COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



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COMMONWEALTH BOARD OF NURSE EXAMINERS

Aurelia G. Long, Chair P.O. Box 501458, Saipan, MP 96950 Commonwealth Health Center Building, former Medical Referral Office Tel: 670.233.2263 fax: 670.664.4813

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED REGULATIONS Volume 34, Number 10, pp 033059-033108, of October 29, 2012

Regulations of the Commonwealth Board of Nurse Examiners: Parts 001 - 001300

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Commonwealth Board of Nurse Examiners ("CBNE" or "the Board") HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, I CMC § 9104(a). The CBNE announced that it intended to adopt them as permanent, and now does so. I also certify by signature below that: as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

AUTHORITY: CBNE has statutory power to promulgate and effect regulations pursuant to 3 CMC § 2306(b) and (c).

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

THE SUBJECTS AND ISSUES INVOLVED: These regulations establish the rules for licensing of nurses, graduate nurses, advanced practice nurses, and nurse assistive personnel. The regulations also govern the scope and standards of practice for each of these professions. Additionally, the regulations speak to reporting requirements and discuss the process for disciplinary action.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted regulations are effective ten (10) days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is ten (10) days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC § 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for

and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

Certified and ordered by: Aurelia G. Long Chairperson, CBNE

Filed and Recorded By:

mole

Esther M. San Nicolas Commonwealth Register

05.21.2013 Date

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Commonwealth of the Northern Mariana Islands Office of the Secretary of Public Works 2nd floor-Joeten Commercial Building, Gualo Lai Saipan, MP 96950



NOTICE OF CERTIFICATION AND ADOPTION OF RULE

ADOPTION OF RULE: ADOPTION OF "RIGHT OF WAY MANUAL"

ACTION TO ADOPT RULE: The Commonwealth of the Northern Mariana Islands, Department of Public Works, HEREBY ADOPTS AS A RULE, the attached "Right-of-Way Manual, pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC §§ 9102, 9105 and applicable regulations.

AUTHORITY: The Department of Public Works, under 1 CMC §§ 2404 and 2403, is empowered to construct and maintain all public works and roads in the Commonwealth and is authorized to adopt rules and regulations regarding those matters over which it has jurisdiction.

PURPOSE AND OBJECTIVE OF RULE: The Right of Way Manual is prepared by the Department of Public Works, Commonwealth of the Northern Mariana Islands, to establish uniform procedures necessary for the Department of Public Works to cany out the functions and objectives of the Right of Way Program under the Right of Way Section. It is intended to comply with applicable Commonwealth and Federal law, regulations, policies, and procedures and is not designed to be used to substitute for CNMI law. These policies and procedures are established for the guidance and use of agencies, officers, and/or administrators of the program and those under the authorizing agency's oversight. The emphasis and prime purpose of this manual is to provide quality assurance to ensure that the CNMI and public interests are completely fulfilled and endorsed ethically and to highest levels for standards and quality.

The manual describes functions and procedures for all phases of ROW real estate programs, including acquisitions, relocation assistance, appraisal and appraisal review, negotiation, eminent domain and property management. The manual also specifies procedures to prevent conflict of interest and to avoid fraud, waste, and abuse.

The manual implements Code of Federal Regulations 23 CFR 710.201 (c) which in part mandates that each state department "which receives funding from the highway trust fund shall maintain a manual describing it's right-of-way organization, policies and procedures." The CFR further obligates other organizations or private consultants under the Department of Public Works (DPW) oversight on federal-aid projects to comply with state and federal laws, regulations, and DPW policies and practices. The manual is developed to satisfy

federal agency directives to establish implementation guidelines relative to applications of federal requirements tailored to CNMI jurisdictions and to serve as a convenient source and reference for the administration of right-of-way activities throughout the CNMI.

Contained in this manual are explanations of rights and benefits of real property owners under federally funded programs. The manual establishes and restates DPW policies and procedures for important right-of-way activities. The policies outlined in this manual have been uniquely formulated to fit the CNMI cultural, legal, and government organizational environments.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on newly adopted rules and regulations (1 CMC § 9102(a)).

The Secretary will take appropriate measures to make this Rule is known to the persons who may be affected by them.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b) and applicable regulations, this adopted Rule is effective 10 days after compliance with 1 CMC §§ 9102, 9105 and publication in the Commonwealth Register.

I, Martin C. Sablan, Secretary of Public Works, hereby approve the attached Rule, and further certify that the attached Rule, the Right-of-Way Manual, is a true copy of the Rule as adopted by the Department of Public Works.

Submitted by: 4

Martin C. Sablan Secretary of Public Works

Filed and Recorded by:

Esther M. San Nicolas Commonwealth Register

Received by:

Esther S. Fleming Special Assistant for Administration

Date

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Pursuant to 1 CMC § 2153(e) and 1 CMC § 9102(c), the rule attached hereto has been reviewed and approved as to form and legal sufficiency by the Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

JOEY P. SAN NICOLAS Attorney General

5/28/13

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Commonwealth of the Northern Mariana Islands

Right-of-Way Acquisition Procedures

Property Owners Rights

Office of the Secretary of Public Works 2nd Floor · Joeten Commercial Building Gualo Rai, Saipan, MP 96950

> Tel Nos: (670) 235 5827 / 235 9570 Fax: (670) 235 6346 www.dpw.gov.mp

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Commonwealth of the Northern Mariana Islands

Right-of-Way Acquisition Procedures

Property Owners Rights

The United States Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 commonly called the "Uniform Act" is the primary law for property acquisitions and relocations of private real property owners whether they are individuals or groups.

In 1987 Congress amended the Uniform Act to increase payment levels, to add benefits for small businesses, and to designate the Department of Transportation through the FHWA as the Lead Agency for the Uniform Act for all Federal and Federally-funded programs and projects. The Uniform Act was once again amended in November, 1997, to add Public Law 105-117, "alien not lawfully present in the United States."

Title II of the Act, "Uniform Relocation Assistance" contains provisions relating to the displacement of persons or businesses by Federal or federally assisted programs or projects. Relocation under the Uniform Act is a specialized and complex subject. As a potentially displaced property owner you will be provided counseling and assistance from the CNMI Department of Public Works which has primary responsibility for ROW projects.

Title III, "Uniform Real Property Acquisition Policy" pertains to the acquisition of real property for Federal or federally assisted programs or projects. One of the purposes of Title III is to encourage and expedite the acquisition of real property through negotiation with property owners, thereby avoiding litigation and relieving congestion in the courts. Other purposes include assuring consistent treatment for property owners in Federal programs and promoting public confidence in Federal land acquisition practices.

Important Provisions of the Uniform Act

The Uniform Act applies to all projects receiving Federal funds or Federal financial assistance where real property is acquired or persons are displaced as a result of acquisition, demolition, or rehabilitation. The Act provides benefits and protection for persons whose real property is acquired or who are displaced from acquired property because of a project or program that uses Federal funds or receives Federal financial assistance. The Constitution requires payment of just compensation for real property which is acquired and when a project results in displacement, the Uniform Act requires services and payments be provided for displaced persons. A displaced person may be an individual, family, business, farm, or non-profit organization.

Applications of the Uniform Act

The Uniform Act applies when Federal dollars are utilized in any phase of a project. The Uniform Act applies even when Federal dollars are not used specifically for property acquisition or relocation activities, but are used elsewhere in the project, such as in planning, environmental assessments or construction. The Uniform Act also applies to acquisitions by private as well as public entities when the acquisition is for a Federal or federally-assisted project.

As a potentially displaced property owner or occupant from acquired land and property you should be thoroughly aware of your rights under the Uniform Act by means of contact with CNMI Agency representatives and the contents of this brochure. (The term "Agency" as used in this brochure usually, but not necessarily, refers to the DPW).

Additional guidance may be obtained from electronic versions of the Federal Highway Administration's brochures on website <u>http://www.fhwa.dot.gov/realestate/index.htm</u>.

The rights set out in this brochure are not a full and complete list or explanation of an owner's rights under the law. They are mainly derived from key elements of The Code of Federal Regulations (implementing the Uniform Act) and CNMI policy. Additional information and guidance will be provided by CNMI government representatives as outlined herein.

Property Owners Rights

The law grants governmental authority to acquire private property for the greater public good under "eminent domain". Just as important, and equally so, you as the owner of taken property have certain rights.

You have the right to:

- a. Receive just and fair compensation for the taking of your property.
- b. An offer of purchase which may not be less than the lowest appraisal of the fair market value of your property.
- c. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based. The appraisal copy must be furnished in a timely manner and before official contact with the acquiring CNMI agency.
- d. An opportunity to accompany at least one appraiser representative of the acquiring agency who appraises your property when an appraisal is required.
- e. Participate in good faith negotiations with the acquiring agency before

the acquiring agency begins condemnation proceedings.

- f. A determination of just compensation and the right to appeal the determination to the Commonwealth court of jurisdiction if you do not agree on a purchase price with the acquiring agency.
- g. Payment of the agreed to purchase price or, if condemned, a deposit of the compensation award before you are required to surrender possession of the property.
- h. Reimbursement for expenses incidental to transferring title to the acquiring agency.
- i. At least 90 days written notice to vacate occupied property.
- j. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for these services including the amount of the payments.

Appraisal Requirement

The Uniform Act requires that all real property to be acquired must be appraised prior to a Right-of-Way acquisition, but it also authorizes waiving that requirement for low value acquisitions.

Regulations provide that the appraisal may be waived:

- If you elect to donate the property and release the agency from the obligation of performing an appraisal, or
- If the agency believes the acquisition of your property is uncomplicated and a review of available data supports a fair market value likely to be \$10,000 or less, the agency may prepare a waiver valuation, rather than an appraisal, to estimate your fair market value.

In special circumstances, if the agency believes the acquisition of your property is uncomplicated and a review of available data supports a fair market value likely to be over \$10,000 but less than \$25,000, the agency may prepare a waiver valuation rather than an appraisal to estimate your fair market value, however, if you elect to have the agency appraise your property, an appraisal will obtained.

Eminent Domain

Eminent domain is the legal term used to describe the inherent right or power of the Commonwealth to use private property for public purposes. The use of this power is a delicate balance between the rights of the public as a whole and those of the private citizen. Federal and Commonwealth law protect the interests of each citizen, as well as the interests of the Commonwealth in serving the general public.

If the owner and the DPW do not reach an agreement for the purchase of property, the issue will go to a condemnation legal proceeding. A CNMI court may choose to hear arguments or appoint a panel or referee to view the property and hear opposing opinions of the property value. The court then determines the amount to be paid by the Commonwealth to the owner.

The DPW has the right to take possession of the property after 30 days of a deposit in the property owners name of the awarded amount with an approved authority or institution.

Just Compensation

Federal and Commonwealth law require the payment of just compensation when private property is acquired for public use. As interpreted by the courts, the normal measure of just compensation is fair market value. Fair market value means the cash price which would be arrived at between a voluntary seller that is willing, but not obligated, to sell and a voluntary purchaser that is willing, but not obligated, to buy, both of whom are acting freely, intelligently, and at arm's length, bargaining in the open market.

The property owner is contacted by a CNMI Department of Public Works right-of-way acquisition specialist to make the offer of just compensation. The amount the acquisition specialist offers as just compensation for the property will not be less than the amount of an approved appraisal. When an acquisition specialist calls on the property owner, questions can be answered concerning the highway project and issues affecting the property.

Negotiated Agreement

Although CNMI is not allowed to offer an amount less than fair market value for a property, there may be particular circumstances or conditions that warrant offering more. After an agreement is reached, the property owner signs a Purchase Agreement. The Director of the Technical Services Division of the CNMI Department of Public Works will accept the Purchase Agreement for the CNMI after the terms have been approved. Purchase Agreements with the DPW shall be in writing and there shall be no agreement to perform or not perform any act except as specifically provided for in the written agreement.

Timely Payment

After the Purchase Agreement has been approved a DPW or contracted title and closing specialist arranges to pay the property owner as soon as possible in accordance with the terms of the approved Purchase Agreement.

Notice to Move

You must be given reasonable time if it is necessary for you to move from property the Commonwealth acquires. You will not be required to move sooner than 90 days after either the Commonwealth makes the first offer to acquire the property, or 90 days from the date comparable replacement housing is available, whichever is later.

The DPW must give written notice specifying the date the property must be vacated at least 30 days before the required date the move must be completed. The 30-day written notice is not issued until the property owner has received payment from the Commonwealth or is entitled to deposited money from court settlement as prescribed by law.

Uneconomic Remnants

An uneconomic remnant is a portion of real property in which the owner is left with an interest after the partial acquisition of the owner's property and DPW has determined has little or no value to the owner. Once this determination is made the Commonwealth is obligated to offer to purchase the remnant if the owner agrees.

A tract is considered to be an uneconomic remnant, when it is not economically feasible to continue the use of this tract by itself, or as part of a larger separated remainder, because of its size, shape, access, change of use, or other detrimental characteristics resulting from the acquisition. This determination may be made during the design, appraisal or acquisition activities of the right of way process, but will generally occur during the appraisal/appraisal review or acquisition activities.

When the owner sells an uneconomic remnant to the Commonwealth, just compensation for the uneconomic remnant is required. If an owner sells to the Commonwealth only that part of the property that is needed for the highway project, the Commonwealth pays for the part that is needed and for any damages caused to the remainder.

Donation of Real Property

Owners of land needed for a highway project are entitled to receive just compensation based on an approved appraisal. If the owner chooses, the right to have the property appraised may be waived and the land donated to the Commonwealth for the highway project.

Rental Arrangements

DPW may allow the former owners of land it acquires to rent the land for a short period. The amount of rent charged will not exceed the fair short-time rental value of the property. It is also possible for the former owner of agricultural property to lease the property from the Commonwealth until it is needed for the highway construction.

Further Information

For questions, comments, and more detailed information please contact the Office of the Secretary of Public Works, Technical Services Division, Right-of-Way Administrator. Contact information is on the cover of this brochure.

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I Introduction

Overview

Purpose and Objective

The Right of Way Manual is prepared by the Department of Public Works, Commonwealth of the Northern Mariana Islands, to establish uniform procedures necessary for the Department of Public Works to carry out the functions and objectives of the Right of Way Program under the Right of Way Section. It is intended to comply with applicable Commonwealth and Federal law, regulations, policies, and procedures and is not designed to be used to substitute for CNMI law. These policies and procedures are established for the guidance and use of agencies, officers, and/or administrators of the program and those under the authorizing agency's oversight. The emphasis and prime purpose of this manual is to provide quality assurance to ensure that the CNMI and public interests are completely fulfilled and endorsed ethically and to highest levels for standards and quality.

The manual describes functions and procedures for all phases of ROW real estate programs, including acquisitions, relocation assistance, appraisal and appraisal review, negotiation, eminent domain and property management. The manual also specifies procedures to prevent conflict of interest and to avoid fraud, waste, and abuse.

The manual implements Code of Federal Regulations 23 CFR 710.201 (c) which in part mandates that each state department "which receives funding from the highway trust fund shall maintain a manual describing it's right-of-way organization, policies and procedures." The CFR further obligates other organizations or private consultants under the Department of Public Works (DPW) oversight on federal-aid projects to comply with state and federal laws, regulations, and DPW policies and practices. The manual is developed to satisfy federal agency directives to establish implementation guidelines relative to applications of federal requirements tailored to CNM1 jurisdictions and to serve as a convenient source and reference for the administration of right-of-way activities throughout the CNMI.

Contained in this manual are explanations of rights and benefits of real property owners under federally funded programs. The manual establishes and restates DPW policies and procedures for important right-of-way activities. The policies outlined in this manual have been uniquely formulated to fit the CNMI cultural, legal, and government organizational environments.

In addition to the manual, there are two FHWA publications which should be freely and continuously referred to in administering federally supported right-of-way activities. They are the *Project Development Guide* and the *Real Estate Acquisition Guide for Local Public Agencies*. The publications are available online at <u>www.fhwa.dot.gov/realestate/pdg</u> & <u>www.fhwa.dot.gov/realestate/lpaguide</u>, respectively.

Scope

The CNMI is obligated to ensure uniform, fair, and equitable treatment of persons or organizations displaced or otherwise deprived of their real property caused by the necessity for the establishment or modification of rights-of-way which are determined to benefit the welfare and general good use by the public. In doing so the CNMI endorses the principles, policies, and laws stated herein and will fully administer them in the spirit of benefiting the CNMI citizenry.

The manual includes ROW policies, instructions, procedures, standard practices, references to Federal and CNMI regulations and citations, forms and exhibits. Flowcharts are included in Appendix B.

Manual Conventions, Terms, and Definitions

Throughout the Right-of-Way Manual the terms *State* and *Agency* are used. These terms should be understood in the context in which they are presented. The terminology written in U.S. statute law when referring to "State" usually means a State of the United States with the term being prevalent in the many CFRs quoted or referred to herein. The term, unless there is a specifically noted exception, also refers to the Commonwealth of the Northern Mariana Islands or CNMI with the same exact connotation as the term "State".

Federal Highway Administration regulations and directives frequently use the term "Agency". The term refers to the CNMI Department of Public Works. Specifically, under 49 CFR § 24.2, "Definitions and acronyms, (1) *Agency*. The term *Agency* means the Federal Agency, State, State Agency, or person that acquires real property or displaces a person." Under this same CFR, "Acquiring Agency"," Displacing Agency"," Federal Agency", and "State Agency" are also defined.

To identify direct quotes or slightly paraphrased text from CFR's and similar documents, an Arial font is used at certain places in the manual.

As a matter of convenience and immediate clarification some important definitions are given at the beginning of certain chapters. Other definitions are given in Appendix C. See Appendix B for a list of forms and exhibits.

Each Manual chapter is concluded with guidelines in the form of CNMI summary requirements for the use of DPW administrators, specialists and operating personnel.

References and Sources

The manual is a composite of source data taken from CFR's, FHWA publications, other U.S. state agency manuals, UASFLA-USPAP standards, and reviews by FHWA, the Departments of Public Works and Public Lands and other CNMI agencies.

Organizational Structure and Program Overview

Department of Public Works

The Department of Public Works is an executive branch under the CNMI Office of the Governor created by PL 1-8, tit.1, ch.15, codified as amended at 1 CMC §§ 2401-2405. The Department is responsible for implementing and managing the planning, engineering, construction, and contract administration of public infrastructure including, but not limited to, buildings, roadways, drainage systems, rights-of-ways, parks, and recreational areas. The DPW is administered by the Secretary of Public Works who is appointed by the Governor with the advice and consent of the Senate.

The Technical Services Division (TSD) Director has direct responsibility for the overall management and supervision of all Division sections including the Right of Way Section. The Manager, Right of Way, has direct responsibility for implementing the Right of Way program. The Director oversees the management and expenditure of Federal Aid Funds through U.S. Federal Highway Administration programs and has responsibilities for the CNMI Local Capitol Improvement Program.

1 CMC § 2401 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

Right of Way Program & Organization

The Right of Way program objective is to ensure that appropriate research, reports, surveys, maps and documentation for the public Right of Way is provided to support the development phase of projects administered by DPW and to determine ROW boundary locations.

To accomplish major projects, additional staffing is anticipated to include (generically) a planner, real estate specialist, and a project manager/coordinator. It is essential that legal counsel be available for all FHWA-related activities. An option for DPW to obtain planning and real estate assistance may be to obtain this expertise by means of a cooperative agreement with the CNMI Department of Public Lands.

Right of Way Function, Goals, & Objectives

Functions of the Right of Way Section include research of designated public lands for rights-ofways, review of survey maps and documents, procurement of appraisal and surveying services for the acquisition of private lands, acquisition and management of real property, and issuance of ROW certification(s) necessary to implement local and foderally funded infrastructure improvements within designated Rights of Ways, and maintaining recorded documentations.

Extensive descriptions of "PUBLIC RIGHTS-OF-WAY AND RELATED FACILITIES REGULATIONS" can be found at Subchapter 155-20.1 of CHAPTER 155-20, "ROADS AND FACILITIES DIVISION" of the NORTHERN MARIANA ISLANDS ADMINSITRATIVE CODE. Part 001 of the Subchapter states the power, authority and responsibilities of the DPW. § 155-20.1-005 lists and outlines definitions which the Right of Way Section is obligated to use in fulfilling its functions.

Waste, Fraud and Abuse

The CNMI ROW Manual serves to assure accordance and compliance with the provisions of the Code of Federal Regulations, in particular, 23 CFR Part 710 and 49 CFR Part 24. DPW will take appropriate measures to prevent fraud, waste, and mismanagement in all ROW related activities.

The FHWA may withhold payment under the conditions in 23 CFR 1.36 if the DPW fails to comply with Federal law or regulation, CNMI law, or under other circumstances of waste, fraud, and abuse. One important objective stated in 49 CFR 24.1 is, "(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective."

CFR 49 18.36 is comprehensive in stating allowable and disallowable practices for federally backed procurements in general and for A & E contracting in particular which includes FHWA activities. In addition, "Conflict of Interest" guidelines for appraisers are given in Chapter III of this manual.

Federal Legal Framework

Acquisitions of private property for public uses has been a long standing precedent of the United States as originally stated in the Fifth and Fourteenth Amendments to the Constitution. These amendments clearly state under what general conditions governments at all levels can appropriate private real estate property, using such terms as "due process of law", "just compensation", and "... nor shall any State deprive any person of ... property without due process".

In addition to overseeing adherence with Constitutional protections, there are three paramount purposes of federal policies in controlling acquisition and relocation requirements.

- The encouragement of amicable negotiations with affected property owners instead of possible litigations.
- Consistent treatment of all parties connected with acquisitions and relocations.

• The building of public confidence in the honesty and fairness of the governmental processes.

Federal real estate acquisition statutes and real property acquisition and personal relocation assistance regulations in which the Federal-aid highway program operates are principally found in:

United States Code

Title 23 – Highways Title 42, Chapter 61 – Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Title 49 – Transportation

Code of Federal Regulations

23 Part 710 49 Part 24

Implementing regulations for the Uniform Act are contained in 23 CFR Part 710 and 49 CFR Part 24. Revised rules for the Uniform Act are first published in the Federal Register and subsequently incorporated in the Code of Federal Regulations (CFR).

23 CFR Part 710

The primary purpose of this part is to ensure the prudent use of federal funds under Title 23 of the United States Code in the acquisition, management, and disposal of real property.

49 CFR Part 24

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (Uniform Act), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole;

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

49 CFR 24.601

This subpart permits a state agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with state (Commonwealth) laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by 49 CFR 24.4 (see Appendix D).

§24.602 directs an agency wishing to proceed on the basis of a certification to request an application from the Lead Agency Director, Office of Real Estate Services, HEPR-1, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. The completed application for certification must be approved by the governor of the state (Commonwealth), or the governor's designee, and must be coordinated with the federal funding Agency, in accordance with application procedures.

CFR 24.603 requires the Federal Lead Agency to monitor and report to the U.S. Congress, State Agency implementation of programs or projects conducted under the certification of CFR 24.602; the Lead Agency will require periodic information or data from the implementing Agencies.

CNMI Legal Framework

CNMI real estate related acquisition and relocation statutes and regulations are referred to in the Commonwealth Constitution and CNMI Revised Statutes (see Chapter 7).

The Commonwealth Constitution: Article XIII Article XIII: EMINENT DOMAIN

Section 1: Eminent Domain Power. The Commonwealth may exercise the power of eminent domain as provided by law to acquire private property necessary for the accomplishment of a public purpose.

Section 2: Limitations. Private property may not be taken without just compensation. Private land may be taken only if no suitable public land is available for the accomplishment of the public purpose.

Acquisitions

The process of acquiring real property includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements, and condemnation. The Commonwealth will conduct acquisition and related relocation activities in accordance with 49 CFR part 24 and appropriate CNMI statute law and regulations.

II ROW Planning

Priority planning for new roadway corridors or for modifying existing ROW's is a requisite for an orderly and efficient flow of available funding and use of present and projected resources. A documented planning process is also required by the FHWA if a project is to be eligible and benefit from Federal-aid highway assistance. These planning regulations are contained in 23 CFR Part 450.

Throughout all phases of planning processes and for most of the functions attendant to right-ofway responsibilities the DPW should have access to legal counsel.

Under FHWA terms, planning begins with a long-term Statewide Transportation Plan (STP). The STP embraces all of the socio-economic, environmental, and engineering factors which will influence or impact transportation needs and modifications for at least the next twenty years. It is somewhat analogous to a transportation master plan.

The STP is followed by a Statewide Transportation Improvement Program (STIP) (23 CFR 450. 216) which sets priorities for projects expected to be started within the next three years. The terminology used by CNMI synonymous with the STIP is the TTIP (Territorial Transportation Improvement Plan). * See Special Note, Page 20.

The STP and STIP together compose one of two major components of the early planning process. Equally important is compliance with the National Environmental Policy Act (NEPA). It is the policy of the DPW to work closely with the CNMI Department of Environmental Quality (DEQ) to ensure compliance for all ROW projects. CNMI adherence with NEPA Regulations as outlined in 23 CFR 771.135 is mandatory for federal assistance projects. In addition, air quality standards must meet the requirements of U.S. EPA Transportation Conformity Regulations (40 CFR Parts 51 and 93).

23 CFR 774 addresses issues concerned with parks, recreation areas, wildlife and waterfowl, refuges, and Historic Sites. The purpose of this part is to implement 23 U.S.C. 138 and 49 U.S.C. 303, which were originally enacted as Section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as "Section 4(f)." Important elements of Section 4F are outlined in Appendix A.

Throughout the ROW planning process the DPW will exercise and implement projects dynamically and with flexibility. When modifications to the 20 year STP are appropriate the entire planning process for particular projects will be revisited. Public involvement and input will be sought from the time of project conception through implementation to completion. CNMI media and special meeting announcements will be frequently and freely circulated.

Guidelines from the FHWA Project Development Guide

Programming generally establishes the need for Federal-aid financing of a project based on the STIP developed by DPW identifying the need for a highway or road improvement through its planning process. A project may encompass more than one phase of work, e.g., preliminary engineering, ROW, or construction.

CNMI can initiate a Federal-aid project by identifying the need for a highway or road improvement through its planning process. DPW then adds the proposed project to the transportation improvement program which is submitted to the FHWA for approval. Once the CNMI program is approved, a project may be authorized. Project authorization can only occur after the CNMI programming request has been approved. No Federal-aid participation in a project is allowed until formal project authorization is given by the FHWA.

A critical document in the reimbursement process is the project agreement, which creates a contractual obligation and allows the FHWA to reimburse eligible project costs. Without the project agreement, the CNMI cannot request Federal reimbursement of expended funds. The requirements for a project agreement are set forth in 23 CFR 630. A project agreement is usually entered into at the same time or shortly after the project authorization is issued. The project agreement allows the FHWA to reimburse costs of the project.

Project authorization obligates the FHWA to reimburse the CNMI for allowable project costs and requires that Federal funds be available for that reimbursement. However, acquisition of ROW may only commence after the necessary environmental decisions have been completed.

The project authorization date establishes the date which begins Federal-aid reimbursement shown on a document transmitting the project authorization to the CNMI. Any part of a project may be authorized individually within its proper sequence according to procedures mutually agreed upon by the CNMI and the FHWA. Parts of a project which sometimes require an individual authorization may be those activities necessary for the completion of the environmental document, public hearings, preliminary ROW activities up to but not including negotiations.

Guidelines for Commonwealth STIP Development

The existing roadway systems in the CNMI can be categorized as primary roads serving the major points; secondary roads connecting village or communities; village roads which function as local residential or intra-village streets; and tourist/scenic roads.

The STIP shall include all areas of the Commonwealth, cover a period of no less than three years and be updated at least every three years. If the STIP covers more than three years, the FHWA will consider the projects in the out years as informational. In case of difficulties in developing a portion of the STIP for a particular area, e.g., special planning area or areas of legal uncertainty, a partial STIP covering the remainder of the Commonwealth may be developed.

For each legal political entity in the Commonwealth the STIP shall be developed in consultation with appropriate local officials having responsibility for transportation in their respective areas.

The CNMI Governor shall provide all interested parties with a reasonable opportunity to comment on the proposed STIP as required by 23 CFR 450.210(a).

The STIP shall include capital and non-capital surface transportation projects within the Commonwealth proposed for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 including but not limited to transportation enhancements; Federal Lands Highway program projects; safety projects; trails projects; pedestrian walkways; and bicycle facilities.

The STIP shall contain all significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53. For informational and conformity purposes, the STIP shall include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all significant projects to be funded with non-Federal funds.

The STIP shall include for each project or phase the following:

(1) Sufficient descriptive material (*i.e.*, type of work, termini, and length);

(2) Estimated total project cost, or cost range, which may extend beyond the three years of the STIP;

(3) The amount of Federal funds proposed to be obligated during each program year (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds); and

(4) Identification of the agencies responsible for carrying out the project or phase.

Detailed project information should estimate:

- personnel costs including training and travel;
- costs for environmental studies, ROW surveys, appraisals, roadway design and engineering; office equipment operation and maintenance;
- amounts necessary for real estate acquisitions and relocations;
- utility relocations;
- construction.

Projects that are not considered of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93.

Each project or project phase included in the STIP shall be consistent with the long-range statewide transportation plan developed under 23 CFR 450.214 and, in metropolitan planning areas, consistent with an approved metropolitan transportation plan developed under 23 CFR 450.322. The STIP may include a financial plan that demonstrates how the approved STIP can be implemented, indicate resources from public and private sources that are reasonably expected to be made available to carry out the STIP, and recommend any additional financing strategies for needed projects and programs.

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For illustrative purposes the financial plan may include additional projects that would be included in the adopted STIP if reasonable additional resources beyond those identified in the financial plan were to become available.

Revenue and cost estimates for the STIP must use an inflation rate(s) to reflect out year expenditures. For assistance with determining inflation rates the CNMI Central Statistics Division should be contacted (log in to <u>www.commerce.gov.mp</u>), or contact FHWA.

The STIP shall include a project, or an identified phase of a project, only if full funding can be reasonably anticipated to be available for the project within the time period contemplated for completion of the project. Financial constraint of the STIP shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues while federally-supported facilities are being adequately operated and maintained.

In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan. For purposes of transportation operations and maintenance, the STIP shall include financial information containing system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)).

Projects in any of the first four years of the STIP may be advanced in place of another project in the first four years of the STIP subject to the project selection requirements of 23 CFR 450.220. The STIP may be revised at any time under procedures adopted by the DPW subject to FHWA/FTA approval (see CFR 450.218). Changes that affect fiscal constraint must take place by amendment of the STIP.

More information for the development of STIPs can be found in 23 CFR 450.216.

Project Development General

The Project Development process typically follows a sequence of actions and approval in order to qualify for funding. Key steps in this process are

Planning and Budgeting

CNMI agencies conduct Commonwealth-wide planning to develop coordinated transportation systems under FHWA planning regulations contained in 23 CFR part 450. In addition air quality non-attainment areas must meet the requirements of the US EPA Transportation conformity regulations (40 CFR parts 51 and 93). Projects must be included in an approved State Transportation Improvement Program (STIP) in order to qualify for Federal-aid funding. The DPW ROW Section prepares cost estimates for ROW activities for each project identified in the STIP.

Public Involvement

CNMI policy strongly encourages public involvement in long-range transportation plans, including the STIP, which provides opportunities for public review. Public participation for

comment is required at key decision points. Early and continuous opportunities for involvement in transportation issues are highly important for the public-at-large, affected government agencies, private providers of transportation and other potential users of Commonwealth transportation facilities.

DPW is responsible for initiating, organizing, coordinating and conducting meetings and forums directed toward public involvement for Commonwealth transportation planning. To the maximum extent practicable DPW will ensure that public meetings are held at convenient and accessible locations and times and will provide adequate public notice for public involvement.

The DPW shall allow 45 calendar days for public review and written comment before adopting major new procedures or revising existing procedures. DPW will provide copies of the approved public involvement process document(s) to the FHWA for informational purposes.

Commonwealth policy requires local government official participation in the development of the long-range CNMI transportation plan and the STIP. A plan for consulting with local government officials shall be developed and incorporated in the STIP that is separate from the public involvement process and provides expedient opportunity for local government participation. It is advisable that FHWA be provided copies of these types of (local) activities and contacts for informational purposes.

Development of ROW Plans

After the proposed roadway has been delineated and approved by CNMI authorities, a survey shall be initiated in accordance with CNMI policies and standards. The surveys shall emanate and close on control points of the Mariana Islands District Coordinate System of 1966 (Saipan and Tinian) and the Mariana Islands District Coordinate System of 1970 for Rota. If higher accuracy standards are required for a particular project DPW shall incorporate them into a Scope of Work if the survey is contracted. Primary control, secondary control, affected ROW properties and survey monuments which may influence project positioning shall be tied to or included in a control network.

Protection of Survey Control Points and Benchmarks/Monuments

Contracts with the CNMI and/or local governments for roadway construction, reconstruction, realignments, or rehabilitations must contain provisions for the contractor to take measures to protect, restore, maintain, or otherwise preserve the position of geodetic and property survey points established by the Department of Lands and Natural Resources, other CNMI agencies, the U.S. federal government, and CNMI registered surveyors.

The contractors shall include in their bid estimates sufficient monetary amounts to engage the services of a registered CNMI surveyor to locate and provide a sketch map of existing survey monuments and control points before any construction or repaying operations are undertaken.

The estimates shall also include the cost of resetting, reestablishing, or preserving in its original location any monument or marker which is subject to being permanently covered by roadway materials. Such a monument or marker position must be retrievable by using commercially available removable covers which can be extended to the surface of the roadway.

The DPW Manager, Right-of-Way, and the Director, Division of Land Registration and Survey shall develop and coordinate a quality assurance plan for each contracted project to ensure the intent of this section is implemented. Costs for the activities of the Division for furnishing survey and platted information for monument/marker locations and descriptions and for field inspections shall be borne by the contractor.

Topography

Topographic surveys are primarily conducted for design purposes but can also be valuable in the total ROW selection process. These surveys demonstrate existing conditions and can assist with analyzing the impacts a proposed construction design would have on a particular parcel of land.

ROW Plans often require extensive research to determine property boundaries, impacts of easements and to locate improvements to the property. The location of topographic features can provide helpful evidence for use in boundary retracement surveys.

Geodetic Surveys (23 CFR Subpart D)

Geodetic surveys along Federal-aid highway routes may be programmed as Federal-aid highway projects and as such will be required to conform to National Ocean Survey (NOS) specifications. NOS, under FHWA auspices, will be responsible for the inspection and verification of the work to ensure established standards and specifications have been met and will recommend final project acceptance to FHWA.

23 § 630.404 Standards

(a) Highway purposes may best be served by the establishment of station markings for horizontal control along Federal-aid highway routes at spacings of three to eight kilometers (about 2 to 5 miles) and station markers for vertical control of spacings no closer than one kilometer. <u>These requirements may be waived</u> only with the approval of the Administrator.

(c) Where geodetic station markers cannot be established initially at points readily accessible from the Federal-aid route, or where unavoidable circumstances result in their being established within construction limits, supplemental projects may later be approved to set and survey markers at satisfactory permanent points, preferably within the right-of-way but at points where their use does not introduce traffic hazards.

The Division of Land Registration and Survey has developed stationing standards which better fit the geographic conditions of the Commonwealth. These standards are to be used in lieu of the federal standards.

Utilities

For planning and allocating utility relocation and construction costs, it is necessary to know, a) utility type, b) its ownership, c) if the utility must be moved, and (d) the ownership of the property or easement occupied. The ROW plan should indicate the location and type of all utility lines and irrigation canals lying within the proposed project limits. Both government and private utilities must have agreements with DPW.

Utility Agreements

When a utility is to cross or occupy a right-of-way DPW will require that the terms of use be written in a formal agreement, documented and approved by the CNMI and the public or private entity owner. This requirement applies to new highway construction, to planned improvements of existing highways, and to renewals of prior agreements.

The terms for the utility installation must at a minimum include the specific location, summary of the planned construction with provisions for maintaining safe traffic flow, access restrictions, impacts of expected utility maintenance, the size, type, nature, and extent of the utility facilities to be located within the highway right-of-way and other details DPW considers important.

Drawings furnished by the existing or proposed utility owner showing the existing and/or proposed location of the utility facilities in the right-of-way with respect to planned highway construction or improvements should include the normal travel corridor, right-of-way lines, and existing and proposed access lines and points.

The formal agreement will state the extent of liability and responsibilities of the public or private utility owners with emphasis on possible future conditions and adjustments necessary to accommodate highway right-of-way improvements, and penalties for non-conformance.

Preliminary Right-of-Way Plan Field Work

Preliminary work should include ownership and rights determinations. The work should be done by DPW in coordination with the CNMI Division of Land Registration and Survey. DPW has the option to contract elements of this work with licensed CNMI surveyors or other professional such as real estate specialists.

- 1) Identification of Property Owners:
 - a. Identify affected ownership using preliminary ROW design plans;
 - b. Obtain CNMI Recorder documents pertaining to the ROW parcels;
 - c. Search for encumbrances, releases, and easements;

- d. Make physical inspection of property. Note physical evidence of easements, wells, ditches, ingress and egress;
- e. Identify related subdivision plats and vacations of streets.
- 2) Secure additional survey corner ties and additional topography where the roadway improvement may affect improvements adjacent to the ROW. This additional survey work and topography should include:
 - a. Underground cables and conduits;
 - b. Wells;
 - c. Irrigation ditches and systems;
 - d. Septic tanks, cesspools, and leaching fields.;
 - e. Important landscaping features.

As part of both environmental and infrastructure considerations, utilities which occupy selected ROW's and their possible relocations demand special attention. Utility factors for new or modified ROW's can involve complex and crucial challenges requiring coordination and negotiation by responsible authorities, private or public.

Right-of-Way Plan

Following CNMI decisions about the need for a particular roadway project and a tentative location has been identified, several alternatives should be considered. Best alignments will need to be analyzed with various interwoven considerations. The number of persons and affected businesses, displacement costs for individuals and groups, possible hazardous materials and contaminants in the construction corridor along with clean-up costs are examples.

Once a preliminary roadway corridor is selected, a right-of-way plan will be prepared. This ROW plan will illustrate and annotate construction elements including the center and outside ROW lines, various design features, and identification of enjoined property owners. Enough detail is to be collected that will allow for legal parcel descriptions and identification of those parcels requiring on-the-ground surveys. The Plan should identify which project activities require a Scope of Work.

The Scope of Work shall include, as required submittals, a project justification and description, funding sources, volume and special aspects of the required work, necessary procurements, zoning restrictions, survey data computations, as-built diagrams, ownership holdings, utilities, nature and location of signage, and a listing of DPW-provided assistance services.

ROW Plans developed for appraisal and acquisition purposes may require detail exterior to construction boundaries which have little to do with the actual construction, such as for uneconomic remnants.

Improvements

Visible or known improvements (buildings, signs, and leaching fields) indicated in the Scope of Work within the proposed ROW and extending 50 feet beyond the proposed ROW boundary must be located and shown on the ROW Plans. Particular attention should be given to the following:

- 1) Underground cables and conduits location, size, owner, where they originate and terminate;
- 2) Wells location, size, owner, area served;
- 3) Irrigation ditches and systems location, size, owner, where they originate and terminate, parties served;
- 4) Septic tanks, cesspools, and leaching fields location, size, in use or abandoned;
- 5) Underground storage tanks owner, location, size, capacity, when installed, condition.

Contents of ROW Severance Plat

The Division of Land Registration and Survey promulgated standards and procedures governing the preparation of property maps for government approval and recording with the Office of the Commonwealth Recorder.

The Saipan Zoning Law of 2007 requires all survey plats to be submitted to the zoning office for review and compliance of their contents relative to zoning restrictions.

The contents of ROW severance survey plats are to include, but not limited to:

- A. General
- 1. Basic lot boundary survey (must be platted and recorded before a ROW severance survey is started);
- 2. Reference to ownership title, deeds, approved and recorded plats, adjoining ROW property owners;
- 3. Depiction of existing horizontal survey control with ties to the subject property;

- 4. Comparison of record data to current survey data.
- B. ROW Data
- 1. Monuments at points of intersection of private property lines with the proposed ROW boundaries, and at the beginning and ending of curves;
- 2. As built structures, improvements, and natural objects in the proposed ROW corridor and to 25 feet beyond the ROW limits, significant enough for inclusion in appraisal processes;
- 3. ROW width, lot lines of adjoining properties, lot numbers, recorded document numbers, bearings and distances, parcel areas (measurements in meters using one survey foot equal to 3.280833 feet);
- 4. North arrow, bar scale, notes, legends, standard DLRS title block;
- 5. Encroachments with area of overlap.
- C. Plat Size and Type

Standard ROW survey plats are 24 by 36 inches, drawn on Mylar film.

Right-of-Way Certification Requirements 23 CFR 635.309(b) and (c)

Certifications to the FHWA of the acquisition status of ROW are necessary for advancing project to the PS&E level. A certification addresses the status of required relocation activities coincident with the project. It is critical to contract administration that the exact acquisitions status for the project be known at the time a construction contract is advertised and awarded.

Key elements of the certification report must include assurance that

- 1. all necessary acquisitions of ROW are lawfully completed (thus making it unlikely that project contracts will be stopped by litigation);
- 2. all affected parties are relocated and residential occupants have decent, safe, and sanitary housing;
- 3. encroachments and acquired structures within the ROW are identified along with how they will removed;
- 4. safe disposal of hazardous waste is planned with information as to contractor responsibilities.

23 CFR 635.309(g) requires a certification statement that ROW was acquired in accordance with applicable Federal Highway Administration (FHWA) directives or that acquisition of ROW is not required.

Example certification forms are available for use in Chapter 13 of the FHWA Project Development Guide which can be accessed at <u>www.fhwa.dot.gov/realestate/pdg</u>.

Construction Start-Up

Construction bids can only be solicited following an approved ROW Plan and completion of acquisitions, relocation assistance, and preparation of the ROW certification attesting that applicable laws have been complied with and those properties which will be used for the ROW are free and clear of encumbrances. Provisions for early construction start-ups are outlined in subsequent Chapters.

For planning activities and subsequent operations the directives and guidelines of 23 CFR 710.201 will be implemented by the DPW. Key elements of 710.201 are summarized and paraphrased from the following sections:

(g) Procurement. Contracting for activities required in support of Commonwealth rightof-way programs through use of private consultants and other services shall conform to 49 CFR 18.36. This CFR contains detailed rules for the administration of federal grant funds which can also be within the framework of existing CNMI procurement regulations and procedures.

(h) Use of other public land acquisition organizations or private consultants. The DPW may enter into written agreements with other Commonwealth, municipal, or local public land acquisition or managing agencies and organizations or with private consultants to carry out its responsibilities. Such organizations, firms, or individuals must comply with the policies and practices of the DPW. The DPW will monitor any such real property acquisition activities to assure compliance with Commonwealth and federal law and requirements and is responsible for informing such organizations of all such requirements.

(i) Approval actions. The DPW and the FHWA will agree on the scope of property related oversight and approval actions for which the FHWA has responsibility. The content of the most recent oversight agreement shall be reflected in Commonwealth documentation. The oversight agreement will indicate what materials and documents are required to be submitted by the CNMI for review and approval by the FHWA.

(k) Description of acquisition process. The DPW shall provide persons affected by projects or acquisitions advanced under title 23, U.S.C. with a written description of its real property acquisition process under Federal/Commonwealth law 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.

Prior to the advertisement of bids, the Secretary of the CNMI Department of Public Works must certify that the ROW is available for construction. Elements for this certification include,

title to all properties and easements is vested with the Commonwealth or otherwise controlled through permit, license, MOU, or recorded formal consent filed with the DPW;

property or property rights held by federal agencies have vested with the CNMI or have otherwise been formally permitted for ROW construction;

persons and businesses who are required to move or move personal property have been relocated from the project right of way;

structures and improvements have been removed from the project right of way or will be removed as part of the construction contract;

NEPA rules and guidelines have been or will be enforced for asbestos abatement for structures removed or scheduled for removal.

Allowable exceptions to final certification for construction starts include, on a case by case basis, factors and situations which are conducive to expediency and logistical arrangements resulting in an eventual benefit for the project. These exceptions are subject to prior approval by the FHWA and must be rectified before construction begins on the affected portion of the project.

ROW Planning Summary

To meet federally mandated requirements to obtain funding support, documentation must be prepared as part of the general and specific planning processes.

Included are:

The Statewide (Commonwealth) Transportation Plan (STP), a comprehensive master plan encompassing the integration of existing transportation corridors with projections for new routes and capabilities to accommodate anticipated public and private needs. The STP should embed all possible factors which will potentially influence components of the total infrastructure and social well being of the population ranging from environmental effects to business developments. The STP is not limited to those projects which would be supported by federal funding - it should include the total transportation planning spectrum.

The Statewide Transportation Improvement Program STIP (TTIP) brings the focus of the STP a step closer to an actual project basis by prioritizing projects for roadway construction, remediation, and other public uses during the next three years. The emphasis of the TTIP should be on financial estimates for individual projects with breakdowns of the amounts and sources of funding support. Detailed descriptive information for specific projects should be provided such as types of work involved, expected duration of the project, and functions to be served.

Prior to the development and preparation of a right-of-way plan for a specific project preliminary work is needed including property and topographic surveys, improvements identification and location, and utilities and easements delineations. Preparation of a current and entirely correct severance plat with potentially affected owners within and exterior to the ROW corridor is a necessity. See Appendix H for a handbook type summation of the survey component as part of the planning process.

The final right-of-way plan or set of plans will combine all of the previously mentioned elements in a singular or array of representations for use as a guiding master plan for various project users.

The sequence of preliminary work elements leading to the final ROW Plan preparation will vary depending on particular project circumstances and management overview.

The following guidelines are taken (edited) from the FHWA Project Development Guide:

An environmental impact assessment is required by the NEPA of 1969, as amended. NEPA mandates a systematic, interdisciplinary approach be used in assessing the impact of a project. The level of this analysis will vary with the type of project being proposed. A proposed project has three possible levels of environmental assessment: Categorical Exclusion (CE), Environmental Assessment (EA) or Environmental Impact Statement (EIS). Project actions which do not individually or cumulatively involve significant social, economic, or environmental impacts result in a CE or EA.

During the environmental analysis process ROW representatives can assist project development by actively participating and identifying environmental problems and solutions caused by,

Social and economic impacts;

Acquisition impacts;

Relocation impacts;

Other project impacts.

DPW must have procedures approved by the FHWA for public involvement or public hearing programs pursuant to 23 U.S.C. 128 and 40 CFR, parts 1500-1508.

The public involvement or public hearing procedures provide for:

- Coordination of public involvement activities and public hearings with the entire NEPA process.
- Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.

- One or more public hearings or the opportunity for hearing(s) to be held by DPW at a convenient time and place for any Federal-aid project which requires significant amounts of ROW, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.
- Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information.

* Modification of the STP, STIP and other program requirements outlined by FHWA directives may be proposed to the FHWA for possibilities leading to acceptance of the improvement recommendations from the <u>Comprehensive Highway Master Plan Study 2008</u> (Prepared by Parsons Brinckerhoff, San Diego, California), especially with respect to length of planning durations and substitution for the STP.

III APPRAISALS

Conflict of Interest

The conflict of interest provision objective in 49 CFR § 24.102(n) is to minimize the risk of fraud while allowing CNMI agencies to operate as efficiently and freely as possible. There are three parts to this conflict of interest provision:

The appraiser, review appraiser, or person performing the waiver valuation (value finding) shall not have any interest, direct or indirect, in the real property being valued for CNMI.

Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators for a project or program may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work.

An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. (Appendix A, CFR 24.102(n)).

The intent of this conflict of interest provision is to ensure appraisal/valuation independence and to prevent inappropriate influence. It is not intended to prevent DPW or other CNMI agencies from providing appraisers/value-preparers with appropriate project information and participating in determining the scope of work for the appraisal or valuation.

Appraisal Requirements

The appraisal, including its review and approval by the acquiring agency is the foundation on which the entire effort to provide property owners just compensation is built. The Uniform Act requires that the property be appraised before an acquiring agency begins negotiations to acquire it and that the amount of the approved appraisal be the basis of the offer of just compensation. Additionally, Uniform Act regulations (49 CFR. Part 24, Subpart B) require that appraisals be reviewed and approved.

Real property acquisition appraisal requirements for federal and federally-assisted programs are stated in 49 CFR 24.103(a) "Appraisal requirements". This section sets forth the requirements for real property acquisition appraisals for federal and federally-assisted programs. Appraisals

are to be prepared according to these requirements which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). Commonwealth agencies may have appropriate appraisal requirements that supplement these requirements.

For federally-assisted programs the Commonwealth will adhere to the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).

The federal appraisal requirements (49 CFR 24.103) are designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements. They are also consistent with certain Standards Rules of the USPAP. This consistency relationship was recognized in the U.S. Office of Management and Budget Bulletin 92-06.

While these (federal) requirements (UASFLA) are considered consistent with USPAP, neither set of standards can supplant the other. Their provisions are not identical or interchangeable. Appraisals performed for federal and federally-assisted real property acquisition must follow the UASFLA mandated regulations. An appraiser who is working within the bounds of USPAP should recognize that compliance with both USPAP and UASFLA requirements may be achieved by using the Supplemental Standards Rule and the Jurisdictional Exception Rule of USPAP, where applicable.

An example of application of the Supplemental Standards Rule can be taken from the USPAP Manual, Page 14, "... public agencies such as state highway departments, have published written standards. Any appraiser under contract with a local, state, or federal agency should have a copy of the appropriate published supplemental standards and incorporate the requirements of the standards in the work product."

Commonwealth agencies may enhance and expand on the federal requirements to the extent that there is no conflicting legality.

A Commonwealth agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing a scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these (stated) requirements depends on the complexity of the appraisal.

Commonwealth agencies have the responsibility to assure that the appraisals it obtains are relevant to program needs, reflect established and commonly accepted federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in 49 CFR 24.2(a)(3) and the five following requirements:

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (ii) Consideration of 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. See the "Methods of Valuation" section of this Chapter for an outline of valuation methods.

(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 real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser."

Before the initiation of negotiations the real property to be acquired for Right-of-Way purposes shall be appraised (except as provided in CFR 24.102 (c) (2)) and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

Appraisal Waiver

The Uniform Act gives the lead agency (FHWA) the authority to develop procedures for waiving the appraisal requirement in cases of low-value, non-complex acquisitions. Appraisal waiver provisions are found in 49 CFR 24.102(c).

An appraisal is not required if:

The owner is donating the property and releases the Commonwealth from its obligation to appraise the property; or

The Commonwealth determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less based on a review of available data.

The Federal Agency funding the project may approve exceeding the \$10,000 threshold up to a maximum of \$25,000 if the Commonwealth Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and the regulations of waiver no longer apply.

The purpose of the appraisal waiver provision is to provide Agencies a technique to avoid higher costs and delays with the intent that non-appraisers make the waiver valuations. From CFR Section 24.102(c)(2), "Appraisal, waiver thereof, and invitation to owner. The purpose of the appraisal waiver provision is to provide Agencies a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The intent is that non-appraisers make the waiver valuations, freeing appraisers to do more sophisticated work."

To be qualified to make the waiver valuation the Agency employee making the determination to use the appraisal waiver process must have sufficient understanding of appraisal principles to be able to determine whether the proposed acquisition is low value and uncomplicated, and have adequate knowledge of the local real estate market.

Waiver valuations are not appraisals as defined by the Uniform Act and under these regulations; therefore appraisal performance requirements or standards regardless of their source are not required for waiver valuations. However, the Agency must have a reasonable basis for the waiver valuation and an Agency official must still establish an amount believed to be just compensation to offer the property owner(s). Owner accompaniment and appraisal review are not Federal requirements when waiver procedures are used. However, the strictures outlined in the "**Conflict of Interest**" section of this Chapter apply equally to the conduct of appraisal waivers.

Scope of Work

CNMI policy requires that a "Scope of Work" be prepared for all federal interest appraisals. The SOW should contain general expectations from the appraisal and address the needs of the agency and the requirements for federally-assisted program appraisal practice. Specific SOW's are best developed cooperatively between the assigned appraiser (if contracted) and a CNMI agency official who is qualified and knowledgeable in appraisal practice.

The SOW should include the purpose of the appraisal and a clear description of the property being appraised. If a fair market value method is used, an applicable definition and the assumptions and limiting conditions affecting the appraisal must be stated. It may include guidance for research and identification of methods to be considered, including approaches to value. See the "Methods of Valuation" section of this Chapter for an outline of valuation methods.

The scope of work should address the specific requirements in 49 CFR 24.103(a)(2)(i) through (v) and address them, as appropriate. Of particular note are:

Section 49 CFR 24.103(a)(2)(i). The appraisal report should identify the items considered in the appraisal to be real property as well as those identified as personal property.

Section 49 CFR 24.103(a)(2)(ii). All relevant and reliable approaches to value are to be used. However, where an agency determines that the sales comparison approach will be adequate by itself and yield credible appraisal results because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach and be reflected in the scope of work.

Appraisals for CNMI may not include payment of relocation assistance benefits or assume that relocation payments will be made. Appraisals must be independently prepared and each appraisal must be signed by the individual making the appraisal and include the appropriate certification prior to submittal for review.

Qualifications of all appraisers and technicians who contribute to the report must be in the report. Fee (contract) appraisers hired to perform appraisals for CNMI must be certified by the Commonwealth Board of Professional Licensing. Appraisals must be consistent with 49 CFR § 24.103, USPAP, and UASFLA standards.

Notice of Decision to Appraise

The appraiser must advise the property owner of a Commonwealth decision to appraise the property. The notice must be in writing and cover the following:

- A. A specific area is being considered for a particular public use, i.e., the project;
- B. The owner's property is located within the project area;
- C. All or a portion of the owner's property may be acquired for public use.

The letter will offer the owner (or the owner's representative) the opportunity to accompany the appraiser for an inspection of the property, and will give reasonable advance notice. There is no mandatory format for the notice.

Enclosed with the letter to the owner will be the following:

- A. Written explanation of CNMI land-acquisition policies and procedures.
- B. Federal and CNMI brochures especially prepared for acquisition and relocation explanations pertaining to affected property owner and tenants rights and entitlements under the Uniform Act and CNMI law.

Just Compensation

The CNMI Constitution guarantees property owners their property may not be taken for public use without payment of just compensation.

For highway acquisition, if an entire tract or parcel of property is taken, the amount of compensation is the current fair market value of the entire property on the date of valuation. If only a portion of a tract or parcel of land is taken, the damages and special benefits, if any, to the residue of the property are to be determined. In determining the amount of compensation to be paid for such a partial taking, the compensation for the property taken and damages to the residue of said property shall be reduced by the amount of any special benefits which result from the improvement or project, but not to exceed fifty percent of the total amount of compensation to be paid for the property actually taken.

The ultimate determination of just compensation rests with courts of law. Appraisers do not determine just compensation. Appraisers are charged with the duty and responsibility to estimate compensation. However, the amount offered to the property owner must be at least the amount

of the approved appraisal. From Section 49 CFR 24.102(d) Establishment of offer of just compensation, "The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property."

When considering just compensation amounts under federally supported programs, all involved parties should keep in mind that in the absence of a statutory mandate, the United States must pay only for what it takes, not for opportunities that the owner may lose.

Fair Market Value

Compensation for property acquired or taken for public purposes in the CNMI is based on fair market value. Appraisals prepared for DPW are based on the following definition of fair market value and is widely use in the appraisal industry:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- I. buyer and seller are typically motivated;
- 2. both parties are well informed or well advised, and acting in what they consider is their best interest;
- 3. a reasonable time is allowed for exposure in the open market;
- 4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto, and
- 5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted anyone associated with the sale.
- 6. Fair market value is not to be linked to a specific exposure time estimate. The value estimate is based on exposure on the open market for a reasonable length of time. This CNMI determination is a jurisdictional exception to USPAP Standards Rule 1-2(c).

Property rights will be appraised at current market value. The property will be appraised as though free and clear of all liens, bond assessments, and indebtedness. The property will be appraised at its highest and best use, considering its legal and economic utility and desirability. Highest and best use is considered to be the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value.

Any decrease or increase in the fair market value prior to the date of valuation of real property caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical

deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

The market value of required property is the total appraised value of the property rights proposed for purchase including net damages, if any, to the remainder.

Since market value and just compensation are two of the most important elements in support of legitimate appraisals the following section from the California ROW manual is quoted, i.e.,

7.01.01.01 Definition of Market Value, "The measure of "just compensation" is "market value." Section 1263.320 of the Code of Civil Procedure defines market value as:

"(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

"(b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable."

Highest and Best Use

Certified appraisals necessarily require determination of "highest and best use". Under UASFLA standards the appraiser's first step is to estimate the highest and best use of the land as if it is vacant. If there are improvements, a second highest and best use is estimated. Reliable estimates may involve marketability-feasibility studies.

Four criteria must be met for all highest and best use determinations: physically possible; legally permissible; financially feasible; and a result with the highest value. Each of these items must be addressed in the appraisal report. The use that conforms to the first three criteria and is the most profitable constitutes the highest and best use for the property.

The Colorado DOT ROW manual describes highest and best use as follows:

3.12.19 - Highest and Best Use

Highest and best use is the fundamental concept to real property valuation. Recognition of a property's highest and best use has been universally accepted by the courts as the proper valuation concept employed under the power of eminent domain. Highest and best use is the most important and necessary analysis performed when estimating value of real property. The importance does not cease with just estimating highest and best use of the total property or in the before condition, it is just as important to accurately estimate the value of the residue after the taking. A highest and best use analysis of the after situation is a totally independent study of the

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residue, not just a modification of the study of the property's highest and best use in the before situation. If the appraiser does not estimate the property's highest and best correctly in the before and after situations, it will be impossible to estimate reasonable market value correctly.

Highest and best use will affect each of the three major methods to valuation; cost approach, sales comparison approach and income approach. A review appraiser must know how highest and best use affects land value, building value, depreciation, rental rates, vacancy rates, land to building ratios, contributory value of improvements, capitalization rates, expense ratios, etc. and be aware of any circumstances where the appraiser has misapplied the valuation method with the estimated highest and best use determination. The consistent use theory must not be violated. Land cannot be valued under one highest and best use and the improvements valued under a different highest and best use. Likewise, damages cannot be estimated based on a different highest and best use than the highest and best use determined for the land.

Determination of Larger Parcel

Federal appraisal standards as stated by the Interagency Land Acquisition Conference, Washington, DC, 2000, in their Uniform Appraisal Standards for Federal Land Acquisitions mandate that a larger parcel determination be made by appraisers in arriving at a highest and best use analysis.

In making a larger parcel determination the appraiser is required to consider tracts of land in the light of contiguity or proximity, ownership unity, and highest and best use unity. This determination is irrespective of total or partial acquisitions and is conducted on an economic basis as opposed to such factors as the "value to the public or government".

Appendix C contains a definition of "Larger Parcel", however, the application of the concept can become highly complex in the legal sense and is beyond the scope of this Manual to adequately describe. If not familiar with larger parcel determinations as related to highest and best use, DPW assigned appraisers should develop a background for this association.

A complete copy of the UASFLA 2000 standards conference can be accessed online at <u>www.appraisalinstitute.org</u> or <u>www.justice.gov/enrd/land-ack</u>.

Valuation of Special Use Property

A just and equitable method of determining the value of nonprofit, special use property for which there is no relevant, comparable market is:

"The cost of purchasing land and the reasonable cost of making it suitable for the conduct of the same nonprofit, special use, together with the cost of constructing similar improvements."

This method of valuation pertains only to those properties where all of the following apply:

1. Operated for a special nonprofit use such as a school, church, cemetery, hospital or a similar property;

2. Tax-exempt;

- 3. Not owned by a public entity;
- 4. There is no relevant, comparable market.

Appraisal Report

Appraisal reports prepared for DPW will contain all basic information and conclusions with pertinent support. The report shall contain information about the properties and general aspects of the entire project. Additional backup information such as detailed improvement descriptions and plans, photographs, bids, detailed cost studies, interview records, comparable data, utility relocation studies, and other items should be maintained until acquisition is complete and the files are no longer necessary for record or testimony.

49 CFR 24.9(a) requires an agency to maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which entitled.

The format to be followed by appraisers is the following:

FORMAT FOR FEDERAL APPRAISAL REPORTS

PART I – INTRODUCTION

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

PART II – FACTUAL DATA-BEFORE TAKING

- 11. Legal description
- 12. Area, city and neighborhood data
- 13. Property data:
 - a. Site
 - b. Improvements
 - c. Equipment
 - d. Use history
 - e. Sales history 5 years
 - f. Rental history

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- g. Assessed value and annual tax load
- h. Zoning and other land use regulations

PART III - DATA ANALYSIS AND CONCLUSIONS - BEFORE TAKING

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

PART IV - FACTUAL DATA- AFTER TAKING

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

PART V – DATA ANALYSIS AND CONCLUSIONS – AFTER TAKING

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

PART VI - ACQUISITION ANALYSIS

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

PART VII – EXHIBITS AND ADDENDA

- 32. Location map
- 33. Comparable data map
- 34. Detail of comparative data
- 35. Plot Plan
- 36. Title evidence report

- 37. Other pertinent exhibits
- 38. Qualifications of appraiser

Appraiser(s) Certification

For federally related acquisitions the CNMI requires that each written real property appraisal report contain a signed certification with (minimum) content according to the following:

- the statements of fact contained in this report are true and correct.
- 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.
- --- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.
- --- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- 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 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.
- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform* Appraisal Standards for Federal Land Acquisition
- I have (or have not) made a personal inspection of the property that is the subject of this report.
 (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

Methods of Valuation

Value Approaches and Reconciliation

The appraisal of all properties can utilize three approaches to value as appropriate. If an approach is not used, an explanation will be given for the non-applicability of the particular approach. Even if not required, separate approaches may be used if helpful. The final reconciliation of value will be made considering the relative validity and reliability of each approach and will be the best estimate of the value of the entire property. The basis of reconciliation and relative considerations will be explained as necessary.

Reconciliation is the comparison and analysis of the method and results of each appraisal approach resulting in the best and final supportable estimate of value. Reconciliation is neither a

correction of errors nor an averaging of the estimates reached separately by each of the examined approaches. Averaging is not a satisfactory reconciliation procedure.

The final estimate of value should be further segregated for total charges to such circumstances as lessee-owned improvements, partial acquisition, and joint acquisitions. Separate approaches and reconciliations for before and after conditions may be required to measure severance damages.

Sales Comparison Approach

The Sales Comparison Approach is required in most appraisals. The only exception is for certain governmental, public utility, or special-purpose parcels under specified circumstances. Comparable data will be fully utilized for direct comparison of total values, land values, improvement values, for information for other approaches, and for damage and special benefit studies. It is important to use similar properties when employing this method.

The most reliable comparable data are the sales and listings of properties similar to the subject property. Valuable information may be gained for all three approaches by studies of similar properties with regard to such factors as use and development, well-informed opinions, independent appraisals, depreciated values, after condition land use, remainder parcel and excess parcel sales, and income-expense experience. Each factor or value element in the appraisal which can be supported by comparable data attains greater reliability. There may be instances where there is sufficient comparable data to very clearly support the value indicated by the Sales Comparison Approach without the need for analysis by other approaches.

Proper analysis of comparable data in relation to the subject property is basic to the Sales Comparison Approach. The following procedures are not intended to serve as instructional guidelines for DPW staff to perform professional appraisals. They are intended to provide an introduction to elements of appraisals when conducted by certified appraisers and should be helpful for DPW in preparing scopes of work and other documentation.

To achieve high quality in relating comparables to a subject property, professional appraisals consider and use:

A. Comparable-data prices which may be compared in terms of whole properties. However, to facilitate comparison, reduction of comparable prices to a common denominator or unit of comparison may be desirable. Examples are price per square foot and price per dwelling unit. Applicable adjustments may be made on either the whole property or unit of comparison basis.

B. Six basic elements of comparable adjustment are: property rights conveyed; financing terms; conditions of sale, i.e., motivations of the buyer or seller; expenditures immediately after purchase (expenditures a buyer will have to make immediately upon purchase, e.g., demolition costs, hazardous waste cleanup); market conditions (time); physical characteristics, e.g., location, size, shape, topography, access.

Each appraisal must contain a sufficient description of the comparable sales including the specific elements of comparison made so it is possible for the reader to understand the conclusions drawn by the appraiser from the comparable sales data.

DPW and FHWA policy mandate that quantified adjustments shall be the primary method of adjusting comparable data. The quantified adjustments can be expressed as a percentage or dollar amount and represent a market derived adjustment or, absent that, the appraiser's opinion of the comparative weight for the element of comparison to be made.

In limited circumstances when the appraiser cannot find market derived adjustments or form an opinion of the comparative weight for the element of comparison to be made, qualitative adjustments can be used. Qualitative adjustments require more extensive analytical reporting. To merely state that the comparable is superior or inferior is not acceptable. Each element of comparison must be discussed in detail.

Cost Approach

The Cost Approach is required in the valuation of improved properties where income and market data are limited. In the valuation of improved properties where there is sufficient comparable data to estimate the value of the property by the market and income approaches, the Cost Approach is optional. However, the Cost Approach may still be appropriate and advisable in these cases for reconciliation with the Income and Sales Comparison Approaches. An analysis and support of depreciation must accompany the Cost Approach.

The basis for "cost new" estimates must be supported by acceptable cost sources. Included are valuations of buildings, structures, machinery and equipment and all other improvements pertaining to the real property. Examples of acceptable cost-new sources are:

- recent actual construction costs of similar improvements;
- cost data services (businesses);
- architects, engineers, contractors, builders and supplier estimates;
- actual written bids from contractors, engineers, suppliers;
- manufacturers' catalogs.

Cost references must be itemized in the appraisal report.

Income Approach

The Income Approach is usually required for valuation of properties that are bought and sold in the market on the basis of income. This would most often occur with smaller residential income properties. Use of the Income Approach in those cases is optional. However, its use may still be appropriate as a check against the other approaches. In most cases involving income property inclusion of an Income Approach is expected. When the Income Approach is used, documentation to support each element, including income, expenses, and rate(s) must be included in the Appraisal Report. A schedule of actual and fair income will be included as a supplement. The schedule will show the rental basis including furniture or utilities supplied, and the reasons for adjustment to fair rents.

An appraisal checklist that complies with the Uniform Appraisal Standard for Federal Land Acquisitions (UASFLA) is contained in Appendix G.

Easements

Permanent Easements

Permanent easements of less than fee title, such as drainage easements, slope easements, and utility easements will be valued by the loss of utility and desirability before and after the imposition of the easement. This loss may be expressed as a percentage of the property unencumbered fee value. An easement also may involve improvements taken and possible damages and specific benefits to the residue after take.

Temporary Easements

A temporary easement is defined as "An easement granted for a specific purpose and applicable for a specific time period. A construction easement, for example, is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner." (Appraisal Institute, <u>The Dictionary of Real Estate Appraisal</u>, Fourth Edition, Chicago, 2002, p. 288).

DPW policy is that compensation due for a temporary easement is the reasonable rental value for the time the easement is used.

Temporary easements such as a detour will be valued by the loss of utility and desirability of the area for the time the temporary easement is needed. This rental value may be expressed as a discounted land rental for the period of the loss of the owner's actual use of the temporary easement area. The basis of valuation and term of loss of actual use should be described.

Restoration costs after termination of the temporary easement are a legitimate consideration. The appraiser shall be provided with a Letter of Information from DPW relating whether any improvements in the temporary easement will or will not be replaced as part of the construction project.

Access Rights

Access rights are subject to governmental alteration police power and eminent domain. The government's police power must be reasonable. When police power is applied reasonably, the abutting property owner is not entitled to any compensation, even though the government's action may decrease the value of the property. Examples of police power action would be the

conversion of a two-way street into a one-way street, the elimination of left turns into and out of a property, and the diversion of street traffic to an alternate route. When the government alters access rights under the power of eminent domain, however, the property owner is entitled to compensation. Unreasonable access restrictions are compensable.

Access rights, which are part of the real estate owner's bundle of rights, include the right of reasonable ingress and egress, the right of reasonable light and air, and the right of reasonable right to see and be seen.

The imposition of access control is not a taking of a property right. The restriction of access is measured by the loss of value of the property rights before and after the restriction. The restriction of access may not be compensable. Application of access considerations must be consistent with Commonwealth law. When questions arise concerning issues on the restriction of access, DPW shall contact the Office of Attorney General for legal guidance about this issue.

Appraisal Review

All appraisals are reviewed to:

1. Comply with the FHW A requirement for a review.

2. Ensure that the appraiser's documentation including valuation data and the analysis of that data demonstrates the soundness of the appraiser's opinion of value and that the appraisal report conforms to the requirements of this Chapter and established appraisal practices.

3. Ensure that the appraised amount is equitable and represents a proper amount for the offer of just compensation in accordance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended.

DPW may internally conduct the required review if there is a fully qualified staff member(s) sanctioned by the Secretary to perform this work. The alternative is to contract with a CNMI licensed, federally qualified, appraiser to conduct the review appraisal.

The review appraisal, at a minimum, determines the adequacy and appropriateness of the appraisal report being reviewed to ensure that it is based on sound appraisal theory and contains appropriate documentation to support the appraisers' conclusions. It should also accomplish the requirement that the approved appraisal represents the fair market value of the property and a proper amount for the offer of just compensation.

If a review appraiser concludes that an appraisal report is unacceptable, the review appraisal report must include the reasons for the reviewer's conclusion. When the scope of work requires the review appraiser to evaluate compliance with specific USPAP requirements it is appropriate to analyze those compliances although USPAP does not in general require review determinations to include compliances or non-compliances.

Definitions

Administrative Review - this review ensures that the appraisal contains the proper forms, is in proper sequence, and the arithmetic is correct. The administrative review is usually less detailed than a technical review, and the administrative reviewer does not render an opinion as to adequacy of the opinion of value.

Technical Review - performed for the purpose of forming an opinion as to whether the analyses, opinions and conclusions in the appraisal report under review are appropriate and reasonable and that the appraisal complies with the Uniform Act, the requirements of this Chapter, and established appraisal practices.

An administrative review can be completed by qualified DPW staff and then transferred to a CNMI sanctioned appraiser for technical review or both the administrative and technical review can be assigned to the selected review appraiser.

USPAP Standard Rules

The following is a summary of key elements of the Rules. This summary should not be substituted for a complete reading of the most recent **USPAP** publication which can be viewed online at <u>www.uspap.org</u>.

Standard 1 encompasses or requires,

adequate identification of the real estate; analysis of sales of the subject property

during the three years prior to the current date of the appraisal; a statement that the standards do not absolutely require that any of the accepted approaches for value including sales comparison (although recommended) be used; when developing a market value the appraiser must state an opinion of reasonable exposure; market value based on reasonable exposure; allowance for two types of appraisals, complete and limited, and three types of appraisal reports, i.e., self-contained, summary, and restricted use; opinion of highest and best use for market value approaches; definition of the estimated value; personal property considerations in the appraisal; type of real property interest.

Standard 2 encompasses,

A provision for explanation for exclusion of the commonly used valuation approaches; a certification requirement that the personal compensation is not contingent on a predetermined value; inclusion of the purpose and the effective date of the appraisal (the effective date establishes a base point for the value estimate); a statement that Standard 2 rules are binding except for oral appraisal reports; listing the names of persons providing professional expertise input for the appraisal assignment; that an employer is equally as responsible as is the appraisal preparer for its validity and conclusions.

Standard 3 requires,

an appraisal review and report contain an opinion of the quality of the appraisal and a complete disclosure of the scope of work for the assignment. In general,

Departures from specific requirements of the USPAP (Departure Rule) must be disclosed.

Release or disclosure of confidential data is only permissible for enforcement agencies and to other parties as may be or is authorized by established law.

Market value is not necessarily the same as the estimated value in a self-contained appraisal.

Jurisdictional Exception Rule

As it pertains to the USPAP and Federal-CNMI appraisal requirements, "if any part of those standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction."

Jurisdictional Exceptions to USPAP

In specific instances if it is determined that the USPAP Standard Rules are not harmonious with the Uniform Act as applied to the CNMI situation, or with CNMI law itself, the USPAP Jurisdictional Exception Rule can be invoked.

General Information

Projects with Federal participation or reimbursement must adhere to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, which is the primary public law. Implementing federal regulations for the Uniform Act are 49 CFR Part 24 and 23 CFR Part 710. This DPW ROW Manual Chapter III on appraisals and appraisal review incorporates these authorities by reference. CNMI case law is also applicable. The *Uniform Standards for Federal Land Acquisitions* provides appraisal guidelines for federal acquisitions. The DPW ROW Manual establishes CNMI public policies and procedures. 49 CFR 24.103 appraisal requirements are designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements. They are also considered to be consistent with USPAP Standards Rule 1, 2 and 3.

Summary

As a summary of key principles of good appraisal practices, the USPAP *Reconciliation and the Appraisal Report* (Chapter 13) is an excellent reference. It should be kept in mind that USPAP standards are subject to Jurisdictional Exception but for the most part and in reality Jurisdictional Exception is rarely invoked by appraisal practitioners and authorities. The following synopsis should not be substituted for a complete reading of the most recent **USPAP** publication which can be viewed online at <u>www.uspap.org</u>.

Synopsis

"Reconciliation", or "Correlation" is an objective weighing of the methods and results of each appraisal approach used to arrive at the single best and most supportable conclusion of value under the realization that not every approach may be appropriate for every property. Reconciliation is not merely the correction of errors or the averaging of the estimates reached by each of the appraisal approaches, but the final statement of reasoning and weighing of facts, results, and conclusions that culminate in a fully justified final estimate of value.

Factors to be considered include: definition of the value being pursued; reliability of data collected for each approach; strengths and weaknesses of each approach; relevance of each approach to the subject property and market behavior.

For the three approaches: confirm the steps followed in the sales comparison, cost and income capitalization methods.

Decide which of the three approaches is the most applicable, in terms of the value sought for the subject property.

Written Report Styles:

Forms can be of various optional or set designs used by government agencies and others.

Narrative reports should contain the appraiser's reasoning, analyses, and factual elements leading to an opinion of value. Detailed supporting data such as utilities, property taxes, zoning, real estate documents and appropriate graphics are examples.

IV Acquisitions

Acquisition – activities to obtain an interest in, and possession of, real property.

Real Property – land and improvements thereto, including but not limited to, the interest, rights, and benefits that are coincident with the ownership of real estate, easements, or access rights. In this manual real property and real estate have synonymous definition.

Acquisition and Relocation procedures constitute the most sensitive aspects of DPW activities involving direct personal contacts with the public. The primary goal of DPW during the acquisition process is to acquire the needed property interests by negotiation.

The process of acquiring real property includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements, and possible condemnations. The DPW will conduct acquisition and related relocation activities in accordance with 49 CFR Part 24.

Federal and Commonwealth policies establish uniform, fair, and equitable treatment of persons displaced by the acquisition of real property. The provisions of Title III of the Uniform Act under Section 305 provide that each state to the greatest extent practical under state law will be guided by the land acquisition policies in Section 301 and the provisions of Section 302. Two of the fundamental tenets of acquiring private property for public purposes is that an owner of private property must be paid **just compensation** and **due process** must be adhered with for the acquisition of private property. Noncompliance with federal law can result in ineligibility for reimbursement of project cost. The Uniform Act applies to all real property acquisitions for projects where Federal funds are involved.

The Uniform Act contains three titles:

Title I, the general provisions of the law;

Title II, uniform relocation assistance;

Title III, uniform real property acquisition.

CNMI Acquisition Policies

Encourage and expedite the acquisition of real property by agreements with owners;

Avoid litigation and relieve congestion in the courts;

Assure consistent treatment for owners;

Promote public confidence in Federal and Commonwealth acquisition practices;

Real property interest acquired by the Commonwealth for rights-of-way shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public;

Comply with current FHWA requirements and policies;

Maintain thorough records of acquisitions and property management activities.

As soon as possible owners shall be notified of CNMI interest in acquiring their real property and their basic entitlements including the obligation of the CNMI to secure an appraisal.

Prior to any undertaking by the CNMI government, an agreement or memorandum of understanding for right-of-way, *drainage or slope easements* acquisition shall be implemented between the landowner(s) and the government granting the government irrevocable easement or fee simple title on completion of the acquisition process.

Acquisition and Management Records

23 CFR Part 710 and FHW A policy require

1. Acquisition records including relocation records related to owners or tenants, and property inventories of acquired improvements shall be in sufficient detail to demonstrate compliance with Part 710 and 49 CFR Part 24. These records shall be retained at least 3 years from:

the date the Commonwealth receives federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or

the date a credit toward the federal share of a project is approved based on early acquisition activities of the Commonwealth.

2. Property management records shall include inventories of real property considered excess to project needs and agreements for use of real property managed by DPW for ROW purposes.

3. Contracting for activities in support of state right of way programs through use of private consultants and other services shall conform to 49 CFR 18.36.

4. The DPW to enter into written agreements with other Commonwealth land acquisition

agencies and organizations or with private consultants when necessary to assist with carrying out DPW authorities and responsibilities involving The Uniform Act. Such organizations, firms, or individuals must comply with the policies of the DPW. The DPW shall assure compliance with state and federal law and requirements and is responsible for informing such organizations or individuals of all such requirements and for imposing sanctions in cases of non-compliance.

5. DPW and FHWA agreements as to the scope of property related oversight and approvals for which FHWA will retain Part 710 responsibilities. Agreements will include those projects which require the submission of documents or materials.

6. Approval of amounts of just compensation by a responsible official of DPW.

7. The DPW to provide persons affected by projects or acquisitions advanced under Title 23, USC, with a written description of real property acquisition processes under The Uniform Act and CNMI law and of the owner's rights, privileges, and obligations. The description shall be written in clear non-technical language and available in the English, Chamorro, and Carolinian languages.

Project Authorization

ROW Plan Approval

Acquisition of rights-of-way must be detailed for an authorized project in a Right of Way Plan with prior FHWA approval.

Project Agreement

The DPW shall obtain FHWA authorization in writing or electronically before proceeding with real property acquisitions including hardship acquisition and protective buying (see 23 CFR 710.503). DPW must prepare a project agreement in accordance with 23 CFR part 630, subpart C. The agreement shall be based on an acceptable estimate for the cost of acquisition. A credit can be requested toward the non-federal share for early acquisitions, donations, or other project contributions provided conditions in 23 CFR 710.501 are satisfied.

Funding and Reimbursement

Early acquisition (23 CFR 710.501)

CNMI may undertake early acquisition for corridor preservation, access management, or other purposes. Title searches, preparation of preliminary property maps, and other early acquisition activities necessary for NEPA clearance can be advanced as provided for under 23 CFR 710.501.

Rights-of-way acquired in advance may be eligible for federal approval for reimbursement if

they are subsequently incorporated into a project eligible for surface transportation program funding and the acquisitions and relocations comply with the Uniform Act, or costs are incurred for acquisition of land to preserve environmental and scenic values. Other conditions include compliance with Title VI of the Civil Rights Act of 1964; the Governor certifies that the acquisition is in accordance with formal, established land use, environmental, and transportation plans; acquisition selections are considered under FHWA regulations to examine alternatives for various environmental impacts; the project has complied with the National Environmental Policy Act and the Endangered Species before submission of reimbursement costs for federal participation; the FHWA and EPA concur that the property acquired in advance of federal approval did not influence the environmental assessment of the project or the decision relative to the need to construct the project or the selection of the project design and location.

The property must be acquired in accordance with the provisions of 49 CFR Part 24 and DPW must submit proposed advance acquisitions to the FHWA for approval.

For protective buying and hardship acquisitions, prior to DPW obtaining final environmental approval, the Commonwealth 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:

(1) The project is included in the currently approved STIP;

(2) DPW has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property subject to the provisions of 23 U.S.C. 138 (this law lays out special requirements relating to maximum protection for public park and recreation lands, wildlife and waterfowl refuges, and historic sites by prohibiting use of these lands for other purposes except under specially authorized conditions); and

(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

For protective buying the DPW 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.

For hardship acquisitions the DPW must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

(1) Supports the hardship acquisition by providing justification on the basis of health,

safety or financial reasons that remaining in the property poses an undue hardship;

(2) Documents an inability to sell the property at fair market value because of the impending project within a time period that is typical for properties not impacted by the impending project.

Acquisition of property for protective buying or hardship reasons 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.

At the time of processing an environmental document, the Commonwealth may request reimbursement of costs incurred for early acquisition, provided conditions prescribed in 23 CFR 710.501, are satisfied.

For additional information and review of early acquisition requirements and applications see "Early Acquisition" section, this Chapter.

Acquisitions in General

The following pre-conditions are necessary for Federal participation in the costs for acquiring real property except as especially provided for in early acquisitions:

The project for which the real property is acquired is included in an approved Commonwealth Transportation Improvement Program (STIP);

The Commonwealth has executed a project agreement with the FHWA;

Clearances are obtained under the National Environmental Policy Act (42 U.S.C).

Costs have been incurred in conformance with Commonwealth and Federal law requirements.

Eligible federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise.

Federal participation is provided for:

a. Real property acquisition and the usual costs and disbursements associated with real property acquisition required under the laws of the Commonwealth including:

(1) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.

(2) The cost of acquisition activities, such as, appraisal, appraisal review, cost

estimates, relocation planning, right of way plan preparation, title work, and similar necessary right of way related work.

(3) The cost to acquire real property, including incidental expenses.

(4) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process.

(5) The cost of minimum payments and appraisal waiver amounts outlined in the CNMI Right-of-Way Manual, Chapter V Relocations.

b. Relocation assistance and payments. Payments made incidental to and associated with the displacement from acquired property under 49 CFR Part 24.

c. Damages. The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition.

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 and technical guidance. Salary and related expenses of employees of DPW are eligible costs in accordance with OMB Circular A-87 (available at http://www.whitehouse.gov/omb/circulars). Included are CNMI costs incurred for managing or providing technical guidance, consultation or oversight on projects where right of way services are performed by a political subdivision or others.

f. Property not incorporated into a project funded under Title 23 of the United State Code. The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

(1) General. Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.

(2) Easements not incorporated into the right of way. The cost of acquiring easements outside the right of way 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. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, DPW shall offer to acquire the uneconomic remnant. For the legal purposes, an uneconomic remnant is a parcel of

real property that the owner is left with after a partial acquisition and DPW determines to have little or no value or utility to the owner.

h. Access rights. Payment for full or partial control of access on an existing highway (i.e., one not on a new location). Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

i. Utility property.

(1) The cost to replace operating real property owned by a displaced utility and conveyed to DPW for a highway project, as provided in 23 CFR Part 645, Subpart A, Utility Relocations, Adjustments, and Reimbursement, and 23 CFR Part 646.

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

Indirect costs may be claimed under the provisions of OMB Circular A-87. Indirect costs may be included on federal-aid billings after the indirect cost rate has been approved by FHWA. Indirect costs are not the same as incidental expenses mentioned in a. (3) above.

Section 4(f)

Section 4(f) refers to the original section within the U.S. Department of Transportation Act of 1966 which established the requirement for consideration of park and recreational lands, wildlife and waterfowl refuges, and historic sites in transportation project development. The provisions of Section 4(f) of the Highway Act of 1966 are codified in 49 U.S.C. §303 and 23 U.S.C. §138, and implemented by the Federal Highway Administration through the regulations in 23 CFR 774. The term "4(f)" continues to be widely referenced throughout the ROW professional community. (See Appendix A)

Withholding Payment

The FHWA may withhold payment under the conditions in 23 CFR 1.36 where the DPW fails to comply with federal law or regulation, CNMI law, or under circumstances of waste, fraud, and abuse.

Limitations on Actions

The Commonwealth "should be aware that notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the Federal Register indicating that such decisions are final within the meaning of 23 U.S.C. 139(*I*). Claims arising under Federal law seeking judicial review of any such decisions are barred unless filed within 180 days after publication of the notice. This 180-day time period does not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed".

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The FHWA interpretation of 23 U.S.C. 139(/) can be found in appendix E to the "SAFETEA-LU Environmental Review Process: Final Guidance," dated November 15, 2006. The implementation procedures in appendix E apply only to FHWA projects (see *http://www.fhwa.dot.gov/*).

Project Agreement. As a condition of Federal-aid the DPW shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisitions, including hardship acquisition and protective buying (see 23 CFR 710.503). The DPW must prepare a project agreement in accordance with 23 CFR part 630, subpart C. The agreement shall be based on an acceptable estimate for the cost of acquisition. On projects where the initial project agreement was executed after June 9, 1998, the CNMI may request credit toward the non-Federal share for early acquisitions, donations, or other contributions applied to the project provided conditions in 23 U.S.C. 323 and 23 CFR 710.501, are satisfied.

Federal Land Transfers

Except for real estate owned by the U.S. military or Veterans Administration, the DPW shall file with the FHWA an application for lands or interests in lands owned by U.S. civilian agencies and needed for highway purposes. Guidance for the FHWA application can be obtained from 23 United States Code (U.S.C.) 107(d), 23 U.S.C.317 and 23 CFR 710.601. The District office of the Corps of Engineers (for Army or Air Force) or the Public Works of the appropriate naval district should be contacted as to real estate processes relative to their respective holdings.

Additional guidance is available from FHWA publication (2009) "Manual for Federal Land Transfers for Federal-aid Projects" which can be accessed at: http://www.fhwa.dot.gov/realestate/fltmanual/index.htm.

The details and particular requirements for the proposed land transfers will vary among the various agencies and offices. At a minimum the DPW should be prepared to furnish legal descriptions, survey plats, narrative justifications, formal construction commitments, and formal assurances that there has been or will be compliance with appropriate Federal law.

Parcels owned by Federal and Commonwealth agencies cannot be acquired by condemnation unless the affected agency consents to and cooperates in the condemnation.

Negotiations

Before the start of negotiations for real property DPW shall establish an amount of just compensation for the acquisition and make a timely offer to the legal owner with this established amount. In no event shall such amount be less than the DPW approved appraisal of the fair market value of the property. DPW shall provide the owner of real property to be acquired with a written statement and summary of the basis for the established amount of just compensation.

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property will be acquired for such improvement, will be disregarded in determining the

compensation for the property unless there is physical deterioration within the reasonable control of the owner.

DPW shall not advance the time of condemnation, defer negotiations or condemnation, delay the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

Pre-Negotiation Activities

The key to successful negotiation is preparation. When preparing for negotiations, the negotiator must assemble and complete certain required acquisition documents and various administrative tasks.

There are a number of items a negotiator should have knowledge of before an offer to purchase from the property owner is made.

1. <u>Right of Way Plans</u>. These plans should identify features of the highway construction that may affect the valuation and/or use of the property.

2. <u>Ownership documents/Title commitments</u>. Necessary for the negotiator for contacting appropriate parties including holders of affected liens.

3. <u>Construction Items</u>. The source of this information is the construction plans and specifications. Some of the most often asked questions pertain to the grade and elevation of the roadway, the structures to be built, such as bridges, culverts, underpasses, or irrigation facilities.

4. <u>Control of Access</u>. Controlled access may mean a limitation of access or complete denial depending on the needs of the project. The negotiator should be completely familiar with the access control to be exercised.

5. <u>FMV and Appraisals</u>. Negotiators need to review this information. The negotiator should understand all aspects of the appraisal and fair market value. At this time, or any time during negotiations, should it appear that pertinent facts have escaped the attention of the appraiser, the negotiator should not hesitate to confer with the appraiser and/or the reviewer.

An appraisal is not required if the owner is donating the property or DPW determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.

When an appraisal is determined to be unnecessary DPW will prepare a waiver valuation. The DPW employee or representative making the determination must have enough

understanding of appraisal principles to be able to determine if the proposed acquisition fits the waiver valuation criteria and threshold. Waiver valuations are not appraisals as defined by the Uniform Act and CFR regulations; therefore, appraisal performance requirements or standards are not mandatory.

6. <u>Memorandum of Agreement (MOA)</u>. The MOA must be a complete statement of all the terms of the agreement between the property owner and DPW. It shall include the sum of money to be paid for land, damages, and improvements, less the approved salvage value of any improvements retained by the owner as part consideration for the settlement and any other agreements or inventories that are a part of the settlement.

Prior to contacting the property owner to initiate negotiations coordination should take place with Commonwealth offices which are associated with the acquisition process. The negotiator should be aware of contacts, offers, explanations, and assistance the owner has received from all CNMI offices. Similarly, the negotiator should have complete information relative to property management and relocation benefits for conveyance to the property owner during the negotiation process. In addition the negotiator should be aware of any design changes in the vicinity of the property which might affect the subject parcel or estimates of just compensation.

Negotiation Requirements

1. <u>Commencement of Negotiations</u>. Negotiations must not commence until DPW has established its estimate of fair market value by an appraisal.

2. <u>Separation of Functions</u>. Negotiations are prohibited by the person who made the appraisal or was the reviewing appraiser for the property. The one exception is that DPW can establish procedures which will allow the same person to both appraise and negotiate for those acquisitions of \$10,000 for less. When the appraisal has been waived the same person may establish value and negotiate on those acquisitions of \$10,000 or less.

49 CFR § 24.102 (n) (3) states, "An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. (See appendix A, §24.102(n).)"

3. <u>Reasonable Effort</u>. All reasonable efforts shall be made to expeditiously acquire the real property by negotiations.

4. <u>No Coercion</u>. The negotiator should be careful not to imply that the negotiation is a "take it or leave it" situation. Condemnation as a threat shall be avoided. DPW shall not advance the time of condemnation or defer negotiations or condemnation or the deposit of funds with the court in order to induce an agreement on the price to be paid for the property.

The negotiator should maintain rapport with the property owner, inspire confidence in the correctness of the acquisition process and the fairness of the offer being made. The property owner shall be given a reasonable period of time to consider the offer and obtain advice or assistance. In no case shall DPW compel an agreement on the price to be paid for a property by

- a. deferment of negotiations;
- b. advancement or deferment of condemnation;
- c. take any other action which may be coercive in nature.

Contact with the Owner

The negotiator should attempt to make an appointment with the owner to provide an explanation of the right of way acquisition process and to furnish an acquisition brochure. The owner must be given a written offer of the approved estimate of just compensation for the property to be acquired and a summary statement of the basis for the offer. The owner should be given a reasonable time to consider the offer and an opportunity to present information which is believed to be relevant in determining the value of the property along with suggested modification in the proposed terms and conditions of the purchase.

CFR Section 24.102(f) Basic negotiation procedures. An offer should be adequately presented to an owner, and the owner should be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.

This section also provides that the property owner be given a reasonable opportunity to consider the Agency's offer and to present relevant material to the Agency. In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

Negotiations by Mail

If reasonable efforts to make personal contact with the owner fail or the owner resides out of the Commonwealth and personal contact is impracticable, the owner may be contacted by certified mail or other documented means.

Negotiation by mail is an option intended to provide a convenience for the owner and to accelerate the acquisition process. This approach may involve complete negotiations by mail without personal contact or a limited use of this approach such as the first offer by mail with follow-up personal contact. To implement a mail based negotiation DPW will mail (certified):

- an offer letter;
- a summary statement;

- a Memorandum of Agreement;
- a property plat or sketch showing the effect of the taking;
- a brochure which explains the CNMI acquisition program.

If the DPW does not receive a response in a timely manner there should be a follow-up telephone call. Questions can be addressed over the phone or at the property owner's request, an appointment for a personal contact can be made. If a personal contact is then conducted negotiations will follow the normal negotiation process. However, the owner can sign a Memorandum of Agreement or deed and return it to DPW by mail.

Negotiation by mail may not be used for parcels where relocation is involved.

Offer to Acquire (Notice of Interest)

After the property valuation process (appraisal or value finding) has been completed a timely written offer shall be made of the amount established as just compensation. Such a procedure must be based on current values.

Correspondence prepared for the property owner should include an offer letter; summary statement; Memorandum of Agreement; property plat or sketch showing details of the location of the property and its attendant improvements; a brochure explaining the CNMI acquisition program.

The delivery of the initial written offer of just compensation to the owner (or representative) to purchase the real property for the project establishes the date of initiation of negotiation.

In those instances where only a portion of the property is to be acquired, the statement must separately indicate the amount of compensation being offered for the property being acquired and a separate amount for damages to the remaining property.

A summary statement must also be provided to the *tenant owner* of any buildings, structures, or other improvements affected by the acquisition. The Summary Statement sets forth minimum information sufficient so that the owner can make a reasonable judgment concerning the amount of the offer. The following is the minimum that shall be included:

1. The amount established as just compensation. (In the case of a partial acquisition, the compensation for the real property to be acquired and for damages to remaining real property shall be separately stated.)

2. A description and location identification of the real property and the interest in the real property being acquired. The description does not necessarily mean a legal description of the property, but an identification which is understandable to the owner.

3. Identification of buildings, structures, and other improvements (including removable building equipment and trade fixtures) considered to be part of the real property to be acquired. If appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

4. DPW may include any additional information deemed appropriate or is required by Commonwealth law.

The property owner should be given a reasonable opportunity (at least 30 days) to consider the offer and to present relevant material to DPW. If the owner intends to provide an appraisal, DPW should furnish the owner with DPW appraisal requirements and recommend that the owner's appraisal be based on those standards.

Revised Offers

If the right of way acquisition is changed or the approved estimate of just compensation is revised, a revised offer and summary statement explaining the basis of the offer must be furnished to the property owner.

If a lengthy delay is encountered between the time the estimate of just compensation is established and the time an offer is be made to the owner, DPW should reevaluate the offer amount to assure that the amount offered remains representative of the current market value.

Occasionally additional information may dictate a need for a revision to the offer. If an owner volunteers information DPW must give that information appropriate consideration. Any revision should be documented providing an explanation of the reasons. Revised offers should be written and expediently furnished to the owner.

Memorandum of Agreement (MOA)

When a final settlement with an owner is reached DPW will prepare an MOA which contains a complete statement of all the terms of the agreement between the property owner and DPW. It shall include all money to be paid for land, for damages, and for improvements less the approved salvage value of any improvements retained by the owner as part consideration for the settlement and any other agreements or inventories that are a part of the settlement. If the property is obtained through condemnation guidance should be obtained from the DPW and DPL legal counsels.

When the terms of a settlement with a property owner allow the owner to retain certain improvements, fixtures or equipment, bona fide salvage values shall be deducted from the full purchase price. If such improvements, fixtures, or equipment are allowed to be retained by the owner for any amount less than the approved salvage value the settlement must be justified in writing by the DPW Director of Technical Services. When an owner agrees to remove improvements from the right of way the MOA will specify a date for removal of the improvements and a retention of a part of the purchase price to enforce specific performance(s) by the owner.

The salvage value is the probable sale price of an item offered for sale to knowledgeable buyers with removal from the property at the buyer's expense. The salvage items are not eligible for relocation assistance. Included are items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

The MOA may include amounts to be paid for moving and rehabilitation of improvements, in lieu of purchase, or amounts to be paid the owner for work to be performed such as relocation of ditches or construction of service roads. Such amounts shall be fully supported by realistic estimates of cost. The MOA shall not include obligations for DPW to remove, rehabilitate or rebuild buildings or other improvements for the owner.

Where the location of structures such as irrigation or drainage culverts, gates, road approaches, or other items shown on construction plans are changed by agreement with an owner, the surveyed location shall be shown on the MOA.

Conveyances and releases must be documented and indicated on the MOA.

Additional MOA Considerations

These additional items should be identified in the MOA if applicable:

- 1. Uneconomic remnant
 - An uneconomic remnant is a parcel of the real property in which the owner is left with an interest after the partial acquisition of the owner's property and DPW has determined the remnant has little or no value or utility to the owner;
 - If the acquisition of only a portion of property would leave the owner with an uneconomic remnant, DPW shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project.
 - Uneconomic remnants may have value but not for the owner (as determined by DPW). The owner may decline a DPW purchase offer. DPW is only obligated to make an offer to purchase the uneconomic remnant.
- 2. Trade Fixtures
 - Copies of fair market value determinations will include a specific itemization of the trade fixtures that are part of the consideration offered for the property.

• Money paid for trade fixtures will be withheld from the settlement until the occupant moves out and final inspection confirms the trade fixtures identified on the inventory are present and intact. The final check out inventory will be signed by the owner and a DPW representative.

A property inventory should be prepared and signed by a DPW representative and permanently filed.

Final Offer

When negotiations have not brought about a settlement and it appears condemnation is probable DPW must send a final letter. This letter will give the owner ten days to accept the offer. DPW may decide that a best and final offer should be made prior to filing condemnation. If a final settlement is rejected condemnation should be filed. (Also see Pages 57-58)

Settlements

A settlement is 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, Included are:

1. 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;

2. A legal settlement is a settlement reached by a responsible CNMI legal representative after filing a condemnation proceeding including stipulated settlements approved by the court in which the condemnation action had been filed;

3. 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 compensation for a taking under the laws of eminent domain.

Administrative settlement is recommended by the negotiating agent. Legal settlement is recommended by the assigned attorney.

Agreement for Possession and Use

DPW policy limits the use of these types of agreement to infrequent and unusual circumstances. The target time used for reaching a settlement is 60 days. In some instances it may be necessary to go to 90 days, but no more than 120 days should be used without prior approval by the DPW Director of Technical Services.

Payment Before Possession

The Uniform Act requires that no owner shall be required to surrender possession of real property before DPW pays the agreed purchase price, or deposits with the court for the benefit of the owner or a Title Company as Escrow Agent an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

When an amicable settlement between the property owner and DPW has been reached, DPW shall expediently pay the owner the agreed purchase price.

DPW may retain a reasonable portion of the purchase price in order to assure that the acquired property, including fixtures, is transferred to DPW in reasonably good condition. Such funds would have to be made available to the owner no later than DPW taking physical possession of the property.

Parcel Negotiation Record and Certificate

The negotiator must maintain timely and adequate records of negotiations on a parcel basis. A record of each contact with a property owner should be dated and signed by the negotiator. Logs will be maintained by the negotiator and kept on file.

The records should indicate the primary activities by the negotiator regarding the meetings with the property owner, the property owner's comments and other information about the parcel furnished from outside sources. The records should be in sufficient detail to demonstrate compliance with federal law. These records shall be retained for at least three years from the date of acceptance of the final payments. The records shall be signed and dated by the negotiator.

The Parcel Negotiation Record and Agent's Certificate (DPW Form xxxx) is a means to record all contacts with the owner and indicate what has taken place during negotiation. This form contains the certificate to be signed by the negotiator.

Conveyance Documents

The negotiator must ensure the preparation of necessary conveyance documents. These documents must be reviewed for accuracy and completeness and should be consistent with the appraisal report with respect to the legal description and extent of the right of way taking.

The transfer of the title to DPW may require the payment of incidental expenses by the owner. These incidental expenses are reimbursable under Federal regulations (49 CFR 24.106). The regulation also states that "whenever feasible, the agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the agency."

Property Closings

The final steps for acquisitions include obtaining property encumbrance releases, preparation of closing statements and deeds, payment of just compensation, and title insurance.

If title companies close acquisitions for DPW, the following procedures shall be used in order that the original documents are returned to the DPW for filing:

- 1. The original deeds shall be prepared and recorded as required by CNMI law. The original deeds shall be transmitted to DPW.
- 2. The original releases may be prepared by the title companies.
- 3. All financial documents shall be transmitted to DPW.

5. All original closing documents for each property including the closing statement shall be transmitted by the title company to DPW.

Property Encumbrance Releases

Property encumbrance releases (or provisions for) on acquired property are necessary in order to clear the title before the closing. The process can be a simple or complicated depending on the interest acquired and the type of title information obtained by DPW. It is required that any known encumbrance on the land be properly released at such time as DPW takes title. Various kinds of encumbrances or liens each require a distinctive type of release.

Most encumbrances can be classified as mortgages, deeds of trust, mechanics liens, judgments, tax liens, leases, and Torrens titles.

Thorough investigation by DPW staff of the background of properties to be acquired is mandatory. For apparent difficult cases DPW may retain consultants, attorneys, or title companies for determinations.

For acquisitions with easements DPW may approve a taking subject to the easement encumbrance if in its judgment this action does not compromise the easement rights acquired.

Early acquisition

(23 CFR 710.501, "State" should be taken as "Commonwealth")

(a) *Real property acquisition.* The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) *Eligible costs.* Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federal-aid project if the following conditions are met:

(1) The property was lawfully obtained by the State;

(2) The property was not land described in 23 U.S.C. 138;

(3) The property was acquired in accordance with the provisions of 49 CFR part 24;

(4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);

(5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:

- (i) The decision on need to construct the project;
- (ii) The consideration of alternatives; and
- (iii) The selection of the design or location; and
- (6) The property will be incorporated into a Federal-aid project.
- (7) The original project agreement covering the project was executed on or after June 9, 1998.

(c) *Reimbursement*. In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the STD to demonstrate that:

(1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and

(2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

Additional guidance for early acquisition applications is given under "Funding and Reimbursement", this Chapter.

Protective Buying and Hardship Acquisition (23 CFR 710.503)

(a) General conditions. Prior to obtaining final environmental approval DPW 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:

(1) The project is included in the currently approved STIP;

(2) DPW has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and

(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

(b) Protective buying. DPW 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. DPW must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and

(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

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

Eminent Domain and Condemnation

If any interest in real property is to be acquired by exercise of the power of eminent domain DPW shall institute formal condemnation proceedings. DPW shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the real property. It is mandatory that if DPW makes a management decision to begin a condemnation, the CNMI Office of Attorney General will be informed.

If the Commonwealth institutes condemnation proceedings and it is the judgment of the court that DPW cannot acquire the real property by condemnation or DPW abandons the proceeding, then the property owner shall be reimbursed for reasonable costs and expenses including

attorney, appraisal and engineering fees actually incurred because of the condemnation proceedings (Uniform Act Title III Section 304). These provisions also apply if an owner is successful in an inverse condemnation proceeding.

Using condemnation as a threat is prohibited. The time of condemnation shall not be advanced or negotiations deferred in order to induce an agreement on the price to be paid for the property.

When the owner and DPW cannot reach agreement over a reasonable period of time DPW can initiate condemnation proceedings and deposit with the court or otherwise make money available in an amount not less than the approved appraisal. This amount may be withdrawn by the owner, and such action shall not jeopardize the owner's rights in the condemnation proceedings.

Filing of Condemnation

When negotiations have not brought about a settlement and it appears condemnation is imminent, the negotiator must send a final letter. This letter will give the owner ten days to accept the offer.

If the owner does not accept this offer a condemnation packet must be prepared. The packet is prepared by the DPW Right-of-Way Administrator with a copy sent to the Office of Attorney General. Each packet consists of:

- 1. Copy of final condemnation letter.
- 2. Memorandum of Ownership which should be updated to within 90 days of the first negotiation contact. (See Form # xxxx, Appendix B.)
- 3. Legal description of the property
- 4. Negotiation Record and Agent's Certificate.
- 5. Fair Market Value.
- 6. Tax Certificate.
- 7. Final Letter.
- 8. Miscellaneous correspondence pertinent to the parcel.

DPW Condemnation Responsibilities

The DPW Director of Technical Services is responsible for the accuracy of the Right-of-Way plans and the CNMI Division of Land Registration and Survey is responsible for furnishing correct legal descriptions for the property undergoing condemnation proceedings.

Representatives of these offices may be asked to testify as to the accuracy and completeness of their work at immediate possession hearings and valuation trials.

Once possession is obtained through an immediate possession hearing, court stipulation, or a possession and use agreement, DPW staff should photograph the property and improvements especially including possible damages. Staff may be asked to testify to the photographs at a valuation trial.

Review of Settlement Types

A legal settlement is a settlement reached by a responsible CNMI legal representative after filing a condemnation proceeding including stipulated settlements approved by the court in which the condemnation action had been filed;

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 compensation for a taking under the laws of eminent domain.

Once a case is set for court attention a team shall be assembled made up of the Project Leader or a real estate specialist, the DPW Director of Technical Services, the Director of Land Registration and Survey, the Appraiser, and the Review Appraiser. The team shall be led by the attorney in charge of the case. The team decides what exhibits shall be used in the case and determines guidelines for presentation emphasis.

If another CNMI agency has the principal proprietary interest in the property at trial a designated official from that agency should replace the DPW Director of Technical Services on the team. The DPW Right-of-Way Administrator shall serve as an advisor, coordinator, and furnish logistical support to the team irrespective of the team composition.

Improvements

The DPW will manage real property acquired for a project until it is required for right-of-way construction. Clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract.

Frequently the property to be acquired contains buildings, structures, or other improvements. These improvements may be owned by tenants and not the owner of the land. Section 302 (Uniform Act Title III) deals with the acquisition of such buildings, structures, and improvements and with the satisfaction of tenant rights.

In such cases, if DPW acquires any interest in real property, it also shall acquire at least an equal interest in all improvements located upon the real property which will be removed from the real property or will be adversely affected by the use to which such real property will be put. Just

compensation for improvements shall be the greater of the fair market value of the improvement as a contributing factor to the fair market value of the real property to be acquired, or the stand alone fair market value of each improvement scheduled for removal from the real property.

The payment of fair market value is to the tenant-owner for each building, structure, or improvement. Payments will not be made until the owner disclaims all interest in the improvements of the tenant. The tenant shall assign, transfer, and release to DPW all the rights, title, and interest in and to the improvements. DPW will pay certain expenses incidental to the transfer of property including recording fees, transfer taxes, and penalty costs for prepayment of any preexisting recorded mortgage

Key Summaries

For FHWA participation in ROW funding there are separate rules for

- Early and Hardship Acquisitions and Protective Buying
- Costs incurred prior to establishing a project agreement with the FHWA under certain conditions such costs may be eligible for credits towards the Commonwealth share of a federally aided project
- Direct eligible costs.

In all of the above instances many of the same laws, rules and regulations apply. One example is the NEPA requirements.

Summary of Basic Acquisition Procedures

The following rules and guidelines are extracted from 49 CFR 24.102.

Negotiation and Appraisal:

The Agency shall make reasonable effort to acquire the real property expeditiously by negotiation.

As soon as feasible, the Agency shall notify the owner in writing of its interest in acquiring the real property and offer reasonable effort to expeditiously acquire the property through negotiation. At this time the basic protections provided to the owner by law shall be thoroughly communicated by the Agency to the owner.

Before starting negotiations the real property to be acquired shall be appraised, except as provided in §24.102 (c)(2) and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

An appraisal is not required if the owner is donating the property and releases the Agency from its obligation to appraise the property or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.

When an appraisal is determined to be unnecessary the Agency shall authorize a waiver valuation prepared by a person with sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

The Federal Agency funding the project may approve exceeding the 10,000 threshold up to a maximum of 25,000 if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property the Agency shall authorize an appraisal (See appendix A, 24.102(c)(2)).

If the agency believes the acquisition of a property is uncomplicated and a review of available data supports a fair market value likely to be over \$10,000 but less than \$25,000, the agency may prepare a waiver valuation rather than an appraisal to estimate the fair market value, however, if the property owner elects to have the agency appraise the property, an appraisal will obtained.

Just Compensation

Before the initiation of negotiations the Agency shall determine an amount of just compensation for the real property. This amount shall not be less than the approved appraisal of the fair market value of the property taking into account the value of allowable damages or benefits to any remaining property. Shortly thereafter the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation accompanied by a summary statement which includes a comprehensive basis and explanation for the offer. (See appendix A, §24.102(d).).

Negotiation Procedures

Condemnation proceedings are prohibited from taking part in the negotiation process.

The Agency shall make reasonable efforts to contact the owner or the owner's representative to discuss the purchase offer including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with §24.106. The owner shall be given reasonable opportunity to consider the offer and present material information believed to be relevant for determining the value of the property. The owner may suggest modification to the terms and conditions of the purchase offer which the Agency is obligated to consider (See appendix A, §24.102(f)).

If a need for an updated or new appraisal is warranted by the information presented by the owner, or by a change in the character or condition of the property or by a significant delay since the time of the first appraisal, the Agency shall instigate new or updated appraisal(s). If the latest appraisal information indicates that a revised purchase offer is warranted, the Agency shall promptly offer that revised amount to the owner in writing.

Administrative Settlement

The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed. An authorized Agency official must authorize the settlement as being reasonable, prudent, and in the public interest. (See appendix A, §24.102(i)).

Agency Possession

Except for unusual circumstances involving construction purposes the owner must receive or have access to authorized fair market value or court ordered award amounts before surrendering possession of the real property (See appendix A, §24.102(j)).

Uneconomic Remnant

If the acquisition of a portion of a property would leave the owner with an uneconomic remnant the Agency shall offer to acquire the remnant along with the portion of the property needed for the project (See 24.2(a)(27)).

V Relocations

Purpose

The purpose of this manual chapter is to outline policies and procedures and to establish authority for a CNMI Right of Way Relocation Assistance Program to be followed when providing relocation assistance to facilitate the construction of public improvements. Policies and procedures have been developed to comply with FHWA requirements. This manual is presented in the interest of improving program delivery and efficiency and is intended to expand knowledge and understanding of program procedures when providing relocation assistance.

Authority

Many times land needed for a highway is occupied. Consequently it may be necessary to relocate the occupants. The occupants may be families, individuals, businesses, farms, or even non-profit organizations. The Uniform Act and Department of Transportation/Federal Highway Administration regulations address the benefits and protections for persons displaced by highway projects which are wholly or partially funded with Federal money.

The United States Constitution and the Commonwealth Constitution and laws prescribe certain requirements when governmental bodies acquire private property. The Uniform Act contains a response to the need to unify and increase protections provided to private persons affected by government projects and address the needs of displaced people due to public projects.

Among other benefits the Uniform Act provides relocation payments for residential occupants and for businesses, farms, and non-profit organizations. These payments include moving expense payments and certain supplementary payments for replacement housing for residential occupants. In addition, the Act provides certain protections such as requiring the availability of replacement housing for displaced persons, minimum standards for such housing, and required notices and information to be provided to all property occupants. The law requires the provision for advisory services to project occupants to help them move successfully.

In 1987 Congress amended the Uniform Act to increase payment levels, to add benefits for small businesses, and to designate the Department of Transportation through the FHWA as the Lead Agency for the Uniform Act for all federal and federally-funded programs and projects. The Uniform Act was once again amended in November, 1997, to add Public Law 105-117, "alien not lawfully present in the United States."

In 2005, revisions prepared by the FHWA to the Uniform Act clarified requirements with the intent to improve service to individuals and businesses affected by federal or federally-assisted projects and reduce the burdens of government regulations. Title 49 of the Code of Federal Regulations (CFR), Part 24, regulates CNMI's Relocation Assistance Program on Federal and federally assisted projects.

The provisions of the Uniform Act concerning relocation are found in Title II. One purpose of Title II is to assure fair and equitable treatment of persons displaced as a result of federal and federally assisted programs to the extent that the affected parties do not sustain disproportionate damages and inconvenience from projects designed to benefit the public as a whole. It is important that a relocation program be successfully implemented not only for the welfare of those to be displaced but to the progress of the entire highway project. Without the relocation of those on site the project cannot proceed to actual construction and the highway will not be built.

In this entire Chapter when the term "DPW" is used it refers to the CNMI Department of Public Works. For further meaning of "Agency" reference should be made to the definitions section of this Chapter.

Relocation Policies and Requirements

CFR 49 24.404 (b): "Basic rights of persons to be displaced. Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible."

The Commonwealth endorses and will strictly implement CFR 49 24.404 (b) as stated.

"Basic acquisition policies", 49 CFR 24.102, is addressed in a separate section of this manual.

Duplication of Payment

Relocation payments will not be made to persons who receive a payment under Federal, Commonwealth, local law, or insurance proceeds which is determined by DPW to have the same purpose and effect as a relocation payment.

Assurances, Monitoring and Corrective Action

The CNMI ROW manual serves to assure accordance and compliance with the provisions of Federal regulations 49 CFR Part 24. DPW shall take appropriate measures to prevent fraud, waste, and mismanagement in all ROW related activities.

Official Notices

Every official notice which DPW provides to a property owner or occupant shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in DPW files. 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 CNMI sanctioned person who may be contacted for answers to questions or to request assistance.

Compliance with Related Laws and Regulations

Other federal laws and implementing regulations which the Commonwealth will comply with when applicable include:

Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.)

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.)

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.)

The Flood Disaster Protection Act of 1973 (Pub. L. 93-234)

The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.)

Executive Order 11063 - Equal Opportunity and Housing, amended by Executive Order 12892

Executive Order 11246 - Equal Employment Opportunity, amended

Executive Order 11625 – Minority Business Enterprise

Executive Orders 11988 - Floodplain Management, and 11990 - Protection of Wetlands

Executive Order 12250 - Leadership and Coordination of Non-Discrimination Laws

Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights

Robert T. Stafford Disaster Relief and Emergency Assistance Act, amended (42 U.S.C. 5121)

Executive Order 12892 – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994)

Applicable Codes of Federal Regulations

Particular Codes of Federal Regulations cited throughout this Relocation chapter are initially outlined and summarized below since they compose the basic structure for all federally funded ROW relocation matters.

Key CFRs

The Appendix to CFR 49 Part 24 (Subparts A, B, C, D, E, F, and G) expands on and explains selected sections from the main body of the CFR 49 regulations.

For instance, the definition for a dwelling site in Section 24.2 is "(11) **D**welling site. The term dwelling site means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. (See appendix A, $\S24.2(a)(11)$.)". The term is further addressed in the appendix as "Section 24.2(a)(11) **D**welling Site. This definition ensures that the computation of replacement housing payments are accurate and realistic (a) when the dwelling is located on a larger than normal site, (b) when mixed-use properties are acquired, (c) when more than one dwelling is located on the acquired property, or (d) when the replacement dwelling is retained by an owner and moved to another site."

24.102 states the requirements for meeting federally mandated acquisition policies.

24.102 (c), 102 (d), 102 (e), 102 (f) require an appraisal of the real property to be acquired, sets conditions when an appraisal is not required, mandates the preparation of a waiver valuation, sets parameters for just compensation, and outlines basic negotiation procedures.

24.203 (b) establishes starting dates of eligibility for relocation assistance and requires the Agency to promptly notify the occupants of their eligibility.

(b) Notice of relocation eligibility. Eligibility for relocation assistance shall begin on the date of a notice of intent to acquire (described in §24.203(d)), the initiation of negotiations (defined in §24.2(a)(15)), or actual acquisition, whichever occurs first. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

24.203 (d) provides for a "Notice of intent to acquire" which is a written communication to the party or parties subject to displacement from property acquired prior to commitment of federal financial assistance. The notice establishes eligibility for relocation assistance.

(d) Notice of intent to acquire. A notice of intent to acquire is a displacing Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Agency intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance. (See $\frac{24.2(a)(9)(i)(A)}{2}$

24.204 provides for the availability of a comparable replacement dwelling before displacement under certain guidelines and rules, with waivers allowed in exceptional circumstances. In general a party cannot be displaced from their dwelling unless one comparable replacement dwelling is made available.

For example, the person must have sufficient time to negotiate and enter into a purchase agreement or lease for the replacement property if that is the choice.

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24.301-306 allows and delineates payments for certain actual and reasonable moving and related expenses associated with relocations. Categories for residential, nonresidential, and non-profit organizations are outlined. Allowable (discretionary) reimbursements for utility relocations are defined.

As an example, and in general, any owner-occupant or tenant who qualifies as a displaced party and who moves from a dwelling (including a mobile home) or who moves from a business, farm or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary.

24.2 (a)(6), 24.2 (a)(8); 24.401 (c), 24.403 (a) describe and define in detail, "decent safe, and sanitary dwelling"; reasonable cost for a comparable replacement dwelling; provides rules for determining payable costs and cost differentials for replacement dwellings as compared to the particular displacement dwelling as a basis; prohibition of duplication of payments.

For example, 24.2 (a)(6)(ii) states, "Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable tradeoffs for specific features when the replacement unit is equal to or better than the displacement dwelling".

24.3; 24.401 (a); 24.401 (b); 24.401 (d); 24.401 (e); 24.402 (a); 24.402 (b); 24.402 (c); 24.403 (f); 4.3 list payable incidental expenses connected with a relocation; eligibility and rules for replacement housing payments for 90-day and 180-day occupants of the displacement dwelling, as the case may be; payable adjustments due to increased mortgage interest and fees associated with real estate closing costs; limits of rental assistance payments if that choice is made; limits of the monetary amounts for replacement housing; qualifications for replacement housing of last resort (when a project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants as specified in 24.401 or 24.402, the Agency shall provide additional or alternative assistance); basic rights of a person to be displaced; prohibition of duplication of payments and payments after death; disbursement of possible insurance proceeds from displacement housing.

Two examples are, 24.2 (a)(6)(viii)(C) states for "a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-ofoccupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in $\S24.402(b)(2)$. Such rental assistance must be paid under $\S24.404$, "Replacement housing of last resort." Referring to replacement housing payments for 180-day homeowners, Section 24.401(c)(2)(iii) (see Appendix), provides for using the current fair market value to determine price differentials for residential use but does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

24.404 outlines and explains the qualifications and administration of rules for replacement housing of last resort.

One eligibility possibility is if there is little or no comparable replacement housing available to displaced persons within an entire program or project area, consequently, last resort housing assistance is necessary for the area as a whole;

24.501-503 provides for replacement housing payments for parties displaced from a mobile home. The eligibility requirements and assistance for these types of displacements are generally the same as for displacements from conventional dwellings although close attention will need to be paid to whether the property is registered as real estate or personal property resulting in differing funding entitlements.

Definitions

The following definitions are important to understanding relocation concepts, policies and implementation matters described in this Chapter. When "appendix A" is cited in these definitions it refers to the CFR and not to this manual.

Agency: As used in this manual the term refers to the CNMI Department of Public Works. Depending on the context in which "Agency" is used the term may refer to the FHWA or to a non-government organization or a private person using Federal financial assistance for a program or project that acquires real property or displaces a person.

Comparable Replacement Dwelling: A dwelling which is

a. Decent, safe and sanitary (DSS);

b. Functionally equivalent to the displacement dwelling. The term functional equivalent means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling the principal features must be present.

c. Adequate in size to accommodate the occupants;

d. In an area not subject to unreasonable adverse environmental conditions;

e. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

f. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

g. Currently available to the displaced person on the private market. A comparable replacement dwelling for a person receiving government housing assistance before displacement may encompass similar government housing assistance.

h. Within the financial means of the displaced person.

1) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in 24.401(c), all increased mortgage interest costs as described at 24.401(d) and all incidental expenses as described at 24.401(e), plus any additional amount required to be paid under 24.404, replacement housing of last resort.

2) A replacement dwelling rented by an eligible displaced person is considered to be within his or her 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 displacement dwelling as described at 24.402(b)(2).

3) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the persons base monthly rent for the displacement dwelling as described in 24.402(b)(2). Such rental assistance must be paid under 24.404, replacement housing of last resort.

i. Obtained under a government housing assistance program similar to a dwelling a person occupied under a government housing assistance program before displacement. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply (See appendix A, 24.2(a)(6)(ix)).

Decent, Safe, and Sanitary Dwelling

The following standards which are not met by a local code shall apply unless waived for good cause by the federal agency funding the project. The dwelling shall

a. Be structurally sound, weather tight, and in good repair;

b. Contain a safe electrical wiring system adequate for lighting and other devices;

c. Have an air conditioning system capable of sustaining healthful and comfortable temperatures except in those localized areas where local climatic conditions do not require such a system;

d. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or in the absence of local codes the policies of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes the policies of such Agencies;

e. There shall be 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 a housekeeping dwelling there shall be a kitchen area that contains a fully usable 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;

f. Have at least one unobstructed safe exit to open space at ground level;

g. For a displaced person with a disability, be free of any barriers which prevent convenient reasonable entrance and exit or use of the dwelling by such displaced person. (See appendix A, 24.2(a)(8)(vii).)

Displaced Person

a. General. A person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at 24.401(a) and 24.402(a)):

1) as a direct result of a written notice of intent to acquire (see 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

2) as a direct result of rehabilitation or demolition of a project; or

3) as a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or part, other real property on which the person conducts a business or farm operation. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under 49 CFR 24.205(c), and moving expenses under 24.301, 24.302 or 24.303.

b. Persons not displaced: The following is a nonexclusive listing of persons who do not qualify as displaced persons:

1) A person who moves before the initiation of negotiations (see 24.403(d)) unless the Agency determines that the person was displaced as a direct result of the program or project;

2) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

3) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

4) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with guidelines established by the federal Agency funding the project (see appendix A 24.2(a)(9)(ii)(D));

5) An owner-occupant who moves as a result of an acquisition of real property as described in 24.101(a)(2) or 24.101(b)(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 is not subject to this part.); (This section involves among other factors the failure of negotiations to result in an acquisition agreement and the lack of authority of the Agency to exercise eminent domain).

6) A person whom the Agency determines is not displaced as a direct result of a partial acquisition;

7) A person who, after receiving a notice of relocation eligibility (described at 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 the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

8) An owner-occupant who conveys property, as described in 24.101(a)(2) or 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 the Agency will not acquire the property.

9) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;

10) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Public Law 93-477, *Appropriations for National Park System*, or Public Law 93-303, *Land and Water Conservation Fund*, except that such owner remains a displaced person for purposes of 49 CFR Part 24 Subpart D;

11) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations or a person who has been evicted for cause, under applicable law, as provided for in 24.206. However, advisory assistance may be provided to unlawful occupants at the option of the Agency in order to facilitate the project;

12) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 24.208; or

13) Tenants required to move as a result of the sale of their dwelling to a person using down payment assistance provided under the American Dream Down payment Initiative (ADDI) authorized by Section 102 of the American Dream Down payment Act (Pub. L. 108-186; Codified at 42 USC 12821).

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 a condominium or cooperative 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. (See Appendix A, 24.2(a)(11).)

Farm Operation

Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Household Income

Total gross 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.

Initiation of Negotiations

a. When a displacement results from the acquisition of the real property by a Federal Agency or Commonwealth Agency the *initiation of negotiations* means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. If the Federal Agency or Commonwealth Agency issues a notice of its intent to acquire the real property and the person moves after that notice but before delivery of the initial written purchase offer, the *initiation of negotiations* means the actual move of the person from the property.

b. When the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property and there is no related acquisition by a Federal Agency or a Commonwealth Agency, the *initiation of negotiations* means the notice to the person that he or she will be displaced by the project or if there is no notice the actual move of the person from the property.

c. In the case of a permanent relocation to protect the public health and welfare under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or Superfund) (CERCLA) the initiation of negotiations means the formal announcement of such relocation or the federal or federally-coordinated health advisory where the federal government later decides to conduct a permanent relocation.

d. In the case of permanent relocation of a tenant as a result of an acquisition of real property described in § 24.101(b)(1) through (5) the initiation of negotiations means the actions described in § 24.2(a)(15)(i) and (ii), except that such initiation of negotiations does not become effective for purposes of establishing eligibility for relocation assistance for such tenants until there is a written agreement between the Agency and the owner to purchase the real property. (See appendix A, § 24.2(a)(15)(iv)).

Owner of a Dwelling

A person is considered to own a dwelling if the person purchases or holds any of the following interests in real property;

a. fee title, a life estate; or

b. an interest in a cooperative housing project which includes the right to occupy a dwelling; or

c. a contract to purchase any of the interests or estates described in 24.2(a)(1)(i) or (ii); or

d. any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

Person

Any individual, family partnership, corporation, or association.

Salvage Value

The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense. Included are items for re-use. These types of items are not eligible for relocation assistance.

Small Business

A business having not more than 500 employees working at the site being acquired or displaced by a program or project.

State

When referred to in this manual, *State* means the Commonwealth of the Northern Mariana Islands applied in meaning the same as to States of the United States.

Unlawful Occupancy

An occupier without property right, title or payment of rent or an occupier legally evicted under Commonwealth law. The CNMI at its discretion may consider such person to be in lawful occupancy.

Utility Facility

An electric, gas, water, steam power, or materials transmission or distribution system; a transportation system; a communications system including cable television; any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such systems. A utility facility may be publicly, privately, or cooperatively owned.

Utility Relocation

Removing and reinstalling a facility including necessary temporary facilities; acquiring right-ofway for a new location; moving, rearranging or changing the type of existing facilities; taking necessary safety and protective measures. Includes the construction of a replacement facility that

has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service.

Planning, Advisory Services, and Coordination

Acquisition Relocation Plan

Successful relocation programs require planning. Housing resources must meet the needs of displaced residents in terms of size, price, rental, location, and timely availability. Advisory services and various notices, some with specific timing requirements, must be provided. Businesses must be given assistance in relocating with a minimum of disruption to their operations. Payments must be made available to displaced persons at the time they are needed to obtain replacement housing or to move. Coordination with other involved agencies is necessary. These activities do not happen automatically, they require planning. The Uniform Act is clear about requiring planning.

Planning for relocation begins with the general project plan since the relocation of occupants is one of the major impacts and should be uniquely considered at an early stage in the planning process.

If problems are revealed early in the planning process various solutions may be considered such as extension of lead time, alignment and plan changes prior to construction, or implementation of clearly defined mitigation measures. To ascertain who will be displaced and to learn about potential problems, personal interviews with those affected by the project are crucial. The factual information developed from personal interviews should indicate if orderly relocation can be achieved.

The preparation of an Acquisition Relocation Plan will prove helpful, useful and advantageous to DPW as well as others in administering the overall project.

Key elements of the CNMI Acquisition Relocation Plan include:

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

An inventory of potential Displaced Person(s) containing characteristics and needs of individuals, families, businesses and non-profit organizations and farms, to be relocated (obtained by interviews). (See Appendix B, DPW Form # xxxx.)

An estimate of the amount personal property moves which are likely to be needed.

A survey of the real estate market to determine if an adequate supply of comparable replacement housing and suitable replacement locations for businesses and farms will be available to meet the needs of the displaced persons in a timely manner.

An analysis of the problems anticipated in the relocation of the occupants including anticipated relocation advisory services that may be important; and proposed solutions for resolving anticipated problems. (See Appendix B, DPW Form # xxxx.)

The Acquisition Relocation Plan should also incorporate an analysis of the impacts of displacing businesses, farms, and non-profit organizations. Planning for displaced businesses and farms is inherently expected to involve complex or lengthy moving processes with few specialized alternative relocation sites adaptable for small business applications. These special needs should be addressed by:

Consideration of any special relocation advisory services that may be needed.

A personal interview with each business, farm, and non-profit owner or designated representative. A real estate specialist should determine the relocation needs and preference of each entity to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.

The Displaced Person(s) Information (DPW Form xxxx) is designed to obtain a number of items including business replacement site requirements, current contractual obligations and a large volume of logistical considerations associated with the actual move.

Once the facts have been gathered, the displaced persons identified, the available or anticipated resources are known, and the factors affecting supply and demand have been analyzed, they should be summarized as a final section in the Acquisition Relocation Plan.

Offer of Advisory Services

DPW must plan for providing the advisory services displaced persons will need. Providing these services may make the difference between a successful relocation and one which delays the progress of project activities. CNMI real estate specialists will need to work with many different people and situations.

Relocation advisory services will be necessary in all phases and aspects of a highway project. They involve providing information, counseling, advice, and encouragement and often require repeated and intense personal contact. There is probably no other assistance more important for displaced persons. Some displaced persons will require minimal advisory services; others will need extensive services. The CNMI advisory assistance goal is to assure that all displaced persons are relocated successfully and all relocation problems are adequately addressed and resolved. *Personal interviews shall be conducted with each displaced person/business.*

Eligibility for Advisory Services

There are four categories of persons eligible to receive advisory services:

Persons occupying real property to be acquired for the project. Most parties will fall in this category. These are people who are occupants of the project site. This group may include owners and tenants of residences, owners and tenants of businesses and farms, and non-profit organizations.

Persons occupying real property adjacent to that being acquired who are subject to substantial economic injury by the acquisition. The acquisition of property adjacent to a business may potentially reduce its clientele, limit accessibility or cause other serious difficulties. Although such businesses are not entitled to business relocation payments, DPW must make available relocation assistance advisory services to them. Examples might include consultation with the business on space needs, current market conditions, or traffic patterns or transportation as they relate to relocating the business; information regarding the availability of relocation sites; information about and referral to the Small Business Administration.

Persons who, as a result of the project move or move personal property from real property not being acquired for the project. For example the owner of a business lives across the street from his or her business location. When it is relocated across town, the owner chooses to move his or her residence also in order to remain close to the business location.

Persons who move into property after acquisition and are aware that they will have to move due to the project. Such "short-term occupants" are entitled to advisory services.

Lawful Presence in the United States

Each person seeking relocation payments or relocation advisory assistance shall as a condition of eligibility certify that they are a citizen or national of the United States or an alien who is lawfully present in the United States; family members must furnish the same certifications.

For relocation assistance, owners of an unincorporated business, farm, or nonprofit organization must establish that they are a citizen or national of the United States, or an alien who is lawfully present in the United States. An incorporated business, farm, or nonprofit organization must establish that the corporation is authorized to conduct business within the United States.

In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made.

Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization is otherwise eligible shall be computed for the household based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

Reviews by CNMI Agencies of certifications shall be conducted in a nondiscriminatory fashion.

Advisory Services to be Provided

The real estate specialist must explain relocation payments and other assistance offered by CNMI to each potential displaced person, including eligibility requirements and procedures for obtaining such assistance. Along with the explanation, a relocation brochure will be given.

Although occasionally CNMI relocation representatives may need to provide unusual types of assistance, normally, there is a group of services which form the basis of typical advisory services for all displaced persons. Included are:

Explanation of relocation services and relocation assistance payments;

Explanation and discussion of the eligibility requirements for each relevant type of relocation payment and at the appropriate time determine the eligibility for payments for each displaced person;

Furnishing of current listings including prices or rents of replacement properties either comparable to acquired dwellings or appropriate for displaced businesses and farms;

Referrals about Federal and State housing programs offering relocation or related types of assistance;

Assistance in obtaining and completing applications or claim forms for relocation payment or related assistance;

Transportation if needed for the displaced person to inspect potential replacement housing.

Delivery to each person, residential or business/farm/non-profit of the relocation brochure alone does not constitute a complete explanation of services. The following activities must also be conducted:

Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available. The displaced person must be informed that a replacement housing payment will not be made unless the replacement dwelling is inspected and certified to be decent, safe, and sanitary.

All displaced persons shall be offered transportation to inspect housing to which they are referred.

A displaced person who may be eligible for government housing assistance at the replacement dwelling shall be advised of requirements of such government housing assistance program which may limit the size of the replacement dwelling, the long term nature of a rent subsidy, and the limited (42 months) duration of the relocation rental assistance payment.

If DPW allows an owner or tenant to occupy the acquired property on a short term rental or short notice termination rental basis the amount of rent required shall not exceed the fair short term rental value.

Special Services

Social services may be available from a number of public and private agencies. It is important for DPW to determine the services available to the residents of the project area and the ways to obtain the services for the displaced persons. The FHWA Project Development Guide (Chapter 10) contains information on available services.

Coordination of Relocation Activities

Relocation activities shall be coordinated with project work and other displacement causing activities to ensure that to the extent feasible persons displaced receive consistent treatment and the duplication of functions is minimized.

The construction or development of a public improvement shall be so scheduled that to the greatest extent practicable no person lawfully occupying real property shall be required to move from a dwelling or to move a business or farm operation without at least 90 days written notice from DPW of the date by which such move is required.

Comparables

Comparability:

The following guidelines describe aspects of comparability (also see definition under comparable replacement dwelling). Determination of comparability is one of the most complex and sensitive

aspects of ROW acquisition and can often be subjective, requiring good judgment. It is DPW policy to adequately and fairly apply these principles.

1. Decent, safe and sanitary (DSS, also defined in the definitions section).

The term refers to the physical condition of the replacement dwelling and its effect on the health and safety of the occupants. Basically a dwelling which meets the requirements of a local housing and/or occupancy code will compose acceptable standards.

There is a distinction between housing/occupancy codes and building codes. Building codes set standards for construction and apply only to new construction and certain additions and alterations. Housing/occupancy codes set standards for habitability and apply to all dwellings in a community. Housing/occupancy codes are narrower in scope than building codes. They are concerned with those elements which influence health and safety. Building codes are concerned with conformance to current building standards.

2. Functionally equivalent (also in definitions under comparable replacement dwelling).

The emphasis is on function. The replacement dwelling when compared with the acquired dwelling should perform the same function, provide the same utility, and possess like amenities. This requires that the principal features of the acquired dwelling be present in the comparable. For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. A garage might provide an adequate substitute for a workshop space. A dining area may substitute for a separate dining room. Under some circumstances attic space could substitute for space for storage purposes and vice versa.

3. Adequate in size to accommodate the occupants.

In general this requirement relates to the occupancy standards in local housing/occupancy codes. However the particular composition of the displaced household must be taken into consideration.

4. In an area not subject to unreasonable adverse environmental conditions.

Unreasonable adverse environmental conditions may have a serious negative effect on the habitability of a replacement dwelling. Proximity to environmental influences such as sewage treatment plants, noisy factories possibly dispensing pollutants, salvage yards, dump sites, or unhealthful or unsafe conditions may make a dwelling unsuitable to be used as a comparable.

5. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and reasonably accessible to the person's place of employment.

The adequacy of access to commercial and public facilities is a case-by-case judgment. It is

important to determine the access needs of each displaced person to various institutions and facilities. DPW must make housing available that is generally not less desirable than the displacement dwelling with regard to those institutions and facilities. A family with children would be concerned with schools. An elderly retired couple without a car would consider it important to be near a grocery store. This does not mean that the displaced person's personal desires as to particular schools or shopping areas have to be met but a sincere attempt should be made to accommodate the displaced person's preference. DPW will consider both needs and availability.

Continued access to the displaced person's place of employment is an important consideration for replacement housing. The objective is that housing be reasonably accessible to the person's place of employment. Referrals need not be limited to housing equally distant from employment as the displacement dwelling, but travel time or distance from the referral should not hinder continued employment.

6. On a site that is typical for residential development with normal site improvements, including landscaping. The replacement site need not include special improvements such as outbuildings, swimming pools and greenhouses.

7. Currently available to the displaced person on the private market.

DPW may refer displaced persons only to housing that has recently been confirmed as being available. Thus a sales or rental dwelling no longer on the market may not be used to determine the sales or rental priced of a comparable replacement dwelling.

8. Within the financial means of the displaced person.

It is assumed that owners can afford replacement housing if they are not required to pay more for the mortgage payment on their replacement dwelling than they paid for the displacement dwelling. For tenants the assumption is that they should not pay more than 30% of their average monthly gross household income if the amount is classified as "low income."

9. For a person receiving governmental housing assistance before displacement a dwelling that may reflect similar governmental housing assistance.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit.

When considering DSS requirements pay particular attention to porches, stoops, and exterior stairs; roofs, electrical systems; foundations and plumbing.

Selection of Comparables

A real estate specialist should personally inspect the comparables both inside and outside to assure the proposed replacement properties are comparable and meet the standard of equal to or better. The specialist should note any unusual or special features found in the comparable dwelling.

An analysis of the displacement neighborhood is needed if the proposed comparable properties are not within the same neighborhood. Public and private facilities that are significant conveniences to the displacement neighborhood should be identified and considered in selecting the comparable replacement neighborhood. Attention should be paid to the distance of the displaced person's place of employment or other location upon which the displaced person may depend.

All features lacking in the comparable dwelling as compared to the displacement dwelling and all features found to be in addition those in the displacement dwelling should be described. The comparable replacement dwelling should usually be chosen from an area of equal or higher value.

Payments for Moving and Related Expenses

These types of payments fall into two broad categories, residential and nonresidential (businesses, farms, and non-profit organizations). An owner or tenant qualifying as a <u>displaced</u> person who moves from a dwelling (includes a mobile home) or from a nonresidential establishment is entitled to payment for actual moving and related expenses as determined by DPW to be reasonable and necessary.

There is no fixed dollar ceiling on payments for actual moving expenses but the payment may not exceed the actual cost of the moving and related expenses. An actual cost move may be carried out by a commercial mover or by the displaced person, i.e., a self-move. A detailed inventory of personal property to be moved should be prepared.

Moves From a Dwelling

Expenses for moving personal property from a dwelling is determined based on the cost of one of the following methods (can be combined):

- 1. Commercial move. Moves performed by a professional mover.
- 2. Self move. Moves that may be performed by using

a. Fixed Residential Moving Cost Schedule (available at www.fhwa.dot.gov/realestate/fixsch96.htm);

b. Actual Cost Move - payments are not to exceed the actual cost of the moving and

related expenses supported by receipts for the cost claimed. The charges must be reasonable and typical of the amounts charged for similar moves. Such items as labor rates and equipment rentals should not exceed the cost paid by a commercial mover or other vendor.

Use of both a. and b. above is permitted but self moves based on the lower of two bids or estimates are not eligible for reimbursement.

Eligible expenses for moves from a dwelling include the expenses described in 49 CFR Part 24, § 24.301 paragraphs (g)(1) - (g)(7) and (g)(11) - (g)(13).

(g) Eligible actual moving expenses. (1) Transportation of the displaced person and personal property.

(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.

(11) Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

(12) Professional services as the Agency determines to be actual, reasonable and necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(13) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

Fixed Payment for Residential Moving Expenses

As an alternative a person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment for actual moving *and related expenses* under 49 CFR Part 24, § 24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule previously mentioned herein.

Moves from a Mobile Home or Home Site

A non occupant owner of a rented mobile home is eligible for actual cost reimbursement (49 CFR Part 24 §24.301) to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner occupant obtains a replacement housing payment under one of the circumstances described at 49 CFR Part 24 §24.502(a)(3), the homeowner occupant is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

In the simplest case expenses of a <u>displaced</u> person for moving personal property from a mobile home is determined based on the same methods, rules, and eligible costs as moves from a dwelling.

If an owner-occupant elects not to relocate a mobile home which is personal property (versus real property) but the mobile home is capable of being relocated to a comparable alternate site, the owner is not considered displaced but is eligible for the same moving costs as previously described.

It is unlikely that determinations for mobile home expenses will ever be encountered in the Commonwealth since most structures of the past, present, and future are built to withstand typhoons or possibly earthquakes. However if the need does arise it should be realized that mobile home displacements can involve sets of complex factors. A thorough analysis of the CFR's cited herein or assistance of legal counsel may be necessary. Examples include whether a mobile home is personal or real property, the determination for which necessarily falls within the purview of Commonwealth law and if the housing occupies owned land or leased land.

Seasonal or Dormitory Rooms

A person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under 49 CFR §24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule. The payment to a person with minimal personal

possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an Agency at no cost to the person is limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule (find at www.fhwa.dot.gov/relestate/fixsch96.htm.

Moves from a Business, Farm or Nonprofit Organization

Personal property from a business, farm or nonprofit organization as determined by an inventory may be moved by one or a combination of the following methods:

1. Commercial move. Based on the lower of two bids or estimates prepared by a commercial mover or at DPW discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate. The costs claimed for reimbursement of an actual cost move must be supported by appropriate receipts or other records.

2. Self move. A self move payment may be based on one or a combination of the following:

a. The lower of two bids or estimates prepared by a commercial mover or at DPW discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

b. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and equipment rent fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover. Reimbursement for a self-move is based on the actual cost incurred by the business for equipment and labor. 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. Charges for equipment owned by the business and used in the move should be prorated against its usual operating cost. It also is acceptable to pay for management time for overseeing the move.

Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in 49 CFR Part 24, § 24.301 paragraphs (g)(1) through (g)(7) (previously stated herein) and paragraphs (g)(11) through (g)(18) and § 24.303:

(11) Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

(12) Professional services as the Agency determines to be actual, reasonable and necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(13) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(14) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling prices.); or

(ii) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. (See appendix A, §24.301(g)(14)(i) and (ii).) If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

If a piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists and shall not include the cost of code required betterments or upgrades that may apply at the replacement site. The allowable in place value estimate and moving cost estimate must reflect only the "as is" condition and installation of the item at the displacement site.

Example of how to calculate the payment being the lesser of A. or B:

A. Calculate the amount for the continued use of an item, in place, as is, at the displacement site, and subtract the (net) proceeds from the sale:
Current fair market value of the equipment in place, as is, installed and fully operational.
\$10,000
Subtract the proceeds from the sale -\$7,000
Add the cost of the sale <u>+\$500</u>
\$3,500

B. The current estimated cost to move and reconnect an item "as is" at the replacement site will not include upgrades for code requirements. If the equipment is in storage and is not being used at the acquired site the estimated cost to move cannot include storage. Calculate the estimated cost to move and reconnect the item, as is, with no upgrades. Current estimated cost to move and reconnect, as is, with no upgrades for code requirements. \$2,500

Payment is the lesser of A or B above: \$2,500

(15) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(16) Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage.

Examples of using a Substitute Equipment method being the lesser of A. or B:

A. Cost of a substitute item \$10,000 Add the cost of installation +\$1,000 Subtract the proceeds of sale or trade-in -\$2.500 Add in the cost of the sale +\$500 \$9,000

B. Cost to move and reinstall the replaced item with no allowance for storage. \$12,500 Payment is the lesser of A or B above: \$9,000

(17) Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

- (i) Transportation;
- (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 sites;

(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.

(18) Low value/high bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Agency.

Related Nonresidential Eligible Expenses (49 CFR § 24.301)

The following expenses, in addition to those provided by §24.301 for moving personal property, shall be provided if the Agency determines that they are actual, reasonable and necessary:

(a) Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

(b) 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 Agency a reasonable pre-approved hourly rate may be established. (See appendix A, §24.303(b).)

(c) Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Agency.

Fixed Payment Nonresidential Moving Expenses

A displaced business, farm, or non profit may be eligible to apply for a fixed payment not less than \$1000 or more than \$20000 in lieu of the payments for actual moving and related expenses *and actual reasonable reestablishment expenses* provided by 49 CFR Part 24, § 24.301, §24.303, and § 24.304. The fixed payment for a business or farm shall equal the average annual net earning. The fixed payment for a nonprofit organization shall be the average gross revenue less administrative expenses. DPW determines eligibility using the following criteria:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site;

2. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings);

3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired and which are under the same ownership and engaged in the same or similar business activities;

4. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

5. The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (See 49 CFR Part 24, \S 24.2(a)(7).)

a. Had average annual gross receipts of at least \$5,000; or

b. Had average annual net earnings of at least \$1,000; or

c. Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

Personal Property Move Only (Residential, Business, Farm or Nonprofit Organization)

Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses as described above in 49 CFR Part 24, § 24.301 paragraphs (g)(1) through (g)(7) and (g)(18).

Ineligible Moving and Related Expenses

A displaced person is not entitled to payment for:

1. The cost of moving real property in which the displaced person reserved ownership;

2. Interest on a loan to cover moving expenses;

3. Loss of goodwill;

4. Loss of profits;

5. Loss of trained employees;

6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in 49 CFR Part 24, \S 24.304(a)(6);

7. Personal in jury;

8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before DPW or DPL;

9. Expenses for searching for a replacement dwelling;

10. Physical changes to the real property at the replacement location of a business or farm operation except as provided in 49 CFR Part 24, $\S 24.301(g)(3)$ and $\S 24.304(a)$;

11. Costs for storage of personal property on real property already owned or leased by the displaced person;

12. Refundable security and utility deposits.

Price Differential and Replacement Housing Payments

A price differential is the difference between the price actually paid by the displaced person for a replacement dwelling and the price paid by the acquiring agency for the displacement dwelling. The price of the comparable dwelling sets the upper limit of payment computation for the price differential.

The price differential to be paid is the amount which must be added to the acquisition cost of the displacement dwelling and site (see 49 CFR Part 24, § 24.2(a)(11)) to provide a total amount equal to the lesser of:

1. The reasonable cost of a comparable replacement dwelling as determined in accordance with 49 CFR Part 24, § 24.403(a); or

2. The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

Replacement housing payments are available <u>only to displaced persons who occupied dwellings</u> as their primary place of residence.

A displaced person is eligible for a replacement housing payment on a 180-day homeowneroccupant basis if the person:

1, Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations;

2. Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (DPW may extend the one year period for good cause);

a. The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court;

b. The date the DPW obligation under 49 CFR Part 24, § 24.404 (Replacement Housing of Last Resort) is met.

The maximum replacement housing payment for an eligible 180-day homeowner-occupant is \$22,500, however, the payment is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment is the sum of:

1. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling;

2. The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling;

3. Reasonable expenses incidental to the purchase of the replacement dwelling.

See "Price Differential Computation Example", Page 95.

Owner Retention of Displacement Dwelling

If owners elect to retain ownership of their dwelling and move it to a replacement site, the purchase price of the replacement dwelling shall be the sum of:

1. The cost of moving and restoring the dwelling comparable to that prior to the move;

2. The cost of ensuring a decent, safe, and sanitary replacement dwelling;

3. The current market value for residential use of the replacement dwelling site;

4. The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

Increased Mortgage Interest Costs

If a displaced owner-occupant is required to pay increased interest costs to pay for financing the replacement property, factors used in computing the amount to be paid to a displaced person include the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. Payments can include other debt service costs if not paid as incidental costs. Other guidelines the real specialist should consider in the computation of the increased mortgage interest payment:

1. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling;

2. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter;

3. The interest rate on the new mortgage used in determining the amount of the payment 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;

4. Purchaser's points and loan origination or assumption fees but not seller's points, can be paid.

Incidental Expenses

Incidental expenses are those necessary and reasonable costs actually incurred by the displaced person for purchase of a replacement dwelling, and customarily paid by the buyer:

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 application and appraisal fees;

3) loan origination or assumption fees that do not represent prepaid interest;

4) professional home inspection, certification of structural soundness, and pest inspection;

5) credit report;

- 6) owner's and mortgagee's evidence of title, e.g., title insurance;
- 7) escrow agent's fee;

8) documentary stamps, sales or transfer taxes;

9) other costs DPW determines to be incidental to the purchase.

Rental Assistance Payment for 180-Day Homeowner

A 180-day homeowner-occupant who elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. 49 CFR Part 24, § 24.402(b)(1) and CFR Part 24, § 24.402(b)(3) contain further guidance.

Replacement Housing Payment for 90-Day Occupant

A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance or down payment assistance, if such displaced person

1. legally occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations;

2. rents, or purchases, and occupies a decent, safe, and sanitary replacement dwelling within 1 year after

a. a tenant moves from the displacement dwelling; or

b. an owner-occupant receives final payment for the displacement dwelling or a condemnation settlement or after the date of moving from the displacement dwelling.

Rent Supplement Payment for 90-Day Occupant

An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed 5,250 for rental assistance (see 49 CFR Part 24, § 24.402). The payment is 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

I. the monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

2. the monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

The base monthly rental for the displacement dwelling is determined by its fair market rental value. If a tenant fits a "hardship category" (classified as low income by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and

Section 8 Programs), the rent supplement is determined by using thirty (30) percent of the displaced person's average monthly gross household income. U.S. HUD "Public Housing and Section 8 Program Income Limits" are updated annually and are available on FHWA's web site at <u>http://www.fhwa.dot.gov/realestate/ua/ualic.htm</u>.

The first example below demonstrates the payment for a non-hardship 90 day displacement; the second example is for a hardship displacement.

Rent (FMV) and Utilities at Displacement Dwelling	\$1200
Annual Household Income	50000
Number of Occupants of Household	5
Low Income Threshold	47250
30% of Monthly Household Income	NA
Base Monthly Rental	1200
Comparable Rent and Utilities	1250

Payment:

1250 less 1200 = 5050 x42 months = 2100

 Rent (FMV) and Utilities at Displacement Dwelling Annual Household Income 	
Number of Occupants of Household	
Low Income Threshold	47250
3. 30% of Monthly Household Income	1150
Base Monthly Rental (lesser of 1 or 3)	
4. Comparable Rent and Utilities	

Payment:

1250 less 1150 = 100100 x 42 months = \$4200

In these two examples "Comparable Rent and Utilities" means the additional amount of combined rent and utilities necessary to rent the replacement.

Down Payment Assistance

Down payment assistance not to exceed \$5250 is available for displaced *tenant*-occupants of more than 90 days and *owner*-occupants of more than 90 but less than 180 days. The total amount cannot be more than the person would receive if renting a comparable replacement dwelling. The same replacement housing payment rationales as for a 180 day displaced

occupant applies to these types of down payments, 49 CFR Part 24, § 24.401(a) and (b).

A displaced person eligible to receive a replacement housing payment as a 180-day owneroccupant is not eligible for this type of down payment.

The full amount of the down payment must be applied to the purchase price of the replacement dwelling and related incidental expenses.

Carve Outs of Home Sites

To determine the typical home site portion of the acquisition price, use the actual price paid for the portion of the home site in the taking area plus the value of the residential improvements in the taking area plus any severance damages to either the remainder of the dwelling or home site area.

If damages are assigned to the entire remainder without an allocation between the remainder of the home site and the excess land remaining, the damages will be prorated between these remainders to establish the acquisition price of the dwelling, including the structure and land.

In areas where a typical home site cannot be determined due to variances of tract sizes within a residential area, the area actually used for residential purposes by the displaced person will be used to compute the replacement housing payment. Consideration must be given to locations of driveways and fences, outbuildings, gardens, pools, and to the area maintained, cleared and mowed, for residential usage.

If all or part of areas occupied by nonresidential structures must be included in order to create a home site tract typical of the area, the typical home site will be configured using whatever portion of those areas is necessary. Examples of Items to be Carved Out: Swimming pools, garages/carports, outbuildings, larger than typical lots, extra buildable lots.

For replacement dwellings which are on tracts larger than typical for residential use in the area where the excess land is used for nonresidential purposes, the replacement housing payment will be calculated using the actual cost of the replacement dwelling plus the prorated portion of the site which is typical for residential use.

Typical Home Site Determination

If the acquired dwelling is located on a land area that is typical in size for similar dwellings located in the same neighborhood or rural area, the maximum purchase additive payment is the probable selling price of a comparable replacement dwelling on another typical tract, less the acquisition price of the acquired dwelling and the tract on which it is situated. If an uneconomic remnant remains after a partial taking and the owner declines to sell that remnant, the fair market value of the remainder will **not** be added to the acquisition cost of the acquired dwelling for purposes of computing the replacement housing payment.

Price Differential Computation Example

Total Take – Typical Residential Lot Size

1. Price of Comparable (see "Comparables" section, this Ch	apter); \$	<u></u>
2. Appraised value of subject to be acquired. Include value remnant, or "building lot remainder," and/or damages;	of uneconomic; \$_	
3. Maximum Price Differential (Subtract line 2 from line 1). \$\$	
Residential Carve Out		
4. Price of Comparable;	\$_	
5. Appraised value of land and improvements (dwelling, we to be acquired contributing to the residential use of the su larger than typical, only include square footage typical of	bject. For lots	
6. Amount of damages to the residential portion of the rema (do not include if lot is larger than typical);	ining property \$	
7. Carve out residential value of subject (Add lines 5 and 6)	; \$	S
8. Maximum Price Differential (Subtract lines 7 from line	4). 5	ß
Actual Price Differential Computation		
9. Purchase Price of Replacement Dwelling or Price of Con	nparable (lesser amt);	§
10. Residential value of acquired dwelling/site. Include indu administrative settlements, free salvage;		\$
11. Subtract line 10 from line 9;	:	\$
12. Maximum Price Differential (line 3 or 8);		\$
13. Price Differential Payment (lesser of lines 11 or 12).		\$

Relocation Benefits for Temporary Tenants

Tenants permanently displaced by a Federally-assisted project are covered by the Uniform Act. Tenants who are not required to relocate permanently are not considered displaced persons for purposes of the Uniform Act but are entitled to temporary relocation expenses in accordance with 49 CFR 24.2(g)(2)(iv) and 49 CFR Part 24 Appendix A.

Reestablishment Expenses for Nonresidential Moves

Small businesses, farms, and nonprofit organizations are entitled to receive payments, not to exceed \$10,000, for expenses incurred in relocating and reestablishing their respective operations at a replacement site. This payment cannot be made if the organization accepts a fixed payment in lieu of the payment for actual moving and related expenses.

Reestablishment expenses must be reasonable and necessary as determined by DPW. DPW will base expense eligibility decisions on necessity, i.e., is the expense necessary to reestablish the displaced operation. Expenses include, but are not limited to, the following:

1. Repairs or improvements to the replacement real property as required by Federal, Commonwealth, or local law, codes or ordinances.

2. Modifications to the replacement property to accommodate the operation or to build suitable replacement structures.

3. Construction and installation costs for exterior signing to advertise a business.

4. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

5. Advertisement of replacement location.

6. Estimated increased costs of operation during the first 2 years at the replacement site for items such as:

- a. Lease or rental charges;
- b. Personal or real property taxes;
- c. Insurance premiums; and
- d. Utility charges, excluding impact fees.

7. A business whose sole activity at the site is providing space at the site to others is eligible for a reestablishment expense payment.

Ineligible Reestablishment Expenses

Examples of items not considered necessary or otherwise disallowed include:

1. Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

3. Interest on money borrowed to make the move or purchase the replacement property.

4. Payment to a part-time business in the home which does not contribute materially (defined at 49 CFR Part 24, § 24.2(a)(7)) to the household income.

Summary of Displacement Compensations

For most of the below stated payments there are regulatory allowances for case by case increases to be determined by the Agency on the basis of unusual conditions or hardship situations.

Residential

A replacement housing payment is, in general, payment for the difference between the actual acquisition price or rent of a comparable replacement dwelling and the acquisition price or rent of the dwelling from which the occupant is being displaced. Additionally, increased mortgage interest costs and selected incidental expenses (settlement costs) may be eligible for reimbursement.

There are three types of replacement housing payments: purchase supplement, rental assistance, and down payment.

- Owners who were in occupancy 180 days or more prior to the initiation of negotiations may be eligible for a purchase supplement or a rental assistance payment.
- Tenants who were in occupancy 90 days or more prior to the initiation of negotiations may be eligible for a rental assistance payment or a down payment.
- Owners who were in occupancy 90 days to 179 days prior to the initiation of negotiations, may be eligible for a rental assistance payment or a down payment, however, the down payment cannot exceed the amount a recipient would have received if they had been a 180-day owner.

The replacement housing payment for a 180-day owner may not exceed \$22500. The maximum reimbursable down payment for eligible displacements is \$5,250. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance.

Moving and related expenses include payment for the actual cost to move personal property. A property owner may have a commercial mover move personal property or may elect to move the personal property himself. In addition, the property owner has the option to be paid on the basis of a schedule published by FHWA rather than on the basis of actual costs (a copy of the schedule is available on website http://www.fhwa.dot.gov/realestate/index.htm).

Negative Equity

The FHWA Office of Real Estate Services issued a Memorandum on November 10, 2010 effectively implementing a temporary waiver for modification of the methodology of Title 49 of CFR 24 § 24.401 (b)(1) which normally calculates Replacement Housing Payments (RHP) for displaced homeowner-occupants. This waiver will remain in effect until December 31, 2012. Except for the waiver, all of the other conditions of 49 CFR Part 24 remain applicable including the \$22500 statutory cap on the RHP.

The purpose of the waiver is to bridge the gap of between a homeowners constitutionally mandated just compensation and additional costs incurred in obtaining a comparable replacement property. Under the Uniform Act, persons displaced by a foreally financially assisted project are entitled to benefits which minimize the hardship when they are forced to relocate to accommodate a public improvement project.

Negative equities can occur when homeowners experience a fair market value of the property (or just compensation) which is less than their current mortgage amount.

The Uniform Act makes clear that displaced homeowners should not be worse off economically than before their displacement. The waiver accomplishes this requirement by allowing an administrative settlement in an amount above the current fair market value of the property to meet the mortgage balance in addition to the RHP for a comparable replacement dwelling as determined by the DPW. Normally (without the waiver) a displaced homeowner who for certain reasons is eligible for an administrative settlement amount above FMV would not receive an RHP if the settlement exceeds the price differential eligibility for a comparable replacement dwelling.

Business

A business may be reimbursed for up to \$2,500 of expenses incurred in connection with searching for a replacement location.

The cost to move and disconnect and reinstall personal property will usually be reimbursable. If business owners decide not to move personal property, as an alternative they may elect to be paid on the basis of actual direct loss of tangible personal property or the cost of substitute personal property. Such alternate payments may not exceed the actual cost to move the items.

Fixed moving expenses payment. A business may be eligible for a payment of not less than \$1,000 and not more than \$20,000 in place of actual moving and related expenses and reestablishment expenses often referred to as an "in lieu" payment. The payment amount is based on average annual net earnings of the business.

The average annual net earnings of a business are one-half of its net earnings before federal, state, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced.

The owner of a small business may be eligible for up to \$10,000 for reimbursement of eligible expenses associated with the reestablishment of a business at a replacement location.

Reestablishment expenses must be reasonable and necessary as determined by DPW (comparable standards are not used). The types of eligible expenses are numerous, detailed and sometimes complex.

Farm Operation

A displaced farm operation may choose a fixed payment in lieu of actual moving and related expenses and reestablishment expenses in amount equal to its average annual net earnings but not less than \$1000 or more than \$20000

The average annual net earnings of a farm operation are one-half of its net earnings before federal, state, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced.

The owner of a farm may be eligible for up to \$10,000 for reimbursement of eligible expenses associated with the reestablishment of the operation at a replacement location.

Nonprofit Organization

A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses if DPW determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses.

A nonprofit organization may be eligible for up to \$10,000 for reimbursement of eligible expenses associated with the reestablishment of the activity at a replacement location.

Utilities

49 CFR 24.306 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing Agency causes the relocation of a utility facility (see §24.2(a)(31)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing Agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met[.]

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing Agency;

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NUMBER 05 MAY 28, 2013 PAGE 033486 (4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing Agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing Agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing Agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally-assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing Agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (*See* appendix A, §24.306.)

Section 24.306 Discretionary Utility Relocation Payments. Section 24.306(c) describes the issues that the Agency and the utility facility owner must agree to in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Tenants

Bona fide tenants occupying residential, business, farm or non-profit organization facilities may be eligible for payments under differing circumstances.

For a tenant, the monthly rent and estimated average monthly utility (electricity, gas, other heating and cooking fuels, water and sewer) cost for a comparable replacement dwelling is considered to be within financial means if, after receiving rental assistance, this amount does not exceed the base monthly rent (including average monthly utility cost) for the dwelling from which the tenant is displaced.

The Agency may need to calculate the base monthly rent using 30% of the displaced tenant's total monthly gross household income if that income qualifies as low income in accordance with established low income amounts determined by the U.S. Department of Housing and Urban Development (HUD).

The Agency will also evaluate the amounts designated for shelter and utilities for a tenant that receives government assistance.

The rental assistance payment will be computed using the lesser of these three, rent and average monthly utility cost; 30% of the total monthly gross household income for a qualified low income tenant; or the total amount designated for shelter and utilities (for a tenant receiving government assistance).

To ensure the maximum benefit, it is important to provide the Agency appropriate evidence of total monthly household income when asked. There are some amounts that are not included as monthly household income, including income earned by dependents. The Agency will explain this procedure in greater detail.

Last Resort Housing

The term Last Resort Housing is an administrative procedure authorized by law to address those times when comparable replacement housing is not available under statutory limits specified in law. The law and regulation allow the Agency to provide a replacement housing payment in excess of the statutory maximums of \$5,250 and \$22,500. This provision is frequently used.

The Agency must provide comparable replacement housing, that is, decent, safe and sanitary and within the displaced person's financial means, before moving. The Agency may provide the necessary housing in a number of ways:

- Making a replacement housing payment in excess of the maximum \$5,250 or \$22,500 statutory limits.
- Purchasing an existing comparable residential dwelling and making it available to the displaced person in exchange for their displacement dwelling.
- Moving and rehabilitating a dwelling and making it available to the displaced person in exchange for their property.
- Purchasing, rehabilitating or reconstructing an existing dwelling to make it comparable.
- Purchasing land and constructing a new replacement dwelling comparable to the displaced dwelling.
- Purchasing an existing dwelling, removing barriers or rehabilitating the structure to accommodate a handicapped displaced person.
- Providing a direct loan which will enable construction or contract for the construction of a decent, safe, and sanitary replacement dwelling.

Review of the Relocation Process

1. Plan Project

- Estimate relocation needs, such as housing (conduct door-to-door survey if feasible).
- Estimate costs and staffing needs.
- Hold public hearings
- Decide plan of action.
- 2. Project Approved
 - Establish organization and train staff.
 - Establish management control system and procedures for coordinating relocation with displacement causing activity.
 - Establish record keeping procedures.

3. Inform Persons to be Displaced

- Provide general written information describing payments, services, and protections.
- o Identify representative comparable replacement dwelling.
- Provide notice of eligibility for relocation assistance. Include cost and location of comparable replacement dwelling.

4. Interview Persons to be Displaced

• Determine (or update) individual needs and preferences. Complete site occupant record.

- Explain available payments and services, eligibility conditions, filing procedures, and basis for determining maximum replacement housing payment.
- Encourage person not to move prematurely.
- Explain rental policies for short-term occupancy after acquisition.
- 5. Work with Persons to be Displaced
 - Make referrals to replacement housing units and replacement business locations. Inspect replacement housing before referral.
 - Provide counseling, technical aid, and appropriate referrals to social service agencies.
 - Inform owner to notify agency prior to moving.
 - Issue 90-day notice, if necessary.
- 6. Person Chooses Replacement Property and Moves
 - Inspect replacement housing before move to ensure it is decent, safe, and sanitary.
 - Issue advance payment when needed.
 - Upon notification of business move, inspect personal property at displacement site. Inspect personal property at replacement site to ensure it was moved.
- 7. Process Claims and Make Payments
 - Assist in preparing and filing claim(s). Review claims and promptly issue payments.
 - Deal with complaints quickly and equitably. Assist in preparation of appeal as appropriate.
- 8. Follow-Up
 - Evaluate program success (include follow-up contacts with persons displaced).
 - Improve procedures for future.
 - Maintain records to demonstrate compliance with law and regulations.
- 9. Checklist
 - Complete RELOCATION CHECKLIST AND RECORD OF CORRESPONDENCE (See Appendix B, DPW Form xxxx.)

VI Property Management

The purpose of this manual chapter is to clarify and implement existing statutes, rules, policies, and procedures related to the property management program and to establish uniform procedures for each property management activity. The acquiring agency is responsible for the preservation of improvements and for reasonable safety measures relative to acquired property and protection of lawful occupants when the agency has acquired ownership and possession of property.

Federal regulations for property management functions are found in 23 CFR Part 710 with FHWA participation set out in 23 CFR 710.203(b) (4). These regulations prescribe FHWA policies and procedures for the management of real property acquired in connection with Federal-aid highway projects. The policies in 23 CFR Part 710 apply to the Commonwealth and all political subdivisions that manage real property acquired for any highway or highway related project in which federal funds will participate in any part of the right of way costs of a project. The FHWA may participate in net costs incurred in rental, maintenance, disposal of improvements, protection, rodent control, and clearance of real property.

The Department of Public Works is required to have property management policies and procedures that ensure adequate control and effective administration of lands and improvements acquired for ROW purposes. These policies are contained in this ROW manual.

The control and administration of acquired property includes:

• Property records which show:

An inventory of all improvements acquired as part of the ROW project;

An accounting of the property management expenses and the rental payments received;

An accounting of the disposition of improvements and the recovery payments received.

- Methods for accomplishing the clearing of ROW when such clearance is performed separately from the contract for the physical construction of the project;
- Methods for managing a rodent control program;
- Methods for employing private firms or public agencies for the management of real property;

- Methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means;
- Procedures for disposing of real property acquired using Title 23 U.S.C. funds.

Key Definitions

Access Rights: The right of entrance and exit from a property that abuts a street or highway.

Airspace: By definition, property management is managing and administering property acquired for highway purposes so that the public interest is served. This property is often called **airspace** and is defined as that space located above, at, or below the highway's established grade line, lying within the approved right-of-way (ROW) limits and includes air rights under and over highway structures and over sections of highway as well as surface rights of any ROW located away from the traveled way improvements.

FHWA Directives and CNMI Policy

Most of the following guidelines and directives are a synopsis taken from the FHWA Office of Real Estate Services Project Development Guide, Chapter 12, "Property Management". Each separate element is followed by a CNMI policy or procedures statement.

Physical Clearance

During the ROW project acquisition phase, before construction starts, physical clearance and removal of structures, vegetation, wells, utilities, and similar improvements should be implemented. Included is the removal of pests and hazardous materials that may interfere with project construction.

CNMI policy: The ROW construction area will be free of all obstructions and environmental hazards and be blade-ready for initial grading.

Clearance Methods

Two ways of ROW clearing are 1) as part of the construction contract, or 2) as a separate contract. Both methods are considered to be a part of the Federal-aid highway project. Such contracts must conform to the provisions of 49 CFR 18.36.

CNMI Policy: In general and on a case by case basis clearing of the ROW project will proceed under separate contract rather than by being included in the construction contract.

Inventories

Federal regulations require an up-to-date inventory of the property acquired for the project. There is no standard format for this inventory. The inventory can begin before or during the implementation of appraisal activities.

CNMI Policy and Procedure: DPW Form # xxxx (see Appendix B) will be used to conduct ROW property inventories beginning as soon as possible after official project approval. Collected data will be computer compatible with the information stored in both interactive and PDF formats.

Rodent Control

The need for rodent control measures must be documented by periodic inspection of improvements to determine if it is necessary to provide for rodent control. Implementation of plans should start no later than the relocation of the first occupant to leave the project area.

CNMI Policy and Procedure: DPW will retain a private service or another qualified government agency to conduct rodent inspections and treatments which will be documented in the ROW project files. If warranted treatments will extend beyond the ROW limits in cooperation with adjacent property owners. The CNMI Department of Health will be consulted for rodent control activities and operations.

Acquisition Phase Security

The acquiring agency is responsible for the preservation and security of the improvements and for reasonable safety measures when it has acquired ownership and possession of property. Acquired ROW must be maintained in a manner which will prevent, minimize, or correct problems such as illegal dumping, or disposal of rubble and debris on cleared ROW until needed for construction.

CNMI Policy: Recognizing that vandalism and dumping on acquired ROW and associated improvements is a likely problem, each project or portions of the project will be analyzed on a case by case basis for applicable solutions. One or more of the following possibilities will be considered for implementation

- fences
- immediate sale of improvements
- retain private security services
- coordination with law enforcement
- community involvement.

Rental Processing

FHWA guidelines state in general if the acquiring agency rents (leases) ROW properties, the term of the lease should be no longer than the anticipated advertising date for the project. The tenants can be persons who occupied the property at the time it was acquired or persons selected as tenants by the acquiring agency after acquisition. Those persons in occupancy when the acquisition is completed are displaced persons under the relocation program and the rental process should be coordinated with that process (see Chapter V). Persons who first come into occupancy following the acquisition do not meet the definition of a displaced person as set forth in 49 CFR 24.2.

CNMI Policy: Unless unusual circumstances prevail DPW will allow owner occupants and tenants of a residential improved property to lease the subject property until the advertising date for the project. DPW will allow up to 30 days from the date of closing without charge. The DPW Director of Technical Services must approve the renting back to an owner occupant and the file must include supportive documentation for this decision.

Businesses will be allowed a lease back to the owner or tenant until such time as the properties are needed for construction. In the case of an owner-occupied business DPW will allow 30 days from the date of closing before rental payments begin.

DPW will not allow any free occupancy for tenants, residential or business, except as noted.

Establishment of Rental Rates

The period of free occupancy and the rental rate to a short term occupier is negotiable. If the property is not needed for a few months before the construction bids are advertised, then it is normally advantageous to the agency to have the property occupied in order to prevent vandalism and to prevent an unsightly appearance. Determination of the fair market rental amount to be charged may be necessary. A rent to be collected that is less than the fair market rent should be explained. Extended free occupancy or a reduced rent may be considered an administrative settlement which requires justification. Political considerations, timing of the project, individual hardship and the like may influence the free occupancy period and/or the amount of rent to be collected.

There can be problems with relocation when property is rented back to the original occupant. Per CFR 24.203, displaced occupants have a right to receive a relocation housing payment based on decent, safe, and sanitary housing **at the time they are given notice to move**. As a result, payments must be re-computed at the time of the notice to vacate. Sometimes a relocation problem is affected by the length of time the property is rented to the original occupant.

Long term occupant rentals should be based on the current fair market rental value. This type of tenant occupies state owned property that was acquired far in advance of the actual construction date or is on projects that have been postponed or canceled.

The current fair market rent to be charged to the long term occupant can be determined by an analysis of the rental rates on similar properties in the area. As properties that are occupied by residential tenants are acquired for the project the agent computes a rental assistance payment for them, thus developing useful rental information. Use of the multiple listing services, prior ROW project leasing practices and general trends in real estate may be helpful.

Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were purchased as a part of an FHWA funded project. Since this property was acquired with public funding, the principle guiding disposal would normally be to sell the property at FMV and use the funds for Title 23 transportation eligible projects, per 23 U.S.C. 156 and 23 CFR 710.403(e). Exceptions to the general requirement for charging FMV are set forth in 23 CFR 710.403(d).

CNMI Policy and Procedure: Short term and long term rental rates will be based on local listing rates as analyzed through public advertisements, various real estate listings, and possibly, advice from private appraisal sources. In no case will rental rates exceed perceived fair market value. The establishment of rental rates will be conducted by the CNMI Department of Finance with recorded documentations of the processes used.

Maintenance Agreements

Maintenance agreements are either contracts or written agreements between the owner of the property (in this instance the acquiring agency) and a person or firm who agrees to maintain the property. The scope of maintenance to be performed spans the entire spectrum of levels of maintenance. To a large extent the level of maintenance will be based on four primary considerations:

1. Type of Structure

All types of structures are acquired for highway projects but some are more conducive to being maintained and rented than others.

2. Age and condition of the structure.

Generally, the older the structure the more maintenance will be required. A commercial structure which will generate a high rent with a tenant who is willing to perform all necessary maintenance would be highly advantageous to the agency. A negative or marginal cash flow should eliminate a property from consideration as one to be rented.

3. Term of the lease.

The length of time the property is expected to be rented is another factor in the decision to rent a property. The longer the time between its acquisition and its need by the project, the more feasible the renting of a property becomes. If a property is likely to be rented for

several years, and its type and condition make it conducive to rent, then the decision to be made concerns the maintenance issue. The longer the term of the lease, the more desirable it will be to have the property professionally maintained.

4. Ability of the tenant to provide maintenance.

Depending on the type of structure, some tenants are more capable of providing maintenance than others, thereby reducing maintenance costs and improving profitability. On the other hand, it may be more desirable to charge a higher rent which would include maintenance considerations.

There are four ways to maintain property:

State Resources.

Utilization of state resources to maintain property is usually a cost effective method if the manpower is available. This method is usually good to use in combination with tenant maintenance.

2. Commercial managers.

Property management firms can sometimes provide property maintenance services. Services can be contracted for which would provide everything from daily janitorial services to periodic systems maintenance.

3. Tenant maintenance.

Allowing the tenant to maintain the premises is the most cost effective way of maintaining a property. A primary risk with this method is the delay of required or necessary maintenance. The next risk is the quality of maintenance conducted. Leases can be structured to account for these risks and others.

4. Combination.

Using of a combination of the above methods can be another cost effective way of dealing with required maintenance. The specific combination of methods and the degree to which they are employed will determine the feasibility for renting a property

CNMI Policy and Procedures: The CNMI Department of Finance will administer and set rental maintenance schedules and amounts for ROW improvements based on comparable government furnished facilities.

Owner Improvement Retention Option

One desirable option for the disposal of improvements is owner retention by removal of the improvement to an alternative location.

For this option to be viable an inventory of the affected structures should be conducted based on information contained in the appraisal reports of the properties. DPW should determine early in the project if there is or will be available remainder lands or other available lots which could be purchased for the placement of these structures. This is important since availability of lots may determine the feasibility of making the offer of retention to the owner.

The owner of improvements should be made aware that options exist for retaining improvements.

Owner retention can result in good public relations as an example of the acquiring agency's willingness to work with the owner and the community through which the highway is passing. It may also be an option which will assist in furthering an amicable settlement of the acquisition.

CNMI Policy: The option for retention of an improvement will be made known to the owner after analysis of all factors and other options by DPW results in a prospective mutually beneficial situation.

Sale of Improvements Option

Another option for disposing of improvements is public sale or auction. The sale or auction should return to the government the greatest net proceeds and should be open and competitive.

Sales should be advertised as soon as it is known that the occupant will be vacating the premises. Advertisements should indicate that there may still be an occupant on the premises. The right to cancel should also be reserved if the occupant is still in occupancy.

If the expected advertisement date for the project allows adequate time for the sale and removal of improvements, coordination with project engineers or highway construction contract specifications personnel is advisable because the improvements to be sold and removed must then be eliminated from the clearing and grubbing contract improvement list or the portion of the construction contract which lists improvements to be removed by the contractor if that method of clearing is chosen.

The purchaser of an improvement should be required to post a performance bond to pay for removal as a contingency for failure to remove it from the project area.

CNMI Policy: The sale or auction of improvements as an option will be analyzed by DPW for best feasibility. If this option is selected the CNMI Department of Finance will administer and oversee the sales or auction.

Demolition Option

A third option for disposition of improvements is through demolition. Demolition may be through either a demolition-only contract, or as an item in the roadway construction contract. If the demolition is under a separate demolition contract, the contract provisions and administration should assure that necessary provisions are included, such as prevailing wage rate requirements and civil rights provisions.

It is important to ensure that the appropriate owner and/or tenant vacation notice has been given and the contractor not be given notice to proceed until proper possession is secured.

CNMI Policy: As with the other two stated options, demolition will be investigated and evaluated on an equal basis for the most beneficial method along with the protection of the owner's best interests.

Post-Construction Property Management

Post construction property management is similar to pre-construction property management except that in this phase of the project the owning agency has the opportunity to function as a profit-making private enterprise. The airspace is a capital asset which belongs to the taxpayers. The DPW has a responsibility to conserve and protect this asset and to obtain the highest return possible for the taxpayers.

There are probable locations where the owning agency will likely have land or airspace excess to the needs of the highway facility. The project engineer-in-charge makes the determination as to a specific location being unnecessary to the highway facility. There are also legal and fiscal functions to be processed when disposing of excess land. Property management is an area in ROW that has the potential to return some of the investment made by the taxpayer.

CNMI Policy: Each situation will examined by a team headed by the DPW to determine the potential for excess airspace as a worthwhile profit endeavor. In general the priority for excess airspace is 1) in consultation with DPW engineering expertise dispose of the property by sale at FMV, 2) maintain the property as an integral portion of the airspace, and 3) manage the property to return a profit.

Post-Construction Disposals

In general terms, a disposal is the releasing of a previously acquired property interest which at the time of acquisition was needed for the maintenance, construction, or operation of the highway. A disposal of property may include excess property that is outside the finally developed ROW; excess surface areas outside the ROW; surface areas within existing ROW; and highway airspace beneath or above a highway structure or the area over a highway.

Federal regulations require the disposal of properties purchased with federal assistance not directly needed for program purposes as soon as practical. The acquiring agency must, to the extent it is able, predetermine in the project agreement with FHWA which properties will become excess upon project completion and will require disposal.

The CNMI should, as a part of its application to the FHWA, indicate the status of the parcels of land as related to availability or desirability for parks, recreation, highway aesthetics, and other environmental purposes.

23 CFR part 620 and part 710, subpart D contain the federal requirements when disposing of ROW. Federal involvement comes into play when *portions of the highway ROW* are no longer needed for highway purposes. This includes changes in the control of access to the highway from adjacent properties which are not relinquishment situations, i.e., to another governmental agency for highway related purposes.

A relinquishment is the conveyance of a portion of a highway ROW or facility by the state to another governmental agency for highway use (refer to the 23 CFR part 620, subpart B). A relinquishment by definition is for a highway purpose and is to another public agency. If the receiving agency no longer needs the relinquished property, it then becomes surplus property and may be treated as a disposal.

Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were purchased as a part of an FHWA funded project. Since this property was acquired with public funding, the principle guiding disposal would normally be to sell the property at FMV and use the funds for Title 23 transportation eligible projects, per 23 U.S.C. 156 and 23 CFR 710.403(e). Exceptions to the general requirement for charging FMV are set forth in 23 CFR 710.403(d). An appraisal will typically mean a before and after value appraisal of that which is being disposed which will identify any increase in value caused by the disposal of ROW.

CNMI Policy: CFR regulations and FHWA policy and guidelines will control DPW implementation for the disposal of excess property.

Joint Development and Multiple Use Highway Airspace

Joint development and multiple use encompass the creative use of highway ROW to provide benefits to communities and to assist in blending highways into the environments they traverse. Joint development is a coordinated planning process carried on by highway agencies and other agencies or organizations within the corridor of a proposed highway. The development can involve a mixture of public funds with institutional/nonprofit funds and/or private sector investment.

CNMI Policy: Joint development and multiple use will be proactively pursued by DPW for realization of the greatest benefit to local interests and the general public.

Controlled Access

Controlled access facilities have special features which require an awareness of their operation and the additional rights acquired from adjacent property owners. These rights must be effectively managed to ensure the operational integrity of the facility.

CNMI Policy: Controlled access as it applies to affected property owners will be coordinated and managed to the extent that the rights of enjoined property owners or other affected parties are maintained and protected.

New Access Points

Consider the following items when a new access point is proposed:

- 1. Who initiated the request and for what purpose is the access to be used.
- 2. Relationship to other highway improvement plans and programs.
- 3. Distances to and size of communities or activities directly served or potentially served.
- 4. Description and analysis of the existing access condition and the proposed access.
- 5. Traffic and operational analysis for existing and proposed conditions; including crossroads and other roads and streets to the extent necessary to assure effective collection and distribution of traffic from the new access.
- 6. Any other information that might help explain and/or support the proposal, e.g., cost effective analysis, source funding, implementation schedules.

CNMI Policy: Thorough planning in the early stages of ROW modification or new construction projects should accomplish much in the way of reducing needs for new (later) access means. Given that preliminary and final planning was efficiently projected with accommodation as it could best be incorporated in these initial planning stages change with time is inevitable and flexibility must remain an option to meet evolving conditions. The six points listed above will serve as the guidelines for DPW when considering petitions for new access points.

Access Changes and Modifications

Per 23 CFR 710.403, all uses of or improvements to the ROW created by a modification of access control lines must be of value to the traveling public as opposed to the special interest or benefit to the person or persons proposing to alter the established access. When an access point is changed along a controlled access facility, or when the controlled access line is moved from one location to another, the following may apply:

- 1. A determination of FMV can consider whether the additional access is required primarily for highway purposes and is not directly, indirectly, or substantially motivated by or related to a non-highway purpose.
- 2. FMV must be obtained whenever the property interests were obtained with FHWA funding.

Reasons such as the change will improve local economic conditions by providing more jobs or more services, maintain the local business environment and increase the tax base, provide low income housing, protect and preserve the environment, mitigate local or state agency requirements in order to develop the property adjacent to the highway, etc., are not acceptable alone as meeting a highway purpose.

Access control is a valuable public asset and a movement of the access line and/or providing a new access point should be evaluated both in terms of (1) the effect upon the highway system, (2) the effect upon the adjacent or nearby property, and (3) the perception of the highway facility to be gained by the public and others who use the highway facility.

In terms of the effect upon the highway system operational factors should be noted and future expansion or modification of the highway facility or the unit to be placed thereon, as well as alternatives to the use, should be carefully considered. Will the proposed use restrict future use of the ROW for a highway purpose?

The effect on adjacent or nearby property is usually the reason for the request for modification of the access control. Exposure to the traffic for its advertising value is a plus factor for business and might well be a negative factor for other persons living and/or working adjacent thereto. Granting a new access or moving the access control line gives those using the highway facility and those who just observe it a different perspective. Landscaping, natural growth of trees, wetlands and the view from on and off the highway may change. The change may be good or bad but it should be evaluated.

CNMI Policy: Specific cases may develop wherein an access location presents a significant undue hardship or inconvenience to one or more adjacent property owners, or in an opposite circumstance the lack of an access point may comprise a significant obstacle for adjacent property owners to adequately use valuable roadway resources. The operative words for management decisions are "significant" and "adequate".

The second paragraph in this section outlines the FHWA guidelines for non-valid reasons for establishing new or modified access points and control lines. DPW will strive to balance the legitimate needs of adjacent property owners with the welfare and best interests of the public in general when considering new or modified access points.

Leasing of ROW Property

CNMI Policy: If CNMI ROW property acquired with federal funding assistance is leased it will be in accordance with 23 CFR 710.407 which partially states, ". . . covered by an agreement between the STD and lessee which contains provisions to insure the integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the state and the FHWA harmless, non discrimination, access by the STD and the FHWA for inspection, maintenance, and reconstruction of the facility."

Summary

CNMI policy in administering airspace property is aimed at basic concepts and striving for diminished need for management interventions and excess regulation. However, FHWA policies and guidelines will be followed within the best possible simplified framework.

Relevant CFR regulations and FHWA requirements are for the most part cited directly in this Chapter for reference by DPW and to use when administering ROW properties. There is a vast amount of varied, sometimes complex, elements to consider in property management functions. By using the information herein most applications can be facilitated. For those cases presenting difficulties, real or perceived, an appropriate CFR should be analyzed further, or FHWA or the CNMI Office of Attorney General should be consulted.

An issue not directly addressed in this Manual involves the leasing of some ROW properties by the Division of Public Lands. This issue is currently under joint consideration by DPW and DPL potentially leading to DPW having jurisdiction over all matters within CNMI rights-of-way. Public and private utilities should also be included in possible regulations which may be promulgated relative to jurisdictional authorities of the DPW.

VII CNMI Statutory Law and Regulations

Overview and Primary Authorities

The Constitution of the Northern Mariana Islands provides that the Commonwealth may exercise the power of eminent domain as provided by law to acquire private property necessary for the accomplishment of a public purpose only if no suitable public land is available and if just compensation is paid to the property owner, NMI Constitution, Article XIII. "Just Compensation" for private property taken for a public purpose is reiterated in *Commonwealth Of The Northern Mariana Islands V. Bordallo*, 1 N. Mar. I. 208, 219 (N. Mar. I. 1990).

CNMI eminent domain procedures for the Commonwealth government to follow in the exercise of its constitutional power to acquire real property by eminent domain are codified at 1 CMC 9211 et. seq. Acquisition of real property under Commonwealth law is contained in the Land Compensation Act of 2002 codified at 2 CMC §4711 - §4716. Relocation assistance (fair and equitable treatment of persons displaced by Commonwealth acquisitions) is codified at 2 CMC §4721 - §4732.

The Land Compensation Act of 2002 sets forth a legislative scheme for the payment of claims made on or after January 1, 1990 for lands taken by the Commonwealth by eminent domain or other legal process. This Act directs the Department of Public Lands (DPL) to compensate for the acquisition of private lands for right of way purposes as well as other claims involving private land acquisition permitted by law. The Land Compensation Act of 2002 authorizes regulations to establish just compensation based on fair market value of the land at the time of taking. Administrative and judicial review is also recognized.

Rulemaking authority for the promulgation of rules and regulations to implement this Act is vested with the Secretary of the DPL (formerly Commissioner of the Board of Public Lands which was eventually succeeded by the Marianas Public Lands Authority or MPLA, and (currently) becoming the DPL.

Northern Mariana Islands Administrative Code Chapter 145-50 "PUBLIC PURPOSE LAND EXCHANGE RULES AND REGULATIONS", defines "Fair Market Value; Basis", as "... market value shall be based upon nationally recognized appraisal standards ... and, in the case of land being acquired for highway purposes, consistent with *federal* requirements applicable to valuation of land being acquired for highway purposes.".

Additional indication of CNMI compliance with federal acquisition and relocation policies is stated in Chapter 7 "Land Acquisition; Relocation", 2 CMC § 4712 (c), "... owner shall be reimbursed for reasonable expenses of litigations in line with Section 304 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4654)". The Governor is empowered to issue regulations to implement the requirements and provisions of Chapter 7.

Northern Mariana Islands Administrative Code TITLE 155: DEPARTMENT OF PUBLIC WORKS, CHAPTER 155-20: ROADS AND FACILITIES DIVISION, Subchapter 155-20.1 $\S001$ (b) requires the DPW "to adopt rules and regulations for those matters over which the Department has jurisdiction (1 CMC \S 2404 and 2 CMC \S 4923)".

Coordination Between the Departments of Public Lands and Public Works

The DPW Right-of-Way Branch, Technical Services Division, is responsible for assurance that certain legally mandated functions for ROW land acquisitions are fulfilled before turning implementation for conveyances over to the DPL.

After certification by the CNMI Governor (or legislature determination) that private land is to be acquired for a public purpose (2 CMC § 4143), the ROW Branch arranges for parcel boundary surveys or verifies adequate legal description, identifies any encumbrances or disputes, initiates property title validity research, prepares a "Preliminary Acquisition Notice" for conveyance from the Office of Governor to the relevant land owner stipulating CNMI intentions and certain owner's rights, and follows up by forwarding documentations to the DPL for negotiation and implementation of the acquisition by purchase or land exchange. Details for land exchanges are codified from the Public Purpose Land Exchange Act in 2 CMC 4141 et.seq.

Leases of ROW-related properties are administered by the DPL; these leases are under the rules, regulations, and directives of the FHWA as outlined in this manual if federal funding assistance supported their existence. An important point is that DPW, DPL, and other CNMI agencies are not the "owners", only the administrators. The Commonwealth is the sovereign and ultimate holder to title to original and acquired government lands and properties.

Coordination of CNMI Regulations with Federal Regulations

There are a few inconsistencies between Commonwealth law and the federal Uniform Act. If federal support is not proposed for a CNMI right-of-way project or in any way linked to that project then the Uniform Act does not necessarily apply.

Minor differences between the two sets of (Federal-Commonwealth) regulations include duration of times allowed in certain situations for official notices to landowners and for processing of documents. Allowable reimbursements for landowners and tenants for acquisitions and relocations have a higher cap under the federal standards. However, FHWA policies and federal regulations usually permit some flexibility in applying the federal standards. Preapproval from the FHWA should be obtained for significant differences which the CNMI may want to impose.

The CNMI Land Compensation Act of 2002 bases fair market value of the land at the time of taking by the Commonwealth which is the date when the Governor certifies in writing the need for the acquisition of the private land (2 CMC \S 4746). UASFLA standards do not allow market value to be linked to a specific exposure time stating that "... the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive

market... ". This UASFLA standard also differs from the USPAP standard in this regard although jurisdictional exception could be invoked (see Chapter 3).

In contrast to 2 CMC § 4746, in NMIAC 145-40-010 (q), Market Value is defined as "The most probable price as of a specified date . . . for which the specified property rights should sell after reasonable exposure in a competitive market . . . ". The CNMI Office of Attorney General Office should be consulted whenever a matter of this nature arises.

Another (small) area of difference is demonstrated in NMIAC 145-40-010 (f) which indicates that review appraisers should perform their work in accordance with USPAP. While this definition is mostly true for federal practice, the primary set of standards to use should be in accordance with UASFLA.

A more significant difference in the Federal-Commonwealth array is that CNMI review appraisals are optional although regulations provide for them in the Commonwealth practice. Review appraisals are not optional under federal requirements.

Interfaces

Real property owned by the CNMI or local governments incorporated within a federally funded project can be used as a credit toward matching share requirements in the total project cost. A credit cannot exceed the CNMI matching share required by the project agreement.

Fundamental tenets which should be well understood in the intended CNMI application of real property acquisitions under federal requirements include:

- •The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (amended in1987 and 1997) commonly called the "Uniform Act", also referred to as the URAA or URA, is the primary law for acquisitions and relocations of private real property owners whether they are individuals or groups.
- Direct acquisitions are not the only elements of funding causing federal requirements to apply. The Uniform Act may apply if corollary activities related to acquisitions are conducted. Examples which can activate federal requirements are planning activities, environmental assessments, and construction.
- •All federal, CNMI, and local government agencies receiving federal financial assistance that involve the acquisition of real property must comply with Uniform Act provisions and corollary regulations.
- Failure to comply with the Uniform Act provisions will result in denial of federal reimbursement of project costs.

• Negotiations with affected parties for real property acquisitions should be the first consideration over other means such as condemnations

FHWA standards allow reimbursement for real property acquisitions under CNMI law as long as there is conformance with the Uniform Act and other appropriate federal law.

The Uniform Relocation Assistance and Real Property Acquisition Act (URAA), 42 U.S.C. §§ 4601 et.seq., implemented by CFR 49 Part 24 Subparts A-G is intended to standardize the benefits to individuals displaced by federal projects and to ensure that dislocated parties are fairly and equally treated. The Act also makes clear that federal funds do not provide for double recovery, i.e., Commonwealth payments associated with displacements are not entitled to additional equal federal reimbursement for elements identical in purpose and effect.

If CNMI eminent domain laws do not provide sufficient payments to satisfy minimum recovery specified by the Uniform Act for displaced parties then the URAA authorizes federal funding to cover the difference. Thus the Uniform Act is a supplement to CNMI eminent domain law by providing for an additional source of funding.

ROW Related Leasing

Title 23 USC § 156 addresses the use of proceeds from the sale or lease of real property acquired with Federal-aid funds. An interpretation and analysis of the FHWA implementing regulations of § 156 by the DOT Office of General Counsel includes the following points:

The proceeds are not federal funds.

The proceeds must be used on projects that could be eligible for federal assistance under Title 23.

When such proceeds are used for Title 23 projects, a Federal-aid project is not created.

When this type of funding is used, the CNMI should have an accounting system in place which documents the amount of the Federal share of net income deposited in appropriate account during the fiscal year, and the amount of the Federal share of net income expended on Title 23 projects during the fiscal year.

The regulations of 23 CFR 710.403 (d) and (e) remain unchanged.

Additional information regarding the use Title 23 applications can be found at www.fhwa.gov/realestate/tea21dw5

Utility Approvals

Under 23 CFR § 645.215 a state transportation department is required to submit a statement to FHWA as to the authority of utilities to use and occupy the State highway rights-of way including the STD authority to regulate such use and the policies the STD will follow in administering utilities within Federal-aid rights-of way under its jurisdiction.

On determination by the FHWA that the STD policies satisfy the provisions of 23 U.S.C. 109, 111, and 116, and 23 CFR 1.23 and 1.27, and meet the requirements of this regulation the FHWA will approve their use on Federal-aid highway projects in that State.

When a utility files a notice or makes an individual application or request to the STD to use or occupy the right-of-way of a Federal-aid highway project, the STD is not required to submit the matter to the FHWA for prior concurrence, except when the proposed installation is not in accordance with this regulation or the STD policy statement previously approved by the FHWA for use on Federal-aid highway projects.

Land Exchange

CNMI PUBLIC LAW No. 15-2, (Public Lands Act of 2006), Section 107, states (c) "The Department shall develop administrative policies, procedures, and controls related to public land, which shall ensure that (1) Public land exchanged for private land is of comparable value and current land valuations are used in all land exchanges;". While DPL legal counsel should be involved for all specific land exchanges, in general, it does not appear likely that FHWA funding would be a guiding element for these types of acquisition.

Summary

Chapters 2 and 7 of the CMC and 145-40, 145-50, 155-20 of the NMIAC contain detailed laws and regulations with respect to eminent domain, acquisitions (including exchanges) of private lands for Commonwealth purposes and subsequent reimbursements and other assistance for the affected owners and tenants for their relocations. For the most part the CNMI requirements are consistent with the federal Uniform Act and its attendant CFR's.

This apparent consistency should not preclude a thorough review by CNMI agencies and officials of both sets of (Federal-CNMI) regulations, directives, and policies to ensure compliance with federal standards. Questionable perceptions and apparent conflicts should be referred to the CNMI Office of Attorney General and/or the FHWA regional office for guidance.





Commonwealth of the Northern Mariana Islands

Acquired Right-of-Way Relocations

Rights and Benefits for Displaced Parties

Office of the Secretary of Public Works 2nd Floor · Joeten Commercial Building Gualo Rai, Saipan, MP 96950

Tel Nos: (670) 235 5827 / 235 9570 Fax: (670) 235 6346 www.dpw.gov.mp

Commonwealth of the Northern Mariana Islands

Acquired Right-of Way Relocations

Rights and Benefits for Displaced Parties

Government programs designed to benefit the general public often result in acquisition of private property, and sometimes in the displacement of people from their residences, businesses, nonprofit organizations, or farms. To provide uniform and equitable treatment for persons displaced, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This law, called the Uniform Act, is the foundation for the information contained in this brochure.

In 1987 Congress amended the Uniform Act to increase payment levels, to add benefits for small businesses, and to designate the Department of Transportation through the FHWA as the Lead Agency for the Uniform Act for all Federal and Federally-funded programs and projects. The Uniform Act was once again amended in November, 1997, to add Public Law 105-117, "alien not lawfully present in the United States."

All Federal, State, the Commonwealth of the Northern Mariana Islands, local government agencies, and any others receiving Federal financial assistance for public programs and projects that require the acquisition of real property must comply with the policies and provisions of the Uniform Act. The acquisition itself does not need to be federally funded for the rules to apply. If Federal funds are used in any phase of the program or project, the rules of the Uniform Act apply.

The rights set out in this brochure are not a full and complete list or explanation of displacement rights under the law. They are mainly derived from The Code of Federal Regulations (implementing the Uniform Act) and CNMI policy. Additional information and guidance will be provided by CNMI government representatives as outlined herein.

If you are required to move as a result of a Federal or federally assisted program or project, a representative from the CNMI Department of Public Works (DPW) or other Agency will contact you. (The term "Agency" as used in this brochure usually, but not necessarily, refers to the DPW).

The representative will answer your questions and provide additional information you may need. If you have a disability that prevents you from reading or understanding this brochure, you will be provided appropriate assistance. You should notify the DPW if you have special requirements for assistance.

This brochure explains your rights as an owner of real property to be acquired under a federally funded program or project. The requirements for acquisition of property are explained in a CNMI brochure entitled "Right-of-Way Acquisition Procedures", "Property Owners Rights". Acquisition and relocation information can also be found on the Federal Highway Administration Office of Real Estate Services website, <u>www.fhwa.dot.gov/realestate</u>.

Relocation assistance advisory services and payments are administered by the CNMI Agency responsible for the acquisition of real property and/or the displacement of people from property to be used under a federally funded program or project. The Agency may contract with a qualified individual or firm to administer the relocation program. However, the CNMI Agency remains responsible for the program.

All expenses must be considered necessary and reasonable by the sponsoring Agency and supported by paid receipts or other evidence of expenses incurred.

Relocation payments received are not considered as income under the Internal Revenue Code, or for determining eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for Federal law providing low-income housing assistance).

An "Alien Not Lawfully Present" in the CNMI who is displaced is not eligible for relocation payments or assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, unless ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent or child, and such spouse, parent or child is a citizen or an alien lawfully admitted for permanent residence.

Appraisal Requirement

The Uniform Act requires that all real property to be acquired must be appraised prior to a Rightof-Way acquisition, but it also authorizes waiving that requirement for low value acquisitions.

Regulations provide that the appraisal may be waived:

- If you elect to donate the property and release the agency from the obligation of performing an appraisal, or
- If the agency believes the acquisition of your property is uncomplicated and a review of available data supports a fair market value likely to be \$10,000 or less, the agency may prepare a waiver valuation, rather than an appraisal, to estimate your fair market value.

In special circumstances, if the agency believes the acquisition of your property is uncomplicated and a review of available data supports a fair market value likely to be over \$10,000 but less than \$25,000, the agency may prepare a waiver valuation rather than an appraisal to estimate your fair market value, however, if you elect to have the agency appraise your property, an appraisal will obtained.

Fair Housing Laws

Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 set forth the policy of the United States to provide, within constitutional limitations, for fair housing. These Acts and Executive Order 11063 make discriminatory practices in the purchase and rental of residential units illegal if based on race, color, religion, sex, or national origin.

Displaced Person Moving Costs

A displaced person is any person (individual, family, partnership, association or corporation) who moves from real property, or moves personal property from real property as a direct result of (1) the acquisition of the real property, in whole or in part, (2) a written notice from the Agency of its intent to acquire, (3) the initiation of negotiations for the purchase of the real property by the Agency, or (4) a written notice requiring a person to vacate real property for the purpose of rehabilitation or demolition of improvements, provided the displacement is permanent and the property is needed for a Federal or federally assisted program or project.

If you qualify as a displaced person, you are entitled to reimbursement of your moving costs and certain related moving expenses. Displaced individuals and families may choose to be paid either on the basis of actual, reasonable moving costs and related expenses, or according to a fixed moving cost schedule. To assure your eligibility and prompt payment of moving expenses, you should contact the relocation representative from the sponsoring Agency before you move.

You may be paid for your actual, reasonable moving costs by a professional mover plus related expenses, or you may move yourself. Related expenses involved in the move may include:

- Packing and unpacking personal property.
- Disconnecting and reconnecting household appliances.
- Temporary storage of personal property.
- Insurance while property is in storage or transit.
- Transfer of telephone service and other similar utility reconnections.
- Other expenses considered eligible by the Agency.

Business, Farm, and Nonprofit Organization Assistance

A relocation specialist from the DPW will contact and you to find out your needs and replacement site requirements and estimate the time needed to accomplish the move. Relocation services and payments will be explained in accordance with your eligibility. It is important to explain to the representative any anticipated problems. During an initial interview the relocation specialist will ask questions to determine your financial ability to accomplish the move, including lease terms and other obligations.

The specialist will help determine the need for outside assistance to plan, move, and reinstall personal property. The specialist will identify and is authorized to resolve issues regarding what is real estate and what is personal property for relocation. The specialist can provide advice as to possible alternative sources of funding and assistance.

Individuals and Families

You may choose to be paid on the basis of a fixed moving cost schedule established by the DPW. The amount of the payment is based on the number of rooms in your dwelling. Your relocation representative will be able to tell you the exact amount you will be eligible to receive if you select this option. The schedule is designed to include all of the expenses incurred in moving, including those services that must be purchased from others.

If you are the owner of a displaced mobile home, you may be entitled to a payment for the cost of moving the mobile home to a replacement site on an actual cost basis. Displaced mobile home occupants (owners or tenants) may also be eligible for a payment for moving personal property from the mobile home such as furniture, appliances and clothing on an actual cost basis, or on the basis of a moving cost schedule.

There are three types of replacement housing payments: purchase supplement, rental assistance, and down payment. All replacement housing payments must incorporate, "Comparable"; "Financial Means"; and "Decent, Safe, and Sanitary" (DSS).

A comparable replacement dwelling must be DSS and functionally equivalent to your present dwelling. A comparable replacement dwelling should be:

- Adequate in size to accommodate the occupants (e.g., you and your family).
- Located in an area that is not subject to unreasonable adverse environmental conditions.
- Located in an area that is not less desirable than your present location with respect to public utilities and commercial and public facilities.
- Reasonably accessible to your place of employment.
- Located on a site that is typical in size for residential development with normal site improvements.
- Currently available on the private market.
- Within your financial means.

For a homeowner, if a purchase supplement is needed and provided, in addition to the acquisition price for your dwelling, then the replacement dwelling is considered to be within your financial means.

For a tenant, the monthly rent and estimated average monthly utility cost for a comparable replacement dwelling is considered to be within financial means if, after receiving rental assistance, this amount does not exceed the base monthly rent (including average monthly utility cost) for the dwelling from which the tenant is displaced.

The Agency may need to calculate the base monthly rent using 30% of the displaced tenant's total monthly gross household income, if that income qualifies as low income in accordance with established low income amounts determined by a designated CNMI authority.

The Agency will also evaluate the amounts designated for shelter and utilities for a tenant that receives government assistance.

The rental assistance payment will be computed using the lesser of the three: rent and average monthly utility cost; 30% of the total monthly gross household income for a qualified low income tenant; or the total amount designated for shelter and utilities for a tenant receiving government assistance.

Decent, Safe, and Sanitary

The DSS standard means the replacement dwelling meets the minimum requirements established by Federal regulations and conforms to applicable CNMI housing and occupancy codes. The dwelling shall:

- Be structurally sound, weather tight, and in good repair.
- Contain a safe electrical wiring system adequate for lighting and other devices.
- Be adequate in size with respect to the number of rooms and area of living space to accommodate the displaced person.
- Contain a well-lighted and ventilated bathroom providing privacy to the user and containing a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and sewage drainage system.
- Contain a kitchen area with a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, with adequate space and utility connections for a stove and refrigerator.
- Have unobstructed exit to safe, open space at ground level.

• Be free of any barriers which would prevent a reasonable entrance, exit or, in the case of a handicapped displaced person, use of the dwelling.

Replacement Housing Limitations

A replacement dwelling inspection for decent, safe, and sanitary requirements is conducted by Agency personnel for the sole purpose of determining your eligibility for a relocation payment. The Agency's approval of a dwelling does not provide any assurance or guarantee that there are no deficiencies in the dwelling or in its fixtures and equipment that may be discovered at a later date.

Last Resort Housing

Last Resort Housing is an administrative procedure authorized by law to address those times when comparable replacement housing is not available under statutory limits specified in law. The law and regulation allow the Agency to provide a replacement housing payment in excess of the statutory maximums of \$5,250 and \$22,500.

The Agency must provide comparable replacement housing, that is DSS and within your financial means, before you are required to move. The Agency may provide the necessary housing in a number of ways, such as:

- Making a replacement housing payment in excess of the maximum \$5,250 or \$22,500 statutory limits.
- Purchasing an existing comparable residential dwelling and making it available to you in exchange for your dwelling.
- Moving and rehabilitating a dwelling and making it available to you in exchange for your property.
- Purchasing, rehabilitating or reconstructing an existing dwelling to make it comparable to your property.
- Purchasing land and constructing a new replacement dwelling comparable to your dwelling when comparables are not otherwise available.
- Purchasing an existing dwelling, removing barriers or rehabilitating the structure to accommodate a handicapped displaced person when a suitable comparable replacement dwelling is not available.
- Providing a direct loan which will enable you to construct or contract for the construction of a decent, safe, and sanitary replacement dwelling.

Freedom of Choice

Displaced persons have the freedom of choice in the selection of a replacement dwelling. The Agency will not require you, without your written consent, to accept a replacement dwelling provided by the Agency. If you decide not to accept the replacement housing offered by the Agency, you may secure a replacement dwelling of your choice but it must meet the DSS standard. If you are eligible for Last Resort Housing, your relocation representative will explain the program to you.

Length of Occupancy – Basic Occupancy Requirements

The type of payment you are eligible for depends on whether you are an owner or a tenant, and how long you have lived in the property being acquired prior to the initiation of negotiations. "Length of occupancy" simply means the number of days that you occupied the dwelling before the date of initiation of negotiations by the Agency for the purchase of the property.

"Initiation of negotiations" is usually the date the Agency makes the first personal contact with the owner(s) of real property, or their representative, to provide a written offer to purchase the property being acquired.

Owners who were in occupancy 180 days or more prior to the initiation of negotiations may be eligible for a purchase supplement or a rental assistance payment.

Tenants who were in occupancy 90 days or more prior to the initiation of negotiations may be eligible for a rental assistance payment or a down payment.

Owners who were in occupancy 90 days to 179 days prior to the initiation of negotiations, may be eligible for a rental assistance payment or a down payment. The down payment cannot exceed the amount you would have received if you had been a 180-day owner.

If you were in occupancy at the time of the initiation of negotiations, but less than 90 days prior to that date, you are considered a displaced person entitled to relocation assistance advisory services and moving payments. You may be entitled to a rental assistance payment if comparable replacement rental housing is not available within your financial means. The Agency will use the financial means test described earlier in this brochure which involves determining qualification as low income using an authorized CNMI definition. If so, and you are required to pay rent and utilities in excess of 30% of your average monthly gross household income for a comparable replacement dwelling unit, you may be eligible for a rental assistance payment under Last Resort Housing because comparable replacement housing is not available within your financial means.

Replacement Housing – Purchase Supplement

If you are an owner and occupied your home for **180** days or more immediately prior to the initiation of negotiations for your property, you may be eligible - in addition to the fair market value of your property - for a supplemental payment for costs necessary to purchase a comparable DSS replacement dwelling. The Agency will compute the maximum payment you are eligible to receive. You must purchase and occupy a DSS replacement dwelling within one year. A purchase supplement has three components: a price differential, an amount for increased mortgage interest, and incidental expenses. The purchase supplement is in addition to the acquisition price paid for your property.

A *price differential* payment is the amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling.

You may be reimbursed for *increased mortgage interest* costs if the interest rate on your new mortgage exceeds that of your present mortgage. To be eligible, your acquired dwelling must have been encumbered by a bona fide mortgage which was a valid lien for at least **180** days prior to the initiation of negotiations.

You may be reimbursed for *incidental expenses* such as reasonable costs incurred for title search, recording fees, and certain other closing costs, but not for prepaid expenses such as real estate taxes and property insurance.

Replacement Housing – Rental Assistance

For **180-Day owners** who elect to rent, a rental computation will be computed based on a determination of the fair market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference will be multiplied by 42. The rental assistance payment cannot exceed the amount the owner would have received as a price differential described previously.

Owner occupants and tenants of **90** days or more may be eligible for a rental assistance payment if they have been in occupancy at least 90 days immediately preceding the initiation of negotiations for the acquisition of the property.

This payment is designed to enable you to rent a comparable decent, safe, and sanitary replacement dwelling for a 42-month period. If you choose to rent a replacement dwelling and the cost of rent and utilities are higher than you were paying, you may be eligible for a rental assistance payment. The Agency will determine the maximum payment you may be eligible to receive in accordance with established procedures.

The rental assistance payment will be paid in a lump sum unless the Agency determines that the payment should be paid in installments. You must rent and occupy a DSS replacement dwelling within one year to be eligible.

Replacement Housing – Down Payment

Owner occupants of 90 to 179 days and tenants of 90 days or more may be eligible for a down payment and incidental expenses. The Agency will determine the maximum down payment you may be eligible to receive based on its computation for a rental assistance payment. The payment for a displaced owner occupant shall not exceed the amount that would have been received by a 180-day owner for the same property. To be eligible for the full amount of the down payment assistance payment, the entire payment must be used to purchase a DSS replacement dwelling.

The payment may be used for a down payment toward the purchase price and/or eligible incidental expenses. Incidental expenses include the reasonable costs of title search, recording fees, and certain other closing costs but do not include prepaid expenses such as real estate taxes and property insurance. You may be eligible for the reimbursement of loan origination or loan assumption fees if such fees are normal to real estate transactions in the CNMI and do not represent prepaid interest. The combined amount of the down payment and incidental expenses cannot exceed the amount the Agency computed as your maximum rental assistance payment.

Moving Cost Reimbursement

Owners or tenants may be paid on the basis of actual, reasonable moving costs and related expenses or, under certain circumstances, a fixed payment. Actual, reasonable moving expenses may be paid when the move is performed by a professional mover or if you move yourself. Related expenses, such as personal property losses, expenses in finding a replacement site, and reestablishment expenses may also be reimbursable.

Your moving costs must be supported by paid receipts or other evidence of expenses incurred. In addition to the transportation costs of your personal property, certain other expenses may be reimbursable, such as packing, crating, unpacking and uncrating, and the disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment and other personal property.

Other expenses such as professional services necessary for planning and carrying out the move, temporary storage costs, and the cost of licenses, permits and certifications may also be reimbursable.

Estimated Cost Move

If you agree to take full responsibility for all or part of the move of your operation, the Agency may approve a payment not to exceed the lower of two acceptable bids or estimates obtained by the Agency from qualified moving firms, moving consultants, or a qualified Agency staff employee. The advantage of this moving option is that it relieves you from documenting all moving expenses because the payment is limited to the amount of the lowest acceptable bid or estimate.

Direct Loss of Tangible Personal Property

Displaced businesses, farms, and nonprofit organizations may be eligible for a payment for the actual direct loss of tangible personal property which is incurred as a result of the move or discontinuance of the operation. This payment is based on the lesser of the value of the item for continued use at the displacement site less the proceeds from its sale, or the estimated cost of moving the item.

Searching Expenses for Replacement Property

Displaced businesses, farms, and nonprofit organizations are entitled to reimbursement for actual, reasonable expenses incurred in searching for a replacement property, not to exceed \$2,500. Expenses may include transportation, meals, and lodging when away from home; the reasonable value of the time spent during the search; and other expenses determined to be reasonable and necessary by the Agency.

Fees paid to real estate agents or brokers to locate a replacement site may be reimbursed, exclusive of any commissions or fees related to the purchase of the site.

Related Eligible Expenses

In addition to the moving expenses previously outlined, costs for the following items may be reimbursed if the Agency determines they are actual, reasonable, and necessary:

- Connection to available nearby utilities to improvements at the replacement site.
- Professional services to determine a proposed relocation site suitability for the displaced person's operation.
- Impact fees or one time assessments for heavy utility usage as determined necessary by the Agency.

Reestablishment Expenses

A small business, farm, or nonprofit organization may be eligible for a payment, not to exceed \$10,000, for expenses incurred in relocating and reestablishing the enterprise at a replacement site. To qualify, the business, farm, or nonprofit organization must have not more than 500 employees working at the site who will be displaced by a program or project. Reestablishment expenses may include, but are not limited to:

• Repairs or improvements to the replacement real property required by Federal, State, and local laws, codes or ordinances.

- Modifications to the replacement real property to make the structure(s) suitable for the operation.
- Construction and installation costs of exterior advertising signs.
- Redecoration or replacement such as painting, wallpapering, paneling, and carpeting when required by the condition of the replacement site.
- Advertising the replacement location.
- Estimated increased costs of operation at the replacement site during the first two years for items such as: lease or rental charges; personal or real property taxes; insurance premiums; utility charges.

In Lieu Payment

Displaced businesses, farms, and nonprofit organizations may be eligible for a fixed payment in place of moving expenses, personal property losses, searching expense, and reestablishment expenses. The fixed payment may not be less than \$1,000 nor more than \$20,000.

For a business to be eligible for a fixed payment, the Agency must determine the following:

- Business owns or rents personal property that must be moved due to the displacement.
- Business cannot be relocated without a substantial loss of its existing patronage.
- Business is not part of a commercial enterprise having more than three other businesses engaged in the same or similar activity which are under the same ownership and are not being displaced by the Agency.
- Business contributed materially to the income of the displaced business operator during the two taxable years prior to displacement.

Any business operation that is engaged solely in the rental of space to others is not eligible for a fixed payment. Included are the rental of space for residential or business purposes.

Eligibility requirements for farms and nonprofit organizations are slightly different than business requirements. The computation for nonprofit organizations differs in that the payment is computed on the basis of average annual gross revenues less administrative expenses for a specified two year period.

Computation of Fixed Payment

The fixed payment for a displaced business or farm is based upon the average annual net earnings of the operation for the two taxable years immediately preceding the taxable year in which it was displaced, or a two-year period deemed more representative by the Agency. Proof is required of net earnings to support your claim. Proof of net earnings can be documented by income tax returns, certified financial statements, or other reasonable evidence acceptable to the Agency.

Right to Appeal

Any aggrieved party may file a written appeal with the head of the Agency if the person believes the Agency has failed to properly determine his or her eligibility for relocation assistance, advisory services, or the amount of a relocation payment. If you have a grievance, you will be given a prompt and full opportunity to be heard. You will also have the right to be represented by legal counsel or other representative in connection with the appeal, but solely at your own expense.

The Agency will review your appeal and consider all information available to ensure a fair and full review. The Agency will provide you with a written determination as well as an explanation of the decision. If you are dissatisfied with the Agency decision you have the right to seek further judicial review.

Summary

The sponsoring Agency (the Agency which has primary responsibility for the Right-of-Way project, normally the Department of Public Works) will contact and interview you to find out your needs. Relocation services and payments will be explained in accordance with your eligibility. Your housing needs and desires will be solicited as well as your need for assistance.

The Agency will provide a current listing of comparable properties. You will be provided a written determination of the amount of replacement housing payment for which you qualify. The Agency will offer transportation to inspect housing referrals.

You cannot be required to move unless at least one comparable decent, safe, and sanitary (DSS) replacement dwelling is made available to you. If you locate a replacement dwelling on your own, it must be inspected by the Agency to ensure the dwelling meets DSS standards.

There are many variable factors which will ultimately result in the replacement accommodation or facility you will be offered and the type and amount of payments you will receive. The Commonwealth places your health, welfare, and safety as its highest priority while maintaining its responsibility for a fair settlement and adherence with the laws, rules, and regulations coincident with the Uniform Act.

Definitions

Business

Any lawful activity, with the exception of a farm operation, conducted primarily for the purchase, sale, lease, and rental of personal or real property; or for the manufacture, processing, and/or marketing of products, commodities, or any other personal property; or for the sale of services to the public; or solely for the purpose of the Uniform Act an outdoor advertising display or displays, when the display(s) must be moved as a result of the project.

Displaced Person

Any person (individual, family, partnership, association or corporation) who moves from real property, or moves personal property from real property as a direct result of (1) the acquisition of the real property, in whole or in part, (2) a written notice from the Agency of its intent to acquire, (3) the initiation of negotiations for the purchase of the real property by the Agency, or (4) a written notice requiring a person to vacate real property for the purpose of rehabilitation or demolition of improvements, provided the displacement is permanent and the property is needed for a Federal or federally assisted program or project.

Farm

Any activity conducted solely or primarily for the production of one or more agricultural products or commodities including timber for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Non-profit Organization

A public or private entity that has established its nonprofit status under applicable Federal or Commonwealth law.

Program or Project

An activity or series of activities undertaken by a Federal agency, or an activity undertaken by the State or local agency with Federal financial assistance in any phase of the activity.

Small Business

A business having not more than 500 employees working at a site which is the location of economic activity and which will be acquired for a program or project, or is displaced by a program or project. A site occupied solely by an outdoor advertising sign(s) does not qualify for purposes of the reestablishment expense benefit.

Further Information

For questions, comments, and more detailed information please contact the Office of the Secretary of Public Works, Technical Services Division, Right-of-Way Administrator. Contact information is on the cover of this brochure.

Commonwealth of the Northern Mariana Islands Department of Lands and Natural Resources Arnold Palacios, Secretary Department of Lands and Natural Resources, Caller Box 10007 Saipan, MP 96950 Tel. 322-9830

PUBLIC NOTICE OF PROPOSED REGULATIONS FOR THE MARPI PUBLIC CEMETERY UNDER THE DEPARTMENT OF LANDS AND NATURAL RESORUCES

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:

The Commonwealth of the Northern Mariana Islands, Department of Land and Natural Resources, intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to requirements of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The Secretary of Lands and Natural Resources ("Secretary") is empowered by statutory authority to adopt rules and regulations in furtherance of his duties and responsibilities. 1 CMC § 2654; 3 CMC § 2624; 1 CMC §§ 9101-9115 (Administrative Procedure Act).

THE SUBJECTS AND ISSUES INVOLVED: The proposed regulations concern the public cemeteries.

THE TERMS AND SUBSTANCE: These regulations establish procedures and rules for the maintenance of and for burials at public cemeteries in the Commonwealth.

TO PROVIDE COMMENTS: Send or deliver your comments to Arnold Palacios, Secretary of Lands and Natural Resources, at the above address, with the subject line "Public Cemetery Regulations." Comments are due within 30 days from the date of publication of this notice. (1 CMC § 9104(a)(2))

These proposed regulations were approved by the Secretary on this ____ day of _____ 2013.

Submitted by: RNOLD PALACIOS

Secretary of Lands and Natural Resources

Received by:

ESTHER \$. FLEMING Governor's Special Assistant for Administration

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Filed and Recorded by:

HER M SAN NICOLAS Commonwealth Register

05.20.2013 Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the $\frac{2013}{100}$ day of $\frac{100}{100}$ 2013.

San Nicolas Joey y General Attor

NORTHERN MARIANA ISLANDS ADMINISTRATIVE CODE TITLE 85 DEPARTMENT OF LANDS AND NATURAL RESOURCES REGULATIONS

Regulation Title:Northern Mariana Island Administrative CodeTitle 85 (Department of Lands and Natural Resources)Chapter 85-110 (Public Cemetery Regulations)

The following chapter shall be added to Title 85:

Part 001 - General Provisions

§ 85-110-001 Purpose

The purpose of this chapter is to establish rules for the public cemeteries in the Commonwealth. It is the goal of the Department of Lands and Natural Resources to maintain the Commonwealth's public cemeteries to ensure a quiet and beautiful resting place for the deceased and to provide for their proper burial.

§ 85-110-005 Definitions

As used in this rule unless otherwise provided:

(a) "Cemetery" means a public cemetery in the Commonwealth.

(b) "Commonwealth" means the Commonwealth of the Northern Mariana Islands.

(c) "Department" means the Department of Lands and Natural Resources.

(d) "Grave" means the space of ground in the cemetery used, or intended to be used, for burial of human remains.

(e) "Interment" means the disposition of human remains by burial or inurnment.

(f) "Liner" means a grave liner or vault.

(g) "Secretary" means the Secretary of Lands and Natural Resources or his or her designee.

(h) "Space" means area in the cemetery used, or intended to be used, for interment or inurment of human remains.

§ 85-110-010 Authority

(a) The Secretary shall be authorized to enforce the regulations in this chapter and may delegate his or her duties to enforce the regulations.

Part 100 - Maintenance Standards

§ 85-110-101

(a) The Department shall ensure that the grounds are kept in a condition so as to prevent the cemetery's offensive deterioration, and shall ensure that maintenance activities to not interfere with burial services.

(b) At a minimum, the Department shall provide the following maintenance at the cemetery:

(1) Trim or mow grass and prune shrubs and trees in and around the cemetery. Grass shall be trimmed or mowed to a level where flat markers of individual graves can be seen.

(2) Suppress or remove weeds on the developed cemetery property.

(3) Repair or restore improvements, structures and fences on the property which are owned by the cemetery.

(4) Keep cemetery roads accessible.

(5) Keep all occupied crypts and niches properly sealed or closed.

(6) Repair any grave marker that is damaged by the negligence of the cemetery or its employees or contractors.

(7) Supply and empty trash receptacles when filled, and keep public areas of the cemetery grounds and water features clear of trash and debris.

(8) Control vermin and insect problems.

§ 85-110-105 Floral and Decorative Objects

(a) The following items are prohibited and may not be placed on graves, or otherwise left in the cemetery:

- (1) Potted plants;
- (2) Permanent plantings;
- (3) Artificial flowers or plants;
- (4) Vigil lights;
- (5) Commemorative items;
- (6) Toys; and

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(7) Glass containers or objects.

(b) Cut natural flowers, wreaths, and sprays in containers may be placed on, but not attached to, graves. Department personnel shall remove faded or withered floral displays.

(c) Candles are permitted for ceremonial purposes; however, the candles must be extinguished and removed from the cemetery at the end of the ceremony.

Part 200—Burials

§ 85-110-201-Map of Burial Plots; Register

(a) The Department shall survey the cemetery and develop a master map of the burial plots and number each burial plot.

(b) The master map shall be used to assign burial plots.

(1) To obtain a burial plot, the requesting party shall fill out a burial plot assignment application and submit it, along with the interment fee, to the Department. The requesting party shall also submit a copy of the decedent's death certificate and a copy of his or her burial permit obtained from the Department of Public Health.

(c) The Department shall also maintain a register for the assignment of burial plots. The register shall contain the name, date of birth, date of death, date of burial, and burial plot number of the person interred at the cemetery.

§ 85-110-205 Interment Fees [Reserved]

[Reserved]

§ 85-110-210 Burials

(a) Burials at the cemetery shall be administered and managed by the Department.

(b) The Department shall be responsible for providing uniform grave markers; opening and closing the crypts, and lowering the body; assigning burial plots.

(c) All expenses incurred by the survivors or representative for the funeral services and supplies provided by a funeral director of their choice and transportation shall be the responsibility of the survivors or representative.

(d) Graves shall be temporarily marked using a temporary grave marker until the Department provides the permanent marker for each grave.

(e) All graves shall have a liner.

§ 85-110-215 Disinterment

(a) Interment of eligible decedents shall be considered to be permanent and final.

(b) Disinterment and removal of remains shall be permitted only with the prior approval of the Secretary and the Department of Public Health.

(c) All arrangements and all expenses in connection with a disinterment shall be the responsibility of the requesting individual or agency. These arrangements shall include compliance with Commonwealth health laws or rules, engagement of a funeral director to accomplish the disinterment, necessary re-casketing of the remains, rehabilitation of the old grave, and compliance with any special instruction of the Secretary.

(d) The Secretary or a designated cemetery official shall supervise disinterments at the gravesite.

(1) Special care and concern shall be shown for adjacent graves and markers.

(2) Department personnel shall reopen the grave down to one foot above the top of the grave liner or vault.

(e) When a disinterment has been completed, the open grave shall be reused at the earliest practical date.

Commonwealth Gi Sangkattan Na Isian Marianas Siha Department of Lands yan Natural Resources Arnold Palacios. Sekritåriu Department of Lands and Natural Resources Caller Box 10007, Saipan, MP 96950 Tel. (670) 322-9830

NUTISIAN PUPBLIKU GI MANMAPROPONIN REGULASION SIHA NI PARA I MAKPI' NA SIMENTETVUN PUPBLIKU SIHA GI PAPA' I DEPARTMENT OF LANDS VAN NATURAL RESOURCES

I AKSION NI MA'INTENSIONA NA PARA U MA'ADÅPTA I AREKLAMENTU VAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas Siha, I Department of Lands yan Natural Resources, ha intensiona para u adåpta kumu petmanienti na regulation siha ni mañechettun i Manmaproponi na Regulasion siha sigun gi dinimånda gi Åktun Administrative Procedure 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi dies(10) dihas dispues di adåptasion yan pupblikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b))

ÅTURIDÅT: I Sekritåriun i Lands yan Natural Resources ("Sekritåriu") gai fuetsa ginin i åturidåt estatua para u adåpta i areklamentu yan regulasion siha ni para u mås adilånta i opbligasion yan risponsåpblidåt siha. 1 CMC § 2654; 3 CMC § 2624; 1 CMC §§ 9101-9115 (åktun Administrative Procedure).

I SUHETU VAN ASUNTU NI TINEKKA: I manmaproponi na regulasion siha gi intires simentetyun pupbliku.

I TEMA VAN SUSTÅNSIAN I PALÅBRA SIHA: Esti na regulasion siha manma'estapblesi manera yan areklamentu siha para i maintenance i yan para i hinafut gi simentetyun pupbliku siha gi halum i Commonwealth.

PARA U MAPRIBENIVI UPIÑON SIHA: Na'hånåo pat intrega i infotmasion guatu gi as Arnold Palacios, Sekritåriun i Department of Lands yan Natural Resources, gi sanhilu' na address, yan i råyan suhetu "I Regulasion siha gi Simentetyun Pupbliku." Todu infotmasion debi na u fanhålum gi halum trenta(30)dihas ginin i fetchan i pupblikasion esti na nutisia. 1 CMC § 9104(a)(2).

Esti i manmaproponi na regulasion siha manma'aprueba ni i Sekritåriu guini gi diha _____ di _____ di ______2013.

Nina'hålum as: ___

 \mathcal{A}

5/1/13 Fetcha

ARNOLD PALACIOS Sekritåriu, Department of Lands yan Natural Resources

Rinesibi:

05/04/13

ESTHER S. FLEMING Ispesiåt Na Ayudånti Para i Atministrasion Gubietnu

Pine'lu yan Ninota as:

man

ESTHER M. SAN NICOLAS Rehistran Commonwealth 05.20.2013

Fetcha

Sigun i 1 CMC § 2153(c) (Inaprueban Abugådu Heneråt gi regulasion siha ni para u macho'gui kumu para fotma) yan 1 CMC § 9104(a)(3) (hen tan inaprueban Abugådu Heneråt) i manmaproponi na regulasion siha ni mañechettun guini manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligåt ginin i CNMI Abugådu Heneråt yan debi na u mapupblika. 1 CMC § 2153(f) (pupblikasion i areklamentu yan regulasion siha).

Mafetcha gi diha _____ gi ____ 2013.

Joey Patrick San Nicolas Abugådu Heneråt

6/13

Fetcha

KODIGUN ADMINISTRATIVE GI SANGKATTAN NA ISLAS MARIANA TITULU 85 REGULASION SIHA GI DEPARTMENT OF LANDS VAN NATURAL RESOURCES

Titulun Regulasion:Kodigun Administrative Sangkattan na Islas MarianasTitulu 85 (Department of Lands yan Natural Resources)Kapitulu 85 – 110 (Regulasion siha gi Simentetyun Pupbliku)

I sigienti na kapitulu debi na u mana'danña' guatu gi Titulu 85:

Påtti 001 - Prubension Heneråt Siha

§ 85 – 110-001 Hinangai

I hinangain esti na kapitulu para u ma'istapblesi areklamentu siha para i simentetyun pupbliku siha gi halum i Commonwealth. I dinisehan i Department of Lands yan Natural Resources para u maintain i simentetyun pupbliku siha gi Commonwealth para u na'siguru na silensiu yan bunitu na sagan diskånsu para i manmåti yan para u pribeniyi propiu na hinafut-ñiha.

§ 85 – 110-005 Difinision Siha

Kumu ma'usa guini na areklamentu solu sino mapribeniyi:

- (a) "Simentetyu" kumeke'ilekña simentetyun pupbliku gi halum Commonwealth.
- (b) "Commonwealth" kumeke'ilekña i Commonwealth gi Sangkattan na Islas Marianas.
- (c) "Dipattamentu" kumeke'ilekña i Department of Lands yan Natural Resources.
- (d) "Grave" kumeke'ilekña i kåmpu gi tanu' gi halum simentetyu ni ma'usa, pat ma'intensiona para ma'usa, para mahåfut i tatåotåo siha.
- (e) "Interment" kumeke'ilekña i dispusision i tatåotåo måtai gi hinafut pat inurnment.
- (f) "Liner" kumeke'ilekña i liner hinaftan pat vault.
- (g) "Sekritåriu" kumeke'ilekña i Sekritåriun i Lands yan Natural Resources pat i ha disikna.
- (h) "Kåmpu" kumeke'ilekña i åria gi simentetyu ni ma'usa, pat ma'intensiona para ma'usa, para interment pat inurnment gi tatåotåo i mamåtai siha.

§ 85 – 110-010 Åturidåt

(a) I Sekritåiu debi na u ma'åturisa para u enforce i regulasion siha gi halum esti na kapitulu yan siña ha delegådu i opbligasion siha ni para u enforce i regulasion siha.

Påtti 100 - Maintenance Standards

§ 85 110-101

- (a) I Dipattamentu siña ha na'siguru na i tanu' siha manmafa'måolik gi kundision kosa kumu para i prinibenin i cemetery's offensive deterioration, yan debi ha na'siguru na i aktibidåt maintenance siha ti u inistotba yan i sitbision siha gi båndan interu.
- (b) Gi menus di, i Dipattamentu debi na u pribeniyi i sigienti na maintenance gi simentetyu:
 - (1) Ma'utut pat maguåssan i cha'guan yan u malåbbun i shrubs yan i trongku siha gi sanhalum yan uriyan i simentetyu. I cha'guan debi na i malåbbun pat u machåchak gi manera anai månu na pumarehu yan i måtka siha gi kada indibiyuåt na hinaftan siha gi anai siña mali'i'.
 - (2) Onñu' pat na'suha i cha'guan gi ma-developed na propiedåt simentetyu.
 - (3) U ma'arekla pat u mana'adilånta tåtti siha, istråktura yan kollat siha gi propiedåt ni mandueñun i simentetyu.
 - (4) U mababayi chålan siha ni para u accessible.
 - (5) U mana'siguråo todu i naftan yan niches na u fanmahuchum måolik pat ma-sealed.
 - (6) U ma'arekla maseha håfa na måtkan naftan ni mayamak ginin i ti inadahin i emple'åo i simentetyu siha pat i contractors.
 - (7) U mana'huyungi yan u mayuti todu i basula gi sahguan basula yanggin bokka', yan u mana'gåsgas todu i årian pupbliku gi lugåt simentetyu yan atyu i guaha hånum na u mana'suha i basula yan i imbaråsussiha.
 - (8) U mamaneha i prubleman gå'ga' yan i insects.

§ 85 -110-105 Floris yan Katbesa na Kosas Siha

- (a) I sigienti siha na kosas manmapribi yan siña ti u mapega gi naftan siha, pat sino u masotta gi halum i simentetyu:
- (1) Potted plants;
- (2) Petmanienti na tinanum siha;
- (3) Artificial na floris pat tinanum siha;
- (4) Vigil lights;
- (5) Commerative items;
- (6) Hugeti siha; yan
- (7) Sahguan mamafak pat kosas siha.

(b) Initut floris, kurona siha, yan sprays gi halum i sahguan siha siña mapega gi, låo ti u mana'chettun guatu, naftan siha. I taotåo i Dipattamentu debi na u mana'suha i manmåfnas pat mampåsmu siha ni manmapega.

(c) Siña masedi na u fanmapega i dangis siha para i hinangain sirimoñias; låo, i dangis siha debi na u fanmapunu' i finañila'-ñiha yan u mana'suha gi simentetyu gi ottimun i sirimoñias.

Påtti 200 ---- Hinafut Siha

§ 85 – 110-201 ----- Måpan i Lugåt Naftan Siha; Rehistra

(a) I Dipattamentu debi na u survey i simentetyu yan u cho'gui i master na måpan i naftan siha yan u numiru kada lugåt naftan siha.

(b) I master na måpa debi na u ma'usa ni para u madisikna i lugåt i naftan siha.

(1) Para ahentan i lugåt naftan, i mamamaisin na petsona debi na u fill out i aplikasion i lugåt naftan na assignment yan u na'hålum, yan i apas hinafut, guatu gi Dipattamentu. I mamamaisin na petsona debi na u na'hålum i kopian i settifikun måtai ni matai yan i kopian lisensian naftan ni ha ahenta ginin i Dipattamentun Hinemlu' Pupbliku.

(c) I Dipattamentu debi lokkui' na u maintain i rehistra para i madisikna na lugåtnaftan siha. I rehistra debi na u gaigi i na'an, fetchan mafañågu, fetchan anai måtai, fetchan anai ma håfut, yan i numirun i lugåt gi anai manahålum i petsona gi simentetyu.

[Reserved]

§ 85 – 110-210 Hinafut Siha

(a) Hinafut siha gi simentetyu debi na u ma'-administered yan mamaneha ni Dipattamentu.

(b) I Dipattamentu debi na risponsåpbli ni para u pribeniyi un klåsi na måtkan hinaftan siha; mababa yan hinichum i naftan siha, yan u mana'tunuk i taotåo; ma'asisikna i lugåt i naftan siha.

(c) Todu gåstu siha u ma'-incurred ni survivors pat i reprisentånti para i funeral na sitbisiu siha yan supplies u mapribeniyi ginin funeral director gi månu malagu'-ñiha yan transpottasion debi responsåpblidåt i survirors pat i representånti.

(d) I naftan siha debi na u mamåtka tempuråriu ni u ma'u'usa i måtkan naftan estaki prinebiniyi ni Dipattamentu ni i petmanienti na måtka para kada naftan.

(e) Todu naftan siha debi na u gai iyu pruteksion gi sanhalum (liner).

§ 85-110-215 Disinterment

(a) Interment gi kualifikåo na måtai debi na u makunsidera na u petmanienti yan ottimu.

(b) Disinterment yan mana'suhan i tatåotåo debi na u malisensia solu ya åntis di inaprueban i Sekritåriu yan i Dipattamentun Hinemlu' Pupbliku.

(c) Todu manma'arekla siha yan todu gåstu siha ni dumadanña' yan i disinterment na debi na responsåpblidåt i mamamaisin na indibiyuåt pat ahensia. Esti na areklu siha debi na u såonåo i compliance i lain health Commonwealth siha pat areklamentu siha, engagement i funeral director para i kinimpli i disinterment, nisisåriu na u mata'lun mapega gi ata'ut i tatåotåo, rehabilitation i bihu na naftan, yan i compliance i maseha håfa na ispisiåt na tinagu' i Sekritåriu.

- (d) I Sekritåriu pat i ha disikna na ufisiåt gi simentetyu debi na u pulan i disinterment gi fi'un i naftan.
- (1) Ispisiåt na inadahi yan concern debi na u annuk i fi'on-ña na naftan yan i matka siha.
- (2) I Department personnel debi na u ta'lun bumaba påpa' i naftan asta un pie hulu' i sanhilu' gi grave liner pat i vault.
- (e) Yanggin i disinterment esta munhåyan, i mababa na naftan debi na u mata'lun ma'usa gi mamamaila' na praktikåt na fetcha.

Commonwealth of the Northern Mariana Islands Department of Lands and Natural Resources Arnold Palacios, Secretary Department of Lands and Natural Resources Caller Box 10007 Saipan, MP 969S0 Tel. 322-9830

ARONGORONGOL TOULAP REEL POMWOL ALÉGH REEL MARPI PUBLIC CEMETERY FAAL LEMELEMIL DEPARTMENT OF LANDS AND NATURAL RESOURCES

MÁNGEMÁNGIL MWÓGHUT YEEL BWE EBWE ADAPTÁÁLI POMMWOL ATIWLIGH KKAL:

Commonwealth of the Northern Marianas Islands, Department of Land and Natural Resources ebwe adáptááli me aléghuwló atiwligh kka e appasch bwe Proposed Regulations, sandi amwelil Administrative Procedure Act. 1 CMC § 9104(a). Atiwligh kkal ebwe bwung ló 10 ráál mwuril re adáptááli me apasch lól Commonwealth Register. (1 CMC § 910S(b)).

BWÁNGIL: _Secretary il Lands me Natural Resources ("Secretary") eyoor bwangil ebwe adáptááli atiwligh kkal faal lemelemil 1 CMC §2624; 1 CMC §§ 9101-9115 (Administrative Procedure Act).

KKAPASAL ME AWEWEEL: Pomwol atiwligh kkal nge reel public cemeteries.

KKAPASAL ME ÓUTOL: Atiwligh kkaal ebwe ayoora pomwol mwóghutughut me aléghul libwelibw lól public cemeteries lól Commonwealth.

ISISILONGOL MÁNGEMÁNG: Afanga me ngare bwughiló yóóm mangemang reel Arnold Palacios, Secretary of Lands and Natural Resources, reel address iye weilang, me subject line"Public Cemetery Regulations."Mángemang nge ebwe lól 30 ráál sangi raal iye e appasch arong yel (1 CMC § 9104(a)(2)).

Pomwol atiwligh kkal re apreba li mereel Secretary wóól ______raalil ______raalil ______

Isáliiyalong: ARNOLD PA ACIOS

Secretary of Lands and Natural Resources

Mwir Sángi: ESTHER S. #LEMING

Governor's Special Assistant for Administration

Amwel Sángi:

ESTHER M. SAN NICOLAS Commonwealth Register

06/13

Ráll

05.20.2013 Ráll

Sángi 1 CMC § 2153(e) Allégh kkaal a lléghló sángi AG bwe e fil reel fféérúúl me 1 CMC §9104(a)(3)(mwiir sángi AG)Pomwol atiwligh kkal a appaschlong a takkal amwuri fiischiy, me angúúngú ló fféérúl me legal sufficiency sángi CNMI Attorney General me ebwele akkatewoow, 1 CMC §2153(f) (Arongowowul allégh me atiwligh kkaal.

Ráál ráálil 2013

Joey an Nicolas General Atto

Ráll

2

MAY 28, 2013 PAGE 033535

NORTHERN MARIANA ISLANDS ADMINISTRATIVE CODE TITLE 85 DEPARTMENT OF LANDS AND NATURAL RESOURCES REGULATIONS

Ital Atiwligh: Northern Mariana Island Administrative Code Title 85(Department of Lands and Natural Resources) Chapter 85-110 (Public Cemetery Regulations)

Chapter kka faal ebwe apasch ngáli Title 85:

Part 001- Milikka Autol

§85-110-001 Bwúlúl

Bwúlúl chapter yel ebwe ayoora alléghúl public cemeteries lól Commonwealth. Mwuschelil Department of Lands and Natural Resources bwe ebwe lemeli olopeykka yaar publikko lól Commonwealth reel ebwe eew leli iye e ghilómw me ling ngalir mal máá.

§ 85-110-005 Meeta faal

Igha e awewe lól atiwligh kkal me ngare bwe a ayoora

- (a) "Olopey" faal nge olopeyil toulap lól Commonwealth
- (b) "Commonwealth" faal nge Commonwealth of the Northern Mariana Islands
- (c) "Dipatamento" faal nge Department of Lands and Natural Resources.
- (d) "Peyas" faal nge eew space-il pwél lól olopey iyere yááyá, me ngare rebwe yááyá reel libwilibwil aramas.
- (e) "Libwilibw" faal nge peyas lól ilighil aramas me ngare inurnment
- (f) "Liner" faal nge grave liner me ngare vault
- (g) "Secretary" faal nge Secretary of Lands and Natural Resources me iyo e afeli
- (h) "Space" faal nge eew lely me olopey iye re yááyá, me ngare rebwe yááyá reel libwilibw me ngare

§85-110-010 Bwángil

(a) Secretary e atoriza ebwe amamawa atiwligh kkal lól chapter yeel me emwal ebwe bwal delegate li bwángil reel rebwe amamawa atiwligh kkal.

Part 100-Maintenance Standards

§ 8S-110-101

(a) Dipatamento ebwe afali ghatchuw kkonditionil wool olopey me maintenance activities reel esabw interfere me burial services.

(b) Esóóbw bwal ghi lap, Depatamento ebwe ayoora tapelal mwóghutughut kkal me olopey

(1) Trim me lumowa li fitil me ghupi torongkko wóól olopey. Fitil rebwe trim lil me lumowa lil nge ebwe wewe ngali level il flat markers il pey,

- (2) li ló me ngare rebwe amarey waar kka e ffas olopey.
- (3) Aghatchúliló iimw me fences wóól propidod kka yaal olopey
- (4 Yáálil olopey ebwe accessible
- (S) Alongal pey ebwe tit ghatch
- (6) Féérú grave markers kka e féir mereer schóól angaangil olopey me ngare contractors.
- (7) Ayoora me alusu leliyal bwasula ngare a ssogh, ebwe ghasaghas wóól pey me leliyal schaal sangi bwasula.
- (8) Control-il maal.

§ 8S-101-10S Floris me mil aling

- (a) Ikkal meta kka ese mwal ebwe isis wóól pey me ngare isis tiw olopey
- (1) Ira e lo lol leliyal
- (2) ira kka re fotoghi
- (3) Artificial floris me ira
- (4) Dangiis
- (S) Commerative items
- (6) Toys; me

- (7) metakka e lo lól léé
- (b) floris kka e ghopoghop, kkorona, sprays lól leliyal emwal ebwe isis wóól nge esóóbw apasch tiw wóól pey. Schóól angang imwo rebwe asiw ló floris kka a pwas.
- (c) Emwel dangis rebwe yaya reel seremonias schaagh, ebwe schaagh takk nge rebwe ghuluw me bwughilo.

Part 200-Libwilibw

§ 85-110-201 Móópal leliyal libwilibw; Register

- (a) Depatamento ebwe survey li olopey me ayoora eew master map il burial plots me numeral eew me eew burial plot.
- (b) Master map nge rebwe yááya reel assign il burial plots.

(1) Reel tingorel burial plot, ubwe fill out li application nge was isalilong me óbwósul interment ngali Dipatamento. Ubwe bwal isalilong death certificate me copil burial permit mereel Department of Public Health.

(c) Departmentebwe ayoora register reel assignment il burial plots, register ebwe lo ital aramas iye e maa, ralil ubwutiwel, rálil maa, rálil libwilibw, me plot number.

§ 85-110-205 Óbwóssul interment(Reserved)

(Reserved)

§ 85-110-210 Libwilibw

(a) Dipatamento ebwe lemelem reel libwilibw me olopey

(b) Dipatamento ebwe ayoora uniform grave markers, susul me tiil bwóór, atetiway ilighil me assign il burial plots.

(c) alongal ghasto reel funeral services me pisegh iye re ayoora mereel funeral director me gharetta nge ebwe lo reel yaal schóó.

(d) Pey nge rebwe aghikkila reel eew temporary marker, outol depatamento ayoora permanent marker.

(d) alongal pey nge ebwe yoor liner.

§ 85-110-215 Disinterment

(a) Pey lól maal máá nge ra kkonsidera li bwe a permanent me final

(b) Ebwe apreba mereel Secretary me Department of Public Health mwal disinterment me removal il remains.

(c) Alongal méél disinternment nge e lo ngali iyo e tingor me ngare agency. Alongal mwóghutughut kkal nge rebwe atabwey alléghul Commonwealth health, tolongol funeral director reel ebwe atawey mwoghutughutul disinternment, ngare e nesesario rebwe re-casket li remains, rehabilitation il old grave, me rebwe atabwey afal mereel Secretary.

(d) Secretary me ngare iyo e afali ebwe supervise li disinternment me olopey

(1) Rebwe ghi afaliy pey kka e lo arol

(2) Schóól angangal Department rebwe sughi ta pey eew foot weilangil grave liner me ngare vault.

(e) Ngare a takk disinternment, pey we e susu nge rebwe bwal amwetemweta yaar yááya sefali.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos Governor Jude U. Hofschneider Lieutenant Governor

EXECUTIVE ORDER No. 2013-08

DECLARATION OF HEALTH EMERGENCY

WHEREAS, the Commonwealth Healthcare Corporation ("CHC") provides the bulk of necessary healthcare in the Commonwealth, as well as providing all emergency medical services; and

WHEREAS, the disruption of the provision of medical services by the CHC poses a direct threat to the health and safety of the people of the Northern Mariana Islands; and

WHEREAS, the CHC is currently in arrears to payments to vendors providing vital services and equipment and is in arrears in regards to salary payments to necessary employees; and

WHEREAS, CHC deteriorating financial condition affects its ability to maintain adequate infrastructure, equipment and personnel such that it is jeopardizing CHC's federal funding; and

WHEREAS, CHC, has been notified by federal authorities that, due to deficiencies in CHC operations and infrastructure, CHC will cease to be eligible for Medicare/Medicaid payments along with other penalties if the deficiencies are not promptly remediated.

WHEREAS, Article III §10 of the Constitution of the Commonwealth and PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013 provide that the Governor has the authority and duty to take necessary steps to respond to impending disasters;

NOW THEREFORE, I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and PL 18-4, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the disruption of critical medical services in the Commonwealth and the danger that such a condition poses to the public because of the great increase in otherwise preventable deaths that would result.

WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY, I intend to enable CHC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of all CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands and CHC including, but not limited to, the authority to:

- 1. Suspend all statutory or regulatory provisions as required; and
- 2. Utilize all available resources of the Commonwealth government and its political subdivisions as reasonably necessary to respond to the emergency.

To ensure that the suspension of regulatory provisions does not lead to financial abuse, this emergency declaration incorporates the March 19, 2012 Memorandum of Understanding (MOU) between CHC and the Department of Finance, Office Management and Budget, and Office of the Attorney General. In addition, any financial reports submitted by the CHC pursuant to the MOU must be submitted with a certification of the person submitting them stating that the reports are a full and accurate under penalty of perjury.

Done this 20 Kaylof April, 2013

ELOY S. INOS Governor



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos Governor Jude U. Hofschneider Lieutenant Governor

EXECUTIVE ORDER NO. 2013-09

SUBJECT: DECLARATION OF EXECUTIVE REORGANIZATION OF THE OFF-ISLAND MEDICAL REFERRAL PROGRAM UNDER THE OFFICE OF THE GOVERNOR

AUTHORITY: "The Governor may make changes in the allocation of offices, agencies and instrumentalities and in their functions and duties that are necessary for efficient administration." CNMI Constitution, Article III, Section 15.

WHEREAS, Section 15, Article III of the CNMI Constitution empowers the Governor to make changes to the allocation, functions, and duties of offices, agencies, and instrumentalities of the executive branch necessary for efficient administration; and

WHEREAS, prior to PL 16-51, the Medical Referral Program was a part of the Department of Public Health, and with the passage of PL 16-51, the Medical Referral Program passed to and is currently organized under and as a part of the Commonwealth Healthcare Corporation.

WHEREAS, although personnel from CHC have a role in determining who may partake of medical referrals, it is unnecessary and inefficient to have the Off-Island Medical Referral Program under the Commonwealth Healthcare Corporation ("CHC") when it is not fiscally responsible for the operations of the Off-Island Medical Referral Program. See PL 16-51, § 3 (3 CMC § 2804(v)). Further, it is fiscally prudent and more efficient for the Office of the Governor to assume operation of the Off-Island Medical Referral Program due to CHC's precarious financial and administrative state.

NOW, THEREFORE, I, Eloy S. Inos, Governor of the Conunonwealth of the Northern Mariana Islands, pursuant to the powers vested in me by the Constitution of the Commonwealth of the Northern Mariana Islands, do hereby,

DECLARE that the efficient administration of the Off-Island Medical Referral Program necessitates the transfer of the Off-Island Medical Referral Program from under the Commonwealth Healthcare Corporation to under the Office of the Governor.

ORDER that, pursuant to my constitutional reorganization powers:

1. The Commonwealth Healthcare Corporation shall relinquish responsibility for the administration and operation of the Off-Island Medical Referral Program; and the Office

of the Governor shall assume responsibility for the administration and operation of the Off-Island Medical Referral Program.

2. All records and property (real or personal) of the Off-Island Medical Referral Program and all the personnel used in the administration of the Off-Island Medical Referral Program (including employees whose chief duties relate to such administration) are hereby transferred to the Office of the Governor. All personnel transferred pursuant to this Executive Order shall maintain their current positions and status in the classified civil service or in the excepted service, if applicable and as the case may be. The Director of Personnel Management shall ensure an orderly transfer of personnel.

3. The unexpended balances of appropriations, allocations, allotments, or other funds available for the use of the Off-Island Medical Referral Program on the effective date of the transfer are transferred to the Office of the Governor on the effective date of this transfer. In the transfer of such funds, an amount may be included for the liquidation of obligations incurred prior to the transfer. Subsequent to the transfer, the Off-Island Medical Referral Program's operations shall be reflected in the annual budget of the Office of the Governor.

4. There shall be regular communication between the Chief Executive Officer of the Commonwealth Healthcare Corporation or his designees and the Governor or his designees to ensure an efficient transition. This communication and cooperation shall extend beyond the transfer with the ultimate goal of optimal efficiency in the operations of the Off-Island Medical Referral Program.

PROVIDE that all rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, repealed or terminated.

PROVIDE that if any provision of this Executive Order or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Executive Order or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

PROVIDE that in accordance with the Constitution, this plan shall become effective sixty days after submission to the Legislature, unless specifically modified or disapproved by a majority of the members of each house of the Legislature, provided, that in case it shall appear to the Governor that the interest of economy or efficient management require that the transfer be delayed beyond the date this plan becomes effective, the Governor may, in his discretion, fix a later date therefore, and he may for like cause further defer such date from time to time.

SIGNED AND PROMULGATED on this 2013. 2 **ELOY S. INOS** Governor



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos Governor Jude U. Hofschneider Lieutenant Governor

EXECUTIVE ORDER NO. 2013-10

SUBJECT: DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY

AUTHORITY: I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the community, environment, and critical infrastructure of the Commonwealth of the Northern Mariana Islands.

WHEREAS, CUC IS THE SOLE ELECTRICITY SUPPLIER to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI's businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

WHEREAS, WITHOUT CUC ELECTRICITY:

- (1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it:
- (2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited oil supplies for emergency generation and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;
- (3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup oil supplies for emergency generators were exhausted; and

(4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water.

WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

- (1) CUC is owed approximately \$14 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed over millions more by residential users;
- (2) There is conflict and potential conflict between CUC and government agencies over money owed and other issues. Such conflict drains resources especially if it results in the parties going to court. Interagency cooperation and oversight is vital to ensure that government agencies can continue its operations without draining CUC's remaining resources.
- (3) The people of the Commonwealth and its government are going through severe economically distressed times. This has put a severe strain on the government to meet its obligation.
- (4) CUC often only has days' worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole, cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers;
- (5) A unified government approach is necessary to reconcile and resolve the fiscal crises of the government with the fiscal crises of CUC. This can only be achieved through a declaration of significant emergency.

WHEREAS, THERE EXISTS A TECHNICAL WORKER CRISIS:

- (1) CUC faces a manpower crisis. Skilled workers and a responsive support system are key to the success of the operation, particularly for preventative maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers;
- (2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines and charges and, in the extreme, to a federal takeover of their finances;

- (3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised;
- (4) The legislature, through P.L. 17-1 (Mar. 22, 2010). has limited CUC's ability to hire technical staff, eliminating prior statutory permission to hire up to nineteen foreign workers and reinstituting a moratorium on the government's hiring of foreign nationals, even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act. as subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC § 8123(h);
- (5) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidates:
- (6) The impact of an inadequate workforce is substantial. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service. Second, the power plants would again degrade, producing more of these outages. Third, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team, with all expenses charged to CUC customers.
- (7) CUC's renewal of contracts and hiring of foreign expert workers is necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth.

WHEREAS, A BOARD OF DIRECTORS DOES NOT EXIST:

(1) There is no Board of Directors. CUC has functioned without a Board because it has had to. While CUC's enabling act, reenacted as P.L. 16-17, as amended, authorizes a Board, there is no CUC Board yet because, while the staff of the Governor's Office have diligently tried to find Board volunteers who meet the complex statutory qualifications, they have been unable to do so. Nonetheless, CUC must continue to function. (2) Without a Board in place, I still must provide for the continued operations of CUC. The Executive Director needs to be able to negotiate with federal and other agencies.

WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY. I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands including, but not limited to, the authority to:

- 1. Suspend all statutory or regulatory provisions as required; and
- 2. Utilize all available resources of the Commonwealth government and its political subdivisions as reasonably necessary to respond to the emergency.

It is hereby ORDERED that:

This Declaration of a State of Significant Emergency shall take effect immediately and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30)-day period, terminate the declaration of a state of significant emergency. PL 18-4, § 104(g)

Under authority of this Declaration and with the goal of mitigating or ameliorating the above described crises, I immediately direct the following:

DIRECTIVE 1: All of the executive power of the CUC, which shall include any and all powers vested in the Board of Directors and the Executive Director, shall be exercised by my designated Executive Director.

DIRECTIVE 2: Section 4531 of Title 3 of the Commonwealth Code is hereby suspended as to CUC as follows:

The following strike-out formatted language of the quoted provisions of the following statute regulating government employment is, as indicated, suspended immediately:

3 CMC §4531. Restrictions on Government Employment

Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.

As a result of my suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

The above described Directives are in no way meant as the limits of my actions or authority under this Declaration. Accordingly, I reserve the right under this Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 20 TH day of May 2013.

ELOY S. INOS Governor Commonwealth of the Northern Mariana Islands