SAMOA
INFRASTRUCTURE ASSET MANAGEMENT PROJECT
PHASE II
LAND ACQUISITION AND RESETTLEMENT FRAMEWORK.

CONTEXT.

There has been significant economic growth in Samoa over the past decade even after two cyclones devastated the country in 1990 and 1991, leaving over $440 million in damage (four times the GDP). The priorities for the rehabilitation of the country's economy and infrastructure were brought sharply into focus and major reforms and institutional strengthening programs for key Government Departments have been implemented in conjunction with development of all priority sectors as determined by the annual Strategy for Economic Development.

Adequate economic infrastructure has been the major focus of the development of the Samoan economy and the Infrastructure Asset Management Project (IAMP), a World Bank funded Adaptable Program Loan planned for implementation in two Phases of 3 and 5 years respectively, is a main source of support for this development.

The completion of Phase I of the IAMP will occur in June 2003, to be followed in July 2003 by the initiation of Phase II. The three areas identified by Government for prioritisation are: air transport, road transport and coastal protection.

Much of the infrastructure development in the urban area has been established and the focus will now shift to the development of further road access to rural areas, and tourist developments, while maintaining and upgrading existing roadworks and in particular, the main arterial roads.

Coastal Infrastructure Management plans for both Upolu and Savaii have been completed and development of the coastal protection infrastructure will be implemented.

The second stage of the IAMP implementation may give rise to the possibility of land being acquired by Government for the extension or installation of road works and/or coastal infrastructure, and it is also possible that some minor resettlement of people may occur. Given the fact that the exact improvements and potential new construction are not yet defined, it is considered prudent to develop a general framework for land acquisition and resettlement, which will guide such activities, should they occur during project implementation.
THE PROJECT:

The Government of Samoa with funding support from IDA through an adaptable program loan is currently implementing an 8-year Infrastructure Asset Management Program (IAMP). Phase 1 of the program is to be completed by June of 2003 and preparations are underway for activities under IAMP 2.

The overall objectives of the Infrastructure Asset Management Program are to support the Government of Samoa in the management and cost-effective maintenance of basic infrastructure and to assist its public sector reform efforts through strengthening the capacities of key agencies in the sector. The specific objectives of the program are to:

a. ensure safe, reliable and efficient operation of key infrastructure, air and land transport and coastal activities that are vital to the island’s economy;
b. improve the physical and financial management of the infrastructure assets so as to make efficient use of scarce resources and minimize future financial dependence on external support; and
c. support public sector reform and increased private sector participation in the provision of infrastructure.

Specifically, the second phase of the program will encompass the following:

a) Support for warranted priority development of the road network, consideration of environmental sustainability, economic viability and social impact in the assessment and appraisal of public expenditures, to meet priority needs for access and economic development and to improve safety and operation of the main arterial road;

b) Extension of the coastal asset management strategy to the entire coastline, support priority protection investments and to improve safety and operation of the main arterial road.

c) Consolidation and continuation of progressive reform of public works delivery, performance – oriented management of all infrastructure assets, safer and more efficient road transport, implementation of new environmental management processes in public and private sectors including new oversight role for DLSE; and improved financial sustainability of airport operations and assets.
Introduction.

The purpose of this framework is to establish parameters for the conduct of land acquisition and settlement of project affected persons (PAPs) who may be affected during the implementation of IAMP Phase 2. While the number of people and the magnitude of adverse impacts are projected to be minimal, the Project will work to minimize the number of PAPs and/or adverse impacts of the sub-projects on households or communities and individuals.

The framework has been developed by a review of the following:

- Taking of Lands Act 1964
- Alienation of Customary Land Act 1965
- Alienation of Freehold Land Act 1972
- The Lands Surveys and Environment Act 1989
- Samoa Economic Strategy
- Coastal Infrastructure Management Plan
- National Environment Strategy

Other:

Three separate workshops/consultations were held with key stakeholders in the formulation this framework. This included meetings with representatives of the Komiti Tumama (Women’s Health Committees), the Pulenuu, (Village mayors) and representatives of Government Departments (Ministry of Works, Lands Surveys and Environment, Electric Power Corporation, Samoa Water Authority), and private and government valuers.

Definition of terms:

Terms commonly used in relation to these guidelines are defined as follows:

Project Affected Persons. - (PAPs) refers to any person or persons who would be identified, through a baseline census information collected for each of the inventories implemented in relation to a particular sub-project, to be affected by any of the following circumstances:
- Acquisition or possession by the Project in full or in part, permanent or temporary, of any title, right or interest over house/s, land/s (including but not limited to residential, agricultural land, grazing lands) and or any other fixed/movable assets:
- Acquisition or possession by the Project of crops (annual and perennial) and trees whether partial or in whole;
- Whose business/livelihood is in part or as a whole affected by the Project.

Land Acquisition

- Refers to the process whereby a person or entity is compelled by a public agency to alienate all or part of the land a person/entity owns or possesses, to the ownership and possession of that agency for a “public purpose” in return for consideration.

Replacement Cost

- Refers to the value determined to be fair compensation for real property (freehold or customary) based on its productive potential, replacement cost of houses and structures (as reckoned on current fair market price of building materials and labour without depreciation or deductions for salvaged building materials) and the market value of residential land crops and other commodities.

Resettlement.

- Refers to all measures taken to mitigate any and all adverse impacts of the Project on PAP’s property and/or livelihood including compensation, relocation and rehabilitation (where applicable).

Relocation

- Refers to the physical relocation of a PAP from his/her pre-project place of residence.

Rehabilitation

- Refers to compensatory measures provided under these guidelines other than payment of the replacement costs of acquired or affected assets.

Compensation.

- Refers to payment in cash or kind of the replacement costs of the acquired or affected assets.
Samoan Terms:

- Matai – title holder and representative of the extended family.
- Alii and Faipule - village council of chiefs and orators of a village
- Pule – authority over land established by the Lands and Titles Court.
- Pulenuu – Village Mayors (Government appointed liaisons with villages)
- Tautua – service provided by an individual to family, village or country.

Objectives of the Land Acquisition and Resettlement Framework.

The possible impacts and the extent to which the project will directly affect people in Samoa cannot be clearly defined at this point and this Resettlement Policy Framework has been prepared in anticipation of possible land acquisition or resettlement that may be identified during the implementation of the project, though this is expected to be minimal. The overall objective of this framework is to ensure that all PAPs are compensated for their losses and provided with assistance to improve, or at least maintain, the pre-Project living standards and income generating capacity.

The World Bank’s Operational Policy 4.12 on Involuntary Resettlement outlines the following principles, which have been adopted in the preparation of this document and will govern the project implementation:

- Avoid or minimise involuntary resettlement where feasible.
- Assist displaced persons in improving their former living standards, earning capacity and production levels or at least restoring them.
- Encourage community in planning and implementing resettlement
- Provide assistance to affected people regardless of the legality of title of land.

This document briefly discusses land tenure in Samoa, the legal and institutional framework, valuation as a basis of determining compensation, grievance procedures and gaps identified between the law and practice and procedures. A suggested framework is provided as a basis for any PAPs to be compensated for any losses and provided with assistance to improve or at least maintain their pre-project living standards and earning capacity.

BACKGROUND.

1. Land Tenure in Samoa.

There are three types of land tenure in Samoa namely:

- Customary (81%)
- Freehold (12%) and
- Public lands (7%).

These percentages are only estimates as there has been no recent analysis of actual acreage and percentages of each type of land tenure. It is certain however, that over the
past 40 years, since gaining independence in 1962, Government has released several hundred acres of public land to be sold to the general public. In other instances, Government land has been designated for the use of certain villages and communities for various reasons, e.g. where villages adjoining Government lands have claimed that they no longer have sufficient land to cultivate and cater for a growing village population.

a). Customary Land.

The majority of land in Samoa is held under customary ownership and is protected by the Constitution for the “customs and usages” of the people of Samoa.

Customary land is held in the name of the matai or head of the family, who has the authority or pule over the family land that is similar to a trustee. The matai determines the distribution of family land among members of the family for their use. It is believed that every Samoan has rights to land that will provide him with a means to earn a living and support his family. It is uncommon for a Samoan to be without rights to some land as a descendant of Samoan parents. It is also uncommon for a Samoan not to have access to alternative areas of land on which to relocate or to cultivate. However these rights to customary land are dictated by one’s blood connections. Consequently, one does not have a choice about the location of customary land to which one is entitled.

Most commonly, people will have access to large areas of land within their rural village while seeking to purchase a piece of freehold land within proximity to the urban centre and the facilities and amenities provided there.

Alienation of customary land is possible by only two methods:

a) By lease of the land to a person determined by the matai of the family. The Minister of Lands is appointed by the Alienation of Customary Land Act 1965 to act for and on behalf of all beneficial owners in signing a lease for registration.

b) Customary land may also be alienated by the Taking of Lands Act 1964 for a “public purpose.”

The boundaries of customary land are known to the family from years of use and traditional knowledge. The majority of customary lands have never been registered or surveyed. Although the Alienation of Customary Land Act requires the Registrar to register the alienation or lease of customary land there is no other provision for register of customary land. Any determination of title over customary land is held in the records and decisions of the Lands and Titles Court. This Court is an independent Court specifically established to deal with customary lands and titles. Lawyers are not permitted to appear before this Court unless they are representing their personal interest in any customary land or title. The records of the Lands and Titles Office are accessible exclusively to the members and descendants or heirs to the land or title. One can only access the records by providing proof to the Registrar of Lands and Titles that one is an “heir” to the land or a descendant of the family to which the land or title belongs. The register of customary land is not a public record.
There are many instances where the authority or ownership of customary land is uncertain or disputed. Such disputes are referred to the Lands and Titles Court for decision about the *pule* over the land or title in dispute.

The majority of Samoans do not favour the idea that the records of the Lands and Titles Court should be open to the public as they jealously guard their genealogies and land entitlements. However the idea of registration of the “pule” over land is gathering favour.

b) Freehold Land.

Freehold land is registered under a Deeds registration system established prior to Independence in 1962. This involves the registration of Deeds of Conveyance in the name of the purchaser. The Registrar of Lands registers and retains a copy of the Deed of Conveyance and the registered proprietor retains the original. The Register of freehold lands is a public record which can be accessed by the payment of a search fee at the Lands, Surveys and Environment Department.

There are shortcomings to the Deeds registration system. For example, the registered title is only as good as the strongest link in the chain of registration and there is no guarantee of indefeasibility of one’s title by registration of a Deed of Conveyance in the Deeds system. In contrast, indefeasibility of title is guaranteed in a Torrens system and the indefeasibility of a registered Title is a fundamental cornerstone of such a system.

In Samoa the Deeds registration system operates in principle. However, in practice the Samoan legal profession applies the principles of the Torrens system to registration of title. It would not be an unfair assessment to state that a hybrid Deeds/Torrens system has developed in Samoa. Reform of the land registration system is long overdue and would be welcomed by those most familiar with it.

Freehold land is situated mainly within the Apia urban area and the outskirts of Apia. The acreage of freehold land has increased since the Government has made several hundred acres of Government land available for purchase by the Public.

Ownership of freehold land can be determined by conducting a search of the volumes of the Land Register. There is limited amount of freehold land coupled with an ever increasing number of people willing to purchase freehold giving rise to a situation over the past ten years where the development of a robust real estate market has occurred. Land prices have increased rapidly and a quarter acre section bought ten years ago at $8,000.00 tala ($USD2,000.00) is now worth about $40,000.00 tala ($USD 13,000.00). Freehold land is highly valued and the current market value of the land is determined by the price a willing buyer will pay for it and factors such as comparable land sales and the services and amenities accessible to the area in which the land is located.
Residence on freehold land is not subject to the authority of the chiefs and orators of a village, even if it is located in a village.

c). Government or Public Land.

A Land Board established by the Lands Surveys and Environment Act 1989 administers government land. Records of Government land taken from “Reports on Administration” 1925, 1926 and 1928, estimated that the total area of Samoa comprised 725,000 acres, roughly distributed as follows:

- Upolu – 275,000 acres
- Savaii – 450,000 acres.

- Government lands – 85,630 acres
- Freehold lands – 40,000 acres
- Customary (also referred to as “Native” lands) – 599,370 acres.

No recent study has been undertaken to obtain more accurate figures or determine any major changes in these acreage numbers. However, it can be assumed that there have been only slight variations over the past 60 odd years. Customary land cannot be sold or mortgaged and the only significant change or movement in acreage of Public lands would be for the reasons outlined earlier, where Government have released several hundred acres of land for sale to the general public and instances where Public lands have been leased on a long term basis to villages and communities.

The Land Registrar is empowered by section 15 of the Land Registration Act to register all Public land, freehold land or customary land that is leased or alienated. There is also provision for the Registrar to record and register any customary land where the pule or authority over it has been established. However, this is rarely utilised.

2. Legal and Institutional Framework.

a. Relevant Legislation.

The Constitution, as the Supreme law of the land states in Clause 14 that:

1. No property shall be taken possession of compulsorily and no right over interest in any property shall be acquired compulsorily except under he law which of itself, or when read with any other law
   a) Requires the payment within a reasonable time of adequate compensation;
   b) Gives the person right of access to the Supreme Court regarding the amount of compensation;
   c) Gives the right of appeal to the Supreme Court.
Taking of Lands Act 1964.

i.) General Provisions

The Taking of Lands Act 1964 establishes the taking of Lands for “public purposes.” Part III, section 25 refers to the fact that “every person having an estate or interest in any land taken under this Act for any purpose, or injuriously affected thereby or suffering any damage from the exercise of any of the powers given by this Act shall be entitled to full and just compensation...for the same from the Minister as soon as reasonably possible after any person becomes entitled to compensation under this Act, the Minister shall offer such sum “as he thinks fit.” If the owner does not accept the offer from Government, the Supreme Court shall ascertain the compensation payable and the decision may be appealed to the Court of Appeal.

In ascertaining the amount of compensation the fact that the land is taken compulsorily is not a factor to be taken into account and sub section 37 of the Act states that: “the value of the land shall be taken to be that amount which the land, if sold on the open market by a willing seller on the specific date might realise”

Claims are barred after five years after the date of the Act of Proclamation taking the lands. Claims for compensation may be “made by any person including the executor or administrator...to an estate whether that person has or has not the power to sell and convey (the) same. Sub section 28.

“A claim for customary land or any estate therein.... may be made by the person who has pule over that land at the date of taking on behalf of all persons interested...”

ii) Notice to Owners.

Upon a determination of the land to be taken, reasonable notice is required to be given to the owner or occupier of the land or the matai who has the pule over customary land. Public notice is also given and 28 days is allowed for any objections.

If no written objection is received, the Minister may then proceed to take the land by Proclamation.

iii) Valuation – as Basis For Compensation.

The Government of Samoa does not undertake annual valuations of freehold land on an annual basis and registered proprietors of land will only request a Government or private valuation of their land if it is required for bank security purposes or to determine the stamp duty to be paid if the land is being conveyed or assessed for the administration of a deceased’s estate.
Determination of compensation to be paid for freehold land is easily valued because it is regularly sold and conveyed, mortgaged as collateral for loans and its value is determined by the fluctuation of the open market of "willing buyer and seller." Currently, a quarter acre section can fetch up to $40,000.00 Samoa tala depending on location and other factors.

Land is valued according to the availability of amenities such as water, electricity and telephones, its proximity to amenities such as schools and hospitals and the comparable sales of land in the same area of similar size.

Current market value of customary land presents many difficulties from a valuer’s point of view because customary land cannot be sold, mortgaged or alienated other than by lease. Such land has never been subject to any rates or land tax payments (nor has freehold land). However, the Taking of Lands Act 1964, states that compensation should be paid at the "market value" when customary land is rarely, if ever, given a market value.

The valuation of customary land has, in the past, been measured by initially considering the current market value of freehold land in the same area. An adjustment of the market value should be considered for factors including the location, the likelihood of multiple beneficial owners, the fact that customary land cannot be sold or mortgaged and its utilisation, which is bound by "Samoan custom and usage" under the Constitution. Since the matai of the family and the village council of chiefs and orators usually have authority over the land, this factor should also be taken into account. Consequently, a retail business situated on customary land will be subject to trading hours determined by the village curfew hours and the sale of alcohol or other products may be banned by the village council. Such restrictions will directly impact on the earning potential of a business because of its location on customary land.

3. Traditional Methods of Negotiation and Grievance Procedures.

a). Consensus and negotiation are part and parcel of Samoan life and decision making. Generally, Samoan people are keenly aware of their standing or va fealoa'i with any other person. Tautua or service to the country and to one’s village and family are central to one’s life as a citizen of the country. For that reason, many Government initiatives relating to the establishment of infrastructure, water, electricity and other amenities and services have been completed without interruption or obstacles being placed before Government by PAP’s. From experience of the Government Departments and service Corporations, the nature of the initial contact made by the Government’s representatives with a village or community, is crucial to the success or failure of any project.

Negotiation and agreement by consensus should provide the best avenue to iron out and resolve any grievances expressed by the individuals, the matai or households whose land might be affected by sub projects. Grievances are commonly made known to the Government representatives or implementing agency in the first instance.
Many PAPs do not know where to direct their grievances and it is not unusual for land surveyors as the first people “on the ground” to bear the brunt of complaints and be required to explain the nature of the work or project being undertaken. The general public should be advised clearly by the implementing agency or Government representative as to who is responsible for and the procedure for handling grievances or compensation claims.

b) **Direct approaches to the Government are** common. Many village councils or individuals will approach the relevant Minister of State directly for a resolution to any grievances. Being a small island nation has its advantages in allowing for direct contact with Ministers of State to seek resolution of grievances. Members of Parliament may also be approached to make representations on behalf of their constituents or PAPs, to the Government.

c) **The Taking of Lands Act 1964** provides that the Minister of Lands shall make an offer of compensation as he “thinks fit.” If the offer is unacceptable to the PAPs, they have the option of taking their claim to the Supreme Court in the form of an action against the Government. If necessary the decision may be appealed to the Court of Appeal, which is the country’s final appellate jurisdiction.

This is usually the last resort for many reasons, not least of which is the legal expense of mounting a civil claim or case for compensation against the Government. Such cases are rarely brought before the Supreme Court for determination. The Court will be bound by the provisions of the Taking of Lands Act 1964 which refers only to “market value” and makes no provision for resettlement costs or payment of earning capacity or loss of income. Compensation is more commonly negotiated and determined by consensus.

The Land Ordinance 1959 s.25 allows the Government to prepare land for settlement and s.36 provides for the exchange of land by Government for “the fee simple of any other land...” and may pay or receive any sum by way of equality of exchange.

While the provision of Government land for settlement has seldom if ever, been exercised, for resettlement purposes, there are other examples of the Government transferring public lands to community groups, villages and individuals when there has been a lack of land available to the village for communal use. This is usually leased to the chiefs and orators of a village who in turn allocate the land to villagers.

Not surprisingly, the grievance procedures defined by the Taking of Lands Act 1964 are only utilised as a last resort. It is more common for any differences to be settled by negotiation and consensus reached between the Government and the village or villagers involved and this is usually the first step in the resolution of any grievances.

In addition to compensation, it is not unusual for payments to be made to certain individuals and also to the *Alii* and *Faipule* (councils of *matai*) of a village as part of
the traditional gifts made by those who approach a village or community with a request to use a village's lands or other resources.

The manner in which the delicate issue of taking lands for public purposes is handled often determines the likelihood of obstacles or resistance from PAPs. There is a commonly held understanding that any matter of contention can be resolved with the customary or traditional negotiation and consensus agreement. It is therefore crucial to fully involve local village groups and individuals in a fully transparent process at the inception of any project's implementation.

**GAPS/OBSERVATIONS.**

- Past acquisitions of land as provided by the Taking of Lands Act have sometimes been haphazard or done with very little consultation or even notification because of the perceived urgency for the completion of the required works. The proverbial "cart before the horse" situation is not uncommon.

  In some instances, the projects are completed before the land is proclaimed and the land remains un-proclaimed.

- It has often been the case that compensation has not been paid or people have not claimed compensation because they are not aware of their rights to compensation or because they voluntarily give their land for the public purpose, in the belief that it is in the public interest to do so and furthermore, that this is a way of providing *tautua* or service to the country.

- Customary land often has multiple or overlapping land rights and disputed *pule* sometimes results in the owners not being determined. As a consequence PAPs are not compensated, or compensation is paid to the wrong person.

- Departments or Corporations have acted unilaterally and with little inter-departmental coordination after obtaining consent from Cabinet to take land for a public purpose. Negotiations with landowners and promises of compensation are made without the involvement of the Minister of Lands or the LA&E Department and are later not honored.

  As a result, PAPs are disillusioned when they do not receive the compensation initially promised and expected from the Government representatives they were approached by in the first instance.

- Compensation is sometimes paid to the *matai* of a family who does not use it for his family or distribute the payment to family members. Several years later members of the *matai's* family may claim compensation over the same land themselves.
No legislation exists to regulate valuers and valuation practices. This results in vast discrepancies between individual valuers and the valuations for the same area of freehold or customary land. The current Salelologa land dispute is a recent example in which the disparity between the Government and private valuations of the same area of land is in the millions of Samoan tala. The matter is currently under the adjudication of the Supreme Court.

Difficulties arise in the valuation of Customary land because such land cannot, by law, be mortgaged, sold or taken to pay debts. It is difficult to ascertain the “market value” of customary land other than by using the market value of freehold land as a basis. Other characteristics of customary land should then be taken into account, including accessibility and location. A comparative determination of sales of similar land in a particular area would be difficult to assess and a deduction of value to take a variety of factors into account may be appropriate.

**ENTITLEMENT FRAMEWORK:**

**Implementation.**

The Department or executing agency will principally be the Ministry of Works, the Lands Surveys and Environment and the Treasury Department in conjunction with the Contractor company. Upon identification of the specific land area to be acquired, an appointed Department representative should initiate negotiations with the village chiefs and orators, matai or beneficial owner of customary land, registered proprietor or PAP.

Inter department cooperation should be utilised where appropriate by including a representative from the Lands Survey and Environment Department to accompany the Ministry of Work’s representative. Clear explanation of the purpose of the acquisition, the area of land required and the PAP’s right to compensation according to the law should be given. The payment of compensation should be negotiated and determined using the following guidelines:

**PAPs losing more than 20% or all of their productive assets (agricultural land, House or business) or in cases when the remaining assets are not economically viable are entitled to:**

- Full compensation at replacement cost of the entire asset or at direct land/ asset replacement and
- Rehabilitation assistance that allows them to enhance or at least maintain their standard of living.
PAPs losing less than 20% of their productive assets and where the remaining assets remain viable for continued use are entitled to cash compensation at replacement cost for the affected asset.

**Agricultural land** will be replaced by:

- Land of equal market value or business potential (as the case be), which is acceptable to the PAP or
- Full compensation at replacement cost where land is not available.

**Commercial, residential or other real property** will be replaced by:

- Land of equal market value or business potential (as the case may be) which is acceptable to the PAP; or
- Full compensation at current market value, where suitable replacement land is not available or at the informed request of the PAP.
- Replacement of damaged or lost crops will be based on full market value for one year and will be paid in cash.
- PAPs whose land is temporarily taken will be compensated at full replacement cost for their net loss of income and/or damaged assets, including a reasonable amount for the opportunity cost/s.
- Appropriate transfer and subsistence allowances will be given during the transition phase as part of the rehabilitation assistance package to allow PAPs to enhance or at least maintain their standards of living.
- Verification of titles to land and any payments (e.g. tax or stamp duty on conveyance) shall be undertaken before land replacement or cash compensation is made.

**For PAPs losing Residential land and Structures.**

- The provision of replacement residential land (house site and garden) of equivalent size, satisfactory to the PAP; and cash compensation reflecting full replacement cost of the structures, without depreciation;
- If the PAP so wishes and the portion of the land to be lost represents 20% or less of the total area of the residential land area; and the remaining is still a viable residential lot, cash compensation, at full replacement (market value), will be provided to the PAP;
- If after acquisition, the residential land and/or structure is insufficient to rebuild the residential structure lost, then at the request of the PAP the entire residential land and structure will be acquired at full replacement cost, without depreciation; and
- Tenants who have leased a house for residential purposes will be provided with cash grant of three months rental fee at the prevailing market rate in the area and will be assisted in identifying alternative accommodation.

**For PAPs Losing Agricultural Lands and or/other Crops.**
- The general mechanism for compensation of lost agricultural land will be through provision of “land for land” arrangements of equal productive capacity, satisfactory to the PAP. However, if the PAP so wishes and the portion of the land to be lost represents 20% or less of the total area of the landholding, and the remaining land is still a viable economic holding, cash compensation, at full replacement cost (market value), will be provided to the PAP;
- If more than 20% of a person’s agricultural land is acquired and the remaining holding is not viable, then the Project will acquire the entire landholding and provide compensation of the acquired land at direct land replacement value;
- PAPs will be compensated for the loss of standing crops and fruit or industrial Trees at full (current) market price; and
- PAPs whose land is temporarily taken by the works under the Project will be compensated for their loss of income, standing crops and for the cost of soil restoration and damaged infrastructure, including a reasonable amount for opportunity cost/s.
- PAPs who will lose their income will be provided opportunities for alternative livelihood through skills and entrepreneurship training, job matching or business development assistance.

For PAPs Losing a Business.

- The provision of an alternative business site of equal size and accessibility to customers, satisfactory to the PAP;
- Cash compensation for lost business structure reflecting full replacement cost of the structures, without depreciation;
- Cash compensation for the loss of income and opportunity during the transition period; and
- Cost of money in case of delays of one year or more in releasing payment.

Other Cases.

- In cases where community infrastructure such as schools churches, health centers, water sources, roads or electrical and water supply connections are damaged, the Project will ensure that these are restored or repaired as the case may be, at no cost to the community.

A public awareness campaign through local television and radio stations about the proposed project could be launched prior to the project implementation which would provide notice to the PAPs of the land areas affected by the project and allowing all PAPs the opportunity to be involved in any negotiations for compensation.
Voluntary Land Settlement.

Where donations of lands for the Project are made, there should be arrangements to ensure that the donation is indeed voluntarily given, that the donor is the legitimate owner of such lands and that the donor is fully informed of the nature of the sub-project and the implications of donating the property.

The following safeguards would be applied according to the circumstances of the donation of land and the project requirements:

- An assessment that the affected person does not suffer a substantial loss affecting his/her economic viability as a result of the donation.
- In the case of Customary land, confirmation from the appointed matai and any beneficial owners in writing, that the land is free of claims or encroachments from any third party;
- Deed of donation, witnessed by a person authorised under the Oaths, Affidavits and Declarations Act 1963.
- Declaration of Ownership with waiver of rights.

PUBLIC CONSULTATION AND PARTICIPATION.

As noted above, public consultation and participation is a hallmark of traditional Samoan life (FaaSamo, the Samoan way). The first step in any process of designing and implementing a specific land acquisition or resettlement activity should be consultation with the village(s) and PAPs affected. The best entry point for this dialogue is the Village Mayor (the Pulenuu) who is the government-appointed liaison between villages and Government. The Pulenuu are well informed about all Government projects and activities as a result of their monthly meetings in Apia. At the same time, as members of the Alii ma Faipule of their respective villages, they can assist in the identification of those who have pule over land required for acquisition by the sub project. Meetings in the respective villages with the village councils should be held and also with those who are directly affected and have control or pule over any land to be acquired. The actual occupants of the land should also be consulted regarding any possible resettlement or relocation and should also be informed about any compensation to be paid.

These meetings should cover the following at a minimum:

- An orientation and briefing for the community on the Infrastructure Asset Management Project, its objectives and components;
- The specific subproject proposal, including likely benefits as well as possible negative impacts
- Schedules for implementation
- LARF Policy under the project and the implementation arrangements
- Specific discussions on compensation for impacts on assets
Conditions and documentation requirements for sale or donation of specific properties/assets to be affected
Grievance mechanisms and processes

Copies of basic information on the project, LARF policies and approaches to entitlements should be distributed ahead of the public meeting(s). In addition, all consultations and other public meetings should be properly documented.

The Executing Agency shall not allow any subproject construction work until the compensation has been agreed and paid to PAPs, or the required documentation for donation and waivers/quit claims have been submitted for the sub-project component.

Implementation procedures.

An inventory of the likely impacts, the names of people and amounts of land, agricultural land, crops, trees, fixed assets productive assets and temporary damage should be compiled as a matter of urgency, once the areas for the implementation of the project are finalised. The information to be included in the inventory should include the following information for each affected household:

- Number of persons and names
- Amount and area of all residential plots lost
- Amount, category/type and area of agricultural land lost
- Quantity and types of crops and trees lost
- Quantity and category of any fixed assets lost
- Productive assets lost as a percentage of total productive assets, and
- Temporary damage to productive assets.

Land Acquisition and Compensation Report

In the event that less than 200 PAPs will be affected by the subproject with regard to the need to acquire land and other assets, a land acquisition and compensation report can be prepared based on the final determination of the areas in which the sub projects are to be implemented, together with an implementation schedule. The outline for the LACR is presented in Attachment 1.

The LACR shall be included as an attachment to the sub-project proposal. Compensation or other entitlements should be completed before any award of contract for civil or other works is finalised.

Implementation Schedule

A detailed implementation schedule of the activities to be undertaken shall be included in each inventory and resettlement plan. Whether PAPs require compensation, or voluntarily contribute and part of their land and/or assets for the sub-project, payment of compensation or completion of deeds of donations and other relevant legal documents
shall be satisfactorily completed prior to the Executing Agencies award of contract for civil works.

Supervision, Monitoring and Evaluation
An independent third party could undertake supervision and monitoring of the implementation of compensation and land acquisition. The local NGO, "O le Siosiomaga", an environment NGO or the umbrella organisation SUNGO could be involved in this capacity. The role of the NGO should be explained clearly to PAPs in order for them to understand that it may approach the NGO as an independent third party.

Much is to be gained from the experience of those who have had the practical experience of approaching PAPs and village leaders and matai to negotiate access to and acquisition of their lands.

Neither the fact that the Government or donor agency is acting within its legal rights nor the fact that one has the best technical plans to achieve the project outcomes will count for anything if the wrong approach is taken in dealing with customary or freehold land owners rights in Samoa. The involvement of an independent NGO, which is trusted by the local population, will go a long way towards easing the concerns of the village groups concerning the process of land acquisition and/or resettlement. This is especially so as current land issues related to land acquisition and compensation, which are in the public eye, have raised people's awareness and expectations regarding these matters.

Monitoring and supervision will include:

- Verification that the baseline information of all PAPs has been done and that the valuation of assets lost or damaged, the provision of compensation and other entitlements, and relocation has been carried out in accordance with the provisions of this LARF policy and respective inventory and land acquisition plans;
- Verification and follow-up action to ensure that funds for implementing the inventory and land acquisition plans are provided in a timely manner and that such funds are used in accordance with the provisions of the inventory and resettlement plan; and,
- Assurance that all grievances have been recorded and resolved in a timely manner.

In order to ensure that these steps have been taken, and that all relevant procedures have been followed in consultation and follow-up with PAPs, the responsible monitoring agency shall visit a sample of at least 25% of PAP households affected by the project during construction work and report to the Executing Agency any grievances or deviations from the agreed process or activities.
ENTITLEMENT FRAMEWORK MATRIX.

The Ministry of Works, the Lands Survey and Environment Department must liaise closely with those executing the project to ascertain any likely land acquisition, determine any required resettlement and the implementation of this Policy framework.

The amount of compensation to be paid will be determined by valuation of the assets at market value or replacement value, whichever is the higher.

The attached matrix provides further details for the determination of entitlement:

COMPLAINTS AND GRIEVANCES PROCEDURES.

Negotiation and public consultation should be held with any or all of the following persons regarding customary land: Pulenuu -village mayor, Village Council, PAPs or Occupiers of the land and the matai of the family to whom the occupiers render service or “tautua.” Verification of the “pule” over customary land may be obtained by cross checking with other sources, e.g. other people in the village or the Lands and Titles Court, the Member of Parliament for the district.

Upon determining the “pule” over the land, negotiations should be undertaken regarding the compensation to be paid and to whom. Upon agreement being reached, compensation should be paid to the PAP or to the matai identified by the family as the person holding authority over the land.

There may be instances in which the pule or authority over the land is disputed or the matai cannot be determined or resides overseas. In some instances, the family or PAPs concerned do not have a designated matai and it may be necessary for compensation to be held by the Minister of Lands for payment to the beneficial owners of the land, once they are identified and known.

Where consensus is not reached or there are genuine grievances or complaints raised, a process of mediation should be engaged as an initial step in resolving these.

GRIEVANCE / COMPLAINTS PROCEDURE.

1. Mediation.

Any objections, complaints or grievances regarding the acquisition of the land, the amount of compensation or any other issues may be dealt with by a mediation process, which should involve the PMU, the PAPs or their representative and a mediator to be agreed upon by both parties. Possible mediators could be identified beforehand to act in this capacity such as: Pulenuu, “Alii Sili” of the village (paramount chiefs,) or public servants or professionals with connections to or local knowledge of the particular village.
2. Representation to Minister of Lands or Government.

Failing mediation, the PAP's may be directed to approach the Government directly through making representations to their Member of Parliament or directly to the Minister of Lands. Where mediation has failed, it is important for the PAPs or landowners to know that their grievance is heard personally and at the highest level of Government. The Minister of Lands will also have the opportunity to ensure that all avenues have been exhausted in trying to resolve the grievance presented.

3. Legal Recourse.

The Taking of Land Act 1964 that where a person does not agree with the amount of compensation offered by the Minister of Lands, a claim may be filed in the Supreme Court for the determination of compensation to be paid by Government. Any decision may be appealed to the Court of Appeal.

Promotion of public awareness about the avenues and process for lodging complaints or grievances should be made known to PAPs and all parties contacted during the process of consultation and negotiation. Open dialogue should be encouraged and sought to ensure transparency throughout the implementation of the Program.
Annex People Consulted:

Mr. So’oalo David Fong  
Asst. Director,  
Lands Surveys and Environment Department.

Mr. Patea Setefano  
Government Valuer  
Lands Surveys and Environment Department

Ms. Theresa Potoi – Vaai  
Legal Officer  
Lands Surveys and Environment Department

Mr. Darryl Clarke  
Senior State Solicitor  
Office of the Attorney General

Mr. Moefa’auo Titimaea Tapu  
Senior Engineer,  
Electric Power Corporation

Ms. Treena Atoa.  
Legal Adviser,  
Samoa Water Authority.

Mr. Seiuli Eneliko  
Acting Secretary,  
Ministry of Internal Affairs.

Mr. Bismark Crawley  
Project Manager IAMP

Mr. Bruce Harris  
World Bank.

Mr Murray Betham.  
Valuer, Elon Betham and Associates.

Mr. Soloi Enokati Pelo.  
Surveying Firm, Apia.

Mrs. Tapusalaia Faatonu Faletose.  
President Komiti Tumama and  
Members of Womens’ Health Committees  
Upolu and Savaii.

Mr. Fiu Mata’ese Elisara –La’ulu  
Chief Executive Officer  
“O le Siosiomaga” Environment NGO.

Pulenuu - Village Mayors
<table>
<thead>
<tr>
<th>ASSET</th>
<th>IMPACT CATEGORY</th>
<th>PAP</th>
<th>COMPENSATION FOR ENTITLEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>FREEHOLD LAND</td>
<td>Unoccupied</td>
<td>Registered Proprietor</td>
<td>Full replacements cost at market value.</td>
</tr>
<tr>
<td></td>
<td>Less than 20% land holding affected.</td>
<td>Registered Proprietor</td>
<td>Compensation for land affected at full market value.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Landlord/Lessor.</td>
<td>Minimum cash compensation equivalent to 10% of rental for remaining period of lease.</td>
</tr>
<tr>
<td>RESIDENTIAL</td>
<td>More than 20% of land holding affected,</td>
<td>Registered Proprietor</td>
<td>Offer to registered proprietor of exchange land of equivalent market value or compensation at market value. If affected land is larger than land offered in exchange, cash compensation to be paid for the difference in area/size.</td>
</tr>
<tr>
<td>NON COMMERCIAL</td>
<td>remaining land not viable for continued use.</td>
<td>Tenant/Lessee.</td>
<td>Replacement land to be free of stamp duty or registration costs. Transfer/resettlement assistance. Rehabilitation assistance.</td>
</tr>
<tr>
<td></td>
<td>Land used for business partially affected, limited loss</td>
<td>Registered Proprietor/Bus.owner</td>
<td>Cash compensation of 20% of lease or rental for the remaining period of the rental/lease. Assistance in rental/lease of alternative property.</td>
</tr>
<tr>
<td>COMERCIAL</td>
<td>Land used for business severely affected, remaining area insufficient for continued use.</td>
<td>Registered Proprietor/bus.owner</td>
<td>Land for land exchange or compensation at market value at PAP's choice. Land to be free of stamp duty and registration costs. Transfer/resettlement assistance.</td>
</tr>
<tr>
<td>ASSET</td>
<td>IMPACT CATEGORY</td>
<td>PAP</td>
<td>COMPENSATION FOR ENTITLEMENT</td>
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<tr>
<td></td>
<td>ASSET IMPACT CATEGORY PAP COMPENSATION FOR ENTITLEMENT</td>
<td></td>
<td>Rehabilitation assistance.</td>
</tr>
<tr>
<td></td>
<td>Tenant/Lessee.</td>
<td>Assistance in rental lease of alternative property.</td>
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<tr>
<td></td>
<td>Cash compensation at 20% gross annual income.</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Tenant/Lessee.</td>
<td>Lessee/tenant owner.</td>
<td>Cash compensation for affected assets at replacement cost.</td>
</tr>
<tr>
<td></td>
<td>Owner</td>
<td>Cash compensation for fixed structure and other fixed assets.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Registered Proprietor.</td>
<td>Full cash assistance in restoration of remaining structure.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tenant/ Lessee owner.</td>
<td>Lessee/tenant owner.</td>
<td>Cash compensation for affected assets at replacement cost.</td>
</tr>
<tr>
<td></td>
<td>Cash compensation for entire structure and other fixed assets.</td>
<td>Tenant/Lessee owner.</td>
<td>Assistance in alternative rental arrangements.</td>
</tr>
<tr>
<td>AGRICULTURAL</td>
<td>ASSET IMPACT CATEGORY PAP COMPENSATION FOR ENTITLEMENT</td>
<td>Registered Proprietor.</td>
<td>Land exchange offered or compensation according to PAPs choice.</td>
</tr>
<tr>
<td></td>
<td>Less than 20% of land holding and the remaining land is economically</td>
<td>Tenant/Lessee</td>
<td>Land exchange offered or compensation according to PAPs choice.</td>
</tr>
<tr>
<td></td>
<td>more than 20% of land holding lost OR where less than 20% land</td>
<td>Farm Worker</td>
<td>Land exchange offered or compensation according to PAPs choice.</td>
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<tr>
<td></td>
<td>holding lost but remainder becomes economically not viable.</td>
<td></td>
<td>Land exchange offered or compensation according to PAPs choice.</td>
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<tr>
<td></td>
<td>Registered Proprietor.</td>
<td>Tenant/Lessee</td>
<td>Compensation for value of harvest for one year</td>
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<td></td>
<td>Tenant/Lessee</td>
<td>Farm Worker</td>
<td>Assistance in obtaining other employment. Cash compensation</td>
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<tr>
<td></td>
<td>Cash compensation for entire structure and other fixed assets.</td>
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<td>equal to 3 months salary.</td>
</tr>
<tr>
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<td>Tenant/Lessee owner.</td>
<td></td>
<td>Transfer resettlement assistance. Rehabilitation assistance.</td>
</tr>
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<tr>
<td>STANDING CROPS</td>
<td>Crops affected by land acquisition or temporary acquisition or easement.</td>
<td>PAP</td>
<td>Cash compensation at full market value.</td>
</tr>
<tr>
<td>TREES</td>
<td>Trees lost</td>
<td>Registered Proprietor</td>
<td>Cash compensation based on type, age and productive value of affected.</td>
</tr>
<tr>
<td>EASEMENT</td>
<td>Temporary acquisition of easement.</td>
<td>Registered Proprietor</td>
<td>Cash compensation equivalent to 10% of value of the affected easement.</td>
</tr>
<tr>
<td>CUSTOMARY LAND</td>
<td>Unoccupied</td>
<td>Matai - of extended family</td>
<td>Exchange for land of similar size and value. Value and compensation to be determined by assessing market value of freehold land of similar size less 40%.</td>
</tr>
<tr>
<td></td>
<td>Less than 20% land holding affected.</td>
<td>Matai - of extended family</td>
<td>Compensation for land affected at market value of freehold land less 40%.</td>
</tr>
<tr>
<td>RESIDENTIAL</td>
<td>More than 20% of land holding affected, remaining land not viable for continued use.</td>
<td>Matai - of extended family or individual occupants.</td>
<td>Offer and exchange of land of similar market value of freehold land less 40% If affected land is larger than land offered in exchange, cash compensation to be paid for the difference in area/size. Replacement land to be free of stamp duty or registration costs. Transfer/resettlement assistance. Rehabilitation assistance.</td>
</tr>
<tr>
<td>COMMERCIAL LEASE</td>
<td>Land leased for business partially affected, limited loss</td>
<td>Matai landlord or beneficial owners.</td>
<td>Cash compensation for affected land at full market value. Compensation equivalent to 10% of gross annual income.</td>
</tr>
<tr>
<td></td>
<td>Land used for business severely</td>
<td>Matai of extended family/ occupants</td>
<td>Land for land exchange or compensation at market value at PAPs choice. Land to be free of stamp duty and registration costs.</td>
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<td><strong>CUSTOMARY LAND.</strong></td>
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<td>Structure partially affected but remaining structure remains viable for continued use.</td>
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<td>Matai of extended family.</td>
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<td>Assistance in alternative rental arrangements.</td>
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<td><strong>STRUCTURES</strong></td>
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<td>Entire structure affected or structure partially affected but the remaining structure not viable for continued use</td>
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<td>Matai of extended family.</td>
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<td>EASEMENT</td>
<td>Temporary acquisition of easement.</td>
<td>Matai of family or chiefs and orators of villages.</td>
<td>Cash compensation of value comparative to market value of freehold land.</td>
</tr>
</tbody>
</table>
INDEPENDENT STATE OF SAMOA
SECOND INFRASTRUCTURE ASSET MANAGEMENT PROJECT
PUBLIC DISCLOSURE OF ENVIRONMENTAL ASSESSMENT REPORT AND LAND ACQUISITION AND RESETTLEMENT FRAMEWORK

The Government of Samoa through IDA has received a Grant to assist in the preparation of the Second Infrastructure Asset Management Project (IAM-2), which has as its main objective the achievement of transport and coastal infrastructure assets that are economically, environmentally and socially sustainable and managed by an effective partnership of stakeholders.

A portion of the Grant is being applied for consultant services for the provision of an Environmental Assessment (EA) study and the preparation of a Land Acquisition and Resettlement Framework (LARF).

The purpose of the EA study is to evaluate current national environmental policy and regulatory provisions, in particular for:

- environmental assessment and management of infrastructure-related activities
- to develop an environmental safeguard framework for the IAM-2 Project activities
- to satisfy national and donor requirements
- to assist with consultations
- to produce a public report.

The purpose of the LARF is:

- to draft a Land Acquisition and Resettlement Framework (LARF) which will accommodate existing land ownership and use patterns and practices (including traditional and customary values and Government policies, legislation and procedures on land acquisition and resettlement) while meeting the Bank policy requirements.

The reports have now been submitted to Government and, in accordance with the policies of the International Development Association, which is part of the World Bank, they will be disclosed to the public.

The reports are available for public scrutiny at the IAMP Project Management Unit, which is situated in the offices of Apia Management Services Ltd on the first floor of the SLAC Building, corner of Vaea Street and Convent Street.

Any interested person may read the reports at this location during office hours, which are 8.00 to 12.00 and 13.00 to 16.30.

Tuu’u Dr. Jeti Taulealo
Director Of Lands, Survey and Environment