



MAY 06 2021

DEPARTMENT ORDER

NO. **37**
Series of 2021 *May 7/2021*

) **SUBJECT: Clarifying Department Order No.**
) **110, Series of 2019 Particularly in Entering**
) **Compromise Agreement, Filing an Appeal,**
) **Motion for Reconsideration, Petition for**
) **Certiorari, or Other Legal Remedies in**
) **Court Case involving DPWH Right-of Way**
Acquisition

The constitutional mandate on eminent domain is enshrined in Section 9, Article III of the 1987 Constitution which provides that private property shall not be taken for public use without just compensation.

Consistent therewith, Section 2 of Republic Act (RA) No. 10752, otherwise known as "The Right-of-Way Act", provides that the State shall ensure that the owners of real property acquired for national government infrastructure projects are promptly paid just compensation for the expeditious acquisition of the required right-of-way for the projects.

In a plethora of cases decided by the Supreme Court, just compensation in expropriation cases has been held to contemplate just and timely payment; it embraces not only the correct determination of the amount to be paid to the landowner, but also the payment of the land within a reasonable time from its taking. Equally important is the rule that just compensation does not imply fairness to the property owner alone. Compensation must also be just to the public, which ultimately bears the cost of expropriation.

By virtue of the delegated authority provided for in Department Order No. 110, series of 2019 (DO No. 110, s. 2019), in relation to Department Order No. 65, Series of 2017, the Head of the Right-of-Way Task Force shall be responsible for determining the appropriateness of entering into a compromise agreement or pursuing an appeal for an expropriation case, and/or for any court action initiated by the property owner wherein the subject matter is the taking of his/her property by the DPWH without payment of compensation.

Guided by the foregoing principles, this Department is continuously adopting mechanisms to effectively implement national infrastructure projects as well as to compensate the property owners within the bounds of law and dictates of jurisprudence, thus these clarificatory guidelines:

I. Compromise Agreement

Consistent with DO 110, s. 2019, the following factors, among others, may be used by the Head of ROW Task Force in determining the appropriateness of entering into a compromise agreement with property owners whose property was acquired the right-of-way for national infrastructure projects and is a subject of a pending court action:

1. The offer to compromise is initiated by the claimant;
2. All papers and documents in support of the right-of-way acquisition are complete based on prevailing DPWH requirements;
3. There is no pending legal issue or dispute regarding ownership or title to the property as determined by the court and the only matter left to be resolved by the court is the amount of just compensation to be paid to the property owner;
4. The amount involved therein does not exceed:
 - a. For expropriation cases instituted by this Department:
 - i. Lots – the amount stated in the letter-offer which may be the current market value as appraised by a Government Financial Institution or an Independent Property Appraiser, or the Bureau of Internal Revenue (BIR) Zonal Value at the time of taking¹, whichever is higher;
 - ii. Structures/Improvements – the replacement costs, as appraised by this Department, stated in the letter-offer; and
 - iii. Crops/Trees – the current market value, as appraised by competent government agencies, stated in the letter-offer.
 - b. For any court action initiated by the property owner wherein the subject matter is the taking of his/her property by the DPWH without payment of compensation:
the BIR Zonal Value of the property at the time of taking and if the parties cannot reasonably determine the time of taking of the property based on existing records, the BIR Zonal Value at the time of the completion of the project affecting the subject property may be considered;
5. All defendants agreed to waive the payment of damages of any kind, including interest accrued from the time of filing of the case;
6. Capital gains tax and unpaid real property tax shall be paid by the property owner. Expanded withholding tax, estate tax, and other taxes and fees due shall also be paid by the property owner except those that the government shall pay in accordance with RA No. 10752;
7. The property owner waived any right or interest to file any action in relation to the subject properties and/or the expropriation case.

The Head of ROW Task Force shall certify that the agreement to be entered into is neither prejudicial nor grossly disadvantageous to the interest of the government after the same is reviewed, recommended, and approved by the Office of the Solicitor General (OSG), as the government's legal counsel. The compromise agreement shall be submitted to the court for approval as not being contrary to law, morals, good customs, public order, or public policy.

¹ Time of taking shall mean the date when the implementing agency actually entered the property or the date of the filing of the complaint for expropriation, whichever came first.

II. Appeal and Other Legal Remedies

Appeal, motion for reconsideration, petition for certiorari, or other legal remedies available under the Rules of Court after a judgment or decision was rendered by the courts of law may no longer be availed of in an expropriation case if upon assessment of the Head of the ROW Task Force, taking the totality of circumstances surrounding the case, the effect of pursuing said remedies will result to a similar, or an increase in, liability of this Department. In its assessment, the following factors, among others, may be considered by the ROW Task Force Head in evaluating whether further legal action/s will serve the best interest of the Department:

1. Factors stated in Item No. I (Compromise Agreement), particularly sub-item nos. 2, 3, and 4;
2. If the amount of just compensation is more than: 1) the current market value of the land and the BIR zonal value; 2) the replacement cost of structures or improvements; and 3) the current market value of the crops and trees:
 - a. The difference between the total amount of just compensation awarded in the decision of the court sought to be appealed, and the total amount contained in the Department's letters offer for the affected properties or the total amount deposited with the court pursuant to RA No. 10752, whichever is higher, is not more than six percent (6%). The threshold of 6% shall be based on the higher amount between the amount stated in the Department's letters offer or amount deposited with the court pursuant to RA No. 10752; or
 - b. The amount does not exceed the value awarded in a final and executory judgment of the Supreme Court of the Philippines for an adjacent property subject of another expropriation proceeding;
3. The length of time that elapsed between the date of filing and the date the case is finally resolved by the court;
4. The case was already remanded by the appellate court to the trial court for proper determination of just compensation;
5. The subject infrastructure project is already being utilized despite pendency of the case;
6. For expropriation cases pending before collegiate courts, the interest accrued is already higher than the difference as mentioned in matter No. II (Appeal and Other Legal Remedies) particularly sub-item no. (2)(a).
7. The legal interest imposed by the court is consistent with BSP-MB Circular No. 799, series of 2013²;

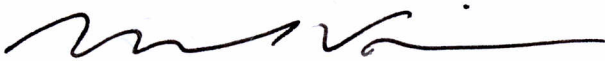
² Interest shall accrue as follows:

(a) The difference between the principal amount of just compensation and the amount of initial deposit shall earn legal interest of 12% per annum from the date of taking until June 30, 2013.

8. There is a favorable recommendation not to appeal the case from the Solicitor General or his duly authorized representative;
9. Availability of additional pieces of evidence to bolster the position of this Department.

The presence or absence of any of the circumstances in Item Nos. I and II shall not prevent the Head of the ROW Task Force to exercise its discretion on whether a compromise, an appeal or otherwise is the best course of action for the government. Other relevant and/or related circumstances may be considered by the Head of the ROW Task Force Head thru a Cost-Benefit Analysis that it may conduct. It is emphasized that the Head of the ROW Task Force shall, at all times, consider the best interest of the government in deciding on these matters.

This Order shall take effect immediately. Any/all previous issuances in conflict with this Order shall be repealed or amended accordingly.



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Secretary

Department of Public Works and Highways
Office of the Secretary



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- (b) The difference between the principal amount of just compensation and the amount of initial deposit shall earn legal interest of 6% per annum from July 1, 2013 until the finality of the decision.
 - (c) The total amount of just compensation, or the sum of legal interest in items a and b above plus the unpaid portion of just compensation shall earn legal interest of 6% per annum from the finality of the decision until full payment thereof.