



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

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DEPARTMENT ORDER)

NO. 43)

Series of 2020 *file 06.07.2020*

SUBJECT: GUIDELINES FOR RIGHT-OF-WAY (ROW) ACQUISITION AND PAYMENT OF ANCESTRAL DOMAINS AFFECTED BY THE IMPLEMENTATION OF NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS

Pursuant to Section 9, Article III of the 1987 Constitution, private property shall not be taken for public use without just compensation, and the recognized rights of Indigenous Cultural Communities (ICC) or Indigenous Peoples (IP) under Republic Act No. 8371 (R.A. No. 8371), otherwise known as "The Indigenous Peoples Rights Act (IPRA) of 1997", this Department hereby provides for the guidelines on right-of-way (ROW) acquisition and payment of ancestral domains affected by the implementation of national government infrastructure projects.

Considering the nature of lands of ancestral domains, easement of right-of-way is the most convenient and practicable mode for the acquisition of ancestral domains among the modes of ROW acquisition mentioned in Republic Act No. 10752. Under the mode of acquiring easement of right-of-way, upon execution of ROW easement agreement, the owner will grant the Implementing Agency the right to use the affected portion of the lot as ROW but the owner retains the ownership thereof, which is consistent/compatible with the nature of the ancestral domains as community property of ICCs and IPs that cannot be sold, disposed or destroyed, and guarantees their right to return to their ancestral domains in case DPWH will no longer need the same as part of road right-of-way of the national road. Compensation will be given to the ICCs/IPs based on the existing BIR Zonal Valuation at the time of actual construction of national government infrastructure project.

Although, the Implementing Rules and Regulations (IRR) of Republic Act No. 10752 provide that easement of right-way can be resorted to **"if the portion of a lot needed for a ROW is minimal, such that the expenses for surveying or segregating that portion from the main lot would be very much more than the value of the part of the lot needed"**, there is no explicit prohibition in the aforementioned law of using the said mode in other instances. In fact, it is provided in the IRR of the said law that, **"[t]he mode of ROW acquisition through easement agreement may also be used in government agency-to-agency transactions, including those involving government-owned and controlled corporations."** By inference, easement of right-of way may be used in other cases if warranted by the circumstances and if the ICCs/IPs will agree thereto. Its applicability is not exclusive to the condition that the land to be acquired is only minimal in area.

Thus, in order to facilitate (ROW) claims involving ancestral domains owned by ICCs and IPs, recognized under R.A. No. 8371, affected by the implementation of national government infrastructure projects, the following guidelines are hereby adopted and shall be incorporated in the DPWH Right-of-Way Acquisition Manual (DRAM):

"Section 2.16" of the DRAM is renumbered as "Section 2.16-A", with the amended title "ROW Acquisition by Easement of ROW (Minimal Area)"; and a new subsequent section is hereby established as "Section 2.16-B", with the title "ROW Acquisition by Easement of ROW (Ancestral Domain)", to wit:

"2.16-B ROW Acquisition by Easement of ROW (Ancestral Domain)

Objective: To acquire RROW through Easement of ROW involving lands covered by Certificate of Ancestral Domain Title (CADT) or NCIP-confirmed Ancestral Domain.

Lead Office/Person:

For Projects at the CO: UPMO Clusters/ PPPS Director

For Other Projects: RD/DE

For All Projects: NCIP

Support:

- UPMO Cluster/ PPPS Director
- RO Staff
- DO Staff

Overview:

This procedure is applicable to the acquisition of Lands and/or Improvements within an ancestral domain covered by Certificate of Ancestral Domain Title (CADT) or those with pending issuance of the CADT but the National Commission on Indigenous Peoples (NCIP) confirms as ancestral domain. Further, this procedure applies only to national government infrastructure projects implemented by the DPWH involving road opening and widening, implemented after the effectivity of the IPRA of 1997 and to be implemented now or in the future on ancestral domain covered by CADTs.

Under this mode, a ROW Easement Agreement shall be executed by and between the NCIP Accredited or Certified Tribal Council and the Implementing Office (IO), whereby the former will grant the latter the absolute and unimpeded right to use the affected portion of their ancestral domain as Road Right-of-Way (RROW) for as long as the public purpose requirement subsists, but the IPs/ICCs retain ownership of that portion of the lot. This shall be in accordance with the procedure and requirements set forth hereunder, viz:

Procedure:

1. Upon determining that a road opening or road widening project will traverse/affect lands covered by CADTs, the IO shall immediately coordinate with the NCIP for the issuance of Certification Precondition (CP).

Notwithstanding lengths and widths of the programmed phases or packages of the project at the time of construction, the CP to be

secured shall cover a thirty meter (30m) width RROW for the entire stretch of the road opening or the entire stretch of every national highway for widening within the ancestral domain.

The CP shall specifically state, among others, that the area affected does not overlap with any ancestral domain and that the free and prior informed consent (FPIC) of all members of the project affected ICCs/IPs have been secured and embodied in a Memorandum of Agreement on FPIC duly endorsed by NCIP.

2. Thereafter, the IO, with the assistance of the NCIP, shall conduct parcellary and/or structural survey and prepare the corresponding plans, as the case may be, to determine the actual area and/or improvements to be affected or previously affected by the national government infrastructure project.
3. The IO shall only deal with the Tribal Council or the Authorized Tribal Council Member, duly accredited and certified by the NCIP as representing the ICCs/IPs whose CADT is affected by the project, with the assistance of the NCIP.

For purposes of processing ROW Payments, the NCIP Accredited or Certified Tribal Council shall designate an Authorized Signatory, who shall be a member of the said Tribal Council. All issues and concerns pertaining to the acquisition of land and improvement shall be coursed through the NCIP.

4. *Determination of the Compensation Price.* Based on the approved parcellary plan, compute the right-of-way acquisition compensation price by multiplying the total affected area with the corresponding current, relevant BIR Zonal Valuation at the time of actual construction of the road widening and road opening project. Said compensation price shall be paid to the ICCs/IPs through the NCIP accredited Tribal Council or Tribal Council authorized signatory.

In case of outstanding claims, the basis of computing compensation price shall be the BIR Zonal Valuation at the time of actual construction of the road widening and road opening project.

Replacement cost of improvements (structures, crops, and trees) that will be affected based on the approved parcellary and/or structural survey plan shall also be determined based on existing rules therefor, which shall be paid to the individual owners or to the NCIP accredited or certified tribal council, whichever is applicable.

5. *Issuance of Notice of Taking.* Once the compensation price for the affected property (parcels of land and improvements) is determined, a Notice of Taking shall be issued to the ICCs/IPs through the NCIP accredited Tribal Council, with the assistance of NCIP, detailing the total area affected, the corresponding BIR Zonal Valuation, and the

total compensation price of the affected area, which notice shall constitute as the formal and definite offer for the affected portion of the ancestral domain. (In accordance with Section 11 of R.A. No. 10752)

In case of affected improvements, Notice of Taking shall be issued to the individual ICCs/IPs through their NCIP accredited Tribal Council, with the assistance of NCIP.

In case of outstanding claims, Letter Offer shall be issued instead of the Notice of Taking.

6. *Acceptance or Rejection of Offer.* If the Tribal Council accepts the compensation price offered by the IO, the NCIP Accredited or Certified Tribal Council shall, within thirty (30) days from receipt of the Notice of Taking or Letter Offer, communicate their acceptance in writing, coupled with NCIP Certification that all project affected ICC/IP members have been duly informed of the said acceptance of the compensation price, and none interposed any objection thereto.

If the ICCs/IPs, through the NCIP Accredited or Certified Tribal Council, rejects, refuse to receive, or fails to respond in writing to the price offer within thirty (30) days from receipt of the Notice of Taking or Letter Offer; or refuses or fails to negotiate, or refuses or fails to submit pertinent documents within thirty (30) days from receipt of notice or request, the IO may resort to any appropriate legal action/remedy, with the assistance of the Office of the Solicitor General (OSG), against all the ICCs/IPs through the Tribal Council representing them.

7. Prepare the voucher at fifty percent (50%) of the compensation price of the land obtained in Step 4, and, if applicable, seventy percent (70%) of the Replacement Cost of the improvements/structures and assessed value of the crops and trees determined based on existing DPWH guidelines, rules, and regulations.
8. Refer below for the documentary requirements for payment of easement of ROW.
9. Once the compensation price is accepted, the ROW Easement Agreement shall be prepared, and all documentary requirements shall be secured. Upon signing of the ROW Easement Agreement and receipt by the project affected ICCs/IPs, through the NCIP Accredited or Certified Tribal Council, of the initial payment, the IO shall clear the ROW in accordance with the pertinent provisions of the DRAM.
10. The IO shall be allowed to immediately enter and take possession of the ancestral domain subject of the ROW Easement Agreement and implement national government infrastructure projects upon execution of the ROW Easement Agreement and receipt by the ICCs/IPs,

through the NCIP Accredited or Certified Tribal Council, of the first payment of just compensation representing fifty percent (50%) of the total compensation based on the BIR Zonal Valuation at the time of actual taking and, if applicable, seventy percent (70%) of the Replacement Cost of the structures/improvements and assessed value of the crops and trees determined by the IO based on existing DPWH guidelines, rules, and regulations.

11. The IO shall pay the remaining fifty percent (50%) of the total compensation for the land upon annotation of the ROW Easement Agreement on the Title. If applicable, the IO shall pay the remaining thirty percent (30%) of the Replacement Cost and assessed value of crops and trees once the improvements/structures, crops and trees have been completely removed and/or demolished.
12. The ROW Easement Agreement shall be annotated to the CADT at the Land Registration Authority or concerned Register of Deeds within fifteen (15) working days from the date of its execution.
13. Provide the IO database copies of the ROW Easement Agreement and the Electronic Certified True Copy of the CADT containing the annotation.
14. The IO shall process the final payment of the claim and make sure to release the same once the ROW Easement Agreement has been annotated on the CADT and, if applicable, the land is completely cleared of the improvements.

Documentary Requirements for Payment of Easement of ROW:

1. Original CADT or Electronic Certified True Copy from ROD with O.R.;
2. If CADT is not yet issued, Certified True Copy of Approved Original Plan with verified written confirmation of the site as Ancestral Domain by NCIP;
3. Parcellary and/or Structural Survey Plan duly prepared and approved by DPWH;
4. Tax Declaration (Original or Certified True Copy at the time of actual taking);
5. Certification-Exempt from Real Property Tax issued by the City/Municipal Treasurer;
6. BIR Zonal Valuation of the affected area duly certified by BIR;
7. NCIP Certification/Accreditation of Indigenous Political Structure (IPS)/ Indigenous Peoples Organization (IPO) recognized in the Ancestral Domain;

8. NCIP Certification that all project affected ICC/IP members have been duly informed of the said acceptance of the compensation price and none interposed any objection thereto;
9. Photocopy, with three (3) specimen signatures, of two (2) valid government issued IDs of all Tribal Council Members who issued the resolution, and of the Tribal Council Member designated to transact ROW Claims and receive payment;
10. Original or Certified True Copy of the Amendment Plan (Subdivision Plan) approved by the Land Management Service, DENR;
11. Original Copy of the Certification of Non-Overlap from the Land Management Bureau (LMB) that the affected ancestral domain property does not overlap with any titled/registered property;
12. Registry of Deeds Certification that the Original of the Title is intact;
13. Notarized Original Resolution of the Tribal Council authorizing the Tribal Council Member designated to transact ROW Claims and receive payment, duly certified by the NCIP;
14. Original Copy of the Certification from NCIP that the signatories in the Resolution are authorized and representative of the ICCs/IPs affected;
15. Certified True Copy of the Memorandum of Agreement (MOA) on FPIC for future projects;
16. Certified True Copy of NCIP Certification of ICC/IP Consent for completed projects; and
17. Original Copy of Certification Precondition (CP) for past, present, and future projects."

This Order shall take effect immediately.

For strict compliance.



MARK A. VILLAR
Secretary

Department of Public Works and Highways
Office of the Secretary



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