

097.13 DPWH
09-18-2012



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
OFFICE OF THE SECRETARY
Manila

SEP 17 2012

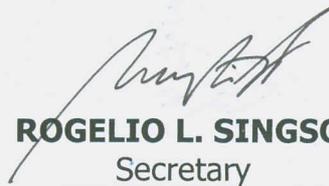
DEPARTMENT ORDER)
No. 66)
Series of 2012 ^{09.18.12})
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**SUBJECT: Amendment to Section 2.12 of the
Infrastructure Right-of-Way
(IROW) Procedural Manual
Expropriation Proceedings and
Standard Forms for Letter Offers**

In line with the Department's objective to improve the Infrastructure Right-of-Way (IROW) process, new procedures for IROW Procedural Manual Section 2.12 Expropriation Proceedings (refer to Annex A) and Letter Offers Standard Forms for acquisition through purchase (refer to Annex B) are hereby adopted for strict compliance.

This Department Order supersedes D.O. 5, Series of 2003, for 2.12 Expropriation Proceedings procedures defined in the IROW Procedural Manual. Further, it mandates the use of standard forms attached herewith for use in Section 2.8 IROW Acquisition through Purchase.

All other directives of D.O. 5, Series of 2003 remain unchanged unless otherwise superseded by other Department Orders (e.g. Omnibus Delegated Authorities).


ROGELIO L. SINGSON
Secretary



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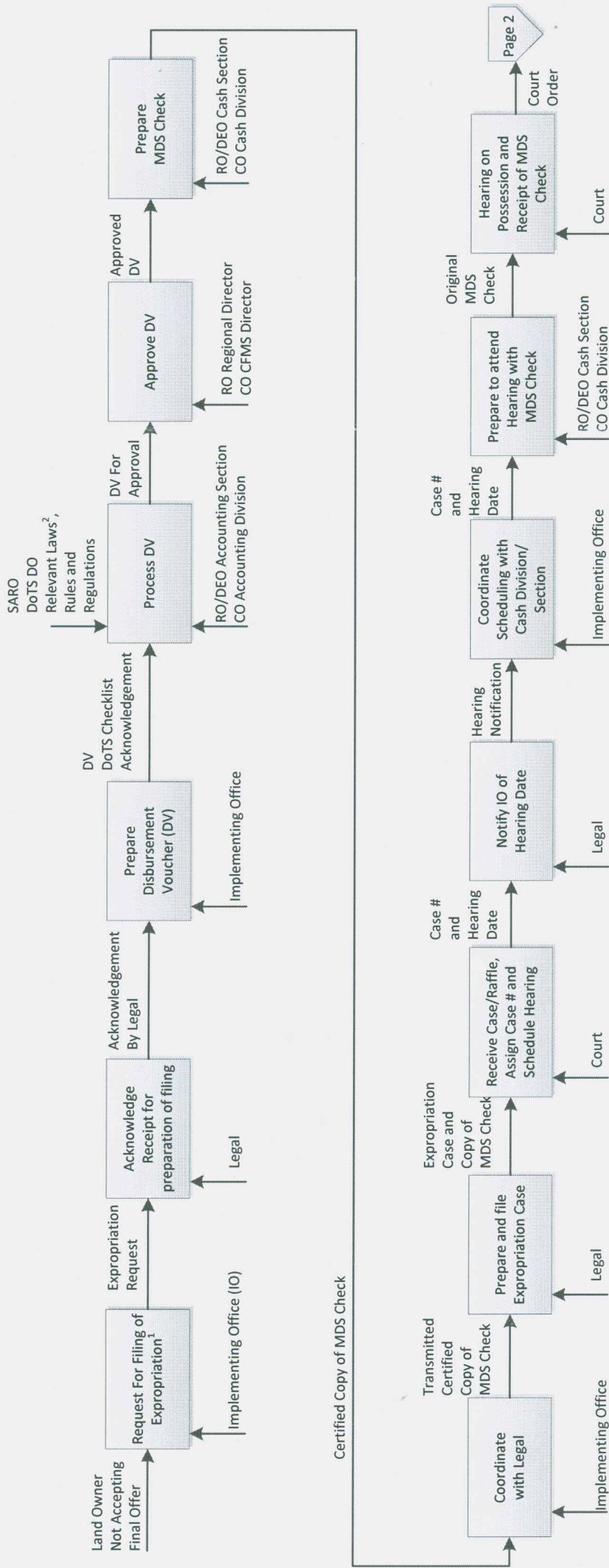
Annex A

Acquisition of Right of Way Through Expropriation Proceedings

1. Land Acquisition And All Right Of Way Expropriation – Flowchart
2. IROW Procedural Manual Section 2.12 *Expropriation Proceedings* – Procedures
3. Appendix J1 – Affidavit from the Implementing Office on ascertainment of the identities or whereabouts of Claimant(s)
4. Appendix J2 – Affidavit from Claimant that the person is one and the same person
5. Appendix J3 – Certification from the Implementing Office that the person is one and the same person
6. Appendix J4 – Affidavit from the Implementing Office on Taxpayer Identification Number

Land Acquisition And All Right Of Way Expropriation

Page 1 of 2

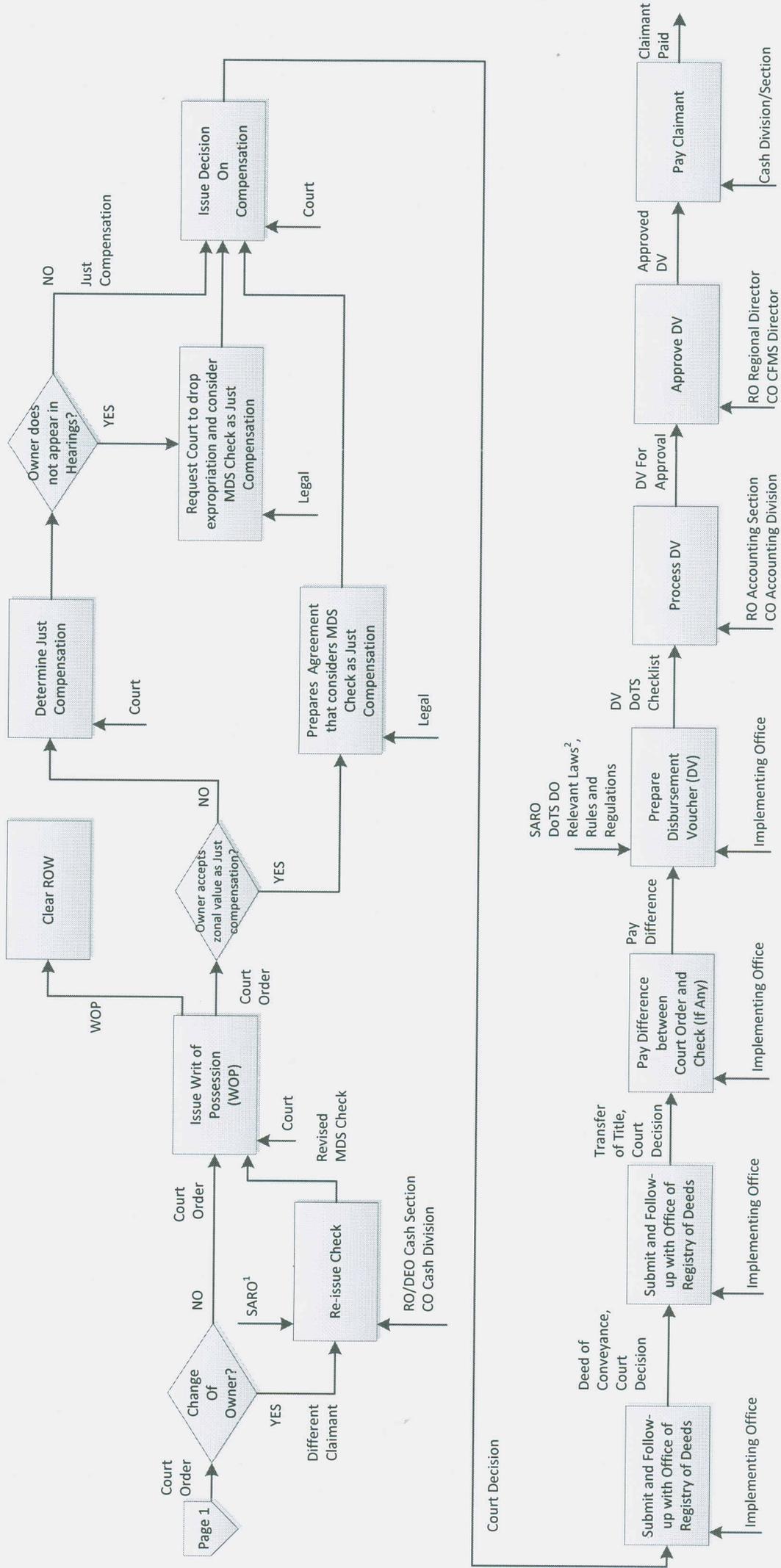


¹ For RO/DEOs, request to Legal Staff in Region

² Need to review relevant laws still in effect

Land Acquisition And All Right Of Way Expropriation

Page 2 of 2



¹ Proposed change to SARO by Lot versus Owner

2.12 Expropriation Proceedings

Objective: To acquire IROW by means of expropriation proceedings.

Policy: IROW Agent must exercise due diligence during the 2.8 Acquisition through Purchase process before entering the 2.12 Expropriation Proceedings process.

Lead Persons: Legal Service Officer and RO Legal Officer duly deputized by the OSG
IROW Agent of PMO, RO, and DEO

Support:

- Office of the Solicitor General (OSG)
- Regional Trial Court (RTC)
- Provincial/City Prosecutor
- Implementing PMO
- Legal Service Staff
- Legal Staff of RO
- Support 2

Overview:

In accordance with associated Department Order(s), the Government (DPWH) shall initiate expropriation proceedings in cases where the property owner refuses the second (final) offer. If said property owner still refused to accept the second (final) offer, or have not responded whatsoever within the 15-day period, as provided for in Section 7 of the IRR FOR RA 8974, expropriation proceedings shall be initiated.

Procedure:

1. The Implementing Office gets Parcenary Survey Report (Plan) and the LAPRAP and compiles all original and/or certified true copies of the following documents:
 - Approved master parcellary plan
 - Subdivision plan with technical descriptions
 - TCT/OCT/EP/CLOA
 - Tax declaration for land
 - Tax declaration for improvements, if any
 - ECC
2. The Implementing Office prepares an IROW Compensation Matrix showing the name of owner(s), title number, total area, affected area, type of improvement, replacement cost of improvements, and BIR zonal value of affected area, following the template shown in **Appendix J**.

3. The Implementing Office prepares Memorandum of Request for the issuance of the Obligation Request (ObR) to the Budget Officer. The Budget Officer prepares the ObR based on available allotment. This step should be carried out parallel with Step 4.
4. The Implementing Office requests the Office of the Solicitor General (OSG) to prepare for filing the case with the Regional Trial Court (RTC) of the concerned City/Municipality or Province. The IROW Compensation Matrix prepared in Step 2 will form part of the case, whereas the documents prepared in Step 1 will comprise the Attachments. If there are problems relating to service of letter offers and ascertainment of the identities or whereabouts of claimants, heirs, and Mortgagees, include an Affidavit, following the template shown in **Appendix J1**. If the owner refuses to provide Taxpayer Identification Number (TIN), the Implementing Office shall include the requirement to provide the TIN as part of the complaint. The Implementing Office shall also include requesting the Court to instruct the Registry of Deeds to transfer the Title in the name of RP as part of the complaint.
5. The OSG, at its discretion, may deputize the Provincial/City Prosecutor or DPWH Lawyer to act in behalf of the OSG in the filing of complaint to the proper Court.
6. The OSG or the deputized prosecutor/DPWH lawyer sends an acknowledgement of receipt of the documents required for filing of the case to the Implementing Office.
7. Upon receipt of acknowledgement, the Implementing Office will prepare a disbursement voucher for the payment to the property owner. The amount should be equivalent to 100% of the value of land based on the current BIR zonal valuation, PLUS the value of improvements and/or structures based on replacement cost, in accordance with the method of computation provided for in Section 10 of the IRR of RA 8974. These values may be obtained from the LAPRAP prepared. The Implementing Office shall ensure that the LAPRAP has taken into consideration properties acquired under Commonwealth Act (CA) 141 (Free Patent, Sales Patent, Homestead Patent) wherein the Government has retained easement rights.

If there is a minor change in the Claimant, refer to the following:

- For cases of obvious misspelled names, include an Affidavit from the owner, following the template shown in **Appendix J2**, and a certification from the Implementing Office, following the template shown in **Appendix J3**, that it is a misspelling only and the person is one and the same. Attach a copy of a government-issued identification.
- In the cases of the title being in the maiden name of the owner and the owner is now married, include a National Statistics Office (NSO) copy of the marriage certificate.

If the owner refuses to provide Taxpayer Identification Number (TIN), the Implementing Office should attach an Affidavit, following the template shown in **Appendix J4**, to the Disbursement Voucher.

8. The Accounting Division/Section processes the Disbursement Voucher.
9. The Cash Division/Section prepares the MDS Check(s) and provides the Implementing Office with a copy of the approved MDS Check(s) for filing purposes. The Cash Division/Section will ensure that the MDS Check(s) is (are) in the name of the Defendant(s).

10. The Implementing Office provides a certified true copy of the approved MDS Check(s) to OSG or its deputized prosecutor/DPWH lawyer.
11. The OSG or its deputized prosecutor/DPWH lawyer files case including an Urgent Ex-Parte Motion for issuance of Writ of Possession (WOP) with the concerned RTC. The certified true copy of the MDS Check(s) is (are) attached to the complaint.
12. The RTC will then issue the Summons and direct the concerned Sheriff to deliver said Summons to each of the defendants.

(Note: To expedite the delivery of Summons to the respective defendants, the IROW Agent may arrange for logistical support, such as the provision of vehicle for said delivery. Experience shows that a month's time of delivery period can be shortened to three (3) days, if such logistics are made available)

13. The defendant(s), within the given time frame given in the Summons, may either:
 - File and serve a Notice of Appearance, specifying the property being claimed (if he has no objection to the taking of his property) or
 - File an objection or defense to the taking of the property
14. The OSG or the deputized prosecutor/DPWH lawyer will notify the Implementing Office to attend hearings of possession set by the RTC.
15. The Implementing Office notifies the Cash Division/Section of the hearing date. A representative from the Cash Division/Section attends the initial hearing with the actual MDS Check(s) to turn over to the Court.
16. Upon issuance of Court Order, if there is a minor change in the Claimant, refer to Step 7.

If there is a need for the inclusion of a Mortgagee as the payee even if not included on the Master List, DBM approval is not required.

In the event that the SARO is by claimant and no authority for DPWH Secretary approval has been provided by DBM, DBM approval for change of creditor is required.

17. Upon confirmation of the identity of the property owner, the Court shall release the check to the property owner and request him to acknowledge receipt. The Implementing Office shall ensure that the TIN is provided to the Accounting Division/Section.
18. The Court shall then issue a WOP to the plaintiff (DPWH, represented by the Implementing Office) and an order directing the local Registry of Deeds to annotate said Writ of Possession on the land title. The Implementing Office will coordinate with law enforcement agencies in implementation of WOPs, and Local Inter-Agency Committee or local housing board if relocation of informal settlers is needed.
19. If the owner accepts/agrees that the zonal valuation for the lot and the replacement cost for the improvements as the Just Compensation, the OSG or the deputized prosecutor/DPWH lawyer either a) files a motion with the Court for final judgment based on such acceptance/agreement, or b) prepares a Compromise Agreement for approval of the Court, stating that the amount already paid (Step 17) will be considered the Just Compensation. The requirement for payment of capital gains tax shall be included in this agreement or Court Order. Proceed to Step 25.

20. If the owner wishes to pursue the case, the Court shall then appoint not more than three (3) competent and disinterested persons as *commissioners* to ascertain and report to the Court the just compensation for the property sought to be taken.
21. The OSG or the deputized prosecutor/DPWH lawyer attends hearings for determination of Just Compensation set by the RTC.
22. If the owner does not appear in the Hearings, thereby waiving his rights, the Implementing Office will request the OSG or the deputized prosecutor/DPWH lawyer to file a motion to submit the case for decision adopting the amount already received by the defendant(s) (Step 17) as the Just Compensation and require payment of capital gains tax by the defendant(s). Proceed to Step 25.
23. The appointed commissioners shall then submit within 60 days from their appointment, a full and accurate report containing their recommendations.
24. The owner of the property has 10 days to file objection to the commissioners' report (if any).
25. When the decision of the Court becomes final and executory, the Implementing Office shall pay the property owner the difference between the amount already paid (Step 17) and the just compensation as determined by the Court (if any). The Title should be annotated for any Compromise Agreement.
26. The Implementing Office shall prepare and process the Deed of Conveyance.
27. Go to the Register of Deeds of the place in which the property is located and bring a certified copy of the judgment and the Deed of Conveyance for proper recording and processing.
28. Regularly and continuously follow up with the Office of said Register of Deeds regarding the status of the transfer. Do this until the Transfer of Title (TCT) of the property has been registered in the name of the Republic of the Philippines.
29. Provide copy of TCT to IROW-PMO.

Appendix J1

Republic of the Philippines)
City / Municipality of _____)
Province of _____)

AFFIDAVIT

I, (IROW Agent Name) of legal age, and office address at DPWH (IROW-PMO, Rosario, Pasig City), after having been duly sworn to in accordance with Law, do hereby depose and state the following:

That the Republic of the Philippines through the DPWH is implementing the (Tarlac-Pangasinan-La Union Expressway (TPLEX) project) with total length of approximately (88.58 kms) through the DPWH

That I am an official of DPWH occupying the position of _____
_____.

That _____ is / are:

- Registered owner/s of the affected lot.
- Named owner in the Tax Declaration of the affected lot.
- Known owner/claimant/occupant/ or person appearing to have interest over the affected lot (as per affidavit of the Brgy. Captain of the area where the lot is located).

That a _____ Letter Offer/Notice to acquire the affected lot through negotiation was personally delivered to the above-mentioned person/s on _____ at his/her/their
(date)

known address in _____
(address)

but the same was not personally served because:

- temporarily out (within the Philippines)
- temporarily out (abroad) _____ OFW
(address, if known)
- permanently residing abroad _____
(address, if known)
- no longer residing at given address and whereabouts unknown

deceased

If deceased, Heirs

name:

address:

relation:

name:	address:	relation:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other Reason, _____

That the Letter Offer was instead served to said _____
thru _____ who is
(recipient)
his/her _____.
(relationship)

That we are executing this affidavit to attest to the truthfulness of the foregoing and for whatever legal purposes that this statement may serve.

IN WITNESS WHEREOF, we have hereunto set my hand this _____,
in _____, Philippines.

Affiant

SUBSCRIBED AND SWORN to before me this _____, affiant
exhibited to me his/her _____ no. _____ issued on
_____ at _____, Philippines.

Doc No. _____

Appendix J2

Republic of the Philippines)
City / Municipality of _____)
Province of _____)

AFFIDAVIT

I, (Property Owner Name) of legal age, residing at (address of Property Owner), after having been duly sworn to in accordance with Law, do hereby depose and state the following:

That JONATHAN E. GONZAGA as stated in the ROW record and specified in the enclosed government issued identification (Driver's License No. _____), was misspelled and erroneously stated as JONATHAN E. GONZAGO in DBM attachment (Annex _____) to SARO No. _____.

That the said typographical error was not intentional but only due to oversight.

That the above-mentioned person is one and the same person.

That we are executing this affidavit to attest to the truthfulness of the foregoing and for whatever legal purposes that this statement may serve.

IN WITNESS WHEREOF, we have hereunto set my hand this _____,
in _____, Philippines.

Affiant

SUBSCRIBED AND SWORN to before me this _____, affiant
exhibited to me his/her _____ no. _____ issued on
_____ at _____, Philippines.

Doc No. _____

CERTIFICATION

THIS IS TO CERTIFY that per ROW records, JONATHAN E. GONZAGA is (are) the legal owner(s) of an affected parcel of land and improvement(s) located at _____ specified in the approved parcellary survey plan as Lot No. _____ and registered under TCT No. _____.

It is certified that the name(s) JONATHAN E. GONZAGA in the ROW record and specified in the enclosed government issued identification (Driver's License No. _____), was (were) misspelled and erroneously stated as JONATHAN E. GONZAGO in DBM attachment (Annex _____) to SARO No. _____. The said typographical error was not intentional but only due to oversight.

It is further certified that JONATHAN E. GONZAGA and JONATHAN E. GONZAGO is one and the same person.

Issued this _____ day of _____, 2012.

PARTICK B. GATAN, CESO III
Project Director

Appendix J4

Republic of the Philippines)
City / Municipality of _____)
Province of _____)

AFFIDAVIT

I, (IROW Agent Name) of legal age, and office address at DPWH (IROW-PMO, Rosario, Pasig City), after having been duly sworn to in accordance with Law, do hereby depose and state the following:

That the Republic of the Philippines through the DPWH is implementing the (Tarlac-Pangasinan-La Union Expressway (TPLEX) project) with total length of approximately (88.58 kms) through the DPWH

That I am an official of DPWH occupying the position of _____.

That _____ is / are:

- Registered owner/s of the affected property.
- Named owner in the Tax Declaration of the affected property.
- Known owner/claimant/occupant/ or person appearing to have interest over the affected property (as per affidavit of the Brgy. Captain of the area where the property is located).

That the affected property is being acquired through expropriation proceedings.

That the Taxpayer Identification Number (TIN) of the above-mentioned person/s required for processing claims was requested but the above-mentioned person/s will not give his/her/their TIN(s).

That the said TIN(s) will be provided prior to release of future payment(s).

That we are executing this affidavit to attest to the truthfulness of the foregoing and for whatever legal purposes that this statement may serve.

IN WITNESS WHEREOF, we have hereunto set my hand this _____, in _____, Philippines.

Affiant

SUBSCRIBED AND SWORN to before me this _____, affiant exhibited to me his/her _____ no. _____ issued on _____ at _____, Philippines.

Doc No. _____

Annex B

Standard Letter Offers for Acquisition of Right of Way Through Purchase

1. Letter Offer – First Offer
2. Second (Final) Letter Offer

EXAMPLE

**LETTER OFFER
(For Lot and Improvements¹)**

Date

NAME OF PROPERTY OWNER(S)

Complete Residential Address

SUBJECT: C-5 NORTHERN LINK ROAD PROJECT PHASE 2 SEGMENT 9.0 FROM NLEX TO MC ARTHUR HIGHWAY, VALENZUELA CITY

Sir/Madam:

May we respectfully inform that the government has identified parcel(s) of land (*and among other properties/improvements¹*) located at (*address of the affected properties or improvements*) registered in your name(s) and described under the title(s) listed in the table below to be traversed by the above-mentioned project.

Consider therefore, this letter as our offer to purchase your property (*and improvement(s)¹*) at the price indicated below, for the affected lot(s) based on current BIR Zonal Value officially issued by Bureau of Internal Revenue (RDO No. __) of _____ City and approved by the Department of Finance (*and affected improvement(s) based on Replacement Cost Method¹*) pursuant to the provisions of Republic Act 8974:

LOT

KIND OF PROPERTY	TCT NO.	AFFECTED AREA (Sq. m.)	BIR ZONAL VALUE (P/Sq. m.)	AMOUNT (P)
Residential Land	V-39379	178.00	2,000.00	P 356,000.00

IMPROVEMENTS

KIND OF PROPERTY	TAX DECLARATION NO.²	AMOUNT (P)
a) One (1) Storey Residential House (Concrete) with CHB & Steel Gate	C-017-07408	P755,589.63
b) CHB Fence with Steel Gate		P130,844.56

TOTAL AMOUNT (Lot and Improvement¹) P 1,242,434.19

Should you find the foregoing offer acceptable, kindly signify your acceptance within fifteen (15) days from receipt of this letter by affixing your signature on the space provided below and return a duplicate original of this document to the bearer or authorized DPWH representative coordinating with you.

¹ If Lot only, delete these portions.

² If not available, ask for Barangay Certificate that they are property owner for improvements

If you have any question(s), you may call our office at 6410732 or 6416020 and look for **Engr. Pepito S. Consunji, Jr., Head, Right-of-Way Acquisition** for the project or e-mail us at irowSegment9@dpwh.gov.ph and we will gladly explain the processes that you will undertake involving the acquisition of your property.

Thank you for your cooperation.

Very truly yours,

PATRICK B. GATAN, CESO III
Project Director

Received by:

Please indicate complete name, signature and date received

Response:

Please specify if offer is accepted or rejected by placing a check mark on the appropriate check box and place your complete name, signature and acceptance/rejection date, and contact information below:

Offer is accepted/conformed

Your signature below shall be considered a full and complete acceptance of this offer and shall be the basis of the price that will be paid to you by way of Deed of Absolute Sale (DOAS) for the affected lot(s) (and Agreement to Demolish and Remove Improvement (ADRI) for the affected improvement(s)³).

Offer is rejected/declined Reason: _____

Affected Owner/Authorized Representative Date Accepted/Rejected Contact # email address (if any)

Other Action:

If the receiver is not the owner, please specify:

Please place check mark on this box if owner has moved to another address.

New address: _____, Contact #: _____

Address Unknown

Please place check mark on this box if owner(s) is (are) deceased. Please indicate the name(s) of heir(s) below, if any:

(Name of Heir) (Complete Residential Address) Contact # email address (if any)

³ If Lot only, delete these portions.

Please place check mark on this box if property is mortgaged. Please indicate details of Mortgage below:

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
(Name)	(Bank/Agent)	(Address)	Contact #	Amount of Mortgage

Please place check mark on this box if ownership over the property (*and any improvements⁴*) is disputed. Please specify name(s) of potential other Claimant(s):

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
(Name)	(Address)	Contact #	Nature of dispute

Please place check mark on this box if there are any other parties with legal interest over the property (*and any improvements⁴*) (Example: use of property or improvements). Please specify name(s) of potential other claimant(s).

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
(Name)	(Address)	Contact #	Nature of dispute

Disclaimer: The Government reserves the right to withdraw or amend the Offer should the Project be discontinued.

⁴ If Lot only, delete these portions.

EXAMPLE

**SECOND (FINAL) LETTER OFFER
(For Lot and Improvements¹)**

Date

NAME OF PROPERTY OWNER(S)

Complete Residential Address

SUBJECT: C-5 NORTHERN LINK ROAD PROJECT PHASE 2 SEGMENT 9.0 FROM NLEX TO MC ARTHUR HIGHWAY, VALENZUELA CITY

Sir/Madam:

This refers to the parcel(s) of land (*and among other properties/improvements¹*) identified by the government and located at (*address of the affected properties or improvements*) registered in your name(s) and described under the title(s) listed in the table below to be traversed by the above-mentioned project.

Considering that you have declined our previous offer to purchase your property (*and improvement(s)¹*) at the price indicated previously in our letter dated _____, for the affected lot(s) based on current BIR Zonal Value officially issued by Bureau of Internal Revenue (RDO No. __) of _____ City and approved by the Department of Finance pursuant to the provisions of Republic Act 8974, we are presenting our second (final) offer to purchase the said property (*and improvements¹*) based on the appraisal of _____, a *Government Financing Institutions (GFI) and/or Private Appraisers duly accredited by the GFI* for the affected lot(s) (*and Replacement Cost Method for the affected improvements¹*) still pursuant to the provisions of R.A. 8974:

LOT

KIND OF PROPERTY	TCT NO.	AFFECTED AREA (Sq. m.)	APPRAISAL VALUE (P/Sq. m.)	AMOUNT (P)
Residential Land	V-39379	178.00	2,000.00	

IMPROVEMENTS

KIND OF PROPERTY	TAX DECLARATION NO. ²	AMOUNT (P)
a) One (1) Storey Residential House (Concrete) with CHB & Steel Gate	C-017-07408	P755,589.63
b) CHB Fence with Steel Gate		P130,844.56

TOTAL AMOUNT (Lot and Improvement¹) P _____

Should you find the foregoing offer acceptable, kindly signify your acceptance within fifteen (15) days from receipt of this letter by affixing your signature on the space provided below and return a duplicate original of this document to the bearer or authorized DPWH representative coordinating with you.

¹ If Lot only, delete these portions.

² If not available, ask for Barangay Certificate that they are property owner for improvements.

Should you decline this second (final) offer, this office shall be constrained to file an expropriation case in favor of the government to exercise its right to eminent domain. Please be advised that once the case is filed, it must proceed through the Court, unless a Compromise Agreement is reached and approved by the Court.

If you have any question(s), you may call our office at 6410732 or 6416020 and look for **Engr. Pepito S. Consunji, Jr., Head, Right-of-Way Acquisition** for the project or e-mail us at irowSegment9@dpwh.gov.ph and we will gladly explain the processes that you will undertake involving the acquisition of your property.

Thank you for your cooperation.

Very truly yours,

PATRICK B. GATAN, CESO III
Project Director

Received by:

Please indicate complete name, signature and date received

Response:

Please specify if offer is accepted or rejected by placing a check mark on the appropriate check box and place your complete name, signature and acceptance/rejection date, and contact information below:

Offer is accepted/conformed

Your signature below shall be considered a full and complete acceptance of this offer and shall be the basis of the price that will be paid to you by way of Deed of Absolute Sale (DOAS) for the affected lot(s) (and Agreement to Demolish and Remove Improvement (ADRI) for the affected improvement(s)³).

Offer is rejected/declined Reason: _____

Affected Owner/Authorized Representative Date Accepted/Rejected Contact # email address (if any)

Other Action: (Please use the following to update information provided on the First Letter Offer)

If the receiver is not the owner, please specify:

Please place check mark on this box if owner has moved to another address.

New address: _____, Contact #: _____

Address Unknown

³ If Lot only, delete these portions.

Please place check mark on this box if owner(s) is (are) deceased. Please indicate the name(s) of heir(s) below, if any:

_____	_____	_____	_____
_____	_____	_____	_____
(Name of Heir)	(Complete Residential Address)	Contact #	email address (if any)

Please place check mark on this box if property is mortgaged. Please indicate details of Mortgage below:

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
(Name)	(Bank/Agent)	(Address)	Contact #	Amount of Mortgage

Please place check mark on this box if ownership over the property (*and any improvements⁴*) is disputed. Please specify name(s) of potential other Claimant(s):

_____	_____	_____	_____
_____	_____	_____	_____
(Name)	(Address)	Contact #	Nature of dispute

Please place check mark on this box if there are any other parties with legal interest over the property (*and any improvements⁴*) (Example: use of property or improvements). Please specify name(s) of potential other claimant(s).

_____	_____	_____	_____
_____	_____	_____	_____
(Name)	(Address)	Contact #	Nature of dispute

Disclaimer: The Government reserves the right to withdraw or amend the Offer should the Project be discontinued.

⁴ If Lot only, delete these portions.