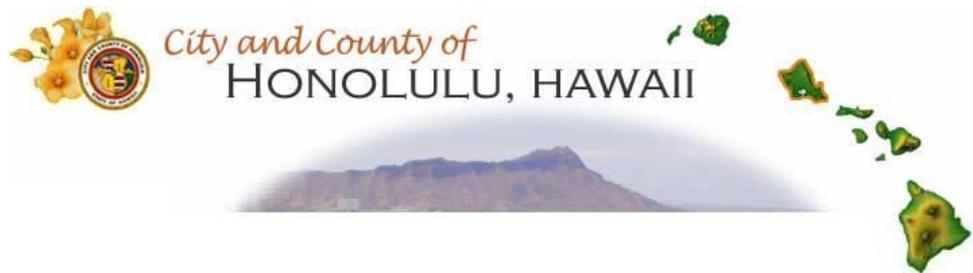


# Real Estate Acquisition Management Plan (RAMP) Honolulu High-Capacity Transit Corridor Project



**February 29, 2008**  
Revised April 1, 2008

Prepared for:  
City and County of Honolulu



# Table of Contents

---

<b>1</b>	<b>INTRODUCTION .....</b>	<b>1-7</b>
1.1	<b>Project Background and Planning.....</b>	<b>1-8</b>
1.2	<b>Project Description .....</b>	<b>1-9</b>
1.2.1	<b>Alignment.....</b>	<b>1-9</b>
1.2.2	<b>Stations .....</b>	<b>1-11</b>
1.2.3	<b>System-Wide Elements .....</b>	<b>1-12</b>
1.2.4	<b>Fare Collection.....</b>	<b>1-12</b>
1.2.5	<b>Operating Plan .....</b>	<b>1-13</b>
1.2.6	<b>Ridership Estimates .....</b>	<b>1-13</b>
1.3	<b>Project Delivery .....</b>	<b>1-13</b>
1.3.1	<b>Delivery Strategy .....</b>	<b>1-13</b>
1.3.2	<b>Environmental Impact Statement and Preliminary Engineering .....</b>	<b>1-14</b>
1.3.3	<b>Phase I Delivery .....</b>	<b>1-14</b>
1.3.4	<b>Phase II Delivery .....</b>	<b>1-15</b>
1.3.5	<b>Schedule and Cost .....</b>	<b>1-16</b>
1.3.6	<b>Goals and Objectives .....</b>	<b>1-16</b>
1.4	<b>Legal and Statutory Authority .....</b>	<b>1-16</b>
1.4.1	<b>Agency Background and Overview .....</b>	<b>1-16</b>
<b>2</b>	<b>PURPOSE .....</b>	<b>2-1</b>
2.1	<b>RAMP Goal.....</b>	<b>2-1</b>
2.2	<b>Policy and Procedures.....</b>	<b>2-2</b>
2.3	<b>Interdepartmental Issues Resolution Process.....</b>	<b>2-2</b>
<b>3</b>	<b>FEDERAL TRANSIT ADMINISTRATION COMPLIANCE.....</b>	<b>3-1</b>
3.1	<b>Public Law.....</b>	<b>3-1</b>
3.2	<b>Revisions .....</b>	<b>3-1</b>
3.3	<b>Requirements .....</b>	<b>3-1</b>
3.4	<b>FTA Circulars.....</b>	<b>3-1</b>
3.5	<b>FTA Concurrence .....</b>	<b>3-2</b>
<b>4</b>	<b>REAL ESTATE NEED.....</b>	<b>4-1</b>
4.1	<b>Parcel Identification .....</b>	<b>4-1</b>
4.2	<b>Design Changes .....</b>	<b>4-1</b>
4.3	<b>Fee Takings.....</b>	<b>4-1</b>
4.4	<b>Easements .....</b>	<b>4-2</b>
4.5	<b>Acquisition Modes and Methods .....</b>	<b>4-2</b>
4.6	<b>Condemnation .....</b>	<b>4-2</b>

4.7	Right of Entry .....	4-3
4.8	Right-of-Way Cost Estimate.....	4-3
4.9	Right-of-Way Schedule .....	4-4
4.10	Takings .....	4-4
4.11	Contamination Evaluation.....	4-4
4.12	Title Searches .....	4-5
4.13	Required Notices .....	4-5
4.14	Relocation Advisory Services .....	4-6
5	REAL ESTATE PROCESS .....	5-1
5.1	Civil Rights (Title VI).....	5-1
5.2	Basic Negotiation Procedures.....	5-1
5.3	Negotiated Purchase .....	5-1
5.4	Notice to Owner .....	5-2
5.5	Summary Statement .....	5-2
5.6	Surrender of Possession .....	5-3
5.7	Notice to Vacate.....	5-3
5.8	Fair Rental and Incidental Expense Reimbursement .....	5-3
5.9	Coercive Action .....	5-3
5.10	Condemnation.....	5-4
5.11	Uneconomic Remnant.....	5-4
5.12	Improvements – Interest to be Acquired .....	5-4
5.13	Improvements – Just Compensation .....	5-4
5.14	Improvements – Tenant Owned.....	5-4
5.15	Duplication of Payment.....	5-5
5.16	Tenant Rights.....	5-5
5.17	When to Pay Owner’s Litigation Expenses .....	5-5
5.18	Inverse Condemnation .....	5-5
5.19	Donations .....	5-5
5.20	Appraisal Waiver and Invitation to Owner .....	5-6
5.21	Conflict of Interest .....	5-6
5.22	When to Update an Offer of Just Compensation .....	5-7
5.23	Administrative Settlements and FTA Approval.....	5-7
5.24	Payment before Taking Possession .....	5-8
5.25	Real Estate Title Reports.....	5-8
5.26	Appraisal of Property .....	5-9
	5.26.1 Partial Takings .....	5-10

5.26.2	Determining Personalty and Realty .....	5-12
5.27	Property Acquisition and Appraisal .....	5-12
5.27.1	Value Finding .....	5-13
5.27.2	Property Contamination.....	5-14
5.27.3	Acquisition of Tenant-Owned Improvements .....	5-14
5.28	Protective Usage Agreement.....	5-14
5.29	Real Property Negotiations .....	5-15
5.30	Relocation Business Damages .....	5-15
5.31	Fee Simple and Leasehold Interest .....	5-16
5.31.1	Fee Simple.....	5-16
5.31.2	Leasehold Interest.....	5-16
5.31.3	Lease Types .....	5-16
5.32	Real Estate Closings.....	5-17
5.33	Property Delivery to Construction .....	5-18
5.33.1	Right-of-Way Certification .....	5-18
6	CONDEMNATION PROCEDURES .....	6-1
6.1	Condemnation Conditions.....	6-1
6.2	Titles Acquired through Condemnation .....	6-1
6.3	Project Schedule .....	6-1
6.4	Condemnation Approval Process.....	6-2
7	INTRA- AND INTER-GOVERNMENTAL TRANSFERS.....	7-1
7.1	Compensation .....	7-1
7.2	Negotiation Transfers .....	7-1
7.3	Replacement Facilities.....	7-1
7.4	Betterments and Just Compensation .....	7-1
7.5	Administrative Transfers .....	7-2
8	RELOCATION ASSISTANCE PROGRAM .....	8-1
8.1	Relocation Plan .....	8-1
8.2	Nondiscriminatory Reviews .....	8-2
8.3	Relocation Benefits.....	8-2
8.4	Relocation Procedure .....	8-2
8.5	Relocation Program .....	8-2
8.6	Notices .....	8-3
8.7	Public Information.....	8-3
8.8	Relocation Planning.....	8-4
8.9	Relocation Personnel and Offices .....	8-4
8.10	Public-Private Sector Coordination .....	8-5

8.11	Public Brochures .....	8-5
8.12	Public Relocation Notices .....	8-6
8.13	Relocation Statement of Eligibility .....	8-7
8.13.1	Notice of Relocation Eligibility .....	8-7
8.13.2	Ninety-Day Notice .....	8-7
8.13.3	Relocation of Aliens Not Lawfully Present in the United States .....	8-8
8.14	Relocation Advisory Services Program .....	8-9
8.15	Relocation Payments .....	8-10
8.16	Discretionary City Payments .....	8-10
8.17	Relocation Payments not Considered as Income .....	8-10
8.18	Relocation of On-Premise Signs .....	8-11
8.19	Relocation Appeals Procedure .....	8-11
8.20	Formal Hearing Requests .....	8-12
8.21	Administrative Review .....	8-12
8.22	Relocation Claims Process .....	8-13
8.22.1	Documentation .....	8-13
8.22.2	Expeditious Payments .....	8-13
8.22.3	Advance Payments .....	8-13
8.22.4	Notice of Denial of Claim .....	8-13
8.22.5	Time for Filing .....	8-13
8.22.6	No Waiver of Relocation Assistance .....	8-13
8.22.7	Expenditure of Payments .....	8-14
8.23	Relocation Last Resort Housing .....	8-14
9	REAL PROPERTY MANAGEMENT .....	9-1
9.1	Property Management Procedures .....	9-1
9.2	Property Management Activities .....	9-1
9.3	Building Cut-Offs and Asbestos .....	9-1
9.4	Building Inspections and Surveys .....	9-1
9.5	Economic Feasibility .....	9-1
9.6	Temporary Easement .....	9-2
9.7	Partial Acquisitions .....	9-2
9.8	Real Property Sales and Dispositions .....	9-2
9.9	Record Keeping and Reports .....	9-3
10	RIGHT-OF-WAY PROCESS TRACKING .....	10-1
10.1	Tracking Responsibility .....	10-1
10.2	Parcel Schedule .....	10-1
10.3	Meetings .....	10-1

<b>10.4</b>	<b>Budget</b>	<b>10-1</b>
<b>10.5</b>	<b>Document Filing</b> .....	<b>10-1</b>
<b>10.6</b>	<b>Confidentiality</b> .....	<b>10-1</b>
<b>10.7</b>	<b>Maps and Drawings</b> .....	<b>10-2</b>
<b>11</b>	<b>PROJECT ORGANIZATION AND STAFFING</b> .....	<b>11-10</b>
<b>11.1</b>	<b>Organizational Approach</b> .....	<b>11-10</b>
<b>11.2</b>	<b>City and County of Honolulu</b> .....	<b>11-11</b>
<b>11.2.1</b>	<b>Organization of the City and County of Honolulu</b> .....	<b>11-11</b>
<b>11.2.2</b>	<b>Key City Departments and Entities Relating to the Project</b> .....	<b>11-14</b>
<b>11.2.3</b>	<b>Key City Departments Relating to Real Property Acquisitions and Relocations</b> .....	<b>11-16</b>
<b>11.4</b>	<b>Use of Consultants</b> .....	<b>11-23</b>
<b>11.5</b>	<b>Interface with Other Agencies</b> .....	<b>11-24</b>
<b>11.6</b>	<b>Interface with City Departments Involved in Real Estate</b> .....	<b>11-28</b>

**List of Tables**

**Table 1-1: Phase I – East Kapolei to Leeward Community College..... 1-11**  
**Table 1-2: Phase II – Leeward Community College to Puuloa Road (Salt Lake) ..... 1-11**  
**Table 1-3: Phase II – Puuloa Road (Salt Lake) to Nimitz Highway)..... 1-11**  
**Table 1-4: Phase II – Nimitz Highway to Ala Moana Center ..... 1-12**  
**Table 1-5: Phase II – Ala Moana Center ..... 1-12**  
**Table 1-6: Phase I – Line Segment and Stations Design-Build Contract Units ..... 1-14**  
**Table 1-7: Phase II – Line Segment and Stations Design-Build or Design-Bid-Build  
Contract Units 1-15**  
**Table 4-1: Right-of-Way Costs..... 4-3**

**List of Figures**

**Figure 2-1: Interdepartmental Issues Resolution Process..... 2-3**  
**Figure 11-1: City & County of Honolulu Organization Charter ..... 11-13**  
**Figure: 11-2: Project Relationship Structure..... 11-15**  
**Figure: 11-3 Right-of Way Acquisition Organization Chart.....11-22**

In cooperation with the Federal Transit Administration (FTA), the City and County of Honolulu (the City) is undertaking preliminary engineering (PE) and preparing an Environmental Impact Statement (EIS) for making transit improvements to the Honolulu High-Capacity Transit Corridor in Honolulu, Hawai'i. This EIS is being prepared in conformance with the following:

- 40 CFR Part 1500-1508, Council on Environmental Quality, Regulation for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969, as amended;
- 49 CFR Part 611, FTA, Major Capital Investment Projects;
- 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (see Appendix C); and
- The Safe, Accountable, Flexible, and Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU).

The EIS will also fulfill the requirements of Chapter 343 of the Hawai'i Revised Statutes, as amended (HRS 343), which governs the assessment of the environmental impacts of major projects.

The City is implementing a Right-of-Way Acquisition Program for the Honolulu High-Capacity Transit Corridor Project (the Project). The purpose of the Project is to improve mobility for travelers in the highly congested east-west corridor between Kapolei and the University of Hawai'i at Mānoa (UH Mānoa). This corridor is confined by the Waianae and Koolau mountain ranges to the north (mauka), and the ocean to the south (makai). The Project will provide public transportation services in the corridor that are faster and more reliable than the services currently operating in mixed-flow traffic. The Project will also provide an alternative to private automobile travel and improve linkages between Kapolei, Downtown Honolulu, UH Mānoa, Waikīkī, and the urban area in between. In conjunction with other improvements included in the Oahu Regional Transportation Plan, the Project will moderate anticipated traffic congestion in the corridor. It will also support the Oahu General Plan and Oahu Regional Transportation Plan's goals, by serving areas designated for urban growth.

The First Project, a 19.5-mile portion of the Locally Preferred Alternative, will be completed in several construction phases:

- First Construction Phase: This will include constructing the guideway from the western terminus in East Kapolei to the vicinity of Leeward Community College (LCC). This phase also includes contracts for the maintenance yard/shops and systems. The General Engineering Consultant (GEC) will prepare the Design-Build contracting packages for this construction phase. Construction and testing for First Construction Phase activities is anticipated to take approximately two years. The right-of-way acquisition timeline is critical for on-schedule completion of this construction phase.
- Second Construction Phase: This phase will include the remaining portion of

the First Project, from the vicinity of LCC to the Ala Moana Center. This construction phase is anticipated to be delivered through several contract units,

## **1.1 Project Background and Planning**

The Alternatives Analysis (AA) for the Project was initiated in August 2005 and the Honolulu High-Capacity Transit Corridor Project Alternatives Analysis Report was presented to the Honolulu City Council in October 2006. The purpose of the report was to provide the City Council with the information necessary to select a mode and general alignment for high-capacity transit service on Oahu. The report summarized the results of the AA that was conducted following the FTA's planning guidance. The report provided information on the costs, benefits, and impacts of four alternatives: the No Build Alternative, Transportation Systems Management Alternative, Managed Lane Alternative, and Fixed-Guideway Alternative.

In November and December 2006, public meetings were held on the AA. On December 22, 2006 the Honolulu City Council enacted Ordinance No. 07-001 which selected a fixed-guideway alternative from Kapolei to the University of Hawaii at Manoa and Waikiki as the Locally Preferred Alternative (LPA) for the Project. Ordinance 07-001 identified a specific alignment for the majority of the corridor but left options open in two locations. At the western end of the corridor, the LPA selection identified two alignments (described in the AA Report as Section I – Saratoga Avenue/North-South Road and Kamokila Boulevard), with the notation "as determined by the city administration before or during preliminary engineering." In the center of the corridor, the LPA selection also identified two alignments (described in the AA Report as Section III – Salt Lake Boulevard and Aolele Street), also with the notation "as determined by the city administration before or during preliminary engineering."

This LPA selection was made recognizing that currently-identified revenue sources – including revenues from the 0.5-percent General Excise Tax (GET) surcharge in place from January 1, 2007 through December 31, 2022 and a reasonable expectation of FTA New Starts funds – would not be sufficient to fund the capital cost of the LPA. Thus, a financially feasible Minimum Operable Segment (MOS) needed to be chosen. On February 27, 2007 the Honolulu City Council selected the MOS to be East Kapolei to Ala Moana Center, via Salt Lake Boulevard (Resolution 07-039, FD1(c)).

## **1.2 Project Description**

### **1.2.1 Alignment**

The First Project is a 19.5-mile portion of the LPA extending from East Kapolei in the west to Ala Moana Center in the east. The alignment is a dual guideway of which 18.0 miles are elevated, 1.2 miles are at grade, and 0.3 mile is below grade.

The First Project is planned to be delivered in two phases, described below and discussed more fully in Section 1.3, Project Delivery:

## Phase I

- East Kapolei to Navy Drum Site Maintenance Base/ Leeward Community College

## Phase II

- Leeward Community College to Puuloa Road (Salt Lake);
- Puuloa Road (Salt Lake) to Nimitz Highway; and
- Nimitz Highway to Ala Moana Center Terminus.

The following description of the proposed alignment and stations is organized by these phases.

### **Phase I – East Kapolei to Leeward Community College**

East Kapolei is the western terminus of the First Project. The alignment begins at North-South Road north of Kapolei Parkway. The alignment follows North-South Road in a northerly direction to Farrington Highway where it turns east following Farrington Highway and crosses Fort Weaver Road. The alignment is elevated along North-South Road and a combination of elevated and at-grade along Farrington Highway.

The alignment continues in a northeasterly direction following Farrington Highway in an elevated structure. South of the H-1 Freeway, the alignment descends to at grade and below grade at the Navy Drum Site Maintenance Base and Storage Facility, and from there continues on to Leeward Community College.

### **Phase II – Leeward Community College to Puuloa Road (Salt Lake)**

The alignment returns to an elevated structure in order to cross the H-1 Freeway. North of the freeway, the alignment turns eastward along Kamehameha Highway. The alignment continues in an elevated structure along Kamehameha Highway to Aloha Stadium. Leaving Aloha Stadium, the alignment turns from Kamehameha Highway to follow Salt Lake Boulevard until it crosses Puuloa Road onto Pukoloa Street.

### **Phase II – Puuloa Road (Salt Lake) to Nimitz Highway**

From Pukoloa Street, the alignment crosses over the Moanalua Stream, turning south to follow the Koko Head bank of Moanalua Stream until it turns southeast, crossing over the H-1 Freeway onto Dillingham Boulevard. The alignment is elevated throughout this section. The alignment proceeds southeast following Dillingham Boulevard and crosses Kapalama Canal, leaving Dillingham Boulevard at Kaaahi Street, and crosses Iwilei Road. The alignment is elevated throughout this section.

### **Phase II – Nimitz Highway to Ala Moana Terminus**

After crossing Iwilei Road the alignment follows the Nimitz Highway to Halekauwila Street and continues southeast along Halekauwila Street past Ward Avenue where it transitions onto Queen Street. At the end of Queen Street the alignment crosses Waimanu Street and property on the north side of Waimanu Street that will be acquired to allow the alignment to cross over to Kona Street. The alignment then goes through Ala Moana Center and ends with a tail track along Kona Street. The alignment is elevated throughout this section.

## 1.2.2 Stations

The First Project would be served by 19 stations. The name, location, type and features of each station are summarized in Tables 1-1 through 1-5 by the planned Phase I and Phase II station groups discussed in Section 1.3, Project Delivery.

Table 1-1: Phase I – East Kapolei to Leeward Community College

Station No.	Name/Planned Location	Planned Station Type	Planned Station Features
1.	East Kapolei @ North-South Road	Aerial, Side, Mezzanine	Surface Park & Ride: 1,400 spaces Major bus interface
2.	UH West Oahu @ North-South Road	Aerial, Side, Mezzanine	Surface Park & Ride: 1,400 spaces Major bus interface
3.	Hoopili @ Farrington Highway	Aerial, Split Side, No Mezzanine	
4.	Farrington Highway @ Leoku	Aerial, Side, Mezzanine	Major bus interface
5.	Farrington Highway @ Mokuola	Aerial, Side, Mezzanine	Major bus interface
6.	Leeward Community College	Below grade, cut "at grade station"	

Table 1-2: Phase II – Leeward Community College to Puuloa Road (Salt Lake)

Station No.	Name/Planned Location	Planned Station Type	Planned Station Features
7.	Kamehameha Highway @ Kuala	Aerial, Side, Mezzanine	Structured Park & Ride: 1,600 spaces Major bus interface
8.	Kamehameha Highway @ Kaonohi	Aerial, Side, Mezzanine	Major bus interface
9.	Salt Lake Boulevard @ Kahuapaani (Aloha Stadium)	Aerial, Side, Mezzanine	Surface Park & Ride: 1,650 spaces Major bus interface
10.	Salt Lake Boulevard @ Ala Nioi Place	Aerial, Stacked Platforms	

Table 1-3: Phase II – Puuloa Road (Salt Lake) to Nimitz Highway)

Station No.	Name/Planned Location	Planned Station Type	Planned Station Features
11.	Dillingham Boulevard @ Middle	Aerial, Side, Mezzanine	Major bus interface
12.	Dillingham Boulevard @ Mokauea	Aerial, Side, Mezzanine	
13.	Dillingham Boulevard @ Kokea	Aerial, Side, Mezzanine	
14.	Kaaahi	Aerial, Side, Mezzanine	

Table 1-4: Phase II – Nimitz Highway to Ala Moana Center

Station No.	Name/Planned Location	Planned Station Type	Planned Station Features
15.	Nimitz Highway @ Kekaulike	Aerial, Side, Mezzanine	
16.	Nimitz Highway @ Fort	Aerial, Side, Mezzanine	
17.	Halekauwila @ South	Aerial, Side, No Mezzanine	
18.	Halekauwila @ Ward Avenue	Aerial, Side, Mezzanine	

Table 1-5: Phase II – Ala Moana Center

Station No.	Name/Planned Location	Planned Station Type	Planned Station Features
19.	Ala Moana Center on Kona Street	Aerial, Side, Mezzanine	Major bus interface

### 1.2.3 System-Wide Elements

Details of the system-wide elements will be finalized after the City selects the technology of the LPA. Accordingly, the following descriptions are illustrative and subject to change following technology selection.

The traction power distribution system will consist of substations and main-line track power distribution facilities. The substations will be spaced at approximately one-mile intervals along the alignment with ratings in the range of 2 to 5 megawatts (MW). The power distribution system will be based on a 750-volt direct current (DC) third rail system.

Train signaling will use automatic train control (ATC) technology. The communications and security facilities will include emergency phones, closed-circuit television (CCTV), and public address and information display systems.

There will be 60 to 100 or more guideway vehicles (depending on the transit technology selected) to accommodate 6,000 passengers per hour per direction.

The maintenance base may be constructed on 43 acres of land at the Navy Drum site, east of Farrington Highway to the south of Leeward Community College, to service and store the transit vehicles. An alternative site also under consideration is further west along Farrington Highway near the University of Hawaii West Oahu Campus.

### 1.2.4 Fare Collection

The fare system will be integrated with the fare structure on the City's existing bus system, TheBus. The First Project is contemplated to be barrier-free and operate on an honor basis. Fare vending machines would be placed in all stations and continued use of standard fare boxes is assumed for TheBus. Under the barrier-free concept, no gate or fare inspection points would be installed at the stations. Fare inspectors would ride the system and check that passengers have valid tickets or transfers. Violators would be cited and fined.

The following assumptions were made for the fixed guideway system:

- Fares for the fixed guideway system will be consistent with the fare structure for TheBus. Pass products will work interchangeably on both modes, and transfers between modes will be seamless and free.
- Current City policy requires that the bus fares be adjusted so that the farebox recovery ratio does not fall below 27 percent or exceed 33 percent. It is assumed that future fare increases will keep fare levels consistent with the 2006 inflation-adjusted fare level.

### **1.2.5 Operating Plan**

The First Project is planned to operate in revenue service seven days a week. Weekday service would operate between 4 a.m. and midnight. Saturday service would run from 5 a.m. to midnight, and Sunday service would run from 6 a.m. to midnight. Vehicle headways in each direction would range from three minutes during peak periods to ten minutes in the late night hours (“owl” period). A train would arrive in each direction at the station every six minutes during base periods. The operating plan assumes a vehicle loading standard of one standee per 2.7 square feet of floor space. The system is planned to operate with multi-car or articulated vehicles approximately 175-200 feet in length, with each train able to carry a minimum of 300 passengers. The peak capacity would be 6,000 passengers per hour per direction. The system would be expandable to allow for a 50- percent increase in capacity.

### **1.2.6 Ridership Estimates**

Current opening-year travel forecasts anticipate 66,000 average weekday boardings. The forecast for ridership in 2030 is 90,000 riders per weekday.

## **1.3 Project Delivery**

### **1.3.1 Delivery Strategy**

The City intends to implement the First Project in phases. Phase I of the First Project (Phase I) is planned to be from the western end of the alignment at East Kapolei to Leeward Community College, and is scheduled to begin operations by the end of 2012. Phase II of the First Project (Phase II) consists of the remaining sections of the First Project, and is scheduled for operation in 2017.

Phase I is planned to be constructed using the Design-Build method of delivery. The City intends to finance Phase I with local funds.

Phase II of the First Project is planned to be delivered using the Design-Bid-Build delivery method with FTA New Starts assistance.

Vehicles and systems elements are planned to be manufactured and delivered in two increments to meet the specific needs of each phase. The number of contracts to be used in these procurements has not yet been established.

### **1.3.2 Environmental Impact Statement and Preliminary Engineering**

The City has engaged a GEC, with a combined scope of work and the following written Notices to Proceed (NTPs):

- NTP #1 encompasses work required to prepare the draft EISs required by NEPA and Hawaii Revised Statutes (HRS) Chapter 343, and to support the City's request to FTA to enter PE. NTP #1 was issued on August 24, 2007.
- NTP #2 is anticipated to be issued after FTA has approved entry into PE. Under NTP #2, the GEC will conduct PE and prepare the final EISs. A Record of Decision (ROD) is expected by mid-2009.
- NTP #3 will be issued for all remaining work not covered by NTPs #1 and #2, such as work related to construction and procurement contractor selection, vehicle procurement document preparation, and design-build contract document preparation.

FTA's authorization for Final Design is anticipated in early 2010.

### 1.3.3 Phase I Delivery

Design-Build documents for the Phase I utility relocation (not performed by utility owners), line segment and stations, and the maintenance base Design-Build contracts are scheduled to be prepared in 2008. Design-Build construction is planned to begin in the latter half of 2009, after the ROD is issued, through 2012. The planned Phase I line segment and stations contract unit is described in Table 1-6. Other contract units for Phase I construction are planned to include the maintenance base and storage facility, vehicles, and systems elements. A final breakdown for the systems elements will be determined during PE.

Table 1-6: Phase I – Line Segment and Stations Design-Build Contract Units

Line Segment and Stations	Guideway: East Kapolei to Leeward Community College.  Stations: East Kapolei @ North-South Road UH West Oahu @ North-South Road Hoopili / Farrington Highway Farrington Highway @ Leoku Farrington Highway @ Mokuola - Leeward Community College
---------------------------	---

Right-of-way certification will begin with entry into PE, and right-of-way acquisition is scheduled to be completed early in 2010. Utility relocation agreements (performed by utility owners) for design are scheduled to start during 2008 followed by construction from mid-2009 through 2011.

The decision on vehicle technology, including selection and design, is scheduled to be made in mid-2008 with procurement in late 2008. NTP for Phase I vehicle manufacture and delivery is projected to begin in mid-2009 through early 2012, followed by testing.

Systems design would occur in 2010. Phase I systems supply, installation and testing will take place in 2011 through 2012.

Following integrated testing, Phase I is scheduled to start operations by the end of 2012.

### 1.3.4 Phase II Delivery

The City intends to contract for Final Design with engineering design consultants following FTA authorization to enter into Final Design, scheduled for early 2010. Construction contracts would be awarded beginning in 2011 through 2012. Construction is scheduled to be completed by mid-2016.

Phase II is planned to be packaged for design and construction into three line segments and three station groups, as shown in Table 1-7.

Table 1-7: Phase II – Line Segment and Stations  
Design-Bid-Build Contract Units

Line Segment 1	Leeward Community College to Puuloa Road (Salt Lake)
Station Group 1	Kamehameha Highway @ Kuala Kamehameha Highway @ Kaonohi Salt Lake Boulevard @ Kahuapaani (Aloha Stadium) Salt Lake Boulevard @ Ala Nioi Place
Line Segment 2	Puuloa Road (Salt Lake) to Nimitz Highway
Station Group 2	Dillingham Boulevard @ Middle Dillingham Boulevard @ Mokauea Dillingham Boulevard @ Kokea Kaaahi
Line Segment 3	Nimitz Highway to Ala Moana Center
Station Group 3	Nimitz Highway @ Kekaulike Nimitz Highway @ Fort Halekauwila @ South Halekauwila @ Ward Avenue

Due to its complexity, the terminus station at Ala Moana Center would be a separate design and construction package.

Phase II right-of-way acquisition and relocation and utility relocations would take place in 2011 through 2012.

Manufacture and delivery of vehicles for Phase II would take place between mid-2013 and mid-2016. Phase II systems supply, installation and testing would take place between early 2014 and the end of 2016.

Following integrated testing, Phase II revenue service is planned to start in early 2017.

### 1.3.5 Schedule and Cost

As discussed previously, technical work to support the preparation of the NEPA document commenced in mid-2007 and will be followed by PE. The Project's Phase I is scheduled to

commence operations by the end of 2012 and Phase II in 2017. Additional details on the schedule are included in the PMP Appendix D.

The current cost estimate for the First Project, expressed in 2007 dollars, excluding finance charges, is \$3,727 million, and in year of expenditure dollars, \$4,684 million.

### **1.3.6 Goals and Objectives**

The City's goal for the Project is to provide fast, reliable public transportation services to a rapidly developing area and to ease congestion in the east-west transportation corridor between Kapolei and the University of Hawaii at Manoa. The Project is also intended to provide basic mobility in areas with diverse populations. The Project supports the goals of Oahu's General Plan and the 2030 Oahu Regional Transportation Plan by serving areas designated for urban growth. The goals used to select the LPA during the AA included:

- Improve corridor mobility;
- Encourage patterns of smart growth and economic development;
- Provide a cost-effective solution;
- Provide a feasible solution;
- Minimize community and environmental impacts; and
- Achieve consistency with other planning efforts.

This Project will contribute to moderating the growth in anticipated traffic congestion in the corridor, improving transit linkages within the corridor, and providing an alternative to private automobile usage.

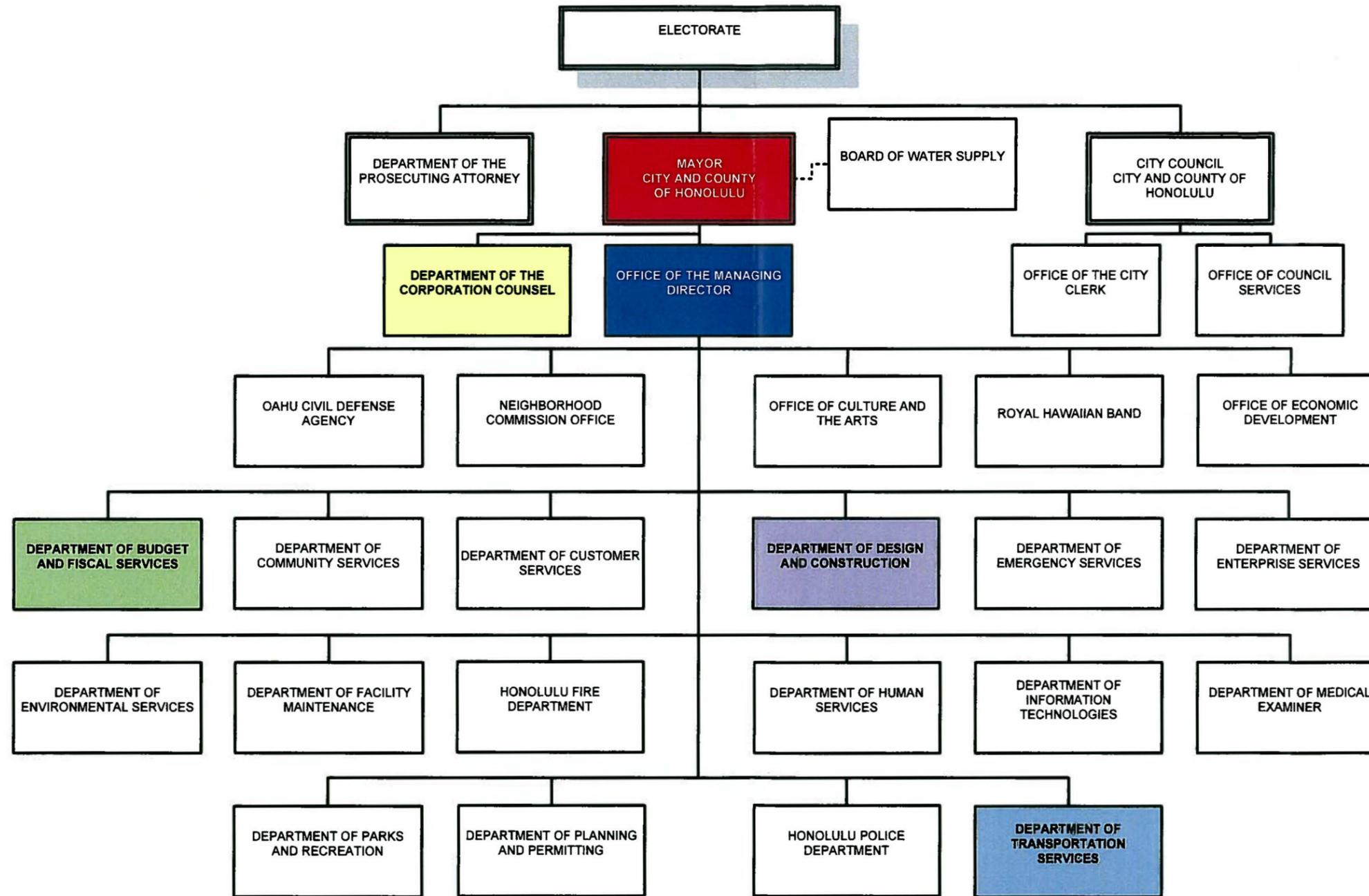
## **1.4 Legal and Statutory Authority**

### **1.4.1 Agency Background and Overview**

The City is a body politic and corporate, as provided in Section 1-101 of the Revised Charter of the City and County of Honolulu 1973 (RCH). The City's structure of government is presented in Figure 1-1: City and County of Honolulu Organization Charter.

Figure 1-1: CITY AND COUNTY OF HONOLULU ORGANIZATION CHARTER.

## CITY AND COUNTY OF HONOLULU ORGANIZATION CHARTER Figure 1-1



This Real Estate Acquisition Management Plan (RAMP) outlines the policies and procedures that the City and County of Honolulu (the City) must adopt in order to comply with federal and state requirements for right-of-way appraisal, land acquisition, relocation, and property management activities for all construction phase activities. Any agency that utilizes federal funds to finance a public project that requires the acquisition of private property or causes displacement must comply with policies and procedures that conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and 49 CFR Part 24 implementing regulations (collectively “the Uniform Act”), and FTA Circular 5010.1 C (see Appendix D), and applicable implementation guidelines. These policies and procedures must also incorporate compliance requirements of state statutes and guidelines.

## 2.1 RAMP Goal

The RAMP’s overall goal is to help the City and the Project Team direct a common effort to secure real estate in support of the Project. The property to be acquired is necessary for the construction and operation of a system, including stations, guideways, power lines, traction power substations and system appurtenances, maintenance and storage facilities, park-and-ride lots, and utility relocation. The RAMP is identified as a requirement in the Project Management Plan (PMP).

The RAMP references the PMP and other documents guiding the Project as a whole. The RAMP’s intent is to:

- Provide an overview of the acquisition process;
- Define roles for the City, Project personnel, consultants, or subconsultants involved in title reports, appraisal and appraisal review, acquisition, condemnation and/or relocation services, property management services, and environmental assessment services;
- Outline acquisition strategies and decision-making processes;
- Identify coordination requirements and processes;
- Define tasks and assign responsibility for those tasks;
- Establish project controls that monitor the acquisition schedule, costs, and quality controls; and
- Monitor progress to completion and adherence to laws, regulations, and procedures.

## **2.2 Policy and Procedures**

This RAMP discusses the following policies and procedures that the City proposes to utilize in order to comply with federal and state requirements.

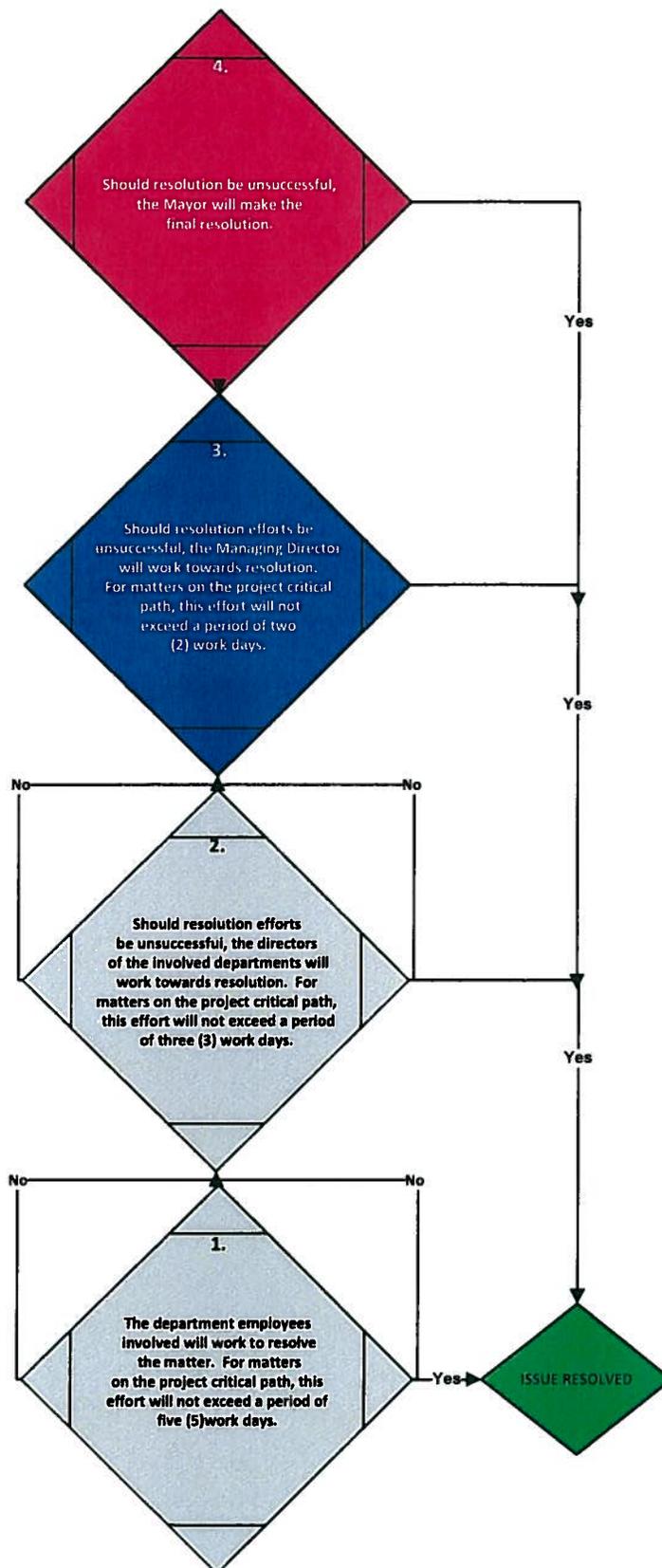
- Federal and state legislation that controls public acquisition and relocation activities and regulations that control public acquisition;
- City real estate process and procedures (which can be found in the appendices); and
- Acquisition, relocation, and property management policies and procedures that have consolidated and integrated federal laws and regulations and provide the basic parameters for the RAMP's development and operation.

## **2.3 Interdepartmental Issues Resolution Process**

Any issues or disputes that arise between parties reporting to separate departments of the City regarding the real estate acquisition management plan shall be resolved under the following procedure:

1. The department employees involved will work to resolve the matter. For matters on the project critical path, this effort will not exceed a period of five (5) work days
2. Should resolution efforts be unsuccessful, the directors of the involved departments will work towards resolution. For matters on the project critical path, this effort will not exceed a period of three (3) work days
3. Should resolution efforts be unsuccessful, the Managing Director will work towards resolution. For matters on the project critical path, this effort will not exceed a period of two (2) work days
4. Should resolution be unsuccessful, the Mayor will make the final resolution.

**Figure 2-1: Interdepartmental Issues Resolution Process**





# **3 Federal Transit Administration Compliance**

---

## **3.1 Public Law**

On January 2, 1971, the U.S. Congress adopted Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (known as the Uniform Act). The Uniform Act provides for uniform and equitable treatment of persons displaced from their homes, businesses, non-profit organizations, or farms by federal and federally-assisted programs and establishes uniform and equitable land acquisition policies.

## **3.2 Revisions**

The current version of the Uniform Act (49 CFR Part 24) was revised as of December 27, 2004, introduced in the Federal Register on January 4, 2005, and put into effect on February 3, 2005. The Uniform Act and implementing guidelines were written to ensure that displaced persons receive fair and equitable treatment and do not suffer disproportionate injuries because of programs designed for the benefit of the public as a whole.

## **3.3 Requirements**

One of the fundamental requirements of this legislation is that no person be required to move from their home unless affordable comparable decent, safe and sanitary replacement housing is available. Replacement housing must not be generally less desirable with regard to public utilities and public and commercial facilities than the homes from which these people are displaced. Regarding a public agency's acquisition of real property, the Uniform Act seeks to:

- Ensure consistent and fair treatment of real property owners;
- Encourage and expedite acquisition by agreement in order to minimize litigation and relieve congestion in the courts;
- Promote confidence in public land acquisition; and
- Ensure that the agencies implementing these regulations do so in an efficient and cost-effective manner.

## **3.4 FTA Circulars**

The Federal Transit Administration (FTA) Circular 5010.1C (Chapter I, Sections 7 and 8, last modified December 27, 1999) directs that all acquisition and relocation necessary for the development of a transportation system must be conducted in compliance with the Uniform Act of 1970, as amended, and codified in 49 CFR Part 24.

The following define the requirements by which properties will be acquired and owners paid fair market value for their property:

- Title III, Uniform Real Property Acquisition Policy;
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the Uniform Act); and
- Hawai'i Revised Statutes, Chapters 101 and 113, Eminent Domain.

Relocation assistance provisions for displaced businesses and residential occupants are outlined in the Uniform Act, Title I. The City has the power of eminent domain (the right of government to take private property for public use upon the payment of Just Compensation) for the acquisition of property, but the City must consider all reasonable alternatives to mitigate displacement and relocation impacts.

### **3.5 FTA Concurrence**

Prior FTA concurrence is required when the City's recommended Offer of Just Compensation exceeds \$250,000, or when a property appraised at \$250,000 or more must be condemned.

The Rapid Transit Division (RTD)'s Manager of Real Estate will prepare a request to the FTA to increase the approval amount for just compensation, appraisal and administrative settlements. This task is scheduled to be done within the second quarter of 2008.

Instead of using its power of eminent domain, when a property cannot be purchased at appraised value, the City may propose acquisition through negotiated settlement. In this case, the City must document that reasonable efforts to purchase the property at the appraised amount have failed and prepare written justification supporting why the settlement is reasonable, prudent, and in the public interest.

The Right-of-Way Agent, under the direction of the Land Division Chief and the Department of Corporation Counsel, must provide justification when the settlement purchase represents a significant increase. The Land Division Chief will evaluate the risks of settling for the proposed amount versus the risks of trying the condemnation case in court. Prior FTA concurrence is also needed when the settlement is \$50,000 higher than the offer.

The initial definition of the real estate required for the Project will be controlled by the location of the approved alignment for the system. The General Engineering Consultant (GEC) has prepared Pre-Draft EIS Alignment Plans and Profile drawings dated March 2008 on which the current Project Parcel Listing (Appendix O) is based. Parcel requirements are based on an analysis of:

- Design requirements
- Locations of stations or line segments
- Construction requirements
- Construction techniques
- Real estate costs
- Relocation impacts

#### **4.1 Parcel Identification**

See Appendices O and P, respectively, for Project Parcel Listing and Project Parcel Plans. The information shown therein should be considered preliminary and confidential. Parcels will not be designated for acquisition until detailed boundary surveying, mapping, and sufficient right-of-way engineering are performed, based on the most current alignment and station location information.

The GEC will prepare legal descriptions, parcel sketches, and right-of-way maps for the First Construction Phase by the end of September 2008. The Second Construction Phase parcel sketches and legal descriptions will be finalized shortly after the Record of Decision is signed in August 2009.

#### **4.2 Design Changes**

Design changes can occur during public review of the Project: as a result of the level of funds available; or they may occur due to unexpected events or finds on the Project. The scope of the Project can be changed due to any of these items. .

All design changes will be approved by the Project Executive and disseminated to the RTD Manager of Real Estate and the RTD Right-of-Way Coordinator. The RTD Right-of-Way Coordinator will transmit the information to the Right-of-Way Team to ensure that the Project schedule will be met. Document Control will track all design changes. Major design changes will also be discussed and tracked at each weekly Right-of-Way Team meeting to make sure the Project schedule is not delayed.

#### **4.3 Fee Takings**

The preliminary right-of-way cost estimate identifies only fee takings. When the right-of-way engineering plans are further developed in the New Starts Preliminary Engineering (PE) phase, temporary and permanent construction easements will be identified if necessary.

#### **4.4 Easements**

Temporary and/or permanent construction easements are scheduled to be identified for the First Construction Phase in August 2008. They will be added to the right-of-way cost estimate and the estimate will be revised accordingly. The acquisition of temporary and permanent easements is handled in the same manner as the acquisition of fee parcels. Typically, if a temporary and/or permanent easement is associated with a fee parcel to be acquired, the Land Acquisition Officer will negotiate with the property owner on both parcels at the same time.

When permanent and temporary easements and any license agreements are identified, the Right-of-Way cost estimate will be updated to incorporate those changes. Land values are based on market sales within the Project corridor and the surrounding area. The remaining costs are based on reasonable averages estimated from the appraiser's experience with public-sector transportation projects.

#### **4.5 Acquisition Modes and Methods**

The City may acquire real property in several different ways, depending on project or program needs and the interests or desires of property owners. It is possible that more than one method or mode of acquisition may be used on a single project. Acquisition methods are listed below and a brief description of these methods can be found in Appendix Q:

- Negotiated Settlement Based of Approved Valuation
- Administrative Settlement
- Acquisition by Exchange
- Donation
- Mediation or Arbitration
- Advanced Acquisition
- Condemnation
- Voluntary Transactions

#### **4.6 Condemnation**

If negotiations with the owner of either the fee parcel or the easement are not successful, a lawsuit package will be prepared and will proceed to condemnation. The lawsuit for the easement is done together with the lawsuit for the fee taking.

#### 4.7 Right of Entry

Rights of Entry will be obtained from property owners to access parcels for environmental testing and surveying. Right-of-entry documents give the City the right to enter the owner's property or remaining lands. The City will restore any disturbed property to a safe and sanitary condition after it has used the property for the necessary task.

#### 4.8 Right-of-Way Cost Estimate

The total estimated cost for the right-of-way necessary for the 34-mile LPA is \$175,636,696 (2007 dollars). This estimate incorporates design revisions as of January 17, 2008.

Table 4-1: Right-of-Way Costs

Line Segments	Estimated Cost With 50% Contingency		2007 Dollars
	Purchase or Lease of Real Property	Relocation of Existing Households & Businesses	Total Costs
East Kapolei to Ala Moana * 20-mile FP	121,710,000	1,650,000	123,360,000
Airport Loop on Aolele	24,627,816	491,328	25,119,144
West Kapolei to East Kapolei	21,929,888	437,504	22,367,392
Ala Moana Station to UH Mānoa	1,500,000	159,008	1,659,008
Waikiki Spur	3,000,000	131,152	3,131,152
Soft Costs Included In Estimate: Data Sheets & Parcel Maps			175,636,696

The Project design is not finalized and more parcel revisions are expected. The right-of-way cost estimate will be revised and updated at completion of the Environment Impact Statement (EIS) and again at PE completion by the GEC Design Team.

Future right-of-way cost estimate revisions will include:

- Consultant Costs
- Acquisition Costs
- Relocation Costs
- Closing Costs
- Condemnation Litigation Costs
- Damages to Remainders Costs
- Revised Contingency Costs
- Other Soft Costs

The RTD's Manager of Real Estate will ensure that the overall Project cost estimate is updated as plans are developed. Throughout the Project's duration, the RTD will revisit the right-of-way cost estimate as actual expenditures are incurred and approved for payment

by the City. They will also review the estimate for conformity with the overall Project cost estimate.

#### **4.9 Right-of-Way Schedule**

The primary determinant of right-of-way activities is the Project schedule, which may include the following:

- Right-of-Way Engineering
- Design Changes
- City Council Approval
- Appraisal
- Appraisal Review
- Acquisition
- Condemnation
- Relocation
- Closing
- Property Management
- Demolition

A parcel-by-parcel schedule will be developed as the right-of-way engineering plans for the Project progress. This schedule will be separated into two sections: one for whole takings and one for partial takings. Design changes will be tracked and monitored for impact to the Right-of-Way schedule. A Real Estate Acquisition Process Timeline can be found in Appendix E.

#### **4.10 Takings**

Partial takings will be separated by construction phase in accordance with their location in the Project area. These parcels will be also identified based on their complexity. The most complex parcels will have longer timeframes built into their schedules. Complexity is defined by whether structures are located on the parcel, and whether building cutoffs and refaces, asbestos surveys and abatement, demolition, and relocation are required. The less complex parcels, such as vacant parcels, will have shorter schedules.

Title searches and legal descriptions will be provided to the selected appraisers during the PE phase. Appraisers will then begin research and development of the appraisals.

#### **4.11 Contamination Evaluation**

The City will conduct a contamination evaluation to determine potential hazardous materials and petroleum impacts from properties or operations located within or adjacent to the proposed alignment. Based on the information obtained, possible contaminated parcels that could potentially affect the proposed project alternatives will be identified.

These sites are currently being researched for evidence of documented contamination and will be further evaluated for potential construction impacts.

A regulatory database search identified numerous sites within the corridor as potentially contaminated. Each site will be reviewed and rated based on the following criteria:

- Proximity to proposed right-of-way acquisition parcels
- Type of mitigation required
- Completeness of record in the tracking system
- Most recent date of action or notice of discharge

#### **4.12 Title Searches**

Sketches and legal descriptions for the Project's First Construction Phase acquisitions will begin in the second quarter of 2008. A real estate acquisition process flow chart and a Real Estate Acquisition Process Timeline Schedule can be found in Appendix E. More information on the minimum requirements, scope of work, and certification for title searches is included in Appendix T.

Title searches, parcel sketches, and legal descriptions for the first group of partial acquisitions will follow. These will be grouped by First or Second Construction Phase. The appraisals will then be prepared and reviewed, and agents will make initial offers as the packages are received. The City will negotiate with First and Second Construction Phase property owners using the City's Real Property Acquisition Policy and Procedures. See Appendix Q for real property acquisition modes and methods and Appendix W for related policy and procedures.

#### **4.13 Required Notices**

As soon as feasible, owners shall be notified of the City's interest in acquiring the real property and the basic protections, including the City's obligation to secure an appraisal, provided to the owner by law and 49 CFR Section 24.102 (b).

Notice of Relocation Eligibility, according to the 49 CFR Section 24.203(b), shall be provided to the owner occupants at the time of initial offer and to the tenant promptly thereafter.

A General Information Notice will be provided to the tenant occupants as soon as feasible and will be in compliance with 49 CFR Section 24.203 (a).

All 90-day Notices will be in compliance with 49 CFR Section 24.203(c).

The Department of Design and Construction, Land Division, will coordinate with the Department of Budget and Fiscal Services' Relocation Section on any land acquisitions that require the City to provide relocation assistance; including providing required written notices to occupants on the property to be acquired. More relocation information can be found in Chapter 8.

Examples of relocation notices can be found in Appendix I.

#### **4.14 Relocation Advisory Services**

Relocation advisory services will be available throughout the acquisition and condemnation processes. For specific information on relocation advisory services see Section 8.14.

The timely delivery of right-of-way will be critical to successful implementation of the Project. The City's real estate procedures and project-specific procedures are being developed to allow for adequate and realistic projections of real estate availability. Complex or unusual acquisition and relocation parcels will be identified early, to allow adequate time for an accelerated First Construction Phase real estate process delivery. All land acquisitions will be implemented in compliance with the Uniform Act and its regulations.

### **5.1 Civil Rights (Title VI)**

Right-of-way acquisition will be conducted in a manner that assures no person shall, on the ground of race, color, sex, or national origin, be denied the benefits to which they are entitled, or be otherwise subjected to discrimination. As a condition of receiving federal assistance, the Department of Design and Construction is required to comply with various non-discrimination laws and regulations. Title VI forbids discrimination against any agency receiving federal assistance. The Federal-Aid Highway Act of 1973 added the requirement that there be no discrimination on the grounds of sex (gender).

Additionally, the Civil Rights Restoration Act of 1987 defines the word "program" to clarify that discrimination is prohibited throughout an entire agency if any part of the agency receives federal financial assistance. This is in accordance and compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation (herein after referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC 2000d to 2000-4).

### **5.2 Basic Negotiation Procedures**

The City shall make all reasonable efforts to contact owners or owners' representatives and discuss its offer to purchase property. This will include explaining the basis for the Offer of Just Compensation and its acquisition policies and procedures, including payment of incidental expenses in accordance with 49 CFR Section 24.106. Owners shall be given reasonable opportunity to consider offers, present materials they believe are relevant to determining property value, and suggest modifications in the proposed terms and conditions of the purchase. All negotiations will be in accordance with 49 CFR Sections 24.101 and 24.102. The City's real property acquisition policy and procedures can be found in Appendix W.

### **5.3 Negotiated Purchase**

Every reasonable effort shall be made to acquire the necessary real property interests expeditiously by negotiations. Offers should be fair, reasonable, and based at a minimum on an approved appraisal or other negotiations achieved by administrative settlements. Owners should not be coerced into accepting the City's offers. Prompt offers shall be

made to acquire real property for the full amount the City has established as just compensation. More information about the City's real property acquisition policy and procedures can be found in Appendix W.

#### **5.4 Notice to Owner**

As soon as feasible, the City shall make every effort to notify affected owner(s) in writing of their interest in acquiring real property (ties). The City shall also notify owner(s) of basic protections provided to them by law.

#### **5.5 Summary Statement**

Upon Initiation of Negotiations, the City shall provide owners of real property to be acquired with a written Summary Statement of the amount it has established as just compensation (including damages) for proposed acquisitions. This will be in accordance with 49 CFR Section 24.102 (e). These statements may be part of the offer letter and at a minimum shall include the following:

- The amount established as just compensation, including any damages to the remainder and acquisition of access rights when applicable as of the date of summons (per 49 CFR Section 24.102 (d));
- A statement that the offer is based on the City's review and an analysis of a property appraisal(s) made by a qualified appraiser(s) or qualified personnel. This is for cases of nominal values using the appraisal waiver provision (per 49 CFR Section 24.102(c)(2)(ii));
- Identification of the real property to be acquired, including the estate or interest being acquired;
- Identification of improvements and fixtures considered to be part of the real property to be acquired; and
- Where appropriate, a separate Statement of Just Compensation for the real property to be acquired.

An offer should be adequately presented to the owner(s), and owner(s) should be properly informed. Face-to-face contact should take place, if feasible, but this is not required in all cases. For example, a face-to-face would not be feasible for owners who live out of state, in another country, or who are not in close proximity). Property owners shall be given a reasonable opportunity to consider the City's offer and present relevant material to the City if they feel an offer is too low.

In order to satisfy this requirement, the City must allow owners time for analysis, research, and development of a response, which may include getting an appraisal. The time needed for this can vary significantly depending on circumstances, but fourteen (14) days is the minimum time that can be reasonably expected to be needed according to City Policy. However, it is the City's practice to try to allow thirty (30) days when possible.

Regardless of the Project's time pressures, property owners must be afforded at least this opportunity. Some jurisdictions initiate formal eminent domain procedures at the earliest

opportunity because of the long and time-consuming process, including gaining possession of the needed real property. The provisions set forth in this section are not intended to restrict this practice, as long as it does not interfere with the reasonable time that must be provided for negotiations and the City's adherence to the Uniform Act's ban on coercive action (49 CFR Section 301(7)).

## **5.6 Surrender of Possession**

No owner shall be required to surrender possession of real property before agreeing to a Consent to Enter, or before the City pays the agreed purchase price or deposits with the court. Clarification of surrender of possession can be found in the City's real property acquisition policy and procedures (Appendix W).

## **5.7 Notice to Vacate**

No person lawfully occupying real property shall be required to move from a dwelling or move a business or farm operation without at least 90 days written notice from the City of the date by which the move is required. All Notices to Vacate will be in compliance with 49 CFR Section 24.203(c).

## **5.8 Fair Rental and Incidental Expense Reimbursement**

The City may permit an owner or tenant to occupy the real property acquired on a short-term rental basis or for a period subject to termination by the City on short notice. The amount of rent required shall not exceed the property's fair rental value for short-term occupancy (per 49 CFR Section 24.102 (m)). Other terms and conditions may be negotiated as part of an administrative settlement when circumstances warrant.

The City, shall reimburse real property owners, to the extent the City deems fair and reasonable, for expenses necessarily incurred for:

- Recording fees, transfer taxes, documentary stamps, legal descriptions of the real property, and any other similar expenses incidental to conveying the real property to the City. However, the City is not required to pay costs solely required to perfect the owner's title to the real property;
- Penalty costs and other charges for prepayment of any pre-existing recorded mortgage entered in good faith encumbering the real property; and
- The pro-rata portion of any prepaid real property taxes that are allocable to the period after the City obtains the property title or effective possession of it, whichever is earlier. Whenever feasible, the City shall pay these costs directly to the billing agent so the owner will not have to pay this cost and then seek reimbursement from the City.

This reimbursement will be given as soon as practicable after the purchase price payment date, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property (whichever is the earlier).

## **5.9 Coercive Action**

In no event shall the City take the following actions to compel an agreement on the price to be paid for a property:

- Advance the time of condemnation;
- Defer negotiations or defer condemnation and the deposit of funds in court for the use of the owner; or
- Take any other action coercive in nature.

### **5.10 Condemnation**

If any interest in real property is to be acquired by exercise of the power of eminent domain, the City shall institute formal condemnation proceedings. The City shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property. It is also not the City's policy to cause inverse condemnation. Inadvertent action or delay in beginning a project may result in an owner's perception that an acquisition has effectively occurred even without a physical taking of the property. The City will actively prevent this perception by proper project planning and communicating with property owners.

### **5.11 Uneconomic Remnant**

If acquisition of only part of a property could leave its owner with an uneconomic remnant(s), the City shall offer to acquire these remnant(s). Owners shall have the right to retain this remnant(s) if they so choose. These agreements shall be in writing.

### **5.12 Improvements – Interest to be Acquired**

If the City acquires any interest in real property, it shall acquire at least an equal interest in all buildings, structures, or other improvements located on the real property acquired. The City will in most cases require that these buildings, structures, and improvements be removed from the real property and/or will determine that they will be adversely affected by the acquired real property's intended use. The acquisition of all tenant improvements will be carried out in compliance with 49 CFR Section 24.105.

### **5.13 Improvements – Just Compensation**

To determine just compensation to be paid for any building, structure, or other improvement required to be acquired (per Section 5.12), the building, structure, or other improvement shall be deemed to be part of the real property to be acquired. However, tenants and owners of any other interest in the real property have the right and obligation to remove the building, structure, or improvement at the expiration of the lease. The acquisition of all tenant improvements will be carried out in compliance with 49 CFR Section 24.105.

### **5.14 Improvements – Tenant Owned**

Tenants who own buildings, structures, or other improvements to be acquired will be paid fair market value that takes into account these improvements' contribution to the fair market

value of the real property to be acquired. Alternatively, they will be paid the fair market value of the building, structure, or improvement to be removed from the property if this amount is greater, unless so specified in the lease document covering the property.

### **5.15 Duplication of Payment**

Payment shall not result in duplication of any payments otherwise authorized by law. No payments shall be made unless the land owner involved disclaims all interest in tenant improvements. In consideration of any payments, tenants shall assign, transfer, and release to the City all rights and titles to and interests in such improvements. A separate Summary Statement shall be provided to tenants when improvements are being separately acquired.

### **5.16 Tenant Rights**

Nothing in the preceding sections shall be construed to deprive the tenant of any rights to reject payment and obtain payment for property interests, in accordance with other applicable law.

### **5.17 When to Pay Owner's Litigation Expenses**

The City shall pay to the owner of any right, title, or interest in real property the sum that the court (which has jurisdiction over City-instituted proceedings to acquire real property by condemnation) awards the owner as reimbursement for reasonable costs, disbursement, and expenses. This includes reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings if:

- The final judgment is that the City cannot acquire the real property by condemnation; or
- The proceeding is abandoned by the City.

### **5.18 Inverse Condemnation**

If the City intends to acquire an interest in real property by exercising the power of eminent domain, it shall institute formal condemnation proceedings. The City will not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

Where an inverse condemnation or similar proceeding is successfully maintained for the taking of real property, as a part of the judgment or settlement the City shall pay the owner a sum that will (in the opinion of the Court or the official effecting the settlement) cover reimbursements and expenses, including reasonable attorney, appraisal, and engineer fees actually incurred because of the proceeding.

### **5.19 Donations**

An owner whose real property is being acquired may, after being fully informed by the City of the right to receive just compensation for such property, donate the property, any part

thereof, any interest therein, or any compensation paid therefore, to the City as the owner shall determine. The City is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the City from such obligation, as provided in 49 CFR Section 24.102 (c)(2).

Nothing in this RAMP shall be construed as preventing a qualified bona fide owner whose real property is being acquired for a federal-aid project from making a gift or donation of such property, any part thereof, or any compensation paid therefore. Donation can only take place after the qualified owner has been fully informed of their rights to receive just compensation for the acquisition of the real property or interest.

## **5.20 Appraisal Waiver and Invitation to Owner**

The purpose of the appraisal waiver provision is to provide the City a technique to avoid the cost and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The appraiser making the determination to use the appraisal waiver process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is low value and uncomplicated. The City will be compliant with all regulations found in 49 CFR Section 24.102(c)(2)

Since waiver valuations are not appraisals, as defined by the Uniform Act, there is no requirement for an appraisal review. However, the City must have a reasonable basis for the waiver valuation and the City official must establish an amount believed to be just compensation to offer the property owner(s). In other words, comparables, data and some analysis must be presented in order to support the de minimum valuation.

An appraisal is not required if the City determines that it 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 review of available data. However, documentation and presentation is still recommended to support the valuation opinion.

A Summary Statement is not required from the City's Appraisal Section, because no appraisal is required. Justification and reasons for a nominal value should be documented and supported as follows:

- When an appraisal is determined unnecessary, the City shall prepare a waiver valuation or compensation estimate.
- The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation, and will preferably have a license or certification of qualification.

## **5.21 Conflict of Interest**

No person performing appraisal, appraisal review or waiver valuation shall have any interest (direct or indirect) in the real property being valued by the City (49 CFR Section 24.102(n)). Compensation to the person performing a waiver valuation shall not be based on the amount of the valuation estimate. No one 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 appraisal waiver valuation.

Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work. An exception to this is if the federal funding agency waives this requirement because it determines that this situation would create a hardship for the City. An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review, or waiver valuation may be authorized by the City to act as a negotiator for real property for which that person has made an appraisal, appraisal review, or waiver valuation if the offer to acquire the property is \$10,000 or less. An agent may be involved in the scope of work and have input in informing the appraiser of the need for a solution to an appraisal valuation problem.

## **5.22 When to Update an Offer of Just Compensation**

An appraisal should be updated or a new appraisal ordered if the information presented by the owner(s) indicates that there is a material change in the character or condition of the property that indicates the need for new appraisal. An update or new appraisal should also be made if a significant delay has occurred since the time of the appraisal of the property. In this case, the City shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in purchase offer is warranted, the City shall promptly reestablish just compensation and offer that amount to the owner in writing.

## **5.23 Administrative Settlements and FTA Approval**

Even among expert appraisers, there is room for reasonable disagreement on property values and it will not be unusual for property owners to disagree with the City's offer. An administrative settlement is an increased offer made to motivate amicable settlement with an owner and avoid recourse to eminent domain.

The City does not have an inflexible "take it or leave it" position in dealing with citizens being required to provide property for public improvement. The City's position is to listen to owners and remain open to revising an offer if it is reasonable to do so, if it would result in settlement, and if it would serve the overall public good. An administrative settlement must serve these interests in a specific stated way.

Several public-interest reasons for administrative settlement include:

- When the risk of the higher condemnation court award is greater than the increased settlement proposal;
- When the administrative costs of condemnation (e.g., appraisals, witness fees, staff time, court costs) would exceed the increased offer amount; and
- When the scheduled advertisement date for the Project would be at risk if the acquisition is delayed.

An administrative settlement is not based on appraised value. Corrections to a deficient appraisal may result in a revised Offer of Just Compensation, but this is not an

administrative settlement. The Land Division Chief is the required approval authority for all administrative settlements, and may authorize Acquisition Agents to explore and recommend proposed settlement terms with owners who have declined initial offers.

An Acquisition Agent's authority to discuss administrative settlements will generally be limited to amounts less than \$2,500 or 10 percent of the initial just compensation offer, whichever is less. The Agent will record the terms and details of any discussion of administrative settlement in the Acquisition Tracking Report and Negotiation Log. The Land Division Chief must approve all proposed administrative settlements that exceed 10 percent of the original offer.

If an Acquisition Agent reaches an agreement with the owner to settle administratively within these limits, a revised contract and settlement invoice will be prepared along with other necessary forms. Once the owner signs the revised contract and understands that the document constitutes an offer to sell, the Agent will transmit the parcel documents to the Land Division Chief for approval. It is not an approved settlement until signed by the Land Division Chief.

The City will solicit FTA concurrence when needed and will follow 49 CFR Section 24.102 (i) regarding administrative settlements. When federal funds are used in any phase of the Project, a written justification shall be prepared which indicates that the available information (e.g., appraisals, recent court awards, estimated trail costs, or valuation problems) supports such a settlement.

FTA approval is required for all administrative settlements \$50,000 and above the appraised value prior to a formal offer to the owner. FTA approval is also required if the just compensation amount is over \$250,000. If either situation arises during the Project, the Manager of Real Estate will submit a written request with justification to FTA that includes all available information supporting the settlement request.

## **5.24 Payment before Taking Possession**

Before requiring owners to surrender possession of real property, the City will obtain a Consent to Enter or shall pay the agreed purchase price to the owner(s). In the case of a condemnation, the City will deposit with the court for the benefit of the owner(s) an amount not less than the City's approved appraisal of the market value of the property or the court award of compensation in the condemnation proceedings for the property.

## **5.25 Real Estate Title Reports**

A draft parcel identification list from the right-of-way cost estimate prepared by the GEC is currently available. This list will be updated, and the Department of Design and Construction will determine current ownership to help prepare legal descriptions, parcel sketches, and right-of-way maps.

The Department of Design and Construction will be responsible for tracking and reviewing title reports. Right-of-way maps will be drawn after development of the parcel sketches and legal descriptions.

The Department of Design and Construction will also be responsible for updating title searches throughout the life of the Project. It will provide in-house title services with support from the GEC as needed. Title searches will be prepared as outlined in the scope of services for title reports.

Delivery of the title searches for partial takings will be staged in accordance with the Project's construction phases. Complex title searches may be given longer task-completion timeframes. Updates will be requested as needed. The title search work will begin during the preliminary engineering stage and continue throughout right-of-way activities.

## **5.26 Appraisal of Property**

Before the initiations of negotiations, the real property to be acquired shall be appraised in accordance with the real property acquisition appraisal requirements for federal and federally-assisted programs as stated in 49 CFR 24.103(a) and state laws and regulations.

Appraisals will be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). The City assures that the appraisals it obtains will be relevant to its program needs, reflect established and commonly accepted federal and federally-assisted program appraisal practice, and as a minimum, comply with the definition of appraisal in § 24.2(a)(3), and contain the following requirements:

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 five-year sales history of the property.

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.

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.

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, where appropriate.

The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

Upon submission of completed appraisals, the Land Division Chief will assign the appraisal review to the Review Appraiser. The Review Appraiser will study the appraisal report,

prepare a separate review report, approve the fair market value, and recommend a Statement of Just Compensation to the Land Division Chief. Final just compensation will be determined by the Land Division Chief. The amount of just compensation is the amount on which offers to purchase will be based.

All appraisals and reviews will be completed in compliance with the Uniform Appraisal Standards for Federal Land Acquisition and other applicable requirements, as noted in 49 CFR Part 24. These include the Uniform Standards of Professional Appraisal Practices, FTA Real Estate Requirements, Generally Accepted Standards, and Hawai'i Eminent Domain Standards.

An additional appraisal will be prepared if the Land Division Chief finds the valuation issue to be complex. In accordance with 49 CFR Part 24, the Land Division Chief shall instruct appraisers to disregard any decrease or increase in the real property's market value that is caused by the Project for which the property is to be acquired.

### **5.26.1 Partial Takings**

Where only part of an owner's property is taken, the appraiser must estimate not only the market value of the part taken, but the amount of any severance damage to the remainder. The City uses a variety of methods for partial takings.

The accepted procedure for partial takings consists of a complete appraisal of the whole property before taking, and a complete appraisal of the remaining property after taking. This is the recognized procedure in condemnation appraising. The practice is to be followed with few exceptions.

This “before and after” approach should be used on all partial takings, except when it is clearly evident there will be no damage to the remainder. Reasons for not using the “before and after” approach should be well explained.

For partial takings “before and after” appraisals are subject to an important qualification: the “after” valuation must eliminate any consideration of damages or benefits not allowable under the law, even though they may be reflected in the ultimate value of the remaining property on the market. In any of case of doubt, the Right-of-Way Division should be consulted.

The “after” value estimates for both land and improvements should be supported by one or more of the following methods:

- Sales of comparable properties from which there have been takings for like usage;
- Sales, cost estimates, and income estimates on properties comparable to the remainder;
- Land economic studies of previously-acquired partial takings to support estimates of damages and benefits to the remainder land;
- A re-analysis of the sales data used to support the “before” value estimate; and
- The economic loss or gain brought about by the change in land use, units of production, costs of operation, rentals, etc.

For partial takings, the severance damage must be justified in the appraisal report by factual data that supports the appraiser’s conclusions. The manner of computing severance damage is of extreme concern to the Right-of-Way Division and subject to detailed examination. For instance, an appraiser’s unsupported opinion that the remaining property is depreciated 20 percent is not acceptable. The appraiser must carefully consider the special benefits that may be occasioned by the proposed highway construction, and must thoroughly document his conclusions where special benefits are used to offset damages.

For partial takings on limited-access facilities (e.g., when a portion of the property becomes landlocked or part or all of the water supply is taken), the “after” value must be determined by the market value concept. The possibility or probability that access can be secured or alternative water supply located after the taking is to be considered only to the extent reflected in the remainder’s market value. In other words, the State cannot force a property owner to purchase access rights or use an alternative water supply. However, when alternatives are available they should be considered to the extent that they affect the remainder’s market value.

## 5.26.2 Determining Personalty and Realty

Before an appraiser begins inspecting a property and before beginning the appraisal process, it is recommended that the appraiser and relocation consultant/agent meet with property owners and if possible with tenants/lessees. (Tenants and lessees are defined as having the right to use or occupy a property under a lease agreement; the leaseholder or tenant). This meeting should help the appraiser and relocation agent determine what the owner and tenant feel is personal, what is real, and who owns it. The appraiser and/or relocation agent should obtain a copy of the lease from the owner or tenant, which will explain any terms, conditions and leasehold interest.

The definition of a lease is: “. . . a written document to which the rights to use and occupy land or structures are transferred by the owner to another for a specified period of time in return for a specified rent”. The lease should identify what may or may not be realty or personalty.

The following definitions provide the City with an understanding of personalty and realty:

- Real Estate is the physical land and appurtenances affixed to the land (e.g., structures). Real estate is immobile and tangible. The legal definition of real estate includes land and all things that are a natural part of land (e.g., trees and minerals) as well as all things attached to it by people (e.g., buildings and site improvements). All permanent building attachments (e.g., plumbing, electrical wiring, heating systems) and built-in items (e.g., cabinets and elevators) are usually above the ground.
- Real Property includes all interests, benefits, and rights inherent in the ownership of physical real estate.
- Personalty or Personal Property is identifiable portable and tangible objects that are considered by the general public to be “personal” (e.g., furnishings, artwork, antiques, gems and equipment). This is all property not classified as real estate. (USPAP, 1992 edition). Personal property includes movable items that are not permanently affixed to and part of the real estate.

## 5.27 Property Acquisition and Appraisal

The City will acquire all real property in accordance with the Uniform Act and with applicable State laws. The general philosophy will be to acquire the minimum right-of-way necessary to construct, maintain, protect, and operate the rail system.

To facilitate acquisition by agreement, the City will conduct negotiation activities in a highly professional manner. It will exercise care to protect the interest of property owners who may be unfamiliar or inexperienced in real estate values.

The City will make every reasonable effort to negotiate and acquire real property at appraised values. Before initiating negotiations, the City will establish an amount that it believes reasonable just compensation for real property. This amount will not be less than the approved appraisal of the property’s fair market value and will take into account the

value of allowable damages or benefits to any remaining property.

The Land Division Chief will establish the amount believed to be reasonable just compensation. All appraisers and reviewers will be state certified and must have Uniform Act experience. They will be selected by the Appraiser Selection Committee, which consists of Department of Design and Construction representatives. This Department maintains a list of qualified appraisers and firms (see Appendix V). All fee and review appraisers are selected based on their licensure or State of Hawai'i certification, experience, demonstrated quality of work, education, and reputation. All fee and review appraisers must also be familiar with the local real estate market and must not have any conflict of interest with the properties being acquired. Appraiser qualifications and requirements can also be found in Appendices G and R. Appendix X includes the City's 2007/2008 Request for Qualifications for real property appraisal services.

The GEC was selected in accordance with the City's procurement process, and real estate appraisers were included in the GEC Team. These appraisers will be available to provide services in accordance with the City's direction.

### **5.27.1 Value Finding**

Full appraisal and/or negotiation procedures are not necessary in certain instances. Value Finding is a method of determining values on uncomplicated parcels where the value would be \$2,500 or less. In accordance with FTA Circular 5010.1C, the Manager of Real Estate will contact FTA for further guidance in this situation. The property owner must be offered the option to have an appraisal done on the property. The individual who would be preparing the value finding estimate should have a good understanding of the local real estate market. Because it is not an appraisal, it does not need to be reviewed. .

The minimum documentation required for a Value Finding is the following:

- The extent of investigating, collecting, confirming and reporting data;
- Assumptions and limiting conditions (may be included);
- Purpose and intended use;
- A summary of and brief supporting data for the appraisal procedures used;
- An explanation for excluding any of the usual valuation approaches
- An explanation of the highest and best use.

The City will sign the amount established as the Value Finding and the Land Division Chief will make the final approval. All approved properties will be acquired in fee simple, unless a lesser interest is determined to be in the City's best interest and adequate control can be obtained to assure the Project's safe operation and construction. Every reasonable effort will be made to promptly acquire real property by negotiated purchase for the full amount of the approved just compensation. When negotiations are initiated, owners will be provided with written statements that set forth the amount established as just compensation and the basis for the determination.

## **5.27.2 Property Contamination**

Unless otherwise instructed by the Land Division Chief, appraisers should value property as free from any contamination or environmental hazards that would reduce value. However, appraisers will advise the Land Division Chief of any observations that may indicate contamination on either on the property to be acquired or on remaining property. The City will make specialized examinations to evaluate conditions and determine remediation costs. Any issues affecting compensation will be addressed with the owner during the acquisition process.

## **5.27.3 Acquisition of Tenant-Owned Improvements**

When acquiring any interest in real property, the City shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located on the real property to be acquired that it requires to be removed, or which it determines will be adversely affected by the use to which the real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

Improvements considered to be real property are any building, structure, or other improvements owned by the owner of the real property on which it is located. This shall be considered real property for purposes of the Project.

Special conditions may arise for the Project and when they do, no payment shall be made to a tenant-owner for any real property improvement, unless:

- The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the City all of the tenant-owner's right, title, and interest in the improvement;
- The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
- The payment does not result in the duplication of any compensation otherwise authorized by law.

The full amount of the approved just compensation (court-ordered compensation) will be paid to property owners when documents of conveyance are recorded at the State Bureau of Conveyances. If a parcel is acquired via a Court Order of Condemnation in a condemnation case, the approved just compensation amount will be deposited in the registry of the court for the benefit of the property owner. If acquisition of only part of a property would leave the owner with an uneconomic remnant, the City will offer to acquire that remnant. The City's condemnation of real property interest will be pursued only after all reasonable efforts to obtain the required property by negotiation have been exhausted.

## **5.28 Protective Usage Agreement**

The City may establish a Protective Usage Agreement to provide for the possession and use of properties that have been vacated by an owner-occupant or lessee prior to

acquisition. Use of this type of agreement may eliminate a property owner's claim of monetary damages from loss of rental income. The Protective Usage Agreement is to be executed in conjunction with the date an occupant moves from the subject property and terminates on the date of title transfer, unless otherwise stipulated. More information about Protective Usage Agreements can be found in Appendix M.

Each Protective Usage Agreement will identify the property in its entirety and establish the monetary amount to be disbursed to the property owner based on the current existing rent, unless otherwise agreed. Considerations for a Protective Usage Agreement include the following:

- Timeframe: a lease should be executed if it is determined to be in the City's best interest. Timeframes should not exceed a 12-month period.
- Lawsuit: if determined that a lawsuit will be filed within a minimal timeframe (30 to 90 days) and the title will transfer to the City immediately, the monetary impact should be analyzed.
- Monthly rent payments actually paid to the owner pursuant to the provisions of the agreement will not be sought by owners in any subsequent claim for just compensation.

## **5.29 Real Property Negotiations**

Real property acquisition will begin after obtaining the ROD.

At least two acquisition agents will be assigned to Phase 1 of the First Project. The Land Division Chief will determine the necessary staffing levels, make acquisition assignments, assist the agents when necessary, and monitor progress of the acquisition effort.

The Land Division will notify all affected land owners. Upon delivery of the title searches and receipt of the approved just compensation, the assigned Acquisition Agent will keep complete negotiation logs through the Acquisition Tracking Report (ATR) and review the appraisal report, title information, and Project plans prior to delivery of the written offer to acquire the property. All necessary documents relative to the written offer will be prepared and reviewed prior to delivery to the property owner. An example of the Acquisition Tracking Report can be found in Appendix E.

As soon as a title is vested with the City or possession has been granted to the City, the Department of Budget and Fiscal Services' property management procedures will be followed to manage these assets. Demolition of any improvements will occur as soon as possible following possession, unless directed to be included in construction.

## **5.30 Relocation Business Damages**

Although the FTA does not participate in paying for business damages, damages will be tracked on a separate production report and discussed at each City Right-of-Way Team Meeting. The Notice to Owner (see Section 5.4) must contain the following:

- A copy of maps and/or construction plans relating to the parcel;
- A statement of the business owner's statutory rights; and
- A statement of the rights and responsibilities of the business owner regarding:
  - The timing and method of notice delivery;
  - The time requirements for the business owner's claim; and
  - The requirement to submit business records.

## **5.31 Fee Simple and Leasehold Interest**

### **5.31.1 Fee Simple**

Fee simple ownership is probably the most familiar form of ownership for real estate, Fee simple is sometimes called fee simple absolute because it is the most complete form of ownership.

### **5.31.2 Leasehold Interest**

A leasehold interest is created when a fee simple land owner (lessor) enters into an agreement or contract (commonly called a ground lease) with a lessee. An interest in the land is conveyed by the lease, but a leasehold interest differs from fee simple title because the lessee does not own the land and must pay ground rent. Also, the lessee's rights are limited to occupancy and use of the land for a specified duration, usually long term such as 55 years. Fee simple and leasehold determination procedures can be found in Appendix Z.

### **5.31.3 Lease Types**

Although a lease can be drawn to fit any situation, most fall into one of several broad classifications: flat rental, graduated rental, revaluation, index, and percentage. Leases may be applied on a gross rental basis with the lessor paying all of the real estate's operating expenses, or a net rental basis with the tenant paying all expenses. Lease terms frequently fall between these extremes and specify the division of expenses between a lessor and lessee. Leases can also be categorized by their terms of occupancy, such as month-to-month, short-term (five years or less), or long-term (over five years).

### **5.32 Real Estate Closings**

The Department of Design and Construction will conduct all necessary closings and related activities. This will include but not be limited to providing an updated title search, proof of satisfaction of all liens and encumbrances, recording all title documents, and collection and payment of pro-rated real estate taxes.

Check requests for acquisition parcels will comply with the following procedures:

- Checks will be issued by the Department of Budget and Fiscal Services;
- The Land Division Chief will make a check request to the Department of Budget and Fiscal Services;
- A signed W-9 Form for each person/company to receive a check will be required;
- A copy of the purchase contract and closing statement must accompany the request;
- If a loan exists, a copy of the payoff letter will be provided; and
- Separate checks will be issued for acquisition and relocation payments.

The Relocation Agent must prepare an inventory list of realty and personalty property when the appraiser and relocation agent do an initial walk-through with the property owner and tenant/lessee. This identifies what is realty and personalty and who owns it. This initial meeting and realty and personalty list ensure that a duplicate payment will not occur at the conclusion of the acquisition and/or relocation process. See Appendix J for more information on realty and personalty appraisal procedures.

A final walk-through with the property owner and/or lessee identifies that the owner or lessee has not removed real property that the appraisal included in its original valuation that the City has paid for. The RTD's Manager of Real Estate will coordinate the final walk-through with Inspectors and/or Contractors. The appraisal would have identified items included that the appraiser identified as real property and any leasehold items not included. The initial inventory list shall be the same as the final walk-through inventory list. The final walk-through shall be done prior to closing or after the relocation is complete and prior to submitting final relocation costs.

The City will require the release of any encumbrance attached to or binding real property such as a mortgage, construction lien, judgment lien, or accrued and unpaid taxes. When the entire property is being purchased, a satisfaction of the encumbrance will need to be provided. In the case of partial acquisition parcels, a partial release of the encumbrance will be required. Commercial or governmental lien holders customarily require time to process lien satisfactions and releases after receipt of payment. In these instances, the City may grant a deferral in clearing encumbrances in cases where execution and delivery of the satisfaction or release must be reasonably assured. In these circumstances, the City may deliver the acquisition payment at closing in exchange for a commitment in writing that a properly-executed satisfaction or release will be promptly issued.

### **5.33 Property Delivery to Construction**

When all necessary right-of-way is acquired or in legal possession of the City and cleared, the Project will be certified “Right-of-Way Clear” and will be made available to the construction contractor. Real property to be used in a federally-assisted transit project must be acquired and its occupants relocated in compliance with 49 CFR Part 24. These regulations implement the Uniform Act. The City will also ensure that acquisition or possession and displacement activity comply with individual state statutory and judicial case law.

#### **5.33.1 Right-of-Way Certification**

The project certification of right-of-way is the confirmation that all property rights needed for project construction have been cleared (i.e., all required property rights have been acquired or, if not acquired, the right to occupy them for purposes of construction has been acquired, and all properties have been vacated). The Land Division Chief approves all certification requests prepared.

If the City is not in complete ownership and possession of right-of-way (i.e., “clear right-of-way”), the Lead Acquisition Agent will provide information on the certification form for parcels for which the City does not have legal possession, and information on occupants who remain in occupancy. The Land Division Chief will sign a “conditioned” certification that includes a “limitation of operations.” The Project advertisement will be deferred or restrictions will be placed in the contract to prohibit the contractor from entering those properties not yet cleared.

High priority will be given to completing acquisition and relocation on a project that is under a “limitation” or “conditional certification.” The Land Division Chief or a delegate will submit weekly updates to the Project Manager on the status of uncleared parcels.

# 6

## Condemnation Procedures

---

Condemnation is the process by which a public entity exercises its right to take property for public use (the right of eminent domain). The City will seek condemnation of property interest only after all reasonable efforts to obtain the required property by negotiations have been exhausted and sufficient time has elapsed for the property owner to make a decision. The threat of condemnation will not be used to reach a settlement, but will be exercised in order to avoid costly delays in the construction program. The City's condemnation policy and procedures are found in Appendix S.

### 6.1 Condemnation Conditions

Condemnation may be required when the following conditions exist:

- Death of an owner and/or inability to locate the owner's heirs;
- Mortgagees that do not release mortgage interest;
- Title defects that preclude acquisition by voluntary conveyance; and
- Multiple ownership and lack of unanimity among the owners.

When the Land Division Chief has approved the Land Acquisition Officer's recommendation that a negotiated settlement cannot be reached, action will be initiated to acquire the parcel through condemnation. The Department of the Corporation Counsel will prepare the suit package and file the condemnation lawsuit. The timeframe from the Corporation Counsel filing a condemnation lawsuit to the Order of Possession date is typically three to six months. The Department of the Corporation Counsel plans to have adequate Eminent Domain Attorneys available to provide these lengthy condemnation services to City for the Project.

### 6.2 Titles Acquired through Condemnation

As soon as the Land Division Chief approves the Land Acquisition Officer's recommendation that a parcel cannot be acquired by negotiations, action will be initiated to acquire the parcel through condemnation. The Department of Design and Construction will request the Corporation Counsel to obtain approval from the City Council to condemn properties and to file the condemnation lawsuit. The Department will proceed to obtain an Order of Possession and deposit the just compensation value or other required deposit amount with the Clerk of the First Circuit Court of the State of Hawai'i.

The time from the Department of the Corporation Counsel filing a condemnation lawsuit to the Order of Possession date is dependent on the difficulty of serving the complaint to the property owner and other factors. If the Order of Possession is obtained, the City will have immediate possession of the property. However, there are many cases where possession is not granted at the time of the Order of Possession. The City's condemnation policy and procedures can be found in Appendix S.

### 6.3 Project Schedule

Sometimes circumstances exist that may affect potential impact to the project schedule. For example, a resident may express a need for more time to locate a replacement dwelling, or a business owner may request more time to find a suitable replacement site to re-establish the business. An elderly person may require more time to have a handicap ramp installed at her new home, or an aircraft facility may request more time to find a site that would meet the required size and zoning to accommodate aircraft. The judge must weigh each argument on a case-by-case basis and balance the landowner's hardship with the condemning authority's need to have possession of the subject property.

The Order of Possession does not convey titles to the City, but does allow the City to enter the property and conduct project-related activities, including demolition and construction. The settlement of compensation is determined later, possibly at trial.

#### **6.4 Condemnation Approval Process**

Hawai'i Revised Statutes Sections 101-13 and 3-110 of the Revised Charter of the City and County of Honolulu requires that condemnation requests be submitted to the City Council for approval. Once the required condemnation Resolution is approved by the City Council, the Land Division Chief will schedule for closing or condemnation.

The City has an established process that must be followed to obtain City Council approval of a Condemnation Resolution.

# 7

## **Intra- and Inter-Governmental Transfers**

---

### **7.1 Compensation**

The Constitution of the State of Hawai'i, Article I, Section 20, Eminent Domain, requires the payment of compensation only for the taking of private property for a public purpose. Publicly-owned property shall be acquired without monetary payment when the intended use is consistent with the use for which it was dedicated or acquired. If a title will not be transferred to the City, the City must receive written permission to use the right-of-way from the local governmental entity holding the title to the right-of-way in question.

### **7.2 Negotiation Transfers**

When negotiating to acquire a property parcel held by a local governmental entity in the nature of a local proprietary property, the assigned negotiator shall follow all procedures applicable to the acquisition of any privately-owned property. This includes but is not limited to the procedures for acquisition by eminent domain. The City shall specifically request a donation of the parcel at the Initiation of Negotiations. More information about the City's ability to condemn Agencies, if necessary, is in the process of being written into the City's condemnation policy and procedures found in Appendix S.

### **7.3 Replacement Facilities**

When lands, buildings, or other improvements are needed for transportation purposes but are held by a governmental entity and utilized for public purposes other than transportation, the City may compensate the entity for such properties by providing functionally equivalent replacement facilities. The provision for replacement facilities may only be undertaken with the agreement of the governmental entity affected.

### **7.4 Betterments and Just Compensation**

Costs of increases in capacity and other betterments are not eligible for reimbursement. Exceptions are those necessary to replace utility; those required by existing codes, laws, and zoning regulations; and those related to reasonable prevailing standards for the type of facility being replaced. After just compensation for the parcel is established, the City shall advise the owning agency in writing of the amount. The owning agency shall have the option of accepting the just compensation established by the appraisal process or accepting functional replacement.

## **7.5 Administrative Transfers**

City properties can usually be transferred administratively if they are not being used for some other purpose. The transfer of City properties shall be in accordance with City ordinances. However in some cases, the City may be required to assume responsibility for upkeep of the property. Each property will be reviewed individually. The City will closely monitor these special acquisitions and attend negotiation sessions with the appropriate City personnel.

The Relocation Assistance Program will establish and provide the authority for relocation assistance in accordance with the Uniform Act. The Relocation Agent is conducting preliminary relocation planning and will conduct a Relocation Needs Assessment Survey during appraisal walks. The Department of Budget and Fiscal Services has assigned a Relocation Agent for the First Construction Phase. Future staffing needs will be assessed as the Project approaches the Second Construction Phase. Individuals hired in the future will need to have Uniform Act experience and knowledge or Uniform Act training will be provided by RTD.

## 8.1 Relocation Plan

The Department of Budget and Fiscal Services will prepare a Relocation Plan prior to the Record of Decision (ROD) being issued for the Project. During the Project's relocation planning stage, the Department of Budget and Fiscal Services will plan for the Relocation Program in a way that recognizes problems associated with displacing individuals, families, businesses, farms, and non-profit organizations and will develop solutions to minimize adverse impacts. This planning will precede any action that will cause displacement. It will also consider the complexity and nature of the anticipated displacement, including an evaluation of the program resources available to carry out timely and orderly relocations. Appendix Y describes the City's roles and responsibilities in the relocation process.

Planning may involve a relocation survey or study, which may include the following:

- An estimate of the number of households to be displaced, including information such as owner/tenant status; the 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, when applicable.
- An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) expected to be available to fulfill the needs of displaced households. When an adequate supply of comparable housing is not expected to be available, the City should consider Housing of Last Resort actions. (The real estate market in Hawai'i will more than likely require Housing of Last Resort actions, and the Project budget reflects this projection.)
- Relocation cost estimate updates.
- An estimate of the number, type and size of the businesses, farms, and non-profit organizations to be displaced.
- An estimate of the availability of replacement business sites. If an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses that are reasonably expected to involve complex or lengthy moving processes, or for small businesses with limited

financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

## **8.2 Nondiscriminatory Reviews**

The City's review of self-certifications provided by displaced individuals shall be conducted in a nondiscriminatory fashion. The City will apply the same standard of review to all certifications it receives, except that the standard may be revised periodically. The person(s), unincorporated, or incorporated entities being displaced would self-declare.

Individuals or entities would have to provide the proper documentation to the City to be eligible for relocation payments or relocation advisory assistance.

- Self-Certification (CFR Section 24.08 d and e).
- The City shall consider these self-certifications to be valid, unless it determines otherwise. This would be based upon the review of documentation or other information the City deems reliable and appropriate.

## **8.3 Relocation Benefits**

Relocation assistance benefits are available to all eligible residential occupants, businesses, non-profit organizations, and owners of personal properties located within the Project corridor. Appropriate notices and advisory services will be provided to displaced persons. Relocation advisory services will be available on a continual basis during preliminary project design and throughout completion of the Project.

## **8.4 Relocation Procedure**

The Uniform Act will be utilized in administering the Relocation Program for this Project. Relocation eligibility will be determined based on the Uniform Act. This act also establishes a uniform policy for the fair and equal treatment of persons displaced as a result of any government actions such as a public transportation program. The City's relocation policy and procedures can be found in Appendix N.

In implementing its Relocation Assistance Program, the City may use its own facilities, personnel and services or may contract these services to a consultant. The City will adhere to its Relocation Policy and Procedures the Uniform Act and FTA Circular 5010.1C, as maybe revised in the future.

## **8.5 Relocation Program**

The City will establish staff and support a city-wide Relocation Program that will provide the services, technical assistance, and training to enable the City to meet its statutory and regulatory relocation assistance requirements. The City and all consultants working on its behalf will perform relocation in accordance with the Uniform Act.

City Department roles and responsibilities are outlined below:

- The Department of Budget and Fiscal Services (BFS) Purchasing Division,

Relocation Section is responsible for providing relocation services to enable the City to fulfill its statutory relocation assistance requirements;

- City agencies should notify the Relocation Section as early as possible of any proposed or planned projects that might require the City to provide relocation assistance;
- The RTD will request funding for relocation in its Capital Improvement Program budget after consulting with the Relocation Section; and
- The Department of Design and Construction, Land Division, will coordinate with the Relocation Section on any land acquisitions that require the City to provide relocation assistance; including providing required written notices to occupants on the property to be acquired.

To ensure that displacees have adequate knowledge of the Relocation Program, the City will present information and provide an opportunity to discuss relocation services and eligibility benefits at public hearings and meetings. The City will distribute relocation brochures and provide adequate advisory services to all eligible parties affected by the Project. The City will meet with each displaced person to provide advisory services and written information. The Relocation Agent will provide a full explanation of all applicable relocation eligibilities, as provided by the Uniform Act and outlined in 49 CFR, Part 24.

## **8.6 Notices**

No persons eligible for relocation assistance and lawfully occupying real property will be required to move themselves, their personal property, and the inventory used in the operation of their business from the proposed right-of-way without at least a 90-day written notice. No person shall be required to move from a displacement dwelling sooner than ninety (90) days after comparable replacement housing has been offered. No person may be deprived of any rights that he/she may have under the Uniform Act. Thirty (30) days written notice will be given prior to the actual date to vacate.

The City will assure that within a reasonable time prior to issuance of a Notice to Vacate, at least one comparable replacement housing will be made available to any eligible displaced domiciled person.

## **8.7 Public Information**

Public meetings will be held in appropriate facilities located in areas where acquisition and relocation activities will take place. At these meetings, the information presented by the City may include:

- Identification of parcels to be acquired;
- Eligibility requirements, potential payment procedures, and limitations for residential and business payments;
- A description of reimbursable incidental expenses;
- Eligibility requirements and options for moving cost reimbursements;

- Appeal procedures;
- A description of how relocation assistance and advisory services will be provided; and
- The address and telephone number of the Project Relocation Office.

Time will be allowed for general questions from meeting attendees in order to assure a clear understanding of the Relocation Assistance Program. Owners and occupants of parcels located in or near the project area will be invited to public meetings conducted by the City.

## **8.8 Relocation Planning**

The City will conduct an in-depth planning analysis to recognize any potential problems associated with the displacement of individuals, families, businesses, non-profit organizations, and farms. A Needs Assessment Survey, as referenced in 49 CFR Section 24.205, will be developed during preliminary relocation planning and will be utilized to help develop solutions and identify parcels that may be adversely impacted by the Project.

The Needs Assessment Survey will include non-residential information as required by 49 CFR Section 24.205(c)(2)(i) A-F and residential information as required by 49 CFR Section 24.205(c)(ii). Information from preliminary investigations during the Project's conceptual planning stage and from environmental assessment reports may help determine the following:

- The estimated number of individuals, families, businesses, and non-profit organizations and farms to be relocated. This includes information specific to owner/tenant status, estimated values and rental rates of properties acquired, family characteristics, and special consideration of impacts;
- The probable availability of decent, safe, sanitary replacement housing within the financial means of the individuals and families affected;
- The probable availability of replacement sites for businesses and non-profit organizations;
- A description of the actions proposed, to ensure that necessary dwellings will be available in advance of any displacement;
- A statement of relocation issues for each identifiable relocation, along with possible solutions;

## **8.9 Relocation Personnel and Offices**

The City will maintain the necessary personnel and office locations to ensure prompt and

equitable consideration and treatment, as prescribed in the Uniform Act. The City will also maintain the following information in its real estate office to help facilitate the Relocation Program:

- Current and continually updated lists of replacement dwellings available, without regard to race, color, religion or national origin. These lists will be drawn from various sources and must be suitable in price, size and condition for individuals and families;
- Current and continually updated lists of suitable commercial properties and locations for displaced businesses;
- Information on the location of schools, parks, playgrounds, shopping centers, and public transportation routes in the area;
- Schedules and costs of public transportation;
- Information on the Relocation Program; local ordinances pertaining to housing, building codes, and open housing; and consumer education literature on housing, shelter costs, and family budgeting;
- Brochures on apartment directory services and neighborhood and metropolitan newspapers; and
- The current status of each displacee/relocation.

#### **8.10 Public-Private Sector Coordination**

City Relocation Personnel will contact and exchange information with other public and private agencies in order to provide services that may be useful to persons being relocated. Such agencies may include:

- Local Housing Authority
- City and County Social Service Agencies
- Department of Housing and Urban Development
- Veterans Administration
- Small Business Administration
- Other city and state agencies providing services appropriate to displacees
- Private agencies

Contact will also be maintained with the local real estate community including real estate brokers, real estate boards, property managers, apartment owners and managers, and home building contractors. Only general referrals will be provided to displacees.

#### **8.11 Public Brochures**

Relocation brochures developed by FHWA will be available to all displaced persons. These brochures provide an overview of eligible benefits and describe the Relocation Assistance Program. Brochures shall be made available in all languages predominant in Hawaii. See Appendices F and H for examples of FHWA relocation and acquisition brochures.

## **8.12 Public Relocation Notices**

In accordance with 49 CFR Section 24.203, as soon as feasible all eligible occupants deemed to be affected shall receive a General Information Notice which is a written description of the Project and its general Relocation Program. See Appendix F

At a minimum, this description must:

- Inform the person that he or she may be displaced for the Project, and generally describe the relocation assistance for which the person may be eligible, the basic conditions of eligibility, and procedures for obtaining payment(s);
- Inform the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help filing payment claims, and other necessary assistance to help the displaced person successfully relocate;
- Inform the displaced person that he or she will not be required to move without at least 90 days advance written notice, and inform any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;
- Inform the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in 49 CFR Section 24.208(h);
- Describe the displaced person's right to appeal the City's determination of their eligibility for assistance;
- Describe how and when the City will communicate with the displaced person before the move occurs and inform the displaced person that he or she must continue to pay rent.

No lawful occupant shall be required to move unless he or she has received at least a "First Negotiation Contact and Notice of Relocation Eligibility/90-Day Notice" which is an advance written notice of the specific date by which the property is to be vacated. This notice may be issued 90 days or more before the person is expected to be displaced. The notice shall state the specific date by which the occupant is required to move, and state that the occupant will receive a further notice that indicates at least 30 days in advance of the specific date by which he or she must move. See Appendix I for more information on relocation notices and development.

The City will provide each displaced person with a written “First Negotiation Contact and Notice of Relocation Eligibility/90-Day Notice” stating that they will be eligible for relocation assistance when displaced by the Project. A written Notice of Ineligibility will be given to occupants not eligible for this assistance. Based on the type of displacement, this notice will explain the following:

- Relocation services for which they are eligible;
- For residential occupants, the eligibility requirements to receive the appropriate replacement housing payments and moving expense reimbursements; and
- The optional types of moving cost payments available to businesses, farms, non-profit organizations, and owners of personal property.

These notices will be provided:

- To fee owners of parcels at the time of Initiation of Negotiations;
- To businesses, non-profit organizations, farm tenants, and/or owners of personal property as soon as practical after the Initiation of Negotiations with the parcel fee owner; and
- To residential tenants as soon as practical after the Initiation of Negotiation with the parcel fee owner.

### **8.13 Relocation Statement of Eligibility**

To determine the amount of replacement housing entitlement and rental/down payment assistance, the following information will be considered: the duration of ownership and occupancy, the reasonable cost of a comparable replacement dwelling unit, and monthly gross household income. The City will examine the actual leasing price or selling price of at least one (or as many as three) comparable replacement dwellings available on the market when calculating the replacement housing entitlement. Displaced persons will be informed of the amount of the maximum replacement housing payment to which they may be entitled on or before the date of issuance of the 90-day notice.

#### **8.13.1 Notice of Relocation Eligibility**

Eligibility for relocation assistance shall begin on the date of Initiation of Negotiations (defined in 49 CFR Section 24.203 for the occupied property). When this occurs, the City shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

#### **8.13.2 Ninety-Day Notice**

General: No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice (as noted in 49 CFR Section 24.203 (c)(3) of the earliest date by which he or she may be required to move.

Timing or Notice: The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.

Content of notice: The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available (See 49 CFR Section 24.204(a)).

### **8.13.3 Relocation of Aliens Not Lawfully Present in the United States**

In accordance with 49 CFR Section 24.208, each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify the following:

- For individuals, that he or she is either a citizen or national of the United States, or an alien lawfully present in the United States.
- For families, that each family member is either a citizen or national of the United States or an alien lawfully present in the United States. The head of the household may provide this certification on behalf of other family members.
- For unincorporated businesses, farms, or non-profit organizations, that each owner is either a citizen or national of the United States, or an alien lawfully present in the United States. Principal owners, managers, or operating officers may provide this certification on behalf of other persons with an ownership interest.
- For incorporated businesses, farms, or non-profit organizations, that the corporation is authorized to conduct business within the United States.

If the City has reason to believe that a person's certification of being a citizen or national is invalid, the City shall request evidence of United States citizenship or nationality from that person. If considered necessary, the City will verify the accuracy of this evidence with the issuer.

If the City has reason to believe that a person's certification of being an alien lawfully present in the United States is invalid, the City shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. A list of local BCIS offices is available at <http://www.uscis.gov/graphics/field/offices/alpha.htm>.

Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. If the City is unable to contact the BCIS, it may contact the FTA for a referral to the BCIS.

No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section, or who has been determined to not be lawfully present in the United States. This policy will be followed unless such person can demonstrate to the City's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to the person's

spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States.

For purposes of the preceding paragraph, “exceptional and extremely unusual hardship” to the spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance will directly result in:

- A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;
- A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or
- Any other impact that the City determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

#### **8.14 Relocation Advisory Services Program**

The City will follow its current Relocation Advisory Program in providing the maximum assistance possible to persons directly affected by the Project. These services will be used to help displaced persons locate comparable housing that meets their needs. The Relocation Advisory Program will be administered so that the relocation process will not result in different or separate treatment on account of race, color, religion, national origin, sex, marital status, or any other arbitrary circumstances.

Residential assistance will be in compliance with 49 CFR Section 24.205(c)(ii) as noted, “Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.”

The City recognizes that public involvement and proper administration of the Relocation Program will enhance the Project’s overall success. During the program’s early stages, the issues associated with displacements will be identified and analyzed. The complexity of parcel relocations will be identified through strategic planning developed to minimize adverse relocation impacts.

Relocation advisory services will be offered to all eligible persons affected by the Project, to minimize hardships to persons adjusting to relocation. Advisory services will be provided through counseling, resource assistance, and relocation coordination. The advisory program shall include measures, facilities, and services that may be necessary or appropriate in order to accomplish the following:

- For displacement of non-residential properties, businesses, farms, and non-profit organizations, determine their relocation needs and preferences; and
- Explain relocation payments and other assistance for which they may be eligible, related eligibility requirements, and procedures for obtaining this assistance.

This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should determine the following;

- The business' replacement site requirements, current lease terms and other contractual obligations, and financial capacity to accomplish the move.
- The need for outside specialists, in accordance with 49 CFR Section 24.301(g)(12), to help plan the move, help with the actual move, and help with reinstallation of machinery and/or other personal property.
- Any personal property/realty issues and their resolution. Every effort must be made to identify and resolve personal property/realty issues prior to or at the time of the property's appraisal.
- An estimate of the time required for the business to vacate the site.
- An estimate of the anticipated difficulty of locating a replacement property.
- Any advance relocation payments required for the move, and the City's legal capacity to provide them.
- Storage options for personal property.

### **8.15 Relocation Payments**

The Uniform Act provides for certain relocation payments in addition to the amount a fee owner receives as just and adequate compensation for their real property. The City's Relocation Program will ensure that any person required to move from the acquired real property and who meets eligibility requirements will receive relocation payments based on their respective eligibility.

Each relocation payment claim will be supported by documentation justifying expenses incurred such as bills, invoices, receipts and explanations for the claim. For partial takings where it is necessary to remove miscellaneous personal property from the proposed right-of-way, owners of the eligible personal property are entitled to reimbursement for the actual, reasonable and necessary costs of moving personal property.

### **8.16 Discretionary City Payments**

The City may exercise sole authority to provide payments to displaced persons who are proven to have no legal status. Such payments will be minimal and only established to assist with costs necessary to progress the displacee from the Project area. Payments will not be eligible for FTA participation and will be made uniformly and fairly.

### **8.17 Relocation Payments not Considered as Income**

In accordance with 49 CFR Section 24.209, no relocation payment received by a displaced person shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S. Code). Also, no relocation payment will be considered income for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the

Social Security Act (42 U.S. Code 301 et seq.) or any other federal law, except for any federal law providing low-income housing assistance. The Hawai'i Revised Statutes Section 111-5 provides a similar exemption. Displacees will be encouraged to seek advice from their own tax experts.

### **8.18 Relocation of On-Premise Signs**

On-premise signs are eligible to be moved, and sign owners are entitled to reimbursement for the actual, reasonable and necessary cost of moving signs to a replacement site. On-premise signs are considered personal property. An actual direct loss payment shall be made to reimburse owners with signs that cannot be relocated without violating local, state and federal law or when sign owners choose not to relocate signs. In the case of an on-premise sign that is moved to a site in violation of federal, state or local regulations, the owner or lessee is not eligible for moving costs or other related payments.

### **8.19 Relocation Appeals Procedure**

All displaced persons will be informed of their right to appeal the eligibility payment or the amount of the relocation payment. The right of appeal will be described in all brochures and other informational pamphlets distributed to the public. All displacees have the right to be represented by counsel or other representatives for their appeal. However, these costs are not eligible for reimbursement under current federal guidelines.

The displacee or aggrieved person may submit a written appeal to the Real Property Management Officer, who will conduct an administrative review of the case. Formal appeal requests must be made in writing and directed to:

Wendale K. Imamura  
Purchasing Administrator  
Department of Budget and Fiscal Services  
530 South King Street, Room 115  
Honolulu, Hawaii 96813

Attention: Diane Murata, Real Property Management Officer

The written appeal must be filed no later than 60 days from the date the aggrieved person receives written notification from the City that the claim has been denied. Failure to submit a written appeal within this time may result in denial of the claim.

## **8.20 Formal Hearing Requests**

If the Real Property Management Officer denies the claim, the aggrieved person will be advised of their right to appeal that decision under City right-of-way procedures. The person may request a formal hearing if they disagree with the facts as stated, or an informal proceeding if they do not dispute the facts stated but disagree with the City's decision.

Requests for formal hearings or informal proceedings must be made in writing and directed to:

Mary Patricia Waterhouse  
Director, Department of Budget and Fiscal Services  
530 South King Street  
Honolulu, Hawaii 96813

The City will explain the relocation-related appeal process to the displacee or aggrieved person, and will permit them to inspect and photocopy all but confidential materials (e.g., appraisals) that are pertinent to the appeal during work hours.

## **8.21 Administrative Review**

The Department of Budget and Fiscal Services will conduct an administrative review. The Department will review and consider all information and justifications submitted by the displacee or aggrieved person. After this review, the following will apply:

- If the Department of Budget and Fiscal Services finds in favor of the displacee or aggrieved person, the appeal will be reviewed by the Department of the Corporation Counsel.
- If the Department of the Corporation Counsel concurs with the Department of Budget and Fiscal Services, the displacee or aggrieved person will be notified of this determination and the City will provide the necessary claim forms and assistance to process the claim.
- If the Department of the Corporation Council does not concur with the Land Division Chief, the displacee or aggrieved person will be notified of the determination and the City will provide appeal process information.
- This notice must explain the basis on which the decision was made, and reference the specific procedures and rules under which the claim was denied (if applicable).
- This notice must be by certified letter, return receipt requested, and response must be sent within 60 days from receipt of appeal.
- This notice must advise the displacee that a judicial review request, pursuant to the City's right-of-way procedures, must be made within 30 days from receipt of notification.

## **8.22 Relocation Claims Process**

The City's Relocation Claims Process reflects a commitment to treat all individuals fairly. The following sections describe several important components of the claim process:

### **8.22.1 Documentation**

Any claim for a relocation payment shall be supported by documentation that may be reasonably required to support the expenses incurred (e.g., bills, certified prices, appraisals, or other evidence of such expenses). A displaced person must receive the reasonable assistance necessary to complete and file any required claim for payment.

### **8.22.2 Expeditious Payments**

The City shall review claims in an expeditious manner. Claimants shall be promptly notified of any additional documentation required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

### **8.22.3 Advance Payments**

If a person demonstrates the need for an advance relocation payment to avoid or reduce a hardship, the City shall issue the payment, subject to appropriate safeguards to ensure that the payment's objective is accomplished.

### **8.22.4 Notice of Denial of Claim**

If the City disapproves all or part of a payment, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

### **8.22.5 Time for Filing**

All claims for a relocation payment shall be filed with the City within 18 months after:

- The date of displacement (for tenants); and
- The date of displacement or the date of the final payment for the acquisition of the real property, whichever is later (for owners).

The City may waive this time period for good cause.

### **8.22.6 No Waiver of Relocation Assistance**

The City shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act.

### **8.22.7 Expenditure of Payments**

Payments shall not be considered to constitute federal financial assistance. Accordingly, payments from the City do not apply to the expenditure of federal payments by or for a displaced person.

After the Department of Information and Technology prints the check, BFS Treasury Division will mail the check to displaced persons. A receipt acknowledging payment request is also sent with the check. The Relocation Section does not hand deliver checks to vendors or displaced persons. The Relocation Section files the signed receipt of payment. This process is factored into the relocation schedule.

### **8.23 Relocation Last Resort Housing**

If a preliminary housing survey indicates that a sufficient number of comparable decent, safe and sanitary dwellings are not available for replacement purposes for persons displaced by the Project, the City may consider the feasibility of a “last resort housing” plan to make housing available through purchase, rental and/or construction. This alternative may also be considered if comparable decent, safe and sanitary dwellings become unavailable during the Project’s acquisition and relocation phase within the statutory monetary caps found at 49 CFR Sections 24.401 and 24.402.

As soon as a potential need for Last Resort Housing is identified, the Real Property Management Specialist will prepare a report in the form of a memorandum to the Real Property Management Officer for approval. The report will present critical displacement needs and the housing options and methods available to meet those needs. The report will also evaluate options and methods of providing housing, the funding required and the recommended action.

The City’s Last Resort Housing procedures follow the requirements found in 49 CFR Section 24.404.

Real property management relates to the control and administration of lands and improvements acquired from the time a property's title is vested with the City until the property is turned over for construction. Acquired land and any accompanying improvements are valuable resources that must be protected and often can be productive during this interim. Property management involves maintaining and protecting the property acquired. This includes making improvements, being responsible for the occupancy and rental of improved and unimproved lands, and disposing of improvements by sale or demolition.

### **9.1 Property Management Procedures**

The City is in the process of updating its Property Management Procedures. The City will adhere to the City's Lease and Rental Ordinance. Fair market rental, as long as it does not cause economic displacement, will be charged for temporary rental of the acquired properties. See Appendix M for more information on lease and rental procedures.

### **9.2 Property Management Activities**

Property management activities begin when the property title is transferred, or when the Order of Possession is granted to the City; property management will end when construction phasing begins.

### **9.3 Building Cut-Offs and Asbestos**

A building cut-off is the physical severing of a portion of the building from the remaining building. This occurs when the acquired portion of a building lies within the boundaries of the right-of-way of a transportation facility and must be cleared. Reface refers to the construction necessary to enclose the exposed portion of a building that has been cut off. A licensed asbestos consultant may perform an asbestos survey of a building to be cut off. Since the building may potentially contain asbestos-containing materials, offers to acquire and demolish an entire building or convert the parcel from a partial to a full acquisition may be considered.

### **9.4 Building Inspections and Surveys**

No requirement exists for a building or cut-off to be surveyed for asbestos-containing materials prior to acquisition. However, a building inspection is done by the City prior to the property appraisal. The City may choose to have a survey performed prior to acquisition. In order to perform the survey prior to acquiring the property, approval will need to be obtained from the property owner to enter the property. If the property owner is not agreeable, a court order would be needed for performance of the survey.

### **9.5 Economic Feasibility**

For properties where a building cut-off and reface is proposed, the real estate appraiser will

determine whether the cut-off and reface is economically feasible and consistent with the highest and best use of the property. If the appraiser decides in favor of the cut-off and reface, his/her report should clearly define how this work will be handled.

## **9.6 Temporary Easement**

The appraiser should evaluate whether a permit for the cut-off and reface can be obtained. Depending on how the cut-off and reface is to be accomplished, a temporary easement for demolition or a right of entry may be needed. If a right of entry is used; it cannot be enforced through condemnation. The recommended purpose language in the temporary easement document for demolition should read as follows:

“A temporary easement for the purpose of demolition and removal of improvements and/or cutting, refacing, and modifying building improvements and any work incidental to said activities or connected therewith.”

## **9.7 Partial Acquisitions**

A partial acquisition involving a building cut-off can be handled in several ways. In evaluating the advantages and disadvantages of each, consideration should be given to the building components and systems within the area of the cut-off. The known or potential presence of asbestos-containing materials must also be considered, as well as the extent of the easement or right of entry required to perform the cut-off and reface. Some options include:

- The City performs the cut and reface;
- The City performs the cut and the property owner performs the reface;
- The property owner performs the cut and reface or the City may decide to acquire the entire building; and
- The City may contract for property management and for demolition services that include general contracting.

## **9.8 Real Property Sales and Dispositions**

The City will adhere to all ordinances and state statutes on the sales, dispositions and exchanges of real and personal properties having no FTA interest. The disposal of personal property to other governments, charitable organizations for the aged, trade-ins are permissible in certain situations. Private negotiations and the sale of personal property are permitted for property valued at less than \$100. Any personal property valued at more than \$100 is done by advertisement for sealed bids or public auction.

All disposals of real property by exchanges, negotiated sales, sealed bidding or public auction, irrespective of the value of the real property, will require prior approval by the City Council. See Appendix L for more information on real and personal property transaction procedures.

Real property having an FTA interest will be disposed in accordance with FTA Circular 5010.1C.

## **9.9 Record Keeping and Reports**

The City will establish and maintain complete and comprehensive records of all acquisition and relocation activities to a sufficient detail to demonstrate compliance with 49 CFR Section 24.9. The City will submit appropriate reports to FTA as required.

Records maintained by the City are confidential regarding their use as public information, unless applicable law provides otherwise. Records will 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 he or she is entitled or in accordance with FTA's records retention requirements in Circular 5010.1C, whichever is later.

Records will include a comprehensive database of all displacees; including names and addresses, notices, claims processing, contact records, and any other pertinent information. All correspondence and contacts with displacees will be recorded and maintained in a database.

Records will be available at reasonable hours for inspection by federal officials. Reports on the Relocation Program will be submitted to FTA in the format required, and to other entities that the City has approved as having an interest in or responsibility for such records.



**10.1 Tracking Responsibility**

All tasks that support the Project's master schedule will be closely monitored and tracked by the City. The City is currently developing a Right-of-Way Tracking System (ATR) that will track the following information for each individual parcel: environmental information, appraisal, acquisition, business damages, lawsuit preparation and condemnation, City- and FTA-required approvals, relocation, property management, and lawsuit preparation activities referenced in Appendices E-1 and E-2. Other tracking and reporting tools will be utilized for actual as well as projected needs and availability as referenced in Appendix E-5.

**10.2 Parcel Schedule**

A parcel-by-parcel schedule will also be used to track the Project's right-of-way activities. The Manager of Real Estate is responsible for the various disciplines and will oversee their areas of responsibility referenced in Appendix E-4.

**10.3 Meetings**

The Right-of-Way Coordinator will conduct right-of-way meetings based on a pre-arranged schedule. Additional meetings may be scheduled for specific parcel or relocation concerns as necessary.

**10.4 Budget**

The right-of-way budget will be tracked and monitored by the computerized production control system, which also has a budget tracking capability. This system makes it possible to manage Project expenditures and also tracks work orders, fees, invoices, payments, closing costs, relocation costs, appraised value, and just compensation.

**10.5 Document Filing**

The original right-of-way acquisition documents will be retained by the Land Division and will be filed by the acquisition numbers, which will be used as unique identifiers unless otherwise determined and documented. The original relocation documents will be retained by the Department and Budget Fiscal Services. General items that apply to the Project right-of-way will be filed within both departments in general files labeled according to their subject. RTD will retain copies of all original acquisition and relocation documents. Copies of all parcel sketches and legal descriptions will be kept in general files and in each individual file to which they apply. Individual contact records will be a part of each parcel file and they will also be part of an electronic tracking system that produces a log of all contact records which the City will maintain.

**10.6 Confidentiality**

The tracking system is not a centralized document library. It will contain highly sensitive information that will be kept confidential, and only appropriate right-of-way personnel will have access to the system.

## **10.7 Maps and Drawings**

DocuShare is the system now being used to track maps and drawings. There is a Correspondence Routing Sheet for hard all copies of maps and drawings to be submitted. When maps and drawings have been received and e-mail is sent out letting the receivers know that the electronic versions have been uploaded to a specific site on the network. This ensures that the Acquisition Agent is utilizing the most current information available.



This chapter of the RAMP describes the Project organization and staffing approach. Topics include organizational approach, organization, staffing, key personnel functions and responsibilities, use of consultants, and interface with other agencies. As implementation of the First Project advances, the organization will evolve to maximize the efficient use of personnel and adjust to the changing workload.

### **11.1 Organizational Approach**

Successful implementation of the Project will involve a number of entities. As further described in this section, the City will implement the Project using its own forces and the services of third-party consultants and contractors. An initial list of entities involved to manage, oversee and/or carry-out work on the Project includes the following:

- Federal Transit Administration (FTA), the lead federal agency;
- FTA's Project Management Oversight Contractor (PMOC);
- City and County of Honolulu (City), Project Sponsor and FTA Grantee;
- Project Management Support Consultant(s) (PMC);
- PE/EIS General Engineering Consultant (GEC);
- Engineering Design Consultants (EDC);
- General Construction Manager(s) (GCM); and
- System Supplier(s) and Construction Contractors.

The organizational principles established for carrying out the Project are as follows:

- Decision-Making and Coordination of Planning:
- Coordinate with senior managers from key City departments on a continuing basis.
- Coordinate with state and federal cooperating and participating agencies on a continuing basis.
- Involve senior managers from City departments when policy and programmatic decisions are made related to their departmental jurisdictions.
- The Mayor will determine overall Project policies which are not otherwise established by Ordinance.

- Project Implementation:
- The DTS Director will be primarily responsible for the Project. The DTS Director will retain control of the Project's third-party contracts as the contracts' Officer-in-Charge. The DTS RTD will control all technical aspects and phases of the work, and will be the primary point of contact for the Project.
- The RTD is supplementing its staff during the PE/EIS phase of project development through a contract with a PMC. The PMC approach permits the immediate mobilization of an experienced project management team and additional staff as needed while the City recruits employees. The City may procure services of a PMC for the Final Design phase if the City's staffing level needs to be supplemented.
- Work to conduct PE and to prepare the requisite EIS(s) will be provided by a single GEC overseen by the RTD.
- The RTD will function as an integrated project organization during the PE/EIS phase, with key staff from the City, PMC, and GEC co-located within the Project office. A determination will be made during the PE phase whether RTD continues as an integrated project organization in subsequent phases.
- EDCs and a GCM will be procured during PE.
- System Suppliers and Construction Contractors may be procured during all construction phases.
- The City will operate and maintain the First Project fixed guideway system through a management services contract.

## **11.2 City and County of Honolulu**

This section describes the organizational structure of the City and the responsibilities of key City departments as they relate to the Project. An example of City's organizational structure can be found below in Figure 11-1.

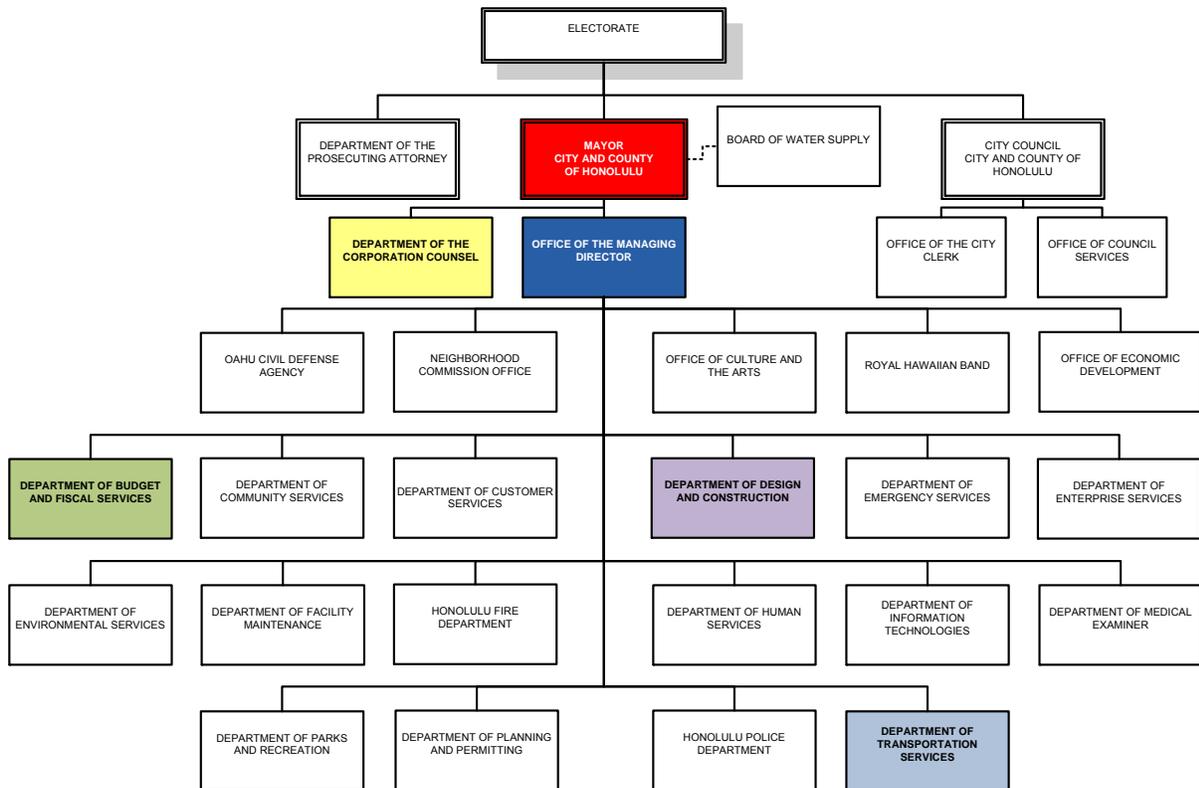
### **11.2.1 Organization of the City and County of Honolulu**

The City's governmental structure consists of the Legislative Branch and the Executive Branch. The legislative power of the City is vested in and exercised by an elected nine-member City Council whose terms are staggered and limited to no more than two consecutive four-year terms. Every legislative act of the City Council is made by ordinance. Every proposed ordinance is initiated as a bill and is passed only after three readings on separate days. A public hearing is required for each bill. Non-legislative acts of the City Council are made by resolution, and except as otherwise provided, no resolution has the force or effect of law. The executive power of the City is vested in and exercised by an elected Mayor, whose term is limited to no more than two consecutive full four-year terms. The executive agencies involved with the Project are further described in this section. The City is the designated recipient of FTA Section 5307 funds apportioned to the Honolulu and Kailua-Kaneohe urbanized areas. The City has been an FTA grantee since 1970 and the

grants are managed by the DTS. The DTS will also apply for and manage New Starts funds awarded to the City. The overall responsibility for implementing the Project is with DTS.

Figure 11-1: City & County of Honolulu Organization Charter

CITY AND COUNTY OF HONOLULU  
**ORGANIZATION CHARTER** Figure 11-1

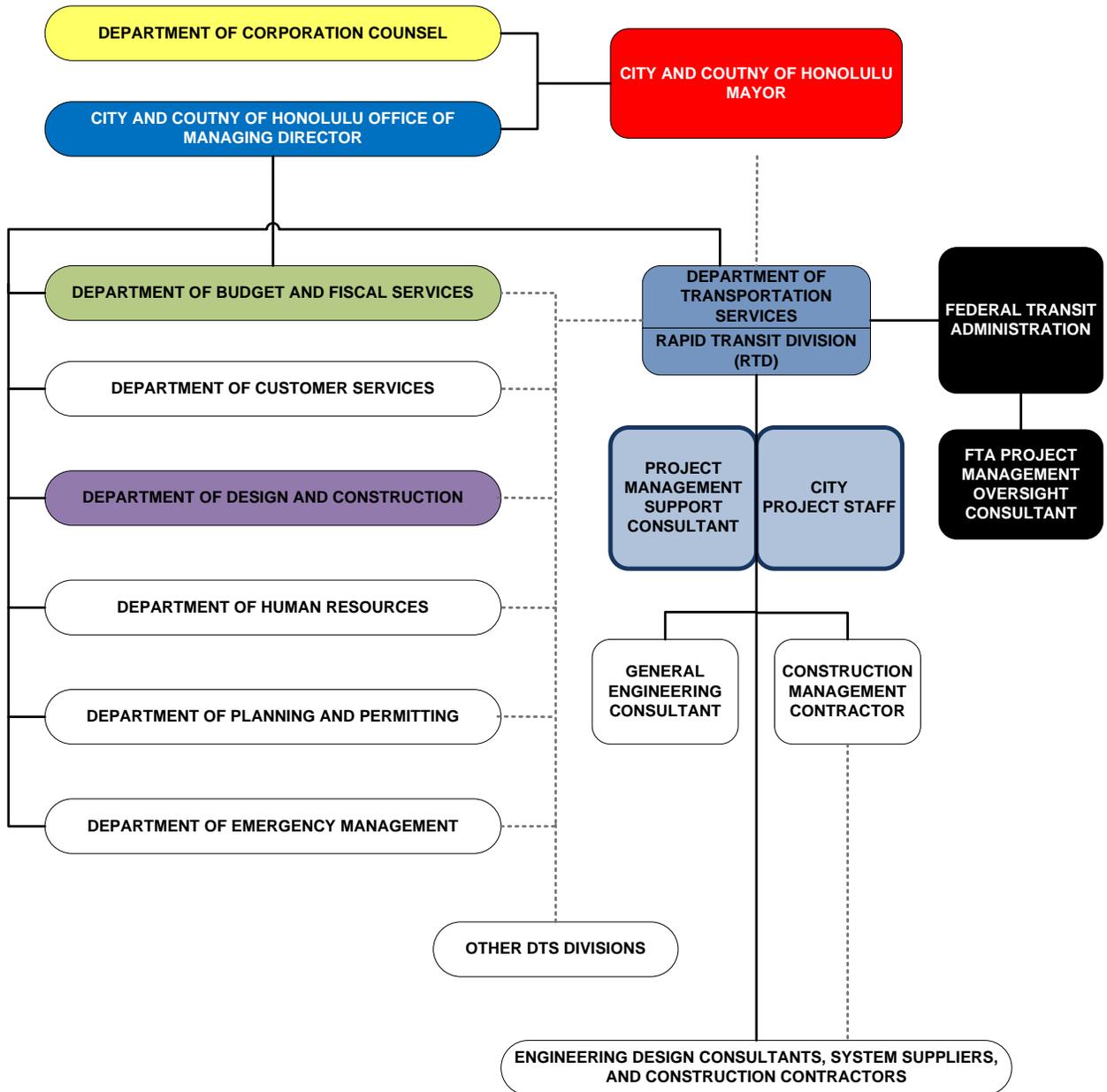


## **11.2.2 Key City Departments and Entities Relating to the Project**

The functions of the key City departments that will be involved in the Project and the Project organization are described in Section 2 of the Project Management Plan. The Project organization chart is presented in Figure 11-2.

Figure 11-2: Project Relationship Structure

**CITY AND COUNTY OF HONOLULU PROJECT RELATIONSHIP STRUCTURE**  
**RAMP Figure 11-2**



### **11.2.3 Key City Departments Relating to Real Property Acquisitions and Relocations**

The DTS (the City's implementing agency) is not a transit authority. The City's Revised Charter (RCH) and Revised Ordinances (ROH) delineate the responsibilities of each department within the executive branch. The City's different departments do not constitute legal entities which are separate and apart from the City and County of Honolulu (City and County of Honolulu v. Toyama, 61 Haw. 156, 598 P.2d 168 (1979)). The departments with authority over real estate acquisitions and relocations are the Departments of Design and Construction, Corporation Counsel, and Budget and Fiscal Services. These departments will continue to fulfill their responsibilities under the RCH and ROH for the Project.

Department of Design and Construction (DDC) - Pursuant to ROH Section 2-8.1, the DDC's Land Services Division is the City agency responsible for surveys, title searching, appraising and negotiation for acquisition of lands and easements for rights-of-way for street widening and extensions, sewers, water, drainage and other public uses. During the fiscal year ended June 30, 2007, the Land Services Division conducted 1,455 title searches, 1,018 negotiations, and 780 field surveys; and acquired 393 parcels. The Chief of the Land Services Division is authorized to approve review appraisals and offers of just compensation.

Department of the Corporation Counsel (COR) – The Corporation Counsel is the director of the COR and serves as the chief legal adviser and legal representative of all agencies, the City Council and all officers and employees in matters relating to their official powers and duties. The COR represents the City in all legal proceedings, except as otherwise provided by the Revised Charter of the City and County of Honolulu (RCH).

Department of Budget and Fiscal Services (BFS) - Pursuant to ROH Section 6-203, the BFS is responsible for preparing and maintaining a perpetual inventory of all lands owned, leased, rented or controlled by the City. The BFS' Purchasing and General Services Division is responsible for procuring all materials, supplies, equipment, and services for city departments and agencies; processing construction, consultant, and personal services contracts; maintaining inventory of all city personal property; exchange, disposal, sale or transfer of surplus equipment; and managing city-owned real property not utilized by other departments. The division's Property Management and Disposal Section is responsible to conduct relocations pursuant to requirements set forth in the Uniform Act. BFS responsibility for Property Management can be found in the ROH Chapter 28 (see RAMP Appendix M), and disposal of City property in ROH Chapter 37. Relocation responsibility was assigned to BFS through an executive reorganization as referenced in the City's Relocation Policies and Procedures, Section I. City-Wide Relocation Responsibilities, A . "The Department of Budget and Fiscal Services (BFS) Purchasing Division, Relocation Section is responsible for providing relocation services, including the technical assistance, and training to enable the City to fulfill its statutory relocation assistance requirements."

### 11.3 Right-of-Way Team Members

The Right-of-Way Teams are groups of individuals who work for the Department of Design and Construction, Budget and Fiscal Services, Rapid Transit Division, Transportation Services, Corporation Counsel, Program Management Support Consultant, and the General Engineering Consultant.

A Right-of-Way Coordination Team was established to assist the development and approval of the RAMP document. After the RAMP document approval, the Right –of-Way team will begin work on implementing the document into the project. The Land Division will begin making offers to purchase the needed right of way after the appraisal review and just compensation has been established but not before the issuance of the ROD.

The Right-of-Way Team meets every Thursday from 1:30 – 2:30 p.m. in the Alii Place War Room (Honolulu). The Right-of-Way Coordinator will be responsible for coordination, notification, assignments, outcome, and record keeping of these meetings, as well as coordinating right-of-way activities and processes among all stakeholders.

Right-of-Way Teams are self-directed and staffed with professionals who are well-versed in CFR regulations and requirements, and have proficiency in several real estate related disciplines necessary to deliver a clear right-of-way for construction, and have adequate experience in implementing a project in compliance with the Uniform Act. Right-of-Way Acquisition Organization resumes can be found in Appendix G.

Right-of-Way Team members possess the following interpersonal and organizational skills and abilities that enable them to work effectively within a team structure:

- Professional Independence – Right-of-Way Team members make many decisions without consulting higher management authority in advance. However, they realize their decision-making authority level.
- Collaborative Attitude – Right-of-Way Team members coordinate and integrate their efforts with work of specialists from other work disciplines and departments. There is a collaborative, not authoritative, relationship among departments representing different Project functions.
- Personal Responsibility – Right-of-Way Team members are responsible for achieving specific Project goals. There is no chain of command that can obscure responsibility. There is no occasion for finger pointing or blame shifting. Individuals working on the Project are considered experts and conduct themselves in such a manner.
- Focus on Project Schedule and Budget – Right-of-Way Team members participate with the Project Manager in setting goals at the start of each project. Progress is monitored and adjustments are made at milestone points. Once established, the Right-of-Way Team commit to the schedule and budget. Achievement is not an exclusive management concern.
- Due to the way the City is structured it will be imperative that each of the City departments participating in tasks relating to the development and

implementation of the RAMP, Real Estate Process, Condemnation Procedures, Intra- and Inter-Governmental Negotiation Transfers, Relocation Assistance Program, Real Property Management, and Right-Of-Way Tracking communicate effectively, efficiently, and in a timely manner throughout the life of the Project. All right-of-way decisions and assignments related to the development and implementation of the RAMP will be documented and filed in the RTD Document Control System.

The Right-of-Way Team consists of staff from RTD; the Departments of Design and Construction, Corporation Counsel, Budget and Fiscal Services; and the GEC.

Manager of Real Estate

Right-of-Way Coordinator

Deputy Corporation Counsel

Land Division Chief

Real Property Appraisal Officer

Land Acquisition Officer

Land Survey Branch Chief

Property Management Specialist-Relocation Agent

Right-of-Way Specialist (Consultant)

Right-of-Way Mapping Manager (Consultant)

All Team members except for the Land Survey Branch Chief and the Right-of-Way Coordinator and Mapping Manager require Uniform Act experience. The City is committed to hiring individuals who have Uniform Act experience and knowledge as well as to providing technical training.

### **11.3.1 Manager of Real Estate (TBD; Thomas Miyata is serving as Interim Manager of Real Estate)**

The Manager of Real Estate will need to have a strong background in 49 CFR Part 24, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs" and be able to demonstrate his or her knowledge and skills associated with the regulations. The following is the position description for the Manager of Real Estate. Under the supervision of the Project Executive, this position is directly responsible for:

Developing and managing all activities related to the Honolulu High-Capacity Transit Corridor Project real estate programs.

Monitoring and making decisions related to joint development opportunities in accordance with RTD policy, including negotiations with developers and other public and private agencies to maximize monetary benefit of City owned land and public transit services. Evaluating joint development proposals and responsible for overseeing any joint development project.

Coordinating appraisal, acquisition and management of properties, relocation of displaced tenants, and the sale of excess property with DDC and BFS.

Deciding strategies designed to support and enhance RTD real estate activities.

Managing the most difficult analyses and preparation of complex technical reports regarding joint development, appraisals, negotiations, relocation assistance and property disposition functions.

Coordinating with all key RTD personnel.

Overseeing proper application and compliance with FTA and other applicable federal, state and City regulations.

Performing other duties as assigned.

### **11.3.2 Right-of-Way Coordinator: Carol Webb**

Carol is a project controls and scheduling specialist, most recently involved innovative transit program underway at the Harris County (Houston) MTA where her responsibilities included developing schedules for Phase 2 of Houston Metro Solutions, a \$1.2 billion project. She was responsible for the real estate acquisition schedules for a centralized intermodal facility and five new LRT and BRT corridors, ROW Coordinator focusing on defining and facilitating the interfaces between all of the ROW Stakeholders, tracking ROW budget and producing reports and charts to communicate the actual and projected expenditures, development of program schedules for vehicles and systems, establishing baseline cost schedules for real estate and future forecasting, and reviewing and analyzing the program schedules provided by contractors. Carol was formerly with Siemens Transportation Systems, where she served as a project controls scheduler for the Houston METRO Light Rail Transit Project. More details on Carol's experience are provided below.

### **11.3.3 Deputy Corporation Counsel: Winston Wong**

Winston Wong is a licensed attorney authorized to practice before all Hawaii courts. He has over 30 years of experience in the land acquisition and eminent domain areas of the law. He also has 2 years experience implementing Uniform Act and other requirements. His experience includes the handling of a number of eminent domain cases and trials. His position in the Department of the Corporation Counsel is to assist all City departments in acquiring any interest in real property needed for a public purpose.

### **11.3.4 Land Division Chief: Thomas Miyata**

Thomas has about 30 years of experience in real estate appraisal and has a Certified General Appraiser license in the State of Hawaii since 1991. He also has 3 years of experience implementing Uniform Act and other requirements. Appraisal experience includes partial takings, easement valuations, temporary acquisitions, market value estimate for disposition and acquisition, and various related valuation studies. He is qualified to testify as an expert witness for the City on real estate valuation issues.

His prior employment with the City and County of Honolulu includes real property appraisal and real property analyst for the property tax assessment division. Thomas has been with the Land Division for 20 years and held positions as a staff appraiser and Real Property Appraisal Officer performing appraisals and appraisal review for the real estate acquisition. He has been Chief of the Land Division for the past 5 years. His current position is responsible for managing the real estate acquisition activities for the City that include surveying, real estate appraisal, appraisal review, title searching and document preparation and the coordination with the department responsible for relocation activities.

### **11.3.5 Real Property Appraisal Officer: Scott Shigeoka**

Scott Shigeoka has been a Certified General Appraiser licensed in the State of Hawaii since 1991 with over 29 years of experience in real estate appraisal. During the past ten years Mr. Shigeoka has worked at the State of Hawaii Department of Transportation and most recently with the City and County of Honolulu's Department of Design and Construction, Land Division. He has over 8 years of experience implementing Uniform Act and other requirements. Appraisal assignments have included partial takings, easement valuations, temporary acquisitions, market value estimate for disposition and acquisition, and various related valuation studies. Scott also has testified as an expert witness on real valuation in the Hawaii circuit courts.

### **11.3.6 Land Acquisition Officer: Mary (Dodie) Browne**

Dodie Browne has worked in the real estate field for the past 27 years researching land titles and genealogy to determine accuracy of title ownership. Ms. Browne has worked for the City and County of Honolulu's Department of Design and Construction for 20 years; 18 years as a Land Agent negotiating for property rights for various City projects, and the last two years as the Branches Acquisition Officer. She has over 19 years of experience implementing Uniform Act and other requirements on the various Federal Aid Projects in which she has been involved. Ms. Browne has been involved in numerous land transactions for the City, including federally assisted projects. She currently plans and coordinates the work of the Acquisition Branch which includes the Negotiation, Abstract and Documents Sections, to meet City construction deadlines.

### **11.3.7 Land Survey Branch Chief: Milton Watanabe**

Milton Watanabe has over 33 years of experience in the field of land surveying in Hawaii; the last 29 years with City and County of Honolulu's Department of Design and Construction, Land Division; the last 7 years as the Land Survey Branch Chief. Previously Mr. Watanabe was employed as a surveying technician with the US Army Corps of Engineers, Fort Shafter and as an engineering aide with a private engineering firm. Mr. Watanabe has been registered as a Licensed Professional Land Surveyor in the State of Hawaii since 1992. He is also registered as a Land Court Surveyor in the State of Hawaii.

### **11.3.8 Property Management Specialist – Relocation Agent: May Whitten**

May Whitten has over 25 years of experience in the real estate field including 10 years of housing management. She is a Relocation Agent for the City and County of Honolulu's Department of Budget and Fiscal Services since 2002 and is responsible for all relocation required by the entire City in accordance with URA and Hawaii Administrative Rules, Title 17-2017 and interim property management. She also has 5 years of experience

implementing Uniform Act and other requirements. Her responsibilities include initial research, relocation planning, budgeting through final payments of relocation assistance. She also oversees relocation generated by the City's sub recipients of federal funds, such as, Community Development Block Grants (CDBG) and Home Investment in Affordable Housing (HOME), and ensures the sub recipients follow the Uniform Act as amended.

#### **11.3.9 Right-of-Way Specialist: LaMar Mabey**

LaMar has over 30 years experience in real estate as a real estate agent, real estate broker and as an appraiser. He has been a Certified General Appraiser in the State of Utah since 1992. He has been involved in the appraisal profession over 19 years, the last 16 ½ years working within the Right of Way Division of the Utah Department of Transportation (UDOT). His right of way experience includes making sure the Uniform Act as amended was implemented in all appraisals, appraisal reviews, negotiations and relocations. During his tenure at UDOT, he worked very close with his counterpart at the Federal Highway Administration on Right of Way issues. He also has had some experience working with the Utah Transit Authority (UTA) on their light rail systems and commuter rail system (Front Runner).

#### **11.3.10 Right-of-Way Mapping Manager: Kevin Wong**

Kevin Wong has about 33 years of experience managing and designing a diverse range of engineering projects in both the private and public sector. For the past 17 years, he has worked with Parsons Brinckerhoff in Honolulu and is currently PB's discipline lead for surveying, right-of-way mapping, and drainage/storm water management/flood control on the Honolulu High-Capacity Transit Corridor Project.

Kevin experience with PB includes, most recently, managing the Hawaii Water Systems Technical Studies Program Statewide Dam Break Analysis for the US Army Corps of Engineers (USACE)/Department of Land and Natural Resources (DLNR). In this project, PB was tasked with studying the effects of a variety of dam break scenarios for two earthen dams, one on the island of Kauai and the other on the island of Molokai, with the ultimate purpose of mapping the worst-case flood inundation areas that would result from those scenarios. From 1993 through project completion in 2000, Kevin was PB's project manager for the Interstate Route H-3 Tetsuo Harano Tunnel project. Kevin led PB's multidisciplinary tunnel design and construction management team responsible for planning, design, construction management, and operations and maintenance support for this complex highway tunnel project. Kevin is a licensed civil engineer in the State of Hawai'i and the State of California.



## **11.4 Use of Consultants**

### **Project Management Support Consultant (PMC)**

The PMC provides in-house project management services and functions as an extension of the City's staff. Such services shall include professional, technical, managerial and other support services to initiate and complete the PE/EIS phase of the Project. The PMC will be integrated into the RTD. The PMC's work will be monitored by the PExec.

### **PE/EIS General Engineering Consultant (GEC)**

The GEC will conduct PE and prepare EISs for the Project pursuant to NEPA and HRS Chapter 343 and it's implementing administrative rules. As part of this effort, the GEC will be responsible for conducting public involvement activities, and conducting engineering and technical studies to support the preparation of the EIS. The GEC will assist the RTD in preparing for competitive procurement of fixed guideway revenue vehicles and developing Design-Build procurement documents for Phase I. The GEC will also conduct preliminary engineering and New Starts PE and prepare documents to support the City's request to advance Phase II to the Final Design phase.

### **Before and After Study Consultant (BASC)**

The BASC reports to the RTD and will be contracted to implement the Before and After Study Plan prepared by the RTD, as required by the FTA New Starts program. Title 49 United States Code Section 5309(g)(2)(C) requires a project sponsor to develop a Before and After Study as a condition for each new Full Funding Grant Agreement (FFGA). These studies are intended to assess the impacts of New Starts projects, compare the actual costs of the projects and ridership two years after opening to those forecast, and identify the sources of differences between predicted and actual outcomes.

### **Engineering Design Consultants (EDCS)**

EDCs will provide support to RTD during all elements of engineering and design of Phase II of the First Project. The EDCs will provide design support services in three main areas. These include the following: Final Design of the fixed facilities; Final Design of the system-wide elements; and Engineering services during construction for both fixed facilities and system-wide elements. Fixed facilities design includes the design of civil and structural facilities, track-work, utilities, stations, and landscaping. System design includes design of the Project's electrification system, train signal system, train-to-central control communications system, fare collection, and storage yard. Vehicle procurements for Phases I and II will be managed by separate EDCs and will include Buy America pre-award and post delivery audits. Engineering services during construction includes activities such as responding to requests for information, shop drawing review, and review of contractor value engineering and cost reduction proposals.

### **General Construction Manager (GCM)**

The GCM's responsibilities are further detailed in Chapter 11. In general, the GCM will provide services during the fixed facilities final design and construction phases, including final design oversight of the EDCs, resident engineering, office engineering, and inspection. This will include such items as performing QA inspections of all EDC and Contractor

activities, reviewing all contract document submittals including shop drawings and specifications, reviewing contractor invoices, reviewing requests for information (RFIs), reviewing requests for change (RFCs), conducting inspections, value engineering, and reviewing change order estimates.

### **System Suppliers and Construction Contractors**

Construction Contractors will be responsible to construct the First Project based on the scope provided. It is not certain at this time which suppliers of the system components of the Project will be included as part of the construction contract or individually procured. Such information will be developed when further engineering has been completed.

## **11.5 Interface with Other Agencies**

The City is required to interface with other agencies during the development and implementation of the First Project. As part of the planning and initial design process, relationships have been built with affected agencies. This will continue through the life of the First Project. Regular meetings will occur between project management and staff for both public and private entities throughout the design development process.

### **Cooperating and Participating Agencies**

In compliance with SAFETEA-LU Section 6002, appropriate federal and state agencies were invited by the FTA and the City to serve as cooperating or participating agencies in the environmental review process for the Project. A “cooperating agency” has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed project or project alternative. “Participating agencies” are those with an interest in the Project. As cooperating or participating agencies, they will have the opportunity to be involved in defining the purpose of and need for the Project, as well as determining the range of alternatives to be considered for the Project.

### **Cooperating Agencies**

The following agencies have agreed to be cooperating agencies:

- The Federal Highway Administration (FHWA) - The Project will require FHWA approval related to access to the interstate system, notably at the H-2 freeway ramps.
- The U.S. Army Corps of Engineers will be involved with issuing permits or other approvals related to streams along the alignment.
- The U.S. Department of Homeland Security (U.S. Coast Guard-14th Coast Guard District) will also issue approvals related to stream crossings.
- The U.S. Department of Defense’s (U.S. Army Garrison-Hawaii) will review the planned guideway’s crossing of U.S. Army property at Fort Shafter.

The State of Hawaii Department of Transportation has been invited to participate as a cooperating agency; the Project will require their approval related to the use of state right-of-way along Kamehameha Highway and Farrington Highway. The U.S. Department of Defense (U.S. Naval Base Pearl Harbor) has determined not to participate as a cooperating agency; rather, they will be involved as a participating agency.

## **Participating Agencies**

The following federal agencies have accepted the invitation to be participating agencies: U.S. Department of Agriculture (Natural Resource Conservation Service, related to the loss of agricultural lands; the U.S. Department of the Interior (Fish and Wildlife Service), related to Section 7 consultations; the U.S. Department of the Interior (National Park Service), related to the Arizona Memorial; the U.S. Department of the Interior (U.S. Geological Survey Pacific Island Ecosystems Research Center), related to earthquakes; the U.S. Department of Transportation (Federal Aviation Administration) related to Honolulu International Airport; the U.S. Environmental Protection Agency, for overall environmental issues; and the U.S. Federal Emergency Management Agency, related to flooding.

The following state agencies have accepted the invitation to be participating agencies: State of Hawaii's Hawaii Community Development Authority, related to the Kakaako and Kalaeloa communities; the State of Hawaii Department of Education, related to potential impacts on schools; the State of Hawaii Department of Accounting and General Services, related to state projects and buildings; the State of Hawaii Department of Land and Natural Resources (State Historic Preservation Division and Division of Forestry and Wildlife), related to historic resources and endangered species; the State of Hawaii Department of Defense, for related defense issues; the State of Hawaii Department of Hawaiian Home Lands, related to lands in Kapolei and the potential maintenance and storage facility at the Navy Drum Site; the State of Hawaii Department of Health, related to clean water, air quality and noise issues; the State of Hawaii Office of Environmental Quality Control, related to implementation of Hawaii Revised Statutes Chapter 343; the State of Hawaii Office of Hawaiian Affairs, related to Hawaiian and cultural issues; the State of Hawaii University of Hawaii, related to University of Hawaii lands; and the Oahu Metropolitan Planning Organization.

The PExec will be responsible for project level interface between agencies. Formal technical agreements with each of the affected private and public entities will be executed. These agreements will be developed by the RTD, reviewed by the COR, and may require adoption of an authorizing resolution by the City Council. Key agencies, jurisdictions and private entities affected by the Project include but are not limited to the agencies described below.

### **Department of Homeland Security (DHS)**

DHS provides centralization for the national network of organizations and institutions focused on homeland protection. DHS works to enhance rail and transit security, in coordination with the U.S. Department of Transportation and other federal agencies, and in partnership with the public and private entities that own and operate the nation's transit and rail systems. DHS's Transportation Security Administration (TSA) works to advance mass transit and passenger rail security through a comprehensive strategic approach that enhances capabilities to detect, deter, and prevent terrorist attacks and respond to and recover from attacks and security incidents, should they occur. TSA Surface Transportation Security Inspectors, from the TSA Office of Security Operations, conduct on-site inspections of mass transit and passenger rail agencies and maintain collaborative working

relationships with industry representatives. They work closely with the TSA Mass Transit Security Division for support and programmatic direction.

### **Federal Transit Administration (FTA)**

FTA awards and administers grants and oversees the expenditures of federal funds for mass transit projects. FTA contracts with a PMOC to act as an extension of its project management staff in monitoring an agency's performance on a major capital investment project. The PExec, with support from staff, will interface with the PMOC and the FTA on a regular basis. The City understands the importance of maintaining involvement by the PMOC and the FTA at its regional and headquarters offices. The PExec will continue to provide an on-going relationship with FTA and the PMOC with open communications throughout the Project.

### **State of Hawaii**

The First Project is being developed and constructed within the State of Hawaii (the State). The First Project will be required to meet state laws and regulations related to health, safety, environment and welfare.

### **Department of Business, Economic Development, and Tourism**

The RTD will interface with the Department of Business, Economic Development and Tourism's Office of Planning in its administration of the Hawaii Coastal Zone Management Program.

### **Department of Health**

The EIS required by HRS Chapter 343 will be coordinated with the Department of Health's Office of Environmental Quality Control.

### **Department of Land and Natural Resources**

The RTD will interface with the Department of Land and Natural Resources' Historic Preservation Division. The State Historic Preservation Officer is the head of this division.

### **Department of Transportation (HDOT)**

Coordination with the HDOT will occur where the First Project is in close proximity to or affects a state highway or interstate facility.

### **Hawaii State Foundation on Culture and the Arts (FCA)**

This Foundation manages the Art in Public Spaces Program which was established in 1967 with the enactment of the Art in State Buildings Law. This designated one percent of the construction costs of new buildings for the acquisition of art, either by commission or purchase. This was expanded in 1989 by the State legislature to include having works of art for all state public spaces. The one percent is set aside into a special fund and is not subject to the state's general operating fund allowing for long term significant art projects to be planned and implemented.

### **Hawaii State Safety Oversight Office (SSOO)**

Prior to the start of PE, the State will designate a State Safety Oversight Office to comply with federal requirements for safety oversight. The department which will house this office has not yet been determined.

## **Oahu Metropolitan Planning Organization (OAHUMPO)**

The OahuMPO was formed as mandated per the Federal Surface Transportation Assistance Act of 1973 and State Legislature of 1975 through the passage of Chapter 279E, Hawaii Revised Statutes. OahuMPO's function is to coordinate the activities of the "3-C" transportation planning process on Oahu. The planning itself is done largely by the City and the State planning and transportation departments, which are OahuMPO's participating agencies. Oahu MPO will be involved in the Project as a participating agency.

The Oahu MPO is responsible for coordinating transportation planning on Oahu and has four components: Policy Committee; Technical Advisory Committee; Citizen Advisory Committee; and Staff. OahuMPO is also responsible for identifying Oahu's future transportation needs and programming the federal funds for such projects and programs. This is achieved primarily through the development of the following documents: Oahu Regional Transportation Plan (ORTP); Overall Work Program (OWP); and Transportation Improvement Program (TIP). OahuMPO is responsible to process Project-related amendments and/or modifications to the ORTP and TIP.

### **Policy Committee**

The Policy Committee is the "heart" of the OahuMPO planning process. It sets the policy and direction and makes the final approval on OahuMPO matters. The Policy Committee consists of 13 members: Five City Council members; Three State senators (including the chair of the Senate Transportation Committee); Three State representatives (including the chair of the House Transportation Committee); HDOT Director; and City DTS Director.

### **Technical Advisory Committee (TAC)**

The Technical Advisory Committee provides advice to the Policy Committee and the OahuMPO's Executive Director on technical matters, and ensures the technical competence of the planning process.

### **Citizen Advisory Committee (CAC)**

The CAC is the foundation of the OahuMPO's public involvement program. The CAC provides public input to the Policy Committee and the OahuMPO's Executive Director on transportation planning issues. As such, the CAC is involved early in the process, often meeting face-to-face with agency representatives. The CAC provides an opportunity for citizens to get involved in the transportation planning process. The CAC members include community organizations, professional associations, neighborhood boards, special interest groups, and transportation providers. Any organization can become a member of the CAC by attending four meetings within a 12-month period. All CAC meetings are open to the public; and participation from all citizens is welcome. Meetings are typically held on the third Wednesday of the month at 4:00 p.m. in downtown Honolulu.

## **11.6 Interface with City Departments Involved in Real Estate**

The process of Project development involves a varied range of professionals, departments, and work disciplines including, planning, design, environment, utilities, public involvement, right-of-way and project management. Right-of-way is a critical function when real estate interests are required for the Project.

## **Appendices**

- Appendix A** Acronyms
- Appendix B** Glossary
- Appendix C** 49 CFR Part 24
- Appendix D** FTA Circular 5010 .1C
- Appendix E** Real Estate Acquisition Process, Tracking, and Reporting Tools (E1-E5)
- Appendix F** FHWA Relocation Brochure
- Appendix G** Real Estate Staffing Resumes
- Appendix H** FHWA Acquisition Brochure
- Appendix I** Relocation Notices and Development
- Appendix J** Appraisal Realty and Personalty Determination Procedures
- Appendix K** RESERVED
- Appendix L** Real Property Transaction Procedures
- Appendix M** Lease and Rental Procedures
- Appendix N** Relocation Policy and Procedures
- Appendix O** Project Parcel Listing
- Appendix P** Project Parcel Plans
- Appendix Q** Real Property Acquisition Modes and Methods
- Appendix R** Appraiser Requirements, Scope of Work, Certification
- Appendix S** Condemnation Policy and Procedures
- Appendix T** Title Search Requirements, Scope of Work, Certification
- Appendix U** RESERVED
- Appendix V** Real Property Qualified Appraisers List FY 2007/2008
- Appendix W** Real Property Acquisition Policy and Procedures
- Appendix X** Real Property Appraisers Request for Qualifications FY 2007/2008
- Appendix Y** Relocation City-Wide Roles and Responsibilities
- Appendix Z** Fee Simple and Leasehold Determination Procedures



APPENDIX A

**ACRONYMS**

<u>Acronym</u>	<u>Definition</u>
AA	Alternatives Analysis
ACM	Asbestos Containing Material
ASTM	American Society for Testing and Materials
ATR	Acquisition Tracking Report
BCIS	Bureau of Citizenship and Immigration Service Office
BFS	Department of Budget and Fiscal Services
CAC	Citizen Advisory Committee
CCH	City and County of Honolulu
CE	Cost Estimate
CERCLA	Comprehensive Environmental Response Compensation and Liability Act of 1980
CFR	Code of Federal Regulations
City	City and County of Honolulu (Project Sponsor and FTA Grantee)
COR	Department of Corporate Counsel
D/B	Design-Build
DCS	Department of Customer Services
DDC	Department of Design and Construction
DHR	Department of Human Resources
DHS	Department of Homeland Security
DPP	Department of Planning and Permitting
DTS	Department of Transportation Services
EDC	Engineering Design Consultant
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FCA	Hawaii State Foundation on Culture and the Arts
FHWA	Federal Highway Administration
FN	Folio Number (Property Identification)
FT	Full-Time
FTA	Federal Transit Administration
GCM	General Construction Manager
GEC	General Engineering Consultant
HDOT	Highway Department of Transportation
HHCTCP	Honolulu High-Capacity Transit Corridor Project
IN	Initiation of Negotiations
JC	Just Compensation
LAC	Licensed Asbestos Consultant
LCC	Leeward Community College
LPA	Locally Preferred Alternative
MPO	Metropolitan Planning Organization
NTP	Notice to Proceed
OM	Office of the Mayor
OMD	Office of Managing Director
OSHA	Occupational Safety and Health Administration
PE	Preliminary Engineering
Pexec	Project Executive
PM	Project Manager

APPENDIX A

**ACRONYMS**

<u>Acronym</u>	<u>Definition</u>
PMC	Project Management Support Consultant
PMOC	Project Management Oversight Contractor (FTA)
PMP	Project Management Plan
Project	Honolulu High-Capacity Transit Corridor Project
PT	Part-Time
RA	Review Appraiser
RACM	Regulated Asbestos Containing Material
RAMP	Real Estate Acquisition and Management Plan
RAR	Review Appraiser Report
ROD	Record of Decision
RON	Resolution of Necessity
ROW	Right of Way
RTD	Rapid Transit Division
SAFETEA-LU	Safe, Accountable, Flexible, and Efficient Transportation Equity Act - A Legacy for Users
TAC	Technical Advisory Committee
TC	Transportation Commission
TPD	Transportation Planning Division
UH	University of Hawai'i
Uniform Act	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
USC	United States Code
USPAP	Uniform Standards of Professional Appraisal Practice



## APPENDIX B

### GLOSSARY

- A. Appraisal - A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date fully supported by pertinent factual market data.
- B. *Comparable replacement dwelling*. The term *comparable replacement dwelling* means a dwelling which is:
1. Decent, safe and sanitary as described;
  2. 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 trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling (iii) Adequate in size to accommodate the occupants;
  3. In an area not subject to unreasonable adverse environmental conditions;
  4. 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;
  5. 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.
  6. Currently available to the displaced person on the private market
  7. Within the financial means of the displaced person:
    - a. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all incidental expenses plus any additional amount required to be paid under replacement housing of last resort.
    - b. 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

- c. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement 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. Such rental assistance must be paid under replacement housing of last resort.
  8. For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.
- C. Cost to cure - The cost to restore an item of deferred maintenance to new or reasonably new condition.
- D. Decent, safe and sanitary dwelling – a dwelling which meets local housing and occupancy codes. However, any of the following standards that are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:
1. Be structurally sound, weather tight, and in good repair;
  2. Contain a safe electrical wiring system adequate for lighting and other devices;
  3. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;
  4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes 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;
  5. 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 the case of 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;

6. Contains unobstructed egress to safe, open space at ground level; and
  7. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.
- E. Displaced Person - Any 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 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 for 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 in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under §24.205(c)
- F. Dwelling - The place of permanent or customary and usual abode of a person. It includes a single family building; a one-family unit in a multi-family building; a unit of a condominium or cooperative housing project; any other resident unit, including a mobile home which is either considered to be real property under State law, or cannot be moved without substantial damage or unreasonable cost or is not a decent, safe and sanitary dwelling.
- G. Economic Rent - The amount of rent a tenant or homeowner would have to pay to rent a dwelling comparable to the acquired dwelling in a similar area.
- H. Fair Market Value - 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 adaptable and available.
- I. Family - Two or more individuals who live together in a dwelling and are:
1. Are related by blood, marriage, adoption, or legal guardianship; or
  2. Who live together as a family unit and may be determined to be jointly eligible for relocation assistance and payments.
- J. Farm Operation - A lawful activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use.
- K. Federal Financial Assistance - A grant, loan or contribution provided by the United States, other than a Federal guarantee or insurance, or an annual payment or capital loan to the District of Columbia.
- L. Functional Replacement - The replacement of real property, acquired for a transportation facility or purpose, with lands or facilities, or both, which will provide equivalent utility. The

replacement may be accomplished by construction of a new facility or renovation of an existing facility, whichever is cost effective, feasible and agreed to by the parties to the functional replacement agreement.

- M. Grantee - Any public agency which, either individually or jointly with one or more other public agencies, is eligible to receive Federal financial assistance.
- N. Initiation of Negotiation for the Project - The date the City makes the first personal contact. The term *initiation of negotiations* means the following:
1. Whenever the displacement results from the acquisition of the real property by a Federal Agency or State 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. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, and a 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.
  2. Whenever 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 State 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.
  3. 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.
  4. 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 under this part, until there is a written agreement between the Agency and the owner to purchase the real property
- O. Just Compensation - The measure of Just Compensation is the fair market value of the property taken. It disregards any decrease or increase in the fair market value of the property to be acquired prior to the date of valuation caused by the Project, other than that due to physical deterioration within the reasonable control of the owner.
- P. Local Governmental Entity - A unit of government with less than statewide jurisdiction or an officially designated public agency or authority of such a unit of government. The term may include a county, an incorporated city, a metropolitan planning organization or a Water Control/Management District.
- Q. Local Proprietary Property - Property owned by a local governmental entity for a specific purpose other than a transportation facility, such as a school, office or park.

- R. Mortgage - A lien commonly given to secure an advance on or the unpaid purchase price of, real property together with any credit instruments secured thereby.
- S. Ninety (90) Day Letter of Assurance - The letter sent to all displacees that gives them the assurance that they will have at least ninety (90) days before they are required to vacate.
- T. Nonprofit Organization - A corporation, partnership, individual or other public or private entity engaged in a business, professional or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade or other tangible property for the carrying on of the business, profession or instructional activity on the premises.
- U. Owner - One or more individuals:
  - 1. Owning, legally or equitably, the fee simple estate, a life estate, a 99-year lease or other proprietary interest in the property;
  - 2. Contracting for any of the foregoing estates or interests;
  - 3. With a lease, at least 50 years to run from the date of the acquisition of the property;
  - 4. With an interest in a cooperative housing project, which includes the right to occupy the dwelling; or
  - 5. Who has succeeded to any of the foregoing interests by devise, request, or inheritance of operation of law.
- V. Person - A partnership, company, corporation or association, as well as an individual or family.
- W. Project - Any FTA Grant Agreement which will result in the acquisition of land and/or the displacement of people.
- X. Remnant - A remainder or portion of property that will be left in a size, shape or condition as to be of little market value.
- Y. Tenant - An individual or family who rents, or is temporarily in lawful possession of a dwelling, including a sleeping room.





# Federal Register

---

Tuesday,  
January 4, 2005

---

Part V

## Department of Transportation

---

Federal Highway Administration

---

49 CFR Part 24

Uniform Relocation Assistance and Real  
Property Acquisition for Federal and  
Federally-Assisted Programs; Final Rule

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****49 CFR Part 24**

[FHWA Docket No. FHWA-2003-14747]

RIN 2125-AE97

**Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

**SUMMARY:** The FHWA is revising the regulation that sets forth governmentwide requirements for implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act). These changes will clarify present requirements, meet modern needs and improve the service to individuals and businesses affected by Federal or federally-assisted projects while at the same time reducing the burdens of government regulations. The regulation has not been fully reviewed or updated since it was issued in 1989. These amendments to the Uniform Act regulation will affect the land acquisition and displacement activities of 18 Federal Agencies including the new Department of Homeland Security.

**DATES:** *Effective Date:* February 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mamie L. Smith, Office of Real Estate Services, HEPR, (202) 366-2529; Reginald K. Bessmer, Office of Real Estate Services, HEPR, (202) 366-2037; or JoAnne Robinson, Office of the Chief Counsel, HCC-30, (202) 366-1346, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the **Federal Register's** home page at: <http://www.archives.gov> and the Government Printing Office's database at: <http://www.gpoaccess.gov/nara/>.

**Background**

Title 49, CFR, part 24 implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et*

*seq.*, (the Uniform Act). The Uniform Act applies to all acquisitions of real property or displacements of persons resulting from Federal or federally-assisted programs or projects and affects 18 Federal Agencies. This regulation has not been comprehensively revised or updated since its initial publication in 1989.

The FHWA, as the lead Federal Agency, hosted an all-Agency meeting in 2001 to begin discussions about a comprehensive review of this regulation because of numerous requests from various Agencies to update 49 CFR Part 24. The FHWA worked with the 18 other Federal Agencies to form a Federal Interagency Task Force to explore the need to revise this regulation. The FHWA then hosted five nationwide public listening sessions to gather public input into the need for regulatory reform.

After receiving public input, working with the Interagency Task Force and incorporating recommendations from all 18 Federal Agencies, the FHWA published a notice of proposed rulemaking (NPRM) on December 17, 2003 (68 FR 70342). The NPRM proposed revisions to the Uniform Act regulation that would clarify present requirements, meet modern needs and improve the service to the individuals and businesses affected by Federal or federally-assisted projects while at the same time reducing the burdens of government regulations. An extensive history of the Uniform Act's implementation, and a comprehensive narrative outlining the efforts to update this regulation is discussed in the preamble to the NPRM in great detail.

**Public Meetings**

During the comment period to the NPRM, the FHWA hosted three additional public meetings (in Washington, DC; Atlanta, GA; and Lakewood, CO) to discuss the proposed changes to the regulation as outlined in the NPRM. The meetings were held to assure that every opportunity was offered to encourage additional public and stakeholder comment on the proposed changes. A total of 60 individuals and organizations attended the three public meetings. Also, during the comment period, the FHWA posted on its Web site a pre-addressed comment form for easy access and mailing to the docket.

**Discussion of Comments Received to the Notice of Proposed Rulemaking (NPRM)**

In response to the NPRM published on December 17, 2003, the FHWA received 775 comments to the docket.

The 775 comments were received from 80 individual commenters. The commenters included a variety of groups and organizations, such as local public Agencies, State Highway Administrations, private real estate and environmental consulting firms and interested individuals.

Of the 775 docket comments, 62 were positive and supportive of the proposed changes and 58 were on subjects where no change had been proposed. Thirty comments were programmatic questions and will be answered through a follow-up question and answer memorandum, and 26 comments requested increases in statutory limits that cannot be addressed in the regulations. On March 3, 2004, all 18 Federal Agencies were invited and encouraged to send representatives to an Interagency Federal Task Force (IFTF) meeting to review and respond to the 775 comments. Of the 18 Federal Agencies, 12 responded by sending one or more representatives. Following the initial meeting, four additional IFTF meetings were held and all 775 comments were categorized into subparts discussed individually, and evaluated. The FHWA, as Lead Agency, would like to thank the Department of Housing and Urban Development (HUD) who worked closely with FHWA to organize and share in hosting the work group meetings to assure that all comments were carefully considered.

**Section-by-Section Discussion Changes****Subpart A—General****Section 24.1(b)**

One commenter indicated that § 24.1(b) should include an anti-discrimination purpose.

A number of Federal statutes (notably the Civil Rights Acts of 1964 and 1968) and Executive Orders apply to Agencies carrying out Federal or federally-assisted programs, and prohibit discrimination on the basis of race, color, sex, age, religion, national origin or disability. These legal authorities are self-executing and do not require specific mention in a rule implementing the Uniform Act to find effect. Any explicit listing of such provisions in this regulation runs the risk of inadvertent omission, creating the implication that any legal authority not referenced is somehow inapplicable.

**Section 24.2 Definitions and Acronyms**

Two commenters suggested various formatting changes. One suggested that clarity and readability would be improved by stating each defined term only once, rather than entry as a heading, followed by repeating the term

in the definition. Another suggested that we adopt simplified formatting.

We appreciate these comments, however, we will keep the same format in this final rule.

#### Section 24.2(a) Personal Property

One commenter requested that we add a definition of personal property.

We considered the request, however, after surveying the varying State laws that define personal property, we have determined that it would not be feasible to provide a single definition that would fit within all State laws. Therefore, whether an item is personal property or real property will continue to be left to State law.

#### Section 24.2(a)(5) Citizen

One commenter requested that we define or clarify the term "noncitizen national" used in the definition of "citizen" in § 24.2(a)(5).

The term "noncitizen national" was added to the definition of citizen in 1999 (64 FR 7130). The term includes persons from certain United States possessions, such as American Samoa, who are considered citizens for purpose of this part. Accordingly, no change in the final rule is necessary.

#### Section 24.2(a)(6)(ii) Comparable Replacement Dwelling

Ten comments were made on the proposal to remove the phrase "style of living" from the definition of comparable replacement dwelling. The majority of the comments were in favor of removing the phrase; however, two commenters were concerned that the displaced person's rights would be diminished if the phrase is deleted.

We carefully considered removing "style of living" from the definition of comparability, and we determined that the displaced person would not suffer any erosion of protections provided by existing comparability requirements. The phrase "style of living" has sometimes been misused and has proven to be confusing.

Occasionally, the phrase has been used out of context and interpreted to require identical unique features found in acquired dwellings. In such cases, the standard for replacement housing has been raised to a level above "comparable." This interpretation can make it nearly impossible to find appropriate replacement housing and could result in replacement housing payments greater than those intended by the Congress.

A more complete explanation can be found in the preamble to the NPRM (68 FR 70344). The Congress recognized that strict and absolute adherence to an

exhaustive, detailed, feature-by-feature comparison can result in rigidities. We believe other criteria currently under the definition of comparability will adequately cover the factors covered by "style of living" and, therefore, have not included this phrase in the final rule.

#### Section 24.2(a)(6)(viii) Deductions from Rent

One commenter objected to the proposed addition of language in § 24.2(a)(6)(viii) that would have allowed rent owed to an Agency to be taken into account when determining whether a comparable replacement dwelling is within a displaced person's financial means. The comment noted that State landlord/tenant laws normally govern disputes over rent, and that § 24.2(a)(6)(viii) should not, in effect, supercede the tenant protections contained in such laws in determining a displaced person's financial means.

We agree with this comment, and accordingly have not adopted the language that would have considered any rent owed the Agency in determining financial means.

#### Section 24.2(a)(6)(viii) Financial Means

The Uniform Act requires that comparable replacement dwellings must be "within the financial means" of a displaced person. This term is defined further within the definition of comparable replacement dwelling. The NPRM proposed simplifying the definition of financial means by consolidating it from three paragraphs to a single paragraph. No change in meaning was intended.

We received 12 comments on this proposed change. The commenters expressed two major concerns. First, several comments indicated that consolidating the separate paragraphs relating to owners and tenants was confusing and might, in some cases, result in changes to replacement housing payments.

After further consideration, we believe these comments are correct, and, accordingly, have not adopted the proposed consolidation. (We have, however, deleted some redundant language relating to welfare assistance programs that designate amounts for shelter and utilities, since this is now addressed in § 24.402(b)(2)(iii).)

Secondly, because of other related changes in the NPRM, several commenters stated that the proposal would no longer adequately address the benefits to be provided to a person who is not eligible to receive replacement-housing payments because of a failure to meet the necessary length of occupancy requirements. Such persons are still

entitled to receive comparable replacement housing within their financial means.

Besides proposing to simplify the description of financial means, the NPRM also proposed changing the way the rental replacement housing payment would be computed by revising the description of "base monthly rent" in § 24.402(b)(2), and removing the reference to 30 percent of income in § 24.404(c)(3) (which describes the eligibility of persons that fail to meet the length of occupancy requirements). The later two changes have been adopted, as discussed further in this preamble.

We agree that the proposed changes left it unclear as to the benefits that were to be provided to persons who failed to meet length of occupancy requirements. Accordingly, we have retained a paragraph (§ 24.2(a)(6)(viii)(C)), within the description of financial means, that addresses those persons, described in § 24.404(c)(3), who do not meet length of occupancy requirements. It is similar to the current provision, and provides that the payment to such persons shall be the amount, if any, by which the rent at the replacement dwelling exceeds the base monthly rent described in § 24.402(b)(2), over a period of 42 months.

#### Section 24.2(a)(6)(ix) Subsidized Housing

Several commenters took issue with the proposed change to apply a government housing subsidy program's unit size restrictions when providing comparable replacement housing.

It appears that several of the commenters did not understand how the government subsidy programs work. The choice of a replacement dwelling is always left to a displaced person, but a displaced tenant's eligibility for relocation assistance is premised upon the selection of a decent, safe and sanitary "comparable" dwelling. The existing regulations have long provided that a comparable dwelling, in the case of a person displaced from housing receiving certain project-based or voucher based subsidies, is another dwelling unit receiving the same or a similar subsidy.

In such cases the HUD program requirements for subsidized housing, may limit the unit size of available subsidized housing by applying a determination as to a family's current needs, even though the displacement dwelling may have been larger. This final rule acknowledges these requirements, and provides in § 24.2(a)(6)(ix) that the requirements of government housing assistance

programs, relating to the size of the dwelling unit that may be provided, apply when such housing is used as a comparable replacement dwelling.

A person displaced from a subsidized unit may elect to relocate to housing available on the private market without subsidy, but the available relocation payment will be limited by a computation using a comparable subsidized unit. In most cases, the long-term housing subsidy available to someone displaced from a subsidized unit, will be more advantageous than a relocation payment based on the selection of a dwelling available on the private market. The relocation payment for a dwelling on the private market is limited to a rental differential for a 42-month period by the Uniform Act.

#### Section 24.2(a)(8)(ii) Decent, Safe and Sanitary

Twenty comments were received concerning the inclusion of standards relating to deteriorated paint or lead-based paint in the definition of "decent, safe, and sanitary dwelling" in § 24.2(a)(8). While all of these comments were favorable, there is no legal authority for mandating these standards in connection with the referral to comparable private market replacement housing under the Uniform Act. Accordingly, this language has been removed from the list of the mandatory elements of "decent, safe, and sanitary" replacement housing appearing in this regulation. Instead, we have included in appendix A a suggestion that such standards may be required by local housing and occupancy codes, and may, in any event be highly desirable in protecting the health and safety of displaced persons and their families.

#### Section 24.2(a)(8)(iv) Housing and Occupancy Codes

Of the seven comments received on § 24.2(a)(8)(iv) having to do with using local housing and occupancy codes to determine whether the unit is decent, safe and sanitary, most were concerned with determining the number of rooms and living space per individual. One commenter requested that the FHWA set a minimum number of square feet in a bedroom for each occupant as well as set an age standard for bedrooms occupied by siblings of opposite gender.

The protection of the public health, safety and welfare is an essential power of a sovereign government specifically reserved to the States. Accordingly, this regulation references local housing and occupancy codes as the primary source for defining "standard" housing. (In the case of certain federally subsidized replacement housing, federally-issued

"housing quality standards" may be employed where such codes do not exist or are not applied to such housing.)

As was noted in the preamble to the NPRM, the existing regulatory policy on this subject would apply only in the absence of local codes. This has been clarified in § 24.2(a)(8)(iv). Questions of whether contrary or more restrictive housing and occupancy standards than those found in a local code, imposed by State law, must be deemed to override these local standards must be determined as a matter of State law by courts of competent jurisdiction or by the State's Attorney General, and cannot be addressed in these regulations.

#### Section 24.2(a)(8)(vi) Egress to Safe Open Space

We received three comments concerning the removal of the requirement that replacement housing units have two means of egress when replacement units are on the second story or above and have direct access to a common corridor. One was in favor of the change, a second was uncertain as to the purpose of the requirement and another was against the change for fear of the safety risks to the displaced person.

This is an area best handled through local fire and building codes and does not require Federal guidelines to assure the safety of displaced persons. There was overwhelming support for removing the requirement from our five national Public Listening Sessions that we held leading up to preparations of the NPRM. Therefore, no change was made to the language proposed in the NPRM.

#### Section 24.2(a)(8)(vii) Disability

Thirteen commenters requested that the definitions of Comparable Replacement Dwelling and Decent Safe and Sanitary Dwelling (and the corresponding provisions of appendix A) go into more detail regarding the needs of persons with disabilities, as well as a variety of disabilities.

Because the needs of persons who are disabled are addressed by other Federal or local statutory and regulatory requirements, which may or may not apply to any individual project which triggers the Uniform Act, we believe it is unnecessary to elaborate further in this rule except as noted in appendix A. The final rule addresses the need to accommodate the displaced person's needs in terms of unit size, location, access to services and amenities, reasonable ingress, egress or use of a replacement unit, and therefore, we do not believe additional detail is necessary.

We agree that there is a need to revise some of the language in appendix A, § 24.2(a)(8)(vii) to address the physical attributes of replacement housing for persons with physical disabilities beyond those dependent on a wheelchair. Therefore, we have broadened the language in the final rule to include persons with a physical impairment that substantially limits one or more of the major life activities of such individual. We have not addressed the needs of other nonphysical disabilities (such as mental impairment) in this rule since it is unclear what unit attributes would need to be addressed for this class of persons and any needs of such persons would be more appropriately addressed by other statutory and regulatory requirements.

#### Section 24.2(a)(9)(ii)(D) Temporary Relocation

In 1987, the Uniform Act was amended to cover displacement from Federal and federally-assisted programs or projects as a direct result of rehabilitation. To counter the disincentive this might create for a tenant temporarily displaced from a residence while that residence is being rehabilitated, we considered such a person not to be displaced, if, and only if, certain stringent protections are applied. These included covering moving expenses to and from the temporary location, payment of increased housing costs during the period of relocation, the guarantee of a return to the same unit, or to another suitable unit in the same building or complex, and a limitation on a rental increase at the rehabilitated replacement unit.

We believe that this interpretation of the law, to create an exception to its general applicability, must be limited and strictly applied, in order to meet the intent of Congress. Accordingly, the NPRM proposed that displacement for a period exceeding 12 months must ordinarily be considered significant enough to fall within the general rule pertaining to displacement as a direct result of rehabilitation, and not to come within the limited exception to the definition of "displaced person" which the law establishes. Therefore, the language proposed in the NPRM will not change.

We received eleven comments on the proposed language further describing temporary relocation in § 24.2(a)(9)(ii)(D) of appendix A. Two comments supported this change. However, we are seriously concerned that several of the commenters appear to believe that a person who is displaced by a project that triggers the Uniform

Act can somehow be exempted from full relocation assistance benefits as a displaced person if the Agency terms his/her relocation "temporary", regardless of the required length of time or hardship caused to the displaced person. We are further concerned that some commenters seem to consider the cost to their project more important than the protection provided by the Uniform Act. This may indicate that appropriate project and relocation planning is not taking place. It is for this reason that additional clarity concerning temporary relocation has been added to the rule.

Several commenters referenced the HUD policies on temporary relocation. HUD has indicated for years that it has always restricted "temporary relocation" to situations where the Uniform Act trigger was rehabilitation. In such cases, a tenant was guaranteed the right to return to a unit in the project prior to moving from the displacement dwelling. In recent years, HUD has permitted grantees to consider up to one year as acceptable temporary relocation duration, but again, only where the Uniform Act trigger is rehabilitation. However, HUD reports that some HUD grantees may have abused this policy and stretched it to apply in situations which are clearly beyond the scope of "temporary," where an entire building or group of buildings is being demolished and will be replaced with fewer units. In this situation, displaced persons cannot be guaranteed a unit in the new building(s) at the time they are required to move from the displacement unit for reasons including: there may be insufficient units rebuilt; former tenant may not meet newly adopted return criteria, and, return to the project may not be for years simply because of the massive demolition and rebuilding that must take place. While many of these sorts of projects purport to allow displaced tenants to return, the reality is that few can. We do not support advising tenants that they are only being temporarily relocated, and are not displaced, when their actual return to a unit in the project is in doubt, and/or may not be for an extended period of time. Further, permanently displacing a person and providing them with full relocation assistance under the Uniform Act should not automatically negate their ability to apply for or return to the site of the HUD funded project that caused their displacement. Many HUD projects give preference to former tenants who want to return.

The rule, now requires that any residential tenant who has been temporarily relocated for a period beyond one year must be contacted by

the Agency and offered all permanent relocation assistance.

One commenter suggested imposing the same one-year requirement upon owner occupants and nonresidential occupants. The final rule adopts language in the proposed rule that provides that "temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location." We believe this establishes a sound policy that should be followed in most cases. We recognize, however, that in some situations, involving temporary relocations caused by disasters or public health emergencies, Agencies may not be able to provide permanent relocation benefits to such occupants within one year, if ever, because of statutory or programmatic limitations.

We also agree with the commenter who suggested that a temporary move of personal property is not intended to be covered by the one-year limitation on temporary moves.

We expanded the language in appendix A, § 24.2(a)(9)(ii)(D), to cover "rehabilitation or demolition" as suggested by one of the commenters. As noted, we are not changing the language relative to "one year" as we believe this is a reasonable time for any tenant to be in temporary housing (one year is a fairly common initial lease period across the United States). After the one-year period, the final rule requires that a residential tenant be offered permanent relocation assistance. Such tenants may be given the opportunity to choose to continue to remain temporarily relocated for an agreed to period (based on new information about when they can return to the displacement unit), choose to permanently relocate to the unit which has been their temporary unit, and/or choose to permanently relocate elsewhere with Uniform Act assistance. It is expected that temporary relocations will be rare, and, for HUD funded projects, clearly planned for in the development of the project, and used only where a tenant is guaranteed a replacement unit in the project or unit from which they were displaced.

#### Section 24.2(a)(9)(ii)(M) American Dream Downpayment Initiative (ADDI)

A new paragraph, § 24.2(a)(9)(ii)(M), has been added to the list of "persons not displaced" to reflect a provision, added by Section 102 of the American Dream Downpayment Act (Pub. L. 108-186; codified at 42 U.S.C. 12821) provides that the Uniform Act does not apply to the American Dream Downpayment Initiative (ADDI), a downpayment assistance program

administered by the Department of Housing and Urban Development.

#### Section 24.2(a)(11) Dwelling Site

We received nine comments in response to the proposed definition of dwelling site. Most agreed that it was needed. Six commenters asked that additional information be provided on what constitutes a dwelling site.

We agree and are revising the definition for clarity. We have provided specific examples in appendix A as to when its use is appropriate.

#### Section 24.2(a)(12) Eviction For Cause

We received nine comments on the proposal to simplify the eviction for cause provisions in § 24.206 by moving some of them to a new definition in § 24.2(a)(12). Several commenters found this proposal to be confusing, and believed that it resulted in substantive changes to the eviction for cause provisions. This was not our intent, and accordingly we have not adopted the changes to § 24.206 and the new definition that were proposed in the NPRM. We have retained the current regulatory language in § 24.206.

One commenter objected to a clarifying sentence proposed in § 24.206 of appendix A, which simply stated that an eviction related to project development does not affect entitlement to relocation benefits. The commenter felt that this conflicted with the current eviction for cause provisions. However, we have retained the language in appendix A to make it clear that evictions related to scheduled project development, to gain possession of property, do not affect relocation eligibility. As noted in § 24.206, a person who is a lawful occupant on the date of initiation of negotiations is presumed to be entitled to relocation benefits, and can only be denied relocation benefits if the person had received an eviction notice prior to the initiation of negotiations, or is evicted thereafter "for serious or repeated violations of material terms of the lease or occupancy agreement." We do not consider an eviction resulting from a failure to move or relocate when asked to do so, or to cooperate in the relocation process for a federally funded project, to be based on a "serious or repeated violation of material terms" of a lease or agreement.

If an eviction is "for the project" (resulting from a failure to move or relocate when asked to do so, or to cooperate in the relocation process) such an eviction cannot be considered as "serious or repeated violation of material terms" of a lease or agreement unless, prior to executing the lease, the

tenant was notified in writing of the proposed project and its possible impact on him/her and that he/she would not be eligible for relocation payments. While public housing leases may have a clause requiring that a tenant move or cooperate in a move, these provisions are included for the purpose of adjusting unit size as necessary for changes in family composition, and do not negate the tenant's eligibility for relocation benefits caused by a federally-assisted project which triggers the Uniform Act.

#### Section 24.2(a)(13) Financial Assistance/Lease Payments

One commenter objected to the proposed addition of the term "lease payment" in the definition of "Federal financial assistance" in § 24.2(a)(13). The commenter noted that this term is not included in the statutory definition of "Federal financial assistance" and its addition could have major consequences that were not mentioned or considered in the NPRM. We agree and have deleted the term.

#### Section 24.2(a)(14) Household Income

We received 16 comments concerning the new definition of household income. Most of the comments were positive and in support of the new definition. However, four commenters requested that we go further in our definition of household income by adding additional examples. Several of the same commenters also requested that the examples given in appendix A be moved to the definition in § 24.2(a)(14).

Because the sources of household income constantly change and vary by household, we will not produce a more definitive list of income sources. Based on the experience of other Federal Agencies that use definitions of income, such definitions can never be totally comprehensive or timely, and could render the regulations outdated within a short period of time. Displacing Agencies need to determine income for each individual or family based on whatever financial resources are available (earned, unearned, benefits, etc.). When a question arises as to whether something should be considered as income, the Federal Agency administering the program should be contacted for its assessment. To further assist in the determination of income exclusions, the FHWA has provided a Web site, (*see* appendix A, § 24.2(a)(14)), of income exclusions that are federally mandated. The income exclusions change periodically based on congressional action and the FHWA will update the Web site as necessary.

We are opposed to moving the examples in appendix A to the definition. The examples are to support the definition and should not be a part of the definition. Therefore, they will remain in appendix A.

One commenter suggested that we change the language in the definition to assure that income claimed is actually received. It is our position that the responsibility for verifying income should be left to the acquiring Agency.

One commenter raised the concern that we have not made provisions for changes that may occur in the income stream throughout a 12 month period. We suggest that if the income changes before the relocation offer is made, that an adjustment be made based upon verification of the change in income. Otherwise, we suggest using the income stream in existence at the time of the relocation offer. The amount of a displaced tenant's replacement housing payment should not be adjusted if the tenant's income later changes. The Uniform Act envisions a rental assistance payment that is determined once, and which is not affected by subsequent events. Replacement Housing Payments under the Uniform Act are not to be confused with rental or homeownership subsidy programs. There is no statutory provision for adjusting relocation claims or payments based on changes in income after the eligibility determination has been made.

#### Section 24.2(a)(15) Initiation of Negotiations

The NPRM proposed adding paragraph (iv) to the definition of Initiation of Negotiations (ION) in § 24.2(a)(15), to address ION for acquisitions that occur amicably, without recourse to the power of eminent domain. The intent was to avoid establishing a tenant's relocation eligibility before there was any certainty that the property would actually be acquired.

We received 21 comments on this change. A major concern was that delaying tenant eligibility in these cases, until the owner accepts an offer to purchase, might have an adverse effect on such tenants by, for example, their being forced to move as part of the pre-acquisition negotiations, as well as otherwise increasing uncertainty in program management.

In response, we have revised paragraph (iv) in the final rule to provide that ION means the actions described in paragraphs (i) and (ii), for routine Agency acquisitions, except that, in the case of amicable acquisitions covered in paragraph (iv), the ION does not become effective for purposes of

establishing relocation eligibility until there is a written agreement between the Agency and the owner to purchase the property. This would establish the potential relocation entitlement of tenants at the time negotiations begin, but would not provide relocation benefits in the event no agreement was reached to acquire the property. Such tenants should be fully informed of their potential eligibility.

In response to a comment we also changed the reference to "acceptance of the Agency's offer to purchase the real property" to "written agreement between the Agency and the owner to purchase the real property," for greater clarity and specificity.

At the request of the Environmental Protection Agency (EPA), the language in § 24.2(a)(15)(iii), concerning the initiation of negotiations on superfund related projects, has been updated and clarified, primarily to delete references to a "Federal or federally-coordinated health advisory." Such health advisories are general in nature and are rarely related to determinations that relocation is necessary. Rather, the action that triggers relocation is a fact-based determination by the EPA, or the Federal Agency conducting an action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510 or Superfund) (CERCLA), that temporary relocation or acquisition is necessary because there is a threat to an individual's health or safety. Typically, on such projects, temporary relocation occurs first, and then, if warranted by the circumstances, it may be followed by permanent relocation. Similar clarifications have also been made in appendix A, § 24.2(a)(15)(iii).

#### Section 24.2(a)(17) Mobile/Manufactured Homes

A new definition for the term "mobile home" has been added to this section. Six comments were received on this proposed addition. Five commenters agreed that the definition was needed, and three comments proposed changes to the definition to differentiate between mobile homes, manufactured housing and recreational vehicles. The term "mobile home" includes both manufactured homes and recreational vehicles used as residences. Appendix A explains that "mobile homes" and "manufactured homes" are recognized as synonymous by HUD for that Agency's programs, and for purposes of this regulation will be considered the same. Appendix A also includes further requirements that recreational vehicles must meet in order to qualify as replacement housing in appendix A.

(Subpart F continues to include an explanation of the different methods of computing relocation assistance when a mobile home has been determined to be personal property, and when it is determined to be real property.)

#### Section 24.2(a)(22) Program or Project

One commenter requested a more detailed definition of the term "project." Federal Agency experience over the years has amply demonstrated that it is not feasible to devise a common definition of "project" which could apply to all Federal and federally-assisted programs subject to the Uniform Act. Widely varying legislative and administrative histories of the various programs currently covered, as well as (in some cases) decades of practice, have led to the conclusion that the broad definition of "project" should remain unchanged. To alter the present definition might prove highly disruptive to the administration of many programs administered by Federal Agencies.

However, Federal Agencies should always interpret the term "project" in a way that will ensure that persons who are forced to move as a result of Federal or federally-assisted activities are covered by the Uniform Act.

#### Section 24.2(a)(30) Utility Costs

Two commenters suggested further clarifying the expenses that are included in the definition of utility costs. In response, we have replaced the reference to heat and light with a reference to electricity, gas, and other heating and cooking fuels.

#### Section 24.4(a)(3) Assurances

We received two comments opposing the changes proposed in the NPRM to § 24.4(a)(3) of the NPRM. One commenter was concerned that the proposed language would exempt Agencies undertaking arm's length acquisitions from required compliance with the Uniform Act. Similarly, a second commenter brought to our attention that the proposed language may nullify the conditions set forth in CFR 49 Part 24.101(b)(1). We did not intend to undermine the requirements of other sections of the regulations, therefore, after careful review, we agree that the proposed language may be perceived to conflict with the provisions in § 24.101(b)(1), and have not adopted the proposal in the final rule.

#### Section 24.8 Compliance with Other Laws and Regulations

Several commenters suggested the inclusion of additional laws and regulations within § 24.8.

The existing regulatory language requires the implementation of this part to be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to the laws and regulations cited. The list is merely a representative sample of some significant laws and regulations and is by no means intended to be a comprehensive listing of all applicable laws and regulations. An applicable law or regulation is not required to be cited in this section to be applicable to this part. Therefore, no change is considered necessary. However, for clarity, we have corrected two existing laws. We have added, "as amended" after the reference to the Robert T. Stafford Disaster Relief and Emergency Assistance Act in § 24.8(n); and, we have added a reference to EO 12892, Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994), § 24.8(o). EO 12892 replaced EO 12259.

#### Section 24.9 Records and Reports

We received twelve comments on the proposed revisions to § 24.9(c), which proposed to require each Federal Agency to submit an annual report summarizing its relocation and acquisition activities. One commenter supported this change and one sought further clarification. The remaining ten commenters opposed this change, primarily on the grounds that it would impose significant administrative burdens and would have little apparent value.

It was not our intent to increase administrative burdens. As was noted in the NPRM, our primary interest was in obtaining more accurate information, to more effectively monitor implementation of the Uniform Act. However, due to the negative comments received, we have decided not to adopt the proposed change.

Further, since no comments objected to the proposed simplification of the report form in appendix B, we have adopted the proposed form and the instructions for its use. The simplification of the form may lead to greater use by Agencies.

Outside the context of Part 24, the lead Agency will explore the possibility of obtaining such additional acquisition and displacement information from other Federal Agencies as may result from routine Agency operations and oversight.

#### Subpart B—Real Property Acquisition

We received a comment that the NPRM proposed change to replace the term "fair market value" with "market

value" throughout Subpart B to better reflect current appraisal terminology was neither minor nor reflected universally accepted eminent domain terminology throughout the country.

Upon further examination, we determined that "fair market value" terminology is consistent with Uniform Act language and it appears that Federal courts see no difference in the terms "fair market value" and "market value." Accordingly, we have retained the terminology "fair market value" throughout the subpart, except for § 24.101(b)(1) through (5), where eminent domain is not applicable. But we have added language to appendix A noting that for Federal eminent domain purposes, the two terms may be synonymous.

#### Section 24.101(a) Direct Federal Program or Project

Federal Agencies advised us voluntary transaction provisions were being used to a significant extent and suggested that these exceptions should no longer apply to acquisitions by Federal Agencies. Their proposal to eliminate this provision for Federal agencies direct purchases is consistent with section 305(b)(2) (42 U.S.C. 4655(b)(2)) of the Uniform Act, which allows these exceptions for recipients of Federal financial assistance, but provides no such exceptions for Federal Agencies themselves. We included the Agencies' suggested revision in the NPRM.

Formerly, the two major exceptions to real property acquisition requirements in Subpart B were voluntary transactions and acquisitions in which the Agency does not have the power of eminent domain. We restructured this section to clarify the application of the real property acquisition requirements set forth in this subpart, and to revise the exceptions to those requirements.

We have adopted the Agencies' proposed change in the final rule, but the exceptions for federally-assisted projects and programs remains in § 24.101(b).

One commenter objected to excluding direct Federal acquisitions from voluntary transaction procedures because the commenter believed that where an Agency acquired a property that was listed for sale, it would create a windfall for that property owner by allowing the owner to receive Uniform Act benefits.

However, as noted elsewhere in this rule (See § 24.2(a)(9)(ii)(E) and (H) and 24.101(a)(2)), if a property owner voluntarily conveys his or her property, without recourse to the power of eminent domain, he or she would

continue to be ineligible for relocation benefits.

Based on a comment we added the word "direct" to the title of § 24.101(a) for clarity. We also added language to appendix A to further clarify the applicability of this paragraph.

We updated language in the rule and in appendix A to reflect the Rural Utilities Service, successor Agency to the Rural Electrification Administration.

We added § 24.101(a)(2) to make it clear that, despite the rule change to make all direct Federal acquisitions undertaken without recourse to the power of eminent domain subject to the provisions of Subpart B, the owners of property acquired voluntarily by direct Federal acquisition, continue to be ineligible for relocation assistance benefits.

#### Section 24.101(c) Less-Than-Full-Fee Interest in Real Property

There was a comment suggesting we move the language from appendix A, discussing Agencies applying these regulations to any less-than-full-fee acquisition, into the body of the rule itself for greater clarity.

We agree, and the final rule reflects this change.

#### Section 24.102 Basic Acquisition Policies

We received a comment stating that § 24.102 relates only to acquisitions under the threat of eminent domain, and should be retitled to reflect that.

We respectfully disagree with this comment and note the exceptions to the applicability of Subpart B, Real Property Acquisition, are in 49 CFR 24.101.

#### Section 24.102(c)(2) Appraisal, Waiver thereof, and Invitation to Owner

We received 28 comments on the NPRM appraisal waiver provisions. Twelve support the changes proposed in the NPRM.

Five commenters disagree with the proposed "two-tier" waiver threshold, especially the provision that the property owner be given the option to have an appraisal if the Agency wishes to use a waiver threshold between \$10,000 and \$25,000. These comments expressed the position that this procedure would be confusing and not really accomplish much.

In response to the language proposed in the NPRM, we received comments requesting waiver thresholds far in excess of \$10,000. However, the Agencies are not comfortable with a waiver threshold over the proposed \$10,000 limit without additional safeguards for the property owner. Part of this caution is based on the regulatory

history of the present policy, which links the appraisal waiver threshold to the cost of appraisal, i.e., a concern that appraisal costs were exceeding acquisition costs. The final rule does not change the NPRM proposal. We point out that use of the appraisal waiver provision is optional for an Agency, so if appraisal waiver provisions become burdensome or ineffective, the Agency need not implement them.

Two commenters expressed concern that appraisal waiver provisions risked property owner protection and were inconsistent with OMB Circular 92-06, which states, "Agencies should prepare real estate appraisal and appraisal review reports in accordance with written and approved agency standards consistent with the Uniform Standards of Professional Appraisal Practice (USPAP), sections (sic) I-III, as developed by the Appraisal Standards Board of the Appraisal Foundation."

We point out that appraisal waivers for low value acquisitions are specifically authorized by the Uniform Act, Section 301(2). We share the concern that property owners retain protections intended by the Uniform Act. That is one reason why we did not raise the waiver threshold to any higher level. As for the issue of consistency with USPAP, appraisal waiver is not an appraisal performance issue, but an issue about when an appraisal is needed under Federal law.

A question was also raised as to whether the threshold applies to the value of the larger parcel (before value) or the value of the proposed acquisition.

The regulation states that it applies to the "anticipated value of the proposed acquisition."

One commenter suggested removing the "on a case-by-case basis" language from proposed § 24.102(c)(ii) because it created confusion.

We did remove the "on a case-by-case-basis" language from the final rule as it was unclear.

There was one comment expressing concern about situations where a high percentage of an Agency's acquisitions may be through appraisal waiver procedures.

The FHWA shares that concern and is considering initiating research to examine this issue as it applies to our partner State DOTs; however, it is beyond the scope of this rulemaking action.

Two commenters pointed out (and support) that the NPRM proposed adding language that the determination to use an appraisal waiver must be made by a qualified person.

We are pleased to see not only support for this provision, but that it

was significant enough to comment on it.

Because of the number of comments indicating confusion in general as to the appraisal waiver provisions, we have added further explanation in appendix A.

#### Section 24.102(f) Basic Negotiation Procedures

Two commenters suggested that "reasonable opportunity" provided to an owner to consider and respond to an offer should be defined with a specific time frame (such as 30 days).

We did not include a required time frame, but appendix A does discuss the issue, stating that, depending on the circumstances, 30 days would seem to be a minimum time frame. We are reluctant to specify a time frame because we believe that circumstances can dramatically impact what is an appropriate reasonable opportunity to consider an offer and present information.

One commenter stated that giving property owners "a reasonable opportunity to consider the offer" has the potential to slow down project times.

We recognize this potential, however, we believe this statement reflects the primary purpose of the Uniform Act and this regulation, which is to assist and protect property owners and occupants.

One commenter suggested that Agencies should provide the owner and/or his/her appraiser a copy of the Agency's appraisal requirements and inform them that their appraisal should be based on those requirements.

This is an excellent idea, and we have included language to encourage Agencies to do this in appendix A.

One commenter suggested adding the word "all" to "reasonable efforts to contact the owner."

We agree and added the word "all" to the final rule for greater clarity.

#### Section 24.102(i) Administrative Settlement

Comments indicated support for this section, but noted that not much was changed. We agree. The revised language focuses more on clearly stating the supporting justification for settlements.

One commenter suggested that § 24.107, certain legal expenses, should be cross-referenced in this section.

Since the topics and issues are different, we did not make that change.

We have revised the language to require more specific information in the written justification ("state" rather than "indicate") and deleted specific suggestions ("appraisals, recent court

awards, estimated trial costs, or valuation problems") in favor of requesting "what available information, including trial risks, supports the settlement."

#### Section 24.102(n) Conflict of Interest

The NPRM proposed expansion of this section to include all persons making waiver valuations under § 24.102(c)(2). This change would bring equal conflict of interest standards to all individuals valuing real property, whether their work is waiver valuations, appraisal, or appraisal review, and would clarify who is covered.

We received 24 comments on the proposed revision to this section. The majority of comments referenced the proposal that any person functioning as a negotiator shall not supervise or formally evaluate the appraiser, review appraiser or person making waiver valuations.

Comments received focused on the impacts on Agency operations. A major concern was how an Agency could comply with the requirement that an appraiser, review appraiser or anyone making a waiver valuation not be supervised or evaluated by anyone negotiating for the property since currently most, if not all, managers frequently become involved in negotiations.

This is a difficult issue, but we, as well as the other affected Federal Agencies, continue to support the provision providing independence for appraisers from officials negotiating to acquire the property.

One commenter recommended that no Agencies be exempted from appraiser independence provisions and suggested that streamlined appraisals and reports could be used to meet budgetary needs.

The exemption is not based on financial considerations, but rather on recognition that some small Agencies, especially Federal-assistance recipients such as local public Agencies, do not have the staffing levels that are needed to support the separation of functions.

One commenter wondered about the impact on consultants of providing independence for appraisers from officials negotiating to acquire the property, and suggested the ethical controls in the Uniform Standards of Professional Appraisal Practice (USPAP)<sup>1</sup> are sufficient.

We note that USPAP controls apply to the appraiser, whose only recourse to inappropriate pressure from a manager or supervisor is refusal to do the assigned task. We believe that this does not adequately address conflict of interest concerns. Policing conflict of interest should not be the appraiser's responsibility. The impact on a consultant will ultimately be up to the funding Agency, which may waive this provision if it believes it appropriate to do so. Again, the responsibility to prevent undue pressure on an appraiser is on the Agency.

One commenter suggested the same (Agency) person should be able to procure contract appraisal services and serve as a negotiator.

This comment was from a local public Agency, which, as such, would be eligible for a waiver if granted by the Federal funding Agency, therefore we did not incorporate such a change.

One commenter expressed a concern that a Federal Agency could give itself a waiver from the requirement that negotiators may not supervise appraisers.

We believe the regulation is clear that the waiver is only for "a program or project receiving Federal financial assistance." This precludes the Federal Agency from granting itself a waiver.

One commenter supported the exception in the last paragraph, which allows the appraiser, the review appraiser and preparer of a waiver valuation to also act as negotiator when the offer to acquire is \$10,000 or less. However, another commenter objected to this exception, stating the issue was too important to allow a waiver.

Another commenter suggested the \$10,000 threshold be raised to match the appraisal waiver threshold.

One commenter objected to allowing appraisers to act as negotiators in acquisitions under \$10,000.

We did not change the threshold amount because the participating Federal Agencies continue to believe that the \$10,000 limit provides a reasonable and appropriate exception for low value transactions. The rule adopts the conflict of interest language proposed in the NPRM.

#### Section 24.103 Criteria for Appraisals

One commenter asked if there is some way we could require that all appraisals prepared for use under the Uniform Act meet appraisal requirements in this rule. The commenter was referring to appraisals made other than for the Agency, such as for property owners.

Many jurisdictions grant broad authority to property owners to express their opinions about their property, and

some even compensate them for the costs of an independent appraisal. We see no way we can require appraisal requirements in this rule for property owners' appraisals or other valuation opinions. We suggest Agencies make available their appraisal requirements to property owners so at the least they will know what the requirements are for the Agency's appraisal(s).

The revisions relating to appraisals in §§ 24.103 and 24.104 are the first since The Appraisal Foundation published the USPAP in 1989. Considerable confusion and misunderstanding as to the applicability of the USPAP provisions to Uniform Act real property acquisitions have existed ever since USPAP was first published. The Uniform Act and 49 CFR part 24 set the requirements for appraisal and appraisal review in support of Federal and federally-assisted acquisition of real property for government projects. Many of the revised provisions of §§ 24.103 and 24.104 are intended to assist the appraiser, the Agency and others in understanding the requirements of these subparts in light of the USPAP.

We changed the terminology throughout this section from "standards" to "requirements" to avoid confusion with USPAP standards rules. We also added the phrase "Federal and federally-assisted program" to more accurately identify the type of appraisal practices that are to be referenced, and to differentiate them from private sector, especially mortgage lending, appraisal practice.

One commenter suggested we use USPAP Standards 1, 2 and 3 for several reasons. Certified and licensed appraisers in most States are required to comply with USPAP, and although the Jurisdictional Exception may be used where the USPAP is contrary to law or public policy, that complicates matters unnecessarily. Also, USPAP standards are already in place, and this would assure the Federal government, taxpayers and property owners that appraisals and appraisal reports comply with certain minimum standards.

Uniform Act appraisal requirements have been in place for some time and actually predate USPAP. They were put in place to do what the commenter suggests: provide assurance that when an Agency needs real property, all the parties involved are treated fairly. That is the primary purpose of the Uniform Act. As for the USPAP Jurisdictional Exception, we believe any "complication" is mostly based in misunderstanding of how it works. In any case, USPAP Jurisdictional Exceptions are by definition based in law or public policy and the Agency has

<sup>1</sup> Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/html/USPAP2004/toc.htm>.

very little, if any, flexibility for optional compliance with the Uniform Act.

#### ection 24.103(a) Appraisal Requirements

In the NPRM we proposed stating that these regulations set forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs to make it clear that other performance standards, such as USPAP and those issued by professional appraisal societies, do not directly govern programs covered by the Uniform Act. Based on the comments we received, this proposed language clarified the relationship between the appraisal requirements in this rule and USPAP and we have included that language in the final rule. Additionally, we have added further explanatory language in appendix A.

The NPRM proposed adding a requirement for a scope of work statement in each appraisal. The scope of work replaces the former appraisal problem statement. It also renders obsolete the former "minimum standards" and "detailed" appraisals, replacing them with an infinitely variable standard driven by the circumstances of each acquisition. We have included in appendix A a discussion on preparing the scope of work.

We received several comments supporting the adoption of the scope of work. One commenter suggested that the scope of work for Uniform Act purposes needs to be clearly differentiated from the scope of work required by USPAP.

As of the publication of this regulation, the Appraisal Standards Board has not finalized the scope of work in USPAP, so it would be premature to attempt to differentiate. It is our hope that the two concepts will be consistent and that a scope of work written in compliance with this rule will be compatible with any future scope of work requirement in USPAP.

One commenter said that the appraiser should not be able to unilaterally determine the scope of the assignment or what the appraiser will provide the Agency. However, another commenter suggested that the appraiser should decide the scope of work, perhaps in consultation with the client (Agency). This comment was made as part of a discussion about the Agency instructing the appraiser that in certain circumstances, the sales comparison approach would be the only approach to value to be used.

We point out that Agencies have had input to the appraisal process under the old rule. First, the "sales comparison

approach only" option has been available to Agencies for many years and has, to our knowledge, caused no problems. Second, these requirements are written on the basis that the Agency is a "knowledgeable user" of appraisal services. That is, the Agency is familiar with both the appraisal process and its own needs, and is capable of participating in a legitimate statement of work to solve the appraisal problem. Accordingly, we believe that appraisers should not be given final authority over the appraisal process for an Agency. We believe it is appropriate that this option continue to be retained by the Agency.

One commenter said it believes the purpose and/or function of the appraisal, a definition of the estate being appraised, and if it is market value, its applicable definition, and the assumptions and limiting conditions should be stated separately, and not be in the scope of work.

We believe the scope of work, as a vehicle of agreement between the appraiser and the Agency, is the appropriate place to include these items. They should also be included in the appraisal report, as part of the scope of work statement.

One commenter questioned the meaning of "the extent appropriate" for application of the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).<sup>2</sup>

The UASFLA is a publication that summarizes Federal eminent domain appraisal case and statute law. So, to the extent that an Agency either follows Federal eminent domain practices, or voluntarily adopts UASFLA as its appraisal guidelines, it may be applicable.

Another commenter recommended that the appraisal clearly define and list which items are considered as real property and which are considered as personal property.

We agree and the regulation and appendix A have been revised to reflect this suggestion.

Still another commenter suggested the five-year sales history be changed to ten years since the property may not have changed hands in the last five years.

Although we did not change the requirement in the regulation, we point out that its requirements are minimums. If the appraiser or the Agency believes

<sup>2</sup> The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at <http://www.usdoj.gov/enrd/land-ack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/ecom/publications/default.asp> and select "Legal/Regulatory" or call 888-570-4545.

higher levels of performance are necessary, then the appraisal scope of work should reflect that.

#### Section 24.103(a)(2)(ii) Appraisal Requirements

A commenter suggested that USPAP compliance would require appraisers to invoke the USPAP Departure Provision to use only the sales comparison approach.

We disagree with this evaluation. At the present time, a State certified or licensed appraiser who is requested by an Agency to provide only the sales comparison approach would, in our opinion, be doing so under the USPAP Jurisdictional Exception Rule, since the Agency's request would be pursuant to the authority granted it under its law and public policy, which is the basis for a USPAP Jurisdictional Exception.

#### Section 24.103(d) Qualifications of Appraisers and Review Appraisers

One commenter suggested the rule should recognize that appraisal professional organizations' designations provide an indication of an appraiser's abilities.

We have added language to § 24.103(d)(1) and corresponding text to appendix A to emphasize the need for appraisers and review appraisers to be qualified and competent, and that State licensing or certification, and professional designations can help provide an indication of an appraiser's abilities.

#### Section 24.103(d)(1)

While the majority of the comments on the proposed changes to this section were positive, we did receive several comments that recommended that appraisers and review appraisers be required to be State certified.

Although we have not adopted that suggestion, we recognize the need for appraisers and review appraisers to be qualified and competent, and that State licensing or certification, and professional designations can help provide an indication of an appraiser's abilities. Therefore, we have added certification and licensing to the list of items to be considered by an Agency in determining the qualification of an appraiser (or review appraiser). We also note that some States have specifically excluded certain State Agency appraisers from State licensing/certification requirements.

#### Section 24.104 Review of Appraisals

For consistency, the term review appraiser is used throughout this rule to refer to the person performing appraisal reviews. We also added language that

will clarify and specify the responsibilities, authorities and expectations associated with appraisal review.

One commenter stated that the NPRM significantly expands appraisal review responsibilities and requirements.

We believe the final rule more accurately elucidates what was commonly assumed to be appraisal review responsibilities and requirements.

A commenter suggested that the final rule should allow administrative reviews performed by appraisers or non-appraisers where the values are less than \$50,000.

We disagree because only a technical review can provide the basis for approving an appraisal for valuation purposes.

There was an objection to the discussion in the first two paragraphs of appendix A as being promotional and self-serving.

This discussion provides information on the concept of appraisal review as it is used by public Agencies and we believe it is necessary.

One commenter said the proposed change to allow the review appraiser to support and approve a different value without any oversight or review is not a good policy. This could result in the review appraiser being pressured to increase or reduce appraised values without oversight.

First, the policy allowing the review appraiser to support and approve a value different from that of the appraisal being reviewed has been part of the preceding rule and is not new. Second, at the Agency's option, the Agency official who establishes the amount believed to be just compensation to be offered to the property owner may be someone other than the review appraiser.

#### Section 24.104(a) Review Appraisers

Several commenters responded to the three options available for the appraisal review.

One commenter expressed concern for using the term "rejected."

We agree and replaced the term "rejected" proposed in the NPRM with "not accepted." This more clearly reflects that such appraisals, while they may meet others' standards or requirements, do not meet the requirements of this rule and the Agency.

One commenter suggested that the type and level of review should be left to the discretion of the acquiring client Agency.

We agree that the Agency should have some discretion as to the review, and we

believe that is included in the appraisal review provisions. However, we also believe the amount of appraisal review discipline specified in this rule is necessary to assure compliance with the Uniform Act requirement that the offer believed to be just compensation be based on an approved appraisal.

The same commenter also suggested that the rule delete the requirement that all appraisals must be reviewed.

We do not believe we have flexibility under the Uniform Act to make appraisal review optional. The Uniform Act calls for an approved appraisal, which this rule interprets and implements as requiring a technically reviewed appraisal. We note that while the Uniform Act specifically grants authority for waiver of the appraisal, it does not do so for approving an appraisal.

There were two comments saying the appraisal review provisions should be consistent with USPAP. One specifically cited that having the review appraiser approve the appraisal was not consistent with USPAP, and should be changed unless there is a compelling reason to be different.

We believe, first of all, that it is not inconsistent with USPAP for the review appraiser to be requested to approve the appraisal. We believe the requirement for approving the appraisal is within the bounds of USPAP's Standard Rule 3-1(c) where identification of the scope of the (review appraisal) work to be performed is discussed. Second, if there is any question as to consistency, we point out that the requirement for an "approved appraisal" is in the Uniform Act and would appear to qualify as a USPAP Jurisdictional Exception, based on being "law or public policy."

One commenter suggested that the phrase "accepted (but not used)" could raise questions in condemnation litigation as to why a report met "government standards" was not used, perhaps implying the Agency shopped for the value it wanted to get.

The appraisal review report should discuss why one of two or more reports was selected as approved for best supporting an offer believed to be just compensation.

Another commenter stated that references to the review appraiser setting just compensation is inaccurate and should be deleted.

The language in § 24.104 was carefully written to follow the Uniform Act. A staff review appraiser may be authorized to "develop and report the amount believed to be just compensation," not "set" just compensation, which we acknowledge is the purview of the courts.

One commenter raised a concern that the review appraiser should be required to develop an opinion on whether or not the report complies with Standards 1, 2 and 3 of USPAP as well as an opinion of market value.

As we have noted, while this regulation is intended to be consistent with USPAP, it implements the Uniform Act and its requirements only; it is not a vehicle for implementing USPAP.

A commenter suggested that the owner be offered the opportunity to accompany the review appraiser on the inspection of the property.

An on-site inspection by the review appraiser is not a specific requirement of these regulations, so inviting the property owner would be inappropriate. The necessity of an onsite inspection by the review appraiser depends on the appraisal problem, the appraisal(s), and Agency policy.

One commenter asked what was the background of accepted, approved and rejected.

The three appraisal review results options specified reflect the results that were always needed, but never specifically cited. They are directly related to the needs of the acquisition process specified in the Uniform Act. Additional language has been added to appendix A to further clarify that process.

#### Section 24.104(b) Review of Appraisals

One commenter expressed the position that it is not good policy to allow the review appraiser, as part of the appraisal review process, to develop independent valuation information if he/she could not approve any submitted appraisal. Concern was expressed that there was potential for undue coercion to be exerted on the review appraiser without oversight.

We believe that newly introduced provisions to enhance appraiser and review appraiser independence will mitigate this risk. We point out that the provisions allowing the review appraiser to develop an independent valuation are carried over from the previous rule.

#### Section 24.104(c) Written Report

One commenter requested clarification that only a duly authorized Agency staff person can make the approved appraisal decision, because Agencies sometimes mistakenly believe they have no choice but to accept the review appraiser's conclusion.

This is clarified in the final rule.

Another commenter asked if an appraisal report which has had its value conclusion modified in some fashion

during review, maintains its status as approved.

This would come into play primarily when, subsequent to submission by a fee appraiser, the reviewer modifies the recommended (or approved) amount due to a plan revision or other similar reason. For the purposes of the Uniform Act and this regulation, the review appraiser could adjust the recommended or approved amount to reflect changes without voiding the acceptance of the reviewed appraisal report, if those changes are not so substantial as to change the appraisal problem.

Still another commenter asked whether the requirement that any damages or benefits to any remaining property be identified in the review appraiser's report is to be just a simple allocation between damages and benefits or whether discussion is implied.

The requirement is to "identify" any damages or benefits. Therefore, if some discussion may be needed to explain an allocation, such discussion should be included, too, but is not explicitly required.

Two commenters objected to authorizing the review appraiser to determine the amount believed to be just compensation, opining that is a management determination.

We agree it is a management determination, but it is also appropriate to give management the option of delegating this responsibility to a staff review appraiser.

#### Section 24.105 Acquisition of Tenant-Owned Improvements.

One commenter stated that some tenant-owned improvements or modifications made to accommodate a tenant's disability or the disability of a household member, such as ramps, may have no market value or salvage value because they are of limited use to anyone but the tenant who installed them. In such situations, the regulations should require that the household be compensated for the replacement value of the improvements.

We did not change the provision in § 24.105 for such a situation because the residential occupant would be "made whole" through relocation assistance provisions of this regulation.

#### Section 24.106 Expenses Incidental to Transfer of Title to the Agency

One commenter stated that we should add a new paragraph describing "other related costs incurred", solely as a result of transfer of real property to the Agency. The regulation can allow only those expenses specified by the Uniform

Act, section 303, therefore, this change was not made.

#### Subpart C—General Relocation Requirements

##### Section 24.202 Applicability

One commenter suggested we change the word "benefits" to "entitlements." We feel that since the word "assistance" is used throughout the Uniform Act that we will change the word "benefits", when feasible, to "assistance" to be more in line with the language used in the Uniform Act. The Uniform Act program is not an entitlement program but rather a reimbursement program to assist in relocating to a new site.

##### Section 24.203(b) Notice of Relocation Eligibility

One commenter requested that we further define "promptly" in § 24.203(b), suggesting that it refers to the prompt notification of all occupants/tenants after the initiations of negotiations and, therefore, should be defined to not exceed 7 calendar days or perhaps up to 10 calendar days at most. We consider promptly meaning "as soon as practicable" and do not believe that further elaboration is necessary. Displacing Agencies may wish to further define the term in their operational procedures. (The FHWA has issued guidance in the past to the State Highway Agencies suggesting that, as used in this section, "promptly" means 7 to 10 days).

##### Section 24.203(d) Notice of Intent to Acquire

The NPRM proposed moving the definition of notice of intent to acquire from the "Definitions" section to the "Notices" section of the regulations. The intent was to group all relocation notices in one place for consistency. A minor revision in wording for clarity was also proposed. No change in the meaning of the term was intended.

We received four comments on this proposed change. One commenter proposed alternative wording for the term that has not been adopted. Three commenters expressed confusion over the intent of this term, therefore, further explanation is warranted here.

The notice of intent to acquire is one of three actions (the other two being initiation of negotiations for acquisition, and actual acquisition) that can establish a person's eligibility for relocation assistance (see § 24.2(a)(9)(i)(A)). Unlike the other notices described in § 24.203, a notice of intent to acquire is not mandatory. As was noted when the 1989 final rule was issued (54 FR 8916), its purpose "is to

clearly establish a displaced person's eligibility for relocation benefits. However, it should be understood that the absence of such a notice does not deprive the person of eligibility for relocation benefits."

A notice of intent to acquire may be used to establish a person's eligibility for relocation assistance prior to the initiations of negotiations and sometimes prior to commitment of Federal-financial assistance. A notice of intent to acquire is a means by which displacing Agencies may establish a person's relocation eligibility in advance of the typical acquisition and relocation process in order to conduct orderly relocation, minimize adverse impacts on displaced persons and to expedite project advancement and completion.

One commenter suggested that the notice of intent to acquire could be confused with the "notice to owner" found in § 24.102(b). A notice to owner is merely an Agency's notice informing the owner of the Agency's interest in acquiring the property; it is not a commitment and does not establish relocation eligibility. Whereas a notice of intent to acquire is an Agency's written notice provided to a person to be displaced; it is a commitment and clearly establishes relocation eligibility in advance of the normal acquisition and relocation process.

One commenter was uncertain as to the relationship between the notice of intent to acquire, and the notice of relocation eligibility, described in § 24.203(b). While the notice of intent to acquire is one of three possible actions that establish eligibility for relocation assistance, the notice of relocation eligibility is a mandatory notice that notifies persons when they become eligible for relocation assistance. For greater clarity and consistency we have added references to the notice of intent to acquire and actual acquisition in § 24.203(b) to make it clear that the notice of relocation eligibility must be provided after whichever Agency action first triggers a person's eligibility for relocation assistance.

#### Section 24.204(b)(1) Disaster Relief Act and Section 24.204(c) Basic Conditions of Emergency Move

For clarity, we have updated the citation to the Robert Stafford Disaster and Emergency Assistance Relief Act, as amended, (42 U.S.C. 5122) in § 24.204(b)(1). We have also added a reference to "displacement dwelling" in § 24.204(c) to emphasize that we are referring to relocations from such dwellings.

### Section 24.205 Relocation Planning, Advisory Services, and Coordination

One commenter asked whether changes in § 24.205 were intended to preclude so-called “global settlements.” Another comment, focusing primarily on § 24.207(f) (which prohibits Agencies from requesting that displaced persons waive relocation benefits), recommended that the regulation would preclude the use of such settlements. The comment described “global settlements” as “the packaging of relocation entitlements (in some cases moving, mortgage interest, price differential, etc.) with the fair market value to reach an administrative settlement of the acquisition.”

The changes to § 24.205 are not intended to reflect “global settlements.” We do not believe that such settlements are consistent with the requirements of the Uniform Act or this part.

The Uniform Act and this part require that relocation payments be determined in accordance with specific fact based criteria. For example, a homeowner’s replacement housing payment shall be based on the “amount, if any” that must be added to “the acquisition cost of the dwelling acquired” to equal the reasonable cost of a comparable dwelling. It is therefore impossible to accurately determine the amount of a displaced homeowner’s replacement housing payment until the actual acquisition cost of the acquired dwelling is established. Furthermore, a replacement housing payment can only be made to a displaced homeowner if the homeowner purchases and occupies a decent safe and sanitary replacement dwelling within one year after he or she receives final payment for the acquired dwelling. Accordingly, under the Uniform Act and this part, a homeowner’s replacement housing payment cannot be determined until the actual acquisition cost is known.

In addition, actual reasonable moving expenses often cannot be determined until after the move has been completed. Relocation benefits provided under the Uniform Act and this part must be determined in accordance with the applicable requirements contained therein, and any “settlement”, related to relocation benefits, that does not do so would not be consistent with statutory and regulatory requirements.

Both §§ 24.205 and 24.207(f) are drafted to ensure that displaced persons are fully advised of all relocation assistance benefits that are available to them, and that a displaced person is offered all the assistance and benefits for which he or she is eligible. This

applies to both residential and nonresidential displacements.

### Section 24.205(c)(2)(i)(A–F) General Planning

We received eleven comments on the proposed requirement for obtaining information from the displaced business owners concerning a business’s needs during the relocation process to enable the acquiring Agency to assist the business in successfully relocating to a replacement site. Most were in favor of the new informational requirements. Three commenters expressed concerns, stating that their planning process was undertaken early, during the early environmental studies, and that the information would be obsolete prior to the actual relocation process.

We included this requirement so that the interviews, where the six informational items are to be obtained, are conducted during the advisory assistance process. This process is to be undertaken when relocation can be expected to begin within a short interval of time.

One commenter was concerned that some business owners employed legal counsel that advised the businesses not to provide any information to the displacing Agency. In such cases, acquiring Agencies should explain to business owners that the intent of the interview questions is to obtain data that will enable the Agency to better assist the displaced business, and that the Agency is required to seek such information by a Federal regulation implementing the Uniform Act.

### Section 24.205(c)(2)(i)(C)

We received two comments recommending we change the wording in § 24.205(c)(2)(i)(C) concerning the resolution of personalty/realty issues, in order that the provision apply to all businesses not just tenant businesses. We agree with the recommendation and have removed “tenant” from § 24.205(c)(2)(i)(C).

We received six comments to the proposed change to § 24.205(c)(2)(i)(C), concerning identification and resolution of realty/personalty items prior to an appraisal of the property.

All commenters agreed that this is a problem area and that a change is needed. However, all commenters shared a common concern, that requiring resolution prior to the appraisal of the property is sometimes not possible.

One commenter suggested “should” be used in place of “must.” Several commenters reminded us that most Agencies are aware of the problem and make every effort to identify and resolve

these issues as early as possible, but that sometimes it is not possible given the reluctance of tenants and owners to cooperate.

We received many comments from the public prior to the NPRM requesting a stronger position be taken on resolving realty/personalty issues early in the process. However, we recognize the valid concerns reflected in the comments and, therefore, have changed § 24.205(c)(2)(i)(C) to provide that “every effort must be made” to identify and resolve realty/personalty issues prior to “or at the time of” the appraisal.

### Section 24.205(c)(2)(i)(E)

We received three comments on § 24.205(c)(2)(i)(E) which proposed that interviews with displaced business owners include an estimate of a business searching expense payment based on the estimated difficulty in locating a replacement site. The comments questioned the purpose of obtaining an estimate of searching expenses and asked whether the acquiring Agency or the business owner should prepare it.

There are two general purposes for this provision. The first is to generate a discussion of the anticipated problems faced by the business to enable the acquiring Agency to determine the time required for the move; and, second, to factor in the time and costs of investigating a replacement site. These costs include those necessary to obtain permits, attend zoning hearings and negotiate the purchase of a replacement site. Our primary intent was to identify problems in locating a replacement site. For clarity, and in response to the comments, we have deleted the requirement that an estimate of the searching expense payment be provided.

### Section 24.205(c)(2)(ii)

Several commenters noted the incorrect placement of a sentence concerning business interviews within the residential portion of this section of the regulations, at the end of § 24.205(c)(2)(ii). This sentence was erroneously repeated from the preceding business interview discussion, and has been deleted from the final rule.

One commenter recommended that the regulations provide that reasonable accommodations be made for disabled displaced persons in the interview process and with regard to transportation. The NPRM did not propose any changes in this area and we believe none are necessary. Agencies must make every effort to provide reasonable accommodations for all displaced persons, including the

disabled, in order to minimize any adverse impacts. This is not a new requirement; it is a fundamental principle of relocation advisory services. As such, no additional changes were adopted.

#### Section 24.205(c)(2)(ii)(D)

We received 12 comments regarding the proposal that an Agency, which has a program objective of providing minority persons with an opportunity to relocate outside of areas of minority concentration, may determine to provide a reasonable and justifiable increase in the payment to facilitate such a move. Every comment disagreed with the addition of this flexibility for various reasons, many because it was perceived as a mandate to provide additional payments rather than an option based on an Agency's program goals. Based on further consideration, and in response to the comments, we removed this language from the final rule.

#### Section 24.205(c)(2)(ii)(E)

We received six comments on § 24.205(c)(2)(ii)(E), which concerns transportation to inspect replacement housing. One commenter suggested that such transportation should be "need based" for only certain individuals, such as those with health limitations or disabilities. Another commenter wanted to add the wording "as appropriate." Still another commenter wanted the decision to provide this transportation to be at the discretion of the Agency.

The requirement to offer transportation to all displaced persons is not new. A minor clarification was proposed to emphasize that all displaced persons are entitled to such transportation. It has been our experience that most people will provide their own transportation, but in fairness to all, transportation shall be offered to all displaced persons equally.

One commenter voiced concern about government liability in transporting non-government persons, and suggested designating other forms of transportation. We purposely did not designate a mode of transportation. It is the responsibility of the Agency to decide how they will transport a displaced person. If liability is a concern, there are other means of transportation available such as a taxicab or rental car.

#### Section 24.206 Eviction for Cause

See the explanation under Subpart A, definitions, § 24.2(a)(12), in this preamble.

#### Section 24.207(f) Waiver of Benefits

We received 17 comments on § 24.207(f), which provides that displacing Agencies shall not propose or request that a displaced person waive his or her relocation benefits. This section complements §§ 24.205(c) and 24.203(a), (b) and (c) which describe the information and notices that must be provided to persons prior to displacement.

The comments were virtually unanimous in support of § 24.207(f). However, it appears that a few commenters did not fully understand this provision. As we noted in the preamble to the NPRM (68 FR 70348–70349), because the Uniform Act imposes requirements on displacing Agencies to provide relocation assistance, a person to be displaced cannot relieve an Agency from the Uniform Act's requirements by agreeing to waive his or her relocation assistance and benefits.

Appendix A, § 24.207(f), provides that a person, after they have been fully advised of all relocation payments and assistance to which they are entitled, may, in a written statement, choose not to accept some or all of such benefits. In the unlikely event that a person simply refuses to accept some or all payments and assistance, and refuses to provide any written statement to that affect, the Agency should document such refusal in writing.

We have made two minor changes to § 24.207(f) in response to comments. We have inserted "No" as the first word of the section's title, to emphasize that this provision is not intended to encourage any waiver of benefits. We have also changed the phrase "relocation assistance and payments provided by the Uniform Act," to "relocation assistance and benefits provided by the Uniform Act," to avoid any implication that this section would apply to payments for the acquisition of real property, which are addressed in detail in subpart B.

#### Section 24.207(g) Expenditure of Payments

We received five comments on proposed § 24.207(g). These generally requested minor editorial changes or further clarification. This section expresses longstanding practice and understanding by stating that relocation payments provided to a displaced person are not "Federal financial assistance" for purposes of this part, and therefore, their expenditure is not subject to the Uniform Act. In response to the comments received minor

changes have been made to improve clarity.

#### Subpart D—Payments for Moving and Related Expenses

##### Section 24.301(b) Moves From a Dwelling

We received 13 comments on § 24.301(b), moving from a dwelling. Most of the commenters were unclear on what is meant by the phrase "but not by the lower of two bids or estimates" in § 24.301(b). It has long been our position that a residential displaced person cannot be paid for a self-move based on the lower of two bids or estimates. This has always been a moving option reserved for businesses. There are only three types of moving options available for residential moves, that are described in §§ 24.301(b)(1) and (2)(i) and (ii). After careful consideration of the comments we agree that the proposed language in § 24.301(b) could be misunderstood and have made changes to better clarify that a residential self-move cannot be based on the lower of two bids or estimates.

Two commenters questioned why we allow an actual cost move, supported by receipted bills, to equal the hourly rate that a commercial mover would receive. In response to that, the rate a commercial mover would pay is only there as a comparison, to ensure that the rate charged is not excessive. The rate may be less than the prevailing commercial rate.

One commenter suggested that we make it clear that the hourly rate for equipment rental be based on the actual cost of the equipment rental, but not exceed the cost a commercial mover would charge. We agree and have added language to §§ 24.301(b)(2)(ii) and 24.301(d)(2)(ii) to reflect this clarification.

##### Section 24.301(b)(2)(iii) and (c)(2)(iii) Moving Cost Finding

We received 20 comments on the proposed new method of moving personal property that would allow a qualified Agency staff person to estimate and determine the cost of a small uncomplicated personal property move up to \$3,000, with the informed consent of the displaced person (NPRM § 24.301(b)(2)(iii).)

The comments varied from those who supported the proposal to those who opposed it. Others found it confusing and questioned the legality of our actions. Six commenters requested we increase the amount anywhere from \$5,000 to \$10,000 with one commenter suggesting the amount be set individually by each State. Four

commenters requested additional explanation as to what determines a "qualified" staff person and two commenters questioned the legality of such a move indicating that there is no statutory support for creating a different type of move.

One commenter suggested we tie the amount to a meaningful index to be evaluated periodically similar to the Fixed Residential Moving Costs Schedule and one commenter requested an explanation of how we arrived at \$3,000.

This proposed change was intended to provide greater flexibility. However, because of the apparent misunderstanding of the purpose of the proposal, and the range of confusion and concern expressed, we have decided not to adopt this proposal.

#### Section 24.301(d) Moves From a Business, Farm or Nonprofit organization

One commenter brought to our attention that we had inadvertently left out actual cost moves as one of the options for business moves. We agree and thank the commenter for bringing it to our attention. We have added it back in the regulations as part of § 24.301(d)(2)(ii).

Two commenters requested additional information on hourly rates. We feel hourly rates are adequately explained in Actual Cost Self-Move.

#### Section 24.301(d)(2) Self-Move

One commenter objected to the elimination of "qualified staff" to estimate actual, reasonable moving expenses, especially in low-cost uncomplicated moves. While we recognize that it is sometimes difficult to receive an accurate estimate from a professional mover, the use of such an estimate, wherever possible, is valuable in establishing accuracy. We understand that occasionally it is necessary to consult trade associations representing specialty movers on a case-by-case basis. As a result, we did not make any changes to the rule.

#### Section 24.301(e) Personal Property Only

We received seven comments concerning the new paragraph on personal property, § 24.301(e). All were positive comments, however, four commenters requested additional explanation of what is covered by the new paragraph. The four commenters were concerned that, as proposed, § 24.301(e), personal property, would be limited to eligible expenses as described in § 24.301(g)(1) through (g)(7) and not be eligible for expenses in § 24.301(g)(8)

through (g)(18). Thus, in effect eliminating the use of actual direct loss of tangible personal property, substitute personal property, searching expense, and other normally eligible business expenses.

As explained in the preamble to the NPRM, this provision was only intended to be used for moving personal property from property acquired for a Federal or federally-assisted project, where there was no need for a full relocation of a residence, business, farm or nonprofit organization. It was not intended to cover the eligible moving items in § 24.301(g)(8) through (g)(18). However, upon further consideration, eligibility for payment based on § 24.301(g)(18) Low Value/High Bulk is determined to be appropriate for inclusion in a personal property only move. As such, we have revised this section of the regulations to include § 24.301(g)(18) as an eligible actual moving expense as part of a nonresidential personal property only move.

It should also be noted that personal property only moves do not trigger eligibility for reestablishment expense payments, nor are they eligible for actual moving expense payments under § 24.301(g)(8) through (g)(17).

For moving options and examples of the types of personal property only relocations, see appendix A, § 24.301(e).

#### Section 24.301(g)(3) Eligible Moving Expenses

We received 19 comments regarding compliance with code requirements at the replacement site of a small business, farm or nonprofit organization. The commenters requested that we consider moving more criteria from § 24.304 to either §§ 24.301 or 24.303.

Nine of the commenters urged moving the provision providing payments for "repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance" from the reestablishment expense § 24.304, which provides a reestablishment payment not to exceed \$10,000, to § 24.303, where the reimbursement provision is not limited. Four commenters suggested that we should move additional criteria from § 24.304 to other sections that provide payment for actual, reasonable and necessary expenses.

We do not believe these suggestions are appropriate since we believe actual moving cost expenses for businesses should be limited to personal property items, while expenses for improving business real property should be reimbursed under reestablishment provisions of § 24.304. However, we

note that three provisions which were formerly under reestablishment limitations, and which do not fall within the category of realty or personalty, have been moved to revised § 24.303, and can be considered for reimbursement without a defined dollar limitation.

Four commenters requested further clarification of the reference to modifications of personal property in § 24.301(g)(3). To clarify, the provision for displaced businesses, permitting modifications to the personal property within the replacement structure, provides payment for costs necessary to adapt personal property to the replacement site, and includes modifications mandated by Federal, State or local law, code, or ordinance. This includes circumstances when such property and equipment was "grandfathered" in the displacement structure, but changes or upgrading of the personalty is required by the Americans with Disabilities Act (ADA), the Occupational Safety and Health Administration (OSHA), other Federal laws, State or local law, code or ordinances at the replacement site. The modifications authorized for reimbursement must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner. Finally, the expenditures for authorized modifications must be reasonable and necessary.

Two commenters were concerned that we may have gone too far in moving some items from §§ 24.304 to 24.303, instead suggesting that more attention should be given to the level of service provided to businesses as proposed in § 24.205. Their concern is that it is questionable whether having no cost limits will always improve the percentage of successful business relocations. We considered their concern but have elected to make the proposed changes.

To further clarify § 24.301(g)(3) we have restructured the existing wording to distinguish residential and nonresidential items and added a reference to Federal, State or local law, code or ordinance.

#### Section 24.301(g)(12)

We received one comment recommending that § 24.301(g)(12) further define the limits of eligible fees for professional services. The commenter recommended that such eligible fees be limited to fees related to actually moving the personal property, and not include fees related to

conceptual building or site layouts intended for construction/reconstruction at the replacement property.

No changes have been made to this section. The professional services described in this section only include those that are directly related to moving personal property. Conceptual building or site layouts intended for construction/reconstruction at the replacement property are not considered eligible expenses under this section. Professional services related to these types of expenses may be considered eligible expenses under § 24.303(b), related nonresidential eligible expenses, if the Agency determines them to be actual, reasonable and necessary.

#### Section 24.301(g)(14) and (g)(14)(i)

We received 13 comments recommending that we clarify § 24.301(g)(14) relating to the actual direct loss of tangible personal property. In particular commenters expressed confusion about the meaning of the phrase “value in place as is for continued use,” with two comments suggesting that the regulation include a definition of an appraisal method to estimate this in-place value. Two comments requested clarification as to whether reconnect charges should be included with the estimated moving cost.

The term “value in place as is for continued use” means the depreciated value of the item as it is installed at the displacement site as of the date of the acquisition. We have modified Appendix A, § 24.301(g)(14) to clarify the correct value considerations to estimate in-place value. Generally, an item will be valued based on the current cost of the item as installed on the displacement site, and depreciated to reflect the current condition and estimated remaining useful life. Standard professional personal property appraisal methods would be acceptable. The in-place value at its “as is” condition may not include costs that reflect code or other requirements that were not actually in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site.

The estimated moving cost for an item is also to be limited to the “as is” condition of the item at the displacement site. Therefore, estimated reconnect costs may not include costs to meet code or other requirements that would only be necessary to relocate the item to a replacement site. Since the item is claimed as a loss and is not to be relocated, allowable reconnect costs

may only reflect an estimate of the cost that would be incurred to install the item as it currently exists at the displacement site. Also the moving cost estimate may not include reconnect costs for an item that is not operable or installed at the displacement site.

We believe that the provision proposed in the NPRM, as further explained in appendix A, is correct and consistent with this intent of the Uniform Act, to provide moving benefits that are actual, reasonable and necessary. Therefore, we have included this provision in the final rule.

#### Section 24.301(g)(17)

We received twelve comments concerning § 24.301(g)(17), which proposed raising the searching expense limit from \$1,000 to \$2,500. One commenter was not in favor of the increase. Other commenters wanted a greater increase on the allowable limit, no limitation, or urged that it be indexed. The remaining commenters expressed agreement with the increase and/or sought clarifications.

Two commenters asked whether the actual fees assessed for permits are payable under § 24.301(g)(17)(v). This provision includes the actual time and effort required to obtain permits and to attend zoning hearings, not the assessed fees for the permits.

Section 24.301(g)(17) also includes the time spent in negotiating the purchase of a replacement business site based on a reasonable salary or earnings rate. We have added paragraph (g)(17)(vi) to provide for these expenses. In addition, fees necessary in obtaining such permits are eligible costs but should be based on a pre-approved hourly rate that is reasonable and necessary.

#### Section 24.301(g)(18)

We received ten comments on § 24.301(g)(18) concerning low value/high bulk personal property. Most comments concerned basing the moving payments on the lesser of the amount received if sold, and the replacement cost at the new location of the business. Two commenters stated that a determination as to whether items should be moved should be a joint decision between business operator and the displacing Agency.

We have adopted the proposed language providing for payment of the lesser of the described amounts. We believe that the business owner should be permitted to make the decision on whether the material is to be moved to the new business location. However, the amount of the reimbursement in the move cost should be limited to that set

forth in the final rule. Also, there was concern that the items listed in the last sentence of § 24.301(g)(18) are the only items that can be moved under this provision. However, that was not the intent. The items listed are only examples and there certainly can be other items that qualify under this provision. We have made a minor clarification to address this concern.

#### Section 24.301(h)(12)

We received six comments on § 24.301(h)(12). Two commenters objected to listing refundable security and utility deposits as ineligible moving expenses. While a good argument might be made for providing reimbursement for these expenses, the Uniform Act provides no authority for their reimbursement and we therefore cannot include them in the regulatory description of “actual, reasonable moving expenses,” without a legislative change. The fact that they are refundable would remove them from eligibility.

#### Section 24.302 Fixed Payment For Moving Expenses—Residential Moves

We received one comment on the proposed changes to § 24.302, Fixed Residential Moving Cost Schedule (FRMCS). The commenter requested that the amounts be updated annually or biannually. The same commenter requested that the amount be increased to be more in line with what a professional commercial mover would receive.

The purpose of the FRMCS is not to be in competition with professional commercial movers, but rather to offer an option to the commercial move. There are currently three methods to move personal property from a dwelling; a professional commercial mover, the fixed residential moving cost schedule, or an actual cost move based on receipted bills (See § 24.301(b).) The Fixed Residential Moving Cost Schedule is updated every three years. The language in the final rule will remain as proposed in the NPRM.

#### Section 24.303(b) Related Nonresidential Eligible Expenses

We received 7 comments requesting further clarification of eligible professional services mentioned in § 24.303(b). There was confusion as to whether professional services included attorneys' fees and other professional services relating to costs of negotiating to acquire property, closing costs, etc.

Generally, professional services performed prior to the purchase or lease of a replacement site, to determine its suitability for the displaced person's

business operation, would be eligible for reimbursement; provided the Agency determines that they are actual, reasonable and necessary. Such professional services include, but are not limited to, soil testing, feasibility and marketing studies, and may be based on a pre-approved hourly rate. Fees and commissions directly related to the purchase or lease of the site, such as realtor commissions or finder's fees are ineligible for reimbursement.

Moving expenses for businesses sometimes include the cost of obtaining outside professional services made necessary only by the relocation. For example, attorneys' fees for representation before zoning authorities, or the cost of obtaining a soil analysis necessary in the preparation of a replacement site are directly related to relocation, and may be considered eligible expenses. By contrast, if these services are provided by regular employees of the displaced business, (such as staff engineers,) or professional contractors ordinarily used by the business for its everyday operations (such as legal counsel on retainer), these services are considered ordinary costs of doing business, and cannot be recognized among eligible moving expenses.

One commenter suggested we revise the wording in this section for clarity. We concur and have made some minor modifications.

#### Section 24.304 Reestablishment Expenses—Nonresidential Moves

Three comments suggested that § 24.303 be expanded to include costs necessary to satisfy requirements of Federal, State or local law, code or ordinance, including the Americans with Disabilities Act (ADA). In the NPRM we considered such costs to be among those listed as reestablishment expenses in § 24.304(a). As mentioned above, reestablishment expenses are, by statute, available to displaced farms, nonprofits, and small businesses, and are limited to \$10,000.

In the NPRM we proposed increasing assistance to businesses and farms by changing some of the costs that had been considered to be reestablishment expenses, to actual reasonable moving expenses, which are not subject to the \$10,000 cap. However, the proposed changes only included those costs that were unrelated to improvements to the replacement site. Costs related to improving the replacement real property were more clearly considered to be "reestablishment expenses," and accordingly, were retained in § 24.304.

We continue to believe that this approach provides the most reasonable

interpretation of the Uniform Act's requirements and, therefore, in the final rule we have left costs of repairs or improvements to the replacement real property, required by Federal, State or local law or codes, in § 24.304, as reestablishment expenses.

#### Section 24.304(a)(2)

We received one comment pointing out that § 24.304(a)(2), which concerns necessary modifications to the replacement property, seems to apply to existing buildings which are purchased or leased and must be renovated to some extent, and asked if this section applied to new construction.

The cost of constructing a new business building on the vacant replacement property is considered a capital expenditure and, as provided in § 24.304(b)(1), is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction of a replacement structure, a displacing Agency may request a waiver from the funding Agency of § 24.304(b)(1) under the provisions of 49 CFR part 24.7.

#### Subpart E—Replacement Housing Payments

##### Section 24.401(a) Eligibility

One commenter assumed that appendix A is not regulatory. This is not accurate. Appendix A is an integral part of the regulation, and, while it does not impose mandatory requirements, it does provide important additional guidance and information concerning the purpose and intent of a number of the provisions in part 24.

##### Section 24.401(e) Incidental Expenses

One commenter suggested that the payment of actual reasonable expenses incidental to the purchase of a replacement dwelling, described in § 24.401(e), would be simplified by providing a single payment for a displaced homeowner's actual closing costs up to a fixed amount, such as \$3,000. While this suggestion might simplify the computation of this component of the replacement housing payment, it was not proposed for public comment in the NPRM and, therefore, it is outside the scope of this rulemaking. However, this suggestion could be addressed in a future rulemaking effort to update 49 CFR part 24.

##### Section 24.401(f) Rental Assistance for 180-day Homeowner

We received nine comments on the change in proposed in § 24.401(f) that would allow a rental assistance payment for a displaced 180-day homeowner

(who elects to rent instead of purchase a replacement dwelling) to exceed \$5,250 if the difference in the estimated market rent of the acquired dwelling and the rent for a comparable replacement dwelling support a higher figure. The NPRM also proposed that the rental supplemental payment not be allowed to exceed the amount the 180-day homeowner would have received as a housing (purchase) supplemental payment under § 24.401(b).

Three of the nine commenters suggested clarification as to the maximum amount of assistance to which the displaced 180-day homeowner is entitled. In response, we have made several minor changes to this section. The rental assistance payment cannot exceed the amount the 180-day homeowner would have received under § 24.401(b)(1) (see also § 24.401(c)) which describes how that amount is determined. The payment cannot include costs for expenses under §§ 24.401(b)(2) and (3) (also see §§ 24.401(d) and (e)) as it is not possible to calculate what the 180-day homeowner who rents would have received for increased mortgage interest costs and incidental costs if the person does not actually purchase a replacement dwelling.

##### Section 24.402(b)(2) Base Monthly Rental for Replacement Dwelling

We received 23 comments on the proposed change in § 24.402(b)(2) that reflects more closely the statutory requirement that only a low-income displaced person's income shall be taken into consideration when calculating rental assistance payments for a comparable replacement dwelling (42 U.S.C. 4624(a)). We have adopted this change in the final rule and it is more in line with the intent of the Uniform Act in that it assures consideration of income for low-income persons. The procedures in § 24.402(b)(2)(ii) will continue to use 30 percent of monthly gross household income, but only for displaced persons who qualify as low income under the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits.<sup>3</sup>

Of the 23 comments, thirteen strongly favored the change; five expressed concern about increased administrative burden; three commenters requested that we drop the 30 percent altogether; one expressed concern that the change would deny replacement housing

<sup>3</sup> A link to the applicable URA Low Income Limit is available on FHWA's Web site at the following URL: <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>.

assistance to tenants; and one commenter pointed out that there would be variations of income by county and State.

We have carefully considered each comment and for the following reasons, we have adopted the proposed change in the final rule. Regarding the increased administrative burden, we have requested several of our field offices to use the HUD Annual Survey of Income Limits and find it relatively user friendly. The initial attempt, as in any new procedure, was awkward, but additional tests became increasingly easier. The request to drop the 30 percent requirement completely would not be in compliance with the Uniform Act, as noted above. The concern by one commenter that the change would eliminate those who are most in need of the assistance is incorrect. We believe that we would be reaching out specifically to those who are truly in need of additional assistance. Those tenants that do not fall into the low-income category will be offered a comparable dwelling based on a rent-to-rent comparison.

#### Section 24.402(c) Downpayment Assistance Payment

We received eight comments on the proposed change in the criteria to receive a downpayment. Four commenters expressed support for the proposed change to the discussion of § 24.402(c) in appendix A. The proposal would remove language that indicated that an Agency should limit the amount of downpayment assistance to an amount ordinarily required for conventional loan financing. The proposed change allows a displaced person to apply the full amount of the rental replacement housing payment as a downpayment towards the purchase price of the replacement dwelling and related incidental expenses, regardless of any limitation on what is ordinarily required for conventional loan financing. No negative responses were received and the change has been adopted.

Two commenters stated that § 24.404(c)(1)(viii), (concerning possible differences between a rental assistance payment and a downpayment when providing housing of last resort) was inconsistent with the proposed change to appendix A, § 24.402(c), described above. We agree and, accordingly, have deleted § 24.404(c)(1)(viii).

#### Section 24.403(a) Determining Cost of Comparable Replacement Dwelling

The NPRM proposed that the homeowner's replacement housing payment be broadened to include any

increase in real property taxes at the replacement dwelling during the first two years of ownership. We received 31 widely varying comments on this proposal. Nine comments opposed the proposed change. Six comments supported the proposal. Eleven comments supported the concept, but either disagreed with the details of the proposal, or also wanted to include any increases in such costs as insurance, utilities and homeowner's association fees. The remaining comments asked for clarification or expressed no opinion.

Comments that opposed the proposal mentioned such factors as; the addition of substantial administrative burdens, with relatively little benefit; the difficulty in factoring in various State or local provisions that grant property tax relief based on age, income, disability or other factors; and the view that an increase in real property taxes is not really part of the "cost" of the replacement dwelling for purposes of the Uniform Act.

We have carefully considered the comments and have decided not to adopt this proposed change. Our decision is based primarily on the general administrative burdens mentioned in the comments, as well as on the difficulty, suggested in the comments, of trying to develop a reasonably equitable and manageable system for providing short term compensation for property tax increases. We believe that it would be difficult for such a system to easily take into account the variable and inconsistent nature of such taxes resulting from provisions of State and local law that often provide reduced taxes in certain circumstances or to certain groups. Our decision was also influenced by the lack of any clear indication in the Uniform Act that real property taxes were intended to be included as part of the cost of a comparable dwelling.

Not including this proposal in the final rule does not affect the ability of any displacing Agency to compensate displaced homeowners for increased property taxes and similar costs if otherwise authorized to do so.

#### Section 24.403(a)(1)

The NPRM proposed removing the requirement that Agencies adjust the asking price of comparable replacement dwellings in computing a homeowner's replacement housing payment. That adjustment was considered burdensome for displacing Agencies, as well as for displaced homeowners by, in effect, forcing the homeowner to negotiate for a price lower than the asking price when purchasing a replacement dwelling.

We received 14 comments on this proposal. Ten supported it, and three asked for some further clarification. One commenter requested the right to continue adjusting the comparable. We have adopted the proposal without change. Accordingly, since the requirement to adjust asking prices has been deleted from the rule, there is no longer any authority or basis for Agencies operating under the Uniform Act to make such adjustments (which would reduce the amount of the homeowner's replacement housing payment). Displacing Agencies must now use the asking price of a comparable dwelling in computing the replacement housing payment.

#### Section 24.403(a)(6)

In the NPRM, we proposed to include language in § 24.2(a)(6)(viii) that would have allowed rent owed to an Agency to be taken into account when determining whether a comparable replacement dwelling is within a displaced person's financial means. Because we received a comment objecting to similar language in § 24.2(a)(6)(viii), we have decided to remove this language from both 24.403(a)(6) and § 24.2(a)(6)(viii).

#### Subpart F—Mobile Homes

##### Sections 24.501 through 24.502

We received seven comments on Subpart F, Mobile Homes, concerning clarifications of §§ 24.501 and 24.502. Four commenters identified incorrect wording in §§ 24.502(a)(1)(iii) and 24.502(b)(2). The error concerned the replacement housing payment eligibility computation for an eligible homeowner that is displaced from his/her mobile home. We agree that the wording did not accurately transpose in formatting the NPRM and the error has been corrected in §§ 24.502(a)(1)(iii) and 24.502(b)(2).

Two commenters suggested a simplification of the terms describing a displaced homeowners application of a rental assistance payment and concerning a homeowner who is not displaced from their mobile home. After reviewing these provisions we have determined that they are clear as proposed in the NPRM; however, to further clarify the comparable replacement home site we have moved the existing §§ 24.502(d) to 24.502(b)(3).

#### Distributions Tables

For ease of reference, distribution and derivation tables are provided for the current sections and the proposed sections as follows:

DERIVATION TABLE

DERIVATION TABLE—Continued

DERIVATION TABLE—Continued

DERIVATION TABLE		DERIVATION TABLE—Continued		DERIVATION TABLE—Continued	
New section	Old section	New section	Old section	New section	Old section
24.1	24.1.	24.101(b)(5)	24.101(a)(5).	24.303(b)	24.304(a)(7) and (a)(9).
24.2(a)(1)	24.2 Agency.	24.101(c)	24.101(b).		24.304(a)(11).
24.2(a)(2)	24.2 Alien not lawfully present in the United States.	24.101(d)	24.101(c).	24.303(c)	24.304(a)(5).
		24.102(c)(1)	24.102(c).	24.304(a)(4)	24.304(a)(8).
		24.102(n)	24.103(e).	24.304(a)(5)	24.304(a)(10).
24.2(a)(3)	24.2 Appraisal.	24.103(a)(1)	24.103(a)(2).	24.304(a)(6)	24.304(a)(12).
24.2(a)(4)	24.2 Business.	24.103(a)(2)	24.103(a)(3).	24.304(a)(7)	24.306.
24.2(a)(5)	24.2 Citizen.	24.103(a)(3)	24.103(a)(4).	24.305	24.306 (b)(1) through (4).
24.2(a)(6)	24.2 Comparable replacement dwelling.	24.103(a)(4)	24.103(a)(5).	24.305(b)(1) through (4).	24.306 (c) through (e).
24.2(a)(6)(i) through (vii).	24.2 Comparable replacement dwelling (1) through (7).	24.103(a)(5)	24.103(a)(6).	24.305(c) through (e)	24.307.
24.2(a)(6)(viii)(A) through (C).	24.2 Comparable replacement dwelling (8)(i) through (iii).	24.203(a)(2) through (5).	24.203(a)(4).	24.306	24.401(c)(4).
		24.203(d)	24.2 Notice of intent to acquire.	24.401(c)(2)	24.207(e).
24.2(a)(6)(ix)	None.	24.205(a)(4)	None.	24.403(a)(5)	24.207(f).
24.2(a)(7)	24.2 Contribute materially.	24.205(a)(5)	24.205(a)(4).	24.403(a)(6)	24.401(c)(2).
		24.205(c)(2)(i)(A) through (F).	None.	24.403(a)(7)	24.401(c)(3).
24.2(a)(8)	24.2 Decent, safe, and sanitary dwelling.	24.205(c)(2)(ii)(A) ..	24.205(c)(2)(ii).	24.403(g)	24.404(c)(1)(viii).
		24.205(c)(2)(ii)(B) ..	24.205(c)(2)(ii)(A).	None	24.501 Intro. para.
		24.205(c)(2)(ii)(C) ..	24.205(c)(2)(ii)(B).	24.501(a)	24.505(e).
		24.205(c)(2)(ii)(D) ..	24.205(c)(2)(ii)(C).	24.501(b)	24.503.
24.2(a)(9)	24.2 Displaced person.	24.205(c)(2)(ii)(E) ..	24.205(c)(2)(ii)(C).	24.502 Heading	24.503(a)(1) and 505(c).
		24.205(c)(2)(ii)(F) ..	24.205(c)(2)(ii)(D).	24.502(a)	24.503(a)(1) and 505(c).
24.2(a)(9)(ii)(M)	None.	None	None.	24.502(a)(1)	24.503(a)(1) and 505(c).
24.2(a)(10)	24.2 Dwelling.	24.205(c)(2)(vi).	24.205(c)(2)(vi).	24.502(a)(2) and (3)	24.503(a)(2) and (3).
24.2(a)(11)	None.	24.205(e)	24.205(c)(2)(iv).	24.502(b)	24.503(b).
24.2(a)(12)	24.2 Farm operation.	24.207(e)	24.207(g).	24.502(b)(1)	None.
24.2(a)(13)	24.2 Federal financial assistance.	24.207(f) and (g)	None.	24.502(b)(2)	24.503(a)(3) and 503(b).
		24.301(a)	24.303(a) and 24.502(b).	24.502(c)	24.505(a).
24.2(a)(14)	None.	24.301(a)(1) and (2)	24.502(a).	24.502(d)	24.503(a)(3)(iii) and 24.505(b)(1).
24.2(a)(15)	24.2 Initiation of negotiations.	24.301(b)(1) and (2)	24.301 Intro. para.	24.502(e)	24.505(b)(2).
		24.301(b)(1)	24.303(a).	24.503	24.504.
24.2(a)(15)(iv)	None.	24.301(b)(2)(i)	24.302 First sentence.		
24.2(a)(16)	24.2 Lead Agency.	24.301(b)(3)	None.		
24.2(a)(17)	None.	24.301(c)	None.		
24.2(a)(18)	24.2 Mortgage.	24.301(d)	24.303(a).		
24.2(a)(19)	24.2 Nonprofit organization.	24.301(d)(1) and (2)	24.303 (c).		
		24.301(f)	24.303(e).		
24.2(a)(20)	24.2 Owner of a dwelling.	24.301(g)(1)	24.303(a)(1) and 24.301(a).		
24.2(a)(21)	24.2 Person.	24.301(g)(2)	24.301(b) and 24.303(a)(2).		
24.2(a)(22)	24.2 Program or project.	24.301(g)(3)	24.303(a)(3).		
24.2(a)(23)	24.2 Salvage value.	24.301(g)(4)	24.303(a)(4) and 24.301(d).		
24.2(a)(24)	24.2 Small business.	24.301(g)(5)	24.303(a)(5) and 24.301(e).		
24.2(a)(25)	24.2 State.	24.301(g)(6)	24.303(a)(7) and 24.301(f).		
24.2(a)(26)	24.2 Tenant.	24.301(g)(7)	24.303(a)(14) and 24.301(g).		
24.2(a)(27)	24.2 Uneconomical remnant.	24.301(g)(8)	24.502(b)(1).		
24.2(a)(28)	24.2 Uniform Act.	24.301(g)(9)	24.502(b)(2).		
24.2(a)(29)	24.2 Unlawful occupancy.	24.301(g)(10)	24.502(b)(3).		
		24.301(g)(11)	24.303(a)(6).		
24.2(a)(30)	24.2 Utility costs.	24.301(g)(12)	24.303(a)(8).		
24.2(a)(31)	24.2 Utility facility.	24.301(g)(12)(i) through (iii).	24.303(a)(8)(i) through (iii).		
24.2(a)(32)	24.2 Utility relocation.	24.301(g)(13) through (17).	24.303(a)(9) through (13)(iv).		
24.2(a)(33)	None.	24.301(g)(17)(v) and (vi).	None.		
24.2(b)	None.	24.301(g)(18)	None.		
24.8(m)	None.	24.301(h)(1) through (11).	24.305(a) through (k).		
24.8(n)	None.	24.301(i)	24.303(b).		
24.8(o)	None.	24.301(j)	24.303(d).		
24.101(a) and (b)	24.101(a).	24.303 Intro. para.	23.303 Intro. para.		
24.101(b)(1)	24.101(a)(1).	24.303(a)	24.304(a)(4).		
24.101(b)(1)(i)	24.101(a)(1)(i).				
24.101(b)(1)(ii)	24.101(a)(1)(ii).				
24.101(b)(1)(iii)	24.101(a)(1)(iii).				
24.101(b)(1)(iv)	24.101(a)(1)(iv).				
24.101(b)(2)	24.101(a)(2).				
24.101(b)(2)(i)	24.101(a)(2)(i).				
24.101(b)(2)(ii)	24.101(a)(2)(ii).				
24.101(b)(3)	24.101(a)(3).				
24.101(b)(4)	24.101(a)(4).				

DISTRIBUTION TABLE

Old section	New section
Subpart A	Subpart A
24.1	24.1 Text unchanged.
24.2 Heading	24.2 Heading revised.
None	24.2(a) Introductory para. added.
Agency	24.2(a)(1) Revised.
(1) Acquiring agency	24.2(a)(1)(i) Redesignated and revised.
(2) Displacing agency	24.2(a)(1)(ii) Redesignated and text unchanged.
(3) Federal agency	24.2(a)(1)(iii) Redesignated and text unchanged.
(4) State agency	24.2(a)(1)(iv) Redesignated and text unchanged.
Alien not lawfully present in the US.	24.2(a)(2) Redesignated.
Appraisal	24.2(a)(2)(i) Redesignated and revised.
	24.2(a)(2)(ii) Redesignated and text unchanged.
	24.2(a)(3) Redesignated and text unchanged.
Business	24.2(a)(4) Redesignated.





DISTRIBUTION TABLE—Continued		DISTRIBUTION TABLE—Continued		DISTRIBUTION TABLE—Continued	
Old section	New section	Old section	New section	Old section	New section
24.304(a)(6) .....	24.301(g)(11) Redesignated.	24.401(d) .....	24.401(d) Text unchanged.	24.503(a) .....	24.502(a) Redesignated and revised.
24.304(a)(7) .....	24.303(b) Redesignated and revised.	24.401(d)(1) .....	24.401(d) Revised.	24.503(a)(1) .....	24.502(a)(1) Redesignated and revised.
24.304(a)(8) .....	24.304(a)(5) Redesignated.	24.401(d)(2) through 24.401(e)(3).	24.401(d)(2) through 24.401(e)(3) Text unchanged.	None .....	24.502(a)(1)(i) through (iii) Added.
24.304(a)(9) .....	24.303(b) Redesignated and revised.	24.401(e)(4) .....	24.401(e)(4) Revised.	24.503(a)(2) .....	24.502(a)(2) Redesignated and text unchanged.
24.304(a)(10) .....	24.304(a)(6) Redesignated.	24.401(e)(5) through (e)(9).	24.401(e)(5) through (e)(9) Text unchanged.	24.503(a)(3) .....	24.502(a)(3) Redesignated and revised.
24.304(a)(11) .....	24.303(c) Redesignated and revised.	24.401(f) .....	24.401(f) Revised.	24.503(a)(3)(i) through (iv).	24.502(a)(3)(i) through (iv) Redesignated and text unchanged.
24.304(a)(12) .....	24.304(a)(7) Redesignated.	24.402(a) through (b)(2)(i).	24.402(a) through (b)(2)(i) Text unchanged.	None .....	24.502(b)(1) Added.
24.304(b)(1) through (3).	24.304(b)(1) through (3) Text unchanged.	24.402(b)(2)(ii) .....	24.402(b)(2)(ii) Revised.	24.503(b) .....	24.502(b)(2) Redesignated and revised.
24.304(b)(4) .....	24.304(b)(4) Revised.	24.402(b)(2)(iii) and (b)(3).	24.402(b)(2)(iii) and (b)(3) Text unchanged.	None .....	24.502(b)(3) Added.
24.305 section heading.	24.305 Removed.	24.402(c)(1) .....	24.402(c)(1) Revised.	None .....	24.502(c) through (e) Added.
24.305(a) through (k)	24.301(h)(1) through (h)(11) Redesignated and revised.	24.402(c)(2) .....	24.402(c)(2) Text unchanged.	24.504 Heading .....	24.503 Heading Redesignated and text unchanged.
None .....	24.305(h)(12) Added.	24.403 Heading .....	24.403 Text unchanged.	24.504 Intro. para. ....	24.503 Intro. para. Redesignated.
24.306 section heading.	24.305 Redesignated.	24.403(a) and (a)(1) ..	24.403(a) and (a)(1) Revised.	24.504(a) and (b) .....	24.503(a) and (b) Redesignated and text unchanged.
24.306(a) .....	24.305(a) Redesignated and revised.	24.403(a)(2) through (4).	24.403(a)(2) through (4) Text unchanged.	24.504(c) .....	24.503(c) Redesignated and revised.
24.306(a)(1) through (a)(5).	24.305(a)(1) through (a)(5) Redesignated and text unchanged.	None .....	24.403(a)(5) through (7) Added.	24.505(a) through (e)	24.505(a) through (e) Removed.
24.306(a)(6) .....	24.305(a)(6) Revised.	24.403(b) .....	24.403(b) Revised.	24.505(e) .....	24.501(b) Redesignated.
24.306(b) .....	24.305(b) Revised.	24.403(c) through (f)(1).	24.403(c) through (f)(1) Text unchanged.	24.601 .....	24.601 Text unchanged.
24.306(c) .....	24.305(c) Revised.	24.403(f)(2) .....	24.403(f)(2) Revised.	24.602 .....	24.602 Revised.
24.306(c)(1) through (d).	24.305(c)(1) through (d) Redesignated.	24.403(f)(3) .....	24.403(f)(3) Text unchanged.	24.603 .....	24.603 Text unchanged.
24.306(e) .....	24.305(e) Revised.	None .....	24.403(g) Added.		
24.307 section heading.	24.306 Redesignated.	24.404(a) through 404(a)(2)(ii).	24.404(a) through 404(a)(2)(ii) Text unchanged.		
24.307(a) through (b)	24.306(a) through (b) Redesignated.	24.404(a)(2)(iii) .....	24.404(a)(2)(iii) Revised.		
24.307(c) .....	24.306(c) Revised.	24.404(b) through 404(c)(1)(vi).	24.404(b) through 404(c)(1)(vi) Text unchanged.		
Subpart E	Subpart E	24.404(b) through 404(c)(1)(i).	24.404(b) through 404(c)(1)(i) Revised.		
24.401 through 24.401(b).	24.401 through 24.401(b) Text unchanged.	24.404(c)(1)(ii) through (vi).	24.404(c)(1)(ii) through (vi) text unchanged.		
24.401(c) .....	24.401(c) Text unchanged.	24.404(c)(1)(vii) .....	24.404(c)(1)(vii) Revised.		
24.401(c)(1) .....	24.401(c)(1) Revised.	24.404(c)(1)(viii).	24.404(c)(1)(viii) Revised.		
24.401(c)(1)(i) and (ii)	24.401(c)(1)(i) and (ii) Text unchanged.	24.404(c)(2) and (3) ..	24.404(c)(2) and (3) Revised.		
24.401(c)(2) .....	24.403(a)(7) Redesignated and revised.	Subpart F	Subpart F		
24.401(c)(3) .....	24.403(g) Redesignated and text unchanged.	24.501 Heading .....	24.501 Heading Text unchanged.		
24.401(c)(4) .....	24.401(c)(2) Redesignated and text unchanged.	24.501 Intro. para. ....	24.501(a) Redesignated and revised.		
24.401(c)(4)(i) .....	24.401(c)(2)(i) Redesignated and text unchanged.	None .....	24.501(b) Added.		
24.401(c)(4)(ii) and (iii).	24.401(c)(2)(ii) and (iii) Redesignated and revised.	24.502(a) .....	24.301(a)(1) and (2)		
24.401(c)(4)(iv) .....	24.401(c)(2)(iv) Redesignated and text unchanged.	24.502(b) through (b)(3).	24.301(g)(8) through (g)(10) Redesignated and revised.		
		24.503 section heading.	24.502 Redesignated and revised.		

**Rulemaking Analyses and Notices**

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, nor is it significant within the meaning of Department of Transportation regulatory policies and procedures.

This action updates and streamlines the Uniform Act regulation and does not include any new initiatives. We have made only nominal adjustments to enhance services and payments to persons displaced by Federal and federally-assisted programs and projects. The costs of the increased benefits will continue to be funded through Federal and federally-assisted project funds. These changes will assist the 18 Federal Agencies that acquire real property or displace persons, and several of these Agencies provided input in developing this final rule.

This final rule will not adversely affect, in a material way, any sector of the economy. This action will assist agencies in developing their programs that acquire real property or displace persons by providing increased assistance, especially for businesses, farms and nonprofit organizations. None of the changes will materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) the FHWA has evaluated the effects of this action on small entities and has determined that the final rule will not have a significant economic impact on a substantial number of small entities.

This action updates the government-wide regulation that provides assistance for persons, including small businesses, displaced by Federal and federally-assisted programs or projects. One of the reasons for the update is to increase assistance for displaced small businesses. We anticipate this final rule will have a positive impact on those relatively few small businesses that are affected by such programs or projects. Financial impacts on local governments are mitigated by the fact that any increased costs will accrue only on federally-assisted programs, which will include participation of Federal funds. For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). The updates are applicable only on Federal and federally-assisted programs. This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120.7 million or more in any one year (2 U.S.C. 1532).

#### *Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action will not have a substantial direct effect or sufficient federalism implications on States that will limit the policymaking discretion of the States. The FHWA has also determined that this action will not preempt any State law, or State

regulation, or affect the States' ability to discharge traditional State governmental functions.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### *Paperwork Reduction Act*

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

#### *National Environmental Policy Act*

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this final rule will not have any effect on the quality of the environment.

#### *Executive Order 12630 (Taking of Private Property)*

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights.

#### *Executive Order 12988 (Civil Justice Reform)*

This final rule meets applicable standards in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *Executive Order 13045 (Protection of Children)*

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This action does not involve an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

#### *Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt

tribal law. Therefore, a tribal summary impact statement is not required.

#### *Executive Order 13211 (Energy Effects)*

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

#### *Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects in 49 CFR Part 24**

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements and Transportation.

Issued on: December 27, 2004.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, Part 24, as set forth below:

#### **PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS**

##### **Subpart A—General**

Sec.

- 24.1 Purpose.
- 24.2 Definitions and acronyms.
- 24.3 No duplication of payments.
- 24.4 Assurances, monitoring and corrective action.
- 24.5 Manner of notices.
- 24.6 Administration of jointly-funded projects.
- 24.7 Federal Agency waiver of regulations.
- 24.8 Compliance with other laws and regulations.
- 24.9 Recordkeeping and reports.
- 24.10 Appeals.

##### **Subpart B—Real Property Acquisition**

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.

- 24.106 Expenses incidental to transfer of title to the Agency.  
 24.107 Certain litigation expenses.  
 24.108 Donations.

#### Subpart C—General Relocation Requirements

- 24.201 Purpose.  
 24.202 Applicability.  
 24.203 Relocation notices.  
 24.204 Availability of comparable replacement dwelling before displacement.  
 24.205 Relocation planning, advisory services, and coordination.  
 24.206 Eviction for cause.  
 24.207 General requirements claims for relocation payments.  
 24.208 Aliens not lawfully present in the United States.  
 24.209 Relocation payments not considered as income.

#### Subpart D—Payments for Moving and Related Expenses

- 24.301 Payment for actual reasonable moving and related expenses.  
 24.302 Fixed payment for moving expenses—residential moves.  
 24.303 Related nonresidential eligible expenses.  
 24.304 Reestablishment expenses—nonresidential moves.  
 24.305 Fixed payment for moving expenses—nonresidential moves.  
 24.306 Discretionary utility relocation payments.

#### Subpart E—Replacement Housing Payments

- 24.401 Replacement housing payment for 180-day homeowner-occupants.  
 24.402 Replacement housing payment for 90-day occupants.  
 24.403 Additional rules governing replacement housing payments.  
 24.404 Replacement housing of last resort.

#### Subpart F—Mobile Homes

- 24.501 Applicability.  
 24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.  
 24.503 Replacement housing payment for 90-day mobile home occupants.

#### Subpart G—Certification

- 24.601 Purpose.  
 24.602 Certification application.  
 24.603 Monitoring and corrective action.

Appendix A to Part 24—Additional Information

Appendix B to Part 24—Statistical Report Form

**Authority:** 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

#### Subpart A—General

##### §24.1 Purpose.

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; and

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

##### §24.2 Definitions and acronyms.

(a) *Definitions.* Unless otherwise noted, the following terms used in this part shall be understood as defined in this section:

(1) *Agency.* The term *Agency* means the Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

(i) *Acquiring Agency.* The term *acquiring Agency* means a State Agency, as defined in paragraph (a)(1)(iv) of this section, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority.

(ii) *Displacing Agency.* The term *displacing Agency* means any Federal Agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(iii) *Federal Agency.* The term *Federal Agency* means any department, Agency, or instrumentality in the executive branch of the government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(iv) *State Agency.* The term *State Agency* means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the

authority to acquire property by eminent domain under State law.

(2) *Alien not lawfully present in the United States.* The phrase “alien not lawfully present in the United States” means an alien who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and whose stay in the United States has not been authorized by the United States Attorney General; and,

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

(3) *Appraisal.* The term *appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(4) *Business.* The term *business* means any lawful activity, except a farm operation, that is conducted:

(i) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;

(ii) Primarily for the sale of services to the public;

(iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(iv) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(5) *Citizen.* The term *citizen* for purposes of this part includes both citizens of the United States and noncitizen nationals.

(6) *Comparable replacement dwelling.* The term *comparable replacement dwelling* means a dwelling which is:

(i) Decent, safe and sanitary as described in paragraph 24.2(a)(8) of this section;

(ii) 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 trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling (See appendix A, § 24.2(a)(6));

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) 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;

(vi) 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. (See also § 24.403(a)(2));

(vii) Currently available to the displaced person on the private market except as provided in paragraph (a)(6)(ix) of this section (See appendix A, § 24.2(a)(6)(vii)); and

(viii) Within the financial means of the displaced person:

(A) 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.

(B) 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).

(C) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-

occupancy requirements, comparable replacement 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 § 24.402(b)(2). Such rental assistance must be paid under § 24.404, Replacement housing of last resort.

(ix) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply. (See appendix A, § 24.2(a)(6)(ix).)

(7) *Contribute materially.* The term *contribute materially* means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(i) Had average annual gross receipts of at least \$5,000; or

(ii) Had average annual net earnings of at least \$1,000; or

(iii) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(iv) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(8) *Decent, safe, and sanitary dwelling.* The term *decent, safe, and sanitary dwelling* means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:

(i) Be structurally sound, weather tight, and in good repair;

(ii) Contain a safe electrical wiring system adequate for lighting and other devices;

(iii) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;

(iv) 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;

(v) 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 the case of 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;

(vi) Contains unobstructed egress to safe, open space at ground level; and

(vii) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (See appendix A, § 24.2(a)(8)(vii).)

(9) *Displaced person.* (i) *General.* The term *displaced person* means, except as provided in paragraph (a)(9)(ii) of this section, any 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));

(A) 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;

(B) As a direct result of rehabilitation or demolition for a project; or

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

(ii) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(A) 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;

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

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

(D) 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 any guidelines established by the Federal Agency funding the project (See appendix A, § 24.2(a)(9)(ii)(D));

(E) 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 for a Federal or federally-assisted project is subject to this part.);

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

(G) 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;

(H) An owner-occupant who conveys his or her 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. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;

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

(J) 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 Pub. L. 93-477, Appropriations for National Park System, or Pub. L. 93-303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;

(K) 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;

(L) 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

(M) Tenants required to move as a result of the sale of their dwelling to a person using downpayment assistance provided under the American Dream Downpayment Initiative (ADDI) authorized by section 102 of the American Dream Downpayment Act (Pub. L. 108-186; codified at 42 U.S.C. 12821).

(10) *Dwelling*. The term *dwelling* means 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.

(11) *Dwelling 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, § 24.2(a)(11).)

(12) *Farm operation*. The term *farm operation* means 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.

(13) *Federal financial assistance*. The term *Federal financial assistance* means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(14) *Household income*. The term *household income* means 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. It does not include income received or earned by dependent children and full time students under 18 years of age. (See appendix A, § 24.2(a)(14) for examples of exclusions to income.)

(15) *Initiation of negotiations*. Unless a different action is specified in

applicable Federal program regulations, the term *initiation of negotiations* means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal Agency or State 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. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, and a 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.

(ii) Whenever 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 State 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.

(iii) 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.

(iv) 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 under this part, 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)).

(16) *Lead Agency*. The term *Lead Agency* means the Department of Transportation acting through the Federal Highway Administration.

(17) *Mobile home*. The term *mobile home* includes manufactured homes and recreational vehicles used as residences. (See appendix A, § 24.2(a)(17)).

(18) *Mortgage*. The term *mortgage* means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real

property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(19) *Nonprofit organization*. The term *nonprofit organization* means an organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(20) *Owner of a dwelling*. The term *owner of a dwelling* means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(i) Fee title, a life estate, a land contract, a 99 year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(iii) A contract to purchase any of the interests or estates described in § 24.2(a)(1)(i) or (ii) of this section; or

(iv) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(21) *Person*. The term *person* means any individual, family, partnership, corporation, or association.

(22) *Program or project*. The phrase *program or project* means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

(23) *Salvage value*. The term *salvage value* means 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 (i.e., not eligible for relocation assistance). This includes 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.

(24) *Small business*. A *small business* is a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of § 24.304.

(25) *State*. Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the

United States, or a political subdivision of any of these jurisdictions.

(26) *Tenant*. The term *tenant* means a person who has the temporary use and occupancy of real property owned by another.

(27) *Uneconomic remnant*. The term *uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value or utility to the owner.

(28) *Uniform Act*. The term *Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601 *et seq.*), and amendments thereto.

(29) *Unlawful occupant*. A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. An Agency, at its discretion, may consider such person to be in lawful occupancy.

(30) *Utility costs*. The term *utility costs* means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

(31) *Utility facility*. The term *utility facility* means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(32) *Utility relocation*. The term *utility relocation* means the adjustment of a utility facility required by the program or project undertaken by the displacing Agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

(33) *Waiver valuation*. The term *waiver valuation* means the valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to § 24.102(c)(2) appraisal waiver provisions.

(b) *Acronyms*. The following acronyms are commonly used in the

implementation of programs subject to this regulation:

(1) BCIS. Bureau of Citizenship and Immigration Service.

(2) FEMA. Federal Emergency Management Agency.

(3) FHA. Federal Housing Administration.

(4) FHWA. Federal Highway Administration.

(5) FIRREA. Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(6) HLR. Housing of last resort.

(7) HUD. U.S. Department of Housing and Urban Development.

(8) MIDP. Mortgage interest differential payment.

(9) RHP. Replacement housing payment.

(10) STURAA. Surface Transportation and Uniform Relocation Act Amendments of 1987.

(11) URA. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(12) USDOT. U.S. Department of Transportation.

(13) USPAP. Uniform Standards of Professional Appraisal Practice.

#### § 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the Agency to have the same purpose and effect as such payment under this part. (See appendix A, § 24.3).

#### § 24.4 Assurances, monitoring and corrective action.

(a) *Assurances*. (1) Before a Federal Agency may approve any grant to, or contract, or agreement with, a State Agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State Agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing Agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring Agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to §§ 301 or 302 of the Uniform Act. If, in the judgment of the Federal Agency, Uniform Act compliance will be served, a State Agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency, which both acquires real

property and displaces persons, may combine its section 210 and section 305 assurances in one document.

(2) If a Federal Agency or State Agency provides Federal financial assistance to a "person" causing displacement, such Federal or State Agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal Agency may provide Federal financial assistance to a State Agency after it has accepted a certification by such State Agency in accordance with the requirements in subpart G of this part.

(b) *Monitoring and corrective action.* The Federal Agency will monitor compliance with this part, and the State Agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal Agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603, of this part).

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

#### § 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

#### § 24.6 Administration of jointly-funded projects.

Whenever two or more Federal Agencies provide financial assistance to an Agency or Agencies, other than a Federal Agency, to carry out functionally or geographically related activities, which will result in the acquisition of property or the displacement of a person, the Federal Agencies may by agreement designate one such Agency as the cognizant Federal Agency. In the unlikely event that agreement among the Agencies cannot be reached as to which Agency

shall be the cognizant Federal Agency, then the Lead Agency shall designate one of such Agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally-assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal Agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally-assisted activities under the agreement shall be deemed a project for the purposes of this part.

#### § 24.7 Federal Agency waiver of regulations.

The Federal Agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

#### § 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

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

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

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

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

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

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

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

(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892.

(i) Executive Order 11246—Equal Employment Opportunity, as amended.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

(n) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

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

#### § 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall 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 he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal Agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding Agency shows good cause. The report shall be prepared and submitted using the format contained in appendix B of this part.

#### § 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination of the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal

counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review of the Agency decision.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

## Subpart B—Real Property Acquisition

### § 24.101 Applicability of acquisition requirements.

(a) *Direct Federal program or project.*

(1) The requirements of this subpart apply to any acquisition of real property for a direct Federal program or project, except acquisition for a program or project that is undertaken by the Tennessee Valley Authority or the Rural Utilities Service. (See appendix A, § 24.101(a).)

(2) If a Federal Agency (except for the Tennessee Valley Authority or the Rural Utilities Service) will not acquire a property because negotiations fail to result in an agreement, the owner of the property shall be so informed in writing. Owners of such properties are not displaced persons, (see §§ 24.2(a)(9)(ii)(E) or (H)), and as such, are not entitled to relocation assistance benefits. However, tenants on such properties may be eligible for relocation assistance benefits. (See § 24.2(a)(9)).

(b) *Programs and projects receiving Federal financial assistance.* The requirements of this subpart apply to any acquisition of real property for

programs and projects where there is Federal financial assistance in any part of project costs except for the acquisitions described in paragraphs (b)(1) through (5) of this section. The relocation assistance provisions in this part are applicable to any tenants that must move as a result of an acquisition described in paragraphs (b)(1) through (5) of this section. Such tenants are considered displaced persons. (See § 24.2(a)(9).)

(1) The requirements of Subpart B do not apply to acquisitions that meet all of the following conditions in paragraphs (b)(1)(i) through (iv):

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (See appendix A, § 24.101(b)(1)(i).)

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner in writing of what it believes to be the market value of the property. (See appendix A, § 24.101(b)(1)(iv) and (2)(ii).)

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and

(ii) Inform the owner in writing of what it believes to be the market value of the property. (See appendix A, § 24.101(b)(1)(iv) and (2)(ii).)

(3) The acquisition of real property from a Federal Agency, State, or State Agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(5) Acquisition for a program or project that receives Federal financial assistance from the Tennessee Valley Authority or the Rural Utilities Service.

(c) *Less-than-full-fee interest in real property.*

(1) The provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent and/or temporary easements necessary for the project. However, the Agency may apply these regulations to any less-than-full-fee acquisition that, in its judgment, should be covered.

(2) The provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

(d) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See § 24.4(a).)

### § 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (See § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.*

(1) Before the initiation of 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.

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the Agency from its obligation to appraise the property; or

(ii) 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.

(A) When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation.

(B) The person performing the waiver valuation must have sufficient

understanding of the local real estate market to be qualified to make the waiver valuation.

(C) 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 obtain an appraisal and not use procedures described in this paragraph. (See appendix A, § 24.102(c)(2).)

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. (See § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. (See appendix A, § 24.102(d).)

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

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

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) *Basic negotiation procedures.* The Agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, 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 which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation. (See appendix A, § 24.102(f).)

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *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 and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (See appendix A, § 24.102(i).)

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (See appendix A, § 24.102(j).)

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall

offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(a)(27).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (See appendix A, § 24.102(m).)

(n) *Conflict of interest.*

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

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

(2) 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 may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency.

(3) 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).)

#### § 24.103 Criteria for appraisals.

(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).<sup>1</sup> (See appendix A, § 24.103(a).) The Agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).<sup>2</sup>

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

(2) The Agency has the responsibility to assure that the appraisals it obtains are relevant to its 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 § 24.2(a)(3) and the five following requirements: (See appendix A, §§ 24.103 and 24.103(a).)

(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. (See appendix A, § 24.103(a)(1).)

(ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (See appendix A, § 24.103(a).)

(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, where appropriate.

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

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (See appendix A, § 24.103(b).)

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(a)(24)) of the retained improvement.

(d) *Qualifications of appraisers and review appraisers.*

(1) The Agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The Agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the Agency to be qualified. (See appendix A, § 24.103(d)(1).)

(2) If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*).

#### § 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (see § 24.103(d)(1) and appendix A, § 24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103 and other applicable

requirements, including, to the extent appropriate, the UASFLA, and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted. If authorized by the Agency to do so, the staff review appraiser shall also approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), and, if also authorized to do so, develop and report the amount believed to be just compensation. (See appendix A, § 24.104(a).)

(b) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with § 24.103 to support a recommended (or approved) value. (See appendix A, § 24.104(b).)

(c) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (See appendix A, § 24.104(c).)

#### § 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the

<sup>1</sup> Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/html/USPAP2004/toc.htm>.

<sup>2</sup> The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at <http://www.usdoj.gov/enrd/land-ack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/econom/publications/Default.asp> and select "Legal/Regulatory" or call 888-570-4545.

improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.

(c) *Appraisal and Establishment of Just Compensation for a Tenant-Owned Improvement.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the market value of the whole property, or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(a)(23).)

(d) *Special conditions for tenant-owned improvements.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law.

**§ 24.106 Expenses incidental to transfer of title to the Agency.**

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly to the

billing agent so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**§ 24.107 Certain litigation expenses.**

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation;

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

**§ 24.108 Donations.**

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

**Subpart C—General Relocation Requirements**

**§ 24.201 Purpose.**

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

**§ 24.202 Applicability.**

These requirements apply to the relocation of any displaced person as defined at § 24.2(a)(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this regulation. (See appendix A, § 24.202.)

**§ 24.203 Relocation notices.**

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of

eligibility, and the procedures for obtaining the payment(s);

(2) Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;

(3) Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;

(4) Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in § 24.208(h); and

(5) Describes the displaced person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(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.

(c) *Ninety-day notice.* (1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be

required to vacate the property on less than 90 days advance written notice if the displacing Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

(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 § 24.2(a)(9)(i)(A).)

**§ 24.204 Availability of comparable replacement dwelling before displacement.**

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2 (a)(6)) has been made available to the person. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

- (1) The person is informed of its location;
- (2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
- (3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal Agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

- (1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);
- (2) A presidentially declared national emergency; or
- (3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a

substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

- (1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;
- (2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and
- (3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

**§ 24.205 Relocation planning, advisory services, and coordination.**

(a) *Relocation planning.* During the early stages of development, an Agency shall plan Federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

- (1) 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 when applicable.
- (2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the

Agency should consider housing of last resort actions.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

(c) *Relocation assistance advisory services.* (1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of 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.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

- (i) Determine, for nonresidential (businesses, farm and nonprofit organizations) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) 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. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) Determination of the need for outside specialists in accordance with § 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For businesses, an identification and resolution of personal/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

(ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.

(A) 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 as set forth in § 24.204(a).

(B) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2(a)(8).) If such an inspection is not made, the Agency shall

notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(D) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See appendix A, § 24.205(c)(2)(ii)(D).)

(E) The Agency shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see § 24.2(a)(6)(ix)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(iii) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(d) *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. (See § 24.6.)

(e) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the

occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

#### § 24.206 Eviction for cause.

(a) Eviction for cause must conform to applicable State and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(1) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

(b) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project. (See appendix A, § 24.206.)

#### § 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advanced payments.* If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency no later than 18 months after:

(i) For tenants, the date of displacement.

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) The Agency shall waive this time period for good cause.

(e) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) *No waiver of relocation assistance.* A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

(g) *Expenditure of payments.* Payments, provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

**§ 24.208 Aliens not lawfully present in the United States.**

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and

(a)(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding Agency and, within those parameters, that of the displacing Agency.

(c) 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 to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be 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.

(d) The displacing Agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing Agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the Agency considers reliable and appropriate.

(e) Any review by the displacing Agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each displacing Agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, a displacing Agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

(1) If the Agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing Agency shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. A list

of local BCIS offices is available at <http://www.uscis.gov/graphics/fieldoffices/alpha.htm>. Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. (If an Agency is unable to contact the BCIS, it may contact the FHWA in Washington, DC, Office of Real Estate Services or Office of Chief Counsel for a referral to the BCIS.)

(2) If the Agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing Agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing Agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the displacing Agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in § 24.207 of this part.

(Approved by the Office of Management and Budget under control number 2105-0508.)

**§ 24.209 Relocation payments not considered as income.**

No relocation payment received by a displaced person under this part shall be considered as income for the purpose

of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S. Code), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S. Code 301 *et seq.*) or any other Federal law, except for any Federal law providing low-income housing assistance.

#### Subpart D—Payments for Moving and Related Expenses

##### § 24.301 Payment for actual reasonable moving and related expenses.

(a) *General.* (1) Any owner-occupant or tenant who qualifies as a displaced person (defined at § 24.2(a)(9)) 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.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 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 § 24.502(a)(3), the home-owner 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.

(b) *Moves from a dwelling.* A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods: (Eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (g)(7) of this section. Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.)

(1) *Commercial move*—moves performed by a professional mover.

(2) *Self-move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* (Described in § 24.302.)

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the

equipment but not exceed the cost paid by a commercial mover.

(c) *Moves from a mobile home.* A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods: (self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section. Eligible expenses for moves from a mobile home include those expenses described in paragraphs (g)(1) through (g)(7) of this section. In addition to the items in paragraph (a) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (g)(8) through (g)(10) of this section.)

(1) *Commercial move*—moves performed by a professional mover.

(2) *Self-move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* (Described in § 24.302.)

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(d) *Moves from a business, farm or nonprofit organization.* Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods: (Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in paragraphs (g)(1) through (g)(7) of this section and paragraphs (g)(11) through (g)(18) of this section and § 24.303.)

(1) *Commercial move.* Based on the lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

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

(i) The lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(ii) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a

commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

(e) *Personal property only.* 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 described in paragraphs (g)(1) through (g)(7) and (g)(18) of this section. (See appendix A, § 24.301(e).)

(f) *Advertising signs.* The amount of a payment for direct loss of an advertising sign, which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

(g) *Eligible actual moving expenses.*

(1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the property in connection with the move and necessary storage.

(6) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving-related expenses that are not listed as ineligible under

§ 24.301(h), as the Agency determines to be reasonable and necessary.

(8) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hookup" charges.

(9) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(10) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

(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 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.

(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. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(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.

(h) *Ineligible moving and related expenses.* A displaced person is not entitled to payment for:

- (1) The cost of moving any structure or other real property improvement in which the displaced person reserved

ownership. (However, this part does not preclude the computation under § 24.401(c)(2)(iii));

(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 § 24.304(a)(6);
- (7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency;

(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 §§ 24.301(g)(3) and 24.304(a);

(11) Costs for storage of personal property on real property already owned or leased by the displaced person, and

(12) Refundable security and utility deposits.

(i) *Notification and inspection (nonresidential).* The Agency shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in § 24.203. To be eligible for payments under this section the displaced person must:

(1) Provide the Agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(2) Permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(j) *Transfer of ownership (nonresidential).* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

#### § 24.302 Fixed payment for moving expenses—residential moves.

Any 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 § 24.301. This payment shall be determined according

to the Fixed Residential Moving Cost Schedule<sup>3</sup> approved by the Federal Highway Administration and published in the **Federal Register** on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an Agency at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule.

**§ 24.303 Related nonresidential eligible expenses.**

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.

**§ 24.304 Reestablishment expenses—nonresidential moves.**

In addition to the payments available under §§ 24.301 and 24.303 of this subpart, a small business, as defined in § 24.2(a)(24), farm or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) 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 such items as:

- (i) Lease or rental charges;
- (ii) Personal or real property taxes;
- (iii) Insurance premiums; and
- (iv) Utility charges, excluding impact fees.

(7) Other items that the Agency considers essential to the reestablishment of the business.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(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 § 24.2(a)(7)) to the household income.

**§ 24.305 Fixed payment for moving expenses—nonresidential moves.**

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.301, 24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, 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). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, 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 is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (See § 24.2(a)(7).)

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(a)(12)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may

<sup>3</sup> The Fixed Residential Moving Cost Schedule is available at the following URL: <http://www.fhwa.dot.gov/realstate/fixsch96.htm>. Agencies are cautioned to ensure they are using the most recent edition.

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 the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See appendix A, § 24.305(d).)

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or 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. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which the Agency determines is satisfactory. (See appendix A, § 24.305(e).)

#### § 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;

(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.)

#### Subpart E—Replacement Housing Payments

##### § 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant 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; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) 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; or

(ii) The date the displacing Agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also § 24.404.) The payment under this subpart 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 shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section;

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.* (1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site (see § 24.2(a)(11)) to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

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

(2) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(a)(8)); and

(iii) The current market value for residential use of the replacement

dwelling site (see appendix A, § 24.401(c)(2)(iii)), unless the claimant wanted the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

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

(d) *Increased mortgage interest costs.* The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be 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. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d)(1) through (d)(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (See appendix A, § 24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(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, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(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 termite inspection.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determine to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but 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. The difference, if any, is

computed in accordance with § 24.402(b)(1), except that the limit of \$5,250 does not apply, and disbursed in accordance with § 24.402(b)(3). Under no circumstances would the rental assistance payment exceed the amount that could have been received under § 24.401(b)(1) had the 180-day homeowner elected to purchase and occupy a comparable replacement dwelling.

#### § 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling; or

(ii) For an owner-occupant, the later of:

(A) The date he or she 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 with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.* (1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See § 24.404.) Such payment shall be 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

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement

dwelling for a reasonable period prior to displacement, as determined by the agency (for an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

(ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs<sup>4</sup>. The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or,

(iii) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the Agency's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. If the Agency elects to provide the maximum payment of \$5,250 as a downpayment, the Agency shall apply this discretion in a uniform and consistent manner, so that

eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (See appendix A, § 24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

**§ 24.403 Additional rules governing replacement housing payments.**

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(a)(6)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) Multiple occupants of one displacement dwelling. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have

separate entitlements to relocation payments.

(6) Deductions from relocation payments. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(7) Mixed-use and multifamily properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing the initial payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(a)(8).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling;
- (2) Purchases and rehabilitates a substandard dwelling;
- (3) Relocates a dwelling which he or she owns or purchases;
- (4) Constructs a dwelling on a site he or she owns or purchases;
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
- (6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or
- (2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under

<sup>4</sup> The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on FHWA's Web site at <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>.

§ 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(g) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (See § 24.3.)

#### § 24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area;

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person, or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

(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.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A replacement housing payment under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers for persons with disabilities.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see appendix A, § 24.404(c)), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(a)(6)(ii) of this part.

(3) The Agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (See § 24.2(a)(6)(viii)(C).) Such assistance shall cover a period of 42 months.

### Subpart F—Mobile Homes

#### § 24.501 Applicability.

(a) *General.* This subpart describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with subpart D of this part and a replacement housing payment in accordance with subpart E of this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in § 24.301(g)(1) through (g)(10).

(b) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person

who is entitled to relocation payments and other assistance under this part.

**§ 24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.**

(a) *Eligibility.* An owner-occupant displaced from a mobile home or site is entitled to a replacement housing payment, not to exceed \$22,500, under § 24.401 if:

(1) The person occupied the mobile home on the displacement site for at least 180 days immediately before:

(i) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

(ii) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

(iii) The date of the Agency's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in paragraphs (a)(3)(i) through (iv) of this section.

(2) The person meets the other basic eligibility requirements at § 24.401(a)(2); and

(3) The Agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not, and cannot economically be made decent, safe, and sanitary;

(ii) Cannot be relocated without substantial damage or unreasonable cost;

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) *Replacement housing payment computation for a 180-day owner that is displaced from a mobile home.* The replacement housing payment for an eligible displaced 180-day owner is computed as described at § 24.401(b) incorporating the following, as applicable:

(1) If the Agency acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

(2) If the Agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on paragraph (a)(1)(iii) of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (*i.e.*, purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the Agency's selected comparable mobile home less the Agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

(3) If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(c) *Rental assistance payment for a 180-day owner-occupant that is displaced from a leased or rented mobile home site.* If the displacement mobile home site is leased or rented, a displaced 180-day owner-occupant is entitled to a rental assistance payment computed as described in § 24.402(b). This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.

(d) *Owner-occupant not displaced from the mobile home.* If the Agency determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described at § 24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in this section or § 24.503 as applicable.

**§ 24.503 Replacement housing payment for 90-day mobile home occupants.**

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed \$5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days

immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the Agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at § 24.502(a)(3).

**Subpart G—Certification**

**§ 24.601 Purpose.**

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

**§ 24.602 Certification application.**

An Agency wishing to proceed on the basis of a certification may request an application for certification from the Lead Agency Director, Office of Real Estate Services, HEPR-1, Federal Highway Administration, 400 Seventh St, SW., Washington, DC 20590. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding Agency, in accordance with application procedures.

**§ 24.603 Monitoring and corrective action.**

(a) The Federal Lead Agency shall, in coordination with other Federal Agencies, monitor from time to time State Agency implementation of programs or projects conducted under the certification process and the State Agency shall make available any information required for this purpose.

(b) The Lead Agency may require periodic information or data from affected Federal or State Agencies.

(c) A Federal Agency may, after consultation with the Lead Agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State Agency fails to comply with its certification or with applicable State law and regulations. The Federal Agency shall initiate consultation with the Lead Agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The Lead Agency will also inform other Federal Agencies, which have accepted a certification under this subpart from

the same State Agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the Lead Agency report biennially to the Congress on State Agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the Lead Agency may require periodic information or data from affected Federal or State Agencies.

#### Appendix A to Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

##### Subpart A—General

###### Section 24.2 Definitions and Acronyms

**Section 24.2(a)(6) Definition of comparable replacement dwelling.** The requirement in § 24.2(a)(6)(ii) that a comparable replacement dwelling be “functionally equivalent” to the displacement dwelling means that it must perform the same function, and provide the same utility. While it need not possess every feature of the displacement dwelling, the principal features must be present.

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. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is “adequate to accommodate” the displaced person) may be found to be “functionally equivalent” to a larger but very run-down substandard displacement dwelling. Another example is when a displaced person accepts an offer of government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling.

**Section 24.2(a)(6)(vii).** The definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

**Section 24.2(a)(6)(ix).** A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned dwelling with a housing program subsidy tied to the unit may qualify

as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing.

A housing program subsidy that is paid to a person (not tied to the building), such as a HUD Section 8 Housing Voucher Program, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing assistance program, the rules of that program governing the size of the dwelling apply, and the rental assistance payment under § 24.402 would be computed on the basis of the person’s actual out-of-pocket cost for the replacement housing.)

**Section 24.2(a)(8)(ii) Decent, Safe and Sanitary.** Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored. Even where local law does not mandate adherence to such standards, it is strongly recommended that they be considered as a matter of public policy.

**Section 24.2(a)(8)(vii) Persons with a disability.** Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the Agency is required to address persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Agency shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person’s needs.

**Section 24.2(a)(9)(ii)(D) Persons not displaced.** Paragraph (a)(9)(ii)(D) of this section recognizes that there are circumstances where the acquisition, rehabilitation or demolition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered “displaced persons” under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary

relocation. These expenses may include moving expenses and increased housing costs during the temporary relocation.

Temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location. The Agency must contact any residential tenant who has been temporarily relocated for a period beyond one year and offer all permanent relocation assistance. This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.

Similarly, if a business will be shut-down for any length of time due to rehabilitation of a site, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be displaced at the Agency’s option.

Any person who disagrees with the Agency’s determination that he or she is not a displaced person under this part may file an appeal in accordance with 49 CFR part 24.10 of this regulation.

**Section 24.2(a)(11) Dwelling 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.

**Section 24.2(a)(14) Household income (exclusions).** Household income for purposes of this regulation does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program. For a more detailed list of income exclusions see Federal Highway Administration, Office of Real Estate Services Web site: <http://www.fhwa.dot.gov/realestate/>. (FR 4644–N–16 page 20319 Updated.) If there is a question on whether or not to include income from a specific program contact the Federal Agency administering the program.

**Section 24(a)(15) Initiation of negotiations.** This section provides a special definition for acquisition and displacements under Pub. L. 96–510 or Superfund. The order of activities under Superfund may differ slightly in that temporary relocation may precede acquisition. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert individual owners and tenants to potential health or safety threats and to offer to temporarily relocate them while additional information is gathered. If a decision is later made to permanently relocate such persons, those who had been temporarily relocated under Superfund authority would no longer be on site when a formal, written offer to acquire the property was made, and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition of initiation of negotiation, which is based on the date the Federal Government offers to temporarily relocate an owner or tenant from the subject property.

*Section 24.2(a)(15)(iv) Initiation of negotiations (Tenants.)* Tenants who occupy property that may be acquired amicably, without recourse to the use of the power of eminent domain, must be fully informed as to their eligibility for relocation assistance. This includes notifying such tenants of their potential eligibility when negotiations are initiated, notifying them if they become fully eligible, and, in the event the purchase of the property will not occur, notifying them that they are no longer eligible for relocation benefits. If a tenant is not readily accessible, as the result of a disaster or emergency, the Agency must make a good faith effort to provide these notifications and document its efforts in writing.

*Section 24.2(a)(17) Mobile home.* The following examples provide additional guidance on the types of mobile homes and manufactured housing that can be found acceptable as comparable replacement dwellings for persons displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met: the recreational vehicle is purchased and occupied as the "primary" place of residence; it is located on a purchased or leased site and connected to or have available all necessary utilities for functioning as a housing unit on the date of the displacing Agency's inspection; and, the dwelling, as sited, meets all local, State, and Federal requirements for a decent, safe and sanitary dwelling. (The regulations of some local jurisdictions will not permit the consideration of these vehicles as decent, safe and sanitary dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

For HUD programs, mobile home is defined as "a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such terms shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act, provided by Congress in the original 1974 Manufactured Housing Act." In 1979 the term "mobile home" was changed to "manufactured home." For purposes of this regulation, the terms mobile home and manufactured home are synonymous.

When assembled, manufactured homes built after 1976 contain no less than 320 square feet. They may be single or multi-sectioned units when installed. Their designation as personalty or realty will be determined by State law. When determined to be realty, most are eligible for conventional mortgage financing.

The 1976 HUD standards distinguish manufactured homes from factory-built "modular homes" as well as conventional or "stick-built" homes. Both of these types of housing are required to meet State and local construction codes.

*Section 24.3 No Duplication of Payments.* This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment is computed.

#### **Subpart B—Real Property Acquisition**

Federal Agencies may find that, for Federal eminent domain purposes, the terms "fair market value" (as used throughout this subpart) and "market value," which may be the more typical term in private transactions, may be synonymous.

*Section 24.101(a) Direct Federal program or project.* All 49 CFR Part 24 Subpart B (real property acquisition) requirements apply to all direct acquisitions for Federal programs and projects by Federal Agencies, except for acquisitions undertaken by the Tennessee Valley Authority or the Rural Utilities Service. There are no exceptions for "voluntary transactions."

*Section 24.101(b)(1)(i).* The term "general geographic area" is used to clarify that the "geographic area" is not to be construed to be a small, limited area.

*Sections 24.101(b)(1)(iv) and (2)(ii).* These sections provide that, for programs and projects receiving Federal financial assistance described in §§ 24.101(b)(1) and (2), Agencies are to inform the owner(s) in writing of the Agency's estimate of the market value for the property to be acquired.

While this part does not require an appraisal for these transactions, Agencies may still decide that an appraisal is necessary to support their determination of the market value of these properties, and, in any event, Agencies must have some reasonable basis for their determination of market value. In addition, some of the concepts inherent in Federal Program appraisal practice are appropriate for these estimates. It would be appropriate for Agencies to adhere to project influence restrictions, as well as guard against discredited "public interest value" valuation concepts.

After an Agency has established an amount it believes to be the market value of the property and has notified the owner of this amount in writing, an Agency may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations, it would be entirely appropriate for Agencies to apply the administrative settlement concept and procedures in § 24.102(i) to negotiate amounts that exceed the original estimate of market value.

Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.

*Section 24.101(c) Less-than-full-fee interest in real property.* This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases.

*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.

The Agency employee making the determination to use the appraisal waiver process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is low value and uncomplicated.

Waiver valuations are not appraisals as defined by the Uniform Act and these regulations; therefore, appraisal performance requirements or standards, regardless of their source, are not required for waiver valuations by this rule. Since waiver valuations are not appraisals, neither is there a requirement for an appraisal review. 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).

The definition of "appraisal" in the Uniform Act and appraisal waiver provisions of the Uniform Act and these regulations are Federal law and public policy and should be considered as such when determining the impact of appraisal requirements levied by others.

*Section 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.

*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.

In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the eminent domain process, including gaining possession of the needed real

property, is very time consuming. These provisions are not intended to restrict this practice, so long as it does not interfere with a reasonable time that must be provided for negotiations, described above, and the Agencies adhere to the Uniform Act ban on coercive action (section 301(7) of the Uniform Act).

If the owner expresses intent to provide an appraisal report, Agencies are encouraged to provide the owner and/or his/her appraiser a copy of Agency appraisal requirements and inform them that their appraisal should be based on those requirements.

**Section 24.102(i) Administrative settlement.** This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

**Section 24.102(j) Payment before taking possession.** It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

**Section 24.102(m) Fair rental.** Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value of the property to a short-term occupier." Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

**Section 24.102(n) Conflict of interest.** The overall objective is to minimize the risk of fraud while allowing Agencies to operate as efficiently as possible. There are three parts to this provision.

The first provision is the prohibition against having any interest in the real property being valued by the appraiser (for an appraisal), the valuer (for a waiver estimate) or the review appraiser (for an appraisal review.)

The second provision is that no person functioning as a negotiator for a project or program can supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work for that project or program. The intent of this provision is to ensure appraisal/valuation independence and to prevent inappropriate influence. It is not intended to prevent Agencies from providing appraisers/valuers with appropriate project information and participating in determining the scope of work for the appraisal or valuation. For a program or project receiving Federal financial assistance, the Federal funding

Agency may waive this requirement if it would create a hardship for the Agency. The intent is to accommodate Federal-aid recipients that have a small staff where this provision would be unworkable.

The third provision is to minimize situations where administrative costs exceed acquisition costs. Section 24.102(n) also provides that the same person may prepare a valuation estimate (including an appraisal) and negotiate that acquisition, if the valuation estimate amount is \$10,000 or less. However, it should be noted that this exception for properties valued at \$10,000 or less is not mandatory, e.g., Agencies are not required to use those who prepare a waiver valuation or appraisal of \$10,000 or less to negotiate the acquisition, and, all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at \$10,000 or less.

**Section 24.103 Criteria for Appraisals.** The term "requirements" is used throughout this section to avoid confusion with The Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) "standards." Although this section discusses appraisal requirements, the definition of "appraisal" itself at § 24.2(a)(3) includes appraisal performance requirements that are an inherent part of this section.

The term "Federal and federally-assisted program or project" is used to better identify the type of appraisal practices that are to be referenced and to differentiate them from the private sector, especially mortgage lending, appraisal practice.

**Section 24.103(a) Appraisal requirements.** The first sentence instructs readers that requirements for appraisals for Federal and federally-assisted programs or projects are located in 49 CFR part 24. These are the basic appraisal requirements for Federal and federally-assisted programs or projects. However, Agencies may enhance and expand on them, and there may be specific project or program legislation that references other appraisal requirements.

These appraisal requirements are necessarily designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements. They are also considered to be consistent with Standards Rules 1, 2, and 3 of the 2004 edition of the USPAP. Consistency with USPAP has been a feature of these appraisal requirements since the beginning of USPAP. This "consistent" relationship was more formally recognized in OMB Bulletin 92-06. While these requirements are considered consistent with USPAP, neither can supplant the other; their provisions are neither identical, nor interchangeable. Appraisals performed for Federal and federally-assisted real property acquisition must follow the requirements in this regulation. Compliance with any other appraisal requirements is not the purview of this regulation. An appraiser who is committed to working within the bounds of USPAP should recognize that compliance with both USPAP and these requirements may be achieved by using the Supplemental Standards Rule and the Jurisdictional Exception Rule of USPAP, where applicable.

The term "scope of work" defines the general parameters of the appraisal. It reflects

the needs of the Agency and the requirements of Federal and federally-assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and an Agency official who is competent to both represent the Agency's needs and respect valid appraisal practice. The scope of work statement should include the purpose and/or function of the appraisal, a definition of the estate being appraised, and if it is market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work should consider the specific requirements in 49 CFR 24.103(a)(1) through (5) and address them as appropriate.

**Section 24.103(a)(1).** The appraisal report should identify the items considered in the appraisal to be real property, as well as those identified as personal property.

**Section 24.103(a)(2).** 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. This should be reflected in the scope of work.

**Section 24.103(b) Influence of the project on just compensation.** As used in this section, the term "project" means an undertaking which is planned, designed, and intended to operate as a unit.

When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

**Section 24.103(d)(1).** The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

**Section 24.104 Review of appraisals.** The term "review appraiser" is used rather than "reviewing appraiser," to emphasize that "review appraiser" is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal Agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires more. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the Agency's real property valuation needs and the appraiser.

Agency review appraisers typically perform a role greater than technical appraisal review. They are often involved in early project development. Later they may be involved in devising the scope of work statements and participate in making

appraisal assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on Agency policy and requirements, to appraisers, both staff and fee. Additionally, review appraisers are frequently technical advisors to other Agency officials.

*Section 24.104(a).* This paragraph states that the review appraiser is to review the appraiser's presentation and analysis of market information and that it is to be reviewed against § 24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal review is to be a technical review by an appropriately qualified review appraiser. The qualifications of the review appraiser and the level of explanation of the basis for the review appraiser's recommended (or approved) value depend on the complexity of the appraisal problem. If the initial appraisal submitted for review is not acceptable, the review appraiser is to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's development of an acceptable appraisal.

In doing this, the review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself.

If the Agency intends that the staff review appraiser approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount the Agency believes is just compensation, she/he must be specifically authorized by the Agency to do so. If the review appraiser is not specifically authorized to approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount believed to be just compensation, that authority remains with another Agency official.

*Section 24.104(b).* In developing an independent approved or recommended value, the review appraiser may reference any acceptable resource, including acceptable parts of any appraisal, including an otherwise unacceptable appraisal. When a review appraiser develops an independent value, while retaining the appraisal review, that independent value also becomes the approved appraisal of the fair market value for Uniform Act Section 301(3) purposes. It is within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on the property.

*Section 24.104(c).* Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of § 24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact

science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal.

At the Agency's discretion, for a low value property requiring only a simple appraisal process, the review appraiser's recommendation (or approval), endorsing the appraiser's report, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

*Section 24.106(b). Expenses incidental to transfer of title to the agency.* Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. Such expenses must be reasonable and necessary.

#### Subpart C—General Relocation Requirements

*Section 24.202 Applicability and Section 205(c) Services to be provided.* In extraordinary circumstances, when a displaced person is not readily accessible, the Agency must make a good faith effort to comply with these sections and document its efforts in writing.

*Section 24.204 Availability of comparable replacement dwelling before displacement.*

*Section 24.204(a) General.* This provision requires that no one may be required to move from a dwelling without a comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "where possible, three or more comparable replacement dwellings shall be made available." Thus, the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

*Section 24.205 Relocation assistance advisory services.* Section 24.205(c)(2)(ii)(D) emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

*Section 24.206 Eviction for cause.* An eviction related to non-compliance with a requirement related to carrying out a project (e.g., failure to move or relocate when instructed, or to cooperate in the relocation process) shall not negate a person's entitlement to relocation payments and other assistance set forth in this part.

*Section 24.207 General Requirements—Claims for relocation payments.* Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated nonresidential moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in § 24.301(d)(1).

While § 24.207(f) prohibits an Agency from proposing or requesting that a displaced

person waive his or her rights or entitlements to relocation assistance and payments, an Agency may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such written statement must clearly show that the individual knows what they are entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated and may not be coerced by the Agency.

#### Subpart D—Payment for Moving and Related Expenses

*Section 24.301. Payment for Actual Reasonable Moving and Related Expenses.*

*Section 24.301(e) Personal property only.* Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the business or residence will not be taken and can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired.

For a nonresidential personal property only move, the owner of the personal property has the options of moving the personal property by using a commercial mover or a self-move.

If a question arises concerning the reasonableness of an actual cost move, the acquiring Agency may obtain estimates from qualified movers to use as the standard in determining the payment.

*Section 24.301 (g)(14)(i) and (ii).* If the 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. As prescribed in the regulation, the allowable in-place value estimate (§ 24.301(g)(14)(i)) and moving cost estimate (§ 24.301(g)(14)(ii)) must reflect only the "as is" condition and installation of the item at the displacement site. The in-place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site.

*Section 24.301(g)(17) Searching expenses.* In special cases where the displacing Agency determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. These include those costs involved in investigating potential replacement sites and the time of the business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings. Necessary attorney fees required to obtain such licenses or permits are also reimbursable. Time spent in negotiating the purchase of a replacement business site is also reimbursable based on a reasonable salary or earnings rate. In those instances when such additional costs to

investigate and acquire the site exceed \$2,500, the displacing Agency may consider a waiver of the cost limitation under the § 24.7, /raiver provision. Such a waiver should be subject to the approval of the Federal-funding Agency in accordance with existing delegation authority.

**Section 24.303(b) Professional Services.** If a question should arise as to what is a "reasonable hourly rate," the Agency should compare the rates of other similar professional providers in that area.

**Section 24.305 Fixed Payment for Moving Expenses—Nonresidential Moves.**

**Section 24.305(d) Nonprofit organization.** Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fundraising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public Agencies.

**Section 24.305(e) Average annual net earnings of a business or farm operation.** If the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than \$1,000, even \$0 or a negative amount, the minimum payment of \$1,000 shall be provided.

**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.

**Subpart E—Replacement Housing Payments**

**Section 24.401 Replacement Housing Payment for 180-day Homeowner-Occupants.**

**Section 24.401(a)(2).** An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

**Section 24.401(c)(2)(iii) Price differential.** The provision in § 24.401(c)(2)(iii) to use the current market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the market value may be used.

**Section 24.401(d) Increased mortgage interest costs.** The provision in § 24.401(d) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to

the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The Agency must know the remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

**SAMPLE COMPUTATION**

<b>Old Mortgage:</b>	
Remaining Principal Balance .....	\$50,000
Monthly Payment (principal and interest) .....	\$458.22
Interest rate (percent) ....	7
<b>New Mortgage:</b>	
Interest rate (percent) ....	10
Points .....	3
Term (years) .....	15

Remaining term of the old mortgage is determined to be 174 months. Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee. However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of \$458.22 at 10% = \$42,010.18.

<b>Calculation:</b>	
Remaining Principal Balance .....	\$50,000.00
Minus Monthly Payment (principal and interest) .....	- 42,010.18
Increased mortgage interest costs .....	7,989.82
3 points on \$42,010.18 .....	1,260.31
Total buydown necessary to maintain payments at \$458.22/month .....	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage (\$42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were \$35,000, the buydown payment would be \$7,706.57 (\$35,000 divided by \$42,010.18 = .8331; \$9,250.13 multiplied by .83 = \$7,706.57). The Agency is obligated to inform the displaced person of the approximate amount

of this payment and that the displaced person must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The Agency must advise the displaced person of the interest rate and points used to calculate the payment.

**Section 24.402 Replacement Housing Payment for 90-day Occupants**

**Section 24.402(b)(2) Low income calculation example.** The Uniform Act requires that an eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment calculated in accordance with § 24.402(b). One factor in this calculation is to determine if a displaced person is "low income," as defined by the U.S. Department of Housing and Urban Development's annual survey of income limits for the Public Housing and Section 8 Programs. To make such a determination, the Agency must: (1) Determine the total number of members in the household (including all adults and children); (2) locate the appropriate table for income limits applicable to the Uniform Act for the state in which the displaced residence is located (found at: <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>); (3) from the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA)\*, or Primary Metropolitan Statistical Area (PMSA)\* in which the displacement property is located; and (4) locate the appropriate income limit in that jurisdiction for the size of this displaced person/family. The income limit must then be compared to the household income (§ 24.2(a)(15)) which is the gross annual income received by the displaced family, excluding income from any dependent children and full-time students under the age of 18. If the household income for the eligible displaced person/family is less than or equal to the income limit, the family is considered "low income." For example:

Tom and Mary Smith and their three children are being displaced. The information obtained from the family and verified by the Agency is as follows:

Tom Smith, employed, earns \$21,000/yr.  
Mary Smith, receives disability payments of \$6,000/yr.

Tom Smith Jr., 21, employed, earns \$10,000/yr.

Mary Jane Smith, 17, student, has a paper route, earns \$3,000/yr. (Income is not included because she is a dependent child and a full-time student under 18)

Sammie Smith, 10, full-time student, no income.

Total family income for 5 persons is: \$21,000 + \$6,000 + \$10,000 = \$37,000

The displacement residence is located in the State of Maryland, Caroline County. The low income limit for a 5 person household is: \$47,450. (2004 Income Limits)

This household is considered "low income."

\* A complete list of counties and towns included in the identified MSAs and PMSAs can be found under the bulleted item "Income Limit Area Definition" posted on the FHWA's Web site at: <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>.

**Section 24.402(c) Downpayment assistance.** The downpayment assistance revisions in § 24.402(c) limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance that exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing Agency should develop a policy that affords equal treatment for displaced persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects.

For the purpose of this section, should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling, the payment would be limited to the cost of the dwelling.

**Section 24.404 Replacement Housing of Last Resort.**

**Section 24.404(b) Basic rights of persons to be displaced.** This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(a)(20). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

**Section 24.404(c) Methods of providing comparable replacement housing.** This Section emphasizes the use of cost effective means of providing comparable replacement housing. The term "reasonable cost" is used to highlight the fact that while innovative means to provide housing are encouraged, they should be cost-effective. Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller, decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of

which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

**Appendix B to Part 24—Statistical Report Form**

This Appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

**General**

**1. Report coverage.** This report covers all relocation and real property acquisition activities under a Federal or a federally-assisted project or program subject to the provisions of the Uniform Act. If the exact numbers are not easily available, an Agency may provide what it believes to be a reasonable estimate.

**2. Report period.** Activities shall be reported on a Federal fiscal year basis, *i.e.*, October 1 through September 30.

**3. Where and when to submit report.** Submit a copy of this report to the lead Agency as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15. Lead Agency address: Federal Highway Administration, Office of Real Estate Services (HEPR), Room 3221, 400 7th Street SW., Washington, DC 20590.

**4. How to report relocation payments.** The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

**5. How to report dollar amounts.** Round off all money entries in Parts of this section A, B and C to the nearest dollar.

**6. Regulatory references.** The references in Parts A, B, C and D of this section indicate the subpart of the regulations pertaining to the requested information.

**Part A. Real property acquisition under The Uniform Act**

**Line 1.** Report all parcels acquired during the report year where title or possession was vested in the Agency during the reporting period. The parcel count reported should relate to ownerships and not to the number of parcels of different property interests (such as fee, perpetual easement, temporary easement, etc.) that may have been part of an acquisition from one owner. For example, an acquisition from a property that includes a fee simple parcel, a perpetual easement parcel, and a temporary easement parcel should be reported as 1 parcel not 3 parcels. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.)

**Line 2.** Report the number of parcels reported on Line 1 that were acquired by condemnation. Include those parcels where compensation for the property was paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency through condemnation authority.

**Line 3.** Report the number of parcels in Line 1 acquired through administrative

settlement where the purchase price for the property exceeded the amount offered as just compensation and efforts to negotiate an agreement at that amount have failed.

**Line 4.** Report the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency in Line 1.

**Part B. Residential Relocation Under the Uniform Act**

**Line 5.** Report the number of households who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling. The term "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit.

**Line 6.** Report the total amount paid for residential moving expenses (actual expense and fixed payment).

**Line 7.** Report the total amount paid for residential replacement housing payments including payments for replacement housing of last resort provided pursuant to § 24.404 of this part.

**Line 8.** Report the number of households in Line 5 who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling as part of last resort housing assistance.

**Line 9.** Report the number of tenant households in Line 5 who were permanently displaced during the fiscal year by project or program activities, and who purchased and moved to their replacement dwelling using a downpayment assistance payment under this part.

**Line 10.** Report the total sum costs of residential relocation expenses and payments (excluding Agency administrative expenses) in Lines 6 and 7.

**Part C. Nonresidential Relocation Under the Uniform Act**

**Line 11.** Report the number of businesses, nonprofit organizations, and farms who were permanently displaced during the fiscal year by project or program activities and moved to their replacement location. This includes businesses, nonprofit organizations, and farms, that upon displacement, discontinued operations.

**Line 12.** Report the total amount paid for nonresidential moving expenses (actual expense and fixed payment.)

**Line 13.** Report the total amount paid for nonresidential reestablishment expenses.

**Line 14.** Report the total sum costs of nonresidential relocation expenses and payments (excluding Agency administrative expenses) in Lines 12 and 13.

**Part D. Relocation Appeals**

**Line 15.** Report the total number of relocation appeals filed during the fiscal year by aggrieved persons (residential and nonresidential).

**BILLING CODE 4910-22-P**

FEDERAL FISCAL YEAR ENDING SEPT. 30, 20 \_\_\_\_\_

REPORTING AGENCY: \_\_\_\_\_

STATE: \_\_\_\_\_

CITY/COUNTY (For Local Government Agencies): \_\_\_\_\_

FEDERAL FUNDING AGENCY: \_\_\_\_\_

**PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT**

1) Total Number of Parcels Acquired (Ownerships)	
2) Number of Parcels in Line 1 Acquired by Condemnation	
3) Number of Parcels in Line 1 Acquired by Administrative Settlement (Above initial offer - see 24.102(i))	
4) Compensation - Total Costs (Including 24.106; Excluding appraisal costs, negotiator fees and other administrative expenses)	

**PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT**

5) Total Number of Residential Displacements (Households)	
6) Residential Moving Payments - Total Costs	
7) Replacement Housing Payments - Total Costs	
8) Number of Last Resort Housing Displacements in Line 5 (Households)	
9) Number of Tenants converted to Homeowners in Line 5 (Households using 24.402(c))	
10) Total Costs for Residential Relocation Expenses and Payments (Sum of lines 6 and 7; excluding Agency Administrative Costs)	

**PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT**

11) Total Number of NonResidential Displacements	
12) NonResidential Moving Payments - Total Costs (Including 24.305)	
13) NonResidential Reestablishment Payments - Total Costs	
14) Total Costs for Nonresidential Relocation Expenses and Payments (Sum of lines 12 and 13; excluding Agency Administrative Costs)	

**PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT**

15) Total Number of Relocation Appeals (Residential & NonResidential)	
---	--



You are here: Home → Legislation, Regulations & Guidance → Circulars/Significant Guidance → **Grant Management Guidelines**



## Grant Management Guidelines

**C 5010.1C**

10-01-98

### Table of Contents

- General
- Dear Colleague Letter
- Disclosure of Lobbying Activities
- Chapter I: Project Administration and Management
- Chapter II: Management of Real Property, Equipment & Supplies
- Chapter III: Financial Management
- Chapter IV: Payment Procedures
- Exhibit I-1: A Summary of Planning, Capital and Operating Grant Changes
- Exhibit I-2: Overview of the Grant Management Sequence
- Exhibit IV-1: Request for Advance or Reimbursement (SF270)
- Exhibit IV-2: Payment Information Form - ECHO-ACH Payment System
- Exhibit IV-3: Signatory Authorization and Certification
- Appendix: Joint Development Projects

Top of Page

U.S. Department of Transportation

### Federal Transit Administration

1. **PURPOSE.** The purpose of this circular is to provide guidelines and management procedures for Metropolitan Planning grants, Capital Program grants and Urbanized Area Formula grants for assistance programs of the Federal Transit Administration (FTA), after award. Guidance is provided which covers Grant Administration and Management in Chapter I, Real Property and Equipment Issues in Chapter II, Financial Management in Chapter III, and Payment Procedures in Chapter IV.

Grant management guidelines for the Elderly and Persons With Disabilities Program are contained in FTA Circular 9070.1E, and grant management guidelines for Other Than Urbanized Areas Program are contained in FTA Circular 9040.1E.

2. **CANCELLATION.** This circular cancels FTA Circular 5010.1B, "Grant Management Guidelines, dated 9-7-95.
3. **EXPLANATION OF CHANGE.** This circular incorporates the Federal transit laws as codified in 49 United States Code, chapter 53. The major changes in this circular are in the new chapter II, for management of real and personal property. This change was made to better meet customer needs. This chapter includes a comprehensive list of disposition options for real property, equipment and supplies including the new TEA-21 provision, 49 U.S.C. 5334 (g)(4).
4. **REFERENCES :**

- a. Federal transit laws, 49 U.S.C. chapter 53.
- b. Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 U.S.C. 101 note, as amended by the TEA-21 Restoration Act 105-206, 112 Stat. 685, July 22, 1998, 23 U.S.C. 101 note.
- c. Intermodal Surface Transportation Efficiency Act of 1991, Public Law No. 102-240, 105 Stat. 1914, December 18, 1991 (codified as amended by Public Law 103-272, 108 Stat. 745, July 5, 1994, in scattered sections of 49 and 23 United States Code).
- d. 49 U.S.C. 5307(i), "Reviews, Audits, and Evaluations," [This includes reference to the triennial review process.]
- e. 49 U.S.C. 5327, "Project Management Oversight."
- f. 31 CFR Part 205, Ch. II, "Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs." (Treasury C.1075.)
- g. 49 CFR Part 18, the Common Rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- h. 49 CFR Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1984."
- i. 49 CFR Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs."
- j. 49 CFR Part 24, "Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs," dated 3-2-89.
- k. Americans With Disabilities Act of 1990, as implemented in 49 CFR Parts 27, 37 and 38, Transportation for Individuals With Disabilities; Final Rule 9-6-91.
- l. 49 CFR Part 663, "Pre-Award and Post Delivery Audits of Rolling Stock Purchases," dated 9-24-91.
- m. OMB Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," dated 1-15-81, and changes to this document published 5/17/95, effective 9/1/95.
- n. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" as revised June 24, 1997. Department of Health and Human Services Publication No. OASC-10, "A Guide for Local Government Agencies - Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government."
- o. FTA Circular 4220.1E, "Third Party Contracting Guidelines," dated 4-15-96.
- p. FTA Circular 4702-1, FTA, "FTA Guidelines for Title VI Information Specific to FTA Programs," dated 5-26-88.
- q. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for FTA Recipients," dated 7-26-88.
- r. FTA Circular 4715.1A, "Section 20 (Human Resource) Guidelines for FTA Applicants," dated 7-26-88.
- s. FTA Circular 4716.1A, "FTA Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicles Manufacturers," dated 7-26-88.
- t. FTA Circular 5700.1, "Requirements and Responsibilities for Indirect Cost Proposals/Cost Allocations Plans for Technical Studies and Capital Grants," dated 5-24-83.
- u. FTA Circular 8100.1B, "Program Guidance and Application Instructions for Planning and Technical Studies Grants," dated 10-25-96.
- v. FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions," dated 10-1-98.
- w. FTA Circular 9300.1A, "Capital Program: Grant Application Instructions." dated 10-1-98.
- x. National Environmental Policy Act of 1969, as amended (NEPA).
- y. Uniform Standards of Professional Appraisal Practice (USPAP).

- z. FTA Buy America regulations, 49 C.F.R. Part 661.
- aa. DOT Seismic Safety Rule, 49 C.F.R. 41.117.

5. **BACKGROUND.** This revised circular updates the general grant management procedures applicable to FTA grantees that receive Federal funds under 49 U.S.C., chapter 53. The revisions are consistent with the current provisions of the Transportation Equity Act for the 21st Century (TEA-21), as amended, and other applicable statutes, OMB guidelines and DOT policy and regulations.

These procedures are intended to assist grantees in administering FTA-funded projects and in meeting grant responsibilities and reporting requirements. More specific guidance regarding certain subjects, such as civil rights or cost principles, is provided in the above-referenced documents, which deal more specifically with individual topics. Grantees are reminded of their responsibility to comply with regulatory requirements and should be aware of all pertinent material to assist in the management of federally assisted grants.

6. **WAIVERS.** To the extent permitted by law, the Federal Transit Administrator reserves the right to waive any provision of this circular.

Sincerely,

Gordon J. Linton  
Administrator

Top of Page

**Revised Grant Management Guidelines Circular 5010.1C, dated 10/1/98**

**Number C-98-31**  
11-04-98

U.S. Department of Transportation

Headquarters

400 Seventh St. S.W.  
Washington, D.C. 20590

**Federal Transit Administration**

Dear Colleague:

As you know, many changes have occurred in the Federal Transit Administration (FTA) over the past several years. Consequently, FTA guidance circulars have become outdated and in need of revision. I am happy to provide to you a revision of FTA's Grant Management Guidelines Circular 5010.1C, dated October 1, 1998.

This circular has been updated to include a separate chapter II for real property and equipment acquisition, management, and disposition issues. One of the changes, enacted by the Transportation Equity Act for the 21st Century (TEA-21), allows the grantee to retain sales proceeds from excess assets to help reduce the gross project cost of subsequent capital projects.

In FY 1999, FTA will begin using its new Transportation Electronic Award and Management (TEAM) system for grant award and management. The system uses graphic user technology, providing point

and click "smart" selections that will aid grant recipients in the process of submitting applications and reporting on the management of their grants.

I hope you will find many benefits to assist you in the management of your FTA transit grant programs. I urge you to become familiar with the changes as this circular is now the operational document for FTA program management. You also have my personal assurance that in the months ahead FTA will continue its efforts to assist you in the management of your transit grants in the most business-like manner possible.

Sincerely,  
Gordon J. Linton

Top of Page

## Chapter I: Project Administration and Management

1. **GENERAL.** This circular describes the process and provides guidelines and procedures for management of FTA grants at 49 U.S.C. chapter 53, sections:

5309 Capital Program;

5303 Metropolitan Planning;

5307 Urbanized Area Formula Program;

5313(b) State/Planning and Research.

Procedures for management of 49 U.S.C. Section 5310, the Elderly and Persons with Disabilities Program grants, are provided in the current version of FTA Circular 9070.1E, and procedures for management of 49 U.S.C. Section 5311, Nonurbanized Areas Formula Program grants, are provided in the current version of FTA Circular 9040.1E. FTA follows the Common Rule (49 C.F.R. Part 18) for project management for those programs that have states as grantees, including Sections 5310, 5311, and 5313(b).

Agencies that receive FTA assistance are defined as "grantees." The term "projects" refers to public transit improvement activities funded under an executed grant. Similarly, "projects" refer to locally developed groups or lists of projects as presented in the Transportation Improvement Program or State Transportation Improvement Program (TIP/STIP) and to FTA, as approved and defined in executed agreements, referred to herein as "program."

FTA Regional Offices retain responsibility for management oversight of most grant projects. References in this circular to the cognizant agency mean the FTA Regional Office unless otherwise defined.

2. **GRANT APPROVAL.**

- a. **Notification.** FTA notifies grantees of grant approval electronically through the electronic award and management system. The Grant Agreement includes the notification of award, and the approved project budget. Special conditions of the approval may be included in the award, the current version of the Master Agreement, the electronic grant (screen), or the conditions for using pre-award authority if applicable. Pre-award authority may be granted for incurring project-related costs prior

to approval of an application.

- b. Cost Eligibility and Payment Method. Absent any type of pre-award authority, the grantee may begin to incur project costs as of the obligation date stated in the Notification of Grant Approval. Cash payments are made by the Automated Clearing House Method (ACH). See Chapter IV for more details. Requests for reimbursements will not be honored until the grant agreement has been executed by both FTA and the grantee and returned to FTA. Information regarding a cost allocation plan is discussed in Chapter III.
- c. Execution of Grant Agreement. Electronic execution of the grant agreement is accomplished, for the most part, by all grant applicants. There may still be occasions where printed paper copies will be accepted. However, FTA expects all applicants to gain access to the electronic award and management system, thereby saving time and money for them and the Federal government.

### 3. GRANTEE RESPONSIBILITIES FOR GRANT ADMINISTRATION AND MANAGEMENT.

The grantee is responsible for administration and management of the grant in compliance with the grant agreement and applicable FTA circulars and regulations. The grantee is also responsible for funds that "pass through" to a subrecipient. Grantees may revise budgets in ways that do not change the scope of a grant. Procedures for changes to an approved grant are discussed later in this chapter. FTA monitors grants to confirm that grantees establish and follow procedures that are reasonable and comply with FTA requirements. Submission of Annual Certifications and Assurances stand in lieu of detailed FTA scrutiny. Annual independent audits for recipients of urbanized area formula program funds and triennial reviews give FTA an opportunity to verify the grantee's certifications and assurances. The grantee's responsibilities include actions that :

- a. Provide continuous administrative and management direction of project operations.
- b. Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress.
- c. Assure conformity to grant agreements, applicable statutes, codes, ordinances, and safety standards.
- d. Maintain the project work schedule agreed to by FTA and the grantee and constantly monitor grant activities to assure that schedules are met and other performance goals are being achieved.
- e. Keep expenditures within the latest approved project budget.
- f. Assure compliance with FTA requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements.
- g. Request and withdraw Federal cash only in amounts and at times as needed to make payments that are immediately due and payable.
- h. Account for project property and maintain property inventory records that contain all the elements required.
- i. Arrange for an annual independent organization-wide audit in accordance with OMB Circular, A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- j. Prepare and submit force account and cost allocation plans prior to incurring costs if seeking reimbursement for these costs. Update and retain these approved documents for FTA upon request and during Triennial Review.
- k. FTA requires reports, once submitted and approved by FTA, to be updated and retained by the grantee for availability during the Triennial Review process.

### 4. CIVIL RIGHTS REQUIREMENTS.

- a. General. It is the responsibility of FTA to ensure that grantees are in compliance with all civil rights program requirements that apply to FTA-assisted projects and activities.

The applicable civil rights program areas are: Title VI of the Civil Rights Act of 1964 (Service Delivery/Benefits); Equal Employment Opportunity (EEO); Disadvantaged Business Enterprise (DBE) Program; and the Americans with Disabilities Act (ADA) Program. These program areas are detailed in the Annual List of Certifications and Assurances and in the Master Agreement.

All required civil rights program submissions must be approved by FTA and periodically updated in accordance with program guidelines.

- b. Nondiscrimination. 49 U.S.C. Section 5332, states that no person on the basis of race, color, creed, national origin, sex, or age, shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through Federal financial assistance.

These nondiscrimination provision and associated affirmative action obligations apply to employment and business opportunities and are in addition to the provisions of Title VI of the Civil Rights Act of 1964.

- c. Title VI (Service Delivery/Benefits). Each grantee receiving Federal financial assistance pursuant to any section of 49 U.S.C. chapter 23 or Title 23 U.S.C., covered by this circular, must have its Title VI submission approved by FTA, as specified in FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients," and must annually certify compliance regarding the level and quality of transit service through the Annual Certifications and Assurances process.
- d. Equal Employment Opportunity (EEO). Grantees with 50 or more employees that have received in the previous Federal fiscal year capital and/or operating funds of over \$1 million, or technical studies grants totaling over \$250,000, must develop and submit to FTA an EEO program. Areas covered by the EEO program are specified in FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for [FTA] Recipients."
- e. Disadvantaged Business Enterprise (DBE) Program. Grantees must meet the requirements of the Department of Transportation's (DOT) Disadvantaged Business Enterprise Regulation (49 CFR Part 23) which implements Section 1101 of the Transportation Equity Act for the 21st Century. DBE program requirements are specified in FTA Circular 4716.1A, "Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers."
- f. The Americans with Disabilities Act of 1990 (ADA). The ADA prohibits discrimination on the basis of disability. In the area of public transit, the ADA mandates increased accessibility and nondiscriminatory service. This includes the construction of facilities, acquisition of rolling stock or other equipment, undertaking of studies or research, or participation of any program or activity receiving or benefiting from FTA financial assistance. The Act also broadens the range of disabilities which must be accommodated. To comply with this provision, all entities must meet the requirements of DOT's regulations implementing the ADA. (49 CFR Parts 27, 37 and 38).

The grantee must annually signify compliance with the above civil rights requirements through the Annual Certifications and Assurances.

5. REPORTING REQUIREMENTS. The purpose of a grant is defined by the budget at the time of grant approval and is formalized in the Grant Agreement. FTA monitors grant activities to ensure proper grantee stewardship of Federal funds and compliance with the laws and regulations that govern its grant programs. FTA must also be able to report on

program results, industry trends and its own oversight responsibilities. The information FTA needs for program forecasting, management and reporting is furnished through narrative milestone/progress reports submitted by grantees about significant events, relevant grant activities and any changes to or variances in the grant schedule or budget.

With respect to the level of detail required for these reports, FTA treats all approved activity line items alike. Thus, an activity contained in a Capital Program grant (49 U.S.C. Section 5309), and a project contained in an Urbanized Area Formula Program grant (49 U.S.C. Section 5307), must be presented in the reports in sufficient detail that important information is not lost in aggregation. For example, the number of full-sized buses in a grant must not be reported together with vans and supervisory automobiles under the heading "rolling stock." FTA staff are available to meet with grantees soon after grant approval to mutually agree on an appropriate level of reporting detail. This will assure that FTA has the information needed to manage its overall program and to respond fully to specific requests from Congressional committees, auditors and the general public.

- a. Milestone/Progress Reports. The requirement for milestone/progress reports applies to all FTA grants covered by this circular. This report should be provided electronically through the FTA electronic award and management system. Procedures are available from the FTA regional offices. If only operating assistance is involved, the reporting requirements are limited to the estimated and actual dates when all funding has been expended. FTA reserves the right to review operating revenue and expense records for these operating-only grants. Depending on project complexity, FTA may also request other special reports or quarterly project management meetings. Final project reports are discussed in Close-Out Procedures at the end of this chapter. Each milestone/progress report should include the following data.
  1. Address each activity line item within the approved grant unless FTA advises otherwise.
  2. Include a discussion of all budget or schedule changes.
  3. For each milestone, include original estimated completion date, revised estimated completion date, and the actual completion date if applicable.
  4. Provide the dates of expected or actual requests for bid, delivery, etc.
  5. Provide a narrative description of projects, status, specification preparation, bid solicitation, resolution of protests, and contract awards.
  6. Analyze significant project cost variances. Completion and acceptance of equipment and construction or other work should be discussed, together with a breakout of the costs incurred and those costs required to complete the project. Use quantitative measures, such as hours worked, sections completed or units delivered.
  7. Include reasons why any scheduled milestones or completion dates were not met, identifying problem areas and discussing how the problems will be solved. Discuss the expected impacts of delays and the steps planned to minimize these impacts.
  8. Provide a list of all outstanding claims exceeding \$100,000, and all claims settled during the reporting period. This list should be accompanied by a brief description, estimated costs, and the reasons for the claims.
  9. Include a list of all change orders and amounts exceeding \$100,000, pending or settled, during the reporting period. This list should be accompanied by a brief description.
- b. Transit Enhancement Reports are required from recipients with population areas of 200,000 and above who receive funds under the Urbanized Area Formula Program (section 5307). The term "transit enhancement" means projects that are designed to enhance mass transportation service or use and are physically or functionally related

to transit facilities. Enhancements are defined in the urbanized area formula program application circular, FTA C 9030.1C. Recipients of these funds are required under Section 5307(f) to submit a report listing the projects carried out during the previous fiscal year with those funds to include the amounts expended. This report is to be submitted as a narrative attachment to the electronic 4th quarter milestone/progress report. Certification that this report has been submitted is required as part of the Annual List of Certifications and Assurances.

- c. Financial STATUS Reports. FTA grant recipients are to submit financial information through the electronic award and management system. This report should be provided concurrently with the milestone/progress reports.
- d. Disadvantaged Business Enterprise (DBE) Quarterly Progress Reports. As with financial reports, grantees may submit these reports (required by FTA Circular 4716.1A) with other quarterly reports if furnishing paper form.
- e. Reports of Significant Events. Unforeseen events that impact the schedule, cost, capacity, usefulness or purpose of the project should be reported to FTA immediately after detection and then reflected in the next quarterly progress report. Special reports should be submitted when:
  1. Problems, delays, or adverse conditions will affect the grantee's ability to achieve project objectives within the scheduled time period or within the approved project budget. The report should discuss actions taken and/or contemplated and any Federal assistance needed to resolve the situation; or,
  2. Favorable developments will enable the grantee to achieve project goals/complete project activities ahead of schedule or at lower cost.
- f. Report Due Dates. Urbanized area formula and capital program financial status reports (FSR) and milestone/progress reports are due to FTA within 30 days after the end of each calendar quarter, i.e., by January 30, April 30, July 30, and October 30. All state recipients of planning assistance are required to submit their reports annually. In individual cases, FTA may grant extensions of report due dates. Payments may be withheld when reports are not submitted as agreed.

Submission of FSRs and milestone/progress reports for grants in FTA's non-urbanized area formula, elderly and persons with disabilities, metropolitan planning, and state planning and research programs are due annually for the period ending September 30 each year. FTA may request more frequent reporting when circumstances warrant.

6. GRANT MODIFICATIONS. A grant obligates the grantee to undertake and complete activities defined by the scope and budget as incorporated in the grant agreement. The grant budget, as used in this circular, means the approved financial plan that FTA and the grantee agree will be followed in carrying out the purposes of the grant. During the course of the program or project, it may be necessary to modify the grant by revising the budget or amending the grant agreement. For example, modifications may be required because of changes in the purpose, description, terms and conditions, or an increase in the cost of an approved grant.

- a. Definitions.

1. Grant Scope is defined as the broad purpose or objectives of a grant. The scope of a grant may encompass one or more specific projects.
2. Project scope is defined as the broad purpose of a specific project within a grant. There may be multiple scopes identifying each of the different projects within a grant and each scope may contain a number of activities which represent the estimate of actions needed to complete the project. FTA reserves the right to consider other information in determining the "scope of the project" when that term is used for legal purposes. See the Master Agreement.

3. Project Activity Line Item is defined as the description and dollar amount contained in the budget for an approved grant activity associated within a particular scope approved as part of a grant. Activity line items under each scope are informational and are used as tools for the FTA and grantee to manage the grant. Quantities of rolling stock must be recorded at the project activity line item level.
4. Budget Revision is defined as any change within the scope of the original grant. A budget revision may be a transfer of funds within a project or among projects within an approved grant. It could also include the addition or deletion of an activity. A budget revision cannot be used to materially change the purpose or intent, i.e., scope, or Federal dollar amount of the grant. When a transfer is performed between capital/operating/planning activities, a financial purpose code (FPC) change is made by the FTA project manager. Grant recipients should be aware of this when initiating drawdowns.
5. Administrative Amendment. An administrative amendment is defined as a minor change in a grant agreement normally initiated by FTA to modify or clarify certain terms, conditions or provisions of a grant.
7. Lapsed Funds. It is important to note that the authority to obligate program funds lapses, i.e., ceases to be available, at the end of the funds' period of availability. After the year of availability, any lapsed funds already approved in a grant can only be used for the purpose for which the funds were approved. Proposed changes in the scope of a grant cannot be done with lapsed funds, however, budget revisions are still allowable. If all activities in the approved grant have been completed, and there are lapsing funds that are unobligated by the grantee, these funds should be deobligated by FTA. Because of the potential for severe penalties for anti-deficiency violations, grantees must exercise careful judgment in determining changes to their grants. A grantee should periodically review the funding approved in their grants and its availability. The year of funding can be found on the last page in the approved project budget under the accounting classification.

Planning and capital grant changes are summarized in Exhibit I-1, at the end of this chapter. The table provides an overview of the relationship between budget revisions, administrative amendments and grant amendments as described in the text.

## 8. Budget Revisions.

1. General. The approved grant budget is sent to the grantee electronically following FTA approval of the grant. The grantee is responsible for controlling and monitoring all grant activities to ensure that they are carried out in accordance with the approved budget, including control of individual projects within the grant.

Beyond assuring that grantees' budget revisions will not change the amount or scope of a grant, the grantee may change the dollar amount to be spent to procure or construct items under an individual activity item. FTA monitors grants to confirm that grantees establish and follow procedures that are reasonable and comply with FTA requirements. Grant changes may be made by budget revision if the purpose, scope and amount of the grant will remain unchanged.

2. Prior Approval. Grantees must obtain prior FTA approval electronically for the following proposed budget revisions.
  - a. Prior FTA approval is required when the Federal share of the grant exceeds \$100,000 and the cumulative amount of project funds to be transferred between or among activities, (including all budget revisions

since the last one specifically approved by FTA) exceeds twenty percent. Proposed budget revisions for planning grants which exceed thirty percent require prior FTA approval

- b. Prior FTA approval is required when the revision would transfer funds between operating and capital/planning categories, or between activity line items with different Federal matching ratios, such as from 80/20 to 83/17 option to include "Americans with Disabilities Act" or "Clean Air Act" requirements.
- c. Prior FTA approval may be required when the revision is for the addition or deletion of capital expenditures. The grantee should refer to OMB Circular A-87, attachment B for selected items of cost. Paragraph 19.c. of that attachment indicates criteria for requiring FTA approval.
- d. Prior FTA approval is also required for a formula or capital program grant if the budget revision would:
  - 1. Increase or reduce the number of revenue rolling stock vehicles to be purchased by more than two units.
  - 2. Change the size or physical characteristics of the activities specified in a grant.
  - 3. Advance a formula program Section 5307 contingency project if the contingency project is not in year one of the current TIP.

d. Administrative Amendment.

- 9. Modify Terms. An administrative amendment cannot be used to change the scope of a grant. An administrative amendment may be used to change or clarify the terms, conditions or provisions of a grant contract. These usually are initiated by FTA and may be used only when no change will result in the scope, amount or purpose of the grant. An administrative amendment is used to modify a grant contract for such purposes as to comply with changes required by FTA law, to change the year or type of funds obligated for a grant, to transfer equipment from one grantee to another, to reflect a change in the grantee's name, or to deobligate Federal funds that are not needed to complete approved project scope or purpose.
- 10. Operating Period Changes. An administrative amendment may be used to institute time period changes, adjustments or extensions to time of operating period provided the total amount of Federal funds previously awarded under the grant remains unchanged. The grantee may enter a change in electronic text with a brief explanation. This allows sufficient flexibility to encompass potential time adjustments, and allows the FTA office sufficient time to review.

If a time period is part of the grant agreement, the grantee may request a time change in a brief letter for approval by the Regional Administrator. This is then retained for potential auditor review. The alternate option is to specify a longer time period in the original grant to encompass any potential time adjustments that may become necessary or do not specify a finite time period, [e.g., "for the next operating period"] which provides maximum flexibility.

- e. Grant Amendment. An increase in the Federal share or a change in the scope of a grant requires a grant amendment.
  - 1. A grant amendment is required when proposed changes in the grant would:
    - a. Materially alter the objective of the approved project (i.e., change the scope);
    - or
    - b. Require an increase in the Federal share.
  - 2. Requirements. Grant amendments are subject to the same application requirements as a new grant request. Issuance of a revised grant agreement and budget is required for an amendment and, because a change in scope or funding

of the grant results, a change in the previous obligation of funds is also required. FTA can reobligate funds only if the previously obligated funds have not lapsed.

3. Procedures. An amendment must be used for grant changes that cannot be handled by a budget revision or administrative amendment. Amendments require the issuance of a revised grant agreement and budget, and may require a change in the amount of funds obligated for the grant. A deobligation and reobligation of funds to accompany a change in project scope can occur only if the previously obligated funds have not lapsed, or if new funds are available.

An amendment is subject to the same requirements as a new grant request except that the grantee need not resubmit portions of the original grant application which are unaffected by the change. The grantee must submit a detailed description of the changes, a revised project budget and if applicable, an SF-424 form if there are changes in funding levels. These changes may be accomplished electronically.

4. Change of Scope. The scope of a grant is changed by the following.
  - a. A transfer within an approved planning grant budget that cumulatively exceeds thirty percent of the budget most recently approved by FTA when FTA's share of the grant is more than \$100,000 would constitute a scope change. This would include changes totaling 30 percent or more at the state (cumulative) level for metropolitan planning (49 U.S.C. Section 5303) grants as well as at the state level for statewide planning (49 U.S.C. Section 5313).
  - b. A material change that FTA concludes would modify an activity item, project description or the size or type of items specified in any grant would constitute a scope change.
  - c. Changes in quantity of items to be purchased or constructed generally trigger an amendment only when they are significant enough to materially change the purpose or intent of the approved grant as defined by the scope. Changes in quantities for revenue rolling stock that exceed 20 percent of the base amount, where specified, are generally considered significant changes and will require processing of a grant amendment.
  - d. Changes in activity item quantities may be made by budget revision unless the change is so significant as to materially alter the grant's basic purpose. The 20 percent threshold does not apply to changes in activity items when quantities are not specified at the scope level in the approved project budget.
  - e. A change to a grant to add a project, if not previously included as a contingency project in an approved TIP/STIP, or to delete a project if the deletion affects the intent or objectives of the grant would constitute a scope change.
    5. Funds Reobligation. To effect a change in scope of a formula grant, the Federal funds previously approved must not have lapsed and the obligation of Federal funds must be changed as follows.
    6. Scope Reduction. If the scope of a grant is reduced or the cost of the original scope decreases, the funds obligated to it must be reduced accordingly unless offsetting cost increases are approved by FTA.
    7. Activity Replacement. If a grant is changed to replace some activities by others within a scope, funds must be adjusted to reflect the change.
    8. Increase in the Project Amount. If the scope of a grant increases or the costs of the original scope increases and additional Federal funds are required, new funds may be obligated to the project.

## 11. PROCUREMENT.

- a. General. Third party contracts are entered into by the grantee for procurement of supplies, equipment, construction, and other services required to implement a grant project. Grantees must follow certain procedures to ensure that these materials and

services are obtained in free and open competition, prices are fair and reasonable, and are in compliance with the provisions of applicable Federal, State and local laws. This includes affording procurement opportunities to small and disadvantaged business enterprises.

For information on specific third party contracting standards, see FTA Circular 4220.1D, dated April 15, 1996, entitled "Third Party Contracting Guidelines," and FTA Circular 4716.1A, entitled "FTA Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers." Inter-agency agreements passing through grant funds to other public bodies (including transit operators) are not third-party contracts. The pass-through grantee must comply with FTA Circular 4220.1D (or subsequent revision), if it enters into any subsequent third-party contracts using FTA grant funds.

- b. Claims and Change Orders. FTA will not substitute its judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts.

1. Interest and Rights. Consistent with provisions of the grant agreement, third party contractor claims are to be evaluated and resolved by the grantee pursuant to the following considerations, requirements and limits.
12. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contracts.
13. FTA retains a right to a share of any proceeds recovered through a third party contract claim, in proportion to the Federal share committed to the project. If the third party contract contains a liquidated damages provision, any liquidated damages recovered must be credited to the project unless FTA permits other uses of the funds involved.
14. The grantee must pursue all legal rights available under any third party contract.
15. The grantee must notify FTA of any current or prospective litigation or major disputed claim in excess of \$100,000 relating to any third party contract.
16. Claims for reimbursement that result from third party contract change orders issued by the grantee are handled as sole source procurements under provisions of FTA Circular 4220.1D, not as claims. All change orders must be approved by authorized grantee officials and supported by cost justification. The cost must be allowable, within the grant scope, allocable and reasonable for the completion of project scope to be eligible for funding under an FTA grant.
17. Settlement of Claims.
18. In order to substantiate each part of a large claim before settlement, a formal audit may be conducted by the grantee. In those instances, the audit should be conducted in accordance with "Generally Accepted Auditing Standards" as defined by the American Institute of Certified Public Accountants.
19. Before settlement of other claims, the grantee may prefer to undertake an audit or similar analysis.
20. The grantee must adequately document in its project files all pertinent facts, events, negotiations, applicable laws, and a legal evaluation of the likelihood of success in any potential litigation proceeding.
21. The grantee must assure that its documentation provides sufficient information to serve as the basis for FTA concurrence in the compromise or settlement of the claim, in the event that FTA review and concurrence become necessary. Although FTA does not become involved in the negotiation of a claim, the FTA may review the reasonableness of a

negotiated settlement for the purpose of determining the extent of our participation in the settlement.

22. Cost Sharing. Any Federal cost sharing in grantee's third party contractor claims will be determined as follows. Claims that result from grantee negligence or error normally are not eligible for FTA participation. For example, FTA normally will not participate in any claim settlement for which the grantee failed to:
  23. obtain clear access to all needed right-of-way prior to award of the construction contract;
  24. execute all required utility agreements in time to assure uninterrupted construction progress;
  25. undertake comprehensive project planning and scheduling to achieve proper coordination among contractors;
  26. inform potential contractors of all available geo-technical information on subsurface conditions;
  27. assure that all grantee-furnished materials are compatible with contractor project facilities and/or equipment and available when needed;
  28. complete all pre-construction survey and engineering prior to issuing the contractor a Notice to Proceed;
  29. obtain the necessary approvals and agreements from all other public authorities affected by the project prior to contract award; or
  30. assure that all design and shop drawings are promptly approved and made available to the contractor as needed.

If the grantee's claim records substantiate that reasonable and prudent measures were taken to prevent or offset the causes underlying the claim, FTA may participate in the negotiated cost. Subject to availability of funds, FTA can fund a prorated share of the properly incurred, eligible costs of contractor claims that are not caused by mismanagement on the part of the grantee or attributable to the contractor.

31. FTA Review and Concurrence. Grantees must secure FTA review and concurrence in a proposed claim settlement before using Federal funds in the following instances:
  32. when negotiated settlement exceeds \$100,000;
  33. when insufficient funds remain in the approved grant to cover the settlement; or
  34. where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste or fraud.
35. Claims Review. When deemed necessary, FTA may initiate review of grantee claims file/history or experience under a particular grant. Claimed amounts, determined to be ineligible through subsequent audit or FTA review, if already disbursed, must be returned to FTA by the grantee.
36. Claims List. A list of all outstanding claims exceeding \$100,000 and a list of all claims settled during the reporting period are required as part of each quarterly progress report. This list should be accompanied by a brief description and reasons for each claim.
37. ROLLING STOCK PURCHASES.
  - a. Buy America. The grant applicant must certify that in carrying out a procurement it will comply with applicable Buy America laws. Specific Buy America requirements apply to each acquisition of iron, steel, or manufactured goods, including rolling stock. Unless an acquisition qualifies for a waiver, Federal transit assistance authorized by 49 U.S.C. chapter 53 and 23 U.S.C. (Highways) may not be used to finance the acquisition of iron, steel, or manufactured goods that are not produced in the United States. [49 U.S.C. Section 5307(d)(1)(E). Also see Category XII, item A(5) in Annual Certifications and Assurances. Also in accordance with 49 U.S.C. Section 5323(j), and FTA Buy America regulations, 49 CFR. Part 661.]
  - b. Pre-Award and Post Delivery Audits. FTA requires grant recipients purchasing revenue passenger rolling stock to undertake reviews of the rolling stock prior to the award of

the contract and following delivery of the vehicles. The intention is to improve compliance with Buy America requirements, the grantee's bid specifications, and Federal Motor Vehicle Safety Standards. Compliance must be certified on the Annual List of Certifications and Assurances. The requirement is from 49 U.S.C. Section 5335 (a) and is implemented in a regulation (49 CFR. 663).

- c. Requirements for Bus Fleets. FTA has established several policies that are meant to ensure that buses purchased or leased with Federal funds are maintained and remain in transit use for a minimum normal service life and to ensure that the buses acquired are necessary for regularly scheduled transit revenue service (i.e., to meet peak service requirements with a reasonable allowance for spares).
38. Service Life Policy. Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. Minimum normal service lives for buses and vans are:
    39. Large, heavy-duty transit buses (approximately 35'-40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
    40. Medium-size, heavy-duty transit buses (approximately 30'): 10 years or 350,000 miles.
    41. Medium-size, medium-duty transit buses (approximately 30'): 7 years or 200,000 miles.
    42. Medium-size, light-duty transit buses (approximately 25-35'): 5 years or 150,000 miles.
    43. Other light-duty vehicles such as small buses and regular and specialized vans: 4 years or 100,000 miles.

It is recommended that grant applicants specify the expected service life category in requests for bids when acquiring new vehicles.

FTA calculates the value of vehicles prior to the end of their minimum normal service life on the basis of a formula using straight-line depreciation as described in paragraph (2)(b) below. Removal of an FTA-funded vehicle from revenue service before the end of its minimum normal service life, except for reasons of fire, collision, or natural disaster, leaves the grantee liable to FTA for the Federal share of the vehicle's remaining value. Consistent with this policy, the suggested vehicle service life standards stated above in years refer to time in normal service, not time spent stockpiled or otherwise unavailable for regular transit duty.

2. Replacement Policies. (Also see Chapter II of this circular for equipment disposition.)
  44. Replacement at End of Minimum Normal Service Life. Vehicles proposed to be replaced must have achieved at least the minimum normal service life. For purposes of bus replacement grant applications, the age of the bus to be replaced is its years of service or mileage at the time the proposed new bus is introduced into service. A fleet roster must accompany a grant application for which funds are requested to replace vehicles.
  45. Early Disposition Policy. If a vehicle is replaced before it has achieved its minimum normal service life, the grantee has the option of returning to FTA an amount equal to the remaining Federal interest in the vehicle or applying the "Like-Kind Exchange" policy (discussed below) and placing an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.

To determine the Federal interest in a federally funded vehicle during its minimum normal service life, a straight-line depreciation formula is used: for example, for a bus with a 12-year minimum normal service life, the bus's value decreases each year by 1/12 of its original purchase price. Similarly, the Federal interest in the bus decreases each year by 1/12 of the amount of the Federal grant that was awarded for its purchase.

- c. Use of Like-Kind Exchange Policy. A vehicle may be traded-in or sold before the end of its minimum normal service life, if a grantee so chooses. Moreover, a grantee may

elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like kind. "Like-Kind" means a bus for a bus with a similar service life and a rail vehicle for a rail vehicle. Under the Like-Kind Exchange policy, proceeds from the vehicle sales are not returned to the FTA; instead, all proceeds must be invested in acquisition of the like-kind replacement vehicles. If sales proceeds are less than the amount of the Federal interest in the vehicle to be replaced, the grantee is responsible for providing the difference, along with the grantee's local share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the Federal interest, the investment of all the proceeds in acquisition of the like-kind replacement vehicle results in reduction of the gross project cost.

Grant applicants interested in buying a replacement vehicle before the end of the minimum normal service life of the vehicle to be replaced should refer to the FTA Notice, "Change in Policy on Sale and Replacement of Transit Vehicles," published in the

46. Rebuilding Policies. Buses to be rebuilt should be at the end of the minimum normal service life, as previously described, and in need of major structural and/or mechanical rebuilding. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins. The eligibility of this major capital bus rebuild work is in addition to the eligibility of vehicle overhauls as described below.

Depending upon the extent of rebuilding planned, it may be subject to Americans with Disabilities Act requirements. Rebuilding is also an eligible capital cost under the category of preventive maintenance.

47. Vehicle Overhauls. Rolling stock overhauls are an eligible capital expense. FTA assistance for vehicle overhaul is based on a percentage of annual vehicle maintenance costs. A grant applicant may apply for FTA capital assistance for vehicle overhauls in an amount up to 20 percent of its annual vehicle maintenance costs. This eligibility for capital assistance applies also to leasing and to contracted service. This eligibility is in addition to eligibility of rebuilding discussed in paragraph (3) above. Because the category, "vehicle overhaul-20 percent" is also an eligible capital cost under the category of preventive maintenance, FTA intends to eliminate the category "vehicle overhaul-20 percent" beginning with FY 2000 funds.
48. Spare Ratio Policies. Spare ratios will be taken into account in the review of projects proposed to replace, rebuild, or add vehicles. The basis for determining a reasonable spare bus ratio takes local circumstances into account. The number of spare buses in the active fleet for grantees operating 50 or more revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum service.

For purposes of the spare ratio calculation, "vehicles operated in maximum service" is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak season of the year, on the week and day that maximum service is provided. It excludes atypical days and one-time special events. Scheduled standby vehicles are permitted to be included as "vehicles operated in maximum service."

Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage, e.g., 100 vehicles required and 20 spare vehicles is a 20 percent spare ratio.

For each grant application to acquire vehicles, a grant applicant must address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced, and the applicant's conformance with the FTA

spare ratio guideline. An applicant is required to notify FTA if the spare ratio computation on which the grant application is based is significantly altered prior to the grant award. A fleet status report must be submitted with each grant application to acquire rolling stock.

49. Contingency Fleet. Buses may be placed in an inactive contingency fleet -- stockpiled -- in preparation for emergencies. No bus may be stockpiled before the vehicle has reached the end of its minimum normal service life. Buses held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan, updated as necessary, to support the continuation of a contingency fleet. A contingency plan is not an application requirement, although FTA may request information about the contingency fleet during application review. Contingency plans are subject to review during triennial reviews required for the Urbanized Area Formula Program. Any rolling stock not supported by a contingency plan will be considered part of the active fleet. Since vehicles in the contingency fleet are not part of the active fleet, they do not count in the calculation of spare ratio.

d. Requirements for Fixed Guideway Rolling Stock.

1. Service Life. In the case of rail vehicles acquired with FTA assistance, FTA has established a minimum normal service life of 25 years. Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. The service life in years refers to total time in normal transit service, not time spent stockpiled or otherwise unavailable for regular transit use. A grantee that regularly measures lifespan by hours of operations, or by any other measure, may develop an appropriate methodology for converting its system to years of service. The reasonableness of such methodologies will be subject to examination, particularly if the grantee proposes to retire a vehicle before FTA's service life requirement has expired.

When a grantee removes a vehicle financed by FTA from service before expiration of its minimum normal service life--except for reasons of fire, collision, or natural disaster-- the grantee is legally obligated to FTA for an amount equal to the Federal share of the vehicle's remaining value, as explained further below. The value of a vehicle prior to the end of its minimum normal service life is calculated on the basis of straight-line depreciation.

2. Replacement. (Also see Chapter II of this circular on Equipment Disposition.)
- a. Replacement at End of Minimum Normal Service Life. Before a grantee may replace an old rail vehicle with a new rail vehicle, the old vehicle must have reached or exceeded its 25-year minimum normal service life. For purposes of a rail vehicle replacement project, the age of the vehicle to be replaced is its age at the time the new vehicle is introduced into service. FTA's 25-year service life requirement is a minimum standard.
- b. Early Disposition. If a vehicle is replaced before the end of its minimum normal service life, the grant applicant has the option of returning to FTA an amount equal to the remaining Federal interest in the vehicle or using FTA's "Like Kind Exchange" policy and putting an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.

To determine the Federal interest remaining in a federally financed rail vehicle, one must first calculate the total value remaining in the vehicle using the straight-line depreciation method. Based on straight-line depreciation, the value of a rail vehicle with a 25-year minimum normal service life decreases by 1/25 of the purchase price for each year the vehicle has been in transit service. Thus, a rail vehicle in service for 20 years has a total remaining value of 5/25 or

1/5 of the original purchase price. Having calculated the total remaining value, one then multiplies that figure by the percentage of Federal assistance that was provided to purchase the vehicle. The product of this multiplication represents the Federal interest remaining in the vehicle.

- c. Use of Like-Kind Exchange. A vehicle may be traded-in or sold before the end of its minimum normal service life, if a grantee so chooses. Moreover, a grantee may elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like kind. "Like-Kind" means a bus for a bus with a similar service life and a rail vehicle for a rail vehicle. Under the Like-Kind Exchange policy, proceeds from the vehicle sales are not returned to the FTA; instead, all proceeds must be invested in acquisition of the like-kind replacement vehicles. If sales proceeds are less than the amount of the Federal interest in the vehicle to be replaced, the grantee is responsible for providing the difference, along with the grantee's local share of the cost of the replacement vehicle. If sales proceeds are equal to or greater than the amount of the Federal interest, all the proceeds also must be used to purchase the like-kind replacement vehicle, and the reinvestment amounts to a lowering of the gross project cost. Grant applicants interested in buying a replacement vehicle before the end of the minimum normal service life of the vehicle to be replaced should refer to the FTA Federal Register Notice, "Change in Policy on Sale and Replacement of Transit Vehicles," 57 Fed. Reg., 39328, August 28, 1992.
- d. Rebuilding. Any rail vehicle that will be rebuilt must have an accumulated service life of at least 12 years (mid-life rebuild) or must have reached the end of its minimum normal service life (end-of-life rebuild). The eligibility of this major capital rail rebuild work is in addition to the eligibility for vehicle overhauls (paragraph c below). The rebuilding is also eligible as preventive maintenance.
- e. Spare Ratio. Because rail transit operations tend to be highly individualized, FTA has not established a specific number to serve as an acceptable spare ratio for rail transit operations. Nevertheless, rail operators should be aware that the grant applicant's rail vehicle spare ratio and the rationale underlying that spare ratio will be examined as part of the grant application review whenever FTA assistance is requested to purchase rail vehicles, and during the triennial review. A fleet status report must be submitted with any grant application for assistance to acquire rolling stock. As in the calculation of spare ratio for bus fleets, scheduled standby fixed guideway vehicles are permitted to be included as "vehicles operated in maximum service."

The following guidance should be used to support an operator's proposed spare ratio when the spare ratio is under review by FTA:

1. An operator of a rail system must have in its file available upon request by FTA a fleet management plan that addresses operating policies (level of service requirements, train failure definitions and actions); peak vehicle requirements (service period and make-up, e.g., standby trains); maintenance and overhaul program (schedules, unscheduled, and overhaul); system and service expansions; rail car procurements and related schedules; and spare ratio justification.
2. Spare ratio justification should consider: average number of

- cars out of service for scheduled maintenance, unscheduled maintenance and overhaul program; allowance for ridership variation (historical data); ridership changes that affect car needs caused by expansion of system or services; contingency for destroyed cars; and car procurements for replacements and system expansions.
3. Cars delivered for future expansion and cars that have been replaced, but are in the process of being disposed of, should be identified and separated from other spares because they unfairly inflate the spare ratio.
  4. Peak Vehicle Requirement includes "standby" trains that are scheduled, ready for service, and have a designated crew.
  5. Factors that may influence spare ratio are: equipment make-up (locomotive hauled trains; married pair units or single cars; equipment design, reliability and age); environmental conditions (weather, above ground or underground operation, loading and track layout); operational policies (standby trains, load factors, headways); maintenance policies (conditions for removing cars from service, maintenance during nights and weekends, and labor agreement conditions; and maintenance facilities and staff capabilities.
3. Vehicle Overhaul. Rolling stock overhauls are an eligible capital expense; this is considered a major re-work item. Another assistance category for overhauls, available since 1996, has been that referred to as "vehicle overhaul -20 percent." In that option, a grant applicant has been able to apply for FTA capital assistance in an amount up to 20 percent of its annual vehicle maintenance costs for vehicle overhauls, and FTA has participated in the total project cost at the 80/20 Federal/local share ratio. Because preventive maintenance, defined as all maintenance, has been authorized as a capital expense by TEA-21, FTA intends to eliminate as redundant the category "vehicle overhaul-20 percent," concurrent with the appropriation of Fiscal Year 2000 funds. The eligibility for the major re-work categories, vehicle overhauls and rebuilding, will continue.
9. DESIGN AND CONSTRUCTION
- a. Buy America Requirements. The grant applicant must certify that in carrying out a procurement authorized for the Urbanized Area Formula Program the applicant will comply with applicable Buy America laws (49 U.S.C. Section 5307(d)(1)(E)). (See Category XII, in Annual Certifications and Assurances.) In accordance with 49 U.S.C. Section 5323(j), and FTA Buy America regulations, 49 CFR. Part 661, specific Buy America requirements apply to each acquisition of iron, steel, or manufactured goods, including rolling stock. Unless an acquisition qualifies for a waiver as discussed further in this section, Federal transit assistance authorized by 49 U.S.C. chapter 53 and 23 U.S.C. (Highways) may not be used to finance the acquisition of iron, steel, or manufactured goods that are not produced in the United States.
  - b. Environmental Mitigation. The National Environmental Policy Act (42 U.S.C. 4321) and the FTA's implementing procedures (23 CFR Part 771) require that the environmental effects of proposed transit projects be documented

and that environmental protection be considered before a decision can be made to proceed with a project. Where adverse environmental effects are likely to result, 49 U.S.C. Section 5324(b) Economic, Social and Environmental Interests, require that alternatives be considered to avoid those effects. If there is no feasible and prudent alternative which avoids the adverse environmental effects, then all reasonable steps must be taken to minimize those effects.

Measures to avoid or mitigate environmental harm are described in the environmental documents prepared for projects. These measures have been developed jointly by FTA and the grantee to respond to State and local as well as Federal environmental requirements. The mitigation measures in final environmental documents are expressed as commitments on the part of the grantee which will be implemented if the project receives Federal funding. When a grant is made, the mitigation measures are incorporated by reference in the grant agreement for construction and become legally binding terms and conditions of the grant which cannot be withdrawn or substantively changed without FTA's approval.

The progress in implementing adopted mitigation measures is monitored by FTA regional staff through periodic project reviews, on-site inspections and special meetings when necessary. The grantee has the responsibility to apprise FTA at the earliest possible time of any problems in implementing the adopted measures and any need for changes. Where mitigation options are being considered, FTA will maintain a role in the decision making process to ensure continuing compliance with DOT regulation 23 CFR Part 771 implementing Environmental Impact & Related Procedures, and 49 U.S.C. Section 5324 (b) Economic, Social and Environmental Interests .

Information about FTA's environmental protection process is available through the FTA regional office.

- c. Project Management Plan. A written plan is required by 49 U.S.C. Section 5327. Grantees develop and implement a project management plan for all major capital projects funded by FTA as part of the Project Management Oversight Program. This plan covers a grantee's detailed project management strategy to control the project budget, schedule and quality. (See paragraph Design and Construction for definition of major capital project.)

As a general rule, if the project meets the definition of major capital project, the grantee must submit the project management plan during the grant application review process. If FTA determines the project is major after the grant has been approved, FTA will inform the grantee of its determination and will require submission of the plan within 90 days. (See 49 CFR Part 663, dated 9-1-89.)

- d. Utility Relocation.
  1. General. The construction of transit systems may require the relocation and/or rearrangement of privately and publicly owned utilities. These utilities include, but are not limited to systems and physical plant for producing, transmitting or distributing communications, electricity, gas, oil, crude oil products, water, steam, waste storm water, or other substances; publicly owned fire and police

signal systems; and railroads and streets which directly or indirectly serve the public or any part thereof. Relocating and/or rearranging utilities and facilities necessary to accommodate an FTA-funded transit system may be considered an eligible expense as part of an FTA-funded project. Exceptions to this include those situations where State and local law expressly prohibit the financing of such by the public entity.

2. Eligibility for FTA Funding. In order to qualify for FTA funding, the grantee must execute an agreement for relocating or rearranging facilities with the entity responsible for the facilities prescribing the procedures for the relocation and/or rearrangement of the facilities for the purpose of accommodating the construction of the FTA funded project. Prior FTA approval is not required in reaching a utility relocation agreement.
3. Utility Relocation Agreement. These agreements are distinguishable from third party contracts in that:

Only actual allowable, allocable, and reasonable costs are reimbursable. Where the work is to be performed by the public utility's forces, no profit is allowed; and

Reimbursement is limited to the amount necessary to relocate and/or rearrange the facilities to effect a condition equal to the existing utility facilities. Generally, reimbursement would not provide for greater capacity, capability, durability, efficiency or function, or other betterments, except for meeting current state and local codes. Indirect costs of governmental entities incurred under a utility relocation agreement are eligible for FTA reimbursement only in accordance with an approved Cost Allocation Plan as prescribed in OMB Circular A-87.

- e. Force Account. Force account is work other than grant or project administration that is included in an approved grant and performed by a grantee's own labor forces. Force account work may consist of design, construction, refurbishment, and inspection, and construction management activities, if eligible for reimbursement under the grant. (See paragraph 14b below.) Incremental labor costs from flagging protection, service diversions or other activities directly related to the capital grant may also be defined as force account work. Force account work does not include grant or project administration activities which are otherwise direct project costs. Force account also does not include work on rolling stock which is not a major capital project.

One of four conditions may warrant the use of a grantee's own labor forces. These are cost savings, exclusive expertise, safety and efficiency of operations, and union agreement.

FTA prior review of a force account plan and justification are required where the total estimated cost of force account work to be performed under the grant is greater than \$10,000,000. When work to be performed is less than \$10,000,000 but over \$100,000, a force account plan is required to be in the grantee's file, but does not require prior FTA approval. When work to be performed using force account is less than \$100,000 a detailed plan is not required.

Basis for Reimbursement. Reimbursement for force account work is subject to the grantee providing the following:

1. Justification for using grantee forces;
2. Preparation of a force account plan;
3. A description of the scope of work;
4. A copy of the construction plans and specifications which includes:
  - a. A detailed estimate of costs
  - b. A detailed schedule and budget; and
  - c. A copy of the proposed cooperative agreement when another public agency is involved.
5. Submit documentation equivalent to a sole source justification stating the basis for a determination that no private sector contractor has the expertise to perform the work. In addition, the required documentation must provide the basis for the grantee decision to use force account labor including the following information;
6. Provide the present worth of the estimated cash drawdown for both the force account and private sector contract options. In the analysis, use the current interest rate paid on one-year Treasury Bills as the discount rate;
7. Include the cost of preparing documents; cost of administration and inspection; cost of labor, materials and specialized equipment; cost of overhead; and profit for private contract;
8. Include the unit prices for labor; materials and equipment; overhead; and profit, if applicable for private contract;
9. Provide certification that costs presented are fair and reasonable;
10. Provide an analysis of force account labor availability, considering normal operations and maintenance activities as well as other programmed and existing capital projects. This must be consistent with costs of labor, material and specialized equipment; and
11. Provide relevant citations from labor union agreements and an analysis of how it pertains to the work in question.

Base the present value calculation on the midpoint of construction; and if the time for completion of the work differs for force account and a private sector contract, include an estimate of the cost of not using the completed improvement in the present worth calculation. For example, if the work is to replace leased facilities, the cost of continuing the lease until the work is complete should be taken into account in the cost estimate for each option considered.

Safety considerations may be addressed by a statement of the transit operator's safety officer that performing the work with private sector contractors would have an adverse effect on public safety. Efficiency concerns may be addressed by a present worth calculation, including an estimate of the value of lost transit operation efficiency.

Special care must be taken to ensure that requirements of OMB Circular A-87 are followed, especially for charging expendable property to force account projects and making sure that allowable costs are assigned to the correct activity codes.

Most general purpose equipment and tools can be used in force account work and thereby benefit more than one project. Therefore, the cost of these items normally should not be treated as a direct charge to the project. However, an appropriate use or depreciation charge is an allowable indirect cost if otherwise provided for in the

project budget. Unusual circumstances may call for purchase of specialized equipment that is unique to the force account work that is being performed. If such equipment is required, prior FTA approval must be obtained. The usual FTA equipment disposition requirements apply.

The progress and status of force account activities should be separately discussed in milestone/project reports, with emphasis on schedule and budget.

- f. Seismic Standards & Reporting. New Federally funded buildings, and additions to existing buildings and bridges, built with Federal assistance must be designed and constructed in accordance with state, local and industry required standards or codes. The applicant is responsible to know before accepting delivery that the building complies with the seismic design and construction requirements and certify through the annual certification and assurance process, as required by 49 CFR, Part 41.
- g. Value Engineering. Value Engineering (VE) is the systematic, multi-disciplined approach designed to optimize the value of each dollar spent. To accomplish this goal, a team of architects/engineers identifies, analyzes and establishes a value for a function of an item or system. The objective of VE is to satisfy the required function at the lowest total costs (capital, operating and maintenance) over the life of a project consistent with the requirements of performance, reliability, maintainability, safety and esthetics.
  1. Applicability.
    - a. Major Projects. It is the FTA policy to require VE on major capital projects, and encourage the application of VE techniques to all construction projects. A major capital project is usually identified during the grant review process.
    - b. Major capital project means the construction, extension, rehabilitation or modernization of fixed guideway or new-start projects with a total project cost in excess of \$100 million; or a project which FTA determines is a major capital project based on criteria defined in 49 CFR, Part 633. Other Projects . Grantees are encouraged to conduct VE on all construction projects including bus maintenance and storage facilities whose costs are estimated to exceed \$2 million, and on revenue railcar acquisition and rehabilitation.
  2. Timing. VE on a project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering (PE) or at 30 percent of design. Some large or complex projects may need to conduct two VE studies.
  3. Reporting. VE Report. Grantees with major capital projects are required to submit a VE report to the appropriate FTA Regional Office at the end of each Federal fiscal year indicating the results of their VE efforts. Copies of the VE report form are available in each regional office.
- h. Peer Review. Peer review is a process used by the grantee in the planning, design and implementation of capital projects. The concept of peer review can be applied to any problem or situation where a second opinion can be useful to decision makers. FTA encourages the

grantee to confer with other transit operations and maintenance experts in order to benefit from their experiences. It has been used to review rail extensions, new start projects and the planning of a system of bus facilities. It has provided an in-depth critique of rail systems designs at the preliminary and final engineering stages, provided operations and maintenance information with respect to a variety of rail subsystems and validating the process used by a grantees' planning staff to site bus facilities. The purpose of peer review is to improve the performance of the process or product being reviewed. Basically the question asked is "can we do this better?" Although the grantee is encouraged to conduct peer review with all capital projects, in some instances it may be required by FTA.

- i. Crime Prevention Review. Grantees are encouraged to perform crime prevention reviews during the design phase of all FTA funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should be carried out as a project intended to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of the review should complement the project size and scope. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the grantee and be available for FTA review upon request.

#### 10. SALES PROCEEDS.

- a. General. Procedures for disposition of proceeds from the sales of FTA-funded assets are set forth below. These apply to all planning and capital grants governed by this circular except for previously approved grants that contain terms and conditions to the contrary.

(See Chapter II of this circular for Real and Personal Property and Equipment disposition.)

- b. Definition. Sales Proceeds are the net proceeds generated by the disposition of excess real property or equipment that was purchased in part with FTA grant funds.
- c. Requirement. When a grantee disposes of equipment with a unit value of more than \$5,000, or supplies with an aggregate residual value of more than \$5,000, the grantee must remit to FTA the Federal portion of original participation in market value or net sales proceeds, whichever is greater. Real property must be appraised for its market value. This provision does not apply to proceeds from the licensing or leasing of air rights or from other incidental uses of project property, which are treated as program income. (See Chapter II for alternative options for disposition of real property, equipment and supplies.)
- d. Refunds to FTA. Sales proceeds refunded to FTA must be paid in the form of a check or, if over \$10,000, must be transmitted to FTA by the electronic funds transfer system. See "Repayment Procedure" in chapter IV of this circular.
- e. Proceeds Retained. Certain proceeds from the sale or other disposition of assets will be retained by the grantee. These include the local share of proceeds from the sale of assets that were funded with Federal assistance, all proceeds from the sale of assets not funded with

Federal assistance, and all proceeds from the license or lease of air and subsurface rights generated through incidental use of project real property. Proceeds from the sale of locally financed assets that were replaced under a Federal grant must be retained for mass transit purposes. (Also see Chapter II.3 Equipment for insurance proceeds, and other equipment and real property disposition guidelines.)

11. **PROGRAM INCOME.** Program income means gross income received by the grantee or subgrantee directly generated by a grant-supported activity, or earned only as a result of the grant agreement during the grant period, the time between the effective date of the award and the ending date as reflected in the final financial report. The following provisions apply to all FTA planning and capital grants governed by this circular except for approved grants that contain specific terms and conditions to the contrary. (Also see Chapter III regarding Program Income Accountability, and the Common Rule at 49 CFR. part 18.25.)
  - a. **Definition.** Program income is revenue generated directly or indirectly from grant- supported activities (i.e., income generated by grant funds after they have been applied to authorized grant purposes). Program income is a form of mass transit revenue, but excludes sales proceeds, interest earned on advances of Federal funds and revenues generated by activities that are not grant supported. Examples of program income include fare box revenues and income from the licensing or leasing of air rights or from other leases; advertising; concessions; and the sale of planning reports and maps.
  - b. **General.** Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc., and interest earned on any of them.
  - c. **Reference.** FTA's program income policies are governed by 49 CFR, Part 18, the Common Rule, and may differ from OMB Circular A-102 for State and Local Governments. (See FTA circulars 9070.1E and 9040.1E for guidance on state issues of program income.)
  - d. **Use.** Grantees may retain program income so long as it is used only for mass transit purposes. These may include planning, capital or operating expenses. Program income may not be used to refund or reduce the local share of the grant from which it was earned, but may be used for other transit grants.
12. **SPECIAL REQUIREMENTS.**
  - a. **Political Activities.** Chapter 15 of Title 5 of the United States Code (Hatch Act) provides that all State or local agency employees who are engaged in an activity financed by Federal government grants or loans may not be candidates for elective office or use their positions to influence public elections. Furthermore, those State and local agencies receiving Federal assistance are prohibited from coercing their employees into making political contributions. Exceptions to the general Hatch Act prohibition do

exist, such as certain non-supervisory transit employees and persons holding elective office. State and local agencies should contact the appropriate FTA Regional Counsel or the FTA Office of Chief Counsel to discuss any questions they may have about the specific applicability of these provisions to their situation.

- b. Copyrights and Rights in Data. When FTA provides financial assistance for demonstration projects, it is with the general intention of increasing public transit knowledge, rather than limiting the benefits of the project to the participants of the project. Except as otherwise provided in the grant agreement, the grantee is free to copyright any material developed under or during the course of a project.

However, FTA reserves a royalty-free non-exclusive and irrevocable right to reproduce, publish, distribute, or otherwise use, and authorize others to use the work for Government purposes. This applies particularly to FTA-assisted capital and operating projects. In addition, for research, development, and demonstration projects financed with FTA-awarded assistance, FTA reserves the right to acquire greater rights in data including copyrights.

- c. Patent Rights. All grantees must notify FTA of any inventions, improvements, or discoveries conceived of or actually reduced to practice by the grantee or its employees in the course of, or under the terms of, the grant contract. FTA determines whether or not and where a patent application will be filed, as well as the disposition of all rights in such inventions, improvements and/or discoveries, including title to and rights under any patent application or patent that may be issued. The grantee is responsible for executing all documents to effect the determination.

- d. Published Reports.

1. All FTA sponsored reports must contain on the inside front cover the following disclaimer:

NOTICE

"This document is disseminated under the sponsorship of the Department of Transportation in the interest of information exchange.

The United States Government assumes no liability for the contents or use thereof."

2. When trade names or manufacturers' names are used in a report, this fact must be specifically brought to the attention of FTA before the report is approved. These reports must contain the following notice on the inside front cover:

NOTICE

"The United States Government does not endorse products or manufacturers.

Trade or manufacturers' names appear herein solely because they are considered essential to the object of this report."

13. **FTA OVERSIGHT.** FTA may conduct on-site inspections of projects to evaluate the grantee's effectiveness in implementing the project in conformance with the grant agreement. Inspection visits may be made, for example, to follow up on information received from the grantee about an event with significant impact on the project, or to determine whether the grantee has adequately complied with civil rights laws, regulations, and agreements. Inspection and concurrence by FTA in project work does not relieve the grantee of its responsibilities and liabilities as the responsible party for carrying out the grant.
  - a. **Project Management Oversight (PMO).**
    1. **Definition.** Oversight is a continuous review and evaluation of various processes to ensure: compliance with statutory, administrative and regulatory requirements; that FTA national and grantee goals are reached; and improvement of the process (FTA and grantee) and components. Although oversight is focused during various reviews, oversight is actually an ongoing activity. Oversight can also be viewed as an increased emphasis on monitoring the adequacy of grantee systems to ensure proper planning, technical, financial and administrative controls and which will result in improved grantee compliance with statutory and administrative requirements.
    2. **Requirement.** FTA conducts PMO for major capital projects, using its own staff or a combination of FTA and contractor staff. For general guidance, grantees are required to provide all needed information about each project selected for this oversight. PMO begins as early in project implementation as practical, usually during the preliminary engineering process.
    3. **FTA Project Team.** FTA may assign its own or contractor staff to provide special oversight or monitoring of major construction or equipment acquisition projects. Contractor staff are generally used for major projects.
    4. **Financial Capacity Reviews.** These reviews provide data for spot reports on the financial plan and are complementary to project management oversight.
  - b. **Quarterly Project Management Meetings.** Quarterly project management meetings may be instituted with selected grantees. These meetings will provide a forum for management briefings, status/progress reports, discussion of accomplishments and problems and, as appropriate, an opportunity for site inspection. The quarterly meetings do not replace quarterly written reports unless a specific exemption is granted by FTA.
  - c. **Triennial Reviews.** FTA is required by law to perform reviews and evaluations of urbanized area formula program grantees to evaluate formula grant management performance and grantee compliance with current FTA requirements. The reviews must be conducted for each formula grant recipient at least once every three years and integrated into FTA's grant management

functions. The reviews are conducted by teams formed by FTA staff and outside contractors following an annual work program. Desk reviews are followed by a site visit. The team documents its findings and recommendations in a draft triennial review report, which is furnished to the grantee for comment before it is released in final form to interested local, State and Federal officials.

When appropriate, corrective actions are recommended to resolve grantees' program management deficiencies. FTA monitors the grantee's actions until compliance with all program requirements is achieved. If needed, FTA can invoke sanctions to assure that grantees act to correct any noted program deficiencies.

- d. Financial Management Systems Reviews. Grantees are selected for FMO review by FTA to provide FTA an oversight tool and the grantees with technical assistance on financial management systems issues. The FMO review scope requires FMO contractors to conduct a series of interviews, full transaction review and appropriate substantive tests. Determination is made whether the grantee's financial management system meets the requirements of the Common Rule (49 CFR Part 18.20), and expresses an objective, external, independent professional opinion to FTA on the effectiveness of the grantees' internal control environment. An average FMO review takes three to four weeks at the grantees' site.
- e. Procurement Reviews. Conduct of procurement system reviews of FTA grantees involves a site visit to ensure that the requirements and standards of the common rule on administrative requirements for grants, 49 CFR Part 18.36 as it specifically applies to procurements, are met.
- f. Safety Reviews.
  1. Drug and Alcohol Program. Based on information acquired from a variety of possible sources (media reports, triennial review findings, annual MIS reports), FTA assigns its own staff, plus contractor support, to audit grantees' drug and alcohol testing programs which appear to be in non-compliance with FTA regulations. The audits are extensive, in-depth reviews and include detailed examination of records and interviews with appropriate grantee personnel and their contractors.
  2. Security Audits. Grantees' security activities are reviewed, on a voluntary basis, to assist grantees in their efforts to enhance the personal security of patrons and employees. The National Transit Data Base [49 U.S.C. Section 5335 (a), ] is used to target which grantees can benefit from security audits; audit findings are used subsequently to focus technical assistance efforts and capital program resources where most needed.
  3. FTA Safety Oversight Audit Program. 49 CFR Part 659.7 requires FTA to monitor and evaluate compliance with the State Safety Oversight Rule. In order to monitor activities

for this regulation, FTA has initiated this State safety oversight audit program. The audits are intended to establish compliance with the regulation. The audits are also expected to provide a forum to recommend improvements in the effectiveness of the oversight program established by each State in which regulated rail fixed guideway systems operate.

4. Civil Rights Review. Civil rights compliance is required by recipients and subrecipients of Federal assistance as specified in the FTA Master Agreement which sets forth the terms and conditions governing the administration of a transit project or projects supported with FTA financial assistance. FTA retains the right to review grantee compliance status at any time during the life of the project.
14. SUSPENSION AND TERMINATION. The suspension of a grant is an action by FTA which temporarily suspends Federal assistance for a project pending corrective action by the grantee or pending a decision to terminate the grant by FTA. If FTA determines that the grantee has failed to comply with the terms and conditions of the grant agreement, including the civil rights requirement, FTA notifies the grantee in writing of its intent to suspend the grant. FTA may withhold further payments and/or prohibit the grantee from incurring additional obligations pending corrective action by the grantee or a decision to terminate the project for cause. This includes work being performed by third party contractors or consultants. Unless FTA notifies the grantee otherwise, suspension will not invalidate obligations properly incurred by the grantee prior to the date of suspension to the extent that they are uncancelable.
    - a. Termination for Cause. FTA may terminate a grant, in whole or in part, at any time before project completion, whenever it determines that the grantee failed to comply with the conditions of the grant including failure to make reasonable progress. FTA will promptly notify the grantee in writing of its intent to terminate and the reasons therefore and the effective date. Payments made to the grantee or recoveries by FTA are in accordance with the terms of the grant agreement and the legal rights and liabilities of both parties as defined in the agreement.
    - b. Termination for Convenience. FTA or the grantee may terminate a grant in whole or part, when both parties agree that continuation of the project would not produce results commensurate with the further expenditure of funds. By signing the grant agreement, the grantee agrees at the outset to a termination for convenience in the event FTA makes such a finding. Both parties must agree upon the termination conditions, including the effective date and, in case of partial termination, the portions to be terminated. The grantee may not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. FTA evaluates each obligation to determine its eligibility for inclusion in project costs. Settlement is made in accordance with terms and conditions of the grant agreement. FTA allows full credit to the recipient for the Federal share of the noncancelable obligations properly incurred by the grantee prior to termination.
    - c. Partial Termination. In some cases, FTA may deobligate funds in an

- approved grant before close-out because the funds are no longer needed to accomplish the grant purpose.
15. **CLOSE-OUT PROCEDURES.** Close-out is the process by which FTA determines that all responsibilities and work by the grantee are completed and the associated financial records are closed. Close-out begins immediately after all work activities under the grant are completed and all close-out documentation must be submitted within the following 90 days.
- a. **Final Financial Settlement.** The grantee must initiate close-out of a grant when all approved activities are completed and applicable Federal funds expended. This requires a letter notifying FTA that the grant is ready for close-out. In order to expedite grant close-out the following should be submitted electronically:
1. a final Financial Status Report (SF-269A);
  2. a final budget revision reflecting actual project costs by scope and activity;
  3. a final narrative milestone/progress report including a discussion of each activity line item contained in the final budget and list of equipment purchased under the grant;
  4. a request to deobligate any unexpended balance of Federal funds; and
  5. any other reports required as part of the terms and conditions of the grant.
- b. **Close-Out by FTA.** FTA reserves the right to unilaterally initiate grant close-out. There are certain circumstances that could cause FTA to close-out a grant in whole or in part at any time before project completion such as:
1. Grantee failure to comply with the terms or conditions of the grant agreement or other Federal requirement;
  2. Continuation of the project would not produce results commensurate with further expenditure of funds;
  3. Funds are no longer needed to accomplish the grant purpose;
  4. Failure by the grantee to make reasonable progress to complete approved grant activities or,
  5. Determination that the project has been essentially completed and/or approved funds have been substantially drawn down.
- c. **Adjustments to Federal Share of Costs.** Necessary adjustments to the Federal share of cost are made after FTA receives and reviews the required close-out information. Adjustments may also be necessary after the audit required by OMB Circular A-133 is performed. FTA funds are not available for audit or other grant activities after a grant has been closed out. Additional information on audit is contained in Chapter III, Financial Management. Any Federal grant funds received by the grantee but not expended must be returned in the form of a check payable to the Federal Transit Administration and mailed to the address shown below, or by wire transfer if the amount is \$10,000 or more. See Chapter IV-7 for Pittsburgh lockbox facility mail address and wire transfer ABA number.

Whenever checks are mailed to the lockbox facility in Pittsburgh, the grantee should send a letter of explanation to the FTA Regional Office.

16. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS .
  - a. Applicability. This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of recipients which are:
    1. Records required to be maintained by this circular or the terms of the grant agreement, or otherwise reasonably considered as pertinent to FTA program requirements or the grant agreement.
    2. Records executed electronically may be retained in that manner, but files must be accessible for possible review, audit or down-loading to paper copy when required.
    3. This section does not apply to records maintained by contractors or subcontractors.
  - b. Length of Retention Period.
    1. Except as otherwise specified, records must be retained for three years from the starting date specified in paragraph 16c, below.
    2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained for three years after completion of the action and resolution of all issues which arise from it.
    3. To avoid duplicate record keeping, FTA may make special arrangements with grantees (including subgrantees as appropriate) to retain any records which are continuously needed for joint use. FTA will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by FTA, the 3-year retention requirement is not applicable to the recipient.
  - c. Starting Date of Retention Period.
    1. General. The starting date for retention of records related to multi-year projects is the date of submission of the expenditure report upon project completion or, if waived, the date it would have been due.
    2. Equipment records. The retention period for the equipment records required by paragraph 7c(2)(a) and (b) starts from the date of the equipment's disposition or replacement or transfer at FTA's direction.
    3. Records for income transactions after grant close-out. In some cases grantees must report income after a grant is closed out. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.
    4. Direct cost rate proposals, cost allocation plans and similar rate and rate allocation methods. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations or the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).
      - a. If submitted for negotiation: If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the three year retention period for its supporting records starts from the date of such submission.
      - b. If not submitted for negotiation: If the proposal, plan, or other computation is not required to be submitted to the Federal Government

- (or to the grantee) for negotiation purposes, then the three year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
5. Contract Records. The retention period for all required contract records commences after the grantees or subgrantees make final payments and all other pending matters are closed. [Reference 49 C.F.R. 18.36(i) (11)].
  - d. Substitution of Photocopies. Copies made by microfilming, photocopying, or similar facsimile methods may be substituted.
  - e. Access to Records.
    1. Records of grantees and subgrantees. FTA and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the grant, in order to perform audits, or make examinations, excerpts, or transcripts.
    2. Expiration of right of access. The right of access in this section is not limited to the required retention period but continues as long as the records are retained.
  - f. Restrictions on Public Access. The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to grantee records owned and possessed by the grantee. Unless required by State or local law, grantees and subgrantees are not required to provide periodic public access to their records. However, FTA may request a grantee to provide access to those records the grantee maintains on behalf of FTA, (i.e., records required by Federal statute or regulation, such as Davis-Bacon wage records).

Top of Page

## Chapter II: Management of Real Property, Equipment & Supplies

1. DEFINITIONS. The following definitions apply to FTA property management standards.
  - a. Acquisition Cost of Purchased Equipment means the purchase price of equipment. This is the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose. Other charges such as the cost of inspection, installation, transportation, taxes, duty or protective in-transit insurance should be treated in accordance with the grantee's regular accounting practices, as separate line items. The cost of items separately installed and removable from rolling stock, such as fare boxes and radios, is treated as a separate acquisition and not as part of the cost of the vehicle.
  - b. Air Rights. That space located above, at, or below (subterranean) the surface of the ground, lying within a project's property limits, is defined as "air rights."
  - c. Brownfields. The U.S. Environmental Protection Agency (EPA) defines "brownfields" (one type of contaminated property), as abandoned, idled, or under-used industrial and commercial land, often found in urban areas, where redevelopment is complicated by real or perceived hazardous contamination. These properties have lower levels of contamination than Superfund sites, but they are a health risk and economic detriment to the communities where they are located.

- d. Equipment Inventory means a physical inventory of property taken and results reconciled with the property records.
- e. Equipment means all tangible, nonexpendable, personal property that has a useful life of more than one year and an acquisition cost that exceeds \$5,000 per unit. Includes rolling stock and all other such property used in the provision of public transit service. A grantee may use its own definition of equipment provided that such definition would at least include all equipment.
- f. Excess Property means property which the grantee determines is no longer required for its needs or fulfillment of its responsibilities under an FTA assisted grant.
- g. Excess Real Property Inventory and Utilization Plan means the document which lists each real estate parcel acquired with participation of Federal funds that is no longer needed for approved FTA project purposes and which states how the grantee plans to use or dispose of the excess real property.
- h. Incidental Use of Project Property and Equipment means the authorized use of real property and equipment acquired with FTA funds for purposes other than provision of transit service. Such use must be compatible with the approved purposes of the project and not interfere with intended mass transportation uses of project assets. Air rights licenses and leases are treated as incidental uses and not as disposition of excess property.
- i. Market Value means the most probable price which equipment should bring in a competitive and open market.
- j. Net Proceeds from the Sale of Project Equipment and Real Property means the amount realized from the sale of property no longer needed for transit purposes less the expense of any actual and reasonable selling and fixing-up expenses. Net proceeds from equipment means that selling expenses of \$100 or 10 percent of the sale price, whichever is greater, can be deducted to achieve net proceeds, in lieu of actual selling costs.
- k. Real Property means land, including affixed land improvements, structures and appurtenances. It does not include movable machinery and equipment.
- l. Service Life (Useful Life). Service life of revenue rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. See Chapter I; and C 9030.1C, Urbanized Area Formula Program: Grant Applications Instructions; and C 9300.1A Capital Program: Grant Application Instructions.
- m. Straight Line Depreciation. The value of a revenue passenger vehicle is depreciated on a straight-line basis over the service life as a percentage of cost. The Federal interest in rolling stock is determined on the basis of straight line depreciation over the service life of the asset. That is, a 12 year minimum service life depreciates 1/12 of its original purchase price each year. The FTA interest in that vehicle therefore decreases each year by 1/12 of the amount of the Federal grant that was awarded for its purchase.
- n. Supplies mean all tangible personal property other than equipment.

2. REAL PROPERTY. The following requirements govern the acquisition, use or disposition of real property purchased with federally participating funds.

- a. Acquisition of Real Property and Relocation of Persons and Their Personal Property. Acquisition of real property and relocation activities necessary to secure property for a project in which there will be Federal funds must be carried out pursuant to the requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act), as amended. The Uniform Act is implemented by regulation (49 CFR part 24).

The objective of the Uniform Act is that owners of real property to be acquired for Federal and federally assisted projects be treated fairly and consistently; that persons displaced be treated fairly, consistently and equitably; and that acquiring agencies implement the regulations in a manner that is efficient and cost effective. The regulations implementing the Uniform Act are very specific in naming the means to achieve those legislated objectives.

1. Summary.

Following are examples of acquisition and relocation actions required in 49 CFR Part 24:

a. Acquisition :

1. Before making an offer to the property owner, the grantee must first establish market value of the parcel to be purchased. Market value is to be established through a current appraisal and appraisal-review. The owner has a right to accompany the appraiser during examination of the property.
2. No owner shall be required to surrender possession of real property without either payment of the agreed purchase price to the owners or deposit of the established just compensation in condemnation court and available to the owner. The grantee must expeditiously reimburse property owners for actual, reasonable, and necessary expenses incidental to transfer of title.
3. If the acquisition leaves the owner with an uneconomical remnant, the grantee must offer to acquire that remnant. An uneconomical remnant is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.
4. Any decrease or increase in market value caused by the project or caused by the likelihood that a particular property is to be acquired for the project will be disregarded in determining just compensation for the property.

b. Relocation :

1. Early provision of written explanations of acquisition and relocation programs.
2. No individual, family, partnership, corporation or association will be required to move without at least 90 days advance notice.
3. In the case of residential displaces, the 90-day notice must also include the availability of at least one comparable replacement dwelling. Rental assistance and replacement housing payments are provided to make the dwellings affordable
4. All displacees--both business and residential--are reimbursed for certain moving expenses.
5. There must be as many residential dwellings available as there are families who will be displaced. The dwellings must be comparable to the ones from which the persons are displaced. In addition, the comparable replacement dwellings must be decent, safe and sanitary; located in the same area or in areas generally not less desirable in regard to public utilities and public and commercial facilities; reasonably accessible to the displacees' places of employment and within the financial means of the displaced families; and adequate in size to accommodate the occupants.

6. Replacement housing must be open to all persons regardless of race, color, religion, sex, or national origin.

In addition, the grantee should inform itself of State laws regarding compensation for real property and requirements for relocation of persons and personal property.

2. Contaminated Property (including Brownfields). Appraisals should consider the effect, if any, the contamination has on the market value of the property being valued. Appropriate due diligence for contamination should have been conducted as a part of the NEPA process and discussed in the NEPA document before selection of a brownfield site in a capital project. The results of the due diligence should be given to the appraiser since the information should prove useful in estimating market value. Federal and local environmental regulatory programs originate from statutory laws and regulations, therefore words and terms often possess specific legal definitions. For convenience we use only the terms, "contamination" and "hazardous material." These terms should be interpreted broadly to include all contaminants that can affect property value.

The legal responsibility for hazardous material clean-up and disposal rests with parties within the property title chain and with parties responsible for the placement of the material on the property. Grantees must attempt to identify and seek legal recourse from those potentially responsible parties or substantiate the basis for not seeking reimbursement.

During the NEPA process, the grant applicant will have considered not only the estimated project cost of appropriate remediation (remediation being any action, developed in consultation with appropriate regulatory agencies, to reduce, remove or contain contamination), the applicant will also have considered and taken action regarding the short and long-term liabilities associated with brownfields.

To encourage the complete assessment of contamination prior to project decision-making, FTA generally will not participate in the remediation of contamination discovered during construction whose encounter was not anticipated.

The grantee should contact FTA for technical assistance regarding contaminated property.

3. Appraisals.
  - a. General. Except as discussed below, an offer of just compensation will be established on the basis of a recent independently prepared appraisal that estimates a fair market value. Appraisers who are not staff employees must be certified appraisers. It is recommended that appraisals and review appraisals be completed by appraisers experienced with State and Federal laws for valuing properties for public acquisitions. Appraisers, and grantees making appraisal assignments should be familiar with the implementing regulations of the Uniform Act (49 C.F.R. 24), especially subpart B. Depending on the individual State Appraisal Board, certified appraisers may need to utilize the jurisdictional exception provisions of Uniform Standards of Professional Appraisal Practice (USPAP) in order to complete the assignment for a public agency. When valuing properties that contain contamination or hazardous material, the appraiser must consider the

effect, if any, the contamination's or material's presence has on the market value.

- b. Exceptions . Full appraisal and/or negotiation procedures are not necessary in certain instances. FTA should be contacted for further guidance when any one of the following situations occurs:
  - 1. The owner is donating the property.
  - 2. The grantee does not have authority to acquire property by eminent domain.
  - 3. The property qualifies as a voluntary acquisition as defined in 49 CFR 24.101(a).
  - 4. The valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data.
  - 5. State subrecipients may use the state's staff appraisers to prepare required independent appraisals.
- c. Review Appraisals. All appraisals for acquisition of real property are to be reviewed in accordance with the Uniform Act. The review appraisal should determine the soundness of the report's value estimate. The review appraiser is often expected to determine if the value conclusion is consistent with State laws for public acquisitions and with the the Uniform Act. The review appraiser often is also responsible for assuring that value estimates are consistent when multiple parcels of property are needed for the project. The review appraisal cannot determine the soundness of a report's value estimate without the review appraiser possessing familiarity with the subject, its comparables and other market factors; rarely will a mere desk review be sufficient.

The Uniform Act contains options for the grantee when its review appraiser is unable to recommend approval of an appraisal. Review appraisers who are not staff employees must be certified appraisers.

#### 4. FTA Oversight of Property Acquisition

- a. Prior FTA concurrence is required when the grantee's recommended offer of just compensation exceeds \$250,000, or when a property appraised at \$250,000 or more must be condemned.

Instead of using its power of eminent domain, when a property cannot be purchased at appraised value, a grantee may propose acquisition through negotiated settlement. The grantee must document that reasonable efforts to purchase the property at the appraised amount have failed and prepare written justification supporting why the settlement is reasonable, prudent and in the public interest. A litigation attorney must provide the justification when the settlement purchase represents a significant increase. The attorney should evaluate the risks of settling for the proposed amount versus the risks of trying the condemnation in court. Prior FTA concurrence is needed when the settlement is \$50,000 higher than the offer.

- b. Alternative Procedure. A grantee, conducting a major capital project or one with a fully staffed real estate department, may prefer an alternative process, which permits higher dollar thresholds before FTA prior concurrence is needed. To do this, an FTA real estate specialist must

review and approve the processes used in acquiring and clearing real estate. Grantees may request a review through the FTA Regional Office.

5. In-Kind Contributions. Grantees may use in-kind contributions of real property as part of the local matching share are eligible for a grant if the property to be donated is needed to carry out the scope of the approved project. The property can be owned and donated by the grantee or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised.

Credit can only be allowed for the value of the portion of real property used or consumed by the project. The request must include a statement that Federal funds were not used to purchase the property. Only the non-federal share of the property may be counted as local share.

6. Functional Replacement. Functional replacement provides a method of paying the cost necessary to replace a publicly owned facility (i.e., a fire station or school) being acquired with a similar needed facility that offers the same utility, including requirements of current local laws, codes, and reasonable prevailing standards in the area for similar facilities. The property to be functionally replaced must be in public ownership (State, County, City or other public jurisdiction), and State law must permit the grantee to incur functional replacement costs. The grantee must demonstrate and FTA must concur that functional replacement is in the public interest. FTA must concur in the agreement between the grantee and the other owner.
- b. Use. Title to real property is vested in the grantees or other public bodies. It is FTA's policy to permit grantees maximum flexibility in determining the best and most cost-effective use of FTA-funded property. To this end, FTA encourages incidental uses of real property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. For example, grantees may be able to encourage incidental use of air rights at and over transit facilities and project areas. FTA approval is required for these incidental uses of real property which must be compatible with the original purposes of the grant.

Incidental use of project real property is subject to the following considerations.

1. Needed Property. This policy applies only to property that continues to be needed and used for an FTA project or program. It is FTA's intention to assist only in the purchase of property that is needed for an FTA project.
2. Purpose & Activity. The incidental use must not compromise the safe conduct of the intended purpose and activity of the initial mass transit project activity.
3. Continuing Control. Incidental use must not in any way interfere with the grantee's continuing control over the use of the property or its continued ability to carry out the project or program.
4. Non-Profit Use. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenues, non-profit uses are also permitted.
5. Air Rights Income. Proceeds from licensing and leasing of air rights should reflect appraised fair market value. Income received from the authorized use of air rights may be retained by the grantees (without returning the Federal share) if the income is used for eligible transit planning, capital and operating expenses. This income cannot be used as part of the local share of the grant from which it was derived. However, it may be used as part of the local share of another FTA grant.

c. Disposition .

1. Excess Real Property Inventory and Utilization Plan. The grantee should prepare and keep up to date an excess property utilization plan for all property that is no longer needed to carry out the originally intended purpose. Grantees are also required to notify FTA when property is removed from the service originally intended at grant approval and put to additional or substitute uses.

The grantee's plan should identify and explain the reason for excess property. Such reasons may include one or more of the following.

- a. The parcel, when purchased, exceeded the grantee's need (uneconomic remnant, purchased to logical boundary, part of administrative settlement, etc.);
- b. The property was purchased for construction staging purposes such as access, storage or underpinning, and construction is completed;
- c. The intended use of the parcel is no longer possible because of system changes, such as alignment, or amendments to the project grant agreement;
- d. Improvements to real property were damaged or destroyed, and therefore the property is not being used for project purposes, but it is still be needed for the project. If so, the improvements may be renovated or replaced. In this case, applicable cost principles must be observed; or
- e. A portion of the parcel remains unused, will not be used for project purposes in the foreseeable future, and can be sold or otherwise disposed.

The inventory list should include such things as property location; summary of any conditions on the title, original acquisition cost and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed.

Unless FTA and the grantee agree otherwise, the excess real property inventory and updated excess property utilization plan is to be retained by the grantee, available upon FTA request and during the Triennial Review process.

2. Disposition Alternatives. If the grantee determines that real property is no longer needed for the approved project, FTA may approve use of the property for other purposes. This may include use in other Federal grant programs or in non-Federal programs that have consistent purposes with those authorized for support by FTA.

In those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, FTA may permit the net proceeds from the disposition to be used as an offset to the cost of the replacement property.

When real property is no longer needed for the originally authorized purpose, the grantee will request disposition instructions from FTA. Following are the allowable alternative disposition methods.

- a. Sell and Reimburse FTA. Competitively market and sell the property and pay FTA its share of the fair market value of the property. This is the percentage of FTA participation in the original grant times the best obtainable price, net of reasonable sales costs.
- b. Offset. Sell property and apply the net proceeds from the sale to the cost of

- replacement property under the same program. Return any excess proceeds to FTA. [Common Rule CFR49 part 18.31]
- c. Sell and Use Proceeds for Other Capital Projects. Sell property and use the proceeds to reduce the gross project cost of another FTA eligible capital transit project. [49 U.S.C., 5334(g)(4)]. The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the liability as the proceeds are applied to one or more FTA approved capital projects. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.
  - d. Sell and Keep Proceeds in Open Project. If the grant is still open, the grantee may sell excess property and apply the proceeds to the original cost of the total real property purchased for that project.
  - e. Transfer to Public Agency for Non-Transit Use. Follow procedures for publication in Federal Register to transfer property (land or equipment) to public agency with no repayment to FTA. This is a competitive process and there is no guarantee that a particular public agency will be awarded the excess property. [49 U.S.C., 5334(g)(1)]
  - f. Transfer to Other Project. Transfer property to another FTA eligible project. The Federal interest continues.
  - g. Retain Title With Buyout. Compensate FTA by computing percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. The grantee must document the basis for value determination; typically this is an appraisal or market survey.

Sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return or at least payment of appraised fair market value.

- h. Joint Development. A transfer meeting the three tests for joint development is not a disposition and the proceeds are deemed program income.

[See Joint Development Appendix at end of this circular for more detailed information. Also see FTA Circular 9300.1A, Capital Program: Grant Application Instructions, Appendix B]

3. EQUIPMENT. Certain equipment management standards apply to equipment purchased with Federal funds. Following are guidelines for the acquisition, use and disposition of equipment.
  - a. State recipients. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. [49 CFR, part 18.32(b)]
  - b. Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee, subgrantee or another participating public body.
  - c. Use of Equipment.
    1. Equipment is to be used by the grantee in the programs or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by Federal funds. When need no longer exists, see

- disposition guidelines.
2. The grantee may make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the project or program for which it was originally acquired. FTA reserves the right in the grant agreement to require the grantee, with FTA approval, to transfer title to equipment no longer needed or used for the purposes of the grant (or program) to the Federal Government or an otherwise eligible grantee. (49 CFR.18.32)
  3. The grantee must not use equipment acquired with grant funds to provide services to compete unfairly with private companies that provide equivalent services. Non-transit use of FTA financially assisted equipment is acceptable so long as it is incidental, does not interfere with transit use (i.e., transit has priority), and income generated is retained by the grantee for transit use.
- d. Leasing Agreement. The grantee may enter into a contract for leasing its project equipment and facilities to a private operator (the lessee). Under this arrangement the grantee (the lessor) should include the following provisions in the proposed lease agreement:
1. The project equipment shall be operated by the lessee to serve the best interest and welfare of the project sponsor lessor and the public. The terms and conditions for operation of service imposed by the grantee shall be evidenced in a service agreement.
  2. The lessee shall maintain project equipment at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the project sponsor. The project sponsor lessor and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the project equipment.
  3. The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.
- e. Management. Equipment management procedures include the following minimum requirements:
1. Rail systems are required to submit a fleet management plan that addresses operating policies (level of service requirements, train failure definitions and actions); peak vehicle requirements (service period and make-up, e.g. standby trains); maintenance and overhaul program (scheduled, unscheduled, and overhaul); system and service expansions; rail car procurements and related schedules; and spare ratio justification.
  2. Property records must be maintained by the grantee. Records must include a description, identification number, procurement source, acquisition date, cost, percentage of Federal participation in the cost, the grant project under which it was procured, location, use and condition, and any disposition data, including the date of disposal and sale price, or, where applicable, the method used to determine its fair market value. The grantee should also state who holds title to the equipment.
  3. A physical inventory of equipment must be taken and the results reconciled with equipment records at least once every two years. Any differences must be investigated to determine the cause of the difference.
  4. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of property. Any loss, damage, or theft must be

investigated and documented by the grantee.

5. Adequate maintenance procedures must be developed and implemented to keep the property in good condition. These procedures should be consistent with the maintenance plan required of grantees for equipment funded under 49 U.S.C. 5309 and 5307 and should be documented and available for audit or triennial review.
6. Warranty standards, when part of equipment contracts, should provide for correction of defective or unacceptable materials or workmanship. These should specify coverage and duration and meet currently available industry standards. Grantees are responsible for :
  - a. Establishing and maintaining a system for recording warranty claims. This system should provide information needed by the grantee on the extent and provisions of coverage and on claims processing procedures;
  - b. Identifying and diligently enforcing warranty system for recording warranty claims; and
  - c. Tagging or otherwise identifying property as Government property.

f. Disposition.

1. Disposition Before End of Service Life: Any disposition of rolling stock before the end of its service life requires prior FTA approval. FTA is reimbursed its share of the proceeds from disposition. If revenue rolling stock is being removed from service before the end of its useful life, the return to FTA is the greater of the FTA share of the unamortized value of the remaining service life per unit, based on straight line depreciation of the original purchase price, or the Federal share of the sales price (even though the unamortized value is \$5,000 or less).
2. Retain and Use Elsewhere. When original or replacement equipment is no longer needed for the original project or program, it may be used by the grantee for other projects or programs. FTA prior approval of this alternative is required. FTA retains its interest.
3. Value Over \$5,000: After the service life of equipment is reached, equipment with a current market value exceeding \$5,000 per unit, or unused supplies with a total aggregate fair market value of more than \$5,000, may be retained or sold, with reimbursement to FTA of an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sale proceeds, by the percentage of FTA's participation in the original grant. The grantee's transmittal letter should state whether the equipment will be retained or sold. Use of sales proceeds are discussed elsewhere in this chapter.
4. Less than \$5,000 value: Equipment with a unit market value of \$5,000 or less, or supplies with a total aggregate market value of \$5,000 or less, may be retained, sold or otherwise disposed of with no obligation to reimburse FTA, providing useful service life requirements have been met. Records of this action must be retained.
5. Like-Kind Trade-In or Offset Exchange. With prior FTA approval, the grantee may elect to use the trade-in value or the sales proceeds to offset the cost of a replacement bus or rail transit vehicle to acquire a replacement vehicle, applying 100 percent of the net proceeds to acquisition of the replacement vehicle/s. (See 49 CFR, Part 18.32; and Federal Register pp. 39328/39329, dated August 28, 1992). Remaining cost differences, if more than the proceeds, are to be met by the grantee. Excess proceeds, if any, are returned to FTA minus a deduction for prorata local share.
6. Transfer to Public Agency for Non-Transit Use. With prior FTA approval, the grantee may follow procedures for publication in the Federal Register to transfer

property (including land or equipment) to a public agency with no repayment to FTA. These procedures are available from the appropriate FTA regional office. [49 U.S.C. 5334(g)(1)].

7. Sell and Use Proceeds for Other Capital Projects. With prior FTA approval, the grantee may sell equipment or supplies and use the proceeds to reduce the gross project cost of other FTA eligible capital transit projects. [49 U.S.C., 5334 (g)(4)] The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the liability as the proceeds are applied to one or more FTA approved, capital projects. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.
8. Unused Supplies. Disposition of unused supplies before the end of the industry standard life expectancy is determined in total aggregate fair market value and if found to exceed \$5,000, the grantee or subgrantee shall compensate FTA for its share; or transfer the sales proceeds to reduce gross project cost of other capital project/s. [49 U.S.C. 5334(g)(4)].

Top of Page

### Chapter III: Financial Management

#### 1. INTERNAL CONTROLS.

- a. Definition. Internal controls are the organization plan, methods and procedures adopted by the grantee to insure that resources are properly used and safeguarded, and that necessary information is provided to grantees and FTA managers.
- b. General. FTA payments to a grantee are made electronically to meet the Federal share of eligible expenses under a grant.

Acceptance of an FTA grant obligates the grantee to use funds it receives as specified in the grant agreement. This creates a vested interest by the United States in unused grant balances, any improperly applied funds, and property or facilities purchased or otherwise acquired under the grant whether funds are received by the grantee as an advance or by reimbursement.

Grantees and subgrantees are responsible for establishing and maintaining adequate internal control over all their functions that affect implementation of a grant.

For proper management of grants, these controls must be used by each grantee in all its operating, accounting, financial and administrative systems. To assure proper accountability for grant funds, internal controls must be integrated with the management systems used by the grantee to regulate and guide its operations.

- b. Objectives. Resources must be used in accordance with applicable state, local, and Federal laws, regulations and policies, and the grant assistance agreement. Resources must be safeguarded against waste, loss, and misuse. Reliable data on resource use and safeguards must be accumulated, maintained and fairly disclosed in reports to grantee management and FTA. A proper system of internal controls will help the grantee to:
  1. Operate efficiently and economically;
  2. Keep obligations and costs within the limits of authorizations and legal

- requirements, consistent with accomplishing the purpose of the grant;
  3. Safeguard assets against waste, loss and misuse;
  4. Ensure timely collection and proper accounting of the grantee's operating and other revenues; and
  5. Assure accuracy and reliability in financial, statistical and other reports.
- d. Necessary Elements. Certain elements are necessary to achieve these objectives and meet the standards discussed later in this chapter. Each facilitates the grantee's use of internal controls. These are:
1. Reasonable assurance that internal controls are an integral part of the grantee's management systems;
  2. Existence of a positive and supportive attitude among grantee managers and employees;
  3. Assignment of internal control functions to competent and experienced employees;
  4. Identification of specific internal control objectives to assure that needs are identified and that valid controls are planned and implemented;
  5. Adoption of internal control policies, plans and procedures that reasonably assure their effectiveness, such as organizational separation of duties and physical arrangements such as locks and fire alarms; and
  6. The grantee should conduct a regular program of testing to identify vulnerabilities in the internal control system.
- e. Standards of Internal Control and Audit Resolutions.
1. General.
    - a. Grantee management policies that govern grant implementation must be clearly stated, understood throughout the organization and conform to applicable legislative and administrative requirements.
    - b. The grantee's formal organization structure must clearly define, assign and delegate appropriate authority for all duties.
    - c. Responsibility for duties and functions must be segregated within the organization to assure that adequate internal checks and balances exist. Grantees should pay particular attention to authorization, performance, recording, inventory control and review functions to reduce the opportunity for unauthorized or fraudulent acts.
    - d. A system for organizational planning should exist to determine financial, property and personnel resource needs.
    - e. Written operating procedures should be simply stated, yet meet the grantee's operating, legal and regulatory requirements. In developing its procedures, the grantee should consider such factors as feasibility, cost, risk of loss or error, and availability of suitable personnel. Other important considerations are the prevention of illegal or unauthorized transactions or acts.
    - f. The grantee's information system must reliably provide needed operating and financial data for decisionmaking and performance review.
    - g. Proper supervision must be provided and performance must be subject to review of an effective internal audit program.
    - h. All personnel must be properly qualified for their assigned responsibilities, duties and functions. Education, training, experience, competence and integrity should be considered in assigning work. All must be held fully accountable for the proper discharge of their assignments.
    - i. Expenditures must be controlled so that construction, equipment, goods and services are acquired and received as contracted for (as to quality, quantity, prices and time of delivery). Authorizations for expenditures must

conform to applicable statutes, regulations and policies.

- j. All real property, equipment, expendables and funds must be safeguarded to prevent misuse, misappropriation, waste or unwarranted deterioration or destruction.

2. Financial Management Systems. Minimum requirements of a grantee's financial management system are contained in the Common Rule, 49 CFR part 18.20(b).

[Exception: State Financial Management Systems. The common rule (49 CFR, Part 18.20(a) requires a state to expend and account for grant funds in accordance with state laws and procedures for expending and accounting for its own funds.]

For other than state recipients and subrecipients, each grantee and subgrantee must establish and maintain an adequate financial management system that provides for:

- a. Accumulation and reporting of accurate, current and complete financial information for each grant;
- b. Records that identify the source and application of funds for grant-supported activities. These must include information about Federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income;
  - c. Control and accountability for all funds, property and other assets, including safeguards against unauthorized use;
  - d. Comparability of actual outlays with budgeted amounts for each grant-funded activity. Where appropriate, unit cost information should be provided for productivity comparisons;
  - e. Procedures for determining reasonableness, eligibility and proper allocation of costs as required by OMB Circular A-87 Cost Principles for State and Local Governments;
  - f. Accounting records that are supported by source documentation;
  - g. Procedures that assure the shortest elapsed time between receipt of funds from U.S. Treasury and grantee disbursements. Payment received from FTA must be disbursed within three business days. If not disbursed within three days, funds become excess funds and must be returned to FTA. (See Chapter IV for additional information regarding payment procedures.) These requirements apply to prime grantees as well as subrecipients; and
  - h. Procedures that assure timely and appropriate resolution of audit findings and recommendations.

3. FTA Review of Grantee's Internal Controls. DOT auditors or designated Financial Management Oversight representatives may visit a grantee after project approval to review its system of internal controls. The review will address grantee compliance with the internal and financial control standards.

FTA will provide the grantee with a copy of the review and discuss action by the grantee to correct any reported deficiencies.

4. Financial capacity reviews are performed on grantees involved in major capital investment projects. The review assesses the financial capability of grantees to meet Full Funding Grant Agreement obligations. The financial capacity reviews analyze plans to mitigate the risks associated with:
  - a. the provision of the required local share;
  - b. the ability to complete the project on schedule in the face of delays or reduced Congressional appropriations, unanticipated conditions or budget over-runs; and

- c. the ability to operate and maintain the existing system, as well as the project.

### 3. COST ALLOCATION PLAN/INDIRECT COST PROPOSAL.

3. General. Under federally funded grant programs, recipients may incur costs of both a direct and indirect nature. A cost allocation plan is required if a grantee desires to charge indirect program-related costs to an FTA grant.

#### 4. Definitions

1. Direct costs are those that can be identified specifically with a particular project. These costs may be charged directly to a grant project.
2. Indirect costs are those that are:
  - a. Incurred for a common or joint purpose benefiting more than one cost objective;
  - b. Not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved; and
  - c. Originating in each of the grantee's operating or organizational units (as well as those incurred by others in supplying goods, services, and facilities to each unit).

Examples of indirect costs are operation and maintenance of buildings and expenses of unit heads and their immediate staff. Principles and standards for determining costs applicable to grants and contracts with grantees or other state or local agencies are presented in OMB Circular A-87, and the appropriate Department of Health and Human Services (DHHS) publications.

#### 5. Types of Plans. There are two types of cost allocation plans presented in OMB Circular A-87.

1. The first plan covers the distribution of costs of support services provided by a state/local government to its operating agencies and is referred to as a state or local government-wide central service cost allocation plan.
2. The second plan covers distribution of costs within an individual grantee or contractor (i.e., operative) agency, including costs of services allocated to it under the state or local government-wide central service cost allocation plan, for all work performed by that agency. This second type of plan is commonly referred to as an indirect cost plan.

DHHS brochure, ASMB C-10 contains questions and answers regarding cost allocation plans and sample formats for both plans. This document is available with updates and changes through the Government Printing Office by subscription, or on the DHHS web site at: [www.os.dhhs.gov/progorg/GrantsNet/index.html](http://www.os.dhhs.gov/progorg/GrantsNet/index.html). It provides the implementation guide for A-87 and may be reproduced without permission.

#### 6. Preparation of Plan. Grantees who intend to seek FTA reimbursement for indirect costs must prepare a cost allocation plan and/or indirect cost rate plan.

1. Purpose. The purpose of the plan is to guide the grantee's allocation of costs, assuring that:
  - a. All activities of local government departments or state agencies have been considered;
  - b. Distribution of indirect costs is based on a method(s) reasonably indicative of the amount of services provided;
  - c. Services provided are necessary for successful conduct of Federal programs;
  - d. Level of costs incurred are reasonable;

- e. Costs of state or local centralized government services may be charged in conformance with government-wide cost allocations plans; and
  - f. Costs claimed are allowable in accordance with OMB Circular A-87, as applicable.
2. Steps in Plan Development. Four steps are basic in preparing a cost allocation plan:
- a. Identifying costs of each type of service to be claimed;
  - b. Determining the users of the service;
  - c. Determining the method for allocating each type of service cost to users; and
  - d. Mathematically allocating these costs to users.

Once FTA or another cognizant Federal agency has accepted a grantee's cost allocation plan or indirect cost rate proposal, the grantee must update it annually. The update should be retained and made available for review at the time of the grantee's organization-wide audit.

7. Cognizant Federal Agency. Cognizance is generally assigned to the Federal agency that provides the predominant amount of dollar involvement with a grantee organization within a given state or locality. (OMB has assigned cognizant audit agencies for state and local Governments -- Federal Register, 1-6-86.) The cost allocation plan/indirect cost rate proposal should be submitted to the "cognizant" or "lead" Federal agency when:
1. The grantee is working on its first assistance project or has not previously had a cost allocation plan/indirect cost rate proposal reviewed and accepted;
  2. The grantee has made a change in its accounting system, thereby affecting the previously approved cost allocation plan/indirect cost rate and its basis of application; or
  3. The grantee's proposed cost allocation plan/indirect cost rate exceeds the amounts and rates approved for the previous year(s) by more than ten percent.

In other instances, the grantee should forego submission of its annual cost allocation plan/indirect cost rate proposal directly to the cognizant agency, retaining the documents for future review. In accordance with OMB Circular A-133, this review will be accomplished at the time of the organization-wide audit of the grantee.

If DOT is the cognizant agency, cost allocation plans should be sent to FTA for DOT review unless the Federal Highway Administration (FHWA) is the primary awarding agency. In that case, the plans should be sent to FHWA with a copy to FTA.

8. Costs Supported. All costs in the plan must be supported by formal accounting records to substantiate the propriety of eventual charges. The allocation plan of the grantee should cover all applicable costs. It should also cover costs allocated under plans of other agencies or organizational units which are to be included in the costs of other federally sponsored programs. To the extent feasible, cost allocation plans of all agencies rendering assistance to the grantee should be presented in a single document.

The cost allocation plan should contain, but need not be limited to the following:

1. The nature and extent of services provided and their relevance to federally sponsored programs;

2. Items of expense to be included;
  3. Methods to be used in distributing cost; and
  4. Appropriate civil rights data.
- g. Plan Content. The cost allocation plan should contain, but not necessarily be limited to, the following:
1. Individual position or group classifications for direct staff services;
  2. The annual salary rate or salary range for each position classification, with estimated average salary charged to the project for each rate;
  3. The estimated period of service as provided by each position classification, estimates of percentage of time each position will devote to the project, and the estimated cost of each;
  4. The nature and extent of services provided by each position classification;
  5. Details of other direct charges including the nature of charges and estimated costs; and
  6. All categories of indirect costs, proposed methods, and the basis for allocating them to the project, total indirect costs, and the estimated amount to be charged to the project.

It is important to note that although personnel services should be estimated on a percentage-of-time basis for planning purposes, only actual time charged to the project as supported by adequate time sheets will be eligible for reimbursement.

- h. Plan Approval. Most transit agencies are under the cognizance of the Department of Transportation. Whenever the cognizant agency gives prior approval to a government-wide cost allocation plan or indirect cost proposal, such approval is formalized, distributed to all interested Federal agencies, and applicable to all Federal grants in accordance with OMB Circular A-87.

9. COST STANDARDS.

- a. General. Grantees must follow the guidelines contained in OMB Circular A-87 (state and local governments), in determining whether project costs are allowable or unallowable. Project costs must specifically relate to the purpose of the grant contract and the latest approved project budget. Care must be exercised when incurring costs to ensure that all expenditures meet the criteria of eligible costs. Failure to exercise proper discretion may result in expenditures for which use of project funds cannot be authorized.
- b. Allowable Costs.
1. General. The criteria that govern the eligibility of project costs are discussed below. These criteria are drawn from OMB Circular A-87. To be allowable under a grant program, costs must:
    - a. Be necessary and reasonable for proper and efficient administration of the grant program, be allowable under the principles contained in the OMB circulars and except as specifically provided in this circular, not be general expenses required to carry out the overall responsibilities of state or local governments;
    - b. Be authorized or not prohibited under state or local laws or regulations;
    - c. Conform to any limitation or exclusions set forth in the principles, Federal laws, or other governing limitations as to types or amounts of cost items;
    - d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of

- government of which recipient is a part;
- e. Be treated consistently through application of generally accepted accounting principles appropriate to the circumstances;
- f. Not be allowable or included as a cost of any other federally financed program in either current or prior periods;
- g. Be net of all applicable credits;
- h. Not be incurred prior to grant award unless specifically provided for in a Letter of No Prejudice or equivalent document approved by FTA, or in the preaward authority as described in the Federal Register listing of the Annual Apportionments.

#### 10. PROGRAM INCOME.

- a. General. FTA's program income policies are governed by 49 CFR, Part 18, the Common Rule, and apply to all FTA planning and capital grants governed by this circular except for approved grants that contain specific terms and conditions to the contrary. See Chapter I, section 11 of this circular for additional information regarding Program Income.
- b. Accountability. Grantees must account for program income in their accounting system, which is subject to audit. The accounting system must be capable of identifying program income and the purpose for which it was used.

#### 11. FINANCIAL REPORTING REQUIREMENTS.

- a. General. FTA uses the Milestone/Progress Report to monitor project funds through the electronic award and management system. Note that payment can be withheld for failure to submit either financial or narrative reports in a timely manner.
- b. Disclosure Criteria. The following criteria are basic to full disclosure in financial reports by recipients:
  - 1. All essential financial facts relating to the scope and purpose of each financial report and applicable reporting period should be completely and clearly displayed in the reports.
  - 2. Reported financial data should be accurate and timely. The requirement for accuracy does not rule out inclusion of reasonable estimates when precise measurement is impractical, uneconomical, unnecessary, or conducive to delay.
  - 3. Financial reports should be based on the required supporting documentation maintained under an adequate accounting system that produces information which objectively discloses financial aspects of events or transactions.
  - 4. Financial data reported should be derived from accounts that are maintained on a consistent, periodic basis; material changes in accounting policies or methods and their effect must be clearly explained.
  - 5. Reporting terminology used in financial reports to FTA should be consistent with receipt and expense classifications included in the latest approved project budget.
- c. Milestone/Progress Reports. Electronic financial status reporting is required for all capital grants covered under this circular, as well as combination capital/operating grants. These quarterly reports are to be submitted electronically.

These reports are to be submitted for all non-construction and construction projects on an accrual basis.

- 1. The reports should be prepared by activity line item code, task or project as

appropriate. Electronic system procedures are available from FTA regional offices. Milestone progress reports for Urbanized Area Formula Programs (Section 5307) grants should show the financial activities of the TIP or STIP as a whole, including any operating assistance.

## 12. ANNUAL AUDIT.

- a. General. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and provisional OMB Circular A-133 Compliance Supplement of May 1998 provides the requirements for annual audits of grant recipients. Both documents are available on the OMB web site at <http://www.whitehouse.gov/WH/EOP/OMB/Grants/>.
- a. Requirement. FTA grantees are required to obtain the services of an independent auditor to conduct a single audit each year in conformance with OMB Circular A133, except where a state constitution or statute provides for a single biennial audit.
- b. Purpose. The purpose of the single annual audit report is to determine whether the grantee:
  1. Has prepared financial statements that fairly present its financial position and the results of its financial position and the results of its financial operations in accordance with generally accepted accounting principles;
  2. Has in place internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and
  3. Has complied with laws and regulations that may have material effect on its financial statements and on each of its major Federal assistance programs (as defined according to the sliding scale discussed in A-133).

The annual single audit is to be performed by an independent auditor who is required to determine and report on whether the grantee has internal control systems that reasonably assure it is managing Federal assistance programs in compliance with applicable laws and regulations. Review of a proposed contract for the services of an independent auditor can be arranged through FTA with the grantee's cognizant Federal auditor.

Grantees are required to determine whether certain subgrantees spend Federal assistance funds they receive in accordance with applicable laws and regulations. Audit judgment concerning the grantee's determination is left to the independent auditor.

Sufficient copies of the single audit reports (1 for file and 1 for each Federal agency with findings) should be sent to the Audit Clearing House, 1201 E. 10th Street, Jeffersonville, IN 47132.

- c. Resolution of Audit Findings. Grantees and subgrantees are responsible for prompt resolution of all audit findings and recommendations. This responsibility requires that the grantee:
  1. Promptly evaluate the report;
  2. Determine the appropriate follow-up actions and establish a date for their completion; and
  3. Complete all required actions within the established period of time.

Deficiencies or opportunities for improvement identified in an audit must be resolved by the grantee. The resolution of audits begins with FTA's report to the grantee and continues until the grantee corrects identified deficiencies, implements needed improvements or demonstrates that the findings or recommendations are not valid or do not warrant management action.

The audit is not resolved until FTA concurs in the documentation of steps taken to implement any needed corrective actions. The status of outstanding audit findings and recommendations should be monitored and reported by the grantee in quarterly progress reports and, where appropriate, significant events reported.

### 13. THIRD PARTY CONTRACT AUDITS.

- a. Responsibility for Audit. Grantees must ensure that grant-assisted activities are carried out effectively and efficiently. Audit of third party contracts is an important tool available to grantees in meeting this obligation. A third party audit may be initiated by the grantee as part of its own management process. For example, consultant, engineering or service contracts commonly include provisional overhead (burden) and General & Administrative (G & A) rates which need to be verified by audit for the applicable contract periods. Contract audits may also be requested by FTA to ascertain that payments were made in conformance with the terms of the contract, or for other purposes. Finally, audit of a third party contract may be recommended by the firm conducting the grantee's single annual audit.

Third party contract audits must be conducted by auditors who are independent from the third-party contractor.

- b. Outside Audit Services. Many FTA grantees assign proposal evaluation and contract monitoring duties to their own auditors or financial management personnel. However, some do not have qualified personnel within their organization to conduct this kind of audit review. They must obtain these services elsewhere. Two available sources for audit services are qualified independent accounting firms and contract auditors from agencies and departments of the Federal Government. Private firms usually are able to initiate the audit sooner after the grantee's request than a Federal agency can, but in some cases, a continuing Federal audit function is maintained at contractor locations and can be used for audit of FTA grantees' third party contracts. In other cases, an audit by a Federal agency may best serve the overall government interest.
- c. Costs. Costs of third party contract audit and proposal evaluation are eligible for reimbursement by FTA as a direct or indirect charge in accordance with OMB Circular A-87. FTA recommends that grantees seek guidance from the cognizant Federal auditor before negotiating audit contract agreements. (Cognizant Federal audit is earlier described under Annual Audit in this chapter).
- d. Contracting for Audit Services. In contracting with a private firm for an independent audit, grantees should follow standard procedures for third party contracts. Grantees should direct requests for Federal audit assistance to FTA.

Top of Page

## Chapter IV: Payment Procedures

### 1. GENERAL.

- a. Payment Methods. FTA makes all payments by the Automated Clearing House (ACH) method of payment, regardless of the money amount involved. The cash payments to grantees are made using two ACH methods:

1. Electronic Clearing House Operation (ECHO) Payment; and
2. Requisition Payment.

Under these ACH methods, FTA provides payment to grantees by electronically wiring funds to the recipient's financial institution.

Office of Management and Budget (OMB) Circulars A-102, A-110 and 31 (CFR) Part 205, governs payment to recipients for financing operations under Federal grant and other programs. These regulations require that payment to a grantee be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the grantee in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA "ECHO System Users Manual for Grantees."

- b. Disallowed Costs. In determining the amount of Federal assistance FTA will provide, FTA will exclude:

1. Any project costs incurred by the grantee prior to the date of either the approved grant or the approved project budget (whichever is earlier), unless otherwise permitted by Federal law or regulation or unless an authorized representative of FTA states in writing to the contrary; and
2. Any costs attributable to goods or services received under a contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by FTA.

The grantee agrees that reimbursement of any cost in accordance with indicated payment methods for an approved grant does not constitute a final FTA decision about the allowability of that cost and does not constitute a waiver of any violation by the grantee of the terms of approved grant. The grantee understands that FTA will not make a final determination about allowability until an audit of the project has been conducted. If the government determines that the grantee is not entitled to receive any part of the Federal funds requested, the government will notify the grantee stating the reasons. Project closeout will not alter the recipient's obligation to return any funds due to FTA as a result of later refunds, corrections, or other transactions. Nor will project closeout alter FTA's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by law, FTA may offset any Federal assistance funds to be made available under this project necessary to satisfy any outstanding monetary claims that FTA may have against the grantee. Exceptions pertaining to disallowed costs are set forth in FTA directives or in other written Federal guidance.

- c. Requirement to Remit Interest. The Grantee agrees that:

1. Any interest earned by the grantee on Federal funds must be remitted to FTA, except as provided by 31 U.S.C. Section 6503, or the Indian Self-Determination Act, 23 U.S.C. Section 450, and any regulations thereunder that may be issued by the U.S. Secretary of the Treasury.

2. Irrespective of whether the grantee has deposited funds in an interest-bearing account, the grantee agrees to pay to FTA interest on any FTA funds that the grantee has drawn down and failed to spend for project activities. Unless waived by FTA, interest will be calculated at rates imposed by the Secretary of the Treasury beginning on the fourth business day after the funds were deposited in the grantee's bank or other financial depository. This requirement does not apply to any grantee that is a State, State Instrumentality, or Indian Tribal Government.
  3. Upon notice by the FTA to the grantee of specific amounts due FTA, the grantee agrees to promptly remit any excess payment of amounts or disallowed costs to FTA, including any interest due thereon.
- d. Bond Interest. To the extent permitted by FTA, bond interest is an allowable cost.
  - e. De-obligation of Funds. FTA reserves the right to deobligate unspent Federal funds prior to project closeout.
  - f. Right of FTA to Terminate. The grantee agrees that, upon written notice, FTA may suspend or terminate all or part of the financial assistance provided herein if the grantee is, or has been, in violation of the terms of the approved grant, or if FTA determines that the purposes of the statute under which the project is authorized would not be adequately served by continuation of Federal financial assistance for the project. Any failure to make reasonable progress or other violation of the approved grant that significantly endangers substantial performance of the project shall be deemed to be a breach of the approved grant.

In general, termination of any financial assistance under the approved grant will not invalidate obligations properly incurred by the grantee and concurred in by FTA before the termination date, to the extent those obligations cannot be canceled. However, if FTA determines that the grantee has willfully misused FTA assistance funds by failing to make adequate progress; to make reasonable use of the project real property, facilities, or equipment; or to honor the terms of the approved grant, FTA reserves the right to require the grantee to refund the entire amount of Federal funds provided herein or any lesser amount as may be determined by FTA.

Expiration of any project time period established for this project, does not, by itself constitute an expiration or termination of the approved grant.

Neither the receipt by the grantee of any Federal funds for the project nor the closeout of Federal financial participation in the project shall constitute a waiver of any claim that FTA may otherwise have arising out of the approved grant.

## 2. ELECTRONIC CLEARING HOUSE OPERATION PAYMENT METHOD.

- a. Objective. If payment is made under ECHO, by means of an ECHO Control Number (ECN), the grantee agrees to comply with the following ECHO requirements pursuant to OMB Circulars A-102, A-110, and 31 CFR, Part 205 and as established by the "Guidelines for Disbursements" set forth in the FTA ECHO System Users Manual for Grantees.
- b. Policy.

1. The grantee may initiate cash drawdowns only when actually needed for immediate disbursement required for project purposes. Accordingly, the grantee agrees to expend all Federal funds obtained under the project for project purposes no later than three business days after receipt of those funds.

Failure to expend those Federal funds within three business days of their receipt or to return the funds to FTA within a reasonable period, or an unwillingness or inability on the recipient's part to establish procedures that will minimize the time elapsing between cash advances and the disbursement shall cause FTA to revoke or temporarily suspend the grantee's ECHO Control Number and the grantee's access to the ECHO System. In addition, failure to honor these requirements may result in other remedies authorized by Federal law or regulations.

2. The grantee agrees to report its cash disbursements and balances in a timely manner as required by FTA through completion of the Status of Federal Funds Report when requested.
  3. The grantee agrees to provide for control and accountability for all project funds consistent with Federal requirements and procedures for use of the ECHO system.
  4. The grantee may not draw down funds for a project in an amount that would exceed the sum obligated by FTA or the current available balance for that project.
  5. The grantee shall limit drawdowns to eligible project costs and refrain from drawing down Federal funds before they are needed for disbursement.
  6. The grantee agrees to all applicable requirements in accordance with paragraphs 2b(1) through (5) on its sub-recipients.
  7. The grantee must notify the appropriate FTA regional office when an individual draw down will exceed \$50 million. (In turn, the FTA Headquarters Accounting Office should be notified by the regional office, because FTA must provide Treasury with 48 hours prior notification to draw down funds exceeding \$50 million.)
- c. Procedures to Apply for Electronic Clearing House Operation. The following reference is a brief outline of the procedures under the ECHO method of reimbursement.

*The Treasury Financial Communications System (TFCS) - Letter of Credit (LOC) method previously used was phased out by the Department of Treasury on 12-31-90.)*

1. FTA determines that a grantee should be funded under the ECHO method and sends the grantee an "ECHO Systems Users Manual" for Grantees which includes the applicable information and forms which are required to establish an ECN.
2. The responsible FTA regional office must approve all projects under the ECHO method before an ECN can be authorized for the grantee organization. This also applies to existing active projects that are currently being paid via the requisition

method.

3. The grantee completes and returns to FTA an original Signatory Authorization and Certification letter (see Exhibit IV-1) and a Payment Information Form (see Exhibit IV-2).
4. FTA reviews the completed forms and when approved, initiates the process to establish the grantee on the ECHO system.
5. FTA furnishes the grantee a notification for establishment of an ECN and provides the password for ECHO access by certified mail.
6. Following the effective date of the ECN, the grantee may transmit an ECHO Drawdown request message to FTA in order to receive funds necessary to meet immediate cash disbursement needs.
7. The ECHO System processes the grantee's message. If no problems are noted by FTA, the amount requested or a partial amount is transmitted to Treasury via the Electronic Certification System (ECS).
8. Treasury electronically transfers the payment to the grantee's financial institution within 24 hours.
9. In the event a grantee receiving funds by an ECN demonstrates an unwillingness or inability to establish procedures to minimize the time elapsing between the withdrawal of funds under the ECN and the disbursement of such funds, FTA will cancel the ECN to the extent of the undisbursed balance not obligated in good faith in execution of the Federal project as authorized, and require the grantee to finance its operations with its own working capital.
10. FTA encourages issuance of a single consolidated ECN to cover all payments to a grantee for grant programs covered by this circular. If the grantee or FTA administrative needs require more than one ECN, FTA must approve issuance of another. In no instance may one project be included on more than one ECN.

An "ECHO Systems Users Manual for Grantees" is also available from FTA that details ECHO procedures for Grantees.

d. Grantee Organization Requirements.

1. Signatory Authorization and Certification. The grantee organization must submit a Signatory Authorization and Certification Letter containing the signature of the Authorizing Official (s), signature of the head of the organization or designee, contact person and the official stamp/seal of the organization.
2. Payment Information. The grantee organization must complete all information on the Payment Information Form containing the organization's contact person, bank account and routing numbers, and the original signatures of the organization's authorizing official and bank representative.
3. Request for Payment on ECHO. The grantee organization must access the

ECHO System each time funds are needed to meet current cash disbursement needs. The instructions for accessing the ECHO System are included in the FTA ECHO System Users Manual for Grantees.

4. Planning ECHO Withdrawals. The grantee organization must exercise sound financial judgment and planning to ensure that the requirements for maintaining minimum cash balances are met.
- e. Rejection of Messages. The transmitted message will be edited by ECHO for errors, deficiencies, or omissions which may necessitate the rejection of all or part of the request:
1. The approved grant has not been received in the accounting office which initiates the authorization to disburse funds.
  2. The amount requested for a project is greater than the unexpended balance on that project. If such is the case, only the drawdown request for the project will be rejected. If the message is for one project, then the total message is rejected; but if the message contains more than one project, then only the drawdown for that project is rejected, not the total message.
  3. The breakdown of amounts requested for each project does not sum to the total amount claimed.
  4. The total amount requested is \$50,000,000 or more and at least 48 hours prior notice was not given.
  5. There are excessive funds in the hands of the grantee organization as determined by FTA.
  6. A written request has been received from FTA officials to withhold payment for a reason other than those listed above.
- f. Excessive or Premature Withdrawals. In accordance with the Common Rule (49 CFR 18.21), when excessive cash is being held by a grantee, FTA must request a refund of the excessive cash and, if the grantee is not a State Government or an instrumentality of the state, the interest earned on those funds. However, FTA requires that interest on excess cash held be remitted irrespective of whether the excess funds were deposited into an interest-bearing account. Interest will be calculated at rates imposed by the Secretary of the Treasury beginning on the fourth day after the funds were deposited in the recipient's bank or other financial depository. This requirement does not apply to any grantee that is a State, State Instrumentality, or Indian Tribal Government.
1. Exceptions. The only exceptions to the requirement for prompt refunding are when the funds involved:
    - a. Will be disbursed by the grantee within seven calendar days; or
    - b. Are less than \$10,000 and will be disbursed within 30 calendar days.

These exceptions to the requirement for prompt refunding should not be construed as approval for a grantee to maintain excessive funds. They are applicable only to excessive amounts of funds which are erroneously drawn.

2. Return of Funds. The return of funds is accomplished as follows:
  - a. FTA requests the recipients to remit the excessive cash and any interest to FTA by a check made payable to the Federal Transit Administration. If a single check is used to remit both the premature withdrawal and the interest, the amount of each must be separately identified; and
  - b. The check (s) are to be mailed to the FTA lockbox facility (see paragraph h(2) below) and be accompanied by a letter explaining the purpose of the check(s) and identifying the project number. A copy of the check and the letter should be sent to the grantee's regional office.
- g. Repayment to FTA. FTA program managers will be alert to any information which may indicate a potential repayment. The following are possible reasons for payments becoming due to FTA:
  1. insufficient non-Federal funds to match Federal payments;
  2. the sale of project equipment; or
  3. excessive Federal funds in the project account.
- h. Repayment Procedure. Required repayments must be made promptly to FTA. The grantee is instructed to:
  1. Make the check payable to "Federal Transit Administration;"
  2. Mail all checks to the FTA lockbox facility at:

U. S. Department of Transportation

Federal Transit Administration

P. O. Box 360324M

Pittsburgh, PA 15251-6324
  3. If \$10,000 or more, the amount should be wired to FTA using Treasury's New York City Federal Reserve Bank for deposit to FTA Agency Location Code (ALC) 69080001, ABA # 021030004;
  4. Specify applicable project number(s) on the check;
  5. Provide written explanation as to purpose of payment;
  6. Send a copy of the check and the explanatory letter to the grantee's regional

office; and

7. If the project is on ECHO, the amount may be repaid through a credit on the FTA drawdown message. This credit must be shown in full and not netted against any amount being claimed on the same project, unless an appropriate credit is shown for the original project, with a charge to the new project. Payments of interest must be made by check.

i. Revocation of ECHO Control Number.

An ECN will be revoked when it has been determined that the grantee has demonstrated an unwillingness or inability to establish procedures to withdraw only the amounts necessary to meet current disbursement needs and to time withdrawals as closely as possible to the actual cash disbursements.

3. REQUEST FOR ADVANCE OR REIMBURSEMENT (SF-270).

a. General. If the requisition method of payment is used, the grantee agrees to:

1. Complete and submit "Payment Information Form - ACH Payment System" (See Exhibit IV-2) to FTA's Accounting Division. Under ECHO Control Number (ECN) insert: Not Applicable (N/A).
2. Complete and submit Standard Form 270, "Request for Advance or Reimbursement," (See Exhibit IV-3) to the designated FTA office. No other document need accompany this form. An original and two copies should be sent to FTA.

Upon receipt of a payment request, FTA will authorize payment by ACH deposit if the grantee is complying with its obligations under the approved grant; has satisfied FTA that it needs the requested Federal funds during the requisition period; and is making adequate progress toward the timely completion of the project. If all these circumstances are present, FTA may reimburse apparent allowable costs incurred (or to be incurred during the requisition period) by the grantee up to the maximum amount of Federal funds payable through the fiscal year in which the requisition is submitted, as stated in the project budget.

b. Instructions. Instructions for completing an SF-270 are printed on its reverse side. In addition, the following instructions should assist recipients in completing this form.

1. Only the total column on this form should be completed, unless the project involves more than one funding ratio. In such instances, the other columns are also to be used.

In addition, grantees may elect to round all figures to the nearest dollar; i.e., amounts of \$.50 or over would be rounded to the higher dollar. For example: If the non-Federal share is computed to be \$2,572.70, the amount reported would be \$2,573.

2. Block #5--All requisitions should be numbered consecutively beginning with #1 as the first requisition.

3. **Block #8**--The first requisition covers the date of the grant approval letter through the end of the period for which reimbursement is requested. When a requisition requests reimbursement only, the "ending" date will be the same date on which outlays are reported on line 11a of this form. If the reimbursement and/or an advance is being requested, the "ending" date should reflect the period through which the advance funds are needed.

All requisition report periods should run consecutively. For example, if a requisition is submitted for the period 1/1/99 to 3/31/99, the next requisition will begin 4/1/99.

4. **Block #9**--The name of the grantee should be exactly as indicated on the grant contract.
5. **Block #11--Line A**--The "as of" date should be the date for which the grantee has actual costs recorded. This date should be the same as the "to" date, Block #8, unless the grantee is requesting an advance.

Line B--Represents the amount applicable to program income that was required to be used for the project or program by terms of the grant or other agreement.

Line D--Represents the estimated expenditures for the advance period, both FTA share and the local share.

Line F--Non-Federal share of line E, depending on the funding ratio for a particular project. If anything other than those percentages, the reason should be specified.

Line G--Federal share of line E, depending on the funding ratio for a particular project.

Line H--Total of previous requisition(s) submitted. This line should not represent actual checks received because the grantee may have submitted a requisition that is in the process of being paid. Requisition #1 on this line should be zero.

Note that recipients should only complete the "total" column of Block #11, unless the grant award letter or grant agreement specified that there is more than one funding source supporting the project. In such cases, separate columns should be utilized for each funding source.

- c. Review of the SF-270. Each SF-270 for funds will be reviewed in light of the periodic progress reports and financial reports required for each project. Changes requiring grant amendments or prior approval of a budget revision must be approved before funds for these changes are requisitioned.

EXHIBITS IV-1 through IV-3 follow  
Exhibit IV-1 \* Exhibit IV-2 \* Exhibit IV-3

Top of Page

### **Exhibit I-1: A Summary of Planning, Capital and Operating Grant Changes**

**BUDGET REVISION** - A transfer of funds within an approved grant budget. None of the budget

revisions described below permits a change in the grant amount, scope, or terms and conditions.

PLANNING GRANTS: 49 U.S.C. Sections 5303 and 5313(b).

URBANIZED AREA FORMULA PROGRAM: including Planning, Capital and Operating Grants under 49 U.S.C. Section 5307.

Capital Program: 49 U.S.C. Section 5309.

Budget revisions that do not require prior FTA approval are:

- 1) Fund transfers within scope and between scopes of same matching ratio if under 20 percent of most recently FTA-approved budget, or if under 30 percent for planning grants;
- 2) Adding activities that are within scope;

With prior FTA approval and limitations listed below, a budget revision is also used to:

Add, delete or modify grant work tasks consistent with the currently approved Unified Planning Work Program or State work program;

Transfer funds within an approved budget that cumulatively exceeds 20 percent of the budget most recently approved by FTA, but does not exceed 30 percent of planning grants, and FTA's share of grant is more than \$100,000. This would include changes totaling 30 percent or more at the state (cumulative) level for metropolitan planning (49 U.S.C. Section 5303) grants as well as at the state level for statewide planning [49 U.S.C. Section 5313(b)];

Increase or reduce the number of units to be purchased or constructed where the change does not exceed the greater of two units or 20 percent of the approved grant scope ;

Change the size of physical characteristics of the project scope items;

Transfer funds between operating, capital/planning scopes; or scopes with different matching ratios.

Refer to section 6 of chapter I for more detailed information.

**ADMINISTRATIVE AMENDMENT** - An amendment normally initiated by FTA that is needed to change or clarify the terms, conditions or provisions of a grant contract, but does not change the scope, amount or purpose of the grant.

An administrative amendment is used to modify a grant contract for such purposes as to comply with changes required by FTA law, to change the year or type of funds obligated for a grant, to transfer equipment from one grantee to another or to reflect a change in the grantee's name - all programs.

**GRANT AMENDMENT** - A change in the scope of a grant or the Federal participation. A grant amendment requires a revised grant agreement and budget, and may require obligation of additional funds, reduction of the amount of funds obligated or deobligation and obligation of funds.

The following are considered scope changes for planning, capital and operating grants:

A transfer of funds within an approved budget for planning grants that cumulatively exceeds 30 percent of the budget approved most recently by FTA. This would include changes totaling 30

percent or more at the state (cumulative) level for metropolitan planning (49 U.S.C. Section 5303) grants as well as at the state level for statewide planning [49 U.S.C. Section 5313(b)];

A change that exceeds the greater of two units or 20 percent of the units to be purchased or constructed under an approved grant scope;

A change to add a project scope, if not previously included as a contingency project in the budget, or to add or delete a project scope which changes the grant scope;

Any other changes that alter the scope of a grant.

Top of Page

## **Exhibit I-2: Overview of the Grant Management Sequence**

### **OVERVIEW OF THE GRANT MANAGEMENT SEQUENCE**

#### One Time Events

Notice of grant approval. Sign grant agreement. Set up ECHO procedures if needed.

#### Periodic or Reoccurring Events

Submit Annual Certifications and Assurances which will assure grantee controls are in place. Request ECHO or requisition payments. Submit reports as required, milestone/progress; financial; and DBE, other special reports. Update excess Property Utilization Plan. Possible FTA on-site inspections. Prepare biennial inventories. Review third party contracts.

#### Events that May Occur

Budget revision. Grant amendments. Property disposition. Control sales and insurance proceeds.

Single annual audit occurs. Audit of third-party contracts occurs. FTA triennial review for 5307 grantees occurs.

Submit final reports. Final financial settlement. Grant close-out occurs.

Top of Page

**Exhibit IV-2: Payment Information Form - ECHO-ACH Payment System**

ECHO Control Number (ECN) \_\_\_\_\_ (For initial ECHO setup agency will assign ECN Number, for non ECHO payments enter "N/A").

Initial Setup  Info. Change  Grantee Information Change

Information from this form is required under the provision of 31 U.S.C. 3322 and 31 CFR 210. Treasury uses this to transmit payment data by electronic means to a company's or a grantee's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Treasury ACH Payment System.

Note: See back for instructions on completing this form.

<b>GRANTEE INFORMATION</b>		
NAME:		
ADDRESS:		
CITY/STATE/ZIP:	TELEPHONE NUMBER: ( )	
CONTACT PERSON NAME:		
SIGNATURE OF AUTHORIZED OFFICIAL IN FTA	TELEFAX NUMBER: ( )	
DATE: / /		
<b>AGENCY INFORMATION</b>		
NAME: <i>Federal Transit Administration</i>		
ADDRESS: <i>400 7th Street SW, Room 9422, TBP-24, Washington, D.C. 20590</i>		
CONTACT PERSON NAME:	<i>(202) 366-9748</i>	
<b>FINANCIAL INSTITUTION INFORMATION</b>		
(Note: Have Your Bank Complete This Section)		
NAME:		
ADDRESS:		
CITY/STATE/ZIP:		
CONTACT PERSON NAME:	TELEPHONE NUMBER: ( )	
NINE DIGIT ROUTING TRANSIT NUMBER: _____		
DEPOSITOR ACCOUNT TITLE:		
DEPOSITORS ACCOUNT NUMBER:		
TYPE OF ACCOUNT: CHECKING SAVING		
SIGNATURE AND TITLE OF	DATE:	FAX NUMBER:

<b>REPRESENTATIVE:</b>	//	( )
------------------------	----	-----

Revised 7/98

B>Instructions for Completing Form:

1. Fill in your ECHO Control Number. If this is an **Initial ECHO Setup**, Agency will assign ECHO Control Number.
2. Check appropriate box(es):
  - a. Initial Setup.
  - b. Change in Bank Information.
  - c. Change in Grantee Information.
3. Fill out information in the appropriate section(s) listed below:

**Grantee Information Section** - Print or type the name of the grantee and address that will receive ECHO/ACH payments. Also include a contact person's name, date, telephone and telefax numbers.

**Financial Institution Information Section** - Have your bank fill out this section. They should print or type the name and address of the financial institution who will receive the ECHO/ACH payment. Also included are the ACH coordinator's name, telephone number, nine-digit routing transit number (ABA #), depositor (grantee) account title, depositor (grantee) account number, and type of account (type can **ONLY** be designated as **Checking** or **Saving**), signature and title of representative, date and telefax number.

4. Mail the form to the name and address shown in the **Agency Information Section**. This section also includes a contact person's name and telephone number.
5. If there are any questions, please call **(202) 366-9748** and ask for the agency's ACH contact.

Top of Page

**Exhibit IV-3: Signatory Authorization and Certification**

\_\_\_\_\_  
(Signature of Authorizing)

This to certify that the above is the signature of

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

---

(Name of Recipient Organization)

---

(Tax Identification Number)

And that they are duly authorized to approve payment requests submitted to the Federal Transit Administration on the behalf of \_\_\_\_\_ (your organization). This (does/does not) supersede previous signatory authorization for this ECHO Control Number.

In addition, \_\_\_\_\_ (Name of Contact Person) is authorized to receive and maintain the ECHO Password.

---

(Signature of Contact Person)

---

(Signature of Recipient Organization Official)

---

(Typed Name and Title)

---

(Date)

---

(Signature of Witness)

(Seal)

Top of Page

### Appendix: Joint Development Projects

1. **INTRODUCTION.** This appendix contains guidelines for undertaking joint development projects. It also contains a set of questions most frequently asked about the concept of joint development and provides responses to those questions, with examples. This appendix implements the joint development policy announced in the Federal Register on March 14, 1997, which is available at [www.fta.dot.gov](http://www.fta.dot.gov) on the FTA Home Page.

2. **JOINT DEVELOPMENT PROJECTS.** Joint development is any income-producing activity with a transit nexus related to a real estate asset in which FTA has an interest or obtains one as a result of granting funds (the "Assisted Real Estate Asset"). Joint development projects must meet three tests: statutory definition, financial return, and highest and best transit use, discussed below.

Joint development projects are commercial, residential, industrial, or mixed-use developments that are induced by or enhance the effectiveness of transit projects. Joint development projects include private, for-profit, and non-profit development activities usually associated with fixed guideway transit systems that are new or being modernized or extended. Such projects can also be associated with new intermodal transfer facilities, transit malls, and Federal, state, or local investments in existing transit facilities. FTA capital funds may be used to facilitate private development that enhances transit; these funds may not be used for purely private development such as construction and permanent financing costs related to the design or construction of residential, retail, or other commercial, public, and private revenue-producing facilities not associated with transit-related development.

3. **REQUIREMENTS RELATED TO STATUTORY DEFINITION.** A joint development transportation project must be compatible with the statutory definition of a capital project:
  - a. It is a transportation project that enhances economic development or incorporates private investment including commercial and residential development, pedestrian and bicycle access to a mass transportation facility, and the renovation and improvement of historic transportation facilities, because the project:
    1. Enhances the effectiveness of a mass transit project, and is related physically or functionally to that mass transit project; or
    2. Establishes new or enhanced coordination between mass transportation and other transportation; and,
    3. Provides a fair share of revenue for mass transportation use.

4. **OTHER DEFINITIONS RELATED TO THE CAPITAL PROJECT DEFINITION.**

- a. ***Physically Related.*** A project is physically related to a capital project if it provides a direct physical connection with transit services or facilities. This includes projects using air rights over transit stations or projects built within or adjacent to transit facilities.
- b. ***Functionally Related.*** A project is functionally related to a capital project if it is related by activity and use, and it is functionally linked (with or without a direct physical connection) to transit services or facilities. Also, a project is functionally related to a capital project if it provides a beneficial service to the public (or community service) and enhances use of or access to transit. Functional relationships do not extend beyond the distance most people reasonably can be expected to walk to use a transit service. The eligible project area for a functionally related project is estimated to be within a radius of approximately 1,500 feet from the center of a transit facility. The eligible project area for a functionally related project will be identified by the grantee in consultation with FTA's Regional Office on a case-by-case basis.

## 5. FINANCIAL RETURN REQUIREMENTS.

- a. Each grantee must negotiate a fair and equitable return in the form of cash and other benefits to be generated as a result of the FTA investment.
- b. All projects must generate a one-time payment or ongoing revenue stream for transit use, the present value of which equals or exceeds the fair market value of the property. See paragraph 6 for discussion of fair market value.
- c. After October 1, 1996, all FTA Master Agreements allow the use of real property for appropriate project purposes "including joint development purposes that generate program income to support transit purposes;" this is the Federal agency authorization required by 49 C.F.R. 18.25(g)(2) by which the revenues are brought within the definition of program income and can be used for transit capital, planning, and operating purposes. While a grant is still open, the transit agency must apply all revenues from any *sale* of real property (which does not qualify as a joint development *transfer*) to the grant purposes, or must return the revenues to FTA, or must obtain FTA approval to use the revenue to reduce gross project costs in another capital project. (See Chapter I, Sales Proceeds.) If the transit agency transfers an Assisted Real Estate Asset from an open grant and maintains continuing control and otherwise meets the three joint development program tests, the transit agency may retain as program income all the revenues that accrue.
- d. For open grants predating October 1, 1996, all the terms of the current Master Agreement apply, so subparagraph c above controls.
- e. Closed grants made in 1983 or thereafter may be reopened to allow for the use of Assisted Real Estate Assets in joint development projects. However, for those closed grants made between 1983 and October 1, 1996, the grant purpose and terms, as necessary, must be amended to allow for joint development. Aside from the requirement that the income be used for transit operating or capital expenses, FTA generally sets no further conditions on income from a closed grant.
- f. Program income includes current or future returns generated from, but not limited to, transfer or lease of property, mortgage proceeds, or returns stemming from participation in distribution of project revenues.
- g. Agreements which transfer title or rights in land or facilities acquired as part of the FTA project must contain provisions which--
  1. Extend the requirements, as appropriate, of the FTA Grant Agreement (see paragraph 9); and
  2. Ensure that the grantee retains continuing control of the assets as long as they are needed for mass transit. This continuing control may be demonstrated by an easement, by a reversionary interest, by a covenant running with the land, by a contractual clause in the joint development agreement, or more commonly, by some combination of these assuring the transit agency that the joint development project will maintain its physical or functional relationship to transit, will continue to enhance coordination between modes, or will in fact result in increased mass transportation usage; and

3. Ensure that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means.

6. HIGHEST AND BEST TRANSIT USE REQUIREMENT.

- a. The calculation of equitable return required in paragraph 5 must be based on the appraised market value as represented either by highest and best use of the property or by highest and best transit use of the property, taking into account in either valuation the local transportation, land use, and economic development plans. Highest and best transit use is that combination of residential, commercial, retail, public, and/or parking space and amenities to be included in the joint development, which is calculated to produce the greatest level of social, economic, and financial benefit to the transit system and the community that it serves.
- b. If the grantee structures a joint development project to include the transfer of an Assisted Real Estate Asset, then the final transfer value must be based on competition to the extent practicable, and FTA concurrence in the final transfer value is required.

7. ELIGIBLE COSTS FOR JOINT DEVELOPMENT PROJECTS. Eligible project costs for joint development projects include, but are not limited to, the following:

- a. Planning, design, engineering, and environmental analyses, as appropriate. (Formula program funds are more appropriate for planning and feasibility analysis.)
- b. Real estate packaging for a specific joint development project including preliminary design and engineering; estimates of operating income and expenses and capital costs; and negotiations to secure financing, developers, and prime tenants.
- c. Land acquisition, relocation, demolition of existing improvements, and site preparation, as appropriate.
- d. Foundations and substructure improvements for buildings over transit facilities.
- e. Open space, and pedestrian connections and access links between transit services and related development.
- f. Other facilities and infrastructure investments needed to induce significant private investment and to improve access between new or existing development and transit facilities.
- g. Utility work. The eligibility of costs of utility work associated with private investment will be considered on a case-by-case basis. FTA grant funds will pay for costs of utility work that are attributable to non-FTA project purposes only when--
  1. The utility services a joint private and transit use; or
  2. The utility lines will be located under a co-located street or sidewalk or within other common elements so that it would benefit the project to provide adequate capacity at the outset of the project.

- h. Safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications).
  - i. Facilities that incorporate community services such as daycare or health care.
  - j. Parking elements. All FTA participation in financing parking improvements must have a public transit justification and use. Parking elements of joint development projects which meet this general rule will be considered on a case-by-case basis.
  - k. Professional Services Contracting Costs. Grantees may incur reasonable and necessary costs for consultants to prepare or perform items a through j above, or to assist the grantee in reviewing the same.
8. FUNDS THAT MAY BE USED IN JOINT DEVELOPMENT PROJECTS. No dedicated funding has been established for joint development projects. Joint development activities are eligible for funding under all Title 49 capital programs, including the Capital Program (Section 5309), the Urbanized Area Formula Program (Section 5307), the Non-urbanized Area Formula Program (Section 5311), and the Elderly and Persons with Disabilities Program (Section 5310). CMAQ and STP funds transferred from the Federal Highway Administration to be administered by FTA may also be used to support joint development projects.
9. APPLICATION OF OTHER FEDERAL REQUIREMENTS TO PRIVATE SECTOR PROJECTS. In a joint development project, FTA must determine whether, and to what degree, various Federal rules apply to the privately funded, non-transit portion of the project. The applicability of Federal requirements (such as those of the National Environmental Policy Act (NEPA), the Davis-Bacon Act, third party procurement requirements, and Buy America) will be resolved on a case-by-case basis for joint development projects involving the transfer of real property. FTA will work with the grant applicant to determine whether, and the extent to which, such Federal requirements apply, particularly to any private development, and the most appropriate procedures for satisfying the requirements. Proposals should be submitted as early as possible in the joint development process. This will allow FTA staff to help the grantee structure an approvable proposal in the least time possible and determine which cross-cutting requirements must be applied to the particular project. Nevertheless, the following cross-cutting requirements are expected to apply in the indicated circumstances:
- a. If the joint development involves a ground lease or transfer of federally assisted real estate and there is no Federal assistance for new improvements, then the following requirements apply to the lessee or transferee and must be incorporated into the lease or the conveyance instrument:
    - 1. language found at 49 C.F.R. 23.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;
    - 2. language found at 49 C.F.R. 27.7 and 49 C.F.R. 27.9(b) binding the lessee or transferee not to discriminate based on disability and binding the same to compliance with the Americans with Disabilities Act with regard to any improvements constructed; and
    - 3. language contained in the FTA MA(4), dated October 1, 1997, and found in

Section 3 Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interest and debarment.

- b. If the construction of improvements is also federally assisted, then in addition to paragraph 9a above, at least the following requirements also will apply and must be incorporated into the lease or the conveyance instrument:
1. Buy America - language making it clear that the steel, iron, and manufactured goods used in the joint development project are produced in the United States, as described in 49 U.S.C. Section 5323(j) and 49 C.F.R. Part 661. The reader is referred to Chapter VI, paragraph 15 of circular 9300.11A for further information about Buy America requirements.
  2. Planning and Environmental Analysis -- language making it clear that the grantee must comply with, and the joint development project is subject to, the requirements of: the FHWA/FTA metropolitan and statewide planning regulations at 23 C.F.R. Part 450; the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et seq. ("NEPA"); Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the NEPA, 40 C.F.R. 1500 et seq.; FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771; Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation; Advisory Council on Historic Preservation regulations on compliance with Sec. 106, "Protection of Historic and Cultural Properties," 36 C.F.R. 800; and restrictions on the use of certain publicly owned lands unless the FTA makes the specific findings required by 49 U.S.C. 303.
  3. Cargo Preference - language making it clear that items imported from abroad and used in the joint development were shipped predominantly on U.S.-flag ships and that the project complies with 46 C.F.R. Part 381, to the extent these regulations apply to the joint development.
  4. Seismic Safety - language certifying that a structure conforms to seismic safety standards, as contained in 49 C.F.R. Part 41.
  5. Energy Conservation and Recycled Products - Transferee(s) or joint developer agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.
  6. Lobbying - 49 C.F.R. Part 20.
  7. Labor Protection--Language making it clear that the transferee or joint developer will adhere to labor protection requirements applying to Federal projects, such as Davis-Bacon - 49 U.S.C. Section 5333(a) and 40 U.S.C. 276a through 276a (7) and 29 C.F.R. Part 5; Copeland "Anti-Kickback " Act as amended, 18 U.S.C. 874 and 40 U.S.C. 276c and 29 C.F.R. Part 3; and Contract Work Hours and Safety Standards Act, 49 U.S.C. 327 through 332 and 29 C.F.R. Part 5 and 40

U.S.C. 333 and 29 C.F.R. Part 1926; as well as 49 U.S.C. 5333 (b) concerning protection of transit employees.

8. Civil Rights Requirements - 49 U.S.C. Section 5332.
9. Program Fraud - Transferee(s) or joint developer agrees to comply with Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and 49 C.F.R. Part 31. Penalties may apply for noncompliance.
10. Language making it clear that the level of Federal participation in the joint development provides no U.S. Government obligation to third parties in the project.
11. Uniform Relocation - If the federally assisted site to be improved is occupied by other than the grantee and the occupant is displaced, the transferee(s) or joint developer must comply with 42 U.S.C. 4601 et seq. and the regulations at 49 C.F.R. Part 24.

- c. In any instance in which FTA determines that NEPA applies to the joint development, the level of environmental analysis will depend upon the complexity of the project and its likely impacts. In some instances, minimal review will be necessary, in which case FTA will issue a Categorical Exclusion. Joint development activities that portend significant environmental impacts, however, will necessitate the preparation of an Environmental Assessment or an Environmental Impact Statement. See generally the FTA Environmental Impact and Related Procedures at 23 C.F.R. Part 771.

10. NOTES TO READER. Before undertaking a new joint development, a grant applicant is encouraged to turn to Chapter X, "Regional Offices," of Circular 9300.1C, select the FTA Regional Office responsible for the grant applicant's locality, and telephone that office to discuss the kind of project planned. Such a dialogue, early in the project planning process, will ensure that the joint development proposal will be reviewed on a timely basis.

The statements included in this appendix reflect typical project situations. Instructions given and policy statements appearing in the circular are not intended to be read as inflexible FTA mandates. They are instead set forth as guidelines which FTA generally applies to typical projects. Early dialogue with the FTA Regional Office will clarify the degree to which a new joint development project conforms to, or differs from, previous FTA experience.

#### 11. FREQUENTLY ASKED QUESTIONS AND SOME PRACTICAL EXAMPLES.

- a. What is joint development? It is an income-producing activity involving a third party, taking place on or with an Assisted Real Estate Asset (described in paragraph 2 above). The third party is the source of the income to the grantee; the third party is the party to whom the property is transferred or the lessee who leases the space.
- b. What is the limitation on new improvements for joint development? The purpose of the Joint Development Policy is to facilitate the use of an Assisted Real Estate Asset for transit oriented joint development. Thus, FTA will support, or allow the use of grant funds for, the construction of a structure that includes a transit facility. However, FTA is unlikely to allow FTA grant funds to support a free-standing facility (such as an apartment building or an office tower) that is not part of a transit facility. (See question

11f for the definition of a shell for joint development.)

- c. Does joint development require a private or nonprofit developer? Not really. The third party's role need not be that of developer; it may be that of a lessee. For example, the transit agency can lease out its excess space to a senior care or day care provider, in which case the transit agency is the "developer" under FTA's policy. If, however, the project is to build an office/retail complex in the air space above a transit station, only a very large transit agency will have the means to borrow the sums necessary to build and finance the structure. It will be much easier (though not absolutely necessary) to have a private partner who builds and manages the development.

One transit authority has created a private subsidiary (limited partnership) to assist it in developing property around an historic central station. This project will create six floors of multi-family rental housing. The project will be financed with a combination of historic preservation tax credits, low-income housing tax credits, and mortgage revenue bonds issued by the city. The transit operator is also a partner in the joint development. The transit operator will receive a share of the project revenues for the life of the limited partnership.

- d. What is highest and best transit use? A property's highest and best use is the use--from among reasonably probable and legal alternative uses that are physically possible, appropriately supported, and financially feasible--that results in the highest anticipated selling price. The way highest and best transit use differs from highest and best use is through recognition that value to the transit system is not in the selling price alone.

Highest and best transit use is that combination of financial return and other transit benefits, such as increasing ridership, reducing trip durations or improving connections between trips, that maximizes the value of the asset to transit.

For example, a transit agency identified several properties adjoining existing or planned transit stations that it wished to use for joint development. One particular property was oddly shaped, but with substantial road frontage. A request for development proposals resulted in offers to build 8 or 10 townhouses with garages. This option would produce the highest immediate cash proceeds to the transit system. However, the transit agency sought and was granted revised zoning on the property, allowing up to 160 moderate income apartments to be offered for rent. The moderate-income rental use will take a long time to produce cash flow and proceeds to the grantee, but in the interim, the moderate-income rental use is projected to increase transit ridership by (conservatively) 32,000 trips per year, which are estimated to be worth between \$18,000 and \$24,000 per year in additional farebox revenues. It is anticipated that these residents will also provide economic support for new retail space in the surrounding community. FTA regards this decision as satisfying the "highest and best transit use" criterion.

- e. How much land may be purchased by a grantee? A town is currently planning improvements to its bus transit system, including a downtown transfer center. The center is being planned as a multi-use facility, which will include a tourist information center, small retail businesses, and possibly a bank. To make this eventual development a reality may require that the transit agency acquire a larger amount of land than is necessary for the transit center alone. FTA will assist the transit operator's land acquisition activities with grant funds, as described in paragraphs 7a through 7e of this appendix. Generally, FTA will not support land purchases more than 1,500 feet

from the center of the transit facility.

- f. What is an "envelope" or "building shell" for a joint development? The transit agency may wish to encourage local economic activity at its facilities. Under the Joint Development policy, the transit agency may build an "envelope," or rehabilitate an existing transit owned facility. Envelope or building shell means (but is not limited to) load bearing walls, roof, foundation, substructure improvement, site design, and engineering. "Tenant finishes," however, are not eligible for FTA reimbursement. These include partition walls, furniture, equipment, shelving, lighting, drapes, floor coverings, and other items specific to the business intended to be operated.

A Neighborhood Travel and Jobs Center involved just such a development. There, the local transit authority was allowed to convert an existing office building into a \$3 million Neighborhood Travel Center. The center will serve as a terminal for bus lines to industrial jobs and will provide the focus for a downtown redevelopment "campus" including jobs training, child care facilities, and a privately-financed development bank. The tenant finishes for each of these ancillary activities will be paid for with non-grant funds, though grant funds were used to rehabilitate the building itself. The tenants will pay market rate rent to the transit authority.

- g. What is the difference between a sale and a joint development transfer? A sale does not involve continuing control of the real property by the grantee and fails to establish a nexus between the Assisted Real Estate Asset and an ongoing transit purpose as outlined in paragraph 3 of this appendix. Proceeds from a sale are not program income and must be returned to FTA pursuant to 49 CFR 18.31(c)(2).

In contrast, a joint development transfer meets the statutory definition test outlined in paragraph 3 of this appendix, the grantee exercises continuing control over the transferred real estate, and the financial and highest and best use tests of the Joint Development Policy are met. The proceeds from a joint development transfer are considered program income, which may be retained by the grantee. (See paragraph 5c.)

Here is an example of a joint development transfer: a rapid rail station includes 6.3 acres for a "park and ride" area. A developer has been approved to build 160 residential units and 17,000 square feet of service retail space on a portion of this area. The transit operator transfers 3.4 acres to the developer for use in the joint development. The development will generate more transit trips and more non-fare revenue than the displaced parking spaces provided. The transit agency will retain the income generated from this land transfer as program income and will be assured of satisfactory continuing control through covenants running with the land. Should the developer re-sell the land in the future, the covenants bind the next owner to a transit-oriented use of the land.

- h. Will NEPA and other Federal cross-cutting requirements discourage private participation? It is the will of the Congress that the Federal cross-cutting requirements govern grantees' use of FTA's financial assistance. To the extent that a grantee joins with a private or nonprofit developer to undertake joint development using FTA grant funds in whole or in part for the improvements to the site, it is that grantee's role to obtain the grant funds necessary to make the joint development financially feasible and to supply its expertise in meeting the applicable Federal requirements. For example, if the proposed land use is known from the outset, a grantee can reduce the risk to the private or nonprofit developer by using transit resources to perform the necessary environmental studies before choosing a partner. Alternatively, a project

may be structured so that the grantee selects a development partner, the grantee and the partner jointly determine the highest and best transit use, and the grantee then performs the necessary environmental studies before its private or nonprofit partner becomes responsible for any costs. Such incentives can attract new participants to transit joint development.

- i. Are all incidental uses joint development? No, not all incidental uses are joint development. ( FTA permits the incidental use of transit equipment and property for purposes other than provision of transit service, provided the use is compatible with the approved purposes of the project and does not interfere with intended uses of project assets.) Allowing nearby theaters and restaurants to use transit parking spaces during the transit system's off hours is an incidental use. So is temporary use of transit property as a staging area for nearby construction. These uses, however, are not joint development. In contrast, the acquisition of land or the redesign of space to allow for additional parking to be used by local theaters and restaurants could be considered as a joint development project -- to the extent the acquisition or redesign is justified by a transit use -- and should be discussed with the Regional Office.
- j. What is the difference between "joint development" and "transit-oriented development?" The term "joint development" is a subset of transit-oriented development. While all joint development is transit-oriented development, not all transit-oriented development meets the three tests of statutory definition (transit nexus), financial return, and highest and best transit use. Some transit-oriented development undertaken by private parties benefits from its proximity to transit without the use of an Assisted Real Estate Asset and/or without the use of FTA funds for new improvements. Such totally private projects are simply not governed by this circular.

Top of Page



U.S. Department  
of Transportation

Federal Transit  
Administration

# PROPOSED CIRCULAR

FTA C 5010.1D  
APPENDIX D

DATE

**Subject: GRANT MANAGEMENT REQUIREMENTS**

---

1. PURPOSE. This circular is a re-issuance of guidance for post-award grant administration and project management activities for all applicable Federal Transit Administration (FTA) grant programs. This revision incorporates provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and includes the most up-to-date available guidance for these programs.

These requirements are intended to assist grantees in administering FTA-funded projects and in meeting grant responsibilities and reporting requirements. Grantees have a responsibility to comply with regulatory requirements and to be aware of all pertinent material to assist in the management of federally-assisted grants.

2. CANCELLATION. This circular, when final, will cancel FTA Circular 5010.1C, "Grant Management Guidelines," dated 10-1-98.
3. AUTHORITY.
  - a. Federal Transit Laws, codified at 49 U.S.C. Chapter 53.
  - b. 49 CFR 1.51.
4. WAIVER. FTA reserves the right to waive any provision of this circular to the extent permitted by Federal law or regulation.
5. FEDERAL REGISTER NOTICE. (This will be inserted when the final circular is adopted).
6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to amend this circular in the future to update references to requirements contained in other revised or new guidance and regulations that undergo notice and comment procedures, without further notice and comment on this circular.
7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. Paper copies of this circular, as well as information regarding these accessible formats, may be obtained by phoning FTA's Administrative Services Help Desk, at 202-366-4865. The Federal Relay Service (FRS) is a Government system to support individuals with

---

**Distribution:** FTA Headquarters Offices (T-W-2)  
FTA Regional Offices (T-X-2)

**OPI:** Office of Program  
Management

hearing impairment. An operator trained to use the TTY System is available to assist those individuals who are hearing impaired. The FRS Toll Free Access Number is 800-877-8339.

/S/ Original Signed by  
James S. Simpson  
Administrator

**SECTION 5010 PROGRAM CIRCULAR**

**TABLE OF CONTENTS**

<u>CHAPTER</u>		<u>PAGE</u>
I.	<u>INTRODUCTION AND BACKGROUND</u> .....	I-1
	1. The Federal Transit Administration (FTA).....	I-1
	2. Authorizing Legislation .....	I-1
	3. How to Contact FTA .....	I-1
	4. Grants.gov.....	I-2
	5. Definitions .....	I-2
II.	<u>CIRCULAR OVERVIEW</u> .....	II-1
	1. General .....	II-1
	2. Applicable Program Descriptions .....	II-1
	3. Responsibilities of Grant Management .....	II-6
	4. Civil Rights Requirements .....	II-8
	5. Cross-cutting Requirements .....	II-11
III.	<u>GRANT ADMINISTRATION</u> .....	III-1
	1. Overview .....	III-1
	2. Grant Application Process .....	III-1
	3. Reporting Requirements .....	III-2
	4. Grant Modifications .....	III-8
	5. Grant Close-out .....	III-12
	6. Suspension and Termination .....	III-13
	7. Retention and Access Requirements for Records .....	III-14
IV.	<u>PROJECT MANAGEMENT</u> .....	IV-1
	1. General .....	IV-1
	2. Real Property .....	IV-1
	3. Equipment, Supplies, and Rolling Stock .....	IV-13
	4. Design and Construction; Facilities .....	IV-28
V.	<u>OVERSIGHT</u> .....	V-1
	1. General .....	V-1
	2. General Reviews .....	V-1
	3. Program-Specific Reviews .....	V-2
	4. Project Level Reviews .....	V-4
VI.	<u>FINANCIAL MANAGEMENT</u> .....	VI-1
	1. General.....	VI-1
	2. Internal Controls .....	VI-1
	3. Local Match .....	VI-5

<u>CHAPTER</u>	<u>PAGE</u>
4. Financial Plan .....	VI-5
5. General Principles for Determining Allowable Costs .....	VI-5
6. Indirect Costs .....	VI-7
7. Program Income .....	VI-9
8. Annual Audit .....	VI-10
9. Payment Procedures .....	VI-11
 <u>TABLES, GRAPHS, AND ILLUSTRATIONS</u>	
1. Application of Insurance Proceeds: Example 1 .....	IV-27
2. Application of Insurance Proceeds: Example 2 .....	IV-27
3. Example: Fleet Status Report for Vehicles Pending Disposal .....	D-2
4. Exhibit 1: ACH Vendor/Miscellaneous Payment Enrollment Form (SF3881) .....	F-3
5. Exhibit 1 (page 2): Instructions for Completing SF 3881Form .....	F-4
6. Exhibit 2: Request for Advance or Reimbursement (SF-270) .....	F-5
7. Exhibit 2 (page 2): Certification (form) .....	F-6
8. FTA Regional and Metropolitan Contact Information .....	H-1
 <u>APPENDICES</u>	
APPENDIX A. <u>TEAM REPORTING REQUIREMENTS</u> .....	A-1
APPENDIX B. <u>REAL ESTATE ACQUISITION MANAGEMENT PLAN</u> ....	B-1
1. General .....	B-1
2. RAMP Content .....	B-1
APPENDIX C. <u>GUIDE FOR AN APPRAISAL SCOPE OF WORK</u> .....	C-1
1. General .....	C-1
2. Example .....	C-1
APPENDIX D. <u>FLEET STATUS REPORT</u> .....	D-1
1. General .....	D-1
2. Replacement at the End of Minimum Useful Life .....	D-1
3. Early Disposition .....	D-1
4. Example: Fleet Status Report/TransAmerica Buses .....	D-2
APPENDIX E. <u>COST ALLOCATION PLANS</u> .....	E-1
1. Requirements .....	E-1
2. Purpose of the Plan .....	E-1
3. Development of Cost Allocation Plan .....	E-2
4. Submission of Cost Allocation Plan/Indirect Cost Rate Proposals .....	E-3
5. Plan Approval .....	E-3

<u>CHAPTER</u>		<u>PAGE</u>
APPENDIX F.	<u>REQUEST FOR ADVANCE OR REIMBURSEMENT</u> <u>(SF-270)</u> .....	F-1
	1. General .....	F-1
	2. Instructions .....	F-1
	3. Review of the SF-270 .....	F-2
APPENDIX G	<u>REFERENCES</u> (Inserted when circular adopted) .....	G-1
APPENDIX H	<u>FTA REGIONAL AND METROPOLITAN CONTACT</u> <u>INFORMATION</u> .....	H-1
INDEX	<u>SUBJECT AND LOCATION IN CIRCULAR</u>	

**This page intentionally left blank**

## CHAPTER I

### INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION (FTA). FTA is one of ten operating administrations within the U.S. Department of Transportation (DOT). Headed by an Administrator who is appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices that assist transit agencies in all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa.

Public transportation includes buses, subways, light rail, commuter rail, monorail, passenger ferry boats, trolleys, inclined railways, people movers, and vans. Public transportation can be either fixed-route or demand-response service.

The Federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of State and local transit providers, primarily through its regional and metropolitan offices. These grantees are responsible for managing their programs in accordance with Federal requirements, and FTA is responsible for ensuring that grantees follow Federal statutory and administrative requirements.

2. AUTHORIZING LEGISLATION. Most Federal transit laws are codified at 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a Federal program or agency. Congress has amended FTA's authorizing legislation every four to six years. FTA's most recent authorizing legislation is the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, signed into law August 10, 2005. SAFETEA-LU authorizes FTA programs from Federal Fiscal Year (FY) 2006 through FY 2009. Changes have been added to this circular to reflect the SAFETEA-LU changes to Federal transit law and to reflect changes required by other laws that have become effective since the circular was last published in 1998.
3. HOW TO CONTACT FTA. FTA's regional and metropolitan offices are responsible for the provision of financial assistance to FTA grantees and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA headquarters. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which you are located. See Appendix E for additional information.

Visit FTA's website, <http://www.fta.dot.gov>, or contact FTA Headquarters at the

following address and phone number:

Federal Transit Administration  
Office of Communication and Congressional Affairs  
1200 New Jersey Avenue SE  
Room E56-205  
Washington, DC 20590  
Phone: 202-366-4043  
Fax: 202-366-3472

4. **GRANTS.GOV.** FTA posts all competitive grant opportunities on Grants.gov. Grants.gov is the one website for information on all discretionary Federal grant opportunities. Led by the U.S. Department of Health and Human Services (DHHS) and in partnership with Federal grant-makers including 26 agencies, 11 commissions, and several States, Grants.gov is one of 24 Federal cross-agency E-government initiatives. It is designed to improve access to government services via the Internet. More information about Grants.gov is available at <http://www.grants.gov>.
5. **DEFINITIONS.** All definitions in 49 U.S.C. 5302(a) apply to this circular, as well as the following definitions:
  - a. **Accrual Basis of Accounting:** The accounting method where income is recognized when earned instead of when received, and expenses are recognized when incurred instead of when paid.
  - b. **Administrative Amendment:** A minor change in a Grant Agreement normally initiated by FTA to modify or clarify certain terms, conditions or provisions of a grant.
  - c. **Air Rights:** The space located above, at, or below (subterranean) the surface of the ground, lying within a project's property limits.
  - d. **Brownfields:** The Environmental Protection Agency (EPA) defines "Brownfields" (one type of contaminated property), as abandoned, idled, or under-used industrial and commercial land, often found in urban areas, where redevelopment is complicated by real or perceived hazardous contamination. These properties have lower levels of contamination than Superfund sites, but they are a health risk and economic detriment to the communities where they are located.
  - e. **Budget Revision:** Any change within the scope of the original grant. A budget revision may be a transfer of funds within a project scope or between existing activity line items (ALIs) within an approved grant. It could also include the addition or deletion of an ALI.
  - f. **Capital Asset:** Facilities or equipment with a useful life of at least one year, which are eligible for capital assistance.

- g. Capital Lease: Any transaction whereby the grantee acquires the right to use a capital asset without obtaining ownership.
- h. Concurrent Non-Project Activities: Also known as betterments, con-current no-project activities are improvements to the transit project desired by the grant recipient that are not part of the base functioning of the Federal transit project.
- i. Contingency Fleet: Inactive rolling stock reserved/retained for emergencies.
- j. Cost of Project Property: The purchase price of project property. This is the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose. Other charges, such as the cost of inspection, installation, transportation, taxes, duty or protective in-transit insurance, should be treated in accordance with the grantee's regular accounting practices, as separate line items. The cost of items separately installed and removable from rolling stock, such as fareboxes and radios, is treated as a separate acquisition and not as part of the cost of the vehicle.
- k. Depreciation: Is the term most often used to indicate that personal property have declined in service potential. In the accounting world, depreciation is not so much a matter of valuation as it is a means of cost allocation.
- l. Discretionary Funding: Grant funds distributed at the discretion of the agency as distinct from formula funding.
- m. Equipment: An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. Includes rolling stock and all other such property used in the provision of public transit service.
- n. Equipment Inventory: A physical inventory of project (non-real) property taken and results reconciled with the personal property records.
- o. Excess Property: Property which the grantee determines is no longer required for its needs or fulfillment of its responsibilities and has not met its useful life under an FTA assisted grant.
- p. Excess Real Property Inventory and Utilization Plan: The document which lists each real estate parcel acquired with participation of Federal funds that is no longer needed for approved FTA project purposes and which states how the grantee plans to use or dispose of the excess real property.
- q. Fleet Status Report: A report that identifies rolling stock to be replaced, retired, or disposed of and identifies both their mileage and age at the time of removal from service, and it discusses the proposed anticipated spare ratio. This differs from a Bus or

Rail Fleet Management Plan which includes an inventory of all buses among other items, such as operating policies, peak vehicle requirements, maintenance and overhaul programs, system and service expansions, rolling stock procurements and related schedules, and spare ratio justification.

- r. Force Account: The use of a grantee's own labor force to execute a capital grant project.
- s. Formula Funding: Grant funding allocated using factors that are specified in the law, or in administrative formula developed by FTA.
- t. Grant: An award of financial assistance, including Cooperative Agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. Used interchangeably with Grant Agreement.
- u. Grantee: An entity to which a grant is awarded directly by FTA to support a specific project in which FTA does not take an active role or retain substantial control, as set forth in 31 U.S.C. Section 6304. In this circular FTA uses the term grantee interchangeably with grant recipient and recipient.
- v. Grant Scope: The broad purpose or objectives of a grant. The scope of a grant may encompass one or more specific projects.
- w. Incidental Use of Project Property and Equipment: The authorized use of real property and equipment acquired with FTA funds for purposes other than provision of transit service. Such use must be compatible with the approved purposes of the project and not interfere with intended public transportation uses of project assets.
- x. Large Urbanized Area: Any urbanized area with a population of at least 200,000.
- y. Market Value: The most probable price which equipment or project property should bring in a competitive and open market.
- z. Master Agreement: The FTA official document containing substantially all FTA and other cross-cutting Federal requirements applicable to the FTA recipient and its project. The Master Agreement is generally revised annually. The Master Agreement is incorporated by reference and made part of each FTA grant, Cooperative Agreement, and amendment thereto.
- aa. NEPA: National Environmental Policy Act (NEPA), signed into law by President Nixon January 1, 1970, 42 USC Section 4321-4370d declared a national policy to safeguard the environment and created the Council on Environmental Quality in the Executive Office of the President. To implement the national environmental policy, NEPA requires that environmental factors be considered when Federal agencies make decisions and that a detailed statement of environmental impacts be prepared for all major Federal actions significantly affecting the quality of the human environment.

- bb. Net Present Value: The discounted monetized value of expected net benefits (i.e. benefits minus costs). It is calculated by assigning monetary values to benefits and costs, discounting future benefits and costs using an appropriate discount rate to obtain a present value, and subtracting the sum total of discounted costs from the sum total of discounted benefits.
- cc. Net Proceeds from the Sale of Project Equipment and Real Property: The amount realized from the sale of property no longer needed for transit purposes less the expense of any actual and reasonable selling and fixing-up expenses.
- dd. Overhaul: Systematic Replacement or upgrade of systems whose useful life are less than the useful life of entire vehicle in a programmed manner.
- ee. Preventive Maintenance: Is defined as all maintenance costs related to vehicles and non-vehicles. For general guidance regarding eligible maintenance costs, the grantee should refer to the definition of “maintenance” in the most recent National Transit Database (NTD) reporting manual.
- ff. Program Income: Gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the Grant Agreement during the grant period (the time between the effective date of the grant and the ending date of the grant reflected in the final financial report).
- gg. Program of Projects: A list of projects to be funded in a grant application submitted to FTA by a designated recipient. The program of projects (POP) lists the subrecipients and indicates whether they are private non-profit agencies, governmental authorities, or private providers of transportation service, designates the areas served (including rural areas), and identifies any tribal entities. In addition, the POP includes a brief description of the projects, total project cost, and Federal share for each project.
- hh. Projects: For the purposes of the FTA program, public transportation improvement activities funded under an executed grant.
- ii. Project Activity Line Item (ALI): The description and dollar amount contained in the budget for an approved grant activity associated within a particular scope approved as part of a grant. ALIs under each scope are informational and are used as tools for FTA and the grantee to manage the grant. Quantities of rolling stock and other project property, where applicable, must be recorded at the project ALI level. Revisions to ALI amounts are allowable as budget revisions.
- jj. Project Property: Includes equipment, real property, supplies, and rolling stock.
- kk. Project Scope: The broad purpose of a specific project within a grant. There may be multiple scopes identifying each of the different projects within a grant and each scope may contain a number of activities which represent the estimate of actions needed to complete the project. FTA reserves the right to consider other information in

determining the “scope of the project” when that term is used for legal purposes. See the Master Agreement.

- ll. Public Transportation: Transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by AMTRAK. The terms “transit,” “mass transportation,” and “public transportation” are used interchangeably in transit law.
- mm. Real Property: Land, including affixed land improvements, structures, and appurtenances. It does not include movable machinery and equipment.
- nn. Realty/Personalty Report: A realty/personalty report is a listing of items of real estate to be appraised and items of personalty to be moved. Real estate is the land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings, which if removed, deface the structure or integrality of the building, such as plumbing, heating fixtures, etc. Personal property, on the other hand, is the right or interest in things of a temporary or moveable nature. State law varies on the definition of real property and personal property; therefore, the grantee should rely on their State law’s definition of real property and personal property.
- oo. Rebuild: A recondition at the end of useful life to create additional useful life.
- pp. Recipient: An entity that receives funds from FTA, whether as a direct recipient or an indirect recipient. For purpose of this circular, FTA uses the term recipient interchangeably with the terms grant recipient and grantee.
- qq. Remaining Federal Interest for Dispositions Before the End of Useful Life: Is the amount calculated by multiplying the current fair market value or proceeds from sale by FTA’s share of the equipment. Fair market value is the greater of the unamortized value of the remaining service life based on straight line depreciation of the original purchase price or the Federal share of the sales proceeds.
- rr. Remaining Federal Interest for Real Property: Federal interest is the greater of the fair market value of the property, or the straight line depreciated value of improvements plus land value.
- ss. Sales Proceeds: Sales Proceeds are the net proceeds generated by the disposition of excess real property or equipment that was purchased in whole or in part with FTA grant funds.
- tt. Subrecipient: A State or local government authority, nonprofit organization, or operator of public transportation services that receives a grant indirectly through a recipient.

- uu. Useful Life: The expected lifetime of project property, or the acceptable period of use in service. Useful life of revenue rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. See Chapter IV of this circular; and the most recent versions of Circular 9030.1 and Circular 9300.1 Capital Program. Used interchangeably with “service life.”
- vv. Shared Use: Those instances in which a project partner, separate from the transit agency or grantee, occupies part of a larger facility and pays for its prorata share of the construction, maintenance, and operation costs.
- ww. Straight Line Depreciation: Method that is considered as a function of time instead of a function of usage. This method is widely used in practice because of its simplicity. It basically assumes that the asset’s economic usefulness is the same each.
- xx. Supplies: All tangible project property other than equipment with a unit value of less than \$5,000.
- yy. TEAM-Web: Web-based application use for administering and managing FTA grants most commonly referred to as “TEAM.” TEAM stands for Transportation Electronic Award and Management (TEAM) system.
- zz. Transit Enhancements: Projects or project elements that are designed to enhance public transportation service or use and are physically and functionally related to transit facilities. Eligible enhancements include historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities; bus shelters; landscaping and other scenic beautification; public art, pedestrian access and walkways; bicycle access; transit connections to parks within the grantee’s transit service area; signage; and enhanced access for persons with disabilities to public transportation.
- aaa. Uneconomical Remnant: A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the acquiring agency has determined has little or no value or utility to the owner.
- bbb. Unliquidated Obligations: Funding commitments that have been incurred, but for which outlays have not yet been recorded because goods and services have not been received. Unliquidated obligations should be accounted for on Line D of the Financial Status Report (FSR).
- ccc. Value Engineering: An analysis of the functions of a project, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life cycle costs.

**This page intentionally left blank**

## CHAPTER II

### CIRCULAR OVERVIEW

1. GENERAL. This circular provides requirements and procedures for management of all Federal Transit Administration (FTA) programs at 49 U.S.C. Chapter 53, where grant management requirements unique to a particular FTA program are not described in the specific program circular.

FTA follows the Common Rule (49 CFR Part 18) for project management for those programs that have States as grantees, including Sections 5305, 5310, 5311, and 5313(b), and 5316, 5317.

FTA regional and metropolitan offices retain responsibility for management oversight of most grants and projects. References in this circular to the cognizant agency mean the FTA regional or metropolitan office unless otherwise defined.

2. APPLICABLE PROGRAM DESCRIPTIONS. FTA provides formula and discretionary funding under a variety of programs by awarding grants to eligible recipients. While this circular contains the post-award guidance applicable to all FTA programs, several of the programs described below have individual program circulars that contain pre-award instructions and unique grant administration and project management guidance. Please reference FTA's public website at <http://www.fta.dot.gov> for a complete listing of FTA programs and their current FTA circulars.
  - a. Metropolitan Planning, Statewide Planning, and Planning Programs (Section 5303, Section 5304, and Section 5305). These programs provide funding to support cooperative, continuous, and comprehensive planning for making transportation investment decisions in metropolitan areas and statewide.

For planning activities that (A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency; (B) increase the safety of the transportation system for motorized and nonmotorized users; (C) increase the security of the transportation system for motorized and nonmotorized users; (D) increase the accessibility and mobility of people and for freight; (E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns; (F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight; (G) promote efficient system management and operation; and (H) emphasize the preservation of the existing transportation system.

Funds are apportioned by a formula to States that includes consideration of each State's urbanized area population in proportion to the urbanized area population for the entire nation, as well as other factors. States receive no less than .5 percent of the amount apportioned. These funds are sub-allocated by States to Metropolitan Planning

Organizations (MPOs) by a formula that considers each MPO's urbanized area population, their individual planning needs, and a minimum distribution. For more information, please refer to the Joint Planning Regulations at 49 CFR Part 613 published at 72 FR 7224 and the most recent version of FTA Circular 8100.1.

- b. Urbanized Area Formula Program (Section 5307). The Urbanized Area Formula Program makes Federal resources available to urbanized areas and to the Chief Executive Officer of a State (Governor) for transit capital and operating assistance in urbanized areas and for transportation-related planning. An urbanized area is an incorporated area with a population of 50,000 or more that is designated as such by the Bureau of the Census.

For urbanized areas with a population of 200,000 or more, Urbanized Area Formula Program funds are apportioned and flow directly to a designated grantee(s) selected locally to apply for and receive Federal funds. For urbanized areas under 200,000 in population, the funds are apportioned to the Governor of each State for distribution. A few areas with less than 200,000 in population have been designated as transportation management areas at the request of the Governor and the MPO; those areas also receive apportionments directly. Guidance for Section 5307 is found in the most recent version of FTA Circular 9030.1.

- c. Nonurbanized Area Formula Program (Section 5311). This program provides formula funding to States for the purpose of supporting public transportation in population areas of less than 50,000. It is apportioned in proportion to each State's nonurbanized population. Funding may be used for capital, operating, State administration, and project administration expenses. Each State prepares an annual program of projects (POP), which must provide for fair and equitable distribution of funds within the States, including Indian reservations, and must provide for maximum feasible coordination with transportation services assisted by other Federal sources.

Funds may be used for capital, operating, and administrative assistance to State agencies, local public bodies, and non-profit organizations (including Indian tribes and groups), and operators of public transportation services. The State must use 15 percent of its annual apportionment to support intercity bus service, unless the Governor certifies that these needs of the State are adequately met. Projects to meet the requirements of the Americans with Disabilities Act (ADA), the Clean Air Act (CAA), or bicycle access projects, may be funded at 90 percent Federal match. The maximum FTA share for operating assistance is 50 percent of the net operating costs. Guidance for Section 5311 is found in the most recent version of FTA Circular 9040.1.

- d. Capital Program (Section 5309). The Section 5309 Capital Investment Grants Program funds three different programs: (1) fixed guideway modernization in areas with populations over 200,000 with fixed guideway segments at least seven years old (based on a formula); (2) construction and extension of new fixed guideway systems (a.k.a New Starts and Small Starts Program); and, (3) purchase of bus and bus related

equipment and facilities in both urbanized and nonurbanized areas (a.k.a. Bus and Bus Facility Discretionary Program). States and local governmental authorities are eligible applicants for Section 5309 funds. States may apply for Section 5309 bus grants on behalf of private non-profit agencies, private providers of public transportation services, and public subrecipients.

Many States look to the Bus Capital Program to supplement vehicles acquired under Section 5310 and Section 5311 or to construct facilities. While distribution of capital program funds is often determined according to congressional direction, FTA encourages States to apply on behalf of nonurbanized areas.

Guidance for Section 5309 is found in the most recent version of FTA Circular 9300.1.

- e. Transit Cooperative Research Program (TCRP) (Section 5313). This program promotes operating effectiveness and efficiency in the public transportation industry by conducting practical, near-term research designed to solve operational problems, adopt useful technologies from related industries, and introduce innovation that provides better customer service. TCRP products, such as transit security guidelines, new transit paradigms, transit industry best practices, and new planning and management tools, as well as forums for the exchange of ideas, are being used to develop and equip a quality transit workforce with the resources necessary to meet new challenges and opportunities.

The Transportation Research Board (TRB), which administers the TCRP, maintains a publication's list and description of all TCRP projects on its website. TCRP products are available online at the TRCP website, where single hard copies may also be ordered without charge.

Research problem statements are solicited annually from the transit community. TRB awards competitive contracts for research and synthesis studies of current best practices. The TCRP Oversight and Project Selection Committee selects the highest priority problems to be addressed and designates funds for conducting the research.

TCRP is sponsored by FTA and carried out under a three-way agreement among the National Academy of Sciences, acting through the TRB; the Transit Development Corporation, the educational and research component of the American Public Transportation Association (APTA); and FTA. Funds are allocated by transit industry consensus through TRB.

- f. Elderly Individuals and Individuals with Disabilities (Section 5310). This program provides formula funding to States for the purpose of assisting private non-profit groups in meeting the transportation needs of the elderly and persons with disabilities when the transportation service provided is unavailable, insufficient, or inappropriate to meeting these needs. Funds are apportioned based on each State's share of population for these groups of people.

Funds are obligated based on the annual POP included in a statewide grant application. The State agency ensures that local applicants and project activities are eligible and in compliance with Federal requirements, that private not-for-profit transportation providers have an opportunity to participate as feasible, and that the program provides for as much coordination of federally-assisted transportation services, assisted by other Federal sources. Once FTA approves the application, funds are available for State administration of its program and for allocation to individual subrecipients within the State.

Guidance for Section 5310 is found in the most recent version of FTA Circular 9070.

- g. Job Access and Reverse Commute Program (Section 5316). The Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) changed the Job Access and Reverse Commute Program (JARC) from a discretionary program to be administered at the national level by FTA to a formula program. Hence, FTA apportions JARC funds directly to large urbanized areas. FTA apportions JARC funds to the States for small urbanized and nonurbanized areas.

The JARC program provides assistance for public transportation projects that develop and maintain transportation services that transport welfare recipients and eligible low income people to and from jobs and to and from activities that pertain to their employment. "Reverse commute" public transportation projects are also eligible for JARC funding. Reverse commute projects are those that transport residents of urbanized areas and residents of other than urbanized areas to suburban employment opportunities.

The Federal share is 80 percent of capital costs and 50 percent of operating costs. A recipient of JARC funds may use income from services the recipient provides under contract and may use funds from other Federal agencies as the local matching share of a JARC project. A recipient may use up to 10 percent of its JARC apportionment to administer the program, plan, and provide technical assistance.

With respect to JARC funds apportioned to a State, the State must conduct a statewide solicitation for JARC project applications. The State must certify to the following three factors: (1) projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; (2) the plan was developed through a process that included representatives of public, private, and not-for-profit transportation and human service providers, and included participation by the public, and (3) allocations to subrecipients, if any, are distributed on a fair and equitable basis. JARC funds may be used to support extended service hours or routes that are necessary to allow low-income riders access to employment and employment-related activities.

Guidance for the JARC program can be found in the most recent version of FTA Circular 9050.1.

- h. New Freedom Program (Section 5317). SAFETEA–LU added the New Freedom Program. The New Freedom Program provides new public transportation services and public transportation alternatives beyond those required by the ADA to assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

Of the total amount of New Freedom funds authorized, SAFETEA–LU requires FTA to apportion 20 percent of the New Freedom funds to States for projects in other than urbanized areas, and 20 percent to States for projects in urbanized areas with a population of less than 200,000. A State may use up to 10 percent of its New Freedom apportionment to administer the program, plan, and provide technical assistance.

New Freedom funds may be used to assist areas in expanding ADA paratransit service beyond three-fourths of a mile.

Guidance for the New Freedom Program can be found in the most recent version of FTA Circular 9045.1.

- i. Alternative Transportation in the Parks and Public Lands (ATPPL)(Section 5320). The Alternative Transportation in the Parks and Public Lands (ATPPL) program, 49 U.S.C. Section 5320, is newly established by SAFETEA–LU. Its purpose is to enhance the protection of national parks and Federal lands, and increase the enjoyment of those visiting them. The program makes available FTA assistance toward capital and planning expenses in projects designed to improve alternative transportation systems in parks and public lands. Eligible applicants are Federal land management agencies and State, tribal, and local governments with jurisdiction over land in the vicinity of an eligible area. Section 5307 funds may complement ATPPL projects. For example, a National Park Service historic site may exist within an urbanized area. All applicants for funds under the parks program must have the consent of a Federal land management agency. FTA carries out the program in consultation with the Department of the Interior and other Federal land management agencies. Applicants must submit an application in a competitive selection process established by FTA and the Federal land management agencies. The Secretary of the Interior, after consultation with and in cooperation with the Secretary of Transportation, determines the final selection of qualified projects and the funding levels.
- j. Clean Fuels Grant Program (Section 5308). SAFETEA–LU amended 49 U.S.C. Section 5308 and changed this program from a formula-based program to a discretionary grant program. This program assists in financing the acquisition of clean-fuel buses and clean-fuel related facilities for agencies providing public transportation and operating in an urbanized area designated as a non-attainment area for ozone or carbon monoxide under Section 107(d) of the Clean Air Act (CAA), 42 U.S.C. Section 7407(d), or a maintenance area for ozone or carbon monoxide. Eligible grant recipients are designated recipients as defined in 5307(a)(2), an urbanized areas over 200,000 in population, and States for urbanized areas with populations of less than 200,000, for

areas that are designated as non-attainment areas for ozone or carbon monoxide under Section 107(d) of the Clean Air Act (CAA), 42 U.S.C. Section 7407(d); or are maintenance areas for ozone or carbon monoxide. Nonurbanized areas are not eligible recipients under this program.

Eligible projects include the following: the purchase or lease of clean-fuel buses, the construction or lease of clean-fuel electrical-recharging facilities, and improvement of existing facilities to accommodate clean-fuel buses. In addition, clean-fuel, bio-diesel, hybrid-electric, or zero-emissions-technology buses that exhibit emissions reductions equivalent or superior to existing clean-fuel or hybrid-electric technologies may be eligible at FTA's discretion, provided that the Administrator of the Environmental Protection Agency (EPA) has certified the project sufficiently reduces harmful emissions. Section 5308 states that not more than 25 percent of the amount authorized for this program may be used for clean-diesel projects. FTA has implemented this program through a rulemaking to revise 49 CFR Part 624. The final rule was published in the Federal Register (72 FR 15049, March 30, 2007).

Applications are requested through a notice in the Federal Register in each fiscal year that discretionary funds are appropriated by Congress for the program. Grants under this program are subject to the applicable requirements of 49 U.S.C. Section 5307.

3. **RESPONSIBILITIES OF GRANT MANAGEMENT.** Grantees are responsible for the day-to-day management of their Federal grants and of grant supported activities. FTA monitors grants and federally-funded projects to confirm that grantees establish and follow procedures that comply with Federal requirements. Chapter III of this circular describes the mechanics and requirements for grant administration and Chapter IV describes the requirements for managing federally-funded projects.
  - a. **Grantee's Role.** Grantees must monitor grant supported activities to ensure compliance with applicable Federal requirements. This includes the administration and management of the grant in compliance with the Federal regulations, Grant Agreement and applicable FTA circulars. Grantees also are responsible for funds that "pass through" to a subrecipient. In general, submission of Annual Certifications and Assurances stands in lieu of detailed FTA oversight before approval of a grant; however, the results of ongoing or routine FTA oversight activities will also be considered as applicable. Annual independent audits for grantees of Urbanized Area Formula Program funds and other recurring and specialized reviews give FTA an opportunity to verify the grantee's Certifications and Assurances (see Oversight Chapter). The grantee's responsibilities include actions that:
    - (1) Demonstrate legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program.
    - (2) Provide administrative and management support of project implementation.

- (3) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress.
- (4) Ensure conformity to Grant Agreements, applicable statutes, codes, ordinances, and safety standards.
- (5) Maintain the project work schedule agreed to by FTA and the grantee and monitor grant activities to assure that schedules are met and other performance goals are achieved.
- (6) Keep expenditures within the latest approved project scope.
- (7) Ensure compliance with FTA and Federal requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements.
- (8) Request and withdraw Federal funds for eligible activities only in amounts and at times as needed to make payments that are due and payable within three business days and retain receipts to substantiate withdrawals.
- (9) Account for project property and maintain property inventory records that contain all the elements required.
- (10) Demonstrate and retain satisfactory continuing control over the use of project property.
- (11) Demonstrate procedures for asset management and adequate maintenance of equipment and facilities.
- (12) Ensure that an annual independent organization-wide audit is conducted in accordance with Office of Management and Budget (OMB) Circular, A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- (13) Prepare force account and cost allocation plans and submit and obtain approval if applicable before incurring costs.
- (14) Prepare and submit FTA required reports (see Reporting Requirements).
- (15) Update and retain FTA required reports and records for availability during audits or Oversight reviews.
- (16) Ensure that effective control and accountability is maintained for all grant and subgrants, cash, real and personal property, and other assets. Grantees and subgrantees must ensure that resources are properly used and safeguarded, and that it is used solely for authorized purposes.

- b. FTA Role. FTA Headquarters in Washington, DC, serves a broad, program level role in the administration of the programs. FTA Headquarters:
    - (1) Provides overall policy and is primarily responsible for policy and program guidance for all FTA programs; ensures that programs are consistent with the law.
    - (2) Ensures consistent administration of programs by regional and metropolitan offices.
    - (3) Prepares and publishes annual apportionment of funds to the States and designated grantees.
    - (4) Develops and implements financial management procedures.
    - (5) Initiates and manages program-support activities, such as training, courses, regional consistency, and Oversight reviews.
    - (6) Conducts national program reviews and evaluations.
    - (7) Carries out responsibility for national compliance with program requirements.
  - c. FTA regional and metropolitan offices are responsible for the day-to-day administration of grants, projects, and programs. Regional and metropolitan staff:
    - (1) Review and approve grant applications, grant amendments, and budget revisions, as necessary.
    - (2) Obligate and deobligate funds.
    - (3) Work with grantees to implement and manage the programs and projects and ensure grantee compliance.
    - (4) Provide technical assistance.
    - (5) Receive designated grantee's certifications and amendments to the POP.
    - (6) Review Milestone Progress Reports and Financial Status Reports, monitor, and close grants.
    - (7) Conduct triennial reviews and other reviews as necessary.
4. CIVIL RIGHTS REQUIREMENTS. The recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
- a. Nondiscrimination in Federal Transit Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient

at any tier under the project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age and prohibit discrimination in employment or business opportunity.

- b. Nondiscrimination—Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the project, with all of the following requirements under Title VI of the Civil Rights Act of 1964:
- (1) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance;
  - (2) DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,” 49 CFR Part 21;
  - (3) The current FTA Circular 4702.1 “Title VI and Title VI—Dependent Guidelines for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out Department of Transportation’s (DOT’s) Title VI regulations (49 CFR Part 21) and to integrate into their programs and activities considerations expressed in the Department’s Order on Environmental Justice (Order 5610.2), and Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (“LEP”) Persons (70 FR 74087, December 14, 2005);
  - (4) DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. This Order describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities; and
  - (5) DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons. This guidance clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.
- c. Equal Employment Opportunity. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e), and 49 U.S.C. 5332 and any implementing requirements FTA may issue.

- d. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 et seq.), with implementing DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25, and with any implementing directives that DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
- e. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
- f. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
- (1) Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
  - (2) The Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Section 12101 et seq.), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.
  - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR Parts 27, 37, and 38. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities, including a private non-profit entity “standing in the shoes” of the State as a subrecipient providing fixed-route service, to provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
  - (4) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.
- g. Disadvantaged Business Enterprise (DBE). To the extent required by Federal law, regulation, or directive, the recipient agrees to take the following measures to facilitate participation by DBEs:

- (1) Disadvantaged Business Enterprises (DBE). Section 1101(b) of SAFETEA-LU requires FTA to make available at least 10 percent of its funding under that Act for contracts with small businesses concerns owned and controlled by socially and economically disadvantaged people. Each FTA recipients assists FTA in meeting this national goal. Grantees must comply with applicable requirements of DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26, (DBE regulations), in order to receive FTA funding. Contracts funded in whole or in part with FTA funds and subject to FTA's procurement rule are also subject to the grantee's DBE Program and are included to extent of FTA funding in determining (i) whether the grantee meets the DBE threshold for goal setting; and, (ii) the goal if the threshold is met..
- (2) The recipient agrees and assures that it will comply with DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26. Among other provisions, this regulation requires recipients of DOT Federal financial assistance meeting a threshold funding level, namely State and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.
- (3) The recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, national origin, or disability in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from DOT or in the administration of its DBE program and will comply with the requirements of 49 CFR Part 26. The recipient agrees to take all necessary and reasonable steps set forth in 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from DOT. As required by 49 CFR Part 26 and approved by DOT, the recipient's DBE program is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification DOT to the recipient of a failure to implement its approved DBE program, DOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, (31 U.S.C. 3801 et seq).

For further guidance, refer to the Federal laws, regulations, and Executive Orders cited in this chapter. FTA's regional civil rights officers or headquarters civil rights staff will also provide current guidance on request.

5. CROSS-CUTTING REQUIREMENTS. The grantee understands and agrees that it must comply with all applicable Federal laws, regulations, and directives, except to the extent

that FTA determines otherwise, in writing. Refer to FTA's Master Agreement for a list of applicable laws, regulations, and directives. FTA updates the Master Agreement annually.

## CHAPTER III

### GRANT ADMINISTRATION

1. OVERVIEW. This chapter discusses the mechanics and requirements for post-award grant administration. Project management requirements are described in Chapter IV. The following sections emphasize the requirements associated with administering and managing a grant after the grant has been awarded and executed in the Transportation Electronic Award and Management (TEAM) system.
2. GRANT APPLICATION PROCESS. The Federal Transit Administration's (FTA's) pre-award, program-specific circulars describe the grant application process and requirements. Refer to these circulars for instructions for completing a grant application. For a full listing of FTA program circulars, please visit [www.fta.dot.gov](http://www.fta.dot.gov).

FTA provides a streamlined electronic interface between grantees and FTA that allows complete electronic grant application submission, review, approval, and management of all grants. This is done through a Web-based electronic system, commonly known as "TEAM." Among other things, grantees apply for grants, inquire about the status of grants, file the required financial status and milestone progress reports, and submit annual Certifications and Assurances in TEAM.

**The TEAM Project Life Cycle is as follows:**

- a. Project application created,
- b. Project number assigned,
- c. Signoffs and Approvals,
- d. Operating budget money is reserved,
- e. Project awarded,
- f. Project award executed,
- g. Project managed, and
- h. Project closed.

FTA notifies grantees of grant approval electronically in TEAM. The Grant Agreement includes the notification of award and the approved project budget. Special conditions of the approval may be included in the award, the current version of the Master Agreement, the electronic grant (screen), or the conditions for using pre-award authority if applicable. In certain cases, pre-award authority may be available for incurring project-related costs prior to approval of an application.

Once a grantee receives the notification of grant award, the grantee executes the grant in TEAM. The electronic execution of the Grant Agreement signifies the grant is active and post-award grant requirements apply.

3. REPORTING REQUIREMENTS. Once a grant is active, a grantee may be subject to one or more of the following types of post-award reporting requirements. The reporting requirements may vary depending on the size of the grantee, the type of funding, or the amount of funding a grantee receives. Please contact the regional or metropolitan office if there are questions regarding the applicability of the following reporting requirements.
  - a. Financial Status and Milestone/Progress Reports. FTA monitors grant activities to ensure proper grantee stewardship of Federal funds and compliance with the laws and regulations that govern its grant programs. FTA must also be able to report on program results, industry trends, and its own oversight responsibilities. The information FTA needs for program forecasting, management, and reporting is furnished through financial status reports and narrative Milestone/Progress Reports (MPRs) submitted by grantees about significant events, relevant grant activities, and any changes to or variances in the grant schedule or budget.

With respect to the level of detail required for these reports, FTA treats all approved activity line items (ALIs) alike. Thus, an activity contained in a grant must be presented in the reports in sufficient detail that important information is not lost in aggregation. For example, the number of full-sized buses in a grant must not be reported together with vans under the scope “rolling stock,” but instead should be reported separately under the applicable ALI. FTA staff is available to meet with grantees to agree on the appropriate level of reporting detail. This will ensure that FTA has the information needed to manage its overall program.

All grantees are expected to report significant developments or changes as they occur during the year, including any problems, delays, or adverse conditions that may materially impair the ability to meet the objective of the award, and any favorable developments that may enable meeting time schedules and objectives sooner or at a cost substantially less than expected Financial Status Reports.

Payment may be withheld for failure to submit either financial or milestone progress reports in a timely manner. In individual cases, FTA may grant extensions of report due dates for good cause.

Report due dates and additional information about the financial status and milestone progress reports are described below. Please contact your regional or metropolitan office for questions regarding any of these reports.

- (1) Report Due Dates.

- (a) Grantees located in urbanized areas over 200,000 population. Financial Status Reports (FSRs) and MPRs are due to FTA within 30 days after the end of each calendar quarter, i.e., by January 30, April 30, July 30, and October 30.
  - (b) Grantees located in urbanized areas under 200,000 population. Grantees in areas with less than 200,000 in population submit FSRs and MPRs annually. Annual reports are due October 30th, one month after the Federal fiscal year ends. The FTA regional or metropolitan office may request more frequent reporting or additional reports if circumstances warrant additional reporting.
- (2) Financial Status Report (FSR). The FSR must be submitted for all active/executed grants. The requirement for an FSR applies to all FTA grants covered by this circular. The FSR accompanies the MPR (described below) and is used to monitor project funds. The purpose of the FSR is to provide a current, complete and accurate financial picture of the project. This report is submitted electronically in TEAM. Procedures for submitting the report are described in the TEAM User Guide and are available from the FTA regional and metropolitan offices. Please note that when applicable, grantees are required to report unliquidated obligations on the FSR (Line D). Unliquidated obligations are funding commitments that have been incurred, but for which outlays have not yet been recorded because goods and services have not been received. If there are awarded contracts for which deliverables have yet to occur, the dollar amount associated with the undelivered portion of those contracts should be represented as unliquidated obligations. In addition, grantees should provide narrative comments in the "Comments" screen of the FSR indicating for what expended funds have been used. For example, if the grantee expended \$10,000 in a reporting period, a comment should be inserted to the effect, "FY07, QTR III: We requested funds in the amount of \$6,000 for office equipment (ALI: 11.XX.XX) and \$4,000 for associated capital maintenance items (ALI: 11.XX.XX)." Comments describing the financial expenditures should correspond to the activities completed during a reporting period.

The following elements are essential in financial reports by grantees:

- (a) All financial facts (e.g. expenditures and obligations) relating to the scope and purpose of each financial report and applicable reporting period should be completely and clearly displayed in the reports.
- (b) Reported financial data should be accurate and up to date. The requirement for accuracy does not rule out inclusion of reasonable estimates when precise measurement is impractical, uneconomical, unnecessary, or conducive to delay.
- (c) Financial reports should be based on the required supporting documentation maintained in the grantee's official financial management system that produces information which objectively discloses financial aspects of events or transactions.

- (d) Financial data reported should be derived from accounts that are maintained on a consistent, periodic basis; material changes in accounting policies or methods and their effect must be clearly explained.
  - (e) Reporting terminology used in financial reports to FTA should be consistent with receipt and expense classifications included in the latest approved project.
  - (f) Financial reports must be submitted on the accrual basis of accounting.
- (3) Milestone/Progress Reports. The MPR must be submitted for all active/executed grants. The requirement for a MPR applies to all FTA grants covered by this circular. The MPR is the primary written communication between the grantee and FTA. This report should be submitted electronically in TEAM. Procedures for submitting the report are described in the TEAM User Guide and are available from FTA regional and metropolitan offices. If only operating assistance is included in the grant, the reporting requirements are limited to the estimated and actual dates when all funding has been expended. Each MPR must include the following data as appropriate:
- (a) Current status of each open activity line item within the approved grant.
  - (b) Detailed discussion of all budget or schedule changes.
  - (c) The dates of expected or actual requests for bid, delivery, etc.
  - (d) Actual completion dates for completed milestones.
  - (e) Revised estimated completion dates when original estimated completion dates are not met.
  - (f) Explanation of why scheduled milestones or completion dates were not met, identification of problem areas and narrative on how the problems will be solved. Discussion of the expected impacts and the efforts to recover from the delays.
  - (g) A narrative description of projects, status, specification preparation, bid solicitation, resolution of protests, and contract awards.
  - (h) Analysis of significant project cost variances. Completion and acceptance of equipment and construction or other work should be discussed, together with a breakout of the costs incurred and those costs required to complete the project. Use quantitative measures, such as hours worked, sections completed, or units delivered.

- (i) A list of all outstanding claims exceeding \$100,000, and all claims settled during the reporting period. This list should be accompanied by a brief description, estimated costs, and the reasons for the claims.
- (j) A list of all potential and executed change orders and amounts exceeding \$100,000, pending or settled, during the reporting period. This list should be accompanied by a brief description.
- (k) A list of all real property acquisition actions, including just compensation, administrative settlements, and condemnation for each parcel during the reporting period.

Depending on project complexity, at its discretion, FTA may also request other special reports or quarterly project management meetings.

- b. Transit Enhancement Reports. Transit Enhancement Reports must be submitted by grantees with population areas of 200,000 and above who receive funds under the Urbanized Area Formula Program (Section 5307). The term “transit enhancement” means projects that are designed to enhance public transportation service or use and are physically or functionally related to transit facilities. Recipients of these funds are required under Section 5307(d)(K)(ii) to submit a report listing the projects carried out during the previous fiscal year with those funds to include the amounts expended. This report is to be submitted as a narrative attachment to the electronic 4th quarter MPR in TEAM. Certification that this report has been submitted is required as part of the Annual List of Certifications and Assurances.
- c. Civil Rights Reports. Grantees must submit, on a triennial basis, a report on their compliance with the objectives of the most recent version of Circular 4702.1, “Title VI and Title VI Dependent Guidelines for FTA Recipients.” This circular provides details on the contents of compliance reports. Grantees covered under FTA’s Equal Employment Opportunity (EEO) Circular must submit triennial reports on their compliance with this circular. Grantees covered under FTA’s Disadvantaged Business Enterprise (DBE) regulations must submit annual DBE goals to FTA by August 1 of each year. Reports and goals are submitted to the Regional Civil Rights Officer. See paragraph (1) and (2) below for applicability of these two reporting requirements. Grantees must also submit semi-annual DBE progress reports to the Regional Office.
  - (1) Equal Employment Opportunity (EEO). FTA’s EEO program reporting requirements apply to transit agencies employing 50 or more people and receiving \$1 million or more of FTA assistance.
  - (2) Disadvantaged Business Enterprise (DBE). FTA’s DBE goal setting requirements apply to grantees who will award prime contracts (excluding vehicle purchases) exceeding \$250,000 in FTA funds in any given fiscal year. These grantees are required to provide DBE goals to FTA on an annual basis.

- d. Reports of Significant Events. Unforeseen events that impact the schedule, cost, capacity, usefulness, or purpose of the project should be reported to FTA immediately after detection and then reflected in the next quarterly progress report. Special reports should be submitted when:
- (1) Problems, delays, or adverse conditions will affect the grantee's ability to achieve project objectives within the scheduled time period or within the approved project budget. The report should discuss actions taken and/or contemplated and any Federal assistance needed to resolve the situation; or
  - (2) Favorable developments will enable the grantee to achieve project goals/complete project activities ahead of schedule or at lower cost.
- e. National Transit Database (NTD) Reporting. The NTD is FTA's primary national database for statistics on the transit industry. The NTD is the system through which FTA collects uniform data needed by the Secretary of Transportation to administer department programs. The data consist of selected financial and operating data that describe public transportation characteristics. Recipients of FTA Urbanized Area Formula Program (Section 5307) and Nonurbanized Area Formula Program (Section 5311) are required by statute to submit data to the NTD.

The legislative requirement for the NTD is found in 49 U.S.C. 5335(a). The most recent versions of FTA Circulars 2710.1 and 2710.2 contain a description of the system for collecting, recording, and reporting passenger mile data in accordance with the Uniform System of Accounts (USOA).

- (1) Annual Reports. Recipients of FTA Urbanized Area Formula Program (Section 5307) and Nonurbanized Area Formula Program (Section 5311) are required by statute to submit data to the NTD annually.
  - (a) Annual Report. Grantees must collect, record, and report financial and non-financial data in accordance with USOA and update this information with the NTD annually. The National Transit Database Reporting Manual, published by FTA each year, contains specific reporting instructions. The reporting manual can be found on FTA's NTD website at <http://www.ntdprogram.gov/ntdprogram/>.
  - (b) Safety and Security Report. Grantees that are required to submit annual NTD reports must also file safety and security reports. The NTD safety and security report consists of a series of forms that summarize transit-related safety and security incidents for the calendar year. Annual NTD reports are submitted to Congress summarizing transit service and safety data.
  - (c) Due Dates. NTD report submission deadlines are set by the end of the grantee's fiscal year. The due dates are October 28 for fiscal years ending between January 1 and June 30; January 28 for fiscal years ending between

July 1 and September 30; and April 30 for fiscal years ending between October 1 and December 31.

- (d) Exceptions. A grantee that operates no more than nine vehicles in peak service at any time during the year may request a waiver from filing a complete NTD report. This waiver does not apply to fixed guideway service. The grantee must base its waiver request on all fleets and annual maximum service levels. The nine or fewer vehicle waivers and the reporting waivers must be requested and approved by FTA for every reporting year. FTA does not grant permanent waivers from reporting.

In very unusual circumstances, the grantee may request and FTA may grant a waiver from either some or all of the NTD reporting requirements.

- (2) Monthly Ridership Reports. Grantees that receive or benefit from Urbanized Area Formula Program funds must submit or coordinate the submittal of the Monthly Ridership report in addition to the annual NTD report.

The Monthly Ridership report consists of a series of forms that collect monthly ridership data providing FTA with monthly trends in ridership throughout the year. It must contain all the public transportation service, including complementary paratransit services required by the Americans with Disabilities Act of 1990 (ADA), which the transit agency provides or purchases. Instructions for submitting the monthly ridership data can also be found online on the NTD website.

- f. Annual Single Audit. Non-Federal entities that expend \$500,000 or more in Federal awards in a year are required to conduct an annual organization-wide audit in accordance with Office of Management and Budget (OMB) Circular A-133.

- (1) Requirement. The audit must be completed within nine months of the end of the grantee's fiscal year. In addition to the copies required to be submitted to the Federal Clearinghouse and depending upon the results of the audit, grantees are required to take one of the following reporting actions:
- (a) If the single audit contains FTA program findings, a copy of the entire audit report must be submitted to the regional or metropolitan office. If the audit report contains findings related to another Department of Transportation (DOT) program and FTA is the grantee's point-of-contact for DBE program issues, then the grantee must also submit the entire audit report to the regional or metropolitan office.
- (b) If the annual audit report contains no FTA program findings or other DOT program findings, a copy of ONLY the Federal Clearinghouse transmittal sheet (SF-SAC) must be submitted to the FTA regional or metropolitan office.

Annual Single Audits are described in more detail in the Chapter VI, “Financial Management.”

4. **GRANT MODIFICATIONS.** At times, it may be necessary to modify a grant after it has been awarded by revising the budget or amending the grant. The grantee is responsible for controlling and monitoring all grant activities to ensure that they are carried out in accordance with the approved budget. Each grant program has specific requirements that are included in each program grant application circular that should be referenced before contemplating a grant modification. The manner in which a budget is initially structured during the grant application phase can facilitate or impede project management, particularly when unforeseen events require changes in the project.

There are three ways to modify a grant after it has been awarded—either through a budget revision, an administrative amendment, or a grant amendment. Whether a budget revision may be permitted (with or without prior FTA approval before incurring costs) or whether an amendment to the project will be necessary, depends on the effect of the proposed change on the scope of the project. FTA’s review of grant modifications will include a determination of whether or not the proposed change is significant enough to require Department of Labor (DOL) certification of Employee Protective Arrangements. Grantees should contact the FTA regional or metropolitan office for questions relating to grant modification requests, including which type of grant modification is appropriate for the proposed action.

Grant modifications are electronically submitted, reviewed, and approved in TEAM.

a. **Budget Revision.**

- (1) **General.** Budget revisions may be made as long as there is no change in the grantee, purpose, scope codes, and Federal funding of the grant, regardless of the fiscal year the funds were appropriated. Budget revisions must be consistent with the activities contained in an approved Statewide Transportation Improvement Program (STIP) and satisfy applicable National Environmental Policy Act (NEPA) requirements. Useful life of new activities must be addressed in the budget revision, as applicable.
- (2) **Procedures.** Grantees submit budget revisions in TEAM using the “Revise Project Budget” screen. Budget revision requests must include a reason for the revision. For each ALI being adjusted, either by quantity or dollar amount, grantees must include a brief explanation in the “Details” section for the change being requested. Incomplete budget revisions will be returned to the grantee by the FTA reviewer for inclusion of additional information. For assistance with completing budget revisions, please contact the FTA regional and metropolitan office.

Grantees may request budget revisions either before or after incurring costs, depending on the nature of the request. If the budget revision meets the criteria

outlined below in paragraph 3, FTA concurrence is required before incurring costs associated with the proposed change.

- (3) Budget Revisions that Require Prior Approval. Under certain circumstances, grantees must obtain FTA approval before incurring costs for proposed budget revisions. At times, FTA review of a proposed budget revision meeting the following criteria may result in a recommendation to complete a grant amendment. The FTA regional or metropolitan office will make this determination during their review.
- (a) The Federal share of the grant exceeds \$100,000 and the change in the cumulative amount of funds allocated to each scope from the originally approved scope exceeds 20 percent.
  - (b) Federal funds are transferred between ALIs with different Federal matching ratios, such as moving funds from a capital activity with a match ratio of 80/20 to an operating activity with a match ratio of 50/50. This activity also requires a financial purpose code (FPC) transfer. See paragraph (4) below.
  - (c) Changing the Federal share of an existing ALI; such as changing an ALI from 80/20 to 83/17 to account for compliance with ADA or Clean Air Act (CAA) requirements.
  - (d) For revenue rolling stock, when the budget revision changes the number of vehicles to be purchased by more than two units (for grants with fewer than 10 vehicles) or more than 20 percent from the quantity identified in the original grant.  
  
If the change in the number of revenue rolling stock vehicles exceeds 20 percent, the revision must meet FTA's spare ratio requirements and should be supported by a bus fleet status report.
  - (e) The budget revision changes the size or physical characteristics of the ALIs without changing the project scope.
  - (f) The addition of an ALI to an existing scope included in the grant, provided that the request does not change the amount of Federal funds awarded in the original grant or change the scope of the project contained in the grant. The addition of an activity within an approved scope requires that the grantee affirm in the budget revision request that the new activity is consistent with the approved STIP and, if applicable, has satisfied NEPA requirements.

**Note:** If the addition of an ALI to an existing scope is added to move a facility project to the next phase of construction, the budget revision may be sent to DOL for informational purposes. In addition, FTA must confirm eligibility of the project to advance to the next phase of construction.

- (4) Financial Purpose Code Transfers. When a budget revision includes a transfer of funds between capital/operating/planning activities, an FPC change is required to be made by the FTA Project Manager before the grantee is able to draw funds for this purpose. Budget revisions with FPC transfers of any kind require prior FTA concurrence and Regional Office notification to FTA's Office of Accounting.
- (5) Examples. The following are examples of situations when a grantee might request a budget revision. Please note that if the examples below meet any of the criteria outlined above in paragraph (3), the grantee must request FTA concurrence before incurring the costs for the requested activities.
- (a) Budget revisions to existing ALIs. Grant AB-90-1234 includes a scope for vehicles (111-00) with the ALI to purchase 40' buses (11.12.01) and a scope for stations stops/terminals (113-00) with the ALI for construction of a bus terminal (11.33.01). The construction costs for the station are expected to be higher than originally anticipated and there is a surplus in the vehicle line item because the vehicle costs were less than anticipated. A grantee may request to move funds from ALI 11.12.01 to 11.33.01 to cover additional construction expenses. Following the process described in paragraph (2) and after determining if the request meets the threshold for prior FTA approval, the grantee may request to move the excess funds from 11.12.01 to 11.33.01.
- (b) Budget revisions that require an FPC transfer. Grant AB-90-1234 has an approved budget for \$250,000 in operating assistance (30.09.00) and \$50,000 for the purchase of vans (11.12.15). The grantee has \$5,000 remaining under operating assistance and would like to add the operating funds to the purchase of vans, a capital line item. This can be accomplished through a budget revision. The local share for the change would reflect the reduction from a 50 percent local match for the \$5,000 to \$2,500. The local match for the capital item would be 20 percent of \$5,000 or \$1,000. The result of the budget revision is an FPC transfer in TEAM completed by the FTA Project Manager going from (\$5,000) under FPC code 04 to + \$5,000 under FPC code 02. The local share was reduced by \$1,500 as a result of this budget revision. FPC transfers of any kind require prior FTA concurrence and Regional Office notification to FTA's Office of Accounting.
- (c) Adding an ALI to an existing scope. The scope for Stations Stops/Terminals exists in the grant and funds are allocated to acquire route signing (11.32.09). However, the grantee determines that the agency prefers to use the funds to construct passenger shelters (11.33.10), which is an activity within the scope 113-00. The grantee may request a budget revision to add the ALI—11.33.10 and shift the funds from 11.32.09 with prior FTA concurrence. In addition, the grantee must confirm that the approved STIP includes construction of bus shelters and applicable NEPA requirements have been satisfied.

- (6) Operating Assistance Changes. A grantee may use a budget revision to reflect time period changes, adjustments or extensions to the operating period provided the total amount of Federal funds previously awarded under the grant remains unchanged.

b. Administrative Amendment.

- (1) General. An administrative amendment is usually initiated by FTA and may only be used when no change will result in the scope, amount or purpose of the grant. An administrative amendment may be used to change or clarify the terms, conditions, or provisions of a Grant Agreement. An administrative amendment is also used to change the year or type of funds obligated for a grant, to transfer equipment from one grantee to another, to reflect a change in the grantee or grantee's name, or to deobligate Federal funds that are no longer needed to complete the approved project scope or purpose.

c. Grant Amendment.

- (1) General. A grant amendment is required when there is either a change in the scope or an addition of Federal funds to an existing grant. Grant amendments are subject to the same application requirements as a new grant request.
- (2) Procedures. Grantees submit grant amendments in TEAM using the "Create Amendment" screen. Grant amendments require a revised Grant Agreement, revised budget, and may require a change in the amount of funds obligated for the grant. An amendment is subject to the same requirements as a new grant request except that the grantee need not resubmit portions of the original grant application that are unaffected by the change. The grantee must submit a detailed description of the changes and a revised project budget. For example, in TEAM under the project Details section of the grant, grantees should include a header, "Amendment #1," and describe the reason for the amendment and the changes to the grant and budget.
- (3) Change of Scope. FTA requires a grant amendment if the request changes the scope of a grant. Examples and an exception to changes in scope that result in a grant amendment include:
  - (a) Examples.
    - 1 A change in the quantity of items to be purchased or constructed that materially change the purpose or intent of the approved grant.
    - 2 The addition of a new project scope code or the deletion a project scope code if the deletion affects the intent or objectives of the grant.

- 3 The addition of an ALI that results in an amendment to the approved Transportation Improvement Program (TIP)/STIP.

(b) Exception.

- 1 For earmarks, all changes to the grant after award must be consistent with the original intent of the Congressional language. Your FTA Regional Office will assist you in making this determination. For example, if the earmark is for a facility, a grant amendment cannot be executed to add a scope for vehicles.

- (4) Change in Federal Funds. FTA requires a grant amendment if the request changes the total amount of Federal funds in the grant. The one exception is if the scope of a grant is unchanged and the only action is the deobligation of funds, an administrative amendment is used to process the grant modification. See paragraph b, "Administrative Amendment," above.

5. GRANT CLOSE-OUT. Grant close-out is the term used to signify the process by which FTA determines that all activities in a grant are complete and Federal funds have been expended.

- a. Grantee's Role and Responsibilities. The grantee must initiate close-out of a grant when all approved activities are completed and applicable Federal funds expended. All close-out documentation must be submitted within 90 days of the completion of all activities in the grant. This requires notifying FTA by letter or e-mail that the grant is ready for close-out. The grantee should electronically submit the following in TEAM as part of the grant close-out process:

- (1) a final budget reflecting actual project costs by scope and activity;
- (2) a final FSR;
- (3) a final narrative MPR indicating the actual completion date of each ALI, a discussion of each ALI contained in the final budget and list of project property purchased under the grant;
- (4) a request to deobligate any unexpended balance of Federal funds; and
- (5) any other reports required as part of the terms and conditions of the grant.

- b. Close-Out by FTA. FTA may unilaterally initiate grant close-out. Circumstances that could cause FTA to close-out a grant in whole or in part at any time before project completion include:

- (1) Grantee failure to comply with the terms or conditions of the Grant Agreement or other Federal requirement;

- (2) Continuation of the project would not produce results commensurate with further expenditure of funds;
- (3) Funds are no longer needed to accomplish the grant purpose;
- (4) Failure by the grantee to make reasonable progress to complete approved grant activities; or
- (5) Determination that the project has been essentially completed and/or approved funds have been substantially drawn down.

c. Adjustments to Federal Share of Costs. Necessary adjustments to the Federal share of cost are made after FTA receives and reviews the required close-out information. Adjustments may also be necessary after the audit required by OMB Circular A-133 is performed. FTA funds are not available for audit or other grant activities after a grant has been closed. Additional information on the A-133 audit is contained in Chapter VI, Financial Management. Any Federal grant funds received by the grantee but not expended must be returned to FTA. For more information on returning funds to FTA, see Chapter VI, Financial Management.

## 6. SUSPENSION AND TERMINATION.

- a. Suspension. The suspension of a grant is an action by FTA which temporarily suspends Federal assistance for a project pending corrective action by the grantee or pending a decision to terminate the grant by FTA. If FTA determines that the grantee has failed to comply with the terms and conditions of the Grant Agreement, including the civil rights requirements, FTA notifies the grantee in writing of its intent to suspend the grant. FTA may withhold further payments and/or prohibit the grantee from incurring additional obligations pending corrective action by the grantee or a decision to terminate the project for cause. This includes work being performed by third party contractors or consultants. Unless FTA notifies the grantee otherwise, suspension will not invalidate obligations properly incurred by the grantee prior to the date of suspension to the extent that they cannot be cancelled.
- b. Termination for Cause. FTA may terminate a grant, in whole or in part, at any time before project completion, whenever it determines that the grantee failed to comply with the conditions of the grant including failure to make reasonable progress. FTA will promptly notify the grantee in writing of its intent to terminate and the reasons therefore and the effective date. Payments made to the grantee or recoveries by FTA are in accordance with the terms of the Grant Agreement and the legal rights and liabilities of both parties as defined in the agreement.
- c. Termination for Convenience. FTA or the grantee may terminate a grant in whole or part, when both parties agree that continuation of the project would not produce results commensurate with the further expenditure of funds. By signing the Grant Agreement, the grantee agrees at the outset to a termination for convenience in the event FTA

makes such a finding. Both parties must agree upon the termination conditions, including the effective date and, in case of partial termination, the portions to be terminated. The grantee may not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. FTA evaluates each obligation to determine its eligibility for inclusion in project costs. Settlement is made in accordance with terms and conditions of the Grant Agreement. FTA allows full credit to the recipient for the Federal share of the obligations (that cannot be cancelled) properly incurred by the grantee prior to termination.

- d. Partial Termination. In some cases, FTA may deobligate funds in an approved grant before close-out because the funds are no longer needed to accomplish the grant purpose.

## 7. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS.

- a. Applicability. This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees which are:
  - (1) Records required to be maintained by this circular or the terms of the Grant Agreement, or otherwise considered pertinent to FTA program requirements or the Master Agreement.
  - (2) Records executed electronically may be retained in that manner, but files must be accessible for possible review, audit, or down-loading to paper copy when required.
  - (3) This section does not apply to records maintained by contractors or subcontractors.
- b. Length of Retention Period.
  - (1) Except as otherwise specified, records must be retained for three years from the starting date specified in paragraph (c), below.
  - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records must be retained for three years after completion of the action and resolution of all issues which arise from it.
  - (3) To avoid duplicate record keeping, FTA may make special arrangements with grantees (including subgrantees, as appropriate) to retain any records which are continually needed for joint use. FTA will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by FTA, the three-year retention requirement is not applicable to the grantee.

c. Starting Date of Retention Period.

- (1) General. The starting date for retention of records related to multi-year projects is the date of submission of the final FSR upon project completion or, if waived, the date it would have been due.
- (2) Equipment records. The retention period for the equipment records starts from the date of the equipment's disposition or replacement or transfer at FTA's direction.
- (3) Records for income transactions after grant close-out. In some cases, grantees must report income after a grant is closed out. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.
- (4) Indirect cost rate proposals, cost allocation plans and similar rate, and rate allocation methods. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations or the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).
  - (a) If submitted for negotiation: If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the three year retention period for its supporting records starts from the date of such submission.
  - (b) If not submitted for negotiation: If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the three year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
- (5) Contract Records. The retention period for all required contract records commences after the grantees or subgrantees make final payments and all other pending matters are closed. [Reference 49 CFR Part 18.36(i)(11)].

d. Substitution of Photocopies. Copies of documents may be substituted for the originals.

e. Access to Records.

- (1) Records of grantees and subgrantees. FTA, DOT Office of Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the grant, in order to perform audits, or make examinations, excerpts, or transcripts.

- (2) Expiration of right of access. The right of access in this section is not limited to the required retention period but continues as long as the records are retained.
- f. Restrictions on Public Access. The Federal Freedom of Information Act (FOIA)(5 U.S.C. 552) does not apply to grantee records owned and possessed by the grantee. Unless required by State or local law, grantees and subgrantees are not required to provide periodic public access to their records. However, FTA may request a grantee to provide access to those records the grantee maintains on behalf of FTA, (i.e., records required by Federal statute or regulation, such as Davis-Bacon wage records), or other records necessary to determine compliance with federal requirements established as conditions of eligibility for recipients of federal funding.

## CHAPTER IV

### PROJECT MANAGEMENT

1. GENERAL. Real Property, Equipment and Supplies, Rolling Stock, and Facilities purchased or constructed for project purposes must be managed, used, and disposed of in accordance with applicable laws and regulations. This chapter provides guidance on the management, use, and disposition of Federal Transit Administration (FTA) funded real property, equipment, supplies, rolling stock, and facilities.
2. REAL PROPERTY. Real property Must be acquired, managed, used and disposed of in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (PL 91-646) and 49 CFR Part 24, the implementing regulation. The following requirements govern the acquisition, use, or disposition of real property purchased with Federal funds. All regulatory references in this Section are to 49 CFR Part 24, unless specified otherwise.
  - a. General. If a grantee is using Federal funds to acquire real property or provide relocation assistance necessary to secure property for a project, the grantee must comply with the requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act or URA), as amended. The Uniform Act is implemented by regulation (49 CFR Part 24).

The objective of the Uniform Act is to ensure equitable treatment of property owners of real property to be acquired for Federal and federally-assisted projects; that people displaced by a federally-supported project be treated fairly, consistently, and equitably; and that acquiring agencies implement the regulations in a manner that is efficient and cost effective. The regulations implementing the Uniform Act are very specific in naming the means to achieve those legislated objectives.

FTA must review and concur in appraisals and review appraisals for acquisitions over \$500,000 or in-kind contribution of any value before Federal funds are expended or the value is used as local match. The requirements and processes for conducting appraisals, review appraisals, providing relocation assistance, and requesting FTA's concurrence are described in the paragraphs below.

To ensure eligibility for Federal funding, the grantee should follow the typical process sequence when acquiring real property for a project:

National Environmental Policy Act (NEPA) Approval → Title Search → Appraisal → Appraisal Review → Just Compensation Determination → FTA Concurrence (if required) → Offer to Owner → Settlement

- b. Appraisal of Real Estate.

- (1) General. Except as discussed below, an offer of just compensation will be established on the basis of a recent independently prepared appraisal that estimates a fair market value.
- (2) Appraisers. Appraisers must be certified or licensed with a State Appraisal Board as required by the URA regulations at Section 24.103(d)(2). However, staff employees may be exempt from this requirement. FTA recommends that appraisals and review appraisals be completed by appraisers experienced with State and Federal laws for valuing properties for public acquisitions under the threat of eminent domain. Appraisers and grantees making appraisal assignments should be familiar with the implementing regulations of the Uniform Act (49 CFR 24), especially Subpart B. State subrecipients may use the State's staff appraisers to prepare required independent appraisals and appraisal reviews.
- (3) Requirements. Appraisals must be fully compliant with all of the appraisal requirements as cited in Section 24.103(a). This includes compliance with the Scope of Work /defining the appraisal requirements and, as appropriate, a realty/personalty report. The appraiser will also appropriately address the requirements of Section 24.103 (b) and (c) in the report concerning the effects of project influence and owner retention of improvements.

Depending on the individual State Appraisal Board, certified/licensed appraisers may need to utilize the jurisdictional exception provisions of Uniform Standards of Professional Appraisal Practice (USPAP) in order to complete the assignment for a public agency in full compliance with the requirements of Section 24.103.

If the acquisition leaves the owner with an uneconomic remnant, the appraiser or review appraiser may be assigned the responsibility to make this determination and appraise the fair market value of the remnant. [See Section 24.102(k)].

The owner also has a right to accompany the appraiser during the inspection of the property pursuant to Section 24.102(c)(1).

When valuing properties that contain contamination or hazardous material, the appraiser must consider the effect, if any, the contamination's or material's presence has on the market value.

Grantees should update appraisals over six months old in an active real estate market before fair market value is determined and submit to the FTA Regional Office for review and concurrence, when required. If the documents are not updated, the letter of transmittal to FTA shall provide adequate justification explaining why the appraisal was not updated.

- (4) Exceptions. Full appraisal and/or negotiation procedures are not necessary in certain instances. While an appraisal of the property may not be required in some of the following instances, the agency must have some reasonable basis for their

determination of fair market value in accordance with Section 24.101(b), Appendix C. In the case of a donation an appraisal may not be required; however, an appraisal is required if the grantee proposes to use the property as an in-kind contribution as part of the local matching share. FTA should be contacted for further guidance when any one of the following situations occurs:

- (a) The owner is donating the property, reference Sections 24.102(c)(2) and 24.108.
- (b) The grantee does not have authority to acquire property by eminent domain as set out in Section 24.101(b).
- (c) The property qualifies as a voluntary acquisition as defined in Section 24.101(b).
- (d) The valuation is uncomplicated and the fair market value is estimated at \$10,000 or less, based on a review of available data, using the waiver valuation provision found at Section 24.102(c) and Section 24.2(a)(33).

c. Appraisal Review of Real Estate.

- (1) General. All appraisals for acquisition of real property are to be reviewed in accordance with the Uniform Act and 49 CFR 24.104. The review appraisal should determine the soundness of the report's value estimate. A qualified review appraiser [see Section 24.103(d)(1) and Appendix A thereof, and Section 24.104] shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of an appraisal found in Section 24.2(a)(3), as well as other appraisal requirements found in 49 CFR Part 24.103 and other applicable State and local requirements.

The review appraiser is often expected to determine if the value conclusion is consistent with State laws as to what is compensable in eminent domain for public acquisitions and with the Uniform Act. The review appraiser is also responsible for assuring that value estimates are consistent when multiple parcels of property are needed for the project. The review appraiser cannot determine the soundness of a report's value estimate without possessing familiarity with the subject property, the comparables sales used and other market factors; thus rarely will only a desk review be sufficient. The appraisal review report is expected to be a technical analysis of the appraisal, not merely an administrative review.

- (2) Requirements. In accordance with Section 24.104(a), the review appraiser shall prepare a written report identifying each appraisal report as:
  - (a) Recommended (as the basis for the establishment of the amount believed to be just compensation) or,

(b) Accepted (meets all requirements, but not selected as recommended or approved), or

(c) Not accepted.

- (3) Establishment of Just Compensation. If authorized by the grantee, a staff review appraiser may also establish the approved appraisal amount as the offer of just compensation. Under no circumstances can the establishment of the just compensation amount be delegated to a contractor (like a fee review appraiser) who is not a governmental official of the agency.

If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with 24.103 to support a recommended (or approved) value [See Section 24 Appendix A related to Section 24.104(b)].

Review appraisers who are not staff employees must be certified appraisers.

- d. Appraisal Concurrence Process. Prior FTA concurrence is required when the grantee's recommended offer of just compensation exceeds \$500,000, or when a property appraised at \$500,000 or more must be condemned. Appraisals under \$500,000, not requiring FTA concurrence, must follow the applicable appraisal standards (see Section 24.103). The grantee is required to maintain a parcel file with the proper support and documentation. Appraisals and Review Appraisals must be submitted to FTA for review and concurrence for acquisitions over \$500,000 or in-kind contribution of any value before Federal funds are expended or the value is used as local match.
- (1) General. In accordance with URA requirements every effort should be made to acquire real property by negotiation based on the approved just compensation amount that has been determined by the acquiring agency and considering the requirements described in the following:
- (2) Market Value. Before making an offer to the property owner, the grantee must first establish market value of the parcel to be purchased. Property acquisition activities will be conducted in compliance with the requirements of Section 24.101 and 102. Market value is to be established through a current appraisal and appraisal review accomplished in accordance with the requirements of Section 24.103 and 104 respectively. Once the appraisal and the appraisal review are complete, a determination of just compensation must be made by the grantee in accordance with Section 24.102(d).
- (3) Making an Offer. After the just compensation determination has been made by the agency, with FTA concurrence, if required, an offer can be made to the owner.

No owner shall be required to surrender possession of real property without either payment of the agreed purchase price to the owners or deposit of the established just compensation amount in condemnation court as set out in Section 24.102(j). The full amount of the deposit must be made available to the owner without prejudice pending the ultimate determination of just compensation by the judicial process. The grantee must expeditiously reimburse property owners for actual, reasonable, and necessary expenses incidental to transfer of title pursuant to Section 24.106.

- (4) Uneconomic remnant. If the acquisition leaves the owner with an uneconomic remnant, the grantee must offer to acquire that remnant and its value will be presented as an element of the written offer that is made. [See Section 24.102(k)].
- (5) Filing Condemnation. Additionally FTA concurrence is required before filing for condemnation if the appraised amount exceeds \$500,000.
- (6) Administrative Settlements. Any settlement in excess of the grantees approved just compensation must be addressed as an administrative settlement (see definition, Chapter 1, paragraph 5 and Section 24.102(i)). The term “administrative settlements” encompasses both negotiated settlements and legal settlements. Legal settlements are those arrived at prior to a trial on the merits.
  - (a) Requirements. Administrative settlements in excess of \$50,000 more than the current fair market value require prior FTA concurrence. Instead of using its power of eminent domain when a property cannot be purchased at appraised value, a grantee may propose acquisition through negotiated settlement, as explained previously. The grantee must document that reasonable efforts to purchase the property at the appraised amount have failed and prepare written justification supporting why the settlement is reasonable, prudent and in the public interest. Such a settlement will be handled in accordance with administrative settlement requirements at Section 24.102(i). If the settlement request represents a significant increase over the just compensation and if trial risks are a key factor in the settlement justification, a litigation attorney for the agency must be consulted to provide advice in this regard. The decision to recommend a settlement should evaluate among other relevant matters, the risks of settling for the proposed amount versus the risks of trying the condemnation in court.
  - (b) Settlement Concurrence Process. All settlements must be justified in writing and be available in the project files. The justification shall be thorough, document the entire settlement process, demonstrate the logic and reason supporting the settlement, and be able to withstand the scrutiny of an independent review. If either type of settlement exceeds FTA’s threshold for approval, it must be submitted to FTA for advance concurrence before the settlement is consummated.

- e. Relocation Assistance. The relocation assistance program provides a variety of advisory services and benefits to displaced people, businesses, and non-profit organizations. The highlights of this program element and FTA policies related to it are summarized in the following:
- (1) Early provision of written notices and explanations of acquisition and relocation programs must be provided to displacees as required by 49 CFR Part 24.
  - (2) No individual, family, business, farm, partnership, corporation, or association will be required to move without at least 90 days advance notice per Section 24.203.
  - (3) In the case of residential displacees, the 90-day notice must also include the availability of at least one comparable replacement dwelling. Rental assistance and replacement housing payments are provided to make the dwellings affordable and available at the time the notice is given. See Section 24.203(c)(3).
  - (4) All displacees, both business and residential, are reimbursed for certain moving expenses per Section 24.301 through Section 24.306.
  - (5) There must be as many residential dwellings available as there are families who will be displaced. The dwellings must be comparable to the ones from which the people are displaced. In addition, the comparable replacement dwellings must be decent, safe, and sanitary (DSS); located in the same area or in areas generally not less desirable in regard to public utilities and public and commercial facilities; reasonably accessible to the displacees' places of employment and within the financial means of the displaced families; and adequate in size to accommodate the occupants in accordance with 49 CFR 24.204.
    - (a) The definition of DSS at Section 24.2(a)(8) contains the following requirements regarding the number of rooms and area of living space for the displacee. "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."
    - (b) In the absence of applicable housing codes, FTA's policy requires separate bedrooms and gender separation for children over 12 years of age.
  - (6) Replacement housing must be open to all people regardless of race, color, religion, sex, or national origin as required by Section 24.8 of the URA regulations.
  - (7) Any relocation benefits required by State or local law exceeding the specified limits in the Uniform Act will not be reimbursed by FTA.

- (8) Any global type settlements of a property acquisition that involve the inclusion of relocation payments based on other than relocation costs that are actual, reasonable, and necessary are not eligible for FTA reimbursement in accordance with Section 24.207(f) of the URA regulations.
  - (9) Rental and for-sale dwellings used in the determination of replacement housing benefits must be actually and currently available for sale or rent. A rent schedule method cannot be used to calculate a rental differential payment, since the grantee is required to offer the displacee specific rental replacement properties that are actually available as explained in the definitions Section of this circular.
- f. Special Real Estate Acquisition Program Strategies/Issues. Several real estate program strategies or issues are worthy of discussion in some details as follows:

- (1) Alternative Procedure. A grantee with a qualified and fully staffed real estate department conducting a major capital project may request an alternative process, which permits higher dollar thresholds before FTA prior concurrence is needed. An FTA real estate specialist will review the acquisition process and grantee capabilities. Grantees may request a review through the FTA Regional Office.

The request for the approval for alternative real property procedures at a minimum should include the following:

- (a) A statement providing an overall justification and reasoning for why the alternative procedure is requested;
  - (b) Copy of Real Estate department operating procedures;
  - (c) Real Estate department organization staffing chart; and
  - (d) Strategy for using and qualifying Real Estate services contractors, if used;
  - (e) Estimate of the number of transactions that may exceed requested threshold(s);
  - (f) Discussion of Real Estate acquisition schedule/status relative to the overall project schedule; and
  - (g) Discuss Real Estate department program Quality Assurance/Quality Control procedures that are in place to assure program delivery is in compliance with Uniform Act requirements and effective/efficient operational standards given the higher thresholds requested.
- (2) In-Kind Contributions. Grantees may use in-kind contributions of real property as part of the local matching share so long as the property to be donated is needed to carry out the scope of the approved project. The property can be owned and

donated by the grantee or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised. Appraisals for property being donated, regardless of appraised value, must be submitted to the FTA regional or metropolitan office.

Credit can only be allowed for the value of the portion of real property used or consumed by the project. If part of a larger parcel is to be used as local match, and the remaining sub-parcel is intended to be used at a future date for future match the grantee is cautioned to clearly indicate the limits of the sub-parcel to be used as local match and the appraised amount associated with the sub-parcel. The remnant sub-parcel can then follow the same procedure for future local match. If the entire parcel is provided as a local match and no delineation is made related to possible use of the excess sub-parcel as over-match, eligibility of the over-match sub-parcel may be lost. If Federal funds were used to purchase the property, only the non-Federal share of such property may be counted as the value of the in-kind contribution, please refer to Section 18.24(f).

- (3) Functional Replacement. Functional replacement provides a method of paying the cost necessary to replace a publicly owned facility (i.e., a fire station or public school) being acquired with a similar needed facility. The FTA regional or metropolitan office should be contacted for further information.

A determination to use functional replacement should be made early in the project development process. The use of this approach would usually be addressed during the environmental assessment (EA) phase of the project and be presented as a mitigation measure to be undertaken by the project.

- (4) Contaminated Property (including Brownfields). Appropriate due diligence for contamination is conducted as a part of the NEPA process and discussed in the NEPA document before selection of a contaminated property in a capital project. Appraisals should consider the effect, if any contamination has on the market value of the property being valued. The terms, "contamination" and "hazardous material" should be interpreted broadly to include all contaminants that can affect property value.
  - (a) The legal responsibility for hazardous material clean up and disposal rests with parties within the property title chain and with parties responsible for the placement of the material on the property. Grantees must attempt to identify and seek legal recourse from those potentially responsible parties or substantiate the basis for not seeking reimbursement.
  - (b) During the NEPA process, the grant applicant will have considered not only the estimated project cost of appropriate remediation (remediation being any action, developed in consultation with appropriate regulatory agencies, to reduce, remove or contain contamination), the applicant will also have

considered and taken action regarding the short and long-term liabilities associated with Brownfields, if applicable.

- (c) To encourage the complete assessment of contamination prior to project decision-making, FTA generally will not participate in the remediation of contamination discovered during construction.
  - (d) The grantee should contact FTA for technical assistance regarding contaminated property.
- g. Real Estate Acquisition Management Plan (RAMP). A RAMP is required for all major capital projects as a part of the Project Management Plan (PMP) under 49 CFR 633.25 and in accordance with Title 49 CFR Part 24. A full RAMP is not required for other capital projects with real estate acquisition; however, all capital projects must be in compliance with 49 CFR Part 24, if real estate acquisition or relocation assistance is involved. The RAMP is a planning document for the acquiring agency and is a control document for FTA that includes real estate goals and methodology from the perspective of timing, staffing, statutory and policy issues. The RAMP should be periodically reviewed for needed changes. See Appendix A to this circular for a model in the development of a RAMP.
- h. Property Management and Joint Development.
- (1) General. This area concerns the post construction management of property acquired for the facility during project development to ensure that it is properly maintained and operated efficiently for the benefit of the transit system.
  - (2) Incidental Use and Joint Development. Title to real property is vested in the grantees or other public bodies. FTA's policy is to permit grantees maximum flexibility in determining the best and most cost-effective use of FTA-funded property. To this end, FTA encourages incidental uses and joint development of real property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. For example, grantees may be able to encourage joint development of air rights at and over transit facilities and project areas. FTA approval is required for both joint development and for incidental uses of real property. Either must be compatible with the original purposes of the grant.
- Incidental and joint development uses of real property are subject to the following considerations:
- (a) Needed Property. This policy applies only to property that continues to be needed and used for an FTA project or program. It is FTA's intention to assist only in the purchase of property that is needed for an FTA project.
  - (b) Purpose & Activity. The use must not compromise the safe conduct of the intended purpose and activity of the initial public transit project activity.

- (c) Continuing Control. The use must not in any way interfere with the grantee's continuing control over the use of the property or the grantee's continued ability to carry out the project or program.
- (d) Non-Profit Use. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenues, non-profit uses are also permitted including the charging of appropriate rental fees.
- (e) Income. Proceeds from licensing and leasing of air rights or other real property interest should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized incidental or joint development uses of air rights may be retained by the grantees (without returning the Federal share) if the income is used for eligible transit planning, capital and operating expenses. This income cannot be used as part of the local share of the grant from which it was derived. However, it may be used as part of the local share of another FTA grant.

i. Disposition.

- (1) Excess Real Property Inventory and Utilization Plan. The grantee shall prepare and keep up to date an excess property inventory and utilization plan for all property that is no longer needed to carry out any transit purpose. The inventory list should include such things as property location; summary of any conditions on the title, original acquisition cost, and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed.

Grantees are also required to notify FTA when property is removed from the service originally intended at grant approval and put to additional or substitute uses. The grantee's plan should identify and explain the reason for excess property. Such reasons may include one or more of the following:

- (a) The parcel, when purchased, exceeded the grantee's need (uneconomic remnant, purchased to logical boundary, part of administrative settlement, etc.);
- (b) The property was purchased for construction staging purposes such as access, storage or underpinning, and construction is completed;
- (c) The intended use of the parcel is no longer possible because of system changes, such as alignment, or amendments to the project Grant Agreement;
- (d) Improvements to real property were damaged or destroyed, and therefore the property is not being used for project purposes, but it is still needed for the project. If so, the improvements may be renovated or replaced. In this case, applicable cost principles must be observed; and/or

- (e) A portion of the parcel remains unused, will not be used for project purposes in the foreseeable future, and can be sold or otherwise disposed.

Unless FTA and the grantee agree otherwise, the excess real property inventory and updated excess property utilization plan is to be retained by the grantee, available upon FTA request and during the Triennial Review process.

- (2) Disposition Alternatives. If the grantee determines that real property is no longer needed, FTA may approve use of the property for other purposes. This may include use in other Federal grant programs or in non-Federal programs that have consistent purposes with those authorized for support by FTA.
  - (a) Valuation of Property Pending Disposal. For properties no longer needed for transit purposes, the grantee is expected to follow the valuation requirements of 49 CFR Part 24 and obtain an appraisal and review to ascertain the value of the property considered for disposal.
  - (b) Net Proceeds from Disposition. In those situations where a grantee or subgrantee no longer need the real property for any transit purpose and is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, FTA may permit the net proceeds from the disposition to be used as an offset to the cost of the replacement property.
  - (c) Alternative Disposition Methods. When real property is no longer needed for any transit purpose, the grantee will request disposition instructions from FTA. Following are the allowable alternative disposition methods.
    - 1 Sell and Reimburse FTA. Competitively market and sell the property and pay FTA the greater of its share of the fair market value of the property or the straight line depreciated value of the improvements plus land value. FTA's share of the fair market value is the percentage of FTA participation in the original grant multiplied by the best obtainable price, net of reasonable sales costs.
    - 2 Offset. Sell property and apply the net proceeds from the sale to the cost of replacement property under the same program. Return any excess proceeds to FTA. [49 CFR Part 18.31].
    - 3 Sell and Use Proceeds for Other Capital Projects. Sell property and use the proceeds to reduce the gross project cost of another FTA eligible capital transit project. [49 U.S.C., 5334(h)(4)]. The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the liability as the proceeds are applied to one or more FTA approved capital projects. FTA must approve the application of the

proceeds to a subsequent capital grant, which should clearly show that the gross project cost has been reduced with proceeds from the earlier transaction.

- a Sell and Keep Proceeds in Open Project. If the grant is still open, the grantee may sell excess property and apply the proceeds to the original cost of the total real property purchased for that project. This may reduce the Federal share of the grant.
- b Transfer to Public Agency for Non-Transit Use. Follow procedures for publication in Federal Register to transfer property (land or equipment) to public agency with no repayment to FTA. This is a competitive process and there is no guarantee that a particular public agency will be awarded the excess property. [49 U.S.C., 5334(h)(1) through (h)(3)].
- c Transfer to Other Project. Transfer property to another FTA eligible project. The Federal interest continues.
- d Retain Title With Buyout. Compensate FTA by computing percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. The grantee must document the basis for value determination; typically, this is an appraisal or market survey. Alternatively, the grantee may pay the straight line depreciated value of improvements plus land value if this is greater than FTA's share of the fair market value.
- e Sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return or at least payment of appraised fair market value.
- f Joint Development. A transfer meeting the tests for joint development is not a disposition and the proceeds are deemed program income. For additional information on use and eligibility of joint development projects see FTA Guidance (72 FR 5788, February 7, 2007) as the final agency guidance on the "Eligibility of Joint Development Improvements Under Federal Transit Law."
- j. FTA Management and Project Oversight of Property Acquisition. FTA project stewardship includes various strategies, and in some cases involves the application of risk management techniques. Based on various conditions including dollar thresholds and the complexity of the property acquisitions involved, FTA may require the submission of all transactions meeting certain criteria for prior approval. Refer to the discussion of prior concurrence for certain appraisal, condemnation, and settlements issues discussed in this chapter.

FTA may also conduct process or transactional reviews at any time during or after project implementation of the real estate acquisition program to ensure compliance with governing laws and regulations.

3. EQUIPMENT, SUPPLIES, AND ROLLING STOCK. Certain management standards apply to equipment, supplies and rolling stock purchased with Federal funds. The term, project property, as used below, includes equipment, supplies and rolling stock. Following are requirements for the acquisition, use, and disposition of project property.
  - a. State Recipients. A State will use, manage, and dispose of project property acquired under a grant by the State in accordance with State laws and procedures [49 CFR, Part 18.32(b)]. Other grantees will follow the procedures outlined below.
  - b. Title. Subject to the obligations and conditions, the grantee holds title to project property acquired under a grant.
  - c. Federal Interest. FTA retains a Federal interest in any project property financed with Federal assistance until, and to the extent, that FTA relinquishes its Federal interest in that project property.
  - d. Acquisition. Acquisition cost of project property means the purchase price of project property. This is the net invoice unit price, including the cost of modifications, attachment, accessories, or auxiliary apparatus necessary to make the project property usable for the intended purpose. Other charges such as the cost of inspection, installation, transportation, taxes, duty, or protective in-transit insurance should be treated in accordance with the grantee's regular accounting practices, as separate line items. Grantees must follow procurement procedures set forth in the most recent version of Circular 4220.1; additional guidance is provided in FTA's Best Practices Procurement Manual. Two areas of particular importance for rolling stock procurements are:
    - (1) Buy America. The grantee will comply with applicable Buy America regulations for the procurement of FTA funded project property. In accordance with 49 U.S.C. Section 5323(j), and FTA Buy America regulations, 49 CFR Part 661., Buy America requirements apply to the acquisition of iron, steel, or manufactured goods, including rolling stock and constructed infrastructure. Unless an acquisition qualifies for a waiver, Federal Transit assistance authorized by 49 U.S.C. Chapter 53 and 23 U.S.C. (Highways) may not be used to finance the acquisition of iron, steel, or manufactured goods that are not produced in the United States.
    - (2) Pre-Award and Post Delivery Audits for Rolling Stock. FTA requires that grantees purchasing revenue passenger rolling stock undertake reviews of the rolling stock before award of the bid, during manufacture, and following vehicle delivery. Grant applicants seeking to acquire rolling stock must certify that they will comply with Pre-Award and Post-Delivery Review requirements.

The requirement to undertake the pre-award and post-delivery reviews arises from 49 U.S.C. Section 5323(m) and is implemented by FTA regulations at 49 CFR Part 663. The reviews are intended to improve compliance with Buy America requirements, the grantee's bid specifications, and Federal motor vehicle safety standards. FTA has tried to carry out the intent of the law in a way that builds on current practices by many grantees and that improves the monitoring of compliance in the least burdensome manner. Reviews may be conducted by the grantee's staff or by a contractor for the grantee. The regulations require a resident inspector who is not an agent or an employee of the manufacturer to review specification compliance for the grantee at the manufacturing site, unless the procurement is for unmodified vans, 10 or fewer buses acquired by an operator serving an urbanized area with a population of over 200,000 persons, or 20 or fewer buses acquired by an operator serving other than urbanized areas or urbanized areas with populations of 200,000 or fewer. The grantee must keep on file and make available to FTA upon request written reports resulting from the reviews. Compliance must be certified on the Annual List of Certifications and Assurances.

- e. Use of Project Property. Project property is to be used by the grantee in the programs or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by Federal funds. When need no longer exists, see disposition requirements.
- (1) Continuing Control. The grantee agrees to maintain continuing control of the use of project property and constructed improvements to the extent satisfactory to FTA. The grantee agrees to use project property for appropriate project purposes for the duration of the useful life of that property, as required by FTA. If the grantee unreasonably delays or fails to use the project property during the useful life of that property, the grantee agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The grantee further agrees to notify FTA immediately when any project property is withdrawn from project use or when any project property is used in a manner substantially different from the representations the grantee made in its grant application or in the Project Description for the Grant Agreement or Cooperative Agreement for the project.

The grantee may make project property available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the project or program for which it was originally acquired. FTA reserves the right in the Grant Agreement to require the grantee, with FTA approval, to transfer title to project property no longer needed or used for the purposes of the grant (or program) to the Federal Government or an otherwise eligible grantee. (49 CFR part 18.32).

The grantee must not use project property acquired with grant funds to provide services to compete unfairly with private companies that provide equivalent

services. Non-transit use of FTA financially assisted project property is acceptable so long as it is incidental, does not interfere with transit use (i.e., transit has priority), and income generated is retained by the grantee for transit use. (See paragraph (7) below for more information on incidental use).

The grantee agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement, or any other obligation pertaining to project property, that in any way would affect the continuing Federal interest in that project property without written FTA approval.

- (2) Shared Use. Shared use of project property requires prior written FTA approval. Shared use projects should be clearly identified and sufficient detail provided to FTA at the time of grant review to determine allocable costs related to non-transit use for construction, maintenance, and operation costs.
- (3) Incidental Use. Any incidental use of project property will not exceed that permitted under applicable Federal laws, regulations, and directives. Incidental use requires prior FTA approval. Consult your FTA regional and metropolitan office prior to incorporating incidental use activities in projects. Incidental use will be permitted if:
  - (a) The incidental use does not interfere with the grantee's project or public transportation operations;
  - (b) The grantee fully recaptures all costs related to the incidental use from the non-transit public entity or private entity, including all applicable excise taxes on fuel for fueling facilities and wear and tear to capital improvements;
  - (c) The grantee uses revenues received from the incidental use, less the planning, capital, and operating expenses that were incurred to provide the public transportation; and
  - (d) Private entities pay all applicable excise taxes on fuel.
- f. Useful Life of Project Property. FTA provides a useful life policy for rolling stock, trolleys, ferries, and facilities. Where a useful life policy has not been defined by FTA, the grantee, in consultation with the FTA regional or metropolitan office shall "make the case" by identifying a useful life period for all capital assets over \$5,000 to be procured with Federal funds. In the grant application, the grantee shall propose and identify a useful life for the capital asset to be purchased with Federal funds. FTA approval of the grant represents FTA concurrence of the final determination of useful life for the purpose of project property acquisition. This in turn will identify the useful life of the Federal interest for the disposition of the project property in later years.

- (1) Determining useful life for project property. The grantee should identify the method used to determine the useful life. Acceptable methods to determine useful life include but are not limited to:
  - (a) Generally accepted accounting principles
  - (b) Independent evaluation
  - (c) Manufacturer's estimated useful-life
  - (d) Internal Revenue Service guidelines
  - (e) Industry standards
  - (f) Grantee experience
  - (g) The grantee's independent auditor who needs to concur that the useful life is reasonable for depreciation purposes
  - (h) Proven useful life developed at a Federal test facility.
  
- (2) Bus, Van, Trolley, and Rail Rolling Stock Useful Life Policy. Useful life of rolling stock begins on the date the vehicle is placed in normal revenue service and continues until it is removed from normal revenue service. The useful life in years refers to total time in normal revenue transit service, not time spent stockpiled or otherwise unavailable for regular transit use. It is recommended that grant applicants specify the expected useful life category in requests for bids when acquiring new vehicles. Minimum normal useful lives for buses, vans, trolleys and rail vehicles are determined by years of service or accumulation of miles whichever comes first as follows:
  - (a) Buses:
    - 1 Large, heavy-duty transit buses (approximately 35'-40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
    - 2 Medium-size, heavy-duty transit buses (approximately 30'): at least ten years or an accumulation of at least 350,000 miles.
    - 3 Medium-size, medium-duty transit buses (approximately 30'): at least seven years or an accumulation of at least 200,000 miles.
    - 4 Medium-size, light-duty transit buses (approximately 25'-35'): at least five years or an accumulation of at least 150,000 miles.

5 Other light-duty vehicles such as light-duty buses and regular and specialized vans, including all bus models exempt from testing in the most recent version of FTA C 9300.1, Chapter 3, Section 6 (c) (4); at least four years or an accumulation of at least 100,000 miles.

(b) Trolleys: The term “trolley” is often applied to a wide variety of vehicles. Thus, the useful life depends on the type of “trolley.” FTA classifies “trolleys” and the suggested useful life as described below. For disposition actions, FTA will use these minimum useful life:

1 A steel-wheeled “trolley” (streetcar or other light rail vehicle): at least 25 years.

2 An electric trolley-bus with rubber tires obtaining power from overhead catenary: at least 18 years.

3 Simulated trolleys, with rubber tires and internal combustion engine (often termed “trolley-replica buses”): please refer to bus useful life criteria above.

Rail Vehicles: At least Twenty-five years. A grantee that regularly measures lifespan by hours of operations, or by any other measure, may develop an appropriate methodology for converting its system to years of service. The reasonableness of such methodologies will be subject to examination, particularly if the grantee proposes to retire a rail vehicle before FTA’s service life requirement has expired.

(2) Ferries: The useful life of a ferry depends on several factors, including the type and use of the ferry. Until a final policy for ferries is determined, FTA recommends using one of the methods outlined in paragraph (1) above or offers the following suggested minimum service lives:

(a) Passenger Ferries: 25 years

(b) Other Ferries (without refurbishment): 30 years

(c) Other Ferries (with refurbishment): 60 years

(3) Facilities: Determining the useful life of a facility must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, and technological developments. As such, FTA establishes a range of 40–50 years for the minimum useful life of a facility. Based on any of methods identified in paragraph (1) above, a railroad or highway structure has a minimum useful life of 50 years, and most other buildings and facilities (concrete, steel, and frame construction) 40 years.

g. Rolling Stock Rebuilding Policies. FTA laws, regulations, policies and procedures allow the use of capital funds for vehicle rebuilding programs that meet the vehicle requirements in 49 CFR 571 and 49 CFR 38. Requirements for Bus and Rail fleets are summarized below:

- (1) Buses to be rebuilt should be at the end of the minimum normal service life and in need of major structural and/or mechanical rebuilding. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins. The eligibility of this major capital bus rebuild work is in addition to the eligibility of vehicle overhauls as described in paragraph h, Rolling Stock Overhauls below. Grantees should contact the regional or metropolitan office to determine the extent which the useful life of the bus is affected by the rebuild. The minimum extension of useful life is four years.
- (2) Rail cars to be rebuilt must have reached the end of its minimum normal service life (end-of-life rebuild). The minimum extension of useful life is ten years. The eligibility of this major capital rail rebuild work is in addition to the eligibility for vehicle overhauls as described in paragraph h, Rolling Stock Overhauls below.

Depending upon the extent of rebuilding planned, it may be subject to Americans with Disabilities Act (ADA) requirements. Rebuilding is also an eligible capital cost under the category of preventive maintenance.

- h. Rolling Stock Overhauls. Rolling stock overhauls are an eligible capital expense. This eligibility for capital assistance applies also to leasing and to contracted service. This eligibility is in addition to eligibility of rebuilding discussed above. Rolling stock to be overhauled must have an accumulated at least 40 percent of its service life.
- i. Rolling Stock Spare Ratio Policies. Spare ratios will be taken into account in the review of projects proposed to replace, rebuild, or acquire additional vehicles. Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage, e.g., 100 vehicles required and 20 spare vehicles is a 20 percent spare ratio.
- (1) Bus Fleet. The basis for determining a reasonable spare bus ratio takes local circumstances into account. The number of spare buses in the active fleet for grantees operating 50 or more fixed route revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum fixed route service.

For purposes of the spare ratio calculation, “vehicles operated in maximum fixed route service” is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak season of the year, on the week and day that maximum service is provided. It excludes atypical days and special events that do not accurately depict normal peak maximum service requirements. Whether vehicles are locally funded, FTA-funded, or the vehicles have exceeded their service life are not relevant

factors. Scheduled standby vehicles are permitted to be included as “vehicles operated in maximum service.”

Buses delivered for future expansion and buses that have been replaced, but are in the process of being disposed of, should be identified and separated from other spares because they unfairly inflate the spare ratio.

For each grant application identified to acquire vehicles, a grant applicant must address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced including information on age and mileage, and the applicant’s conformance with FTA’s spare ratio guideline. An applicant is required to notify FTA if the spare ratio computation on which the grant application is based is significantly altered prior to the grant award. A fleet status report must be submitted with each grant application to acquire rolling stock.

- (2) Rail Fleet. Because rail transit operations tend to be highly individualized, FTA has not established a specific number to serve as an acceptable spare ratio for rail transit operations. Nevertheless, rail operators should be aware that the grantees rail vehicle spare ratio and the rationale underlying that spare ratio will be examined during the triennial review whenever FTA assistance is used to purchase or rebuild rail vehicles.

The following guidance should be used to support an operator’s proposed rail vehicle spare ratio when the spare ratio is under review by FTA:

- (a) An operator of a rail system must have in its file available upon request by FTA a rail fleet management plan that addresses operating policies (level of service requirements, train failure definitions, and actions); peak vehicle requirements (service period and make-up, e.g., standby trains); maintenance and overhaul program (schedules, unscheduled, and overhaul); system and service expansions; rail car procurements and related schedules; and spare ratio justification.
- (b) Spare ratio justification should consider: average number of cars out of service for scheduled maintenance, unscheduled maintenance and overhaul program; allowance for ridership variation (historical data); ridership changes that affect car needs caused by expansion of system or services; contingency for destroyed cars; and car procurements for replacements and system expansions.
- (c) Cars delivered for future expansion and cars that have been replaced, but are in the process of being disposed of, should be identified and separated from other spares because they unfairly inflate the spare ratio.

- (d) Peak Vehicle Requirement includes “standby” trains that are scheduled, ready for service, and have a designated crew.
  - (e) Factors that may influence spare ratio are: equipment make-up (locomotive hauled trains; married pair units or single cars; equipment design, reliability and age); environmental conditions (weather, above ground or underground operation, loading and track layout); operational policies (standby trains, load factors, headways); maintenance policies (conditions for removing cars from service, maintenance during nights and weekends, and labor agreement conditions; and maintenance facilities and staff capabilities.
- (3) Contingency Fleet. FTA recognizes two types of vehicles—active and contingency. Revenue rolling stock stockpiled in a contingency fleet in preparation for emergencies must have met their minimum normal service life requirements and must be properly stored, maintained, and documented in a contingency plan. These vehicles are not included in the calculation of spare ratio. Contingency plans are subject to review during triennial reviews and other FTA oversight reviews. Any rolling stock not supported by a contingency plan will be considered part of the active fleet.
- j. Leases. The grantee must obtain FTA concurrence before leasing FTA-funded assets to others. The grantee agrees to comply with the requirements of 49 CFR Part 639 for all capital leases. Grantees should reference Circular A-94 for cost-effectiveness calculations and to obtain the most recent discount rate for the purpose of calculating the net present value of a future benefit.
- (1) Leasing FTA-funded Assets to Others for Transit Service. The grantee may enter into a contract for leasing its project property to a private operator (the lessee). Under this arrangement the grantee (the lessor) should include the following provisions in the proposed lease agreement:
- (a) The project property shall be operated by the lessee to serve the best interest and welfare of the project sponsor lessor and the public. The terms and conditions for operation of service imposed by the grantee shall be evidenced in a service agreement.
  - (b) The lessee shall maintain project property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the project sponsor. The project sponsor lessor and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the project property.
  - (c) The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.

- (2) Capital Lease. A capital lease is any transaction whereby the grantee acquires the right to use a capital asset usually for a period of three or more years without obtaining ownership of the capital asset. Based on standard FTA project management guidelines, grantees must maintain an inventory of assets acquired through capital leasing. Eligible lease costs include: finance charges including interest; ancillary costs such as delivery and installation charges; and maintenance costs. A lease may qualify for capital assistance if it meets the following criteria:
  - (a) The capital asset to be acquired by lease is eligible for capital assistance;
  - (b) There is or will be no existing Federal interest in the capital asset as of the date the lease will take effect; and
  - (c) Leasing the capital asset is more cost-effective than purchase or construction of the asset.
- (3) Cost Effectiveness. Grantees are encouraged to obtain FTA review of the cost-effectiveness determination prior to entering into any capital lease, or at any time the terms of the lease are modified. To qualify for an operating or capital lease, a grantee must:
  - (a) Make a written comparison of the cost of leasing the asset with the cost of purchasing or constructing the asset.
  - (b) Certify to FTA before entering into the lease or before receiving a grant, whichever is later, that obtaining the asset or operation function by lease is more cost-effective than purchase or construction of the asset or operation of the activity.
- (4) Calculation of Lease Cost. The estimated lease costs must be reasonable, based on realistic market conditions applicable to the grantee and must be expressed in present value terms. The lease cost of the asset or operations function is the cost to lease the asset or operations function for the same use and the same time period as that time specified in any purchase or construction documents or scope of any operations activity. The lease cost also includes any ancillary costs such as delivery and installation costs and it includes the net present value of the estimated future cost to provide any other service or benefit.
- (5) Calculation of Purchase/Construction Cost or Operations Cost. The purchase/construction or operations cost is the estimated costs for that activity plus ancillary costs such as delivery and installation costs plus the net present value of the estimated future cost to provide any other service or benefit for that activity. The estimated cost must be reasonable, based on realistic current market conditions and based on the expected useful life of the item to be utilized.

- k. Project Property Management. Rolling stock and equipment management procedures include the following minimum requirements:
- (1) Rail systems are required to submit a rail fleet management plan that addresses operating policies (level of service requirements, train failure definitions, and actions); peak vehicle requirements (service period and make-up, e.g. standby trains); maintenance and overhaul program (scheduled, unscheduled, and overhaul); system and service expansions; rail car procurements and related schedules; and spare ratio justification.
  - (2) A transit system with a fixed-guideway system must also submit a Bus Fleet Management Plan along with its PMP for approval of funding through the Section 5309 New Starts program. This requirement is applicable to all transit agencies that are expanding an existing fixed guideway system of planning a new fixed guideway system to be funded with section 5309 New Starts funding. This requirement is explained in detail in the most recent version of FTA Circular 5200.1, Full Funding Grant Agreement (FFGA) Guidance.
  - (3) Equipment records must be maintained by the grantee. Records must include a description of the asset, identification number, procurement source, acquisition date, cost, percentage of Federal participation in the cost, the grant project number under which it was procured, location, use and condition, useful life policy, and any disposition data, including the date of disposal and sale price, or, where applicable, method used to determine its fair market value. The grantee should also state who holds title to the rolling stock and equipment including rolling stock.
  - (4) A physical inventory of equipment must be taken and the results reconciled with equipment records at least once every two years. Any differences must be investigated to determine the cause of the difference.
  - (5) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of project property. Any loss, damage, or theft must be investigated and documented by the grantee.
  - (6) Adequate maintenance procedures must be developed and implemented to keep the project property in good condition. These procedures should be consistent with the maintenance plan required of grantees for equipment funded under 49 U.S.C. 5309 and 5307 and should be documented and available during an audit or triennial review.
  - (7) Warranty standards, when part of rolling stock and equipment contracts, should provide for correction of defective or unacceptable materials or workmanship. These should specify coverage and duration and meet currently available industry standards. General warranty incorporating industry standards and extended warranty are eligible capital costs. FTA's best practices manual encourages grantees to evaluate the cost of an extended warranty in an analysis separate from

the equipment's acquisition cost, in order to make a good business decision. Grantees are responsible for:

- (a) Establishing and maintaining a system for recording warranty claims. This system should provide information needed by the grantee on the extent and provisions of coverage and on claims processing procedures;
- (b) Identifying and diligently enforcing warranty system for recording warranty claims; and
- (c) Tagging or otherwise identifying property as Government property.

k. Disposition.

- (1) Replacement at End of Minimum Normal Useful Life. Project property to be replaced must have achieved at least the minimum normal useful life. For purposes of bus replacement project, the age of the bus to be replaced is its years of service or mileage at the time the proposed new bus is introduced into service. For purposes of a rail vehicle replacement project, the age of the vehicle to be replaced is its age at the time the new vehicle is introduced into service. A fleet status report must accompany a grant application for which funds are requested to replace vehicles. The fleet status report includes the following vehicle information: Peak Requirement, Spares and Spare Ratio for the active fleet, and buses pending disposal and others in the inactive fleet. Additional information that can be requested includes, Year, Make, Model, Vehicle Number, Vehicle Identification Number (VIN), Service Life Requirement, Date Placed in Revenue Service, Date Removed from Revenue Service, Mileage, Total Number of Vehicles, Total Number of Peak Vehicle Requirements, and Total Spare Vehicles. An example of a fleet status report is provided in Appendix D.
- (2) Disposition Before the End of Useful Life. Any disposition of project property before the end of its useful life requires prior FTA approval. FTA is entitled its share of the remaining Federal interest. The Federal interest is determined by calculating the fair market value of the project property immediately before the occurrence prompting the withdrawal of the project property from appropriate use. If project property is being removed from service before the end of its useful life, the Federal interest and the return to FTA is the greater of FTA's share of the unamortized value of the remaining service life per unit, based on straight line depreciation of the original purchase price, or the Federal share of the sales price (even though the unamortized value is \$5,000 or less). The following example is provided to determine the straight-line depreciation of a vehicle: For a 12-year minimum normal service life, the vehicle's value decreases each year by one-twelfth of its original purchase price. Similarly, the straight line depreciation of the original purchase price in the vehicle decreases each year by one-twelfth of the amount of the Federal participation that was awarded for its purchase.

- (3) Retain and Use Elsewhere. After the minimum useful life of project property is reached and is no longer needed for the original project or program, it may be used by the grantee for other transit projects or programs. FTA prior approval of this alternative is not required. FTA retains its interest.
- (4) Value Over \$5,000. After the service life of project property is reached, rolling stock and equipment with a current market value exceeding \$5,000 per unit, or unused supplies with a total aggregate fair market value of more than \$5,000, may be retained or sold. Reimbursement to FTA shall be an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sale proceeds, by the percentage of FTA's participation in the original grant. The grantee's transmittal letter should state whether the equipment will be retained or sold. Use of sales proceeds are discussed elsewhere in this chapter.
- (5) Less than \$5,000 value. After the service life of project property is reached, rolling stock and equipment with a unit market value of \$5,000 or less, or supplies with a total aggregate market value of \$5,000 or less, may be retained, sold or otherwise disposed of with no obligation to reimburse FTA. Records of this action must be retained.
- (6) Like-Kind Exchange Policy. With prior FTA approval, a vehicle may be traded in or sold before the end of its minimum normal service life, if a grantee so chooses. Moreover, a grantee may elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like kind. "Like-Kind" is defined as a bus for a bus with a similar service life and a rail vehicle for a rail vehicle. Under the like-kind exchange policy, proceeds from the vehicle sales are not returned to FTA; instead, all proceeds are re-invested in acquisition of the like-kind replacement vehicle. If sales proceeds are less than the amount of the Federal interest in the vehicle at the time it is being replaced, the grantee is responsible for providing the difference, along with the grantee's local share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the Federal interest of the vehicle traded in or sold, the investment of all proceeds in acquisition of the like-kind replacement vehicle results in reduction of the gross project cost.
- (7) Transfer of Rolling Stock—Grantee-to-Grantee. With prior FTA approval, a grantee may transfer rolling stock to another grantee. In such events, the Federal interest of the vehicles will be transferred and therefore there is no obligation to reimburse FTA. However, no additional FTA funds may be used to acquire the vehicles. Both grantees should coordinate with its FTA Regional Office and the following information should be submitted:
  - (a) A written request for approval to transfer/receive vehicles. The request should include the transferor/transferee grantee name, list of vehicles (year, make, model, date placed in revenue service, date removed from revenue service,

grant no. which originally funded the vehicle, mileage, remaining useful life, Federal share of remaining useful life, reasons for transfer.

- (b) A Board Resolution from each grantee. The transferring grantee's board resolution (or other appropriate legal action) should identify the receiving grantee, a statement that the vehicles are no longer required, a list of the vehicles to be transferred including VINs, and the remaining Federal interest that is transferred to the receiving grantee.

The receiving grantee's board resolution (or other appropriate legal action) should identify the transferring grantee, a statement that the vehicles are needed for revenue service, a list of the vehicles to be acquired including VINs, the remaining Federal interest for each vehicles, agreement that the vehicles will be maintained in accordance and in compliance with FTA requirements, and that the transferred vehicles will be included in its equipment inventory records.

- (c) A Fleet Status Report—Each grantee should provide a fleet status report that includes all information as identified in paragraph I. The fleet status report should reflect the impact that the transfer/addition of the vehicles will have on the grantee's total fleet and spare ratio.

If approved, the receiving grantee will be directed to include the transferred vehicles in its next grant application.

- (8) Transfer to Public Agency for Non-Transit Use [49 U.S.C. 5334(h)(1) through 5334(h)(3)]. With prior FTA approval, the grantee may follow procedures for publication in the Federal Register to transfer project property (including land or equipment) to a public agency with no repayment to FTA. Transfer to another public agency for non-transit use can be approved if FTA confirms:

- (a) the asset will remain in public use for at least five years after the date the asset is transferred;
- (b) there is no purpose eligible for assistance for which the asset should be used;
- (c) the overall benefit of allowing the transfer is greater than the FTA interest in liquidation and return of the FTA remaining Federal interest in the asset, after considering fair market value and other factors; and
- (d) through an appropriate screening or survey process, that there is no interest in acquiring the asset for the Federal government use if the asset is a facility or land.

Additional information regarding this type of disposition is available from the FTA regional or metropolitan office.

- (9) Sell and Use Proceeds for Other Capital Projects [49 U.S.C., 5334(h)(4)]. After the useful life is met and with prior FTA approval, the grantee may sell project property for which there is no longer any transit use and use the proceeds to reduce the gross project cost of other FTA eligible capital transit grants. The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital grant, and reduce the liability as the proceeds are applied to one or more FTA approved capital grants. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.
- (10) Unused Supplies. For the disposition of supplies for which there is no transit use with a total aggregate fair market value that exceeds \$5,000, the grantee shall compensate FTA for its share; or transfer the sales proceeds to reduce the gross project cost of other capital project(s). [49 U.S.C. 5334(h)(4)].
- (11) Casualty, Fire, Natural Disaster and Misused Property. When project property is lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. If any damage to project property results from abuse or misuse occurring with the grantee's knowledge and consent, the grantee agrees to restore the project property to its original condition or refund the value of the Federal interest in that property. The grantee may fulfill its obligations to remit the Federal interest by either:
- (a) With prior FTA approval, investing an amount equal to the remaining Federal interest in like-kind property is eligible for assistance, if the like-kind property is within the scope of the project that provided Federal assistance for the property prematurely withdrawn from use; or
  - (b) Returning to FTA an amount equal to the remaining Federal interest in the withdrawn project property.
- (12) Insurance Proceeds. If the grantee receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the grantee agrees to:
- (a) Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service (listed below are two examples of the application of insurance proceeds), or
  - (b) Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

The Federal interest is not dependent on the extent of insurance coverage or of the insurance adjustment received.

Application of Insurance Proceeds:

**Example 1:**

Insurance Proceeds **Greater than** the Remaining Federal Interest in the Damaged or Destroyed Property.

The remaining Federal interest in the damaged or destroyed property is \$1,800. The grantee receives insurance proceeds in the amount of \$2,500. The grantee is required to apply \$1,800 of the insurance proceeds towards the Federal share of replacing the destroyed property. The remaining insurance proceeds, \$700, may be applied towards the purchase cost of the replacement property or retained by the grantee.

Cost of replacement property:	\$5,000
Less Federal Share of Insurance Proceeds:	< 1,800 >
The remaining funds needed :	\$3,200

If the funding ratio for this property was 80 percent Federal and 20 percent local, the replacement property could be purchased for \$4,000 Federal/\$1,000 Local funds. The insurance proceeds of \$1,800 needed to cover the remaining federal interest in the damaged and destroyed property must be applied to the federal share of the replacement property. The grantee could use an additional \$2,200 in federal funds, and use the remaining \$700 of insurance proceeds as local match, plus an additional \$300 in other local match to replace the property.

**Example 2:**

Insurance Proceeds **Less than** the Remaining Federal Interest in the Damaged or Destroyed Property:

If the Federal interest in the damaged or destroyed property is \$1,800 and the grantee receives insurance proceeds in the amount of \$500, the grantee is required to apply the \$500 of insurance proceeds and \$1,300 of non-Federal funds to equal the remaining Federal interest, towards the cost of the replacement property.

Cost of replacement property:	\$5,000
Less: Insurance Proceeds:	\$500
Non-Federal Funds:	\$1,300
	<\$1,200>

The remaining funds needed: \$3,200

If the funding ratio for this property was 80 percent Federal and 20 percent local, the replacement property could be purchased for \$4,000 Federal/\$1,000 Local funds. The insurance proceeds of \$500 plus an additional \$1,300 in non-federal funds are needed to cover the remaining federal interest in the damaged and destroyed property must be applied to the federal share of the replacement property. These funds must be applied to the federal share of the replacement property. The grantee could use an additional \$2,200 in Federal funds, and an additional \$1,000 in other local match, to replace the.

1. Maintenance. The grantee agrees to maintain project property in good operating order and in compliance with any applicable Federal regulations or directives that may be issued, except to the extent that FTA determines otherwise in writing. The grantee agrees to keep satisfactory records pertaining to the use of project property, and to submit to FTA upon request such information as may be required to assure compliance with Federal requirements. The grantee is required to have a written vehicle maintenance plan and facility/equipment maintenance plan. These plans should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.
- m. Insurance. At a minimum, the grantee agrees to comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing. This includes the requirements of Section 102(a) of the Flood Disaster Protection Act of

1973, 42 U.S.C. Section 4012a(a), related to flood insurance provisions for any project activity involving construction or an acquisition having an insurable cost of \$10,000 or more.

4. DESIGN AND CONSTRUCTION; FACILITIES. Grantees are encouraged to consult FTA's website and the Construction Project Management Handbook for guidance on the development and management of construction projects.
  - a. Environmental Mitigation. Many Federal environmental statutes and Executive Orders establish requirements for transit projects that must be considered prior to FTA and the grantee taking any action that limits the choice of reasonable alternatives or that have an adverse environmental impact. FTA tends to refer to the multiplicity of Acts and Orders as the "NEPA Process." More specifically, NEPA is the National Environmental Policy Act (42 U.S.C. 4321). FTA's implementing procedures for environmental reviews (23 CFR Part 771) require that the environmental effects of proposed transit projects be documented and that environmental protection be considered before a decision can be made to proceed with a project. According to 49 U.S.C. Section 5324(b), FTA is required to take into account the economic, social, and environmental interests affected, and requires that alternatives be considered to avoid those effects. If there is no feasible and prudent alternative which avoids the adverse environmental effects, then all reasonable steps must be taken to minimize those effects. If effects can not be avoided or minimized they must be mitigated.

Measures to avoid or mitigate environmental harm are described in the environmental documents prepared for projects. These measures are developed jointly by FTA and the grantee to respond to State and local as well as Federal environmental requirements. The mitigation measures in final environmental documents are expressed as commitments on the part of the grantee which must be implemented if the project receives Federal funding. When a grant is made, the mitigation measures are incorporated by reference in the Grant Agreement for construction and become legally binding terms and conditions of the grant which cannot be withdrawn or substantively changed without FTA's approval.

The progress in implementing adopted mitigation measures is monitored by FTA regional staff through periodic project reviews, on-site inspections, and special meetings when necessary. The grantee has the responsibility to apprise FTA at the earliest possible time of any problems in implementing the adopted measures and any need for changes. Where mitigation options are being considered, FTA will maintain a role in the decision-making process to ensure continuing compliance with Department of Transportation (DOT) Regulation 23 CFR Part 771 implementing 49 U.S.C. Section 5324 (b).

Information about FTA's environmental review process is available through the FTA Regional Office.

- b. Project Management Plan. A written PMP is required by 49 U.S.C. Section 5327 for all major capital projects. Grantees are required to develop and implement a PMP for all major capital projects funded by FTA as part of the Project Management Oversight (PMO) Program. This plan covers a grantee's detailed project management strategy to control the project scope, budget, schedule, and quality (49 CFR Part 633). A major capital project is defined as a project that: 1) involves the construction of a new fixed guideway or extension of an existing fixed guideway; or 2) involves the rehabilitation or modernization of an existing fixed guideway with a total project cost in excess of \$100 million; or 3) FTA determines is a major capital project because the development of a PMP will benefit specifically the agency or the recipient. Typically, this means a project that: i) generally is expected to have a total project cost in excess of \$100 million or more to construct; (ii) is not exclusively for the routine acquisition, maintenance, or rehabilitation of vehicles or other rolling stock; (iii) involves new technology; (iv) is of a unique nature for the recipient; or (v) involves a recipient whose past experience indicates to the agency the appropriateness of the extension of the PMP requirement.

As a general rule, if the project meets the definition of major capital project, the grantee must submit the PMP during the grant application review process. FTA may also request that a PMP be submitted for other non-major capital projects as deemed appropriate. If FTA determines the project is major capital project after the grant has been approved or if FTA determines that a PMP be submitted for other non-major capital projects after the grant has been approved, FTA will inform the grantee of its determination and will require submission of the plan within 90 days.

c. Utility Relocation.

- (1) General. The construction of transit systems may require the relocation and/or rearrangement of privately and publicly owned utilities. These utilities include, but are not limited to, systems and physical plant for producing, transmitting, or distributing communications, electricity, gas, oil, crude oil products, water, steam, waste storm water, or other substances; publicly owned fire and police signal systems; and railroads and streets which directly or indirectly serve the public or any part thereof. Relocating and/or rearranging utilities and facilities necessary to accommodate an FTA-funded transit project may be considered an eligible expense as part of the project. Exceptions to this include those situations where State and local law expressly prohibit the financing of such by the public entity.
- (2) Eligibility for FTA Funding. In order to qualify for FTA funding, the grantee must execute an agreement for relocating or rearranging facilities with the entity responsible for the facilities prescribing the procedures for the relocation and/or rearrangement of the facilities for the purpose of accommodating the construction of the FTA funded project. Prior FTA approval is not required in reaching a utility relocation agreement.

- (3) Utility Relocation Agreement. These agreements are distinguishable from third party contracts in that:

Only actual allowable, allocable, and reasonable costs are reimbursable. Where the work is to be performed by the public utility's forces, no profit is allowed; and reimbursement is limited to the amount necessary to relocate and/or rearrange the facilities to affect a condition equal to the existing utility facilities. Generally, reimbursement would not provide for greater capacity, capability, durability, efficiency or function, or other betterments or enhancements to the existing utility system, except for meeting current State and local codes. Indirect costs of governmental entities incurred under a utility relocation agreement are eligible for FTA reimbursement only in accordance with an approved Cost Allocation Plan as prescribed in Office of Management and Budget (OMB) Circular A-87.

- d. Force Account. Force account is work other than grant or project administration that is included in an approved grant and performed by a grantee's own labor forces. Force account work may consist of design, construction, refurbishment, inspection, and construction management activities, if eligible for reimbursement under the grant. Incremental labor costs from flagging protection, service diversions, or other activities directly related to the capital grant may also be defined as force account work. Force account work does not include grant or project administration activities which are otherwise direct project costs. Force account also does not include work on rolling stock which is not a major capital project. An example of this is maintenance activities.

One of four conditions may warrant the use of a grantee's own labor forces. These are: (1) cost savings, (2) exclusive expertise, (3) safety and efficiency of operations, and (4) union agreement.

FTA prior review of a force account plan and justification are required where the total estimated cost of force account work to be performed under the grant is greater than \$10,000,000. When work to be performed is less than \$10,000,000 but over \$100,000, a force account plan is required to be in the grantee's file, but does not require prior FTA approval. When work to be performed using force account is less than \$100,000 a detailed plan is not required.

- (1) Basis for Reimbursement. Reimbursement for force account work is subject to the grantee providing the following:
- (a) Justification for using grantee forces;
  - (b) Preparation of a force account plan;
  - (c) A description of the Scope of Work;
  - (d) A copy of the construction plans and specifications which includes:

- 1 A detailed estimate of costs;
  - 2 A detailed schedule and budget; and
  - 3 A copy of the proposed Cooperative Agreement when another public agency is involved.
- (e) Submit documentation equivalent to a sole source justification stating the basis for a determination that no private sector contractor has the expertise to perform the work. In addition, the required documentation must provide the basis for the grantee decision to use force account labor including the following information;
- (f) Provide the present worth of the estimated cash drawdown for both the force account and private sector contract options. In the analysis, use the current interest rate paid on one-year Treasury Bills as the discount rate;
- (g) Include the cost of preparing documents; cost of administration and inspection; cost of labor, materials and specialized equipment; cost of overhead; and profit for private contract;
- (h) Include the unit prices for labor, materials and equipment; overhead; and profit, if applicable for private contract;
- (i) Provide certification that costs presented are fair and reasonable;
- (j) Provide an analysis of force account labor availability, considering normal operations and maintenance activities as well as other programmed and existing capital projects. This must be consistent with costs of labor, material, and specialized equipment; and
- (k) Provide relevant citations from labor union agreements and an analysis of how it pertains to the work in question.

Base the present value calculation on the midpoint of construction; and if the time for completion of the work differs for force account and a private sector contract, include an estimate of the cost of not using the completed improvement in the present worth calculation. For example, if the work is to replace leased facilities, the cost of continuing the lease until the work is complete should be taken into account in the cost estimate for each option considered.

Safety considerations may be addressed by a statement of the transit operator's safety officer that performing the work with private sector contractors would have an adverse effect on public safety. Efficiency concerns may be addressed by a present worth calculation, including an estimate of the value of lost transit operation efficiency.

Special care must be taken to ensure that requirements of OMB Circular A-87 are followed, especially for charging expendable property to force account projects and making sure that allowable costs are assigned to the correct activity codes.

Most general purpose equipment and tools can be used in force account work and thereby benefit more than one project. Therefore, the cost of these items normally should not be treated as a direct charge to the project. However, an appropriate use or depreciation charge is an allowable indirect cost if otherwise provided for in the project budget. Unusual circumstances may call for purchase of specialized equipment that is unique to the force account work that is being performed. If such equipment is required, prior FTA approval must be obtained. The usual FTA equipment disposition requirements apply.

The progress and status of force account activities should be separately discussed in milestone/project reports, with emphasis on schedule and budget.

- e. Seismic Standards & Reporting. New federally-funded buildings, and additions to existing buildings and bridges, built with Federal assistance must be designed and constructed in accordance with State, local, and industry required standards or codes. The applicant is responsible for determining before accepting delivery that the building complies with the seismic design and construction requirements and certifies to the same through the annual Certifications and Assurances, as required by 49 CFR Part 41.
- f. Value Engineering. Value Engineering (VE) is the systematic, multi-disciplined approach designed to optimize the value of each dollar spent. To accomplish this goal, a team of architects/engineers identifies, analyzes, and establishes a value for a function of an item or system. The objective of VE is to satisfy the required function at the lowest total costs (capital, operating, and maintenance) over the life of a project consistent with the requirements of performance, reliability, maintainability, safety, and esthetics.
  - (1) Applicability.
    - (a) Major Capital Projects. It is FTA policy to require VE on major capital projects, and encourage the application of VE techniques to all construction projects. A major capital project is usually identified during the grant review application process. (See Chapter IV, paragraph 4.b, PMP for definition of major capital project.)
    - (b) Non-Major Capital Projects. Grantees are encouraged to conduct VE on all construction projects including but not limited to bus maintenance and storage facilities, intermodal facilities, transfer facilities, revenue railcar acquisition and rehabilitation, and offices, with the level of VE study to be commensurate with the size of the project.

- (2) Timing. VE on a project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering (PE) or at 30 percent of design. Some large or complex projects may need to conduct two VE studies.
  - (3) Reporting. Grantees with major capital projects are required to submit a VE report to the appropriate FTA Regional Office at the end of each Federal fiscal year indicating the results of their VE efforts. Copies of the VE report form are available in each regional office.
- g. Constructability and Design Peer Reviews. Peer review is a process used by the grantee in the planning, design and implementation of capital projects. The concept of peer review can be applied to any problem or situation where a second opinion can be useful to decision makers. FTA encourages the grantee to confer with other transit operations and maintenance experts in order to benefit from their experience. These reviews have been used to review rail extensions, New Starts projects, and transit facilities. These reviews have provided an in-depth critique of designs at the preliminary and final engineering stages. They have provided operations and maintenance information with respect to a variety of subsystems and have validated the process used by a grantee's planning staff to locate bus facilities. The purpose of constructability and design peer reviews is to improve the performance of the process or product being reviewed and optimize the design and subsequent construction of the project. The review should be able to answer such questions as: Can this be constructed? Is there a better process that could be employed to achieve the desired results? Is the product safe? Although the grantee is encouraged to conduct peer reviews with all capital projects, in some instances it may be required by FTA and the process should be fully documented through the recipient's document control process.
- h. Crime Prevention and Security Review. Grantees are encouraged to refine and develop security and emergency response plans and implement projects aimed at detecting chemical and biological agents in public transportation. Emergency response drills should be conducted with public transportation agencies and fully coordinated with local first response agencies. Other security training should be provided for public transportation employees that will serve to better prepare an agency during an emergency. Grantees are encouraged to perform crime prevention reviews during the design phase of all FTA funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should serve to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of review should be commensurate with the project size and scope. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the grantee and be available for FTA review upon request.

- i. Concurrent Non-Project Activities. Concurrent Non-Project Activities, also known as betterments are improvements to the transit project desired by the grant recipient that are not part of the base functioning of the Federal transit project. They are not integral to the base functioning of the transit project and are viewed as enhancements or upgrades to a level beyond what is normally required for the base functioning of the transit project. Examples of betterments include; increased utility pipe sizes, road widening projects for local reasons, environmental mitigation measures not identified in an environmental document, increased landscaping, signal upgrades beyond the base requirements of the transit project, etc. Costs for Concurrent Non-Project Activities are to be paid for by the grantee. Guidance should be obtained from the FTA Regional Office related to any overbuild situation to determine the Federal eligibility of such an activity. An example of an over-build situation is over-designing the foundation and base stories of a multi-story facility in order to better accommodate future vertical expansion of the project. Outside of a joint development project, such an over-build is generally not an allowable grant cost.
- j. FTA Technical Review. The grantee agrees to permit FTA to review and approve, as deemed necessary by FTA, the technical plans and specifications and requirements to the extent FTA believes necessary to ensure proper management and incorporation of FTA requirements.
- k. Construction Oversight. The grantee agrees to comply with any FTA request pertaining to its review of construction plans and specifications. The FTA Regional Office should be consulted to determine if FTA review and approval of construction plans and specifications is necessary to advance the project to the next level of design. The grantee agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications and that the intent of the scope of the project is carried out. To the extent applicable, the grantee agrees to comply with FTA Regulations, Project Management Oversight (PMO), 49 CFR Part 633, and any subsequent PMO regulations FTA may issue.
- l. Energy Conservation. The grantee agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. Section 6321 et seq. The grantee, to the extent applicable, agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 622, Subpart C. FTA assistance for the construction, reconstruction, or modification of buildings for which applications are submitted to FTA will be approved only after the completion of an energy assessment. An energy assessment shall consist of an analysis of the total energy requirements of a building, within the scope of the proposed construction activity and at a level commensurate with the project size and scope. The Energy Assessment should consider: overall design of the facility or modification; materials and techniques used in construction or rehabilitation; special

innovative conservation features that may be used; fuel requirements for heating, cooling, and operations essential to the function of the structure; projected over the life of the facility and including projected costs of this fuel; and energy to be used.

- m. Intelligent Transportation System (ITS). Grantees that have transportation projects that include ITS must be participants in a regional or statewide ITS Architecture process and their ITS projects must be included in the locally approved Regional ITS Architecture. Grantees are required to use a Systems Engineering process for the development of ITS projects.

## CHAPTER V

### FTA OVERSIGHT

1. GENERAL. The Federal Transit Administration (FTA) evaluates grantee adherence to grant administration requirements through a comprehensive oversight program. FTA's Master Agreement, which grantees and FTA sign, specifies these requirements. FTA determines compliance through self-certification and/or site visits. On an annual basis, FTA also completes the Grantee Oversight Assessment Questionnaire which serves as the basic document in FTA's Oversight Program. The purpose of the questionnaire is to assess each grantees need for oversight and the grantee's level of potential non-compliance with FTA requirements. The outcome serves as the primary basis for developing regional oversight plans and for allocating oversight resources among FTA regions for the upcoming fiscal year, which may include oversight reviews, regional meetings, and/or regional site visits.

FTA oversight reviews are categorized by general, program-specific, and project specific. The general reviews are the Triennial Reviews of grantees receiving Section 5307 Urbanized Area Formula Grants and the State Management Reviews of grantees receiving Section 5311 Non-Urbanized Area Formula Grants and Section 5310 Elderly Individuals and Individuals with Disabilities Programs. Program-specific reviews assess grantees compliance in a particular program, such as Financial Management Systems, Procurement, Civil Rights, or Safety and Security. Project level oversight includes the assignment of a Project Management Oversight (PMO) consultant and is frequently applied to major capital projects and/or projects participating in the New Starts Program.

FTA may conduct on-site inspections of projects to evaluate the grantee's effectiveness in implementing the project in conformance with the Grant Agreement. Inspection visits may be made, for example, to follow up on information received from the grantee about an event with significant impact on a project, or to determine whether the grantee has adequately complied with civil rights laws, regulations, and agreements. Inspection and concurrence by FTA in project work does not relieve the grantee of its responsibilities and liabilities as the responsible party for carrying out the grant.

2. GENERAL REVIEWS.
  - a. Triennial Review. FTA is required by law to perform reviews and evaluations of Urbanized Area Formula Program (Section 5307) grantees to evaluate formula grant management performance and grantee compliance with current FTA requirements. The reviews must be conducted for each formula grant recipient at least once every three years and integrated into FTA's grant management functions. The reviews are conducted by teams formed by FTA staff and outside contractors following an annual work program. Desk reviews are followed by a site visit. The team documents its findings and recommendations in a draft triennial review report, which is furnished to

the grantee for comment before it is released in final form to interested local, State and Federal officials.

When appropriate, corrective actions are recommended to resolve grantees' program management deficiencies. FTA monitors the grantee's actions until compliance with all program requirements is achieved. If needed, FTA can invoke sanctions to assure that grantees act to correct any noted program deficiencies.

- b. State Management Review. The State Management Review assesses a State's implementation and management of the Elderly Individuals and Individuals with Disabilities (Section 5310) and the Nonurbanized Area Formula Programs (Section 5311) to ensure they adhere to FTA requirements and meet program objectives. For more information on these programs, please reference the latest version of FTA Circulars 9040.1. and 9070.1.

### 3. PROGRAM-SPECIFIC REVIEWS.

- a. Financial Management Oversight (FMO) Program. Under the FMO program FTA conducts several types of reviews:
  - (1) The Full Scope Financial Management System (Full Scope) review requires FMO contractors to conduct a series of interviews, full transaction review, and appropriate substantive tests. The contractors determine that the grantee's financial management system meets the requirements of the Common Rule (49 CFR Part 18.20). The contractors then express an objective, external, independent, professional opinion to FTA, in accordance with established public accounting standards, on the effectiveness of the grantees internal control environment. An average review takes three to four weeks at the grantee's site;
  - (2) Follow-up reviews are primarily performed to ensure those recommendations resulting from full scope reviews are implemented and working properly. If FTA conducts this type of review, it will normally occur between 12–18 month after the full scope review;
  - (3) Financial Capacity Assessment (FCA) of selected grantees involved in major capital investment projects. This type of review assesses the financial capability of grantees to meet Full Funding Grant Agreement (FFGA) obligations and maintain their existing and planned transit operation. In cases where projects have progressed into construction, the contractors evaluate the financial capacity of grantees to complete the undertaking according to the terms, conditions, budgets, schedules, and commitments in the FFGA or as proposed in a Recovery Plan. Financial Capacity Assessments analyze plans to mitigate the risks associated with:
    - (a) provision of the required local share,

- (b) the ability to complete the project on schedule in the face of delayed or reduced Congressional appropriations, unanticipated conditions, or budget overruns, and
  - (c) the ability to operate and maintain the existing system, as well as the project, and
  - (4) On a case-by-case basis, FTA conducts special analyses or special reviews related to grantees' financial management issues.
- b. Procurement Reviews. Conduct of procurement system reviews of FTA grantees involves a site visit to ensure that the requirements and standards of the Common Rule on administrative requirements for grants, 49 CFR Part 18.36 and the most recent version of FTA C 4220.1 as it specifically applies to procurements, are met.
- c. Civil Rights Reviews. Civil rights compliance is required by recipients and subrecipients of Federal assistance. FTA's Master Agreement specifies that compliance is required, and sets forth the terms and conditions governing the administration of a transit project or projects supported with FTA financial assistance. FTA grantees should be aware, however, that they may be subject to civil rights requirements established and enforced by other Federal agencies that may not recognize the FTA Master Agreement as dispositive of their responsibilities. FTA retains the right to review grantee compliance status at any time during the life of the project. Civil Rights reviews include Title VI, Disadvantaged Business Enterprise, Stop announcements and Paratransit compliance.
- d. Safety and Security Reviews:
- (1) Drug and Alcohol Program. To support compliance with Department of Transportation (DOT) Drug and Alcohol requirements, FTA conducts audits to assess grantee and State implementation of 49 CFR Part 655. Based on data collected and analyzed from the Drug and Alcohol Management Information System (DAMIS), FTA monitors industry drug and alcohol testing rates and results. FTA assigns its own staff, plus contractor support, to audit grantees' drug and alcohol testing programs. These audits are scheduled based on analysis of DAMIS information and requests from FTA regional and metropolitan offices and grantees. These audits provide in-depth reviews of grantee and State programs, and include detailed examination of records and interviews with appropriate grantee personnel and their contractors and service agents, such as collection sites, medical review officers, substance abuse professionals and third party administrators. FTA manages this program using a Web-based auditing and reporting system.
  - (2) Security and Emergency Management Technical Assistance Reviews. In partnership with the Department of Homeland Security, Transportation Security Administration and the Federal Emergency Management Agency, National

Preparedness Directorate, FTA may provide on-site technical assistance and reviews to assess grantee activities to enhance the personal security of passengers and employees and to support core emergency response capabilities. FTA also coordinates with the Department of Homeland Security regarding reviews they conduct at grantees.

- (a) FTA Safety Oversight Audit Program. According to 49 CFR Part 659.7, FTA is required to monitor and evaluate compliance with FTA's State Safety Oversight Rule (49 CFR Part 659). FTA conducts triennial audits of each State designated to implement FTA's State Safety Oversight Rule for the rail transit agencies operating in its jurisdiction. For each audit, FTA assigns its own staff, plus contractor support, to review each State's program. These audits are scheduled based on analysis of annual reporting information provided by the States and requests from FTA regional and metropolitan offices. These audits provide in-depth reviews of each State's program, and include detailed examination of records and interviews with appropriate personnel and their contractors, at both the State Oversight Agency and the regulated rail transit agencies. The audits also provide a forum to recommend improvements to the effectiveness of the oversight program established by each State.
- (b) FTA Voluntary Bus Transit Safety and Security Reviews. To implement the terms of the Memorandum of Agreement (MOU) signed by FTA, the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA), FTA conducts voluntary safety and security reviews at bus agencies throughout the country. These reviews assess each bus agency's safety and security activities against FTA's technical assistance baseline, and provide recommendations, effective practices, and model materials to support improvements in critical safety and security functions.
- (c) Safety and Security Management Plan Review. In Circular 5800.1, Safety and Security Management for Major Capital Projects, FTA explains its safety and security requirements for major capital projects. FTA requires grantees with projects covered under 49 CFR 633 to develop a Safety and Security Management Plan (SSMP), as a chapter or plan within the Project Management Plan (PMP). Before approving each PMP, FTA reviews the SSMP submission, and conducts site assessments at grantees that include records review, interviews, and on-site observation. This review must be completed before FTA can approve a grantee's PMP.

4. PROJECT LEVEL REVIEWS.

- a. Project Management Oversight (PMO). FTA conducts PMO for major capital projects, using its own staff or a combination of FTA and contractor staff. For general guidance, grantees are required to provide all needed information about each project selected for this oversight. PMO begins as early in project implementation as practical, usually during the preliminary engineering process. FTA may assign its own or contractor staff to provide special oversight or monitoring of major construction or equipment acquisition projects. Contractor staff is generally used for major projects.
- b. Financial Capacity. FTA conducts these reviews during the New Starts evaluation process and includes the results in the Annual Report on Funding Recommendations.
- c. Quarterly Project Management Meetings. Quarterly project management meetings may be instituted with selected grantees. These meetings will provide a forum for management briefings, status/progress reports, discussion of accomplishments and problems, and, as appropriate, an opportunity for site inspection. The quarterly meetings do not replace quarterly written reports unless a specific exemption is granted by FTA.
- d. Other Project Management Meetings. Other project management meetings may be instituted with select grantees on other times intervals at the discretion of the Regional Office. These meetings will provide a forum for management briefings, status/progress reports, discussion of accomplishments and problems and, as appropriate, an opportunity for site inspection. The quarterly meetings do not replace quarterly written reports unless a specific exemption is granted by FTA.

**This page intentionally left blank**

## CHAPTER VI

### FINANCIAL MANAGEMENT

1. GENERAL. In this chapter we discuss the proper use and management of Federal funds the Federal Transit Administration (FTA) expects from its grantees. Financial management is one of the most important practices in the management of Federal funds.

2. INTERNAL CONTROLS.

- a. Definition. Internal controls are the organization plan, methods, and procedures adopted by the grantee to insure that effective control and accountability is maintained for all grant and subgrants, cash, real and personal property, and other assets. Grantees and subgrantees must ensure that resources are properly used and safeguarded, and that they are used solely for authorized purposes.
- b. General. FTA payments to a grantee are made electronically to meet the Federal share of eligible expenses under a grant.

The grantee's acceptance of an FTA grant obligates the grantee to use funds it receives as specified in the Grant Agreement. This creates a vested interest by the Federal Government in unused grant balances, any improperly applied funds and property, or facilities purchased or otherwise acquired under the grant whether funds are received by the grantee as an advance or by reimbursement.

Grantees and subgrantees are responsible for establishing and maintaining adequate internal control over all their functions that affect implementation of a grant.

For proper management of grants, these controls must be used by each grantee in all its operating, accounting, financial, and administrative systems. To assure proper accountability for grant funds, internal controls must be integrated with the management systems used by the grantee to regulate and guide its operations.

- c. Objectives. Resources must be used in accordance with applicable State, local, and Federal laws, regulations and policies, and the grant assistance agreement. Resources must be safeguarded against waste, loss, and misuse. Reliable data on resource use and safeguards must be accumulated, maintained and fairly disclosed in reports to grantee management and FTA. A proper system of internal controls will help the grantee to:
  - (1) Operate efficiently and economically;
  - (2) Keep obligations and costs within the limits of authorizations and legal requirements, consistent with accomplishing the purpose of the grant;
  - (3) Safeguard assets against waste, loss, and misuse;

- (4) Ensure timely collection and proper accounting of the grantee's operating and other revenues; and
  - (5) Assure accuracy and reliability in financial, statistical, and other reports.
- d. Necessary Elements. Certain elements are necessary to achieve these objectives and meet the standards discussed later in this chapter. Each facilitates the grantee's use of internal controls. These are:
- (1) Reasonable assurance that internal controls are an integral part of the grantee's management systems;
  - (2) Existence of a positive and supportive attitude among grantee managers and employees;
  - (3) Assignment of internal control functions to competent and experienced employees;
  - (4) Identification of specific internal control objectives to assure that needs are identified and that valid controls are planned and implemented;
  - (5) Adoption of internal control policies, plans and procedures that reasonably assure their effectiveness, such as organizational separation of duties and physical arrangements such as locks and fire alarms; and
  - (6) The grantee should conduct regular program of testing to identify vulnerabilities in the internal control system.
- e. Standards of Internal Control and Audit Resolutions.
- (1) General.
    - (a) Grantee management policies that govern grant implementation must be clearly stated, understood throughout the organization and conform to applicable legislative and administrative requirements.
    - (b) The grantee's formal organization structure must clearly define, assign, and delegate appropriate authority for all duties.
    - (c) Responsibility for duties and functions must be segregated within the organization to assure that adequate internal checks and balances exist. Grantees should pay particular attention to authorization, performance, recording, inventory control, and review functions to reduce the opportunity for unauthorized or fraudulent acts.
    - (d) A system of organizational planning should exist to determine financial, property, and personnel resource needs.

- (e) Written operating procedures should be simply stated, yet meet the grantee's operating, legal, and regulatory requirements. In developing its procedures, the grantee should consider such factors as feasibility, cost, risk of loss or error, and availability of suitable personnel. Other important considerations are the prevention of illegal or unauthorized transactions or acts.
  - (f) The grantee's information system must reliably provide needed operating and financial data for decision-making and performance review.
  - (g) Proper supervision must be provided and performance must be subject to review of an effective internal audit program.
  - (h) All personnel must be properly qualified for their assigned responsibilities, duties, and functions. Education, training, experience, competence, and integrity should be considered in assigning work. All must be held fully accountable for the proper discharge of their assignments.
  - (i) Expenditures must be controlled so that construction, equipment, goods, and services are acquired and received as contracted for (as to quality, quantity, prices, and time of delivery). Authorizations for expenditures must conform to applicable statutes, regulations, and policies.
  - (j) All real property, equipment, expendables, and funds must be safeguarded to prevent misuse, misappropriation, waste, or unwarranted deterioration or destruction.
- (2) Internal Control Self-Assessment. Grantees should evaluate its internal control and financial management systems to ensure that it has effective internal controls and financial management systems. To assist with the evaluation, FTA has established an Internal Control Self-Assessment Form. The form is designed to provide transit agency management staff with the information necessary to evaluate the agency's internal control and financial management system. The form is based on the criteria for effective internal control as set forth in Internal Control—Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Committee (the COSO Report), as well as the criteria for effective financial management systems established by FTA, based on 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (the "Common Rule"). Grantees may access this form at the following website:  
[http://www.fta.dot.gov/documents/FTA Internal Control Self-Assessment Tool.pdf](http://www.fta.dot.gov/documents/FTA_Internal_Control_Self-Assessment_Tool.pdf).
- (3) Financial Management Systems.
- (a) States: A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds.

Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:

- 1 Permit preparation of reports required by the Common Rule, 49 CFR Part 18 and the statutes authorizing the grant, and
- 2 Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) Entities other than a State: The financial management systems of other grantees and subgrantees must meet the following standards:

- 1 Financial Reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with financial reporting.
- 2 Accounting Records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- 3 Internal Control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- 4 Budget Control. Actual expenditure or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If the unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- 5 Allowable Cost. Applicable Office of Management and Budget (OMB) cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in allowability and allocability of costs.
- 6 Source Documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract, and subgrant award documents.

- 7 Cash Management. Procedures for minimizing the time elapsing been the transfer of funds from the Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees. Payment received from FTA must be disbursed within three business days. If not disbursed within three days, funds become excess funds and must be returned to FTA.
3. LOCAL MATCH. The grantee agrees to provide sufficient funds or approved in-kind resources to serve as local match for all federally-assisted projects in compliance with 49 U.S.C. Chapter 53. The grantee certifies that it has or will have available the proportionate amount of local share promptly as project costs are incurred or become due, except to the extent that the Federal Government determines in writing that the local share may be deferred.
4. FINANCIAL PLAN. Upon request from FTA, the grantee agrees to provide a financial plan delineating the source of local share, the amounts applicable to the different sources, and the timeframe for acquisition of local share. (See Category 15 in Annual Certifications and Assurances.) Grantees shall have multi-year financial plans (three to five years) that project operating and capital revenues and expenses. The financial plans should indicate adequate revenues to maintain and operate the existing system and to complete the annual program of projects (POP). If grantees are involved in a New Starts project, the financial plan must have a 20-year horizon.
5. GENERAL PRINCIPLES FOR DETERMINING ALLOWABLE COSTS.

  - a. General. Grantees must follow the guidelines contained in the applicable OMB Cost Principles Circulars in determining whether project costs are allowable or unallowable. OMB Circular A-87 establishes principles and standards for determining costs applicable to grant, contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments.

Project costs must specifically relate to the purpose of the grant contract and the latest approved project budget. Grantees may incur costs of both a direct and indirect nature. Direct costs are costs that can be identified specifically with a particular cost objective. These costs may be charged directly to a grant, contracts, or to other programs against which costs are finally lodged. All direct costs, even for project administration activities, must be adequately supported with proper documentation. For example, all

labor charges must be supported with time and attendance (T&A) records. Indirect costs must be supported by an approved Cost Allocation Plan and/or Indirect Cost Rate Proposal.

Care must be exercised when incurring costs to ensure that all expenditures meet the criteria of eligible costs. Failure to exercise proper discretion may result in expenditures for which use of project funds cannot be authorized.

- b. Allowable Costs. The criteria that govern the eligibility of project costs are listed below. These criteria are drawn from OMB Circular A-87. To be allowable under a grant program, costs must meet the following general criteria:
- (1) Be necessary and reasonable for proper and efficient administration of the grant program, be allowable under the principles contained in the OMB circulars and except as specifically provided in this circular, not be general expenses required to carry out the overall responsibilities of State or local governments;
  - (2) Be authorized or not prohibited under State or local laws or regulations;
  - (3) Conform to any limitation or exclusions set forth in the principles, Federal laws, or other governing limitations as to types or amounts of cost items;
  - (4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally-assisted and other activities of the unit of government of which recipient is a part;
  - (5) Be treated consistently. A cost may not be assigned to a Federal grant as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal grant as an indirect cost;
  - (6) Be determined in accordance with generally accepted accounting principles (GAAP) appropriate to the circumstances;
  - (7) Not be allocable to or included as a cost of any other federally-financed program in either current or prior periods;
  - (8) Be net of all applicable credits;
  - (9) Be adequately documented, and
  - (10) Not be incurred prior to grant award unless specifically provided for in a Letter of No Prejudice (LONP) or equivalent document approved by FTA, or in the pre-award authority as described in the Federal Register listing of the Annual Apportionments.
- c. Disallowed Costs. In determining the amount of Federal assistance FTA will provide, FTA will exclude:

- (1) Any project costs incurred by the grantee prior to the date of either the approved grant or the approved project budget (whichever is earlier), unless specifically provided for in a LONP or equivalent document approved by FTA, or in the pre-award authority as described in the Federal Register listing of the Annual Apportionments; and
- (2) Any costs attributable to goods or services received under a contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by FTA.

The grantee agrees that reimbursement of any cost in accordance with indicated payment methods for an approved grant or cooperative agreement does not constitute a final FTA decision about the allowability of that cost and does not constitute a waiver of any violation by the grantee of the terms of approved grant or cooperative agreement. If the government determines that the grantee is not entitled to receive any part of the Federal funds requested, the government will notify the grantee stating the reasons. Project closeout will not alter the recipient's obligation to return any funds due to FTA as a result of later refunds, corrections, or other transactions. Nor will project closeout alter FTA's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by law, FTA may offset any Federal assistance funds to be made available under a grant necessary to satisfy any outstanding monetary claims that FTA may have against the grantee. Exceptions pertaining to disallowed costs are set forth in FTA directives or in other written Federal guidance.

## 6. INDIRECT COSTS.

- a. General. OMB Circular A-87, "Cost Principles for State and Local Governments," requires grantees who intend to seek payment for indirect costs to prepare a Cost Allocation Plan or an Indirect Cost Rate Proposal. Cost Allocation Plans and/or Indirect Cost Rate Proposals must be approved by FTA or another cognizant Federal agency.
- b. Definitions. Indirect costs, as defined in OMB Circular A-87, are costs that are:
  - (1) Incurred for a common or joint purpose benefiting more than one cost objective;
  - (2) Not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved; and
  - (3) Originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities to the grantee department.

Examples of indirect costs are administrative, operational and expenses of unit heads and their immediate staff. Principles and standards for determining costs applicable to grants and contracts with grantees or other State or local agencies are

presented in OMB Circular A-87, and the appropriate Department of Health and Human Services (DHHS) publication, ASMB C-10.

- c. Cognizant Federal Agency. Cognizance is generally assigned to the Federal agency that provides the predominant amount of dollar involvement with a grantee organization within a given State or locality. (OMB has assigned cognizant audit agencies for State and local governments—Federal Register, 1-06-86.) In those cases where a grant recipient is not assigned a cognizant agency, these grantees will be under the general oversight of the Federal agency that provides them the most funds; which will also be identified as the “lead” Federal agency.
- d. Types of Plans. There are two types of cost plans presented in OMB Circular A-87.
- (1) The first type of plan covers a Cost Allocation Plan that distributes the costs of a State/local government’s executive and central level support functions to those operating organizations (usually at a lower tier level) within the government which benefit from them. These documents are also referred to as a Statewide or local-wide cost allocation plans (SWCAPs/LWCAPs). All SWCAPs must be submitted annually to DHHS for approval. DHHS is the cognizant agency for all States. Similarly, the LWCAPs of designated major cities and counties must also be submitted annually to DHHS or to another Federal cognizant agency. The costs approved under these plans may, at the option of the State or local government, be incorporated in the Indirect Cost Rate Proposals of a grantee agency within the government.
  - (2) The second type of plan covers an Indirect Cost Rate Proposal which is a financial document that is updated annually, at the operating agency level, which distributes the administrative support and/or overhead costs of that agency to the programs (and the grants and contracts) which benefit from them. An Indirect Cost Rate Proposal may include the allocable portion of State or local central service costs approved in the SWCAP/LWCAP.

As required by OMB Circular A-87, DHHS has issued an implementing guide for State, local, and Indian tribal governments. The guide, ASMB C-10, is intended to assist in applying OMB Circular A-87, which provides principles and standards for determining costs applicable to Federal grants and contracts. The procedures in the guide are applicable to grants and contracts awarded by all Federal agencies and have been developed in coordination with the Office of Management and Budget. This document can be ordered from the Government Printing Office (GPO), Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, 202-512-1800, or, on the DHHS website at:  
<http://rates.psc.gov/fms/dca/asmb%20c-10.pdf>.

Refer to Appendix E regarding additional information on Cost Allocation Plan and/or Indirect Cost Rate Proposal development.

7. PROGRAM INCOME.

- a. General. FTA's program income policies are in the Common Rule at 49 CFR Part 18. Grantees are encouraged to earn income to defray program costs. Program income means:
- (1) gross income received by the grantee or subgrantee directly generated by a grant supported activity, or
  - (2) earned only as a result of the Grant Agreement during the grant period (the time between the effective date of the grant and the ending date of the grant reflected in the final financial report.
- b. Program income includes income:
- (1) from fees for services performed,
  - (2) from the use or rental of real or personal property acquired with grant funds,
  - (3) from the sale of commodities or items fabricated under a Grant Agreement, and
  - (4) from payments of principal and interest on loans made with grant funds.
- Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc., and interest earned on any of them.
- c. Cost of generating program income. If authorized by Federal regulations or the Grant Agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.
- d. Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the Grant Agreement or Federal agency regulations as program income.
- e. Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Sections 18.31 and 18.32.
- f. Use of program income. FTA allows its grantee to keep program income and use it for allowable activities in 49 U.S.C. Chapter 53; that is for capital, planning, or operating expenses. Program income may not be used to reduce the local share of the grant from which it was earned, but may be used in future grants.

If grantees choose not to use program income for public transportation purposes, then it shall be deducted from total allowable costs to determine the net allowable costs.

- g. Income after the grant period. There are no Federal requirements governing the disposition of program income earned after the end of the grant period (i.e., until the ending date of the final financial report), unless the terms of the agreement or the Federal agency regulations provide otherwise.

8. ANNUAL AUDIT.

- a. General. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the most recent version of the OMB Circular A-133 Compliance Supplement provide the requirements for annual audits of grant recipients. Both documents are available on the OMB website at: [www.whitehouse.gov/omb/circulars/a133](http://www.whitehouse.gov/omb/circulars/a133).
- b. Requirement. Grantees that expend \$500,000 or more in a year in Federal funds from all sources shall have a single audit conducted, except when they elect to have a program-specific audit conducted.

FTA grantees are required to obtain the services of an independent auditor to conduct a single audit each year in conformance with OMB Circular A-133, except where a State constitution or statute provides for a single biennial audit.

Grantees are required to submit one copy of its annual single audit report to FTA if the audit report contains any findings and recommendations related to the FTA program or other USDOT program findings; or in those cases where the audit report does not contain any FTA findings or recommendations, a copy of only Federal Clearinghouse transmittal sheet "the Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations, OMB Form SF-SAC" should be submitted to the FTA Regional or Metropolitan Office.

Grantees shall keep one copy of the data collection form and one copy of the audit reporting package on file for three years from the date of submission to the Federal clearinghouse. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

- c. Purpose. The purpose of the single annual audit report is to determine whether the grantee:
- (1) Prepared financial statements that fairly present its financial position and the results of its financial position and the results of its financial operations in accordance with generally accepted accounting principles;
  - (2) Has in place internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

- (3) Has complied with laws and regulations that may have material effect on its financial statements and on each of its major Federal assistance programs.

The annual single audit is to be performed by an independent auditor who is required to determine and report on whether the grantee has internal control systems that reasonably assure it is managing Federal assistance programs in compliance with applicable laws and regulations.

Grantees are required to determine whether certain subgrantees spend Federal assistance funds they receive in accordance with applicable laws and regulations. Audit judgment concerning the grantee's determination is left to the independent auditor.

- d. Resolution of Audit Findings. Grantees and subgrantees are responsible for prompt resolution of all audit findings and recommendations. This responsibility requires that the grantee:

- (1) Promptly evaluate the report;
- (2) Determine the appropriate follow-up actions and establish a date for their completion; and
- (3) Complete all required actions within the established period of time.

Deficiencies or opportunities for improvement identified in an audit must be resolved by the grantee. The resolution of audits begins with FTA's report to the grantee and continues until the grantee corrects identified deficiencies, implements needed improvements, or demonstrates that the findings or recommendations are not valid or do not warrant management action.

The audit is not resolved until FTA concurs in the documentation of steps taken to implement any needed corrective actions. The status of outstanding audit findings and recommendations should be monitored and reported by the grantee in quarterly progress reports and, where appropriate, significant events reported.

## 9. PAYMENT PROCEDURES.

- a. General. Provisions in 49 CFR Parts 18 and 19 and 31 CFR Part 205 govern payments to recipients for financing operations under Federal grant and other programs. These regulations require that payment to a grantee be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the grantee in carrying out the approved project.

Before you request funds, verify in the Transportation Electronic Award and Management (TEAM) system that funds are available for the project. Funds should not be requested in amounts greater than the "Available Funds" reported in TEAM.

- b. Payment Methods. FTA makes all payments by the Treasury's Automated Clearing House (ACH) method of payment, regardless of the dollar amount involved. ACH electronically sends payment to a payee's bank for deposit to their bank account. The cash payments to grantees are made using various methods of payments.
- (1) Electronic Clearing House Operation (ECHO) Payment. ECHO is a personal computer (PC) based application that processes draw down requests and makes payments to FTA grantees. ECHO consists of a Web-based application which grantees can access via the Internet to submit their draw down data. ECHO then transmits requests approved for payment to the Grantee's financial institution through Treasury's ACH process. For further information, see FTA's "ECHO System Users Manual for Grantees," at:  
<http://www.fta.dot.gov/documents/ECHOWebGranteeUserManual.pdf>.
  - (2) Requisition Payment. FTA grantees that are paid through a requisition process are also eligible to be paid from the ECHO payment system. However, if a requisition payment is used, Standard Form 270 (SF-270), "Request for Advance or Reimbursement" form is required to be submitted to the Federal Aviation Administration, Enterprise Service Center (ESC) in Oklahoma, City. Instructions for completing SF-270 and the ESC's mailing address can be found in Appendix F.
- c. ECHO Policy. If payment is made under ECHO, by means of an ECHO Control Number (ECN), the grantee agrees to comply with the requirements of 49 CFR Parts 18 and 19, and 31 CFR, Part 205, and as described in FTA's ECHO System User Manual for Grantees.

Disbursement guidelines are in accordance with policies established in Department of Treasury Circular 1075, Part 205, "Withdrawal Of Cash From The Treasury For Advances Under Federal Grant And Other Programs," and by FTA financing agreements. These guidelines state that the recipient organization shall commit itself to:

- (1) Initiating cash draw downs for immediate disbursement needs meaning three business days. Excess Federal funds held more than three days must be returned to FTA along with any interest earned. See (e) Repayment to FTA for detailed information on requirement to remit interest.
- (2) Timely reporting of cash disbursements and balances as required by the Federal program agency (FTA).
- (3) Imposing the same standards of timing and amount upon any secondary recipient organizations.
- (4) Limiting draw downs to eligible project costs, which would include NOT drawing down funds for a project in an amount that would exceed the sum obligated by FTA or the current available balance for that project.

- (5) Providing control and accountability for all project funds consistent with FTA requirements and procedures for use of the ECHO System.
- (6) Furnishing reports of cash disbursements and balances, when required by means of the Financial Status Report (FSR).

d. Excessive or Premature Withdrawals.

- (1) General. For excess payments made by the Federal Government to the grantee that do not qualify as a “claim” for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. Sections 3701 et seq., the recipient agrees that the amount of interest owed to the Federal Government depends on whether the recipient is a State or State instrumentality.
  - (a) A recipient that is a State or State instrumentality agrees that interest owed to the Federal Government will be determined in accordance with Treasury regulations, “Rules and Procedures for Efficient Federal State Funds Transfers,” 31 CFR Part 205 that implements Section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. Section 6503(b).
  - (b) A recipient that is neither a State nor a State instrumentality agrees that common law interest owed to the Federal Government will be determined in accordance with joint Treasury/DOJ regulations, “Standards for the Administrative Collection of Claims,” at 31 CFR Section 901.9(i).
- (2) Exceptions. The only exceptions to the requirement for prompt refunding are when the funds involved:
  - (a) Will be disbursed by the grantee within seven calendar days; or
  - (b) Are less than \$10,000 and will be disbursed within 30 calendar days.

These exceptions to the requirement for prompt refunding should not be construed as approval for a grantee to maintain excessive funds. They are applicable only to excessive amounts of funds which are erroneously drawn.

- (3) Return of Funds. The return of funds is accomplished as follows:
  - (a) FTA requests the recipients to electronically remit the excessive cash and any interest to FTA using the U.S. Treasury’s Pay.Gov Financial Collection System (<https://www.Pay.Gov>).
  - (b) Although paper checks are discouraged, grantees may mail refund checks to FAA (FTA’s Accounting Service Center) in Oklahoma, City. If a single check is used to remit the premature withdrawal and the interest, the amount

of each must be separately identified; and accompanied by a letter explaining the purpose of the check(s) and identifying the project number. A copy of the check and the letter should be sent to the grantee's Regional Office. Additional information pertaining to the mailing of checks is located in Appendix E.

- e. Repayment to FTA. FTA program managers will be alert to any information which may indicate a potential repayment. The following are possible reasons for payments becoming due to FTA:
- (1) insufficient non-Federal funds to match Federal payments;
  - (2) the sale of project equipment; or
  - (3) excessive Federal funds in the project account.
- f. Repayment Procedure. Required repayments must be made promptly to FTA. Grantees can submit repayments through the Treasury's Pay.Gov Financial Collection System (<https://www.Pay.Gov>) for all refunds and repayments or by check using these steps:
- (1) Make the check payable to "Federal Transit Administration."
  - (2) Mail all checks to the FAA/Federal Transit Account.
  - (3) Specify applicable project number(s) on the check.
  - (4) Provide written explanation as to purpose of payment.
  - (5) Send a copy of the check and the explanatory letter to the grantee's regional or metropolitan office.
  - (6) If the project is on ECHO, the amount may be repaid through a credit on the FTA drawdown message. This credit must be shown in full and not netted against any amount being claimed on the same project, unless an appropriate credit is shown for the original project, with a charge to the new project.
- g. Requirement to Remit Interest. Under Section 107.f. of the Federal Transit Administration Agreement Terms and Condition, company or grantee organizations shall be required to remit any interest earned on excess Federal funds drawn down and failed to spend for eligible project activities, or were held in excess of three calendar days. Payments of interest must be made by using the Pay.Gov Financial Collection System.

Unless waived by FTA, interest will be calculated at rates imposed by the Department of the Treasury (<http://fms.treas.gov/>) beginning on the fourth day after the funds were deposited in the company or grantee organization's bank or other financial depository. Upon notice by FTA to the company or grantee organization of specific amounts due,

the company or grantee organization shall promptly remit to FTA any excess Federal fund payments, including any interest due.

- h. De-obligation of funds. FTA reserves the right to deobligate unspent Federal funds prior to project closeout.
- i. Debt Service Reserve. Transit agencies that use debt financing in the form of bonds are often required by the terms of the Bond Indenture to establish Debt Service Reserve (DSR). The Bond Trustee is required to establish a DSR with the proceeds of the bond issue. Usually, the DSR remains untouched for the term of the bonds, and is used to make a subsequent debt service payment ONLY if the recipient has insufficient funds to do so. If the DSR is used in this way, the recipient must replenish the DSR from its own funds and within the time frames outlined in the Bond Indenture or be in default. When there is no default, the balances remaining in the DSR are used to make the last debt service payment to the extent of such balances. Required DSRs may now be funded with FTA grant funds. However to the extent of FTA funding, any particular DSR may only be used to pay principal and/or interest on the bonds. Therefore, grantees intending to fund a DSR with FTA funds may also wish to include some non-FTA funds if the terms of the Bond Indenture allow use of DSR for other items such as late fees or Bond Trustee expenses related to default.
- j. Right of FTA to Terminate. The grantee agrees that, upon written notice, FTA may suspend or terminate all or part of the financial assistance provided herein if the grantee is, or has been, in violation of the terms of the approved grant, or if FTA determines that the purposes of the statute under which the project is authorized would not be adequately served by continuation of Federal financial assistance for the project. Any failure to make reasonable progress or other violation of the approved grant that significantly endangers substantial performance of the project shall be deemed to be a breach of the approved grant.

In general, termination of any financial assistance under the approved grant will not invalidate obligations properly incurred by the grantee and concurred in by FTA before the termination date, to the extent those obligations cannot be canceled. However, if FTA determines that the grantee willfully misused FTA assistance funds by failing to make adequate progress; to make reasonable use of the project real property, facilities, or equipment; or to honor the terms of the approved grant, FTA reserves the right to require the grantee to refund the entire amount of Federal funds provided herein or any lesser amount as may be determined by FTA.

Expiration of any project time period established for this project, does not, by itself constitute an expiration or termination of the approved grant.

Neither the receipt by the grantee of any Federal funds for the project nor the closeout of Federal financial participation on the project shall constitute a waiver of any claim that FTA may otherwise have arising out of the approved grant.

**This page intentionally left blank**

**APPENDIX A**

**TEAM REPORTING REQUIREMENTS**

Will insert later.

Will include FSR and MPR screens from TEAM and instructions

**This page intentionally left blank**

## APPENDIX B

### REAL ESTATE ACQUISITION MANAGEMENT PLAN

#### **A Model for the development of a Real Estate Acquisition Management Plan (RAMP)**

1. GENERAL. The purpose of a RAMP is to guide the assessment of real estate goals and the methodology for real estate acquisition. RAMPs are the grantee's planning tool. If done correctly, they will identify schedule issues, difficult parcels, the need for expanded advisory assistance, and staff issues. For projects participating in the New Starts or Small Starts programs, RAMPs are required as part of the Project Management Plan (PMP).
2. RAMP CONTENT.
  - a. Introduction.
    - (1) Short history of pertinent elements of project
    - (2) Control agreements; intergovernmental contracts, pending solicitations, etc.
    - (3) Legal requirements; Uniform Act, various State laws, local requirements, etc.
    - (4) Geographical description of project
    - (5) Physical description of proposed acquisitions; number of parcels, total acquisitions, partial acquisitions, anticipated number of relocations; etc.
    - (6) General outline of process; and authority to condemn
  - b. Organizational Structure.
    - (1) Identification of staff functions
    - (2) Identification of contractual functions
    - (3) Identification of plan source; process for plan changes, corrections, modifications as a result of negotiations, etc.
    - (4) Party who can establish offer of just compensation
    - (5) Party who can authorize condemnation
  - c. Acquisition Schedule.
    - (1) Set out the timeframe for acquisition and relocation; total length of time needed
    - (2) Date for initiation of negotiations for project

- (3) Difficulties and potential delays
  - (4) How will progress reporting be handled and who will receive this information
  - (5) Identification of a critical path for right of way
- d. Real Estate Cost Estimate.
- (1) Background of estimate; when was it done; what was the basis of the estimate
  - (2) Need for any update of cost estimate
  - (3) How will estimate be compared to actual costs as project progresses
- e. Acquisition Process.
- (1) Plans—who prepares, who can modify, what is process for considering property owner's request to modify, etc.
  - (2) Ownership and title information—how is this gathered, what is the contractual requirements, are those contracts in place, what is the process to update and correct errors and omissions
  - (3) Appraisal—who will do appraisals, what is the contracting requirements if necessary, what is the estimate duration of this task, how many copies of appraisals will be obtained, will appraisals be shared with property owners
  - (4) Appraisal Review process—who will do this task, what is the scope of the task in general, what is the turn around time for this work, will the review handle updates of appraisals, will review handle modification of appraisals based on owner claims, will review be used to support administrative settlements
  - (5) Establishment of offer of Just Compensation—who does this, what is the basis of this offer
  - (6) Negotiations—who will negotiate, what is their authority, who must approve administrative settlements and other concessions to property owners, what is the documentation required of the negotiations process, who signs letter of offer, will negotiator also handle relocation payments, how is interface between negotiations and condemnation handled, what documents will negotiator be expected to provide to legal for settlement and condemnation, will negotiator be present at closing
  - (7) Closing/Escrows—who will provide this service, how will it function, what is the estimated length of time to deposit funds to escrow for closing, what documents will be necessary, how will closings be conducted, what form of deeds will be used, how will property taxes be paid and exempted

- (8) Condemnation—who will authorize suits, who will file, what is relationship between grantee and its legal personnel, what authority does attorney have for settlement, what are progress reporting requirements

f. Relocation.

- (1) Staffing and Administration—how will the relocation function be staffed, who is authorized to compute payments, who will approve payments, what is the relocation process to be utilized in the project, what level of advisory services will be needed, who will provide advisory services, what is the claims payment process, what is the time to pay a relocation claim, what authority and controls will be needed for advanced claims, what documentation will be retained in the files, what forms will be used
- (2) Appeals—what is the legal requirements for administrative appeals, how will the agency establish and staff an appeal function, who is the recipient of appeal requests, what is the appeal process

g. Other Components.

- (1) Document Control—How are documents filed, what length of time will original paper documents be maintained, what is the organization of parcel files, condemnation files, etc., what is the contents of a typical file
- (2) Property management—who will perform property management, what is included in the Scope of Work for property management, who contracts for demolition, what are contracting requirements, what are reporting requirements, statement of policy regarding rental property for extended possession by tenants and owners
- (3) Excess property inventory and utilization plan—who will prepare and track excess parcels, what is the process to evaluate these tracts, who will determine when to sell excess, what is the disposition of proceeds, what are agency, State, or local restrictions on the sale of public property

**This page intentionally left blank**

## APPENDIX C

### GUIDE FOR PREPARING AN APPRAISAL SCOPE OF WORK

1. **GENERAL.** The Scope of Work is a written set of expectations that form an agreement or understanding between the appraiser and the agency as to the specific requirements of the appraisal, resulting in a report to be delivered to the agency by the appraiser. It includes identification of the intended use and intended user; definition of market value; statement of assumptions and limiting conditions; and certifications. It should specify performance requirements, or it should reference them from another source, such as the agency's approved Right-of-Way or Appraisal Manual. The Scope of Work must address the unique, unusual, and variable appraisal performance requirements of the appraisal. Either the appraiser or the agency may recommend modifications to the initial Scope of Work, but both parties must approve changes.
2. **EXAMPLE.** The example below is intended to be a guide for agencies preparing a Scope of Work for real estate appraisals.
  - a. **Scope of Work:** The appraiser must, at a minimum:
    - (1) Provide an appraisal meeting the agency's definition of an appraisal or at a minimum the definition must be compatible with the definition found at 49 CFR 24.2(a)(3).
    - (2) Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.
    - (3) Perform an inspection of the subject property. The inspection should be appropriate for the appraisal problem, and the Scope of Work should address:
      - (a) The extent of the inspection and description of the neighborhood and proposed project area,
      - (b) The extent of the subject property inspection, including interior and exterior areas, and
      - (c) The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property).
    - (4) In the appraisal report, include a sketch of the property and provide the location and dimensions of any improvements. Also, it should include adequate photographs of the subject property and comparable sales and provide location maps of the property and comparable sales.

- (5) In the appraisal report, include items required by the acquiring agency, usually including the following list:
    - (a) The property right(s) to be acquired, e.g., fee simple, easement, etc.,
    - (b) The value being appraised (usually fair market value), and its definition,
    - (c) Appraised as if free and clear of contamination (or as specified),
    - (d) The date of the appraisal report and the date of valuation,
    - (e) The realty/personalty report required at 49 CFR 24.103(a)(2)(i),
    - (f) The known and observed encumbrances, if any,
    - (g) Title information,
    - (h) Location,
    - (i) Zoning,
    - (j) Present use, and
    - (k) At least a 5-year sales history of the property.
  - (6) In the appraisal report, identify the highest and best use. If highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.
  - (7) Present and analyze relevant market information. Specific requirements should include research, analysis, and verification of comparable sales. Inspection of the comparable sales should also be specified.
  - (8) In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project. If necessary, the appraiser may cite the Jurisdictional Exception or Supplemental Standards Rules under Uniform Standards of Professional Appraisal Practice (USPAP) to ensure compliance with USPAP while following this Uniform Act requirement.
  - (9) Report his or her analysis, opinions, and conclusions in the appraisal report.
- b. Additional Requirements for a Scope of Work:

- (1) Intended Use: This appraisal is to estimate the fair market value of the property, as of the specified date of valuation, for the proposed acquisition of the property rights specified (i.e., fee simple, etc.) for a federally-assisted project.
- (2) Intended User: The intended user of this appraisal report is primarily the acquiring agency, but its funding partners may review the appraisal as part of their program oversight activities.
- (3) Definition of Market Value: This is determined by State law, but includes the following:
  - (a) Buyer and seller are typically motivated;
  - (b) Both parties are well informed or well advised, each acting in what he or she considers his or her own best interest;
  - (c) A reasonable time is allowed for exposure in the open market;
  - (d) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
  - (e) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
- (4) Certification: The required certification should be in the State's approved Appraisal Procedures or part of State law.
- (5) Assumptions and Limiting Conditions: The appraiser shall state all relevant assumptions and limiting conditions. In addition, the acquiring agency may provide other assumptions and conditions that may be required for the particular appraisal assignment, such as:
  - (a) The data search requirements and parameters that may be required for the project.
  - (b) Identification of the technology requirements, including approaches to value, to be used to analyze the data.
  - (c) Need for machinery and equipment appraisals, soil studies, potential zoning changes, etc.
  - (d) Instructions to the appraiser to appraise the property "As Is" or subject to repairs or corrective action.
  - (e) As applicable include any information on property contamination to be provided and considered by the appraiser in making the appraisal.

**This page intentionally left blank**

## APPENDIX D

### FLEET STATUS REPORT

1. GENERAL. Whether an agency is replacing vehicles that have met the minimum useful life or disposing of vehicles before they reach the minimum useful life, the fleet status report should include the following information:

- a. Vehicle Number
- b. Year
- c. Make/Model
- d. Vehicle Identification Number (VIN)
- e. Date Placed in Revenue Service
- f. Date Removed from Revenue Service
- g. Minimum Useful Life (Years and Miles)
- h. Mileage (At the time Removed from Revenue Service)
- i. Total Number of Vehicles
- j. Total Number of Peak Vehicle Requirements
- k. Total Number of Spare Vehicles

If the request for replacement or early disposition coincides with a new grant application, the information can be provided in the Transportation Electronic Award and Management (TEAM) system using the Fleet Status screen. The use of the Fleet Status screen is explained in Federal Transit Administration's (FTA's) pre-award circulars and in the TEAM User Guide. Another alternative is to prepare a report, see example in Section four of this appendix..

2. REPLACEMENTS AT THE END OF MINIMUM USEFUL LIFE. Fleet Status reports must accompany a request for a replacement vehicle that has met its minimum useful life. The report will be used to verify that a vehicle has met the minimum useful life and that there is no remaining Federal interest. Please note that while the remaining Federal interest might be zero, if the asset's value exceeds \$5,000, FTA may still be entitled to reimbursement. See Chapter IV, Disposition, for more information about project property valued over \$5,000.
3. EARLY DISPOSITION. Fleet Status Reports must accompany a request for early disposition of vehicles. The report will be used to verify the remaining Federal interest in the vehicles.

4. EXAMPLE. An example of a Fleet Status Report for vehicles pending disposal with and without remaining Federal interest, is shown below.

**Fleet Status Report**  
**TransAmerica Buses**

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Veh #	Vehicle Year	Make/Model or Vehicle Description	Date in Service	Out of Service	Fed Useful Life (yr)	Actual Service (yr)	Remaining yrs	Remaining % based on yrs	Actual Mileage	Minimum Useful life Mileage	Remaining % based on miles	Total Federal Share	Remaining Fed Share based on yrs	Remaining Fed Share based on miles
151	2000	30' New Flyers	09/01/00	09/01/07	7	7.0	0.00	-0.04%	200,000	200,000	0.00%	\$120,000	-	-
152	2000	30' New Flyers	09/01/00	09/03/07	7	7.0	-0.01	-0.12%	200,000	200,000	0.00%	\$120,000	-	-
154	2000	30' New Flyers	09/01/00	09/02/07	7	7.0	-0.01	-0.08%	210,000	200,000	-5.00%	\$120,000	-	-
155	2000	30' New Flyers	09/01/00	09/02/07	7	7.0	-0.01	-0.08%	205,000	200,000	-2.50%	\$120,000	-	-
156	2000	30' New Flyers	03/01/01	03/01/06	7	5.0	2.00	28.53%	140,851	200,000	29.57%	\$120,000	\$34,239	\$35,489
157	2000	30' New Flyers	03/01/01	03/01/06	7	5.0	2.00	28.53%	154,649	200,000	22.68%	\$120,000	\$34,239	\$27,211
158	2000	35' Flexible	03/01/01	06/03/06	10	5.3	4.74	47.40%	200,000	350,000	42.86%	\$120,000	\$56,877	\$51,429
159	2001	35' Flexible	03/01/01	06/03/06	10	5.3	4.74	47.40%	300,000	350,000	14.29%	\$195,000	\$92,425	\$27,857
160	2001	35' Flexible	03/01/01	11/02/07	10	6.7	3.32	33.23%	300,000	350,000	14.29%	\$195,000	\$64,804	\$27,857
161	2001	35' Flexible	03/01/01	07/02/07	10	6.3	3.66	36.60%	325,000	350,000	7.14%	\$195,000	\$71,375	\$13,929
163	2001	35' Flexible	03/01/01	11/02/07	10	6.7	3.32	33.23%	325,000	350,000	7.14%	\$195,000	\$64,804	\$13,929
164	1996	40' Buses	03/21/96	04/03/06	12	10.0	1.96	16.32%	425,000	500,000	15.00%	\$295,000	\$48,156	\$44,250
165	1996	40' Buses	06/19/96	04/03/07	12	10.8	1.21	10.05%	435,000	500,000	13.00%	\$295,000	\$29,635	\$38,350
166	1996	40' Buses	06/19/96	04/03/07	12	10.8	1.21	10.05%	450,000	500,000	10.00%	\$295,000	\$29,635	\$29,500
167	1996	40' Buses	06/20/96	06/02/07	12	11.0	1.04	8.70%	450,000	500,000	10.00%	\$295,000	\$25,661	\$29,500
168	1996	40' Buses	06/23/96	06/02/07	12	10.9	1.05	8.77%	450,000	500,000	10.00%	\$295,000	\$25,663	\$29,500

## APPENDIX E

### COST ALLOCATION PLANS

1. REQUIREMENTS. Grantees who intend to seek Federal Transit Administration (FTA) reimbursement for indirect costs must prepare a Cost Allocation Plan and/or Indirect Cost Rate Proposal. The following are basic requirements for preparing a Cost Allocation Plan.
  - a. Cost allocation plans and Indirect Cost Rate Proposals must be updated annually.
  - b. The updated plans must be retained and made available for review at the grantees annual single audit.
  - c. Updated Cost Allocation Plans may be used on a provisional basis for the following fiscal year with the provision that year-end adjustments must be made to actual costs.
  - d. The initial plan must be approved by FTA or another cognizant Federal agency. For subsequent approvals, please refer to paragraph IV.
  - e. Additionally, all costs in the plan must be supported by formal accounting records to substantiate the propriety of eventual charges. The allocation plan of the grantee should cover all applicable costs. It should also cover costs allocated under plans of other agencies or organizational units which are to be included in the costs of other federally-sponsored programs. To the extent feasible, Cost Allocation Plans of all agencies rendering assistance to the grantee should be presented in a single document.
  - f. Content. The Cost Allocation Plan should contain, but need not be limited to the following:
    - (1) Nature and extent of services provided and their relevance to federally-sponsored programs;
    - (2) Items of expense to be included;
    - (3) Methods to be used in distributing cost; and
    - (4) Appropriate Civil Rights data.
2. PURPOSE OF THE PLAN. The purpose of the plan is to guide the grantees' allocation of costs. The plan should ensure:
  - a. All activities of local government departments or State agencies have been considered;
  - b. Distribution of indirect costs is based on a method(s) reasonably indicative of the amount of services provided;
  - c. Services provided are necessary for successful conduct of Federal programs;

- d. Level of costs incurred are reasonable;
  - e. Costs of State of local centralized government services may be charged in conformance with government-wide cost allocations plans; and
  - f. Costs claimed are allowable in accordance with the Office of Management and Budget (OMB) Circular A-87, as applicable.
3. DEVELOPMENT OF COST ALLOCATION PLAN. In planning the development of a Cost Allocation Plan, grantees should develop a Cost Allocation Plan that identifies costs of supporting service units and allocates those costs to benefiting units on an equitable basis. The following is a list of components that should be included in a Cost Allocation Plan:
- a. An organization chart;
  - b. Financial Statements;
  - c. Cost Allocation Methodology;
  - d. Cost Allocation Rate Proposal:
    - (1) Identification of costs of each type of service to be claimed,
    - (2) Determination of the method for allocating each type of service cost to users,
    - (3) Identification of units rendering/receiving service and associated costs,
    - (4) Description of services,
    - (5) Description of Allocation Base (Consistency is important), and
    - (6) Summary Allocation Schedule for each service.
  - e. Proposal Reconciliation with Financial Statements. (Note: Allocated costs must be reasonable and trackable to the financial Statements);
  - f. Identification of Federal Award Direct Cost Base; and
  - g. Certification of Conformance with OMB Circular A-87. A proposal to establish a Cost Allocation Plan or an Indirect Cost Rate Proposal, will be unacceptable if the Certificate of Cost Allocation Plan or Certificate of Indirect Costs is omitted. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

4. SUBMISSION OF COST ALLOCATION PLAN/INDIRECT COST RATE PROPOSALS. OMB Circular A-87 requires that the plan (called a proposal) be submitted to a grantee's Federal Cognizant Agency for approval. The Cost Allocation Plan/Indirect Cost Rate Proposal should be submitted to the "cognizant" or "lead" Federal Agency when:
  - a. The grantee is working on its first assistance project or has not previously had a Cost Allocation Plan/Indirect Cost Rate Proposal reviewed and accepted;
  - b. The grantee has made a change in its accounting system, thereby affecting the previously approved Cost Allocation Plan/Indirect Cost Rate Proposal and its basis of application;
  - c. The grantee's proposed Cost Allocation Plan / Indirect Cost Rate Proposal exceeds the amounts and rate approved for the previous year(s) by more than 20 percent; or
  - d. The grantee changes the Cost Allocation Plan/Indirect Cost Rate Proposal methodology.
  
5. PLAN APPROVAL. Most transit agencies are under the cognizance of the Department of Transportation (DOT). Whenever the cognizant agency gives prior approval to a government-wide Cost Allocation Plan or Indirect Cost Rate Proposal , such approval is formalized, distributed to all interested Federal agencies, and applicable to all Federal grants in accordance with OMB Circular A-87.

An approved Cost Allocation Plan or Indirect Cost Rate Proposal must be updated annually. The update should be retained and made available for review at the time of the grantee's organization-wide audit.

**This page intentionally left blank**

## APPENDIX F

### REQUEST FOR ADVANCE OR REIMBURSEMENT (SF-270)

1. GENERAL. If the requisition method of payment is used, the grantee agrees to:
  - a. Complete and submit "ACH Vendor/Miscellaneous Payment Enrollment Form" (See Exhibit F-1 to FTA's Accounting Division.
  - b. Complete and submit an original Standard Form 270, "Request for Advance or Reimbursement," (See Exhibit F-2) to the Federal Aviation Administration's Enterprise Service Center in Oklahoma, City, FTA's designated Accounting Center. All supporting documentation needed to support and justify the reimbursement of funds and satisfy the FTA Project Manager must accompany the SF 270.

Upon receipt of the SF 270 payment request, FTA will authorize payment by Automated Clearing House (ACH) deposit if the grantee is complying with its obligations under the approved grant; has satisfied FTA that it needs the requested Federal funds during the requisition period; and is making adequate progress toward the timely completion of the project. If all these circumstances are present, FTA may reimburse apparent allowable costs incurred (or to be incurred during the requisition period) by the grantee up to the maximum amount of Federal funds payable through the fiscal year in which the requisition is submitted, as stated in the project budget.

2. INSTRUCTIONS. Instructions for completing an SF-270 are printed on its reverse side. In addition, the following instructions should assist grantees in completing this form.
  - a. Only the total column on this form should be completed, unless the project involves more than one funding ratio. In such instances, the other columns are also to be used.

In addition, grantees should round all figures to the nearest dollar, i.e., amounts of \$.50 or over would be rounded to the higher dollar. For example: if the non-Federal share is computed to be \$2,572.70, the amount reported would be \$2,573.
  - b. Block #5—All requisitions should be numbered consecutively beginning with #1 as the first requisition. Suggested format should include the fiscal year and sequential number for each individual voucher. For example, the payment request number for the Grantee's first voucher submitted in fiscal year 2007 would appear on the SF 270 as follows: 2007-001.
  - c. Block #8—The first requisition covers the date the grant was awarded, (unless the grant had pre-award authority), through the end of the period for which reimbursement is requested. When a requisition requests reimbursement only, the "ending" date will be the same date on which outlays are reported on line 11a of this form. If the reimbursement and/or an advance is being requested, the "ending" date should reflect the period through which the advance funds are needed.

All requisition report periods should run consecutively. For example, if a requisition is submitted for the period 1/1/07 to 3/31/07, the next requisition will begin 4/1/07.

- d. Block #9—The name of the grantee should be exactly as indicated on the Grant Agreement. Grantees should avoid abbreviation but spell out the entire name of the organization.
- e. Block #11—Line A—The “as of” date should be the date for which the grantee has actual costs recorded. This date should be the same as the “to” date, Block #8, unless the grantee is requesting an advance.

Line B—Represents the amount applicable to program income that was required to be used for the project or program by terms of the grant or other agreement.

Line D—Represents the estimated expenditures for the advance period, both FTA share and the local share.

Line F—Non-Federal share of line E, depending on the funding ratio of a particular project.

Line G—Federal share of line E, depending on the funding ratio for a particular project.

Line H—Total of previous requisition(s) submitted. This line should not represent actual payment received because the grantee may have submitted a requisition that is in the process of being paid. Requisition #1 on this line should be zero.

Note that grantees should only complete the “total” column of Block #11, unless the Grant Agreement specified that there is more than one funding source supporting the project. In such cases, separate columns should be utilized for each funding sources.

Line I – Federal share now requested represents the total amount of the SF 270 reimbursement that will be forwarded to the grantee.

- 3. REVIEW OF THE SF-270. Each SF-270 for funds will be reviewed in light of the periodic progress reports and financial reports required for each project. Changes requiring grant amendments or prior approval of a budget revision must be approved before funds for these changes are requisitioned.

**EXHIBIT 1**

**ACH VENDOR/MISCELLANEOUS PAYMENT  
ENROLLMENT FORM**

OMB No. 1510-0056

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion.

<b>PRIVACY ACT STATEMENT</b>	
<p>The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.</p>	

<b>AGENCY INFORMATION</b>			
FEDERAL PROGRAM AGENCY			
DOT, Federal Transit Administration			
AGENCY IDENTIFIER:	AGENCY LOCATION CODE (ALC):	ACH FORMAT:	
	69-08-0001	<input checked="" type="checkbox"/> CCD+ <input type="checkbox"/> CTX <input type="checkbox"/> CTP	
ADDRESS:			
1200 New Jersey Avenue S.E., East Building, Fifth Floor (E-54)			
Washington, DC 20590			
CONTACT PERSON NAME:			TELEPHONE NUMBER:
Millie Fields			(202 ) 366-6685
ADDITIONAL INFORMATION:			
Mail completed ACH form, with original signatures, to the above address.			

<b>PAYEE/COMPANY INFORMATION</b>	
NAME	SSN NO. OR TAXPAYER ID NO.
ADDRESS	
CONTACT PERSON NAME:	TELEPHONE NUMBER:
Note: Contact name will be verified with the FTA Project Lead	(       )

<b>FINANCIAL INSTITUTION INFORMATION</b>	
NAME:	
ADDRESS:	
ACH COORDINATOR NAME:	TELEPHONE NUMBER:
	(       )
NINE-DIGIT ROUTING TRANSIT NUMBER:	
DEPOSITOR ACCOUNT TITLE:	
DEPOSITOR ACCOUNT NUMBER:	LOCKBOX NUMBER:

**EXHIBIT 1 (continued)**

TYPE OF ACCOUNT:		
<input type="checkbox"/> CHECKING	<input type="checkbox"/> SAVINGS	<input type="checkbox"/> LOCKBOX
SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be the same as ACH Coordinator)		TELEPHONE NUMBER: ( )

NSN 7540-01-274-9925

SF 3881 (Rev 12/80)  
Prescribed by Department of Treasury  
31 U S C 3322; 31 CFR 210

**Instructions for Completing SF 3881 Form**

1. Agency Information Section - Federal agency prints or types the name and address of the Federal program agency originating the vendor/miscellaneous payment, agency identifier, agency location code, contact person name and telephone number of the agency. Also, the appropriate box for ACH format is checked.
2. Payee/Company Information Section - Payee prints or types the name of the payee/company and address that will receive ACH vendor/miscellaneous payments, social security or taxpayer ID number, and contact person name and telephone number of the payee/company. Payee also verifies depositor account number, account title, and type of account entered by your financial institution in the Financial Institution Information Section.
3. Financial Institution Information Section - Financial institution prints or types the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Also, the box for type of account is checked, and the signature, title, and telephone number of the appropriate financial institution official are included.

**Burden Estimate Statement**

The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Branch, Room B-101, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project (1510-0056), Washington, DC 20503.

**EXHIBIT 2**

<b>REQUEST FOR ADVANCE OR REIMBURSEMENT</b>  <i>(See instructions on back)</i>		OMB APPROVAL NO. <b>0348-0004</b>		PAGE _____ OF _____ PAGES
		1. TYPE OF PAYMENT REQUESTED a. "X" one or both boxes <input type="checkbox"/> ADVANCE <input type="checkbox"/> REIMBURSEMENT b. "X" the applicable box <input type="checkbox"/> FINAL <input type="checkbox"/> PARTIAL		2. BASIS OF REQUEST  <input type="checkbox"/> CASH  <input type="checkbox"/> ACCRUAL
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST
6. EMPLOYER IDENTIFICATION NUMBER	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER	8. PERIOD COVERED BY THIS REQUEST		
		FROM (month, day, year)		TO (month, day, year)
9. RECIPIENT ORGANIZATION		10. PAYEE (Where check is to be sent if different than item 9)		
Name:		Name:		
Number and Street:		Number and Street:		
City, State and ZIP Code:		City, State and ZIP Code:		
<b>11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED</b>				
PROGRAMS/FUNCTIONS/ACTIVITIES ▶	(a)	(b)	(c)	TOTAL
a. Total program outlays to date <i>(Ac of date)</i>	\$	\$	\$	\$ 0.00
b. Less: Cumulative program income				0.00
c. Net program outlays (Line a minus line b)	0.00	0.00	0.00	0.00
d. Estimated net cash outlays for advance period				0.00
e. Total (Sum of lines c & d)	0.00	0.00	0.00	0.00
f. Non-Federal share of amount on line e				0.00
g. Federal share of amount on line e				0.00
h. Federal payments previously requested				0.00
i. Federal share now requested (Line g minus line h)	0.00	0.00	0.00	0.00
j. Advances required by month, when requested by Federal grantor agency for use in making prescheduled advances	1st month			0.00
	2nd month			0.00
	3rd month			0.00
<b>12. ALTERNATE COMPUTATION FOR ADVANCES ONLY</b>				
a. Estimated Federal cash outlays that will be made during period covered by the advance				\$
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period				
c. Amount requested (Line a minus line b)				\$ 0.00

AUTHORIZED FOR LOCAL REPRODUCTION

(Continued on Reverse)

STANDARD FORM 270 (Rev. 7-97)  
Prescribed by OMB Circulars A-102 and A-110

**EXHIBIT 2 (continued)**

13. CERTIFICATION		
I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.	SIGNATURE OR AUTHORIZED CERTIFYING OFFICIAL	DATE REQUEST SUBMITTED
	TYPED OR PRINTED NAME AND TITLE	TELEPHONE (AREA CODE, NUMBER, EXTENSION)

This space for agency use

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0004), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**INSTRUCTIONS**

Please type or print legibly. Items 1, 3, 5, 9, 10, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

<i>Item</i>	<i>Entry</i>	<i>Item</i>	<i>Entry</i>
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.		
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.		
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.		
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.		
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.		
<p><b>Note:</b> The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.</p>			
11	The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or		
		activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.	
11a	Enter in "as of date," the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.		
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.		
11c	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.		
13	Complete the certification before submitting this request.		

**APPENDIX G**

**REFERENCES**

**(Appendix G will be inserted when the final circular is adopted).**

**This page intentionally left blank**

**APPENDIX H**

**FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION**

<b><u>Office</u></b>	<b><u>Area Served</u></b>	<b><u>Contact Information</u></b>
Region I	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865
Region II	New York and New Jersey	One Bowling Green Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136
Region III	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market St Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260
Region IV	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U. S. Virgin Islands	230 Peachtree Street NW Suite 800 Atlanta, GA 30303 Phone: 404-865-5600 Fax: 404-865-5605
Region V	Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	200 W Adams St Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351
Region VI	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	819 Taylor St Room 8A36 Forth Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921

Office	Area Served	Contact Information
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	12300 W Dakota Ave. Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300 Fax: 720-963-3333
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	201 Mission St Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726
Region X	Alaska, Washington, Oregon, and Idaho	Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959
Lower Manhattan Recovery Office	Lower Manhattan	One Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212-668-2505
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2201 Fax: 212-668-2136
Philadelphia Metropolitan Office	Philadelphia Metropolitan Area	1760 Market Street, Suite 510 Philadelphia, PA 19103-4124 Telephone: 215-656-7070 Fax: 215-656-7269
Chicago Metropolitan Office	Chicago Metropolitan Office	200 West Adams Street Suite 2410 (24th floor) Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW Suite 510 Washington, DC 20006 Telephone: 202-219-3562/3565 Fax: 202-219-3545

**INDEX**

**SUBJECT AND LOCATION IN CIRCULAR**

<u>Subject</u>	<u>Chapter/Page</u>
Accrual Basis of Accounting .....	I-2
Definition .....	I-2
ACH Vendor/Miscellaneous Payment Enrollment Form .....	App. F-1
Activity Line Item (ALI) .....	I-2; I-5; III-2; III-3; III-8; III-9; III-10; III-11
Acts and Orders.....	IV-28
Administrative Amendment.....	III-8; III-11; III-12
Definition .....	I-2
Administrative Settlements.....	III-5; IV-5; App. B-2
Air Rights.....	IV-9; IV-10
Definition .....	I-2
Alternative Disposition Methods .....	IV-11
Alternative Transportation in the Parks and Public Lands (ATPPL) .....	II-5
American Association of State Highway and Transportation Officials (AASHTO).....	V-4
American Public Transportation Association (APTA).....	II-3; V-4
Americans with Disabilities Act (ADA).....	II-2; II-5; II-10; III-7; III-9; IV-18
Paratransit Service .....	II-5; II-10; III-7
Annual Apportionments.....	II-2; II-8; VI-6; VI-7
Annual List of Certifications and Assurances .....	III-5
Annual Report on Funding Recommendations.....	V-5
Automated Clearing House (ACH).....	VI-11; VI-12; App. F-1
Best Practices Procurement Manual .....	IV-13
Bond Indenture.....	VI-15
Brownfields.....	I-2; IV-8
Definition .....	I-2
Budget Revision.....	I-2; I-5; II-8; III-8; III-9; III-10, App. F-2
Definition .....	I-2
Bus and Bus Facility Discretionary Program.....	II-3
Bus Capital Program .....	II-3
Bus Fleet .....	III-9; IV-18
Bus Fleet Management Plan .....	IV-22
Buy America .....	IV-13
Regulations .....	IV-13
Capital Asset.....	I-2; IV-15; IV-20; IV-21
Definition .....	I-2
Capital Investment Grants Program.....	II-2; II-3; IV-22
Funds.....	II-3
Guidance .....	II-3
Capital Lease.....	IV-20; IV-21
Definition .....	I-2; IV-20

<u>Subject</u>	<u>Chapter/Page</u>
Cash Management Improvement Act .....	VI-13
Certificate of Cost Allocation Plan .....	App. E-2
Certificate of Indirect Costs .....	App. E-2
Certifications and Assurances.....	II-6; III-1; III-5; IV-14; VI-5
Change of Scope .....	III-11
Civil Rights Act .....	<i>See Title VI</i>
Clean Air Act (CAA).....	II-2; II-5; II-6; III-9
Clean Fuels Grant Program.....	II-5
Committee of Sponsoring Organizations of the Treadway Committee (COSO Report).....	VI-3
Common Rule .....	II-1; V-2; V-3; V-4; VI-9
Community Transportation Association of America (CTAA) .....	V-4
Comptroller General of the United States.....	III-15
Concurrent Non-Project Activities .....	I-3
Costs.....	IV-34
Definition .....	I-3; IV-34
Construction Project Management Handbook .....	IV-28
Contamination.....	IV-2; IV-8; App. C-2; C-3
Hazardous .....	I-2
Contingency Fleet .....	IV-20
Definition .....	I-3
Contract Records.....	III-15
Cooperative Agreement .....	<i>See Grant Agreement or Cooperative Agreement</i>
Cost Allocation Plan .....	II-7; III-15; IV-30; VI-6; VI-7; VI-8; App. E-1; E-2; E-3
Cost of Project Property.....	I-3; IV-13
Definition .....	I-3; IV-13
Council on Environmental Quality .....	I-4
Davis-Bacon.....	III-16
Wage Records .....	III-16
Debt Service Reserve (DSR) .....	VI-15
Decent, Safe, and Sanitary (DSS).....	VI-6
Definition .....	VI-6
Department of Health and Human Services (DHHS).....	I-2; VI-7; VI-8
Website .....	VI-6
Department of Homeland Security .....	V-3
Department of Labor (DOL).....	III-8; III-9
Department of Transportation (DOT).....	I-1; II-9; II-10; III-7; App. E-3
Drug and Alcohol Requirements .....	V-3
Office of Inspector General .....	III-15
Regulations .....	II-9; II-10; II-11; IV-29
Designated Recipients.....	I-5; II-5
Disadvantaged Business Enterprises (DBE).....	II-10; II-11; III-5; III-7
Goals .....	III-5
Discretionary Funding .....	I-3; II-1

<u>Subject</u>	<u>Chapter/Page</u>
Definition .....	I-3
Drug and Alcohol Management Information System (DAMIS) .....	V-3
Drug and Alcohol Testing Program .....	V-3
ECHO System (ECHO) .....	VI-12; VI-13; VI-14
ECHO Control Number (ECN).....	VI-12
Payment.....	VI-12
User Manual.....	VI-12
User Manual Website.....	VI-12
Elderly Individuals and Individuals with Disabilities Program .....	II-1; II-3; II-4; V-1
Eligible Recipients .....	II-1; II-5; II-6
End-Of-Life Rebuild.....	IV-18
Energy Policy and Conservation Act.....	IV-35
Environmental Assessment (EA).....	IV-8
Environmental Mitigation.....	IV-28; IV-34
Environmental Protection Agency (EPA).....	I-2; II-6
Equal Employment Opportunity (EEO).....	II-9; III-5
Equipment .....	I-3
Definition .....	I-3
Equipment Inventory .....	I-3; IV-25
Definition .....	I-3
Excess Property.....	I-3
Definition .....	I-3
Excess Real Property Inventory and Utilization Plan.....	I-3; IV-10
Definition .....	I-3
Federal Aviation Administration's Enterprise Service Center .....	App. F-1
Federal Award Direct Cost Base.....	App. E-2
Federal Emergency Management Agency .....	V-3
Federal Clearinghouse .....	III-7; VI-10
Federal Freedom of Information Act .....	III-15
Federal Relay Service (FRS) .....	P-1
Toll Free Access Number .....	P-2
Federal Transit Administration (FTA)..	P-1; I-1; III-1; IV-1; V-1; VI-1; VI-13; App. D-1; E-1
Accounting Service Center .....	VI-13
Address .....	I-1
Designated Accounting Center .....	App. F-1
Office of Accounting .....	III-10
Project Manager.....	III-9; III-10; App. F-1
State Safety Oversight Rule .....	V-4
Website .....	I-1
Federal Transit Law .....	P-1; I-1; IV-12
Financial Capacity Assessment (FCA) .....	V-2
Financial Management Oversight (FMO) Program.....	V-2
Financial Purpose Code (FPC).....	III-9; III-10

<u>Subject</u>	<u>Chapter/Page</u>
Financial Status Report (FSR)	I-7; III-3; III-12; III-14; VI-13
Fixed Guideway Modernization	II-2
Flood Disaster Protection Act	IV-28
Fleet Status Report	I-3; III-9; IV-19; IV-23; IV-25; App. D-1; D-2
Definition	I-3
Example	App. E-2
Force Account	I-3; II-9; IV-30; IV-31; IV-32
Definition	I-3; IV-30
Formula Funding	I-4; II-2; II-3
Definition	I-4
Full Funding Grant Agreement (FFGA)	V-2
Guidance	IV-22
Full Scope Financial Management System (Full Scope)	V-2
Generally Accepted Accounting Principles (GAAP)	VI-6
Government Printing Office (GPO)	VI-8
Grant	I-4
Definition	I-4
Grant Agreement	<i>See Grant Agreement or Cooperative Agreement</i>
Grant Agreement or Cooperative Agreement	I-2; I-4; I-5; I-6; II-7; II-11; III-1 III-2; III-11; III-12; III-13; III-14; IV-10; IV-14; IV-28; IV-31; V-1; VI-1; VI-7; VI-9; App. F-2
Grant Amendment	II-8; III-8; III-9; III-9; III-11; III-12; App. F-2
Grant Scope	I-4
Definition	I-4
Grantee	I-4
Definition	I-4
Grantee Oversight Assessment Questionnaire	V-1
Grants.Gov	I-2
Website	I-2
Hazardous Material	IV-2; IV-8
Inactive Buses	I-3
Incidental Use of Project Property and Equipment	I-4
Definition	I-4
Indian Reservations	II-2
Indian Tribal Governments	VI-5; VI-8
Indian Tribes	II-2
Indirect Cost Rate Proposal	III-15; VI-6; VI-7; VI-8; App. E-1; E-2; E-3
In-Kind Contribution	IV-1; IV-3; IV-4; IV-7; IV-8
Intelligent Transportation Systems (ITS)	IV-35
Projects	IV-35
Internal Control Self-Assessment Form	VI-3
Job Access and Reverse Commute Program (JARC)	II-1; II-4
Funding	II-4
Funds	II-4

<u>Subject</u>	<u>Chapter/Page</u>
Jurisdictional Exception.....	IV-2; App. C-2
Large Urbanized Area.....	I-4
Definition .....	I-4
Leases.....	IV-20
Leasing.....	IV-10; IV-18; IV-20; IV-21
Letter of No Prejudice (LONP).....	VI-6; VI-7
Limited English Proficient (LEP) Persons.....	II-9
Maintenance Area for Ozone or Carbon Monoxide .....	II-5; II-6
Market Value .....	I-4; I-6; IV-2; IV-3; IV-4; IV-5 IV -8; IV -10; IV -11 IV -12; IV -22; IV -23; IV -24; IV -25; IV -26; App. C-1; C-2; C-3
Definition .....	I-4; App. C-3
Master Agreement.....	I-4; I-5; I-11; III-1; V-1; V-3
Definition .....	I-4
Memorandum of Agreement (MOU).....	V-4
Metropolitan Planning Organization (MPO) .....	II-2
Mid-Life Rebuild .....	IV-18
Milestone/Progress Report (MPR).....	III-2; III-3; III-4; III-5; III-12
Monthly Ridership Report .....	III-7
National Environmental Policy Act (NEPA).....	I-4; IV-8; IV-28
Definition .....	I-4
Requirements .....	III-8; III-9; III-10
National Park Service .....	II-5
National Preparedness Directorate.....	V-3
National Transit Database (NTD).....	III-6; III-7
Annual Report.....	III-7
Deadline .....	III-6
Reporting.....	III-6
Reporting Manual .....	I-5
Reporting Requirements .....	III-7
Reports .....	III-6
Website .....	III-6
Net Present Value .....	IV-20; IV-21
Definition .....	I-4
Net Proceeds from the Sale of Project Equipment and Real Property.....	I-5
Definition .....	I-5
New Freedom Program .....	II-1; II-5
New Starts.....	<i>See New Starts or Small Starts Programs</i>
New Starts or Small Starts Programs.....	II-2; IV-22; IV-33; V-1; V-5; App. B-1
Non-Attainment Area for Ozone or Carbon Monoxide.....	II-5; II-6
Nonurbanized Area Formula Program.....	II-2; II-3; III-6; V-1; V-2
Office of Management and Budget (OMB).....	III-13; VI-4; VI-6; VI-8
Circular A-133 .....	III-7; III-13; VI-10
Circular A-87 .....	IV-30; IV-32; VI-5; VI-6; VI-7; VI-8; App. E-2; E-3

<u>Subject</u>	<u>Chapter/Page</u>
Cost Principles Circulars.....	VI-5
Form SF-SAC .....	VI-10
Website .....	VI-10
Passenger Shelters.....	III-10
Peak Vehicle Requirement.....	IV-19; IV-23; App. D-1.
Pre-Award and Post Delivery Audits for Rolling Stock.....	IV-13
Pre-Award Authority .....	III-1; VI-6; VI-7; App. F-1
Preventive Maintenance.....	I-5, -18, IV-28
Definition .....	I-5
Program Fraud Civil Remedies Act.....	II-11
Program Income.....	I-5
Definition .....	I-5
Program of Projects (POP).....	I-5; II-2; II-4; II-8; VI-5
Definition .....	I-5
Project Activity Line Item (ALI) .....	I-5
Definition .....	I-5
Project Description for the Grant Agreement or Cooperative Agreement .....	IV-14
Project Management Oversight (PMO) .....	IV-29; IV-34; V-1; V-4
Project Management Plan (PMP).....	IV-9, IV-22; IV-29; IV-33; V-4; App. B-1
Requirement.....	IV-29
Project Property .....	I-5
Continuing Control .....	IV-14
Cost .....	I-3
Definition .....	I-5
Incidental Use .....	IV-15
Maintenance.....	IV-28
Management.....	IV-21
Shared Use .....	IV-15
Project Scope .....	I-2; I-5; I-7; II-9; III-11; IV-29
Code .....	III-11
Definition .....	I-5
Projects.....	I-5
Definition .....	I-5
Public Transportation.....	I-1; I-4; I-5; I-7; II-2; II-3; II-4; II-5
.....	III-5; III-6; III-7; IV-15, IV-33; IV-34; V-4; VI-9
Definition .....	I-1; I-5
Projects.....	II-4
Rail Fleet.....	IV-19
Rail Fleet Management Plan.....	I-3; IV-21
Rail Vehicles .....	IV-17; IV-19
Real Estate Acquisition Management Plan (RAMP).....	IV-9; Appl B-1
Content.....	App. B-1
Real Property .....	I-3; I-4; I-6; I-7; III-5; IV-1; IV-3; IV-4; IV-5; IV-7

<u>Subject</u>	<u>Chapter/Page</u>
.....	IV-8; IV-9; IV-10; IV-11; IV-12; VI-3; VI-9; VI-15, App. C-2
Definition .....	I-6
Realty/Personalty Report .....	I-6; IV-2; App. C-2
Definition .....	I-6
Recipient .....	I-6
Definition .....	I-6
Recovery Plan .....	V-2
Regional ITS Architecture .....	IV-35
Remaining Federal Interest for Dispositions before the end of Useful Life .....	I-6
Definition .....	I-6
Remaining Federal Interest for Real Property .....	I-6
Definition .....	I-6
Right-of-Way or Appraisal Manual .....	App. C-1
Rolling Stock .....	I-3; I-5; I-6; III-2; III-9; IV-1; IV-13; IV-15; IV-16; IV-17
.....	IV-18; IV-19; IV-20; IV-21; IV-22; IV-23; IV-24; IV-29; IV-30
Federal Interest.....	I-6
Less Than \$5,000 .....	IV-24
Over \$5,000 Per Unit .....	IV-23
Overhauls .....	IV-18
Rebuilding Policies .....	IV-17
Spare Ratio Policies .....	IV-18
Transfer .....	IV-24
Warranty Standards.....	IV-22
Safe, Accountable, Flexible, Efficient, Transportation Equity Act	
A Legacy for Users (SAFETEA-LU).....	P-1; II-4; II-5; II-10
Safety and Security Management for Major Capital Projects .....	V-4
Safety and Security Management Plan (SSMP) .....	V-4
Review .....	V-4
Sales Proceeds.....	I-6
Definition .....	I-6
Scope of Work .....	IV-2; IV-31; App. B-3; C-1
Additional Requirements .....	App. C-2
Section 5307.....	<i>See Urbanized Area Formula Program</i>
Section 5309.....	<i>See Capital Investment Grants Program</i>
Section 5310.....	<i>See Elderly Individuals and Individuals with Disabilities Program</i>
Section 5311.....	<i>See Nonurbanized Area Formula Program</i>
Section 5313.....	<i>See Transit Cooperative Research Program (TCRP)</i>
Section 5316.....	<i>See Job Access and Reverse Commute Program (JARC)</i>
Section 5317.....	<i>See New Freedom Program</i>
Service Life Policy.....	IV-22
Shared Use .....	I-6; IV-15
Definition .....	I-6; IV-15
Small Starts .....	<i>See New Starts or Small Starts Programs</i>

<u>Subject</u>	<u>Chapter/Page</u>
Spare Ratio Policies .....	IV-18
Standard Form 270 (SF-270) .....	VI-12; App. F-1
Instructions.....	VI-12
State Appraisal Board .....	IV-2
State Management Review .....	V-2
State Oversight Agency .....	V-4
Statewide Cost Allocation Plan (SWCAP).....	VI-8
Statewide Transportation Improvement Program (STIP).....	III-8; III-9; III-10; III-11
Straight Line Depreciation.....	I-6; IV-23
Definition.....	I-6
Superfund Sites .....	I-2
Superintendent of Documents .....	VI-8
Supplemental Standards Rules.....	App. C-2
Supplies.....	I-7
Definition .....	I-7
TCRP Oversight and Project Selection Committee.....	II-3
TEAM-Web .....	I-7
Definition .....	I-7
Time and Attendance (T&A) Records .....	VI-4; VI-6
Title IX.....	II-9
Title VI.....	II-9
Title VII .....	II-9
Transit Cooperative Research Program (TCRP).....	II-1; II-3
Transit Development Corporation .....	II-3
Transit Enhancements .....	I-7; III-5
Definition .....	I-7
Reports .....	III-5
Transportation Electronic Award and Management (TEAM) System .....	I-7; III-1; III-2
.....	III-4; III-5; III-8; III-10; III-11; III-12 VI-11; App. D-1
Definition .....	I-7
Procedures.....	III-3; III-11
Reporting Requirements .....	App. D-1
User Guide .....	III-3; App. D-1
Transportation Improvement Program (TIP).....	III-11
Transportation Research Board (TRB) .....	II-3
Transportation Security Administration .....	V-3
TTY System .....	P-1
Triennial Review Process .....	IV-11
Uneconomical Remnant.....	I-7
Definition .....	I-7
Uniform Act or URA .....	<i>See Uniform Relocation Assistance and Real Property Acquisition Policies Act</i>

<u>Subject</u>	<u>Chapter/Page</u>
Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments .....	<i>See Common Rule</i>
Uniform Relocation Assistance and Real Property Acquisition Policies Act ....	IV-1; IV-2; IV-3; ..... IV-4; IV-6; IV-7; App. B-1; C-2
Uniform Standards of Professional Appraisal Practice (USPAP) .....	IV-2; App. C-2
Uniform System of Accounts (USOA) .....	III-6
U.S. Treasury .....	VI-13
Pay.Gov Website.....	VI-13
U.S. Treasury's Pay.Gov Financial Collection System .....	VI-13; VI-14
Unliquidated Obligations .....	I-7; III-3
Definition .....	I-7
Urbanized Area Formula Program.....	II-2; II-6; III-5; III-6; V-1
Funds.....	II-2; II-5; II-6; III-7
Use of Project Property.....	IV-14
Useful Life .....	I-6; III-8; IV-14; IV-15; IV-16; IV-17 ..... IV-18; IV-21; IV-23; IV-24; App. D-1; D-2
Definition .....	I-6
Policy .....	IV-15; IV-16
Useful Life of Project Property.....	IV-15
Value Engineering (VE) .....	I-7; IV-32
Definition .....	I-7; IV-32
Report.....	IV-32
Vehicle Identification Number (VIN).....	IV-23; IV-24; IV-25; App. D-1

## **Appendix E**

## **Real Estate Acquisition Process, Tracking and Reporting Tools (E1 – E 5)**

---

Appendix E-1 ROW Documentation Development Process

Appendix E-2A & E-2R Acquisition and Relocation Tracking Reports

Appendix E-3 ROW Process Flow Chart

Appendix E-4 ROW Acquisition Timeline Process Schedule

Appendix E-5 ROW Projections Graph



**HONOLULU HIGH CAPACITY TRANSIT PROJECT**  
**ROW ACQUISITION TRACKING REPORT RAMP Appendix E-2A**

	City & County of Honolulu Tax Map Key Zone-Section-Plat-Parcel	ACQUISITION NO.	PHASE	SEGMENT	PROPERTY ADDRESS_GIS	OWNER NAME	OWNER MAILING ADDRESS	OWNER PHONE NUMBER	TAKE (Full, Partial, Corner Clip)	LAND AGENT	DATE LD SENT OUT: LETTER OF INTENT, ACQUISITION BROCHURES, RELOCATION BROCHURE, GENERAL INFORMATION BROCHURE	DATE LD CONTACTED OWNERS TO SET UP APPRAISAL WALK WITH APPRAISER, ENGINEER & BFS	DATE TITLE REC'D	DATE SURVEY REC'D	DATE APPRAISALS REQUESTED
1	1-6-016-001	LS06_016-001	1	B	Zone1-Section 6-PLAT 016- Parcel 001				Partial						
2	1-6-016-002	ST07_016-002	1	C	3446 Farrington HWY				Partial						
3	1-6-016-006	TP06_016-006	1	C	Zone1-Section 6-PLAT 016- Parcel 006				Partial						
4	1-6-017-001	LS06_017-001	1	B	Zone1-Section 6-PLAT 017- Parcel 001				Full						





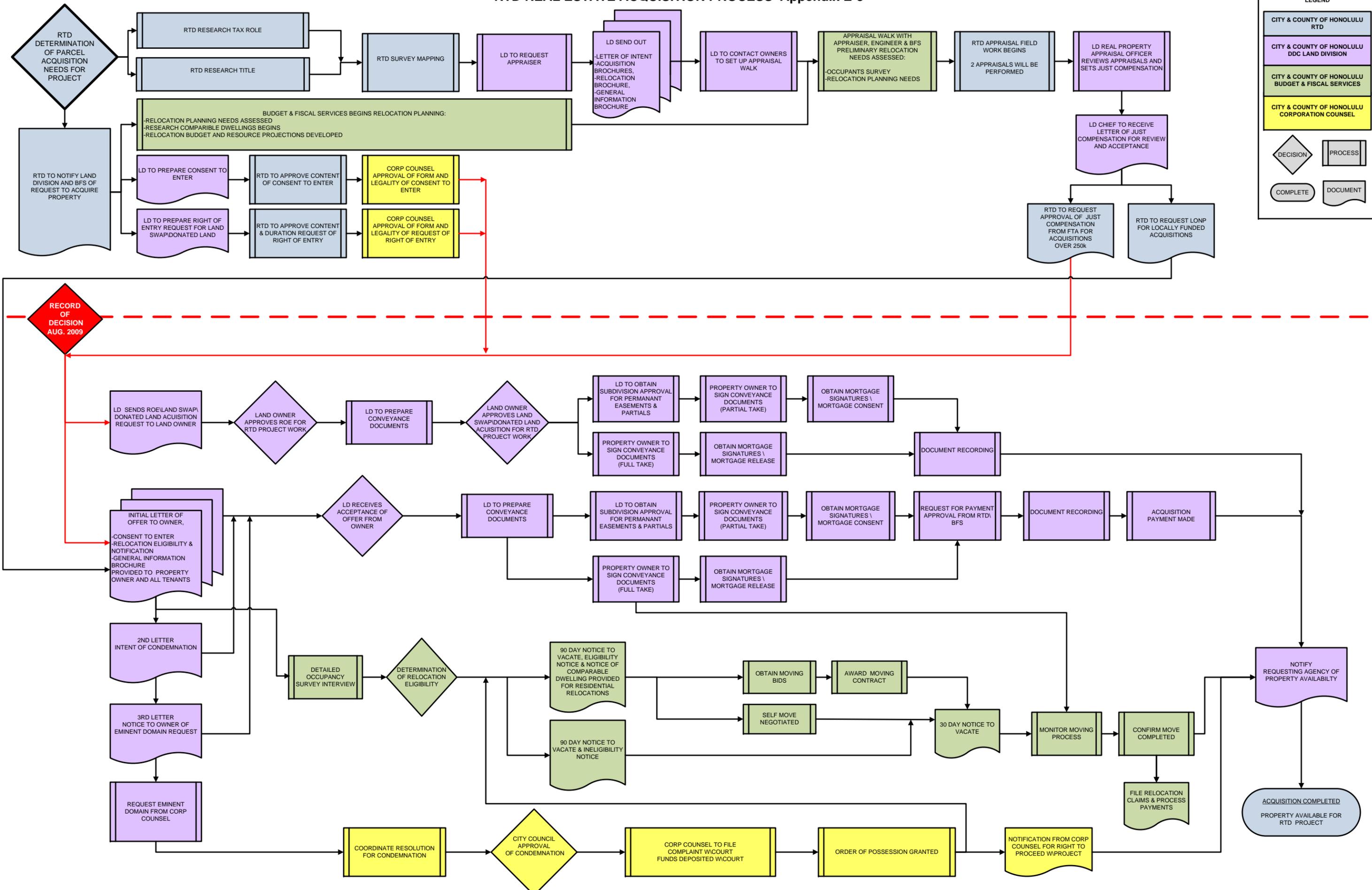


**HONOLULU HIGH CAPACITY TRANSIT PROJECT**  
**ROW ACQUISITION TRACKING REPORT RAMP Appendix E-2A**

ACQUISITION NO.	DATE OF REQUEST EMINENT DOMAIN FROM CORP COUNSEL	CORP COUNSEL TO COORDINATE RESOLUTION FOR CONDEMNATION	DATE CITY COUNCIL APPROVAL OF CONDEMNATION	DATE CORP COUNSEL TO FILE COMPLAINT W\COURT FUNDS DEPOSITED W\COURT	DATE ORDER OF POSSESSION GRANTED	DATE NOTIFICATION FROM CORP COUNSEL FOR RIGHT TO PROCEED W\PROJECT	DATE ACQUISITION COMPLETED PROPERTY AVAILABLE FOR RTD PROJECT	DATE FILE CLOSED	REMARKS
LS06_016-001									
ST07_016-002									
TP06_016-006									
LS06_017-001									



RTD REAL ESTATE ACQUISITION PROCESS Appendix E-3

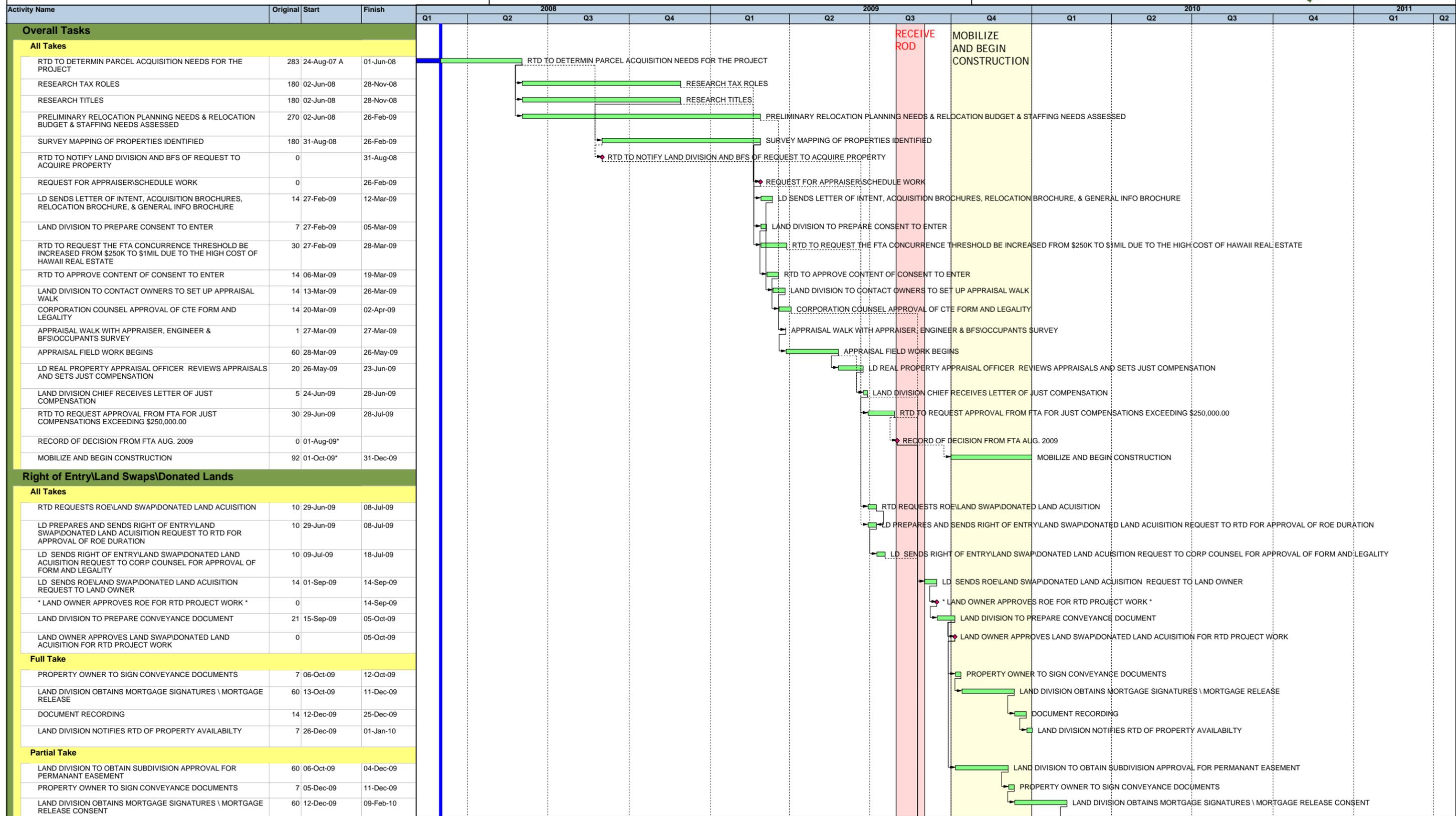


**LEGEND**

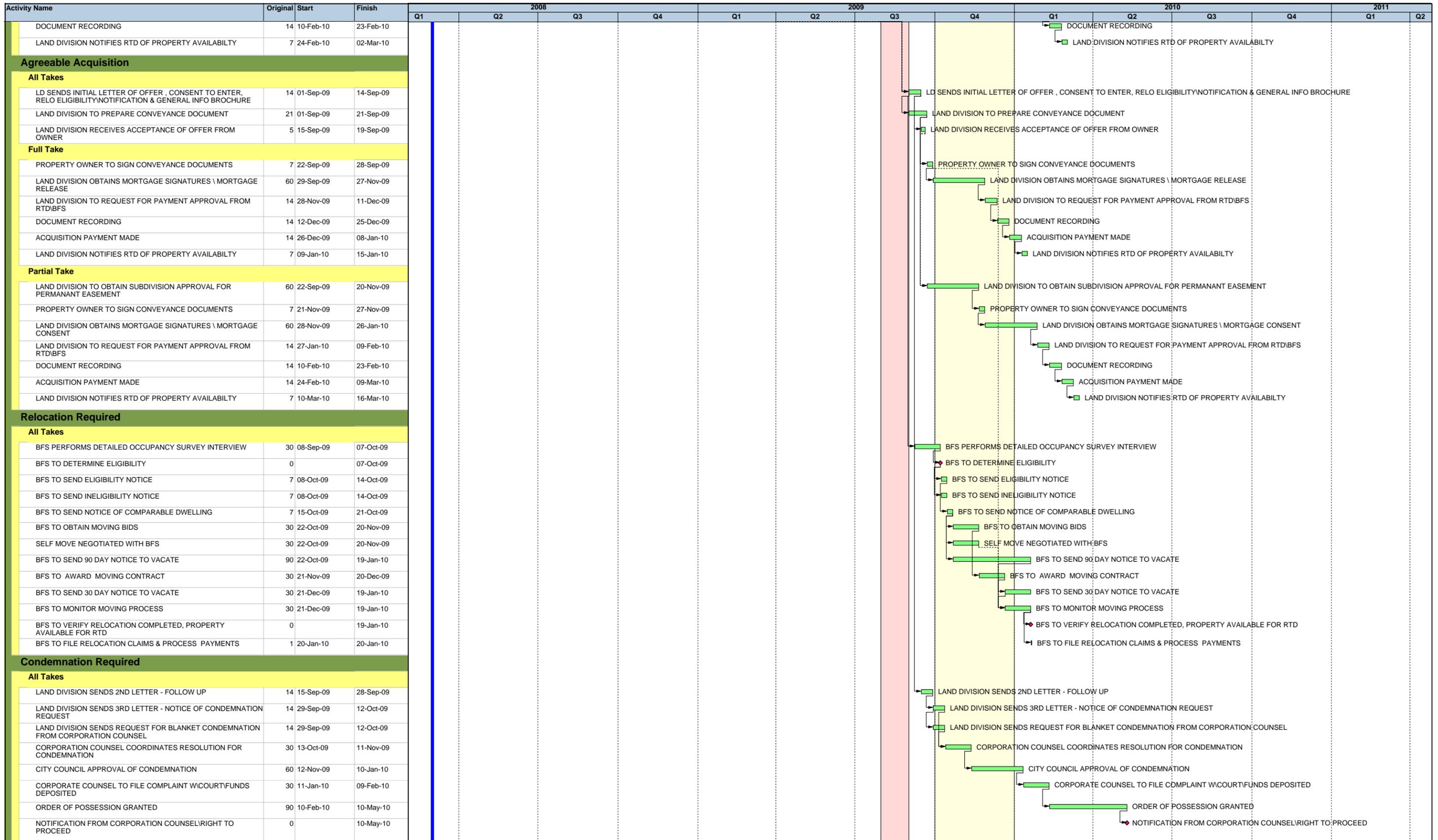
- CITY & COUNTY OF HONOLULU RTD
- CITY & COUNTY OF HONOLULU DDC LAND DIVISION
- CITY & COUNTY OF HONOLULU BUDGET & FISCAL SERVICES
- CITY & COUNTY OF HONOLULU CORPORATION COUNSEL

DECISION (Diamond)  
 PROCESS (Rectangle)  
 COMPLETE (Oval)  
 DOCUMENT (Wavy-bottom shape)

# Real Estate Acquisition Process Timeline Appendix E-4

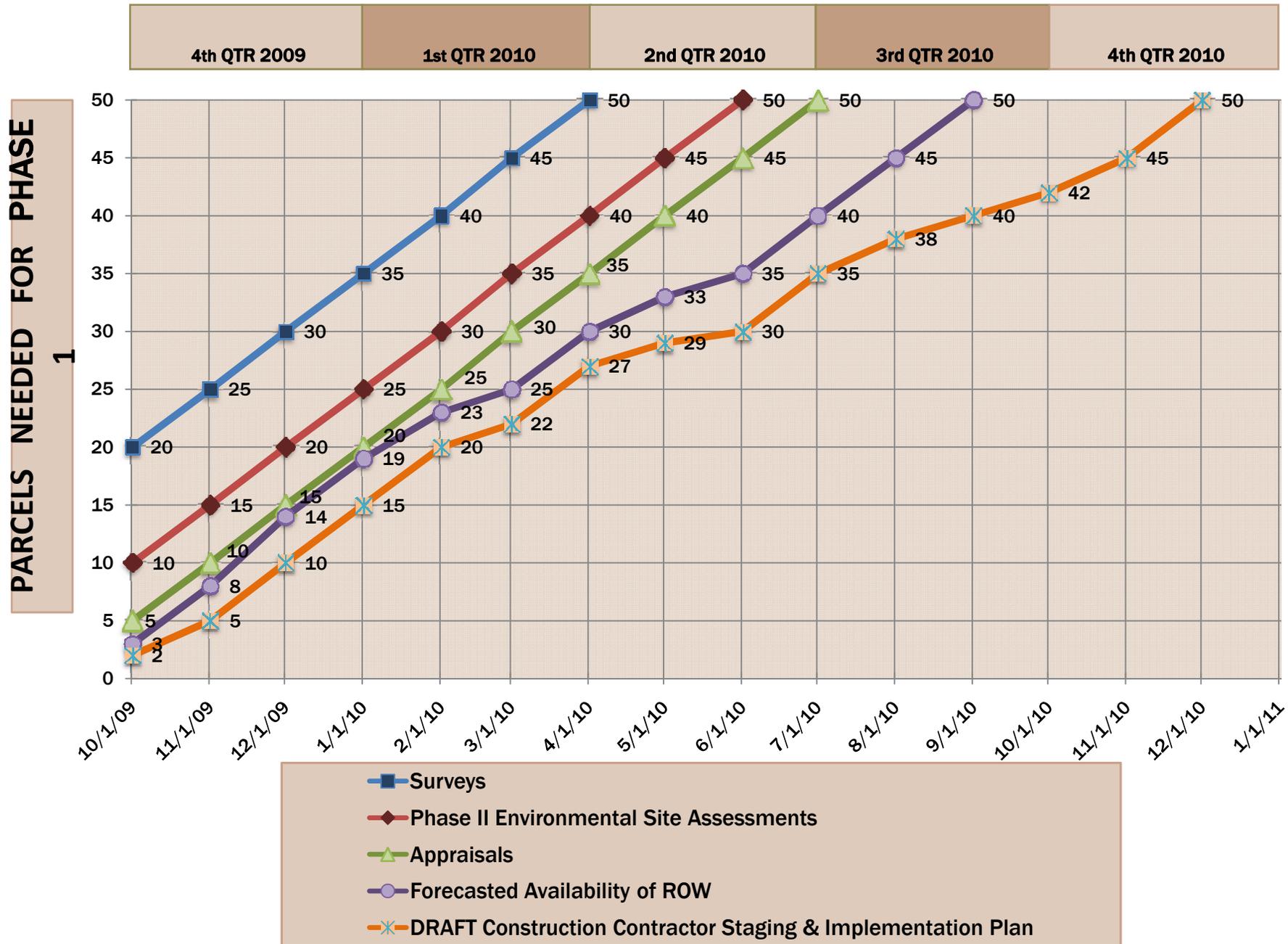


█ Actual Work     █ Critical Remaining Work  
█ Remaining Work     ◆ Milestone

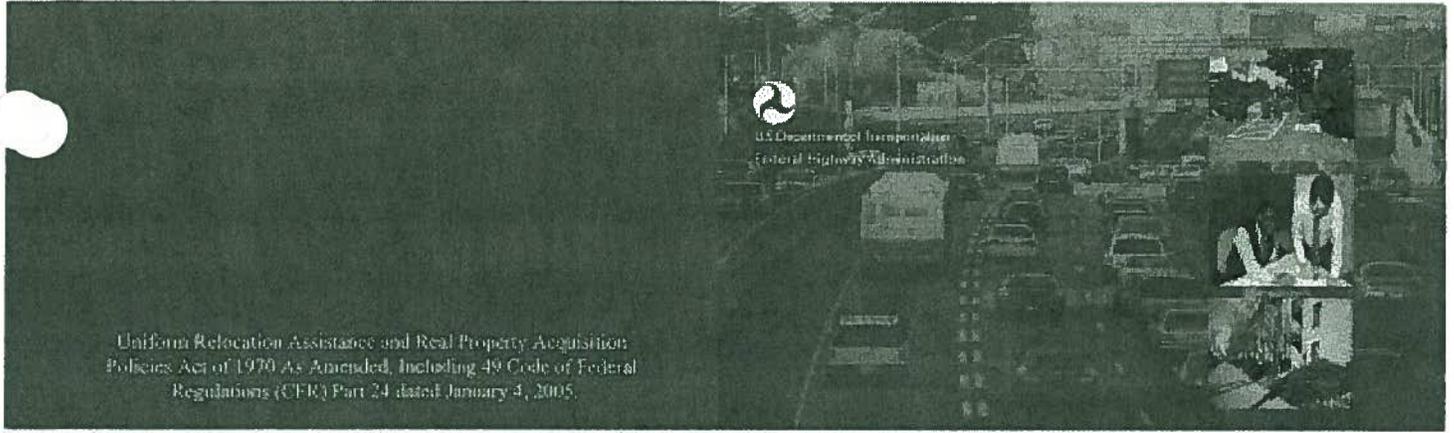


█ Actual Work     █ Critical Remaining Work  
█ Remaining Work     ◆ Milestone

## HHCTP ROW Projections Example Data Only Appendix E-5







# RELOCATION

YOUR RIGHTS AND BENEFITS AS A  
DISPLACED PERSON UNDER THE FEDERAL  
RELOCATION ASSISTANCE PROGRAM



# TABLE OF CONTENTS

Introduction	2
Important Terms Used In This Brochure	3

## **Section 1 – Relocation Advisory Services**

Residential Assistance	6
Business, Farm, and Nonprofit Organization Assistance	7

## **Section 2 – Individuals and Families**

Moving Costs	9
Replacement Housing	10
Replacement Housing – Purchase Supplement	18
Replacement Housing – Rental Assistance	21
Replacement Housing – Downpayment	25

## **Section 3 – Business, Farm, and Nonprofit Organizations**

Moving Cost Reimbursement	27
Related Eligible Expenses	30
Reestablishment Expenses	30
Fixed Payment For Moving Expenses (In Lieu Payment)	32
Project Office	34
Relocation Payments Are Not Considered To Be Income	34
Right To Appeal	34

# **INTRODUCTION**

---

Government programs designed to benefit the public as a whole 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, and amended it in 1987. This law, called the Uniform Act, is the foundation for the information discussed in this brochure.

Acquisition and relocation policies and provisions for all Federal and federally assisted programs and projects are contained in the government-wide rule published in the Federal Register on January 4, 2005. The rules are reprinted each year in the Code of Federal Regulations (CFR), Title 49, Part 24. All Federal, State, local government agencies, and others receiving Federal financial assistance for public programs and projects that require the acquisition of real property must comply with the policies and provisions set forth in the Uniform Act and the regulation.

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.

Section 1 of this brochure provides information about relocation assistance advisory service. Section 2 contains information important to you if you are being displaced from a residence. Section 3 contains information for displaced businesses, farms, and nonprofit organizations.

If you are required to move as a result of a Federal or federally assisted program or project, a relocation counselor will contact you. The counselor will answer your specific 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 sponsoring Agency if you have special requirements for assistance.

This brochure explains your rights as an owner of real property to be acquired for a federally funded program or project. The requirements for acquisition of property are explained in a brochure entitled Acquisition, Acquiring Real Property for Federal and Federal-aid Programs and Projects. Acquisition and relocation information can be found on the Federal Highway Administration Office of Real Estate Services website [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate)

## **IMPORTANT TERMS USED IN THIS BROCHURE**

---

### **Agency**

Relocation assistance advisory services and payments are administered at the local level by an Agency responsible for the acquisition of real property and/or the displacement of people from property to be used for a federally funded program or project. The Agency may be a Federal agency, a State agency, a local agency, such as a county or a city, or a person carrying out a program or project with Federal financial assistance. The Agency may contract with a qualified individual or firm to administer the relocation program. However, the Agency remains responsible for the program.

### **Alien Not Lawfully Present**

The law provides that if a displaced person is an alien not lawfully present in the United States such person 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.

### **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.

## **Nonprofit Organization**

A public or private entity that has established its nonprofit status under applicable Federal or State law.



## **Program or Project**

An activity or series of activities undertaken by a Federal agency, or an activity undertaken by a 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.

## SECTION 1 – RELOCATION ADVISORY SERVICES

A relocation counselor will contact you and offer relocation assistance service.

Any individual, family, business or farm displaced by a Federal or federally assisted program shall be offered relocation assistance services for the purpose of locating a suitable replacement property. Relocation services are provided by qualified personnel employed by the Agency. It is their goal and desire to be of service to you, and assist in any way possible to help you successfully relocate.

Remember, your relocation counselor is there to **help** and **advise** you, so please be sure to make full use of the counselor's services. Do not hesitate to ask questions and be sure you fully understand all your rights and benefits.

An individual with a disability will be provided the assistance needed to locate and move to a replacement dwelling or site. The individual should notify the Agency of any special requirements for assistance.

### **RESIDENTIAL ASSISTANCE**

---

A relocation counselor from the Agency will contact and interview you to find out your needs. Relocation services and payments will be explained in accordance with your eligibility. During the initial interview your housing needs and desires will be determined as well as your need for assistance.

The counselor will offer assistance and 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 counselor can supply information on other Federal and State programs in your area.

Transportation will be offered to inspect housing referrals. The Agency will provide counseling or help you get assistance from other sources as a means of minimizing hardships in adjusting to your new location.

You cannot be required to move unless at least one comparable decent, safe, and sanitary (DSS) replacement dwelling is made available to you.

Please let your counselor know if you locate a replacement dwelling so that it can be inspected to assure that it meets DSS standards.

## **BUSINESS, FARM, AND NONPROFIT ORGANIZATION ASSISTANCE**

---

A relocation counselor from the Agency will contact and interview 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 counselor any anticipated problems. During the initial interview the relocation counselor will ask many questions to determine your financial ability to accomplish the move, including lease terms and other obligations.

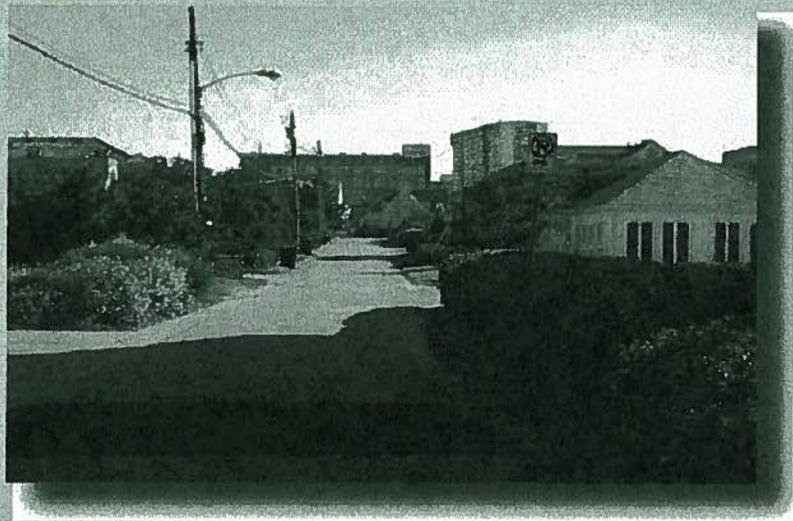
The counselor will help determine the need for outside specialists to plan, move, and reinstall personal property. The counselor will identify and resolve any issues regarding

what is real estate and what is personal property to be relocated. The counselor will explore and provide advice as to possible sources of funding and assistance from other local, State, and Federal agencies. In addition, as needed, the relocation counselor will maintain listings of commercial properties and farms.

The goal is to achieve a successful relocation back into the community.

### **Social Services Provided By Other Agencies**

Your relocation counselor will be familiar with the services provided by other public and private agencies in your community. If you have special problems, the counselor will make every effort to secure the services of those agencies with trained personnel who have the expertise to help you. Make your needs known in order that you may receive the help you need.



### **MOVING COSTS**

---

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 counselor from the Agency before you move.

#### **Actual, Reasonable Moving Costs**

You may be paid for your actual, reasonable moving costs by a professional mover plus related expenses, **or** you may move yourself. Reimbursement will be limited to a 50-mile distance in most cases. 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.

All expenses must be considered necessary and reasonable by the Agency and supported by paid receipts or other evidence of expenses incurred.

### **Fixed Moving Cost Schedule**

You may choose to be paid on the basis of a fixed moving cost schedule established for your State of residence. The amount of the payment is based on the number of rooms in your dwelling. Your relocation counselor 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. For a complete explanation of all moving cost options involving a mobile home, please discuss the matter with your relocation counselor.

## **REPLACEMENT HOUSING**

---

There are three types of replacement housing payments: purchase supplement, rental assistance, and downpayment. To understand replacement housing payments you first need to become familiar with the terms **Comparable; Financial Means; Decent, Safe, and Sanitary (DSS); and Last Resort Housing.**

## **Comparable**

A comparable replacement dwelling must be DSS and functionally equivalent to your present dwelling. While not necessarily identical to your present dwelling, a comparable replacement dwelling should provide for the same utility and function as the dwelling from which you are being displaced. In addition, 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.

## **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 (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 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). 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.

## **Decent, Safe, and Sanitary**

The DSS standard means the replacement dwelling meets the minimum requirements established by Federal regulations and conforms to applicable local housing and occupancy codes. The dwelling shall:

- Be structurally sound, weathertight, and in good repair.
- Contain a safe electrical wiring system adequate for lighting and other devices.
- Contain a heating system capable of sustaining a healthful temperature (approximately 70 degrees Fahrenheit) except in those areas where local climatic conditions do not require such a system.
- 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 egress to safe, open space at ground level.

- Be free of any barriers which prevent reasonable ingress, egress or, in the case of a handicapped displaced person, use of the dwelling.

## **IMPORTANT NOTICE**

Please understand that the 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. Therefore, you must not interpret the Agency's approval of a dwelling to 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. It is your responsibility to protect your best interest and investment in the purchase or rental of your replacement property and you must clearly understand that the Agency will assume no responsibility if structural, mechanical, legal, or other unforeseen problems are discovered after the inspection has been conducted.

### **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. Because this provision is commonly used, the statutory maximums will not be restated throughout this brochure.

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**

All eligible 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 counselor will thoroughly 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 counting 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.

The term “initiation of negotiations” is usually the date the Agency makes the first personal contact with the owner of real property, or his/her 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 downpayment.

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 downpayment, however, the downpayment 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. This involves checking to see if you qualify as low income using the HUD® 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. You should meet with your relocation counselor for an explanation of the relocation benefits that you may be eligible to receive.

# **REPLACEMENT HOUSING – PURCHASE SUPPLEMENT**

---

## **For Owner Occupants of 180 Days or More**

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.

### **Price Differential**

The price differential payment is the amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling.

### **Increased Mortgage Interest**

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.

## Incidental Expenses

You may be reimbursed for other 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.

### Example of a Price Differential Computation

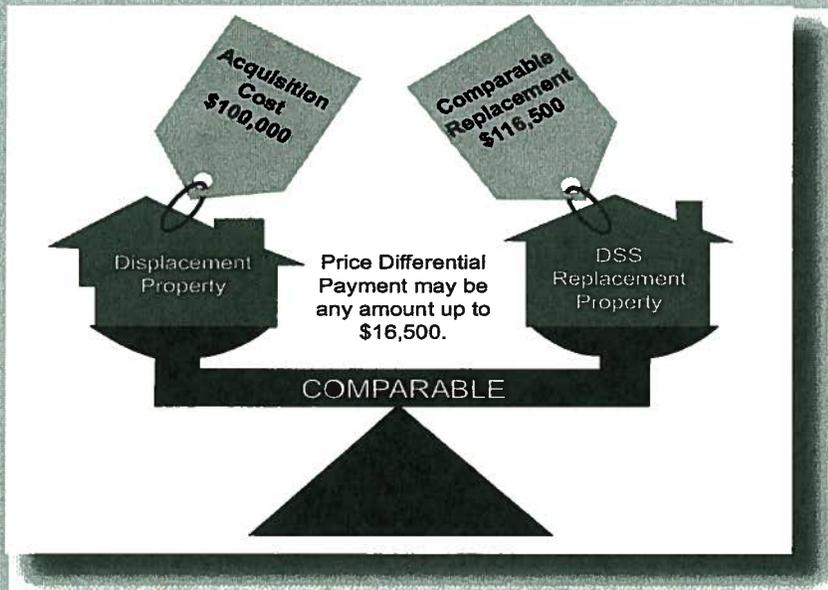
**Example A:** Assume the Agency purchases your property for \$100,000. After a thorough study of available comparable residential properties on the open market, the Agency determines that a comparable replacement property will cost \$116,500. If you purchase a DSS replacement property for \$116,500, you will be eligible for a price differential payment of \$16,500.

**Example B:** If you purchase a DSS replacement property costing more than \$116,500, you pay the difference as shown in Example B.

**Example C:** If your purchase price is less than \$116,500, the price differential payment will be based on your actual cost.



<b>Agency Computation of Maximum Price Differential Payment</b>	Cost of Comparable Replacement Acquisition Price of Your Property <b>Maximum Price Differential Payment</b>	\$116,500 <u>- 100,000</u> <b>\$ 16,500</b>
<b>Example A</b>	Actual Cost of Replacement Property (Same Purchase Price as Comparable) Acquisition Price of Your Property <b>Price Differential Payment</b>	\$116,500 <u>- 100,000</u> <b>\$ 16,500</b>
<b>Example B</b>	Actual Cost of Replacement Property Acquisition Price of Your Property Difference  <b>Price Differential Payment</b>  You Are Responsible for This Amount	\$125,000 <u>- 100,000</u> <b>\$ 25,000</b>  <b>\$16,500</b>  <b>\$8,500</b>
<b>Example C</b>	Actual Cost of Replacement Property Acquisition Price of Your Property <b>Price Differential Payment</b>  Payment is Based on Actual Cost	\$114,000 <u>- 100,000</u> <b>\$ 14,000</b>



# **REPLACEMENT HOUSING – RENTAL ASSISTANCE**

---

## **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. In no circumstances will the rental assistance payment exceed the amount the owner would have received as a price differential described previously.

## **For Owner Occupants and Tenants of 90 Days or More**

Owner occupants and tenants of 90 days or more may be eligible for a rental assistance payment. To be eligible for a rental assistance payment, tenants and owners must 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.

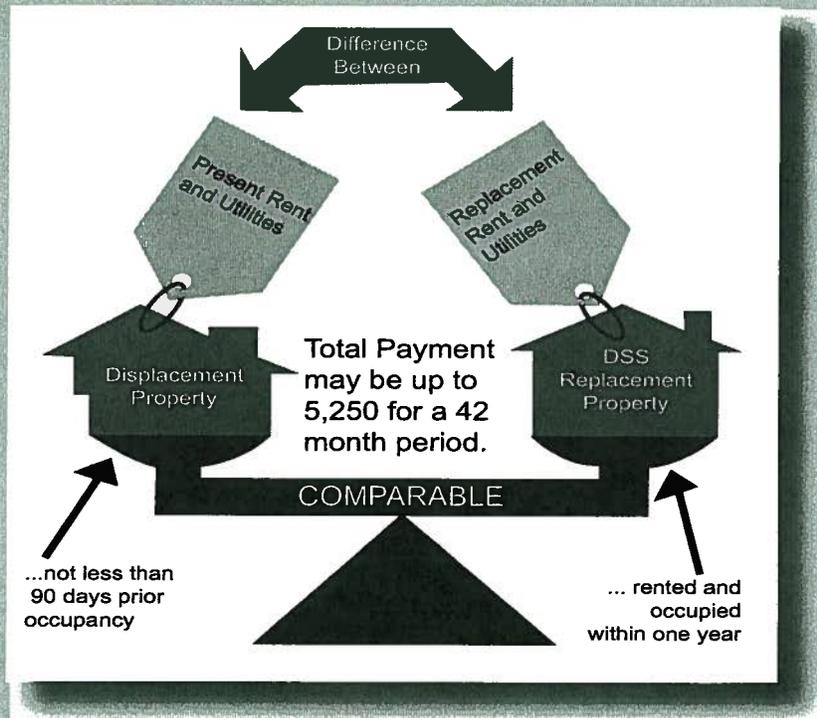
The rental assistance payment will be paid in a lump sum unless the Agency determines that the payment should be paid in installments. You must rent and occupy a DSS replacement dwelling within one year to be eligible.

## **Example**

Assume you have been paying \$500 per month rent for the dwelling unit occupied by you and purchased by the Agency. You also pay \$150 per month for utilities (electricity, gas, other heating and cooking fuels, water, and sewer). The rental assistance payment computation always includes the cost of basic utilities (electricity, gas, other heating and cooking fuels, water, and sewer), as well as the cost of rent. If rent includes utilities, a separate computation is not necessary.

After a study of the rental market, the Agency determines that replacement rental unit, that is DSS and comparable to your unit, is available for \$600 per month. It is estimated that average monthly utility costs for the replacement unit will be \$175 per month. The maximum rental assistance payment you can receive is \$125 per month for a 42-month period, or a total of \$5,250.

**Example A:** If you select a DSS replacement dwelling unit that rents for \$650 per month plus \$175 for utilities, despite the availability of comparable DSS replacement rental units that rent for \$600 per month plus \$175 for utilities, you will receive the maximum amount computed by the Agency, or \$5,250. You will be required to pay the additional \$50 per month yourself.



**Example B:** If you select a DSS replacement dwelling unit that rents for more than your present unit, but less than amount determined by the Agency as necessary to rent a comparable unit, your payment will be based on actual cost. For example, assume you select a replacement dwelling unit that rents for \$575 per month plus \$165 for utilities. On the basis of actual cost, you will be eligible for a payment of \$90 per month for 42 months, or \$3,780.

<b>Agency Computation of Maximum Rental Assistance Payment</b>	Rent You are Currently Paying	\$500
	Plus Cost for Utilities You are Paying	<u>+150</u>
		\$650
	Rent for a Comparable DSS Dwelling	\$600
	Estimated Cost for Utilities	<u>+175</u>
		\$775
	Difference (\$775-650=\$125) x 42 months	\$5250
	<b>Maximum Rental Assistance Payment</b>	<b>\$5250</b>
<b>Example A</b>	Actual Rent for DSS Replacement Property	\$650
	Plus Estimated Cost for Utilities	<u>+175</u>
		\$825
	Difference (\$825-650=\$175) x 42 months	\$7350
	<b>Rental Assistance Payment</b>	<b>\$5250</b>
<b>Example B</b>	Actual Rent for DSS Replacement Property	\$575
	Plus Estimated Cost for Utilities	<u>+165</u>
		\$740
	Difference (\$740-650=\$90) x 42 months	\$3780
	<b>Rental Assistance Payment</b>	<b>\$3780</b>

## **REPLACEMENT HOUSING – DOWNPAYMENT**

---

### **Owner Occupants of 90 to 179 Days and Tenants of 90 Days or More**

Owner occupants of 90 to 179 days and tenants of 90 days or more may be eligible for a downpayment and incidental expenses. The Agency will determine the maximum downpayment you may be eligible to receive based on its computation for a rental assistance payment. However, 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 downpayment assistance payment, the entire payment must be used to purchase a DSS replacement dwelling. The payment may be utilized for a downpayment 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 your area and do not represent prepaid interest. The combined amount of the downpayment and incidental expenses cannot exceed the amount the Agency computed as your maximum rental assistance payment.

The relocation counselor will explain how the Agency determines the maximum downpayment assistance payment.

### **DSS REMINDER**

It is very important to remember that the replacement dwelling you select must meet the basic DSS standard. Do not execute a sales contract or a lease agreement until a representative from the Agency has inspected and certified in writing that the dwelling you propose to purchase or rent meets the DSS standard. Please do not jeopardize your right to receive a replacement housing payment by moving into a substandard dwelling.

### **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 throughout the United States. 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.

Whenever possible, a minority person shall be given reasonable opportunity to relocate to a DSS replacement dwelling which is not located in an area of minority concentration, that is within their financial means. This policy does not require an Agency to provide a displaced person with a larger payment than is necessary to enable the person to relocate to a comparable replacement dwelling.

## **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.

You must provide the Agency with an inventory of the personal property to be moved and advance notice of the approximate date of the move, unless the Agency specifically tells you these notices are not necessary.

The Agency has the right to inspect the personal property at the displacement and replacement sites, and to monitor the move.

### **Actual Cost Move**

You may be paid the actual, reasonable and necessary cost of your move when the move is performed by a professional mover or when you elect to move yourself, however, all 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. This is not an inclusive list of moving related expenses. Your relocation counselor will provide you with a complete explanation of reimbursable expenses.

### **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. A low cost or uncomplicated move may be based on a single bid or estimate at the Agency's discretion. 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. The Agency may make the payment without additional documentation.

### **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. Your relocation counselor will explain this procedure in detail if this is a consideration for you.

## **Low Value High Bulk Property**

If an Agency considers a personal property item to be of low value and high bulk, and moving costs are disproportionate to its value (such as minerals, metals, rock, or topsoil), 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.

## **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. Commissions and fees related to the purchase of a replacement site are not eligible relocation expenses and will not be reimbursed.

## **RELATED ELIGIBLE EXPENSES**

---

In addition to the moving expenses listed above, costs for these items may be reimbursed if the Agency determines they are actual, reasonable, and necessary:

- Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
- Professional services to determine a sites' suitability for the displaced person's operation.
- Impact fees or one time assessments for heavy utility usage as determined necessary by the Agency.

Please discuss this with your relocation counselor before incurring these costs to assure that they are reimbursable.

## **REESTABLISHMENT EXPENSES**

---

A small business, farm, or nonprofit organization may be eligible for a payment, not to exceed \$10,000, for expenses actually 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 (excluding impact fees).
- Other items that the Agency considers essential for reestablishment.



## **FIXED PAYMENT FOR ACTUAL MOVING EXPENSES (IN LIEU PAYMENT)**

---

Displaced businesses, farms, and nonprofit organizations may be eligible for a fixed payment in lieu of (in place of) actual 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. This includes 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 the two year period specified. If you are interested in a fixed payment, please consult your relocation counselor for additional information.

### **Computation of Your 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. You must provide the Agency with proof 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.

### **Fixed Payment Example**

<b>2003</b>	<b>2004</b>	<b>2005</b>
Annual Net Earnings \$16,500	Annual Net Earnings \$18,500	Year Displaced
Average annual net earnings $\$16,500 + \$18,500 = \$35,000 / 2 = \$17,500$ Fixed Payment = \$17,500		

## **PROJECT OFFICE**

---

The Agency may establish a relocation office near the project. Project relocation offices are usually open during hours convenient to persons being displaced, including evening hours when necessary. If the Agency opens a project office, the staff will be happy to assist you, answer questions, and will maintain various types of information.

## **RELOCATION PAYMENTS ARE NOT CONSIDERED TO BE INCOME**

---

No relocation payment received will be considered as income for the purpose of the Internal Revenue Code. No relocation payment received will be considered income for the purposes of determining eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for any Federal law providing low-income housing assistance).

## **RIGHT TO APPEAL**

---

Any aggrieved person 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 promptly review your appeal and consider all pertinent justification and 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 still dissatisfied with the relief granted, the Agency will advise you of your right to seek judicial review of the Agency decision.

An alien not lawfully present in the United States shall not be eligible to receive relocation payments or any other assistance provided under 49 CFR Part 24.

This brochure is provided to assist you in understanding your rights and benefits. If you have questions regarding your relocation please contact your sponsoring Agency representative.

Additional information on Federal relocation and acquisition requirements, the law, and the regulation can be found at [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate)

# NOTES



**NAME**

Thomas T. Miyata

**Years of Experience**

27

**Education\Certification**

University of Hawaii - Bachelor of Arts in Communications  
Kaimuki High School

**Other Certifications and Training**

Courses from the American Institute of Real Estate Appraisers, Society of Real Estate Appraisers, Appraisal Institute, International Right-of-Way Association and Federal Highway Administration.

State of Hawaii Licensed Certified General Appraiser (License No. CGA-175)

Current Membership Chair, Employees Association of the C&C of Honolulu

Past President, Vice-President and Secretary, Employees Association of the C&C of Honolulu

Past Member and Secretary, International Right-of-Way Association

Past Member of the National Association of Review Appraisers and Mortgage Underwriters

**Key Qualifications**

Thomas has about 30 years of experience in real estate appraisal and has a Certified General Appraiser license in the State of Hawaii since 1991. Appraisal experience includes partial takings, easement valuations, temporary acquisitions, market value estimate for disposition and acquisition, and various related valuation studies. He is qualified to testify as an expert witness for the City on real estate valuation issues.

His prior employment with the City and County of Honolulu includes real property appraisal and real property analyst for the property tax assessment division. Thomas has been with the Land Division for 20 years and held positions as a staff appraiser and Real Property Appraisal Officer performing appraisals and appraisal review for the real estate acquisition. He has been Chief of the Land Division for the past 5 years. His current position is responsible for managing the real estate acquisition activities for the City that include surveying, real estate appraisal, title searching and document preparation. Past federal-aid projects include Salt Lake Boulevard Widening, Kamehameha Highway Scenic View Plane and Middle Street Intermodal Transit Center.

**Project Experience****City Department of Design and Construction**

Division Chief, Land Division 2003 to present

**City Department of Design and Construction**

Appraisal Officer, Land Division 1990 to 2003

**City Department of Finance**

Real Property Analyst, Real Property Assessment Division 1988 to 1990

**City Department of Public Works**

Real Property Appraiser V, Land Division 1985 to 1988

**City Department of Finance**

Real Property Appraiser IV, Real Property Assessment Division 1981 to 1985

**Alexander and Alexander Company**

Staff Appraiser 1979 to 1981

**NAME**

Carol L Webb

**Years of Experience**

10+

**Education\Certification**

2008\_02

Primavera Certification Training: Innovative Management Solutions  
Advanced Techniques and Administration in P6

2007\_03

Primavera Certification Training: Innovative Management Solutions  
Primavera P5 for Construction and Engineering

2003\_03

Primavera Certification Training: Commint Technical Services  
Primavera P3 Project Planner

2000\_01

Alvin Community College:  
General Studies

1989\_12

Alvin Community College:  
Certification in Data Processing

**Other Certifications and Training**

OSHA for General Industry [40hrs]

Overhead Catenary System Safety Certification

Hazardous Waste Communication Cetification

HAZCOM Safety Checklist, Vehicle Safety Checklist

Respiratory Fit/Protection Program

RCRA ,HAZMAT,HS&E, Fire/Safety Training Certification

Selected to serve on the Quality Improvement Process Committee at  
GecoPrakla\Schlumberger

Participation and Presentation of weekly Safety Toolbox Meetings and Monthly  
Safety/Quality Meetings.

Authored numerous Safety and Quality oriented items and articles for Safety and  
Quality Workshops as well as the Staffing Solutions Weekly Newsletter

**PC proficient with knowledge and experience working with the following:**

Windows Operating Systems: XP & VISTA

Microsoft Office Professional 2003 & 2007

Primavera Project Planner 3.1, Primavera P5\P6 for Construction and Engineering,  
SureTrak, Claim Digger, Project Investigator, MS Project, Microsoft Visio, Microsoft  
FrontPage

Adobe Acrobat/Adobe Writer, Numerous Graphics and Media Programs, Office  
Equipment including 10 Key Proficient, PC, Fax, Copiers, Printers, Plotters, and  
Scanners, Disc Burners, Video equipment, Projectors, etc.

## **Key Qualifications**

Carol is a project controls and scheduling specialist, most recently involved in the innovative transit program underway at the Harris County (Houston) MTA where her responsibilities included developing schedules for Phase 2 of Houston Metro Solutions, a \$1.2 billion project. She was responsible for the real estate acquisition schedules for a centralized intermodal facility and five new LRT and BRT corridors, ROW Coordinator focusing on defining and facilitating the interfaces between all of the ROW Stakeholders, tracking ROW budget and producing reports and charts to communicate the actual and projected expenditures, development of program schedules for vehicles and systems, establishing baseline cost schedules for real estate and future forecasting, and reviewing and analyzing the program schedules provided by contractors. Carol was formerly with Siemens Transportation Systems, where she served as a project controls scheduler for the Houston METRO Light Rail Transit Project. More details on Carol's experience are provided below.

## **Project Experience**

### **InfraConsult, LLC**

**Honolulu, Hawaii**

#### ***Honolulu High Capacity Transit Project***

Project Controls Analyst\ROW Coordinator

Serving as a Project Controls Analyst focusing on Scheduling for the City & County of Honolulu's High Capacity Transit Project as well as ROW Coordinator for the HHCTP focusing on defining and facilitating the interfaces between all of the ROW Stakeholders and supporting the GEC in the development of the RAMP.

### **Harris County Metropolitan Transit Authority**

**Houston, Texas**

#### ***METRO Solutions Phase II***

#### ***Main Street Enhancements***

#### ***Signature Bus***

Senior Project Controls Specialist\ROW Coordinator

Senior Project Controls Specialist with Houston METRO. Responsibilities include development of schedules for Houston Metro Solutions, Phase 2, a \$1.2 Billion Dollar Project that continues the growth and expansion of the Houston Mass Transit System, as well as Capital Improvement Projects on an as needed basis.

Current assignments include:

Real Estate Acquisition Schedules for a Centralized Intermodal Facility and 5 new Corridors for LRT & BRT

Base lining a Cost Loaded Real Estate Budget Schedule for Forecasting in P5

ROW Coordinator for the Project Team focusing on defining and facilitating the interfaces between all of the ROW Stakeholders.

High Level Construction Schedule for the Intermodal Terminal Facility (Planning Phase)

"What-If" Construction Schedules for possible construction sequencing

Moving P3 Planner Schedules over to the new P5 for Engineering & Construction Development of Program Schedules for Vehicles and Systems and establishing a

Baseline Cost Schedule for future Forecasting in P5  
Development, Preparation, and Coordination of Schedule Reports, Spreadsheets, PowerPoint presentations and Charts for Senior Management Meetings  
Reviewing and Analyzing Program Schedules provided by the Prime Contractor for all Metro Solutions Phase 2 work  
Development and Maintenance of 12+ CIP Project Schedules

**Siemens Intelligent Transportation Systems Houston, Texas**

***ATMS - City of Irving, Texas***

***RCTSS Program - Houston, Texas***

***UDOT & UTA - Salt Lake City, Utah***

***METRO Solutions - Houston, Texas***

***Traffic Operations Control Center - City of Baltimore, Maryland***

Projects Administrator/Senior Projects Control Specialist

Central Regional Projects Administrator for Siemens Intelligent Transportation Systems. Involved in projects such as Regional Computerized Traffic Signal System (RCTSS); Houston, Texas, METRO LRT Traffic Operations Plan Houston, TX, Advanced Transportation Management System Irving, TX. Duties include but not limited to schedule development using Primavera P3 Planner & Microsoft Project, progress control, impact analysis reporting, resource/cost loading, earned value reports & curves, participation in client meetings, coordinating with all project participants/stakeholders, contractors & sub-contractors on planning, scheduling & integration issues. Monthly Tracking and Reporting of Invoices for 25+ Projects for the Central Regional Manager, Assisted in preparation of Project Proposals, Set up of New Projects, Monthly Progress Reporting

**Siemens Transportation Systems**

**Houston, Texas**

***Houston Light Rail Project***

Project Controls Scheduler/Project Coordinator

Project Controls Scheduler and Coordinator with Siemens Transportation Systems Turnkey Division on the Houston Light Rail Transit Project for METRO. CPM cost loaded schedule in excess of 5000 activities integrated with 10 Subprojects. Duties include but not limited to working with the Turnkey Management Team to develop and implement a cost loaded CPM Project Schedule. Work with the client, STS partners, contractors and sub-contractors on planning, scheduling and integration issues, progress control, critiquing/analyzing logic, impact analysis reporting, creating/developing new activities, schedule compression and optimization, resource/cost loading, earned value reports and curves, monitoring/auditing field installation and testing, base lining, troubleshooting, Time Chainage Chart updating, Testing & Commissioning schedule development and progression. Preparation and coordination of schedules, reports, PowerPoint presentations and charts for weekly Senior Management Meetings. Printing/plotting schedules and monthly submittals, and producing/submitting other requested deliverables for the client.



**NAME**

Winston K. Q. Wong

**Years of Experience**

33

**Education\Certification**

Boston University School of Law J.D., 1974. Honors: Best brief, Stone Moot Court Competition.

Boston University A.B., 1971. Magna cum laude, majoring in Economics. Honors: Phi Beta Kappa.

Iolani School Class of 1967 cum laude

**Other Certifications and Training**

Hawaii State Bar Association Member since 1974

Admitted to practice before all courts in Hawaii since 1974.

**Project Experience****City and County of Honolulu****Honolulu, Hawaii*****Department of the Corporation Counsel – City Hall***

Deputy Corporation Counsel January 1977 to Present

Emphasis on land acquisition, valuation, and real property matters, including condemnation lawsuits for all City departments, documentation, advising and preparing and reviewing legislation on such matters relating to City residential condominium leasehold conversion. Defend the City in almost all Land Court matters and quiet title actions. Has advised almost all City departments. Has represented the City in the federal, Hawaii circuit, tax appeal and appellate courts and handled over 38 jury and non-jury trials.

**City and County of Honolulu****Honolulu, Hawaii**

Deputy Prosecuting Attorney January 1975 to January 1977

I was involved in every phase of the criminal justice system including the handling of 15 felony jury trials.

**NAME**

Scott S. Shigeoka

**Years of Experience**

29

**Education\Certification**

Bachelor of Arts, 1980 University of Hawaii at Manoa  
Professional Real Estate Courses Include Credit for:  
SREA Course 101 - Introduction to Appraising Real Property  
SREA Course 102 - Applied Residential Property Valuation  
SREA Course 201 - Principles of Income Property Appraising  
Appraisal Institute: Standards of Professional Practice - Part A  
Appraisal Institute: Standards of Professional Practice - Part B  
Appraisal Institute: Standards of Professional Practice - Part C

**Other Certifications and Training**

Attended and completed various specialized seminars conducted by the former Society of Real Estate Appraisers, Appraisal Institute, and the Honolulu Board of Realtors  
Certified General Appraiser (CGA-136), State of Hawaii, Expiration date: 12/31/09  
Affiliate Member of the Appraisal Institute  
Active Regular Member International Right of Way Association  
Qualified expert witness First Circuit Court, City & County of Honolulu, State of Hawaii.

**Key Qualifications**

Scott Shigeoka has been a Certified General Appraiser licensed in the State of Hawaii since 1991 with over 29 years of experience in real estate appraisal. During the past 10 years Mr. Shigeoka has worked at the State of Hawaii Department of Transportation and most recently with the City and County of Honolulu's Department of Design and Construction, Land Division. Appraisal assignments have included partial takings, easement valuations, temporary acquisitions, market value estimate for disposition and acquisition, and various related valuation studies. Scott also has testified as an expert witness on real valuation in the Hawaii circuit courts.

**Project Experience****City & County of Honolulu****Honolulu, Hawaii**

Department of Design and Construction, Land Division  
Real Property Appraisal Officer, August 2004 to present.

**State of Hawaii****Honolulu, Hawaii**

Former Right of Way Agent IV. Department of Transportation, Highways Division,  
October 1998 to August 2004.

**State of Hawaii**

**Honolulu, Hawaii**

Department of Transportation, Highways Division. Former Right of Way Agent III, April 1998 to October 1998.

**State of Hawaii**

**Honolulu, Hawaii**

Former Real Property Appraiser III, State of Hawaii, Department of Land & Natural Resources, Land Management Division, July 1997 to April 1998.

**State of Hawaii**

**Honolulu, Hawaii**

Stellmacher & Sadoyama, Ltd. Former Senior Appraiser, March 1985 to June 1997.

**State of Hawaii**

**Honolulu, Hawaii**

Hastings Martin Residential Appraisal Corporation. Former Manager, October 1983 to November 1984.

**State of Hawaii**

**Honolulu, Hawaii**

Hastings Martin Residential Appraisal Corporation. Former Staff Appraiser, January 1983 to September 1983.

**State of Hawaii**

**Honolulu, Hawaii**

State Savings & Loan Association. Former Assistant Vice-President & Chief Appraiser, January 1982 to September 1982.

**State of Hawaii**

**Honolulu, Hawaii**

State Savings & Loan Association. Former Department Supervisor & Chief Appraiser, November 1980 to January 1982.

**State of Hawaii**

**Honolulu, Hawaii**

State Savings & Loan Association. Former Staff Appraiser, February 1979 to November 1980.

**State of Hawaii**

**Honolulu, Hawaii**

Tad Fukumoto Appraisal Services, Inc. Former Appraiser Trainee, July 1978 to February 1979.

**NAME**

Mary E. (Dodie) Browne

**Years of Experience**

47

**Education\Certification**

Masters in English Literature, University of Hawaii – Manoa

Bachelor of Arts in Sociology and English Literature, University of Hawaii – Manoa

**Other Certifications and Training****Key Qualifications**

Dodie Browne has worked in the real estate field for the past 27 years researching land titles and genealogy to determine accuracy of title ownership. Ms. Browne has worked for the City and County of Honolulu's Department of Design and Construction for 20 years; 18 years as a Land Agent negotiating for property rights for various City projects, and the last two years as the Branches Acquisition Officer.

Ms. Browne has been involved in numerous land transactions for the City, including federally assisted projects. She currently plans and coordinates the work of the Acquisition Branch which includes the Negotiation, Abstract and Documents Sections, to meet City construction deadlines.

27 years of real estate experience, including researching land titles, genealogy to determine accuracy of title ownership and right of way experience.

21 years with the City and County of Honolulu, Department of Design and Construction; 18 years as a Land Agent negotiating for property rights for various City projects; 3 years as the Acquisition Branch's Acquisition Officer.

**Various Federally Funded Projects:**

Salt Lake Boulevard Widening, Phase 2A, Bougainville Drive to Maluna Street, FAUP No. STP-7311 (2)

Salt Lake Boulevard Widening, Increment 3, FAUP No. STP-7311 (1)

Middle Street Bus Facility

Kamehameha Highway Scenic Viewplane Enhancement

Waiahole-Waikane Scenic Shoreline Preservation

**Project Experience**

**City and County of Honolulu**  
**Department of Design and Construction**  
Land Acquisition Officer

**Honolulu, Hawaii**

**NAME**

Milton S. Watanabe

**Years of Experience**

33 years of land surveying experience includes 29 years with the City and County of Honolulu

**Education\Certification**

Bachelor of Science in Civil Engineering University of Hawaii Manoa

**Other Certifications and Training**

Licensed Professional Land Surveyor – Hawaii [License No. 7559]  
Land Court Surveyor – Hawaii [No. 254]

**Professional Affiliations**

National Society of Professional Surveyors  
Hawaii Land Surveyors Association

**Key Qualifications**

Land Survey Branch Chief since May 2001. Charged with the complete professional, supervisory and operational responsibilities of the Survey Branch in all phases of cadastral work for the Department of Design and Construction and other City Agencies through a staff of professional and sub professional land surveyors, engineering technicians and drafting technicians.

**Project Experience****City and County of Honolulu****Honolulu, HI**

Land Survey Branch Chief, Land Division, Department of Design and Construction

**NAME**

May Whitten

**Years of Experience**

25+

**Education\Certification**

Bachelor of Arts, University of Hawaii, Manoa  
Certified HOME Program Specialist (HUD)

**Other Certifications and Training**

Professional Registrations

Real Estate Broker – Hawaii (RB-16275 Inactive)

5 years of relocation experience

20 years of real estate experience as a real estate agent, broker and manager

**Key Qualifications**

May Whitten has over 25 years of experience in the real estate field including 10 years of housing management. She is a Relocation Agent for the City and County of Honolulu's Department of Budget and Fiscal Services since 2002 and is responsible for all relocation required by the entire City in accordance with URA and Hawaii Administrative Rules, Title 17-2017 and interim property management. Her responsibilities include initial research, relocation planning, budgeting through final payments of relocation assistance. She also oversees relocation generated by the City's subrecipients of federal funds, such as Community Development Block Grants (CDBG) and Home Investment in Affordable Housing (HOME), and ensures the subrecipients follow the Uniform Act as amended.

**Project Experience**

Major projects include Middle Street Intermodal Center, Manana Bus Facility, Ewa Villages Revitalization Project, Waiahole/Waikane acquisition of scenic site and Kulana Nani Apartments renovation project; most of the projects were partially funded with the federal funds, and therefore required thorough knowledge and understanding of URA. Wide range of displacees includes temporary and permanent residential dwellings, farm, non-profit organizations, business offices, retailers, used car dealer, tow company, trucking company and junk yard.

**NAME**

LAMAR MABEY

**Years of Experience**

19 years of appraisal and right of way experience

20 years of real estate experience as a real estate agent and broker

**Education\Certification**

Masters in Business Administration, University of Phoenix

Bachelor of Arts, University of Utah

Certified Public Manager (C.P.M.), State of Utah

**Other Certifications and Training**

Professional Registrations

International Right of Way Association (#3875308)

Certified General Appraiser – Utah (#5454131-CG00)

**Key Qualifications**

Lamar Mabey is PB's Right of Way Specialist in all Right of Way Activities, experienced in project right of way management and supervision. He has 19 years of appraising experience, 18 years of real estate management and sales experience and 8 years in city government as an elected official. Lamar is a former Utah Department of Transportation (UDOT) Local Government Right of Way Manager, Right of Way Appraisal Supervisor, Project Right of Way Lead , Negotiator, Appraiser, Appraisal Reviewer and Relocation

Professional Affiliations

International Right of Way Association

**Project Experience*****PB Design-Build Technical Resource Center (DB-TRC)***

Right-of-Way Supervising Technical Specialist

Providing right of way oversight to the Honolulu High-Capacity Transit Corridor

Project for the RAMP document

Guam – providing right of way oversight and document review

***UDOT's Local Government Right-of-Way Manager/UDOT***

Project Right of Way Lead

12300 South Design-Build Project. UDOT's Right of Way Oversight Manager.

UDOT's first complete turn-key project in Salt Lake County. Making sure the federal policies and procedures were followed along with the Uniform Act because of the 65 residential and business relocations.

### ***I-15 Corridor Reconstruction Design-Build Projects***

Managed all appraisal assignments and appraisal reviews for the 17 miles reconstruction of I-15 in Salt Lake County.

### ***2002 Winter Olympics***

Managed all appraisal assignments and appraisal reviews for the 2002 Olympic funded highway projects.

### ***Legacy Highway***

Managed appraisal assignments and appraisal reviews for the Legacy Highway DB Project. Coordinated with the project right of way lead to help resolve valuation issues that arose during negotiations.

### ***Right of Way***

Oversight Manager for all local government federal aid projects throughout the State of Utah.

Responsible to make sure all local governmental agencies followed the Uniform Act as amended, federal and state policies and procedures so as not to lose federal funding. Worked with local governments when putting together their Right of Way Cooperative Agreements for their local government projects in determining their resource plan and the ROW funding needs for the project. Involved in training city and county officials and personnel in helping them understand the Uniform Act as amended, Federal and State rules, regulations and policies as it relates to ROW acquisitions and relocations on Federal Aid Projects.

### ***UDOT***

Project Right of Way Manager

Worked with Project Managers, designers, contractors, elected officials and property owners in relation to any Right of Way issues that may arise making sure they followed federal policies and procedures and the Uniform Act.

Worked very close with Right of Way counter-part at Federal Highway Administration in making sure all federal regulations and policies and uniform act were followed. Provided training to UDOT personnel and local governments federal regulations and policies and the uniform act. With Utah's Federal Highway Administration (FHWA) Right of Way official, we performed numerous audits on local governments in the State of Utah that did relocations on federal aid projects to make sure they followed the Uniform Act and provided training if necessary.

**UDOT**

Served as right of way appraiser and negotiator.

Performed appraisal reviews for conformity to USPAP Standards and meeting Federal and State policies and procedures. Appraised property to establish the fair market value for highway right of way. Negotiated the purchase of right of way for highway projects. Worked with project manager, traffic/design engineers, consultants, professional and government officials on ROW issues. Met with property owners to discuss how projects would affect them.

**Salt Lake County Assessors Office**

Real and Personal Property Appraiser

Establishing market value for "Ad Valorem Taxation". Helped find and place new businesses and personal property on the county tax rolls, helped established the fair market value of personal property not on the county tax rolls.

**South Jordan City Councilman**

Prepared and finalized department and city annual budgets. Updated the city's master plan and master street plan for future growth and development within the city. Met with property owners and developers to resolve zoning issues for their properties. Worked with developers of commercial/retail and office buildings in their properties. Worked with utility companies and contractors in providing infrastructure to new developments. Worked with city's planning and zoning, city engineer in understanding their recommendations on developments.

**NAME**

Kevin Wong, P.E.

**Years of Experience**

32

**Education\Certification**

Bachelor of Science, Civil Engineering, 1974 University of Hawaii

**Other Certifications and Training**

American Society of Civil Engineers

**Key Qualifications**

Kevin Wong has 32 years of experience managing and designing a diverse range of engineering projects in both the private and public sector. He is currently PB's project manager for the Hawaii Water Systems Technical Studies Program Statewide Dam Break Analysis for the US Army Corps of Engineers (USACE) Department of Land and Natural Resources (DLNR). In this project, PB is tasked with studying the effects of a variety of dam break scenarios for two earthen dams, one on the island of Kauai and the other on the island of Molokai, with the ultimate purpose of mapping the worst-case flood inundation areas that would result from those scenarios.

From 1993 through project completion in 2000, Kevin was PB's project manager for the Interstate Route H-3 Tetsuo Harano Tunnel project. Kevin led PB's multidisciplinary tunnel design and construction management team responsible for planning, design, construction management, and operations and maintenance support for this complex highway tunnel project.

**Project Experience****Hawaii Water Systems Technical Studies Program Statewide Dam Break Analysis Project  
Kauai and Molokai, HI State*****Project Manager***

In this USACE/DLNR project, the PB-NHC team is tasked with performing dam break analyses for earthen dams at the Puu Lua Reservoir on the island of Kauai and the Kualapuu Reservoir on the island of Molokai. This work includes conducting field investigations; verifying/validating government-furnished electronic topographic information (LiDAR and IfSAR); coordinating and scoping ground surveying requirements with the project surveyor, ControlPoint Surveying, inc.; performing hydrologic (HEC-HMS) and hydraulic (unsteady HEC-RAS) modeling; mapping (HEC-GeoRAS) flood inundation areas, resulting from worst-case dam breach scenarios ; and producing draft and final reports documenting project findings.

**Waimanalo Flood Control and Drainage Project                      Oahu, HI*****Engineering Task Leader***

Department of Design and Construction project involving flood control and surface drainage planning analyses for the 11-square-mile Waimanalo watershed, including three stream networks: Waimanalo, Inoaole, and Muliwaiolena Streams. The work involves site investigations; existing technical report reviews; geomorphology; hydrologic, hydraulic, and

sedimentation assessments; recommendations of flood mitigation measures; and identification of specific project descriptions for flood protection alternatives. The project includes public involvement work with Waimanalo Community Vision Group.

**Halawa Interchange Phase I**

**Honolulu, HI**

***Task Leader***

Task leader responsible for supervising a hydrology and hydraulic update study of the interchange, originally designed in the late 1960s, to determine compliance with present-day drainage criteria. The interchange connects four major highways and several secondary street and includes 16 bridges and a large relocated stream. PB, in joint venture, prepared preliminary design of the interchange and related structures, final design for about half of the structures, construction contract documents, and construction estimates.

**Kaumualii Highway Widening Project**

**Kauai, HI**

***Project Manger***

Project Manger for PB environmental permitting scope of work as subconsultant to ParEn, Inc. The entire project involves widening a 3.3 mile portion of Kaumualii Highway from Lihue, west to the vicinity of Kipu Road. Within these limits, Kaumualii Highway will be converted from a two-lane, undivided roadway to a four-lane, divided roadway. PB's responsibilities include preparation and processing of the following permits for several stream crossings: Clean Water Act (CWA) Section 401 (Water Quality Certification), CWA Section 402 (NPDES), CWA Section 404 (Department of Army Permit), State of Hawaii (SOH) Stream Channel Alteration Permit (SCAP), and Coastal Zone Management (CZM) Consistency Determination. Section 404 permit requirements include wetlands compensatory mitigation for a site near Puhi Stream. PB's scope of work also includes coordination of National Historic Preservation Act (NHPA) Section 106 compliance requirements established during the Environmental Assessment process, with regulatory agencies and members of the ParEn, Inc. design team.

**H-3 Finish Unit VIIB Project**

**Oahu, HI**

***Project Engineer***

Project Engineer responsible for environmental permitting services related to construction of scour-protection improvements in a portion of North Halawa Stream adjacent to the H-3 Halawa Quarry Viaduct, Mauka Section. Permitting work included preparing and processing CWA Sections 401, 402, and 404 permits and SOH SCAP and coordinating with project subconsultant Oceanit, who was responsible for performing a wetlands delineation survey.

**Tetsuo Harano (Trans-Koolau) Tunnel**

**Oahu, HI**

***Project Manger***

Project Manager responsible for supervising PB's multidisciplinary tunnel design and construction management team tasked with planning, design, construction management, operations and maintenance support, and contract administration for this \$350-million interstate highway tunnel. This major highway project involved construction of a twin-bore, two lane

tunnel in an isolated mountainous location under strict environmental controls. The H-3 Tetsuo Harano Tunnel Project included the following work: tunneling/underground engineering; tunnel infrastructure design and construction, including site work, utilities, tunnel and portal/control buildings; tunnel and building architecture; civil, structural, electrical, mechanical, tunnel ventilation, and corrosion engineering; systems engineering, including the pioneer deployment in Hawaii ITS technology in traffic and tunnel management systems; tunnel and freeway operations and maintenance program development; and tunnel concrete crack and water leak rehabilitation.

**Tetsuo Harano (Trans-Koolau) Tunnel**

**Oahu, HI**

***Deputy Project Manager***

Deputy project manager responsible for managing the Honolulu-based post-design services on the systems and finish contracts and Honolulu-based project coordination for the development of an operations and maintenance (O&M) program for the tunnel and freeway facilities. Previously, as lead civil engineer on the systems contract, Kevin supervised the civil design and post design services related to installation of 28 dynamic and changeable message signs on the H-3 freeway and approach roadways. Plans, specifications, and estimates (PS&E) work included survey coordination; utility coordination and relocation; power/communications conduit, cable, and controller installation; sign foundation and structure design; roadside barrier design; and construction traffic control plan development.

**The Alaskan Way Viaduct and Seawall Replacement Project (AWVSRP)**

**Seattle, Washington**

***Project Engineer***

This major highway project is a joint by the Washington State Department of Transportation (WSDOT), the Federal Highway Administration (FHWA), and the City of Seattle to replace the existing Alaskan Way Viaduct (SR 99) and the city's seawall with a combination of tunnel, at grade, and viaduct elements. The project tunnel element included two tunnel segments: the Tunnel, approximately 2,100 feet long. The Tunnel Fire Detection Systems Study was part one of a two-part study that was to ultimately develop specific design requirements and recommend a fire detection system for deployment in the Waterfront and Battery Street Tunnels. The study evaluated available fire detection technologies based on current levels of use, industry trends, reliability, performance history in tunnel testing and actual tunnel fires, and level of automation.

**Hawaii Department of Transportation Standard Specifications Update**

**Honolulu, HI**

***Task Leader***

Responsible for portions of PB's project to update HDOT Highways Division Standard Specifications for Road Bridge, and Public Works Construction. Initially, specific responsibilities included revising earthwork-related, drilled shaft, piling, shotcrete, and timber sections of the Standard Specifications. In the project's second phase, Kevin's role was expanded to include final responsibility for updating all technical specifications.

**Engineering Consulting Firm**

**California**

***Assistant Director of Engineering***

Kevin was responsible for quality control in the areas of technical standards, technical training, and consulting and review of plans and civil structural calculations. Additional duties included engineering and management of flood control and drainage projects. Kevin's responsibilities included design and supervision of engineers, designers, and drafting staff in production of street, grading, sewer, and storm-drain plans, tract maps, and other improvements plans related to land development. Computerized floodplain analysis and open-channel design were two of Kevin's specialties.

**Engineering Consulting Firm**

**California**

***Design Engineer***

While with a California-based engineering consulting firm, Kevin focused on preparation of horizontal control calculations related to the development of 18 vocational training centers throughout Saudi Arabia (VOTRAKON). He also conducted hydraulic and hydrology studies for storm-drain and sewage systems for VOTRAKON and performed general civil engineering design for theme parks located in Saudi Arabia, Kuwait, and southern California.

**Building and Safety Division of Department of Public Works**

**County of Los Angeles, California**

Review building plan checker responsible for review of plans, specifications, and calculations to ensure conformance with county and state ordinances governing new construction.

**Waterworks and Utilities Division of Department of Public Works**

**County of Los Angeles, California**

**Staff Engineer**

Staff Engineer responsible for contract administration and inspection of major water-system improvements, including pressure relating stations, fire hydrant and water service installations, in-place cleaning and lining of water mains, and water and reservoir installations. Kevin also processed water service requests based on the flow conditions of existing distribution systems.

**NAME**

Arthur J. Borst

**Years of Experience**

33 (17 with PB, 16 with others)

**Education\Certification**

M.S., Civil Engineering, Polytechnic Institute of New York, 1978

B.S., Civil Engineering, Fairleigh Dickinson University, New Jersey, 1974

**Other Certifications and Training**

PC proficient with knowledge and experience working with the following:

Professional Affiliations

American Society of Civil Engineers

American Council of Engineering Companies

American Underground Construction Association

Professional Registrations - Washington, 1984 (#22130); Oregon, 1992 (#16125)

**Key Qualifications**

Art Borst has extensive experience in the management and design of transit, highway and airport facilities. He is equally at home in the role of project manager, technical discipline manager, and in providing quality assurance and constructibility reviews. Art's involvement in many of these projects starts with the planning and environmental documentation stages and continues through design completion and project start-up. Within PB, he is a Certified Senior Project Manager, having completed PB's Project Management Training Program and demonstrated past project performance on large, multidisciplinary projects. As a professional associate, Art is recognized for his technical expertise in transportation structures.

Before joining PB, Art served as project engineer or project manager on numerous transit, highway, airport, marine facility, and building projects for other firms. Specific projects follow.

**Publications**

Coauthor, Addressing Risk in Seattle's Underground, PB Network, January 2002.

Coauthor, Sound Move – Seattle's Light Rail Goes Underground. Proceedings, Rapid Excavation and Tunneling Conference, American Society of Mining Engineers and American Society of Civil Engineers, 1999.

Contributing author, Seismic Awareness: Transportation Facilities; a Primer for Transportation Managers on Earthquake Hazards and Measures for Reducing Vulnerability. U.S. Department of Transportation, December 1993.

Coauthor, Subway Design and Construction for the Downtown Seattle Transit Project. Proceedings, Conference on Earth Retaining Structures, American Society of Civil Engineers, 1990.

### **Project Experience**

Senior Project Manager/Professional Associate  
Senior Engineering Manager

### ***Transit Projects Parsons Brinckerhoff***

South Lake Union Streetcar, Seattle, Washington: project manager for the environmental documentation, preliminary engineering and final design of a new streetcar line in Seattle connecting the downtown core and the redeveloping South Lake Union area. The South Lake Union streetcar line is the first line being implemented as part of a Seattle Streetcar network utilizing modern low-floor streetcars. This fast-track design project included the design of the in-street trackway, roadway and signalization improvements, utility relocations and improvements, urban design amenities, streetcar systems, and a new streetcar maintenance yard and building. This was the first transit project in Washington to use the General Contractor/Construction Manager (GC/CM) alternative delivery approach. Art played a major role in making presentations to elected officials and numerous community groups and coordinating with other city and county agencies.

Sound Transit High-Capacity Transit (HCT) Project, Phase 2, Puget Sound, Washington: engineering manager for this project, which included updating Sound Transit's regional plan and the associated conceptual engineering and environmental documentation for HCT projects. This included commuter rail, light rail, regional bus service, bus rapid transit and modern streetcar lines. This three-county, multi-billion dollar project also includes park-and-ride facilities, yards, and shops. Coordination with the Washington State Department of Transportation (WSDOT), the Washington State Ferry System, and other local transit agencies has been a critical issue. Conceptual project-level costs and schedules were developed and compared to various funding scenarios, to assist in the development of a transit package to be included in an upcoming regional transportation ballot measure.

Sound Transit Link Light Rail Transit Project, Puget Sound, Washington: Art's role on this project evolved during an 11-year period between 1991 and 2002. During 2001 and 2002, served as project manager for Puget Sound Transit Consultants (PSTC), a PB-led joint venture providing general civil engineering consulting services and EIS support to Sound Transit's Link Light Rail department. The 22-mile light rail system extends from the University of Washington through downtown Seattle to the Seattle-Tacoma (Sea-Tac) International Airport. Prior to serving as project manager, Art was PSTC's design manager for all structures and geotechnical work for the 22-mile light rail transit (LRT) system. During the project's system plan

phase (1991-1995), he was the engineering manager for the north corridor portion of this three-county project for the Central Puget Sound Regional Transit Authority (currently known as Sound Transit). The project included developing a system plan and alternatives analysis for a fixed guideway LRT system in the Seattle, Tacoma and Everett region of Puget Sound. Art also supported the Regional Transit Authority (RTA) at community meetings, where an understanding of local concerns was vital to producing designs acceptable to the communities.

Seattle Streetcar Network and Feasibility Analysis, Seattle, Washington: project manager for the planning and conceptual engineering of a network of streetcar lines in the center city area of Seattle. This project identified and evaluated numerous streetcar lines for their ridership potential, effects on local land use and development, and impacts on the surrounding environment. Infrastructure and vehicle requirements were identified as well as associated capital, operating and maintenance costs. Operation plans and funding strategies were also developed. Art played major roles in making presentations to elected officials and numerous community groups and coordinating with other city and county agencies.

Seattle Monorail Project Technical Review Panel, Seattle, Washington: project manager for the City of Seattle's Technical Review Committee evaluating the proposed 14-mile Seattle Monorail Project. PB's scope included evaluating the general engineering designs, environmental impacts, and terms and conditions of the Design/Build/Operate/Maintain (DBOM) contracts. Particular emphasis was given to minimizing the risks associated with the project and assumed by the City of Seattle.

Downtown Seattle Transit Project (DSTP), Seattle, Washington: Art's involvement with the DSTP began as a subconsultant to PB in 1984 and continued after he joined PB. Art was the project engineer (as a subconsultant to PB) in charge of the Westlake Station design, the International District Station plaza structures, and building protection and underpinning for entire project. He also coordinated the structural design of all other underground structures. This is a 1.7-mile bus rapid transit (BRT) subway with three subway stations, two portal stations, 1,200 feet of cut-and-cover subway, and 5,100 feet of double-tube, shield-driven tunnel. Since its opening in 1990, Art has assisted the Municipality of Metropolitan Seattle (Metro) and Sound Transit with ongoing design and construction-related issues. After the Nisqually Earthquake of February 2001, he inspected the tunnels and cut-and-cover stations for potential damage. Art also provided engineering for the conversion of the transit tunnel from bus-only use to joint bus/light rail use.

Scottsdale Transportation Center, Loloma Station, Scottsdale, Arizona: as quality control engineer for structural design, Art provided the structural quality

assurance/quality control (QA/QC) review of the plans, specifications, and estimates (PS&E) package.

Westside Corridor Project, Portland, Oregon: project engineer in charge of preliminary design for three miles of LRT tunnels, vent shafts, portals, the Washington Park Subway Station, and eight bridge structures. During final design, initiated civil and structural design for the three-mile subway segment of this 11-mile transit project. Provided periodic quality assurance reviews as the final design progressed.

Tel Aviv Metropolitan Area Mass Transit Project, Tel Aviv, Israel: project engineer for the functional (conceptual) design of fixed facilities for this integrated rail and bus system. Responsible for the conceptual design of 12.4 miles (20 km) of tunnels and subway stations and 12.4 miles (20 km) of aerial structures for the metro rail facility, as well as all above-ground structures for the light rail, commuter rail, and bus systems.

South-North Corridor Light Rail Transit Project, Portland, Oregon: provided conceptual engineering for numerous tunnel and bridge crossing options for the Columbia and Willamette rivers. The Columbia River soft-ground tunnel options included immersed tubes and bored tunnels. The Willamette and Columbia River bridge options included concrete segmental, steel truss, arch, girder, cable-stayed, and movable.

Metro Green Line Project, Los Angeles, California: reviewing engineer for the design of aerial guideways, aerial stations, and surface structures for this 20-mile, 14-station light rail system from Norwalk to El Segundo. This included a 16-mile portion that runs in the median of the Glenn Anderson Freeway (I-105).

Metro Blue Line, Pasadena Extension Project, Los Angeles, California: responsible for conceptual and preliminary engineering of the Chinatown Station on this 13.6-mile, 13-station light rail line.

#### ***Highway, Bridge and Tunnel Projects Parsons Brinckerhoff***

Alaskan Way Viaduct and Seawall Replacement Project, Seattle, Washington: member of the Underground Peer Review Committee for the soft-ground tunnel portions of the replacement for the seismically vulnerable double-deck viaduct along Seattle's waterfront. This project included cut-and-cover, mined and bored tunnels in liquefiable soils along Seattle's waterfront and in glacially consolidated soils below some of the most densely developed urban areas of Seattle. Participated in the

constructibility and phasing of the aerial replacement option and in the project's overall risk assessment process.

Seattle Bridge Seismic Retrofit Program, Seattle, Washington: project manager responsible for providing independent reviews of the seismic retrofit design of 35 bridges for the City of Seattle Engineering Department. To provide state-of-the-art input to this project, PB created and managed a Peer Review Group consisting of nationally recognized seismic retrofit experts from academia, agencies, consulting engineering and construction. This was in addition to performing regularly scheduled design and constructibility reviews.

Washington State Department of Transportation (WSDOT) Movable Bridge Mechanical and Electrical On-Call Services, various locations, Washington: project manager for on-call inspection and design services for the rehabilitation of bascule, swing, lift and floating lift/draw spans. Many of these bridges are located on some of Washington's busiest highways, including I-90, SR 520, and SR 99.

On-Call Bridge Design, King County, Washington: project manager for on-call bridge tasks including field inspections, geotechnical studies, seismic retrofit, preliminary design and preparation of plans, specifications, and estimates (PS&E).

South Fork and Rainbow Bridges Seismic Retrofit, Skagit County, Washington: project manager responsible for providing seismic retrofit engineering analysis and design for two bridges in LaConner, Skagit County, Washington. The work involves two phases: 1) preliminary seismic analysis and design; and 2) preparation of PS&E and the post-inspection earthquake manuals. The South Fork Bridge is in a location highly susceptible to liquefaction and the Rainbow Bridge is a 550-foot-long steel arch.

I-5 Widening, Main Street to I-205, Vancouver, Washington: structural engineer for the preliminary design of nine bridge replacements. These include urban interchanges, diamond interchanges, and railroad crossings.

I-5 Tukwila-Lucile HOV Project, King County, Washington: deputy project manager for widening I-5 to provide for preferential transit and carpool treatments in a congested 13-mile corridor from the Seattle central business district south toward Sea-Tac Airport. This project included low-cost operational improvements such as ramp metering, and capital-intensive options such as the addition of HOV lanes on the roadway shoulder, in the median, or on separate HOV bridges.

SR 14/SE 164th Avenue Interchange, Vancouver, Washington: project structural engineer responsible for the preliminary design of a new interchange.

First Avenue South Bridge Seismic Analysis and Retrofit: project engineer responsible for the analysis and preliminary retrofit design of this double-leaf bascule bridge.

#### ***Airport Projects Parsons Brinckerhoff***

Seattle-Tacoma (Sea-Tac) International Airport South Access Program, Seattle, Washington: engineering manager for the preliminary design and permitting of roadways connecting the south end of Sea-Tac Airport to SR-509. The project includes multiple bridges over designated wetlands, tunnels below air cargo facilities and adjacent to city arterials, and a complex system of ramps and bridges that connect the new roadways to the existing terminal drives.

Hong Kong International Airport, Chek Lap Kok Island, Hong Kong: provided landside design coordination for multidisciplinary construction contracts including buildings, roads and utilities at this new airport in Hong Kong. Art's responsibilities included developing and implementing the coordination procedures used by PB and its numerous subconsultants. Also performed quality assurance reviews of the design documents for numerous construction contracts.

Wayne County Airport Access/Exit Drives, Detroit, Michigan: provided constructibility reviews of alternatives for new depressed and underground access/exit drives. Particular emphasis was paid to construction phasing and impacts on existing adjacent taxiways.

#### ***Utility Tunnel Projects Parsons Brinckerhoff***

Cedar River Pipeline Tunnels, Seattle, Washington: project manager for WSDOT during construction for three mined tunnels that are part of the relocation of I-405. The tunnels serve as utilidors for the Seattle Water Department's Cedar River Pipeline relocation.

First Avenue South Utilidor Tunnel, Seattle, Washington: responsible for quality control and design overview of this jacked pipe utility tunnel bored through soft ground 50 feet below the Duwamish River.

#### ***Transit***

Downtown Seattle Transit Project, Seattle, Washington: project engineer (as a subconsultant to PB) in charge of the Westlake Station design, International District Station plaza structures, and building protection and underpinning for entire project. Coordinating engineer for structural design of all other underground structures. This is a 1.7-mile subway with three subway stations, two portal stations, 1,200 feet of cut-and-cover subway, and 5,100 feet of double-tube, shield-driven tunnel.

Baltimore Mass Transit Administration Mondawmin Station, Baltimore, Maryland: design engineer for the structural design of a cut-and-cover reinforced concrete high vault station, ventilation structures, and at-grade bus terminal.

Washington Metropolitan Area Transit Authority (WMATA), New Carrollton Route Section D4, Washington, D.C.: design engineer for the structural design of a cut-and-cover reinforced concrete arch station and ancillary structures.

Metropolitan Atlanta Rapid Transit Authority (MARTA), Proctor Creek Branch Unit DP 23, Atlanta, Georgia: design engineer for the structural design of 4,200 feet of at-grade construction, as well as the Perry Holmes Station and 1,425 feet of cut-and-cover subway.

Dade County Maintenance Facility, Miami, Florida: project engineer for a 55,000-square-foot precast/prestressed concrete bus garage for the maintenance of 350 buses, together with an administration building, conveyORIZED bus washers, and other ancillary facilities.

17th Avenue Tri-Met Maintenance Facility, Portland, Oregon: design engineer for the structural design of a cast-in-place and precast/prestressed concrete bus garage for maintenance of 300 buses.

### ***Highways and Bridges***

I-90 East Approach Replacement Bridge for the Original Lacey V. Murrow Floating Bridge, Mercer Island, Washington: project manager for a 580-foot cast-in-place, post-tensioned, concrete box girder bridge for WSDOT.

Island Crest Way Tunnels, I-90, Mercer Island, Washington: project manager for single-cell and twin-cell vehicular tunnels, retaining walls, and protection of adjacent bridges at the Island Crest Way interchange.

Earth-Retaining Structures, I-5, Pierce County, Washington: project manager for conventional, tied-back, and soil-nailed retaining structures in Federal Way and Tacoma.

West Seattle Bridge Phase II, Seattle, Washington: project engineer for a type, size, and location (TS&L) study for a 480-foot-span, double-leaf swing bridge across the Duwamish River. The client compared the various bridge types studied (including a bascule bridge studied by PB as subconsultant) and selected the swing bridge type to continue into the PS&E stage. Art was responsible for the layout of pier houses and machinery.

Dhahran Expressway, Saudi Arabia: project engineer for seven multiple-span highway bridges and associated earth-retaining structures.

Bridge Inspection, Long Island, New York: performed inspection and quality control for the inspection, inventory, and load rating of highway and railroad bridges in Nassau and Suffolk counties.

Marine Parkway Bridge, New York, New York: project engineer for the inspection and development of repair recommendations for the towers and approach spans of this circa-1937 vertical-lift bridge connecting Brooklyn and Rockaway. The inspection was performed for the Triborough Bridge and Tunnel Authority.

### ***Airports***

Seattle-Tacoma (Sea-Tac) International Airport Parking Expansion Program, Seattle, Washington: project manager for the seismic upgrade and renovation of existing parking garage, 25 acres of new surface parking and ground transportation staging areas, and upgrading of intersections. This project was conducted for the Port of Seattle.

Sea-Tac International Airport Bridge and Tunnel Inspection, Seattle, Washington: project manager for inventory and inspection of bridges and a tunnel at Sea-Tac International Airport for the Port of Seattle.

Automated Transit System (ATS) Guideway, McCarran International Airport, Las Vegas, Nevada: project engineer for a 15-span, post-tensioned concrete box girder guideway connecting the central terminal and a satellite terminal.

### ***Marine Facilities***

Harbor Closure Structure, Corps of Engineers, Dillingham, Alaska: project engineer for the design of cellular cofferdams and removable steel silt barriers to close the harbor at Dillingham.

Gantry Systems, Bremerton, Washington: project engineer for the design of two 400-ton-capacity gantries at the Puget Sound Naval Shipyard.

Mobile Offshore Drilling Units, Beaufort Sea, Alaska: project engineer for the design of three offshore drilling platforms. These composite steel and lightweight concrete drill rigs were designed for Arctic use in 20- to 60-foot water depths.

Trident Berthing Facility, Bangor, Washington: design engineer participating in the preliminary design of the main berthing facility (later known as the delta pier), approach causeway, and administrative facility for this U.S. Navy submarine base.

National Oceanic and Atmospheric Administration (NOAA) Western Regional Center, Seattle, Washington: project civil engineer participating in the creation of a complete facility that included a staging area; administrative, research, and warehouse facilities; and backlands development along the shore of Lake Washington.

Marine Facilities Improvements, Whittier, Alaska: project engineer responsible for the structural design of improvements and repairs for marginal wharf, transfer span, and mooring dolphins to accommodate double-decked barges.

### ***Buildings***

Support of Excavation Systems, Various Locations: managed and performed the design of tied-back and internally-braced support systems for excavations up to 100 feet deep. Projects included cut-and-cover construction in Seattle, Baltimore, and Washington, D.C. and shafts and numerous building excavations in Seattle and New York City.

Providence Medical Center, Seattle, Washington: project manager for the design of a six-story nursing facility and seismic upgrading of an original 1910 building.

St. Joseph Medical Center, Burbank, California: project engineer for the design of a critical care wing and bridge links to existing facilities.

Capitol Power Plant, Washington, D.C.: design engineer participating in work on a refrigeration plant, operations building, and service tunnels.

Pacific Northwest Bell (PNB) Microwave Tower, Bainbridge Island, Washington: project engineer for this American Welding Society award-winning 100-foot steel-pipe tower anchored to the roof of the existing PNB Building.

**NAME**

Jim Dunn

**Years of Experience**

38

**Education\Certification**

B.S. Civil Engineering, Santa Clara University, Santa Clara California

**Key Qualifications**

Jim Dunn is a senior technical manager with PB experienced in the planning, design and construction of rail transit. Jim's career of nearly four decades has been equally divided between the private and public sector. This provides him the unique perspective of understanding the client's needs for quality and timely work products, and also the experience in delivering those products. Most recently, he served as the Chief Engineer for the San Francisco Bay Area Rapid Transit [BART] District. He has a broad range of experience in all aspects of rail transit engineering including management of large multi-discipline engineering organizations. As BART's Chief Engineer he was responsible for the development and enforcement of BART's design standards for the agency's extensions and rehabilitation programs.

**Project Experience****Parsons Brinckerhoff****Honolulu, Hawaii*****Honolulu High Capacity Transit Project*****Design Manager**

As the GET Engineering Manager, Jim worked closely with agency staff in the management of the engineering deliverables of the design-build contractor. He was responsible for the preliminary engineering of the civil and utility relocation drawings for the project. GEC and agency staffs were merged during the project which achieved significant efficiencies in dealing with day to day management of the project.

**Bay Area Rapid Transit [BART]****San Francisco,****California****Chief Engineer**

As Chief Engineer, Jim was responsible for the maintenance, engineering of all fixed and systems facilities of the transit agency. He directed an engineering staff of 115 engineers and maintenance staff of 625 technicians and laborers, with annual operating budgets of \$90 million.

Jim developed and prioritized the agency's 10 and 30 year fixed and system rehabilitation program. He implemented a rehabilitation program that has expended over \$500 million over the past 7 years for the rehabilitation of the agency's decades old communications systems, central commuter systems, interlocking controls, station mechanical equipment traction power and rail replacement.

As chief engineer, Jim recognized the need for and took the lead to institute and implement BART's \$1.2 billion Seismic Retrofit Program. He was responsible for identifying project need, budget projections, cost benefit analysis, risk assessment and ultimate justification before BART's elected board.

Jim represented BART to the community for technical matters regarding operations and capital programs. As the key technical spokesperson for BART, Jim attended community involvement meetings with the general public, performed outreach to the technical community, as well as the legislature. The agency's bond measure was passed by the voters in 2004, achieving the necessary two-thirds majority.

**Hennepin County Regional Railroad Authority [HCRRA] Minneapolis, Minnesota**  
Chief Engineer

As the Administrative Engineer [Chief Engineer] for HCRRA, Jim was responsible for preliminary engineering and environmental documentation for a 26 mile at-grade light rail project. As the chief engineer, Jim worked to establish the first fire-life safety system in the HCRRA.

**Chicago Central Area Circulator**  
Project Manager

**Chicago, Illinois**

Construction Documents Chicago Central Area Circulator responsible for development of construction procurement documents for 10 mile light rail project. As the Project Procurement Manager, he worked closely with city staff in the development of the vehicle specification, procurement documentation and evaluation criteria for the light rail vehicle RFP. During the planning and conceptual design tasks for the vehicle, numerous meetings with the City Administration were necessary to merge their unique design requirements with the industry capabilities and practices.

**NAME**

Kenneth Toru Hamayasu

**Years of Experience**

32+

**Other Certifications and Training**

Mr. Hamayasu is a civil engineer registered in the State of Hawaii.

**Key Qualifications**

Kenneth Hamayasu has worked for the City and County of Honolulu's Department of Transportation Services [DTS] for 34 years; the last 17 years as the DTS' Chief Planner. Mr. Hamayasu is currently the Project Manager for the Honolulu High-Capacity Transit Corridor Project [HHCTCP]. In addition to the HHCTCP, Mr. Hamayasu, has managed, administered and participated in other major rapid transit development projects and studies since 1972.

In addition to his work with FTA-assisted major capital projects, Mr. Hamayasu's experience includes developing and updating island-wide long and short range transportation plans; directing or participating in numerous traffic engineering studies and designs, such as intersections and traffic calming; and directing or participating in bus operation plans and studies, including those relating to bus fare structure, new routes and facilities.

**Project Experience****City & County of Honolulu****Honolulu, Hawaii*****Honolulu High-Capacity Transit Corridor Project***

Project Manager 2007

HHCTCP Preliminary Engineering [PE] and Environmental Impact Statement [EIS]

**City & County of Honolulu****Honolulu, Hawaii*****Honolulu High-Capacity Transit Corridor Project***

Project Manager 2005 - 2006

HHCTCP Alternatives Analysis [FTA assisted]

**City & County of Honolulu****Honolulu, Hawaii*****Primary Corridor Transportation Project***

Project Manager 1998 - 2004

FTA assisted. Responsible for preparing the federal and state environmental disclosure statements; preparing the final engineering plans and construction bid documents; construction management oversight; and administration of contracts.

**City & County of Honolulu**  
***Honolulu Rapid Transit Program***

**Honolulu, Hawaii**

Planning Manager 1988 - 1994

FTA assisted. Responsible for preparing alternative analysis, draft and final Environmental Impact Statements; overseeing patronage forecasting and traffic mitigation plan during construction and FTA grants management activities.

**City & County of Honolulu**  
***Honolulu Area Rapid Transit***

**Honolulu, Hawaii**

Patronage Forecaster 1978 - 1982

FTA assisted. Responsible for overseeing the transit ridership and traffic volume forecasting to support the preparation of the final Environmental Impact Statement.

**City & County of Honolulu**  
***Preliminary Engineering and Evaluation Program***

**Honolulu, Hawaii**

Patronage Forecaster 1972 - 1976

FTA assisted. Responsible for transit ridership and traffic volume forecasting.

**NAME**

Wayne M. Hashiro

**Years of Experience**

31+

**Education\Certification**

Mr. Hashiro is a graduate from the University of Hawaii, Manoa. He holds a Bachelor of Science and a Master of Science degree in Civil Engineering. As a Corps employee he is a graduate of the Aspen Institute Executive Seminar, the Army Management Staff College, the Office of Personnel Management Executive Development Program, Management Development and Labor Relations for Executives and Personnel Management for Executives.

**Other Certifications and Training**

Mr. Hashiro is a registered professional Civil Engineer in Hawaii and is a member of the American Society of Civil Engineers, the Hawaii Water Environment Association and the Water Environment Federation.

**Key Qualifications**

His career includes 31 years with the U.S. Army Corps of Engineers. As an employee of Corps, he has served in various capacities – with the Pacific Ocean Division he was the Honolulu Engineer District Support Coordinator; while with the Japan Engineer District he served as the Deputy Chief of Programs and Project Management Division and Chief of Projects and Operation Branch; at Norfolk Engineer District the Chief of Engineering; worked in Korea as the Chief of Engineering, Planning and Services and Facilities Engineer and as a developmental assignment served as Congressional Fellow for Senator Daniel Akaka. In his early years with the Corps he served as technical expert and project engineer for Military, Civil Works and Environmental programs.

Mr. Hashiro has had private sector exposure while working for Metcalf and Eddy, Inc. in Palo Alto California and the former Sunn, Low, Tom and Hara in Honolulu, prior to joining the Corps.

**Project Experience****City and County of Honolulu**

Managing Director for the honorable Mayor Mufi Hannemann.

Honolulu, Hawaii

**City and County of Honolulu**

Deputy Director for the honorable Mayor Mufi Hannemann.

Honolulu, Hawaii

**City and County of Honolulu**  
Director for the Department of Design and Construction.

**Honolulu, Hawaii**

**NAME**

Wendale (Wendy) J. Imamura

**Years of Experience**

26 years

**Project Experience****Hawaiian Telecom, Inc.****Honolulu, HI**

Sr. Manager, Strategic Sourcing, May 2005

Responsible for overall performance of cost reduction through contract negotiations, managing Value Analysis teams, and driving best practices based on internal and external benchmarking. Managed Small Business expenditures, vendor selection/relationships, EDI/ERP systems, product standardization, companywide systems and processes such as travel, procurement and credit cards.

Supervised 7.

**Verizon Communications****Honolulu, HI**

Manager, Recovery Operations and Repair and Maintenance Services, Hawaii,  
December 2000 to May 2005

Manage asset recovery operations in Hawaii to include but not limited to: redeployment of surplus material, sale of scrap material, processing of warranty material returned to vendors, processing of rental equipment for refurbishment. Administrative duties included tracking cost avoidance and sale dollars, determining fair market value and calculating life cycle costing, budgeting, managing warehousing and logistic services for the collection of surplus/scrap and redeployment/sale of surplus/scrap. Operations had a benefit to cost ratio of 10:1. Managed the repair of company owned equipment and calibration of test and safety equipment including but not limited to: resource scheduling, equipment preventive maintenance program, outsourcing repairs, creating and tracking performance metrics, and budgeting.

Supervised 14.

**Verizon Communications****Honolulu, HI**

**Senior Administrator, March 1998 to December 2000**

Procurement of goods and services in support of Verizon Network services and other Verizon affiliated entities. Contracts include procurement of goods, services and construction in accordance with ISO 9002 procedures. Responsibilities included solicitation, award and successful administration of contracts. Other administrative responsibilities included serving as project lead for the implementation of various national policies and procedures. Average annual cost savings/avoidance was \$2.7 million on an average annual purchase volume of \$8 million.

Supervised 2 purchasing specialists.

**State of Hawaii, Department of Business, Economic Development & Tourism**

**Honolulu, HI**

**Contract Specialist SR24, April 1993 to March 1998**

Procurement of goods and services in support of DBEDT and attached agencies in accordance with HRS 103D, review and recommend for approval all project requests, project/contract budgets, project evaluations, departmental contracts and request for outside agency approvals. Establish and implement departmental procedures relative to project management /procurement and train departmental personnel. Review federal grant applications, draft/review/present testimony for proposed legislation. Secured favorable procurement audit from the State Auditor two years after a seriously critical audit through the implementation of proper procedures and controls.

Supervised 2 contract specialists and 1 contracts clerk.

**State of Hawaii, Department of Transportation**

**Honolulu, HI**

**Procurement & Supply Specialist SR22, September 1992 to April 1993**

Procurement of goods and services in support of the Highways Division including inventory control. Established, implemented, monitored and evaluated departmental procedures relative to procurement and inventory control. Developed DBASE program to track inventory. Other functions (due to resource limitations in the fiscal office) included supervising payroll and cash management (transferring funds via journal vouchers).

Supervised 1 purchasing technician and 1 account clerk.

**Better Brands, Ltd.**

**Waipahu, HI**

**Purchasing Manager, January 1992 to September 1992**

Domestic and international purchasing of inventory for wines and spirits, trafficking, inventory control, identifying slow/no move, obsolete and discontinued stock (SOD), developing programs for elimination of SOD stock, cost accounting, and evaluating/revising supply chain management procedures. Developed computerized program for updating landed inventory costs.

Supervised 3 buyers and 1 account clerk.

**ERA Magnum Properties**

**Aiea, HI**

**Realtor Associate, October 1984 to September 1992**

Property assessment and determining fair market values. Selling real estate.

**Brazier Forest Industries, Inc.**

**Ewa Beach, HI**

**Director of Operations, May 1990 to August 1991**

Established and managed material house bonding program, responsible for cash management and inventory control. Developed inventory management procedures to include audits and controls. Implemented cash management program to invest idle funds. Bonding [program increased sales by 60%.

Managed 1 credit manager, 1 information management specialist, 3 billing clerks, and 3 inventory clerks.

**NAME**

Eugene C. Lee

**Years of Experience**

27

**Education\Certification**

Purdue University (1972), West Lafayette, Indiana (Bachelor of Science in Civil Engineering)

Leilehua High School (1967), Wahiawa, Hawaii

**Other Certifications and Training**

Registration - Hawaii Professional Engineer in Civil Engineering (#4374)

**Project Experience****Honolulu Department of Design and Construction**

Director 2006 to present

**Honolulu Department of Design and Construction**

Deputy Director 2005 to 2006

**Honolulu Department of Design and Construction**

Acting Deputy Director 2003 to 2004

**Honolulu Department of Design and Construction**

Program Coordinator, Office of the Director 1998 to 2002

**Honolulu Department of Public Works**

Program Coordinator, Office of the Director and Chief Engineer 1988 to 1998

**Honolulu Department of Public Works**

Civil Engineer 1981 to 1988

**Hawaii State Department of Transportation**

Civil Engineer 1972 to 1981

**NAME**

Carrie K. S. Okinaga

**Years of Experience**

18

**Education\Certification**

J.D., 1992, Stanford Law School. Associate Editor, Stanford Law Review  
B.A., Government/Public Policy, 1989 Pomona College. Magna cum Laude. Phi Beta Kappa.

Attended University of Hawaii at Manoa Honors Program 1985-1986

**Other Certifications and Training**

Recipient of John A. Vieg Government Award 1989

**Key Qualifications**

Pomona College Scholar 1986-1989

Pacific Century Fellow 1998-1999

American Bar Association [Member Litigation and Labor Employment Law Sections]

Co-Chair, Section of Litigation's 2006 ABA Annual Meeting Committee

Co-Editor, Minority Trail Lawyer 2003-2004

Liaison, Section of Litigation's Woman Advocate Committee 2003-2004

Section of Litigation's Young Lawyers Leadership Program scholarship recipient  
2002-2004

Young Lawyers Division [YLD] Liaison to the Labor Employment Law Section 1999-  
2000

Vice Chair, Minorities in the Profession Committee of the YLD 1997-1999

Assistant Editor, The Affiliate newsletter for the YLD 1998-1999

YLD, District Representative for Alaska and Hawaii 1996-1998

Member, Hawaii ABA Membership Committee 1995

Scholarship Recipient, Minorities in the Profession Committee of the YLD 1995-1996

Member State of Hawaii Subcommittee on Employment Law Jury Instructions 2003-  
2004

Hawaii State Bar Association

Member, Host Committee for 2006 ABA Annual Meeting

Member, CLE Committee 1999-2000, 2002

Member, Nominating Committee 2000

Director, Young Lawyers Division 1994-1999

Secretary, Subcommittee on Disciplinary Rules of the Committee on Lawyer

Competence and Specialization 1995-1996

American Judicature Society, Hawaii Chapter. Co-Chair, Sidebar Program 2004-  
Present

Hawaii Defense Lawyers Association. Vice President 2000 - 2004

Junior Pacific Century Fellow program volunteer 2000-2001

P.A.R.E.N.T.S. Ika Parents Anonymous. Secretary 1995-1998. Director 1994-1998.

### **Project Experience**

**City and County of Honolulu** **Honolulu, Hawaii**  
Corporation Counsel in Department of the Corporation Counsel. 2005 - Present

**McCorriston Miller Mukai MacKinnon** **Honolulu, Hawaii**  
Associate 1992-1999  
Partner 1999-2004  
Hiring Partner and Co-Chair, Hiring Committee 2000-2004

**Carlsmith, Ball, Wichman, Murray, Case, Makai & Ichiki** **Honolulu, Hawaii**  
Summer Associate 1991

**Pillsbury Madison & Sutro** **San Francisco, California**  
Summer Associate 1991

**Nishimura & Sanada** **Tokyo, Japan**  
Summer Associate 1990

**NAME**

Mary Patricia Waterhouse

**Years of Experience**

24

**Education\Certification**

Tulane University, New Orleans, Louisiana. Master of Business Administration, Master of Health Administration.

University of California, Santa Barbara, California. Bachelor of Arts, Biology.

**Key Qualifications**

Certified Public Account, State of Hawaii 1989 to 1996

Hawaii Society of Certified Public Accountants Board Member 1996 to June 2000

Pacific Century Fellow - Class of 1997

**Community Service**

Goodwill Industries of Hawaii Board Member 1998 to 2004

Catholic Charities Corporate Board Member 2001 to 2004

Friends of Children Advocacy Center Mentor 1999 to Present

Mental Health Association in Hawaii Board Member 2004

Diagnostic Laboratory Services Board Member 2004

Sts Peter and Paul Volunteer 1996 to Present

Suicide and Crisis Center Volunteer Phone Specialist 1991 to 2001

AUW, Community Building 1999 to 2002

Hawaii Disability Rights Center Governor Representative 1998 to 2000

Marimed Treasurer 1994 to June 2000

Hale Kipa Treasurer 1994 to 1998

Helping Hands Hawaii Vice President 1987 to 1996

**Project Experience****City and County of Honolulu****Honolulu, Hawaii**

Director of Budget and Fiscal Services February 2005 - Present

Oversee the functions of seven divisions of the City's Department of Budget and Fiscal Services [Administration, Accounting/Fiscal, Operating and Capital Budget, Purchasing, Treasury, Internal Control and Real Property Assessment] that service as the central budgeting and accounting agency of the City and County of Honolulu.

Responsible for the City's annual operating budget of \$1.4 billion and long-range financial planning and management of the City's operating and capital improvements budget.

**Catholic Charities Hawaii****Honolulu, Hawaii**

Vice President of Finance July 2004 - January 2005

Manage the area of accounting including Catholic Charities Hawaii's financial condition and a \$20 million budget.

Involved in strategic planning and business plans.

Approve all contracts and leases.

Facilitate the Budget and Finance Committee and participating in the Entrepreneurial, Retirement program and Housing Development Board Committees.

**Hawaii Community Foundation**

**Honolulu, Hawaii**

VP-Chief Financial and Administrative Officer November 2000 - January 2004

Directed the areas of accounting, finance, grants management, investments, human resources, office management and information systems. Managed the operating budget and was responsible for the Foundation's financial condition.

Coordinated the review and selection of the new accounting system and consultants and oversaw the implementation of the new system, which partially integrates with other systems, both internal and external to the Foundation.

Chaired the statewide program, Hawaii Together-Contracts, which obtained significant improvements in contracts between the state and non-profits.

Represented the Foundations management at the Hawaii Tobacco Advisory Board, Hawaii Children's Trust Fund, Black Memorial Fund and Richard Smart Fund.

Coordinated the Foundation's 2002 office move.

**State of Hawaii**

**Honolulu, Hawaii**

Deputy Comptroller January 1995 - October 2000

Department of Accounting and General Services [DAGS].

Second in charge for the Department of Accounting and General Services, which included overseeing centralized accounting, auditing and information technology functions of the Executive Branch.

Responsible and coordinated Year 2000 (Y2K0) work for the Executive Branch.

Managed the legislative activities for DAGS, including strategy, approving bills and testimony and testifying.

Directed the implementation of a new time and attendance system for the Executive Branch.

Managed the Revenue Maximization Project for the State. The project generated an additional \$38 million for the first two years for the State which about \$15 million is recurring.

Oversaw several information technology products for the State, including the Next Generation Network infrastructure project and the strategic plan.

Implemented and oversaw the first State travel contract.

**University of Hawaii**

**Honolulu, Hawaii**

Instructor August 1992 - January 1995

Taught Introduction to Managerial Accounting, Managerial Accounting and Tax concepts at the School of Accountancy.

Provided consulting services to Honolulu Academy of Art. Developed internal financial statements for department managers.

Provided consulting services to City Mill, Ltd. Developed and coordinated operational policies.

Coordinated student volunteers to teach classes at homeless shelters.

Advisor to Beta Alpha Psi, an accounting honor society for students. Received the Beta Alpha Psi Outstanding Faculty Award Fall 1994. Honored with the Mortar Board Award Spring 1993.

**Heavenly Valley**

**South Lake Tahoe, California**

Accountant/Analyst February 1992 – August 1992

Analyzed remediation agreements with previous owner and contractors.

Prepared weekly statistical and financial reports.

Participated in remediation negotiations.

Prepared audit schedules and assisted with budget.

**KPMG Peat Marwick**

**Honolulu, Hawaii**

Consultant, Senior Consultant, Manager July 1986 - November 1991

Promoted from consultant to senior consultant to manager.

Directed market and financial feasibility studies for proposed and operating properties in Hawaii and Guam, including resorts, hotels, condominiums, retail centers, golf courses, residential developments, convention center and restaurant.

Provided financial analysis on three proposed health bills for the Hawaii state Auditors.

Prepared a hospital rate study for the State of Hawaii, Department of Health.

Conducted business and real estate valuations of various operating companies ranging from bakeries and hardware stores to resorts and shopping centers.

Directed a tariff rate study for the Port Authority of Guam.

Developed financial forecast models for resorts, hotels, golf courses and a medical office building.

**Straub Clinic and Hospital, Inc.**

**Honolulu, Hawaii**

Intern/Manager June 1984 – July 1986

Supervised twenty-four hour urgent care clinic of twenty-eight employees, including eight doctors at four locations.

Prepared monthly financial statements and designed and implemented an accounts receivable system for the clinic.

Developed long range plans and budget for various clinics and departments of a 110 physician clinic.

Prepared cost analysis for lab, radiology, nuclear tests and selected outpatient surgeries.

**NAME**

James R. Van Epps

**Years of Experience**

28

**Education\Certification**

Bachelor of Science, Civil Engineering, 1975 University of Illinois, Urbana-Champaign, Illinois, High Honors

Master of Science, Industrial Engineering, 1980, Kansas State University, Manhattan, Kansas

**Other Certifications and Training**

Executive Education, Program for Manager Development Duke University

National War College, National Defense University

American Society of Civil Engineers

Society of American Military Engineers (Fellow)

National Tau Beta Pi, Engineering Honor Society

Chi Epsilon, National Civil Engineering Honor Society

Alpha Pi Mu, National Industrial Engineering Society

**Key Qualifications**

Jim Van Epps is a senior technical manager with PB. He is experienced in the planning, design, and construction of transit, highway, and water resources projects of significant size and scope.

**Project Experience****Honolulu High-Capacity Transit Corridor Project (HHCTCP) Honolulu, HI**

Project Manager

Responsible for the preliminary engineering/environmental impact statement (PE/EIS) phase of the project. The City and County of Honolulu (City) is currently conducting engineering and technical studies to support the preparation of EISs for the HHCTCP. The HHCTCP's locally preferred alternative (LPA) is a fixed guideway transit system from Kapolei to the University of Hawaii and Manoa and to Waikiki. The final EIS will focus on the LPA's minimum operable segment (first project) and must be based on a selected fixed guideway transit vehicle technology. The selected technology will be the basis for any future procurement of fixed guideway vehicles; technology selection is projected to occur in early 2008. The PE/EIS phase of the project is expected to lead to start of construction in 2009, and the first operable segment in 2012.

**San /Francisco Bay Area Rapid Transit (BART)****Millbrae, CA**

Executive Manager West Bay Extensions

Responsible for directing the \$1.6 billion effort to develop and construct an 8.7 mile four station extension of BART through five municipalities to San Francisco International Airport. Responsible for the project's design, procurement,

construction, testing, real estate acquisition, and community relations. Designated by the Federal Transit Administration (FTA) as one of the nation's four design-build turnkey demonstration megaprojects, the project opened for revenue service in June 2003.

**California Department of Transportation (CALTRANS) Sacramento, CA**  
**Chief Deputy Director for Operations**

Appointed by Governor Pete Wilson to direct management and implementation of policies and programs for the state's intermodal and multi-modal transportation system, with an annual budget of \$6 billion and a staff of 20,000. Supervised Caltrans' 12 districts, as well as its engineering, legal, accounting, information services, equipment, and administrative service centers. Ensured successful completion of a significant portion of the State of California's highway bridge seismic retrofit program including its \$2.6 billion toll bridge retrofit program. Also directed the development and implementation of electronic toll collection on state toll bridges; negotiated and resolved contentious issues relating to the telecommunications industry's use of the state's freeway right-of-way; directed the seismic retrofit of state transportation buildings; and instituted activity-based costing in the State of California's \$4.6-billion transportation program.

**US Army Corps of Engineers Chicago, IL**  
**Commander and Division Engineer**

Responsible for directing the Corps' \$360-million annual operation in the north central region of the United States. Managed engineering, scientific, and support staff of 2,800 engaged in civil works construction and environmental activities. Responsible for five engineer districts, encompassing all or portions of 12 states, 87 congressional districts, and 20 percent of the population of the United States, which covered the Great Lakes and the upper Mississippi River basin. Major responsibilities included program management for navigation, flood regulation, and civil disaster recovery support to the Federal Emergency Management Agency (FEMA). Served as U.S. co-chairman of the U.S. Canadian International Joint Commission's Lake Superior, Niagara River, and Lake Ontario-St. Lawrence River Boards, directly responsible for managing the water resources issues involving the boundary waters of the United States.

**U.S. Army Forces Command Fort McPherson, GA**  
**Director of Engineering and Housing**

Responsible for programs and policy of U.S. Army military construction, real property maintenance and repair, family housing, and environmental operations. Budgeting for the Army's largest command totaled more than \$1.5-billion annually, covering 39 Army installations and serving over 200,000 soldiers and their families throughout the United States. Formulated and executed a capital investment strategy for construction, operation, maintenance, and repair of real property valued in excess of \$32 billion. Reengineered the operation of over 50,000 Army family housing units in

a manner accepted by the Secretary of Defense as the model for the Department of Defense. Reduced the adverse impact of inspection by federal, state and local environmental regulators through aggressive partnering of mutual interests. Reduced energy consumption by more than five percent through a combination of stylized investments involving the federal government, utilities, and private contractors. Directed the allocation of military engineer resources during Hurricane Andrew recovery operations.

**U.S. Army Corps of Engineers**

**Huntington, West Virginia**

Commander and District Engineer

Responsible for directing and engineering and support staff of over 1,000 in executing a \$200 million annual civil works construction program in five states. Worked directly with state leaders, Congressional members, and other federal agencies in developing navigational, flood control, and environmental restoration projects. Completed construction of the \$200 million Robert C. Byrd Locks construction project on the Ohio River several months ahead of schedule and well below budget. Began construction of the \$130-million Winfield Locks construction project on the Kanawha River, a tributary of the Ohio River, following resolution of a contentious environmental cleanup problem that threatened to significantly delay or cancel the project. Served as contracting officer for projects totaling \$292 million.

**NAME**

Wayne Y. Yoshioka, P.E.

**Years of Experience**

29

**Education\Certification**

B.S., Civil Engineering, University of Hawaii, 1978

Additional Studies: Graduate Courses, University of Hawaii, University of Colorado, Denver

**Other Certifications and Training**

Institute of Transportation Engineers

Colorado, 1990 (27089)

Hawaii, Transferring

**Key Qualifications**

Wayne Yoshioka has over 29 years of experience in Project Management and Technical Analysis of major transportation studies and engineering projects working for transportation consulting firms in Hawaii, Colorado, and California. He has been involved in projects requiring broad, multi-disciplinary knowledge of Engineering, Planning, Finance, and Public Relations. Mr. Yoshioka's experience combines Transportation Planning, which takes a big picture view of transportation with Traffic Engineering, which pays attention to the operational and design details that are required to actually implement transportation solutions.

Mr. Yoshioka has experience in the following areas of transportation:

- Regional And Sub-Regional Transportation Planning
- Neighborhood Planning
- Traffic Safety
- Intersection Design
- Traffic Signal Design
- Traffic Coordination And Optimization
- Parking Demand Studies And Parking Layout Design
- Transit Planning
- High-Occupancy Vehicle (HOV) Planning
- Airport Groundside Planning
- Multi-modal Planning
- Travel Demand Forecasting
- Recreational Planning
- Traffic Impact Studies

## **Project Experience**

### **Regional and Sub-regional Transportation Planning**

#### **Oahu Regional Transportation Study**

**Honolulu, HI**

Served as part of a consultant team that was involved in updating the Regional Transportation Plan for the Oahu Metropolitan Planning Organization (OMPO). This study required the ability to look at long-range scenarios and understand the "big picture" of transportation for Oahu.

#### **Waimea Circulation Study**

**Waimea, HI**

Project Manager for a traffic circulation study that investigated ways to address traffic congestion and mobility issues in the town of Waimea, Hawaii. A key element of this study is to prioritize actions that could be implemented over a range of time frames. This would begin with short-range actions to address severe bottlenecks, medium-range actions to address intra-town mobility, and long-range actions to address regional mobility. These actions must respect the historic towns' heritage and the residents desire to maintain a unique Kamuela quality of life. Therefore, this study also acknowledged other mobility modes such as pedestrian and bike in the improvements recommendations.

#### **Comprehensive Highway Master Plan Study**

**Commonwealth of the Northern Marianas Islands (CNMI)**

Project Manager for a study to develop a comprehensive highway master plan for CNMI. Separate master plans are being developed for the islands of Saipan, Rota, and Tinian. Tasks involved evaluation of intersections operations, intersection geometric design, and traffic signal optimization. The study recommended both short and long-range actions and acknowledged the unique needs of each island community.

#### **Southeast Quadrant Study**

**Denver, Colorado**

Identified alternative methods of increasing travel capacity within this region with minimal roadway reconstruction. Developed and utilized a sub-area travel demand model to evaluate travel demand reduction strategies.

#### **Douglas County Transportation Plan Updates Study**

**Douglas County, Colorado**

Developed and utilized a MINUTP sub-area transportation model to evaluate the implications of alternative land use scenarios on the Douglas County Transportation Plan. At the time, Douglas County had been identified as the fastest growing county in the United States.

## **Neighborhood Planning**

### **Actus Lend-Lease Traffic Engineering Support**

#### **Various Oahu Military Bases, Hawaii**

Project Manager for an effort that is providing traffic engineering support to the joint venture responsible for privatizing military housing on U.S. Army, U.S. Air Force, and U.S. Coast Guard bases on Oahu. Responsibilities include developing roadway design standards, evaluation proposed subdivision roadway layouts, and developing pedestrian accessibility plans for the housing areas.

### **Villages of Kapolei Traffic Master Plan Update**

#### **Kapolei, Hawaii**

Project Manager for a study that updated the Villages of Kapolei Traffic Master Plan for the Housing and Community Development Corporation of Hawaii (HCDCH). Key issues included school related pedestrian safety issues and conformance with City & County of Honolulu Subdivision Standards.

### **Mililani Mauka Roadway Master Plan**

#### **Mililani, Hawaii**

Project Manager for a study that updated the roadway master plan for the Mililani Mauka residential development. Tasks included intersection design, roadway right-of-way evaluation and access design.

## **Traffic Safety**

### **Shenandoah National Park Traffic Safety Study**

#### **Luray, Virginia**

Project Manager on a study that investigated high accident rates on 105 miles of Skyline Drive. Developed recommendations for pavement striping, traffic signs, geometric and operational improvements to enhance traffic safety within this national park.

## **Intersection Design**

### **Admiral Clarey Bridge**

#### **Pearl Harbor, Hawaii**

Directed design and evaluation of a future intersection where Ford Island Bridge Road intersects with Kamehameha Highway. Tasks included intersection geometric design, signage, striping and traffic signal design.

### **Taste of H-3 Event**

#### **Kaneohe, Hawaii**

Supported organizers in developing parking layout and passenger shuttle operations for an event that attracted 7,000 to 8,000 people over a 4-hour period. Key features were efficient planning for access to parking, layout of parking, and bus shuttle scheduling.

### **Honolulu Parking Management Study**

#### **Honolulu, Hawaii**

Coordinated parking occupancy and parking turnover data collection in a parking study that evaluated parking supply and policy for Downtown Honolulu.

## **Traffic Signal Design**

### **Moanalua Road Improvement**

**Oahu, Hawaii**

Supervised the preparation of design for six traffic signals to accommodate roadway widening and channelization. Project included right-of-way adjustments, utility relocations, and signalization of a unique off-set intersection at Aiea Heights Drive and Kauhale Street.

### **Meheula Parkway/Makaikai Street Traffic Signal**

**Millilani, Hawaii**

Project Manager for a warrant study and design of a new traffic signal within a planned community. The signal design involved the provision of pedestrian crossings that handled a significant volume of school children.

### **Admiral Clarey Bridge Traffic Signal Design**

**Pearl Harbor, Hawaii**

As Lead Traffic Engineer, supervised the preparation of plans, specifications, and estimates (PS&E) for a new traffic signal at the Ford Island Access Road/Yorktown Avenue intersection.

### **Pedestrian Signal Crossing for the Veterans Administration**

**Tripler Army Medical Center, Hawaii**

As Project Manager, supervised the preparation of traffic signal design plan, specification and timing plans for a pedestrian crossing associated with the proposed Senator Sparky Matsunaga Veterans Administration Clinic.

### **Waena Street Traffic Signal**

**Wailuku, Hawaii**

As Technical Resource, provided technical input into the preparation of PS&E for a new traffic signal at the Waena Street/Lower Main Street intersection in Wailuku, Maui as part of the Wailuku Industrial Park Development.

### **Traffic Coordination and Optimization**

Overall Traffic Coordination and Optimization Experience Mr. Yoshioka has experience using traffic timing simulation and optimization programs such as Synchro/Sim Traffic, TRANSYT-7F, PASSER 11-90, and NETSIM, to optimize traffic operations along a signalized traffic corridor.

### **Access Control Demonstration Project for the Department of Transportation**

**Denver, Colorado**

Developed access control plans for nine miles of suburban arterials to establish procedures for evaluating the effectiveness of access control.

### **Wadsworth Corridor Study**

**Jefferson County, Colorado:**

Evaluated alternative methods to increase corridor capacity on major urban arterial in Denver. Key tools used in the analyses were TRANSYT-7F and NETSIM.

## **Parking Demand Studies and Parking Layout Design**

### **New Parking Garage at Honolulu International Airport**

**Honolulu, Hawaii**

Conducted the planning analyses that helped to establish the need and feasibility for a new parking garage at Honolulu International Airport. The garage is now under construction on a site located between the Inter-Island and the Overseas Terminal parking garages.

### **Ala Moana Center Renovation Phases V-A and V-B**

**Honolulu, Hawaii**

Conducted numerous traffic analyses in support of the renovation and expansion of the Ala Moana Center (AMC) regional shopping center and mixed use development. AMC included a 1.5 million square foot regional shopping center proposed to be expanded to 2.5 million square feet of gross leasable floor area. Also physically attached to the regional shopping center parking are two office buildings and a hotel. Efforts included parking occupancy and parking turnover studies, and designing and evaluating parking layouts for AMC. Also included were design and evaluation of parking layout and internal traffic circulation within a proposed six-level parking garage.

## **Transit Planning**

### **Honolulu High-Capacity Transit Project Alternatives Analysis Honolulu, Hawaii**

Participated in the alternatives analysis (AA) for a proposed high-capacity transit project for the City & County of Honolulu. Participated in travel forecasting, traffic analysis, and public participation aspects of the AA.

### **Primary Corridor Transportation Study**

**Honolulu, Hawaii**

Participated in a study that investigated alternative transit improvements for the most heavily traveled transportation corridor on the Island of Oahu. H-1 from Kapolei to Kahala. As part of the study, identified key transportation demand corridors adjacent to Honolulu International Airport. Also involved in developing and assessing operational characteristics of a proposed Bus Rapid Transit System.

### **Pearl City Bus Facility**

**Pearl City, Hawaii**

Project Manager for the traffic element of the planning phase of a new Bus Maintenance and Operations Facility that replaced the Halawa Valley Bus Facility. In addition to traffic analysis, provided support to noise and air quality analysis and participated in the environmental assessment (EA) and facilities planning documents.

## **High-Occupancy Vehicle (HOV) Planning**

### **Nimitz Contra Flow Project**

**Oahu, Hawaii**

Coordinated the transportation planning and traffic engineering for the now operational Nimitz Contra-Flow lane located between the Keehi Interchange and

Pier 32. Recommended strategies for reducing impact of contra-flow operation on local cross streets.

**Kalaniana'ole Highway HOV Facility**

**Oahu, Hawaii**

Participated in planning and design for a reversible High Occupancy Vehicle (HOV) facility planned to be located within the median of Kalaniana'ole Highway in Honolulu.

**Airport Groundside Planning**

**Honolulu International Airport Master Plan Study**

**Honolulu Hawaii**

Part of a team that is helping the State of Hawaii Department of Transportation, Airports Division, update the master plan for Honolulu International Airport. Responsibilities included inventory of groundside transportation characteristics, including parking occupancy and turnover. Also conducted forecasts of future groundside traffic demand based on projections of future airside activity.

**New Airport Master Plan Study**

**Denver, Colorado**

Developed off-site access to the new Denver International Airport. As part of the study, developed a sub-area travel demand model to evaluate access alternatives and provide input to air quality analyses. Worked with other consultants on groundside transportation access to Denver International Airport.

**Stapleton Airport Groundside Roadway Improvements**

**Denver Colorado**

Worked with the City & County of Denver Department of Aviation to improve terminal arrival and departure area roadway operations. Included modifying layout of lanes and crossovers.

**Multi-modal Planning**

**Metropolitan Area Connection (MAC) Burkhardt Station Analysis Denver, CO**

Assisted in evaluating the inter-modal traffic operations of a light rail system

**Travel Demand Forecasting**

Overall Travel Demand Forecasting Experience: Mr. Yoshioka has considerable experience with computerized transportation modeling programs such as MINUTP, TranPlan, UTPS, and MicroTRIPS. He utilizes a comprehensive big picture approach that results in more realistic forecast of travel.

**Oahu Model Development Study**

**Honolulu, Hawaii**

Participated in a study that developed new computerized land use and travel demand models for OMPO.

### **Year 2000 Land Use Plan Analysis for the Island of Oahu Oahu Hawaii**

Used a computerized travel model to evaluate multiple land use scenarios and two transportation systems, one using a heavy rail/feeder bus system and the other using an all bus system.

### **Traffic Impact Studies**

#### **University of Hawaii-West Oahu**

#### **Ewa, Hawaii**

Transportation Manager on a multi-consultant team that is developing the Long-Range Development Plan for the UH West Oahu Campus and conducting the Environmental Impact Statement for the project. Responsibilities included identifying the appropriate roadway cross-sections, intersection configurations, and traffic control.

Numerous Traffic Impact Studies: Conducted numerous traffic impact analysis studies in Hawaii, Guam, Commonwealth of Northern Mariana Islands (CNMI), Colorado, and California. Through these studies, gained a working knowledge of issues that face both the private development community and the governmental agencies that approve proposed development.

**NAME**

Simon Zweighaft

**Years of Experience**

25

**Education\Certification**

Professional Program in Urban Transportation, Carnegie Mellon University, 1974; B.S., Civil Engineering, State University of New York at Buffalo, 1969; B.A., American Studies, State University of New York at Buffalo, 1969.

**Other Certifications and Training**

Current: California [C62995]; Maryland [16087]

Inactive/Prior: New Jersey [GE37386]; New York [064686-1]; Texas [56225]; Florida [0022867]

**Project Experience****InfraConsult****Honolulu, Hawaii*****Honolulu High-Capacity Transit Corridor Project***

Managing Partner 2006-Present

Simon is assigned as Chief Project Officer for the Honolulu High-Capacity Transit Corridor Project where he acts as staff for the City and County of Honolulu directing preliminary engineering and environmental impact statement preparation for a 20-mile new starts fixed guideway transit project.

**Parsons Brinckerhoff**

Senior Vice President, Southwest District Manager, Technical Director, Major Project Manager 1997-2006 and 1983-1994 [19 years total]

As Parsons Brinckerhoff's transit technical director, Simon was responsible for coordinating PB's work in rail transit engineering design on a worldwide basis. He assisted in matching staff resources to project assignments, undertook quality review of ongoing projects, served as principal-in-charge on selected assignments and participated in the technical development of proposals for new projects. He was the proposal manager for a Concession agreement to design, build, operate and transfer a US\$ 2 billion light rail system for the City of Tel Aviv, Israel.

In his previous position as southwest district manager from 1997 to 2004, Simon was responsible for overseeing project work in 15 offices located in the states of Louisiana, Arkansas, Texas, Oklahoma, New Mexico, Arizona, Nevada, Southern California and Hawaii. Annual revenues of the SW District were approximately \$100 million. During his earlier tenure with PB, Simon made significant contributions to the Los Angeles Metro system, the Baltimore Central Light Rail system, the London Docklands Light Railway and the Hudson-Bergen Light Rail system. His technical responsibilities have included preliminary design environmental impact studies, planning, design criteria, consultant selection, contract management, final design,

and construction administration for major automated guideway transit, light rail, and heavy rail transit projects. During his career, he has served as project manager, director of engineering, manager of project development, chief of planning, and in several other key roles.

**TY Lin, International**

President, Chief Operating Officer 1994-1997 [3 Years]

At TY Lin, International, Simon led this 600 person firm specializing in bridge and structural engineering. The firm had ten offices in the US plus three major international offices [Taipei, Singapore and Kuala Lumpur]. Major projects undertaken at the time included seismic retrofit of the Golden Gate Bridge, viaducts for the H-3 expressway in Oahu, Hawaii, the first bridge over the Jamuna River in Bangladesh, elevated structures for the Taiwan High Speed Rail project and many other major highway interchanges and transit structures projects. He participated heavily in the development of the firms' proposals for design-build projects including elevated structures for the San Juan, Puerto Rico's, Tren Urbano. During his tenure, the firm also made three successful major acquisitions of other consulting firms including, DRC Engineers and David Goodyear and Associates, bringing two of the nations top bridge engineers into the company. TY Lin's revenues were approximately \$60 million annually.

**HDR, Inc.**

Director of Transit Programs [1 year]

**Metropolitan**

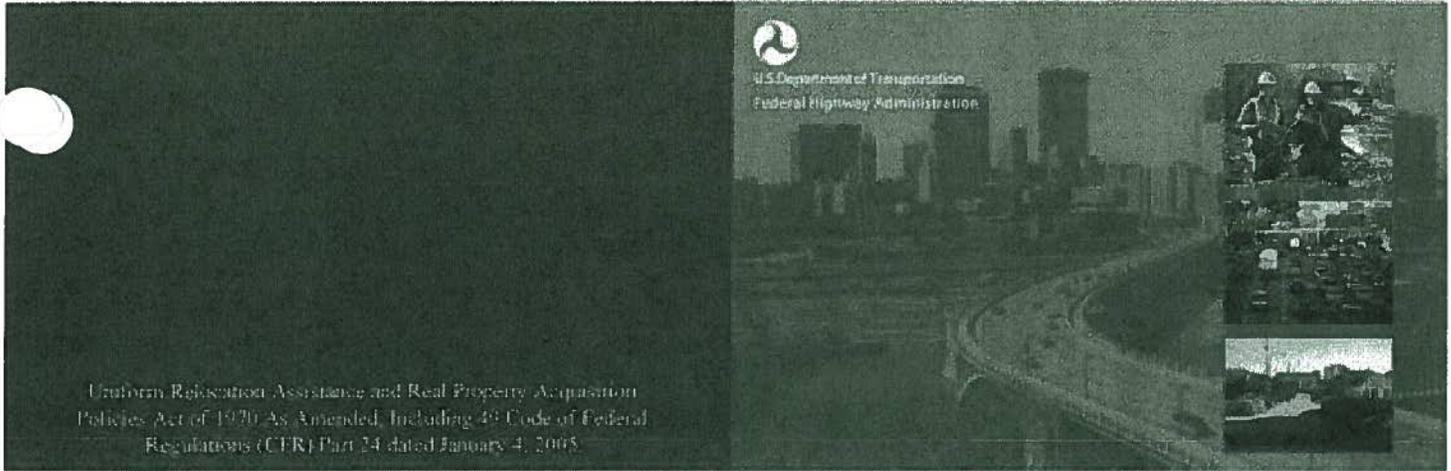
Director of Engineering and Construction [10 years]

**Dade County, Florida**

**Niagara Frontier Transportation Authority**

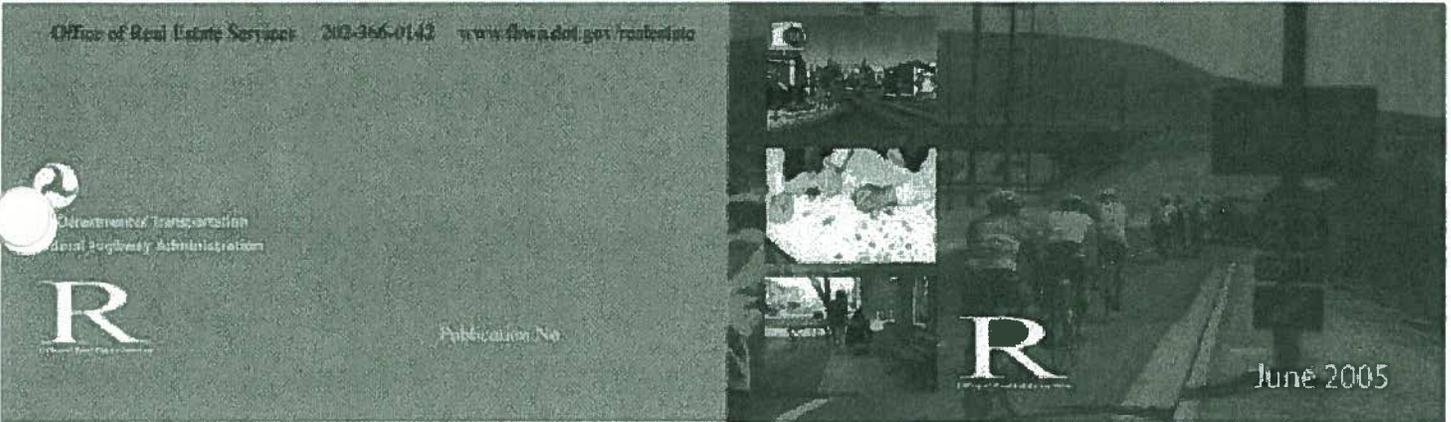
Assistant General Manager [5 years]





# ACQUISITION

## ACQUIRING REAL PROPERTY FOR FEDERAL AND FEDERAL-AID PROGRAMS AND PROJECTS



# TABLE OF CONTENTS

---

Introduction	2
Important Terms Used In This Brochure	4
Property Appraisal	7
Just Compensation	10
Exceptions To The Appraisal Requirement	12
The Written Offer	13
Acquisitions Where Condemnation Will Not Be Used	16
Payment	17
Possessio	18
Settlement	19
Condemnation	20

## **INTRODUCTION**

---

Government programs designed to benefit the public as a whole often result in acquisition of private property and, sometimes, in the displacement of people from their residences, businesses or farms. Acquisition of this kind has long been recognized as a right of government and is known as the power of eminent domain. The Fifth Amendment of the Constitution states that private property shall not be taken for public use without just compensation.

To provide uniform and equitable treatment for persons whose property is acquired for public use, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987. This law, called the Uniform Act, is the foundation for the information discussed in this brochure.

Revised rules for the Uniform Act were published in the Federal Register on January 4, 2005. The rules are reprinted each year in the Code of Federal Regulations (CFR), Title 49, Part 24. All Federal, State and local government agencies, as well as others receiving Federal financial assistance for public programs and projects, that require the acquisition of real property, must comply with the policies and provisions set forth in the Uniform Act and the regulation.



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 rules encourage acquiring agencies to negotiate with property owners in a prompt and amicable manner so that litigation can be avoided.

This brochure explains your rights as an owner of real property to be acquired for a federally-funded program or project. The requirements for relocation assistance are explained in a brochure entitled *Relocation, Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program*.

Acquisition and relocation information can be found on the Federal Highway Administration Office of Real Estate Services website: [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate)

The agency responsible for the federally-funded program or project in your area will have specific information regarding your acquisition. Please contact the sponsoring agency to receive answers to your specific questions.

# IMPORTANT TERMS USED IN THIS BROCHURE

---

## **Acquisition**

Acquisition is the process of acquiring real property (real estate) or some interest therein.

## **Agency**

An agency can be a government organization (Federal, State, or local), a non-government organization (such as a utility company), or a private person using Federal financial assistance for a program or project that acquires real property or displaces a person.

## **Appraisal**

An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

## **Condemnation**

Condemnation is the legal process of acquiring private property for public use or purpose through the agency's power of eminent domain. Condemnation is usually not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An agency then goes to court to acquire the needed property.

## **Easement**

In general, an easement is the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e.,

limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right. Examples are: permanent easement for utilities, permanent easement for perpetual maintenance of drainage structures, and temporary easement to allow reconstruction of a driveway during construction.

### **Eminent Domain**

Eminent domain is the right of government to take private property for public use. In the U.S., just compensation must be paid for private property acquired for federally-funded programs or projects.

### **Fair Market Value**

Fair market value is market value that has been adjusted to reflect constitutional and other legal requirements for public acquisition.

### **Interest**

An interest is a right, title, or legal share in something. People who share in the ownership of real property have an interest in the property.

### **Just Compensation**

Just compensation is the price an agency must pay to acquire real property. An agency official must make the estimate of just compensation to be offered to you for the property needed. That amount may not be less than the amount established in the approved appraisal report as the fair market value for your property. If you and the agency cannot agree on the amount of just compensation to be

paid for the property needed, and it becomes necessary for the agency to use the condemnation process, the amount determined by the court will be the just compensation for your property.

### **Lien**

A lien is a charge against a property in which the property is the security for payment of a debt. A mortgage is a lien. So are taxes. Customarily, liens must be paid in full when the property is sold.

### **Market Value**

Market value is the sale price that a willing and informed seller and a willing and informed buyer agree to for a particular property.

### **Negotiation**

Negotiation is the process used by an agency to reach an amicable agreement with a property owner for the acquisition of needed property. An offer is made for the purchase of property in person, or by mail, and the offer is discussed with the owner.

### **Person**

A person is an individual, partnership, corporation, or association.

### **Personal Property**

In general, personal property is property that can be moved. It is not permanently attached to, or a part of, the real property. Personal property is not to be included and valued in the appraisal of real property.

### **Program or Project**

A program or project is any activity or series of activities undertaken by an agency where Federal financial assistance is used in any phase of the activity.

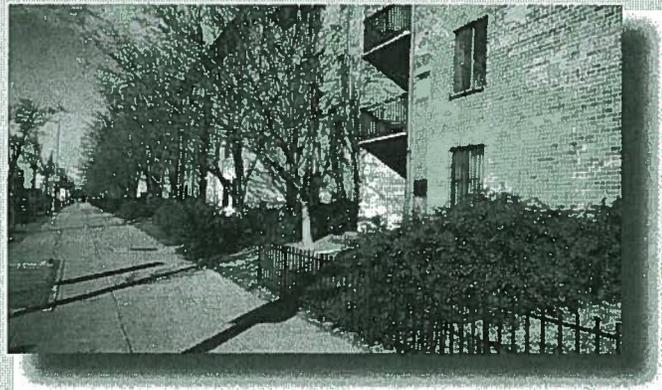
### **Waiver Valuation**

The term waiver valuation means an administrative process for estimating fair market value for relatively low-value, non-complex acquisitions. A waiver valuation is prepared in lieu of an appraisal.

## **PROPERTY APPRAISAL**

---

An agency determines what specific property needs to be acquired for a public program or project after the project has been planned and government requirements have been met.



If your property, or a portion of it, needs to be acquired, you, the property owner, will be notified as soon as possible of (1) the agency's interest in acquiring your property, (2) the agency's obligation to secure any necessary appraisals, and (3) any other useful information.

When an agency begins the acquisition process, the first personal contact with you, the property owner, should be no later than during the appraisal of the property.



An appraiser will contact you to make an appointment to inspect your property. The appraiser is responsible for determining the initial fair market value of the property. The agency will have a review appraiser study and recommend

approval of the appraisal report used to establish the just compensation to be offered to you for the property needed.

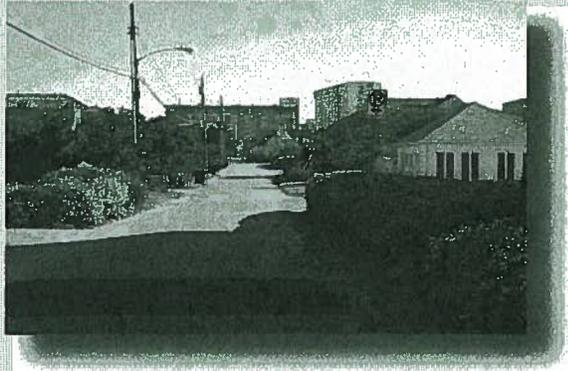
You, or a representative that you designate, will be invited to accompany the appraiser when the appraiser inspects your property. You can point out any unusual or hidden features of the property that the appraiser could overlook. At this time, you should advise the appraiser if any of these conditions exist:

- There are other persons who have ownership or interest in the property.
- There are tenants on the property.
- Items of real or personal property that belong to someone else are located on your property.
- The presence of hazardous material, underground storage or utilities.

This is your opportunity to tell the appraiser about anything relevant to your property, including other properties in your area that have recently sold.

The appraiser will inspect your property and note its physical characteristics. He

or she will review sales of properties similar to yours in order to compare the facts of those sales with the facts about your property. The appraiser will analyze all elements that affect value.



The appraiser must consider normal depreciation and physical deterioration that has taken place. By law, the appraiser must disregard the influence of the future public project on the value of the property. This requirement may be partially responsible for any difference in the fair market value and market value of your property.

The appraisal report will describe your property and the agency will determine a value based on the condition of the property on the day that the appraiser last inspected it, as compared with other similar properties that have sold.

## JUST COMPENSATION

---

Once the appraisal of fair market value is complete, a review appraiser from the agency will review the report to ensure that all applicable appraisal standards and requirements are met. When they are, the review appraiser will give the agency the approved appraisal to use in determining the amount of just compensation to be offered for your real property. This amount will never be less than the fair market value established by the approved appraisal.



If the agency is only acquiring a part of your property, there may be damages or benefits to your remaining property. Any allowable damages or benefits will be reflected in the just compensation amount. The agency will prepare a written offer of just compensation for you when negotiations begin.

### **Buildings, Structures and Improvements**

Sometimes buildings, structures, or other improvements are located on the property to be acquired. If they are real property, the agency must offer to acquire at least an equal interest in them if they must be removed or if the agency determines that the improvements will be adversely affected by the public program or project.

An improvement will be valued as real property regardless of who owns it.

## **Tenant-Owned Buildings, Structures and Improvements**

Sometimes tenants lease real property and build or add improvements for their use. Frequently, they have the right or obligation to remove the improvements at the expiration of the lease term. If, under State law, the improvements are considered to be real property, the agency must make an offer to the tenants to acquire these improvements as real property.

In order to be paid for these improvements, the tenant-owner must assign, transfer, and release to the agency all right, title, and interest in the improvements. Also, the owner of the real property on which the improvements are located must disclaim all interest in the improvements.

For an improvement, just compensation is the amount that the improvement contributes to the fair market value of the whole property, or its value for removal from the property (salvage value), whichever amount is greater.

A tenant-owner can reject payment for the tenant-owned improvements and obtain payment for his or her property interests in accordance with other applicable laws. The agency cannot pay for tenant-owned improvements if such payment would result in the duplication of any other compensation otherwise authorized by law.

If improvements are considered personal property under State law, the tenant-owner may be reimbursed for moving them under the relocation assistance provision.

The agency will personally contact the tenant-owners of improvements to explain the procedures to be followed. Any payments must be in accordance with Federal rules and applicable State laws.

## **EXCEPTIONS TO THE APPRAISAL REQUIREMENT**

---

The Uniform Act requires that all real property to be acquired must be appraised, 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.

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 be obtained.

## THE WRITTEN OFFER

---

After the agency approves the just compensation offer they will begin negotiations with you or your designated representative by delivering the written



offer of just compensation for the purchase of the real property. If practical, this offer will be delivered in person by a representative of the agency. Otherwise, the offer will be made by mail and followed up with a contact in person or by telephone. All owners of the property with known addresses will be contacted unless they collectively have designated one person to represent their interests.

An agency representative will explain agency acquisition policies and procedures in writing, either by use of an informational brochure, or in person.

The agency's written offer will consist of a written summary statement that includes all of the following information:

- The amount offered as just compensation.
- The description and location of the property and the interest to be acquired.
- The identification of the buildings and other improvements that are considered to be part of the real property.

The offer may list items of real property that you may retain and remove from the property and their retention values. If you decide to retain any or all of these items, the offer will be reduced by the value of the items retained. You will be responsible for removing the items from the property in a timely manner. The agency may elect to withhold a portion of the remaining offer until the retained items are removed from the property.

Any separately held ownership interests in the property, such as tenant-owned improvements, will be identified by the agency.

The agency may negotiate with each person who holds a separate ownership interest, or, may negotiate with the primary owner and prepare a check payable jointly to all owners.

The agency will give you a reasonable amount of time to consider the written offer and ask questions or seek clarification of anything that is not understood.

If you believe that all relevant material was not considered during the appraisal, you may present such information at this time. Modifications in the proposed terms and conditions of the purchase may be requested. The agency will consider any reasonable requests that are made during negotiations.

## **Partial Acquisition**

Often an agency does not need all the property you own. The agency will usually purchase only what it needs.

If the agency intends to acquire only a portion of the property, the agency must state the amount to be paid for the part to be acquired.

In addition, an amount will be stated separately for damages, if any, to the portion of the property you will keep.

If the agency determines that the remainder property will have little or no value or use to you, the agency will consider this remainder to be an uneconomic remnant and will offer to purchase it. You have the option of accepting the offer for purchase of the uneconomic remnant or keeping the property.

## **Agreement Between You and the Agency**

When you reach agreement with the agency on the offer, you will be asked to sign an option to buy, a purchase agreement, an easement, or some form of deed prepared by the agency. Your signature will affirm that you and the agency are in agreement concerning the acquisition of the property, including terms and conditions.



If you do not reach an agreement with the agency because of some important point connected with the acquisition offer, the agency may suggest mediation as a means of coming to agreement. If the agency thinks that a settlement cannot be reached, it will initiate condemnation proceedings.

The agency may not take any action to force you into accepting its offer. Prohibited actions include:

- Advancing the condemnation process.
- Deferring negotiations.
- Deferring condemnation.
- Delaying the deposit of funds with the court for your use when condemnation is initiated.
- Any other coercive action designed to force an agreement regarding the price to be paid for your property.

## **ACQUISITIONS WHERE CONDEMNATION WILL NOT BE USED**

---

An agency may not possess the power of eminent domain. Or an agency has the power of eminent domain but elects not to use it for a program or project. If this is the case, you will be informed in writing, before negotiations begin, that the agency will not condemn your property if you and the agency fail to reach agreement. Before making you an offer, the agency will inform you, in writing, of what it believes to be

the fair market value for the property it would like to acquire. An owner, in this situation, is not eligible for relocation assistance benefits.

Tenants on the property may be eligible for relocation benefits.

## **PAYMENT**

---

The next step in the acquisition process is payment for your property. As soon as all the necessary paperwork is completed for transferring title of the property, the agency will pay any liens that exist against the property and pay your equity to you. Your incidental expenses will also be paid or reimbursed.

Incidental expenses are reasonable expenses incurred as a result of transferring title to the agency, such as:

- Recording fees and transfer taxes.
- Documentary stamps.
- Evidence of title, however, the agency is not required to pay costs required solely to perfect your title or to assure that the title to the real property is entirely without defect.
- Surveys and legal descriptions of the real property.
- Other similar expenses necessary to convey the property to the agency.

Penalty costs and other charges for prepaying any preexisting recorded mortgage entered into in good faith encumbering the real property will be reimbursed.

The pro rata share of any prepaid real property taxes that can be allocated to the period after the agency obtains title to the property or takes possession of it, will be reimbursed.

If possible, the agency will pay these costs directly so that you will not need to pay the costs and then claim reimbursement.

## **POSSESSION**

---

The agency may not take possession of your property unless:

- You have been paid the agreed purchase price, or
- In the case of condemnation, the agency has deposited with the court an amount for your benefit and use that is at least the amount of the agency's approved appraisal of the fair market value of your property, or
- The agency has paid the amount of the court award of compensation in the condemnation proceeding.



If the agency takes possession while persons still occupy the property:

- All persons occupying the property must receive a written notice to move at least 90 days in advance of the required date to move. In this context, the term person includes residential occupants, homeowners, tenants, businesses, non-profit organizations, and farms.
- An occupant of a residence cannot be required to move until at least 90 days after a comparable replacement dwelling has been made available for occupancy. Only in unusual circumstances, such as when continued occupancy would constitute a substantial danger to the health or safety of the occupants, can vacation of the property be required in less than 90 days.

## **SETTLEMENT**

---

The agency will make every effort to reach an agreement with you during negotiations. You may provide additional information, and make reasonable counter offers and proposals for the agency to consider.

When it is in the public interest, most agencies use the information provided as a basis for administrative or legal settlements, as appropriate.

## **CONDEMNATION**

---

If an agreement cannot be reached, the agency can acquire the property by exercising its power of eminent domain. It will do this by instituting formal condemnation proceedings with the appropriate State or Federal court.

If the property is being acquired directly by a Federal agency, the condemnation action will take place in a Federal court and Federal procedures will be followed.

If the property is being acquired by anyone else that has condemnation authority, the condemnation action will take place in State court and the procedures will follow State law.

In many States, a board of viewers or commissioners, or a similar body, will initially determine the amount of compensation you are due for the property. You and the agency will be allowed to present information to the court during these proceedings.

If you or the agency are dissatisfied with the board's determination of compensation, a trial by a judge or a jury may be scheduled. The court will set the final amount of just compensation after it has heard all arguments.

## **Litigation Expenses**

Normally, the agency does not reimburse you for costs you incur as a result of condemnation proceedings. The agency will reimburse you, however, under any of the following conditions:

- The court determines that the agency cannot acquire your property by condemnation.
- The condemnation proceedings are abandoned by the agency without an agreed-upon settlement.
- You initiate an inverse condemnation action and the court agrees with you that the agency has taken your real property rights without the payment of just compensation, or the agency elects to settle the case without further legal action.
- The agency is subject to State laws that require reimbursement for these or other condemnation costs.

The information is provided to assist you in understanding the requirements that must be met by agencies, and your rights and obligations. If you have any questions, contact your agency representative.

Additional information on Federal acquisition requirements, the law and the regulation can be found at [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate)

# NOTES

---

# NOTES

---

# NOTES

---



---

**90-DAY OCCUPANT (OWNER OR TENANT)  
90-DAY NOTICE**

Project Code:  
Parcel No:  
Project No:  
Location:  
Date:

Dear \_\_\_\_\_:

A determination has been made as to the fixed residential moving cost schedule and the rental assistance payment you may be eligible to receive. Your entitlement for moving is based on the cost of one or a combination of the following methods:

1. Commercial move;
2. Self move:
  - a. Fixed Residential Moving Cost Schedule - \$ \_\_\_\_;
  - b. Actual cost move.

The rental assistance payment is computed using the lesser of the following:

1. Rent and average monthly utility costs;
2. 30% of the total monthly gross household income for a qualified low income tenants; or
3. The total amount designated for shelter and utilities for a tenant receiving government assistance.

You may be entitled to a rental assistance payment, the amount of which depends on the dwelling you occupy. This rental dwelling must be inspected and determined to be decent, safe and sanitary. If it is and you have to pay \$ \_\_\_\_\_ per month, including utilities, or more for a replacement rental, you will be entitled to \$ \_\_\_\_\_. This payment cannot exceed the maximum of \$5,250 statutory limit.

If, however, you acquire and occupy a comparable rental for less, you will receive the amount, if any, you have to pay over \$ \_\_\_\_\_ per month, including utilities, for a 42-month period. Your rental assistance payment will be a lump sum payment.

If you decide to purchase a replacement dwelling you would be entitled to a down-payment assistance payment. The down-payment assistance payment must be applied to the purchase price of the replacement dwelling and related incidental expenses.

If you are eligible for payments and have complied satisfactorily with all requirements, you will receive a payment within approximately 30 days after filing a claim.

In order to cause you as little inconvenience as possible, you will not be required to vacate your home prior to 90 days from the date of this letter or you will be notified of a specified date at least 30 days prior to the date you must vacate.

If, for any reason, you believe the amount of the entitlement is not correct, please call or write us giving your reasons. We will take these reasons into consideration and advise you of our decision. If you are still dissatisfied, you may appeal to the City for review of your case.

Sincerely,

---

Real Estate Specialist

---

**90-DAY OCCUPANT (OWNER OR TENANT)  
HOUSING OF LAST RESORT  
90-DAY NOTICE**

Project Code:  
Parcel No:  
Project No:  
Location:  
Date:

Dear \_\_\_\_\_:

A determination has been made as to the fixed residential moving cost schedule and the rental assistance payment you may be eligible to receive. Your entitlement for moving is based on the cost of one or a combination of the following methods:

1. Commercial move;
2. Self move:
  - a. Fixed Residential Moving Cost Schedule - \$\_\_\_;
  - b. Actual cost move.

The rental assistance payment is computed using the lesser of the following:

1. Rent and average monthly utility costs;
2. 30% of the total monthly gross household income for a qualified low income tenants; or
3. The total amount designated for shelter and utilities for a tenant receiving government assistance.

You may be entitled to a rental assistance payment, the amount of which depends on the dwelling you occupy. This rental dwelling must be inspected and determined to be decent, safe and sanitary. If it is and you have to pay \$ \_\_\_\_\_ per month, including utilities, or more for a replacement rental, you will be entitled to \$ \_\_\_\_\_. This payment cannot exceed the maximum of \$5,250 statutory limit.

If, however, you acquire and occupy a comparable rental for less, you will receive the amount, if any, you have to pay over \$ \_\_\_\_\_ per month, including utilities, for a 42-month period. Your rental assistance payment will be paid in three installments at 14-month intervals.

If you decide to purchase a replacement dwelling you would be entitled to a down-payment assistance payment. The down-payment assistance payment must be applied to the purchase price of the replacement dwelling and related incidental expenses.

If you are eligible for payments and have complied satisfactorily with all requirements, you will receive a payment within approximately 30 days after filing a claim.

In order to cause you as little inconvenience as possible, you will not be required to vacate your home prior to 90 days from the date of this letter or you will be notified of a specified date at least 30 days prior to the date you must vacate.

If, for any reason, you believe the amount of the entitlement is not correct, please call or write us giving your reasons. The City will take these reasons into consideration and you will be advised of the decision. If you are still dissatisfied, you may appeal to the City for review of your case.

Sincerely,

---

Real Estate Specialist

---

**180 HOMEOWNER OCCUPANT  
90-DAY NOTICE**

Project Code:  
Parcel No:  
Project No:  
Location:  
Date:

Dear \_\_\_\_\_:

A determination has been made as to the fixed residential moving cost schedule and price differential payment you may be eligible to receive. You may also be eligible for increased mortgage interest and incidental expenses.

Your entitlement for moving is based on the cost of one or a combination of the following methods:

1. Commercial move;
2. Self move:
  - a. Fixed Residential Moving Cost Schedule - \$ \_\_\_\_;
  - b. Actual cost move.

You will be eligible for a maximum price differential payment in the amount of \$ \_\_\_\_\_. This payment cannot exceed the maximum \$22,500 statutory limit. This payment is based on the difference between the cost of the comparable replacement dwelling (\$\_\_\_\_) and the acquisition price of your property (\$\_\_\_\_).

In order to receive the full price differential payment, you must purchase a decent, safe and sanitary dwelling costing at least \$ \_\_\_\_\_. If the actual purchase price of the acquired dwelling changes or you purchase a replacement dwelling with a different value, the amount of the replacement housing payment eligibility may change.

For a 180-day owner who elects to rent, a rental computation will be computed based on a determination for 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 may not exceed the amount you would have received as a price differential.

If you are eligible for payments and have complied satisfactorily with all requirements, you will receive a payment within approximately 30 days after filing a claim.

In order to cause you as little inconvenience as possible, you will not be required to vacate your home prior to 90 days from the date of this letter or you will be notified of a specified date at least 30 days prior to the date you must vacate.

If, for any reason, you believe the amount of the entitlement is not correct, please call or write us giving your reasons. The City will take these reasons into consideration and you will be advised of the decision. If you are still dissatisfied, you may appeal to the City for review of your case.

Sincerely,

---

Real Estate Specialist



---

**BUSINESS**

**FIRST NEGOTIATION CONTACT AND NOTICE OF RELOCATION ELIGIBILITY**

**90-DAY NOTICE**

Project Code:  
Parcel No:  
Project No:  
Location:  
Date:

Dear \_\_\_\_\_:

Honolulu City has determined that your farm or place of business is needed for public right-of-way purposes. Negotiations for this parcel were initiated on \_\_\_\_\_, 200\_. The City is prepared to offer you relocation assistance and payments.

You will have a minimum of 90 days from the date of this letter before you may be required to move. You will be notified of a specific date to vacate at least 30 days prior to the date you must move.

The relocation brochure provided to you describes the relocation services and payments and informs you of the appeal procedures in the event you are dissatisfied with the amount determined on any payment.

Every person seeking benefits under the Uniform Act must certify as to residency status. Any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child. Please complete the attached form.

If you have any questions in regard to relocation, you may contact me at \_\_\_\_\_.

Sincerely,

---

Real Estate Specialist

Attachment

---

**Certificate of Legal Residency in the United States**

In accordance with Public Law 105-117, 105<sup>th</sup> Congress and Title 49, Code of Federal Regulation Part 24, all persons seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify that he/she and/or other members of the household are citizens, nationals or aliens who are lawfully present in the United States.

**Residential Displacements**

- A. Individual: I certify that I am: a citizen of the United States   
(or)  
I certify that I am: an alien lawfully present in the United States   
(or)
- B. Family: I certify that there are \_\_\_\_\_ persons in my household and that they are citizens of the United States and \_\_\_\_\_ are aliens lawfully present in the United States.

---

**Non-Residential Displacements**

- C. Sole Proprietorship: I certify that I am a citizen of the United States   
(or)  
I am an alien lawfully present in the United States   
(or)  
I am a non-U.S. citizen not present in the United States
- D. Partnership: I certify that there are \_\_\_\_ partners in the partnership and that \_\_\_\_\_ are citizens of the United States, \_\_\_\_\_ are aliens lawfully present in the United States, and \_\_\_\_\_ are non-U.S. citizens not present in the United States.
- E. Corporations: I certify that \_\_\_\_\_ is Established pursuant to Hawaii State Law and is authorized to conduct business in the United States.

---

(Your signature constitutes certification)

---

Date

**NOTE:** *Honolulu City or its agents may request documentation or other credible evidence in addition to this certificate. In addition, inquiries to the Bureau of Citizenship and Immigration Services (BCIS) may take place.*



---

**RESIDENTIAL**

**FIRST NEGOTIATION CONTACT & NOTICE OF RELOCATION ELIGIBILITY**

**90-DAY NOTICE**

Project Code:

Parcel No:

Project No:

Location:

Date:

Dear \_\_\_\_\_:

Honolulu City has determined that your residence is needed for public right-of-way purposes. Negotiations for this parcel were initiated \_\_\_\_\_, 200\_. The City is prepared to offer you relocation assistance and payments.

You will be required to vacate all improvements located on the above numbered parcel. However, you will not be required to move from your property until at least one comparable replacement dwelling unit has been made available to you and a written 90-day notice has been given to you.

The relocation brochure provided to you describes these services and payments and informs you of the appeal procedures in the event that you are dissatisfied with the amount determined on any payment.

Every person seeking benefits under the Uniform Act must certify as to residency status. Any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child. Please complete the attached form.

Sincerely,

---

Real Estate Specialist

Attachment



## **APPENDIX I**

### **RELOCATION NOTICES AND DEVELOPMENT**

The Right of Way Team is in the process of overseeing the development of the new Public Relocation Notices. They have been working with the Hawaii Department of Transportation to obtain copies of their Relocation Notices. Which are included in Appendix I as sample Notices.

The Right of Way Team will be incorporating many of these notices into their Relocation Policy and Procedures and estimate that this task will be completed by the end of second quarter 2008.

State of Hawaii  
Department of Transportation  
Highways Division  
RIGHT-OF-WAY BRANCH

TO: PROPERTY MANAGEMENT SECTION Date \_\_\_\_\_  
FROM: LAND ACQUISITION SECTION  
PROJECT: \_\_\_\_\_  
\_\_\_\_\_

The following is transmitted for your information:

PARCEL NO. \_\_\_\_\_  
TAX MAP KEY \_\_\_\_\_  
OWNER \_\_\_\_\_  
\_\_\_\_\_  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_  
DATE NEGOTIATION WAS INITIATED \_\_\_\_\_  
DATE OFFER WAS ACCEPTED \_\_\_\_\_  
DATE OF ORDER OF POSSESSION \_\_\_\_\_  
TENANT \_\_\_\_\_  
\_\_\_\_\_  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_  
RENT BEING PAID BY TENANT \_\_\_\_\_  
REMARKS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(for) Principal R/W Agent

RELOCATION ASSISTANCE INFORMATION

1. Project : \_\_\_\_\_
2. Right-of-Way Agent in charge : \_\_\_\_\_
3. Name of relocatee : \_\_\_\_\_
4. Address from which relocated : \_\_\_\_\_
5. Date of notification of relocation advisory assistance : \_\_\_\_\_
6. Advisory assistance requested or declined : \_\_\_\_\_
7. Dates advisory assistance given : \_\_\_\_\_
8. Date relocated : \_\_\_\_\_
9. Relocated through assistance or on own initiative : \_\_\_\_\_
10. Type of occupancy : \_\_\_\_\_  
a) Owner b) Tenant
11. a) Number in family : \_\_\_\_\_  
b) Type of property, single or multi-family : \_\_\_\_\_  
c) Value if single family residence : \_\_\_\_\_  
d) Number of rooms (single family residence or apartment) : \_\_\_\_\_  
e) Monthly rental, if tenant : \_\_\_\_\_
12. For business : \_\_\_\_\_  
a) Type of business : \_\_\_\_\_  
b) Whether relocated or terminated : \_\_\_\_\_  
c) If relocated, distance moved : \_\_\_\_\_
13. Amount of relocation payment : \_\_\_\_\_
14. Date of relocation payment : \_\_\_\_\_
15. Other information : \_\_\_\_\_

RELOCATION ADVISORY  
ASSISTANCE

and

RELOCATION  
PAYMENTS

\*\*\*\*\*

This brochure briefly answers some of the questions most often asked about the assistance that is available to provide a uniform policy for the fair and equitable treatment of owners, tenants, other persons and business concerns displaced by the acquisition of real property for public purposes by the Department of Accounting and General Services.

It also briefly describes the Relocation Assistance Program available under Act 166, Session Laws of Hawaii, 1970. The Department of Accounting and General Services has authorized the Department of Transportation to make the relocation program available to those tenants who are now located in the area described by Tax Map Key 2-1-30:3, 4, 38, 39, 40, 41, 43, 44 and 45, which the State will be acquiring.

Judiciary Complex  
02-21-1969

## INTRODUCTION

There are two services which have been authorized by State Laws to aid persons who must be relocated from their residences and businesses because of a State project. The first service is RELOCATION ADVISORY ASSISTANCE, and the second service is RELOCATION PAYMENTS.

Both are briefly described in this brochure so that you may know the benefits which persons, businesses and farm operations may be entitled to receive and how they are obtained.

We hope that this brochure answers some of the questions you may have about Relocation Advisory Assistance and Relocation Payments. This is a general information brochure only and is not intended to give a detailed description of either the laws or regulations pertaining to Relocation Advisory Assistance and Relocation Payments.

TABLE OF CONTENTS

	<u>Pages</u>
INTRODUCTION . . . . .	1
TABLE OF CONTENTS . . . . .	ii - iii
RELOCATION ADVISORY ASSISTANCE . . . . .	1
RELOCATION PAYMENTS . . . . .	1
What are "Relocation Payments" . . . . .	2
MOVING EXPENSES . . . . .	2
What are "Moving Cost Payments?" . . . . .	2
Who is eligible for a "Moving Cost Payment?" . . . . .	2
"Moving Cost Payment" to Displaced Individual or Family . . . . .	3
"Room Count" Method of Payment for Self Move . . . . .	3
"Actual Cost" Method of Payment . . . . .	3
"Moving Cost Payment" to Business, Farm Operation or Nonprofit Organization . . . . .	3
"In Lieu" Payment to Owner of Business or Farm or to Nonprofit Organization . . . . .	3
What are Average Annual Net Earnings? . . . . .	4
Notification of Intended Moving Date . . . . .	4
What Help is Available? . . . . .	4
SUPPLEMENTAL PAYMENTS . . . . .	4
What is a Replacement Housing Payment? . . . . .	4
What is a Rental Replacement Housing Payment? . . . . .	4
Who is Eligible? . . . . .	4
Owner-Occupant of at least 180 days . . . . .	5
A. If he purchases . . . . .	5
Eligibility requirement to receive replacement housing payment . . . . .	5 - 6

	<u>Pages</u>
B. If he rents . . . . .	6
Owner-Occupant of Less than 180 Days but not Less Than 90 Days . . . . .	6 - 8
A. If he purchases . . . . .	6
B. If he rents . . . . .	6
C. If he retains his dwelling . . . . .	6
Tenant-Occupant and Tenant of a Sleeping Room . . . . .	8 - 10
A. If he rents . . . . .	8
Eligibility requirement to receive rental replacement housing payment . . . . .	8 - 10
B. If he purchases . . . . .	9
What are the Standards for Decent, Safe and Sanitary Housing? . . . . .	10 - 11
What can you do About Violations of the Law? . . . . .	11 - 12
How are Relocation Payments Claimed? . . . . .	12
Where can Detailed Information Concerning Relocation Payment Procedures and Regulations be Obtained? . . . . .	12
APPEAL PROCEDURE . . . . .	13

## RELOCATION ADVISORY ASSISTANCE

Relocation Advisory Assistance Service is available to families (and to individuals who are not members of families), businesses (including the operation of a farm), and nonprofit organizations that must relocate because a State project requires that their residences or businesses be acquired.

On this particular project, this service is being provided by representatives of the Right-of-Way Branch, Land Transportation Facilities, Department of Transportation, located at 869 Punchbowl Street, Honolulu, Hawaii.

DISPLACEMENT CERTIFICATES will be issued by the Department of Transportation to all eligible persons or businesses. These certificates must be presented to the Right-of-Way Branch, Land Transportation Facilities, Department of Transportation, as soon as possible, so that they may provide you with rehousing referrals, advisory assistance and instructions for claiming Relocation Payments.

## RELOCATION PAYMENTS

The second service the Department of Transportation offers is RELOCATION PAYMENTS. Such Relocation Payments are authorized by State laws and are available to displaced individuals, families, business concerns (including the operation of a farm), and nonprofit organizations. Both owners and tenants are eligible for Relocation Payments.

All payments received under Act 166, Session Laws of Hawaii, 1970 shall not be considered as income for the State of Hawaii Income Tax Law; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the State Welfare programs.

The following is a discussion concerning Relocation Payments. It answers various questions concerning moving expenses and supplementary payments for purchase or rental of replacement housing generally asked by displacees.

What are "Relocation Payments?"

Relocation payments are payments for moving expenses and for other expenses necessary for eligible persons to obtain replacement housing.

#### MOVING EXPENSES

What are "Moving Cost Payments?"

Moving cost payments are allowances to reimburse the expense of moving personal property including temporary storage of personal property, if necessary, for a reasonable time not to exceed six months, when persons or enterprises are displaced because of the need for their premises to construct a State project.

Who is eligible for a "Moving Cost Payment?"

Any individual, family, business, farm operation or nonprofit organization who moves as a result of acquisition of a property for a State project is eligible for a moving cost payment when:

- A. He is in occupancy at the initiation of negotiations for the acquisition of the real property in whole or in part; or
- B. He is in occupancy at the time he is given a written notice by the State of its intent to acquire the property by a given date; and
- C. He moves from the real property or moves his personal property from the real property subsequent to the earliest date established in A. or B. above; and
- D. The real property is subsequently acquired; and
- E. He files an application for moving cost payment on a form provided by the Department of Transportation within 18 months from the date of his move from the real property.

If the move occurs after a written order to vacate is issued, the occupant is eligible even though the property is not acquired.

**"Moving Cost Payment" to Displaced Individual or Family**

Individuals or families displaced from their residential dwellings may choose to receive a moving cost payment by either the "Room Count" method for self moves or by the "Actual Cost" method.

**"Room Count" Method of Payment for Self Move**

The "Room Count" payment provides for a flat payment according to a fixed schedule based on the number of rooms (or room equivalents) of furniture and personal belongings in the house.

If the "Room Count" method is chosen, no more than \$200 moving costs can be paid no matter how large the home may be. However, in addition, displacees will receive a DISLOCATION PAYMENT of \$100 regardless of the number of rooms.

**"Actual Cost" Method of Payment**

The "Actual Cost" method provides for payment of actual and reasonable cost of a move accomplished by a commercial mover to a displaced individual (who is not a member of a family), or family within a 50 mile radius of the point from which the move is made. If the "Actual Cost" method is chosen, displacees are not allowed the additional \$100 dislocation allowance.

**"Moving Cost Payment" to Business, Farm Operation or Nonprofit Organization**

The owner of a displaced business or farm operation and, also, a displaced nonprofit organization, if eligible, may receive a payment for:

- A. Actual reasonable moving expense;
- B. Actual direct losses of tangible personal property.

**"In Lieu" Payment to Owner of Business or Farm or to Nonprofit Organization**

In lieu of actual reasonable moving and related expenses, owners of some displaced businesses or farm operations and, also, some displaced nonprofit organizations may be eligible to receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation or nonprofit organization. This payment shall be not more than \$5,000.

What are Average Annual Net Earnings?

"Average annual net earnings" are one-half of any net earnings of the business or farm operation before Federal, State and local income taxes, during the two taxable years immediately preceding the taxable year in which the business or farm operation is re-located.

Notification of Intended Moving Date

A business concern (1) should submit to the Right-of-Way Branch a written notice of its intention to move at least 30 days, but not earlier than 90 days, prior to the intended move, and the new address; and (2) has permitted, at all reasonable times, the inspection by Right-of-Way Agents of the Right-of-Way Branch, Highways Division, of all property to be moved from the project site.

What Help is Available?

Your Highways Division can help you to find replacement housing, business premises or agricultural land. It can provide you with FHA, VA and conventional home financing information. It can direct you to other agencies which provide services that may be of help to you.

#### SUPPLEMENTAL PAYMENTS

Supplemental payments are payments made to certain residential property owners or tenants in addition to moving expenses. These payments are called "replacement housing payments" and "rental replacement housing payments".

What is a Replacement Housing Payment?

A replacement housing payment is an additional payment to an eligible displaced homeowner or tenant who purchases and occupies decent, safe and sanitary replacement housing.

What is a Rental Replacement Housing Payment?

A rental replacement housing payment is the amount paid to an eligible displaced homeowner or tenant to enable such displaced person to lease or rent decent, safe and sanitary replacement housing for a period not to exceed two years.

Who is Eligible?

If you have legally occupied residential premises as either an owner-occupant or tenant for a specified period of time, and purchased or rented a decent, safe and sanitary replacement housing and occupied the same within a limited period of time, you are eligible for a replacement housing payment.

**Owner-Occupant**

A displaced owner-occupant of a dwelling who purchases and occupies, or rents and occupies, a decent, safe and sanitary dwelling and who meets other eligibility requirements may receive the following:

**A. If he purchases:**

An amount, if any, as replacement housing payment, the combined total payment of which shall not exceed \$5,000 for the additional cost necessary:

1. To purchase comparable replacement dwelling which is adequate for him and his family;
2. To reimburse him for incidental expenses incident to the purchase of his replacement dwelling when such costs are incurred by him.

Eligibility requirement for an owner-occupant to receive replacement housing payment

The owner-occupant is eligible for such payments when:

1. He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part; or
2. He is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date; and
3. Such occupancy has been for at least one year immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and
4. The property was acquired from him by the State; and
5. He purchased and occupied a decent, safe and sanitary dwelling within a 1-year period beginning on the later of the following dates:
  - (a) The date on which he receives from the State final payment for all costs of the acquired dwelling in negotiated settlements; or in the case of condemnation, the date on which the State deposits the required amount in court for his benefit; or

Owner-Occupant (con't)

- (b) The date on which he is required to move by the State's written notice to vacate; or
- (c) The date on which he moves, if earlier than the date on which he is required to move.

- 6. He files an application for replacement housing payment on a form provided by the Department of Transportation no later than 6 months after the expiration of the 1-year period as specified above, except that, in condemnation cases, such period shall be extended to 6 months after final adjudication.

If otherwise eligible, the owner-occupant may receive this payment if the State issued an order to vacate even though the property is not acquired. However, if he has previously received a rental replacement housing payment described immediately next hereunder in B. "if he rents", the amount of such rental replacement housing payment shall be deducted from the amount of replacement housing payment, if any, which he is eligible to receive.

B. If he rents:

An amount, if any, as rental replacement housing payment for him to rent a decent, safe and sanitary replacement dwelling adequate for him and his family for the next two years, only if he is eligible for a replacement housing payment described on pages 5 and 6 of this brochure. The rental replacement housing payment, if any, shall not exceed \$1,500 nor the maximum which he would have received had he elected to receive a replacement housing payment.

A displaced owner-occupant of a dwelling who is otherwise eligible under the eligibility requirements for a replacement housing payment, as specified on pages 5 and 6, except that he has owned and occupied the dwelling for less than one year more than 90 days prior to the initiation of negotiations, may receive the following:

Owner-Occupant (con't)

A. If he purchases:

The full amount of the downpayment must be applied to the purchase price and such downpayment and incidental costs claimed must be shown in the closing statement. Certified copies must be submitted in triplicate with his claim therefor.

B. If he rents:

An amount, if any, as rental replacement housing payment for him to rent a decent, safe and sanitary replacement dwelling adequate for him and his family for the next two years. In no event shall the rental replacement housing payment that he may receive exceed \$1,500.

Tenant-Occupant  
and tenant of a  
sleeping room

A displaced tenant-occupant of a dwelling or a tenant of a sleeping room who rents and occupies, or purchases and occupies, a decent, safe and sanitary dwelling and who is otherwise eligible, may receive the following:

A. If he rents:

An amount, if any, as rental replacement housing payment for him to rent a decent, safe and sanitary replacement dwelling adequate for him and his family for the next two years. In no event shall the rental replacement housing payment that he may receive exceed \$1,500.

Eligibility require-  
ment for a tenant-  
occupant and a tenant  
of a sleeping room to  
receive rental replace-  
ment housing payment

The tenant-occupant of a dwelling, or tenant of a sleeping room, is eligible for a rental replacement housing payment, when:

1. He is in occupancy at the beginning of negotiations for the acquisition of the real property, in whole or in part; or
2. He is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date; and
3. Such occupancy has been for at least 90 consecutive days immediately prior to the date of vacation or initiation of negotiations, and

4. The property was subsequently acquired; and
5. He rented and occupied a decent, safe and sanitary dwelling within a 1-year period beginning on the later of the following dates:

- (a) The date on which the property owner receives from the State final payment for all costs of the acquired dwelling in negotiated settlements; or in the case of condemnation, the date on which the State deposits the required amount in court for his benefit; or
- (b) The date on which he is required to move by the State's written notice to vacate; or
- (c) The date on which he moves, if earlier than the date on which he is required to move.

6. He files an application for rental replacement housing payment on a form provided by the Department of Transportation no later than 6 months after the expiration of the 1-year period as specified above, except that, in condemnation cases, such period shall be extended to 6 months after final adjudication.

B. If he purchases:

An amount, if any, as replacement housing payment to enable him to make a downpayment on the purchase of a replacement dwelling including the eligible expenses incurred by him incident to such purchase only if he is eligible for a rental replacement housing payment, as described immediately preceding this paragraph under A. "if he rents". The amount, if any, shall be the total of the downpayment determined as necessary by the State for a decent, safe and sanitary comparable dwelling if such purchase was financed with a conventional loan and the eligible expenses incurred by him incident to such purchase. In no event shall the amount of replacement housing payment that he may receive exceed \$1,500.

The full amount of the downpayment must be applied to the purchase price and such downpayment and incidental costs claimed must be shown in the closing statement, the certified copies of which in triplicate, are required to be submitted with his claim therefor.

All rental replacement housing payments described heretofore in this brochure, will be made in one lump sum payment.

A supplemental payment shall not be made unless the Department has established, by inspection, that the property acquired has been vacated and the replacement dwelling meets the standards of decent, safe and sanitary housing.

All relocatees, whether owner-occupants or tenant-occupants are cautioned not to make any commitments to relocate or purchase any replacement housing until they are personally contacted by Relocation Assistance Personnel of the Highways Division to assure themselves of not jeopardizing their eligibility to receive benefits as displacees of a State project.

What are the Standards for Decent, Safe and Sanitary Housing?

A decent, safe and sanitary dwelling is one which meets all of the following minimum requirements:

1. Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.
2. Has a continuing and adequate supply of potable, safe water.
3. Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and an adequate sewage system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.
4. Has a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system.
5. Has an adequate and safe wiring system for lighting and other electrical services.

6. Is structurally sound, weathertight, in good repair and adequately maintained.
7. Each building used for dwelling purposes shall have a safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multidwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In multi-dwelling buildings of three stories or more, the common corridor on each story must have at least two means of egress.
8. Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet (70 square feet for mobile home) of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries and unfurnished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.

The standards for decent, safe and sanitary housing as applied to rental of sleeping rooms shall include the minimum requirements contained in paragraphs 1, 5, 6, 7 and the following:

1. At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.
2. Lavatory, bath and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

How are Relocation Payments Claimed?

Applications for relocation payments are filed directly with the Right-of-Way Branch, Highways Division, Department of Transportation. Their Property Management Section will provide you with proper claim forms and assist you in filling them out.

All claims submitted shall be reviewed by the Department of Accounting and General Services. Upon approval of your claim, you should be receiving your payment within a month.

Where Can Detailed Information Concerning Relocation Payment Procedures and Regulations be Obtained?

This information can be obtained by contacting the RIGHT-OF-WAY BRANCH, HIGHWAYS DIVISION, DEPARTMENT OF TRANSPORTATION located at 869 Punchbowl Street, Honolulu, Hawaii.

### APPEAL PROCEDURE

Any displaced person aggrieved by a determination as to his eligibility for payment described in this brochure or the amount of such payment, may request in writing, that his application be reviewed by the Director of the Hawaii Housing Authority. Such a request shall be filed with the Head, Right-of-Way Branch, Highways Division, Department of Transportation and must contain all necessary data and information in support of the applicant's position for disagreeing with the Department's initial ruling.

The Head, Right-of-Way Branch shall first review such a request, then forward it with his recommendation to the Comptroller for his review. After his review, the Comptroller shall then forward such a request with his recommendation to the Director of the Hawaii Housing Authority for his review and final decision.

Any aggrieved applicant who is not satisfied with the decision of the Director of the Hawaii Housing Authority may appeal the Director's determination to the Circuit Court of the Circuit in which he then resides. The appeal shall be made pursuant to the Administrative Procedure Act set forth in Chapter 91, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the Authority.

STATE OF HAWAII  
Department of Transportation  
Land Transportation Facilities  
Division  
Right-of-Way Branch  
869 Punchbowl Street  
Honolulu, Hawaii 96813

TO: \_\_\_\_\_  
\_\_\_\_\_

FOR: Moving Costs

Based on Actual Reasonable Expense  
or on Fixed Schedule \$ \_\_\_\_\_

Dislocation Allowance \_\_\_\_\_

Total Claim \$ \_\_\_\_\_

Parcel(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(I) (WE) HEREBY CERTIFY  
that the foregoing statement is  
true and correct and request for  
payment of the above sum is  
hereby made.

\_\_\_\_\_  
\_\_\_\_\_

SURVEY INFORMATION  
OCCUPANT(S)

FHWA PROJECT #: \_\_\_\_\_  
HWY PROJECT #: \_\_\_\_\_  
PARCEL #: \_\_\_\_\_

PROPERTY/OCCUPANT INFORMATION:

Occupant(s) Name: \_\_\_\_\_ Owner: \_\_\_\_\_ Tenant/Renter: \_\_\_\_\_  
(Tenant(s) and/or Renter(s) may also be family members living in household who pay for living in said household. They would then be considered as a tenant. If this is the case, you will then need to describe this type of arrangement to include what cost they are paying and submit as an attachment.)

Property Address: \_\_\_\_\_ Telephone #: \_\_\_\_\_ (H) \_\_\_\_\_ (W)  
\_\_\_\_\_  
Fax No.: \_\_\_\_\_  
\_\_\_\_\_  
TMK No.: \_\_\_\_\_  
\_\_\_\_\_

TYPE OF RESIDENCE:

Type Of Residence (refers to structure): Single Family \_\_\_\_\_ Duplex \_\_\_\_\_ Multi Family \_\_\_\_\_  
Stories/Levels: Single Story \_\_\_\_\_ Two Stories \_\_\_\_\_ Three Stories \_\_\_\_\_ Split Level \_\_\_\_\_  
Rooms: Bedroom(s) # \_\_\_\_\_ Bathroom(s) # \_\_\_\_\_ Multi-Dwelling(s) (#) \_\_\_\_\_

LIVING ARRANGEMENT(S):

Type Of Living Arrangement As Applicable: (Example: Grandpa sleeps in living room; Daughter and Son-in-Law in one bedroom; teenage Daughter and Son share one bedroom, no one pays rent and legal owner is Grandpa, etc.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If Multi-Family, describe living arrangement, owner/tenant occupant, including room/bathrooms utilized by type and submit as an attachment)

TYPE OF GARAGE/CARPORT:

Covered/No. Of Cars: \_\_\_\_\_ Not Covered/No. Of Cars: \_\_\_\_\_ Number Of Cars In Household: \_\_\_\_\_



**HOUSEHOLD MEMBERS:**

LIST ALL HOUSEHOLD MEMBERS LIVING IN DWELLING/HOUSE: TO INCLUDE ADULTS AND CHILDREN						
Name	Relationship	Age	Sex	Location of School	Distance/Time	Travel mode

**PRINCIPAL RESIDENCE:**

How Long Occupied (yrs/mos.): \_\_\_\_\_ Date Of Purchase: \_\_\_\_\_ Date Rented: \_\_\_\_\_

- If OWN submit copy of ownership/deed.
- If MORTGAGE submit copy of mortgage document.
- If RENTING submit copy of rental agreement. If a rental agreement is not available then you will need to provide evidence of your rent/security deposit which may be in the form of rent receipts for the last 6 months and/or a letter from the owner verifying the date of occupancy, amount of rent and security deposit.

**MORTGAGE:**

Current Monthly Mortgage Payment: \_\_\_\_\_ Approx. Mort. Balance: \_\_\_\_\_ Yrs. Remain.: \_\_\_\_\_

Monthly Utility Costs:

Electricity: \_\_\_\_\_ Sewer/Water: \_\_\_\_\_

Gas: \_\_\_\_\_ Other: \_\_\_\_\_

(We can determine utilities for you if you submit copies of utility invoices for the past 6 months. If others, describe and provide invoices so we can determine cost)

**RENTING:**

Current Monthly Rent: \_\_\_\_\_ Security Deposit Amount: \_\_\_\_\_

Monthly Utilities Cost If Not Included In Rent:

Electricity: \_\_\_\_\_ Sewer/Water: \_\_\_\_\_

Gas: \_\_\_\_\_ Other: \_\_\_\_\_

(We can determine utilities for you if you submit copies of utility invoices for the past 6 months. If others, describe and provide invoices so we can determine cost)

**INCOME:**

Total Gross Monthly Income (earned/recurring non-earned) Of Owner Occupant(s) \_\_\_\_\_

**SPECIAL NEEDS OF HOUSEHOLD MEMBER(S):**

Special Needs Of Household Members To Include Handicap Requirements If Applicable: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Identify who and what is needed. Submit attachment if necessary and appropriate documentation to verify special needs.)

**SPECIAL UTILITY AND/OR TELECOMMUNICATION FEATURES:**

Describe What, How Many And Monthly Cost For Such Things As Cable Connected Television, Modem For Computers, More Than One Telephone, Special Telephone (wonder phone) etc: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Submit attachment if necessary, billing invoices for past 6 months)

**CURRENT DWELLING ROOM COUNT:**

Dwelling Room Count							
Living Room	Dining Room	Kitchen	Bedrooms	Bathrooms	Other Rooms	Car Storage	Other Storage
<p>(NOT APPLICABLE IN THE STATE OF HAWAII)</p> <p>MOBILE HOME Brand: _____ Model: _____ Own/Rent: _____</p>							
Age	Dimensions	Underskirt	Patio/Porch	Awning	Out building		

Describe Other Rooms And Any Other Information On Dwelling Size If Not Noted Above Or If Room Is Of Unusual Size (Example: Patio, Porch, Covered Lanai, Gazebo, Tea House, Sauna, Furo):

---



---



---



---



---

(You may want to provide us with construction plans of your dwelling so that we can make copies and return the originals to you.)

**OWNERSHIP INFORMATION:**

Ownership Information:

The Legal Owner(s) Is/Are As Indicated On TITLE: \_\_\_\_\_

\_\_\_\_\_

Are Any Of The Owners Deceased? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Name(s) \_\_\_\_\_ Date Of Death \_\_\_\_\_

Name(s) \_\_\_\_\_ Date Of Death \_\_\_\_\_

**OWNERSHIP INFORMATION CONTINUED:**

Is The Property Covered By A Will, An Estate, Trust, Or Other Conveyance, Describe?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Please attach copy of documents as applicable)

Has The Will Or Other Instrument Been Legally Processed, Describe?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Please attach copy of documents as applicable)

CURRENT HEIRS ACCORDING TO DEED/TITLE/LEGAL DOCUMENT ARE:				
Name	Relationship	Age	Spouse/Single	Address

**COMPLETE IF APPLICABLE:**

Estate Executor: \_\_\_\_\_ Tele #: \_\_\_\_\_ (H) \_\_\_\_\_ (W)

Relationship To Legal Owner: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**APPRAISAL:**

List Additional Items You Would Like The Appraiser To Know: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Submit an attachment if necessary to describe)

**OTHER INFORMATION** (Submit an attachment if necessary to describe items below):

Plan To Purchase \_\_\_\_\_ Or Rent \_\_\_\_\_ A Replacement Dwelling/Building.

Preferred Relocation Areas: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Type Of Property Desired: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Anticipated Relocation Problems: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Questions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Following is Being Submitted To The Best Of My Knowledge:

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Print Name)

SIGNATURE: \_\_\_\_\_

REVIEWED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(RIGHT OF WAY AGENT)

*NOTE: Please do not hesitate to submit more information, either copies of receipts/documents or just by noting on another piece of paper and submitting it with this survey. Anytime there are any additions and/or changes please provide it to us in writing. Your written documents do not have to be fancy, just whatever is easiest, convenient and comfortable for you, something that we can understand.*

THANK YOU!

To: \_\_\_\_\_ Date: \_\_\_\_\_  
From: \_\_\_\_\_ Supervising Right-of-Way Agent  
Subject: Breakdown of Acquisition Cost for Rental Purposes  
Project: \_\_\_\_\_

Manner Acquired      Date      Tax Map Key No.(s)      Parcel No.(s)

Name of Former Owner(s) \_\_\_\_\_

No. of dwelling(s) or building(s) \_\_\_\_\_

<u>Name of Occupant</u>	<u>Address</u>	<u>Rent Per Month</u>
a.		
b.		
c.		
d.		

Date of payment received by former owner(s) \_\_\_\_\_

Revocable Permit(s) commence \_\_\_\_\_

The breakdown of the total purchase price is allocated as follows:

Land	\$
Improvements	
a.	
b.	
c.	
d.	
Severance Damages	
Landscaping	_____
TOTAL	\$

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Supervising Right-of-Way Agent

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
Property Management & Acquisition Office  
869 Punchbowl Street  
Honolulu, Hawaii 96813

We, the undersigned, all acting individually, in consideration of the State of Hawaii's grant of permission to use, occupy and possess that certain premises situated at

\_\_\_\_\_, Honolulu, Hawaii,  
identified by Tax Map Key No. \_\_\_\_\_, up to and  
including the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
which premises was purchased by the Department of Transportation  
for the construction of the \_\_\_\_\_,  
Federal-Aid Project No. \_\_\_\_\_, \_\_\_\_\_

do hereby covenant and agree as follows:

1. To give and notify the Property Management and Acquisition Office of the Department of Transportation (Phone: 50511 - Local \_\_\_\_\_) at least thirty (30) days in advance of the undersigned's intent to vacate from the premises at the end of the aforementioned period, or at any other earlier determination date; and

2. To assign the State of Hawaii, Department of Transportation, Property Management & Acquisition Office as payee in fire insurance policies, and to name the undersigned and the State of Hawaii, Department of Transportation, Property Management and Acquisition Office as co-insured in public liability and property damage insurance policies, for the duration of said use, occupation and possession.

DATED at Honolulu, Hawaii, this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, and executed by the undersigned in duplicate.

WITNESS: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Property Management & Acquisition  
Office, Dept. of Transportation

\_\_\_\_\_  
Phone: \_\_\_\_\_ Local \_\_\_\_\_

Department of Transportation  
Highways Division  
Right-of-Way Branch  
869 Punchbowl Street  
Honolulu, Hawaii 96813-5097

CERTIFICATE OF DISPLACEMENT

This is to certify that \_\_\_\_\_  
(Name of occupant)

residing at \_\_\_\_\_  
(address)

Tax Map Key No. \_\_\_\_\_ on \_\_\_\_\_,  
(date)

will be required to vacate because the property is to be acquired by

The DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII,

for \_\_\_\_\_,

Federal-Aid Highway Project \_\_\_\_\_.

Tentative date for construction of this project is \_\_\_\_\_.

Date: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_  
Right-of-Way Branch  
Department of Transportation  
State of Hawaii

Name of Owner: \_\_\_\_\_

Highway Parcel No. \_\_\_\_\_

STATE OF HAWAII

STANDARDS FOR DECENT, SAFE, AND SANITARY HOUSING  
FOR PERMANENT RELOCATION HOUSING FOR FAMILIES

INSPECTION RECORD  
(CHECKLIST OF MINIMUM REQUIREMENTS)

Displaced by (Give Project No.) \_\_\_\_\_

NAME: \_\_\_\_\_ Owner-Occupant \_\_\_\_\_ Tenant \_\_\_\_\_

Address: \_\_\_\_\_ Tax Map Key No. \_\_\_\_\_

Landlord or Agent \_\_\_\_\_ Phone \_\_\_\_\_

Contract Rent \$ \_\_\_\_\_ Unfurn. \_\_\_\_\_ Partly Furn. \_\_\_\_\_ Furn. \_\_\_\_\_

No. of Bedrooms Required \_\_\_\_\_ No. of Bedrooms \_\_\_\_\_ Total No. of Rooms \_\_\_\_\_

	YES	NO
1. The dwelling:		
a. Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations applicable to the property in question . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
2. The dwelling:		
a. Has potable safe water . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
b. Has continuing water supply . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
c. Has adequate water supply . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
3. The dwelling:		
a. Has a kitchen or an area set aside for kitchen use . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
b. Has a kitchen with a sink . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(1) In good working condition . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(2) Connected to hot and cold water . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(3) Connected to an adequate sewage system . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
c. Has a kitchen with a stove . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(1) In good working condition . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
d. Has a kitchen with a refrigerator . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(1) In good working condition . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
e. Has utility service connections . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(1) With adequate space for the installation of such facilities . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
4. The dwelling:		
a. Has a bathroom . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(1) That is well lighted . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(2) That is well ventilated . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(3) That affords privacy to person within . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(4) With a lavatory basin . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(5) With a bathtub or stall shower . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(a) Properly connected to an adequate supply of hot and cold running water . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(6) With a flush closet . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
(7) Numbers 4, 5 and 6 of the above in good working order and properly connected to a sewage disposal system . . . . .	<input type="checkbox"/>	<input type="checkbox"/>

- |   | YES                      | NO                       |
|---|--------------------------|--------------------------|
| 5. The dwelling:  |                          |                          |
| a. Has adequate and safe wiring system . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |
| (1) For lighting . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) For other electrical services . . . . .   | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Is structurally sound . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Is weathertight . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Is in good repair . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Is adequately maintained . . . . .   | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Has a safe unobstructed means of egress which leads to<br>safe open space at ground level . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. The dwelling unit in a multi-dwelling building:  |                          |                          |
| a. Has access either directly or through a common corridor<br>to a means of egress to open space at ground level . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. The dwelling if in a multi-dwelling building (three stories or more)<br>with a common corridor on each story:  |                          |                          |
| a. Has at least two means of egress . . . . .   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Habitable floor space (defined as that space used for sleeping,<br>living, cooking or dining purposes. Excludes enclosed places<br>as closets, pantries, bath or toilet rooms, service rooms,<br>connecting corridors, laundries, and unfurnished attics, foyers,<br>storage spaces, cellars, utility rooms and similar spaces): |                          |                          |
| a. Totals at least 150 square feet for first occupant in a<br>standard living unit . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Includes at least 100 square feet for each additional<br>occupant (70 square feet for mobile home) . . . . .   | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Subdivided into sufficient rooms adequate for the family . . . . .   | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. All rooms adequately ventilated . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |

STANDARDS FOR SINGLE PERSON NON-HOUSEKEEPING FACILITIES

- |  | YES                      | NO                       |
|--|--------------------------|--------------------------|
| 1. The standards for decent, safe, and sanitary housing as applied<br>to the rental of sleeping rooms include the minimum requirements<br>contained in numbers 1, 5, 6 and 7 mentioned above . . . . . | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. The sleeping room:  |                          |                          |
| a. Has at least 100 square feet of habitable floor space<br>for the first occupant . . . . .   | <input type="checkbox"/> | <input type="checkbox"/> |
| (1) Has 50 square feet of habitable floor space for<br>each additional occupant . . . . .  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Lavatory, bath and toilet facilities:   |                          |                          |
| a. Provides privacy for occupant . . . . .   | <input type="checkbox"/> | <input type="checkbox"/> |
| (1) If facilities are separate from the room, a door<br>that can be locked . . . . .   | <input type="checkbox"/> | <input type="checkbox"/> |

REMARKS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I certify that I have inspected the replacement housing at the address shown above and in my opinion find that it (does) (does not) meet the standards of decent, safe, and sanitary as enumerated in IM 80-1-71.

Signature \_\_\_\_\_

Date \_\_\_\_\_ Title \_\_\_\_\_

COMPUTATION OF RENTAL REPLACEMENT HOUSING AMOUNT  
(Tenant-Occupant for at least 90 days)

Project No.: \_\_\_\_\_

Name of Claimant: \_\_\_\_\_

Property Displaced From: Address \_\_\_\_\_

Hwy. Parcel No. \_\_\_\_\_ TMK No.: \_\_\_\_\_

Required Information:

1. 48 x the amount (\$ \_\_\_\_\_) necessary to rent a comparable dwelling \$ \_\_\_\_\_
2. 48 x the average monthly rent (\$ \_\_\_\_\_) during last 3 months) paid by relocatee for unit vacated \$ \_\_\_\_\_
3. 48 x the State determined economic rent (\$ \_\_\_\_\_) applied to unit vacated \$ \_\_\_\_\_
4. 48 x the rental payment (\$ \_\_\_\_\_) required if claimant relocates in public subsidized housing \$ \_\_\_\_\_
5. 25% of the monthly family gross income of claimant \$ \_\_\_\_\_
6. 12 x the average monthly income of the relocatee \$ \_\_\_\_\_

Computation:

7. Line 1 minus Line 2 if amount in parenthesis shown in Line 2 is reasonably equal to market rentals, or Line 1 minus Line 3 if amount in parenthesis shown in Line 2 is not reasonably equal to market rentals. Use this computation if the amount shown in parenthesis on Line 2 does not exceed the amount on Line 5)

Line 1 \$ \_\_\_\_\_

(Insert applicable Line) Line 2 -- \$ \_\_\_\_\_

\$ \_\_\_\_\_

8. Line 1 or Line 4, whichever is lesser, minus Line 6 (Use this computation if the amount shown in parenthesis on Line 2 exceeds the amount on Line 5)

(the lesser) Line \_\_\_\_\_ \$ \_\_\_\_\_

Line 6 -- \$ \_\_\_\_\_

\$ \_\_\_\_\_

9. Rental Replacement Housing amount for payment (If amount on Line 7 or Line 8 exceeds \$4,000, enter \$4,000. Otherwise, enter applicable amount shown in Line 7 or Line 8)

\$ \_\_\_\_\_

Remarks: \_\_\_\_\_

Computation made by \_\_\_\_\_

NOTE: When using computation in Line 7, "rent being paid" shall include any rent supplements applied by others except when, by law, such supplement is to be discontinued upon vacation of the property. When using computation in Line 8, "rent being paid" shall not include supplemental rent by public agencies.

If the amount on Line 8 is \$500 or less, a lump-sum payment is to be made. If the amount on Line 8 exceeds \$500, divide the amount by 4. The resultant amount is the total of each of four annual payments to be made.

NAME AND ADDRESS OF CLAIMANT

COMPUTATION PREPARED BY:  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Date)

COMPUTATION FOR REPLACEMENT HOUSING PAYMENT  
FOR OWNER OCCUPANTS OF 180 DAYS OR MORE

Required Information

1. Actual purchase price of replacement dwelling. \$ \_\_\_\_\_
2. Cost of comparable replacement dwelling based on comparative or other method. \$ \_\_\_\_\_
3. Acquisition price paid by State for claimants former dwelling. \$ \_\_\_\_\_

COMPUTATION

4. Line 1 or 2 whichever is less \$ \_\_\_\_\_
5. Minus line 3 - \_\_\_\_\_
6. Amount of differential payment \$ \_\_\_\_\_

COMPUTATION OF TOTAL REPLACEMENT HOUSING PAYMENT

1. Amount of differential payment \$ \_\_\_\_\_
2. Plus interest payment + \_\_\_\_\_
3. Plus incidental cost + \_\_\_\_\_
4. Total (Sum of lines 1, 2 and 3) \$ \_\_\_\_\_
5. Minus adjustments (amount previously received as Replacement Housing Payment) - \_\_\_\_\_
6. Total Replacement Housing Payment (line 4 minus line 5) \$ \_\_\_\_\_

COMPUTATION OF DOWNPAYMENT ASSISTANCE FOR CLAIMANT  
WHO MOVED TO REPLACEMENT UNIT PURCHASED

Project No.: \_\_\_\_\_

Name of Claimant: \_\_\_\_\_

Property Displaced From: Address \_\_\_\_\_

Hwy. Parcel No. \_\_\_\_\_ TMK No. \_\_\_\_\_

Required Information:

1. Amount necessary for downpayment \$ \_\_\_\_\_

2. Costs incidental to purchase (Total amount approved by the State) \$ \_\_\_\_\_

Computation:

3. Base amount (Sum of Lines 1 and 2) \$ \_\_\_\_\_

NOTE: If line 3 is \$2,000 or less, skip Lines 4, 5, 6 and 7 and enter the amount of Line 3 on Line 8a

4. Amount on Line 3 in excess of \$2,000

	Line 3	\$ _____		
		-	\$ 2,000.00	
				\$ _____

5. Amount on Line 4 divided by 2

	Line 4	\$ _____		
		/	2	
				\$ _____

6. Matching amount (If amount on Line 5 exceeds \$2,000, enter \$2,000. Otherwise, enter the amount on Line 5) \$ \_\_\_\_\_

7. Amount of Line 6 plus \$2,000

	Line 6,	\$ _____		
		+	\$ 2,000.00	
				\$ _____

8. Amount of downpayment assistance

a. Amount of Line 3 or Line 7 \$ \_\_\_\_\_

b. Minus adjustments (Explain below in remarks) - \$ \_\_\_\_\_

\$ \_\_\_\_\_

Remarks: \_\_\_\_\_

Computation made by \_\_\_\_\_

# CLAIM FOR PAYMENT INCOME BASIS IN LIEU OF MOVING EXPENSE Business or Farm Operation

CLAIM MUST BE FILED WITHIN 18 MONTHS OF DATE OF MOVE. PRINT OR TYPE ALL INFORMATION

TO:	Project:			
	Section:			
	Parcel: <span style="float: right;">TMK No.:</span>			
1. Claimant's Name and Address	2. Name and Address of Business or Farm			
3. Claimant's Phone No.	4. Date of Move			
5. Address Moved to (if applicable)	6. Controlling Dates	Month	Day	Year
	a. Property vacated on			
	b. Last day to file claim			
	c. Claim filed on			

7. I CERTIFY that I have examined the income tax returns submitted with the Request for Determination of Entitlement by the above named claimant. I have found the net earnings for each year and the average annual net earnings to be as follows:

19....., \$.....; 19....., \$.....; Annual net earnings \$.....

.....  
Date

8. Payment of this claim is requested in the amount of \$.....  
I CERTIFY that I am the owner or authorized representative of the business or farm operation named above; that no other claim for reimbursement or compensation for payment of moving expense or in lieu of moving expenses has been submitted, or payment received, or will be accepted from any other source, by me or on behalf of said business or farm operation. I understand this claim for payment is based on information previously submitted to the Department of Transportation and that all such information is true and correct and is a part of this claim. I understand that falsification of any item in this claim as submitted herewith may result in forfeiture of the entire claim, and may result in civil liability or criminal prosecution.

Claimant's Signature ..... Title .....

Signature ..... Title .....

**SPACES BELOW TO BE COMPLETED BY HIGHWAYS DIVISION**

I CERTIFY that I have examined this claim and the Request for Determination of Entitlement with substantiating documentation, submitted in connection with this claim, and have found it to conform to the applicable provisions of the Federal-Aid Highway Act of 1968. This claim is approved and

payment is authorized in the amount of \$.....

.....  
Date Authorized Signature

<b>DISPOSITION</b>
Check Number .....
Date of Payment .....
Fiscal Officer, Highways Division State Department of Transportation

DETERMINATION OF THE AMOUNT NECESSARY TO RENT A COMPARABLE DWELLING

Project: \_\_\_\_\_

Subject Property: \_\_\_\_\_

Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Highway Parcel No.: \_\_\_\_\_ Tax Map Key No.: \_\_\_\_\_

Name of Displacee: \_\_\_\_\_

Owner-Occupant: \_\_\_\_\_ Tenant-Occupant: \_\_\_\_\_

Comparable(s) Available for Rent on the Market to Displacee:

Comparable #1 Address: \_\_\_\_\_ Tax Map Key No. \_\_\_\_\_

Whom and When Contacted: \_\_\_\_\_

Comparable #2 Address: \_\_\_\_\_ Tax Map Key No. \_\_\_\_\_

Whom and When Contacted: \_\_\_\_\_

Comparable #3 Address: \_\_\_\_\_ Tax Map Key No. \_\_\_\_\_

Whom and When Contacted: \_\_\_\_\_

Criteria for Comparability	Subject	Comparable #1	Comparable #2	Comparable #3
Monthly Rent				
Meets DS & S Standards				
Functionally equivalent				
Substantially the same with regard to:				
Number of rooms				
Area of Living Space				
Type of Construction				
Age				
State of Repair				
Accessibility to public services and facilities and places of employment				
Neighborhood				
Fair Housing				
Adequate to Accommodate the Relocatee				
Within Displacee's Financial Means				

The one most comparable is \_\_\_\_\_ and the amount necessary to rent a comparable is \$ \_\_\_\_\_

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Determination Made By: \_\_\_\_\_  
 \_\_\_\_\_

APPROVED: \_\_\_\_\_ Supervising Right-of-Way Agent

Head, Right-of-Way Branch \_\_\_\_\_ Date \_\_\_\_\_

The undersigned, owner-occupant(s) of the property(ies) located \_\_\_\_\_, identified by Tax Map Key number(s) \_\_\_\_\_, designated as Parcel(s) \_\_\_\_\_ of \_\_\_\_\_ pending final adjudication by the Court in a condemnation proceeding as to the amount of the State's acquisition price for the said property(ies), hereby request payment of an advance provisional replacement housing payment in the amount of \$\_\_\_\_\_.

In consideration for the payment in advance of said amount, the undersigned hereby agrees that:

1. Upon final determination of the condemnation proceeding, the replacement housing payment will be recomputed using the acquisition price determined by the Court as compared to the actual price paid or the amount determined by the State of Hawaii necessary to acquire a comparable, decent, safe and sanitary dwelling; and

2. If the amount awarded in the condemnation proceeding as the fair market value of the property acquired plus the amount of the recomputed replacement housing payment exceeds the price paid for, or the State of Hawaii's determined cost of a comparable dwelling, the undersigned will refund to the State of Hawaii, from the final judgment amount, an amount equal to the amount of the excess. However, in no event, shall the undersigned be required to refund more than the amount of the provisional replacement housing payment advanced.

DATED: \_\_\_\_\_

WITNESSED BY:

\_\_\_\_\_

INSPECTION REPORT

PROJECT NO. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAME: \_\_\_\_\_ OWNER-OCCUPANT \_\_\_\_\_ TENANT \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TAX MAP KEY \_\_\_\_\_

DWELLING DESCRIPTION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INSPECTOR: \_\_\_\_\_ INSPECTION DATE \_\_\_\_\_ TIME \_\_\_\_\_

PROPERTY ACCEPTABLE: YES \_\_\_\_\_ NO \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(ATTACH EXTRA PAPER IF NECESSARY)

The undersigned, owner-occupant(s) of the property(ies)  
located \_\_\_\_\_,  
identified by Tax Map Key number(s) \_\_\_\_\_,  
designated as Parcel(s) \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_  
pending final adjudication by the Court in a condemnation proceeding as  
to the amount of the State's acquisition price for the said property(ies),  
hereby request payment of an advance provisional replacement housing pay-  
ment in the amount of \$ \_\_\_\_\_.

In consideration for the payment in advance of said amount, the  
undersigned hereby agrees that:

1. Upon final determination of the condemnation proceeding,  
the replacement housing payment will be recomputed using the acquisition  
price determined by the Court as compared to the actual price paid or the  
amount determined by the State of Hawaii necessary to acquire a comparable,  
decent, safe and sanitary dwelling; and

2. If the amount awarded in the condemnation proceeding as the  
fair market value of the property acquired plus the amount of the recom-  
puted replacement housing payment exceeds the price paid for, or the State  
of Hawaii's determined cost of a comparable dwelling, the undersigned will  
refund to the State of Hawaii, from the final judgment amount, an amount  
equal to the amount of the excess. However, in no event, shall the under-  
signed be required to refund more than the amount of the provisional  
replacement housing payment advanced.

DATED: \_\_\_\_\_

WITNESSED BY:

\_\_\_\_\_

Date \_\_\_\_\_

REPLACEMENT HOUSING PAYMENT ELIGIBILITY

Comparable Data	Subject Property	Comparable #1	Comparable #2	Comparabl. #3
Tax Map Key No.				
Asking price/State offering price				
Date				
Seller (Broker or Agent)				
Adjusted price		*	*	*
Number of Bedrooms				
Area of living space				
Type of construction				
Age				
State of repair				
Same type of neighborhood				
Accessibility to public services and places of employment				

\*Determined on the basis of local market conditions indicating an approximate 5% below asking price

COMPUTATION OF REPLACEMENT HOUSING PAYMENTS

Comparable #1	Adjusted Price	Average price	\$
" #2	\$	Less: State offering price	\$
" #3	\$	Replacement housing payment =	\$ _____ or
TOTAL	\$	maximum \$5,000, whichever	
Average price: Total ÷ 3 =	\$	is less.	

Each of the comparable properties meets the standards for decent, safe, and sanitary housing as indicated on the attached check lists of minimum standards.

\_\_\_\_\_  
Supervising Right-of-Way Agent

APPROVED:

\_\_\_\_\_  
EDWARD K. OCHIAI  
Head, Right-of-Way Branch

\_\_\_\_\_  
Date

# REQUEST FOR RELOCATION SERVICE

*To the occupants*

If you must move from your present dwelling because it is needed for a highway project, the Department of Transportation, Highways Division, situated at 869 Punchbowl Street, Honolulu, Hawaii, will help you by providing relocation advisory assistance if you wish. To obtain this service, fill in this form, sign it, and mail or bring it to the Highways Division, Right-of-Way Branch at the address shown. You will then be furnished information about available housing which meets your needs. Please print or write legibly. Add comments at the bottom if necessary.

Mail or Bring to:			<b>THIS SPACE FOR HIGHWAYS DIVISION USE</b>		
			Project:		
			Section:		
			Parcel:	TMK No.:	
Last Name	First	Initial	Address of State-owned Property you now occupy		
Home Phone	Business Phone				
			Apt. No.		

FILL IN SECTION BELOW WHETHER YOU PLAN TO RENT OR BUY									
NUMBER IN FAMILY									
Adults	Give Ages & Sex of Children						Family Gross Income	No. of Bedrms Required	1 or 2 Car Garage
	Age	Sex	Age	Sex	Age	Sex			
Children	.....	.....	.....	.....	.....	.....	General Area Where you Wish to Move		
Total	.....	.....	.....	.....	.....	.....			
List Special Features You Want (Such as 2 bathrooms, built-ins, swimming pools, etc.)									
List Neighborhood Features You Want (Such as Parochial Schools, Public Transportation, etc.)									

FILL IN SECTION BELOW IF YOU PLAN TO BUY A HOME		
Price Range Wanted	Down Payment	Size (Estimated Area)
\$ .....	\$ .....	..... Sq. Ft.

FILL IN SECTION BELOW IF YOU PLAN TO RENT HOUSING				
Maximum Monthly Rent You Will Pay	\$ .....	Will You	Yes	No
Check Type Housing You Want		Pay the Last Month's Rent in Advance?		
		Pay Cleaning Deposit?		
		Pay for Utilities?		
		Redecorate?		
Do You Have Pets?		Type Laundry Facilities Needed?		
Additional Comments:				

Date

Signature

\_\_\_\_\_

STATE OF HAWAII  
Department of Transportation  
Land Transportation Facilities  
Division  
Right-of-Way Branch  
869 Punchbowl Street  
Honolulu, Hawaii 96813

TO: \_\_\_\_\_  
\_\_\_\_\_

FOR: Moving Costs

Based on Actual Reasonable Expense or on Fixed Schedule	\$ _____
Dislocation Allowance	_____
Total Claim	\$ _____

Parcel(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(I) (WE) HEREBY CERTIFY  
that the foregoing statement is  
true and correct and request for  
payment of the above sum is  
hereby made.

\_\_\_\_\_  
\_\_\_\_\_

**CLAIM FOR INCIDENTAL EXPENSES**

If you purchase a replacement dwelling and file a claim for a replacement housing payment, you must complete this form and submit it, together with a certified copy of the closing statement for the transaction, to the Right-of-Way Branch, Highways Division, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii.

List incidental expenses actually incurred by you in connection with the purchase of your replacement dwelling. Such expenses must be shown on the closing statement you submit with this claim. Complete columns (a), (b), (c) and (d). If you are an owner-occupant of less than 180 days, the closing statement must also show the total downpayment made and the amount of cash contribution from your own funds applied towards the purchase of your replacement dwelling.

ITEM (a)	COSTS INCURRED BY CLAIMANT			This Column for use by Highways Division Amount Approved (e)
	Charged to Claimant on Closing Statement (b)	Paid Directly by Claimant (c)	Amount Claimed (Col. (b) + (c)) (d)	
	\$	\$	\$	\$
<b>TOTAL</b>	\$	\$	\$	\$

Listing of documents submitted herewith in support of amounts entered in Column (d) above:

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of Owner-Occupant(s)

This block for use by Highways Division

APPROVED: \_\_\_\_\_

\_\_\_\_\_

Supervising Right-of-Way Agent

\_\_\_\_\_

Date

**Appendix J  
Determination Procedures**

---

**Appraisal Realty and Personality**

## APPRAISAL REALTY/PERSONALTY DETERMINATION PROCEDURES

The determination of realty/personalty items as part of the appraisal process ensures proper handling of such items. The result is fair compensation and/or reimbursement of relocation expenses to the owners of the respective items. Legal counsel should be consulted if there are any questions as to the status of a given item.

See 49CFR for:

- Personal Property - Part 24.103(a)(2)(i).
- Real Property - Appendix A Part 24.103(a)(i).

The Uniform Standards of Professional Appraisal Practice define Personal Property and Real Property as:

- Personal Property - identifiable tangible objects that are considered by the general public as being "personal" – for example furnishings, artwork, antiques, gems, jewelry, collectibles, machinery and equipment; all tangible property that is not classified as real estate.
- Real Property – the interest, benefits, and rights inherent in the ownership of real estate.
- Real Estate – the identified parcel or tract of land including improvements, if any.

From an implementation standpoint, it is critical to achieve responsible allocation of what is realty and what is personalty. The allocation will drive what is acquired vs. relocated.





## REAL PROPERTY TRANSACTIONS

37-1.1

## Chapter 37

REAL PROPERTY TRANSACTIONS INVOLVING  
THE CITY AND COUNTY OF HONOLULU

## Articles:

1. Disposal of Real Property Owned by the City and County of Honolulu

Article 1. Disposal of Real Property Owned by the  
City and County of Honolulu

## Sections:

- 37-1.1 Definitions.  
37-1.2 Transfers of use of city real property—Surplus real property—Disposal.  
37-1.3 Disposal of real property other than surplus real property.  
37-1.4 Special procedures and provisions.  
37-1.5 Exemptions.  
37-1.6 General provisions for disposal by sale.  
37-1.7 General provisions for disposal of city real property by exchange.  
37-1.8 General provisions for disposal of city real property by gift.  
37-1.9 Preparation of documents—Appraisals.  
37-1.10 Disposal of interests in property not subject to this article.  
37-1.11 Proposed sale of high value property.

## Sec. 37-1.1 Definitions.

For purposes of this article, the following words and phrases shall have the following meanings:

"Agency" means any office, department, board, commission or other governmental unit of the city, other than the board of water supply.

"Director" means the director of budget and fiscal services of the city.

"Dispose of real property" means to transfer or alienate real property by sale, gift, exchange or other voluntary action, but shall not include the lease or rental of real property or the destruction or demolition of an improvement to real property. The phrase shall include the cancellation of any easement for access to the ocean.

"Real property" includes a fee simple interest, a life estate, or a remainder or executory interest in land or any improvements thereon, whether legal or equitable, and any easement for access to the ocean, but does not include any license or any easement other than an easement for access to the ocean. (Added by Ord. 92-108; Am. Ord. 04-11)

## Sec. 37-1.2 Transfers of use of city real property—Surplus real property—Disposal.

- (a) Any agency of the city having under its jurisdiction and control real property which is no longer desired or needed by the agency for its own use shall submit a list of such real property to the director which shall include a description of the property and an estimate as to the fair market value.
- (b) The director shall prepare an inventory of all real property found on any list submitted pursuant to subsection (a), including the descriptions of the properties and estimated fair market values, and shall circulate copies of the inventory to such agencies of the city as the director shall determine, and any agency receiving copies of the inventory shall, within 30 days of the receipt thereof, file with the director a statement as to whether or not any of the real property included in the inventory is needed by the agency for its use.
- (c) If an agency submits a statement to the director indicating a need for the use of any real property included in the inventory, the statement shall also contain a request for the use of such real property. The director may then recommend to the mayor the transfer of the use of the real property to the agency indicating a need to use the real property. Prior to making a transfer, the director shall provide written notification of the proposed transfer to the neighborhood board of the district in which the subject property is situated and to any abutting property owners at least 10 days prior to such transfer; provided, however, written notification shall not be required for the transfer of real property with an estimated fair market value under \$5,000.00. This subsection shall not preclude the mayor from making lawful transfers of the use of city property between agencies by means other than those provided in this section.

- (d) Any real property included in the inventory which is not recommended by the director to the mayor for transfer, or which is recommended by the director to the mayor for transfer but is not transferred within a reasonable time, as determined by the director, shall be deemed surplus real property.
- (e) The director, with the concurrence of the corporation counsel, shall determine whether to recommend to the council the disposal of surplus real property.
- (f) Before any surplus real property owned by the city may be disposed of, the director shall submit a recommendation and a draft resolution with respect to the proposed disposal of the surplus real property to the council. The draft resolution shall include a description of the real property, an estimate as to the fair market value of the real property, and a statement whether the real property will be disposed of by gift, exchange, sale, or other means. If the real property is proposed to be exchanged, the draft resolution shall state the property for which the real property is proposed to be exchanged. If the real property is proposed to be sold, the draft resolution shall state whether the property is proposed to be sold at auction, by negotiated sale, or otherwise, and shall state the minimum price for which the property will be sold.
- (g) If the council finds that the proposed disposal of surplus city real property is in the interest of the inhabitants of the city and adopts a resolution authorizing the director to dispose of the surplus real property, the surplus real property may be disposed of in accordance with the terms of the resolution and in accordance with Section 37-1.6, Section 37-1.7, or Section 37-1.8, whichever is appropriate. Otherwise, the surplus real property may not be disposed of.

(Added by Ord. 92-108)

**Sec. 37-1.3 Disposal of real property other than surplus real property.**

- (a) The city may not dispose of real property that is not surplus real property, as determined in Section 37-1.2, except pursuant to this section.
- (b) If the director or the mayor, with the concurrence of the corporation counsel, finds it to be in the interest of the inhabitants of the city to dispose of city real property that is not surplus real property, as determined in Section 37-1.2, the director or the mayor may propose to the council that real property be disposed of pursuant to this section. Any such proposal shall state the public interest being served by the proposal and shall state that the real property is not surplus real property.
- (c) The council, either pursuant to a proposal made under subsection (b), or on its own proposal, may, if it finds it to be in the interest of the inhabitants of the city, adopt a resolution authorizing the director to dispose of city real property.
- (d) After the council's adoption of a resolution pursuant to subsection (c), the director may dispose of the real property that is the subject of the resolution in accordance with the terms of the resolution and with Section 37-1.6, Section 37-1.7, or Section 37-1.8, whichever is appropriate.

(Added by Ord. 92-108)

**Sec. 37-1.4 Special procedures and provisions.**

- (a) Any real property held by the city for school purposes may not be disposed of without the consent of the superintendent of education.
- (b) No city real property bordering the ocean shall be sold or otherwise disposed of.
- (c) All proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes.
- (d) The disposal of an abandoned county highway shall be subject to HRS Section 264-3.
- (e) The transfer of a county highway to the state shall be subject to HRS Section 264-2.
- (f) Real property acquired by the city by foreclosure of a real property tax lien shall be disposed of pursuant to Chapter 8 of this code.
- (g) Real property acquired by the city by default in the payment of any special assessment shall be disposed of pursuant to Section 14-26.9 this code.
- (h) Real property acquired by the city under its power of eminent domain pursuant to HRS Section 46-61 and Chapter 101, in excess of that needed for a public purpose, shall be disposed of pursuant to HRS Sections 46-61 and 101-2, to the extent that these sections apply to such excess real property.
- (i) Any category of real property owned by the city, the disposal of which is governed by state law, shall be disposed of in accordance with such state law and, to the extent not inconsistent herewith, in accordance with this article.

(Added by Ord. 92-108)

**Sec. 37-1.5 Exemptions.**

The following shall be exempt from this article:

- (a) Disposal of real property of the board of water supply.
- (b) Disposal of any real property acquired by the city specifically for the purpose of disposing of the property, provided that the ordinance or resolution authorizing the acquisition specifically provides for the disposal of the city real property by means other than those specified in this article.
- (c) Disposal of real property constituting a housing unit or unimproved housing lot acquired or developed by the city when the unit or lot is disposed individually.

A unit or lot is disposed "individually" when disposed:

- (1) After a solicitation of bids or offers for that unit or lot by itself; and
- (2) In a transaction separate from the transaction disposing any other city real property.

When units or lots in a housing project are placed for sale to the public or class of the public, the solicitation of offers for a unit or lot in the project shall be deemed a solicitation for "that unit or lot by itself" which complies with subdivision (1).

For the purpose of this subsection, "housing unit" means a detached dwelling or duplex unit, including the zoning lot on which situated and other appertaining real property interests. "Housing unit" also means a dwelling unit in a multifamily dwelling and the appurtenant real property interests to the unit. "Unimproved housing lot" means a zoning lot, with no or only infrastructure improvements, on which a detached dwelling or duplex unit must be constructed by the acquirer. "Detached dwelling," "duplex unit," "dwelling unit," "multifamily dwelling," and "zoning lot" mean the same as defined under Chapter 21.

(Added by Ord. 92-08; Am. Ord. 98-48)

**Sec. 37-1.6 General provisions for disposal by sale.**

- (a) Real property owned by the city which is to be disposed of by sale shall be sold subject to the following provisions, except to the extent that they are inconsistent with Section 37-1.4:
  - (1) The resolution authorizing the sale of the property shall state whether the property is proposed to be sold at auction, by negotiated sale, or otherwise, and shall state the minimum price for which the property will be sold;
  - (2) The property shall be disposed of by public auction unless otherwise provided in the resolution authorizing the sale;
  - (3) If the council determines by resolution that city real property may be disposed of by auction, the director shall, before selling the city real property by auction, give notice of the proposed sale at least once a week for two weeks in a newspaper of general circulation in the city;
  - (4) The property shall not be disposed of for a sales price less than any minimum, or upset price, stated in the resolution authorizing the sale.
- (b) If the city real property to be sold, whether surplus or nonsurplus, has an assessed value greater than \$1 million, the resolution authorizing the sale of the property shall, in addition to complying with subsection (a), contain the following information:
  - (1) The intended use of the property by the buyer; and
  - (2) The information required in Section 37-1.11(a)(1), (a)(2) and (a)(4).

(Added by Ord. 92-108; Am. Ord. 04-11)

**Sec. 37-1.7 General provisions for disposal of city real property by exchange.**

Real property owned by the city which is to be disposed of by exchange shall be exchanged subject to the following provisions, except to the extent that they are inconsistent with Section 37-1.4:

- (a) A description of the property being exchanged and the property for which it is being exchanged, and the name of the owner or owners of the property for which city real property is being exchanged shall be set forth in the resolution authorizing the exchange.
- (b) The city may accept property of less than equivalent value for city real property only when the difference is made up by a cash payment or when permitted as a gift pursuant to Section 37-1.8.

(Added by Ord. 92-108)

**Sec. 37-1.8 General provisions for disposal of city real property by gift.**

- (a) Real property owned by the city which is to be disposed of by gift shall be disposed of subject to the following provisions, except to the extent that they are inconsistent with Section 37-1.4:
- (1) A description of the city real property being disposed of by gift, an estimate of the value thereof, and the name of the donee thereof shall be set forth in the resolution authorizing the disposal by gift.
  - (2) The council shall make a determination and declare in the disposal resolution that the disposal by gift shall serve a public purpose.
  - (3) The council may impose any conditions or restrictions upon the disposal by gift, including but not limited to, restrictions upon the use of the real property for a period of time or in perpetuity and may provide for the reversion of the property to the city in the event that such conditions or restrictions as are imposed are not adhered to.
- (b) Any negotiated sale or any exchange of city real property for less than the fair market value of the city real property shall be treated as a gift of city real property to the extent that fair market value of the city real property exceeds the sales price of the city real property (in the case of a negotiated sale) or the fair market value of the property for which the city real property is exchanged (in the case of an exchange). Any such gift shall comply with this section and may be subject to conditions or restrictions as provided in (a)(3) above.
- (Added by Ord. 92-108)

**Sec. 37-1.9 Preparation of documents—Appraisals.**

The director is authorized to prepare, subject to the approval of the corporation counsel, such deeds and other documents as are necessary to effect the disposal of city real property as authorized by council resolution. When requested by the council, the director or the director of the department of design and construction shall prepare an appraisal of the fair market value of city property or of property proposed to be exchanged for city real property. The council shall make the final determination as to the sales price of city real property and of the exchange value of property to be exchanged for city real property. (Added by Ord. 92-108; Am. Ord. 04-11)

**Sec. 37-1.10 Disposal of interests in property not subject to this article.**

Nothing in this article shall be construed to prohibit the director or any officer or agency of the city from utilizing the procedures set forth in this article for the disposal of interests in property that are not subject to this article, including, but not limited to easements other than easements for access to the ocean. (Added by Ord. 92-108)

**Sec. 37-1.11 Proposed sale of high value property.**

- (a) The director shall submit a draft resolution to the council containing the following information before city surplus or nonsurplus real property, with an assessed value of more than \$1 million, is marketed:
- (1) A description of the property, including its size, location, existing zoning, and any city facilities or improvements on the property;
  - (2) The assessed value of the property;
  - (3) A marketing plan or approach that describes how the property will be marketed, including the manner of advertising the property's availability, the extent of any planned local, national or international advertising or other marketing efforts and a copy of any proposed brokerage agreement with a real property brokerage firm for the sale of the property;
  - (4) Any conditions or restrictions which the director proposes to be applicable to the property upon its sale, including permitted uses of the property; height restrictions; preservation of view planes; landscaping; preservation of existing structures; maintenance of existing public facilities, including parking; retention of existing rental housing units, elderly or special needs housing units, moderate-income housing units, low-income housing units, very low-income housing units, or extremely low-income housing units, if applicable; and any other proposed conditions or restrictions.
- (b) The council may adopt the resolution in the form transmitted by the director, or with additional conditions or restrictions. Upon the adoption of the resolution, the director may proceed with the marketing of the property. No resolution for the sale of city property, as described in Section 37-1.6, shall be considered by the council unless the resolution described in this section has first been approved.
- (Added by Ord. 04-11)



## REAL PROPERTY LEASE AND RENTAL

28-1.1

## Chapter 28

## LEASE AND RENTAL OF CITY REAL PROPERTY, INCLUDING FEES

## Articles:

1. General Provisions
2. Bidding Requirements and Procedures
3. Exceptions to Bidding Requirement
4. Term of Agreements
5. Penalty
6. General Provisions for the Lease and Rental Policy for the Department of Enterprise Services
7. Rental Schedule
8. Concessions
9. Nonprofit Organizations
10. Severability
11. Lease and Permit Policy for the Grounds of City Hall and the Honolulu Municipal Building
12. Telecommunications Facilities

## Article 1. General Provisions

## Sections:

- |        |              |
|--------|--------------|
| 28-1.1 | Purpose.     |
| 28-1.2 | Scope.       |
| 28-1.3 | Definitions. |

## Sec. 28-1.1 Purpose.

The purpose of this chapter is to establish a uniform procedure for the lease or rental of real property owned by the city, with the exception of the city hall building and the Honolulu municipal building. Any and all office spaces located within the subject two buildings shall be reserved for the exclusive use by agencies of the City and County of Honolulu. (Sec. 30-1.1, R.O. 1978 (1983 Ed.))

## Sec. 28-1.2 Scope.

The scope of this chapter includes the policy that the lease or rental of property of the City and County of Honolulu or the award of concessions shall require public advertisements and bids, except under specific circumstances. This chapter also includes the required bidding procedures and attendant terms of agreements and penalties. (Sec. 30-1.2, R.O. 1978 (1983 Ed.); Am. Ord. 91-27, 97-02)

## Sec. 28-1.3 Definitions.

The following words and phrases shall, for the purposes hereof, have the meaning respectively ascribed to them unless it is apparent from the context that a different meaning is intended:

"Agency" means any office, department, board, commission or other governmental unit of the city including the city council and its offices.

"Concession" means the grant to a private individual, partnership or corporation of the privileges to conduct operations essentially retail in nature, involving the sale of goods, wares, merchandise or services to the general public, such as restaurants, retail stores, parking facilities, golf driving ranges, canoe storage facilities (halaus), in or on land or buildings owned or controlled by the City and County of Honolulu.

"Council" means the city council of the City and County of Honolulu.

"Finance director" means the director of finance of the City and County of Honolulu.

"Managing director" means the managing director of the City and County of Honolulu.

"Nonprofit organization" means an association, corporation or other entity, organized and operated exclusively for religious, charitable, scientific, literary, cultural, educational, recreational or other nonprofit purposes, no part of the assets, income or earnings of which inures to the benefit of any individual or member thereof, and whose

charter or other enabling act contains a provision that, in the event of dissolution, the assets owned by such association, corporation or other entity shall be distributed to another association, corporation or other entity organized and operated exclusively for nonprofit purposes, and which further qualifies for exemption from the general excise tax provisions of HRS Chapter 237, as amended, and under Section 501 of the Internal Revenue Code of 1954, as amended. Such nonprofit organization must not merely be a sponsor of the event, production, attraction or activity being given, but must actively promote, produce, stage or conduct such event, production, attraction or activity. (Sec. 30-1.3, R.O. 1978 (1987 Supp. to 1983 Ed.))

## Article 2. Bidding Requirements and Procedures

### Sections:

28-2.1	Bidding required.
28-2.2	Call for bids.
28-2.3	Qualification of bidders.
28-2.4	Advertisement for bids.
28-2.5	Cost of publication.
28-2.6	Bids—Opening—Rejection.
28-2.7	Bids—Withdrawals.
28-2.8	Deposits to accompany bid.
28-2.9	Forfeiture of deposits—Return.
28-2.10	Bond in lieu of deposit.
28-2.11	Contract execution—Award to highest responsible bidder.
28-2.12	Security deposit.
28-2.13	Surety on bond—Justification.
28-2.14	Violation voids contract.
28-2.15	Competitive sealed proposals.

#### Sec. 28-2.1 Bidding required.

Unless expressly excepted in this chapter, no real property or any concession or concession space in any building or on any land owned by or under the jurisdiction of the City and County of Honolulu shall be leased or rented except under contract let under public advertisement for sealed tenders in the manner provided hereinafter. (Sec. 30-2.1, R.O. 1978 (1983 Ed.))

#### Sec. 28-2.2 Call for bids.

The finance director shall call for bids, accept bids and award concessions or award contracts to lease or rent property on terms, conditions and rentals approved by the corporation counsel, as to form and legality. (Sec. 30-2.2, R.O. 1978 (1983 Ed.))

#### Sec. 28-2.3 Qualification of bidders.

Before any prospective bidder shall be entitled to submit any bid required under this chapter, the bidder shall, not less than six calendar days prior to the day designated for opening bids, give written notice to the finance director of the bidder's intention to bid, and the finance director shall satisfy himself or herself of the prospective bidder's financial ability, experience and competence to carry out the terms and conditions of any contract that may be awarded. For this purpose, the finance director may require prospective bidders to submit answers, under oath, to questions contained in a questionnaire setting forth a complete statement of the experience, competence and financial standing of such prospective bidders. Whenever it appears to the finance director that any prospective bidder is not fully qualified and able to carry out the terms and conditions of the contract that may be awarded, the director may, after affording such prospective bidder an opportunity to be heard, refuse to receive or consider any bid offered by such prospective bidder. All information contained in the answers to questionnaires shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not fully entitled thereto shall be subject to penalties as provided by law. Questionnaires so submitted shall be returned to the bidders after having served their purpose. (Sec. 30-2.3, R.O. 1978 (1983 Ed.))

**Sec. 28-2.4 Advertisement for bids.**

- (a) Publication of a call for tenders for the awarding of concessions or concession spaces shall be made at least on three separate days in a daily newspaper of general circulation in the City and County of Honolulu.
- (b) Publication of a call for tenders for leasing of real property or any improvements thereon, other than a concession or concession space, shall be made once a week for at least two weeks in a daily newspaper of general circulation in the City and County of Honolulu.
- (c) Such public announcement shall include, but not be limited to the following information:
  - (1) Description of the concession, real property, or improvements and the objectives for it;
  - (2) Location;
  - (3) Scope of the award or lease;
  - (4) Length of the award or lease;
  - (5) Amount and type of government funds, if any, available for the project;
  - (6) Description of any special requirements of unique features.

(Sec. 30-2.4, R.O. 1978 (1983 Ed.))

**Sec. 28-2.5 Cost of publication.**

The finance director may require the party requesting the publication of a call for tenders to deposit with the director a certified check or cash equal to or greater than the estimated cost of publishing the advertisement for bids, before such advertisement is published. The cost of publication may be deducted from said deposit and retained by the city and county if said party fails to submit a bid. (Sec. 30-2.5, R.O. 1978 (1983 Ed.))

**Sec. 28-2.6 Bids—Opening—Rejection.**

The time of opening of such tenders shall not be less than five days after the last publication. All bids shall be sealed and delivered to the finance director, and shall be opened by the director at the hour and place to be stated in the call for tenders, in the presence of all bidders who attend, and may be inspected by any bidder. The finance director may reject any or all bids and waive any defects, when in the director's opinion such rejection or waiver will be for the best interest of the city and county. Upon completion of the evaluation and selection process, the finance director shall file a written report with the city clerk, including the results with the successful bidder. The city clerk, upon receipt of the written report, shall post same for public inspection under an appropriate title on the bulletin board on which meeting notices of the council, including its agenda, are posted and such report shall be a public record. (Sec. 30-2.6, R.O. 1978 (1983 Ed.))

**Sec. 28-2.7 Bids—Withdrawals.**

No bidder may withdraw such bid for a period of 60 days after the opening thereof. (Sec. 30-2.7, R.O. 1978 (1983 Ed.))

**Sec. 28-2.8 Deposits to accompany bid.**

All bids shall be accompanied by a deposit of legal tender or by a certified check payable to the finance director drawn on a bank doing business within the State of Hawaii, for or in a sum equal to five percent of the amount bid, but in no event to be less than \$50.00; provided, that when the amount bid exceeds \$50,000.00, the certificate of deposit or certified check shall be \$2,500.00 plus two percent of the amount in excess thereof. (Sec. 30-2.8, R.O. 1978 (1983 Ed.))

**Sec. 28-2.9 Forfeiture of deposits—Return.**

If the bidder to whom the contract is awarded fails or neglects to enter into the contract and furnish satisfactory security as required by this article, within 10 days after the award or within such further time as the finance director may allow, the finance director shall pay the deposit into the treasury as a realization of the City and County of Honolulu. If the contract is entered into and the security furnished within the required time, the deposit shall be returned to the successful bidder. Deposits made by the unsuccessful bidders shall be returned to them after the contract is entered into or, if the contract is not entered into, after the expiration of 60 days after the opening of the bids or after the finance director publishes another call for tenders, whichever is sooner. (Sec. 30-2.9, R.O. 1978 (1983 Ed.))

**Sec. 28-2.10 Bond in lieu of deposit.**

In lieu of the deposit of legal tender or a certified check, a bid may be accompanied by a surety bond naming the city and county as obligee, with the bidder as principal, and a surety company, authorized to do business as such in this state, as surety, in a penal sum equal to the deposit required under Section 28-2.8, conditioned upon the bidder entering into the contract and furnishing the required security within 10 days after the award or within such further time as the finance director may allow. (Sec. 30-2.10, R.O. 1978 (1983 Ed.))

**Sec. 28-2.11 Contract execution—Award to highest responsible bidder.**

All such contracts shall be in writing, shall be executed by the finance director in the name of the City and County of Honolulu, and shall be made with the highest responsible bidder, if such bidder shall qualify by providing the security required hereinbelow. If the highest and best bid or any other bid has been rejected, or if the bidder to whom the contract was awarded has failed to enter into the contract and furnish satisfactory security, the finance director may, in the director's discretion, award the contract to the next highest responsible bidder. (Sec. 30-2.11, R.O. 1978 (1983 Ed.))

**Sec. 28-2.12 Security deposit.**

Before any contract is entered into, the bidder shall give security for the compliance therewith by deposit of an amount equal to two months' rental or other charge required under the contract, except that in the case of a contract for the lease of residential property, a security deposit in an amount equal to one month's rent shall be required. In lieu thereof the finance director may accept good and sufficient bond for the said amount, naming the city and county as obligee, with the bidder as principal, and a surety company authorized to do business as such in this state, as surety. (Sec. 30-2.12, R.O. 1978 (1983 Ed.))

**Sec. 28-2.13 Surety on bond—Justification.**

If the surety or sureties on such bond shall be other than a surety company authorized to do business under the laws of this state, there shall be not more than four such sureties who shall severally justify such amounts as, taken together, will aggregate the full amount of the bond; provided, that in the case of such sureties they shall deposit with the finance director certified checks or certificates of deposit (payable on demand on or after such period as the finance director may stipulate) or bonds, stocks or other negotiable securities, or execute and deliver to such officer a deed or deeds of trust of real property, all of such character as shall be satisfactory to the finance director, in security equal to the full cash value of 100 percent of the amount for which each surety shall have assumed. The finance director may waive the necessity of furnishing such security, in cases where the director is satisfied as to the financial responsibility of the proposed surety or sureties; provided, that if there be but one personal surety, said surety shall justify the full amount of the bond. (Sec. 30-2.13, R.O. 1978 (1983 Ed.))

**Sec. 28-2.14 Violation voids contract.**

After the effective date of this chapter, any contract awarded or executed in violation of this chapter shall be void and of no effect. (Sec. 30-2.14, R.O. 1978 (1983 Ed.))

**Sec. 28-2.15 Competitive sealed proposals.**

(a) Notwithstanding anything to the contrary in this chapter, the city may lease or rent real property and/or improvements thereon by competitive sealed proposals when (1) such property and/or improvements will be used for cultural, arts, nature, sports, recreational, historical or other similar activities open to the public; (2) the city council approves of the use of such process by ordinance or resolution in advance of the issuance of the request for proposals, and (3) the director of budget and fiscal services determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the city. Factors to be considered in determining whether competitive sealed bidding is not practicable or not advantageous include:

- (1) Whether the award determination involves the consideration of factors in addition to financial return to the City and County of Honolulu;
- (2) Whether oral or written discussions may need to be conducted with offerors concerning technical and financial aspects of their proposals;
- (3) Whether offerors may need to be afforded the opportunity to revise their proposals, including revision of the financial return to the City and County of Honolulu; and

- (4) Whether an award may need to be based upon a comparative evaluation as stated in the request for proposals of differing financial return, quality, and contractual factors, in order to determine the most advantageous offering to the City and County of Honolulu. Quality factors may include technical and performance capability and the content of the technical proposal.
- (b) Proposals shall be solicited through a request for proposals.
  - (c) Public notice of the request for proposals shall be given in the same form and manner for advertisements for bids.
  - (d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during discussion. A register of proposals shall be prepared and shall be open for public inspection after the contract award.
  - (e) The request for proposals shall state the relative importance of (1) financial return to the city and (2) other evaluation factors.
  - (f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
  - (g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city, taking into consideration the financial return to the city and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.
- (Added by Ord. 02-64)

## Article 3. Exceptions to Bidding Requirement

## Sections:

28-3.1	Bidding not required—Leased or rental property—Conditions.
(28-3.2	Bidding not required—Development of special needs housing, Repealed by Ord. 04-33.)
28-3.2	Reserved.
28-3.3	Bidding not required—Concessions.
28-3.4	Bidding not required—Leasing to private developers.
28-3.5	Bidding not required—Housing or human services providers.

## Sec. 28-3.1 Bidding not required—Leased or rental property—Conditions.

The director of budget and fiscal services may award contracts to lease or rent property on terms, conditions and rentals approved by the corporation counsel as to form and legality without calling for public bids, when:

- (1) Eminent Domain. Real property and/or improvements thereon have been acquired by the City and County of Honolulu by eminent domain proceedings, negotiated purchase or exchange, and where immediate use of the property acquired is not necessary. Said property shall be rented on a month-to-month tenancy which shall be revocable at the option of the city after the tenant has been given 30 days' written notice to vacate. The total tenancy under any such lease or rental agreement shall not exceed the period of one year from the effective date of such lease or rental agreement; provided, however, that with consent of the council, a renewal or extension of said tenancy beyond such period may be allowed. The provisions of this paragraph shall not be construed as prohibiting the director from leasing or renting such property by public bidding and for a period in excess of one year, pursuant to the provisions of this chapter.
- (2) Employee of the City and County of Honolulu or the State of Hawaii. Real property and improvements thereon are leased or rented to employees of the City and County of Honolulu or the state. Said property shall be leased or rented only under the following conditions:
  - (A) The party or parties to whom the property is leased or rented must be and continue to be an employee of the City and County of Honolulu or the state during the term of the demise; and
  - (B) The leasing or renting of the property to said employee must be related to the employee's employment.
- (3) Thirty-Day Period or Less. Real property and/or improvements thereon are leased for a period not to exceed 30 days. No extension of such lease shall be permitted without calling for public bids.
- (4) Tourist Activities Without Charge. Enterprises, shows or activities presented without charge primarily for the promotion of the tourist industry in and for the City and County of Honolulu regardless of which person, association or company sponsors such enterprise, show or activity; provided, however, that such lessee or tenant does not sell merchandise on the premises, directly or indirectly, or engage in any business promotional or advertising, whether oral, by printed matter, signs, displays or electronic devices.
- (5) Neal S. Blaisdell Center or the Neal S. Blaisdell Center or the Waikiki Shell. The rental is for the use of facilities for the purpose of holding any event or attraction at the Neal S. Blaisdell Center or the Waikiki Shell in accordance with the provisions of Articles 6 through 9 of this chapter.
- (6) City and County Employee Organizations. Real property and/or office spaces that are leased or rented to any federal credit union of city and county employees or employees of city and county affiliate groups or organizations.
- (7) Eleemosynary Corporations. Real property and/or improvements thereon are leased or rented to any eleemosynary corporation, society or organization formed for the prevention of cruelty to animals, and which is authorized and empowered by law to seize and impound stray dogs running at large.
- (8) Government Employment Training Programs. Real property and/or improvements thereon are leased or rented to any nonprofit organization primarily engaged in employment training programs sponsored by the federal, state, or city and county government.
- (9) Accessory Uses. Real property is leased or rented to contractors who are awarded city construction contracts for use as a field office and storage of equipment and supplies. Rental shall be at the fair market rental and shall be limited to the duration of the construction contract only.
- (10) Governmental Subdivisions. Real property and improvements thereon are leased or rented for the use of any political or governmental subdivision of the federal, state or county governments.
- (11) Private Developer. Real property and improvements thereon are leased or rented to a private developer as described in Section 28-3.4.

(12) **Housing and Human Services Providers.** Real property and/or improvements thereon are leased to a provider of housing and human services as prescribed in Section 28-3.5.

(13) **Telecommunications Facilities.** City property is leased for use as telecommunications facilities under Article 12. (Sec. 30-3.1, R.O. 1978 (1983 Ed); Am. Ord. 90-14, 92-95, 04-33, 05-020)

(Sec. 28-3.2 **Bidding not required—Development of special needs housing. Repealed by Ord. 04-33.**)

Sec. 28-3.2 **Reserved.**

Sec. 28-3.3 **Bidding not required—Concessions.**

The finance director may award concessions on terms and conditions approved by the corporation counsel as to form and legality without calling for public bids, when:

- (a) **Activities Without Charge.** Concessions or concession spaces which are set aside without any charge for events, productions, attractions or activities including the exhibition and sale of handcrafts, works of art, produce or products of a nonprofit organization, as defined in Article 1, or its members as long as the sale of any craft item, works of art, produce or products are made by the member of the organization who actually makes, creates, grows or gathers the items being sold, and as long as all net profits earned by the nonprofit organization from the concession are to be applied to the expenses of the organization incurred in connection with events or activities directly related to the purpose for which it has been organized.
- (b) **Periods of Two Days or Less.** Concessions or concession spaces which are set aside for a period or periods of time not to exceed two successive days without any charge:
  - (1) For the exhibition and sale of works of art by artists who actually produce the works of art being exhibited and sold;
  - (2) For the exhibition and sale of handcrafted items being exhibited and sold; and
  - (3) For the display and sale of fruits and vegetables, seafoods and prepared but not manufactured food products by the person who actually grows or gathers the fruits and vegetables, catches the seafoods or prepares the food products being displayed and sold.
- (c) **Handicapped or Blind Persons.** Concessions or concession spaces which are set aside for the use of handicapped or blind persons or any nonprofit organization primarily engaged in physical rehabilitative programs.
  - (1) **Nonprofit Private Corporations.** The word "persons" contained herein shall include a nonprofit private corporation which has been exempted from taxation as prescribed under Section 501 of the Internal Revenue Code of 1986, as amended, and its articles of incorporation or association shall have a provision contained therein that the primary objective of the corporation is to service or aid or abet or assist the handicapped or blind persons.
  - (2) **No Rent, Except for Maintenance Cost.** Notwithstanding any provisions to the contrary contained herein, the finance director shall assess no rent for leasing or renting of concessions or concession space to handicapped or blind persons, including any vending machines assigned to such vendors; provided, that for real property, including improvements thereon, the finance director shall assess the cost of maintenance of that portion of such real property leased or rented to handicapped or blind persons.
- (d) **Governmental Subdivisions.** Concessions or concession spaces which are set aside for the use of any political or governmental subdivision of the federal, state or county governments.
- (e) **Nonprofit Beachboy Concessions.** Concessions or concession spaces which are set aside for beachboys licensed by the state department of transportation.
  - (1) **Policy.** The council finds that Hawaiian beachboys are rooted in the state's historical and cultural traditions and that there is a need for the city to provide for concessions available to licensed beachboys on beach property under the jurisdiction of the City and County of Honolulu.
  - (2) **Definition.** "Nonprofit beachboy concession" is the grant to a qualified beachboy association of the privilege to conduct operations essentially retail in nature, involving the rental of surfboards, bodyboards or canoes. A qualified beachboy association is an association which is dedicated to the preservation of the beachboy tradition and is incorporated as a nonprofit corporation in accordance with state law.
  - (3) **Special Conditions to Be Met When Providing Beachboy Concessions on Beach Park Property under the Jurisdiction of the City and County of Honolulu.** The following special conditions shall govern the award of nonprofit beachboy concessions on beach park property under the jurisdiction of the City and County of Honolulu:

- (A) The department of parks and recreation shall designate specific sites on the beach for each beachboy concession and shall locate the sites so as not to impede access to and use of the beach by the public;
- (B) A beachboy concession may offer to provide instruction for the use of rental equipment incidental to the rental of said equipment, and may offer the sale of canoe rides incidental to the rental of canoes; and
- (C) The department of parks and recreation shall establish policies to ensure that the use of the nonprofit beachboy concessions is restricted to beachboys who are licensed pursuant to Chapter 82, Title 19, Hawaii Administrative Rules (department of transportation), and that such concessions are operated to provide equal opportunity for use by all licensed beachboys.
- (4) Fees and Charges for Beachboy Concessions. The department of parks and recreation is authorized to set the fees charged by the beachboy concessions.
- (5) Rules. The director of parks and recreation shall adopt rules pursuant to HRS Chapter 91 necessary for the purposes of this subsection.
- (f) Nonprofit Zoo, Cultural Park and Botanical Garden Concessions. Concessions or concession space at county zoos, cultural parks or botanical gardens set aside for use by support groups which are incorporated as nonprofit corporations in accordance with state law, for the purpose of supporting county aims and goals of the zoo and botanical gardens and cultural parks; provided that each support group shall annually submit to the director of parks and recreation and the council an audited financial statement of the revenues and expenditures of that support group.
- (g) Coin-Operated Vending Machines. Concession spaces which are leased or rented for coin-operated vending machines except coin-operated insurance vending machines.
- (h) Public Pay Telephones. Concession spaces which are leased or rented for public pay telephones.
- (i) Hans L'Orange Baseball Facility. Concessions or concession spaces at the Hans L'Orange baseball facility which are set aside without charge to the permittee of a professional sports activity; provided, however, that the period of use of such concessions or concession space shall be limited to the term of the permit. As used in this section, unless the context otherwise requires:
  - (1) "Permittee" means the promoter, sponsor, exhibitor, league or other person who obtains a permit for the purposes of conducting a professional sports activity at a professional sports facility for which admission fees are charged;
  - (2) "Professional sports activity" means a game, event, exhibition, or activity of a recognized sport for which admission fees are charged and the participants in which receive compensation in return for participation in the sport;
  - (3) "Hans L'Orange baseball facility" means the playing field, bleachers, stands and other areas of the facility enclosed by a fence.

(Sec. 30-3.3, R.O. 1978 (1983 Ed.); Am. Ord. 90-74, 94-53, 94-80, 95-61)

**Sec. 28-3.4 Bidding not required-Leasing to private developers.**

- (a) The city may lease or rent real property, including improvements thereon, to a private developer without calling for bids for the purpose of constructing housing, commercial, parking and other facilities or uses in implementing the housing and human services programs of the city and county. As used in this section, "developers" includes both for-profit and nonprofit developers of housing or other facilities for any need group, including low-moderate income persons and persons receiving human services as defined in Section 28-3.5.
- (b) The city agency shall make a public announcement on each occasion when any project is proposed or contemplated and set forth the objectives to be achieved for the project and request interested persons to submit proposals therefor. The city agency shall make such announcements in a daily newspaper of general circulation in the state once a week for two successive weeks. Such public announcement shall include, but not be limited to the following information:
  - (1) Description of the proposed project and the objectives for the project, including a description of the type of need group to be served;
  - (2) Location of the proposed project;
  - (3) Scope of the project;
  - (4) Length of the lease;
  - (5) Amount and type of government funds available for the project; and
  - (6) Description of any special requirements or unique features of the project.
 Any interested developer shall file a statement of the developer's intention to submit a proposal with the city agency on or before 30 days after the last public announcement.

- (c) (1) The city agency shall examine all proposals from interested developers and determine those developers the city agency deems qualified to perform the services for the specific project under consideration. The agency shall thereafter select no fewer than three developers who are considered most qualified to perform the required services; provided, that if there are fewer than three developers, after the deadline for submitting proposals, the agency may still select a developer and file such report with the city clerk. The city agency may negotiate with developers submitting the best three proposals in making a final selection. If no qualified proposals are received in response to the notice, the city agency may negotiate with and select a developer, provided that fact is noted in the report filed pursuant to subdivision (2).
- (2) Upon completion of the evaluation and selection process, the director shall file a written report with the city clerk, including the results of the negotiations with the successful developer. The city clerk shall post the report for public inspection in City Hall where other public notices and meeting agendas of the council are posted. The report shall be a public record.
- (d) The evaluation and selection by any city agency of the design and developer for any housing project may include consideration of the following criteria:
- (1) Implementation of the general plan objectives and policies in the area of housing;
  - (2) Compatibility with all other applicable general plan objectives and policies;
  - (3) Contribution toward implementing the planned land use pattern and other development or redevelopment policies for the site and surrounding area, as specified in the adopted development plan and any adopted special or special area plan district covering the area; and
  - (4) Attractiveness and functionality of the project design. Specific considerations shall include:
    - (A) Conformance with the urban design principles and controls specified in the adopted development plan for the area;
    - (B) Relationship of structures within the project to each other, and of the entire project to surrounding structures, in terms of providing a harmonious composition of masses, colors and textures;
    - (C) Integration of spaces and building forms;
    - (D) Relationship of off-street parking to the overall vehicular circulation system;
    - (E) Pedestrian circulation plan;
    - (F) Provision of recreational and other facilities for community and leisure time activities; and
    - (G) Landscaping of the site.
  - (5) Economic feasibility of the project. Specific considerations shall include:
    - (A) Demand for the type and price of housing to be provided;
    - (B) Projected development costs;
    - (C) Projected income from unit sales/rentals;
    - (D) Availability of federal aid; and
    - (E) Anticipated cash flow.
  - (6) Developer's previous experience and financial capability.
  - (7) Compensation to be provided the city for the land lease or rental.
- (e) Subsequent to selection of the developer, the city agency shall issue to the developer a letter of intent which shall indicate to the developer that the developer may proceed at the developer's own expense and risk to initiate and undertake such studies as the developer may wish.
- (f) Subsequent to the receipt by the city clerk of the developer selection report, the council may require the city administration to prepare an appraisal of the land on which the project is proposed. The council may require the appraisal to be based on the highest and best use, the developer's proposed use, or both. In either case, the appraisal shall be based on the current Uniform Standards of Professional Appraisal Practice (USPAP) and Advisory Opinions as promulgated by the Appraisal Standards Board of the Appraisal Foundation. The requirements shall be expressed in a resolution approved by the council. The resolution also shall include a due date for submittal of the appraisal to the council. The mayor may refuse to prepare the appraisal, provided notice thereof is submitted to the council within five working days of the city administration's receiving the resolution.
- (g) At the earliest feasible date, a lease and development contract shall be submitted by the city agency to the council for approval by resolution; provided, that the council, prior to approval by resolution, may add, delete or amend any term or condition of said lease and development contract.
- Upon approval, said development contract shall set forth in detail all covenants, obligations, restrictions, requirements and conditions to govern the proposed development and subsequent operation of said project; provided, that such development contract shall indicate the studies and design work which must be satisfactorily carried out and approved as a condition to the execution of a lease for said property. The lease may be submitted to the council for

- approval by resolution separately from and subsequent to the submission of the development contract.
- (h) The lease rent may be negotiated. If the lease rent is for a nominal amount, the city agency shall certify that:
- (1) A public hearing was held on the project, including the lease terms;
  - (2) There is a compelling public need for the housing or human services to be provided;
  - (3) A suitable and reasonably priced private facility is not available;
  - (4) The developer has demonstrated financial need; and
  - (5) The lease complies with the restrictions specified in Section 28-4.2.
- (i) Any agency administering a city housing project affected by the provisions of this chapter shall establish a system to determine preferences by lot in the event the number of qualified applicants exceeds the number of housing units available. Where the city has established preferences for housing units by ordinance or rules and regulations, the order of preferences within each category for the selection of units shall be determined by lot.
- (Added by Ord. 90-14; Am. Ord. 97-08, 04-33)

**Sec. 28-3.5 Bidding not required—Housing or human services providers.**

- (a) The city may lease or rent real property and/or improvements thereon without recourse to public bidding to providers of housing or human services. For the purposes of this section:
- “Human services” includes child care, health services, and social services.
- “Providers” means operators or managers of housing units for designated need groups, or operators or managers of other facilities wherein human services are provided to designated need groups.
- “Social services” means those services required by persons with social problems or physical or mental disabilities. Persons requiring health or social services are also termed persons with special needs.
- (b) When such lease or rental to providers of housing or human services is contemplated, the director of budget and fiscal services shall cause to be published a notice stating:
- (1) The service objectives to be achieved, including the type or types of housing or human services to be provided and any limits on client fees charged;
  - (2) The minimum qualifications that providers of housing or human services must meet;
  - (3) The criteria to be used to rank and select proposals; and
  - (4) The proposal form, applicable deadlines, and other information necessary for interested persons to submit proposals.
- The notice shall be published in a daily newspaper of general circulation at least once a week for two successive weeks, and the last notice shall be published at least 14 days prior to the deadline for submission of proposals.
- (c) The appropriate city agency shall examine all proposals properly submitted from interested persons, evaluate them according to the stated criteria, and determine the best three proposals thereby. The city agency may negotiate with persons submitting the best three proposals in making a final selection of a proposal.
- (d) Following selection of a proposal, the city agency shall file a written report with the city clerk containing the public notice published to request proposals, a listing of the top three proposals, and identifying the proposal selected, including the results of any negotiations with the selected proposer.
- (e) Upon receipt of the report, the city clerk shall post the report for public inspection in City Hall where other public notices and meeting agendas of the council are posted. The report shall be a public record.
- (f) Following selection of the proposal, the city agency shall submit a lease or rental agreement therefor to the council for approval by resolution. The lease agreement shall contain any conditions and requirements applicable to the housing or human service to be provided, including client fees to be charged.
- (g) The lease rent may be negotiated. If the lease rent is for a nominal amount, the city agency shall certify that:
- (1) A public hearing was held on the project, including the lease terms;
  - (2) There is a compelling public need for the housing or human services to be provided;
  - (3) A suitable and reasonably priced private facility is not available;
  - (4) The developer has demonstrated financial need; and
  - (5) The lease complies with the restrictions specified in Section 28-4.2.
- (h) Notwithstanding the provisions of subsections (b) through (g), in cases of impending foreclosure affecting a nonprofit housing or human services provider, the council by resolution may authorize the director to assign a lease to a new nonprofit housing or human services provider without a request for proposals.

(Added by Ord. 92-95; Am. Ord. 04-33)

## Article 4. Term of Agreements

## Sections:

- 28-4.1 Duration.  
28-4.2 Lease restrictions—Generally.

## Sec. 28-4.1 Duration.

The term of any contract to lease or rent property of the City and County of Honolulu shall not exceed five years; provided, that the council by resolution may authorize the leasing or renting of property for a longer period when deemed necessary in the public interest and:

- (1) When the lessee or tenant is required by the terms of the proposed contract to expend the sum of \$25,000.00 or more for capital assets or to provide for the renovation or maintenance of any capital asset, or the lessee's or tenant's expenditure is equal to or in excess of the sum of \$25,000.00, as determined by the council. The term "capital asset" as used herein shall include not only the construction of improvements but the installation of furniture and fixtures, the cost of which would be depreciable over the period of the concession or lease in excess of five years;
  - (2) When the property is devoted to the training and education of handicapped or blind persons and by the terms of the proposed contract, the lessee or tenant is required to construct on such property any improvement, the estimated cost of which, including cost of labor and materials, is equal to, or in excess of, the sum of \$10,000.00, as determined by the council;
  - (3) When the real property is leased or rented for the use of the state or federal government or any agency thereof or the board of water supply;
  - (4) When the city enters into a development contract with a person for the development of the property and the construction of housing units of all kinds and types as permitted in the area where the property is situated, or any other type of structural development which may be beneficial to the city; or
  - (5) When the real property is leased to a housing or human services provider in accordance with Section 28-3.5 and the city agency proposing the lease certifies that the longer term is necessary to secure noncity financing or to enable the transfer of the real property to a different housing or human services provider.
- (Sec. 30-4.1, R.O. 1978 (1983 Ed.); Am. Ord. 90-14, 02-55, 04-33)

## Sec. 28-4.2 Lease restrictions—Generally.

Except as otherwise provided, the following restrictions shall apply to all leases made in accordance with this chapter:

- (1) No lease shall be for a longer term than 75 years including the initial term and any renewal or extension;
- (2) No lease shall be made to any person who is in arrears in the payment of taxes, rents or other obligations owing to the city.

(Added by Ord. 90-14; Am. Ord. 04-33)

## Article 5. Penalty

## Sections:

- 28-5.1 Disciplinary action.

## Sec. 28-5.1 Disciplinary action.

- (a) Any officer or employee who violates any of the provisions of this chapter upon a finding pursuant to a hearing to be conducted by such person's appointing authority, shall be subject to disciplinary action by such person's appointing authority.
- (b) Any lessee or tenant violating any provisions of this chapter shall cause the termination of the lease or tenancy and the lessee or tenant may be subject to the payment of any outstanding rental before and after such hearing.
- (c) Any person, officer or employee violating any provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and be subject to the provisions of Section 1-3.1, ROH 1990.

(Sec. 30-5.1, R.O. 1978 (1983 Ed.))

**Article 6. General Provisions for the Lease and Rental Policy for the  
Department of Enterprise Services**

**Sections:**

- 28-6.1 Purpose.
- 28-6.2 Definitions.
- 28-6.3 Rental of facilities.
- 28-6.4 Equal treatment.
- 28-6.5 Payment in advance.
- 28-6.6 Form of payment.
- 28-6.7 Use without payment prohibited.
- 28-6.8 Bookings and cancellation—Appeal.
- 28-6.9 Insurance.
- 28-6.10 Security.
- 28-6.11 Waiver of fees—Use of facilities for fundraising—Authority.
- 28-6.12 Waiver of rental rates, charges and rules—Conditions.
- 28-6.13 Co-promotion of events by the department of enterprise services.

**Sec. 28-6.1 Purpose.**

The purpose of Articles 6 through 9 of this chapter is to establish a uniform policy for the lease and rental of facilities at the Neal S. Blaisdell Center and the Waikiki Shell including awarding of concessions therein. (Sec. 29-1.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Sec. 28-6.2 Definitions.**

The following words and phrases shall, for the purposes of Articles 6 through 9, have the meaning respectively ascribed to them in this section, unless it is apparent from the context that a different meaning is intended:

"Admission event" means an event at which a fee is charged to or other consideration is exacted from an exhibitor, organization or member of the public for use of facilities or attendance at the event.

"Agency" means any office, department, board, commission or other governmental unit of the city, including the council and its officers.

"Concession" means the grant to a private individual, partnership, corporation or other entity of the privilege to conduct operations essentially retail in nature, involving the sale of goods, wares, merchandise or services to the general public, such as restaurants, retail stores, parking facilities, and golf driving ranges, in or on land or buildings owned by the City and County of Honolulu.

"Deposit" means the established portion of the rent charged to the tenant of an admission event in order to complete a contract.

"Dark day cost" means the one-day cost of maintaining a facility in good condition, when it is not rented.

"Director of enterprise services" means the director of enterprise services of the City and County of Honolulu.

"Exhibit show" means any event where the primary performance is a group of individual displays of products or services.

"Facility daily operating cost" means the combined dark day and use day cost to operate a facility, excluding any cost for services, which is not part of the rental. The "facility daily operating cost" shall be the basis for the fixed rental rate.

"Director of budget and fiscal services" means the director of budget and fiscal services of the City and County of Honolulu.

"Gross receipts from admission charges" means any consideration or value received by or on behalf of the tenant, less federal admission tax and state general excise tax, in connection with the use of the facilities rented, including admission to partake of food and refreshment to be served at the facilities covered by this chapter, whether or not such consideration or value is designated as a donation, gratuity, contribution or the like, and whether or not receipt of such consideration or value is evidenced by a ticket, card, ribbon, button, token, badge or the like.

"Managing director" means the managing director of the City and County of Honolulu.

"Meeting room" means the following rooms located at the Neal S. Blaisdell Center: Pikake Room; Hawaii Suites 1 to 12; Galleria 1st floor or 2nd floor; Maui Room; Oahu Room; Kanai Room; and Waikiki Room.

"Net square footage rent" means the rent charged for the square footage of sold booth space in any trade or exhibit show.

"Nonadmission event" means an event at which members of the public and exhibitors are admitted without charge or other obligation to pay for attendance at the event or use of the facilities except for an event where the facilities are rented to a nonprofit organization which rents the facilities pursuant to the terms and conditions set forth in Article 9.

"Nonperformance day" means the period from 10:00 a.m. to midnight when the facilities are used for any purpose not amounting to a "performance day." The term "nonperformance day" shall include, but is not limited to, the use of the facilities for rehearsals, moving in and out of equipment, and preparation of the facilities for the performance or event. The provisions of Section 28-7.2 shall be applicable.

"Nonprofit organization" means an association, corporation or other entity actively pursuing its primary purpose in the State of Hawaii, organized and operated exclusively for religious, charitable, scientific, literary, cultural, educational, recreational or other nonprofit purposes, no part of the assets, income or earnings of which inures to the benefit of any individual or member thereof, and whose charter or other enabling act contains a provision that, in the event of dissolution, the assets owned by such association, corporation or other entity shall be distributed to another association, corporation or other entity organized and operated exclusively for nonprofit purposes, and which further qualifies for exemption from the general excise tax provisions of HRS Chapter 237, as amended, and under Section 501 of the Internal Revenue Code of 1954, as amended. Such nonprofit organization must not merely be a sponsor of the event, production, attraction or activity being given, but must actively promote, produce, stage or conduct such event, production, attraction or activity.

"Overtime rate" means the rate quoted per each hour or fraction thereof and will be applicable when any facility is used beyond the rental periods specified herein, meaning the time period after midnight. However, at the discretion of the director of enterprise services, a one-hour grace period before the overtime rate for major events becomes applicable may be allowed. Rental of a facility solely on overtime rates is not authorized.

"Performance day" means the period from 10:00 a.m. to midnight when the facilities are used for an attraction, event or occasion attended by the public audience, or members of a group. The term "performance day" shall include the use of the facilities for the purpose of recording, filming or televising an attraction or event for a commercial purpose or for a purpose other than for the personal use of the camera or recording operator. However, the recording, filming or televising of an event or attraction, without charge by the tenant, for a bona fide news purpose or to advertise the event or attraction to be shown at the facilities covered herein, shall not otherwise convert a non-performance day to a performance day.

"Sold booth space" means any booth space paid by cash, trade or other form of payment.

"Use day operating cost" means the incremental operating cost (above dark day cost) incurred when the facility is in use. "Use day operating cost" includes labor, equipment and services not otherwise assessed as a direct cost to the tenant. Use day operating cost shall be the basis for the reduced rental rates assessed for nonadmission events and the deposits assessed for admission events. (Sec. 29-1.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03, 05-017)

#### Sec. 28-6.3 Rental of facilities.

The use and rental of facilities at the Neal S. Blaisdell Center and the Waikiki Shell (hereinafter referred to as "facilities") shall be permitted according to the provisions of Articles 6 through 9 of this chapter. (Sec. 29-1.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

#### Sec. 28-6.4 Equal treatment.

Rent and all other charges shall apply equally to all tenants using the facilities covered under this chapter, except as provided herein. (Sec. 29-1.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-6.12 Waiver of rental rates, charges and rules—Conditions.**

- (a) The director of enterprise services may waive the percentage rental charges set forth in Section 28-7.1 and any or all rules governing the reservation, rental and use of the Neal S. Blaisdell Center Arena for a party applying for a waiver, for a maximum of two consecutive years; provided that the director determines that an event or attraction to be presented by the party:
- (1) Offers the potential for revenues to the city in subsequent years that are greater than the amount of the charges waived;
  - (2) Offers the public a form of entertainment or sporting event that is not currently available at any facility in the city;
  - (3) Will involve the rental of the facilities for at least six performance or game days per year;
  - (4) Offers the potential to enhance the economic growth of the city by increasing tourism, attracting attendance by off-island fans or sports enthusiasts, promoting Hawaii by broadcasting the events nationally and internationally, and boosting retail sales in the city;
  - (5) Will not preclude the use of the Neal S. Blaisdell Center Arena by the regular tenants of these facilities during the year;
  - (6) Will not require the city to incur any costs for improvements or the purchase of new or additional equipment for a single event or attraction or to incur increased maintenance costs; and
  - (7) Will not interfere with or impair any existing contracts entered into by the city with commercial vendors, concessionaires or third parties involving the use of the Neal S. Blaisdell Center Arena.
- (b) The director of enterprise services is authorized to adopt rules pursuant to HRS Chapter 91 to implement this section, including establishing the waiver application form to be used by an applicant requesting a waiver.
- (Added by Ord. 98-17; Am. Ord. 03-03)

**Sec. 28-6.13 Co-promotion of events by the department of enterprise services.**

The director of enterprise services may waive the percentage rental charges set forth in Section 28-7.1 and enter into a co-promotion relationship with a tenant in order to bring to the Neal S. Blaisdell Center Arena, the Neal S. Blaisdell Center Exhibition Hall, the Neal S. Blaisdell Center Concert Hall or the Waikiki Shell a major commercial event which will be popular with the community and whose initial cost of presentation creates a financial risk which would prohibit the tenant from booking the event without a shared risk arrangement. The director of enterprise services may then co-promote the event with the tenant. All expenses from the event for both the city and the tenant will be netted from gross receipts. The net proceeds from the event would then be split equally between the tenant and the city.

The director of enterprise services shall report to the council no later than 30 days after June 30 of each year detailing, for the fiscal year just ended, the events co-promoted by the department and the increased revenues and bookings resulting therefrom compared to the previous year. (Added by Ord. 06-35)

**Article 7. Rental Schedule**

**Sections:**

- 28-7.1 Rates.
- (28-7.2) Definitions. Repealed by Ord. 03-03.)
- 28-7.2 Reserved.
- 28-7.3 Services included in rental charge.
- 28-7.4 Assignment of rights or privileges prohibited.
- 28-7.5 Broadcasting, taping or filming—Permission required.
- 28-7.6 Facilities use by city agencies.
- 28-7.7 Rules.

**Sec. 28-7.1 Rates.****(a) NONADMISSION EVENTS**

Users of facilities used for nonadmission events shall pay the following charges as applicable.

(1) Except for events qualifying for reduced rental rates, the following fixed rental rates shall be charged. The fixed rental rates shall cover the facility daily operating cost of each facility.

(A)	Arena	
	Performance Day.....	\$4,692.00
	Nonperformance Day.....	2,346.00
	Overtime rate (per hour).....	503.00
(B)	Concert Hall	
	Performance Day.....	2,964.00
	Nonperformance Day.....	1,482.00
	Overtime rate (per hour).....	318.00
(C)	Exhibition Hall	
	Performance Day.....	3,392.00
	Nonperformance Day.....	1,696.00
	Overtime rate (per hour).....	363.00
(D)	Pikake Room	
	Performance Day.....	826.00
	Nonperformance Day.....	413.00
	Overtime rate (per hour).....	89.00
(E)	Hawaii Suites 1 to 12	
	Performance Day.....	80.00
	Nonperformance Day.....	80.00
(F)	Galleria 1st floor or 2nd floor	
	Performance Day.....	200.00
	Nonperformance Day.....	100.00
	Overtime rate (per hour).....	5.00
(G)	Maui Room	
	Performance Day.....	125.00
	Nonperformance Day.....	125.00
(H)	Oahu Room	
	Performance Day.....	105.00
	Nonperformance Day.....	105.00
(I)	Kauai Room	
	Performance Day.....	95.00
	Nonperformance Day.....	95.00
(J)	Waikiki Shell	
	Performance Day.....	1,694.00
	Nonperformance Day.....	847.00
(K)	Waikiki Shell Amphitheater	
	Performance Day.....	564.00
	Nonperformance Day.....	282.00
(L)	Nonfacility Space	
	Performance Day.....	\$0.03/sq. ft.
	Nonperformance Day.....	\$0.015/sq. ft.

**(2) Reduced Rental Rates.**

When facilities are only rented on low use days (Mondays, Tuesdays or Wednesdays) or less than five weeks in advance of the use day, the tenant shall pay a reduced rent. The reduced rental rates shall cover the use day operating cost for each facility. Facility rentals by the Blaisdell Center's in-house caterers for all events approved by the director of enterprise services will be assessed at the reduced

rental rate except where the caterer's client is a qualified nonprofit organization as defined in this article. In such situation the caterer will be assessed the applicable nonprofit rate.

(A)	Arena	
	Performance Day .....	\$3,294.00
	Nonperformance Day .....	1,647.00
(B)	Concert Hall	
	Performance Day .....	1,844.00
	Nonperformance Day .....	922.00
(C)	Exhibition Hall	
	Performance Day .....	2,150.00
	Nonperformance Day .....	1,075.00
(D)	Pikake Room	
	Performance Day .....	596.00
	Nonperformance Day .....	298.00
(E)	Hawaii Suites 1 to 12	
	Performance Day .....	60.00
(F)	Galleria 1st or 2nd floor	
	Performance Day .....	200.00
(G)	Maui Room	
	Performance Day .....	125.00
(H)	Oahu Room	
	Performance Day .....	105.00
(I)	Kanai Room	
	Performance Day .....	95.00
(J)	Waikiki Shell	
	Performance Day .....	1,354.00
	Nonperformance Day .....	677.00
(K)	Nonfacility Space .....	\$.03/sq. ft.

(b) **ADMISSION EVENTS**

Users of facilities used for admission events shall pay the following charges as applicable:

(1) **Deposits.**

Deposits for admission events shall cover the facility use day operating cost and are due upon execution of the rental agreement:

(A)	Arena and Arena Theater Configuration (one-half arena seating and setup for stage shows)	
	Performance Day .....	\$3,294.00
	Nonperformance Day .....	1,647.00
(B)	Concert Hall	
	Performance Day .....	1,844.00
	Nonperformance Day .....	922.00
(C)	Exhibition Hall	
	Performance Day .....	2,150.00
	Nonperformance Day .....	1,075.00
(D)	Pikake Room	
	Performance Day .....	596.00
	Nonperformance Day .....	298.00
(E)	Hawaii Suites 1 to 12	
	Performance Day .....	60.00
(F)	Galleria 1st or 2nd floor	
	Performance Day .....	200.00
(G)	Maui Room	
	Performance Day .....	125.00

(H)	Oahu Room Performance Day.....	105.00
(I)	Kauai Room Performance Day.....	95.00
(J)	Waikiki Shell Performance Day.....	1,354.00
	Nonperformance Day.....	677.00
(K)	Waikiki Shell Amphitheater Performance Day.....	452.00
	Nonperformance Day.....	226.00
(L)	Nonfacility Space.....	\$.03/sq. ft.

(2)

**Percentage Rental Rates.**

The tenant shall pay the applicable deposit or percentage rent, whichever is greater, based upon gross receipts from admission charges. Percentage rent shall be based upon the schedule listed below and calculated on gross receipts from admission charges for each contracted event, which performances shall occur in a period of up to seven consecutive days. Each seven consecutive day period or portion thereof, shall begin a new calculation of the percentage rent period.

(A)

**Arena:****(i) Full Arena**

10.0% of gross receipts up to \$150,000.00; plus  
8.5% of gross receipts from \$150,000.01 to \$250,000.00; plus  
7.5% of gross receipts from \$250,000.01 to \$350,000.00; plus  
6.5% of gross receipts from \$350,000.01 to \$450,000.00; plus  
5.5% of gross receipts from \$450,000.01 to \$550,000.00; plus  
5.0% of gross receipts over \$550,000.00.

**(ii) Arena Theater Configuration**

5% of gross receipts.

**(iii) Should a tenant request a cap on the percentage rent as a condition of bringing to the Arena a major popular commercial event with a minimum of two consecutive performances, the director may set a rent cap as follows:**

For the first two performances, the percentage rent shall be calculated as prescribed in this section and the percentage rent shall be capped at a total of \$53,000.00.

For each additional performance of the event, the percentage rent shall be calculated as prescribed in this section and the percentage rent shall be capped at \$26,500.00.

(B)

**Waikiki Shell****(i) Waikiki Shell**

When the Waikiki Shell is rented during the months of April through August, the following percentage rates will apply:

10.0% of gross receipts up to \$75,000.00; plus  
8.5% of gross receipts from \$75,000.01 to \$150,000.00; plus  
5.0% of gross receipts over \$150,000.00.

When the Waikiki Shell is rented during the low-use months of September through March, the following percentage rates will apply:

8.5% of gross receipts up to \$150,000.00; plus  
5.0% of gross receipts over \$150,000.00.

**(ii) Waikiki Shell Amphitheater**

5% of gross receipts.

(C)

**Concert Hall**

5.0% of gross receipts up to \$500,000.00; plus  
5.0% of gross receipts in excess of 75% of the weekly gross potential (based upon ticket price and salable seats). The maximum weekly percentage rent for the Concert Hall shall be \$35,000.00.

- (D) **Exhibition Hall**  
10.0% of gross receipts.
  - (E) **Pikake Room**  
5.0% of gross receipts.
  - (F) **Hawaii Suites, Maui, Oahu, Kauai and Galleria**  
5.0% of gross receipts.
- (3) **Net Square Footage Rental.** Net square footage is calculated by the facility in which the booth space is located. The booth space shall be the area a subcontractor of the tenant shall have rented to present a product, service or other commercial display. Rent shall be \$0.17 per net square foot per event day. A tenant shall pay the greater of the deposit, the total net square footage rental, or the percentage rental rate for each event day.
- (4) **Exhibition Hall and Meeting Rooms Rental for Fundraisers.** Where the exhibition hall and meeting rooms are rented for the presentation of a fundraising event sponsored by a nonprofit organization, a bona fide political party, which qualifies under Hawaii's election laws, or a bona fide political candidate, who qualifies under Hawaii's election laws, the tenant of the exhibition hall shall pay the applicable rental charge or 10 percent of the donated gross receipts collected for the event, whichever is greater; provided, that a rental cap shall apply which provides that the percentage rental shall not exceed twice the applicable deposit; and this rental cap shall not apply to the Waikiki Shell, arena or the concert hall if it is used for a fundraising event.
- (5) **Facility Use for Indoor Sports Practice Rental.** When the sports surface is already installed, ordinary lighting is used, and there are no additional labor, cleanup and air conditioning costs incurred by the city, the use of the facility for practice purposes, at the discretion of the director of enterprise services, is permissible without charge; provided, that a waiver of liability is signed by the tenant.
- (c) **Nonperformance Day Rental.**
- (1) When renting either the exhibition hall or the Pikake Room, the tenant will be entitled to the nonperformance day rental rate for the number of days equal to the number of performance days. Any nonperformance days exceeding that number will be charged at the fixed rental rate, reduced rental rates, or deposit, as applicable, for a performance day for the facility.
  - (2) Any tenant renting the arena for an event which requires more than eight hours to change over the facility for that event will be charged a nonperformance day at the beginning and end of the booking.
- (d) **Charges for Facilities and Services Not Specified.** The director of enterprise services shall be authorized to establish and assess reasonable rental charges for those facilities and services not specified herein.

(Sec. 29-2.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 98-17, 03-03, 05-017, 06-35)

(Sec. 28-7.2 **Definitions.** Repealed by Ord. 03-03.)

Sec. 28-7.2 **Reserved.**

Sec. 28-7.3 **Services included in rental charge.**

In return for the rental payment, the city shall furnish the tenant with the use of the facilities for the purposes specified, ordinary lighting, ordinary cleanup and air conditioning, if available. The rental payment shall not include the services of electricians, spotlight operators, stagehands, musicians, ticket sellers, ushering personnel, janitors, security, medical services or any other services and extraordinary costs unless specified in the rental agreement. The director of enterprise services may require a tenant to make a reasonable deposit to be determined at the director's discretion to cover anticipated extraordinary cleanup costs, or require the tenant to arrange for cleanup of the facility at the tenant's own expense, or both. (Sec. 29-2.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-7.4 **Assignment of rights or privileges prohibited.**

The assignment of any rights or privileges under a rental agreement is prohibited without the written consent of the director of budget and fiscal services. When there is an authorized full or partial assignment of such rights or privileges, the director of enterprise services is authorized to charge and collect from the tenant-assignor an additional

sum equal to the total assessment for the facility rented. The provisions of Sections 28-6.9 and 28-6.10 shall also be applicable to an assignee. (Sec. 29-2.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-7.5 Broadcasting, taping or filming—Permission required.**

All rental agreements shall reserve the right to the city to negotiate charges for radio and television broadcasts, motion picture or recording privileges in the facilities, not exceeding 10 percent of anticipated receipts from the sale of broadcast rights by the tenant, and residual payments for the use of any film, videotape, recording or taping made in a facility covered by the policy. The use of the facilities to broadcast, film, videotape or record without the written permission of the city shall be prohibited. Any tenant who films, tapes, broadcasts or records any event in the facilities rented without the permission of the city may be assessed a charge fixed at the discretion of the director of enterprise services consistent with charges negotiated with tenants similarly situated plus a 25 percent penalty of such charge. (Sec. 29-2.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-7.6 Facilities use by city agencies.**

Any city agency may reserve and use any of the facilities covered herein upon written confirmation by the director of enterprise services. Prior to issuing such confirmation, the director of enterprise services shall ensure that the appropriate departmental transfer of funds representing minimum rental and all other charges shall be accomplished. Rental charges may be waived, at the discretion of the director of enterprise services, if the facility is available and booked no more than three weeks in advance of the event date. (Sec. 29-2.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-7.7 Rules.**

The director of enterprise services shall adopt rules, in accordance with HRS Chapter 91, not inconsistent with this chapter, governing the reservation, renting and use of the facilities covered herein. (Sec. 29-2.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

### Article 8. Concessions

**Sections:**

**28-8.1 Awarding of concessions.**

**Sec. 28-8.1 Awarding of concessions.**

- (a) Concessions in the facilities shall be awarded as provided by law. The term of any concession shall not exceed a period of five years.
  - (b) The sale and consumption of alcoholic beverages shall be in conformity with applicable laws. However, the sale and consumption of alcoholic beverages shall be prohibited if the tenant of the facility in which such concession is located objects to such sale and consumption.
- (Sec. 29-3.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

### Article 9. Nonprofit Organizations

**Sections:**

- 28-9.1 Facilities use and rental by nonprofit organizations.
- 28-9.2 Proof of nonprofit status.
- 28-9.3 Rental rates.
- 28-9.4 Special performances.
- 28-9.5 Equipment rental.
- 28-9.6 Scheduling of nonperformance days.
- 28-9.7 Applicability of Articles 6 through 9.

**Sec. 28-9.1 Facilities use and rental by nonprofit organizations.**

A nonprofit organization may use the facilities of the Neal S. Blaisdell Center and the Waikiki Shell under the terms and conditions provided herein. (Sec. 29-4.1, R.O. 1978 (1987 Supp. to 1983 Ed.)

**Sec. 28-9.2 Proof of nonprofit status.**

The nonprofit organization shall provide proof to the director of enterprise services that it qualifies under the definition of a "nonprofit organization" set forth in Section 28-6.2. (Sec. 29-4.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-9.3 Rental rates.**

**(a) Nonprofit Fixed Rental.**

(1) The department of enterprise services will establish nonprofit fixed rental rates at the Neal Blaisdell Center Arena, Concert Hall, Pikake Room and Waikiki Shell equivalent to the applicable use day operating cost for facility rentals. Rates will be adjusted annually at the beginning of each fiscal year commencing on July 1, 2006 in accordance with the rate schedule in Section 28-9.3 below until the nonprofit fixed rental rate for the facilities identified is equivalent to but no more than the use day operating cost for the facility. After attainment of such coverage, the department will conduct a use day operating cost review on a biennial basis thereafter and undertake rental adjustment through the adoption of rules pursuant to HRS Chapter 91 to maintain the nonprofit rental rates at the use day operating cost described herein.

(2) Nonprofit Fixed Rental in FY 2006

(A)	Arena	
	Performance Day .....	\$1,288.00
	Nonperformance Day .....	644.00
(B)	Concert Hall	
	Performance Day .....	790.00
	Nonperformance Day .....	395.00
(C)	Exhibition Hall	
	Performance Day .....	964.00
	Nonperformance Day .....	482.00
(D)	Pikake Room	
	Performance Day .....	334.00
	Nonperformance Day .....	167.00
(E)	Waikiki Shell	
	Performance Day .....	670.00
	Nonperformance Day .....	335.00

(3) Nonprofit Fixed Rental in FY 2007

(A)	Arena	
	Performance Day .....	\$1,788.00
	Nonperformance Day .....	894.00
(B)	Concert Hall	
	Performance Day .....	1,054.00
	Nonperformance Day .....	527.00
(C)	Exhibition Hall	
	Performance Day .....	1,260.00
	Nonperformance Day .....	630.00
(D)	Pikake Room	
	Performance Day .....	400.00
	Nonperformance Day .....	200.00
(E)	Waikiki Shell	
	Performance Day .....	840.00

	Nonperformance Day.....	420.00
(4)	Nonprofit Fixed Rental in FY 2008	
(A)	Arena	
	Performance Day.....	\$2,288.00
	Nonperformance Day.....	1,144.00
(B)	Concert Hall	
	Performance Day.....	1,318.00
	Nonperformance Day.....	659.00
(C)	Exhibition Hall	
	Performance Day.....	1,556.00
	Nonperformance Day.....	778.00
(D)	Pikake Room	
	Performance Day.....	466.00
	Nonperformance Day.....	233.00
(E)	Waikiki Shell	
	Performance Day.....	1,010.00
	Nonperformance Day.....	505.00
(5)	Nonprofit Fixed Rental in FY 2009	
(A)	Arena	
	Performance Day.....	\$2,788.00
	Nonperformance Day.....	1,394.00
(B)	Concert Hall	
	Performance Day.....	1,582.00
	Nonperformance Day.....	791.00
(C)	Exhibition Hall	
	Performance Day.....	1,852.00
	Nonperformance Day.....	926.00
(D)	Pikake Room	
	Performance Day.....	532.00
	Nonperformance Day.....	266.00
(E)	Waikiki Shell	
	Performance Day.....	1,180.00
	Nonperformance Day.....	590.00
(6)	Nonprofit Fixed Rental in FY 2010	
(A)	Arena	
	Performance Day.....	\$3,294.00
	Nonperformance Day.....	1,647.00
(B)	Concert Hall	
	Performance Day.....	1,844.00
	Nonperformance Day.....	922.00
(C)	Exhibition Hall	
	Performance Day.....	2,150.00
	Nonperformance Day.....	1,075.00
(D)	Pikake Room	
	Performance Day.....	596.00
	Nonperformance Day.....	298.00
(E)	Waikiki Shell	
	Performance Day.....	1,354.00
	Nonperformance Day.....	677.00
(7)	The nonprofit organization shall pay the nonprofit fixed rental rates, reduced rental rates, or deposit, as applicable, for each day of use. The percentage rental rates as set forth in Section 28-7.1(b)(2), shall be	

- applicable to a nonprofit organization, except for the rental of the concert hall for which the additional rental charge shall be five percent of the gross receipts in excess of \$40,000.00.
- (8) Public educational institutions or private educational institutions which are licensed by the state department of education and qualify as nonprofit organizations shall pay the nonprofit fixed rental rates, reduced rental rates, or deposit, as applicable, for each day of use; provided that the activity or the sponsored program which takes place at the center is an integral part or extension of an established school curriculum, including but not limited to athletic, musical, cultural (plays and dramas), social (school dances or graduation exercises) and educational (lectures and seminars) activities; provided further that this exception shall not be available if the activity or program is primarily for fundraising purposes. Any activity or program shall be deemed primarily for fundraising purposes when the funds raised through admissions, donations or gifts or other things of value exceed the cost of sponsoring the activity or program at the center or exceed the amount budgeted for the curriculum activity or program for which the center was rented. The percentage rental rates, as set forth in this section or Section 28-7.1(b)(2), shall be applicable to a nonprofit organization, except for the rental of the concert hall for which the additional rental charge shall be five percent of the gross receipts in excess of \$40,000.00.
- (b) (1) Any nonprofit organization renting the concert hall for not less than 30 performance days during the current fiscal year of the city shall not be required to pay the five percent additional rental charge on the gross receipts in excess of \$40,000.00.
- (2) Any nonprofit organization renting the concert hall for 21 or more consecutive days shall pay the minimum rental due for that rental period as specified in subsection (a) plus five percent of gross receipts for the rental period in excess of \$250,000.00.
- (3) Any nonprofit organization that rents the concert hall and qualifies for the rental adjustment contained in Section 28-9.3(b)(1) may, prior to receiving a signed contract from the city, or with their agreement after receiving a signed contract from the city, be displaced from the contracted date by the department of enterprise services to allow the use of the facility by another tenant that will provide an event that offers greater financial benefit to the department; be of large public appeal; and offer an attraction to the community that would not otherwise be presented without the availability of the concert hall. If a nonprofit organization is displaced as described above, the nonprofit organization shall be given replacement use of the Waikiki Shell and not be required to pay any percentage rental charge.

(Sec. 29-4.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03, 05-017, 06-35)

#### Sec. 28-9.4 Special performances.

The nonprofit organization shall be accorded the use of the concert hall at no charge for fixed rental, and no charge levied for equipment rental or usher fees, under the following conditions:

- (a) The performance shall consist of events or attractions staged primarily for the educational and cultural betterment of the youth of Hawaii 18 years old and under;
- (b) The performance shall be authorized in writing by the state department of education and shall be held on regular school days;
- (c) The performance shall be held between the matinee hours of nine a.m. and two p.m. on a space available basis to be determined by the director of enterprise services; and
- (d) The admission price for the performance shall not exceed \$2.00 per student.

(Sec. 29-4.4, R.O. 1978 (1987 Supp. to 1983 Ed.)); Am. Ord. 99-03, 03-03)

#### Sec. 28-9.5 Equipment rental.

The nonprofit organization shall pay the prevailing equipment rental rates established by the director of enterprise services for the use of equipment. (Sec. 29-4.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

#### Sec. 28-9.6 Scheduling of nonperformance days.

The scheduling of nonperformance days shall be on a space available basis to be determined by the director of enterprise services. (Sec. 29-4.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-9.7 Applicability of Articles 6 through 9.**

Except as otherwise provided in this article, all of the provisions of Articles 6 through 9 shall apply to nonprofit organizations. (Sec. 29-4.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Article 10. Severability****Sections:**

28-10.1 Severability.

**Sec. 28-10.1 Severability.**

The provisions of this chapter, as enacted by this ordinance, are hereby declared to be severable. In accordance therewith, if any portion of said chapter is held invalid for any reason, the validity of any other portion of this chapter shall not be affected and if the application of any portion of this chapter to any person, property or circumstance is held invalid, the application hereof to any other person, property or circumstances shall not be affected. (Sec. 30-6.1, R.O. 1978 (1983 Ed.); (Sec. 29-5.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Article 11. Lease and Permit Policy for the Grounds of City Hall and the Honolulu Municipal Building****Sections:**

28-11.1 Definitions.

28-11.2 Applicability.

28-11.3 Terms and conditions.

28-11.4 Permitted private uses of grounds.

28-11.5 Application procedure.

28-11.6 Copies of permit and lease applications to be provided to council—Notice of approval.

**Sec. 28-11.1 Definitions.**

For the purposes of this article, the following terms shall have the following meanings, unless it is apparent from the context that another meaning is intended.

"Active use" of grounds means use of the grounds while activities or events are being held for patrons, or goods or services are being sold to patrons.

"Entry fees" means any fees charged during a major event by any person, including the lessee, to persons for:

- (1) Entry onto the grounds of City Hall and the Honolulu Municipal Building or into any contiguous area of the grounds in excess of 1,000 square feet; or
- (2) Use of any public walkway.

"Event" means any gathering, held in whole or in part by a person or persons on the grounds of City Hall and the Honolulu Municipal Building.

"Exempt event" means any event:

- (1) In which no more than 25 persons are anticipated to participate;
- (2) For which there is no sound amplification;
- (3) Which lasts for a period of less than three hours;
- (4) For which no fee is charged for participation;

- (5) Involving no sales or solicitations for the sale of any product or service; and
- (6) For which no temporary structures are set up.

"Fee" includes any charge, however denominated, whether in the form of money, token, script or other medium of value.

"Food" includes beverages, condiments and utensils.

"Grounds of City Hall and the Honolulu Municipal Building" or "grounds" means Tax Map Key parcels 2-1-33: 7 and 2-1-33: 10, but excluding City Hall; the Honolulu Municipal Building, the City Hall Annex, the portion of Tax Map Key parcel 2-1-33: 10 that is set aside for use as the Civic Center child care facility and, to the extent that they may be within said parcels, the public sidewalks immediately abutting King Street, Alapai Street and Beretania Street. For purposes of this definition, the inner courtyards of City Hall and the Honolulu Municipal Building shall be deemed a part of those buildings.

"Hold" includes "conduct," "sponsor" or "promote."

"Lease" means any lease agreement, rental agreement or concession agreement.

"Lessee" means any person holding any lease for use of all or any portion of the grounds of City Hall and the Honolulu Municipal Building.

"Major event" means an event for which the person holding the event desires authority to:

- (1) Impede any person from access to, or charge a fee to any person for access across the grounds of City Hall and the Honolulu Municipal Building to, City Hall, the Honolulu Municipal Building, the City Hall Annex, the Civic Center parking facility or the Civic Center child care facility;
- (2) Prevent any person from having use of, or charge any person a fee for use of, any public walkway; or
- (3) Partition, fence, rope, cordon off or otherwise demarcate any contiguous area of more than 1,000 square feet of the grounds for purposes of precluding any person from entering the area or for purposes of charging a fee to any person to enter the area.

"Minor event" means any event other than a major event or exempt event.

"Person" includes any natural person; any limited or general partnership or joint venture; any limited liability company; any corporation, whether professional, for profit or not-for-profit; any trust, including any business or land trust; and any other private organization, association or entity. The term shall not include a governmental agency.

"Public walkway" means any walkway or pathway, including any ramp or steps, designed to accommodate pedestrian traffic, whether paved with asphalt, concrete, brick or any other material located on the grounds of City Hall and the Honolulu Municipal Building, but excluding the public sidewalks immediately abutting King Street, Alapai Street, Punchbowl Street and Beretania Street.

"Sublessee" means a person authorized, expressly or impliedly, by any person holding a lease entered into under this article for a major event, to provide goods or services to the patrons of the major event.

"Subpermittee" means a person authorized, expressly or impliedly, by any person holding a permit issued under this article for a minor event, to provide goods or services to the patrons of the minor event.

"Temporary structures" includes tents, booths, stages, viewing stands, risers, rides, games, portable toilets and similar structures set up on the grounds for an event.

(Added by Ord. 99-05)

#### Sec. 28-11.2 Applicability.

- (a) This article shall apply to any lease, license, permit or agreement entered into by the city for the use of all or any portion of the grounds of City Hall and the Honolulu Municipal Building for the purposes of conducting an event.
- (b) This article shall not apply to:
  - (1) Any easement, including any utility easement;
  - (2) Any temporary license for the purposes of permitting the repair or renovation of or additions to City Hall, the Honolulu Municipal Building, the City Hall Annex, the Civic Center parking facility or the Civic Center child care facility;

- (3) Any peddling activity by any peddler duly licensed pursuant to HRS Section 445-141;
- (4) Any handbilling activity;
- (5) Any display permitted under the city's Honolulu city lights program;
- (6) Any food vending concession awarded by the city;
- (7) The city-sponsored people's open market program;
- (8) Any gathering held exclusively by a governmental entity or a combination of governmental entities; or
- (9) Any gathering of persons for the purpose of exercising first amendment rights, involving no fee for participation, and involving no sales or solicitations for the sale of any product or service, in the area bounded by:
  - (A) City Hall;
  - (B) The public sidewalks immediately abutting South King Street and Punchbowl Street;
  - (C) The public walkway along the eastern (diamond head) wall of City Hall and connecting with the public sidewalk immediately abutting South King Street; and
  - (D) The public walkway connecting the western (ewa) entrance of City Hall with the public sidewalk immediately abutting Punchbowl Street.

This subsection shall not be construed to preclude the holder of a lease entered into under Section 28-11.4 from charging a permitted fee for persons subject to paragraphs (3) and (4).

(Added by Ord. 99-05)

**Sec. 28-11.3 Terms and conditions.**

- (a) The holder of a permit for a minor event shall be subject to the following conditions:
  - (1) The permittee shall not prevent any person from having access to, and shall not charge a fee to any person for access to, City Hall, the Honolulu Municipal Building, the City Hall Annex, the Civic Center parking facility or the Civic Center child care facility.  
This condition shall not preclude the designation of parking stalls or areas within the Civic Center parking facility for the exclusive use of certain persons or classes of persons or the charging of a fee for parking within the facility to the extent allowed under the minor permit. This condition shall also not preclude the city or the operator of the Civic Center child care facility from closing a building on the grounds of City Hall and the Honolulu Municipal Building to the public as permitted by law or by lawful order of the city official in charge of the city building or, for the Civic Center child care facility, at the direction of the operator of the facility.
  - (2) The permittee shall not prevent any person from having use of, nor shall the permittee charge a fee to any person for use of, any public walkway for purposes of crossing the grounds or for purposes of access to any of the facilities enumerated in subdivision (1), except that the permittee may prevent a person from using such a public walkway to allow for the setting up and breaking down of stages, tents and other permitted temporary structures.
  - (3) The permittee shall not permit any contiguous area of more than 1,000 square feet of the grounds to be partitioned, fenced, roped or cordoned off or otherwise demarcated for purposes of charging a fee to persons entering the partitioned, fenced, roped, cordoned or otherwise demarcated area.
- (b) The holder of a lease or permit for a major or minor event and any person holding an exempt event shall abide by any applicable administrative rules of any city agency pertaining to the use or lease of the grounds of City Hall and the Honolulu Municipal Building, or any portion thereof.
- (c) The holder of a lease or permit for a major or minor event shall be subject to the following conditions:
  - (1) The lessee or permittee shall provide adequate security personnel and sanitation facilities during, and adequate clean-up following, the event and shall pay the cost of any soil aeration or grassing necessitated by the use of the grounds by the lessee or permittee and any patrons, volunteers or employees of the lessee or permittee.
  - (2) The use of the grounds shall conform to the diagram and statements contained in the lessee's or permittee's application.

- (3) At least one of the persons designated by the lessee or permittee to be in charge of the grounds shall be present on the grounds at all times during their active use.
  - (4) The lessee or permittee shall have such insurance naming the city as an additional insured, or post such bond with the city, as shall protect the city from any reasonably foreseeable injury to persons or property resulting from the lessee's or permittee's use of the grounds, including the acts and omissions of the lessee or permittee, any sublessee or subpermittee, any officer, director, employee or agent of the lessee or permittee or of any sublessee or subpermittee, relating to the event, including acts and omissions during the event, while setting up for the event, while breaking down temporary structures after the event, or while cleaning up after the event. The coverage and terms of such insurance or bond shall be subject to the approval of the director of budget and fiscal services. This requirement may be waived for a minor event if the director of budget and fiscal services determines that the risk of injury to persons or property reasonably foreseeable to result from the event is negligible.
  - (5) The lessee shall pay a fee of \$200.00 to cover the city's costs of processing and administering the lease for a major event and the permittee shall pay a fee of \$100.00 to cover the city's cost of processing and administering the permit for a minor event.
  - (6) For no event shall the active use of the grounds extend beyond three consecutive days.
  - (d) Any lease or permit to which this article applies may include conditions, in addition to those enumerated in subsections (a) through (c), prescribed by the director approving the lease or permit.
  - (e) Any lessee holding a major event shall be subject to the following additional condition: The lessee shall comply with the same conditions applicable to the holder of a permit for a minor event under subdivisions (a)(1) and (2), provided that the lessee may require persons seeking access to any facility described in subdivision (a)(1) or crossing the grounds for the purposes described in subdivision (a)(2) to move actively toward their destination or actively across the grounds.
  - (f) The violation of any condition of a lease or permit to which this article applies shall be grounds for termination of the lease or permit, nonissuance of a lease or permit in the future to the lessee or permittee or the imposition of such other penalty as may be prescribed in the lease or permit.
- (Added by Ord. 99-05; Am. Ord. 01-21)

**Sec. 28-11.4 Permitted private uses of grounds.**

- (a) Notwithstanding the provisions of Article 2, the city shall not enter into any lease or permit for the use of all or any portion of the grounds of City Hall and the Honolulu Municipal Building for any event to which this article applies, or otherwise grant any license or permit for the exclusive use of the grounds of City Hall and the Honolulu Municipal Building, or any portion thereof for any event to which this article applies, except as provided in subsections (b) and (c). No person may hold a major or minor event without obtaining a lease or permit pursuant to this article.
- (b) The director of customer services may, upon review of an application submitted pursuant to Section 28-11.5, issue a permit, on the terms and conditions applicable to minor events under Section 28-11.3, to any person to hold a minor event.
- (c) The director of budget and fiscal services may award a lease on the terms, conditions and rentals applicable to major events under Section 28-11.3 and approved by the corporation counsel as to form and legality, for a private organization holding a major event on the grounds and meeting all of the following criteria:
  - (1) The private organization is a not-for-profit corporation or association chartered or otherwise authorized to do business in the State of Hawaii for charitable purposes.
  - (2) The purposes for which the private not-for-profit corporation or association is organized provide direct benefits to the people of the city.
  - (3) The purposes for which the not-for-profit corporation or association is organized fall into at least one of the following categories:
    - (A) Social services for the poor, the aged or the youth of the city;
    - (B) Health services, including services for those with physical and/or emotional/mental disabilities;
    - (C) Educational, manpower and/or training services; or

- (D) Services to meet a definitive cultural, social or economic need within the city not being met by any other private organization.
- (d) Any lease for a major event entered into under, or permit for a minor event issued under, this article shall not be subject to the public bidding requirements of Articles 2 and 3.
- (e) In determining whether to enter into a lease or grant a permit under this section, and in conditioning such a lease or permit, the director of budget and fiscal services or the director of customer services, as the case may be, shall consider the potential effects of the proposed event on normal city functions.
- (Added by Ord. 99-05)

**Sec. 28-11.5 Application procedure.**

- (a) Any person desiring to enter into a lease to hold a major event on the grounds of City Hall and the Honolulu Municipal Building shall submit an application to the director of budget and fiscal services at least 30 days in advance of the proposed event. Any person desiring a permit to hold a minor event on the grounds shall submit an application to the director of customer services at least 15 days in advance of the minor event. The application shall be accompanied by the applicable fee and shall include the following:
- (1) If the application is for a major event, a statement of the person's qualifications to enter into a lease under this article and such documentation thereof as may be required by the director of budget and fiscal services.
  - (2) A statement of the portion of the grounds of City Hall and the Honolulu Municipal Building that will be used for the major or minor event.
  - (3) A statement of the duration of the proposed lease or permit and the dates and hours during which the grounds will be actively used and during which setting up and breaking down of temporary structures will be taking place.
  - (4) A diagram showing the proposed location of any temporary structures, as well as any areas proposed to be partitioned, fenced, roped, cordoned or otherwise demarcated for the purpose of charging a fee, or partitioned, fenced, roped or cordoned for any other purpose, including the name of any sublessee or subpermittee that will be using any temporary structure.
  - (5) A statement of the anticipated patronage of the event and the media that will be used to attract patronage.
  - (6) A statement as to proposed security, sanitation and clean-up measures and personnel for the event.
  - (7) A general statement of the forms of entertainment to be provided, if any, and whether sound amplification will be utilized.
  - (8) A statement of all fees to be charged by the lessee or permittee or any sublessee or subpermittee, including any entry fees, and of what is to be received by event patrons in exchange for payment of the fees.
  - (9) A statement of whether any of the net proceeds from the fees charged will be turned over to any person or persons other than the lessee or permittee and a statement as to the tax-exempt or charitable status of such person or persons.
  - (10) A designation of a natural person or persons who will be in charge of the grounds during the event.
  - (11) The address of the applicant, and the name and address of the natural person preparing the application.
  - (12) A statement by the applicant as to whether it shall meet the requirement of Section 28-11.3(c)(4) by providing liability insurance or by posting a bond and providing such proof of insurance or bond as may be required by the director of budget and fiscal services for a major event, or by the director of customer

services in consultation with the director of budget and fiscal services for a minor event. If an applicant for a minor event permit seeks a waiver of the requirement, the applicant shall so state and shall state the basis for the waiver.

- (13) A statement as to any insurance that will be provided by any sublessee or subpermittee.
  - (14) Any additional information deemed necessary by the director of budget and fiscal services and the director of customer services.
  - (b) The director of budget and fiscal services and the director of customer services shall prescribe the form of the applications made to each of them, respectively, pursuant to subsection (a).
  - (c) The director to whom the application is submitted shall notify the applicant within 10 working days of receipt of a completed application as to whether the application is granted, granted with conditions, or denied. The decision of the director shall be final.
- (Added by Ord. 99-05)

**Sec. 28-11.6 Copies of permit and lease applications to be provided to council—Notice of approval.**

Within three working days of receipt of an application to enter into a lease or for the issuance of a permit under Section 28-11.5, the director of budget and fiscal services or the director of customer services, whichever received the application, shall provide a copy of the application to the council. Within three working days of final approval of an application, the director giving the final approval shall give notice of the approval to the council and shall include in the notice any special conditions imposed under the lease or permit. (Added by Ord. 99-05)

**Article 12. Telecommunications Facilities**

**Sections:**

- 28-12.1 Definitions.
- 28-12.2 Leases for telecommunications facilities on city property.
- 28-12.3 Colocation of certain wireless communication facilities.

**Sec. 28-12.1 Definitions.**

For the purposes of this article, the following terms shall have the following meanings, unless it is apparent from the context that another meaning is intended:

“Antenna” means any system of wires, poles, rods, reflecting discs, dishes or similar devices used for the transmission or reception of wireless communications services signals.

“Aggregate footprint” means the area of space occupied by the telecommunications facilities, measured in square feet, including areas of exclusive use by the telecommunications carrier, but excluding areas for coaxial cable runs, conduit paths, utility and access easements.

“City property” means all real property now or hereafter owned by the City and County of Honolulu, whether in fee ownership or other interest.

“Department” means the department of information technology.

“Telecommunications facilities” means the plant, equipment and property, including but not limited to pedestals, antennas, electronics, and other appurtenances used to transmit, receive, distribute, provide or offer telecommunications.

“Type I Telecommunications Facility” means any telecommunications facility where the entire telecommunications facility is attached to or supported by any permanent building or other structure of the city located on the property on which the telecommunications facility is also located.

“Type II Telecommunications Facility” means any telecommunications facility that does not meet the definition of “Type I Telecommunications Facility.”

“Telecommunications service” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

“Wireless communications services facility” means a privately owned cellular, paging or broadband personal communications services facility that includes an antenna. (Added by Ord. 05-020; Am. Ord. 06-22)

**Sec. 28-12.2 Leases for telecommunications facilities on city property.**

- (a) After July 1, 2005\*, any private person or entity desiring to locate a telecommunications facility on city property shall submit an application for a lease to the department on a form prescribed by the department. The application shall include conceptual plans and specifications for the proposed facility, specifically setting forth: (1) the proposed height and area of the various components of the facility, including the proposed location of any cables, wires, and conduits to serve the facility, and (2) the proposed methods and treatments to be used to minimize the visual impacts of the proposed telecommunications facility to the greatest practicable extent.
- (b) The department shall consult with the city department or agency currently using the property in order to determine whether the proposed telecommunications facility would unduly interfere with the current use of the property. The department shall also consult with the department of the corporation counsel to determine whether there exist any legal restrictions that would preclude the use of the city property for the proposed facility and whether there exist significant liability concerns relating to the proposed facility.
- (c) Notwithstanding any provision of this chapter, and without the necessity of competitive bidding, if the department determines, after conducting the consultations prescribed in subsection (b), that it would be in the best interests of the city to lease the city property to the applicant, it may negotiate the terms of a lease with the applicant and submit the lease to the council for its approval, approval with modifications or conditions, or disapproval, by resolution. The department shall not authorize the use of any city property if the use of the property will compromise public safety.
- (d) Unless otherwise authorized by the council, the monthly rental for the use of city real property for a telecommunications facility shall be as follows:

**Type I Telecommunications Facilities:**

<u>Aggregate Footprint</u>	<u>Monthly Rental Amount</u>
75 square feet or less	\$1,000
Greater than 75 but less than or equal to 125 square feet	1,200
Greater than 125 but less than or equal to 175 square feet	1,425
Greater than 175 but less than or equal to 225 square feet	1,650
Greater than 225 but less than or equal to 275 square feet	1,875
Greater than 275 but less than 325 square feet	2,100
325 square feet or more	2,325

**Type II Telecommunications Facilities:**

<u>Aggregate Footprint</u>	<u>Monthly Rental Amount</u>
475 square feet or less	\$1,000
Greater than 475 but less than or equal to 525 square feet	1,200
Greater than 525 but less than or equal to 575 square feet	1,425
Greater than 575 but less than or equal to 625 square feet	1,650
Greater than 625 but less than or equal to 675 square feet	1,875
Greater than 675 but less than 725 square feet	2,100
725 square feet or more	2,325

The department may recommend and the council may authorize a different monthly rental amount when: (i) the city will be required to take measures to mitigate negative aesthetic aspects of the facility or minimize the potential threat of the facility to public safety; or (ii) in instances where the department determines that the monthly rental amount is not feasible.

\* Editor's note: "July 1, 2005" is substituted for "the effective date of this ordinance."

- (e) For purposes of this section an entity is not a "private" entity if it is an agency or department of the city, the State of Hawaii, or the United States, or if the telecommunications facility to be situated on city real property is to be owned by or used exclusively for the benefit of the city, the State of Hawaii, or the United States.
- (f) This section shall not apply to a telecommunications facility to be situated on land of the board of water supply or any semiautonomous agency of the city.
- (g) The term of the lease shall be subject to Article 4.
- (h) The lease shall provide for the applicant to post bond in a sum sufficient to ensure that the proposed telecommunications facility will be completed as planned and may require a reasonable deposit to insure that the facility is adequately maintained.
- (i) The council may impose such other reasonable conditions relating to safety or aesthetics, as it may deem appropriate.
- (j) Approval of the lease by the council shall not constitute a waiver of any zoning, subdivision, state land use, special management area, building code or other legal requirements applicable to the telecommunications facility. The lease shall allow the lessee to terminate the lease if any permit or approval necessary for the construction or operation of the facility is denied or revoked. Following council approval of the lease terms, the director of budget and fiscal services may award the lease subject to those terms.
- (k) The department may adopt rules having the force and effect of law, pursuant to HRS Chapter 91, for the implementation of this article.
- (l) This section shall not apply to any license, easement, concession or other right of occupancy for the following:
  - (1) Telecommunications cables, wires, conduits, ducts, poles, anchors, or wire line telecommunications equipment cabinets and associated appliances and equipment on city real property, provided that no related telecommunications facilities are situated on the property;
  - (2) The temporary use of city property as a staging area for the construction of telecommunications facilities on real property not under the ownership or control of the city; or
  - (3) The placement of a pay telephone, as defined in Hawaii Administrative Rules Section 6-82-3, and related cables, wires, conduits, ducts or other equipment on city property.
  - (4) The placement of telecommunications facilities on city property where the deed or other use restrictions preclude the city from entering into a lease agreement for the property.

(Added by Ord. 05-020)

**Sec. 28-12.3 Colocation of certain wireless communication facilities.**

All leases to private persons or entities for the purposes of situating a privately owned wireless communications services facility on city property shall include appropriate conditions to ensure that the facility shall be, to the maximum extent practicable, capable of supporting one or more antennas owned or used by private persons or entities other than the lessee. (Added by Ord. 05-020)



## REAL PROPERTY LEASE AND RENTAL

28-1.1

## Chapter 28

## LEASE AND RENTAL OF CITY REAL PROPERTY, INCLUDING FEES

## Articles:

1. General Provisions
2. Bidding Requirements and Procedures
3. Exceptions to Bidding Requirement
4. Term of Agreements
5. Penalty
6. General Provisions for the Lease and Rental Policy for the Department of Enterprise Services
7. Rental Schedule
8. Concessions
9. Nonprofit Organizations
10. Severability
11. Lease and Permit Policy for the Grounds of City Hall and the Honolulu Municipal Building
12. Telecommunications Facilities

## Article 1. General Provisions

## Sections:

- |        |              |
|--------|--------------|
| 28-1.1 | Purpose.     |
| 28-1.2 | Scope.       |
| 28-1.3 | Definitions. |

## Sec. 28-1.1 Purpose.

The purpose of this chapter is to establish a uniform procedure for the lease or rental of real property owned by the city, with the exception of the city hall building and the Honolulu municipal building. Any and all office spaces located within the subject two buildings shall be reserved for the exclusive use by agencies of the City and County of Honolulu. (Sec. 30-1.1, R.O. 1978 (1983 Ed.))

## Sec. 28-1.2 Scope.

The scope of this chapter includes the policy that the lease or rental of property of the City and County of Honolulu or the award of concessions shall require public advertisements and bids, except under specific circumstances. This chapter also includes the required bidding procedures and attendant terms of agreements and penalties. (Sec. 30-1.2, R.O. 1978 (1983 Ed.); Am. Ord. 91-27, 97-02)

## Sec. 28-1.3 Definitions.

The following words and phrases shall, for the purposes hereof, have the meaning respectively ascribed to them unless it is apparent from the context that a different meaning is intended:

"Agency" means any office, department, board, commission or other governmental unit of the city including the city council and its offices.

"Concession" means the grant to a private individual, partnership or corporation of the privileges to conduct operations essentially retail in nature, involving the sale of goods, wares, merchandise or services to the general public, such as restaurants, retail stores, parking facilities, golf driving ranges, canoe storage facilities (halaus), in or on land or buildings owned or controlled by the City and County of Honolulu.

"Council" means the city council of the City and County of Honolulu.

"Finance director" means the director of finance of the City and County of Honolulu.

"Managing director" means the managing director of the City and County of Honolulu.

"Nonprofit organization" means an association, corporation or other entity, organized and operated exclusively for religious, charitable, scientific, literary, cultural, educational, recreational or other nonprofit purposes, no part of the assets, income or earnings of which inures to the benefit of any individual or member thereof, and whose

charter or other enabling act contains a provision that, in the event of dissolution, the assets owned by such association, corporation or other entity shall be distributed to another association, corporation or other entity organized and operated exclusively for nonprofit purposes, and which further qualifies for exemption from the general excise tax provisions of HRS Chapter 237, as amended, and under Section 501 of the Internal Revenue Code of 1954, as amended. Such nonprofit organization must not merely be a sponsor of the event, production, attraction or activity being given, but must actively promote, produce, stage or conduct such event, production, attraction or activity. (Sec. 30-1.3, R.O. 1978 (1987 Supp. to 1983 Ed.))

## Article 2. Bidding Requirements and Procedures

### Sections:

28-2.1	Bidding required.
28-2.2	Call for bids.
28-2.3	Qualification of bidders.
28-2.4	Advertisement for bids.
28-2.5	Cost of publication.
28-2.6	Bids—Opening—Rejection.
28-2.7	Bids—Withdrawals.
28-2.8	Deposits to accompany bid.
28-2.9	Forfeiture of deposits—Return.
28-2.10	Bond in lieu of deposit.
28-2.11	Contract execution—Award to highest responsible bidder.
28-2.12	Security deposit.
28-2.13	Surety on bond—Justification.
28-2.14	Violation voids contract.
28-2.15	Competitive sealed proposals.

#### Sec. 28-2.1 Bidding required.

Unless expressly excepted in this chapter, no real property or any concession or concession space in any building or on any land owned by or under the jurisdiction of the City and County of Honolulu shall be leased or rented except under contract let under public advertisement for sealed tenders in the manner provided hereinafter. (Sec. 30-2.1, R.O. 1978 (1983 Ed.))

#### Sec. 28-2.2 Call for bids.

The finance director shall call for bids, accept bids and award concessions or award contracts to lease or rent property on terms, conditions and rentals approved by the corporation counsel, as to form and legality. (Sec. 30-2.2, R.O. 1978 (1983 Ed.))

#### Sec. 28-2.3 Qualification of bidders.

Before any prospective bidder shall be entitled to submit any bid required under this chapter, the bidder shall, not less than six calendar days prior to the day designated for opening bids, give written notice to the finance director of the bidder's intention to bid, and the finance director shall satisfy himself or herself of the prospective bidder's financial ability, experience and competence to carry out the terms and conditions of any contract that may be awarded. For this purpose, the finance director may require prospective bidders to submit answers, under oath, to questions contained in a questionnaire setting forth a complete statement of the experience, competence and financial standing of such prospective bidders. Whenever it appears to the finance director that any prospective bidder is not fully qualified and able to carry out the terms and conditions of the contract that may be awarded, the director may, after affording such prospective bidder an opportunity to be heard, refuse to receive or consider any bid offered by such prospective bidder. All information contained in the answers to questionnaires shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not fully entitled thereto shall be subject to penalties as provided by law. Questionnaires so submitted shall be returned to the bidders after having served their purpose. (Sec. 30-2.3, R.O. 1978 (1983 Ed.))

**Sec. 28-2.4 Advertisement for bids.**

- (a) Publication of a call for tenders for the awarding of concessions or concession spaces shall be made at least on three separate days in a daily newspaper of general circulation in the City and County of Honolulu.
- (b) Publication of a call for tenders for leasing of real property or any improvements thereon, other than a concession or concession space, shall be made once a week for at least two weeks in a daily newspaper of general circulation in the City and County of Honolulu.
- (c) Such public announcement shall include, but not be limited to the following information:
  - (1) Description of the concession, real property, or improvements and the objectives for it;
  - (2) Location;
  - (3) Scope of the award or lease;
  - (4) Length of the award or lease;
  - (5) Amount and type of government funds, if any, available for the project;
  - (6) Description of any special requirements of unique features.

(Sec. 30-2.4, R.O. 1978 (1983 Ed.))

**Sec. 28-2.5 Cost of publication.**

The finance director may require the party requesting the publication of a call for tenders to deposit with the director a certified check or cash equal to or greater than the estimated cost of publishing the advertisement for bids, before such advertisement is published. The cost of publication may be deducted from said deposit and retained by the city and county if said party fails to submit a bid. (Sec. 30-2.5, R.O. 1978 (1983 Ed.))

**Sec. 28-2.6 Bids—Opening—Rejection.**

The time of opening of such tenders shall not be less than five days after the last publication. All bids shall be sealed and delivered to the finance director, and shall be opened by the director at the hour and place to be stated in the call for tenders, in the presence of all bidders who attend, and may be inspected by any bidder. The finance director may reject any or all bids and waive any defects, when in the director's opinion such rejection or waiver will be for the best interest of the city and county. Upon completion of the evaluation and selection process, the finance director shall file a written report with the city clerk, including the results with the successful bidder. The city clerk, upon receipt of the written report, shall post same for public inspection under an appropriate title on the bulletin board on which meeting notices of the council, including its agenda, are posted and such report shall be a public record. (Sec. 30-2.6, R.O. 1978 (1983 Ed.))

**Sec. 28-2.7 Bids—Withdrawals.**

No bidder may withdraw such bid for a period of 60 days after the opening thereof. (Sec. 30-2.7, R.O. 1978 (1983 Ed.))

**Sec. 28-2.8 Deposits to accompany bid.**

All bids shall be accompanied by a deposit of legal tender or by a certified check payable to the finance director drawn on a bank doing business within the State of Hawaii, for or in a sum equal to five percent of the amount bid, but in no event to be less than \$50.00; provided, that when the amount bid exceeds \$50,000.00, the certificate of deposit or certified check shall be \$2,500.00 plus two percent of the amount in excess thereof. (Sec. 30-2.8, R.O. 1978 (1983 Ed.))

**Sec. 28-2.9 Forfeiture of deposits—Return.**

If the bidder to whom the contract is awarded fails or neglects to enter into the contract and furnish satisfactory security as required by this article, within 10 days after the award or within such further time as the finance director may allow, the finance director shall pay the deposit into the treasury as a realization of the City and County of Honolulu. If the contract is entered into and the security furnished within the required time, the deposit shall be returned to the successful bidder. Deposits made by the unsuccessful bidders shall be returned to them after the contract is entered into or, if the contract is not entered into, after the expiration of 60 days after the opening of the bids or after the finance director publishes another call for tenders, whichever is sooner. (Sec. 30-2.9, R.O. 1978 (1983 Ed.))

**Sec. 28-2.10 Bond in lieu of deposit.**

In lieu of the deposit of legal tender or a certified check, a bid may be accompanied by a surety bond naming the city and county as obligee, with the bidder as principal, and a surety company, authorized to do business as such in this state, as surety, in a penal sum equal to the deposit required under Section 28-2.8, conditioned upon the bidder entering into the contract and furnishing the required security within 10 days after the award or within such further time as the finance director may allow. (Sec. 30-2.10, R.O. 1978 (1983 Ed.))

**Sec. 28-2.11 Contract execution—Award to highest responsible bidder.**

All such contracts shall be in writing, shall be executed by the finance director in the name of the City and County of Honolulu, and shall be made with the highest responsible bidder, if such bidder shall qualify by providing the security required hereinbelow. If the highest and best bid or any other bid has been rejected, or if the bidder to whom the contract was awarded has failed to enter into the contract and furnish satisfactory security, the finance director may, in the director's discretion, award the contract to the next highest responsible bidder. (Sec. 30-2.11, R.O. 1978 (1983 Ed.))

**Sec. 28-2.12 Security deposit.**

Before any contract is entered into, the bidder shall give security for the compliance therewith by deposit of an amount equal to two months' rental or other charge required under the contract, except that in the case of a contract for the lease of residential property, a security deposit in an amount equal to one month's rent shall be required. In lieu thereof the finance director may accept good and sufficient bond for the said amount, naming the city and county as obligee, with the bidder as principal, and a surety company authorized to do business as such in this state, as surety. (Sec. 30-2.12, R.O. 1978 (1983 Ed.))

**Sec. 28-2.13 Surety on bond—Justification.**

If the surety or sureties on such bond shall be other than a surety company authorized to do business under the laws of this state, there shall be not more than four such sureties who shall severally justify such amounts as, taken together, will aggregate the full amount of the bond; provided, that in the case of such sureties they shall deposit with the finance director certified checks or certificates of deposit (payable on demand on or after such period as the finance director may stipulate) or bonds, stocks or other negotiable securities, or execute and deliver to such officer a deed or deeds of trust of real property, all of such character as shall be satisfactory to the finance director, in security equal to the full cash value of 100 percent of the amount for which each surety shall have assumed. The finance director may waive the necessity of furnishing such security, in cases where the director is satisfied as to the financial responsibility of the proposed surety or sureties; provided, that if there be but one personal surety, said surety shall justify the full amount of the bond. (Sec. 30-2.13, R.O. 1978 (1983 Ed.))

**Sec. 28-2.14 Violation voids contract.**

After the effective date of this chapter, any contract awarded or executed in violation of this chapter shall be void and of no effect. (Sec. 30-2.14, R.O. 1978 (1983 Ed.))

**Sec. 28-2.15 Competitive sealed proposals.**

(a) Notwithstanding anything to the contrary in this chapter, the city may lease or rent real property and/or improvements thereon by competitive sealed proposals when (1) such property and/or improvements will be used for cultural, arts, nature, sports, recreational, historical or other similar activities open to the public; (2) the city council approves of the use of such process by ordinance or resolution in advance of the issuance of the request for proposals, and (3) the director of budget and fiscal services determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the city. Factors to be considered in determining whether competitive sealed bidding is not practicable or not advantageous include:

- (1) Whether the award determination involves the consideration of factors in addition to financial return to the City and County of Honolulu;
- (2) Whether oral or written discussions may need to be conducted with offerors concerning technical and financial aspects of their proposals;
- (3) Whether offerors may need to be afforded the opportunity to revise their proposals, including revision of the financial return to the City and County of Honolulu; and

- (4) Whether an award may need to be based upon a comparative evaluation as stated in the request for proposals of differing financial return, quality, and contractual factors, in order to determine the most advantageous offering to the City and County of Honolulu. Quality factors may include technical and performance capability and the content of the technical proposal.
- (b) Proposals shall be solicited through a request for proposals.
  - (c) Public notice of the request for proposals shall be given in the same form and manner for advertisements for bids.
  - (d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during discussion. A register of proposals shall be prepared and shall be open for public inspection after the contract award.
  - (e) The request for proposals shall state the relative importance of (1) financial return to the city and (2) other evaluation factors.
  - (f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
  - (g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city, taking into consideration the financial return to the city and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.
- (Added by Ord. 02-64)

Article 3. Exceptions to Bidding Requirement

Sections:

- 28-3.1 Bidding not required—Leased or rental property—Conditions.
- (28-3.2 Bidding not required—Development of special needs housing, Repealed by Ord. 04-33.)
- 28-3.2 Reserved.
- 28-3.3 Bidding not required—Concessions.
- 28-3.4 Bidding not required—Leasing to private developers.
- 28-3.5 Bidding not required—Housing or human services providers.

Sec. 28-3.1 Bidding not required—Leased or rental property—Conditions.

The director of budget and fiscal services may award contracts to lease or rent property on terms, conditions and rentals approved by the corporation counsel as to form and legality without calling for public bids, when:

- (1) Eminent Domain. Real property and/or improvements thereon have been acquired by the City and County of Honolulu by eminent domain proceedings, negotiated purchase or exchange, and where immediate use of the property acquired is not necessary. Said property shall be rented on a month-to-month tenancy which shall be revocable at the option of the city after the tenant has been given 30 days' written notice to vacate. The total tenancy under any such lease or rental agreement shall not exceed the period of one year from the effective date of such lease or rental agreement; provided, however, that with consent of the council, a renewal or extension of said tenancy beyond such period may be allowed. The provisions of this paragraph shall not be construed as prohibiting the director from leasing or renting such property by public bidding and for a period in excess of one year, pursuant to the provisions of this chapter.
- (2) Employee of the City and County of Honolulu or the State of Hawaii. Real property and improvements thereon are leased or rented to employees of the City and County of Honolulu or the state. Said property shall be leased or rented only under the following conditions:
  - (A) The party or parties to whom the property is leased or rented must be and continue to be an employee of the City and County of Honolulu or the state during the term of the demise; and
  - (B) The leasing or renting of the property to said employee must be related to the employee's employment.
- (3) Thirty-Day Period or Less. Real property and/or improvements thereon are leased for a period not to exceed 30 days. No extension of such lease shall be permitted without calling for public bids.
- (4) Tourist Activities Without Charge. Enterprises, shows or activities presented without charge primarily for the promotion of the tourist industry in and for the City and County of Honolulu regardless of which person, association or company sponsors such enterprise, show or activity; provided, however, that such lessee or tenant does not sell merchandise on the premises, directly or indirectly, or engage in any business promotional or advertising, whether oral, by printed matter, signs, displays or electronic devices.
- (5) Neal S. Blaisdell Center or the Neal S. Blaisdell Center or the Waikiki Shell. The rental is for the use of facilities for the purpose of holding any event or attraction at the Neal S. Blaisdell Center or the Waikiki Shell in accordance with the provisions of Articles 6 through 9 of this chapter.
- (6) City and County Employee Organizations. Real property and/or office spaces that are leased or rented to any federal credit union of city and county employees or employees of city and county affiliate groups or organizations.
- (7) Eleemosynary Corporations. Real property and/or improvements thereon are leased or rented to any eleemosynary corporation, society or organization formed for the prevention of cruelty to animals, and which is authorized and empowered by law to seize and impound stray dogs running at large.
- (8) Government Employment Training Programs. Real property and/or improvements thereon are leased or rented to any nonprofit organization primarily engaged in employment training programs sponsored by the federal, state, or city and county government.
- (9) Accessory Uses. Real property is leased or rented to contractors who are awarded city construction contracts for use as a field office and storage of equipment and supplies. Rental shall be at the fair market rental and shall be limited to the duration of the construction contract only.
- (10) Governmental Subdivisions. Real property and improvements thereon are leased or rented for the use of any political or governmental subdivision of the federal, state or county governments.
- (11) Private Developer. Real property and improvements thereon are leased or rented to a private developer as described in Section 28-3.4.

(12) **Housing and Human Services Providers.** Real property and/or improvements thereon are leased to a provider of housing and human services as prescribed in Section 28-3.5.

(13) **Telecommunications Facilities.** City property is leased for use as telecommunications facilities under Article 12. (Sec. 30-3.1, R.O. 1978 (1983 Ed); Am. Ord. 90-14, 92-95, 04-33, 05-020)

(Sec. 28-3.2 **Bidding not required—Development of special needs housing. Repealed by Ord. 04-33.**)

Sec. 28-3.2 **Reserved.**

Sec. 28-3.3 **Bidding not required—Concessions.**

The finance director may award concessions on terms and conditions approved by the corporation counsel as to form and legality without calling for public bids, when:

- (a) **Activities Without Charge.** Concessions or concession spaces which are set aside without any charge for events, productions, attractions or activities including the exhibition and sale of handcrafts, works of art, produce or products of a nonprofit organization, as defined in Article 1, or its members as long as the sale of any craft item, works of art, produce or products are made by the member of the organization who actually makes, creates, grows or gathers the items being sold, and as long as all net profits earned by the nonprofit organization from the concession are to be applied to the expenses of the organization incurred in connection with events or activities directly related to the purpose for which it has been organized.
- (b) **Periods of Two Days or Less.** Concessions or concession spaces which are set aside for a period or periods of time not to exceed two successive days without any charge:
  - (1) For the exhibition and sale of works of art by artists who actually produce the works of art being exhibited and sold;
  - (2) For the exhibition and sale of handcrafted items being exhibited and sold; and
  - (3) For the display and sale of fruits and vegetables, seafoods and prepared but not manufactured food products by the person who actually grows or gathers the fruits and vegetables, catches the seafoods or prepares the food products being displayed and sold.
- (c) **Handicapped or Blind Persons.** Concessions or concession spaces which are set aside for the use of handicapped or blind persons or any nonprofit organization primarily engaged in physical rehabilitative programs.
  - (1) **Nonprofit Private Corporations.** The word "persons" contained herein shall include a nonprofit private corporation which has been exempted from taxation as prescribed under Section 501 of the Internal Revenue Code of 1986, as amended, and its articles of incorporation or association shall have a provision contained therein that the primary objective of the corporation is to service or aid or abet or assist the handicapped or blind persons.
  - (2) **No Rent, Except for Maintenance Cost.** Notwithstanding any provisions to the contrary contained herein, the finance director shall assess no rent for leasing or renting of concessions or concession space to handicapped or blind persons, including any vending machines assigned to such vendors; provided, that for real property, including improvements thereon, the finance director shall assess the cost of maintenance of that portion of such real property leased or rented to handicapped or blind persons.
- (d) **Governmental Subdivisions.** Concessions or concession spaces which are set aside for the use of any political or governmental subdivision of the federal, state or county governments.
- (e) **Nonprofit Beachboy Concessions.** Concessions or concession spaces which are set aside for beachboys licensed by the state department of transportation.
  - (1) **Policy.** The council finds that Hawaiian beachboys are rooted in the state's historical and cultural traditions and that there is a need for the city to provide for concessions available to licensed beachboys on beach property under the jurisdiction of the City and County of Honolulu.
  - (2) **Definition.** "Nonprofit beachboy concession" is the grant to a qualified beachboy association of the privilege to conduct operations essentially retail in nature, involving the rental of surfboards, bodyboards or canoes. A qualified beachboy association is an association which is dedicated to the preservation of the beachboy tradition and is incorporated as a nonprofit corporation in accordance with state law.
  - (3) **Special Conditions to Be Met When Providing Beachboy Concessions on Beach Park Property under the Jurisdiction of the City and County of Honolulu.** The following special conditions shall govern the award of nonprofit beachboy concessions on beach park property under the jurisdiction of the City and County of Honolulu:

- (A) The department of parks and recreation shall designate specific sites on the beach for each beachboy concession and shall locate the sites so as not to impede access to and use of the beach by the public;
- (B) A beachboy concession may offer to provide instruction for the use of rental equipment incidental to the rental of said equipment, and may offer the sale of canoe rides incidental to the rental of canoes; and
- (C) The department of parks and recreation shall establish policies to ensure that the use of the nonprofit beachboy concessions is restricted to beachboys who are licensed pursuant to Chapter 82, Title 19, Hawaii Administrative Rules (department of transportation), and that such concessions are operated to provide equal opportunity for use by all licensed beachboys.
- (4) Fees and Charges for Beachboy Concessions. The department of parks and recreation is authorized to set the fees charged by the beachboy concessions.
- (5) Rules. The director of parks and recreation shall adopt rules pursuant to HRS Chapter 91 necessary for the purposes of this subsection.
- (f) Nonprofit Zoo, Cultural Park and Botanical Garden Concessions. Concessions or concession space at county zoos, cultural parks or botanical gardens set aside for use by support groups which are incorporated as nonprofit corporations in accordance with state law, for the purpose of supporting county aims and goals of the zoo and botanical gardens and cultural parks; provided that each support group shall annually submit to the director of parks and recreation and the council an audited financial statement of the revenues and expenditures of that support group.
- (g) Coin-Operated Vending Machines. Concession spaces which are leased or rented for coin-operated vending machines except coin-operated insurance vending machines.
- (h) Public Pay Telephones. Concession spaces which are leased or rented for public pay telephones.
- (i) Hans L'Orange Baseball Facility. Concessions or concession spaces at the Hans L'Orange baseball facility which are set aside without charge to the permittee of a professional sports activity; provided, however, that the period of use of such concessions or concession space shall be limited to the term of the permit. As used in this section, unless the context otherwise requires:
  - (1) "Permittee" means the promoter, sponsor, exhibitor, league or other person who obtains a permit for the purposes of conducting a professional sports activity at a professional sports facility for which admission fees are charged;
  - (2) "Professional sports activity" means a game, event, exhibition, or activity of a recognized sport for which admission fees are charged and the participants in which receive compensation in return for participation in the sport;
  - (3) "Hans L'Orange baseball facility" means the playing field, bleachers, stands and other areas of the facility enclosed by a fence.

(Sec. 30-3.3, R.O. 1978 (1983 Ed.); Am. Ord. 90-74, 94-53, 94-80, 95-61)

**Sec. 28-3.4 Bidding not required-Leasing to private developers.**

- (a) The city may lease or rent real property, including improvements thereon, to a private developer without calling for bids for the purpose of constructing housing, commercial, parking and other facilities or uses in implementing the housing and human services programs of the city and county. As used in this section, "developers" includes both for-profit and nonprofit developers of housing or other facilities for any need group, including low-moderate income persons and persons receiving human services as defined in Section 28-3.5.
- (b) The city agency shall make a public announcement on each occasion when any project is proposed or contemplated and set forth the objectives to be achieved for the project and request interested persons to submit proposals therefor. The city agency shall make such announcements in a daily newspaper of general circulation in the state once a week for two successive weeks. Such public announcement shall include, but not be limited to the following information:
  - (1) Description of the proposed project and the objectives for the project, including a description of the type of need group to be served;
  - (2) Location of the proposed project;
  - (3) Scope of the project;
  - (4) Length of the lease;
  - (5) Amount and type of government funds available for the project; and
  - (6) Description of any special requirements or unique features of the project.
 Any interested developer shall file a statement of the developer's intention to submit a proposal with the city agency on or before 30 days after the last public announcement.

- (c) (1) The city agency shall examine all proposals from interested developers and determine those developers the city agency deems qualified to perform the services for the specific project under consideration. The agency shall thereafter select no fewer than three developers who are considered most qualified to perform the required services; provided, that if there are fewer than three developers, after the deadline for submitting proposals, the agency may still select a developer and file such report with the city clerk. The city agency may negotiate with developers submitting the best three proposals in making a final selection. If no qualified proposals are received in response to the notice, the city agency may negotiate with and select a developer, provided that fact is noted in the report filed pursuant to subdivision (2).
- (2) Upon completion of the evaluation and selection process, the director shall file a written report with the city clerk, including the results of the negotiations with the successful developer. The city clerk shall post the report for public inspection in City Hall where other public notices and meeting agendas of the council are posted. The report shall be a public record.
- (d) The evaluation and selection by any city agency of the design and developer for any housing project may include consideration of the following criteria:
- (1) Implementation of the general plan objectives and policies in the area of housing;
  - (2) Compatibility with all other applicable general plan objectives and policies;
  - (3) Contribution toward implementing the planned land use pattern and other development or redevelopment policies for the site and surrounding area, as specified in the adopted development plan and any adopted special or special area plan district covering the area; and
  - (4) Attractiveness and functionality of the project design. Specific considerations shall include:
    - (A) Conformance with the urban design principles and controls specified in the adopted development plan for the area;
    - (B) Relationship of structures within the project to each other, and of the entire project to surrounding structures, in terms of providing a harmonious composition of masses, colors and textures;
    - (C) Integration of spaces and building forms;
    - (D) Relationship of off-street parking to the overall vehicular circulation system;
    - (E) Pedestrian circulation plan;
    - (F) Provision of recreational and other facilities for community and leisure time activities; and
    - (G) Landscaping of the site.
  - (5) Economic feasibility of the project. Specific considerations shall include:
    - (A) Demand for the type and price of housing to be provided;
    - (B) Projected development costs;
    - (C) Projected income from unit sales/rentals;
    - (D) Availability of federal aid; and
    - (E) Anticipated cash flow.
  - (6) Developer's previous experience and financial capability.
  - (7) Compensation to be provided the city for the land lease or rental.
- (e) Subsequent to selection of the developer, the city agency shall issue to the developer a letter of intent which shall indicate to the developer that the developer may proceed at the developer's own expense and risk to initiate and undertake such studies as the developer may wish.
- (f) Subsequent to the receipt by the city clerk of the developer selection report, the council may require the city administration to prepare an appraisal of the land on which the project is proposed. The council may require the appraisal to be based on the highest and best use, the developer's proposed use, or both. In either case, the appraisal shall be based on the current Uniform Standards of Professional Appraisal Practice (USPAP) and Advisory Opinions as promulgated by the Appraisal Standards Board of the Appraisal Foundation. The requirements shall be expressed in a resolution approved by the council. The resolution also shall include a due date for submittal of the appraisal to the council. The mayor may refuse to prepare the appraisal, provided notice thereof is submitted to the council within five working days of the city administration's receiving the resolution.
- (g) At the earliest feasible date, a lease and development contract shall be submitted by the city agency to the council for approval by resolution; provided, that the council, prior to approval by resolution, may add, delete or amend any term or condition of said lease and development contract.
- Upon approval, said development contract shall set forth in detail all covenants, obligations, restrictions, requirements and conditions to govern the proposed development and subsequent operation of said project; provided, that such development contract shall indicate the studies and design work which must be satisfactorily carried out and approved as a condition to the execution of a lease for said property. The lease may be submitted to the council for

- approval by resolution separately from and subsequent to the submission of the development contract.
- (h) The lease rent may be negotiated. If the lease rent is for a nominal amount, the city agency shall certify that:
- (1) A public hearing was held on the project, including the lease terms;
  - (2) There is a compelling public need for the housing or human services to be provided;
  - (3) A suitable and reasonably priced private facility is not available;
  - (4) The developer has demonstrated financial need; and
  - (5) The lease complies with the restrictions specified in Section 28-4.2.
- (i) Any agency administering a city housing project affected by the provisions of this chapter shall establish a system to determine preferences by lot in the event the number of qualified applicants exceeds the number of housing units available. Where the city has established preferences for housing units by ordinance or rules and regulations, the order of preferences within each category for the selection of units shall be determined by lot.
- (Added by Ord. 90-14; Am. Ord. 97-08, 04-33)

**Sec. 28-3.5 Bidding not required—Housing or human services providers.**

- (a) The city may lease or rent real property and/or improvements thereon without recourse to public bidding to providers of housing or human services. For the purposes of this section:
- “Human services” includes child care, health services, and social services.
- “Providers” means operators or managers of housing units for designated need groups, or operators or managers of other facilities wherein human services are provided to designated need groups.
- “Social services” means those services required by persons with social problems or physical or mental disabilities. Persons requiring health or social services are also termed persons with special needs.
- (b) When such lease or rental to providers of housing or human services is contemplated, the director of budget and fiscal services shall cause to be published a notice stating:
- (1) The service objectives to be achieved, including the type or types of housing or human services to be provided and any limits on client fees charged;
  - (2) The minimum qualifications that providers of housing or human services must meet;
  - (3) The criteria to be used to rank and select proposals; and
  - (4) The proposal form, applicable deadlines, and other information necessary for interested persons to submit proposals.
- The notice shall be published in a daily newspaper of general circulation at least once a week for two successive weeks, and the last notice shall be published at least 14 days prior to the deadline for submission of proposals.
- (c) The appropriate city agency shall examine all proposals properly submitted from interested persons, evaluate them according to the stated criteria, and determine the best three proposals thereby. The city agency may negotiate with persons submitting the best three proposals in making a final selection of a proposal.
- (d) Following selection of a proposal, the city agency shall file a written report with the city clerk containing the public notice published to request proposals, a listing of the top three proposals, and identifying the proposal selected, including the results of any negotiations with the selected proposer.
- (e) Upon receipt of the report, the city clerk shall post the report for public inspection in City Hall where other public notices and meeting agendas of the council are posted. The report shall be a public record.
- (f) Following selection of the proposal, the city agency shall submit a lease or rental agreement therefor to the council for approval by resolution. The lease agreement shall contain any conditions and requirements applicable to the housing or human service to be provided, including client fees to be charged.
- (g) The lease rent may be negotiated. If the lease rent is for a nominal amount, the city agency shall certify that:
- (1) A public hearing was held on the project, including the lease terms;
  - (2) There is a compelling public need for the housing or human services to be provided;
  - (3) A suitable and reasonably priced private facility is not available;
  - (4) The developer has demonstrated financial need; and
  - (5) The lease complies with the restrictions specified in Section 28-4.2.
- (h) Notwithstanding the provisions of subsections (b) through (g), in cases of impending foreclosure affecting a nonprofit housing or human services provider, the council by resolution may authorize the director to assign a lease to a new nonprofit housing or human services provider without a request for proposals.

(Added by Ord. 92-95; Am. Ord. 04-33)

## Article 4. Term of Agreements

## Sections:

- 28-4.1 Duration.  
28-4.2 Lease restrictions—Generally.

## Sec. 28-4.1 Duration.

The term of any contract to lease or rent property of the City and County of Honolulu shall not exceed five years; provided, that the council by resolution may authorize the leasing or renting of property for a longer period when deemed necessary in the public interest and:

- (1) When the lessee or tenant is required by the terms of the proposed contract to expend the sum of \$25,000.00 or more for capital assets or to provide for the renovation or maintenance of any capital asset, or the lessee's or tenant's expenditure is equal to or in excess of the sum of \$25,000.00, as determined by the council. The term "capital asset" as used herein shall include not only the construction of improvements but the installation of furniture and fixtures, the cost of which would be depreciable over the period of the concession or lease in excess of five years;
  - (2) When the property is devoted to the training and education of handicapped or blind persons and by the terms of the proposed contract, the lessee or tenant is required to construct on such property any improvement, the estimated cost of which, including cost of labor and materials, is equal to, or in excess of, the sum of \$10,000.00, as determined by the council;
  - (3) When the real property is leased or rented for the use of the state or federal government or any agency thereof or the board of water supply;
  - (4) When the city enters into a development contract with a person for the development of the property and the construction of housing units of all kinds and types as permitted in the area where the property is situated, or any other type of structural development which may be beneficial to the city; or
  - (5) When the real property is leased to a housing or human services provider in accordance with Section 28-3.5 and the city agency proposing the lease certifies that the longer term is necessary to secure noncity financing or to enable the transfer of the real property to a different housing or human services provider.
- (Sec. 30-4.1, R.O. 1978 (1983 Ed.); Am. Ord. 90-14, 02-55, 04-33)

## Sec. 28-4.2 Lease restrictions—Generally.

Except as otherwise provided, the following restrictions shall apply to all leases made in accordance with this chapter:

- (1) No lease shall be for a longer term than 75 years including the initial term and any renewal or extension;
- (2) No lease shall be made to any person who is in arrears in the payment of taxes, rents or other obligations owing to the city.

(Added by Ord. 90-14; Am. Ord. 04-33)

## Article 5. Penalty

## Sections:

- 28-5.1 Disciplinary action.

## Sec. 28-5.1 Disciplinary action.

- (a) Any officer or employee who violates any of the provisions of this chapter upon a finding pursuant to a hearing to be conducted by such person's appointing authority, shall be subject to disciplinary action by such person's appointing authority.
- (b) Any lessee or tenant violating any provisions of this chapter shall cause the termination of the lease or tenancy and the lessee or tenant may be subject to the payment of any outstanding rental before and after such hearing.
- (c) Any person, officer or employee violating any provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and be subject to the provisions of Section 1-3.1, ROH 1990.

(Sec. 30-5.1, R.O. 1978 (1983 Ed.))

**Article 6. General Provisions for the Lease and Rental Policy for the  
Department of Enterprise Services**

**Sections:**

- 28-6.1 Purpose.
- 28-6.2 Definitions.
- 28-6.3 Rental of facilities.
- 28-6.4 Equal treatment.
- 28-6.5 Payment in advance.
- 28-6.6 Form of payment.
- 28-6.7 Use without payment prohibited.
- 28-6.8 Bookings and cancellation—Appeal.
- 28-6.9 Insurance.
- 28-6.10 Security.
- 28-6.11 Waiver of fees—Use of facilities for fundraising—Authority.
- 28-6.12 Waiver of rental rates, charges and rules—Conditions.
- 28-6.13 Co-promotion of events by the department of enterprise services.

**Sec. 28-6.1 Purpose.**

The purpose of Articles 6 through 9 of this chapter is to establish a uniform policy for the lease and rental of facilities at the Neal S. Blaisdell Center and the Waikiki Shell including awarding of concessions therein. (Sec. 29-1.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Sec. 28-6.2 Definitions.**

The following words and phrases shall, for the purposes of Articles 6 through 9, have the meaning respectively ascribed to them in this section, unless it is apparent from the context that a different meaning is intended:

"Admission event" means an event at which a fee is charged to or other consideration is exacted from an exhibitor, organization or member of the public for use of facilities or attendance at the event.

"Agency" means any office, department, board, commission or other governmental unit of the city, including the council and its officers.

"Concession" means the grant to a private individual, partnership, corporation or other entity of the privilege to conduct operations essentially retail in nature, involving the sale of goods, wares, merchandise or services to the general public, such as restaurants, retail stores, parking facilities, and golf driving ranges, in or on land or buildings owned by the City and County of Honolulu.

"Deposit" means the established portion of the rent charged to the tenant of an admission event in order to complete a contract.

"Dark day cost" means the one-day cost of maintaining a facility in good condition, when it is not rented.

"Director of enterprise services" means the director of enterprise services of the City and County of Honolulu.

"Exhibit show" means any event where the primary performance is a group of individual displays of products or services.

"Facility daily operating cost" means the combined dark day and use day cost to operate a facility, excluding any cost for services, which is not part of the rental. The "facility daily operating cost" shall be the basis for the fixed rental rate.

"Director of budget and fiscal services" means the director of budget and fiscal services of the City and County of Honolulu.

"Gross receipts from admission charges" means any consideration or value received by or on behalf of the tenant, less federal admission tax and state general excise tax, in connection with the use of the facilities rented, including admission to partake of food and refreshment to be served at the facilities covered by this chapter, whether or not such consideration or value is designated as a donation, gratuity, contribution or the like, and whether or not receipt of such consideration or value is evidenced by a ticket, card, ribbon, button, token, badge or the like.

"Managing director" means the managing director of the City and County of Honolulu.

"Meeting room" means the following rooms located at the Neal S. Blaisdell Center: Pikake Room; Hawaii Suites 1 to 12; Galleria 1st floor or 2nd floor; Maui Room; Oahu Room; Kauai Room; and Waikiki Room.

"Net square footage rent" means the rent charged for the square footage of sold booth space in any trade or exhibit show.

"Nonadmission event" means an event at which members of the public and exhibitors are admitted without charge or other obligation to pay for attendance at the event or use of the facilities except for an event where the facilities are rented to a nonprofit organization which rents the facilities pursuant to the terms and conditions set forth in Article 9.

"Nonperformance day" means the period from 10:00 a.m. to midnight when the facilities are used for any purpose not amounting to a "performance day." The term "nonperformance day" shall include, but is not limited to, the use of the facilities for rehearsals, moving in and out of equipment, and preparation of the facilities for the performance or event. The provisions of Section 28-7.2 shall be applicable.

"Nonprofit organization" means an association, corporation or other entity actively pursuing its primary purpose in the State of Hawaii, organized and operated exclusively for religious, charitable, scientific, literary, cultural, educational, recreational or other nonprofit purposes, no part of the assets, income or earnings of which inures to the benefit of any individual or member thereof, and whose charter or other enabling act contains a provision that, in the event of dissolution, the assets owned by such association, corporation or other entity shall be distributed to another association, corporation or other entity organized and operated exclusively for nonprofit purposes, and which further qualifies for exemption from the general excise tax provisions of HRS Chapter 237, as amended, and under Section 501 of the Internal Revenue Code of 1954, as amended. Such nonprofit organization must not merely be a sponsor of the event, production, attraction or activity being given, but must actively promote, produce, stage or conduct such event, production, attraction or activity.

"Overtime rate" means the rate quoted per each hour or fraction thereof and will be applicable when any facility is used beyond the rental periods specified herein, meaning the time period after midnight. However, at the discretion of the director of enterprise services, a one-hour grace period before the overtime rate for major events becomes applicable may be allowed. Rental of a facility solely on overtime rates is not authorized.

"Performance day" means the period from 10:00 a.m. to midnight when the facilities are used for an attraction, event or occasion attended by the public audience, or members of a group. The term "performance day" shall include the use of the facilities for the purpose of recording, filming or televising an attraction or event for a commercial purpose or for a purpose other than for the personal use of the camera or recording operator. However, the recording, filming or televising of an event or attraction, without charge by the tenant, for a bona fide news purpose or to advertise the event or attraction to be shown at the facilities covered herein, shall not otherwise convert a non-performance day to a performance day.

"Sold booth space" means any booth space paid by cash, trade or other form of payment.

"Use day operating cost" means the incremental operating cost (above dark day cost) incurred when the facility is in use. "Use day operating cost" includes labor, equipment and services not otherwise assessed as a direct cost to the tenant. Use day operating cost shall be the basis for the reduced rental rates assessed for nonadmission events and the deposits assessed for admission events. (Sec. 29-1.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03, 05-017)

#### Sec. 28-6.3 Rental of facilities.

The use and rental of facilities at the Neal S. Blaisdell Center and the Waikiki Shell (hereinafter referred to as "facilities") shall be permitted according to the provisions of Articles 6 through 9 of this chapter. (Sec. 29-1.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

#### Sec. 28-6.4 Equal treatment.

Rent and all other charges shall apply equally to all tenants using the facilities covered under this chapter, except as provided herein. (Sec. 29-1.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-6.12 Waiver of rental rates, charges and rules—Conditions.**

- (a) The director of enterprise services may waive the percentage rental charges set forth in Section 28-7.1 and any or all rules governing the reservation, rental and use of the Neal S. Blaisdell Center Arena for a party applying for a waiver, for a maximum of two consecutive years; provided that the director determines that an event or attraction to be presented by the party:
- (1) Offers the potential for revenues to the city in subsequent years that are greater than the amount of the charges waived;
  - (2) Offers the public a form of entertainment or sporting event that is not currently available at any facility in the city;
  - (3) Will involve the rental of the facilities for at least six performance or game days per year;
  - (4) Offers the potential to enhance the economic growth of the city by increasing tourism, attracting attendance by off-island fans or sports enthusiasts, promoting Hawaii by broadcasting the events nationally and internationally, and boosting retail sales in the city;
  - (5) Will not preclude the use of the Neal S. Blaisdell Center Arena by the regular tenants of these facilities during the year;
  - (6) Will not require the city to incur any costs for improvements or the purchase of new or additional equipment for a single event or attraction or to incur increased maintenance costs; and
  - (7) Will not interfere with or impair any existing contracts entered into by the city with commercial vendors, concessionaires or third parties involving the use of the Neal S. Blaisdell Center Arena.
- (b) The director of enterprise services is authorized to adopt rules pursuant to HRS Chapter 91 to implement this section, including establishing the waiver application form to be used by an applicant requesting a waiver.
- (Added by Ord. 98-17; Am. Ord. 03-03)

**Sec. 28-6.13 Co-promotion of events by the department of enterprise services.**

The director of enterprise services may waive the percentage rental charges set forth in Section 28-7.1 and enter into a co-promotion relationship with a tenant in order to bring to the Neal S. Blaisdell Center Arena, the Neal S. Blaisdell Center Exhibition Hall, the Neal S. Blaisdell Center Concert Hall or the Waikiki Shell a major commercial event which will be popular with the community and whose initial cost of presentation creates a financial risk which would prohibit the tenant from booking the event without a shared risk arrangement. The director of enterprise services may then co-promote the event with the tenant. All expenses from the event for both the city and the tenant will be netted from gross receipts. The net proceeds from the event would then be split equally between the tenant and the city.

The director of enterprise services shall report to the council no later than 30 days after June 30 of each year detailing, for the fiscal year just ended, the events co-promoted by the department and the increased revenues and bookings resulting therefrom compared to the previous year. (Added by Ord. 06-35)

**Article 7. Rental Schedule**

**Sections:**

- 28-7.1 Rates.
- (28-7.2) Definitions. Repealed by Ord. 03-03.)
- 28-7.2 Reserved.
- 28-7.3 Services included in rental charge.
- 28-7.4 Assignment of rights or privileges prohibited.
- 28-7.5 Broadcasting, taping or filming—Permission required.
- 28-7.6 Facilities use by city agencies.
- 28-7.7 Rules.

**Sec. 28-7.1 Rates.****(a) NONADMISSION EVENTS**

Users of facilities used for nonadmission events shall pay the following charges as applicable.

(1) Except for events qualifying for reduced rental rates, the following fixed rental rates shall be charged. The fixed rental rates shall cover the facility daily operating cost of each facility.

(A)	Arena	
	Performance Day.....	\$4,692.00
	Nonperformance Day.....	2,346.00
	Overtime rate (per hour).....	503.00
(B)	Concert Hall	
	Performance Day.....	2,964.00
	Nonperformance Day.....	1,482.00
	Overtime rate (per hour).....	318.00
(C)	Exhibition Hall	
	Performance Day.....	3,392.00
	Nonperformance Day.....	1,696.00
	Overtime rate (per hour).....	363.00
(D)	Pikake Room	
	Performance Day.....	826.00
	Nonperformance Day.....	413.00
	Overtime rate (per hour).....	89.00
(E)	Hawaii Suites 1 to 12	
	Performance Day.....	80.00
	Nonperformance Day.....	80.00
(F)	Galleria 1st floor or 2nd floor	
	Performance Day.....	200.00
	Nonperformance Day.....	100.00
	Overtime rate (per hour).....	5.00
(G)	Maui Room	
	Performance Day.....	125.00
	Nonperformance Day.....	125.00
(H)	Oahu Room	
	Performance Day.....	105.00
	Nonperformance Day.....	105.00
(I)	Kauai Room	
	Performance Day.....	95.00
	Nonperformance Day.....	95.00
(J)	Waikiki Shell	
	Performance Day.....	1,694.00
	Nonperformance Day.....	847.00
(K)	Waikiki Shell Amphitheater	
	Performance Day.....	564.00
	Nonperformance Day.....	282.00
(L)	Nonfacility Space	
	Performance Day.....	\$0.03/sq. ft.
	Nonperformance Day.....	\$0.015/sq. ft.

(2) **Reduced Rental Rates.**

When facilities are only rented on low use days (Mondays, Tuesdays or Wednesdays) or less than five weeks in advance of the use day, the tenant shall pay a reduced rent. The reduced rental rates shall cover the use day operating cost for each facility. Facility rentals by the Blaisdell Center's in-house caterers for all events approved by the director of enterprise services will be assessed at the reduced

rental rate except where the caterer's client is a qualified nonprofit organization as defined in this article. In such situation the caterer will be assessed the applicable nonprofit rate.

(A)	Arena	
	Performance Day .....	\$3,294.00
	Nonperformance Day .....	1,647.00
(B)	Concert Hall	
	Performance Day .....	1,844.00
	Nonperformance Day .....	922.00
(C)	Exhibition Hall	
	Performance Day .....	2,150.00
	Nonperformance Day .....	1,075.00
(D)	Pikake Room	
	Performance Day .....	596.00
	Nonperformance Day .....	298.00
(E)	Hawaii Suites 1 to 12	
	Performance Day .....	60.00
(F)	Galleria 1st or 2nd floor	
	Performance Day .....	200.00
(G)	Maui Room	
	Performance Day .....	125.00
(H)	Oahu Room	
	Performance Day .....	105.00
(I)	Kanai Room	
	Performance Day .....	95.00
(J)	Waikiki Shell	
	Performance Day .....	1,354.00
	Nonperformance Day .....	677.00
(K)	Nonfacility Space .....	\$.03/sq. ft.

(b) **ADMISSION EVENTS**

Users of facilities used for admission events shall pay the following charges as applicable:

(1)	Deposits.	
	Deposits for admission events shall cover the facility use day operating cost and are due upon execution of the rental agreement:	
(A)	Arena and Arena Theater Configuration (one-half arena seating and setup for stage shows)	
	Performance Day .....	\$3,294.00
	Nonperformance Day .....	1,647.00
(B)	Concert Hall	
	Performance Day .....	1,844.00
	Nonperformance Day .....	922.00
(C)	Exhibition Hall	
	Performance Day .....	2,150.00
	Nonperformance Day .....	1,075.00
(D)	Pikake Room	
	Performance Day .....	596.00
	Nonperformance Day .....	298.00
(E)	Hawaii Suites 1 to 12	
	Performance Day .....	60.00
(F)	Galleria 1st or 2nd floor	
	Performance Day .....	200.00
(G)	Maui Room	
	Performance Day .....	125.00

(H)	Oahu Room Performance Day.....	105.00
(I)	Kauai Room Performance Day.....	95.00
(J)	Waikiki Shell Performance Day.....	1,354.00
	Nonperformance Day.....	677.00
(K)	Waikiki Shell Amphitheater Performance Day.....	452.00
	Nonperformance Day.....	226.00
(L)	Nonfacility Space.....	\$.03/sq. ft.

(2)

**Percentage Rental Rates.**

The tenant shall pay the applicable deposit or percentage rent, whichever is greater, based upon gross receipts from admission charges. Percentage rent shall be based upon the schedule listed below and calculated on gross receipts from admission charges for each contracted event, which performances shall occur in a period of up to seven consecutive days. Each seven consecutive day period or portion thereof, shall begin a new calculation of the percentage rent period.

(A)

**Arena:****(i) Full Arena**

10.0% of gross receipts up to \$150,000.00; plus  
8.5% of gross receipts from \$150,000.01 to \$250,000.00; plus  
7.5% of gross receipts from \$250,000.01 to \$350,000.00; plus  
6.5% of gross receipts from \$350,000.01 to \$450,000.00; plus  
5.5% of gross receipts from \$450,000.01 to \$550,000.00; plus  
5.0% of gross receipts over \$550,000.00.

**(ii) Arena Theater Configuration**

5% of gross receipts.

**(iii) Should a tenant request a cap on the percentage rent as a condition of bringing to the Arena a major popular commercial event with a minimum of two consecutive performances, the director may set a rent cap as follows:**

For the first two performances, the percentage rent shall be calculated as prescribed in this section and the percentage rent shall be capped at a total of \$53,000.00.

For each additional performance of the event, the percentage rent shall be calculated as prescribed in this section and the percentage rent shall be capped at \$26,500.00.

(B)

**Waikiki Shell****(i) Waikiki Shell**

When the Waikiki Shell is rented during the months of April through August, the following percentage rates will apply:

10.0% of gross receipts up to \$75,000.00; plus  
8.5% of gross receipts from \$75,000.01 to \$150,000.00; plus  
5.0% of gross receipts over \$150,000.00.

When the Waikiki Shell is rented during the low-use months of September through March, the following percentage rates will apply:

8.5% of gross receipts up to \$150,000.00; plus  
5.0% of gross receipts over \$150,000.00.

**(ii) Waikiki Shell Amphitheater**

5% of gross receipts.

(C)

**Concert Hall**

5.0% of gross receipts up to \$500,000.00; plus  
5.0% of gross receipts in excess of 75% of the weekly gross potential (based upon ticket price and salable seats). The maximum weekly percentage rent for the Concert Hall shall be \$35,000.00.

- (D) **Exhibition Hall**  
10.0% of gross receipts.
  - (E) **Pikake Room**  
5.0% of gross receipts.
  - (F) **Hawaii Suites, Maui, Oahu, Kauai and Galleria**  
5.0% of gross receipts.
- (3) **Net Square Footage Rental.** Net square footage is calculated by the facility in which the booth space is located. The booth space shall be the area a subcontractor of the tenant shall have rented to present a product, service or other commercial display. Rent shall be \$0.17 per net square foot per event day. A tenant shall pay the greater of the deposit, the total net square footage rental, or the percentage rental rate for each event day.
- (4) **Exhibition Hall and Meeting Rooms Rental for Fundraisers.** Where the exhibition hall and meeting rooms are rented for the presentation of a fundraising event sponsored by a nonprofit organization, a bona fide political party, which qualifies under Hawaii's election laws, or a bona fide political candidate, who qualifies under Hawaii's election laws, the tenant of the exhibition hall shall pay the applicable rental charge or 10 percent of the donated gross receipts collected for the event, whichever is greater; provided, that a rental cap shall apply which provides that the percentage rental shall not exceed twice the applicable deposit; and this rental cap shall not apply to the Waikiki Shell, arena or the concert hall if it is used for a fundraising event.
- (5) **Facility Use for Indoor Sports Practice Rental.** When the sports surface is already installed, ordinary lighting is used, and there are no additional labor, cleanup and air conditioning costs incurred by the city, the use of the facility for practice purposes, at the discretion of the director of enterprise services, is permissible without charge; provided, that a waiver of liability is signed by the tenant.
- (c) **Nonperformance Day Rental.**
- (1) When renting either the exhibition hall or the Pikake Room, the tenant will be entitled to the nonperformance day rental rate for the number of days equal to the number of performance days. Any nonperformance days exceeding that number will be charged at the fixed rental rate, reduced rental rates, or deposit, as applicable, for a performance day for the facility.
  - (2) Any tenant renting the arena for an event which requires more than eight hours to change over the facility for that event will be charged a nonperformance day at the beginning and end of the booking.
- (d) **Charges for Facilities and Services Not Specified.** The director of enterprise services shall be authorized to establish and assess reasonable rental charges for those facilities and services not specified herein.

(Sec. 29-2.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 98-17, 03-03, 05-017, 06-35)

(Sec. 28-7.2 **Definitions.** Repealed by Ord. 03-03.)

Sec. 28-7.2 **Reserved.**

Sec. 28-7.3 **Services included in rental charge.**

In return for the rental payment, the city shall furnish the tenant with the use of the facilities for the purposes specified, ordinary lighting, ordinary cleanup and air conditioning, if available. The rental payment shall not include the services of electricians, spotlight operators, stagehands, musicians, ticket sellers, ushering personnel, janitors, security, medical services or any other services and extraordinary costs unless specified in the rental agreement. The director of enterprise services may require a tenant to make a reasonable deposit to be determined at the director's discretion to cover anticipated extraordinary cleanup costs, or require the tenant to arrange for cleanup of the facility at the tenant's own expense, or both. (Sec. 29-2.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-7.4 **Assignment of rights or privileges prohibited.**

The assignment of any rights or privileges under a rental agreement is prohibited without the written consent of the director of budget and fiscal services. When there is an authorized full or partial assignment of such rights or privileges, the director of enterprise services is authorized to charge and collect from the tenant-assignor an additional

sum equal to the total assessment for the facility rented. The provisions of Sections 28-6.9 and 28-6.10 shall also be applicable to an assignee. (Sec. 29-2.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-7.5 Broadcasting, taping or filming—Permission required.**

All rental agreements shall reserve the right to the city to negotiate charges for radio and television broadcasts, motion picture or recording privileges in the facilities, not exceeding 10 percent of anticipated receipts from the sale of broadcast rights by the tenant, and residual payments for the use of any film, videotape, recording or taping made in a facility covered by the policy. The use of the facilities to broadcast, film, videotape or record without the written permission of the city shall be prohibited. Any tenant who films, tapes, broadcasts or records any event in the facilities rented without the permission of the city may be assessed a charge fixed at the discretion of the director of enterprise services consistent with charges negotiated with tenants similarly situated plus a 25 percent penalty of such charge. (Sec. 29-2.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-7.6 Facilities use by city agencies.**

Any city agency may reserve and use any of the facilities covered herein upon written confirmation by the director of enterprise services. Prior to issuing such confirmation, the director of enterprise services shall ensure that the appropriate departmental transfer of funds representing minimum rental and all other charges shall be accomplished. Rental charges may be waived, at the discretion of the director of enterprise services, if the facility is available and booked no more than three weeks in advance of the event date. (Sec. 29-2.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-7.7 Rules.**

The director of enterprise services shall adopt rules, in accordance with HRS Chapter 91, not inconsistent with this chapter, governing the reservation, renting and use of the facilities covered herein. (Sec. 29-2.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

### Article 8. Concessions

**Sections:**

**28-8.1 Awarding of concessions.**

**Sec. 28-8.1 Awarding of concessions.**

- (a) Concessions in the facilities shall be awarded as provided by law. The term of any concession shall not exceed a period of five years.
  - (b) The sale and consumption of alcoholic beverages shall be in conformity with applicable laws. However, the sale and consumption of alcoholic beverages shall be prohibited if the tenant of the facility in which such concession is located objects to such sale and consumption.
- (Sec. 29-3.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

### Article 9. Nonprofit Organizations

**Sections:**

- 28-9.1 Facilities use and rental by nonprofit organizations.
- 28-9.2 Proof of nonprofit status.
- 28-9.3 Rental rates.
- 28-9.4 Special performances.
- 28-9.5 Equipment rental.
- 28-9.6 Scheduling of nonperformance days.
- 28-9.7 Applicability of Articles 6 through 9.

**Sec. 28-9.1 Facilities use and rental by nonprofit organizations.**

A nonprofit organization may use the facilities of the Neal S. Blaisdell Center and the Waikiki Shell under the terms and conditions provided herein. (Sec. 29-4.1, R.O. 1978 (1987 Supp. to 1983 Ed.)

**Sec. 28-9.2 Proof of nonprofit status.**

The nonprofit organization shall provide proof to the director of enterprise services that it qualifies under the definition of a "nonprofit organization" set forth in Section 28-6.2. (Sec. 29-4.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-9.3 Rental rates.**

**(a) Nonprofit Fixed Rental.**

(1) The department of enterprise services will establish nonprofit fixed rental rates at the Neal Blaisdell Center Arena, Concert Hall, Pikake Room and Waikiki Shell equivalent to the applicable use day operating cost for facility rentals. Rates will be adjusted annually at the beginning of each fiscal year commencing on July 1, 2006 in accordance with the rate schedule in Section 28-9.3 below until the nonprofit fixed rental rate for the facilities identified is equivalent to but no more than the use day operating cost for the facility. After attainment of such coverage, the department will conduct a use day operating cost review on a biennial basis thereafter and undertake rental adjustment through the adoption of rules pursuant to HRS Chapter 91 to maintain the nonprofit rental rates at the use day operating cost described herein.

(2) Nonprofit Fixed Rental in FY 2006

(A)	Arena	
	Performance Day .....	\$1,288.00
	Nonperformance Day .....	644.00
(B)	Concert Hall	
	Performance Day .....	790.00
	Nonperformance Day .....	395.00
(C)	Exhibition Hall	
	Performance Day .....	964.00
	Nonperformance Day .....	482.00
(D)	Pikake Room	
	Performance Day .....	334.00
	Nonperformance Day .....	167.00
(E)	Waikiki Shell	
	Performance Day .....	670.00
	Nonperformance Day .....	335.00

(3) Nonprofit Fixed Rental in FY 2007

(A)	Arena	
	Performance Day .....	\$1,788.00
	Nonperformance Day .....	894.00
(B)	Concert Hall	
	Performance Day .....	1,054.00
	Nonperformance Day .....	527.00
(C)	Exhibition Hall	
	Performance Day .....	1,260.00
	Nonperformance Day .....	630.00
(D)	Pikake Room	
	Performance Day .....	400.00
	Nonperformance Day .....	200.00
(E)	Waikiki Shell	
	Performance Day .....	840.00

	Nonperformance Day.....	420.00
(4)	Nonprofit Fixed Rental in FY 2008	
(A)	Arena	
	Performance Day.....	\$2,288.00
	Nonperformance Day.....	1,144.00
(B)	Concert Hall	
	Performance Day.....	1,318.00
	Nonperformance Day.....	659.00
(C)	Exhibition Hall	
	Performance Day.....	1,556.00
	Nonperformance Day.....	778.00
(D)	Pikake Room	
	Performance Day.....	466.00
	Nonperformance Day.....	233.00
(E)	Waikiki Shell	
	Performance Day.....	1,010.00
	Nonperformance Day.....	505.00
(5)	Nonprofit Fixed Rental in FY 2009	
(A)	Arena	
	Performance Day.....	\$2,788.00
	Nonperformance Day.....	1,394.00
(B)	Concert Hall	
	Performance Day.....	1,582.00
	Nonperformance Day.....	791.00
(C)	Exhibition Hall	
	Performance Day.....	1,852.00
	Nonperformance Day.....	926.00
(D)	Pikake Room	
	Performance Day.....	532.00
	Nonperformance Day.....	266.00
(E)	Waikiki Shell	
	Performance Day.....	1,180.00
	Nonperformance Day.....	590.00
(6)	Nonprofit Fixed Rental in FY 2010	
(A)	Arena	
	Performance Day.....	\$3,294.00
	Nonperformance Day.....	1,647.00
(B)	Concert Hall	
	Performance Day.....	1,844.00
	Nonperformance Day.....	922.00
(C)	Exhibition Hall	
	Performance Day.....	2,150.00
	Nonperformance Day.....	1,075.00
(D)	Pikake Room	
	Performance Day.....	596.00
	Nonperformance Day.....	298.00
(E)	Waikiki Shell	
	Performance Day.....	1,354.00
	Nonperformance Day.....	677.00
(7)	The nonprofit organization shall pay the nonprofit fixed rental rates, reduced rental rates, or deposit, as applicable, for each day of use. The percentage rental rates as set forth in Section 28-7.1(b)(2), shall be	

- applicable to a nonprofit organization, except for the rental of the concert hall for which the additional rental charge shall be five percent of the gross receipts in excess of \$40,000.00.
- (8) Public educational institutions or private educational institutions which are licensed by the state department of education and qualify as nonprofit organizations shall pay the nonprofit fixed rental rates, reduced rental rates, or deposit, as applicable, for each day of use; provided that the activity or the sponsored program which takes place at the center is an integral part or extension of an established school curriculum, including but not limited to athletic, musical, cultural (plays and dramas), social (school dances or graduation exercises) and educational (lectures and seminars) activities; provided further that this exception shall not be available if the activity or program is primarily for fundraising purposes. Any activity or program shall be deemed primarily for fundraising purposes when the funds raised through admissions, donations or gifts or other things of value exceed the cost of sponsoring the activity or program at the center or exceed the amount budgeted for the curriculum activity or program for which the center was rented. The percentage rental rates, as set forth in this section or Section 28-7.1(b)(2), shall be applicable to a nonprofit organization, except for the rental of the concert hall for which the additional rental charge shall be five percent of the gross receipts in excess of \$40,000.00.
- (b) (1) Any nonprofit organization renting the concert hall for not less than 30 performance days during the current fiscal year of the city shall not be required to pay the five percent additional rental charge on the gross receipts in excess of \$40,000.00.
- (2) Any nonprofit organization renting the concert hall for 21 or more consecutive days shall pay the minimum rental due for that rental period as specified in subsection (a) plus five percent of gross receipts for the rental period in excess of \$250,000.00.
- (3) Any nonprofit organization that rents the concert hall and qualifies for the rental adjustment contained in Section 28-9.3(b)(1) may, prior to receiving a signed contract from the city, or with their agreement after receiving a signed contract from the city, be displaced from the contracted date by the department of enterprise services to allow the use of the facility by another tenant that will provide an event that offers greater financial benefit to the department; be of large public appeal; and offer an attraction to the community that would not otherwise be presented without the availability of the concert hall. If a nonprofit organization is displaced as described above, the nonprofit organization shall be given replacement use of the Waikiki Shell and not be required to pay any percentage rental charge.

(Sec. 29-4.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03, 05-017, 06-35)

#### Sec. 28-9.4 Special performances.

The nonprofit organization shall be accorded the use of the concert hall at no charge for fixed rental, and no charge levied for equipment rental or usher fees, under the following conditions:

- (a) The performance shall consist of events or attractions staged primarily for the educational and cultural betterment of the youth of Hawaii 18 years old and under;
- (b) The performance shall be authorized in writing by the state department of education and shall be held on regular school days;
- (c) The performance shall be held between the matinee hours of nine a.m. and two p.m. on a space available basis to be determined by the director of enterprise services; and
- (d) The admission price for the performance shall not exceed \$2.00 per student.

(Sec. 29-4.4, R.O. 1978 (1987 Supp. to 1983 Ed.)); Am. Ord. 99-03, 03-03)

#### Sec. 28-9.5 Equipment rental.

The nonprofit organization shall pay the prevailing equipment rental rates established by the director of enterprise services for the use of equipment. (Sec. 29-4.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

#### Sec. 28-9.6 Scheduling of nonperformance days.

The scheduling of nonperformance days shall be on a space available basis to be determined by the director of enterprise services. (Sec. 29-4.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Sec. 28-9.7 Applicability of Articles 6 through 9.**

Except as otherwise provided in this article, all of the provisions of Articles 6 through 9 shall apply to nonprofit organizations. (Sec. 29-4.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

**Article 10. Severability****Sections:**

28-10.1 Severability.

**Sec. 28-10.1 Severability.**

The provisions of this chapter, as enacted by this ordinance, are hereby declared to be severable. In accordance therewith, if any portion of said chapter is held invalid for any reason, the validity of any other portion of this chapter shall not be affected and if the application of any portion of this chapter to any person, property or circumstance is held invalid, the application hereof to any other person, property or circumstances shall not be affected. (Sec. 30-6.1, R.O. 1978 (1983 Ed.); (Sec. 29-5.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Article 11. Lease and Permit Policy for the Grounds of City Hall and the Honolulu Municipal Building****Sections:**

28-11.1 Definitions.

28-11.2 Applicability.

28-11.3 Terms and conditions.

28-11.4 Permitted private uses of grounds.

28-11.5 Application procedure.

28-11.6 Copies of permit and lease applications to be provided to council—Notice of approval.

**Sec. 28-11.1 Definitions.**

For the purposes of this article, the following terms shall have the following meanings, unless it is apparent from the context that another meaning is intended.

"Active use" of grounds means use of the grounds while activities or events are being held for patrons, or goods or services are being sold to patrons.

"Entry fees" means any fees charged during a major event by any person, including the lessee, to persons for:

- (1) Entry onto the grounds of City Hall and the Honolulu Municipal Building or into any contiguous area of the grounds in excess of 1,000 square feet; or
- (2) Use of any public walkway.

"Event" means any gathering, held in whole or in part by a person or persons on the grounds of City Hall and the Honolulu Municipal Building.

"Exempt event" means any event:

- (1) In which no more than 25 persons are anticipated to participate;
- (2) For which there is no sound amplification;
- (3) Which lasts for a period of less than three hours;
- (4) For which no fee is charged for participation;

- (5) Involving no sales or solicitations for the sale of any product or service; and
- (6) For which no temporary structures are set up.

"Fee" includes any charge, however denominated, whether in the form of money, token, script or other medium of value.

"Food" includes beverages, condiments and utensils.

"Grounds of City Hall and the Honolulu Municipal Building" or "grounds" means Tax Map Key parcels 2-1-33: 7 and 2-1-33: 10, but excluding City Hall; the Honolulu Municipal Building, the City Hall Annex, the portion of Tax Map Key parcel 2-1-33: 10 that is set aside for use as the Civic Center child care facility and, to the extent that they may be within said parcels, the public sidewalks immediately abutting King Street, Alapai Street and Beretania Street. For purposes of this definition, the inner courtyards of City Hall and the Honolulu Municipal Building shall be deemed a part of those buildings.

"Hold" includes "conduct," "sponsor" or "promote."

"Lease" means any lease agreement, rental agreement or concession agreement.

"Lessee" means any person holding any lease for use of all or any portion of the grounds of City Hall and the Honolulu Municipal Building.

"Major event" means an event for which the person holding the event desires authority to:

- (1) Impede any person from access to, or charge a fee to any person for access across the grounds of City Hall and the Honolulu Municipal Building to, City Hall, the Honolulu Municipal Building, the City Hall Annex, the Civic Center parking facility or the Civic Center child care facility;
- (2) Prevent any person from having use of, or charge any person a fee for use of, any public walkway; or
- (3) Partition, fence, rope, cordon off or otherwise demarcate any contiguous area of more than 1,000 square feet of the grounds for purposes of precluding any person from entering the area or for purposes of charging a fee to any person to enter the area.

"Minor event" means any event other than a major event or exempt event.

"Person" includes any natural person; any limited or general partnership or joint venture; any limited liability company; any corporation, whether professional, for profit or not-for-profit; any trust, including any business or land trust; and any other private organization, association or entity. The term shall not include a governmental agency.

"Public walkway" means any walkway or pathway, including any ramp or steps, designed to accommodate pedestrian traffic, whether paved with asphalt, concrete, brick or any other material located on the grounds of City Hall and the Honolulu Municipal Building, but excluding the public sidewalks immediately abutting King Street, Alapai Street, Punchbowl Street and Beretania Street.

"Sublessee" means a person authorized, expressly or impliedly, by any person holding a lease entered into under this article for a major event, to provide goods or services to the patrons of the major event.

"Subpermittee" means a person authorized, expressly or impliedly, by any person holding a permit issued under this article for a minor event, to provide goods or services to the patrons of the minor event.

"Temporary structures" includes tents, booths, stages, viewing stands, risers, rides, games, portable toilets and similar structures set up on the grounds for an event.

(Added by Ord. 99-05)

#### Sec. 28-11.2 Applicability.

- (a) This article shall apply to any lease, license, permit or agreement entered into by the city for the use of all or any portion of the grounds of City Hall and the Honolulu Municipal Building for the purposes of conducting an event.
- (b) This article shall not apply to:
  - (1) Any easement, including any utility easement;
  - (2) Any temporary license for the purposes of permitting the repair or renovation of or additions to City Hall, the Honolulu Municipal Building, the City Hall Annex, the Civic Center parking facility or the Civic Center child care facility;

- (3) Any peddling activity by any peddler duly licensed pursuant to HRS Section 445-141;
- (4) Any handbilling activity;
- (5) Any display permitted under the city's Honolulu city lights program;
- (6) Any food vending concession awarded by the city;
- (7) The city-sponsored people's open market program;
- (8) Any gathering held exclusively by a governmental entity or a combination of governmental entities; or
- (9) Any gathering of persons for the purpose of exercising first amendment rights, involving no fee for participation, and involving no sales or solicitations for the sale of any product or service, in the area bounded by:
  - (A) City Hall;
  - (B) The public sidewalks immediately abutting South King Street and Punchbowl Street;
  - (C) The public walkway along the eastern (diamond head) wall of City Hall and connecting with the public sidewalk immediately abutting South King Street; and
  - (D) The public walkway connecting the western (ewa) entrance of City Hall with the public sidewalk immediately abutting Punchbowl Street.

This subsection shall not be construed to preclude the holder of a lease entered into under Section 28-11.4 from charging a permitted fee for persons subject to paragraphs (3) and (4).

(Added by Ord. 99-05)

**Sec. 28-11.3 Terms and conditions.**

- (a) The holder of a permit for a minor event shall be subject to the following conditions:
  - (1) The permittee shall not prevent any person from having access to, and shall not charge a fee to any person for access to, City Hall, the Honolulu Municipal Building, the City Hall Annex, the Civic Center parking facility or the Civic Center child care facility.  
This condition shall not preclude the designation of parking stalls or areas within the Civic Center parking facility for the exclusive use of certain persons or classes of persons or the charging of a fee for parking within the facility to the extent allowed under the minor permit. This condition shall also not preclude the city or the operator of the Civic Center child care facility from closing a building on the grounds of City Hall and the Honolulu Municipal Building to the public as permitted by law or by lawful order of the city official in charge of the city building or, for the Civic Center child care facility, at the direction of the operator of the facility.
  - (2) The permittee shall not prevent any person from having use of, nor shall the permittee charge a fee to any person for use of, any public walkway for purposes of crossing the grounds or for purposes of access to any of the facilities enumerated in subdivision (1), except that the permittee may prevent a person from using such a public walkway to allow for the setting up and breaking down of stages, tents and other permitted temporary structures.
  - (3) The permittee shall not permit any contiguous area of more than 1,000 square feet of the grounds to be partitioned, fenced, roped or cordoned off or otherwise demarcated for purposes of charging a fee to persons entering the partitioned, fenced, roped, cordoned or otherwise demarcated area.
- (b) The holder of a lease or permit for a major or minor event and any person holding an exempt event shall abide by any applicable administrative rules of any city agency pertaining to the use or lease of the grounds of City Hall and the Honolulu Municipal Building, or any portion thereof.
- (c) The holder of a lease or permit for a major or minor event shall be subject to the following conditions:
  - (1) The lessee or permittee shall provide adequate security personnel and sanitation facilities during, and adequate clean-up following, the event and shall pay the cost of any soil aeration or grassing necessitated by the use of the grounds by the lessee or permittee and any patrons, volunteers or employees of the lessee or permittee.
  - (2) The use of the grounds shall conform to the diagram and statements contained in the lessee's or permittee's application.

- (3) At least one of the persons designated by the lessee or permittee to be in charge of the grounds shall be present on the grounds at all times during their active use.
  - (4) The lessee or permittee shall have such insurance naming the city as an additional insured, or post such bond with the city, as shall protect the city from any reasonably foreseeable injury to persons or property resulting from the lessee's or permittee's use of the grounds, including the acts and omissions of the lessee or permittee, any sublessee or subpermittee, any officer, director, employee or agent of the lessee or permittee or of any sublessee or subpermittee, relating to the event, including acts and omissions during the event, while setting up for the event, while breaking down temporary structures after the event, or while cleaning up after the event. The coverage and terms of such insurance or bond shall be subject to the approval of the director of budget and fiscal services. This requirement may be waived for a minor event if the director of budget and fiscal services determines that the risk of injury to persons or property reasonably foreseeable to result from the event is negligible.
  - (5) The lessee shall pay a fee of \$200.00 to cover the city's costs of processing and administering the lease for a major event and the permittee shall pay a fee of \$100.00 to cover the city's cost of processing and administering the permit for a minor event.
  - (6) For no event shall the active use of the grounds extend beyond three consecutive days.
  - (d) Any lease or permit to which this article applies may include conditions, in addition to those enumerated in subsections (a) through (c), prescribed by the director approving the lease or permit.
  - (e) Any lessee holding a major event shall be subject to the following additional condition: The lessee shall comply with the same conditions applicable to the holder of a permit for a minor event under subdivisions (a)(1) and (2), provided that the lessee may require persons seeking access to any facility described in subdivision (a)(1) or crossing the grounds for the purposes described in subdivision (a)(2) to move actively toward their destination or actively across the grounds.
  - (f) The violation of any condition of a lease or permit to which this article applies shall be grounds for termination of the lease or permit, nonissuance of a lease or permit in the future to the lessee or permittee or the imposition of such other penalty as may be prescribed in the lease or permit.
- (Added by Ord. 99-05; Am. Ord. 01-21)

#### Sec. 28-11.4 Permitted private uses of grounds.

- (a) Notwithstanding the provisions of Article 2, the city shall not enter into any lease or permit for the use of all or any portion of the grounds of City Hall and the Honolulu Municipal Building for any event to which this article applies, or otherwise grant any license or permit for the exclusive use of the grounds of City Hall and the Honolulu Municipal Building, or any portion thereof for any event to which this article applies, except as provided in subsections (b) and (c). No person may hold a major or minor event without obtaining a lease or permit pursuant to this article.
- (b) The director of customer services may, upon review of an application submitted pursuant to Section 28-11.5, issue a permit, on the terms and conditions applicable to minor events under Section 28-11.3, to any person to hold a minor event.
- (c) The director of budget and fiscal services may award a lease on the terms, conditions and rentals applicable to major events under Section 28-11.3 and approved by the corporation counsel as to form and legality, for a private organization holding a major event on the grounds and meeting all of the following criteria:
  - (1) The private organization is a not-for-profit corporation or association chartered or otherwise authorized to do business in the State of Hawaii for charitable purposes.
  - (2) The purposes for which the private not-for-profit corporation or association is organized provide direct benefits to the people of the city.
  - (3) The purposes for which the not-for-profit corporation or association is organized fall into at least one of the following categories:
    - (A) Social services for the poor, the aged or the youth of the city;
    - (B) Health services, including services for those with physical and/or emotional/mental disabilities;
    - (C) Educational, manpower and/or training services; or

- (D) Services to meet a definitive cultural, social or economic need within the city not being met by any other private organization.
- (d) Any lease for a major event entered into under, or permit for a minor event issued under, this article shall not be subject to the public bidding requirements of Articles 2 and 3.
- (e) In determining whether to enter into a lease or grant a permit under this section, and in conditioning such a lease or permit, the director of budget and fiscal services or the director of customer services, as the case may be, shall consider the potential effects of the proposed event on normal city functions.
- (Added by Ord. 99-05)

**Sec. 28-11.5 Application procedure.**

- (a) Any person desiring to enter into a lease to hold a major event on the grounds of City Hall and the Honolulu Municipal Building shall submit an application to the director of budget and fiscal services at least 30 days in advance of the proposed event. Any person desiring a permit to hold a minor event on the grounds shall submit an application to the director of customer services at least 15 days in advance of the minor event. The application shall be accompanied by the applicable fee and shall include the following:
- (1) If the application is for a major event, a statement of the person's qualifications to enter into a lease under this article and such documentation thereof as may be required by the director of budget and fiscal services.
  - (2) A statement of the portion of the grounds of City Hall and the Honolulu Municipal Building that will be used for the major or minor event.
  - (3) A statement of the duration of the proposed lease or permit and the dates and hours during which the grounds will be actively used and during which setting up and breaking down of temporary structures will be taking place.
  - (4) A diagram showing the proposed location of any temporary structures, as well as any areas proposed to be partitioned, fenced, roped, cordoned or otherwise demarcated for the purpose of charging a fee, or partitioned, fenced, roped or cordoned for any other purpose, including the name of any sublessee or subpermittee that will be using any temporary structure.
  - (5) A statement of the anticipated patronage of the event and the media that will be used to attract patronage.
  - (6) A statement as to proposed security, sanitation and clean-up measures and personnel for the event.
  - (7) A general statement of the forms of entertainment to be provided, if any, and whether sound amplification will be utilized.
  - (8) A statement of all fees to be charged by the lessee or permittee or any sublessee or subpermittee, including any entry fees, and of what is to be received by event patrons in exchange for payment of the fees.
  - (9) A statement of whether any of the net proceeds from the fees charged will be turned over to any person or persons other than the lessee or permittee and a statement as to the tax-exempt or charitable status of such person or persons.
  - (10) A designation of a natural person or persons who will be in charge of the grounds during the event.
  - (11) The address of the applicant, and the name and address of the natural person preparing the application.
  - (12) A statement by the applicant as to whether it shall meet the requirement of Section 28-11.3(c)(4) by providing liability insurance or by posting a bond and providing such proof of insurance or bond as may be required by the director of budget and fiscal services for a major event, or by the director of customer

services in consultation with the director of budget and fiscal services for a minor event. If an applicant for a minor event permit seeks a waiver of the requirement, the applicant shall so state and shall state the basis for the waiver.

- (13) A statement as to any insurance that will be provided by any sublessee or subpermittee.
  - (14) Any additional information deemed necessary by the director of budget and fiscal services and the director of customer services.
  - (b) The director of budget and fiscal services and the director of customer services shall prescribe the form of the applications made to each of them, respectively, pursuant to subsection (a).
  - (c) The director to whom the application is submitted shall notify the applicant within 10 working days of receipt of a completed application as to whether the application is granted, granted with conditions, or denied. The decision of the director shall be final.
- (Added by Ord. 99-05)

**Sec. 28-11.6 Copies of permit and lease applications to be provided to council—Notice of approval.**

Within three working days of receipt of an application to enter into a lease or for the issuance of a permit under Section 28-11.5, the director of budget and fiscal services or the director of customer services, whichever received the application, shall provide a copy of the application to the council. Within three working days of final approval of an application, the director giving the final approval shall give notice of the approval to the council and shall include in the notice any special conditions imposed under the lease or permit. (Added by Ord. 99-05)

**Article 12. Telecommunications Facilities**

**Sections:**

- 28-12.1 Definitions.
- 28-12.2 Leases for telecommunications facilities on city property.
- 28-12.3 Colocation of certain wireless communication facilities.

**Sec. 28-12.1 Definitions.**

For the purposes of this article, the following terms shall have the following meanings, unless it is apparent from the context that another meaning is intended:

“Antenna” means any system of wires, poles, rods, reflecting discs, dishes or similar devices used for the transmission or reception of wireless communications services signals.

“Aggregate footprint” means the area of space occupied by the telecommunications facilities, measured in square feet, including areas of exclusive use by the telecommunications carrier, but excluding areas for coaxial cable runs, conduit paths, utility and access easements.

“City property” means all real property now or hereafter owned by the City and County of Honolulu, whether in fee ownership or other interest.

“Department” means the department of information technology.

“Telecommunications facilities” means the plant, equipment and property, including but not limited to pedestals, antennas, electronics, and other appurtenances used to transmit, receive, distribute, provide or offer telecommunications.

“Type I Telecommunications Facility” means any telecommunications facility where the entire telecommunications facility is attached to or supported by any permanent building or other structure of the city located on the property on which the telecommunications facility is also located.

“Type II Telecommunications Facility” means any telecommunications facility that does not meet the definition of “Type I Telecommunications Facility.”

“Telecommunications service” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

“Wireless communications services facility” means a privately owned cellular, paging or broadband personal communications services facility that includes an antenna. (Added by Ord. 05-020; Am. Ord. 06-22)

**Sec. 28-12.2 Leases for telecommunications facilities on city property.**

- (a) After July 1, 2005\*, any private person or entity desiring to locate a telecommunications facility on city property shall submit an application for a lease to the department on a form prescribed by the department. The application shall include conceptual plans and specifications for the proposed facility, specifically setting forth: (1) the proposed height and area of the various components of the facility, including the proposed location of any cables, wires, and conduits to serve the facility, and (2) the proposed methods and treatments to be used to minimize the visual impacts of the proposed telecommunications facility to the greatest practicable extent.
- (b) The department shall consult with the city department or agency currently using the property in order to determine whether the proposed telecommunications facility would unduly interfere with the current use of the property. The department shall also consult with the department of the corporation counsel to determine whether there exist any legal restrictions that would preclude the use of the city property for the proposed facility and whether there exist significant liability concerns relating to the proposed facility.
- (c) Notwithstanding any provision of this chapter, and without the necessity of competitive bidding, if the department determines, after conducting the consultations prescribed in subsection (b), that it would be in the best interests of the city to lease the city property to the applicant, it may negotiate the terms of a lease with the applicant and submit the lease to the council for its approval, approval with modifications or conditions, or disapproval, by resolution. The department shall not authorize the use of any city property if the use of the property will compromise public safety.
- (d) Unless otherwise authorized by the council, the monthly rental for the use of city real property for a telecommunications facility shall be as follows:

**Type I Telecommunications Facilities:**

<u>Aggregate Footprint</u>	<u>Monthly Rental Amount</u>
75 square feet or less	\$1,000
Greater than 75 but less than or equal to 125 square feet	1,200
Greater than 125 but less than or equal to 175 square feet	1,425
Greater than 175 but less than or equal to 225 square feet	1,650
Greater than 225 but less than or equal to 275 square feet	1,875
Greater than 275 but less than 325 square feet	2,100
325 square feet or more	2,325

**Type II Telecommunications Facilities:**

<u>Aggregate Footprint</u>	<u>Monthly Rental Amount</u>
475 square feet or less	\$1,000
Greater than 475 but less than or equal to 525 square feet	1,200
Greater than 525 but less than or equal to 575 square feet	1,425
Greater than 575 but less than or equal to 625 square feet	1,650
Greater than 625 but less than or equal to 675 square feet	1,875
Greater than 675 but less than 725 square feet	2,100
725 square feet or more	2,325

The department may recommend and the council may authorize a different monthly rental amount when: (i) the city will be required to take measures to mitigate negative aesthetic aspects of the facility or minimize the potential threat of the facility to public safety; or (ii) in instances where the department determines that the monthly rental amount is not feasible.

\* Editor's note: "July 1, 2005" is substituted for "the effective date of this ordinance."

- (e) For purposes of this section an entity is not a "private" entity if it is an agency or department of the city, the State of Hawaii, or the United States, or if the telecommunications facility to be situated on city real property is to be owned by or used exclusively for the benefit of the city, the State of Hawaii, or the United States.
- (f) This section shall not apply to a telecommunications facility to be situated on land of the board of water supply or any semiautonomous agency of the city.
- (g) The term of the lease shall be subject to Article 4.
- (h) The lease shall provide for the applicant to post bond in a sum sufficient to ensure that the proposed telecommunications facility will be completed as planned and may require a reasonable deposit to insure that the facility is adequately maintained.
- (i) The council may impose such other reasonable conditions relating to safety or aesthetics, as it may deem appropriate.
- (j) Approval of the lease by the council shall not constitute a waiver of any zoning, subdivision, state land use, special management area, building code or other legal requirements applicable to the telecommunications facility. The lease shall allow the lessee to terminate the lease if any permit or approval necessary for the construction or operation of the facility is denied or revoked. Following council approval of the lease terms, the director of budget and fiscal services may award the lease subject to those terms.
- (k) The department may adopt rules having the force and effect of law, pursuant to HRS Chapter 91, for the implementation of this article.
- (l) This section shall not apply to any license, easement, concession or other right of occupancy for the following:
  - (1) Telecommunications cables, wires, conduits, ducts, poles, anchors, or wire line telecommunications equipment cabinets and associated appliances and equipment on city real property, provided that no related telecommunications facilities are situated on the property;
  - (2) The temporary use of city property as a staging area for the construction of telecommunications facilities on real property not under the ownership or control of the city; or
  - (3) The placement of a pay telephone, as defined in Hawaii Administrative Rules Section 6-82-3, and related cables, wires, conduits, ducts or other equipment on city property.
  - (4) The placement of telecommunications facilities on city property where the deed or other use restrictions preclude the city from entering into a lease agreement for the property.

(Added by Ord. 05-020)

**Sec. 28-12.3 Colocation of certain wireless communication facilities.**

All leases to private persons or entities for the purposes of situating a privately owned wireless communications services facility on city property shall include appropriate conditions to ensure that the facility shall be, to the maximum extent practicable, capable of supporting one or more antennas owned or used by private persons or entities other than the lessee. (Added by Ord. 05-020)



## APPENDIX N

### RELOCATION POLICY AND PROCEDURES

The City of Honolulu will be conducting all real estate activities in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 49 CFR Part 24, and FTA Circular 5010.1C.



**Table O-1:** List of Affected Parcels by Tax Map Key (TMK) beginning on Page O-2 is the most current Parcel Listing information for the 34-mile LPA. This table was developed based on the HHCTCP March 2008 Pre-Draft EIS Alignment Plans and Profiles Drawing Set.

CONFIDENTIAL

**APPENDIX O  
PROJECT PARCEL LISTING**

<b>TABLE O-1: LIST OF AFFECTED PARCELS BY TAX MAP KEY (TMK)</b>		
<b>TMK</b>	<b>AFFECT</b>	<b>CONSTRUCTION PHASE</b>
<b>Kapolei to Fort Weaver Road Kapolei Extension</b>		
91013011	Partial Acquisition	TBD
91013012	Within Future Roadway	TBD
91013013	Partial Acquisition	TBD
91013014	Within Future Roadway	TBD
91013015	Partial Acquisition	TBD
91013016	Partial Acquisition	TBD
91013020	Within Future Roadway	TBD
91013022	Within Future Roadway	TBD
91013023	Within Future Roadway	TBD
91013026	Partial Acquisition	TBD
91013043	Partial Acquisition	TBD
91013045	Within Future Roadway	TBD
91013052	Partial Acquisition	TBD
91013058	Within Future Roadway	TBD
91015004	Partial Acquisition	TBD
91015021	Partial Acquisition	TBD
91015022	Partial Acquisition	TBD
91016001	Partial Acquisition	TBD
91016005	Partial Acquisition	TBD
91016027	Partial Acquisition	TBD
91016032	City/State Owned	TBD
91016108	Partial Acquisition	TBD
91016121	City/State Owned	TBD
91016122	Partial Acquisition	TBD
91017003	City/State Owned	TBD
91017069	City/State Owned	TBD
91017075	City/State Owned	TBD
91069001	Partial Acquisition	TBD
<b>First Project</b>		
91016108	Partial Acquisition	<b>First Construction Phase</b>
91016109	Within Future Roadway ROW	<b>First Construction Phase</b>
91017004	Partial Acquisition	<b>First Construction Phase</b>
91017071	Partial Acquisition	<b>First Construction Phase</b>
91018001	Partial Acquisition	<b>First Construction Phase</b>
91018001	Partial Acquisition	<b>First Construction Phase</b>
91018006	Partial Acquisition	<b>First Construction Phase</b>

**APPENDIX O  
PROJECT PARCEL LISTING**

<b>TABLE O-1: LIST OF AFFECTED PARCELS BY TAX MAP KEY (TMK)</b>		
<b>TMK</b>	<b>AFFECT</b>	<b>CONSTRUCTION PHASE</b>
<b>Fort Weaver Road to Aloha Stadium</b>		
94008020	Partial Acquisition	First Construction Phase
94008025	Partial Acquisition	First Construction Phase
94011037	Partial Acquisition	First Construction Phase
94017012	Full Acquisition	First Construction Phase
94019050	Full Acquisition	First Construction Phase
94019061	Partial Acquisition	First Construction Phase
94045022	Partial Acquisition	First Construction Phase
94045024	Partial Acquisition	First Construction Phase
94045026	Partial Acquisition	First Construction Phase
94047008	Partial Acquisition	First Construction Phase
94047033	Partial Acquisition	First Construction Phase
94048046	Full Acquisition	First Construction Phase
96003043	City/State Owned	First Construction Phase
97022001	Partial Acquisition	Second Construction Phase
97022006	Partial Acquisition	Second Construction Phase
97022008	Partial Acquisition	Second Construction Phase
97022021	Partial Acquisition	Second Construction Phase
97023003	Partial Acquisition	Second Construction Phase
97023008	Partial Acquisition	Second Construction Phase
97023017	Partial Acquisition	Second Construction Phase
97023018	Partial Acquisition	Second Construction Phase
97024034	Partial Acquisition	Second Construction Phase
97024045	Partial Acquisition	Second Construction Phase
98009005	Partial Acquisition	Second Construction Phase
98009011	Partial Acquisition	Second Construction Phase
98009014	Partial Acquisition	Second Construction Phase
98009015	Partial Acquisition	Second Construction Phase
98009016	Partial Acquisition	Second Construction Phase
98009017	Partial Acquisition	Second Construction Phase
98010002	Full Acquisition	Second Construction Phase
98014005	Partial Acquisition	Second Construction Phase
98014010	Partial Acquisition	Second Construction Phase
98014012	Partial Acquisition	Second Construction Phase
98018021	Construction Easement	Second Construction Phase
98021059	Partial Acquisition	Second Construction Phase
98021068	Partial Acquisition	Second Construction Phase
99041012	Construction Easement	Second Construction Phase
<b>Maintenance Facility and LCC Station</b>		
94008010	Partial Acquisition	First Construction Phase
96003044	Partial Acquisition	First Construction Phase
96003048	Partial Acquisition	First Construction Phase
96003048	Partial Acquisition	First Construction Phase

**APPENDIX O  
PROJECT PARCEL LISTING**

<b>TABLE O-1: LIST OF AFFECTED PARCELS BY TAX MAP KEY (TMK)</b>		
<b>TMK</b>	<b>AFFECT</b>	<b>CONSTRUCTION PHASE</b>
<b>Park and Ride Lot &amp; H-2 Ramp</b>		
96003012	Full Acquisition	Second Construction Phase
96003013	Full Acquisition	Second Construction Phase
96003014	Full Acquisition	Second Construction Phase
96003015	Full Acquisition	Second Construction Phase
96003016	Full Acquisition	Second Construction Phase
96003017	Full Acquisition	Second Construction Phase
96003018	Full Acquisition	Second Construction Phase
96004002	Full Acquisition	Second Construction Phase
96004006	Partial Acquisition	Second Construction Phase
96004019	Partial Acquisition	Second Construction Phase
<b>Aloha Stadium to Ke'ehi Interchange Salt Lake Boulevard Alignment</b>		
11006001	Partial Acquisition	Second Construction Phase
11006004	Partial Acquisition	Second Construction Phase
11006013	Partial Acquisition	Second Construction Phase
11007006	Partial Acquisition	Second Construction Phase
11007007	Partial Acquisition	Second Construction Phase
11007018	Partial Acquisition	Second Construction Phase
11007019	Partial Acquisition	Second Construction Phase
11007020	Partial Acquisition	Second Construction Phase
11007021	Partial Acquisition	Second Construction Phase
11007022	Partial Acquisition	Second Construction Phase
11007023	Partial Acquisition	Second Construction Phase
11010011	Partial Acquisition	Second Construction Phase
11010012	Partial Acquisition	Second Construction Phase
11010017	Partial Acquisition	Second Construction Phase
11010033	Partial Acquisition	Second Construction Phase
11010041	Partial Acquisition	Second Construction Phase
11010999	Full Acquisition	Second Construction Phase
11035002	Partial Acquisition	Second Construction Phase
11035007	Full Acquisition	Second Construction Phase
11035010	Partial Acquisition	Second Construction Phase
11064001	Partial Acquisition	Second Construction Phase
11071001	Partial Acquisition	Second Construction Phase
99002027	Partial Acquisition	Second Construction Phase
99003061	Partial Acquisition	Second Construction Phase
99003071	Negotiated	Second Construction Phase
99048098	Partial Acquisition	Second Construction Phase
99071060	Full Acquisition	Second Construction Phase
99076007	Partial Acquisition	Second Construction Phase

**APPENDIX O  
PROJECT PARCEL LISTING**

<b>TABLE O-1: LIST OF AFFECTED PARCELS BY TAX MAP KEY (TMK)</b>		
<b>TMK</b>	<b>AFFECT</b>	<b>CONSTRUCTION PHASE</b>
<b>Airport Alignment</b>		
11002004	Partial Acquisition	TBD
11003001	Partial Acquisition	TBD
11003003	Partial Acquisition	TBD
11003004	Partial Acquisition	TBD
11003006	Partial Acquisition	TBD
11003061	Partial Acquisition	TBD
11003138	Partial Acquisition	TBD
11003198	Partial Acquisition	TBD
99001008	Partial Acquisition	TBD
99002004	Partial Acquisition	TBD
99003029	Partial Acquisition	TBD
99003057	Partial Acquisition	TBD
99003061	Partial Acquisition	TBD
99003068	Partial Acquisition	TBD
99003070	Partial Acquisition	TBD
99003071	Negotiated	TBD
<b>Middle Street to Puuhale Road</b>		
12013002	Partial Acquisition	Second Construction Phase
12013021	Partial Acquisition	Second Construction Phase
12013999	City/State Owned	Second Construction Phase
12017002	Partial Acquisition	Second Construction Phase
12026010	Partial Acquisition	Second Construction Phase
<b>Ka'eahu Interchange to Ala Moana</b>		
12003006	Partial Acquisition	Second Construction Phase
12003014	Partial Acquisition	Second Construction Phase
12003016	Partial Acquisition	Second Construction Phase
12003017	Partial Acquisition	Second Construction Phase
12003018	Partial Acquisition	Second Construction Phase
12003020	Partial Acquisition	Second Construction Phase
12003082	Partial Acquisition	Second Construction Phase
12003101	Partial Acquisition	Second Construction Phase
12003106	Partial Acquisition	Second Construction Phase
12009001	Partial Acquisition	Second Construction Phase
12009005	Full Acquisition	Second Construction Phase
12009006	Full Acquisition	Second Construction Phase
12009011	Partial Acquisition	Second Construction Phase
12009016	Full Acquisition	Second Construction Phase
12009017	Partial Acquisition	Second Construction Phase
12009018	Partial Acquisition	Second Construction Phase
12010068	Full Acquisition	Second Construction Phase
15007001	Partial Acquisition	Second Construction Phase
15007006	Partial Acquisition	Second Construction Phase
15007016	Partial Acquisition	Second Construction Phase
15007021	Full Acquisition	Second Construction Phase

**APPENDIX O  
PROJECT PARCEL LISTING**

**TABLE O-1: LIST OF AFFECTED PARCELS BY TAX MAP KEY (TMK)**

<b>TMK</b>	<b>AFFECT</b>	<b>CONSTRUCTION PHASE</b>
15007023	Full Acquisition	Second Construction Phase
15007024	Full Acquisition	Second Construction Phase
15007026	Full Acquisition	Second Construction Phase
15007052	Partial Acquisition	Second Construction Phase
15007054	Partial Acquisition	Second Construction Phase
15007055	Partial Acquisition	Second Construction Phase
15008008	Partial Acquisition	Second Construction Phase
15008009	City/State Owned	Second Construction Phase
15008013	Partial Acquisition	Second Construction Phase
15008018	City/State Owned	Second Construction Phase
15015001	Partial Acquisition	Second Construction Phase
15015005	Partial Acquisition	Second Construction Phase
15015006	Partial Acquisition	Second Construction Phase
15015007	Partial Acquisition	Second Construction Phase
15015008	Partial Acquisition	Second Construction Phase
15015010	Partial Acquisition	Second Construction Phase
15015013	Partial Acquisition	Second Construction Phase
15017006	Partial Acquisition	Second Construction Phase
15020001	Partial Acquisition	Second Construction Phase
15020003	Partial Acquisition	Second Construction Phase
15020007	Partial Acquisition	Second Construction Phase
15021009	Partial Acquisition	Second Construction Phase
15021010	Partial Acquisition	Second Construction Phase
15021011	Partial Acquisition	Second Construction Phase
15028019	Partial Acquisition	Second Construction Phase
15028022	Partial Acquisition	Second Construction Phase
15028066	Partial Acquisition	Second Construction Phase
15028073	Partial Acquisition	Second Construction Phase
15029049	Partial Acquisition	Second Construction Phase
15029050	Partial Acquisition	Second Construction Phase
15029060	Partial Acquisition	Second Construction Phase
15029065	Partial Acquisition	Second Construction Phase
15040003	Partial Acquisition	Second Construction Phase
17002026	Partial Acquisition	Second Construction Phase
21014003	Partial Acquisition	Second Construction Phase
21014006	Partial Acquisition	Second Construction Phase
21027002	Easement	Second Construction Phase
21030001	Partial Acquisition	Second Construction Phase
21031030	Partial Acquisition	Second Construction Phase
21050001	Full Acquisition	Second Construction Phase
21050062	Full Acquisition	Second Construction Phase
21050067	Partial Acquisition	Second Construction Phase
21052005	Partial Acquisition	Second Construction Phase
21052016	Partial Acquisition	Second Construction Phase
21052022	Partial Acquisition	Second Construction Phase
21052027	Partial Acquisition	Second Construction Phase

**APPENDIX O  
PROJECT PARCEL LISTING**

**TABLE O-1: LIST OF AFFECTED PARCELS BY TAX MAP KEY (TMK)**

<b>TMK</b>	<b>AFFECT</b>	<b>CONSTRUCTION PHASE</b>
21052035	Partial Acquisition	Second Construction Phase
21052036	Partial Acquisition	Second Construction Phase
21052045	Partial Acquisition	Second Construction Phase
21052046	Partial Acquisition	Second Construction Phase
21052053	Partial Acquisition	Second Construction Phase
23002001	Partial Acquisition	Second Construction Phase
23002059	Partial Acquisition	Second Construction Phase
23004028	Partial Acquisition	Second Construction Phase
23004029	Partial Acquisition	Second Construction Phase
23004048	Full Acquisition	Second Construction Phase
23004069	Full Acquisition	Second Construction Phase
23004073	Partial Acquisition	Second Construction Phase
23005023	Partial Acquisition	Second Construction Phase
23007027	Partial Acquisition	Second Construction Phase
23007028	Partial Acquisition	Second Construction Phase
23007033	Full Acquisition	Second Construction Phase
23007036	Full Acquisition	Second Construction Phase
23007039	Full Acquisition	Second Construction Phase
23007044	Full Acquisition	Second Construction Phase
23007045	Partial Acquisition	Second Construction Phase
23007049	Partial Acquisition	Second Construction Phase
23007054	Partial Acquisition	Second Construction Phase
23007056	Partial Acquisition	Second Construction Phase
23007057	Partial Acquisition	Second Construction Phase
23007061	Partial Acquisition	Second Construction Phase
23007062	Partial Acquisition	Second Construction Phase
23007063	Partial Acquisition	Second Construction Phase
23038001	Partial Acquisition	Second Construction Phase
23038003	Partial Acquisition	Second Construction Phase
23038006	Partial Acquisition	Second Construction Phase
23039001	Partial Acquisition	Second Construction Phase
23039004	Partial Acquisition	Second Construction Phase
23039005	Partial Acquisition	Second Construction Phase
23039006	Partial Acquisition	Second Construction Phase
23039011	Partial Acquisition	Second Construction Phase

**APPENDIX O  
PROJECT PARCEL LISTING**

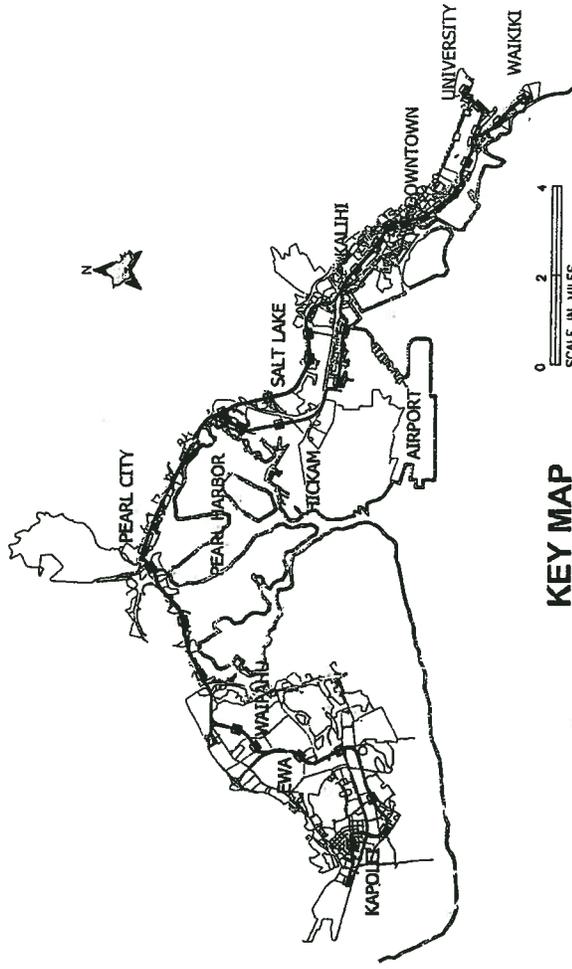
<b>TABLE O-1: LIST OF AFFECTED PARCELS BY TAX MAP KEY (TMK)</b>		
<b>TMK</b>	<b>AFFECT</b>	<b>CONSTRUCTION PHASE</b>
<b>UH Manoa Extension</b>		
23022001	Full Acquisition	TBD
23022007	Full Acquisition	TBD
23022008	Full Acquisition	TBD
23022019	Full Acquisition	TBD
23022032	Full Acquisition	TBD
23022041	Partial Acquisition	TBD
23032065	Partial Acquisition	TBD
23033001	Partial Acquisition	TBD
23034008	Full Acquisition	TBD
23041001	Full Acquisition	TBD
23041002	Full Acquisition	TBD
23041003	Full Acquisition	TBD
23041004	Full Acquisition	TBD
23041006	Partial Acquisition	TBD
23041009	Partial Acquisition	TBD
27011031	Full Acquisition	TBD
27011032	Full Acquisition	TBD
27011033	Full Acquisition	TBD
27011034	Full Acquisition	TBD
27011035	Full Acquisition	TBD
28006032	Partial Acquisition	TBD
28024031	Partial Acquisition	TBD
28024032	Partial Acquisition	TBD
28029001	Partial Acquisition	TBD
<b>Waikiki Extension</b>		
23034027	Partial Acquisition	TBD
23034028	Partial Acquisition	TBD
23034033	Partial Acquisition	TBD
26014023	Partial Acquisition	TBD
26014039	Partial Acquisition	TBD
26017008	Full Acquisition	TBD
26018011	Partial Acquisition	TBD
26018042	Partial Acquisition	TBD
26018052	Partial Acquisition	TBD
26026009	Partial Acquisition	TBD



Included in Appendix P are two samples from the HHCTCP March 2008 Pre-Draft EIS Alignment Plans and Profiles Drawing Set, which includes 86 11" x 17" sheets.

CONFIDENTIAL

# HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT

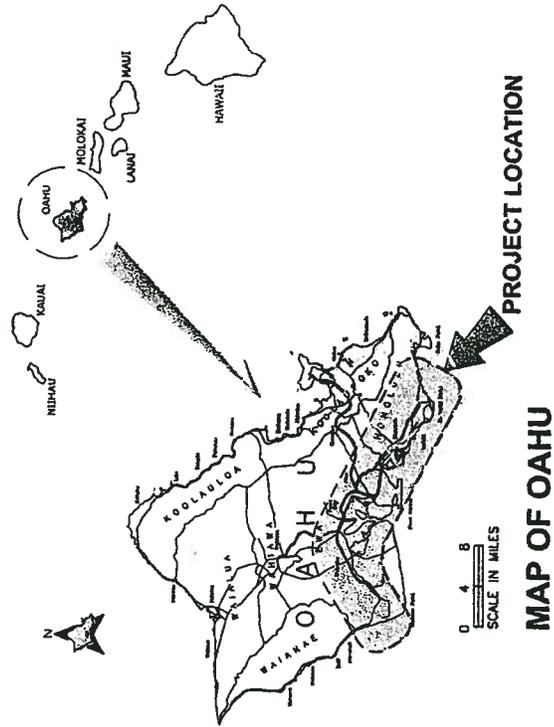


KEY MAP

## PRE-DRAFT EIS ALIGNMENT PLANS AND PROFILES

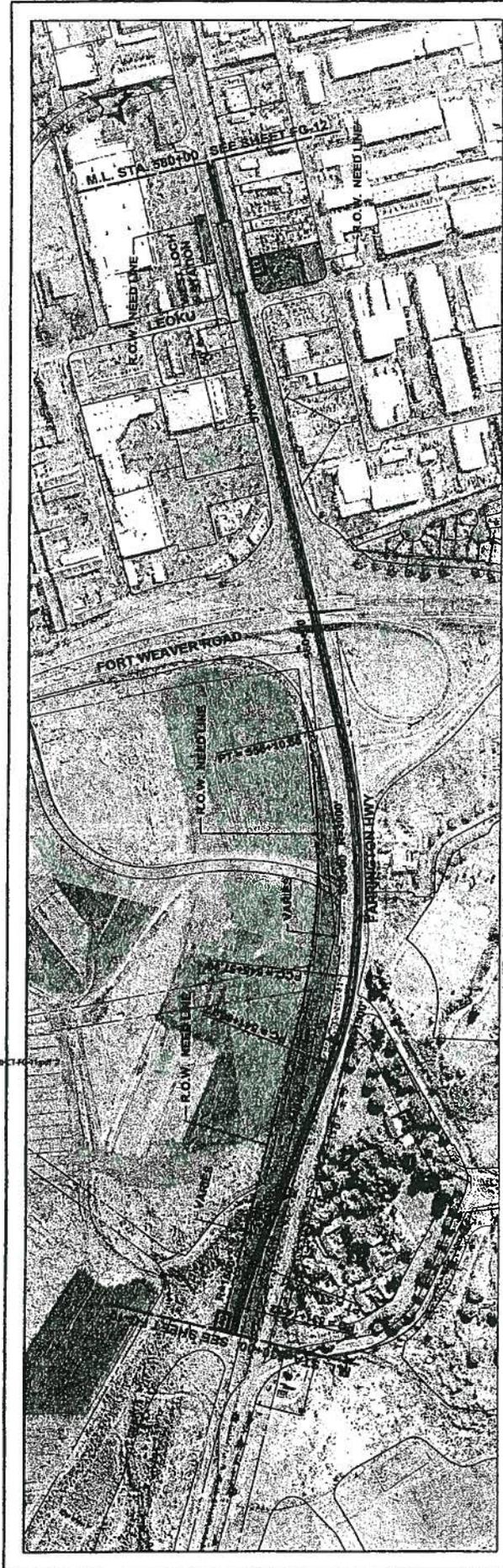
CITY AND COUNTY OF HONOLULU  
RAPID TRANSIT DIVISION

MARCH 2008

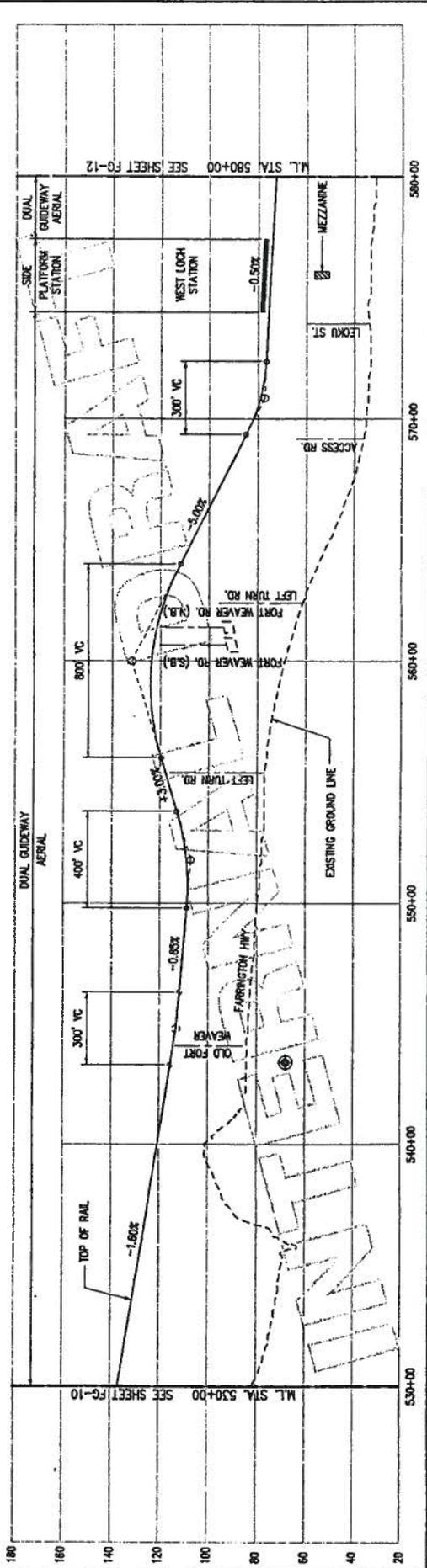


PROJECT LOCATION

MAP OF OAHU



NOTE: PLANS ARE PRELIMINARY AND SUBJECT TO CHANGE



	CITY AND COUNTY OF HONOLULU RAPID TRANSIT DIVISION	HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT DRAFT EIS PLANNING		PRE-DRAFT EIS ALIGNMENT PLANS AND PROFILES PLAN AND PROFILE STA 530+00 TO STA 580+00	PAGE NO. --- DRAWING NO. FG-11
		SCALES: HORIZ. 1" = 200' VERT. 1" = 20' (SCALE IN FEET)	DATE: 03/17/08		



## REAL PROPERTY ACQUISITION MODES OR METHODS

The City may acquire real property interests for projects in several different ways, depending on project or program needs and the interests or desire of property owners. It is possible that more than one method or mode of acquisition may be used on a single project. The acquisition modes and methods are described below:

**Negotiated Settlement Based on Approved Valuation** – This is the City’s preferred, normal and common process for acquisition. Under this approach the City will make an offer to the owner to purchase the property needed for the project for a specified price. The offer will be based on an approved appraisal of the property’s fair market value or an Administrative Compensation Estimate. If the property owner accepts the offer, the City will purchase the property at the offered price. If the owner declines the offer, the City will continue negotiations until final rejection or initiation of condemnation by the City. The owner may provide additional value information or an appraisal that will cause the City to reconsider and revise the original offer. Continuing negotiations will be aimed at helping the owner better understand the effect of the acquisition on remaining property and the basis for reasonableness of the City offer. The exchange of information and views often leads to an agreement on price and settlement.

**Administrative Settlement** – When reasonable efforts to negotiate an agreement on price do not succeed, the City may consider making a higher offer based on valid considerations other than fair market value. Considerations may include the risk of a high condemnation award and the costs of condemnation action including administrative costs. The administrative settlement offer may also reflect a valid uncertainty of value and the limitations of the appraisal process. The Land Division Chief must approve all administrative settlements and conclude that the settlement is reasonable and prudent and in the public interest.

**Acquisition by Exchange** – In unusual cases where it would mutually benefit the City and an owner, the City may offer compensation, in whole or in part, based on a land exchange or added construction features. This generally occurs with large corporate or utility owners that can benefit from land transfers. It is also applicable when the owner can benefit from added construction features that will enhance the system for the general public. The Land Division Chief must approve all land exchanges. The City will only transfer land that is not needed for future use.

**Donation** – The City may accept the donation of real property from an owner. A donation may be offered by an owner for tax reduction,, collateral economic benefit and support for the objectives of the project or desire to contribute to betterment of the community. The offer must be voluntary. The City will inform the owner of the right to Just Compensation and to an appraisal of fair market value to determine such amount.

**Mediation or Arbitration** – The City of a property owner may call on the services of a qualified and disinterested third party to assist in reaching settlement. The City may suggest using an Ombudsman at no cost to the owner. The owner is not limited to services of the Ombudsman. The City and the owner may agree to any alternative dispute resolution method or service that is qualified and available.

**Advanced Acquisition** – Acquisition does not normally begin until after the environmental review process is complete and the preferred project alignment is selected. However, in some cases it may be necessary to acquire properties sooner. Advanced acquisition may be needed to relieve personal hardship to an owner that may result from continued ownership, or to protect the City from high purchase costs if acquisition is delayed. Typically, hardships involve pressing financial circumstances, job transfer, urgent medical problems or similar situations. Protective purchases are situations that in which the City would otherwise incur much higher acquisition costs due to imminent development, zoning change or a fast rising real estate market.

**Condemnation** – When reasonable efforts to settle through negotiations fail, the City may acquire the property through the constitutional process of Eminent Domain. The City must demonstrate compliance with two basic constitutional conditions. The acquisition must be necessary for a public purpose and the City must pay Just Compensation for the property as determined by the Hawaii Court. The use of Eminent Domain requires that the Acquisition Agent and the Land Division Chief coordinate closely with Corporate Counsel.

**Voluntary Transactions** – Right of Way acquisition is normally performed “under threat” of condemnation. This means that the owner doesn’t have the option not to sell to the City because the City will use the power of Eminent Domain if an amicable settlement cannot be reached. There are limited situations, however, in which an offer to acquire real property does not involve the City’s intent to use Eminent Domain authority. This applies where the City has alternatives for placement of a facility. This may apply in location of a maintenance facility, a rest area, wetland replacement area, materials storage area or a material borrow site. In these uses, the City will inform the owner it will acquire only by settlement. The complete requirements concerning voluntary transactions may be found at 49 CFR 24.10(b)(1).



## APPENDIX R

Appendix R is in the process of being revised to include feedback from the PMOC informal review 02-20-08. The revised appendix will be included in the next RAMP submittal.

**APPRAISER  
MINIMUM REQUIREMENTS, SCOPE OF WORK, CERTIFICATION**

**Minimum Requirements**

1. Provide an appraisal meeting the agency's definition of an appraisal found at 49 CFR 24.2 (a) (3).
2. Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.
3. Perform an inspection of the subject property. The inspection should be appropriate for the appraisal problem, and the Scope of Work should address:
  - The extent of the inspection and description of the neighborhood and proposed project area,
  - The extent of the subject property inspection, including interior and exterior areas,
  - The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property),
4. In the appraisal report, include an adequate description of the physical characteristics of the property being appraised (i.e. sketch of the property and provide the location and dimensions of any improvements) and a description of the comparable sales. The appraisal report should include adequate photographs of the Subject property and comparable sales and provide location maps of the property and comparable sales.
5. In the appraisal report, include items required by the acquiring agency, usually including the following:
  - The property right(s) to be acquired, e.g., fee simple, easement, etc.,
  - The value being appraised (usually fair market value), and its definition,
  - Appraised as if free and clear of contamination (or as specified),
  - The date of the appraisal report and the date of valuation,
  - A realty/personalty report is required per 49 CFR 24.103(a)(2)(i),
  - The known and observed encumbrances, if any,
  - Title information,
  - Location,

- Zoning,
  - Present use, and
  - At least a 5-year sales history of the property.
6. In the appraisal report, identify the highest and best use. If highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.
  7. Present and analyze relevant market information. Specific requirements should include research, analysis, and verification of comparable sales. Inspection of the comparable sales should also be specified.
  8. In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project. If necessary, the appraiser may cite the Jurisdictional Exception or Supplemental Standards Rules under USPAP to ensure compliance with USPAP while following this Uniform Act requirement.
  9. Report his or her analysis, opinions, and conclusions in the appraisal report.

### Scope of Work

**INTENDED USE:** This appraisal is to estimate the fair market value of the property, as of the specified date of valuation, for the proposed acquisition of the property rights specified (i.e., fee simple, etc.) for a Federally-assisted project.

**INTENDED USER:** The intended user of this appraisal report is primarily the acquiring agency, but its funding partners may review the appraisal as part of their program oversight activities.

**DEFINITION OF FAIR MARKET VALUE:** This is determined by State law. Fair market value, however, is generally defined as the price that a seller is willing to accept and a buyer willing to pay on the open market in an arm's length transaction, and usually includes the following:

1. Buyer and seller are typically motivated;
2. The parties are well informed or well advised, each acting in what he or she considers his or her own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

**CERTIFICATION:** The appraisal shall include a certification of the appraiser (see attached sample).

**ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser shall state all relevant assumptions and limiting conditions. In addition, the acquiring agency may provide other assumptions and conditions that may be required for the particular appraisal assignment, such as:

- The data search requirements and parameters that may be required for the project.
- Identification of the technology requirements, including approaches to value, to be used to analyze the data.
- Need for machinery and equipment appraisals, soil studies, potential zoning changes, etc.
- Instructions to the appraiser to appraise the property “As Is” or subject to repairs or corrective action.
- As applicable include any information on property contamination to be provided and considered by the appraiser in making the appraisal.

#### **Certification**

In compliance with Standard Rule 2-3 of the Uniform Standards of Professional Appraisal Practice, I certify that to the best of my knowledge and belief:

- That the statements of fact contained in this report are true, and the information upon which the opinions expressed therein are based is correct.
- That the reported analysis, opinions and conclusions are limited only by the reported assumptions and limited conditions and are my personal unbiased professional analysis, opinion and conclusions.
- That I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- That I understand the appraisal may be used in connection with the acquisition of property for a Federal-aid project.
- That any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the project for which such property is acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within reasonable control of the owner, was disregarded in determining the compensation for the property.
- That I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.



## APPENDIX R

### APPRAISER AND APPRAISAL REQUIREMENTS AND GUIDELINES

The following real estate appraisal requirements and guidelines were recently developed by the City in conjunction with State requirements. These guidelines are to be used in conjunction with the Uniform Standards of Professional Appraisal Practice. The following requirements are still in an in-house review process and may be incorporated into future Appraiser Request for Qualifications.

#### Appraiser Requirements

- All Appraisers must be either Hawaii State Certified Residential or Hawaii State Certified General Real Estate Appraisers currently on active status with the Hawaii State Appraisal Board.
- Appraisal reports must comply with Uniform Standards of Professional Appraisal Practice, (USPAP) as published by the Appraisal Standards Board.
- A Complete Summary Report or Complete Self Contained Report is required unless otherwise authorized by the City.
- All appraisals received by the City will be reviewed for accuracy, data, substance and logic. Appraisals that do not reasonably provide sufficient detail, data or are determined to be inadequate will be returned to the appraiser and additional work will be required at no additional compensation.
- The owner of the subject property must be provided an opportunity to accompany the Appraiser at the time of site inspection.

#### Appraisal Guidelines

##### Narrative Appraisal Reports

##### Introduction

- Letter of Transmittal
- Summary of Important Facts and Conclusions
- Table of Contents
- Certification of Value
- Assumptions and Limiting Conditions
- Purpose and Scope of Appraisal
- Effective Date of Valuation

## Description of Property

- Complete Area or Neighborhood Description
  - Marketing Trends
  - Economic Conditions
- Description of Appraised Property
  - Legal Description, Include Copy of Deed in Addenda
  - County Tax Office Property Data with PIN & ID Numbers
  - Detailed Description of Subject Site
    - Approximate Acreage Cleared & Acreage Wooded, (if applicable)
    - Type of Legal Access, if any
    - Frontage and Shape of Parcel
    - Topography, USDA Soil Types and FEMA Flood Map Data
    - View, Appeal and Visibility
    - Utilities Available to Site
  - Detailed Description of Subject Improvements, (if any)
    - Complete Description of Building and/or Site Improvements
    - Sketch of Building and Floor Plan
    - Describe Fixed Equipment
    - Utilities
    - Personal Property Exempted in Report
  - Ownership, Encumbrances, Easements and Appurtenances
  - Subordination Agreements, (if any)
  - Zoning and Comments on Compliance
  - Taxes
  - Five Year Property Ownership History

## Analyses and Conclusions

- Valuation Procedures
  - Apply All Three Approaches to Value As Appropriate
  - Thorough Discussion of Methodology and Sources used
  - Do Not Use Methods Which are not Applicable to the Type of Property Appraised.
  - Before and After Method Should be Used Where Partial Takings are Appraised
- Highest and Best Use Analysis
  - Highest and Best Use as if Vacant
  - Highest and Best Use As Improved
  - Carefully Consider Aspects of Highest and Best Use Discussion of legal permissibility, physical possibility, financial feasibility and maximum profitability
- Approaches to Value
  - Land Value, Must Be Appropriate for the Scope, Purpose, and Intended Use (Do Not Use Subdivision Analysis or Absorption Rates Unless Specifically Instructed by the State Property Office)
  - Sales Comparison Approach
    - Research the Market for Data
    - Verify the Data is Accurate and are Arms Length Transactions

- Determine Relevant Units of Comparison
- State and Compare Specific Sales Data in Grid or Table Format. Be Specific and Consistent. Include Information Such as Grantor/Grantee, Date of Sale, Verification, History, Location, Description, Zoning, Current Use, Deed Book and Page, etc.
- Reconcile and Discuss the Value Indications
- Cost Approach
  - Include Source of Data
  - Show Effective Age and Economic Life Factors
  - Physical Depreciation, External Factors and Obsolescence, (if applicable)
- Income Approach
  - Derivation and Discussion of Capitalization Rate
  - Provide Lease Analysis and Data, (if applicable)
  - Provide Grid of Leased or Rental Sales (if applicable)
  - Use Band of Investment Technique and Operating Statements Only Where Applicable and Valid Data is Available
  - Discounted Cash Flow Analysis to be Used Only with Prior Approval of the State Property Office and When Applicable
- Final Reconciliation of Values with a Complete Explanation of the Final Value Conclusion
- Summary Page of Value with Signature and Seal (May be Incorporated with Letter of Transmittal)

#### Addenda and Exhibits

1. Qualifications of the Appraiser
2. Photographs of Subject Property
3. Site Plan, Survey or Tax Map
4. Soils Map, (if applicable)
5. Copy of Deed
6. Copy of Leases
7. Location Map of Subject and Sales
8. Any Other Exhibits the Appraiser Deems Necessary for Clarity

**Appendix S**

**Condemnation Policy and Procedures**

---

## CONDEMNATION POLICY AND PROCEDURES

- 1. PURPOSE:** To describe the procedures in condemnation proceedings by the City and County of Honolulu.
- 2. POLICY:** Condemnation proceedings shall be initiated whenever an impasse is reached in acquiring right-of-way for public purpose by negotiations or whenever there is a title defect in the parcel (s) to be acquired.
- 3. RESPONSIBILITY:** The Land Division Chief, through the Director of the Department of Design and Construction, shall be responsible for initiating the request for condemnation. The Department of the Corporation Counsel shall be responsible for requesting a condemnation resolution from the Honolulu City Council and filing condemnation proceedings with the Circuit Court.
- 4. PROCEDURES:** Condemnation proceedings are initiated whenever an impasse is reached in acquiring right-of-way by negotiations or whenever there is a title defect in the parcel to be acquired. The proceedings are instituted upon receipt by the Department of the Corporation Counsel of a request from the Land Division to COR. All further contact with the owners is handled by the Department of the Corporation Counsel.

### 4.1 Case Assignments

The Corporation Counsel assigns condemnation cases to a Deputy Corporation Counsel on a case-by-case basis and preferably by projects. The deputy assigned to a specific case shall:

- A. Make a request to the Honolulu City Council for a condemnation resolution.
- B. File the condemnation proceedings and conclude the proceedings by court trial or stipulated judgment.
- C. Where settlement by stipulated judgment is possible, submit his recommendations for the settlement for approval by the Land Division Chief.
- D. Transmit filed copies of the stipulated judgment and Final Order of Condemnation to the Land Division for further processing upon conclusion of the case.

## **4.2 Filing of the Complaint**

Condemnation action is initiated by the deputy assigned the case by filing a Complaint in the Circuit Court, citing all persons who may have or may claim an interest in the land sought for public purposes. It shall contain:

- A. Statement of the use to which the land sought to be condemned is to be put.
- B. Description of the property to be taken. The description is generally attached to the Complaint and designated as Exhibit A.
- C. Map or maps showing the property and its location. The map is attached to the Complaint and designated as Exhibit B. Where more than one map is used, the first is designated as Exhibit B-1, the second Exhibit B-2, etc.<sup>4</sup>
- D. Summons attached requiring an answer to be filed by the defendants cited.

When the owner or claimant of the land sought to be condemned is known, the summons shall be served by a process server by delivering to him a certified copy thereof, together with a copy of the Complaint. If the owner or claimant, although known, cannot be found then the service of the summons shall be made by publication in a newspaper of general circulation. The Affidavit of Publication is filed in the court by the newspaper agency. If the owner or claimant fails to answer or otherwise defend against the Complaint within twenty (20) calendar days, default is taken. However, judgment by default must still be obtained from the court after a prima-facie proof is made.

## **4.3 Order of Possession**

Generally, there is a period of time between the date condemnation action is initiated and the date of the condemnation trial. This is due to time involved in negotiating for possible out of court settlements, discovery, and setting of the trial date based on the court's calendar. Thus, it is necessary to take possession of the property before the court trial in order to proceed with the City's project construction.

Possession is accomplished by filing a Motion for Order of Possession, which is considered ex parte by the Court. The Motion for Order of Possession may also be filed simultaneously

with the Complaint. An Affidavit signed by the Deputy Corporation Counsel is attached to the Motion stating:

- A. The reasons for requiring an immediate occupation of land sought to be condemned.
- B. The sum of money estimated by the plaintiff City and County of Honolulu to be the just compensation or damages for the taking of the land.

The Judge grants an Order of Possession based upon the motion and any defendant(s) who wish to contest the possession by the City may do so within ten (10) calendar days after service of the Order. A deposit of the estimated just compensation is required before the Order is granted. (Section 101-29, Hawaii Revised Statutes.

#### **4.4 Court Deposit**

The amount to be deposited for possession of the property to be condemned is based upon the affidavit signed by the deputy attesting to the estimated just compensation for deposit. The deposit shall be no less than the Review Appraiser's determination of just compensation.

The procedure for deposit and any subsequent additional deposit is as follows:

- A. The Department of the Corporation Counsel shall submit the Request for Payment to the Department of Budget and Fiscal Services (BFS) for the court deposit through the Land Division.
- B. The BFS prepares and submits a warrant voucher to the Department of the Corporation Counsel for deposit to the Court.
- C. Upon receipt of the warrant from the BFS, the Department of the Corporation Counsel shall:
  - 1. Deposit the warrant with the Circuit Court where the complaint is filed.
  - 2. Obtain a "Receipt of Deposit" for the deposit from the Court Clerk.

#### **4.5 Withdrawal of Court Deposit**

Pending litigation, the owner is allowed to withdraw all or a portion of the deposit. The conditions for withdrawals are as follows:

- A. The City stipulates to the withdrawal if it is determined that the owner's title is clear.
- B. Where the owner's title is not clear, the owner may have to file a motion or other proceeding in court for withdrawal (Section 101-31, Hawaii Revised Statutes). The owner must satisfy the Court that he is the owner and thereby entitled to the money.
- C. The owner shall obtain a tax clearance before he is allowed to withdraw any portion of the deposit. (Sections 101-36 and 101-37, Hawaii Revised Statutes.)
- D. Whenever the owner withdraws all or any portion of the court deposit, he abandons all defenses except for his claim for additional compensation.

#### **4.6 Condemnation Settlements**

Condemnation proceedings may be settled out of court in lieu of a court trial. The recommendation for settlement over and above the Review Appraiser's determination of fair market value shall be initiated by the deputy assigned to the case. It is based pursuant to his negotiations with the property owner or his representative.

- A. The deputy submits his recommendation to the Chief of Land Division for concurrence through the Department of the Corporation Counsel. The request shall be in writing and contain his reasons for settlement with supporting data.
- B. The Land Division may approve or disapprove the recommendation for settlement. He may forward the recommendation to the Review Appraiser for preliminary review and recommendations.
- C. Concurrence by the Federal Transit Authority (FTA) may be needed for settlement substantially in excess of the Review Appraiser's determination of value.
- D. The Land Division Chief shall inform the deputy of approval or disapproval of the recommendation for settlement.
  - 1. If settlement is approved, the case is concluded by a Stipulated Judgment.
  - 2. If settlement is disapproved, then the case is concluded by court trial.

#### **4.7 Trial by Court**

When an impasse is reached in a condemnation case, the case is tried in court for the final determination of just compensation. Prior to the actual trial date, the deputy assigned to the case usually holds pre-trial conferences with the Land Division. The conferences are held to see that the appraisal(s), data, maps and other exhibits to be used for the trial are accurate and current. Generally, the deputy and the appraiser(s) discuss their proposed presentation at this time.

A demand for jury trial is filed by the City (plaintiff) or may be filed by the property owner (defendant). The deputy is responsible for the City's presentation in the court trial. He may have other deputies, appraisers and/or right-of-way agents assist him during the trial. Generally, a trial by jury proceeds as follows:

- A. Selection of the jury which panel consists of twelve (12) members.
- B. Opening statement by Plaintiff briefly explaining what he intends to prove.
- C. Presentation of evidence by Plaintiff.
- D. Opening statement by Defendant and presentation of Defendant's case.
- E. Opening argument by Plaintiff.
- F. Argument by Defendant.
- G. Closing argument by Plaintiff.

Viewing of the premises by the Jury or Court is at the discretion of the Court. It is normally based on the premise of whether a viewing would assist the Court or Jury in arriving at its determination of just compensation.

#### **4.8 Interests**

The owner is entitled to interest payment for blight of summons in condemnation proceedings which is computed as follows:

- A. Non-statutory blight. Interest rate of 5% is computed on the total award from the date of summons to the date of deposit. In as much as the City's deposit is concurrent with the filing of a Complaint, there would be no such blight. On a Federal-aid project, this interest payment cost is not eligible for federal reimbursement.

- B. Statutory blight. Interest rate of 5% is computed on the difference between the total award and the amount deposited. (Section 101-33, Hawaii Revised Statutes.)

If payment is delayed more than 30 days after the final judgment, additional interest at the rate of 5% shall also be added to the final judgment. (Section 100-25, Hawaii Revised Statutes) On a Federal-aid project, this interest payment cost is also not eligible for federal reimbursement.

#### **4.9 Report**

Upon completion of the trial, the deputy is to submit the Final Order of Condemnation and other documents that may be pertinent to the case to the Land Division.

#### **4.10 Appeals**

The deputy assigned to the case makes the initial recommendation as to whether an appeal should be taken.

- A. The recommendation is reviewed by the Corporation Counsel.
- B. Final approval is made by the Land Division Chief. Any additional information desired by the Land Division for final determination shall be furnished by the attorney upon request.

The basis of appeal in the State of Hawaii is the same as in most states, that is error in substantive law and procedures as well as the awards not being supported by the evidence, etc.

#### **4.11 Special Counsel**

Special counsel or deputy may be employed on a case-by-case basis. Special counsel or deputy is selected by the Corporation Counsel. The approval for outside counsel shall be based on the following:

- A. The employment of special counsel is in the public interest;
- B. That the fee is reasonable; and
- C. That the fee is not a percentage basis.

#### **4.12 Inverse Condemnation**

The right of filing an inverse condemnation is a common law remedy which any property owner has. Under Article I, Section 20 of the State's Constitution, as amended by Constitutional

Convention in 1968, the words "or damaged" were added so that private property shall not be taken or damaged for public use without just compensation.

- A. A property owner may file inverse condemnation action where his property is being damaged although there may not be any taking.
- B. Whether the owner is not successful in an inverse condemnation suit, he is not entitled to attorney, appraisal, engineering or other costs involved in the litigation of an action.
- C. Section 113-4, Hawaii Revised Statutes, however, provides for the reimbursement for reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred where the owner is successful in any inverse condemnation suit in any program or project in which Federal or Federal-aid funds are used.

#### **4.13 Property Not Acquired; Reimbursement of Owner**

- A. Section 101-27, Hawaii Revised Statutes, allows property owners certain damages upon abandonment or dismissal of proceedings. It provides that the owner shall be awarded his cost of court, a reasonable amount to cover his attorney's fee paid by him and other reasonable expenses. Said section appears to be broad enough to cover all costs. It would also apply where the final court judgment is that the property cannot be acquired by condemnation.
  - B. Section 113-3, Hawaii Revised Statutes is similar to Section 101-27 except that it applies to any project or program in which Federal or Federal-aid funds are used.
-

**Requirements, Scope of Work, Certification**

---

## APPENDIX T

### TITLE SEARCHES REQUIREMENTS, SCOPE OF WORK, CERTIFICATION

**INTENDED USE:** The title examiner or Abstractor compiles and gathers research data and provides a Title Report or Search of Title on the subject matter. These reports or searches are used for varied purposes such as acquisition, sales of City properties, information for litigation purposes, easement or road ownership, general enquiries, etc.

**DEFINITION:** A Title Report or Search is a written analysis of the status of title to real property which includes a property description, name(s) of the vested title holder(s) and how title is held (tenancy), taxes and encumbrances (liens, mortgages, etc). Any clouds or flaws in the title are also reported.

**INTENDED USER:** Primarily for various City agencies.

**SYSTEMS:** There are two systems used in the State of Hawaii, to-wit:

- a. Land Court or Torrens System whereby the State guarantees indefeasible title to those registered.
- b. Regular System.

*Note: Examples or copies of both systems are hereto attached.*

**SOURCE:** Information is gathered from the Bureau of Conveyances, Land Court, Department of Land and Natural Resources, Circuit Court, District Court, Federal Courts (United States District Court, Bankruptcy), Real Property Tax office, State Survey Office, Board of Health, Department of Commerce and Consumer Affairs of the State of Hawaii, State Department of Transportation, Land Acquisition & Survey (City), etc.

**SCOPE OF WORK:** All Title searches will receive a thorough investigation of public records to abstract the nature of any instruments that relate to the status of the title to a specific piece of real estate; the Title search investigation will also include study of liens, encumbrances, easements, and other conditions that affect the quality of the Title ownership.

**CERTIFICATION:** The City is not required to certify Title searches since all work is completed in-house for City use and the City is self-insured. However, the City is aware of private industry certification requirements and implements these requirements on occasions.





DEPARTMENT OF DESIGN AND CONSTRUCTION

PROFESSIONAL SERVICES

FY' 2007-2008

PURSUANT TO JULY 1, 2007 ADVERTISEMENT

**REAL PROPERTY QUALIFIED APPRAISAL LIST  
2007-2008**

**CONSULTANT NAME**

ACM CONSULTANTS, INC.

REHKEMPER & COMPANY, INC.

ROBERTA O. ISHIKAWA, INC.



## REAL PROPERTY ACQUISITION POLICY AND PROCEDURES

- 1. PURPOSE:** To describe uniform policies related to the acquisition function.
- 2. OBJECTIVE:** Uniform real property acquisition policies are established in order to:
- Encourage and expedite the fair acquisition of real property by agreements with owners, in accordance with state and federal laws,
  - Avoid litigation and relieve congestion in the courts;
  - Assure consistent treatment for owners and tenants of real property acquired for state, federal and federal-assisted highway and highway-related programs and projects; and
  - Promote public confidence in the State's land acquisition practices and the agents in the Land Acquisition Section.
- 3. SCOPE:** This section applies to the Land Acquisition Division of the Department of Design and Construction of the City and County of Honolulu for the taking of fee simple, leasehold and/or partial interest takings.
- 4. POLICIES:** To the greatest extent practicable, Right-of-Way Agents involved in the acquisition functions shall be guided by the following policies in real property acquisitions.
- A. Civil Rights (Title VI):
- The right-of-way acquisition function shall be conducted in such a way and manner as to assure that no person shall, on the ground of race, color, sex, or national origin, be denied the benefits to which the person is entitled, or be otherwise subjected to discrimination.
- As a condition of receiving federal assistance, the Department of Design and Construction is required to comply with various non-discrimination laws and regulations. Title VI forbids discrimination against any agency receiving Federal assistance. The Federal-aid Highway Act of 1973 added the requirement that there be no discrimination on the grounds of sex (gender).
-

Additionally, the Civil Rights Restoration Act of 1987 defines the word "program" to make clear that discrimination is prohibited throughout the entire agency if any part of the agency receives Federal financial assistance. In accordance with (Name of Appropriate Legislative in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation (herein after referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964, (78 Stat. 252, 42 USC 2000d to 2000-4).

B. Basic Negotiation Procedures:

The agency shall make all reasonable efforts to contact the owner or owner's representatives and discuss its offer to purchase the property, 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 49 CFR 24.106. The owner shall be given reasonable opportunity to consider the offer and present materials which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase. The City shall consider any and all owner presentations.

C. Negotiated Purchase:

Every reasonable effort shall be made to acquire the necessary real property interests expeditiously by negotiations. The offer should be a fair, reasonable and based on not less than an approved appraisal or other negotiations achieved by administrative settlements. The owners should not be coerced into accepting the City's offer. A prompt offer shall be made to acquire real property for the full amount the City has established as just compensation.

D. Notice to Owner:

As soon as feasible, the City shall make every effort to notify the affected owner(s) in writing of the City's interest in acquiring the real property (ies) and the basic protections provided to the owner(s) by law and this part.

When additional public meetings are required due to unusual circumstances, such as changes in a City project, notices of such informational meetings shall be mailed to the affected owners. See also 49 CFR 24.203 Relocation Notices.

---

#### E. Summary Statement:

Upon initiation of negotiations, the City shall provide the owner of real property to be acquired a written statement of the amount it has established as just compensation, including damages, for the proposed acquisition. (ref 49 CFR 24.102 (e)). The Summary Statement may be made part of the offer letter. At a minimum, the summary statement shall include:

- The amount established as just compensation, including any damages to the remainder and acquisition of access rights when applicable as of the date of summons (ref 49 CFR 24.102 (d)).
- A statement explaining that the offer is based on the City's review and an analysis of an appraisal(s) of such property made by a qualified appraiser(s) or qualified personnel in the cases of nominal values using the appraisal waiver provision (ref. 49 CFR 24.102 (c) (2)(ii)).
- Identification of the real property to be acquired, including the estate or interest being acquired.
- Identification of improvements and fixtures considered to be part of the real property to be acquired.
- Where appropriate, the just compensation for the real property to be acquired shall be separately stated.

An offer should be adequately presented to the owner (s), and the owner (s) 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 City.

In order to satisfy this requirement, the City must allow owners time of analysis, research and development and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending of the circumstances, but fourteen (14) days would seem to be the minimum time these actions can reasonably be expected to require. Regardless of the project time pressures, property owners must be afforded at least this opportunity. Some jurisdictions initiate formal eminent domain procedures at the earliest opportunity because of the long and time consuming process, including gaining possession of the needed real property.

---

These provisions are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations and the City's adherence to the Uniform Act ban on coercive action (Section 301 (7)) of the Uniform Act.

F. Surrender of Possession:

No owner shall be required to surrender possession of real property before the owner agrees to a Consent to Enter or the City pays the agreed purchase price or deposits with the court, for the use and option to withdraw by the owner, an amount not less than the City's approved estimate of just compensation, or the amount of the award of compensation in the condemnation proceeding for such property.

G. Notice to Vacate:

To the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, or to move his business or farm operation without at least 90 days written notice from the City of the date by which such move is required.

H. Fair Rental:

The City may permit an owner or tenant to occupy the real property acquired on a short-term rental basis or for a period subject to termination by the City on short notice. The amount of rent required shall not exceed the fair rental value of the property to a short term occupier. (ref. 49 CFR 24.102 (m)) Other terms may be negotiated as part of an administrative settlement when circumstances warrant such terms and conditions.

I. Coercive Action:

In no event shall the City, in order to compel an agreement on the price to be paid for the property:

- Advance the time of condemnation; or
  - Defer negotiations; or defer condemnation and the deposit of funds in court for the use of the owner; or
  - Take any other action coercive in nature.
-

J. Condemnation:

If any interest in real property is to be acquired by exercise of the power of eminent domain, the City shall institute formal condemnation proceedings. The City shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

K. Uneconomic Remnant:

If the acquisition of only a part of a property could leave its owner with an uneconomic remnant(s), the City shall offer to acquire the remnant(s). The owner shall have the right to retain such uneconomic remnant if the owner so chooses. The agreement shall be in writing.

L. Improvements – Interest to be Acquired:

If the City acquires any interest in real property, it shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which it requires to be removed from the real property or which it determines will be adversely affected by the use to which the real property acquired will be put.

M. Improvements – Just Compensation:

For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under the above paragraph, the building, structure, or other improvement shall be deemed to be part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building structure, or improvement at the expiration of the lease.

N. Improvements – Tenant Owned:

The tenant who owns a building, structure, or other improvement to be acquired under paragraph 4L shall be paid the fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is greater, unless so specified in the Lease Document covering the subject parcel(s).

---

O. Duplication of Payment:

Payment under paragraph 4N shall not result in duplication of any payments otherwise authorized by law. No such payments shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the City all his right, title, and interest in and to such improvements. A separate summary statement shall be provided to such tenant where his improvements are being separately acquired.

P. Tenant Rights:

Nothing in the above paragraphs (4L through 4N) shall be construed to deprive the tenant of any rights to reject payment under these paragraphs and to obtain payment for such property interests in accordance with other applicable law.

Q. Incidental Expense Reimbursement:

The City, as soon as practicable after the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the City deems fair and reasonable, for expenses necessarily incurred for:

- Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;
- Penalty costs for prepayments of any pre-existing recorded mortgage entered into in good faith encumbering such real property; and
- The pro rata portion of real property taxes paid, which are allocable to a period subsequent to the date of vesting title in the City, or the effective date of possession of such real property by the City, whichever is earlier.

R. When to Pay Owner's Litigation Expenses:

The City shall pay to the owner of any right, title, or interest in real property such sum as the court, having jurisdiction of a proceeding instituted by the City to acquire the real property by condemnation, awards the owner reimbursement for his reasonable costs, disbursement, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if:

---

- The final judgment is the City cannot acquire the real property by condemnation; or,
- The proceeding is abandoned by the City.

#### S. Inverse Condemnation:

If the City intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact the taking of the real property.

Where an inverse condemnation or similar proceeding is successfully maintained for the taking of real property, the City shall pay the owner, as a part of the judgment or settlement, such sum as will in the opinion of the Court or the official effecting the settlement, reimbursements and expenses, including reasonable attorney, appraisal, and engineer fees, actually incurred because of the proceeding.

#### T. Donations:

An owner whose real property is being acquired may, after being fully informed by the City of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the City as such owner shall determine. The City is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the State from such obligation, except as provided in 49 CFR 24.102 (c )(2).

Nothing in this Procedure Manual shall be construed to prevent a qualified bona fide owner whose real property is being acquired for a Federal-aid project from making a gift or donation of such property or any part thereof, or of any of the compensation paid therefore, after such qualified owner has been fully informed of their rights to receive just compensation for the acquisition of the real property or interest.

#### U. Appraisal Waiver and Invitation to Owner:

The purpose of the appraisal waiver provision is to provide the City a technique to avoid the cost and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The appraiser making the determination to use the appraisal waiver process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is low value and uncomplicated. Since the waiver valuations are not appraisals, as defined by the Uniform Act, neither is there a requirement for an appraisal

---

review. However, the Agency must have a reasonable basis for the waiver valuation and the Agency official must still establish an amount believed to be just compensation to offer the property owner(s). In other words, comparables, data and some analysis must be presented in order to support the de minimis valuation.

An appraisal is not required if the City 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 review of available data. However, documentation and presentation is still recommended to support the valuation opinion.

A Summary Statement is not required from the Appraisal Section, because no appraisal is required, justification and reasons for a nominal value should be documented and supported.

- (A) When an appraisal is determined unnecessary, the City shall prepare a waiver valuation or Compensation Estimate.
- (B) The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation, preferably, one that has a license or certification of qualification.

#### V. Conflict of Interest:

No persons performing the waiver valuation shall have any interest, direct or indirect in the real property being valued by the Agency, nor shall compensation to the person performing a waiver valuation be based on the amount of 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 appraisal waiver valuation.

Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work except if the Federal Funding Agency waives this requirement if the agency determines that the situation would create a hardship for the City. 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 if the offer to acquire the property is \$10,000 or less. An agent may be involved in the scope of work and have input in informing the

---

appraiser for the need of a solution to an appraisal valuation problem.

#### W. When to Update an Offer of Just Compensation:

An appraisal should be updated or a new appraisal ordered if the information presented to the owner(s) indicates that there is a material change in the character or condition of the property that indicates the need for new appraisal. An update or new appraisal should also be made if a significant delay has occurred since the time of the appraisal of the property, the City shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in purchase offer is warranted, the City shall promptly reestablish just compensation and offer that amount to the owner in writing.

#### X. 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 and an authorized City official (Land Division Chief) approves such an administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, support such a settlement.

An administrative settlement is any authorized settlement made by a responsible acquiring official, that the valuation is in excess of the State's approved valuation of just compensation. The Uniform Act requires that the head of an Agency shall make every reasonable effort to acquire expeditiously real property by negotiations. Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Negotiators should recognize the inexact nature of the process by which just compensation is determined.

The law requires an attempt to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in courts. Cost savings are in the area of salaries, witness fees, travel, per diem costs, excessive court awards, appraisers fees, etc. The administrative settlement process should be maintained separately from the appraisal/appraisal review function.

For example, if there is a difference of opinion between the owner and the City as to the Highest and Best Use that may be difficult to document, this could be a plausible basis for settlement before triggering the legal process. Some of the

---

items that can assist the approving agency in their approval are: appraisals, offer of just compensation, recent court awards, negotiator's diary and records of negotiations, valuation problems and estimates of trial costs.

Y. Payment Before Taking Possession:

Before requiring the owners to surrender possession of the real property, the City obtain a Consent to Enter or shall pay the agreed purchase price to the owner(s), or in the case of a condemnation, deposit with the court for the benefit of the owner(s) an amount not less than the City's approved appraisal of the market value of such property or the court award of compensation in the condemnation proceedings for the property. With prior approval of the owner, the City may obtain a Consent to Enter (CTE) for construction purposes before making payment available to the owner.

Z. Expenses Incidental to Transfer of Title to the Agency:

The owner of real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

- (1) Recording fees, transfer taxes, documentary stamps, legal descriptions of the real property, and any other similar expenses incidental to conveying the real property to the City. However, the City is not required to pay costs solely required to perfect the owner's title to the real property.
  - (2) Penalty costs and other charges for prepayment of any pre-existing recorded mortgage entered in good faith encumbering the real property.
  - (3) The pro-rata portion of any prepaid real property taxes, which are allocable to the period after the City obtains title to the property or effective possession of it whichever is earlier. Whenever feasible, the City shall pay these costs directly to the billing agent so that the owner will not have to pay such cost and then seek reimbursement from the Agency.
-



**REAL PROPERTY APPRAISAL REQUEST FOR QUALIFICATIONS 2007 & 2008****NOTICE TO PROVIDERS OF PROFESSIONAL SERVICES  
CITY AND COUNTY OF HONOLULU**

The City and County of Honolulu anticipates the need for professional services during the fiscal year 2007-2008. Pursuant to Section 103D-304 of the Hawaii Revised Statutes, persons engaged in providing services in the following general categories are invited to submit current Statements of Qualifications and Expressions of Interest:

1. **ADA COMPLIANCE** (compliance with regulatory requirements of the American with Disabilities Act, site survey and assessments, technical assistance, etc.).
2. **APPRAISAL** (real property).
3. **ARBORIST** (investigations, consultations, surveys, etc.).
4. **ARCHAEOLOGY** (investigations, mitigation plans, monitoring, etc.).
5. **ARCHITECTURAL PLANNING AND DESIGN**
  - a. Buildings (master plans, offices, corporation yards, comfort stations, community centers, fire/police stations, etc.).
  - b. Parks (master plans, passive/active parks, recreational facilities, etc.).
  - c. Golf Course (clubhouse, maintenance facilities, comfort station, ADA improvements, etc.).
6. **CONSTRUCTION MANAGEMENT**
  - a. Civil (sidewalks, parking lots, curb ramps, play courts, site improvements, drainage improvements, sewer lines, flood control, traffic improvement, bikeways, bus bays/pads, roadways, curb ramps, traffic improvements, bridges, retaining walls, highway structure improvements, guardrail improvements, bus stop site improvements, etc.).
  - b. Architectural (buildings, offices, corporation yards, comfort stations, community centers, fire/police stations, park/recreational facilities, bus stops, lifeguard towers, etc.).
  - c. Mechanical/Electrical (street lighting, park indoor and outdoor lighting, facilities power/lighting, traffic signal technology, fire alarm systems, air conditioning, elevators, pumps, facilities systems, plumbing, fire protection, fuel storage tanks, etc.).
  - d. Sanitary (waste collection systems, wastewater facilities, solid waste facilities, effluent/biosolids reuse, force mains, etc.).
7. **ENERGY SERVICES - BUILDING FACILITIES** (energy audits and studies, performance contracting, workshops, commissioning and retro-commissioning, etc.).
8. **ENGINEERING PLANNING AND DESIGN**

- a. Civil - Bus stop site improvements
  - b. Civil - Coastal Engineering (sediment transport, shoreline protection, beach erosion studies, etc.).
  - c. Civil - Curb Ramps
  - d. Civil - General Site Improvements
  - e. Civil - Guardrail Improvements
  - f. Civil - Hydraulics (drainage improvements, sewer lines, flood control, outfall improvements etc.)
  - g. Civil - Pavement Improvements
  - h. Civil - Sidewalk Improvements
  - i. Civil - Transportation (traffic studies, intersection channelization, traffic calming, bikeways and bikepaths, traffic control measures, bus bays and pads, bus stops, etc.).
  - j. Electrical (street lighting, park indoor and outdoor lighting, facilities power/lighting, traffic signal technology, fire alarm systems, etc.).
  - k. Environmental (air quality studies, water quality studies, energy, NPDES permitting, etc.).
  - l. Geotechnical (foundations, earth movement, slope stability analysis, slide potential, hazard mitigation, etc.).
  - m. Mechanical (air conditioning, elevators, pumps, facilities systems, plumbing, fire protection, fuel storage tanks, etc.).
  - n. Roadway (new roads, road widening, etc.).
  - o. Sanitary (wastewater facilities, pre-treatment studies, effluent/biosolids reuse, solid waste facilities, etc.).
  - p. Street Rehabilitation.
  - q. Structural (Structures, revetments, foundations/barriers, pole structures, utility structures, recreational facilities, play courts, rigid pavement, piers, local barriers, special inspection, etc.).
  - r. Structural - Bridges
  - s. Transportation (planning, environmental studies, etc.).
9. **ENVIRONMENTAL SERVICES** (hazardous materials, dust, mold, contaminated soil mitigation, environmental assessment and review, etc.).
10. **GRAPHIC ARTIST/ARCHITECTURAL RENDERINGS** (display boards, newsletters, dimensional sketching, signs, etc.).
11. **LAND SURVEYING** (topographic, boundary, parcel maps, shoreline certifications, etc.).
12. **LANDSCAPE ARCHITECTURE** (master plans, landscape/hardscape plans, irrigation, etc.).
13. **PLANNING** (environmental documents, community plans, master plans, site assessment and selection, feasibility studies and analysis, land use and urban design plans, land use permit processing, bus route structuring, master grading plan, master utility plans, fire protection, etc.).
14. **PROGRAM MANAGEMENT** (develop, plan, and manage comprehensive capital improvement program for large infrastructure systems [including wastewater collection and treatment facilities], long-range planning for municipal facilities [including wastewater facilities], project cost estimating and financial planning, project tracking, project scheduling, process development, etc.).

15. **PROJECT MANAGEMENT** (project oversight, contracting, administrative processing, public meetings, services during bidding and construction, etc.).
16. **REAL PROPERTY SERVICES** (leasing of property for City use, etc.).

## **GENERAL INFORMATION**

Consultants shall express their interest providing services in the various category(ies) in the manner specified under SUBMITTAL REQUIREMENTS.

The selection criteria to be employed, in descending order of importance, are 1) experience and professional qualifications relevant to the project type, 2) past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to notices of deficiencies, 3) capacity to accomplish the work in the required time, and, when deemed relevant, 4) familiarity with the specific facility/project site and/or prior related projects.

Note that services for projects that involve certain types of federal funds are required to be advertised on a project specific basis. Consequently, in the event that this need should arise, a separate notice for services will be published which must be responded to separately, and in the manner specified in the advertisement.

## **SUBMITTAL REQUIREMENTS**

All materials submitted which have not been clearly designated as proprietary, shall become the property of the City and subject to public inspection and may be returned only at the City's discretion.

Submittals should be on a compact disc (preferably 1 CD per consultant); in Portable Document Format (PDF) and be should be no larger than 3MB per service category. Your submittal should include the following:

1. Modified Standard Form 330 (r7/04) for each service category. Copies of the form may be downloaded from the City web site at [www.honolulu.gov/pur](http://www.honolulu.gov/pur) or picked up from the Department of Design and Construction at 650 South King Street, 11th Floor, Honolulu, Hawaii 96813. Telephone (808) 768-8436.

Any supplemental information you wish to include related to each project of interest should be incorporated into the submittal. Promotional materials or descriptive literature are not necessary though will be accepted.

If preferred, one submittal may be submitted for multiple categories, however the submittal cannot exceed the 3MB requirement.

2. Completed Service Category Checklist (one checklist per consultant) indicating the Service Categories for which you wish to be considered. Confirmation of the service categories you have been determined to be interested in and qualified for will be mailed back to you within 2 weeks after the deadline or receipt of your submittal, whichever is later.
3. Transmittal Letter dated and signed by an authorized representative of the firm.

Submittals (1 compact disc and 1 hardcopy) should be mailed or delivered to:

Mr. Eugene C. Lee, P.E., Director  
Department of Design and Construction  
650 South King Street, 11<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Requests to Re-Use last year's Statement of Qualifications will not be accepted for fiscal year 2007-2008

**DEADLINE**

No later than **4:30 p.m., July 1, 2007** to receive full consideration for upcoming selections.

**INTERNET ACCESS**

This foregoing information is also available at ([www.honolulu.gov/pur/profsvcs.htm](http://www.honolulu.gov/pur/profsvcs.htm)).

Any inquiries regarding the above should be directed to Sandra Kunioka at (808) 527-6697.

MARY PATRICIA WATERHOUSE  
Director of Budget & Fiscal Services  
By order of MUFU HANNEMAN, MAYOR  
City and County of Honolulu



## RELOCATION CITY-WIDE ROLES AND RESPONSIBILITIES

- A. The Department of Budget and Fiscal Services (BFS) Purchasing Division, Relocation Section is responsible for providing relocation services, including the technical assistance, and training to enable the City to fulfill its statutory relocation assistance requirements.
- B. City agencies should notify the Relocation Section as early as possible of any proposed or planned projects that might require the City to provide relocation assistance.
- C. The Displacing Agency and (BFS), CIP/Fiscal Administration, will reference the relocation cost guidelines and consult with the Relocation Section when reviewing relocation budgets.
- D. The Department of Design and Construction, Land Division, will coordinate with the Relocation Section on any land acquisitions that require the City to provide relocation assistance, including providing required written notices to occupants on the property to be acquired.
- E. The Displacing Agency shall:
  - 1. Review and approve the relocation plan and estimated budget submitted by the Relocation Section.
  - 2. Coordinate management of properties once they have been acquired (e.g., to ensure that leases are issued; that rents are collected; that repairs are performed, etc.)
  - 3. Monitor the project budget, including the relocation budget.
  - 4. Approve list of persons to relocate and relocation timetable.
  - 5. Independently verify that relocation work has been performed or relocation services have been delivered.
  - 6. Ensure that its project managers receive appropriate training in the relocation procedures.
- F. BFS Internal Control Division shall, periodically and as needed, perform audits of relocation activities, including reviewing relocation expenditures by vendor.
- G. BFS Accounting and Fiscal Services Division shall:
  - 1. Process relocation claims in accordance with the Department of Budget and Fiscal Services procedures manual.
  - 2. Review claims for unusual activity, costs or patterns.”



## APPENDIX Z

### FEE SIMPLE AND LEASEHOLD DETERMINATION PROCEDURES

#### FEE SIMPLE

Fee simple ownership is probably the most familiar form of ownership for real estate. Fee simple is sometimes called fee simple absolute because it is the most complete form of ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers or taxation, eminent domain, police power and escheat. Fee simple ownership is for an indefinite duration, freely transferable and inheritable. Ownership rights include the right to possess, use and dispose of the land—sell it, give it away, trade it, lease it, or pass it to others upon death.

#### LEASEHOLD

A leasehold interest is created when a fee simple land-owner (lessor) enters into an agreement or contract, commonly called a ground lease, with a lessee. An interest in the land is conveyed by the lease but a leasehold interest differs from fee simple title as the lessee does not own the land and must pay ground rent. Also, the lessee's rights are limited to only occupancy and use of the land for a specified duration, usually long term such as 55 years. At the time of expiration of the lease the land and, depending on the lease provisions, any improvements are returned to the lessor. Also, depending on the provisions in the lease agreement the lessee may sublease the land with approval of the lessor.

The leasehold differs from a rental in that a rental is usually for a shorter term and does not convey a property interest.