

Right-of-Way Policies and Procedures Manual

Approved July 31, 2019

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, approved by the Federal Highway Administration (FHWA) on July 31, 2019, replaces all previous ROW Manuals. It is intended to fully comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and ensure the prudent use of Federal funds under Title 23, United States Code, in the acquisition, management and disposal of real property.

Revisions to this manual will be made and distributed as rules or requirements change.

Right-of-Way

Policies and Procedures Manual

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1.0 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	ROW Program Administration
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1.5	ROW Manual
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1.8	Assignment of FHWA Approval Actions to DDOT
1.9	ROW Unit’s Operational Guidelines
1.10	Utility Relocation Responsibilities
1.11	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 the laws 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. These statutes assure that citizens of the District affected by the ROW process are treated fairly and equitably.

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 (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 requirement is further outlined in Appendix C, Right-of-Way Acquisition Process.

The policies and procedures of this manual shall apply whenever Title 23, United States Code (USC), grant funding is used, including when grant funds are expended on or participate in project costs¹. The requirements also apply for a project to be eligible for Title 23, USC grant funds for the maintenance of the project at any time in the future. This applies to programs and projects administered by the FHWA and, unless otherwise stated, to all property purchased with Title 23 grant funds or incorporated into a project carried out with grant funding provided under Title 23, except property for which the title is vested in the United States upon project completion. DDOT are accountable to FHWA for complying with, and are responsible for ensuring their subgrantees, contractors, and other project partners comply with applicable Federal laws, as described by this manual.

¹ If Title 23 funds are transferred to other District agencies for any reason whatsoever, the requirements of this manual shall apply.

Functions involved in the acquisition, management and disposition processes are divided into Chapters and sub-sections in this manual. The parties responsible for right-of-way and real estate activities, and for compliance with applicable Federal requirements, can vary by the nature of the responsibility or the underlying activity. Throughout this manual, the parties subject to a particular provision are identified using terms of reference that are defined as set forth in Appendix A-2 (Definitions).

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.

1.2. ROW Program Administration

1.2.1. ROW Program Oversight

The District administers the Federal-aid highway program, funded under Chapter 1 of Title 23, United States Code, through DDOT. DDOT has overall responsibility for the acquisition, management, and disposal of real property interests on its Federal-aid projects, including when those projects are carried out by DDOT's subgrantees or contractors. This responsibility includes ensuring compliance with the requirements of Title 23 and other Federal laws, including regulations. Non-DDOT grantees of funds under Title 23 must comply with the requirements of this manual, except as otherwise expressly provided, and are responsible for ensuring compliance by their subgrantees and contractors with the requirements of this part and other Federal laws, including regulations. 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.

1.3. DDOT Organization

The mission of DDOT 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 the Districts transportation infrastructure through:

- (i) Planning, designing, construction, and maintenance for the District's streets, alleys, sidewalks, bridges, traffic signals, and street lights;

- (ii) Managing and making improvements to the street system to facilitate traffic flow through the District of Columbia;
- (iii) Managing, with the Department of Public Works as a partner, the removal of snow and ice from the streets; and
- (iv) Coordinating the District's mass transit services, including the reduced-fare program for students using MetroBus and MetroRail.

DDOT is organized into four administrations which are responsible for the different aspects of managing and maintaining the District's transportation infrastructure. The four Administrations include the Project Delivery Administration, Operations Administration, Administrative Administration and Performance Management Administration. Each functional area reports to the Office of the Director. An organization chart is included at the end of this Chapter. The DDOT Right-of-Way Unit is part of the Infrastructure Project Management Division (IPMD) and are led by the Right-of-Way Unit Manager. The Right-of-Way Unit coordinates with the Administrations in the Agency on acquisition, management, and disposal of real property interests.

1.3.1. Project Delivery Administration

1.3.1.1. Infrastructure Project Management Division (IPMD)

Responsible for the design, engineering, and construction of roadways and bridge projects in the District of Columbia and manages special/mega construction projects. 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 Quality Assurance and Quality Control Section is responsible for the quality assurance of the materials used in DDOT's construction projects and includes the following sections:

- (i) Field Operations/Materials Research – monitors construction projects and collects and tests samples to ensure compliance with DDOT standards and specifications;
- (ii) Materials Laboratory – conducts laboratory testing of samples and independent assurance testing and maintains laboratory accreditation, and

- (iii) Materials Producers Control – provides oversight of material supplier’s process control of construction material to ensure compliance with DDOT standards and specifications.

The Anacostia Waterfront Initiative/Mega Projects and Stormwater Branch leads the effort in transforming the Anacostia Riverfront by planning, designing, and constructing transportation infrastructure in this area and includes the following sections:

- (i) The ROW Unit provides a continuum of realty services during the project life cycle from project conception, project planning, NEPA compliance, to delivering a clear ROW in a timely manner for DDOT’s construction program to proceed on schedule. The ROW Unit Manager shall report to the Project Manager for all aspects of the ROW Units responsibilities as described in this ROW Manual and ensure that the ROW activities meet the Project budget and schedule.
- (ii) Hydraulics – oversees drainage issues in the public right-of-way and ensures projects meet hydraulic and drainage requirements; and
- (iii) Green Infrastructure – oversees stormwater reduction activities using green infrastructure and Low Impact Development practices and maintains these facilities and ensures compliance with stormwater permits issued by the Environmental Protection Agency and the DC Department of Energy and the Environment.

Special Projects and Utility Coordination Section – provides coordination support with utility companies and DC Plug Team works in collaboration with PEPCO to underground power lines and DC Water, Washington Gas and PEPCO on utility issues related to DDOT Projects. The Special Projects and Utility Coordination Section also does estimating support for all IPMD projects.

1.3.1.2. Planning and Sustainability Division (PSD)

Establishes broad strategic goals to guide multimodal transportation program development through plan review.

The Environmental Program Branch incorporates environmental management into the DDOT decision-making process in order to provide context-sensitive and environmentally sustainable solutions for the Department's operations and District's transportation projects and ensure

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compliance with relevant National Environmental Policy Act (NEPA) and District of Columbia Environmental Policy Act (DCEPA) regulations.

The Strategic Planning Branch prepares strategic goals and multimodal plans for the entire District, while also focusing on specific neighborhood needs and the development of pedestrian and bicycle transportation networks. This branch also coordinates the development of the regional Transportation Improvement Program (TIP) and the Statewide Transportation Improvement Program (STIP).

The Systems Planning Branch advances project level planning of major transportation projects, evaluates the transportation impacts of private land development projects, and manages the Agency's research function. This Branch consists of three sections:

- (i) Research – manages the Agency's research program and coordinates with various internal Agency stakeholders performing research projects;
- (ii) Project Review – manages the review of zoning and permitting cases along with various transportation planning projects in conjunction with the Major Projects Team, and participates in various transportation planning projects to provide insight relating to permitting or land development; and
- (iii) Major Projects – responsible for managing large transportation projects through the planning process such as streetcar, bridge projects, and freeway modifications, and participates in various projects to provide technical direction and oversight.

The Active Transportation Branch consists of three sections:

- (i) Active Transportation Programs – develops and implements innovative programs to support non-automobile travel, including Capital Bikeshare, Transportation Demand Management, and Safe Routes to School, and manages multi-disciplinary activities of program management, outreach and marketing, and education;
- (ii) Active Transportation Design – includes modal planning and design experts focused on bicycle, pedestrian, and freight issues and advances the District's multimodal transportation and sustainability goals; and

- (iii) Highway Safety – responsible for the District’s child safety seat program and administering funds from the National Highway Traffic Safety Administration (NHTSA) including coordination of the District’s Highway Safety Plan with other agencies.

1.3.1.3. Transit Delivery Division

Responsible for planning, operating, and maintaining safe, efficient, and affordable premium transit services to support and augment the District's diverse transportation systems, including the DC Circulator and Streetcar. Provides funding, policy recommendations, and coordination of services with the Washington Metropolitan Area Transit Authority (WMATA). The Transit Safety Branch—provides safety oversight in concert with Federal Transit Division regulations of DC Circulator and Streetcar systems; Mass Transit Branch (WMATA Oversight)— provides funding, policy recommendations, and coordination of services with WMATA, including managing the School Subsidy Program; Transit Operations Branch—responsible for daily operations of the DC Circulator and planning and implementing system changes and upgrades to ensure safe and reliable bus service; Streetcar Branch— responsible for managing the daily operations of the DC Streetcar system and overseeing the contract for the operation of the Streetcar system to ensure it provides safe and reliable service to the public; and Freight and Passenger Rail Branch—provides oversight of DDOT’s responsibilities regarding regional freight and passenger rail service.

1.3.1.4. Traffic Engineering and Signals & Safety Division (TESD)

Plans and designs the District’s traffic control and management assets and infrastructure for the safe and efficient movement of pedestrians and vehicles; coordinates and manages the completion of specialized multi-year programs and projects that involve the conceptual development, design, implementation, and management of traffic control measures. This Division consists of two branches:

- (i) Traffic Signals Branch — plans, designs, and constructs traffic signals to improve pedestrian and vehicular traffic safety/mobility and helps meet the traffic control demands in the District; and develops and implements optimized timing plans for the DC signal system in a five-year cycle to improve multimodal traffic operations; and

- (ii) Traffic Engineering Branch—plans, designs, and implements the Highway Safety Improvement Program, provides District-wide project plan review support, and manages the annual traffic data collection program for the District.

1.3.2. Operations Administration

This Division is responsible for maintaining the District’s infrastructure assets including roads, bridges, alleys, sidewalks, streetlights, tunnels, traffic signals, signs, and parking meters, providing traffic safety control, reinsuring traffic, managing public space and on-street parking regulations, managing the urban forestry program, and conducting snow removal operations. There are five divisions in the Operations Administration: Parking and Ground Transportation, Urban Forestry, Public Space Regulation, Transportation Maintenance, and Traffic Operations and Safety.

1.3.2.1. Parking & Ground Transportation Division

Responsible for managing the District’s curbside parking program comprising approximately 260,000 on-street parking spaces on 26,000 city blocks; completes specialized parking programs and projects using technology and state-of-the-art business practices to most effectively and efficiently manage and operate the District’s parking and ground transportation systems. Metered Parking Branch—operates and maintains single and multi-space parking meters, collects revenue, and manages meter payment programs such as pay by cell; Residential Parking/Handicap Parking Branch—manages the residential parking/handicap parking activities and residential centric programs such as the visitor parking pass; Parking and Ground Transportation Policy Branch—supports parking and ground transportation policy development and analytics including the emergence of curbside users such as point-to-point carshare; and Commercial Vehicle/Ground Freight Operations Branch—manages commercial vehicle and ground freight operation activities as well as motor coach and inter-city bus operations in the District.

1.3.2.2. Public Space Regulation Division (PSRD)

Manages the occupancy of public space by private entities, including public utilities, through the issuance of public space permits, the inspection of work zones in public space, and the excavation and restoration of the public right-of-way; enforces District laws and regulations governing occupancy of public space; and serves as the main point of contact for all applicants

and public inquiries regarding public space permits and inspections. The ROW Unit provides support to PSRD in researching Right-of-Way lines.

1.3.2.3. Maintenance Division

Maintains the integrity, safety, and condition of transportation infrastructure assets through services provided through four branches: Asset Management Branch—responsible for maintaining streets, sidewalks, alleys, bridges, and tunnels for both federal and local transportation assets; Street and Bridge Maintenance Branch—responsible for performing asphalt, masonry, and crack sealing of streets, alleys, and bridges; Streetlight Branch—responsible for managing the performance-based contract to maintain all of the District’s lighting assets; and Traffic Signals Branch—maintains the District’s Intelligent Transportation System (ITS) infrastructure including traffic signals, ITS communications network, CCTV camera systems, variable message signs, etc.

1.3.2.4. Traffic Operations & Safety Division

Manages the day-to-day traffic operations for the District through three branches: Transportation Management Center Branch--manages a 24/7 traffic management center (TMC) at HSEMA and a traffic operations center at the Reeves Center to gather and disseminate traffic and emergency information using a network of cameras and other devices; manages the Roadway Operations Patrol that responds to traffic incidents, emergencies, and roadway activities; and the traffic control officer program to prevent congestion through enforcement; Traffic Engineering and Inspections Branch—conducts traffic calming and traffic safety studies, installs traffic calming devices, manages the school crossing guard program to assist students and pedestrians to safely cross intersections throughout the District; and Field Operations Branch—fabricates, installs, and maintains traffic control devices such as signs and pavement markings.

1.3.3. Administrative Administration

This administration is responsible for formulating and managing budgets and procurements as well as developing policies and procedures to meet the financial and human resource needs of the agency. It supports the transformation of administrative activities from transactional processing to strategically focused resources that directly support the agency’s mission and achievement of its performance objectives. It comprises three divisions: Administrative Services, Resource Allocation, and Davis-Bacon.

1.3.4. Office of General Counsel (OGC)

The OGC is in the Office of the Director and provides guidance and legal support for DDOT. The OGC coordinates with the ROW Unit on all aspects of ROW and interfaces with the Office of Attorney General of the District of Columbia (OAG) on all litigation involving the Agency. 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 planning and management as well as on all matters related to the acquisition of new ROW and/or the acquisition of temporary rights required during project construction or for maintenance of the transportation infrastructure. OGC will draft and/or review all legal documents related to acquisitions as well as provide any necessary guidance to the title company handling the settlement.

1.4. Other District Agencies

1.4.1. Office of the Chief Financial Officer (OCFO)

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 OCFO also processes check and wire requests for right-of-way acquisitions.

1.4.2. 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.

1.4.3. Council of the District of Columbia (DC Council)

The DC Council is the legislative branch of District government. The DC Council approves the budget and approves the DDOT's Transportation Improvement Program (TIP). The TIP is a federally required program that identifies capital projects to be eligible for federal funding. If a DDOT Project involves ROW acquisition this must be set out in the TIP or separate legislative authority may be required for the acquisition.

1.4.4. Deputy Mayor for Planning and Economic Development (DMPED)

DMPED oversees, coordinates, and executes economic development programs and projects. The ROW Unit often coordinates with the DMPED on economic development projects which have ROW impacts.

1.4.5. District of Columbia Department of General Services (DGS)

DGS is responsible for all non-transportation related real estate needs of the District including acquisitions, capital improvement and construction projects and programs, leasing; disposes of District property through sale, lease or other authorized method; manages space in buildings and adjacent areas; and provides building management services for facilities owned or operated by the District.

1.4.6. 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.

1.4.7. District Department of Energy & Environment (DOEE)

DOEE 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 DOEE.

1.4.8. Department of Consumer and Regulatory Affairs (DCRA)

DCRA is responsible for regulating construction and business activity in the District of Columbia. The agency operates a consolidated permit intake center, as well as reviews construction

documents to ensure compliance with building codes and zoning regulations. Among its' many functions, the agency is responsible for permitting outdoor advertising.

1.4.9. Office of the Attorney General for the District of Columbia (OAG)

The Office of the Attorney General (OAG) is the chief legal office of the District of Columbia. The Office enforces the laws of the District, defends and provides legal advice to the District's government agencies. When necessary, OAG will file condemnation action instituted to secure private property for transportation and other public purposes. The OGC will coordinate directly with the assistant attorney general assigned to the case and provide all needed assistance. OAG also handles tax sales and obtains required releases for legal fees.

1.4.10. Office of the DC Surveyor (Surveyor)

The Department of Consumer & Regulatory Affairs' Office of the Surveyor maintains the legal records of all land plats and subdivisions of private and District government property within the District of Columbia. The existing records cover a period of more than two centuries. 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 required for opening or closing streets and alleys. Plats are available on line at <http://surdocs.dcrd.dc.gov/SurDocs/faces/t2.jsp>

1.4.11. Recorder of Deeds

The Recorder of Deeds, an administration of the Office of Tax and Revenue, is the official repository of all land records and general public instruments for the District of Columbia. The office is responsible for the collection of all recordation and transfer tax and filing fees on instruments being recorded and maintains these records for public inspection. Documents can be viewed online and printed (with an account) at <https://gov.kofiletech.us/DC-Washington/>

1.4.12. National Capital Planning Commission (NCPC)

The NCPC provides overall planning and guidance for Federal lands and buildings in the National Capital Region. As required, the ROW Unit will coordinate jurisdictional transfers of real property with the NCPC to obtain approval.²

² DC Code §10-111 and 40 USC 8124

1.5. ROW Manual

DDOT shall ensure that its Title 23-funded projects are carried out using an FHWA-approved and up-to-date ROW Manual or Real Estate Acquisition and Management Plan (RAMP) that is consistent with applicable Federal requirements, including the Uniform Act³. DDOT shall maintain an approved and up-to-date ROW Manual describing its ROW organization, policies, and procedures. Non-DDOT grantees may use one of the procedures in Section 1.5.2 to meet the requirements in this paragraph; however, the ROW Manual options can only be used with DDOT approval and permission. The ROW Manual describes functions and procedures for all phases of the ROW program, including appraisal and appraisal review, waiver valuation, negotiation and eminent domain, property management, relocation assistance, administrative settlements, legal settlements, and oversight of its subgrantees and contractors. The ROW Manual also specifies procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The ROW Manual is in sufficient detail and depth to guide DDOT, its employees, and others involved in acquiring, managing, and disposing of real property interests. DDOT, its subgrantees, and contractors must comply with current FHWA requirements whether or not the requirements are included in the FHWA-approved ROW Manual.

1.5.1. ROW Manual Updates

The ROW Manual must be developed and updated, as a minimum, to meet the following schedule:

- (i) DDOT shall prepare and submit for approval by FHWA an up-to-date ROW Manual by no later than August 23, 2018.
- (ii) Every 5 years thereafter, the chief administrative officer of DDOT shall certify to the FHWA that the current ROW Manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and District real estate law and regulation, including this part.

³ The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91–646, 84 Stat. 1894; primarily codified in 42 USC 4601 et seq.), and the implementing regulations at 49 CFR part 24

- (iii) DDOT shall update the ROW Manual periodically to reflect changes in law and operations and submit the updated materials for approval by the FHWA.

1.5.2. ROW Manual Alternatives

DDOT grantees, and all subgrantees, contractors, and other acquiring agencies carrying out a project funded by a grant under Title 23, United States Code, must demonstrate that they will use FHWA-approved ROW procedures for acquisition and other real estate activities, and that they have the ability to comply with current FHWA requirements. This can be done through any of the following methods:

- (i) Certification in writing that the acquiring agency will adopt and use the FHWA-approved DDOT ROW Manual;
- (ii) Submission of the acquiring agency's own ROW Manual to the grantee for review and determination whether it complies with Federal and State requirements, together with a certification that once the reviewing agency approves the manual, the acquiring agency will use the approved ROW Manual; or
- (iii) Submission of a RAMP setting forth the procedures the acquiring agency or design-build contractor intends to follow for a specified project or group of projects, along with a certification that if the reviewing agency approves the RAMP, the acquiring agency or design-build contractor will follow the approved RAMP for the specified program or project(s). The use of a RAMP is appropriate for a subgrantee, non-DDOT grantee, or design-build contractor if that party infrequently carries out Title 23 programs or projects, the program or project is non-controversial, and the project is not complex. (ii) Subgrantees, contractors, and other acquiring agencies carrying out a project for DDOT submit the required certification and information to DDOT, and DDOT will review and make a determination on behalf of FHWA. Non-DDOT grantees submit the required certification and information directly to FHWA. Non-DDOT grantees are responsible for submitting to FHWA the required certification and information for any subgrantee, contractor, and other acquiring agency carrying out a project for the non-DDOT grantee.

1.6. Record Keeping

The ROW Unit will maintain adequate records of DDOT acquisition and property management activities.

1.6.1. Acquisition Records

Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with Title 23, 49 CFR part 24, and 2 CFR 200.333(c) as applicable. These records shall be retained at least 3 years from the later of either:

- (i) The date the DDOT or other grantee receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property; or
- (ii) The date of reimbursement for early acquisitions or credit toward the DDOT's share of a project is approved based on early acquisition activities under 23 CFR 710.501.

1.6.2. Property Management Records

Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with Title 23 funds or incorporated into a program or project that received Title 23 funding.

1.6.3. Right-of-Way Documentation

While acquiring land for ROW, 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 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:

- (i) Project Schedules (for engineering, Appraisals, negotiations, advertising, construction, etc.)
- (ii) Financial ledgers (including expenditures, payments, etc.)
- (iii) Parcel/case files (for each acquisition of separate parcel [discussed in detail below])
- (iv) Maps (including rights-of-way, acquired property, surrounding property, etc.)
- (v) Photographs (showing property, surrounding property, etc.)
- (vi) Plans (including architectural, engineering, etc.)
- (vii) Other documentary materials (including video tapes, disks, papers and models or illustrations)
- (viii) Relocation Agent phone log
- (ix) Appraisals
- (x) Certifications
- (xi) 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. 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.

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1.7. Procurement of ROW Support

Contracting for all activities required in support of DDOT's or other grantee's ROW projects or programs through the use of private consultants and other services shall conform to 2 CFR 200.317, except to the extent that the procurement is required to adhere to requirements under 23 USC. 112(b)(2) and 23 CFR part 172 for engineering and design related consultant services.

DDOT may enter into written agreements with other State, county, municipal, or local public land acquisition organizations, conservation organizations, private consultants, or other persons to carry out its authorities under this part. Such organizations, firms, or persons must comply with this ROW Manual. DDOT shall monitor any such real property interest acquisition activities to ensure compliance with State and Federal law and is responsible for informing such persons of all such requirements and for imposing sanctions in cases of material non-compliance.

1.8. Assignment of FHWA Approval Actions to DDOT

The 2015 Stewardship/Oversight Agreement between DDOT and FHWA defines the scope of property-related oversight and approvals that will be performed directly by FHWA and those that FHWA will assign to DDOT. The content of the most recent Stewardship/Oversight Agreement is reflected in this ROW Manual. The agreement, and thus this ROW Manual, will indicate which Federal-aid projects require submission of materials for FHWA review and approval. The FHWA retains responsibility for any approval action not expressly assigned to DDOT in the Stewardship/Oversight Agreement.

1.9. ROW Unit's Operational Guidelines

1.9.1. Freedom of Information Act⁴ (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

⁴ DC Code §§ 2-531 et seq

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.

1.9.2. Title VI

DDOT as the recipient of Federal financial assistance in the construction and maintenance of District's transportation facilities must 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.

1.9.3. 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.

1.9.4. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)

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.

1.10. 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. DDOT is developing a Utility Manual. When complete it will be available on the DDOT website.

1.11. ROW Compliant Process

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

1.11.2. 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 either:

- (i) Certified Mail with signed receipt;
- (ii) Overnight Courier service with signed receipt; or
- (iii) Personal hand delivery with signed receipt.

1.11.3. 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 Chief Engineer of IPMD. The appropriate person 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 Resources

Examples

- DDOT Organizational Chart (Example 1-1)

References

- Code of Federal Regulations (CFR)

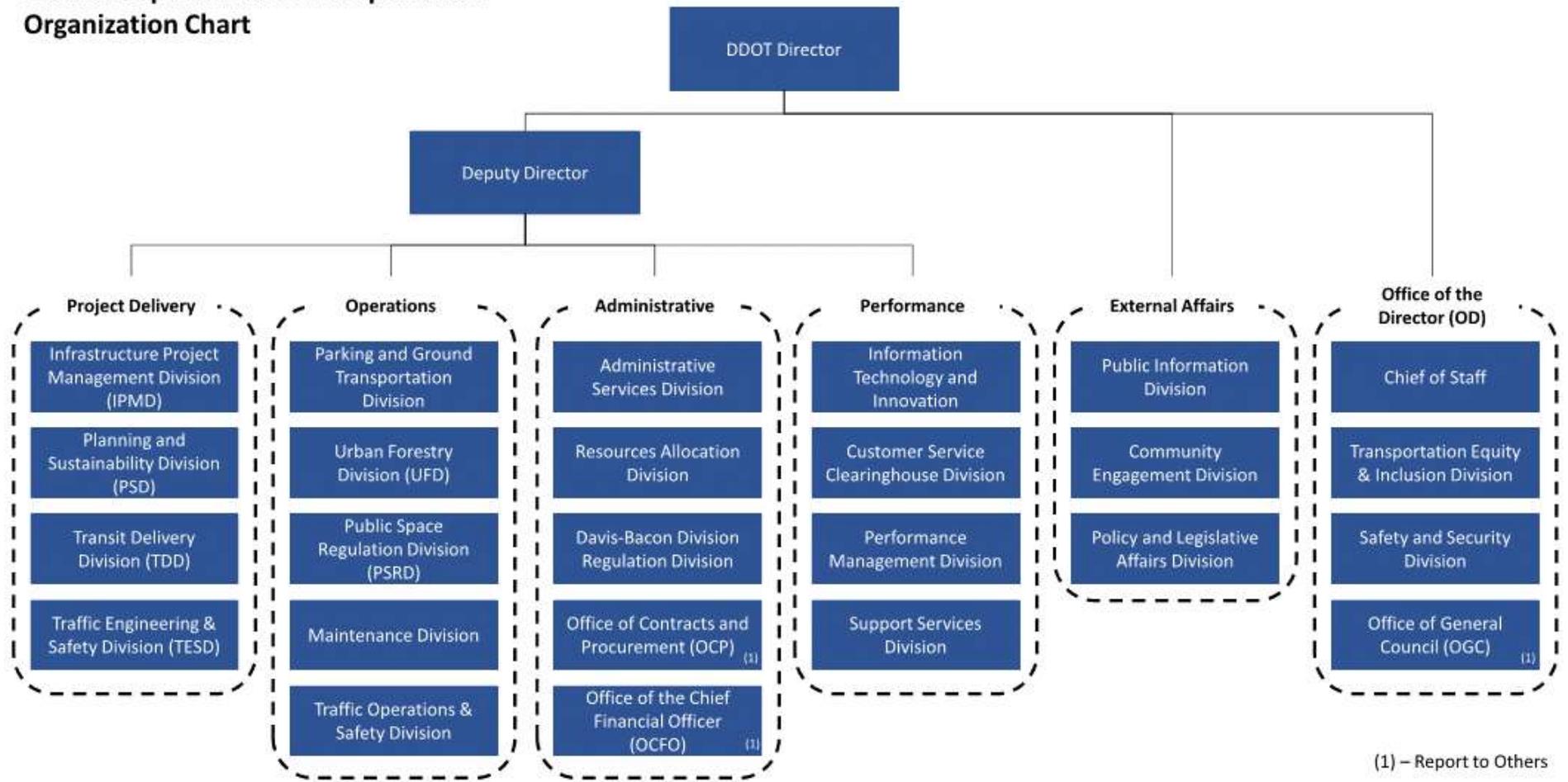
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

- District of Columbia Code

<https://code.dccouncil.us/dc/council/code/>

[Example 1-1]

District Department of Transportation Organization Chart



2.0 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	ROW Cost Estimates & Schedules
2.6	Preliminary Design Plan (30%)
2.7	Parcel and Improvement Identification Numbers (PIN)
2.8	Environmental Site Assessments (ESA)
2.9	Public Information Meetings
2.10	Intermediate Design Plans (65%)
2.11	Right-of-Way Plans
2.12	ROW Acquisitions

2.1. Introduction

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process typically are planning, environmental review, project agreement/authorization, acquisition, construction advertising, and construction.

Because it is necessary that most design details of a 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 all available information at the time.

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.

2.2. Creating a Project

The PSD 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 2.4 of DDOT's Design and Engineering Manual.

As noted in Chapter 4, of this manual, the ROW Unit will be provided a copy of the Project Development and Environmental Evaluation Form¹ and may be requested to provide a preliminary ROW cost estimate for use in DDOT's determination of a project's justification. The

¹ Design and Engineering Manual Section 5.5

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 2.3, 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) regulations² for carrying out NEPA. Environmental approvals under NEPA and other applicable environmental laws and regulations including Section 106 of the National Historic Preservation Act (NHPA) and the Section 4f of the U.S DOT Act of 1966. All environmental approvals have to be coordinated through the Environmental Program Branch of PSD. FHWA is the lead federal agency responsible for providing these approvals. For information regarding DDOT Environmental process please refer to the DDOT Environmental 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.

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 Office of Planning (OP) to ascertain if there are any site development plans being processed for

² 40CFR1500

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 Chapter 3, Section 3.4) for justifying protective buying or early acquisition should be developed and the appropriate plans prepared.

For the format of the preliminary ROW cost estimate see Section 2.5 of this Chapter.

The 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. ROW Cost Estimates & Schedules

Preliminary cost estimates and schedules for the overall project are prepared by the Project Manager at various stages during the Project Development Process (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 be updated to 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%); intermediate design stage (65%); and the approved ROW plans stage.

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.

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 proposed project limits.

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 may in part 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 above or below market value. For estimating purposes at this stage, assessments are generally considered market value. For the annual Assessment Ratio Report

prepared by OTR see

https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/FY%202018%20Assessment%20Ratio%20Report_.pdf

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 Stage ROW Estimates

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 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 potential relocation expenses must be assessed. See Chapter 10, Section 10.3 of this manual for information on how to estimate relocation costs and entitlements payable and which should be included in the preliminary ROW cost estimate.

2.5.3. Preliminary and Intermediate Design Stage ROW Estimates

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. 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. Legislation may be needed for the authority to offer an incentive payment.

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.

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) reference numbers. Exhibits of 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:

- (i) Field visit of the project location, and make a thorough desk review of the plans;
- (ii) Compile a list of questions and items to be resolved or recommended during the review; and
- (iii) 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. 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 12.3, 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 OGC and arrange to have the ESA performed. The ROW Unit with approval of the scope of work and procurement by the OGC 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 potential contamination of a parcel and there are no design alternatives, the ROW Specialist, with the concurrence of the OGC and Project Manager, should request a Phase II ESA 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 include to the maximum extent possible testing for lead paint or Asbestos Containing Material (ACM) ensuring that the testing does not impact upon the occupants as disturbance of the ACM might make them friable. PSD'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 OGC 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

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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 ROW Brochures describe 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.

2.10. Intermediate 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%) intermediate 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
 - (i) Can any alignment changes be made to reduce costly takings, property damage, relocations, etc.?
 - (ii) 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.
 - (iii) 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

- (i) Are grades satisfactory in terms of their impact on adjacent property? If not, explain how they might be changed.
- (ii) Will super-elevation adversely affect adjacent property? Are there any alternatives?
- (iii) Are cuts and fills excessive in consideration of the use of adjoining property?

C. Topography and Survey Information

- (i) Are all important topographical features indicated correctly on the plans? Pay special attention to entrances, cemeteries, wells, signs, landscaping, fencing, etc.
- (ii) Are complete property lines accurately shown on plans?
- (iii) 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?
- (iv) Is parcel data for each property indicated on the ROW data sheet? This includes areas of the whole, acquisitions, easements, and residues.
- (v) 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

- (i) Are railroads properly identified?
- (ii) Are railroad ROW lines shown?
- (iii) Is encroachment on railroad property necessary?

E. Construction Limits

- (i) Do construction limits extend beyond ROW line, requiring temporary or permanent easements?

(ii) Should areas now shown as easements be converted to fee acquisition?

F. Right-of-Way Features and Considerations

(i) Is existing ROW clearly and correctly shown on plans?

(ii) Is proposed ROW completely shown on plans?

(iii) Is proposed ROW adequate and not excessive in width?

(iv) Are minor ROW adjustments needed to avoid excessive or unnecessary damage or takings?

(v) Should a proposed acquisition line be added to preclude Uneconomic Remnants or to bring the acquisition to logical natural barrier?

(vi) Are there strip remainders between old and newly located highways that should be acquired?

(vii) Make recommendations as to acquisitions beyond ROW limits that may be acquired under District law. Explain and support any recommendations.

G. Control of Access Right-of-Way

(i) Are Control of Access lines completely shown on all plan sheets?

(ii) Are Control of Access lines beginning and ending points clearly labeled at a satisfactory point?

(iii) Can minor adjustments be made to Access Control to prevent landlocking property?

H. Buildings

(i) Are the assigned "D" numbers for all buildings and improvements located fully or partially within proposed ROW shown?

(ii) Is development imminent in the project area or construction underway?

(iii) Will advanced, protective buying or hardship/priority acquisition be considered?

I. Entrances

- (i) Are existing curb cuts and driveways shown?
- (ii) Will additional curb cuts or driveways be provided as a result of grade changes at the property line?
- (iii) Are proposed curb cut or driveway grades acceptable for their intended use?
- (iv) Does grade location or width of a proposed curb cut, or driveway cause excessive damage to the property?

J. Easements

- (i) Are temporary or permanent easements needed for construction features, such as slopes, channels, outfall drainage, staging area, etc.?
- (ii) Are all easements indicated and properly identified?
- (iii) Will any easements cause excessive damage?

K. Miscellaneous Items

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

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.

Right of Way

2-13

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 an integral part of the transportation project construction plans, the ROW plans 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. 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.

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. ROW Acquisitions

In accordance with 23 CFR 710.305:

- (i) The Agency will ensure that all acquisitions and related relocation assistance activities are performed in accordance with 49 CFR part 24. If the Agency does not directly own the real property interests used for a title 23 project, the grantee must have an enforceable subgrant agreement or other agreement with the owner of the ROW that permits the grantee to enforce applicable Federal requirements affecting the real property interests, including real property

management requirements in accordance with Sections 12 and 17 of this Manual, as applicable.

- (ii) Adequacy of real property interest. The real property interests acquired for any project funded under title 23 must be adequate to fulfill the purpose of the project. Except in the case of an Early Acquisition Project, this means adequate for the construction, operation, and maintenance of the resulting facility, and for the protection of both the facility and the traveling public.
- (iii) Establishment and offer of just compensation. The amount believed to be just compensation shall be approved as required by the ROW Manual. The offer of just compensation shall be done in accordance with 49 CFR 24.102(d).
- (iv) Description of acquisition process. The acquiring agency shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under District law and this part, and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English in accordance with 49 CFR 24.5, 24.102(b), and 24.203.

Chapter Resource

Examples

- Preliminary Right-of-Way Cost Estimate (Example 2-1)

Flow Chart

- NEPA and Pre-Acquisition Activities

Forms

- Right-of-Way Status Report (form ROW STATUS) (Form 2-1)

References

- Code of Federal Regulations (CFR)

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

- District of Columbia Code

<https://code.dccouncil.us/dc/council/code/>

[Example 2-1]

PRELIMINARY RIGHT OF WAY COST ESTIMATE (continued)

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.

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.

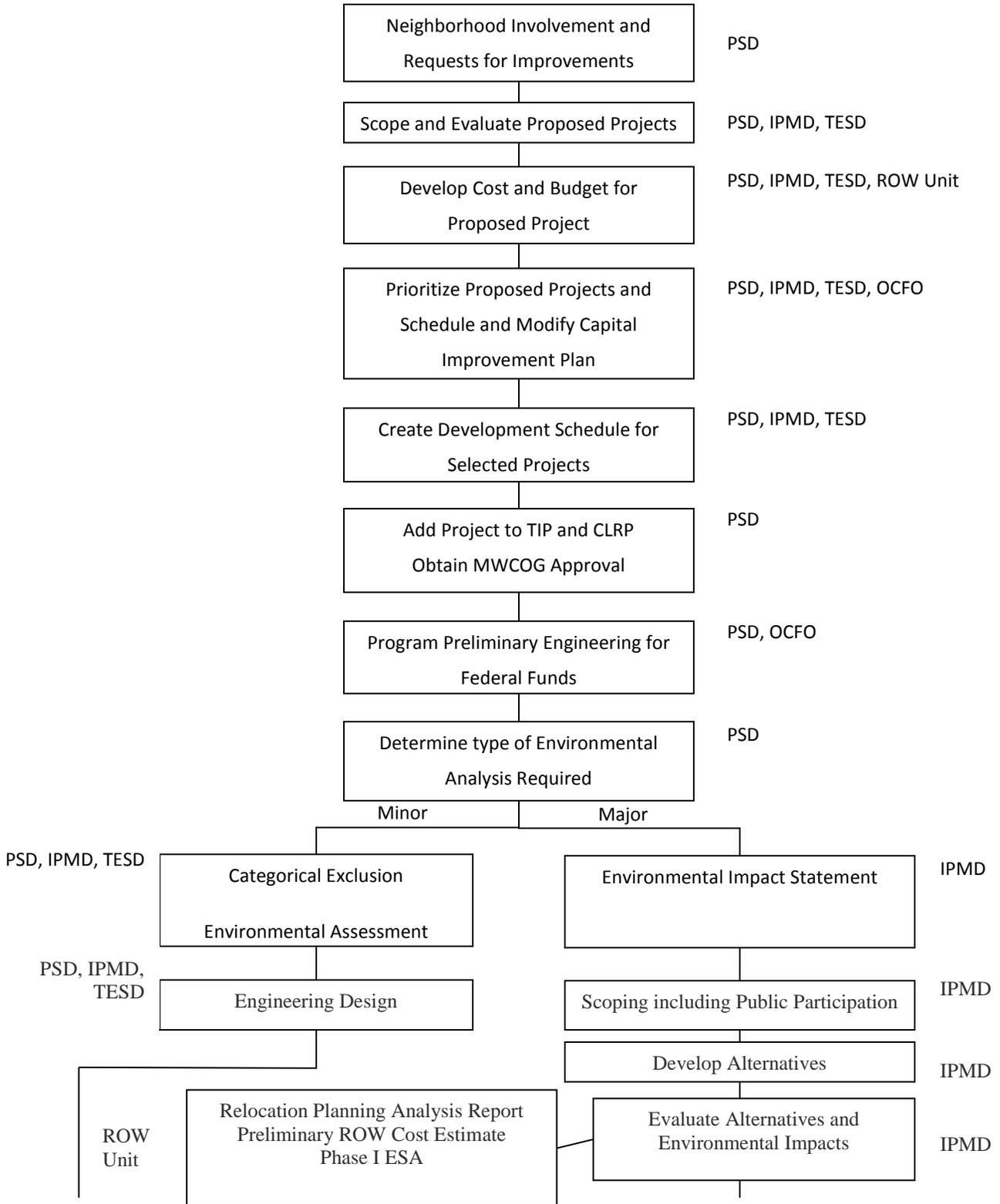
NOTE: INCREASE PROJECTED FOR THE NEXT THREE YEARS AT % PER YEAR

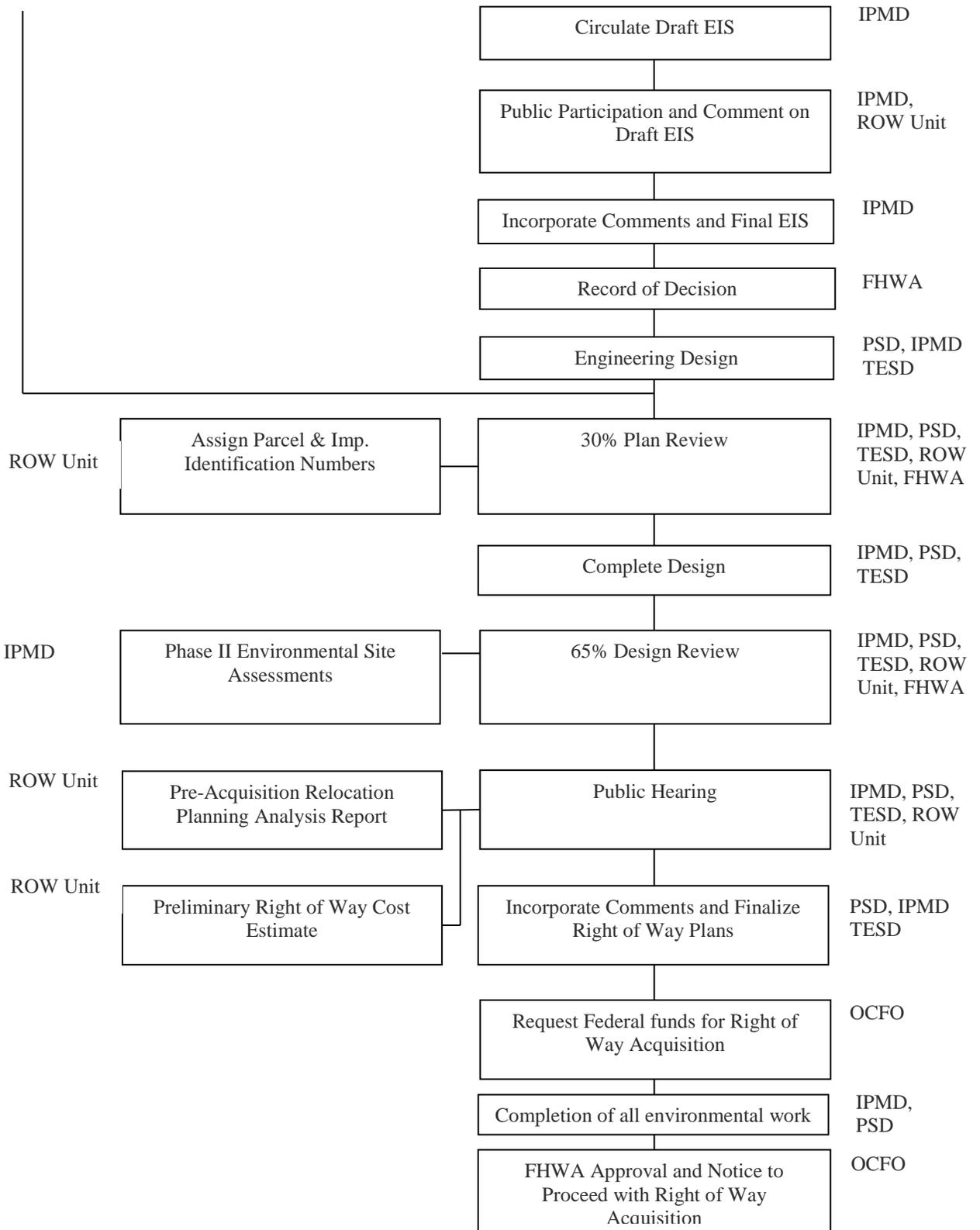
Projected estimated cost as of 20__ is \$

Projected estimated cost as of 20__ is \$

Projected estimated cost as of 20__ is \$

NEPA and Pre-Acquisition Activities





3.0 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 any time 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	Requirements for Protective Buy or Hardship Acquisitions
3.4	Hardship Acquisitions
3.5	Warrants for Protective Buying or Early Acquisition
3.6	Programming Documentation
3.7	Alternative Funding
3.8	Notice to Proceed for ROW Acquisition

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 for these new transportation improvements or for the

rehabilitation or replacement of existing facilities is developed during the planning process, and projects are created to accomplish the identified need. The identification, funding, programming and development process for such projects are covered in Chapter 2 of 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 improvement projects and complying with regulations, the PDP may take several years to complete. During the planning phase of a Project there may be activities occurring in the project area which may substantially affect the engineering alternatives, project costs, or adversely impact individual landowners. These circumstances may warrant protective buying, early acquisitions or hardship acquisitions. The following sections outline the criteria that DDOT will use to evaluate the need for a protective buy, early acquisition or hardship acquisition, as well as the documentation required to support the finding.

3.2. Protective Buying and Early Acquisition

In accordance with the requirements of 23 CFR 710.501 the following are the requirements for an Early Acquisition:

A. General

DDOT may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. DDOT may undertake Early Acquisition Projects before the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes subject to the requirements in this section. DDOT may fund Early Acquisition Project costs entirely with District funds with no Title 23 of the United States Code participation; use District funds initially but seek Title 23 credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to paragraph (e) of this section. The early acquisition of a real property interest under this section shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects.

B. District-funded early acquisition without Federal credit or reimbursement.

DDOT may carry out early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which DDOT receives Federal financial assistance or other Federal approval under Title 23 of the United States Code for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with the requirements of 23 CFR 710.501(c)(1) through (5).

C. DDOT-funded early acquisition eligible for future credit.

Subject to 23 CFR 710.203(b) (direct eligible costs), 23 CFR 710.505(b), and 23 CFR 710.507 (District and local contributions), Early Acquisition Project costs incurred by DDOT at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds, and if the following conditions are met:

- (i) The property was lawfully obtained by DDOT;
- (ii) The property was not land described in 23 USC 138;
- (iii) The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;
- (iv) DDOT complied with the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000d–2000d-4);
- (v) DDOT determined and FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:
 - (a) The decision on need to construct the proposed transportation project;
 - (b) The consideration of any alternatives for the proposed transportation project required by applicable law; and

(c) The selection of the design or location for the proposed transportation project; and

(vi) The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

D. District-funded early acquisition eligible for future reimbursement.

Early Acquisition Project costs incurred by DDOT prior to completion of the environmental review process for the transportation project are eligible for reimbursement from Title 23 funds apportioned to the District once the real property interests are incorporated into a project eligible for surface transportation program funds if DDOT demonstrates, and FHWA concurs, that the terms and conditions specified in the requirements of 23 CFR 710.501(c)(1) through (5), and the requirements of 23 CFR 710.203(b) (direct eligible costs) have been met. DDOT must demonstrate that it has met the following requirements, as set forth in 23 USC 108(c)(3):

- (i) Any land acquired, and relocation assistance provided, complied with the Uniform Act;
- (ii) The requirements of title VI of the Civil Rights Act of 1964 have been complied with;
- (iii) The District has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under District law and the acquisition is certified by the Mayor as consistent with the District plans before the acquisition;
- (iv) The acquisition is determined in advance by the Mayor to be consistent with the District transportation planning process pursuant to 23 USC 135;
- (v) The alternative for which the real property interest is acquired is selected by the District pursuant to regulations issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;
- (vi) Before the time that the cost incurred by the District is approved for Federal participation, environmental compliance pursuant to NEPA has been completed

for the project for which the real property interest was acquired by the District, and the acquisition has been approved by the Secretary under this Act, and in compliance with Section 303 of Title 49, Section 7 of the Endangered Species Act, and all other applicable environmental laws that shall be identified by the Secretary in regulations; and

- (vii) Before the time that the cost incurred by the District is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

E. Federally funded early acquisition.

The FHWA may authorize the use of funds apportioned to the District under Title 23 for an Early Acquisition Project if DDOT certifies, and FHWA concurs, that all of the following conditions have been met:

- (i) The District has authority to acquire the real property interest under District law; and
- (ii) The acquisition of the real property interest -
 - (a) Is for a transportation project or program eligible for funding under Title 23 that will not require FHWA approval under 23 CFR 774.3;
 - (b) Will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under this section in connection with a proposed transportation project;
 - (c) Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the decision of FHWA on any approval required for a proposed transportation project;
 - (d) Will not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;

- (e) Is consistent with the District transportation planning process under 23 USC 135;
 - (f) Complies with other applicable Federal laws (including regulations);
 - (g) Will be acquired through negotiation, without the threat of, or use of, condemnation; and
 - (h) Will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and title VI of the Civil Rights Act of 1964 (42 USC 2000det seq.).
- (iii) The Early Acquisition Project is included as a project in DDOT’s TIP.
- (iv) The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project. Pursuant to 23 USC 108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the proposed transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27, including a significant adverse impact within the meaning of paragraph (e)(2)(ii) of this section. The Early Acquisition Project must comply with all applicable environmental laws.

F. Prohibited activities.

Except as provided in this paragraph, real property interests acquired under paragraph (e) of this section and pursuant to 23 USC 108(d) cannot be developed in anticipation of a transportation project until all required environmental reviews for the transportation project have been completed. For the purpose of this paragraph, “development in anticipation of a transportation project” means any activity related to demolition, site preparation, or construction that is not necessary to protect public health or safety. With prior FHWA approval, DDOT may carry out limited activities necessary for securing real property interests acquired as part of an Early Acquisition Project, such as limited

clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project.

G. Reimbursement.

If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by 23 USC 108 (a)(2), FHWA must offset the amount reimbursed against funds apportioned to the District.

H. Relocation assistance eligibility.

In the case of an Early Acquisition Project, a person is considered to be displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between DDOT and the property owner. Agreements used for Early Acquisition Projects that give DDOT a right to prevent new development or to decide in the future whether to acquire the real property interest(s), but do not create an immediate commitment by DDOT to acquire and do not require an owner or tenant to relocate, do not create relocation eligibility until DDOT legally commits itself to acquiring the real property interest(s).

3.3. Requirements for Protective Buy or Hardship Acquisitions

A. 23 CFR 710.503 provides that prior to final environmental approval of a project, 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 property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

- (i) The project is included in DDOT's currently approved TIP;
- (ii) DDOT has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

- (iii) A determination has been completed for any property interest subject to the provisions of 23 USC 138; and
- (iv) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 USC 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 an owner's request for a hardship acquisition based on a property owner's written submission that –

- (i) 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 other property owners; and
- (ii) 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 remains subject to environmental review under 23 CFR 771. An acquisition under this section may not influence the environmental review of a transportation project which would use the property, including decisions about the need to construct the transportation project or the selection of an alternative.

3.4. 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:

- (i) Nature of the hardship
- (ii) Documentation of inability to sell property at a reasonable price as a result of the project development.

A hardship can result from the following two categories:

- (i) 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.
- (ii) 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. 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.

3.5. 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:

- (i) The proposed development or improvements to a property required for the project is imminent.
- (ii) The proposed development of the required property limits or eliminates feasible alternatives for the transportation project.
- (iii) There will be a significant increase in the project's cost if the landowner is permitted to improve or develop the property.

3.6. 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.

- (i) 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 (IPMD, PSD or TESD). (A plat delineating the proposed ROW and/or areas to be acquired shall be provided if the acquisition does not require the whole property.)
- (ii) Documentation that the warrants for protective buying or early acquisition or hardship acquisition have been met will be prepared by the ROW Unit.

- (iii) 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
- (iv) 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.
- (v) The environmental assessment 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 USC 138, or historic properties as described in 16 USC 470(f). Both the assessment and CE should be performed by the managing unit (IPMD, PSD or TESD). The environmental assessment shall be submitted to the FHWA for review and approval.
- (vi) 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.
- (vii) 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

- (viii) 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 PSD.
- (ix) A statement that the proposed project is included in DDOT’s TIP and is eligible for Federal participation should be prepared by PSD.

3.6.1. 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 USC 135.

3.6.2. 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.

3.7. 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 for a PoDI are not eligible prior to executing a project agreement with FHWA. 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

⁵ 23 USC Ch. 1, 108(c)(2)(c)

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.

3.8. Notice to Proceed for ROW Acquisition

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 Uniform Act and all applicable regulations.

Based upon the time frame of the overall PDP, the ROW Unit shall implement the appropriate property management procedures.

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 Resources

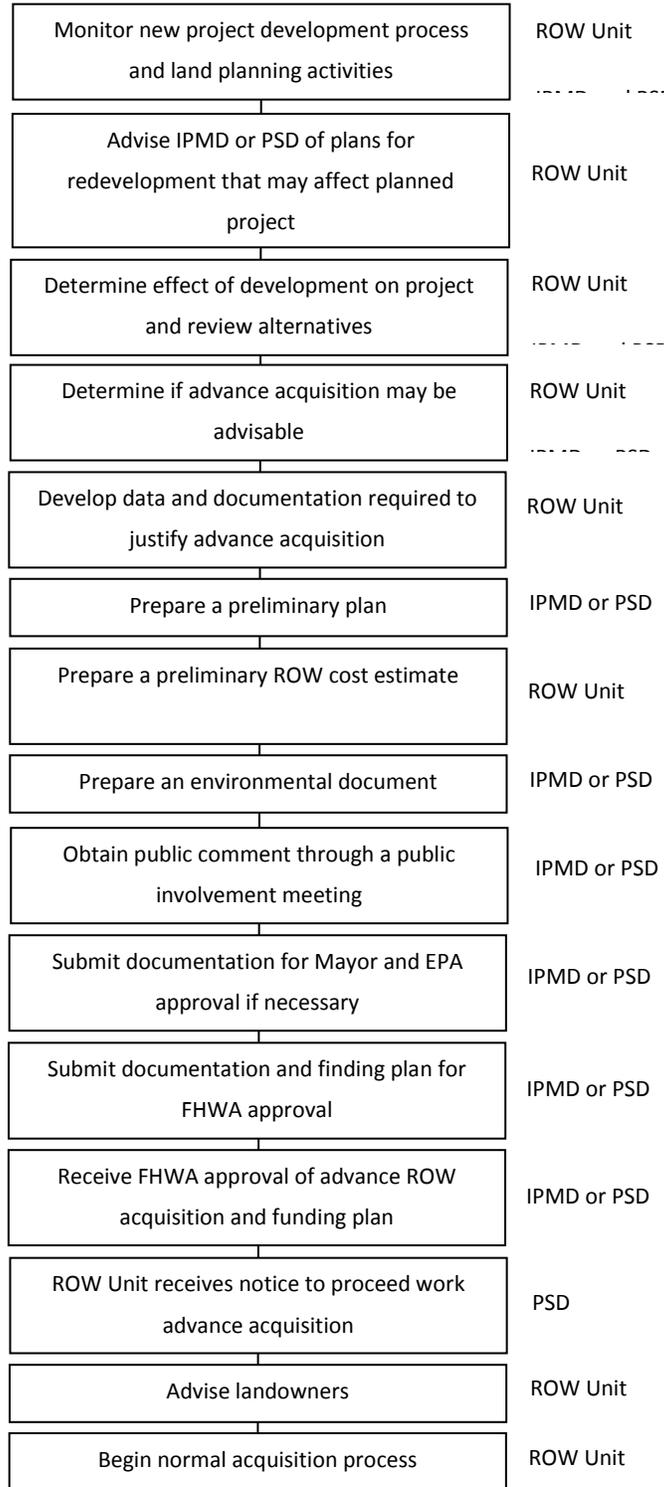
Flow Chart

- Advance Acquisition Process
- Hardship Acquisition Process

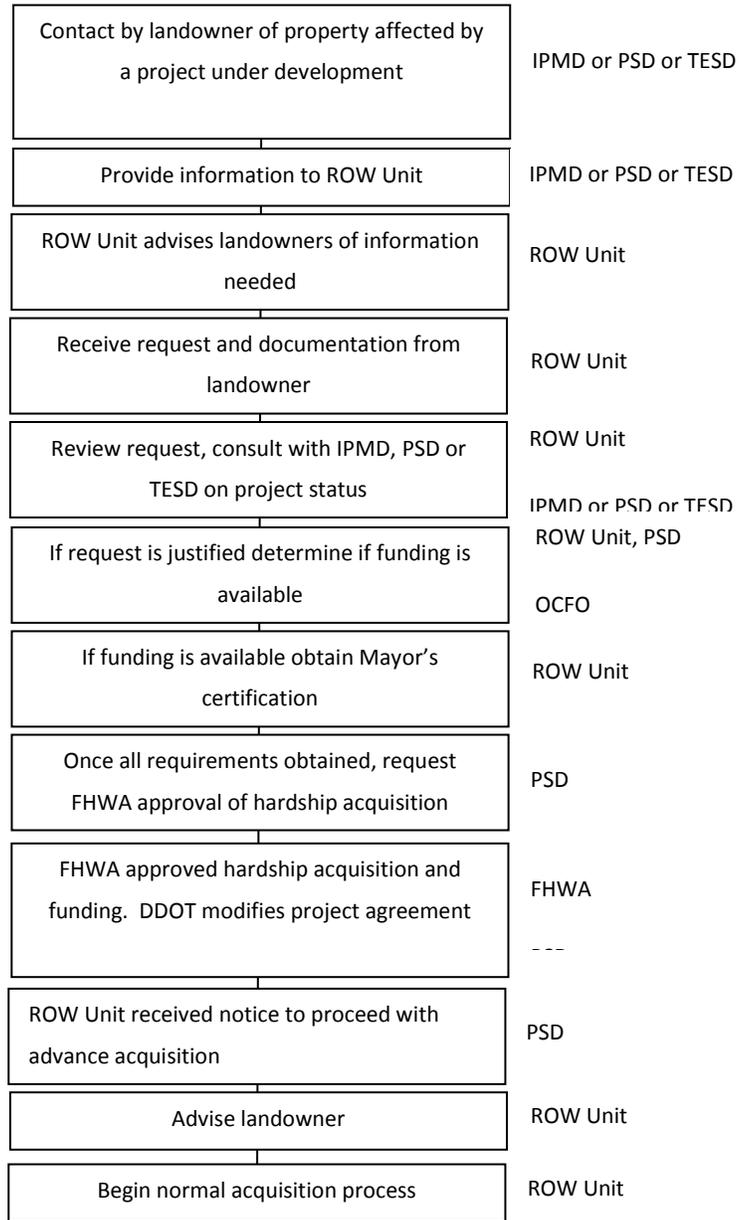
References

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
- United States Code (USC)
<https://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE>

Flow Chart – Advance Acquisition Process



Flow Chart – Hardship Acquisition Process



4.0 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 Title 23.

Section Number	Section Name
4.1	Introduction
4.2	Title 23 Funding and Reimbursement
4.3	DDOT Programming for Projects
4.4	FHWA Approval and Authorization

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 Transportation Improvement Program (TIP) and the Statewide Transportation Improvement Program (STIP). The Project must be submitted to the Metropolitan Washington Council of Governments (MWCOC) Transportation Planning Board (TPB) for approval. The Project Manager develops estimated cost data for the project, a budget and a schedule. 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 IPMD, PSD and the TESD 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 PSD, IPMD, TESD, 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

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

4.2. Title 23 Funding and Reimbursement

In accordance with 23 CFR 710.203 - Funding and Reimbursement:

A. General Conditions

Except as otherwise provided in 23 CFR 710.501 for early acquisition, DDOT only may acquire real property, including mitigation property, with title 23 grant funds if the following conditions are satisfied:

- (i) The project for which the real property is acquired is included in an approved TIP;
- (ii) Preliminary acquisition activities, including a title search, appraisal, appraisal review and waiver valuation preparation, preliminary property map preparation and preliminary relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services, can be advanced under preliminary engineering, as defined in Title 23 CFR 646.204, prior to completion of NEPA (42 USC 4321, et seq.) review, while other work involving contact with affected property owners for purposes of negotiation and relocation assistance must normally be deferred until after NEPA approval, except as provided in Title 23 CFR 710.501, early acquisition; and in Title 23 CFR 710.503 for protective buying and hardship acquisition; and
- (iii) Costs have been incurred in conformance with District and Federal requirements.

B. Direct Eligible Costs.

Federal funds may only participate in direct costs that are identified specifically as an authorized acquisition activity such as the costs of acquiring the real property incorporated into the final project and the associated direct costs of acquisition, except in the case where the District has an approved indirect cost allocation plan as stated in Title 23 CFR 710.203(d) or specifically provided by statute. Participation is provided for:

- (i) Real property acquisition. Usual costs and disbursements associated with real property acquisition as required under the laws of the District, including the following:
 - (a) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies;
 - (b) Ordinary and reasonable costs of acquisition activities, such as, appraisal, waiver valuation development, appraisal review, cost estimates, relocation planning, ROW plan preparation, title work, and similar necessary ROW related work;
 - (c) The compensation paid for the real property interest and costs normally associated with completing the purchase, such as document fees and document stamps. The costs of acquiring Purchase Agreements and other contractual rights to acquire an interest in land, rights to control use or development, leases, Temporary Construction Easements (TCE), and any other similar action to acquire or preserve rights-of way for a transportation facility are eligible costs when FHWA determines such costs are actual, reasonable and necessary costs. Costs under this paragraph do not include salary and related expenses for an acquiring agency's employees (see payroll-related expenses in paragraph (b)(5) of this section);
 - (d) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process. This includes reasonable acquiring agency attorney's fees, but excludes attorney's fees for other parties except where required by District law (including an order of a court of competent jurisdiction) or approved by FHWA;
 - (e) The cost of minimum payments and waiver valuation amounts included in this ROW Manual; and
- (ii) Relocation assistance and payments. Usual costs and disbursements associated with the following:

- (a) Relocation assistance and payments required under 49 CFR part 24; and
- (b) Relocation assistance and payments provided under District law that may exceed the requirements of 49 CFR part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States.
- (c) Damages. The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under District law.
- (d) Property management. The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.
- (e) Payroll-related expenses. Salary and related expenses (compensation for personal services) of employees of DDOT for work on a project funded by a title 23 grant are eligible costs in accordance with 2 CFR part 225 (formerly OMB Circular A-87), as are salary and related expenses of DDOT's employees for work with an acquiring agency or a contractor to ensure compliance with Federal requirements on a title 23 project if the work is dedicated to a specific project and documented in accordance with 2 CFR part 225.
- (f) Property not incorporated into a project funded under title 23, United States Code. The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:
 - a. General. Costs for construction material sites, property acquisitions to a logical boundary, eligible Transportation Alternatives (TA) projects, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing; and

b. Easements and alternate access not incorporated into the ROW. The cost of acquiring easements and alternate access points necessary for highway construction and maintenance outside the approved ROW limits for permanent or temporary use.

(g) Uneconomic Remnants. The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

(h) Access rights. Payment for full or partial Control of Access on an existing road or highway (i.e., one not on a new location), based on elements compensable under applicable District law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(iii) Utility and railroad property.

(a) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to DDOT for a project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, subpart B, Railroad-Highway Projects; and

(b) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately-owned property.

C. Credit for Local Contributions

If the requirements of 23 USC 323 are met, real property owned by the District that is incorporated within a project receiving financial assistance from the Highway Trust Fund can be used as a credit toward the grantee or subgrantee's matching share of total project cost. A credit cannot exceed the District's matching share. DDOT will ensure there is documentation supporting all credits, including the following:

Right of Way

4-5

- (i) A certification that the District acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6); and
- (ii) Justification of the value of credit applied. Acquisition costs incurred by the District to acquire title can be used as justification for the value of the real property.

Credits are not available for real property acquired with any form of Federal financial assistance except as provided in 23 USC 120(j), or for real property already incorporated into existing ROW and used for transportation purposes.

Property may be presented for project use with the understanding that no credit for its use is sought. In such case, DDOT shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6).

D. Withholding payment.

The FHWA may withhold payment under the conditions described in 23 CFR 1.36 for failure to comply with Federal law or regulation, District law, or under circumstances of waste, fraud, and abuse.

E. Indirect Costs.

Indirect costs may be claimed under the provisions of 2 CFR part 225 (formerly OMB Circular A-87). Indirect costs may be included on billings after the indirect cost allocation plan has been prepared in accordance with 2 CFR part 225 and approved by FHWA, other cognizant Federal agency, or, in the case of an DDOT subgrantee without a rate approved by a cognizant Federal agency, by DDOT. Indirect costs for DDOT may include costs of providing program-level guidance, consultation, and oversight to other acquiring agencies and contractors where ROW activities on title 23-funded projects are performed by non-DDOT personnel.

4.3. DDOT Programming for Projects

When the development teams, led by the Project Manager, complete the scoping of a new project, the ROW Unit should be provided a copy of the Project Development and Environmental Evaluation Form and may be requested to provide an estimate of ROW costs for the project. 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.

4.4. FHWA Approval and Authorization

The Project Manager must coordinate with OCFO to program funding for projects. Federally funded projects whose oversight has been assumed by DDOT under 23 USC 106(c) to perform specified approvals and related responsibilities according to the Stewardship & Oversight Agreement will be managed as “Assumed Delegated Projects”.

4.4.1. FHWA - Project of Division Interest

A Project of Division Interest (PoDI) is a project that has an elevated risk, contains elements of higher risk, or presents a meaningful opportunity for FHWA involvement to enhance meeting program or project objectives. DC Division of FHWA performs partial oversight of the PoDI Project based on the Project Specific PoDI plan. All major projects, over \$500 million, are PoDI projects.

DDOT will submit Form 1365 and required documentation to the Division for formal approval, or for all changes (e. g. time, budget, scope, issuance of task orders) on approved PoDI’s. Upon review of the Form 1365 and required documentation, the DC Division will notify DDOT the approval result. If approved, then the Form 1365 will be signed electronically or by hand by the FHWA Program Lead. The appropriate FHWA Program Lead will send the signed Form 1365 to DDOT.

DDOT does not have to notify the Division Office of changes on Assumed Delegated Projects. However, it is expected that DDOT’s procedures will encompass those areas noted above as it assumes FHWA’s Title 23 oversight role and approval responsibilities. DDOT proposes that changes be documented on the OCFO’s Program Action Request (PAR) form and the approval tracked through DDOT’s ProTrak+ database.

Chapter Resources

References

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

5.0 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 a 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

5.1. 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. Title research consists of examining public records to identify all the holders of property rights and liens so that their interest can be evaluated, acquired and/or released in the process of acquisition.

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 OGC. 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 order Title Reports as soon as the schedule warrants.

5.2. Project Survey

The initial determination of landowners is usually made during the survey phase of a transportation improvement project development. The initial research must include the Recorder of Deeds, D.C. Surveyor and the Real Property Tax Administration to determine the current owner, legal description and plat(s) showing the location of property boundaries. This information will be reflected on the plans.

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.

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 and/or temporary rights). The ROW Unit Manager will request that the OGC determine the type of Title Report and coordinate with the Project Manager and OCP to determine the title work can be completed under an existing Project contract or if a new procurement will be necessary.

5.4. Title Reports

5.4.1. Title Search and Reporting Requirements

The examination of the public land records must consist of a reasonably diligent search of the records, considering both the property's character and value and the interests to be acquired. The resulting written report must disclose the name of each person or entity in whom title is vested, and all additional parties identified in the records as having or claiming an interest in the property to be acquired. The latter may include tenants revealed by recorded leases, lienholders, beneficiaries of easements, taxing authorities, owners' associations, and heirs or devisees of a deceased owner where these successors in interest can be identified from public records. Legible copies or accurate transcriptions must be obtained of all documents affecting the present owner's title and those creating interests that run with title to the land.

5.4.2. Selecting a Title Examiner

The record title examination must be obtained from a title examiner or title insurance company deemed competent to provide it by the reviewing attorney. Nationwide title insurance companies are the most readily available sources for title examination. Title insurers authorized by state law to conduct business in the jurisdiction where the subject land is located and who hold membership in the American Land Title Association (ALTA) or Texas Land Title Association (TLTA) may be considered competent to examine title in the absence of adverse information. Subpart 3.6 of these regulations provides an overview of the process for obtaining title insurance.

At a minimum, a provider of title evidence must be licensed if licensing is required by applicable laws in the state where the real property is located. Title examiners must have no financial interest in the land to be acquired, nor be related to or affiliated with a seller or donor. Agencies may adopt their own standards and procedures for approving providers of title evidence in addition to these basic requirements. The Department of Justice does not maintain a list of approved title examiners.

5.4.3. Required Period of Search for Public Land Records

The 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.

5.4.4. Search of Federal Court Records

Examination is required of federal court records in the federal court district where the land is situated to identify judgment liens, decrees, and pending cases that could affect title in any state which has not enacted a statute authorizing judgments and decrees of United States courts to be recorded or otherwise conformed to the rules and requirements relating to judgments and decrees of the courts of the state.

5.4.5. Title Insurance

In most cases the requirements for closing will include the purchase of title insurance. In these cases, the ROW Unit Manager shall coordinate with OGC and the outside Title Company. 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 ordering an Appraisal of the property.

Title insurance commitments and title insurance policies may be amended after issuance for a variety of reasons, including updating the initial search where excessive time has elapsed (for a commitment), adding or deleting exceptions to coverage based on new information brought to the insurer's attention, and otherwise modifying coverage. These amendments are styled as endorsements. Each endorsement must reference the commitment or policy it is amending and should be appended to the commitment or policy. Endorsements become a part of the record title evidence and must be provided promptly to the reviewing attorney.

5.4.6. Title Report Required Contents

An abstract of title must clearly identify the subject land and contain reproducible copies or summaries of all documents found to affect title after examination of the public land records. The contents of a title abstract must be clearly organized. Where multiple parcels sharing a common preceding chain of title are to be acquired, a master abstract should be prepared and supplemented by an individual abstract for each related parcel. The abstractor's certification must appear on each abstract. All Title Reports will contain information concerning:

- Owners
- Source deed

- Taxes and Assessments
- Deeds of Trust
- Liens
- Leases
- Easements
- Unreleased judgments
- Financing statements
- Other information (divorce settlements, estates etc.)

Abstracts containing illegible copies are unacceptable and must not be relied on for review and approval of title until corrected. Abstracts containing extraneous documents irrelevant to the title being examined may also require revision at the discretion of the reviewing attorney.

The preference is for copies of all recorded documents, however, where documents are summarized rather than photocopied, the abstract must contain a sufficient summary of the material portions of each instrument to enable the reviewing attorney to determine the nature and effect of the instrument. Basic data that must be included are recordation information (date, book and page, or instrument number) for each instrument; identification of any unpaid mortgages, deeds of trust, and liens; and notice of any reservations, limitations, or conditions on ownership, e.g., easement grants and affirmative and restrictive covenants. Releases of homestead, dower, and other statutory rights must be affirmatively shown.

Questions raised and encumbrances or clouds on title revealed by the abstract must be addressed in the reviewing attorney's pre-acquisition title opinion. The following sections of this manual focuses on title abstractors' responsibilities to supplement abstracts of title with information that can be used by a reviewing attorney to assess the sufficiency of title.

5.4.7. Special Challenges in Reviewing Title Abstracts

When title examination results are summarized in a title insurance commitment, the commitment should identify all additional documentation required for a transfer of clear title to the District. By contrast, where an abstract of title is obtained, it may be necessary for the

reviewing attorney to make those determinations. The following subparts provide guidance in circumstances where additional research and documentation are found to be necessary following the initial record title examination.

5.4.7.1. Deceased Landowner; Determination of Heirship

When a conveyance follows the death of the most recent owner of record, confirmation must be made that the deed to the District will be signed by the party or parties with legal authority to transfer title. As a practical matter, the ability to satisfy requirements for conveying title by deed created by a landowner's death will depend largely on whether administration (i.e., probate) of the landowner's estate has occurred and, if not, whether the landowner's successors in interest (generally, heirs or devisees, but also potentially lienholders) can be identified and located and will cooperate in conveying title.

5.4.7.2. Conveyances by a Trustee or Fiduciary

When land will be conveyed to the District by a trustee or other fiduciary, the reviewing attorney must verify that the trustee or fiduciary has legal authority to make the sale. The abstract of title must contain all essential parts of trust instruments, powers of attorney, and records of any court proceedings conferring authority for conveyances to enable the reviewing attorney to determine the legal effect of such sale and confirm that all legal requirements for validity were observed.

5.4.7.3. Conveyances by a Corporation or Other Business Entity

When land will be conveyed to the District by a corporation or other business organization (e.g., general or limited partnership or other limited liability entity created by the filing of organizational documents), it is necessary to establish that the entity has authorized the sale and that the individual signing the deed is empowered to do so. Research into the corporate laws of the District to verify the entity is established and in good standing. Also verify the corporate charter or comparable records to confirm the power of the corporation to hold and convey real estate, and any specification of the corporate officer(s) with authority to execute the deed. Obtain a copy of the corporate resolution or other official act identifying the names and titles of the current corporate officer(s) who will sign the deed. When the state of incorporation of the seller is not the District, verify that the corporation is registered to do business in the District.

5.4.7.4. Foreclosures, Tax Sales, or Other Judicial Proceedings

When foreclosure proceedings appear in the chain of title and the time for redemption, appeal, or reopening the matter has not expired, the abstract must provide sufficient information to enable the reviewing attorney to determine the validity and effect of the foreclosure. If the foreclosure is by judicial proceeding, the abstract must identify all defendants and contain sufficient portions of the court record to confirm the regularity of the proceeding and compliance with provisions of the foreclosure statute. If foreclosure is under a power of sale, the terms of the power and evidence of compliance with applicable statutory provisions must appear.

An abstract must fully disclose sufficient portions of the records of all sales by receivers, execution sales, tax sales, distributions as a result of divorce, and other judicial proceedings affecting title to enable the reviewing attorney to determine the legal effect of such sales or proceedings and confirm that statutory requirements were observed and the time for redemption, appeal, or reopening the matter has expired.

5.4.7.5. Special Assessment Districts; Property Owners' Associations

Abstracts containing references to property assessments of any kind, including but not limited to those imposed by drainage, school, special improvement, water, paving, sewer and homeowners' and other property owners' associations, must set out the current and delinquent assessment amounts and reference the statutes or recorded development regimes establishing the assessment rights.

5.4.7.6. Ownership of Streets and Alleys

When land to be acquired by the District will encompass vacated streets or alleys, the abstract of title must include all information of record affecting ownership, including identification of the legal proceeding that permitted vacation. Public utility equipment may exist above or below public rights-of-way without recorded easements. Inquiry must be made of the local governing jurisdiction and public utilities to identify any utility equipment and rights of use still present after vacation. All such rights must be understood by the acquiring agency and reviewing attorney. The information should also be provided to appraisers who may be assigned to value the property.

5.4.7.7. Public Records Lost or Destroyed

If public land records for all or a portion of the period of title examination have been lost, destroyed by fire or natural disaster, or otherwise become unavailable, an abstract of title must begin with the first available record and be supplemented by a certificate of the abstractor as to the following: unavailability of the records; that no reservations, limitations, encumbrances, or defects in the title are known to the abstractor; and that the beginning point of the abstract is accepted by competent attorneys in the community as adequate evidence of record title. The title abstractor must also provide proof of compliance with requirements of statutory proceedings, if any, to establish titles affected by the loss or destruction of records.

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 in coordination with OGC should order the update from the Title Company that prepared the original Title Report. The purpose of a Title Report update is to research the public records from the through date of the Title Report to date to see if there are any changes in ownership, liens or judgements for the property.

Upon receipt of the Title Report and/or Title Binder, the ROW Unit Manager and OGC 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.

The ROW Unit Manager shall consult with the OGC 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 the 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 Resources

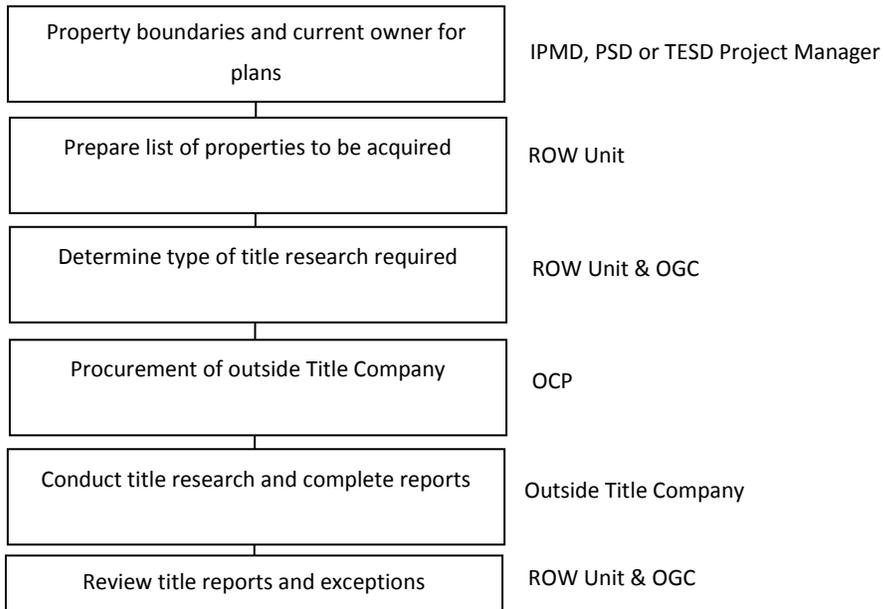
Flow Chart

- Title Research

Reference

- District of Columbia Code
<https://code.dccouncil.us/dc/council/code/>

Flow Chart – Title Research



6.0 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 Fair Market Value (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; and determine the written offer of just compensation to be paid to the landowner. 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
6.4	Information Provided to the Appraiser
6.5	Conflict of Interest
6.6	Property Inspection and Landowner Contact
6.7	Appraisal Report Format
6.8	Appraisal Waiver Valuations
6.9	Appraisal Reports – Minimum Standards
6.10	Comparable Sales
6.11	Appraisal Valuation Issues

6.12	Appraisal – Miscellaneous Requirements
6.13	Data Ownership
6.14	Appraisal Certifications
6.15	Appraisal Processing
6.16	Appraisals – Eminent Domain

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.

All Appraisals required by DDOT shall be prepared by an appraiser. The appraiser shall prepare the Appraisal in accordance with the scope of work 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 UASFLA, sometimes referred to as the “yellow book,” also 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.

Upon completion of the Appraisal, it is to be submitted along with the sales utilized, or a sales brochure, to the ROW Unit Manager and 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 Chief Engineer of IPMD or ROW Unit Manager and will be provided to the landowner with the initial offer.

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

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.), demonstrated expertise in performing similar assignments and experience completing appraisals in compliance with District and Federal law. 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), as amended, 49 CFR part 24 and 23 CFR 710; current US Department of Transportation and FHWA guidelines and policies; DDOT policies and procedures; applicable Federal and District laws and USPAP and UASFLA. The 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) (2) 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.

6.3. Determining Appraisal Requirements

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 Project Manager. For each parcel, the ROW Unit Manager in consultation with the Project Manager and OGC will determine the type of Appraisal required (see Section 6.7 for the types defined); the need to evaluate incurable damages; the complexities of the property being appraised; items that are personal property instead of real property; if an Appraisal Waiver Valuation is appropriate; and any obvious need for a specialty or engineering report.

In addition to the specific Appraisal scope of work, the ROW Unit Manager in consultation with the Project Manager and OGC 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 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 OGC, to determine the need for a consultant licensed appraiser, the scope of work and the estimated contract cost.

Appraisal Waiver Valuations are not Appraisals and are not prepared by a licensed appraiser. FHWA approval is required for the use of an Appraisal Waiver Valuation. In exceptional cases, if qualified staff are not available, the ROW Unit Manager may prepare the justification for hiring a qualified contractor to complete the Appraisal Waiver Valuations on a specific project. The ROW Unit Manager will submit the justification to the Chief Engineer of IPMD for review.

6.4. Information Provided to the Appraiser

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

- (i) Project and parcel numbers
- (ii) Appraisal issues and recommended format.
- (iii) Special Appraisal instructions (proposed easement information, legal instructions, etc.)
- (iv) Due date
- (v) Priorities
- (vi) Current and complete ROW plans, parcel plats, Title Report, design plans, profiles and cross sections, etc.
- (vii) Specialist reports, estimates, and legal opinions
- (viii) Necessary printed forms
- (ix) 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 Appraisal Waiver Valuation shall not have any interest, direct or indirect, in the real property being valued. Compensation for making an Appraisal or Appraisal 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 Appraisal Waiver Valuation, no person shall attempt to unduly influence or coerce an appraiser, review appraiser, or Appraisal Waiver Valuation preparer regarding any valuation or other aspect of an Appraisal, review or Appraisal Waiver Valuation.

An appraiser, review appraiser, or Appraisal Waiver Valuation preparer making an Appraisal, Appraisal review or Appraisal 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 Appraisal Waiver Valuation only if the offer to acquire the property is \$10,000, or less.

6.6. Property Inspection and Landowner Contact

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 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., Real Property Tax Administration for tax records, 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 damages to the remainder are anticipated, 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.

6.7. Appraisal Report Format

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:

- (i) 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:
 - (a) Items identified as personal property;
 - (b) A statement of known and observed encumbrances, if any;
 - (c) Title information;
 - (d) Location;
 - (e) Zoning;
 - (f) Present use;
 - (g) An analysis of highest and best use; and
 - (h) A minimum 5 year sales history of the property.
- (ii) 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.
- (iii) 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.
- (iv) A statement of the value of the property to be acquired and, for a partial acquisition, a statement of the value of the damage and benefits, if any, to the remaining property, where appropriate.
- (v) 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. 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.

6.7.1. Appraisal Waiver Valuation

An Appraisal Waiver Valuation may be 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.

6.7.2. Narrative Appraisal

It is the District’s practice that all Appraisal reports will be prepared in narrative form. The report will include, as a minimum, all essential data which will disclose the purpose, the scope of the problem and the principal techniques and approaches employed. The report should contain all the pertinent supporting data required to sustain the appraiser's final conclusion of market value.

6.7.3. Appraisal Update

If a significant delay of 6 or more months has occurred since the date of the Appraisal was made or the OGC 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. Only the original appraiser may complete an update of an Appraisal. Updates must also comply with USPAP and the Uniform Act requirements. The appraiser should attach a copy of the original Appraisal to the Appraisal update.

6.8. Appraisal Waiver Valuations

An Appraisal Waiver Valuation must include, as appropriate:

- (i) A description of the land to be acquired.

- (ii) 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.
- (iii) 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.

6.9. Appraisal Reports – Minimum Standards

The Appraisal scope of work for each parcel should be agreed upon by the appraiser and the ROW Unit Manager in consultation with the Project Manager and OGC. While the initial scope of work is provided to the appraiser with 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.

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 for the appraisal report are provided in the Example Scope of Work for Appraisal Reports included at the end of this Section 16.

The following are additional requirements to be included depending on the Appraisal question.

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 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.

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).

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 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).

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.

When the potential for incurable damages to the remaining property exists, an after the acquisition valuation of the property is required. It should include an analysis of the impact of the proposed project's influences as though completed on the effective date of the Appraisal (a hypothetical condition as defined by USPAP).

Subsequent to the establishment of an after value, an allocation 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:

- (i) The appraised value of the total property prior to the acquisition (referred to as "A" in the following for this example).
- (ii) The appraised value of land and, if applicable, the improvements to be acquired ("B").
- (iii) The appraised value of the land and improvements remaining after the acquisition, but prior to the recognition of the incurable damages and/or enhancements ("C") (calculated by subtracting "B" from "A").

- (iv) The appraised value of the remainder (land and improvements) including the recognition of incurable damages and any offsets for enhancements (“D”).

6.10. Comparable Sales

The use of comparable sales of real properties similar to the property being appraised¹ is critical in determining FMV. All comparable sales used to determine FMV must be verified.

6.10.1. Verification of Comparable Sales

The appraiser, who is utilizing a comparable sale, 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 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).

If the appraiser is unable to confirm a comparable 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 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.

¹ 49 CFR 24.103(a)(2)(iii)

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 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 condition² 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

² USPAP Standard Rule 1-1(h)

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:

- (i) A brief description of the item;
- (ii) The manufacturer's name;
- (iii) The model name; and
- (iv) The item's serial number.

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:

- (i) The lot condition;
- (ii) The total number of parking spaces and the number of handicapped spaces;
- (iii) A description of the traffic patterns, ingress and egress to the lot;

- (iv) A statement of whether or not the parking conforms to DC ordinances and zoning;
- (v) An analysis of whether or not the existing parking is suitable for the highest and best use as improved, if applicable;
- (vi) An assessment of whether or not the number of parking spaces can be expanded at a future date;
- (vii) A description of the location of the parking spaces relative to the location of the improvements; and
- (viii) 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 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

Right of Way

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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 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 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 OGC 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.³ 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

³ 49 CFR 24.105

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. 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 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 require a specialty Appraisal to value these signs:

- (i) has electrical service;
- (ii) require the services of a sign company for a repair;
- (iii) require the services of a sign company for relocation; and
- (iv) require 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.

6.11.10. Outdoor Advertising (Billboard) Signs

Outdoor advertising signs involve complexities which affects 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 an outdoor advertising sign belongs to the total value of the property and the acquisition.

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.

6.11.11. 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.

6.11.12. Easements

The Project Manager 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 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 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.

6.11.13. 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.

6.11.14. 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 – Miscellaneous Requirements

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 Manger 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 OGC for guidance with respect to specific valuation concerns that result from completing the retrospective value opinion.

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. Use of Primary and Secondary Data

Primary data is information gathered and evaluated first hand (i.e., confirmed sales comparable). 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 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.

6.12.5. 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.

6.12.6. 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 completed 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 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.

6.12.7. 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.

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

6.12.9. 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.

6.12.10. 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 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 OGC 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. See Section 8.17 for more information on donations.

6.12.11. Project Influence Date

When addressing project influence⁶, 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.

6.12.12. 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 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.

⁶ 49 CFR 24.103(b)

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*, 12th edition. If a fundamental market analysis is required, the appraiser is required to use the narrative Appraisal.

6.12.13. 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, appropriately supported, financially feasible, and that results in the highest value” (*The Appraisal of Real Estate*, 12th 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, physically possible, legally permissible, financially feasible, and 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 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.

6.12.14. 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.

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

6.12.16. 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 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:

- (i) Comparable sales similar to the remainder property, including its highest and best use

- (ii) 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.
- (iii) Data and conclusions from severance damages studies that are related to similar acquisitions
- (iv) Public sales of comparable properties by the District of Columbia or other public agencies
- (v) 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

6.12.17. 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.

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 value if the cure is not undertaken.

6.12.18. Non-Compensable Items

Appraisals must exclude compensation for damage items not compensable under District Statutes or case law such as:

- (i) 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 the 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.
- (ii) Loss due to the necessity of moving the 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.
- (iii) Loss of business or profits
- (iv) 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.
- (v) Loss of goodwill.
- (vi) Loss of sentimental value to the landowner of the property.
- (vii) Change in use of a public way.
- (viii) Loss arising from a landowner's inability to find an adequate substitute location.
- (ix) The presence of noise, dirt, and fumes cause by increased traffic and disturbances from construction.
- (x) Loss due to an annoyance and/or inconvenience suffered by the public in general.

- (xi) Loss as a result of a contractor completing construction work for the proposed roadway improvements.
- (xii) Loss resulting from circuitry of travel or (reduced ingress and egress) caused by dividing a street.
- (xiii) Loss resulting from re-routing or the diversion of traffic.
- (xiv) Loss resulting from an increase or a decrease in the amount of traffic volume.
- (xv) Danger from possible illegal acts that may result from a transportation improvement.
- (xvi) Attorney's fee incurred on behalf of the landowner, as a general rule, are not recoverable unless there is a statute that specifically provides for recovery .
- (xvii) Loss resulting from the reasonable exercise of police powers.
- (xviii) Loss resulting from a change in access if the landowner still retains reasonable access to the public road system.
- (xix) Loss that is speculative and remote or is difficult to discern.

6.12.19. General and Special Benefits

In eminent domain valuation, enhancement to a remainder property after a partial acquisition is 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 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.

6.12.20. 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 6.10. 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.

6.12.21. 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 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.

6.12.22. 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 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 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.

6.12.23. 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.

6.12.24. 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.

6.12.25. 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.

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 at least two printed copies of the Appraisal. All copies require the appraiser’s original signature. A searchable electronic copy in pdf file format is required for record keeping for the project.

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.

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 Report Documentation Checklist (see Uniform Appraisal Standards for Federal Land Acquisitions – Appendix A) shall be completed for each report by the ROW Unit Manager or OGC. In addition to the Appraisal Report Documentation Checklist, a review appraiser must complete a technical review Appraisal in accordance with Federal law and regulations. The review appraiser works directly with the appraiser to address any comments on the Appraisal sharing all comments with the ROW Unit Manager and OGC. Once the review process is completed, a copy of the Appraisal, the Appraisal Report Documentation Checklist and review Appraisal is retained in the ROW Unit and the project file.

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 may be required to testify as an expert witness if the appraisal is prepared as part of the litigation.

In such circumstances, the ROW Unit Manager and the OGC will direct the appraiser to submit an updated litigation Appraisal which will be reviewed by the review appraiser prior to acceptance. The appraiser must personally reconfirm all market data once the property is in litigation. Once the property is in litigation the appraiser must coordinate with OGC and OAG on communications concerning the Appraisal and who may request further updates or revisions. Lastly, the appraiser, review appraiser or ROW Unit Manager may be requested to review an opposing party's Appraisal.

Chapter Resources

Flow Chart

- Appraisal Process

Examples

- Appraisal Inspection Contact Letter (see Example 6-1)
- Appraisal Scope of Services (See Example 6-2)

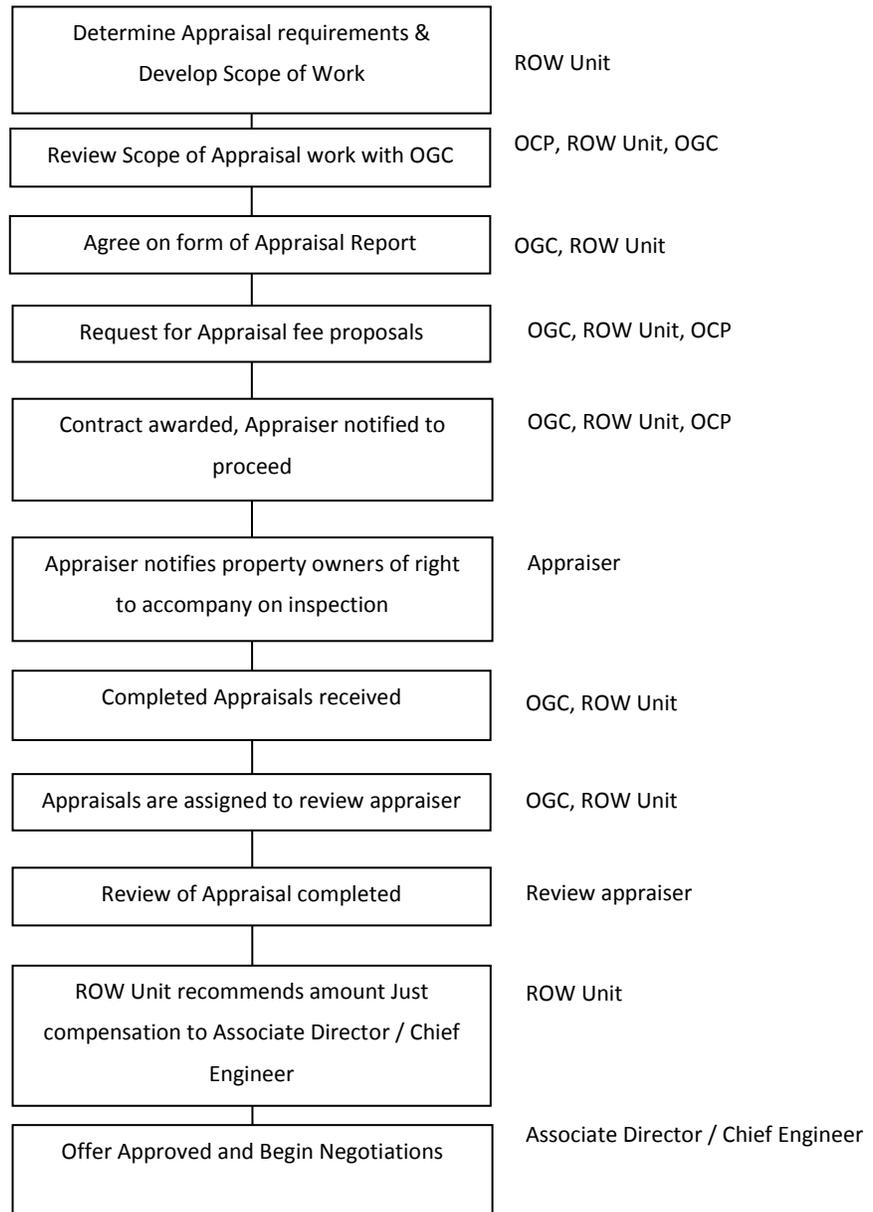
Forms

- Appraisal Report Documentation Checklist (see Uniform Appraisal Standards for Federal Land Acquisitions – Appendix A)

References

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
- Uniform Standards of Professional Appraising Procedure (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.

Flow Chart – Appraisal Process



[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

Right of Way

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DISTRICT DEPARTMENT OF TRANSPORTATION

APPRAISAL SCOPE OF WORK

I. SCOPE OF WORK

The District Department of Transportation (DDOT) is undertaking the [Insert Project Name] project which includes the [Insert Project scope] (the “Project”). DDOT seeks to acquire an interest in the property described as [Insert street address and legal description]. (See the attached right-of-way plans showing the location and the boundaries of the parcels to be acquired attached as Exhibit B). The interest to be acquired is permanent easement / fee simple / temporary construction easement (*select all that apply*). DDOT now seeks to procure appraisal services to determine the fair market value of the interest being acquired.

Fair Market Value is defined by the Uniform Standards of Professional Appraisal Practice as: “(t)he 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:

- (i) Buyer and seller are typically motivated;
- (ii) Both parties are well informed or well advised, and acting in what they consider their best interests;
- (iii) A reasonable time is allowed for exposure in the open market;
- (iv) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- (v) 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.

In determining the fair market value, the appraiser is to conform to the standards set forth the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), the laws and regulations of the District of Columbia, and the District of Columbia Department of Transportation Right-of-Way Policies and Procedures Manual, 2009, revised 2018.

The information being provided with this Scope of Work is Follows:

- Project and parcel numbers are:

DDOT Project: _____

AP No.: _____

Parcel No(s): _____

- Appraisal issues. (See Section IV)
- Special appraisal instructions. (See Section V)
- Due date: (45 days after the Notice to Proceed)
- Date of valuation: Date of Inspection for Offer / Date of Taking for Condemnation
- Current and complete ROW plans
- Parcel plats
- Title report
- Design plans and cross sections

The appraiser must, at a minimum:

- (i) Provide an appraisal meeting the agency’s definition of an appraisal. According to the DDOT Right-of-Way Policies and Procedures Manual, an appraisal is defined as 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. (See 49 CFR 24.2(a)(3))

- (ii) Afford the property owner or the owner’s designated representative the opportunity to accompany the appraiser on the inspection of the property. The appraiser’s initial attempt to contact the landowner must be made by letter (certified mail). 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, the appraiser is to proceed with the appraisal based upon information available through 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.

- (iii) Perform an inspection of the subject property. The property being acquired is _____ acre permanent easement / fee simple / temporary construction easement (select all that apply) and part of the larger parcel identified as _____. (See the attached right-of-way plans showing the location and the boundaries of the parcels attached as Exhibit B).

- (iv) Complete a Narrative Appraisal and Report. The appraisal report should include a sketch of the property and provide the location and dimensions of any improvements. The appraisal report must meet the minimum requirements, per 49 CFR 24.103 and the Uniform Standards of Professional Appraisal Standards and Uniform Appraisal Standard for Federal Land Acquisition (UASFLA). At minimum, the report shall include:
 - (a) Purpose of the appraisal;
 - (b) Scope of the appraisal;
 - (c) The intended user of the appraisal report;

- (d) The property rights to be acquired;
- (e) The value being appraised, and its definition;
- (f) An estimate of the property's fair market value (FMV);
- (g) The date of the appraisal and the date of the valuation;
- (h) The realty/personalty report required at 49 CFR 24.103(a)(3)(i)-(v);
- (i) A description of the subject property in sufficient detail to understand its physical characteristics including but not limited to structures and improvements.
- (j) The known and observed encumbrances, if any;
- (k) Title information including instrument vesting title, the landowner's name, telephone number and address;
- (l) Location;
- (m) The zoning, tax assessment and the amount of the real estate taxes for 2_____(insert tax year);
- (n) Present use;
- (o) 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 report must include a statement to that effect;
- (p) Any jurisdictional exceptions that were invoked as part of the appraisal;
- (q) Any hypothetical conditions and/or extraordinary assumptions that were used in determining FMV;
- (r) Statement of the most recent contact date with the landowner and the initial contact date;

- (s) Statement as to whether the landowner or the owner's representative accompanied the appraiser on the property inspection; if the landowner's representative accompanies the appraiser, the report must state the representative's name;
- (t) A list and discussion of any proffers, dedications, reservations, or other development restrictions that are present on the property;
- (u) Tenant names, addresses, telephone numbers, and the terms of any agreements in place between the landowner and the tenants, if available;
- (v) 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;
- (w) The FEMA flood map information;
- (x) 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.
- (y) 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;
- (z) A description of comparable sales in the body of the report with a summary page and a photo page included in the addenda.
- (aa) 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
- (bb) An explanation for adjustments made to the sales. Also, a reconciliation of the value indicators by the sales comparison approach must be provided.

- (cc) An explanation for any approaches excluded when valuing improved property
 - (dd) 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.
 - (ee) 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.
 - (ff) An estimate of the value of any cost-to-cure items.
 - (gg) 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;
 - (hh) The project identification information that includes Project name; District and Federal project numbers, plan sheets, profiles, entrance profiles, stations, and parcel number(s);
 - (ii) Numbering of each page that indicates the DDOT parcel and landowner reference number in the footer of the report;
 - (jj) 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;
 - (kk) 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 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
- (i) 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 color codes are as follows:

Right of Way

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Proposed Right-of-Way	Red
Existing Right-of-Way	Red
All Permanent Easements	Green
Temporary Easements	Orange
Control of Access Line	Dark Blue

- (ii) The appraiser shall state all relevant assumptions and limiting conditions; and
- (iii) All other items deemed necessary and appropriate, as per the USPAP, the District Department of Transportation Right-of-Way Policies and Procedures Manual, and other relevant federal guidelines.
- (iv) Report his or her analysis, opinions, and conclusions in the appraisal report.

II. INTENDED USER

The intended user of this appraisal report is the District Department of Transportation, its agents and contractors and, in the event of a condemnation, the Office of the Attorney General. Funding partners may also review the appraisal as part of their program oversight activities.

III. INTENDED USE

This appraisal is to estimate the fair market value of the property, as of the specified date of valuation, to calculate the purchase price to be paid in connection with the acquisition of the property in fee simple for use as a transportation facility.

IV. ASSUMPTIONS AND LIMITING CONDITIONS

In developing and reporting the appraisal, the appraiser shall:

- (i) Disregard any decrease or increase in the fair market value 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. If necessary, the appraiser may cite the Jurisdictional Exception under USPAP to ensure compliance with USPAP while following this Uniform Act requirement.

- (ii) 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.

V. SPECIAL CONDITIONS (APPLICABLE PROVISIONS SHALL BE MARKED)

A. Partial Acquisitions. (APPLIES / DOES NOT APPLY)

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:

- (i) The appraised value of the total property prior to the acquisition (referred to as "A" in the following for this example).
- (ii) The appraised value of the remainder (land and improvements) including the impact, positive or negative, of the proposed government project ("B").
- (iii) 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.
- (iv) 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.

The Appraiser should refer to Sections 6.12.20-21 of the District of Columbia Department of Transportation Right-of-Way Policies and Procedures Manual, 2009, revised 2011, for additional requirements pertaining to partial acquisitions and valuation of the remainder.

B. Hazardous Materials.

(APPLIES / DOES NOT APPLY)

In the event the Phase I ESA identifies 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 to the appraiser, together with information about the actual level and extent of the contamination and must appropriately consider the necessary clean-up cost in the FMV of the acquisition.

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

(APPLIES / DOES NOT APPLY)

The appraiser shall make an inquiry as to the ownership of the improvements during the inspection of the property. 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. 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."*

D. Outdoor Advertising (Billboard) Signs.

(APPLIES / DOES NOT APPLY)

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. 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.

E. Easements. (APPLIES / DOES NOT APPLY)

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.

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 have 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.

VI. CERTIFICATION

The appraiser will furnish the ROW Unit Manager with four copies of the appraisal. All copies require the appraiser’s original signature and completion of the following Appraiser’s Certification:

Certificate of Appraiser

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

- (i) The statements of fact contained in this report are true and correct.
- (ii) The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- (iii) 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.
- (iv) I have performed no services, as an appraiser or in any other capacity regarding the subject property within the three year period immediately preceding acceptance of this assignment.
- (v) I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- (vi) The appraisal was made, and the appraisal report prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions.
- (vii) The appraisal was made, and the appraisal report prepared in conformity with the Appraisal Foundation's Uniform Standards for Professional Appraisal Practice (USPAP), except to the extent that the Uniform Appraisal Standards for Federal Land Acquisitions required invocation of USPAP's Jurisdictional Exception Rule, as described in Section D-1 of the Uniform Appraisal Standards for Federal Land Acquisitions.
- (viii) My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- (ix) My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

- (x) 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.
- (xi) No one provided significant professional assistance to the appraiser.
- (xii) The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- (xiii) The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- (xiv) As of the date of this report, I, _____ have completed the continuing education program for Designated Members of the Appraisal Institute.

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

7.0 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	Qualification of a Review Appraiser
7.3	Responsibilities of the Review Appraiser
7.4	Appraisal Review
7.5	Appraisal Corrections and Revisions
7.6	Review Appraisal Conclusions and Actions
7.7	Required Signatures and Certifications
7.8	Conflict of Interest

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

7.2. Qualification of a Review Appraiser

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. All review appraisers must meet the competency provision required by USPAP.

An individual seeking qualification as a review appraiser shall be eligible to be licensed as a “Certified General Real Estate Appraiser” in the District of Columbia with at least 3 years of review 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.

7.3. Responsibilities of the Review Appraiser

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 & 4 of USPAP.

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

¹ 49 CFR 24.104

² 49 CFR 24.104(a)

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.

7.4. 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 review appraiser is given a reasonable time period to complete the review function.

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 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:

- (i) Compliance Check
 - (a) 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.
 - (b) 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.
 - (c) 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

³ 49 CFR 24.104

Report Documentation Checklist (see Uniform Appraisal Standards for Federal Land Acquisitions – Appendix A).

(ii) 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:

- (a) Accurate project number and parcel numbers
- (b) Correct ownership
- (c) Current ROW plans, design plans/profiles, and cross-sections
- (d) Accurate areas
- (e) A discussion of all encroachments
- (f) Existing easements, including identification of size, purpose, use, and interests
- (g) Verify that improvements within local setback requirements from the proposed ROW lines are accurately shown on the ROW plans.

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

- (a) Confirm the accuracy of sales data and check the descriptions of both the subject and comparable sales.
- (b) Identify the scope of available data on the project, including relevant Appraisals and comparable sales.

- (c) Become familiar with zoning, local ordinances or codes, regional requirements, etc. to evaluate the appropriateness of the appraiser's analysis.
 - (d) Conduct an overview of area and neighborhood economic trends.
 - (e) For a partial acquisition, examine cross sections and plans to thoroughly consider the effects of access, drainage, topography, design features, etc. on potential damages or benefits.
 - (f) Conduct spot check interviews of landowners, neighbors, assessors, real estate professionals, recording officers, media, previous owners, local appraisers, or other interested parties as necessary.
- (iv) Analyze Report
- (a) Examine the Appraisal for basic real estate theory, techniques, valuation methods, mathematical accuracy and compliance to established policies and procedure.
 - (b) Does the Appraisal conform to DDOT requirements?
 - (c) 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.
 - (d) Are the sales or market data used comparable to the property under Appraisal?
 - (e) 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?

- (f) 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?
- (g) Determine whether the Appraisal correctly identifies the impact of the acquisition on the remainder.
- (h) 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.
- (i) Ensure that the final estimate of value is allocated by land, easements, improvements, cost-to-cure and damages.
- (j) 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.
- (k) Ensure that the Appraisal contains or makes reference to the information necessary to explain, substantiate, and thereby document the conclusions and estimate of FMV.
- (l) Is a specialty Appraisal report included? The reviewer must disclose any training and experience limitations he may have a consult with appropriate technical specialists, as necessary.
- (m) Is the value conclusion consistent with other Appraisals of similar properties submitted to the Appraisal Review Unit? If not, why?
- (n) 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.

- (o) 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 policies; and applicable Federal and District laws.
- (p) The review appraiser shall include all supporting documentation with the review report.⁴

7.5. 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, the review appraiser shall first ask the appraiser to consider making the required corrections in the Appraisal. 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. If the review appraiser and appraiser are not in agreement, 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, however, shall not attempt to influence the independent opinion of the appraiser and the Appraisal itself shall not be changed by the review appraiser.

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.

⁴ 49 CFR 24.104

⁵ 49 CFR 24.103(c)

If the review appraiser determines that sufficient errors or omission exist within an Appraisal, the review appraiser's own value may be included 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.

7.6. 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 & 4 of USPAP for each Appraisal that is to be approved for acquisition.

When completing a technical review report, the review appraiser is to report conclusions according to one of the following three options.⁵

- (i) Recommended: as the basis for establishment of the amount believed to be just compensation.
- (ii) Accepted: as meeting requirements, but not selected as recommended or approved.
- (iii) 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 ROW Unit Manager should

⁵ 49 CFR 24.104(a)

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) value⁶.

7.7. 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.

7.8. Conflict of Interest

Review appraisers are subject to the same conflict of interest provisions for appraisals found in Section 6.5 above. 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.

⁶ 49 CFR 24.104(b)

Chapter Resources

Flow Chart

- Appraisal Review Process

Example

- Review Appraiser's Certification (see Example 7-1)

Form

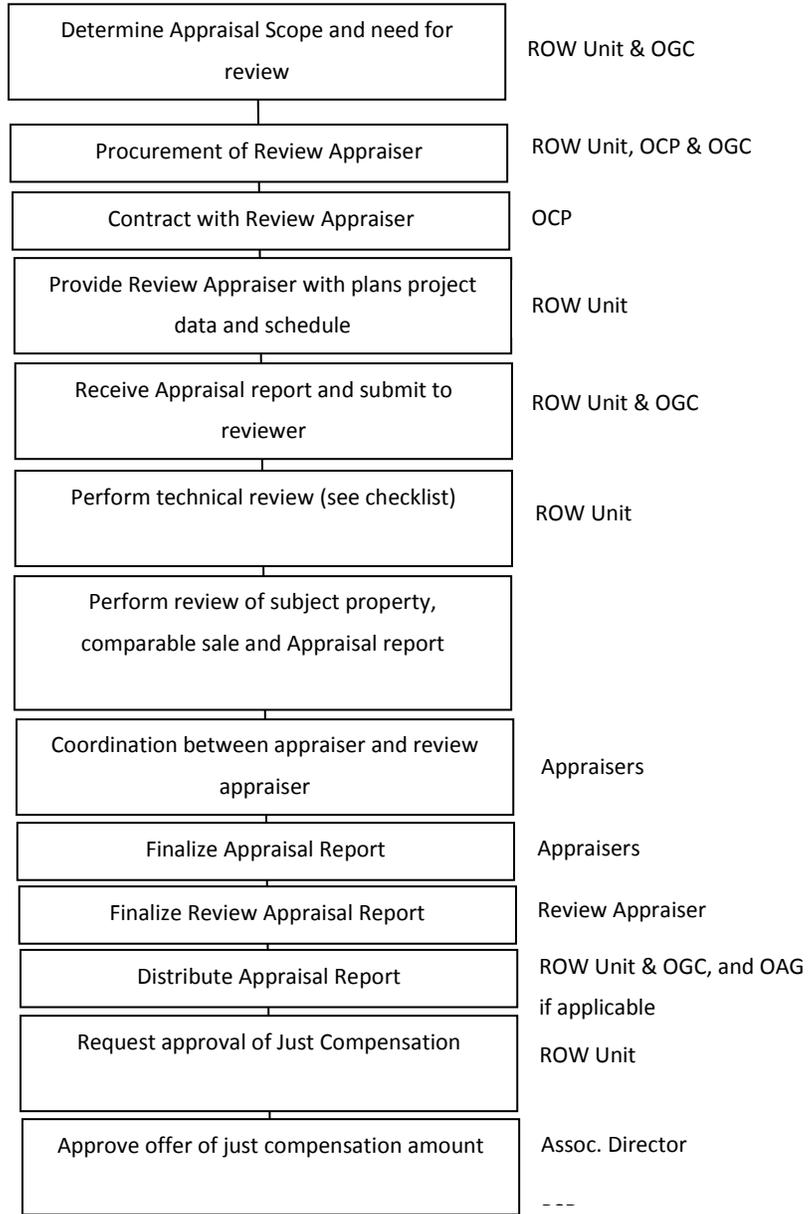
- Technical Review Appraisal Report (Form REVIEW REPORT)

References

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
- Uniform Standards of Professional Appraising Procedure (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.

Flow Chart – Appraisal Review Process



[Example 7-1]

APPRAISAL REVIEW CERTIFICATION

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

- (i) The statements of fact contained in this review report are true and correct.
- (ii) The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- (iii) 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.
- (iv) I have performed no services as an appraiser or in any other capacity regarding the subject property, within the last 3-year period immediately preceding the acceptance of this assignment.
- (v) I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- (vi) Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- (vii) Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- (viii) Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, as of the Report Date, the Code of the District of Columbia; the Code of Federal Regulations, 49 CFR 24 103 and 104; and the Uniform Standards of Federal Land Acquisitions.
- (ix) I have made an exterior inspection of the subject property of the work under review. The inspection was made from the street. The interior was not inspected. All the

Right of Way

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comparable sales used in the report under review were inspected from the exterior. Their interiors were not inspected.

- (x) No one provided significant real property appraisal assistance to the persons signing this certification.
- (xi) The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.
- (xii) The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- (xiii) As of the date of this report, _____ has completed the requirements of the continuing education program of the Appraisal Institute.
- (xiv) The report assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

(Signature)

(Print Name)

8.0 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	Requirements for Offer Package
8.5	Transmittal of Offer Package
8.6	Negotiation by Mail
8.7	Tenant-Owned Improvements
8.8	Continuing Negotiations and Acceptance
8.9	Right of Entry
8.10	Modifications to Curb Cuts in Public Space
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 (90 Day Notice)
8.17	Real Property Donations
8.18	Direct Federal Acquisition

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.

The DDOT enabling legislation, codified at D.C. Code § 50-921.04(a)(1)(H) grants to DDOT, subject the consent of the DGS, the 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 11.3. 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, the Agency preference is to reach a fair settlement based on a mutual agreement. This policy requires that landowners be provided information about the project and the ROW acquisition process that will motivate a timely and voluntary decision to sell.

8.2. Right-of-Way Unit Manager's Duties

The Right-of-Way Unit Manager shall coordinate work on the following tasks with the project manager and OGC:

- (i) Acquisition and clearance of needed rights-of-way for all road, bridge and trail construction and improvement projects in the District of Columbia.

- (ii) Maintenance of adequate records of acquired rights-of-way and their costs, to be used for reporting and reimbursements from the Federal Highway Administration.
- (iii) Management of properties and improvements acquired in conjunction with right-of-way acquisition.
- (iv) The ROW Unit Manager shall prepare a formal assignment for each parcel that includes the following:
 - (a) Project and parcel numbers;
 - (b) The name of each Acquisition Agent;
 - (c) The date of assignment;
 - (d) 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.

8.3. Duties of Acquisition Agent

8.3.1. Laws and Regulations

The Acquisition Agent must be familiar with both federal law and regulations, as well as with District law and regulations. During negotiations, the Acquisition Agent must be able to explain to the landowner the ROW acquisition process, Appraisal options and the specific effects of the project on each property being acquired in a clear understandable way. The preference is for the initial contact between the Acquisition Agent and the landowner to be in person to describe the project. The Acquisition Agent shall provide to the landowner at the initial meeting an initial contact package which includes an initial contact letter (see Example 8-1) and a copy of the FHWA Publication No. FHWA-HEP-05-030 “Acquiring Real Property for Federal and Federal-aid Programs and Projects” and Publication No. FHWA-HEP-05-031 “Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program” (collectively the ROW Brochures).

8.3.2. Landowner Contact

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.

8.3.3. Relocation

The Acquisition Agent must coordinate with the Relocation Specialist if the acquisition involves relocation eligibility for the landowner or tenant. The Acquisition Agent and Relocation Specialist shall meet with the landowner at the same time if the landowner is being displaced, and separately if the tenant is being displaced. If the Acquisition Agent obtains information which could potentially affect the progress schedule or cost of the project, the Acquisition Agent must advise the ROW Unit Manager in a timely fashion.

8.3.4. Recordkeeping

The Acquisition Agent shall maintain working files and master files of the acquisition and relocation activities in sufficient depth and detail to document DDOT compliance with Federal and State laws, rules, codes and the requirements of this manual. The working files and related documentation should be updated during the acquisition process to document contact with the landowner and the detail of negotiations. Master files should be completed once the acquisition and relocation (if applicable) is completed and transmitted to DDOT. Copies of these files shall be provided to DDOT and are subject to FHWA review for all Federal-aid projects.

8.3.5. Negotiations

If the landowner or their representative advise DDOT to conduct all negotiations with an attorney, the Acquisition Agent shall notify ROW Manager and OGC shall be copied on all communications with that attorney.

8.3.6. Document

The Acquisition Agent shall coordinate with the OGC to prepare, or have prepared, the legal documents required to negotiate and document an agreement to purchase the proposed ROW. At a minimum, a purchase agreement shall be required for the acquisition of any interest in land. Depending on how title is held, (e.g. corporation, partnership, estate, trust) OGC may

require additional documentation on who had the authority to bind the owner. The Acquisition Agent should consult with the OGC and/or the organization to verify the actual requirements for the organization to be able to convey title to real property.

8.3.7. Deceased Landowner

If initial research 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.

8.3.8. 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 OGC 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 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.

8.4. Requirements for Offer Package

The offer 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 Purchase Agreement.

The offer package shall be assembled in the following order:

- (i) Letter of Offer to Purchase with summary of offer amount (Example 8-2)
- (ii) DDOT's determination of offer of just compensation (Example 8-3)
- (iii) Purchase Agreement (2 copies)
- (iv) Utility agreement (if needed)
- (v) Colored plan, profile, and entrance profile sheet
- (vi) Plat of partial taking

- (vii) W-9 and Mortgage Information Sheet (Example 8-4)

8.4.1. Letter of Offer to Purchase

An example of the Letter of Offer to Purchase can be found at the end of this section. The Acquisition Agent shall draft Letter of Offer to the ROW Manager and OGC for review and approval prior to delivering to the landowner. The Letter of Offer to Purchase shall include any matters that require special attention, explaining the project's impact on the property and the Agency's plan to mitigate, including 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. 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. Examples of cost to cure items include fencing, landscaping.

8.4.2. DDOT's Determination of Offer of Just Compensation

Once the appraisal and appraisal review are complete and if the review appraiser has recommended the appraisal value be the basis for establishment of the amount believed to be just compensation the Offer of Just Compensation is prepared. The Offer of Just Compensation can be signed by either the ROW Unit Manager or the Chief Engineer. If the review appraisal does not recommend use of the appraisal value be as the basis for establishment of just compensation, DDOT may direct the review appraiser, as part of the review, to present and analyze market information in conformance with 49 CFR 24.103 to support a recommended (or approved) value¹. Under the latter scenario, the review appraisers value shall be the basis for establishment of just compensation.

¹ 49 CFR 24.104(b)

8.4.3. Purchase Agreement (2 copies)

DDOT has an OGC approved purchase agreement form that will be revised to include the terms of each offer. The revised purchase agreement must be reviewed and approved by OGC before it can be included in the offer package. The OGC must approve all requested modifications to the purchase agreement proposed by the landowner or the landowners' representative.

8.4.4. Colored Plan, Profile, and Entrance Profile Sheet

Marked prints of plans (plan, profile and entrance profile) are to be outlined in color to indicate the type of acquisition in accordance with Table 8-1:

Table 8-1: Plan Marking Code Based on Type of Acquisition

Type of Acquisition	Color Outline
Proposed Right-of-Way	Red
Permanent Easement	Green
Temporary Easement	Orange
Control of 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.

8.4.5. Plat Showing Land to be Acquired.

A plat, prepared by a licensed D.C. Surveyor showing the land to be acquired must be included in the offer package.

8.4.6. W-9 and Mortgage Information Sheet (Example 8-4)

A W-9 is required for each person or entity from which land is being acquired. Note -if the property is being acquired under threat of condemnation then a W-9 need not be included in the offer package of the check request package because the proceeds are exempt from taxation.

Right of Way

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8.5. Transmittal of Offer Package

After obtaining the required reviews and approvals from DDOT, the Acquisition Agent shall call the landowner and arrange a meeting to deliver the offer package.

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 and copy OGC on all correspondence. If the landowner does not speak in a language spoken by the 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, the Acquisition Agent must determine that the person contacted has the authority to negotiate and/or convey the property to DDOT. At the initial meeting the Acquisition Agent shall:

- (i) Verify that current title information is correct;
- (ii) 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.

If ownership differs from that shown on the Title Report immediately notify the ROW Unit Manager.

8.5.1. Explanations to be Provided to the Landowner

The Acquisition Agent will explain to the landowner the mechanics of the transfer and the costs that the Agency will pay, including:

- (i) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;
- (ii) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
- (iii) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

Additionally, if the Agency goes to condemnation, the Agency will pay certain litigation expenses including reasonable expenses such as attorney, appraisal and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- (i) The final judgment of the court is that the Agency **cannot acquire** the real property by condemnation;
- (ii) The condemnation proceeding is **abandoned** by the Agency other than under an agreed-upon settlement; or
- (iii) The court having jurisdiction renders **a judgment in favor of the owner** in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

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 it is 30 days. Before leaving the initial visit, the Acquisition Agent should schedule the date/time for the next meeting, if possible.

8.5.2. Information provided by landowner.

In the event the 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.), the information will be provided to the appraiser or review appraiser for

consideration. If Landowner produces new information, such as listings, earnest money agreements or purchase agreements, the new information will be considered by the agency.

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.

8.6. Negotiation by Mail

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:

- (i) The landowner resides outside of the State;
- (ii) The landowner prefers to review information before meeting;
- (iii) A corporation or institution owns the property, and the responsible officer is not available to meet;
- (iv) The landowner is not legally competent to contract for the sale of real estate;
- (v) The landowner is a minor; or
- (vi) 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.

8.6.1. 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).

8.6.2. Procedure for Negotiations by Mail

The procedure is as follows:

- (i) The Acquisition Agent shall send the following to the landowner:
 - (a) Letter of Offer to Purchase with summary of offer amount (Example 8-2)
 - (b) DDOT's determination of offer of just compensation (Example 8-3)
 - (c) Purchase Agreement (2 copies)
 - (d) Utility agreement (if needed)
 - (e) Colored plan, profile, and entrance profile sheet
 - (f) Plat of partial taking
 - (g) W-9 and Mortgage Information Sheet (Example 8-4)
 - (h) A copy of the ROW Brochures detailing the acquisition process.
 - (i) A letter advising the landowner on the process to complete the forms, instruments, and contracts.
 - (j) The name, telephone number and address of the Acquisition Agent who shall be responsible for answering the landowner's questions and concerns.
- (ii) 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.

8.7. 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 8.8.1) 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 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 8.8.1), 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.

8.8. Continuing Negotiations and Acceptance

8.8.1. General

There is no way to know how many contacts that will be needed to negotiate the acquisition of each parcel. However, the commitment of DDOT to make every effort to acquire property through negotiations. A minimum of two contacts within a 30 day period is the preference. After the 30 days expires, the offer may be considered refused unless there is specific reason to believe that extending negotiations would be productive.

If it becomes apparent that the landowner will not accept the DDOT's offer, the Acquisition Agent should contact the landowner and ask whether 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, all future contacts with the landowner, whether in person or by telephone, shall be similarly documented for the file.

8.8.2. 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.

Right of Way

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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.

8.8.3. 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.

8.8.4. 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 a Purchase Agreement or filed a Declaration of Taking.

8.8.5. 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. When evaluating whether to acquire the residue, the ROW Unit Manager must verify whether the residue was included in the original EA. If the residue wasn't included in the EA, then an updated EA must be obtained prior to the decision being made whether to acquire the residue, unless the EA showed no risk of contamination.

Buildings on residue parcels to be acquired will be assigned identification numbers under the following conditions:

- (i) The landowner retains the building(s).
- (ii) 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.

8.9. Right of Entry

DDOT often obtains rights of entry to do initial project engineering and for initial testing on a project. Rights of entry are never used for access to other District owned or federal property. In exceptional circumstances, DDOT may obtain a right of entry for construction purposes before making payment to the landowner, however, approval to the FHWA Division Administrator is required. 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.

8.10. Modifications to Curb Cuts in Public Space

The modification or closing of curb cuts requires the identification of the adjacent landowner. Once the adjacent landowner has been identified, a permit search must be undertaken with DDOT's Permitting Office and DCRA to determine whether the curb cut was permitted. If a permit is found, the process for closing the curb cut follows the procedures of DDOT's permitting process or DCRA's process. If a permit cannot be found for a curb cut, the loss of

access may be compensable and will likely be considered a taking and, therefore, the curb cut must be acquired in compliance with the URA.

In the event a permit is not found, the process for closing a curb cut closure is similar to the process for an acquisition of property described above. The acquisition agent shall meet face to face with the landowner, if feasible, to describe the project and the impact of the project on the subject curb cut. DDOT will make every effort to acquire the curb cut by negotiations. A minimum of two contacts within a 30-day period is suggested. The landowner may donate the curb cut to the DDOT, however, prior to accepting the curb cut the landowner must be informed by the agency of his/her right to receive just compensation. The owner shall also be informed of his/her right to an appraisal of the curb cut by a qualified appraiser.

8.11. Concluding Negotiations

If the offer is acceptable to the landowner, the Purchase Agreement is to be signed by all parties named in the document. If tenant-occupied buildings are within the ROW being acquired, the sections of the acquisition report for “Improvements” and “Relocation” are to be completed. Should there be any issues regarding language in the agreement the landowner’s representative shall resolve them with the OGC. Once the language is resolved all parties shall execute the Purchase agreement and it will be ready to submit to the settlement agent. The OGC will forward the signed Purchase Agreement to the Title Company.

8.12. Terminating Negotiations

The Acquisition Agent will work with each landowner to reach a negotiated sale. 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:

- (i) Landowner or attorney unequivocally states that no further contact is wanted;
- (ii) Landowner displays menacing or threatening conduct;
- (iii) No progress on settlement after repeated personal contacts; or
- (iv) 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.

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.

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 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 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:

- (i) Legal complications
- (ii) Subjectiveness of opinions as to damages to the residue
- (iii) Trend of condemnation awards on similar recent cases
- (iv) Range of probable testimony as to fair market value
- (v) Opinion of legal counsel as to the potential outcome of condemnation case

- (vi) Estimate of trial cost
- (vii) 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 IPMD for approval. Write the special construction requests in clear enough detail to avoid misinterpretation. The IPMD 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 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 Settlement Increase over Approved Offer of Administrative Settlement

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 Chief Engineer may recommend 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 Chief Engineer 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

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 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:

- (i) 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 on leasehold interests and the current status. Information regarding the death of a co-landowner should be listed and a copy of death certificate provided.
- (ii) 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.
- (iii) A written description of compensation agreed upon or offered prepared for inclusion in the deed.
- (iv) Contacts entries with the landowner should include the following:
 - (a) The contact number;
 - (b) The date and time of contact;
 - (c) 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;

- (d) The amount and/or other terms or condition requested by the landowner;
- (e) The contacting Acquisition Agent's name (for every contact, since more than one agent may make contact due to illness, vacation, etc.);
- (f) 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;
- (g) 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.);
- (h) 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, ROW Brochures, warranty, deed, etc.;
 - Responses to specific questions or concerns, or promises made to the landowner;
 - Problems noted, or special requests made (construction features, etc.);
 - The specific details 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
- (v) 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.
- (vi) 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).
- (vii) Special instructions for closing/settlement company or attorney.
- (viii) Signed certification from Acquisition Agent regarding no conflicts of interest and negotiations.
- (ix) 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 complete package to the ROW Unit with a copy to OGC. OGC coordinates directly with 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.

8.16. Notice to Vacate (90 Day Notice)

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 a Purchase Agreement 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:

- (i) The person is informed of its location; and
- (ii) The person has sufficient time to negotiate and enter into a Purchase Agreement or lease for the property (within 90 days); and
- (iii) 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. Real Property Donations

A. Donations of Property Being Acquired

A non-governmental owner whose real property is required for a Title 23 project may donate the property. Donations may be made at any time during the development of a project subject to applicable District laws. *Prior to accepting the property, the owner must be informed in writing by the acquiring agency of his/her right to receive just compensation for the property, the right to an appraisal or waiver valuation of the real*

property, and of all other applicable financial and non-financial assistance provided under 49 CFR part 24 and applicable District law. All donations of property received prior to the approval of the NEPA document for the project must meet the requirements specified in 23 USC 323(d) and shall clearly indicate that:

- (i) all alternatives to a proposed alignment will be studied and considered pursuant to NEPA;
- (ii) 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; and
- (iii) any property acquired by gift or donation shall be reverted in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.

B. Mayor's Memorandum 2015-001, dated August 21, 2015

All donations are subject to Mayor's Memorandum 2015-001, dated August 21, 2015. The donation process is managed by the OGC and requires that a donation agreement be signed. The District donations policies are as follows:

- (i) DDOT may not solicit, accept, or use donated funds, services or property without prior approval by OPGS or OGC;
- (ii) Donations must be used for an authorized purpose of the Agency;
- (iii) Financial donations must be deposited in the Private Donation Funds 8450 (OCFO approves Budget Authority-Funds carry over);
- (iv) No quid pro quo can exist;
- (v) Donations = bona fide contributions; and
- (vi) Donations of cash is prohibited.

C. Required clauses

In the donation agreement, the donor must certify that he/she has read and agrees to be bound by the Rules of Conduct regarding Donations set forth in Mayor's Memorandum. The donation agreement must include the following provisions (i) (t) *o the best of the Donor's knowledge, the Donor is not currently applying for or bidding on any contract, license, permit or similar benefit from the District; nor is the Donor the target of or defendant in any administrative or enforcement action or litigation by the District; and (ii) (t) he District of Columbia government acknowledges that systems are in place for the donation to be accepted by the government and the use of the donation may be properly tracked as required by the Section 115 of the District of Columbia Appropriations Act, 2003, Pub. L.108-7.*

D. DDOT Credit for Donations

Donations of real property may be credited to DDOT's matching share of the project in accordance with 23 USC 323. As required by 23 USC 323(b)(2), credit to DDOT's matching share for donated property shall be based on fair market value established on the earlier of the following: Either the date on which the donation becomes effective, or the date on which equitable title to the property vests in DDOT. The fair market value shall not include increases or decreases in value caused by the project. DDOT shall ensure sufficient documentation is developed to indicate compliance with Section 8.17.1 and with the provisions of 23 USC 323, and to support the amount of credit applied. The total credit cannot exceed DDOT's pro-rata share under the project agreement to which it is applied.

E. Prior to the acceptance of donated 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. At a minimum, the following items should be determined to be acceptable to DDOT:

- (i) Landowner has a clear and unencumbered title to the property being donated;
- (ii) 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; and

(iii) That the improvements located on the property would not unreasonably increase DDOT cost of acquisition and demolition.

F. Upon completion of a satisfactory due diligence, DDOT shall coordinate with OGC on the process and or documentation for transferring title to the donated land. Land that is donated for streets and alleys must go through the dedication process, land for other transportation infrastructure may be transferred by deed. If the landowner requests documentation for tax purposes, DDOT staff shall provide an IRS Form 8283 to document the donation, the ROW Unit Manager shall submit the completed Form 8283 to the Director for signature.

G. Appraisal Waiver.

If the landowner waives his/her/its right to an Appraisal, 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. (I/We) also release DDOT from the obligation of preparing an Appraisal of this donated parcel.”

H. Charitable Contributions.

If the landowner elects to donate the land and take a charitable contribution pursuant to 27 USC 170, the landowner can request an Appraisal, and valuation shall be handled in accordance with this manual. The following clause must be inserted in the agreement between the landowner and DDOT:

Sale to Non-Profit Organization. Purchaser is a political subdivision. Purchaser has qualified and continues to qualify as an organization exempt from taxation under 501(c)(3) of the Internal Revenue Code and is included in the “Cumulative List of Organizations” described in 170 (c) of the Internal Revenue Code published by the Internal Revenue Service. Purchaser is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code. Purchaser acknowledges that the charitable contribution aspect of this transaction is a material inducement to Seller’s execution of this Contract. Seller believes the Purchase Price of the Property which is specified in this Contract is less than the

current, fair market value of the Property. Seller intends to make a charitable contribution to the Purchaser, the value of which is the difference between the Purchase Price and the fair market value as finally determined in an appraisal, and the Purchaser agrees to accept such contribution. At settlement, Purchaser agrees to execute Internal Revenue Service Form 8283 relating to the contribution contemplated based on the difference between the appraised value and the Purchase Price. Notwithstanding the forgoing, Purchaser makes no representation or warranty of any kind as to the value of the donation or as to the tax consequences of the transaction contemplated by this Section. Seller will obtain independent tax counsel and be solely responsible for compliance with the gift substantiation requirements of the Internal Revenue Code.

8.18. Direct Federal Acquisition

- A. The provisions of this paragraph may be applied to any real property that is not owned by the United States and is needed in connection with a project for the construction, reconstruction, or improvement of any section of the Interstate System or for a Defense Access Road project under 23 USC 210, if DDOT is unable to acquire the required ROW or is unable to obtain possession with sufficient promptness. If the landowner tenders a right-of-entry or other right of possession document required by District law any time before FHWA makes a determination that DDOT is unable to acquire the ROW with sufficient promptness, DDOT is legally obligated to accept such tender and FHWA may not proceed with Federal acquisition. To enable FHWA to make the necessary findings and to proceed with the acquisition of the ROW, DDOT's written application for Federal acquisition must include the following:
- (i) Justification for the Federal acquisition of the lands or interests in lands;
 - (ii) The date FHWA authorized DDOT to commence ROW acquisition, the date of the project agreement, and a statement that the agreement contains the provisions required by 23 USC 111;
 - (iii) The necessity for acquisition of the particular lands under request;
 - (iv) A statement of the specific interests in lands to be acquired, including the proposed treatment of Control of Access;

- (v) The DDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;
 - (vi) A statement on compliance with the provisions of parts 771 and 774 of 23 CFR, as applicable;
 - (vii) Adequate legal descriptions, plats, appraisals, and title data;
 - (viii) An outline of the negotiations that have been conducted with landowners;
 - (ix) An agreement that the DDOT will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire, ROW; and
 - (x) A statement that assures compliance with the applicable provisions of the Uniform Act.
- B. Except as provided in paragraph (A) of this section, direct Federal acquisitions from non-Federal owners for projects administered by the FHWA Office of Federal Lands Highway may be carried out in accordance with applicable Federal condemnation laws. The FHWA will proceed with such a direct Federal acquisition only when DDOT is unable to obtain the ROW necessary for the project. The DDOT must make a written request to FHWA for the acquisition and the request shall include a commitment that any real property obtained will be under that agency's sole jurisdiction and control and FHWA will have no jurisdiction or control over the real property as a result of the acquisition. The FHWA may require DDOT to provide any information FHWA needs to make the required determinations or to carry out the acquisition.
- C. If DDOT obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (*ex parte*) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

- D. When the United States obtains a court order granting possession of the real property, FHWA shall authorize DDOT to immediately take over supervision of the property². The authorization shall include, but need not be limited to, the following:
- (i) The right to take possession of unoccupied properties;
 - (ii) The right to give 90 days' notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;
 - (iii) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;
 - (iv) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;
 - (v) The right to clear improvements and other obstructions;
 - (vi) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;
 - (vii) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the applicant for direct Federal acquisition, as in the case of ROW acquired by DDOT for Federal-aid projects; and
 - (viii) Instructions that the authority granted to the applicant for direct Federal acquisition is not intended to preclude the U.S. Attorney from taking action,

² The transfer between the United States and the District will typically be through a Transfer of Jurisdiction.

before the applicant has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

- E. If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that FHWA cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.
- F. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:
 - (i) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;
 - (ii) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and
 - (iii) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.
- G. The lands or interests in lands, acquired under this section, will be conveyed to DDOT to:
 - (i) Maintain Control of Access where applicable;
 - (ii) Accept title thereto;
 - (iii) Maintain the project constructed thereon;
 - (iv) Abide by any conditions which may set forth in the deed; and
 - (v) Notify the FHWA at the appropriate time that all the conditions have been performed.

- H. The deed from the United States to DDOT, or to the appropriate political subdivision thereof, or in the case of a Federal applicant for a direct Federal acquisition any document designating jurisdiction, shall include the conditions required by 49 CFR part 21 and shall not include any grant of jurisdiction to FHWA. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

Chapter Resources

Flow Chart

- Negotiation Process

Examples

- Initial Contact Letter (Goodwill) (Example 8-1)
- Offer to Purchase Letter (Example 8-2)
- Approval of Offer of Just Compensation Letter (Example 8-3)
- Mortgage Information Sheet (Example 8-4)
- Disclaimer of Partial Property Interest (Example 8-5)
- Tenant Retention of Improvements (Example 8-6)
- Posting Unknown Owner (Example 8-7)
- Right of Entry Agreement (Example 8-8)

Forms

- Right-of-Way Acquisition Report (form ACQ-REPORT) (Form 8-1)
- Request for Taxpayer Identification Number and Certification (W-9) (Form 8-2)

Handout

- ROW Brochures - FHWA Publication No. FHWA-HEP-05-030 “Acquiring Real Property for Federal and Federal-aid Programs and Projects” and Publication No. FHWA-HEP-05-031 “Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program”

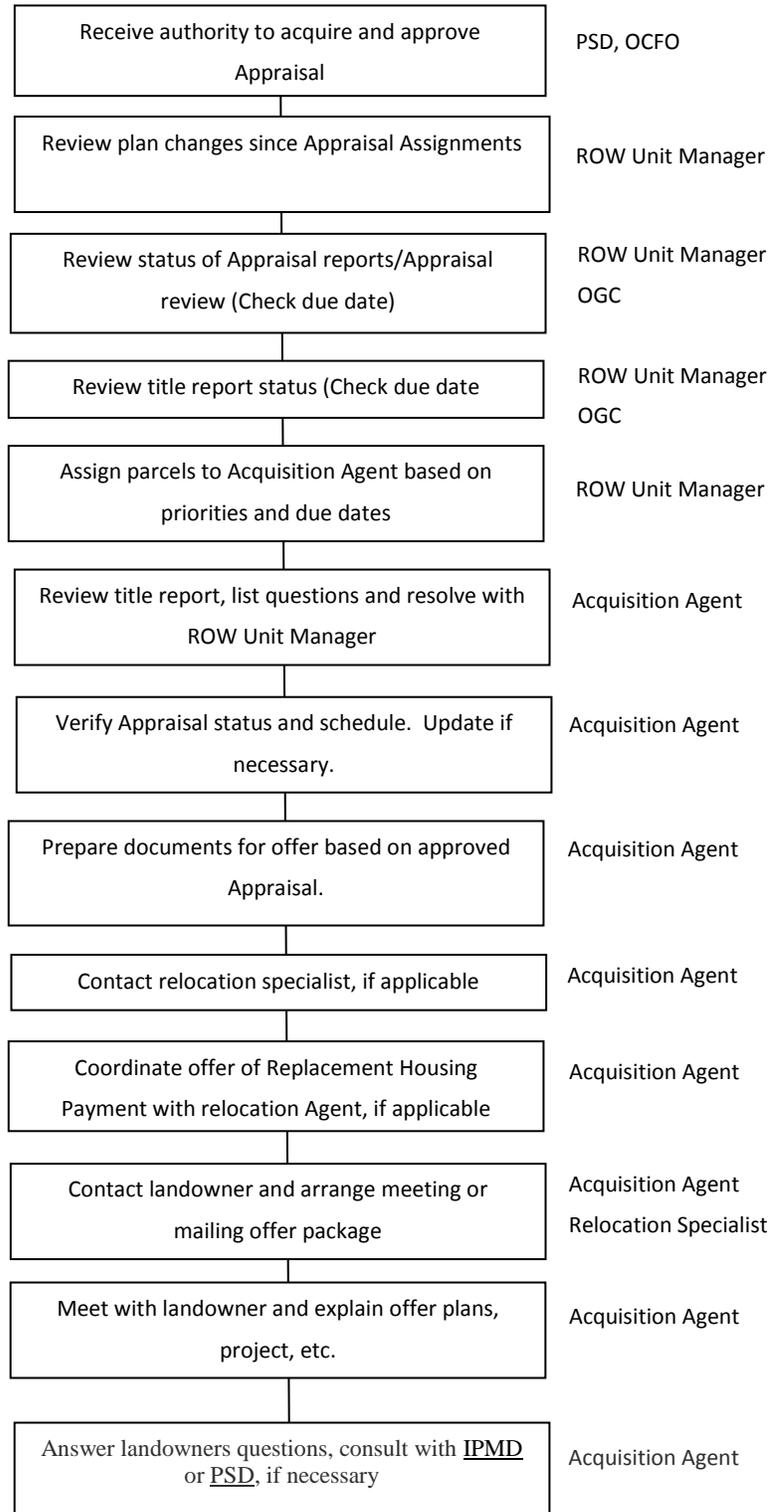
https://www.fhwa.dot.gov/real_estate/uniform_act/acquisition/real_property.cfm

https://www.fhwa.dot.gov/real_estate/publications/your_rights/

References

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
- District of Columbia Code
<https://code.dccouncil.us/dc/council/code/>

Flow Chart – Negotiation Process



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 OGC	Acquisition Agent ROW Unit Manager
Provide documents and signatures needed by OAG	OGC

Example 8-1 – INITIAL CONTACT 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 of Columbia’s 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. The enclosed ROW Brochures more fully explain 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 any concerns or questions. DDOT looks forward to working with you as we move this project forward toward construction.

Sincerely,

Right-of-Way Unit Manager

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 Control of Access line.

Also enclosed is a Purchase Agreement setting forth the above consideration, the conveyance conditions, and description of the area required.

Should this offer be acceptable, we would very much appreciate your executing the 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,

ROW Acquisition Agent

Enclosures

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 =	\$3,072.00
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

Chief Engineer (or) ROW Unit Manager

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 property. 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: _____

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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

Example 8-5 – DISCLAIMER OF PARTIAL PROPERTY INTEREST

DISCLAIMER OF PARTIAL PROPERTY INTEREST

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)

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 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)

Example 8-7 – POSTING UNKNOWN OWNER

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

55 M Street, SE

Suite 400

Washington, DC 20003

Telephone _____

Example 8-8 – RIGHT OF ENTRY AGREEMENT

RIGHT-OF-ENTRY AGREEMENT

This Right-of-Entry Agreement (“Agreement”), dated this ____ day of _____, 201__, is entered into and made by and between _____, his/her successors and assigns (“Owner”), and the DISTRICT OF COLUMBIA, (the “District”) a municipal corporation acting by and through the DISTRICT DEPARTMENT OF TRANSPORTATION, (“DDOT”) pursuant to D.C. Official Code § 50-921.04(4)(D) (collectively, the “Parties”).

_____, in consideration of the potential assistance and advantages to be derived by DDOT, does hereby grant to DDOT a right-of-entry to certain property owned and, or occupied by OWNER, upon the following terms and conditions:

1. Grant of Use: _____ hereby grants to DDOT and its contractors the right to enter upon certain real property known as ____ (insert property description: e.g. SSL or Record Lot and Street Address) ____ (hereinafter, the “Property”), during daylight hours to ____ (describe the work) _____ (the “Work”). The description and procedures for the Work are set forth in Exhibit A. All Work shall be performed so as to avoid interference with the operation of the Property.

2. Costs: Except as otherwise noted, Owner shall not be responsible for any contract costs associated with the Work.

3. Beginning of Work: DDOT shall begin the Work as soon as possible upon the signing of this Agreement by both Parties. DDOT shall provide Owner with written notice of its intent to enter the Property at least five (5) business days before conducting any Work so that Owner shall have the opportunity to have a representative present during any such Work. This notice may be provided by telephone to Owner (_____), provided that any telephonic notice is immediately followed up with notification in writing. The notice must include (i) the date and approximate time of entry onto the Property, and (ii) the nature and extent of the Work to be performed on the Property.

4. Term; Expiration/Termination: The term (“Term”) of this Agreement shall begin on _____, 20__, and expire ____ (__) days thereafter, on _____, 20__, unless terminated earlier or unless extended upon the mutual written agreement of the Parties. This Agreement may be terminated by either Party, with or without cause, provided, however, that the Parties’ rights, if any, to restitution, damages and restoration shall survive any termination of this Agreement.

5. Notice: All notices, requests, modifications, and other communications that are required to be given pursuant to this Agreement shall be delivered by hand with receipt requested, or sent via electronic mail or sent via telefax, but never via United States mail nor via

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overnight delivery service, which are quarantined and delayed to the Owner. All notices shall be addressed as follows

To Owner:

(Insert Address and email address)

With a copy to each of:

To DDOT:

District Department of Transportation

55 M Street, SE

Suite 700

Washington, DC 20003

Attention: Director

With copies to:

District Department of Transportation

Infrastructure Project Management Administration

55 M Street, SE

Suite 700

Washington, DC 20003

Attention: Chief Engineer

District Department of Transportation

55 M Street, SE

7th Floor

Washington, DC 20003

Attention: General Counsel

6. Inspection: At any time during the Term, Owner or any representative of Owner shall have the right at all times to enter the Property for purposes of inspecting the Work to ensure compliance with the terms of this Agreement. If Owner identifies any violation of this Agreement during said inspection, Owner shall so notify the District of the violation, and the District shall take immediate steps to eliminate such violation. Owner's inspection activities shall be at Owner's risk and expense.

7. Removal of Equipment/Restoration: Upon the expiration or termination of this Agreement, all tools, equipment, and other personal property used in connection with the Work shall be removed by DDOT or DDOT's contractors as soon as reasonably possible, and any damage to the Property resulting from the execution of the Work shall be repaired by DDOT or DDOT's contractors, except for ordinary wear and tear and any damage resulting from Owner's negligence or misconduct.

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8. Security/Safety: Barricades, fences, signs, lanterns, and other suitable devices necessary for employee and public safety with respect to the work performed hereunder shall be provided and adequately maintained by DDOT or DDOT's contractor(s). DDOT or DDOT's contractor(s) shall maintain the security of each of its work sites on the Property to the reasonable satisfaction of OWNER during the Work. In the conduct of work undertaken herein, DDOT or DDOT's contractor(s) shall exercise all normal and reasonable safety precautions.

9. Not a Contract for Services/Anti-Deficiency Considerations: The District expressly acknowledges that it is prohibited by law from entering into contracts for services without following the procedures set forth in the Procurement Practices Act, D.C. Official Code §§ 2-301.01 (2008) et seq. The Parties acknowledge and agree that nothing in this Agreement creates a financial obligation in anticipation of an appropriation and that all provisions of this Agreement, or any subsequent agreement entered into by the parties pursuant to this Agreement, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

10. Contractors/Insurance: The District will ensure that the contractors participating or performing the Work on the Property have and maintain levels of insurance coverage that are appropriate for the Work to be conducted on the Property.

11. Liability: DDOT shall cause its contractors engaged to conduct the Work to be responsible for any damage, injury, or loss to persons caused by District's contractors or anyone else entering the Property on their behalf, except to the extent such damages, injuries, or losses are caused by OWNER's negligence or misconduct.

12. Licenses/Permits: DDOT or DDOT's contractors will be responsible for obtaining any necessary licenses and permits for the Work.

13. Hazardous Materials: DDOT must notify OWNER if DDOT discovers hazardous materials or waste on the Property.

14. Entire Agreement: This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified or amended in any manner, except by an instrument in writing executed by the Parties as an amendment to the Agreement.

15. Applicable Law and Binding Nature: The Parties shall comply with all applicable laws, rules and regulations whether now in force or hereafter enacted or promulgated. This Agreement shall be construed under the laws of the District of Columbia without reference to

conflicts of laws principles. This Agreement shall be binding upon the heirs, personal representatives, successors, grantees, and assignees of the respective Parties hereto.

(a) THE PARTIES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNEES EACH WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT IN CONNECTION WITH: (1) ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT; (2) THE RELATIONSHIP OF THE PARTIES HEREUNDER; (3) THE DISTRICT'S USE OR OCCUPANCY OF THE PROPERTY; AND/OR (4) ANY CLAIM OF INJURY OR DAMAGE.

(b) THE PARTIES EACH WAIVE ANY OBJECTION TO THE VENUE OF ANY ACTION FILED IN ANY COURT SITUATED IN THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED, AND WAIVE ANY RIGHT, CLAIM OR POWER, UNDER THE DOCTRINE OF FORUM NON CONVENIENS OR OTHERWISE, TO TRANSFER ANY SUCH ACTION TO ANY OTHER COURT.

16. Exhibits: Exhibits A, referenced herein and attached hereto, shall be deemed incorporated herein by reference, as though rewritten here in their entirety.

17. Counterparts: This Agreement may be executed in counterparts, each separately and together constituting one and the same document. Execution and delivery of this Agreement by facsimile or electronic mail via pdf document shall be sufficient for all purposes and shall be binding on any party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

By: _____

Name:

DISTRICT OF COLUMBIA

DEPARTMENT OF TRANSPORTATION

By: _____

Name:

Title: Director

APPROVED as to legal sufficiency:

OFFICE OF GENERAL COUNSEL

By: _____

Name: _____

Title: _____

EXHIBIT

(Form ACQ-REPORT)

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

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

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 _____

PARCEL: _____ PROJECT: _____

LANDOWNER: _____

NEGOTIATIONS

NEGOTIATOR: _____ ASSIGNED: _____

OFFER MADE: _____ NEGOTIATION COMPLETED: _____

CONTACT DATE: _____ PRESENT: _____

CONTACT DATE: _____ PRESENT: _____

CONTACT DATE: _____ PRESENT: _____

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: _____

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: _____

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: _____

Form - REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

Form **W-9**
 (Rev. November 2017)
 Department of the Treasury
 Internal Revenue Service

**Request for Taxpayer
 Identification Number and Certification**

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

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

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
2 Business name/disregarded entity name, if different from above
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____
4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
5 Address (number, street, and apt. or suite no.) See instructions.
6 City, state, and ZIP code
7 List account number(s) here (optional)
Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

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

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

Social security number					
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 5%; border: 1px solid black; text-align: center;">-</td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 5%; border: 1px solid black; text-align: center;">-</td> <td style="width: 40%; border: 1px solid black; height: 20px;"></td> </tr> </table>		-		-	
	-		-		
or					
Employer identification number					
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; border: 1px solid black; height: 20px;"></td> <td style="width: 5%; border: 1px solid black; text-align: center;">-</td> <td style="width: 90%; border: 1px solid black; height: 20px;"></td> </tr> </table>		-			
	-				

Part II Certification

Under penalties of perjury, I certify that:

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

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

Sign Here	Signature of U.S. person ► _____	Date ► _____
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General Instructions

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

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

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)
 - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor ⁴
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/identitytheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

9.0 Acquisition of Public Lands

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; or a quasi-governmental authority, such as the Washington Metropolitan Area Transit Authority (WMATA). 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 (WMATA)
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.

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 affected 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

- (i) Purpose of the transportation improvement project and the land required;
- (ii) Interest in the land needed for the project;
- (iii) Project numbers and appropriate reference;
- (iv) Map showing the survey of the land needed for the project and relationship to the public land;
- (v) Legal description of the land to be acquired; and
- (vi) Statement of compliance with NEPA,¹ National Historic Preservation Act², Section 4f, and any other Federal environmental laws. For details regarding environmental laws please refer to the DDOT Environmental Policy & Process Manual.

9.2. Federal Lands

Disposal of federal lands can be done through a transfer, donation, or sale of facilities and land no longer needed by the federal government. When a Federal agency notifies GSA that it has unneeded real property, GSA first offers to transfer the property to another federal agency, which must pay fair market value for it. If no other agency wishes to acquire the property, GSA may then convey it to a state or local government, or a qualified nonprofit, for up to a 100% discount—provided it is used for an approved public benefit. If the recipient of a conveyed property fails to use the property as agreed then the property may revert back to the federal government. Should a state or local government or qualified nonprofit wish to acquire the

¹ 42 USC 4332 et.seq.

² 16 USC 470(f) and 23 USC 138

property for a use other than one of the approved public benefits, GSA has the option to sell the property to them at fair market value. The transfer of surplus federal property may be subject to an array of environmental requirements intended to protect human health and safety, natural resources, and cultural resources.³

9.2.1. Transfers of Jurisdiction

In most instances federal land transfers to the Agency are done through a Transfer of Jurisdiction (TOJ) from one holding agency to another holding agency. The District is considered a holding agency per 41 CFR 102-75.175 and D.C. Official Code § 10-111 (2018). TOJ's are processed through the office of the DC Surveyor and require legislation and a plat to complete the transfer. The NPS is the holding agency for most reservations located in the District and maintains an inventory of the holders of District Reservations. Whenever DDOT requires ROW from an NPS controlled property the following procedures are to be followed. The process for TOJ's is outlined in the following sections.

9.2.2. 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:

- (i) Describe the proposed project;
- (ii) Anticipate involvement with NPS controlled property;
- (iii) Provide a written justification for the need of the NPS property; and
- (iv) Provide a schedule of project development activities, if available.

9.2.3. 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

³ An overview of environmental requirements that may apply to the transfer of surplus federal property is available in the General Services Administration (GSA) "Environmental Framework for Real Property Disposal" at <http://propertydisposal.gsa.gov/EnvironmentallInfo>.

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 another agency’s EA and EIS’s. 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.

9.2.4. 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.

9.2.5. Transfer to or from NPS

TOJ’s between federal agencies and the District of Columbia are handled by the Office of the D.C. Surveyor. An application must be filed together with a plat showing the land to be transferred. The application will not be advanced to the D.C. Council until approval has been obtained from NCPC and the Advisory Neighborhood Commissioners (ANC).

9.2.6. Coordination with NCPC

As previously mentioned, a condition precedent to the TOJ is approval by NCPC. A summary must be provided to NCPC describing the project, the project timeline and the justification for the transfer. Typically, the party to whom the land is being transferred prepares the required documentation but there are exceptions to this rule. The Executive Director then prepares a recommendation either in support or opposition to the transfer. NCPC holds a hearing and then NCPC takes official action approving or opposing the transfer.

9.2.7. Recordation.

Once approval for the transfer has been obtained from NCPC and the affected ANC, the legislation will be forwarded to the D.C. City Council and a hearing will be held. Once the

Right of Way

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legislation is enrolled, and the 30-day passive review period has passed the Clerk of the Council will direct the D.C. Surveyor to record the TOJ plat. **Note - The TOJ is not effective until the plat has been recorded.**

9.2.8. Federal Land Transfers thru FHWA

- A. These provisions apply to any project constructed on a Federal-aid highway or under Chapter 2 of Title 23, of the United States Code. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal funding under Chapters 1 and 2 of Title 23, of the United States Code, and to highway-related transfers that are requested by DDOT in conjunction with a military base closure under the current Defense Base Closure and Realignment Act.
- B. An eligible party may file an application with FHWA or can make application directly to the Federal land management agency if the Federal land management agency has its own authority for granting interests in land.
- C. Applications under this section shall include the following information:
 - (i) The purpose for which the lands are to be used;
 - (ii) The estate or interest in the land required for the project;
 - (iii) The Federal project number or other appropriate references;
 - (iv) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
 - (v) A map showing the survey of the lands to be acquired;
 - (vi) A legal description of the lands desired; and
 - (vii) A statement of compliance with the National Environmental Policy Act of 1969 (42 USC 4321, et seq.) and any other applicable Federal environmental laws, including the National Historic Preservation Act (54 USC 306108), and 23 USC 138.

- E. If the FHWA concurs in the need for the transfer, the Federal land management agency will be notified, and a right-of-entry requested. For projects not on the Interstate System, the Federal land management agency shall have a period of 4 months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the reply period at the timely request of the Federal land management agency for good cause.
- F. The FHWA may participate in the payment of fair market value or the functional replacement of impacted facilities as described in Chapter 10, Section 10.16 and the reimbursement of the ordinary and reasonable direct costs of the Federal land management agency for the transfer when reimbursement is required by the Federal land management agency's governing laws as a condition of the transfer.

9.2.9. 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 coordinate directly with the OGC on a TOJ or disposal requirements.

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 each jurisdictions obligations within their respective territorial limits as it relates to the project. The Agency cannot agree to build and/or maintain transportation infrastructure outside the District's territorial limits without an express authorization from Congress.

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:

- (i) The Project Manager will prepare a plat of the area involved. The plat will show the detailed dimensions, area, and other pertinent information about the land needed for the project. The plat is then submitted to the ROW Unit for verification.
- (ii) Early coordination with the agency of the District controlling the required ROW is necessary to ensure its availability for transportation purposes. The Agency must coordinate with DGS on the intra-District transfer between District Agencies. The intra-district transfer is prepared by OGC in coordination and consultation with DGS and the transferring agency.
- (iii) After the intra-district transfer is complete, the OGC coordinates with the Office of the Surveyor to record a plat setting aside the land for "Street Purposes". Once the new transportation facilities are constructed and accepted by the Agency, DDOT sends a memo to the D.C. Surveyor requesting that the streets be opened, and the DC Surveyor will record a Street Opening Plat.
- (iv) Once the Street Opening Plat is recorded, the plat will be sent to Maps & Titles Division of the Real Property Tax Administration in the Office of Tax and Revenue and the account/parcel numbers will be deleted. *Note- Public Space does not have either tax account or parcel numbers.*

The title to the property would not be affected as it continues to reside in the name of the District.

Chapter Resources

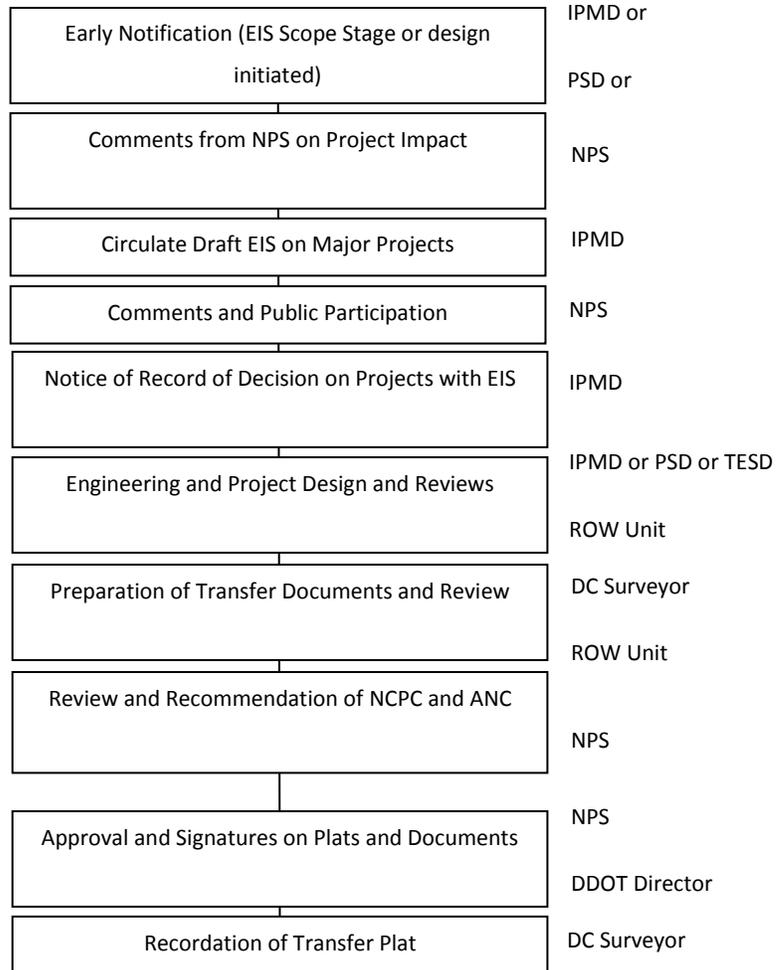
Flow Chart

- Transfer of Jurisdiction

References

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
- United States Code (USC)
<https://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE>
- District of Columbia Code
<https://code.dccouncil.us/dc/council/code/>

Flow Chart – Transfer of Jurisdiction for the National Park Service



10.0 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 Uniform Act.

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	Initial Interview
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 of Real Property in Public Ownership
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. This manual outlines the procedures necessary to assure compliance with the Uniform Relocation Assistance and Real Property Acquisition Act (URA), which is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms.

10.2. Federal Regulations

It is the policy of DDOT to follow and fully comply with the Uniform Act 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, businesses, or farms 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

To help minimize the adverse effects of displacement, the ROW Unit will need to begin relocation planning at the earliest stages of project development, typically when project is being studied during the NEPA process. Before project approval, information is gathered about the needed parcels and identify of any individuals or businesses that could potentially be displaced. The ROW Unit will also estimate the amount of time and resources required to accomplish the relocation, and whether there is adequate replacement housing in the area and what is the cost. The ROW Unit will share this estimate with the Project Manager for use in calculating the project budget.

The ROW Unit will oversee various relocation planning, advisory services and coordination activities in accordance with 49 CFR 24.205, as well as the required record keeping. 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 effects on the displaced persons⁶ or delays in the project's development. Early planning assures that qualified relocation personnel are in place to provide for needs of any displaced persons, businesses or farms.

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.

Depending on the size of the project a relocation study may be required as part of the Agency's relocation planning pursuant to 49 CFR 24.205(a) and shall contain the following information:

- (i) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on

⁶ 49 CFR 24.205

minorities, the elderly, large families, and persons with disabilities when applicable.

- (ii) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Agency should consider housing of last resort actions.
- (iii) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.
- (iv) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.
- (v) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.

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. The Relocation Specialist making on-site inspections for preparation of the relocation study should note the following community characteristics and possible project impacts:

- (i) Concentration of minority, low income families, or elderly residents.
- (ii) Indications of a cohesive neighborhood being bisected by a street or freeway alignment.
- (iii) Disproportionate displacement of low income, minority, or elderly residents because of the project.

- (iv) Dependency of a large number of residents on public transportation to travel to work, schools or shopping.
- (v) 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.
- (vi) Acquisition of community resources, such as health or recreation facilities, parks, churches, or schools.
- (vii) Diminished access to the above community resources caused by the proposed highway location.
- (viii) Acquisition of housing type in short supply, such as those that accommodate large families or rental housing for moderate income residents.
- (ix) Presence of residents with special needs, such as non-English speaking families or handicapped residents' dependent on special services available nearby.
- (x) Evaluation of business to assess functional replacement requirements.

Conditions such as those above will be included in the relocation study 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, therefore, the information obtained as part of the relocation study should be shared with PSD.

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 homes, businesses and farms. As appropriate, the ROW Unit Manager should provide a ROW representative at meetings to answer general questions about potential relocation benefits if DDOT needs all or a part of their property.

The ROW Brochures describing general ROW acquisition and relocation assistance procedures in layman terms should be available for distribution at the meetings. All discussions with the public at this stage must be generic, as many changes can occur before a final design is selected.

10.5. Initial Interview

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:

- (i) All information provided is strictly confidential.
- (ii) 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
- (iii) 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.

A report shall be produced after each interview that contains the following information:

- (i) 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.
- (ii) 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.

- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) The gross family income from all sources including wages, interest, social security, welfare (excluding food stamps), disability payments and other untaxed income.
- (viii) The date the potential 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.
- (ix) 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.
- (x) If an owner-displacee has an outstanding mortgage, the monthly payment, interest rate, original amount, term, and the unpaid balance should be determined.
- (xi) 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, tenant interviews may not be necessary. 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 ROW Brochures 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.

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

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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 (23 CFR 710.203(b)(2)(ii) and 23 USC 101(2)(3)).

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.

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 Decent Safe and Sanatory (DSS) dwelling remains available. In another instance, the displaced person may have a physical disability that prevents the search for replacement dwelling. The Relocation Specialist shall offer all person's transportation to inspect comparable homes or apartments.

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 ROW Brochures 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.

10.7. Providing Relocation Assistance Services (Duties of Relocation Specialist)

The Relocation Specialist will perform advisory services, or arrange for others to provide services, to ensure that the following minimum assistance requirements are met.

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- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) 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 provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.
- (vii) Offer all displacees, especially the elderly and disabled, transportation to inspect housing to which they are referred.

- (viii) Provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial properties and locations for businesses.
- (ix) 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.
- (x) 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.
- (xi) 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 10.18 and afford the displacee ample opportunity to pose questions regarding information provided during meetings and/or arising from the ROW Brochures.
- (xii) 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.
- (xiii) 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.
- (xiv) 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 ROW Brochures and fully explaining the moving procedures and related costs.
- (xv) Plan for any advance relocation payments required for the move and the required documentation to receive advance payments.

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 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.

The Relocation Specialist should develop several sources of information for replacement housing. These sources will include but are not limited to the following:

- (i) Real estate brokers and boards of realtors;
- (ii) Multiple listing services;
- (iii) Real estate developers;
- (iv) Housing and Urban Development (HUD) and Veterans Administration (VA) area and regional offices;
- (v) Builders and construction associations;
- (vi) Real estate management firms;
- (vii) Public housing agencies;
- (viii) Newspaper and Internet advertisements;
- (ix) Mobile home dealers; and
- (x) Banks and other lending institutions.

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. In some instances, 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.

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 **Right of Way**

Relocation Specialist shall assist the displacee in completing all required forms as well as obtaining any necessary supporting documentation for the payment.

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:

- (i) Date of the contact;
- (ii) Person contacted;
- (iii) Topics discussed;
- (iv) Displacee's opinions;
- (v) Notation of available replacement housing offered, if any; and
- (vi) Any other pertinent information obtained during the contact.

10.8. Determination of Eligibility for Assistance and Payments

Relocation assistance payments are available to tenants, homeowners and businesses. For example, tenants may be eligible for rental assistance. Homeowners may be eligible for monetary assistance for the purchase of a home. And business owners may be eligible for moving, re-establishment, and other business-related expenses.

The following four categories of person (see definition) can receive ***Relocation Advisory Services***:

- (i) Persons occupying real property to be acquired for the project.
- (ii) 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.

- (iii) 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.
- (iv) 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.

The following categories of residential displacees may be entitled to **Replacement Housing Payment**:

- (i) The landowner that has been in occupancy for more than 90 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.
- (ii) The landowner that has been in occupancy for less than 90 days that qualify under 49 CFR 24.403 (D) 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
- (iii) 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.

10.8.1. Partially Eligible Occupants

A person who occupies a dwelling prior to its acquisition by DDOT but did not occupy it for 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.

10.8.2. 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:

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.

10.8.3. 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:

- (i) A significant negative impact on the health or safety of the spouse, parent or child.
- (ii) A significant negative impact on the continued existence of the family unit of which the spouse, parent or child is a member.
- (iii) 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

- (i) 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.
- (ii) 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.
- (iii) 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.

- (iv) 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.
- (v) 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.

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 within one year, beginning on the following dates:

- (i) Owner-occupant of 90 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.

- (ii) 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.

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 \$7,200 or less as determined in Section 10.11 shall be paid in a lump sum, unless the ROW Unit Manager determines that it should be paid in installments.

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

- (i) 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.

- (ii) 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.
- (iii) 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.
- (iv) Availability of financing and access to social services, which may be required by the displacee, shall be on a nondiscriminatory basis.
- (v) Relocation activities will comply with the applicable Federal laws and implementing regulations listed in 54 Federal Register 8932.

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:

- (i) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
- (ii) 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.
- (iii) 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 (DSS)

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.

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

- (i) 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. 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

- (ii) 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.
- (iii) 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.
- (iv) 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 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 traverse 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 (i.e. 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.

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 of 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 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).

- (i) Payments for 90-Day Owner-Occupants

A displaced person must have occupied the dwelling prior to its acquisition by DDOT for at least 90 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 \$31,000, 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 by 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.

(ii) Payments for 90 Day Occupants

A displaced residential tenant being displaced for at least 90 days immediately prior to the initiation of negotiations. Persons within this category may be eligible for either a rental-assistance payment or downpayment assistance. The following provides clarification of each type of payment:

- (a) Rental Assistance. This is a payment, not to exceed \$7,200, 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 \$7,200, 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.

An owner-occupant less than 90 day may not receive a downpayment assistance payment which exceeds that which would have been received if the displacee had been a 90-day owner-occupant. A 90-day owner-occupant is not eligible to receive downpayment assistance, unless qualified under 49 CFR 24.103 (D).

- (iii) Special Circumstances

The Uniform Act 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 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

- (i) Owner-Occupants Over 90 Days

The total RHP is an amount up to \$31,000, 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 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:	
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 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 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

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

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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 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 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
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<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.
- (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 90 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 \$31,000 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 \$31,000 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.
- (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 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

Facts

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%

Determination

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
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 than 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 \$7,200, 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 acquired dwelling. Utilities include heat, light, water and sewer. If the payment exceeds the \$7,200, housing of last resort must be used.

Example: Rental Assistance Payment (basic)	
Determining of Maximum Payment	
Rent on available comparable rental unit, including utilities	\$ 825
<i>Less the</i>	
Displacee's current monthly rent, including utilities	<u>-\$ 650</u>
Monthly rent difference	\$ 175
Multiplied by 42 months	\$ 7,350
Entitled to Maximum Rent Supplement Amount	\$7,200
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)

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
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Less the

30% of displacee income	<u>-\$510</u>
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Monthly rent difference:	\$ 90
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Multiplied by

Maximum Rent Supplement Amount (\$90 X 42 months) =	\$3,780
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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.

(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 and properties. The criteria below will apply, corresponding to the type of Section 8 program displacee is receiving:

- (1) 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.

- (2) For a recipient in the voucher program Section 8 will pay up to the housing authority approved payment standard in the area. This usually is 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.
- (3) 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 dwelling 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	
<u>Facts before Relocation</u>	
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
<u>After Relocation</u>	
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). $(\$325 - \$300) \times 42 \text{ months} = \$1,050$	

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 \$7,200 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 Purchase Agreement 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 \$7,200. However, just as with the landowner RHP, a higher computed payment could be paid under authority of HLR.

(I) Downpayment 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 are eligible for downpayment assistance. Owner-occupants of 90 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 \$7,200, 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.

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:

- (i) An existing DSS dwelling is acquired.
- (ii) 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.

- (iii) 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.
- (iv) 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.
- (v) 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.

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:

- (i) Upon final determination of the condemnation proceedings, the RHP will be recomputed using the acquisition price determined by the court.

- (ii) 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 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:

- (i) The date the displacee moves from the real property, or moves personal property from real property; or
- (ii) 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 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 rooms actually occupied by each occupant plus community rooms utilized by each occupant.

10.12.1. Actual Reasonable Moving Expenses

- (i) Move Performed by Commercial Mover
 - (a) 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.

- (b) 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.
- (c) 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.

(ii) Self-Move

An actual cost move may be carried out by the displacee in a self-move for actual, reasonable, and necessary cost expanded. 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:

- (a) Transportation of personal property up to 50 miles, unless the ROW Unit Manager determines that relocation beyond 50 miles is justified
- (b) 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.
- (c) Payment to a commercial mover for completing all or part of the move.
- (d) If an actual cost self-move, payment for rental vehicles or equipment such as trucks, pads, dollies, etc.

- (e) Packing, crating and unpacking of personal property
- (f) 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.
- (g) Insurance premiums to cover the value of personal property for damage or loss during the move or during necessary storage
- (h) 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
- (i) Compensation paid to persons employed to help conduct the move.
- (j) 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:

- (a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;
- (b) Interest on a loan to cover moving expenses;
- (c) Personal injury;
- (d) Expenses for searching for a replacement dwelling;
- (e) Additional expenses of living in a new location; and
- (f) 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 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

Notes:

- (i) As the schedule is revised periodically, the current schedule should be used.
- (ii) 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.

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:

- (i) Actual moving costs for relocating all personal property including machinery, equipment and fixtures and disconnect/reconnect costs
- (ii) Search costs for a replacement location not to exceed \$2,500
- (iii) Reestablishment expenses not to exceed \$25,000

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 \$40,000. The specific amount is based on the net income (Section 10.13.9) 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.

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:

- (i) 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.
- (ii) Packing, crating, unpacking and uncrating the personal property.
- (iii) 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.
- (iv) 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.
- (v) 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.

- (vi) 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.
- (vii) 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.
- (viii) The re-lettering of signs and the cost of replacing stationery on hand at the time of the move that are made obsolete by the acquisition.
- (ix) Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
- (x) 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.
- (xi) Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the ROW Unit Manager.
- (xii) 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:

- (i) Any additional expense incurred because of operating at a new location except as provided as a business reestablishment expense;
- (ii) Cost of moving structures, improvements, or other items of realty retained by the owner;

- (iii) 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;
- (iv) Interest on loans to cover moving expenses;
- (v) Loss of goodwill;
- (vi) Loss of trained or skilled employees, or both;
- (vii) Loss of business or profits, or both; and
- (viii) 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 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 CFR 301(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:

- (i) The amount which would be received if the personal property were sold at the site; or
- (ii) The replacement cost of a comparable quantity delivered to the new business location.

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:
- (i) The replacement cost minus the net proceeds of the sale. Trade-in value may be substituted for net proceeds of sale where applicable; or
 - (ii) 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 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
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Estimated cost to move and reinstall old printing press	\$ 8,000
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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:
- (i) 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
 - (ii) 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 backup 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.

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:
 - (i) 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.
 - (ii) 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.
 - (iii) Explain the full range of benefits including move expenses, reestablishment cost reimbursement, search expense reimbursement, etc.
 - (iv) 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.
 - (v) Obtain all identifying information on direct loss items including make, model, function, age, and condition. Take photos of all such items.
 - (vi) Secure estimates of the cost of relocating the specific identified items, including detach and reinstall costs.
 - (vii) Determine value of items for continued use at the displacement site. This may require a specialist Appraisal.
 - (viii) 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.

- (ix) 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.
- (x) Determine direct loss amount using information gathered in above steps and applying formula in above examples.
- (xi) 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:
 - (i) Transportation. A mileage rate determined by the IRS will apply to the use of an automobile.
 - (ii) Meals and lodging away from home.
 - (iii) Time spent searching, based on reasonable salary or earnings.
 - (iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.
 - (v) Time spent in obtaining permits and attending zoning hearings; and
 - (vi) 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 \$25,000, 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:
- (i) 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.);
 - (ii) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;
 - (iii) 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);
 - (iv) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;
 - (v) Licenses, fees and permits, when not paid as part of moving expenses;
 - (vi) Advertisement of replacement location;
 - (vii) 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
 - (viii) 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 \$25,000. 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 Uniform Act. 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 \$25,000 reestablishment ceiling.

The business reestablishment expense benefit can be essential to displaced small businesses which will incur many other un-reimbursable 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:
- (i) Purchase of capital assets, such as office furniture, filing cabinets, and machinery or trade fixtures.
 - (ii) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.
 - (iii) Interest on money borrowed to make the move or purchase the replacement property.
 - (iv) 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 \$40,000.

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:

- (i) 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.
- (ii) 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.
- (iii) 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 during the two taxable years prior to displacement shall not be considered an "other entity.")
- (iv) The business is not operated at displacement dwelling or site solely for the purpose of renting such dwelling or site to others.
- (v) 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:

- (i) The same premises and equipment are shared;
- (ii) Substantially identical or interrelated business functions are carried out and business and financial affairs are co-mingled;
- (iii) The entities are held out to the public and to those customarily dealing with them, as one business; and
- (iv) The same person, or closely related persons own, control, or manage the affairs of the entities.

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 \$40,000 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 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:	$\$18,500 + \$16,500$ (average annual net earnings) =	\$17,500

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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. 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:

- (i) 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.
- (ii) Tour the site with the business owner. Note specialized or complex equipment, inventory storage, offices.
- (iii) Explain the full range of benefits including moving expenses, reestablishment cost reimbursement, search expense determination, etc.
- (iv) Explain the in-lieu fixed payment option. If there is interest, secure information necessary for an eligibility determination

- (v) 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.

- (i) Business owner is contemplating retirement, or otherwise has decided to discontinue operations.
- (ii) In-lieu payment amount significantly exceeds cost of moving the business.
- (iii) Business owner desires administrative simplicity of not having to support actual move costs
- (iv) 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 – nonresidential (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 49 CFR 24.207(d)) after the later of the following dates:

- (i) The date the displacee moves from the real property, or moves personal property from real property; or
- (ii) 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

A. Utilization

The Uniform Act 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 Uniform Act provides for Housing of Last Resort (HLR) (49 CFR 24.404). HLR is the legal and administrative authority to provide comparable housing when 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 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:

- (i) Comparable replacement housing is not available on the housing market.
- (ii) Comparable replacement housing is available, but:
 - (a) The computed RHP exceeds the \$31,000 limitation.
 - (b) The computed rent supplement exceeds the \$7,200 limitation.
- (iii) 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.

10.14.1. 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 (\$31,000 or \$7,200), 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:

- (i) Consideration of requirements of local zoning and building codes with references to methods proposed to provide comparable housing;
- (ii) Discussion of how, when and where housing will be provided;
- (iii) Consideration of environmental suitability of the location of the proposed housing, including consideration of environmental justice issues;
- (iv) How housing will be financed and the amount of funds to be used for such housing from all funding agencies and private sources;
- (v) Prices for the housing to be rented or sold is within the financial means of the families and individuals to be displaced;
- (vi) Arrangements for maintaining rent levels appropriate for the persons to be relocated;
- (vii) Arrangements for rental housing management;
- (viii) Disposition of the proceeds from rental, sale or resale of such housing;
- (ix) How the construction will be monitored; and
- (x) 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.

10.14.2. 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, 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:

- (i) Make an offer and payments in excess of the statutory limits of \$31,000 and \$7,200 in the computation of an RHP or Rental Assistance.
- (ii) 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.
- (iii) Contract for the construction of new housing to be rented or sold to displaced persons for amounts within their financial means.
- (iv) Make a provision of a direct loan or use of other financial techniques such as mortgage assistance, mortgage origination, down payment assistance or annuity.
- (v) Move or pay for the move of an existing dwelling to the replacement site.
- (vi) 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.

10.14.3. 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.

10.14.4. 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. 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-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.

10.15.2. 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 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 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:

- (i) 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.
- (ii) 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 \$7,200 for 90-day owner or tenant-occupants or \$31,000 for 90-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.

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.

10.15.3. Replacement Housing Payments; 90-Day Owner-Occupant

A. General

A displaced owner of a mobile home who has occupied the home and site for at least 90 days is eligible for the following as a replacement housing benefit as covered under Section 10.11.

- (i) The additional cost necessary to purchase replacement housing.
- (ii) Compensation for the loss of favorable financing on the existing mortgage in the financing of such replacement housing. (If a 180-day Owner-Occupant)
- (iii) 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 \$7,200.

B. Acquisition of mobile home and site from owner-occupant

- (i) 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.
- (ii) Rental RHP.

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:
- (iii) The amount determined by the ROW Unit necessary to rent a comparable mobile home and site for a period of 42 months; or
- (iv) Forty-two times the monthly rent paid for the replacement mobile home and site.

C. Acquisition of site only: owner-occupant retains mobile home

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- (i) 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.
- (ii) 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

- (i) 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.

The entire computed amount may be applied toward the purchase of a comparable mobile home site, if so desired.

- (ii) 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 \$7,200 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:

- (i) The amount determined as necessary to rent a comparable home site for 42 months; or
- (ii) 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.

10.15.4. Replacement Housing Payment to Tenants of 90 Days

A displaced owner or tenant of a mobile home or site, or both, under this category can receive an RHP not to exceed \$7,200 (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:

- (i) The rental RHP is to be determined in accordance with Section 10.11.
- (ii) 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.

10.16. Functional Replacement of Real Property in Public Ownership

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.

10.16.1. Requirements of 49 CFR 710.509

A. General.

When publicly owned real property, including land and/or facilities, is to be acquired for a project receiving grant funds under Title 23, in lieu of paying the fair market value for the real property, the acquiring agency may provide compensation by functionally replacing the publicly owned real property with another facility that will provide equivalent utility.

B. Federal Participation

Federal-aid funds may participate in functional replacement costs only if the following conditions are met:

- (i) Functional replacement is permitted under State law and the acquiring agency elects to provide it;
- (ii) The property in question is in public ownership and use;
- (iii) The replacement facility will be in public ownership and will continue the public use function of the acquired facility;
- (iv) The acquiring agency has informed, in writing, the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement;
- (v) The FHWA concurs in the acquiring agency determination that functional replacement is in the public interest; and
- (vi) The real property is not owned by a utility or railroad.

C. Federal Land Transfers

Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

D. Limits Upon Participation

Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are:

- (i) Costs for facilities that do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and
- (ii) Costs for land to provide a site for the replacement facility.

E. Procedures

When a grantee determines that payments providing for functional replacement of public facilities are allowable under State law, the grantee will incorporate within its approved ROW Manual, or approved RAMP, full procedures covering review and oversight that will be applied to such cases.

10.16.2. Procedures for Functional Replacement of Real Property in Public Ownership

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 to 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.

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:

- (i) District and Federal project number and parcel identification
- (ii) Date of initiation of negotiations for property
- (iii) Names and addresses of displaced persons and their complete original and new addresses and telephone numbers
- (iv) 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
- (v) 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

- (vi) Date and substance of all relocation contacts
- (vii) 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)
- (viii) Date on which actual relocation occurred
- (ix) Type of tenure before and after relocation
- (x) For displacements from dwellings
 - (a) Number in family
 - (b) Type of property
 - (c) Monthly rental
 - (d) Number of room occupied
- (xi) 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:

- (i) The date the removal of personal property was accomplished.
- (ii) The location from which and to which the personal property was moved.
- (iii) 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.

- (iv) Itemized statement of the cost incurred supported by receipted bills or other evidence of expense.
- (v) Amount of reimbursement claimed, amount allowed and an explanation of any difference.
- (vi) 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.
- (vii) 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:

- (i) The date of receipt of each application for such payment.
- (ii) The date on which each payment was made, or the application rejected.
- (iii) Supporting data showing how the amount of the supplement payment to which the applicant is entitled was calculated.
- (iv) A copy of the closing statement to support when replacement housing is purchased.
- (v) A copy of the Truth in Lending Statement and other data, including computations to support the increased interest payment.
- (vi) 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
- (d) 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 appeal 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 Brochures 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 Chief Engineer, or his/her designee. 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.

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 and who will forward it to the Chief Engineer, or his/her designee. The Chief Engineer, or his/her designee, will then 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 letter of determination

stating the basis for the decision will be provided to the displacee 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 Chief Engineers 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 letter of determination, within 10 days. Upon receipt by the Director, the appeal will be referred to a review board consisting of the Chief Project Delivery Officer, or a designated representative, as chairman, the applicable Associate Director or the Chief Engineer or designated representative, and the Chief of Staff. Legal counsel for DDOT may also be present.

A hearing will be scheduled at a time and place reasonably convenient to the displacee 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 review panel will furnish 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 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 Resources

Flow Chart

- 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)

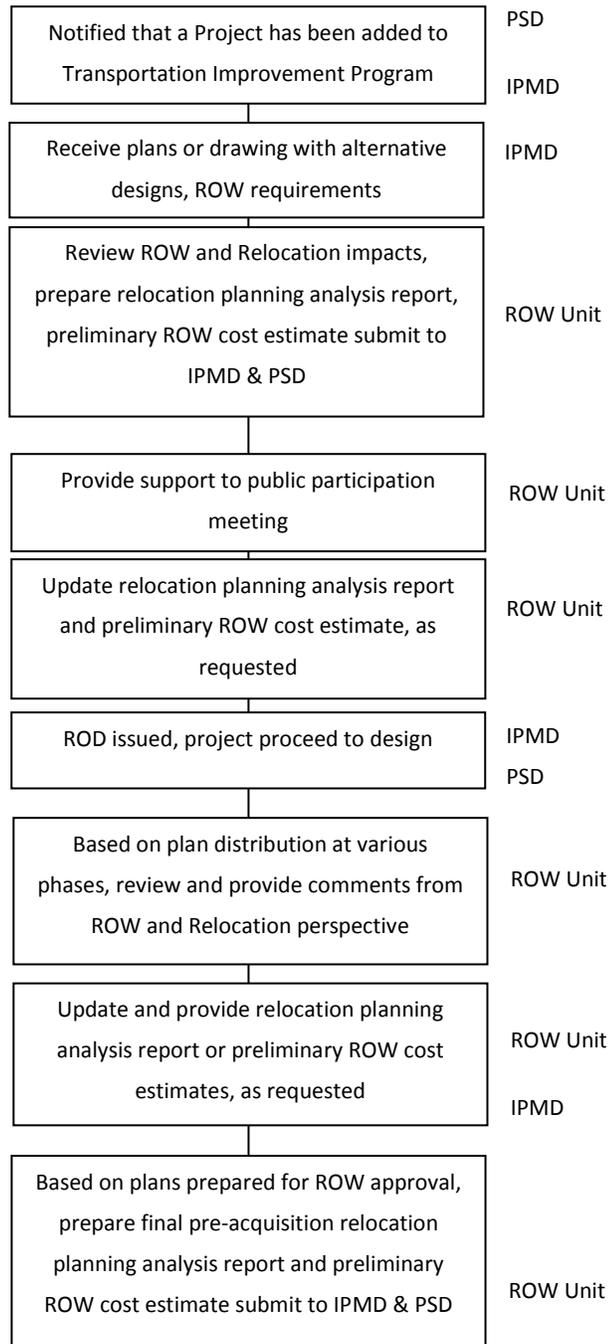
Forms

- Site Occupant Interview Form (form INTERVIEW) (Form 10-1)
- Comparable Replacement Dwelling (form COMP RHP) (Form 10-2)
- Interest Expense Calculation (form MORT. DIFF.) (Form 10-3)
- Move Reimbursement Application (form MOVE APPLY) (Form 10-4)
- Occupancy Affidavit (form OCCUPY) (Form 10-5)
- Relocation Project Log (form LOG) (Form 10-6)
- Residential Claim for Moving and Related Expenses (HUD-40054) (Form 10-7)
- Claim for Actual Reasonable Moving and Related Expenses- Non-Residential (form HUD-40055) (Form 10-8)
- Claim for Fixed Payment In lieu of Payment for Actual Nonresidential Moving and Related Expenses (Form HUD-40056) (Form 10-9)
- Claim for Replacement Housing Payment for 90 Day Homeowner (HUD-40057) (Form 10-10)
- Claim for Rental Assistance or Down Payment Assistance (HUD-40058) (Form 10-11)

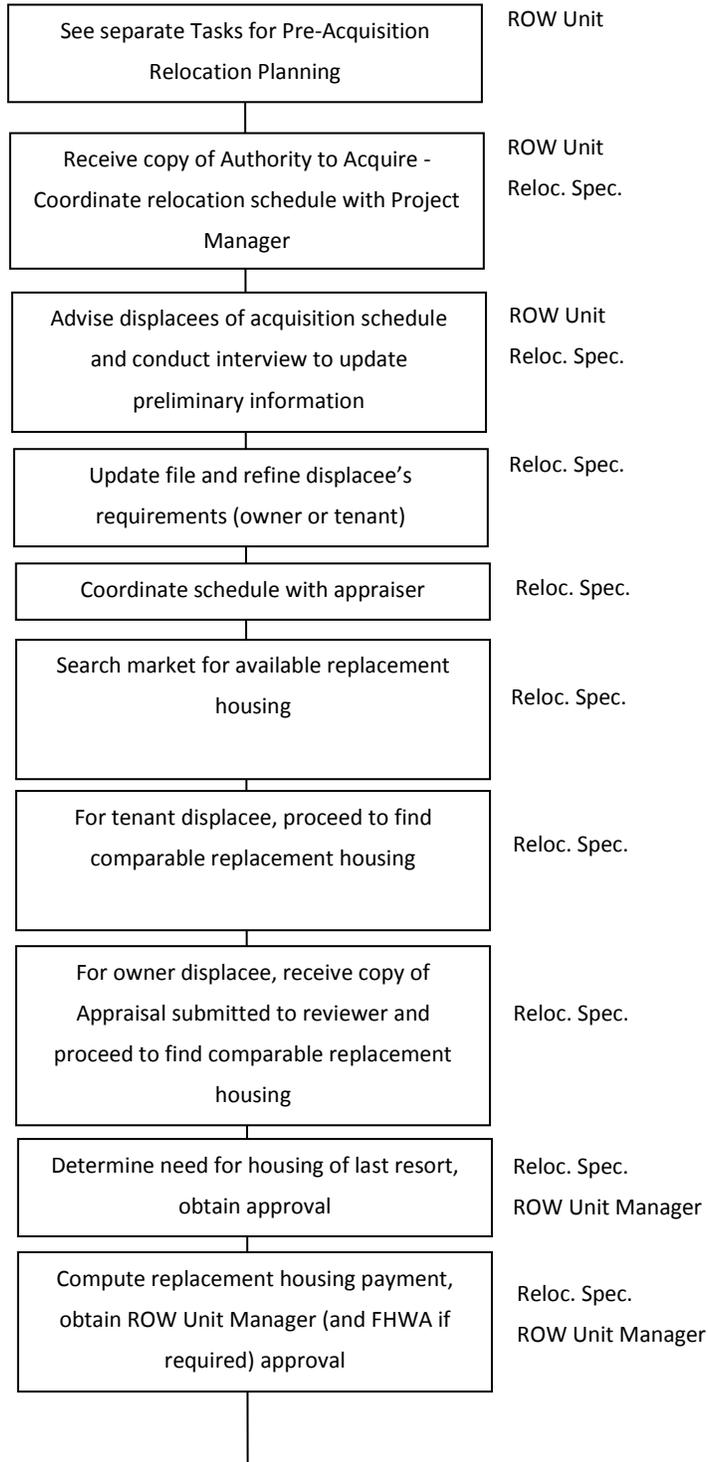
Reference

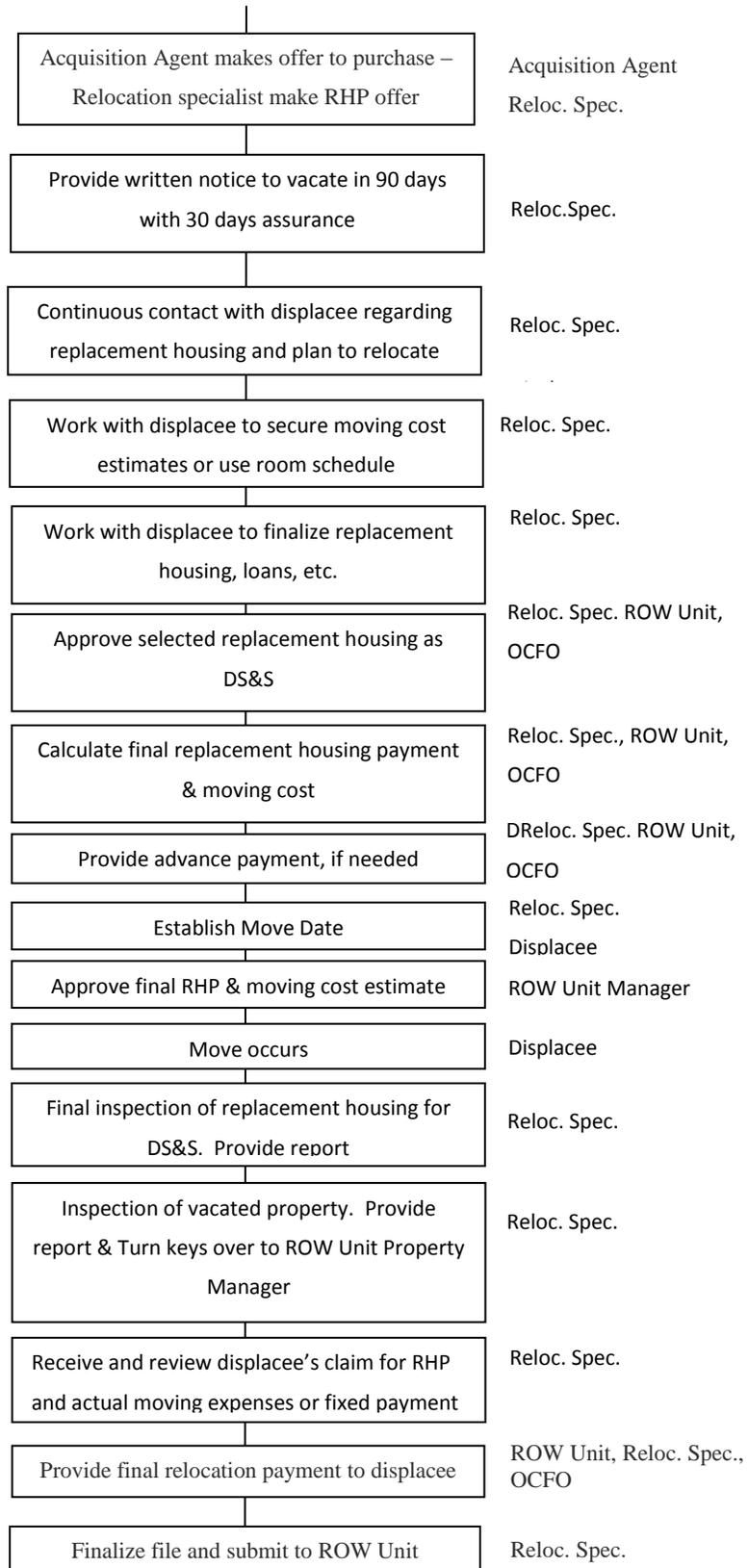
- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Flow Chart – Pre-Acquisition Relocation Planning

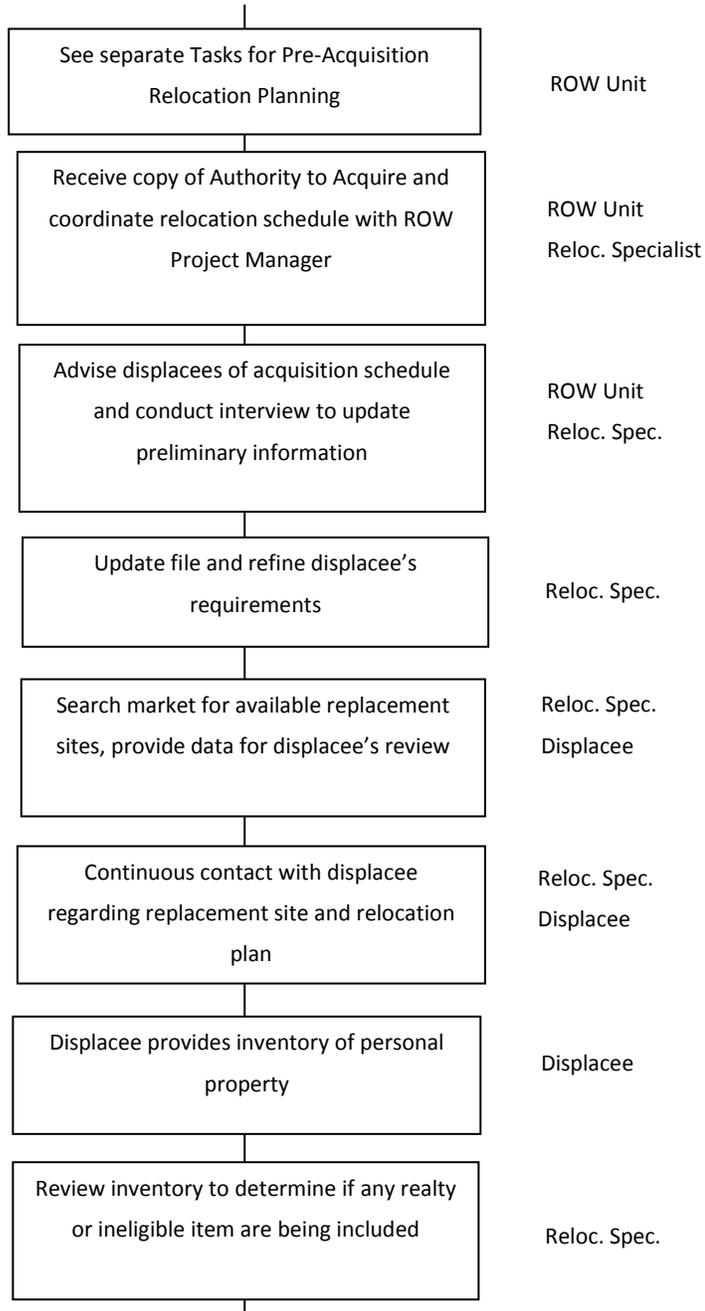


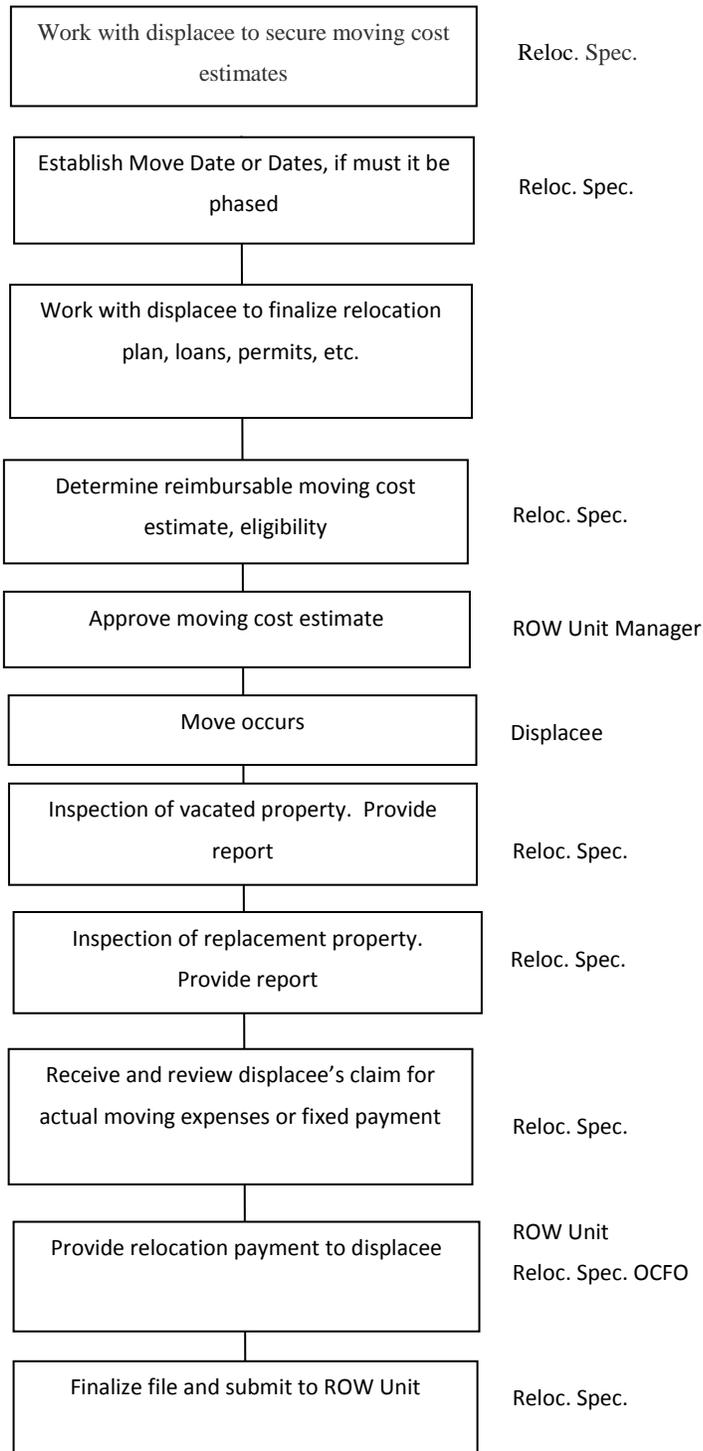
Flow Chart – Residential Relocation





Flow Chart – Nonresidential Relocation





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 an 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

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
- 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

Example 10-2 - 90 DAY ASSURANCE VACATION LETTER

Date

Street

Project:

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

Example 10-3 – OFFER OF COMPARABLE REPLACEMENT HOUSING

Date

Street

Project:

Federal Project No.:

RIGHT OF WAY - Property of
 Parcel
 Displacee:
 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:

- (i) The housing upon which this amount is based is no longer available for purchase; or
- (ii) You purchase replacement housing, the purchase price of which is less than \$_____ (acquisition price plus replacement housing payment); or
- (iii) You rent replacement housing instead of purchasing; or
- (iv) You retain your existing dwelling and move it to be used as your replacement housing; or
- (v) 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.

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 Purchase Agreement, 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

Right of Way

10-103

Example 10-4 - RELOCATION CONTACT REPORT

PARCEL: _____ PROJECT _____

DISPLACEE _____

RELOCATIONS

SPECIALIST: _____

CONTACT DATE: _____ PRESENT: _____

CONTACT DATE: _____ PRESENT: _____

Form 10-1 – SITE OCCUPANT INTERVIEW

CHARACTERISTICS & NEEDS OF DISPLACED INDIVIDUAL OR FAMILY

State _____ Federal _____
Project: 0199-965-104-R201 Project: STP-5403(753) PPMS I.D.: 18975

Parcel
Landowner: DOROTHY P. NICHOLS, Sterling M. Nichols I: 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 the Right-of-Way Manual. _____

Yes

The above is based on a visual inspection and represents the opinion of the inspector.

Interview & Inspection

Made by: _____

Title: _____

Date: _____

Form 10-2 – COMPARABLE REPLACEMENT DWELLING (COMP RHP)

Project: _____ Federal Project: _____ Street _____
Parcel _____
Landowner: _____
Displacee: _____

AVAILABLE REPLACEMENT HOUSING

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 \$ _____

Comparable No. _____

REPLACEMENT HOUSING ACQUIRED

Address of Property _____
Date of Occupancy _____
Recording Data:
Purchase Price \$ _____ Date _____ Deed Book _____ Page No. _____

Right of Way

10-108

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

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? _____

In your opinion, does structure meet the standards for decent, safe, and sanitary housing? _____

If not, could it be made to meet the standards by reasonable repairs? _____

*******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 _____

:

Form 10-3 - INTEREST EXPENSE CALCULATION (MORT DIF)

ITEMIZATION OF COSTS INCURRED INCIDENT TO PURCHASE OF REPLACEMENT

DWELLING AND COMPUTATION OF MORTGAGE INTEREST DIFFERENTIAL

District Project No: _____

FAP: _____

Landowner: _____

Parcel: _____

Displacee:

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:

Mo. Payment	Term	Rate
-------------	------	------

$$\frac{\text{fo}}{\text{r}} \quad \text{@} \quad \text{=} \quad \$ \quad \frac{\text{}}{\text{(Monthly Payment)}}$$

$$\frac{\text{(Amt. of Mortgage)}}{\text{(Term)}} \quad \text{(Int. Rate)}$$

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

$$\text{a.} \quad \frac{\text{}}{\text{(Mon Payment)}} \times 1,000 \quad \div \quad \frac{\text{(Existing Mort.)}}{\text{(Loan Factor)}} \quad \text{=} \quad \frac{\text{(Remaining Balance)}}{\text{(Remaining Balance)}}$$

$$\text{b.} \quad \frac{\text{}}{\text{(Mon Payment)}} \times 1,000 \quad \div \quad \frac{\text{(Replacement Mort.)}}{\text{(Loan Factor)}} \quad \text{=} \quad \frac{\text{(Remaining Balance)}}{\text{(Remaining Balance)}}$$

2. Financial Calculator

$$\text{a.} \quad \frac{\text{fo}}{\text{r}} \quad \text{months} \quad \text{@} \quad \text{=} \quad \frac{\text{(Remaining Balance)}}{\text{(Remaining Balance)}}$$

$$\frac{\text{(Mo. Payment)}}{\text{(Term)}} \quad \text{(Int. Rate)}$$

Form 10-4 - MOVE REIMBURSEMENT APPLICATION (MOVE APPLY)

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:

Form 10-5 - OCCUPANCY AFFIDAVIT (OCCUPY)

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

The foregoing Affidavit was acknowledged before me this _____ day of _____,

20____, by _____

Tenant (s)

and

Owner (s)

My Commission expires:

Notary Public

Form 10-7 - RESIDENTIAL CLAIM FOR MOVING AND RELATED EXPENSES

Residential Claim for Moving and Related Expenses

(49 CFR 24.301 and 24.302)

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB Approval No. 2506-0016
(exp. 4/30/2018)

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 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.

Previous versions obsolete.

Page 2 of 2

form HUD-40054 (7/2015)

Right of Way

10-122

Form 10-8 - CLAIM FOR ACTUAL REASONABLE MOVING AND RELATED EXPENSES- NON-RESIDENTIAL

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. 4/30/2018)

For Agency Use Only	Name of Agency	Project Name or Number	Case Number
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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

<p>(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.</p>	<p>(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.</p>	<p>(3) Corporation. (Name of Corporation) _____ I certify that _____ is established pursuant to State law and is authorized to conduct business in the United States.</p>
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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))		Name and Address of Storage Company
Is This a Final Claim for Storage? <input type="checkbox"/> Yes <input type="checkbox"/> No		
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.					(1) Total (Add all entries in column (f) above)	\$
Signature(s) of Claimant(s) or Agent					(2) Cost of Effort to Sell Property (e.g., advertising) (49 CFR 24.301(g)(15))	\$
Date (mm/dd/yyyy)					(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	Item	Amount	For Agency Use Only
(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.

Previous editions are obsolete

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form HUD-40055

(07/2015)

right of way

1U-127

Form 10-9 - CLAIM FOR FIXED PAYMENT IN LIEU OF PAYMENT FOR ACTUAL NONRESIDENTIAL MOVING AND RELATED EXPENSES

**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. 04/30/2018)

(49 CFR 24.305)

For Agency Use Only	Name of Agency	Project Name or Number	Case Number
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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)
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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.

Form 10-10 - CLAIM FOR REPLACEMENT HOUSING PAYMENT FOR 180 DAY HOMEOWNER

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. 2508-0018
(exp. 10/31/2011)

For Agency Use Only Name of Agency	Project Name or Number	Case Number
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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)
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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))		

Previous editions are obsolete

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.

Previous editions are obsolete

Form 10-11 - CLAIM FOR RENTAL ASSISTANCE OR DOWN PAYMENT ASSISTANCE

**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. 04/30/2018)

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".)	\$	\$

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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	(e) To Be Provided By Agency
(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.

Previous editions are obsolete

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11.0 Voluntary Conveyances and Eminent Domain

Summary

This Chapter describes the closing/settlement process for voluntary conveyances and the procedures used to initiate eminent domain proceedings when an agreement cannot be reached with the landowner or the landowner cannot be found.

Section Number	Section Name
11.1	Introduction
11.2	Settlement – Voluntary Conveyances
11.3	Initiation of Eminent Domain Proceedings
11.4	Trial or Settlement after Declaration of Taking

11.1. Introduction

The acquisition process followed by the ROW Unit is fully described in Chapter 8. Voluntary conveyances are handled by the OGC and the title company, where eminent domain cases are coordinated by the OGC but prosecuted the OAG. Once a Purchase and Sale Agreement has been signed, the ROW Unit will prepare a check request package for closing/settlement and submitted thru the OGC to the OCFO and the purchase price will be wired to the settlement company for settlement. If eminent domain proceedings are being initiated a check request package must be prepared and submitted thru the OGC to the OCFO for issuance of a check to the D.C. Superior Court which will be returned to OGC and included in the eminent domain package described herein.

11.2. Settlement – Voluntary Conveyances

A draft of the Purchase & Sale Agreement is included in the Offer Package (See Chapter 8.4). Should there be any issues regarding the language in the Purchase & Sale Agreement the landowner or landowner's attorney will be directed to the OGC attorney for resolution. Once any contract issues are resolved, the Acquisition Agent shall provide the final version of the Purchase & Sale Agreement to the landowners for signature. Once signed by the landowner,

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the Purchase & Sale Agreement should be returned to the ROW Unit for signature by DDOT. The original agreement is to be returned to the OGC and a copy supplied to the settlement agent.

Once a Purchase and Sale Agreement has been signed, the ROW Unit will prepare a check request package for closing/settlement and submitted thru the OGC to the OCFO and the purchase price will be wired to the settlement company for settlement. The following are the minimum requirements for the check request package

- (i) Check/Wire Request Memo
- (ii) Purchase Agreement
- (iii) Offer of Just Compensation
- (iv) Justification Memo explaining any unusual issues as applicable
- (v) Marked Plans & Plat
- (vi) Appraisal
- (vii) Review Appraisal
- (viii) Title Report
- (ix) Draft HUD-1
- (x) Initial Offer Letter
- (xi) Completed W-9*
- (xii) Wire Information Sheet for the Title/Settlement Company

** Note - only required if the property is not being acquired under threat of condemnation*

The Check/Wire Request Memo must reference the project parcel number, describe the project and explain that voluntary agreement was reached with the owner, and the parcel's package is being submitted to begin closing process with compensation being the agreed upon purchase price state in the Purchase & Sale Agreement and the additional amount needed for closing costs as itemized on the draft HUD-1. The memo must also include the account where the funds

have been obligated and the FAP #. The ROW Unit or OGC will confirm that the wire has been sent and notify the Title Company. OGC will notify the title company that the wire has been sent and request an updated title insurance binder be prepared for the property. The OGC will coordinate the preparation of a Deed with the Title company, to include any special conditions in the approved Purchase & Sale agreement.

Based upon the type of acquisition, the OGC will work with the Title company to obtain any of the releases needed to clear title. The Title Company will prepare a final closing/settlement statement which documents the compensation paid to the landowner as well as the settlement costs associated with the acquisition which may include payments of any penalty associated with the prepayment of the mortgage, recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property

Copies of the settlement package, the original title insurance policy and the recorded deed or easement shall be returned to OGC promptly after recording with the Recorder of Deeds.

11.3. Initiation of Eminent Domain Proceedings

Eminent Domain may be used when negotiations breakdown or when the landowner cannot be located. If the ROW Specialist, in consultation with the Acquisition Agent, the Project Manager and OGC, 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.

If the Agency elects to pursue eminent domain and 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.

The ROW Specialist shall then prepare a check request package to be submitted thru the OGC to the OCFO for issuance of a check to the D.C. Superior Court which will be returned to OGC and included in the eminent domain package described later in this Chapter. The following are the minimum requirements for the check request package for a condemnation:

- (i) Check Request Memo in support of Condemnation;
- (ii) Offer of Just Compensation;
- (iii) Memo explaining the negotiation history including the contact log with the landowner;
- (iv) Marked Plans & Plat;
- (v) Appraisal;
- (vi) Review Appraisal;
- (vii) Title Report;
- (viii) Initial Offer Letter; and
- (ix) Counter Offer(s) as applicable.

The Check Request Memo must reference the project parcel number, describe the project and explain that voluntary agreement could not be reached with the owner or that the owner could not be located. The memo must also include the account where the funds have been obligated and the FAP #. The check must be made payable to the DC Superior Court and returned to OGC for inclusion in the condemnation package being sent to OAG.

Once the check request package for a condemnation has been submitted to the OCFO, the ROW Specialist and Project Manager shall prepare a “condemnation package” for OGC’s review and eventual transmittal to the OAG. The condemnation package shall include Attachments:

- (i) Condemnation Memo;
- (ii) Contact log with landowner;
- (iii) Determination of Just Compensation;
- (iv) DDOT Offer Letter;
- (v) Counter Offer (s) as applicable;
- (vi) DDOT Letter of Intent to File;
- (vii) Marked Plan;
- (viii) Plat and Legal Description;
- (ix) Appraisal Review;
- (x) Appraisal;
- (xi) Title Report;
- (xii) Leases and Lease Assignments (as applicable); and
- (xiii) Contact log and Correspondence with tenant (if applicable).

The purpose of the condemnation memo is to explain the project in sufficient detail to understand the public purpose, the need for the acquisition, the history of the negotiations for the acquisition and any unusual issues that may impact the property (e.g. environmental contamination). The memo must describe in detail the interests being acquired (e.g. fee simple, easement, temporary construction easements) and or extinguished (e.g. leasehold). Note – if DDOT is acquiring temporary construction easements, the memo must describe the term of the temporary construction easement(s) and when they shall commence. The OGC will review the condemnation package and once approved will transmit it to the OAG. An OAG attorney will be assigned to the case and 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:

- (i) Statement of the authority for the taking;
- (ii) DDOT establishment of public use and necessity for the acquisition;
- (iii) Description of the ROW and/or easements taken and of the property from which the rights are being acquired;
- (iv) Type or types of property interest taken;
- (v) Plat of the property taken, and plans of the proposed construction if taking is a partial take;
- (vi) Summary of just compensation for the taking; and
- (vii) 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 the filing of the Complaint, Notice of Taking and Declaration of Taking, OAG will deposit the amount paid as just compensation with the D.C. Superior Court Registry. OAG will then provide the "Date of Taking" to OGC for use in the litigation appraisal. The date of the taking is the latter of the filing of the declaration of taking and the deposit by OAG into the Registry of the Court DDOT's estimated sum of just compensation in accordance with D.C. Code Section 16-1314 (b).

The OGC will interface between OAG and ROW Unit Manager, the appraiser, the review appraiser and ROW Specialist on the litigation appraisal and case scheduling and discovery related to the litigation as well as any proposed settlement. In the event that additional expert witnesses be needed in the opinion of the OAG, OGC will coordinate with the ROW Unit Manager and the Project Manager on the procurement of the additional services required.

11.4. Trial or Settlement after Declaration of Taking

Subsequent to the filing of a Declaration of Taking, DDOT can continue to negotiate with the defendant/landowner but must update periodic OAG on the status of the negotiations. OGC will provide updates to OAG on the status of negotiations. Any proposed settlement of the case prior to trial shall be submitted to OGC for review with the justification for settlement. The amount of any settlement offer 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 Chapter 8, Section 8.13. The ROW Unit, the Project Manager and Associate Director should evaluate the settlement offer and determine whether FHWA approval is required. OGC shall also review proposed settlement with OAG. Once all approvals are obtained, the settlement offer shall be processed in accordance with the Administrative Settlement, Chapter 8, Section 8.13 of Chapter 8, and memorialized by "Consent Agreement and Final Judgment" to be prepared by the OAG and filed in the condemnation case.

If the settlement requires DDOT to pay additional sums for the property condemned, then the ROW Unit shall prepare a check/wire request with the check request package for closing/settlement and submitted thru the OGC to the OCFO. The following are the minimum requirements for the check request package:

- (i) Settlement Memo;
- (ii) Copy of signed Consent Agreement and Final Judgment;
- (iii) Copy of Declaration of Taking; and
- (iv) Wire Information Sheet (if applicable).

The settlement memo must explain in sufficient detail the project, the need for the acquisition, that negotiations failed to achieve a voluntary conveyance, that a Declaration of Taking was filed and when, that subsequently a settlement was reached and the terms of the settlement (being sure to include the amounts of any interest and an explanation of how it was calculated). The memo must describe in detail the interests being acquired (e.g. fee simple, easement, temporary construction easements). The memo must also include the account where the funds have been obligated and the FAP #.

If the case is not settled prior to trial, the OAG 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 applicable Associate Director or Chief Engineer to accept or appeal the award.

If the award is accepted, then Project Manager, in collaboration with the ROW Unit, may need to prepare a check request (as described above) depending on whether the award is greater than the amount deposited into the Court Registry. If the award is greater, than the defendant/landowner is entitled to both the delta between the amount deposited into the Court Registry and the award as well as interest, at the statutory rate, on the delta from the date of the initial deposit and the date of payment.

Chapter Resources

Flow Charts

- Voluntary Conveyance Closing
- Eminent Domain Proceeding

Examples

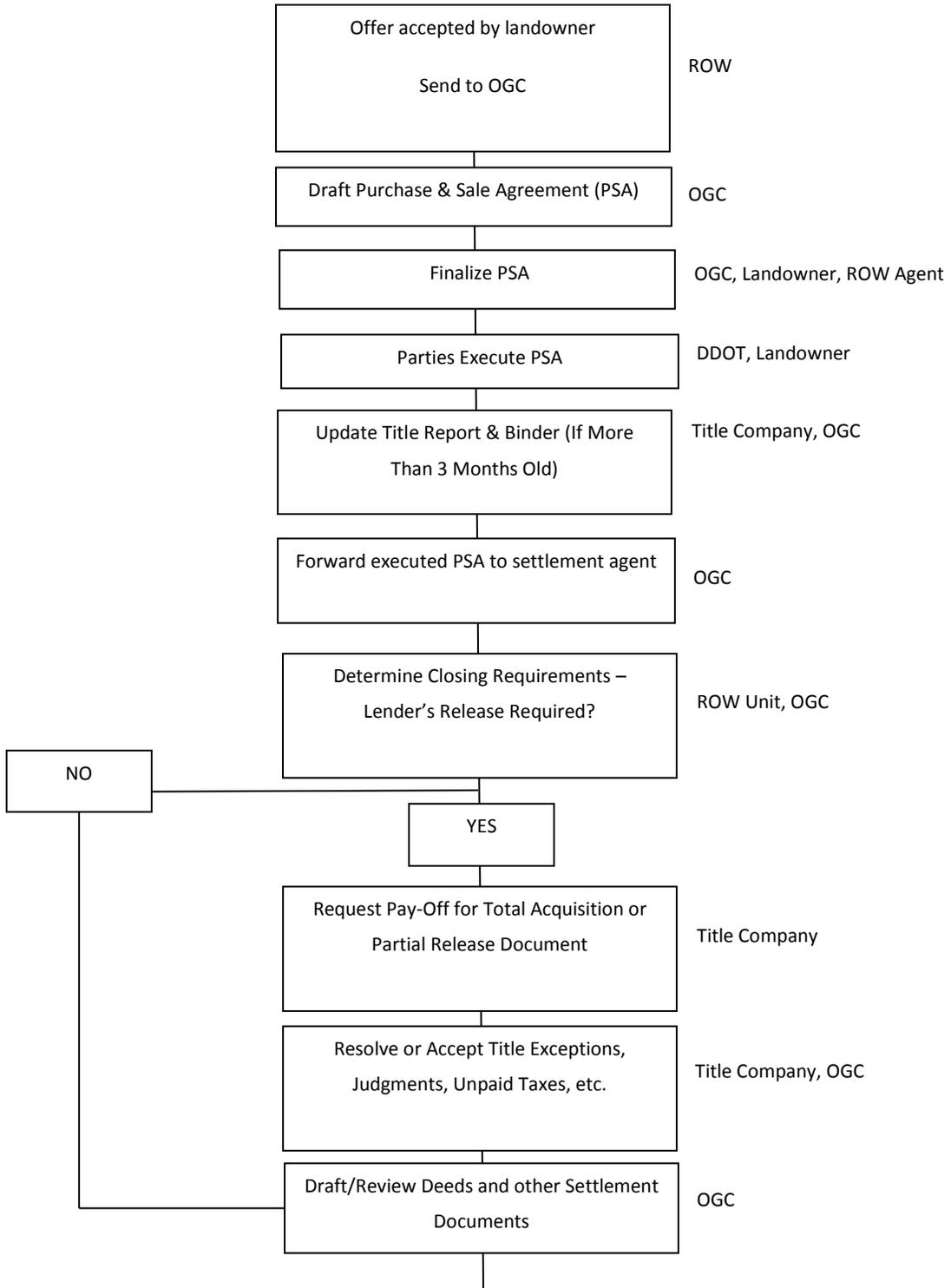
- Second letter (see Example 11-1)
- Check/Wire Request Voluntary Acquisition (Example 11-2)
- Check Request Voluntary Condemnation/Settlement of Condemnation (Example 11-3)
- Eminent Domain Memorandum (Example 11-4)
- Outgoing Wire Instructions (Example 11-5)

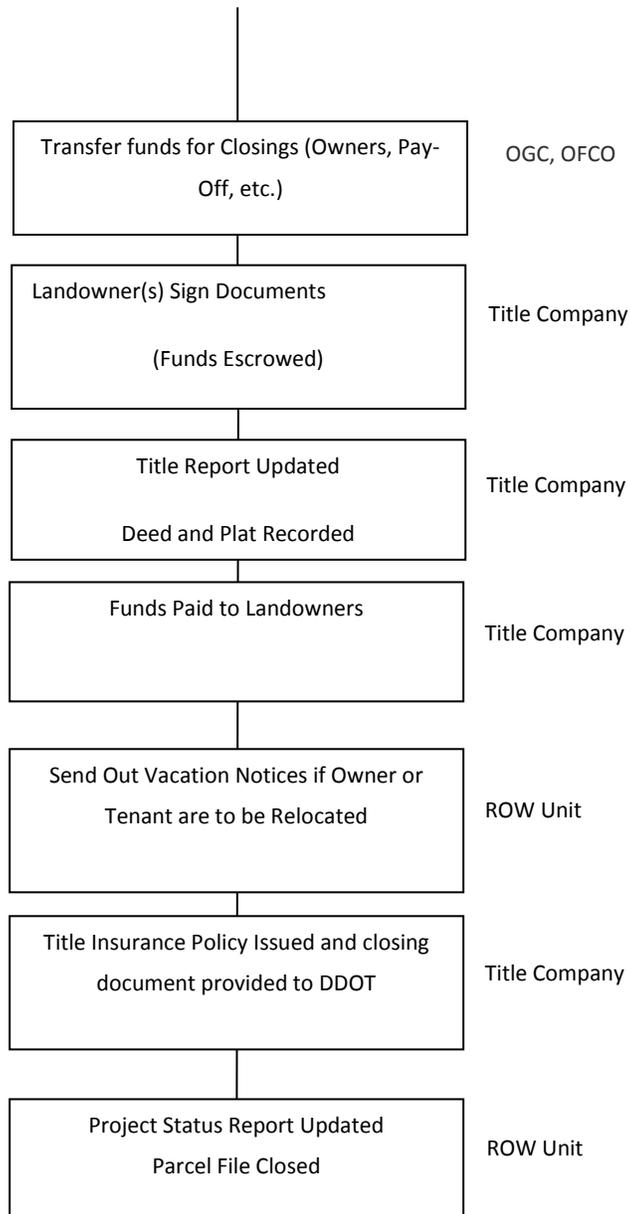
Forms

References

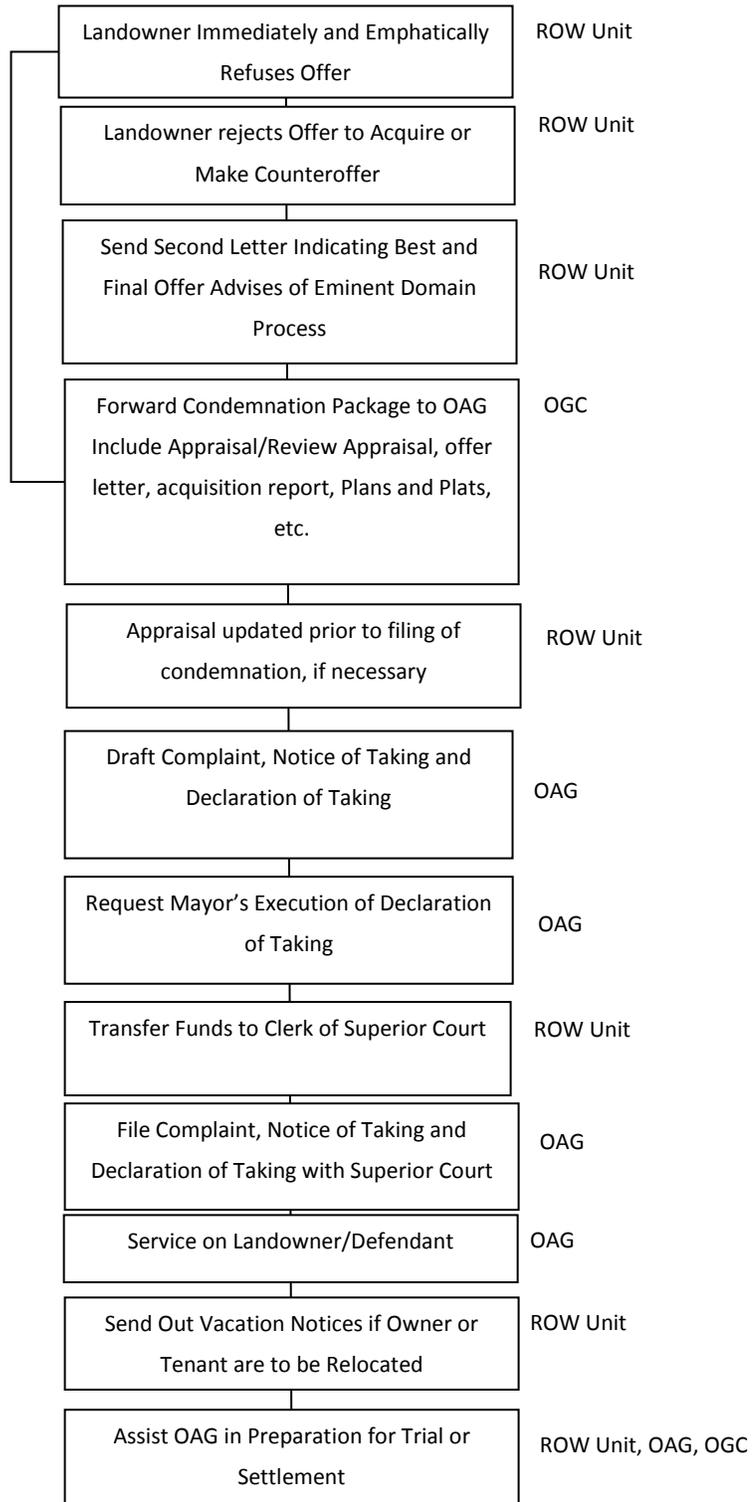
- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
- District of Columbia Code
<https://code.dccouncil.us/dc/council/code/>

Flow Chart - Voluntary Acquisition - Settlement





Flow Chart – Eminent Domain Proceeding



[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 \$_____ made by our Right-of-Way 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 \$_____ 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

CC: DC Office of Attorney General (OAG)

Example 11-2 - CHECK/WIRE REQUEST VOLUNTARY ACQUISITION

MEMORANDUM

DATE: _____

TO: _____

Office of Chief Financial Officer

THROUGH: _____

Office of Chief Financial Officer

FROM: _____

Chief Engineer

SUBJECT: (Insert Project Name) Project

Check Issuance Request for Settlement for Parcel (Insert Project Parcel Number)

Amount: (Insert Dollar Amount) (\$-----.00)

As part of the (Insert Project Name) Project, the District Department of Transportation (DDOT) has determined that the above mentioned, real property interests, are required for the construction of the project.

Parcel (Insert Project Parcel Number) has been through the Right-of-Way (ROW) process consistent with the requirements of the *DDOT Right-of-Way Policies and Procedures Manual* (ROW Manual), dated June 9, 201_, and the *Uniform Relocation Assistance and Real Property Acquisition Act of 1970*. A voluntary agreement was reached with the owner, and the parcel's package is being submitted to begin closing proceedings with compensation of (Insert Purchase Price) Thousand dollars (\$_____.00) for the fee simple title to be acquired, and an additional ____ Thousand ____ Hundred and ____ dollars and ____ cents (\$_____) in closing costs.

Please note a W-9 has not been included in this package because this acquisition is being made under threat of condemnation.

Funds were previously obligated for this and future ROW expenditures as part of the ROW acquisition portion of the (Insert Project Name) Project. These funds were obligated in FY-15 for DC project number CD _____ and FAP# _____ (_____).

Please consider this wire transfer request for the amount of \$ _____. The wire transfer information sheet for the settlement company is included in the attachments to this memorandum.

Attachments:

- A. Purchase Agreement dated _____.
- B. Offer of Just Compensation dated _____.
- C. Justification Memo for Total Take (If applicable).
- D. Marked Plans & Plat.
- E. Appraisal prepared by _____ and dated _____.
- F. Review Appraisal prepared by _____ and dated _____.
- G. Title Report.
- H. Form HUD-1.
- I. Initial Offer Letter dated _____.

Example 11-3 - CHECK REQUEST VOLUNTARY CONDEMNATION/SETTLEMENT OF CONDEMNATION

MEMORANDUM

DATE: _____

TO: _____

Office of Chief Financial Officer

THROUGH: _____

Office of Chief Financial Officer

FROM: _____

Chief Engineer

SUBJECT: (Insert Project Name)

Check Issuance Request for Condemnation Package for Parcel (Insert Project Parcel Number)

Amount: (Insert Dollar Amount) (\$-----00)

As part of the (Insert Project Name) Project, the District Department of Transportation (DDOT) has determined that the above mentioned, real property interests, are required for the construction of the project.

Parcel (Insert Project Parcel Number) has been through the Right-of-Way (ROW) appraisal, offer and negotiation process consistent with the requirements of the *DDOT Right-of-Way Policies and Procedures Manual*, dated June 9, 201_ and the *Uniform Relocation Assistance and Real Property Acquisition Act of 1970*. A voluntary agreement could not be reached within a reasonable timeframe with the owner, and the parcel's package is being submitted to begin condemnation proceedings with compensation of ___ hundred _____ thousand dollars (\$_____). Additional detail to the background of this valuation are provided in Attachment B. The site is currently occupied.

Funds have been previously obligated for this and future ROW expenditures as part of the ROW acquisition portion of the (Insert Project Name) Project. These funds are obligated on DC project number CD _____ - FAP# _____ (____).

Please consider this memo as a check issuance request for a check payable to the order of Clerk of the Superior Court for the amount of \$_____.

The check should be sent to DDOT, Attention:

Office of the General Counsel
District Department of Transportation
55 M Street, SE, Suite 400
Washington, DC 20003

Attachments:

- A. Right of Way Acquisition Report
- B. Determination of Just Compensation dated _____
- C. DDOT Offer Letter dated _____
- D. DDOT Letter of Intent to File dated _____
- E. Marked Plan
- F. Plat and Legal Description
- G. Appraisal Review prepared by _____ and dated _____.
- H. Appraisal prepared by _____ and dated _____.
- I. Title Report

Example 11-4 – EMINENT DOMAIN MEMORANDUM

MEMORANDUM

DATE: _____

TO: _____

Deputy Attorney General

THROUGH: _____

Assistant General Counsel

FROM: _____

Chief Engineer

SUBJECT: (Insert Project Name) Project

Check and Condemnation Package for Parcel (Insert Project Parcel Number)

As part of the (Insert Project Name) Project, the District Department of Transportation (DDOT) has determined that the above mentioned real property interests are required for the construction of the project.

Parcel (Insert Project Parcel Number) has been through the Right-of-Way (ROW) appraisal, offer and negotiation process consistent with the requirements of the *DDOT Right-of-Way Policies and Procedures Manual*, dated June 9, 201_ and the *Uniform Relocation Assistance and Real Property Acquisition Act of 1970*. A voluntary agreement could not be reached within a reasonable timeframe with the owner, and the parcel's package is being submitted to begin condemnation proceedings with compensation of _____ hundred _____ thousand dollars (\$_____). Additional detail to the background of this valuation are provided in Attachment B. The site is currently occupied/vacant. If occupied (A 90 day letter was sent to the tenant, _____ on _____.)

Please find enclosed a check for _____ thousand dollars (\$_____.00).

Further background information regarding the acquisition activities for this parcel are provided in the attachments below.

Attachments:

- A. Right of Way Acquisition Report
- B. Supplement to Right of Way Acquisition Report
- C. Determination of Just Compensation – dated _____
- D. DDOT Offer Letter - dated _____
- E. DDOT Letter of Intent to File – dated _____
- F. Marked Plan
- G. Plat and Legal Description
- H. Appraisal Review prepared by _____ and dated _____
- I. Appraisal prepared by _____ and dated _____
- J. Title Report - dated _____
- K. As applicable - Lease
- L. Contact log and Correspondence to _____

Example 11-5 – OUTGOING WIRE INSTRUCTIONS

**OUTGOING WIRE INSTRUCTIONS
FUNDS TO BE WIRED**



Case #:	Client Name:
Beneficiary (Bank) Name:	Amount To Wire: \$
Beneficiary (Bank) Address:	
Beneficiary Account Number:	
Beneficiary Name (Name on the Account):	Beneficiary ID (ABA) Number:
Additional Reference Information:	



Authorized Agent Ordering Transfer: _____ Requested By: _____

Incoming wire been confirmed? ___Yes ___No

Approved By: _____ Date: _____ Time: _____



Wire entered by: _____ Date: _____ Time: _____

Wire approved by: _____ Date: _____ Time: _____

Tracking Number: _____

Fed Ref Number: _____

12.0 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, as well as the removal or demolition of improvements prior to construction. The property management functions for DDOT assets after the transportation improvements have been completed and accepted, are covered in Chapter 17.

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 Building

12.1. Introduction

The primary property management functions occurring during the time between the acquisition and initiation of construction, which is typically the issuance of the notice to proceed, involve managing the occupancy or securing the improvements. There are instances in which DDOT

may allow for an extended occupancy by the landowner or tenant after the acquisition or lease the property on a short-term basis at a fair and equitable rent. If the improvements are not occupied, then the initial issue is what is required to secure the building(s) or structure(s) on the property.

12.2. Preliminary Project Studies

The ROW Unit 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 ROW Unit's focus will be to provide information with which a decision could be made in regard 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 geometric features. Property management issues in the corridor review and field inspection phase should include, but not limited to, the following areas:

- (i) Identifying uses that would trigger a Phase 2 inspection to evaluate whether there is environmental contamination (e.g. auto repair, dry cleaner, gas station).
- (ii) Identification of improvements which may have contamination, such as asbestos or lead paint.
- (iii) Identification of storage tanks, foundations, etc. that may not be recorded on preliminary plans.
- (iv) Presence of safety hazards or attractive nuisances that will need to be specifically controlled after acquisition, such as, open wells.

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:

- (i) Encroachments on existing ROW, such as porches, building additions, underground garages, etc.

- (ii) Improvements needing asbestos and lead paint inspection and removal before disposal.
- (iii) Properties and improvements having revenue return potential.

12.3. Initial Building and Improvement Inventory

When the proposed transportation improvement plans are developed to the preliminary design plans stage (30%) and circulated for comments, the Property Management 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 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

12.4. Right-of-Way Acquisition Stage

When the authority to proceed with ROW acquisition has been obtained, the Project Manager and the ROW Unit 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 Acquisition Agent, Relocation Specialist and Project Manager is required to ensure the timely transfer of vacant properties or properties that must be vacated.

The ROW Unit will coordinate with the Project Manager to oversee the management of 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. The ROW Unit will coordinate with the Project Manager, OGC and OCFO on what account the rent should be deposited into and how it should be tracked and reported. 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 Row Unit Specialist assigned to the project 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 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, Project Manager, Acquisition Agent and the Relocation Specialist involved in the project of the project status.

12.6. Relocation Coordination

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 as described in Chapter 10.

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 ROW Unit and the Project Manager as the negotiations and relocation assistance activities continue. Copies of the vacation notices are to be sent to the ROW Unit. 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 ROW Unit and the Project Manager 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 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. The ROW Unit shall coordinate with the Project Manager and the OGC to request the OAG obtain an Order of Possession.

12.7. Continuation Rent by Owner or Tenant

Upon transfer of title, through either a voluntary conveyance or eminent domain, the ROW Unit together with the Relocation Specialist shall immediately advise the tenant(s) of the change in ownership and if rent is to be paid direct that payment of rent should be made to DDOT. 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. If DDOT acquired the property through a voluntary conveyance, DDOT may be obligated to provide services pursuant to the tenant's

lease. If the property was acquired through eminent domain and the tenant was joined in the proceeding, then the lease will have been extinguished. The ROW Unit and the Project Manager will need to coordinate with OGC on a case by case base to determine the status of the lease.

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 may be granted for an additional 30 to 90 days and the extension must be adequately documented. The tenant or landowner holding over shall pay a negotiated rent during the extension, as a month to month tenant. The negotiated rent during the extension shall not exceed the fair market rent for the property. If it is anticipated that the owner or tenant will be holding over for more than 180 days, then the ROW Unit and the Project Manager shall follow the formal rental process set forth in Section 12.8.

Hardship cases involving inability to find replacement property at a comparable rental amount will need to be reviewed on a case by case basis to see if a short-term waiver of rent will allow owner/tenant to build cash reserves that would aid in the relocation. A rent waiver must be documented and supported by a memo of justification, and FHWA approval may be required.

12.8. Rental Beyond 180 Days or by Others

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 License provisions as described in Section 12.7 may be less than the fair market rent. Although short term, it may be useful for 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 Project Manager. The request for lease during the acquisition by persons or entities other than the occupant will require circulation for review within the DC Government. 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 OGC, 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 applicable Associate Director or Chief Engineer. The applicable Associate Director or Chief Engineer 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 OGC for action. All rents will be collected and transmitted to DDOT.

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.

12.9. Possession of Acquired Property

Immediately prior to settlement, the Title Company will advise the OGC of the scheduled date of settlement so that the ROW Unit and/or Project Manager 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. If vacant, the property is immediately secured, including boarding up of the ground and basement levels, if necessary. The ROW Unit 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 ROW Unit 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 ROW Unit and the Project Manager 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 ROW Unit. The ROW Unit and the

Project Manager 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.

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 should be contacted immediately to have services discontinued, and wires, pipes, etc. removed unless the ROW Unit or the Project Manager determines that service is necessary to maintain the building or improvement (i.e., fire protection, alarm system, etc.). The ROW Unit and the Project Manager shall document the forgoing in writing in the file.

12.10. Disposal of Improvements and Building

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 when it overlaps a project advertisement date without the applicable Associate Director's or Chief Engineer's approval.

12.10.1. 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 ROW Unit and the Project Manager is important. The Project Manager will to arrange for a consultant firm to perform the asbestos and hazardous material inspection once possession of the improvement has been taken. The ROW Unit 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 placed in the project file. The Asbestos Inspection Report will indicate the presence of asbestos, its location, amount, type and condition, and the estimated cost of removal.

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 Management [Post-Construction Assets]) for information on hazardous material disclosure and notification responsibilities with regard to lessees.

12.10.2. Lead-Based Paint Contamination

DDOT is subject to requirements of the federal and District 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:

- (i) Disclose to purchasers and/or lessees lead paint hazards that are known to DDOT.
- (ii) Provide purchasers and/or lessees with any reports pertaining to the presence of lead-based paint and hazards in or on DDOT owned property.
- (iii) Provide prospective purchasers a 10-day opportunity to conduct a risk assessment or inspection at the buyer's expense.
- (iv) Provide purchasers and lessees with a copy of a Federally approved information pamphlet.

12.10.3. 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 ROW Unit notes these conditions during the inspection at the time possession is taken of the property, especially with regards to improvements on a property. The ROW Unit will work with the Project Manager to secure the property by additional fencing, boarding or locking.

12.10.4. 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 ROW Unit will report the cost of the removal of buildings by DDOT or DPW forces as a charge against the project.

Chapter Resources

Flow Charts

- Possession of Building or Improvement

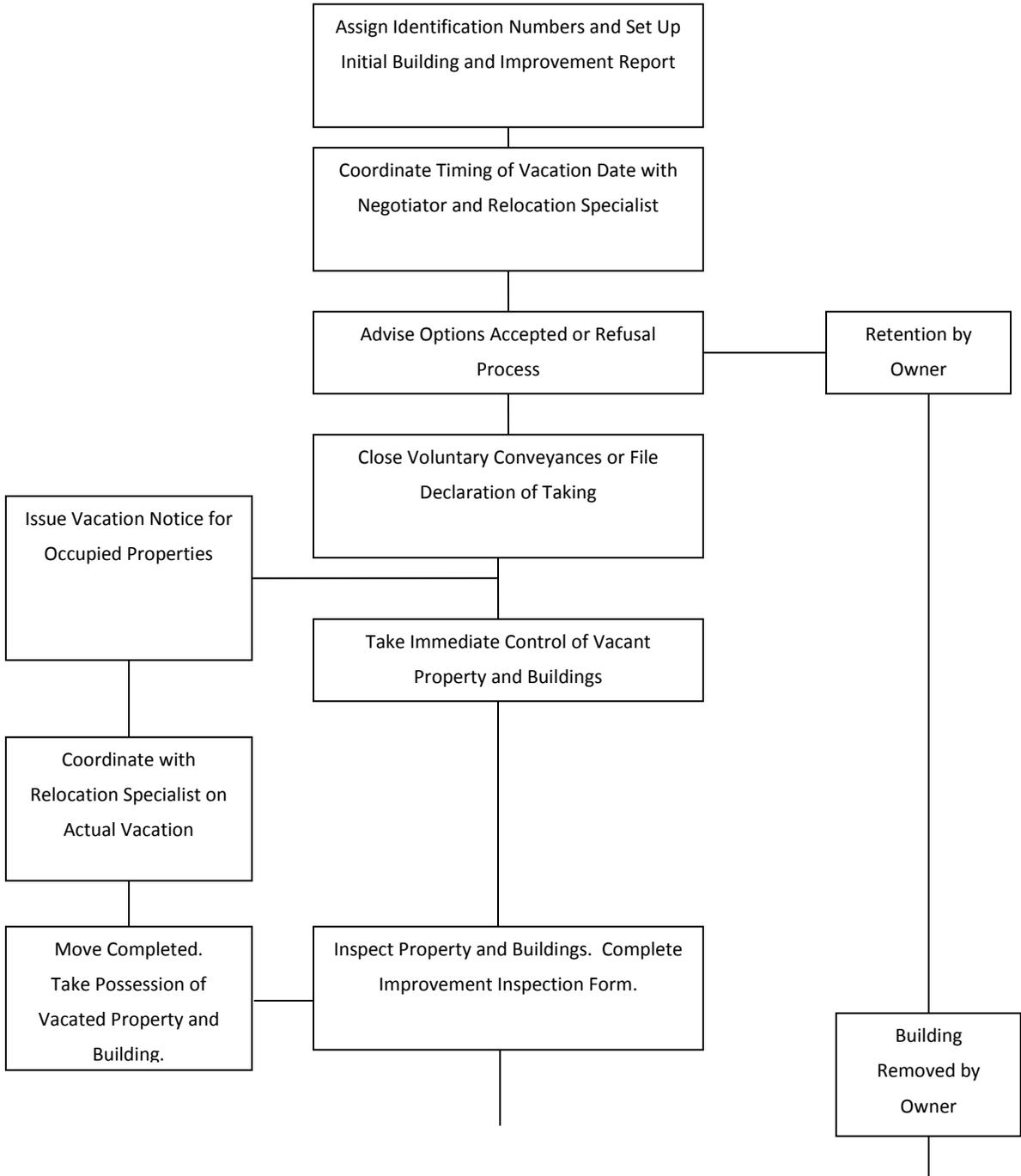
Forms

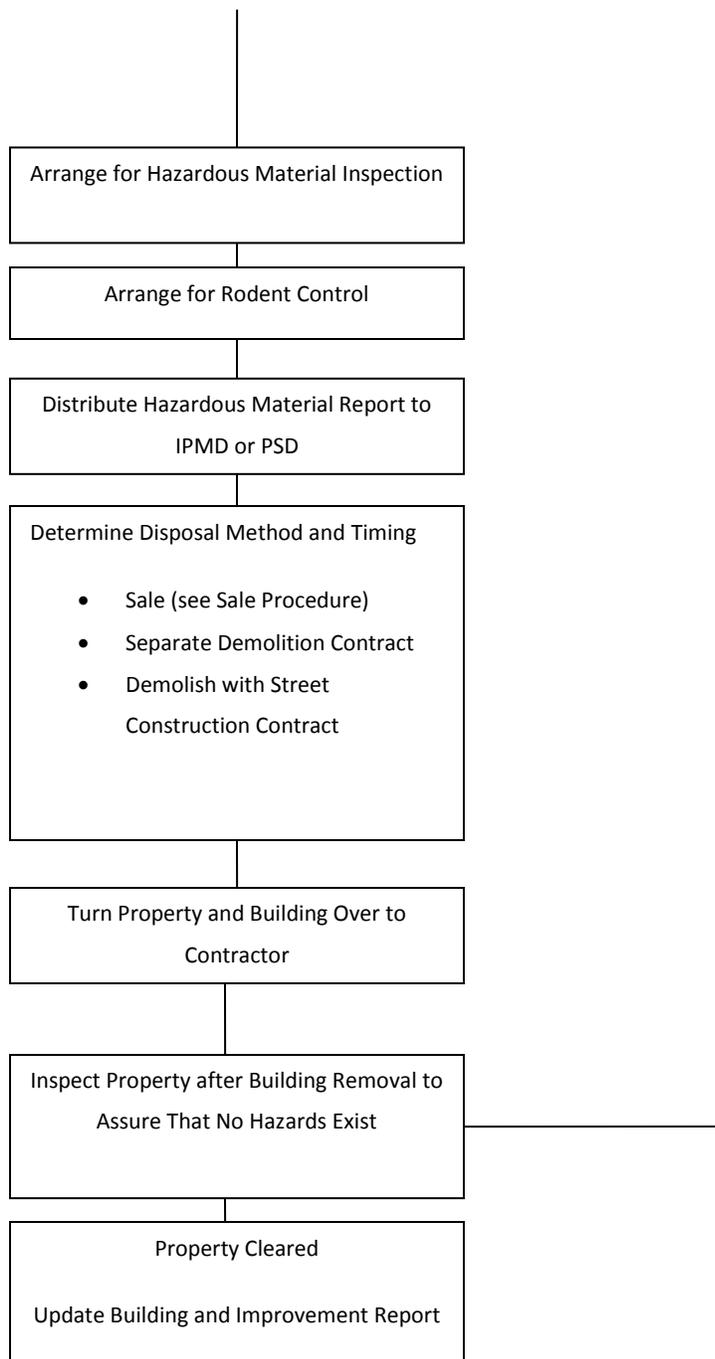
- Building and Improvement Inventory (Form BUILDING-REPORT) (Form 11-1)
- Retention Value of Improvements (RETENTION 1 of 2) (Form 11-2)
- Retention Value Analysis (RETENTION 2 of 2) (Form 11-3)
- Improvement Record Form (Form IMPR INSP) (Form 11-4)

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)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
- District of Columbia Code
<https://code.dccouncil.us/dc/council/code/>

Possession of Building or Improvement





(Form BUILDING)

Form 11-1 – BUILDING AND IMPROVEMENT INVENTORY

NW-30

**DDOT
ROW Unit
Building and Improvement Inventory**

Street
Project
Date

Parcel No. Landowner (last name, first)	Building No.	Plan Sheet No.	Station / Side	Building / Improvement / Structure (BVIS) Type	Building Size (sq. ft.)	Occupancy (owner, tenant, vacant)	Closing or Dedication Date	Vacation Date		BVIS Secured?	Historical Materials (Yes/No)	Removed (Yes/No)	Include in Project Contract (Yes/No)	Comments
								Notice	Actual					

If yes see sheet 2 and 3

Summary

REV 100

**DDOT
ROW Unit
Building and Improvement Inventory**

Street
Project
Date

Parcel No.	Landowner (last name, first)	Building No.	Owner/Retention			Sale of Building, Improvement or Structure				Separate Demolition Contract									
			Owner or Transfer to Retain	Agreed Removal Date	Actual Removal	Building / Improvement to be sold	Advertise for Sale	Bid Accepted	Agreed Removal Date	Actual Removal Date	Building / Structure to be Demolished	Contract Advertised	Contract Awarded	Contract Complete	Actual Completion Date				

Building Disposition

DDOT
ROW Unit
Building and Improvement Inventory

Street
Project
Date

Parcel No. (landowner last name, if all)	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

Form 11-2 – RETENTION VALUE OF IMPROVEMENT(S) (RETENTION 1 of 2)

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: _____

Form 11-2 – RETENTION VALUE ANALYSIS (RETENTION 2 of 2)

Street Project _____ Parcel 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 _____

Form 11-4 – IMPROVEMENT RECORD 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 INSPECTION 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)

13.0 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 and Maintenance Agreement (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.

¹ 23 CFR 646 and 23 CFR 635.309

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:

- (i) Laws exist which address railroad issues only.
- (ii) A finite number of railroad companies exist. As a result, DDOT must negotiate continually with these companies.
- (iii) Railroad companies have the right to an uninterrupted active rail line.
- (iv) A coordinated construction agreement on active lines must exist between DDOT and the railroad companies.
- (v) Railroad companies can be multi-state or international companies with their own multi-level approval process, making for a lengthy negotiation process.
- (vi) 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 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 IPMD, PSD or TESD Unit should include the affected railroad company's engineering department or consultant representative in the review process of the construction plans. The railroad company will require formal plan reviews at 30 percent, 65 percent and 90 percent. These should also be 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 that is not abandoned 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 included in the project construction bid documents.

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 Construction Agreement through IPMD. The Agreement shall be drafted by IPMD 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 IPMD, PSD or TESD for review and comments. The railroad force account estimate should be sent to the Project Manager from IPMD, PSD or TESD for review and comments.

The Construction Agreement should define the following:

- (i) A description of the proposed project and work involved.
- (ii) 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.
- (iii) A description of adjustments required for the railroad company's facilities and who will perform the work and the timing of the adjustment construction.
- (iv) A determination of the cost responsibilities of the improvements.
- (v) An estimate for work or services to be performed by the railroad company or their contractor on a force account basis.
- (vi) Provisions for the safety and protection of railroad operations and the requirement for insurance coverage of DDOT's contractor.
- (vii) Any notices or time requirements for the provision of services by the railroad company.
- (viii) The terms and conditions regarding future maintenance of the transportation improvement and/or changes made to the railroad's facilities.
- (ix) 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 Construction 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 Construction Agreement is resolved, the Construction Agreement should be executed by both parties with each receiving a fully executed original.

Typically, the Construction 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.

13.5. 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 Construction 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.

Once the Construction 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.

All billing received for railroad force account work shall be reviewed by the IPMD or PSD construction inspector and processed for payment by the OCFO.

Chapter Resources

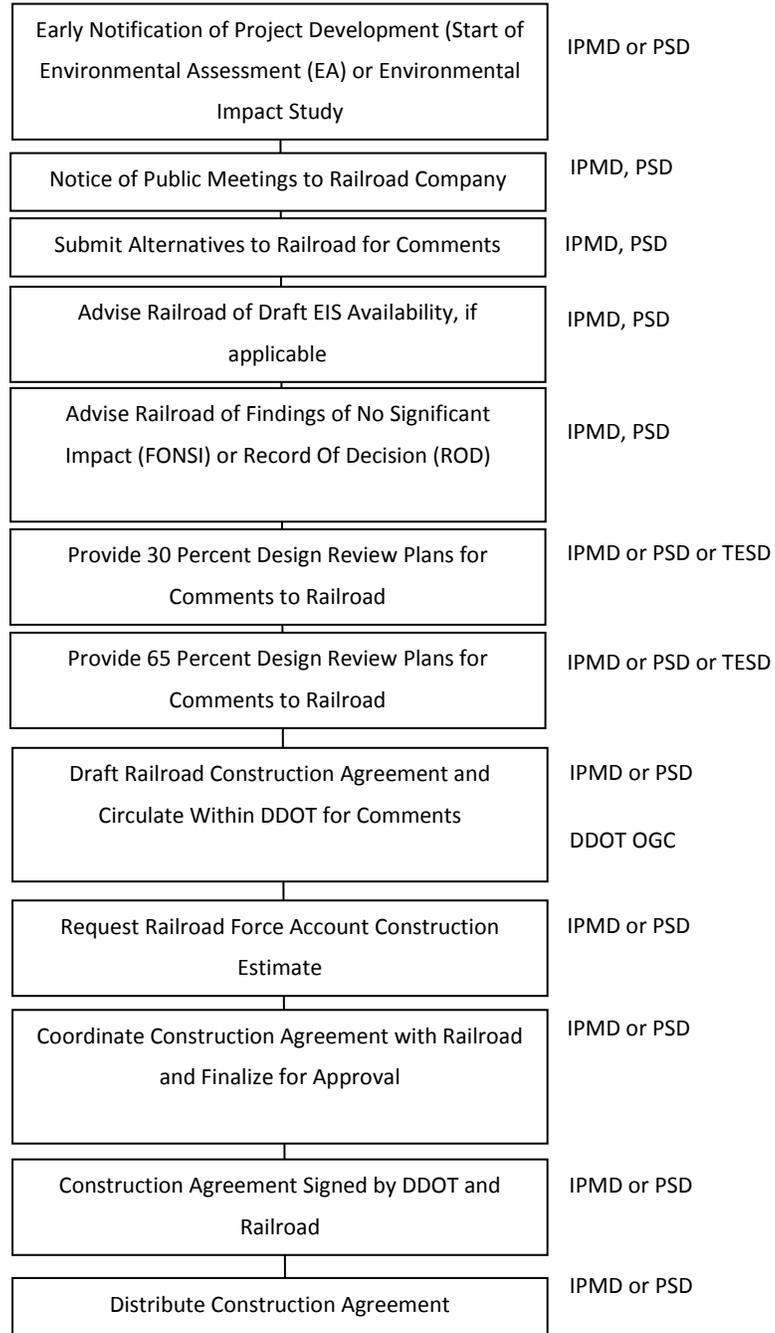
Flow Charts

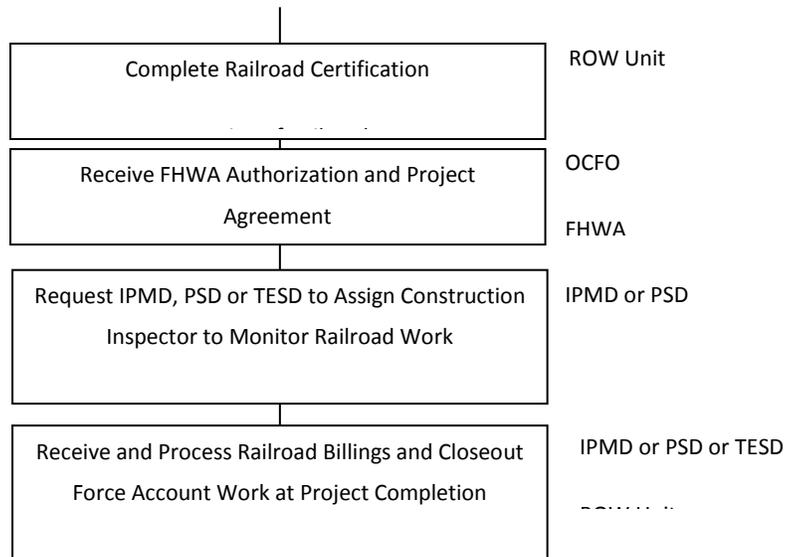
- Railroad Coordination

Reference

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Flow Chart – Railroad Coordination





14.0 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 Construction Project Advertisement
14.4	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 ROW's 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.

14.2. Right-of-Way Acquisition Status

The ROW Status Report (see Chapter 2, Section 2.7) provides the IPMD, PSD, TESD 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.

Right of Way

14-1

The Building Data Report (see Chapter 12, Section 12.5) 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

14.3.1. Right-of-Way Certification

Project authorization for District and Federal funded projects is required when DDOT commits ROW to the terms of a construction contract¹. Bids submitted by contractors are based on DDOT's delivery of a clear ROW before the start of construction. A statement Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

- (i) The plans, specifications, and estimates (PS&E) therefor have been approved
- (ii) A Right-of-Way Certification which is a statement, either separately or combined with the information required by (iii) below, certifying that either all right-of-way (ROW) clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems or the like, there shall be appropriate notification provided in the bid proposals identifying the ROW clearance, utility, and railroad work which is to be underway concurrently with construction.
- (iii) Except as otherwise provided for design-build projects in 23 CFR 710.309, a statement certifying that all individuals and families have been relocated to decent, safe, and sanitary housing or that DDOT has made available to

¹ 23 CFR 635.309

relocatees adequate replacement housing in accordance with the provisions of the 49 CFR part 24.

There are three (3) levels of Right-of-Way Certification:

(i) Certification No. I

All necessary ROW, including Control of Access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court, but legal possession has been obtained. There may be some improvements remaining on the ROW, but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.

(ii) Certification No. II

Although all necessary ROW has not been fully acquired, the right to occupy and to use all ROW required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements.

(iii) Certification No. III

The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. Under these circumstances, DDOT may request the Federal Highway Administration (FHWA) to authorize actions based on a conditional certification as provided in this paragraph.

(a) DDOT may request approval for the advertisement for bids based on a conditional certification. The FHWA will approve the request unless it finds that it will not be in the public interest to proceed with the bidding before acquisition activities are complete.

- (b) DDOT may request approval for physical construction under a contract or through force account work based on a conditional certification. The FHWA will approve the request only if FHWA finds there are exceptional circumstances that make it in the public interest to proceed with construction before acquisition activities are complete.
- (c) Whenever a conditional certification is used, DDOT 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.
- (d) When DDOT requests authorization under a conditional certification to advertise for bids or to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefor, including identification of each such parcel, will be set forth in DDOT's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification must be provided in the request for bids, identifying all locations where right of occupancy and use has not been obtained. Prior to DDOT issuing a notice to proceed with construction to the contractor, DDOT shall provide an updated notification to FHWA identifying all locations where right of occupancy and use has not been obtained along with a realistic date when physical occupancy and use is anticipated.
- (e) Participation of Title 23 funds in construction delay claims resulting from unavailable parcels shall be determined in accordance with 23 CFR 635.124 (Participation in Contract Claim Awards and Settlements).

14.3.2. Project Design Changes.

A ROW Certification must be updated anytime 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.

14.4. Closeout

The ROW phase of a project cannot 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 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:

- (i) All required ROW is acquired, and all required documents are recorded.
- (ii) All condemnation cases are closed by final judgment.
- (iii) 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.

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.

Right of Way

14-5

Chapter Resources

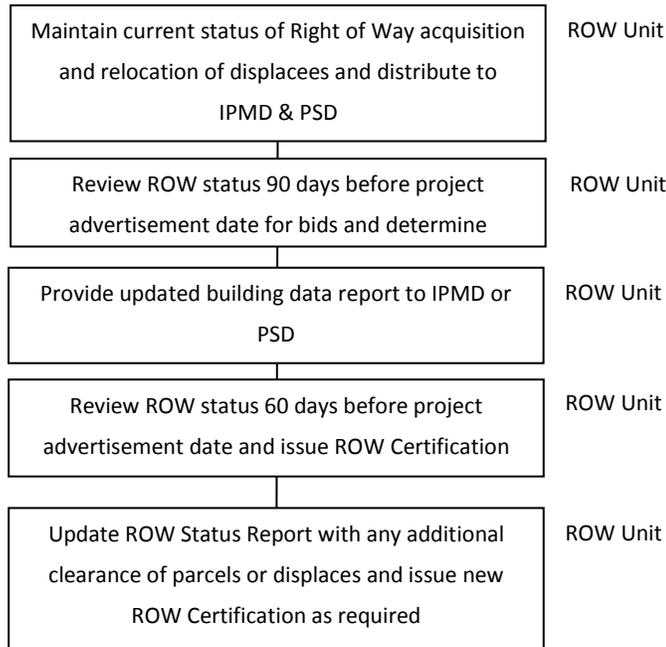
Flow Charts

- Project Certification
- Project Closeout

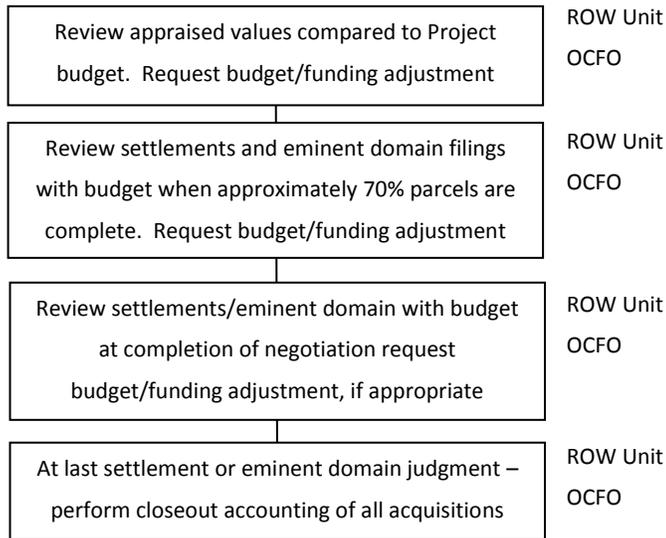
Reference

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Flow Chart – Project Certification



Flow Chart – Project Closeout



15.0 Design Build Projects

Summary

Design-build is a construction contracting process/technique that outsources the completion of design, 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).

Section Number	Section Name
15.1	Introduction
15.2	Right-of-Way Scope for Design-Build Projects
15.3	ROW Submissions

15.1. Introduction

The typical earlier flow chart for a project development process for a transportation project that required the acquisition of ROW was structured as:

- (i) Preliminary study
- (ii) Preliminary design
- (iii) Approved ROW design
- (iv) ROW acquisition
- (v) Utility coordination
- (vi) Completion of construction plans
- (vii) Advertisement for Bid
- (viii) Award of Contract

- (ix) Construction with DDOT inspection
- (x) Contractors Claims

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 EIS 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, utility coordination, complete plans and the construction and delivery of a completed facility. The DDOT ROW Unit will acquire the ROW on design-build contracts as opposed to it being included in the design-build contract.

15.2. Right-of-Way Scope for Design-Build Projects

As mentioned above, the ROW must be acquired and cleared by DDOT in accordance with the Uniform Act and this ROW Manual. A ROW certification will be required when requesting FHWA's authorization and ROW must be available prior to the start of physical construction on an individual property.

15.3. ROW Submissions

The design-build contractor shall provide one set of as-built plans or plats that depict the as built condition of all the ROW (both existing and acquired) within the project limits.

Chapter Resources

Reference

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

16.0 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 supplemental services may include title research, appraisal reports, review appraisal, survey, hazardous material assessments, negotiations, relocation assistance, closing/settlement of transactions and property management (“ROW Services”).

Section Number	Section Name
16.1	Introduction
16.2	Need for Assistance
16.3	Scope of Services
16.4	Appraisal and Review Appraisal Contracting
16.5	Administration of Contracts

16.1. Introduction

Any time consultants provide ROW services to the Agency, DDOT flow down to the consultant all applicable Federal requirements, including but not limited to Title 23 and Title 49 of the Code of Federal Regulations. The ROW Unit will review consultants work product for federally funded projects to ensure compliance with the applicable Federal regulations.

DDOT, in consultation with the OGC, will work with OCP on contracts for the performance of ROW services when the ROW Unit resources are not sufficient to meet the proposed project schedules.

The most essential element of the procurement and management of consultants is to have a well-defined scope of services.

16.2. Need for Assistance

Because it is not efficient or practical to maintain a staff that is adequate in size to accommodate peak workloads or priority projects, 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:

- (i) Size/Complexity of the Project
- (ii) Lead Time
- (iii) Unique project aspects

As the needs for each project are unique, the ROW Unit Manager, in consultation with the Project Manager and OGC, will determine where and in which disciplines consultant assistance is needed. The request to use consultant services should be reviewed and approved by the applicable Associate Director or Chief Engineer. Consideration should also be given to required plan review and other coordination activities for projects in the preliminary stages of development.

The ROW Unit Manager should develop a scope of services for the project, defining the ROW services to be procured. The specific requirements of the project will be incorporated in the scope.

16.3. Scope of Services

A well-defined scope of services is essential when procuring ROW services. The scope of services establishes the manner and expectations for how the services are to be performed; the deliverables; milestones; milestones; required approvals and information to be submitted at various contract milestone dates. The scope of services will be incorporated into the contract upon award.

At the end of this Chapter are example scope of services for title research, appraisal, review appraisal, negotiation and relocation and closing/settlement services. The ROW Unit should

work with the Project manager to modify the form scope to incorporate the requirements for the project.

16.4. Appraisal and Review Appraisal Contracting

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.

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.

Appraisal contracts will be awarded based on the following factors:

- (i) Demonstrated expertise in performing similar assignments
- (ii) Experience completing appraisals in compliance with District and Federal law
- (iii) Ability to submit Appraisals on schedule
- (iv) Cost of services
- (v) Evaluation of appraisers past performance
- (vi) Value of ongoing contracts with the District

16.5. Administration of Contracts

As stated above, the scope of work will be incorporated into the consultant contract upon award.

The ROW Unit Manager and Project manager / contract administrator will hold production meetings with key consultant project personnel at least 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 Unit Manager will monitor the progress of the consultant in performing the contracted scope of services and coordinate with OCP in cases where the work is likely to be continued beyond the end date of the contract.

Chapter Resources

Flow Charts

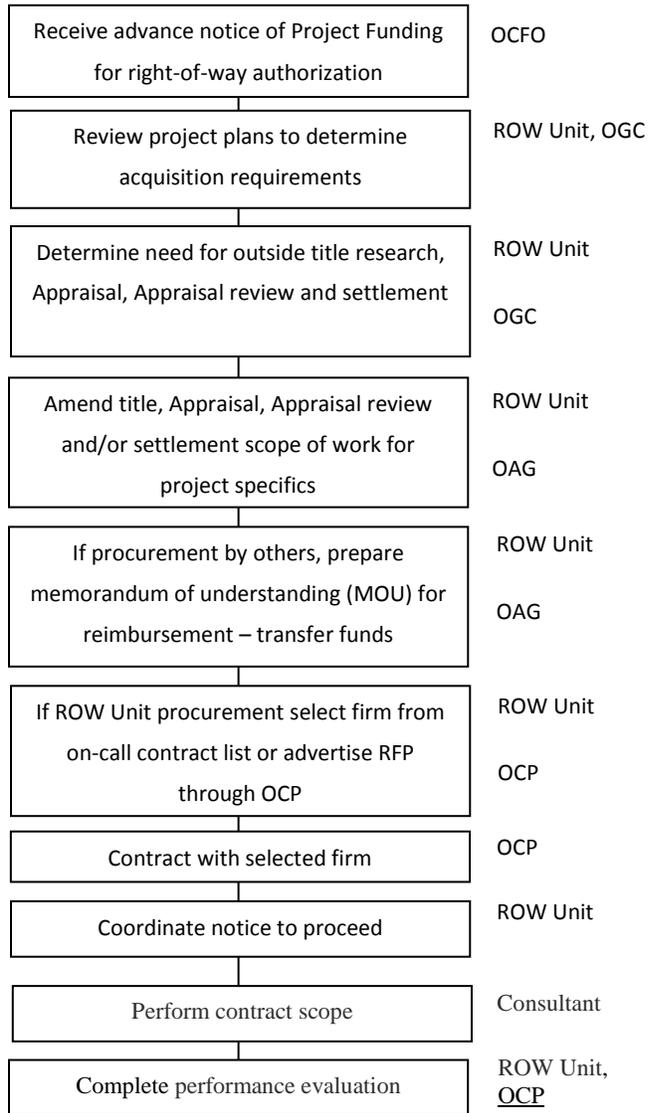
- Consultant Services

References

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
- District of Columbia Code
<https://code.dccouncil.us/dc/council/code/>
- DDOT Consultant Performance Evaluation Procedure

Available from DDOT's Infrastructure Project Management Administration

Flow Chart – Consultant Services



17.0 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	Right-of-Way Use Agreements
17.3	Management of Operating Right-of-Way
17.4	Management of Excess Parcels and Airspace
17.5	Determination of Surplus Property Status
17.6	Preparation and Review of Surplus Property Disposal Package
17.7	Conveyance of Surplus Property
17.8	Approvals and Closing
17.9	Financial Accounting of Funds Received

17.1. Introduction

DDOT acquires and holds land for the construction, operation and maintenance of the Districts transportation facilities. The 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. In some instances, property is acquired which is incidental to project needs.

Post-construction property management involves real property that has been incorporated into public space, operating ROW and land that may not be required presently or in the foreseeable

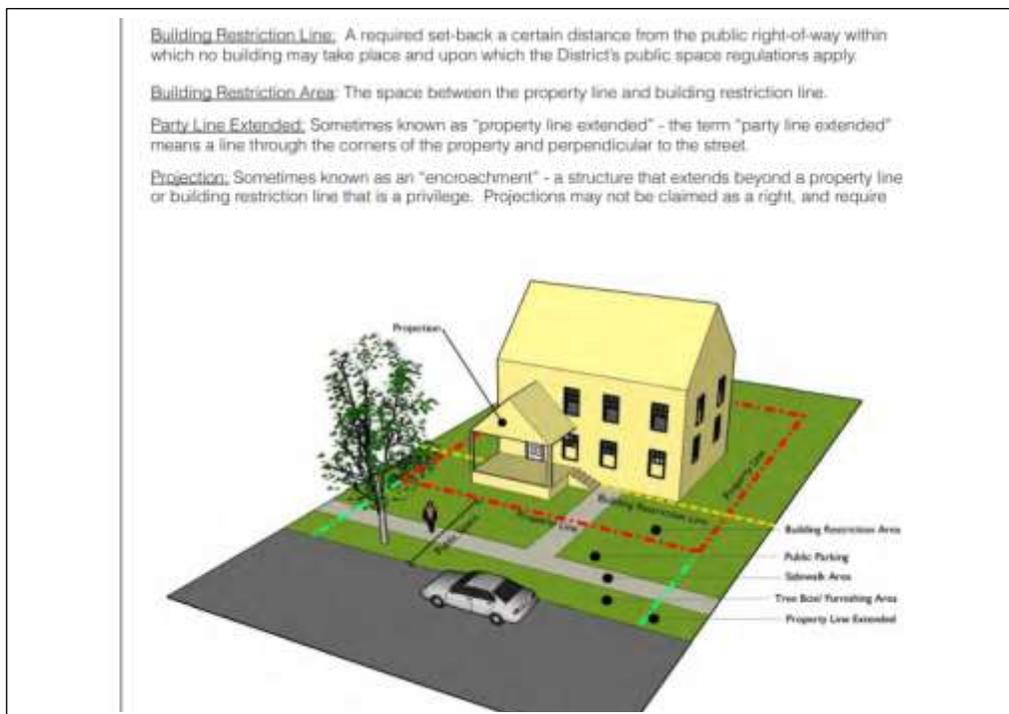
future for the safe and proper operation and maintenance of the transportation network (See 23 CFR 710). These latter may be deemed excess and may include access control and airspace as outlined below.

Evaluation of a parcel status as excess cannot occur until after a project is complete and accepted by the Agency.

The proceeds from the disposal of land acquired or maintained with federal funds must be deposited in a transportation fund and may only be used for eligible transportation projects in accordance with Title 23.

17.1.1. Historic Right-of-Way

Historically, the Right of Way in the District consists of road, curb, sidewalk treebox and public parking. The Right-of-Way is documented on the ROW Distribution Cards, historic ROW Maps and plats recorded with the Office of the D.C. Surveyor. Newly acquired property may be combined with the existing street or highway ROW to establish new boundaries of the ROW. These ROW limits will be shown on a plat recorded at the D.C. Surveyors Office.

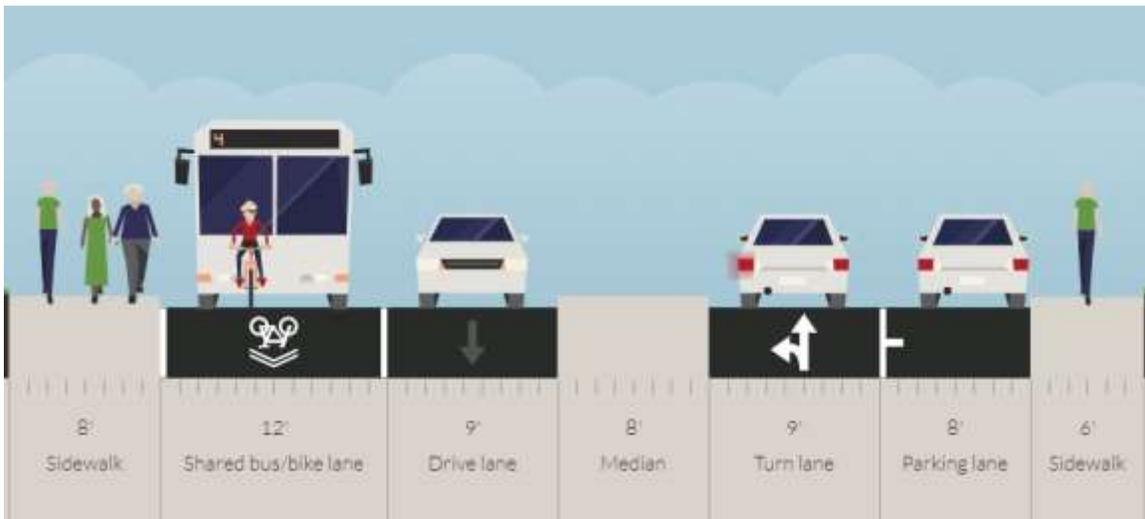


17.1.2. Digital Inventory – GIS

DDOT maintains a digital record of its transportation inventory on GIS. DDOT's Linear Referencing System (or LRS) is a centerline-based method of maintaining a geographic representation of the roadways in the District. Within the LRS, DDOT maintains these centerlines and many characteristics and attributes that describe the roadway. Most characteristics about the roadway (number of lanes, surface type, median type present, etc.) are stored in related database tables; these tables link to the centerlines.

A. Digital Right-of-Way of the Roadway + Sidewalk: LRS Cross-section Data

For the roadway and sidewalk portions of the right-of-way, DDOT has recently completed a digital 'cross-section' of the roads of DC. The purpose of the LRS cross-section is to provide a data model that can capture highly detailed roadway configurations in a way that represents the real world. Below is a graphical representation showing a hypothetical cross-section of the roadway + sidewalk:



B. Sections

In the real world, there are portions of the roadway that have discrete purposes. Lanes provide paths for vehicles to travel upon. Buffers and barriers protect and direct traffic. Medians separate opposing flows of traffic. DDOT calls these basic elements 'Section Types'. Section types could be anything in the roadway which serves a specific purpose in guiding and moving traffic: lanes, bike lanes, medians, buffers, etc. Each section has its purpose.

C. Width

In addition to providing information about what types of sections appear at a given location, it is also important to know the width of the sections. Each section occupies a certain width of the roadway; for a given location, the aggregate for all section widths yields the roadway right-of-way width. Width is stored in feet and has been captured via visual inspection from the latest street-level and aerial imagery.

D. Direction

Direction of travel is the final element of the DDOT cross-section data. A cross-section's direction refers to the allowable/permissible traffic flow for a given section, relative to the centerline's geometry direction. For DC, the centerline geometry direction usually originates at the Capitol building and ascends in an outbound direction, depending on the quadrant the centerline is located in.

E. What Right-of-Way Areas Are Not Included?

While the level of detail described above is significantly better than previous methods of documenting the right-of-way, this representation is not complete. The LRS cross-section data comprise all elements of the roadway + the sidewalk, but this does not include the "public parking", referred to in Section 17.1.1 above.

17.1.3. Excess Parcels

Excess parcels are located outside the existing ROW line and typically 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) or needed by the Agency for any other transportation purpose (e.g. trails, green infrastructure).

17.1.4. 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. D.C. Official Code § 10-1121.01 defines airspace as *(t)he term "airspace" means the space above and below a street or alley under the jurisdiction of the*

Mayor. The Mayor has the authority to lease the airspace pursuant to D.C. Official Code § 10–1121.01- § 10–1121.13.

17.1.5. 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 needed for any transportation purpose, including stormwater management, green infrastructure, trails, transit. 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”.

17.1.6. Street/Alley closures

Chapter 1400 of Title 24, District of Columbia Municipal Regulations (DCMR) sets forth regulations related to the process of closing streets and alleys. Street/Alley closures are processed through the Office of the D.C. Surveyor and can be found on-line at <https://dcra.dc.gov/service/get-street-or-alley-closure-approval>. Upon recordation of a street/alley closing plat, the alley or street, or part thereof, as shown on the plat, shall be considered closed and title to the land will revert to the owners as shown on the plat. Note – temporary road closures (e.g. for block parties) are handled by PSRD through DDOT’s [Transportation Online Permit System \(TOPS\)](#).

17.2. Right-of-Way Use Agreements

In the District, a non-highway use of the real property interests in the ROW is typically evidenced by a public space permit issued by PSRD through TOPS. DDOT may enter into a ROW use agreement which is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in 23 CFR 710.403(b). Note - ROW use agreements, including leasing actions, are subject to 23 CFR part 771.

If a ROW use agreement is used, it must contain provisions that address the following items:

- (i) Ensure the safety and integrity of the federally assisted facility;

- (ii) Define the term of the agreement;
- (iii) Identify the design and location of the non-highway use;
- (iv) Establish terms for revocation of the ROW use agreement and removal of improvements at no cost to the FHWA;
- (v) Provide for adequate insurance to hold the grantee and the FHWA harmless;
- (vi) Require compliance with nondiscrimination requirements;
- (vii) Require grantee and FHWA approval, if not assigned to DDOT, and DDOT approval if the agreement affects a Federal-aid highway and the DDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use; and
- (viii) Grant access to the non-highway use by the grantee and FHWA, and the DDOT if the agreement affects a Federal-aid highway and the DDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.
- (ix) Additional terms and conditions appropriate for inclusion in ROW use agreements are described in FHWA guidance at http://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/airspace_guidelines.cfm. The terms and conditions listed in the guidance are not mandatory requirements.

17.3. Management of Operating Right-of-Way

DDOT will ensure that all real property interests within the approved ROW limits (public space) or other project limits of a facility that has been funded under Title 23 are devoted exclusively to the purposes of that facility and the facility is preserved free of all other public or private alternative uses, unless such non-highway alternative uses are permitted by Federal law (including regulations) or the FHWA. An alternative use, whether temporary under 23 CFR 710.405 or permanent as provided in 23 CFR 710.409, must be in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23).

Multiple divisions within DDOT have roles in the maintenance and management of the public space. For example, the Maintenance Division undertakes the maintenance of the streets and alleys, Urban Forestry maintains the trees in the public space, PSRD has oversight responsibility for the use and occupancy of the public space. See Chapter 1.3 for more information about the roles and responsibilities of the respective DDOT divisions.

17.4. Evaluation Management of Excess Parcels and Airspace

Prior to a parcel or airspace being declared excess, the source of funding used to acquire the original property must be determined. If federal funds have been used to acquire and/or maintain the parcel, then FHWA approval will be required for a disposal or transfer. 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, a public space permit may be issued for an interim use. The use of excess parcels or airspace will be tracked by the ROW Unit in TOPS whether its use is for another District or Federal agency, non-profit or private use.

17.5. Determination of Surplus Property Status

DDOT will conduct an internal review to determine whether a piece or parcel of land is excess and recommend that the piece or parcel of land be surplus, subject to FHWA final approval if federal funds were used to either acquire or maintain the ROW. Current fair market value must be charged for the use or disposal of all real property interests if those property interests were obtained with Title 23, United States Code, funding unless permitted under a qualified exemption ¹.

17.5.1. 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 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).

¹ See 23 CFR 710.403 for the qualified exemptions

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:

- (i) Proposed use of the surplus property.
- (ii) 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.
- (iii) 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.
- (iv) Enter into an agreement pursuant to D.C. Official Code 50-921.01 and pay a \$10,000 fee or the costs associated with evaluating the proposal.

17.5.2. 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. 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:

- (i) PSD for planning policy impacts, plan review, right-of-way and environmental issues
- (ii) IPMD for maintenance, access management, design, engineering, construction and safety issues
- (iii) TESD for traffic operations and safety issues

- (iv) The DDOT Transit Delivery Division (TDD) for policy issues relating to mass transit, including Washington Metropolitan Area Transit Authority (WMATA)
- (v) 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 applicable Associate Director or Chief Engineer, 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.

In determining whether the excess parcel or airspace should be retained or classified as surplus property, the following should be considered:

- (i) The requirements of 23 CFR 710.
- (ii) No probability of expansion within the foreseeable future that would require use of the subject property for current or future transportation purposes.
- (iii) The safe operation and maintenance of the street or highway facility is in no manner placed in jeopardy.
- (iv) 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

17.5.3. 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 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 unless DDOT elects to use the Surplus Property for a project that utilizes the Public-Private Partnership Act of to advance DDOT's mission.

17.5.4. 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:

- (i) City Administrator
- (ii) Department of General Services
- (iii) 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.

17.5.5. 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.

Right of Way

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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.

17.5.6. FHWA Final Approval of DDOT Surplus Property Request - with no Agency or Applicant Request to Acquire or Multiple Applicants on the Same Parcel

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. In the event no Agency or Applicant has requested to acquire, or in the event multiple Applicants are competing for the same parcel, the such disposal shall be conducted in a manner that is in accordance with the procedures outlined in DC Code § 10-801 entitled Sales of Public Lands.

17.6. Preparation and Review of Surplus Property Disposal Package

17.6.1. FHWA Final Approval of both Surplus Property and Property Disposal Request

If the Determination of Surplus Status was initiated by an Applicant, the following steps must occur to dispose of the property:

- (i) A Property Disposal Request must be submitted to the applicable Associate Director or Chief Engineer, who will initiate the processing by the ROW Unit;
- (ii) DDOT must approve the classification of the property as surplus property; and
- (iii) A Surplus Property Disposal Package must be submitted to FHWA for review and approval if the property was acquired with Federal funds or maintained with Federal funds. A request for approval of a disposal must demonstrate compliance with the requirements of 23 CFR 710.403(a), (c), (d), (e), (f) and this section. An individual, company, organization, or public agency requesting DDOT to approve of a disposal of excess real property within the approved ROW

limits or other project limits, or to approve of a disposal of excess real property outside the ROW limits that was acquired with title 23 of the United States Code funding, shall submit a written request to DDOT, together with an application supporting the proposal. If the FHWA is the approving authority, DDOT shall forward the request, together with DDOT's recommendation if the proposal affects a Federal-aid highway, the application, and proposed terms and conditions, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to requirements contained in this section and must include the information specified in 23 CFR 710.405(e)(1) through (9).

If FHWA approves both the classification of the surplus property and the Property Disposal Request, then DDOT may dispose of the surplus property to the Applicant. If FHWA denies the Property Disposal Request, then the process terminates.

17.6.2. 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 an approved licensed appraiser. The ROW Unit, in coordination with OGC, 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 by a review appraiser. 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)

17.6.3. 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:

- (i) 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 USC 142(f), Public Transportation;
- (ii) Use by public utilities as outlined in 23 CFR Part 645;
- (iii) Railroads may be accommodated in accordance with 23 CFR Part 646;
- (iv) Bikeways and pedestrian walkways in accordance with 23 CFR Part 652; or
- (v) Use for transportation projects eligible for assistance in accordance with 23 CFR Part 403.

17.6.4. Surplus Property Disposal Package Requirements for Applicant

The Surplus Property Disposal Package must 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:

- (i) A memo describing the proposed use for the property including detail on the real estate and land use documents required for the transfer, whether the conveyance is a long-term lease, short term lease, permanent easements, deed of covenants, deed of conveyance or air space and statement that acknowledges that all of the transfer documents will be prepared in accordance with the applicable sections of the federal regulations² and District law.
- (ii) Detailed engineering plans of proposed buildings and improvements including an ALTA/ACSM 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.
- (iii) Security analysis of the transportation facility.

² 23 CFR 710.405

- (iv) 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.
- (v) 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.
- (vi) Proposal for Interstate Access Point Approval Request (IAPA), if applicable.
- (vii) 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>.
 - (a) A metes and bounds description, and plat which shall be used to create a legal description of the surplus property.
 - (b) Any other applicable documents.

If the disposal is approved, the transfer 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, will at a minimum, include:

- (i) A description of the proposed use including the proposed design of any facilities to be constructed.
- (ii) Permitted uses subject to any required limitations.

- (iii) A reversion clause and/or provisions for termination of rights if the land ceases to be used for the permitted uses.
- (iv) Whether the property will be subject to a limitation of access line.
- (v) Provisions for access to an Interstate will require an Interstate Access Plan Approval to either request interstate access or eliminate such access.
- (vi) Inspection, maintenance and/or construction 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. If the approved use is discontinued and reversion clause has been included in the deed, the property will revert automatically to the DDOT by operation of law regardless of whether to a District agency or an Applicant.

17.6.5. Surplus Property Disposal Package Requirements for DDOT

The Surplus Property Disposal Package must also include the following documents to be provided to FHWA: Title Report, including air space and easements, if applicable. In addition, a current appraisal and review appraisal must also be provided. The ROW Unit Manager will prepare the following statements for approval by the applicable Associate Director or Chief Engineer:

- (i) 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.
- (ii) 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 IPMD. The plans or drawing must adequately demonstrate the relationship between proposed use and the transportation facility.

- (iii) 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 IPMD.
- (iv) Statement that the environmental analysis and documentation required per NEPA, DC Environmental Policy Act, and other applicable environmental laws and regulations have been reviewed and approved by the applicable Associate Director or Chief Engineer.
- (v) Statement that the Interchange 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 the applicable Associate Director.
- (vi) 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 interest³.
- (vii) If the Property Disposal Request includes airspace which has been classified as surplus property, the following additional documents and statements will be included:
 - (a) 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.
 - (b) 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

³ 23 CFR 710.403

legal, planning, environmental, design, construction, maintenance, insurance and safety requirements.

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.

- (c) The proposed airspace agreement will be included in the Surplus Property Disposal Package.

17.6.6. 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.

17.6.7. 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 OGC will draft, review, negotiate revisions and approve all of the documents of transfer as outlined in Section 17.7.

17.7. Conveyance of Surplus Property

17.7.1. Transfers between Governmental Entities

If a federal agency has made a request to use or acquire the surplus property which is all or part of a reservation, and DDOT and FHWA have approved the request, the surplus property will be transferred to the Federal agency through a transfer of jurisdiction. (See Section 10-111 of the District of Columbia Code and 23 CFR 710.601.)

If a District agency has made a request to use or acquire the surplus property which is all or part of a reservation, and DDOT and FHWA have approved the request, the surplus property will be transferred to the District agency through an Intra District transfer prepared in coordination with DGS.

17.7.2. Transfers of Jurisdiction (TOJ)

TOJ's are processed through the Office of the Surveyor or are accomplished by Congressional legislation. In most cases the transfer is done using the District process and the agency requesting the transfer files the application and pays the application fees. Engineering (CAD files) must be provided to the D.C. Surveyor for use in the preparation of the TOJ plat. NCPC and ANC approvals of the proposed TOJ must be obtained. Once the required approvals are obtained, the TOJ plat will be circulated to by the D.C. Surveyor to District agencies for review and comment. Any objection received will be reviewed and resolved with that agency or administration. Once all the District agencies have responded and any comments addressed, the legislation approving the TOJ will be sent to the D.C. City Council. Upon DC Council approval, the plat is returned to the surveyor for official recording. Copies of the approved plat of Transfer of Jurisdiction shall be maintained by the ROW Unit.

17.7.3. Short-Term Use of Surplus Property

When it is determined to be in the interests of the District, a public space permit may be issued to allow the use on a short-term basis.

17.7.4. Long Term Use or Sale of Surplus Property

A transfer of surplus property to a non-governmental entity is done via a deed conveying a fee-simple interest. DDOT does not typically enter into long-term lease for the use of surplus property, the limited exception is airspace leases. Such dispositions may be the provisions of D.C. Official Code §§ 10-801-10-839.

Note - 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 USC 8734.

17.8. Approvals and Closing

Once executed, the requisite property documents will be 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.

17.9. Financial Accounting of Funds Received

All proceeds from rent, rent penalties, sales of property, etc., will be promptly and properly credited to the appropriate revenue account(s).

- (i) Revenue generated from the lease, sale or use of surplus property acquired either with Federal funding participation will be credited to a separate account, in the amount required by law or regulation, to ensure identification for use on future 23 CFR eligible projects. A copy of the calculation should be sent to FHWA along with any supporting documentation to close out the disposal of any surplus property. The revenue should be credited to the following accounting attributes:
 - (a) District Agency: KAO
 - (b) Soar Index Code: TIT23
 - (c) SOAR PCA Code: ROWM3
 - (d) Agency Object: 6132
- (ii) Any funds received on a project that is still in the active acquisition stage will be credited back to that project.
- (iii) Any monies received as rent or for the sale of property not associated with a transportation project and on which Federal funding was not utilized on any portion of the project (i.e. design or construction), will be credited to the appropriate District revenue account.

Chapter Resources

Example

- Property Surplus Disposal Circulation (Example 17-1)

References

- Code of Federal Regulations (CFR)
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
- Airspace Guidelines to 23 CFR 710.405 and 710.407
www.fhwa.dot.gov/realestate/airguide.htm
- District of Columbia Code
<https://code.dccouncil.us/dc/council/code/>
- District of Columbia
Federal State Agreement entered on September 7, 1967
- District of Columbia
Building Code Referenced in Federal State Agreement

Example 17-1 - PROPERTY SURPLUS DISPOSAL CIRCULATION

MEMORANDUM	
DATE:	Street:
TO: [To be completed for internal or external circulation 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:

Approve for Sale / Lease

Retain for Future Needs

Signed: _____

Date: _____

Comments: _____

Appendix A-1 Acronyms

The following acronyms **where** used in this manual have the following meaning.

AASHTO	American Association of State Highway and Transportation Officials
ACM	Asbestos Containing Material
ACSM	American Congress of Surveying and Mapping
ACT	The Uniform Relocation Assistance and Real Property Acquisition Act
AICP	American Institute of Certified Planners
ALTA	American Land Title Association
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
MWCOG	Metropolitan Washington Council of Governments
DC	District of Columbia
DC	Council of the District of Columbia
COUNCIL	
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)

DGS	DC Department of General Services
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
DSS	Decent Safe and Sanatory
EA	Environmental Assessment
EHA	DC Department of Health – Environmental Health Administration
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
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
IPMD	DDOT’s Infrastructure Project Management Division
IRS	Internal Revenue Service

MOU	Memorandum of Understanding
NCPC	National Capital Planning Commission
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NHTSA	National Highway Traffic Safety Administration
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
OCF	Office of Contracting and Procurement of the District of Columbia
OGC	DDOT's Office of General Counsel
OP	District Office of Planning
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
PSD	DDOT's Planning and Sustainability Division
RAMP	Real Estate Acquisition and Management Plan
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
TDD	DDOT's Transit Delivery Division
TESD	DDOT's Traffic Engineering and Signals Division
TIF	Tax Increment Financing
TIP	Transportation Improvement Program
TOPS	Transportation Online Permit System
PSD	DDOT's Planning and Sustainability Division
USC	United States Code
UST	Underground storage tank
UASFLA	Uniform Appraisal Standard for Federal Land Acquisition
UFA	DDOT's Urban Forestry Administration
USA	Government of the United States of America (also US)
USPAP	Uniform Standards of Professional Appraisal Practice
VA	Veterans Affairs
WMATA	Washington Metropolitan Area Transit Authority

Appendix A-2 Definitions

The following terms where used in this manual have the following meaning.

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.

ACCESS RIGHTS – The right of ingress to and egress from a property to a public way.

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”.

ACQUIRING AGENCY - A State agency, other entity, or person acquiring real property for Title 23, USC, purposes. When an Acquiring Agency acquires real property interests that will be incorporated into a project eligible for Title 23 grant funds, the Acquiring Agency must comply with Federal real estate and right-of-way requirements applicable to the grant.

ACQUISITION – The activities to obtain an interest in, and possession of, real property.

ACQUISITION AGENT – The primary contact person that represents DDOT in negotiating with the landowners.

ACQUISITION APPRAISAL – An Appraisal in any range of value that is simple as to Appraisal solutions.

ACT – The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91–646, 84 Stat. 1894; primarily codified in 42 USC 4601 et seq.), and the implementing regulations at 49 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.

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.

ALIEN NOT LAWFULLY PRESENT IN THE U.S. – An alien who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

- (i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 USC 1101 et seq.) and whose stay in the United States has not been authorized by the United States Attorney General; and,
- (ii) 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.

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.

APPRAISAL WAIVER VALUATION – A determination of value of real property estimated at \$10,000 or less made.

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.

ASSESSMENT – A tax, charge or levy against a property made by the government.

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:

- (i) primarily for the sale of services to the public; or
- (ii) primarily for the purchase, sale, lease and/or rental or any combination of these, of personal and/or real property, or both, or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or
- (iii) primarily for outdoor advertising display purposes, when the display must be moved because of the project; or
- (iv) 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.

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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.

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

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:

- (i) Decent, safe and sanitary (DSS) (also defined below).
- (ii) 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 tradeoffs for specific features when the replacement unit is equal to or better than the displacement dwelling.
- (iii) Adequate in size to accommodate the occupants or displacee.
- (iv) In an area not subject to unreasonable adverse environmental conditions.
- (v) In a location, generally not less desirable than the displacement person’s dwelling with respect to public utilities, commercial and public facilities, and is reasonable accessible to the displacee’s place of employment.

- (vi) On a site typical in size for residential use, with normal site improvements (The site need not include features such as outbuildings, or swimming pools or greenhouses).
- (vii) 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.
- (viii) 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 – Loss in value of a parcel, no portion of which is acquired, resulting from a transportation improvement

CONTRIBUTE MATERIALLY – Means that during the past 2 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:

- (i) Had average annual gross receipts of at least \$5,000; or
- (ii) Had average annual net earnings of at least \$1,000; or
- (iii) Contributed at least 33.3 percent of the owner’s or operator’s average annual gross income from all sources.

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

CONTROL OF 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.

DAMAGES - The loss in the value attributable to remainder property due to the severance or consequential damages, as limited by State law, that arise when only part of an owner's real property is acquired.

DECENT, SAFE, AND SANITARY – (DSS) – 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:

- (i) Be structurally sound, weather tight, and in good repair;
- (ii) Contain a safe electrical wiring system adequate for lighting and other devices;
- (iii) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees Fahrenheit) for a displaced person;
- (iv) 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;
- (v) 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 and utility service connections for a stove and refrigerator;
- (vi) Contains unobstructed egress to safe, open space at a ground level;
- (vii) 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.

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 deed conveying real estate in trust to secure a debt

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.

DISPOSAL - The transfer by sale or other conveyance of permanent rights in Excess Real Property when the real property interest is not currently or in the foreseeable future needed for highway right-of-way or other uses eligible for funding under Title 23 of the United States Code. A disposal must meet the requirements contained in Title 23 CFR 710.403(b). The term “disposal” includes actions by a grantee, or its subgrantees, in the nature of Relinquishment, Abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein.

DISTRICT – The government of the District of Columbia (see also **DC**).

DISTRICT AGENCY - A department, agency, or instrumentality of the District of Columbia or any person who has the authority to acquire property by eminent domain, for public purposes, under District law.

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

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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 transfer of privately owned real property, by a property owner who has been informed in writing by the Acquiring Agency of rights and benefits available to owners under the Uniform Act and Title 23, for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

DRAINAGE EASEMENT – An easement for the purpose of directing the flow of storm water.

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.

EARLY ACQUISITION – Acquisition of real property by an Acquiring Agency prior to completion of the environmental review process for a proposed transportation project, as provided under 23 CFR 710.501 and 23 USC 108.

EARLY ACQUISITION PROJECT - Early Acquisition Project means a project for the acquisition of real property interests prior to the completion of the environmental review process for the transportation project into which the acquired property will be incorporated, as authorized under 23 USC 108 and implemented under 23 CFR 710.501 of this part. It may consist of the acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

EASEMENT – An interest in real property that conveys a right to use or control a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently.

ENVIRONMENTAL ASSESSMENT (EA) – Environmental study undertaken by DDOT to clearly establish the environmental impact of a project. The EA is fully described in 23 CFR 771.119.

ENVIRONMENTAL IMPACT STATEMENT (EIS) – 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 a government entity to take private property for public use.

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 – Process by which property is reverts to the District in absence of a legal owner.

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 in which an individual has in real property.

ESTATE IN REVERSION – A future estate created for a person or persons after a precedent particular estate has been demised or terminated.

EVICITION FOR CAUSE – An eviction related to non-compliance with the terms of the lease or occupancy agreement.

EXCESS REAL PROPERTY – Means a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under Title 23, United States Code.

EXECUTOR – The one appointed by a testator to carry out the provisions of his/her will. An executor may not convey real estate belonging to the testator unless the will so provides.

FAIR MARKET VALUE – The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

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.

FEDERAL AID PROJECT - A project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in, Chapter 1 of Title 23, United States Code.

FEDERALLY ASSISTED - A project or program that receives grant funds under Title 23, United States Code.

FEE APPRAISER – An independent appraiser who furnishes services to the District on an individual contract basis for an agreed fee.

FEE SIMPLE – An estate or ownership of land, without any limitation as to class of heirs or restriction as to right to dispose of same. Fee simple is often spoken of as merely “Fee”.

FHWA – District of Columbia Division of the Federal Highway Administration of the US Department of Transportation.

FINANCIAL MEANS – of the displaced person means:

- (i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner’s financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all eligible incidental expenses.
- (ii) 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.
- (iii) 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.

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.

FORECLOSURE – A legal procedure whereby property used as 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 EQUIVALENT – 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) covenant to defend the title and possession of the estate conveyed.

GRANTEE – One to whom a grant or conveyance is made. For the purpose of 23 CFR 710 the Grantee is the party that is the direct recipient of Title 23 funds and is accountable to FHWA for the use of the funds and for compliance with applicable Federal requirements.

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 most productive use, reasonable but not speculative or conjectural, to which property may be put in the near future, and for which there is a demand.

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 49 CFR 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.

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 Amendment of the Constitution of the United States mandates a payment offer 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 required 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.

MAI – Membership in good standing with the American Institute of Real Estate Appraisers (MAI Designation)

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.

MITIGATION PROPERTY - Real property interests acquired to mitigate for impacts of a project eligible for funding under Title 23.

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.

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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 USC 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:

- (i) 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
- (ii) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by DDOT.

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.

PURCHASE AGREEMENT – The purchase of a right to acquire real property within an agreed-to period of time for an agreed-to amount of compensation or through an agreed-to method by which compensation will be calculated.

OWNER – Any person, corporation, agency or body who purchases or holds any of the following interests in real property:

- (i) 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;
- (ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or
- (iii) 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:

- (i) 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;
- (ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project;
- (iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;
- (iv) 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;
- (v) 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 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.);

- (vi) A person whom DDOT determines is not displaced as a direct result of a partial acquisition;
- (vii) 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;
- (viii) 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;
- (ix) A person who retains the right of use and occupancy of the real property for life following its acquisitions by DDOT;
- (x) 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;
- (xi) 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;
- (xii) 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

- (xiii) Tenants required to move as a result of the sale of their dwelling to a person using the down payment 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 USC 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 – The authority one person may give another to sign a deed or other writing and/or to conduct certain business matters. This authority must be given in writing.

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.

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 the IPMD, PSD or TESD.

PUBLIC PARKING - In 1870, Congress passed the “Parking Act” and designated part of the right-of-way immediately next to private property as park areas to be maintained by the adjacent property owner. This area was to be landscaped and is still referred to as “parking.”

PUBLIC SPACE - Public space is a broad term that includes that area within the street right-of-way and can take on many different appearances. Typically thought of as the publicly owned area between private property lines, it includes the roadway, tree space, sidewalk, and often what appears to be grand avenues and boulevards are lined with landscaping and street trees that create long vistas toward parks and open space. Public space is a defining characteristic of the District and frames long views toward prominent buildings front yards. Regulations for public space are also applied to private property within building restriction lines that define additional setbacks on some streets.

PURCHASE SUPPLEMENT PAYMENT – The amount which, when added to the acquisition value, equals the cost of comparable replacement housing.

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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 ESTATE ACQUISITION MANAGEMENT PLAN (RAMP) – A written document that details how a non-DDOT grantee, subgrantee, or design-build contractor will administer the Title 23 right-of-way and real estate requirements for its project or program of projects. The document must be approved by DDOT, or by the funding agency in the case of a non-DDOT grantee before any acquisition work may begin. It must lay out in detail how the acquisition and relocation assistance programs will be accomplished and any anticipated issues that may arise during the process. If relocations are reasonably expected as part of the Title 23 project or program, the RAMP must address relocation assistance and related procedures.

REAL PROPERTY or REAL PROPERTY INTEREST – Any interest in land and any improvements thereto, including, fee and less-than-fee interests such as: temporary and permanent easements, air or Access Rights, and the Access Control, Purchase Agreement, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve rights-of way for a transportation facility. As used in this part, the terms “real property” and “real property interest” are synonymous unless otherwise specified.

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.

RELINQUISHMENT - The conveyance of a portion of a highway right-of-way or facility by a State highway department grantee under Title 23, United States Code, or its subgrantee, to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

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.

RELOCATION SPECIALIST – Relocation specialist or other assigned representative of DDOT.

REMAINDER – The portion of a parcel retained by the owner after a part of such parcel has been acquired.

REMNANT – A remainder so small or irregular that is usually has little or no economic value to the owner.

RENT – Fixed periodic payment made by a tenant or occupant of property to the owner for the possession and use of the property.

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.

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 – A member of the Appraisal staff whose usual duties are to review Appraisal reports of the fee appraisers and in some instances of staff appraisers, to establish fair market value.

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 – Real Property and rights therein obtained for the construction, operation, maintenance or mitigation of a transportation related facility and which may be funded either under Title 23, United States Code or local funds.

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, 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 MANUAL - This operations manual that establishes DDOT's acquisition, valuation, relocation, and property management and disposal requirements and procedures, and has been approved in accordance with 23 CFR 710.201(c).

RIGHT OF WAY PLAN – The proposed methods to be used to secure required right-of-way including coordination, submission, and approval process.

RIGHT OF WAY USE AGREEMENT - Real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under Title 23.

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 BROCHURES – This includes both the FHWA Publication No. FHWA-HEP-05-030 “Acquiring Real Property for Federal and Federal-aid Programs and Projects” and Publication No. FHWA-HEP-05-031 “Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program”.

https://www.fhwa.dot.gov/real_estate/uniform_act/acquisition/real_property.cfm

https://www.fhwa.dot.gov/real_estate/publications/your_rights/

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.

SETTLEMENT - The result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

- (i) An Administrative Settlement is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.
- (ii) A Legal Settlement is a settlement reached by an authorized legal representative after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation action had been filed.

- (iii) A Court Settlement or court award is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of just compensation for a taking under the laws of eminent domain.

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.

STATE AGENCY - A 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 political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

STATE DEPARTMENT OF TRANSPORTATION - the State highway department, transportation department, or other State transportation agency or commission to which Title 23 of the, United States Code, funds are apportioned.

SQUARE SUFFIX LOT (SSL) – The identification system used by the District of Columbia to identify Real Property.

STEWARDSHIP/OVERSIGHT AGREEMENT – The written agreement between the DDOT and FHWA that defines the respective roles and responsibilities of FHWA and the District for carrying out certain project review, approval, and oversight responsibilities under Title 23, including those activities specified by 23 USC 106(c)(3).

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.

SUBGRANTEE - A government agency or legal entity that enters into an agreement with a Grantee to carry out part or all of the activity funded by Title 23 grant funds. A Subgrantee is accountable to the Grantee for the use of the funds and for compliance with applicable Federal requirements.

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.

SURVEYOR – Office of the District of Columbia Surveyor.

TEMPORARY DEVELOPMENT RESTRICTION - The purchase of a right to temporarily control or restrict development or redevelopment of real property. This right is for an agreed to time period, defines specifically what is restricted or controlled, and is for an agreed to amount of compensation.

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 no 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.

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.

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.

TRANSPORTATION IMPROVEMENT PROGRAM (TIP) - A District-wide, prioritized-funding program of transportation projects that is consistent with the long-range District-wide transportation plan, also known as moveDC. The TIP is a federally required program that identifies capital projects to be eligible for federal funding. DDOT’s TIP lists all surface transportation projects, public transit projects, and multimodal projects proposed for funding by any source including federal, local and private for regionally significant projects. The District’s TIP is updated biannually, covering a period of six years. All states and the District of Columbia are federally mandated to produce a TIP as a part of the Code of Federal Regulations (CFR) US Title 23 (Highways) and US Title 49 (Transit).

TRANSPORTATION PROJECT - Any highway project, public transportation capital project, multimodal project, or other project. As used in this part, the term “transportation project” does not include an Early Acquisition Project as defined in this section.

TURNKEY – Services supplied in a condition ready for immediate use.

UNECONOMIC REMNANT – A remainder property which the DDOT has determined has little or no utility or value to the owner. 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 Policies Act of 1970, as amended (Public Law 91–646, 84 Stat. 1894; primarily codified in 42 USC 4601 et seq.), and the implementing regulations at 49 CFR part 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.

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.

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 is 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 - Flow Charts, Examples and Forms List

Flow Charts

NEPA and Pre-Acquisition Activities	Chapter 2
Advance Acquisition Process	Chapter 3
Hardship Acquisition Process	Chapter 3
Title Research	Chapter 5
Appraisal Process	Chapter 6
Appraisal Review Process	Chapter 7
Negotiation Process	Chapter 8
Transfer of Jurisdiction	Chapter 9
Pre-acquisition Relocation Planning	Chapter 10
Residential Relocation	Chapter 10
Nonresidential Relocation	Chapter 10
Voluntary Conveyance Closing	Chapter 11
Eminent Domain Proceeding	Chapter 11
Possession of Building or Improvement	Chapter 12
Railroad Coordination	Chapter 13
Project Certification	Chapter 14
Project Closeout	Chapter 14
Consultant Services	Chapter 16

Examples

DDOT Organizational Chart	Example 1-1
Preliminary Right-of-Way Cost Estimate	Example 2-1
Appraisal Inspection Contact Letter	Example 6-1
Appraisal Scope of Services	Example 6-2
Review Appraiser's Certification	Example 7-1
Initial Contact Letter (Goodwill)	Example 8-1
Offer to Purchase Letter	Example 8-2
Approval of Offer of Just Compensation Letter	Example 8-3
Mortgage Information Sheet	Example 8-4

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Disclaimer of Partial Property Interest	Example 8-5
Tenant Retention of Improvements	Example 8-6
Posting Unknown Owner	Example 8-7
Right of Entry Agreement	Example 8-8
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
Second letter	Example 11-1
Check/Wire Request Voluntary Acquisition	Example 11-2
Check Request Voluntary Condemnation/Settlement of Condemnation	Example 11-3
Eminent Domain Memorandum	Example 11-4
Outgoing Wire Instructions	Example 11-5
Property Surplus Disposal Circulation	Example 17-1

Forms

Right-of-Way Status Report (form ROW STATUS).....	Form 2-1
Right-of-Way Acquisition Report (form ACQ-REPORT)	Form 8-1
Request for Taxpayer Identification Number and Certification (W-9)	Form 8-2
Site Occupant Interview Form (form INTERVIEW)	Form 10-1
Comparable Replacement Dwelling (form COMP RHP)	Form 10-2
Interest Expense Calculation (form MORT. DIFF.)	Form 10-3
Move Reimbursement Application (form MOVE APPLY)	Form 10-4
Occupancy Affidavit (form OCCUPY)	Form 10-5
Relocation Project Log (form LOG)	Form 10-6
Residential Claim for Moving and Related Expenses (HUD-40054)	Form 10-7
Claim for Actual Reasonable Moving and Related Expenses- Non-Residential	Form 10-8
Claim for Fixed Payment In lieu of Payment for Actual Nonresidential Moving and Related Expenses (Form HUD-40056)	Form 10-9
Claim for Replacement Housing Payment for 90 Day Homeowner (HUD-40057)	Form 10-10
Claim for Rental Assistance or Down Payment Assistance (HUD-40058)	Form 10-11
Building and Improvement Inventory (Form BUILDING-REPORT)	Form 12-1

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Retention Value of Improvements (RETENTION 1 of 2) Form 12-2
Retention Value Analysis (RETENTION 2 of 2) Form 12-3
Improvement Record Form (Form IMPR INSP) Form 12-4

