ISSUED: April 4, 2005 **AR-03-PA-05**

THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE VIRGIN ISLANDS INSPECTOR GENERAL

AUDIT REPORT

AUDIT OF THE
YELLOW CEDAR ACQUISITION PROGRAM
AT THE
VIRGIN ISLANDS PORT AUTHORITY

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GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS
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EXECUTIVE SUMMARY

The following summarizes the major findings resulting from the Audit of the Yellow Cedar Acquisition Program at the Virgin Islands Port Authority.

Finding 1: Initial Offer (pages 5 to 7)

- ✓ Approved review appraisals were not always used when making initial written offers to purchase parcels at Yellow Cedar.
- ✓ Documentation was not available to justify increases in initial offers.
- ✓ Three initial offers exceeded the approved review appraisals, one by as much as $37,300.

Finding 2: Parcel Acquisitions (pages 8 to 11)

- ✓ Instances where the acquisition of parcels in excess of the approved appraisal amounts were not documented nor justified.
- ✓ There were thirteen instances where the acquisition amounts exceeded the approved appraisal amounts by a total of $387,200.
- ✓ There was one instance where the acquisition amount exceeded both the Port Authority's approved appraisal amount and the parcel owner's appraisal amount, by at least $35,000.

Finding 3: Replacement Housing Payments (pages 12 to 14)

- ✓ Records were not maintained to justify the replacement housing payments.
- ✓ Of 47 acquisitions with structures, 40 property owners received replacement housing payments ranging from $20,550 to the maximum of $22,500.
- ✓ The total paid to the 40 property owners was $896,550.
- ✓ The Port Authority did not ensure that property owners were actually residing on the properties before approving the replacement housing payments.
- ✓ Two replacement housing payments were questionable because there was no assurance that the property owners resided on the properties as required by Federal regulations.

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April 4, 2005

Robert O'Connor, Jr.
Chairman
Virgin Islands Port Authority Board
P. O. Box 301707
St. Thomas, Virgin Islands 00803-1707

Dear Mr. O'Connor, Jr.:

Attached is the final report of our audit of the Yellow Cedar Acquisition Program (Yellow Cedar) at the Virgin Islands Port Authority (Port Authority).

The objective of the audit was to determine if the Port Authority managed Yellow Cedar in accordance with the guidelines established in Part 24, Title 49 of the Code of Federal Regulations.

Our audit disclosed that the Port Authority did not always follow established guidelines with respect to the purchasing of property under Yellow Cedar. We found that: (i) in some instances, the Port Authority's initial written offer to purchase exceeded the revised approved appraisal amount; (ii) the Port Authority did not document the reason(s) for paying in excess of the Port Authority's and in some instances the land owner's appraisals when purchasing some properties; and, (iii) the Port Authority did not ensure that replacement housing payments were only paid to owners who actually occupied their properties and did not document the method used in calculating the amounts paid.

An exit conference was held with the Executive Director of the Port Authority on November 19, 2004. A response dated January 24, 2005 was received. Additional information provided to us after the official draft report was issued required some revisions to the report, resulting in us dropping one finding and expanding another. The Executive Director agreed in general with the recommendations made in the report, which dealt generally with a lack of supporting documentation for the decisions made during the acquisition process. The response is included as an appendix to the report, beginning on page 15.

If you or your staff require additional information, please call me at 774-6426.

Sincerely,

Steven van Beverhoudt

Steven van Beverhoudt, CFE, CGFM
V. I. Inspector General

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INTRODUCTION

BACKGROUND

The Port Authority, as part of its Henry E. Rohlsen Airport Extension Project, needed to acquire several parcels of privately owned property on St. Croix, known as Yellow Cedar.

The Federal Aviation Administration (FAA), as an agency of the Federal Government, is authorized to participate financially in the acquisition of land for public airport purposes, and the Port Authority, as the local airport owner, acquires land primarily to construct new airports or to expand existing ones. Easement interest may also be acquired as needed to provide for the over flight of aircrafts, or the removal of obstructions.

The authorization for the Port Authority to acquire the Yellow Cedar properties falls under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Act) as amended. The Act's main objective is to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish land acquisition policies for such programs. The Act is administered by Part 24, Title 49 of the Code of Federal Regulations (49CFR24) entitled the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, As Amended.

The Act allows the airport owner to determine the specific land requirements for a particular airport development or noise compatibility project, and allows the property to be acquired through several methods. The most common methods are the outright purchase of the property or through eminent domain or condemnation. Property can also be acquired through easements, or by donation or exchange. Unless received through donation, private property is acquired by the airport owner through payment of just compensation to the property owner.

Prior to making an offer to purchase private property, the airport owner must arrange for a competent, independent, real property appraiser familiar with local property values to appraise the property. This appraised report is reviewed by a review appraiser for conformance to acceptable appraisal standards and FAA requirements. Once the appraised report is approved, the approved report is used as the basis for the airport owners' written offer to purchase the property.

After just compensation has been determined for the property, an airport owner's representative will call the private property owner to negotiate for its purchase. The written offer must be for no less than the amount of the approved appraisal. During this process, the property owner may be represented by a real property appraiser or an attorney, or both to help in the negotiations, however, their fees will be paid by the property owner and are not reimbursable. When a price agreement is reached, a sales contract is prepared and submitted for the owner's signature. In addition, the property owner may be eligible to receive reimbursement for expenses incidental to the transfer of title to the airport owner.

Families and individuals displaced may be eligible to receive two kinds of relocation payments; one to cover moving and related expenses, and one to assist in obtaining a replacement dwelling. Homeowners, are eligible for a relocation housing payment of up to $22,500 necessary to offset additional cost in the purchase of a replacement dwelling, and a payment of up to $5,250 for renting replacement housing. Renters are eligible for a payment of up to $5,250 for purchasing or renting replacement housing.

Displaced businesses, farms and nonprofit organizations may receive up to: $1,000 to cover moving and related expenses; $10,000 for actual reasonable reestablishment expenses; or a fixed payment based on the average annual net earnings of the displaced business, farm or nonprofit organization, but not less than $1,000 or no more than $20,000.

The Port Authority identified 98 Yellow Cedar properties to be considered for acquisition. In order to facilitate this acquisition, five (5) Airport Improvement Project (AIP) grants were awarded, specifying the parcels to be purchased with each grant. At the time of our review, of the 98 parcels to be purchased, 61 were to be acquired by the AIP grants; the Port Authority acquired 14 parcels using their own funds; and, 23 parcels were awaiting the identification of a funding source.

The schedule below identifies each AIP grant and the parcels that were authorized for each. It also identifies, based on records maintained by Property Management, the 14 parcels acquired using Port Authority funds and the 23 parcels pending a funding source.

Source of Funding	Authorized Plot Numbers	Number Authorized
Port Authority Funds	21, 22, 23, 24, 25, 26, 26A, 26B, 27, 28, 40I,40J, 40K, 40L	14
AIP Grant 16-98	29, 30, 30A, 30B, 33, 57, 59, 62, 93	9
AIP Grant 19-99	88, 89, 90	3
AIP Grant 21-99	65, 73, 74, 75, 82, 83, 84, 85, 86, 87, 91, 92	12
AIP Grant 23-01	32, 40B, 40D, 55, 56, 58, 60, 61, 63, 64, 66, 67, 68, 69, 70, 71, 72, 76, 77, 78, 79, 80, 81	23
AIP Grant 25-02	39A, 40A, 40C, 40E, 40F, 40G, 40H, 44, 49, 50, 51, 52, 53, 54	14
Pending Funding Source	34, 35, 35A, 36, 37, 38, 39, 39B, 42, 43, 45, 46, 47, 48, 200, 201, 202, 203, 204, 205, 206, 207, 208	23
Total		**98**

OBJECTIVE, SCOPE AND METHODOLOGY

The objective of our review was to determine if the Port Authority managed the Yellow Cedar Land Acquisition Program (Yellow Cedar) in accordance with the guidelines established in 49CFR24.

Our scope was limited to the parcels located at Yellow Cedar, St. Croix that were acquired by the Port Authority during 2000 through 2003.

Our audit methodology included the review of the selected Yellow Cedar files maintained at the Port Authority's Property Management Division (Property Management) and Accounting Division (Accounting), and interviews with staff from Property Management.

Except for the standard requiring a peer review every three years, we conducted our review in accordance with standards applicable to compliance audits contained in the Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to provide a reasonable basis for our findings and conclusions. Accordingly, we have performed such tests of records and other auditing procedures that were considered necessary under the circumstances. Weaknesses in internal controls are discussed in the Audit Results section of the report.

PRIOR AUDIT COVERAGE

We are unaware of any audits done of the Yellow Cedar Acquisition Program administered by the Port Authority.

AUDIT RESULTS

CONCLUSIONS

The Port Authority did not always follow established guidelines with respect to the purchasing of property under the Yellow Cedar Land Acquisition Program. We found that: (i) in some instances, the Port Authority's initial written offer to purchase exceeded the revised approved appraisal amount; (ii) the Port Authority did not document the reason(s) for paying in excess of the Port Authority's and in some instances the land owner's appraisals when purchasing some properties; and, (iii) the Port Authority did not ensure that replacement housing payments were only paid to owners who actually occupied their properties and did not document the method used in calculating the amounts paid.

As a result, the Port Authority may have violated Federal regulations in the acquisition of certain Yellow Cedar properties.

These findings are discussed in more details in the Findings sections of this report.

FINDING 1: INITIAL OFFER

The Port Authority did not always use the approved review appraisal when making the initial written offer to purchase parcels as required by Federal regulations. In particular, three (3) initial offers exceeded the approved review appraisals, in one instance by as much as $37,300.

Criteria

49CFR24 states that prior to making an offer to purchase, the airport owner (Port Authority) will arrange for a competent, independent, real property appraiser familiar with local property values to appraise the property. The appraiser will inspect, and set an opinion of its current fair market value in a formal appraisal report. This report is required to be reviewed by a review appraiser for conformance to acceptable appraisal standards and FAA requirements. This approved report is used as the basis for the Port Authority's written offer to purchase the property.

Review Appraisal vs Initial Offer

We identified three (3) instances where the initial offer exceeded the approved review appraisal amount, one by as much as $37,300. In each instance, the final purchase price also exceeded the approved review appraisal amount, and in two of the three instances, the final purchase price also exceeded the initial offer amount. No documentation was provided to show how the initial offer amount was derived, nor how the final purchase price was negotiated. The issue of purchase prices exceeding approved review appraisals will be covered in more detail in Finding 2: Parcel Acquisitions.

The following schedule details the three parcels whose initial offers exceeded the approved review appraisals. In the schedule, we have shown the date and amount of the initial appraisals, the date and amount of the review appraisals, the date and amount of the initial offers, and the date and amount of the final acquisitions. We have also shown the difference between the review appraisals and the initial offers, and the difference between the review appraisals and the final acquisitions.

Plot No.	Port Authority Appraisal		Port Authority Review Appraisal		Port Authority Initial Offer		Difference: Review Appraisal/ Initial Offer	Acquisition		Difference: Review Appraisal/ Acquisition
	Date	Amount	Date	Amount	Date	Amount		Date	Amount	
40E	05/31/02	$125,000	06/24/02	$119,500	06/28/02	$125,000	$5,500	10/19/02	$140,000	$20,500
64	12/13/01	$70,000	12/26/01	$65,000	01/14/02	$70,000	$5,000	05/21/02	$70,000	$5,000
74	02/25/00	$87,000	03/27/00	$88,700	04/13/00	$126,000	$37,300	07/27/00	$130,000	$41,300

Recommendations

We recommend that the Executive Director of the Port Authority:

1. Direct Property Management to provide justification on why the initial offers for the three parcels identified in this finding exceeded the approved appraisal amounts.

2. Require Property Management to adequately document and justify any variations in initial offers from approved appraisals for future acquisitions.

V. I. Port Authority's Response

The Executive Director in his January 24, 2005 response, did not address each of the recommendations made in the report. He did, however, agree that after his review, some of the acquisitions did appear to be questionable considering the lack of documentation in the files. He also indicated that for all future acquisitions, steps will be taken to ensure compliance with 49CFR24.

Also included were comments made by the Director of Property Management and the Internal Auditor. The Property Manager, in his comments, generally disagreed with the report and the findings.

The Internal Auditor included additional information relating to the first finding of the draft report (which was dropped from this report), and additional comments relating to the other findings.

V. I. Inspector General's Comments

Although the Executive Director did not indicate agreement or disagreement to each of the recommendations made, he did agree with the general tone of the report; that is, an overall lack of documentation and justification for the various decisions made in acquiring properties at Yellow Cedar. 49CFR24 requires specific documentation and justification when properties are acquired for more than the approved appraised values. It was clearly evident by our review of the files that the requirements were not met.

We strongly recommend that the Executive Director ensures that Property Management reviews the files for the properties acquired under the Yellow Cedar project and attempt to justify, as much as possible, the decisions made in purchasing the various properties. Without sufficient documentation and justification, the possibility exists that the Federal Aviation Administration (FAA) may require the Port Authority to reimburse Federal funds for the undocumented and unjustified transactions. In addition, specific controls should be put in place to ensure that future acquisitions are adequately documented and justified. The involvement of the Internal Auditor in the review process may assist the Executive Director before acquisitions are finalized. Although not directly addressed, we will close each of the recommendations made.

Regarding the comments made by the Director of Property Management and the Internal Auditor, we reviewed the questioned files as well as obtained additional information from the Accounting Division (this is in addition to what had already been supplied to us by Accounting) and have made the necessary adjustment based on the additional information provided. As a result, we have dropped the first finding relating to the grant authorization; however, we have expanded an additional finding relating to replacement housing payments. It is detailed as Finding 3 of this report.

We must note that during this later review of the files, we did notice that they had been rearranged and organized. We cannot be assured that all of the documents that were in the files during our initial review are still in the files. We have drawn this conclusion because of discrepancies in the information obtained in our initial review, information claimed by the Director of Property Management, information obtained by the Internal Auditor and information obtained in our subsequent review. As an example, during our initial review of Plot No. 74, we identified an initial appraisal document valued at $87,000. The Director of Property Management, in his comments, acknowledged that there was an initial appraisal valued at $87,000, however; the Internal Auditor, in her comments, indicated that there was no record of an appraisal valued at $87,000. In addition, in our follow-up review, as previously stated, the files had been rearranged, and no $87,000 appraisal was found.

In conclusion, we again reiterate our concerns over the lack of supporting documentation and justification for many of the acquisitions made. Every effort should be made to obtain supporting justification for any transaction where the finally acquisition costs exceeded the approved appraisal amounts.

FINDING 2: PARCEL ACQUISITIONS

The Port Authority did not justify or document instances where the acquisition of parcels exceeded the approved appraisal amount. In thirteen (13) instances the final acquisition amounts exceeded the approved appraisal amounts by a total of $387,200.

Criteria

49CFR24 allows property to be acquired in excess of the approved appraisal amount, once sufficient justification is provided to warrant the increase in the value of the property. Section 24.102(i) states that, "The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for, or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) support such a settlement."

Acquisitions

Of the 61 Federally funded parcels that were acquired, we found thirteen (13) parcels that were purchased at a significantly higher amount than they were appraised at. There was no indication in the files to explain why these variances occurred. In one instance, we noted that the Port Authority ignored all three appraisals (the Initial Port Authority Appraisal, the Review Appraisal and the Parcel Owner's Appraisal) and paid the property owner a significantly higher amount. Again, there was no documentation explaining the price variance between the fair market value as represented by the Port Authority appraiser, the initial offer, and the final negotiated amount. The parcel was purchased for $75,000 while the Port Authority's appraisal was $39,400 and the property owner's appraisal was $40,000. As a result, the Port Authority paid at least $35,000 and as much as $35,600 over the current market value as appraised.

Overall, the thirteen (13) parcels were purchased for $1,413,000 while the Port Authority's review appraised prices totaled $1,025,800. The Port Authority paid $387,200 over the current market value as appraised.

The schedule below identifies each of the thirteen (13) parcels, the initial Port Authority Appraisal amounts and date, the Prot Authority's Review Appraisal amounts and date, the Initial Offer amounts and date, the Parcel Owner's Appraisal amounts and date, and the Final Acquisition including Relocation Assistance.

Par. No.	Port Authority Appraisal		Port Authority Review Appraisal		Port Authority Initial Offer		Parcel Owner Appraisal		Final Offer/Acquisition				
	Date	Amount	Date	Amount	Date	Amount	Date	Amount	Date	Parcel	Rel. Asst. I	Rel. Asst. II	Total
40E	05/31/02	$125,000	06/24/02	$119,500	06/28/02	$125,000	--------	(1)	10/19/02	$140,000	$5,250	$22,500	$167,750
67 & 68	02/25/00	$63,700	03/27/00	$63,700	04/13/00	$63,700	06/15/00	$72,500	03/16/01	$70,000	$5,200	$22,500	$97,700
69	02/08/00	$99,300	03/25/00	$99,300	04/13/00	$99,300	02/26/01 04/21/01	$149,500 $130,000	04/25/01	$136,800	$700	$22,500	$160,000
71	02/25/00	$39,400	03/27/00	$39,400	04/13/00	$39,400	06/07/00	$40,000	06/13/01	$75,000	$18,750	------	$93,750
72	02/25/00	$87,200	03/27/00	$87,200	04/13/00	$87,200	--------	(1)	02/28/01	$115,000	$20,350	$22,500	$157,850
74	02/25/00	$87,000	03/27/00	$88,700	04/13/00	$126,000	06/16/99	$126,000	07/27/00	$130,000	$4,125	$22,500	$156,625
79	03/22/00	74,000	03/22/00	$74,000	04/13/00	$74,000	06/21/00 06/14/01	$80,000 $110,000	09/13/01	$104,000	$4,500	------	$108,500
84	02/25/00	$66,300	03/24/00	$66,300	N/A	N/A	10/17/02	$126,000	02/21/03	$126,000	$5,275	------	$131,275
85	02/25/00	$90,200	03/24/00	$90,200	03/24/00	$90,200	04/18/00	$125,000	03/16/01	$119,000	$4,500	$22,500	$146,000
87	02/25/00	$106,000	03/22/00	$107,000	04/13/00	$107,000	05/31/00	$155,000	02/25/01	$150,000	$9,925	$22,500	$182,425
90	02/25/00	$97,400	$3/27/00	$98,500	04/13/00	$98,500	06/06/00	$110,000	07/19/01	$109,500	$5,250	$22,500	$137,250
93	02/25/00	$92,000	03/27/00	$92,000	04/13/00	$92,000	06/01/00 01/22/01	$106,000 $145,000	09/16/01	$137,700	$5,275	$22,500	$165,475

(1) The parcel owners' appraisals, included in the Port Authority's files, were for other properties owned by the same individuals. Questions relative to the property owners' occupancy at the Yellow Cedar properties are discussed in Finding 2: Replacement Housing Payments.

The following examples are based on the parcel files maintained by Property Management. Again, they show the questionable acquisitions, for which no written justification was maintained in the files as required by Federal regulations.

Example 1. The Port Authority initially offered $125,000 for a .262 acre parcel. It was originally appraised at $125,000, and the review appraisal was reduced to $119,500. The property owner had a private appraisal done for a different owned property. It was appraised at $268,460. No other appraisals were seen; however, the acquisition amount was $140,000, plus $27,750, the maximum allowable, for relocation expenses. The difference between the review appraisal and the final acquisition amount (excluding relocation expenses) was $20,500. No documentation explaining the difference was found in the files.

Example 2. A .240 acre parcel was appraised and reviewed by Port Authority appraisers at $39,400. A property owner appraiser valued the property at $40,000, yet the property was acquired for $75,000. This was $35,000 more than the highest appraisal. Again, no documentation explaining the difference was found in the files.

Example 3. A .240 acre parcel had an initial offer of $87,200. The initial appraisal and review appraisal both were also set at $87,200. The property owner had a private appraisal done for a different owned property. It was appraised at $215,000. The final acquisition amount was

$115,000. The property was acquired for at least $27,800 in excess of the Port Authority approved appraisal. No documentation justifying the difference was found in the files.

Example 4. Appraised and approved at $66,300 by the Port Authority appraisers, this .246 acre parcel was acquired for $126,000. The property owner's appraisal for this same property was $126,000. The property was sold for $59,700 over the Port Authority appraised amount. No documentation explaining the difference was found in the files.

Recommendations

We recommend that the Executive Director of the Port Authority:

1. Direct Property Management to review the thirteen (13) parcels identified in this finding, and provide sufficient justification for the increase in the acquisition of each parcel.

2. Ensure that, for future acquisitions, Property Management uses the approved appraisal amount as the initial offer as specified by Federal requirements.

3. Ensure that written documentation is kept on the negotiation process of each property obtained and any substantial deviation from the initial offer and the final acquisition amount be adequately justified.

V. I. Port Authority's Response

The Executive Director did not respond to each of the recommendations made in this section of the report, however, in his response he did indicate agreement with the overall finding of a lack of documentation and justification for several acquisitions. Although not specific, he indicated that steps would be taken to ensure that future transactions are fully documented and justified as required by the Code of Federal Regulations.

The Director of Property Management in his comments claimed that the rules and regulations allow for property to be acquired for more than the approved appraised amounts. He claimed that this was done through negotiation. However, no additional documentation was provided.

The Internal Auditor agreed with the overall finding in this section of the report and expanded on some of the examples.

V. I. Inspector General's Comments

As stated in our comments to the previous finding, we are concerned about the lack of support and justification for the acquisitions mentioned in the report. Every effort should be made to obtain some type of justification for the decisions made, or the Port Authority risks the possibility that the Federal funds will be disallowed by the FAA. Although the recommendations were not individually addressed, we will close the recommendations.

Regarding the comments made by the Director of Property Management, 49CFR24 does allow property to be acquired for more than the appraised amount, however, it must be adequately documented and justified. No additional information was provided with the comments made by the Director of Property Management, accordingly we stand by the finding as reported.

The Internal Auditor agreed with our finding and made additional comments relating to questionable disbursements of replacement housing payments covered in Finding 3 of the report.

FINDING 3: REPLACEMENT HOUSING PAYMENTS

The Port Authority did not maintain records to justify the replacement housing payments. As a result, there were no assurances that the required criteria was used in calculating the $896,550 disbursed in payments. Of 47 properties, with structures, acquired, 38 property owners received the maximum amount of $22,500, one (1) received $21,000 and another received $20,550. In addition, the Port Authority did not ensure that property owners were actually residing at the properties being acquired before paying the maximum replacement housing payments. As a result, two property owners were paid $22,500 each in replacement housing payments although it is questionable whether they were residing at their respective Yellow Cedar properties.

Criteria

49CFR24, Subpart E authorizes replacement housing payments. Section 24.401 defines the requirements for a homeowner-occupant who is to be displaced from a property that had been occupied for at least 180 days.

To be eligible, the homeowner-occupant must have: (i) actually owned and occupied the displaced dwelling for not less than 180 days immediately prior to the initiation of negotiations; and, (ii) purchased and occupied a decent, safe, and sanitary replacement dwelling within one year after the later of the date the person received the final payment for the displacement dwelling or the date that the displacing agency's obligations were met. The payment cannot exceed $22,500.

The CFR further explains that the replacement housing payment is the sum of: (i) the amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling; (ii) the increased interest costs and other debt service costs incurred in connection with the mortgages(s) on the replacement dwelling; and, (iii) the reasonable expenses incidental to the purchase of the replacement dwelling.

Section 24.402 defines the requirements for a homeowner-occupant or a tenant who is to be displaced from a property that had been occupied for at least 90 days. The maximum payment for this category is $5,250.

The CFR states that the displaced person must have: (i) lawfully occupied the displacement dwelling for at least 90 days prior to the initiation of the negotiations; and, (ii) rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one year after, for tenants, the date moved from the displacement dwelling, or for a homeowner-occupant, the later of the date the person received the final payment for the displacement dwelling, or the date moved from the displacement dwelling.

The replacement housing payment for this category is computed as, 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lessor of: (i) the monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or, (ii) the monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

Replacement Housing Payment For 180-Day Homeowner-Occupant

During our review of the various acquisition files, we found that a significant number of homeowners received the maximum in replacement housing payments. We noted that for the 47 properties, with structures, acquired, 38, or 81% of the homeowners received the maximum amount of $22,500 allowable by 49CFR24. Two other homeowners received $21,000 and $20,550 respectively. In our review of the files, we did not see any supporting justification for the maximum payments. In addition, there was no evidence to show that the calculation, as required by the CFR, was done. As a result, there were no assurances that the $896,550 in these payments were justified and allowable.

We also found two instances where, although records indicated that the homeowners may not have occupied their Yellow Cedar properties, the Port Authority did not document whether the questionable situations were investigated to determine eligibility before the $22,500 was paid to each. The $5,250 payments to each tenant is also questionable.

Situation 1: In the first situation, the Port Authority appraiser, in the May 31, 2002 appraisal report, identified the building as a one-story four bedroom, two bathroom house. The report also stated that, "It is rented to a family of 8 children." Based on various dates noted in the appraiser's report, the assessment of the property had been ongoing from at least February 2002.

Also included in the file, as justification for the tenant to receive the renter's replacement housing payment of $5,250, was a letter from the home-owner stating that the tenant had been living at the Yellow Cedar property "since February 1, 2002. The lease expires on February 1, 2003." Based on this statement, the tenant may not have met the 90-day occupancy requirement.

The only correspondence from the Port Authority, questioning the eligibility of the homeowner for the replacement housing payment, is a July 16, 2002 letter stating that, "Since you have already purchased a new residence, the Virgin Islands Port Authority requires an independent appraisal of said residence to determine if you are eligible for the relocation expense of up to Twenty Two Thousand Five Hundred Dollars ($22,500.00)."

Finally, there is a July 19, 2002 appraisal for another home owned by the Yellow Cedar homeowner. The appraisal describes the property as a two-story house, with two bedrooms and two bathrooms in the upper-level and two bedrooms and two and a half bathrooms in the lower-level. It is identified as owner occupied, and constructed around 2000. It appears that the owner: (i) may have been residing at this other location; and, (ii) did not acquired a replacement residence within a year after the Port Authority's acquisition of the Yellow Cedar property.

Situation 2: In this situation, the Port Authority appraiser's February 25, 2000 report identifies the building as a one-story side-by-side duplex. Each unit containing two bedroom and one bathroom.

Included in the file, as justification for two tenants to receive the renter's replacement housing payments of $5,250 each, were two letters, dated March 15, 2001, from the home-owners stating that one tenant had been living in "apartment 72-A from 1993 - present" and the other had been living in the same "apartment 72-A from 1995 - present."

Finally, there is a March 14, 2001 appraisal for another home owned by the Yellow Cedar home-owner. The appraisal describes a two-story, three unit house. The upper level included four bedrooms and three bathrooms. The lower level consisted of two apartments; one was a three bedroom, one bathroom apartment; and, the other was a one bedroom, one bathroom apartment. It was indicated that the main residence was owner occupied, and the two units were rented. The house was listed as being built around 1991. It appears that the owner: (i) may have been residing at this other location; and, (ii) did not acquired a replacement residence within a year after the Port Authority's acquisition of the Yellow Cedar property.

Recommendations

We recommend that the Executive Director of the Port Authority:

1. Direct Property Management to ensure that for the situations where replacement housing payments were made, there is adequate justification for the amounts paid. Since, the one-year acquisition period has already passed, Property Management should be able to ensure that replacement dwellings have been acquired.

2. Direct Property Management to review the two situations where the homeowners' and tenants' occupancies of the Yellow Cedar properties are questionable. If the requirements of 49CFR24 are not meet, initiate action to collect the erroneous payments.

3. Direct Property Management to ensure that for all future acquisitions, the requirements of 49CFR24 are followed, including the proper documentation of all transactions and decisions made.

V. I. Inspector General's Comments

This finding relating to replacement housing payments was added subsequent to the draft report being issued, accordingly no comments were received from the Executive Director. Like the other findings, a lack of documentation and justification for the payments made were the major concerns.

Property Management needs to document and justify the replacement housing payments , or risk to loss of the Federal funds. In addition, the Port Authority needs to develop controls to ensure that the regulations of 49CFR24 are followed for future payments.

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VIRGIN ISLANDS PORT AUTHORITY'S RESPONSE

VIRGIN ISLANDS PORT AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
P.O. BOX 301707
ST. THOMAS, USVI 00803-1707

January 24, 2005

Mr. Steven Van Beverhoudt
V.I. Inspector General
Office of the V.I. Inspector General
2315 Krondprindsens Gade #75
St. Thomas, VI 00802

Dear Mr. Van Beverhoudt:

In response to the audit performed by your agency of the acquisition of privately owned land adjacent to the Henry E. Rohlsen airport commonly referred to as Yellow Cedar on St. Croix, Virgin Islands and funded by the Federal Aviation Administration (FAA), I am submitting a report as prepared by Miss Juanita Williams, V.I. Port Authority's Internal Auditor.

Based on my review of your findings and a cursory review of the Code of Federal Regulations Title 49, Part 24, I find that the acquisition of properties cited are questionable from a documentation record-keeping standpoint. It is difficult for me to respond to specific findings in the audit report due to the lack of adequate records of this agency. Admittedly, documents were submitted to my office which I approved based on recommendations of the Director of Property Management, Mr. Kenn Hobson, whom I relied on to administer the land acquisition program. This program was administered by the same director prior to the start of my tenure as Executive Director, which began on January 1, 2003.

The Internal Auditor and the Director of Property Management have prepared responses which are attached.

I, however, will henceforth ensure that there is full compliance with 49 CFR, Part 24 in the acquisition and relocation of private properties funded by FAA, particularly as it relates to procedures and record-keeping. FAA's Advisory Circular 150/5100-17-Appendix 3 provides the basis for establishing and maintaining an effective Quality Control Program that details the methods and procedures that should be taken to assure conformance to the requirements of

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the Uniform Act. This will be utilized for any future land acquisition to be carried out by this agency.

Sincerely,

Darlan Brin
Executive Director

DB:bd

Attachments (2)

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Virgin Islands Port Authority
Inter-Agency Memorandum *Property Management Division*

TO: Darlan Brin
Executive Director

FROM: Kenn Hobson
Director of Property Management

DATE: November 17, 2004

RE: ***Audit Review – Yellow Cedar Acquisition, St. Croix, VI***

There are some procedural differences contained in the audit review between the auditor's interpretation of the purchasing process of land acquisition and that of the federal government, as promulgated in Part 24, Title 49 of the Code of Federal Regulations that governs acquisitions.

The procedures are as follows:

1. The airport owner first informs the property owner(s) of the intention to purchase (based on a cause) and when an appraiser will be inspecting the property.

2. Upon receipt of the appraisal, the airport owner turns the appraisal over to a review appraiser, who reviews the appraisal for acceptable appraisal standards and FAA requirements.

3. Upon the receipt of the appraisal and the review, the airport owner will analyze both appraisals for discrepancies. A determination will be made to:

    a. Accept the process (albeit minor differences); or
    b. Reject the process and redo the procedure.

4. Make an offer to the property owner. The offer must be accompanied by both the appraisal and the review appraisal.

5. The property owner has three options:

    a. Accept the offer;
    b. Reject the offer and arrange for an appraisal of his/her own; or
    c. Offer to negotiate with the airport owner.

6. Should the property owner reject the offer and elect to pursue an appraisal, the airport owner is obligated to negotiate a figure between both appraisals (the airport owner's and the property owner's) to reject the appraisal.

7. If the airport owner rejects the appraisal, then a move for condemnation is initiated.

FINDING 2: INITIAL OFFER

The auditor was incorrect in its finding of the initial offer in excess of the approved appraisal amount.

Plot No. 64 was appraised for $70,000. The review appraisal suggested an adjustment of $5,000, therefore a suggested reduction to $65,000. The Executive Director approved the appraisal amount of $70,000 and the initial offer was made for $70,000 (not $73,000, as stated in the audit report – See attached initial offer.

Plot No. 74 was appraised for $87,000. The review appraised suggested an adjustment of $1,700. The property owner produced an appraisal done by an independent appraiser for $126,000. The airport owner did a field inspection of the property and approved the owner's appraisal of $126,000. The initial offer was then made for $126,000.

Plot No. 90 was appraised for $97,400 (not the reported $94,000 by the audit). The review appraiser suggested an adjustment of $1,100 increasing the amount to $98,500. The Executive Director approved the $98,500 review and an offer was then made for $98,500.

It must also be noted that the table produced by the auditor contains errors. The corrected is as follows:

(See Table 1)

FINDING 3: PARCEL ACQUISITIONS

The rules and regulations allow for the acquisition of property in excess of the approved appraised amount. This is done through negotiation.

The auditor claims that 11 parcels were purchased at amounts higher than the appraised amounts, and that four (4) of the 11 were purchased at a higher amount than the

three (3) appraisals (the initial Port Authority appraisal, the review appraisal and the owner's appraisal). Our record found that only one (1) parcel was acquired for more than three (3) appraisal amounts. The facts are as follows:

1. Parcels 67 and 68 were acquired jointly since they are contiguous and with common ownership. The auditor failed to recognize that the parcels are owned by the same persons. This information is noted on all the documents for both parcels.

   The combined total of both the initial and review appraisal on Parcels 67 and 68 was $63,700, while the combined total of the owner was $72,500. The combined amount that was paid for both parcels was $70,000.

2. Parcels 70 and 71 were also jointly acquired. In both cases, the only document that did not indicate joint acquisition of the adjacent land is the deed, since each has to be recorded individually.

3. With regards to Parcel 40E, an inspection of the property was made, and it was determined that the property deserved a higher value.

It must be noted that some perceived damage from dust generated by the Airport Runway Expansion Project was already done to these residences. Attorneys were already working on certain individual and class action suits in this regard.

In reviewing the other seven (7) acquisitions, the Executive Director invariably made it clear to the property owner in writing "upon negotiation we settled at [**dollar amount**] for Parcel No. [**property number**].

Surely the auditor does not expect the Executive Director to document every detail of each negotiated property.

It must also be noted that the table produced by the auditor contains errors. The corrected is as follows:

(See Table 2)

pc: Judith James
Juanita Williams
Anna Penn

AUDIT REVIEW -- YELLOW CEDAR ACQUISITION
HENRY E. ROHLSEN AIRPORT, ST. CROIX, VI

CORRECTIONS ARE INDICATED IN BOLD TYPE.

TABLE 1:

PLOT NO.	PORT AUTHORITY APPRAISAL		PORT AUTHORITY REVIEW		INITIAL PORT AUTHORITY OFFER		DIFFERENCE APPRAISAL / OFFER	PARCEL OWNER APPRAISAL		DIFFERENCE APPRAISAL / ACQUISITION
	DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT		DATE	AMOUNT AMOUNT	
64	12/13/2001	$70,000	12/26/2001	$65,000	1/14/2002	**$70,000**	**$0**	5/21/2002	$70,000	**$0**
74	2/25/2000	$87,000	3/27/2000	$88,700	4/13/2000	$126,000	$37,300	7/27/2000	$130,000	**$4,000**
90	2/25/2000	**$97,400**	3/27/2000	**$98,500**	4/13/2000	$98,500	**$0**	7/19/2001	**$109,500**	**$11,000**

TABLE 2:

PARCEL NO.	PORT AUTHORITY APPRAISAL		PORT AUTHORITY REVIEW APPRAISAL		PORT AUTHORITY INITIAL OFFER		PARCEL OWNER APPRAISAL		FINAL OFFER ACQUISITION				
	DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE	PARCEL	REL. ASST. I	REL. ASST. II	TOTAL
40E	5/31/2002	$125,000	6/24/2002	$119,500	6/28/2002	$125,000	-----	-----	10/19/2002	$140,000	$5,250	$22,500	$167,750
67	2/25/2000	$43,800	3/27/2000	$43,800	4/13/2000	$43,800	6/15/2000	$50,000	3/16/2001	**$50,000**	**$700**	$22,500	**$73,200**
68	2/25/2000	$19,900	3/27/2000	$19,900	4/13/2000	$19,900	6/15/2000	$22,500	3/16/2001	**$20,000**	**$0**	**$0**	**$20,000**
69	2/8/2000	$99,300	3/25/2000	$99,300	4/13/2000	$99,300	2/26/2001 4/21/2001	$149,500 $130,000	4/25/2001	$136,800	$700	$22,500	$160,000
71	2/25/2000	$39,400	3/27/2000	$39,400	4/13/2000	$39,400	6/7/2000	$40,000	6/13/2001	$75,000	$18,750	-----	$93,750
72	2/25/2000	$87,200	3/27/2000	$87,200	4/13/2000	$87,200	-----	-----	2/28/2001	$115,000	**$11,350** *	**$22,500**	**$148,850**
79	3/22/2000	$74,000	3/22/2000	$74,000	4/13/2000	$74,000	6/15/2000	$80,000 $110,000	9/13/2001	$104,000	**$0**	-----	**$104,000**
84	2/25/2000	$66,300	3/24/2000	$66,300	-----	-----	6/15/2000	$126,000	2/21/2003	$126,000	**$775**	-----	**$126,775**
85	2/25/2000	$90,200	3/24/2000	$90,200	3/24/2000	$90,200	6/15/2000	$125,000	3/16/2001	$119,000	**$0**	$22,500	**$141,500**
87	2/25/2000	$106,000	3/22/2000	$107,000	4/13/2000	$107,000	6/15/2000	$155,000	2/25/2001	$150,000	**$925**	$22,500	**$173,425**
93	2/25/2000	$92,000	3/27/2000	$92,000	4/13/2000	$92,000	6/15/2000	$106,000 $145,000	9/16/2001	$137,700	**$775**	$22,500	**$160,975**

* Parcel No. 72 - Relocation Assistance I - $850 + $10,500 = $11,350

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VIRGIN ISLANDS PORT AUTHORITY

MEMORANDUM:

TO: Darlan Brin
Executive Director

FROM: Juanita Williams
Internal Auditor

DATE: January 14, 2005

RE: Audit Review – Yellow Cedar Acquisition, St. Croix, VI

Finding 1

Our review indicated the following in connection with the five (5) parcels auditors claimed were acquired using unauthorized AIP 23-01:

1. Parcels 27 and 43 are parcels located in Estate Diamond under HERA Runway Extension. It was authorized under AIP 23-01 Phase 6 for MALSAR Acquisition giving easement.

2. Parcels 57, 59 and 62 were approved under AIP 16-98 and were drawn down under the same grant.

Finding 2

In response to this finding we found:

1. **Plot # 64** was appraised for $70,000 and the review appraisal for $65,000. The Executive Director's offer to purchase the property for $70,000 and the property was acquired for $70,000. There was no initial offer for $73,000 on file.

2. **Plot # 74** was appraised on 2/25/00 for $88,700. Review appraiser, Ann Marsh, reported on June 10, 1999 appraised the property for $126,000; therefore did not give a review value but left the decision to the Port Authority. The initial offer was made for $126,000 on 4/13/00. The purchase was negotiated to $130,000 as per letter dated 5/22/00. There is no record of appraisal for $87,000 or review value of $88,700 or the reason for increase of the initial offer.

3. **Plot # 90** was appraised on 2/25/00 for $97,400 and review appraisal for $98,500 on 3/27/00. On 4/13/00 an initial offer was made to purchase the property for $98,500. The parcel was then appraised by the owner for $110,000 on 6/06/00. The price of $109,500 was negotiated with the owner on 6/22/01 and letter confirming acceptance of offer was sent on 6/25/01. VIPA has the authority to negotiate a figure between the appraisal of the Reviewer recommendation and the owner's appraisal; however, no record was kept of the meeting.

Finding 3

I concur with sections of this finding. For the Uniform Act requirements for real property acquisition appropriate document diary or log with all information pertinent to the negotiations must be maintained with the sponsor's permanent parcel files. These records were not available to show justification for any increase to the review appraiser's recommendations. During our review of the auditor's findings and the acquisition files for each parcels identified, we found that two (2) parcel owners of yellow cedar were landlords and did not reside in yellow cedar. After the initial offer by the Port Authority, these Parcel Owners appraised their other properties acquired in 1992 that were not in the vicinity of the airport and submit these appraisals to Property Management. They also received relocation fee of $22,500 although Chapter 4 stipulated that a voluntary acquisition did not qualify as displaced persons for relocation assistance. These parcels were:

Parcel # 40E was appraised for $125,000 on 5/31/02; however, the review appraiser rated the amount as **unacceptable** and recommended just compensation of $119,500. The Port Authority's initial offer on 6/28/02 was $125,000. On 7/19/02 the Owner submitted an appraisal for his residence at 64 Mount Pleasant, Frederiksted for $268,460 and the property was purchased for $140,000. According to the Recorder of Deeds office on St. Croix, the property has the same owner from 2/14/92. Parcel 40E was rented and Port Authority paid the tenant relocation fee of $5,250. The owner also received relocation fee of $22,500 although he was not living on the premises.

Parcel #72 was appraised on 2/25/00 for $87,200 and review appraisal on 3/27/00 for $87200. VIPA's initial offer on 4/13/00 was for $87,200. On 3/14/01 the owners presented an appraisal on their residence at 94 Southgate, East End "A" Quarter for $215,000 and were recorded by the owner in the Recorder of Deeds office on 8/24/92. Parcel # 72 was a duplex apartment with two tenants. Although each tenant received $4,500 for settlement for dust and $5,250 for relocation, the owners who were not living at Yellow Cedar also received $22,500 for relocation and $850 for moving expenses.

Parcels # 67 & 68 belonged to the same owner; were appraised for a total of $63,700 and recommended by the review appraiser for the same amount.

Owner's appraisal for the two properties was $72,500 and the two properties were acquired for a total of $70,000. The combined amount that was paid for moving and relocation expenses total $23,200 (see checks # 0694 & 0696).

Parcels # 69, 71, 79, 84, 85, 87 & 93 – I concur with the auditor's findings.

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