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**Section 6.1**

**ADVANCE ACQUISITION**

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## Section 6.1

### ADVANCE ACQUISITION

#### PURPOSE

The purpose of this section is to establish the process the Guam Department of Public Works (Department) must follow to comply with early acquisition requirements for right of way acquisitions.

#### AUTHORITY

23 CFR, Section 710.501  
23 CFR, Section 710.503  
The National Environmental Policy Act (NEPA) [42 U.S.C. 4321 et seq.]

#### SCOPE

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

#### REFERENCES

Section 1.1, Right of Way Procedures Manual  
Section 5.6, Eminent Domain  
SAFETEA-LU Environmental Provisions Sections 6001, 6002, 6004 and 6009

#### FORMS

None specific to this section of the Manual.

#### DEFINITIONS

**Advance Acquisition:** The term used by the Department to describe right of way acquisition occurring prior to the year in which right of way acquisition is programmed/scheduled. This term is also used by Federal Highway Administration (FHWA) to describe Federally assisted hardship acquisitions and protective buying occurring during the National Environmental Policy Act (NEPA) process. In the context of this section, advance acquisition shall be the Department's usage. (See **Attachment 1**)

**Early Acquisition:** The term used by the Department to describe right of way acquisition, other than hardship acquisition or protective buying, occurring prior to completion of the NEPA process. (See **Attachment 1**)

**Hardship Acquisition:** The term used by FHWA to describe Federally assisted acquisition of a particular parcel or limited number of parcels occurring during the NEPA process to address health, safety or financial hardships experienced by a landowner as a result of an impending project. (See **Attachment 1**)

**Proactive Acquisition:** A term used by the Department to describe right of way acquisition occurring after completion of the NEPA process but prior to the year in which right of way acquisition is programmed/scheduled. (See **Attachment 1**)

**Protective Buying:** The term used by FHWA to describe federally assisted acquisition of a particular parcel or limited number of parcels occurring during the NEPA process to prevent imminent development that would substantially increase costs or limit future transportation alternatives. (See **Attachment 1**)

### **6.1.1 Advance Acquisition Procedures**

All advance acquisition parcels shall be acquired in accordance with **23 CRF § 710.501** and existing policies and procedures for the acquisition of right of way with only the exception described in **Section 6.1.1.2**.

**6.1.1.2** For advance acquisition parcels, delivery of relocation **Notices of Eligibility** for tenants may be deferred until such time as the Department has entered into a purchase agreement with the property owner or the Department determines that the parcel will be acquired by condemnation. The Department must contact all tenants located on advance acquisition parcels and advise them that the Department has entered or will enter into negotiations with the land owner to purchase the parcel. Tenants must be further informed that at such time as the Department obtains a purchase agreement or decides to pursue condemnation all tenants will be made eligible to receive all relocation benefits to which they are entitled. Tenant contacts should be made in writing and must be documented in the Department's official parcel file.

### **6.1.2 Use of Eminent Domain**

Eminent domain may be used to acquire advance acquisition parcels. Where design plans are not sufficiently complete to support engineering necessity, public purpose and necessity may be demonstrated through use of typical design, construction plans or profiles, and anticipated trends in demographic and other growth patterns, land use and development patterns, traffic projections, expected utility needs, or anticipated mass transit requirements.

### **6.1.3 Evaluating Advance Acquisition Opportunities**

The Department of Public Works Right of Way Supervisor (DPWRS) or designee should monitor real estate activity within priority corridors to identify potential advance acquisition opportunities. The Department should evaluate opportunities based on:

- (A) The importance of the corridor as determined by the Department;
- (B) The existing protection measures in place for the corridor. Parcels on corridors that have been designated in adopted Territorial Government comprehensive plans or are otherwise being protected by the Territorial Government should be considered;
- (C) The availability of funding for advance acquisition;
- (D) The existing schedule for right of way acquisition in the work program;
- (E) The status of the environmental documentation;
- (F) The status of design plans;
- (G) The estimated savings the Department would realize from advance acquisition considering the impact of time on property values, potential development, potential zoning or land use changes, etc;

- (H) The possibility that advance acquisition will advance construction of all or part of an affected project;
- (I) Developer contribution to the project; and
- (J) Whether the property being considered for advance acquisition is listed for sale or is otherwise available for purchase from a willing seller.

#### 6.1.4 Early Acquisition

**6.1.4.1** The Department may acquire parcels using Territory of Guam funds at any time funds are available to do so. Federal participation will not be available for such acquisitions except as described in **Section 6.1.4.2**. However, early acquisition costs may be used as credit towards the Department's matching share for a Federal aid project. Acquisition costs can be either the actual cost the Department incurred for land, improvements, severance damages, and business damages or the current fair market value of the land acquired through early acquisition. Early acquisition costs will be eligible for matching credit provided:

- (A) The early acquisition complies with **Section 1.1, Right of Way Procedures Manual**;
- (B) The acquired property is not **Section 4(f)** pursuant to, **SAFETEA-LU Section 6009, Parks and Recreation areas, Wildlife and Waterfowl Refuges and Historical Sites**;
- (C) The Department determines and FHWA concurs that early acquisition did not influence the environmental assessment for the project including the decision to construct the project, the consideration of alternatives, and the selection of the design or location of the project;
- (D) The project is included in the Territorial Transportation Improvement Plan (TTIP).

**6.1.4.2** Federal reimbursement of early acquisition costs may be approved by FHWA provided:

- (A) There is compliance with all of the requirements in **Section 6.1.4.1**;
- (B) Prior to acquisition, the Department obtains a certification, signed by the Governor, that the early acquisition is consistent with the Territories mandatory comprehensive and coordinated land use, environment and transportation plan. A copy of this certification must be provided to FHWA;
- (C) The Department provides FHWA documentation that the Governor has determined prior to acquisition that early acquisition is consistent with the Territory's transportation planning process; and
- (D) The Department obtains written concurrence from the Guam Environmental Protection Agency in the determinations described in **Section 6.1.4.1 (C)**.

#### 6.1.5 Proactive Acquisition

Federal participation in proactive acquisition is available where:

- (A) The project is included in the TTIP;
- (B) Proactive acquisition has been authorized by FHWA pursuant to the, **SAFETEA-LU Environmental Provisions Sections 6001 and 6002**; and

- (C) The proactive acquisition complies with **Section 1.1, Right of Way Procedures Manual**.

#### **6.1.6 Protective Buying**

During the NEPA process, protective buying may be approved by FHWA for single parcels or a limited number of parcels where the Department can document that the parcel(s) being proposed for protective buying are on the verge of future development or change in their physical character so as to limit future transportation choices or significantly increase future acquisition costs. Following are examples of situations where protective buying may be appropriate:

- (A) Parcels on the verge of costly development, expansion, or change in physical character by construction, excavating, flooding, dumping, etc;
- (B) Parcels with pending zoning or land use changes that will increase the value of the land; and
- (C) Parcels where existing improvements have been severely damaged and reconstruction of the improvements is pending.

#### **6.1.7 Hardship Acquisition**

During the NEPA process hardship acquisition may be approved by FHWA for single parcels or a limited number of parcels provided the Department and FHWA concur in a written assertion from the property owner(s) that due to health, safety or financial reasons continued ownership of the property poses an undue hardship on the owner(s) as compared to other owners on the project. The owner(s) must also demonstrate that because of the pending project he/she cannot sell the property at market value within a typical time period for properties not influenced by the project. Following are examples of situations where hardship acquisition may be appropriate:

- (A) Illness or advanced age within the property owner's family that causes undue economic hardship, prevents the owner from adequately maintaining their property, or requires the owner to relocate to an extended care facility or nursing home;
- (B) Financial hardship causing the property owner to be unable to continue to meet the financial obligations of ownership;
- (C) Significant reduction or loss of rental income resulting from knowledge of the proposed project;
- (D) Structural inadequacies caused by an increase in family size, special needs such as health, safety, or mobility requirements for disabled individuals or structural damage which renders the dwelling unfit for habitation.

#### **6.1.8 FHWA Approval of Hardship Acquisition or Protective Buying**

**6.1.8.1** Hardship acquisition or protective buying may be approved by FHWA where:

- (A) The project is included in the TTIP;
- (B) The Department has complied with public involvement requirements;

- (C) The hardship acquisition or protective buying qualifies as a Programmatic Categorical Exclusion pursuant to the, **SAFETEA-LU Section 6004, State Assumption of Responsibility for Categorical Exclusions (CE)**; and
- (D) The Department has determined and FHWA concurs that the advance acquisition will not influence the environmental assessment for the project, including the decision to construct the project or the selection of a specific location.

**6.1.8.2** Requests for FHWA approval for protective buying and hardship acquisition must be recommendation by the DPWRS and supported by a written request from the Director Department of Public Works (DDPW) containing:

- (A) An explanation of how the proposed parcel(s) meet the requirements for hardship acquisition or protective buying in **Sections 6.1.6** or **6.1.7** as appropriate;
- (B) An explanation of how the Department has complied with the requirements of **Section 6.1.8.1**;
- (C) A description or parcel sketch for the proposed parcel(s);
- (D) A cost estimate detailing the right of way costs for the parcel(s) included in the request; and
- (E) A completed **Type 1 and Programmatic Categorical Exclusion Checklist**.

**6.1.8.3** Requests for approval of hardship acquisition or protective buying shall be provided to the DDPW. In order to provide adequate time for review and approval, requests should be submitted **30 days** prior to the date the Department needs FHWA financial authorization for the hardship acquisition or protective buying. Requests affecting non-interstate projects may be approved by the DDPW, under the delegated federal approval program. When approved by the DDPW, or FHWA, as appropriate, the DPWRS, shall notify the Federal Aid Management Manager of the approval. Upon notification that hardship acquisition or protective buying has been approved, the Department may request FHWA financial authorization for the hardship acquisition or protective buying.

#### **6.1.9 Use of Eminent Domain for Hardship Acquisition or Protective Buying**

**6.1.9.1** Eminent Domain should be considered in a protective buying situation if, at the end of a reasonable negotiation period, a negotiated settlement cannot be achieved. A reasonable negotiation period should be considered as **120 days** unless there are mitigating circumstances, such as owner health issues.

**6.1.9.2** In the case of a hardship acquisition, the Department has no obligation to file condemnation earlier than the project schedule would otherwise call for. If, after good faith negotiations, an agreement cannot be obtained, the Department has no additional obligation to the owner. At the time hardship acquisition is approved by FHWA, the Department must advise the property owner(s) in writing, that if a negotiated agreement cannot be achieved, the Department will terminate negotiations and will not proceed with eminent domain until the scheduled right of way project begins. If negotiations are ended without reaching an agreement, the Department must notify the owner(s) that further negotiations and eminent domain, if necessary, will be deferred until scheduled right of way activities commence.

#### **HISTORY**

Original Issue Date: 2009

# Advance Acquisition

