

PDC

PORTLAND DEVELOPMENT COMMISSION

DATE: August 26, 2009

TO: Board of Commissioners

FROM: Bruce A. Warner, Executive Director

SUBJECT: Report Number 09-98
Issue a Final Order in the Verizon Wireless, LLC Relocation Benefits Appeal

EXECUTIVE SUMMARY

BOARD ACTION REQUESTED

Adopt Resolution No. 6729

ACTION SUMMARY

- 1) In 2005, Verizon Wireless, LLC, ("Verizon") was forced to relocate a cell phone transmission facility located at 3508 SW Moody Avenue due to condemnation proceedings initiated by the Portland Development Commission ("PDC").
- 2) In 2006, Verizon submitted a relocation claim to PDC in the amount of \$1,811,514.54 pursuant to PDC's Relocation Policies and Procedures (the "PDC Relocation Policy").
- 3) PDC's Executive Director, based on recommendations from staff, approved a relocation payment in the amount of \$118,839.23.
- 4) Pursuant to the PDC Relocation Policy, Verizon requested a contested case hearing for review of the Executive Director's decision.
- 5) The Board Chair appointed a hearing officer to hear evidence and make a recommendation to the Board with respect to issuance of a final order (the "Final Order").
- 6) The hearing officer issued a report and recommendation upholding PDC's determination as to the reimbursement amount Verizon is entitled to receive.
- 7) Staff recommends that the Board issue the Final Order accepting the recommendation as to the amount of the relocation payment but, for reasons outlined below, make certain modifications to clarify minor clerical issues and to revise the legal basis for the Final Order.

PUBLIC BENEFIT

Issuing the final order in the Contested Case will complete PDC's contested case procedures as required by the PDC Relocation Policy.

This action will support the following PDC goals:

- Sustainability and Social Equity
- Healthy Neighborhoods
- A Vibrant Central City
- Strong Economic Growth and Competitive Region
- Effective Stewardship over our Resources and Operations, and Employee Investment

PUBLIC PARTICIPATION AND FEEDBACK

The PDC Relocation Policy does not require public participation to issue a final order in a contested case.

COMPLIANCE WITH ADOPTED PLANS AND POLICIES

This action complies with the PDC Relocation Policy, as adopted by the PDC Board of Commissioners on October 26, 2005 (Resolution No. 6302). The PDC Relocation Policy authorizes the Board to issue a final order as a result of the findings of fact and conclusions of law made by a hearing officer in a contested case.

FINANCIAL IMPACT

This action will uphold PDC's determination that Verizon is entitled to a relocation payment in the amount of \$118,839.23.

RISK ASSESSMENT

There are no known legal, financial or operational risks resulting from this action.

WORK LOAD IMPACT

The major workload associated with this action will affect the Legal Department and outside counsel if Verizon elects to appeal the Final Order as issued by the Board. Verizon may file a petition for reconsideration or rehearing within 60 days after the Final Order is served. If it chooses to do so, following PDC's response, it will have exhausted its administrative remedies and will then be eligible to seek judicial review.

ALTERNATIVE ACTIONS

The Board must issue a final order to complete the contested case hearing process as required by the PDC Relocation Policy. The Board may either take the action recommended, adopting the Report and Recommendation as modified in the Final Order, or issue a final order incorporating the entirety of the Hearing Officer's findings of fact and conclusions of law.

CONCURRENCE

N/A

In 2005, as part of the South Waterfront Greenway Development Plan, PDC acquired property that was being used as a public storage business (the “Moody Avenue Property”). At the time PDC acquired the Moody Avenue Property, Verizon was leasing a small space on which it constructed and maintained a wireless cell phone transmission facility (“POR Ross Island”).

PDC’s acquisition of the Moody Avenue Property forced Verizon to move its equipment to another site. When PDC acquires property, it is obligated to provide financial assistance to those who are required to move from the property. In December 2005, Verizon removed its tower and equipment from the Moody Avenue Property. Verizon then submitted a relocation claim to PDC in the amount of \$1,811,514.54, requesting reimbursement for expenses involved in selecting and developing three new wireless telecommunication tower sites. Because of the nature of Verizon’s relocation benefits claim, PDC retained professional consultants to assist it in processing and analyzing Verizon’s claim. With the assistance of these consultants, PDC, applying Oregon law and PDC policies, determined Verizon was eligible for a relocation payment of \$118,839.23.

Verizon disagreed with the PDC staff decision and requested review by the PDC Executive Director. Verizon argued that federal policy underlying the Federal Act superseded Oregon’s statutes and PDC’s regulations. Under Verizon’s theory, PDC was required to pay Verizon the entire cost of creating three new wireless telecommunications facilities because those three facilities are the “functional equivalent” of the facility previously located on the Moody Avenue Property. The Executive Director rejected Verizon’s “functional equivalent” theory and upheld staff’s decision.

Verizon requested a contested case hearing for review of the Executive Director’s decision. Pursuant to the PDC Relocation Policy, the Board appointed a hearing officer and directed her to conduct an evidentiary hearing and provide the Board with a Report and Recommendation based on that hearing. The Board retained the authority to issue the Final Order resulting from Verizon’s request.

On February 20, 2009, Hearing Officer Anne Corcoran Briggs issued her Report and Recommendation, attached hereto as Attachment A. As part of her recommended conclusions of law, the Hearing Officer concluded that Federal statutes, not Oregon statutes, should have been applied. However, applying Federal law, she determined that Verizon was not entitled to any more compensation than PDC had awarded applying Oregon law. Because no federal funds were used to purchase the Moody Avenue Property, and applying either federal law or Oregon law results in affirmation of PDC’s relocation payment decision, it is not necessary to definitively conclude in this case which law applies. Further, because PDC desires to retain the right to apply Oregon law in future cases, it is recommended that the Board approve the Final Order awarding Verizon \$118,839.23 and reserve the right to apply Oregon law in similar future cases.

BEFORE THE PDC HEARINGS OFFICER VERIZON WIRELESS LLC RELOCATION BENEFITS APPEAL

These findings of fact and conclusions of law are divided into four sections: Introduction, Stipulated Facts, Analysis and Conclusions of Law, and Summary Conclusion. Excerpts of relevant legislation are provided in the Appendix.

A. Introduction

In 2005, the Portland Development Commission (PDC) concluded that acquisition of property located at 3508 SW Moody Avenue, Portland was necessary to accomplish its redevelopment plan for the South Waterfront Urban Renewal District. After negotiations between the property owner and PDC failed, PDC used its eminent domain powers to acquire the site.

At the time of acquisition, the property was developed with a storage building. In addition, a portion of the site was subject to a Verizon Wireless, LLC (Verizon) lease. As part of the lease, Verizon located a wireless telecommunications facility, known as the POR Ross Island, on the roof of the storage building. The eminent domain acquisition forced Verizon to move its equipment to another site. However, the new site did not provide the same coverage range as the POR Ross Island facility. Verizon then submitted a claim for relocation benefits, which included a demand for compensation for the cost of providing a "functional equivalent" replacement facility. According to Verizon, the "functional equivalent" required three new sites.

PDC staff considered Verizon's claim. After review, staff concluded that PDC's Relocation Policies and Procedures ("the PDC Policy") allowed reimbursement moving expenses relating to the equipment that was moved from the site to another location, plus administrative expenses, but did not allow for reimbursement of expenses incurred in establishing functionally equivalent facilities. As a result, the claim was accepted in part, and rejected in part.

Pursuant to the PDC policy, Verizon appealed the staff's decision to Bruce Warner, PDC Executive Director. In a decision dated April 8, 2008, the Executive Director addressed Verizon's claim that relocation benefits for a personal property move was governed by ORS 35.510 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646, 42 U.S.C. 4601, et seq.) (the "Federal Act,") and not the PDC Policy. Noting that the South Waterfront Urban Renewal District project did not involve any federal funding, the Executive Director found that staff correctly applied the PDC Policy, and correctly calculated the amount due to Verizon as a result of the personal property move. Verizon appealed that decision.

Pursuant to PDC Policy 11.6, PDC appointed Anne Corcoran Briggs to hear and make a recommendation to the Commission on the merits of the appeal. Per PDC Policy 11.6.4, the hearings officer held a contested case hearing on the appeal on January 12, 2009. PDC was represented by Jeffery J. Matthews, Harang Long Gary Rudnick, PC. Verizon was represented by Dean Phillips, Davis Wright Tremaine LLP.

Both parties were permitted to present written and oral testimony to support their respective positions. After the hearing concluded, the parties agreed to the following post-hearing submittal schedule:

January 27, 2009	Submittal of Stipulated Facts
February 3, 2009	Submittal of Parties' Final Written Legal Arguments
February 24, 2009	Issuance of Hearings Officer's Findings of Fact and Recommendations

B. Findings of Fact

At the request of the hearings officer, the parties submitted the following stipulated facts:

1. Verizon Wireless's predecessor in interest ("Verizon") entered into a Communication Facility Lease commencing July 1, 1998, for the site of a cell tower facility on property located at 3508 SW Moody Street, Portland, Oregon ("the Property"). The initial lease term was for five years, with options for Verizon to extend the lease for two additional five-year periods.
2. On March 4, 2004, the Portland Development Commission ("PDC") informed Verizon that it intended to acquire the Property. The project for which PDC acquired the Property was not a federal project and did not receive any federal financial assistance.
3. On or about August 16, 2004, PDC served written notice on Verizon as to its intent to purchase the Property and of Verizon's eligibility for relocation benefits.
4. Verizon had installed a cell tower and related equipment on the Property, which cell site was referenced by Verizon as the POR Ross Island site.
5. Subsequent to the written notice, Verizon attempted to negotiate with PDC and City of Portland Park Bureau representatives to keep the POR Ross Island cell tower facility on the Property. The City of Portland was intended to eventually become the new owner of the Property, including the Leased Site, and the Property was intended to become City of Portland park property.*
6. The parties attended at least two meetings where Verizon raised the subject of remaining on the Property. A decision was made by PDC or its developer that a cell tower was not suitable for the location.*
7. PDC acquired the Property through condemnation proceedings, which, by the terms of Verizon's lease, terminated Verizon's lease. Thereafter, on or about October 3, 2005, PDC served written notice on Verizon that Verizon had 90 days in which to remove its cell tower and related equipment from the Property.
8. Verizon engineering staff made a determination through use of Verizon's cell signal coverage modeling software that three locations would be necessary to provide adequate signal coverage to the area covered by the POR Ross Island site. Those three sites are identified and located at sites known and identified in the exhibits as Broadcast, Hamilton and Ross Island.

9. Verizon's determination that three new sites were needed to provide coverage for the area covered previously by the POR Ross Island site was made based on software modeling data, not on actual coverage data from Verizon's then existing sites in the surrounding area.
 10. Even if Verizon's cell tower had remained at the POR Ross Island site, the planned development may have required modification of Verizon's cell tower system in the POR Ross Island coverage area because of interference with signals from the POR Ross Island site due to the height and location of the newly constructed surrounding structures.
- * Sections notated with an asterisk are agreed on facts, but are facts which PDC contends are not relevant to the claims asserted by Verizon in this contested case proceeding.

C. Analysis and Conclusions of Law

In its appeal of the April 8, 2008 PDC Executive Director decision, Verizon raises the same legal issues that were raised before the Executive Director:

- (1) Whether the PDC Policy is superseded by state law and the Federal Act
- (2) Whether PDC is required to reimburse for costs incurred in providing "functionally equivalent" telecommunications facilities
- (3) Whether PDC is required to consider the reasonableness of its decision to relocate the ~~Verizon PDC~~ facilities outside of the South Waterfront district boundaries in determining the appropriate displacement remedy

The analysis and recommendation is thus limited to the three issues set out above. The parties agree that the hearings officer is not being asked to determine the dollar value of an award sufficient to cover Verizon's cost of constructing new facilities that are the "functional equivalent" of the POR Ross Island facility. Nor is the Hearings Officer being asked to determine whether Verizon's three new sites are in fact the "functional equivalent" of the POR Ross Facility. If the hearings officer finds for Verizon, the parties agree that remand is the appropriate remedy, to allow staff an opportunity to analyze Verizon's claims under the new standard.

1. Applicable Law

Per PDC Policy 1.3, the PDC Policy is "intended to comply with the requirements of Oregon State Law ORS 35.500 to 35.530 governing relocation payments and assistance to persons displaced by public entities." For projects that do not involve federal funds, the PDC Policy applies directly to persons or businesses displaced by PDC programs or projects, which includes displacement due to eminent domain actions taken by PDC. PDC Policies 2.2 and 2.4. For projects subject to federal funding, the PDC Policies are superseded by regulations implementing the Federal Act, and applicable Fair Housing regulations. PDC Policy 2.3.

The parties stipulate that the South Waterfront Redevelopment plan is not a federal project, and that no federal funds were expended to acquire the SW Moody property. Nevertheless, Verizon argues that ORS 35.510(1) incorporates the Federal Act and implementing regulations by reference, and thus, PDC erred by applying the PDC Policy's "property only move" provisions to Verizon's relocation.

ORS 35.510 provides, in relevant part:

"Whenever any program or project is undertaken by a public entity which program or project will result in the acquisition of real property, notwithstanding any other statutes, charter, ordinance or rule or regulation, the public entity shall:

"(1) Provide fair and reasonable relocation payments and assistance to or for displaced persons as provided in Section 202, 203, 204 and 206 of the Federal Act."¹

According to Verizon, the introduction to ORS 35.510 is very clear: notwithstanding any state or local legislation, "fair and reasonable relocation payments" must be "as provided" for in the Federal Act. Verizon argues the PDC Policy is not an adequate or appropriate substitute for the remedies provided under the Federal Act.

PDC argues that the Oregon Legislative Assembly adopted ORS 35.500 through 35.630 and thereby created its own program for dealing with persons and businesses displaced to accommodate public programs and projects. In support of this assertion, PDC notes that ORS 35.500 through 35.630 includes a different definition of "displaced persons," identifies particular provisions of the Federal Act as it existed in 2003 as providing the appropriate regulatory standards in limited circumstances, and grants authority to local entities to adopt their own implementing regulations. PDC emphasizes that ORS 35.530 specifically addresses when the Federal Act controls, and argues that if the legislature had intended for the Federal Act to supplant local legislation entirely, ORS 35.530 is "entirely superfluous." PDC Post-Hearing Written Argument, 5.

It is true that the pertinent statutes should not be read to adopt the Federal Act wholesale. Rather, the scheme specifies when local entities may depart from the Federal Act and adopt its own relocation policies and procedures. Under the Oregon scheme, PDC may adopt policies for circumstances that where the action of the local government does not involve the acquisition of real property or involves categories of persons that are not described in Sections 202, 203, 204 and 206 of the Federal Act.² However, when a PDC program or project involves the "acquisition of real property," PDC must "[p]rovide fair and reasonable relocation assistance as provided for in * * * the Federal Act" to the categories of persons described in Sections 202, 203, 204 and 206 of the Federal Act. PDC's condemnation of the SW Moody site, and its subsequent order to Verizon to move its equipment off of the site is within the definition of "personal property only move" and as such, it falls within the ambit of

¹ The parties agree that only Section 202 of the Federal Act cited in ORS 35.510(1) potentially applies to these facts.

² PDC appears to have done so, by expanding the universe of "displaced" persons to include persons displaced as a result of PDC programs or projects that do not involve the acquisition of real property. See PDC Policy 2.2.1, 2.2.2, and 2.2.3.

Section 202 of the Federal Act. This interpretation is consistent with the provisions of ORS 35.510(1) by applying not only to projects that without doubt fall under the purview of the federal act, but any public project that involves the "acquisition of real property" by a "public entity." Interpreting the statute as PDC does--to address only those circumstances where federal funding is involved--makes the provisions of ORS 35.510(1) "surplusage."

Contextually, this interpretation is consistent with the purpose of the statute, which is to provide the same types of relocation assistance for locally funded projects as would be provided for federally funded projects. Further, interpreting ORS 35.510(1) to apply to the range of actions described in the listed sections of the Federal Act is consistent with Oregon case law. In *Shepard v. Dept. of Community Corrections of Washington Cty.*, 293 Or 191, 646 P2d 1322 (1982), the Oregon Supreme Court considered the question of whether ORS 35.510 (then numbered ORS 281.060) required the County to pay relocation expenses to residents who were displaced by the County's lease of their housing for offices. There, the residents were month-to-month tenants. After the county entered into a long-term lease agreement, the property owner gave the month-to-month tenants 30-days notice, as required by the Oregon Landlord Tenant Act. The displaced residents sued the County, arguing that they were entitled to displacement payments because they were forced out as a result of the County's taking possession of the property for County offices. The Court concluded that the provisions of the Oregon relocation assistance statutes pertained to property acquired by public entities through condemnation or the threat of condemnation, and not to situations where the public entity acted much like a private lessee under a long-term lease.

In that decision, the Court reviewed legislative history to help it understand the meaning of "acquisition" in ORS 35.510. It noted that ORS 35.510 was first enacted in the early 1970s to address the requirements of the Federal Act. Its original incarnation required local governments to follow the Federal Act only when federal funds were involved. ORS 35.510 was later amended to require local agencies to apply the provisions of the Federal Act in all situations where a public entity is likely to or will acquire property by eminent domain, by changing the phrase in ORS 35.510(1) from "as required by" the Federal Act to "as provided for" in the Federal Act. 293 Or at 199-203.

The Federal Act controls, and PDC erred by failing to apply the Federal Act and its implementing regulations directly. However, PDC's error provides a basis for remand only if the PDC Policy fails to provide the same benefits and procedures that are conferred by the Federal Act. Turning to that question, the hearings officer has reviewed Section 202 of the Federal Act, and the excerpts of the applicable federal regulations that implement the Act, and agrees with PDC that the PDC Policy essentially duplicates the pertinent federal statutory and regulatory language. Compare PDC Policy Sections 3.2.8, 7.2.1 through 7.2.5, 7.3 and Exhibit C with Section 202 of the Federal Act and 49 C.F.R. 24.301. Therefore, while PDC erred by applying the PDC Policy to Verizon's property-only move, that error is not material.

2. "Fair and Reasonable Relocation Payments and Assistance"

- a. Do the benefits offered under the Federal Act comprise "fair and reasonable relocation" assistance as that term is used in ORS 35.510(1)?

ORS 35.510(1) requires public condemners to "[p]rovide fair and reasonable relocation payments and assistance to or for displaced persons as provided for under section[] 202 * * * of the Federal Act." The first question that must be answered in this analysis is whether the payments and assistance provided for under Section 202 of the Federal Act *are* "fair and reasonable relocation payment[s] and assistance to or for displaced persons" as that term is used in ORS 35.510(1) or whether "fair and reasonable" establishes a different standard for calculating relocation payments under state law. If the "fair and reasonable" standard is different than the standards implicitly or explicitly set out in federal law, the second question that must be answered is whether Verizon is correct that the standard, at least insofar as cellular communications towers are concerned, requires the condemner to pay for the "functional equivalent" of what was lost as a result of the eminent domain action.

In support of its position Verizon emphasizes that, unlike other property and equipment, cellular communications facilities are locationally dependent. That is, the quality and range of its service is entirely dependent on the location of its towers in relation to the coverage area. Therefore, Verizon argues, when considering "fair and reasonable relocation assistance," moving costs for cellular communications facilities must include the cost to provide functionally equivalent facilities for the displaced coverage area. Otherwise, Verizon asserts, the remedies provided by the condemner are not "fair and reasonable" because they shift the burden of the public acquisition from the public to the displaced party.

According to PDC, the purpose of the Federal Act's "personal property only move" provisions is to compensate the displaced party for the cost of moving equipment from the condemned site to a single new site. PDC asserts that "fair and reasonable relocation assistance" is defined by the provisions of the Federal Act listed in ORS 35.510(1). That is, if the condemner provides the same processes and remedies for a personal property only move as are set out in the Federal Act, the condemner has provided "fair and reasonable relocation assistance" within the meaning of ORS 35.510(1). PDC argues that Verizon's interpretation creates a new standard of "functional equivalency" from an introductory phrase in state law that has no independent meaning. In PDC's view, the neither the introductory phrase in ORS 35.510(1) nor the Federal Act requires that Verizon be compensated for expenses incurred to provide the "functional equivalent" of what was lost when PDC acquired the SW Moody Avenue site by eminent domain.

The hearings official concludes that ORS 35.510(1) is ambiguous, in that it is not clear whether the statute is intended to place an interpretational gloss on the relocation remedies set out in the Federal Act or whether the provisions of the Federal Act assure "fair and reasonable" relocation payments and assistance. Statutory ambiguities are resolved by applying the methodology set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612, 859 P2d 1143 (1993)(reviewing body considers the text and

context of statute before turning to legislative history and maxims of statutory construction to discern the enactor's intent.)

The text and context support PDC's reading of the statute. Grammatically, the phrase "as provided for" connotes a reference to a particular provision or service, which in this case is the Federal Act. The cited sections of the Federal Act provide a comprehensive framework for compensation and displacement assistance for covered persons. In relevant part, Section 202 of the Federal Act directs the displacing agency to provide payment to the displaced person of (1) actual and reasonable moving expenses, (2) actual "direct losses of tangible personal property as a result of moving or discontinuing the business or farm operation," and (3) actual reasonable expenses in searching for a replacement location.³ By referencing the provisions of the Federal Act, it is reasonably clear that the Oregon Legislative Assembly concluded that those standards would provide "fair and reasonable relocation payments and assistance." If the Legislative Assembly had intended to impose a higher standard, it would have defined "fair and reasonable relocation payments and assistance" to be something more or different than the Federal Act.

From the evolution of the applicable statutory language, it is clear that if PDC follows the regulations promulgated to implement the Federal Act, it has provided "fair and reasonable relocation payments and assistance."

- b. Is PDC obligated to pay for "functionally equivalent" telecommunication facilities?

Having concluded that Section 202 of the Federal Act defines the scope of relocation payments and assistance available to Verizon, the question then is whether the Federal Act must be interpreted to require that PDC pay for the "functional equivalent" of Verizon's POR Ross Island facility. Verizon cites *Pou Pacheco v. Soler Aquino*, 833 F2d 392 (1st Cir. 1987)(*Pou Pacheco*) as support for this proposition.

Pou Pacheco involved the condemnation of land that was developed with a dwelling, a cabinetmaker's shop and a facility for grinding, processing, warehousing and selling coffee. Unlike other equipment, coffee processing equipment must be constantly maintained, or it quickly deteriorates. Due to disagreements between the condemnor and the property owner as to the condemnor's obligation to pay to move the coffee equipment off-site, the coffee equipment was first moved to a substandard facility, and then to a second facility. The owner then brought suit for compensation for dismantling expenses, moving expenses, storage rental expenses, search costs for a replacement location, reinstallation of machinery and equipment, and the value of new equipment and machinery for both moves. The district court agreed with the owner that those expenses were qualifying expenses under the Federal Act. The condemnor appealed, arguing that the district court improperly applied the applicable relocation criteria, with the result that the displaced property owner received a windfall as a result of the initial condemnation. The appellate court disagreed, concluding that the rules granted the

³ "Direct losses of tangible personal property" are limited to "an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency." 42 U.S.C. 4622(a)(2).

agency considerable discretion to exceed the basic benefits provided to a displaced person where there is a factual basis to conclude that additional compensation will result in an equitable and fair settlement. The court held a jury could find, as it did, that the displaced property owner had amply demonstrated that he had incurred extraordinary moving expenses as a result of the condemnation, which warranted additional compensation. The court therefore affirmed the district court's verdict in favor of the property owner.

Pou Pancheco stands for the principle that the condemning agency may make displacement payments that exceed the parameters set out in the governing regulations, if the agency finds that fairness and equity demands it. PDC argues that fairness and equity in this case do not demand an extraordinary award, because Verizon was compensated for (1) the termination of its lease, (2) expenses it incurred to dismantle the POR Ross Island equipment and store it before moving it to another site, and (3) costs associated with finding a replacement location. Therefore, PDC asserts, its obligation to compensate Verizon for moving costs directly related to the condemnation has been fully discharged.

Verizon has not demonstrated that its circumstances are so unique that the provisions of the Federal Act compel PDC to provide the functional equivalent of the POR Ross Island facility. Contrary to Verizon's argument about locational dependency, other types of personal property are similarly affected by a local agency's decision to require relocation. For example, it is easy to foresee a circumstance where the forced relocation of a billboard will require the billboard owner to install new signs at multiple locations to provide the same advertising coverage. Thus, the fact that the equipment is locationally dependent does not demonstrate that "functionally equivalent" facilities must be provided to ensure that the relocation payments are adequate compensation.

This interpretation of the Federal Act is consistent with its provisions regarding residential relocations, and in some cases, small business and farm relocations. There, the law explicitly provides that the relocated persons be afforded a functional replacement (as in the case of residential relocations), or assistance to re-start business operations elsewhere. Congressional omission of such provisions for personal property only moves suggests that "functional equivalency" is not required for personal property that can be moved and re-used in another location.

In conclusion, the hearings officer finds that the Federal Act does not require PDC to provide the "functional equivalent" of the POR Ross Island facility, and that PDC did not abuse its discretion by refusing to cover Verizon's economic damages that result from the need to establish more than one tower location to cover the territory lost by the POR Ross Island facility relocation.

3. Relevance of PDC's Decision to Demand Relocation of POR Ross Island Facilities

Verizon insists that evidence regarding options to remain at the SW Moody site is needed to ascertain whether PDC acted reasonably when it required Verizon to move its equipment from the site. The hearings officer disagrees. The evidence regarding a possibility that Verizon could have stayed at the site under certain circumstances goes to whether PDC reasonably concluded that the goals of the South Waterfront redevelopment plan could not be achieved without relocating the POR Ross Island facilities. It has nothing to do with whether PDC applied the correct standard to compensate Verizon for its forced

relocation, or whether in applying that standard, PDC adequately and actually accounted for the actual costs and expenses of that move. Accordingly, the hearings officer does not consider such evidence.

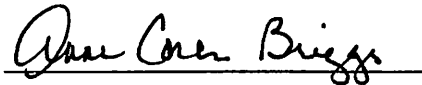
D. Summary Conclusion

For the reasons set forth above, the hearings officer concludes that PDC staff erred in applying PDC relocation policies to the relocation of personal property from the SW Moody Avenue property. However, that error does not require additional proceedings or remedies, for the PDC policies provide the same protections afforded appellant Verizon that it is entitled to under Section 202 of the Federal Act. Finally, the hearings officer concludes that evidence regarding other options to relocation is not relevant to the question of whether PDC applied the correct standard to evaluate Verizon's relocation claim.

The hearings officer therefore concludes that the Commission should find that the errors Verizon alleges do not provide a basis for overturning the Executive Director's decision.

Dated this 20th day of February, 2009.

Respectfully submitted,



Anne Corcoran Briggs
Hearings Officer

Verizon Relocation Benefits Appeal

Appendix A

Statutory Excerpts

ORS 35.500 through 35.530

**Uniform Relocation Assistance and Real Property
Acquisitions Policy Act of 1970, codified at 42 U.S.C. 4601 et seq.
Section 4622 (Section 202 of the Federal Act)**

**49 C.F.R. § 24.301 Payment for actual reasonable
moving and related expenses**

RELOCATION OF DISPLACED PERSONS

35.500 Definitions for ORS 35.500 to 35.530. As used in ORS 35.500 to 35.530:

(1) "Displaced person" means any person who moves, or is required to move the person's residence and personal property incident thereto, or the person's business or farm operation as a result of:

- (a) Acquisition of the real property, in whole or in part, by a public entity; or
- (b) Receipt of a written order by such person from a public entity to vacate the property for public

use.

(2) "Federal Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646, 42 U.S.C. 4601 et seq.) as in effect on January 1, 2003.

(3) "Public entity" includes the state, a county, a city, a consolidated city-county as defined in ORS 199.705 (1), a district, public authority, public agency and any other political subdivision or public corporation in the state when acquiring real property or any interest therein for public use. "Public entity" also includes a private corporation that has the power to exercise the right of eminent domain.

(4) "Public use" means a use for which real property may be acquired by a public entity as provided by law.

(5) "Real property" or any interest therein includes tenements and hereditaments, and includes every interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in such tenements and hereditaments. [Formerly 281.045]

35.505 Relocation within neighborhood; notice prior to move; costs and allowances. (1) A public entity undertaking urban renewal or neighborhood development shall make all reasonable efforts to insure that all displaced persons shall have the option to relocate within their urban renewal or development neighborhood or area and shall not be displaced, except temporarily as required by emergency, until appropriate residential units shall become available to them within their neighborhood or area and within their financial means.

(2) Except as required by emergency, no displaced person shall be required to move from any real property without first having written notice from the public entity at least 90 days prior to the date by which the move is required. In no case shall any displaced person be required to move until the public entity notifies the person in writing of all costs and allowances to which such person may become entitled under federal, state or local law. [Formerly 281.055]

35.510 Duties of public entities acquiring real property. Whenever any program or project is undertaken by a public entity which program or project will result in the acquisition of real property, notwithstanding any other statute, charter, ordinance, or rule or regulation, the public entity shall:

(1) Provide fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203, 204 and 206 of the Federal Act;

(2) Provide relocation assistance programs offering to displaced persons and others occupying property immediately adjacent to the real property acquired the services described in section 205 of the Federal Act on the conditions prescribed therein;

(3) In acquiring the real property, be guided by the land acquisition policies in sections 301 and 302 of the Federal Act;

(4) Pay or reimburse property owners for necessary expenses as specified in sections 303 and 304 of the Federal Act;

(5) Share costs of providing payments and assistance with the federal government in the manner and to the extent required by sections 211 (a) and (b) of the Federal Act; and

(6) Appoint such officers, enter into such contracts, utilize federal funds for planning and providing comparable replacement housing and take such other actions as may be necessary to comply with the conditions and requirements of the Federal Act. [Formerly 281.060]

35.515 Required disclosures for business and farm operations. To be eligible for the payment

authorized by ORS 35.510, a business or farm operation must make its state income tax returns and its financial statements and accounting records available for audit for confidential use to determine the payment authorized. [Formerly 281.070]

35.520 Decision on benefits; hearing; review. Any person who applies for relocation benefits or assistance under ORS 35.510 shall receive the public entity's written decision on the application, which shall include the statement of any amount awarded, the statutory basis for the award and the statement of any finding of fact that the public entity made in arriving at its decision. A person aggrieved by the decision shall be entitled to a hearing substantially of the character required by ORS 183.413 to 183.470, unless federal, state or local law provides otherwise. Notice required by ORS 183.415 must be served within 180 days of the receipt of the written decision by the aggrieved party. The decision of the public entity shall be reviewable pursuant to ORS 183.480. [Formerly 281.085; 2007 c.288 §5]

35.525 Construction. Nothing in ORS 35.510, 35.515 or 35.520 shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to May 7, 1971. [Formerly 281.090]

35.530 Federal law controls. If a public entity is receiving federal financial assistance and is thereby required to comply with applicable federal laws and regulations relating to relocation assistance, such federal laws and regulations shall control should there be any conflict with ORS 35.500 to 35.530. [Formerly 281.105]

42 USC § 4622

Statutes and Session Law

Title 42 - THE PUBLIC HEALTH AND WELFARE

Chapter 61 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

42 USC § 4622 Moving and related expenses

42 USC § 4622. Moving and related expenses

SUBCHAPTER II - UNIFORM RELOCATION ASSISTANCE

(a) General provision

Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of -

- (1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;
- (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;
- (3) actual reasonable expenses in searching for a replacement business or farm; and
- (4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed \$10,000.

(b) Displacement from dwelling; election of payments: expense and dislocation allowance

Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.

(c) Displacement from business or farm operation; election of payments; minimum and maximum amounts; eligibility

Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than \$1,000 nor more than \$20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) Certain utility relocation expenses

(1) Except as otherwise provided by Federal law -

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation;

the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

(2) For purposes of this subsection, the term -

(A) "extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue -

(i) to be a non-routine relocation expense;

(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) "utility facility" means -

(i) any electric, gas, water, steam power, or materials transmission or distribution system;

(ii) any transportation system;

(iii) any communications system (including cable television); and

(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system;

located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned.

(Pub. L. 91-646, title II, Sec. 202, Jan. 2, 1971, 84 Stat. 1895; Pub. L. 100-17, title IV, Sec. 405, Apr. 2, 1987, 101 Stat. 249.)

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49 C.F.R. § 24.301 Payment for actual reasonable moving and related expenses.

Title 49 - Transportation

Title 49: Transportation
PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS
Subpart D—Payments for Moving and Related Expenses

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§ 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 fair 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.

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

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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.