A PROCEDURAL GUIDE

FOR THE

ACQUISITION OF REAL PROPERTY BY GOVERNMENTAL AGENCIES

DEPARTMENT OF JUSTICE

LAND AND NATURAL RESOURCES DIVISION

1972

TABLE OF CONTENTS

	Page
Foreword	iv
Introductory	1
I. Initial Steps to be taken by the acquiring agency prior to acquisition of the land.	1
A. Initial planning	1
1. Necessity for acquisition	1
2. Legislative authority	2
3. Procure survey and maps	2
4. Prepare project plans of operation.	3
B. Procurement of title evidence	3
1. Agency to obtain title evidence expeditiously	3
2. Use of standards compiled by Department of Justice.	4
3. Contracting for title evidence	4
4. Obtaining curative data and pertinent information	4
C. Procurement of appraisals	5
1. Number and qualification of appraisal report.	5
2. Selection of appraisers	5
3. Appraisal contracts and fees.	6
4. Appraisal reports	7
5. Evaluation of appraisal evidence.	10
a. Prior sales of property being acquired.	10
b. Sales of other properties	10
c. Capitalization of income.	11
d. Reproduction cost new less depreciation	12
6. Appraisal analysis	13
D. Negotiation procedures and contracts with landowners	13
1. Pamphlet entitled "Progress, Property, and Just Compensation" should be furnished landowners affected by project.	14
2. Performance by negotiator	14
3. Caution against permitting indiscriminate landowner examination of Government appraisals.	14
4. Detail expenses to be incurred by landowner in effecting a settlement	14
5. Emphasize avenues of savings	14
6. Avoid any possible representations that project as	

presently planned is complete or that there will be no further need of additional property being acquired. . . . 15
7. Negotiator should secure enforceable contract if direct purchase agreement is reached 15
II. Acquisition by direct purchase 16
A. Initiating requests for preliminary opinions of title. . . . 16
1. "Purchase Assembly" to be sent to Justice Department . . 16
2. Preliminary opinion will be furnished to the acquiring agency. 17
B. Closing a direct purchase acquisition. 17
1. If closing is to be handled by Justice. 17
2. If closing is by an attorney of the agency which handles its own closing 18
3. Action required for closing by either Justice or agency . 18
C. Final title assembly required for a final title opinion by the Attorney General 21
1. Completed purchase assembly 21
2. A final opinion by the Attorney General to be furnished to the acquiring agency 22
III. Acquisition by condemnation proceedings 23
A. Material and information to be furnished with request for condemnation 23
1. Request initiated by letter to the Attorney General; requirements to be included 23
2. Declaration of taking-if one is to be filed 25
3. Requirements for a condemnation request without a declaration of taking 26
4. Statement of need for condemnation of land valued at $4,000 or less 27
5. Documents to accompany all requests for condemnation. . . 27
B. Procedure after condemnation proceedings are requested . . 27
1. Government ownership to be posted 27
2. Agency representatives should order a continuation of the existing title evidence 28
3. Appraisals to be updated to date of taking 28
4. Cooperation should continue after referral for condemnation 28
C. Settlements 29-34
Appendix A 31
1. Conditions precedent in authorizing act. 32
2. Discussion of policy when owner insists that so-called "severance damages" be fixed in definite amount in settlement stipulation . 33
3. Land and Natural Resources Division Directive No. 11-68 re prep-

aration and review of appraisal evidence for trial 34
Appendix B (Table of Forms). 37
1. Suggested wording for various estates in land. 40
a. Fee 40
b. Flowage easement (permanent flooding). 40
c. Flowage easement (occasional flooding) 41
d. Access road easement 41
E. Borrow easement 42
f. Borrow pit and spoil area easement and right-of-way . . . 42
g. Drainage ditch easement 42
h. Extinguishment of rights in cemetery 42
i. Leasehold estate for unimproved land 43
j. Moratorium on outstanding minerals 43
k. Railroad easement. 43
l. Road easement 43
m. Temporary easement for exploratory purpose 44
n. Utilities and/or drainage easements 44
2. Offer to sell real property (option contract) 45
3. Offer to sell easement (option contract) 48
4. Certificate of inspection and possession 50
5. Disclaimer 52
6. Closing statement 53
7. Declaration of taking 54
8. Appraisal analysis form 57

FOREWORD

This pamphlet is a revision of an earlier guide first published in 1965 and extensively revised in 1968. Its purpose is to assist in attaining substantial uniformity in land acquisition practices throughout the Government, based upon the experiences gained in the use of the procedures first inaugurated, and the infusion of new ideas and the passage of new laws over the past years.

The purpose of the publication was discussed in the foreword to the 1965 edition, wherein it was stated:

> It is imperative that Federal land acquisition be a model of fairness and efficiency. The United States must take property only when it needs it and owns no property available for the purpose. It must take that estate sufficient for project purposes which is fairest to the taxpayers and owner alike. It must immediately assume control of property acquired, fully protect its interest in that property, and devote the property to all beneficial uses consistent with project purposes. It must treat property owners with perfect fairness, give them every consideration consistent with project needs, provide them an opportunity to sell at a fair market value, or an early opportunity to litigate the issue of just compensation. It must see that just compensation is paid without delay.
>
> It is essential, if these goals are to be achieved, that Federal land acquisition be handled with uniformity--no matter where or for what agency the land is acquired. This requires consolidation of land acquisition into as few agencies as possible and a high degree of coordination and cooperation among those agencies.

Continued gratitude must be expressed to those who did the careful organizational work and compiled the material for past editions. The impact of the procedures outlined herein upon the total land acquisition program of the Government can be measured by the significant gains achieved in making land procurement more responsive to public needs with fairness both to landowners and to the public weal.

Although the present edition, as revised, represents a substantial step forward, it is hoped that the described procedures will continue to evolve. As more experience is accumulated, and interagency cooperation increases, the guide will be further revised and refined. Much credit for this revision must be

redound to those who heeded our previous summons to submit suggestions acquired through application of the procedures detailed in the original editions. Because of the success generated by this appeal, we continue to solicit the candid suggestions of all who have occasion to use this manual.

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Introductory: In the instant revision of this Procedural Guide, preferred procedures for coordinating agency appraisal and precondemnation negotiation responsibility with litigative responsibility of the Department of Justice are set out in summary, outline form in the text of this brochure. Suggestions for the guidance of acquiring agency personnel with respect to planning and carrying out the land acquisition process are included in Appendix A, infra, pages 32, 34.

I

INITIAL STEPS TO BE TAKEN BY THE ACQUIRING AGENCY PRIOR TO ACQUISITION OF THE LAND

A. INITIAL PLANNING

1. *Necessity for acquisition must be determined by agency legal officer in following ways:*

a. *Availability of other suitable land.*--It should be ascertained whether available federally owned land could be used for project in lieu of land contemplated for acquisition.[1]

b. *Need for estate or interest proposed for taking.*

(1) The character of the estate or interest needed for primary purpose should be determined and categorized in the manner suggested by form 1, appendix B, infra, page 40. In this connection, when the nature of the estate required is such that the Government is likely to have to pay substantially the fee value of the land, the fee simple title should normally be acquired.[2]

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[1]If such land exists, arrangements should be made for the transfer of its use to the proposed project. In this connection, it should be borne in mind that a revocable license or permit does not constitute property for which the United States is liable upon condemnation, and passes to the licensee or permittee no estate or interest in the land. E.g., *Action v. United States*, 401 F.2d 896 (C.A. 9, 1968) and authorities there cited. Accordingly, if the property to be acquired includes lands being used under a revocable license or permit issued by a Federal agency [e.g., grazing permits, uranium prospecting permits, bridge franchises, licenses to erect river and harbor structures, permits to erect and maintain telephone and power lines, licenses to occupy, lease, or sell fishing areas (supporting authorities are cited in *Osborne v. United States*, 145 F.2d 892, 896 fm.5 (C.A. 9, 1944) and in *Action v. United States*, 401 F.2d 896 (C.A. 9, 1968)], the agency desiring to acquire the use of the property should make arrangements (a) for the revocation of the revocable license or permit by the Federal agency issuing the revocable license or permit and (b) for such use rights in the property as are appropriate. The General Services Administration annually compiles and issues an inventory of Federal real property holdings.

[2]See e.g., the express provisions in this respect set out in the joint policy statement of the Department of the Army and the Department of the Interior relative to reservoir project lands (27 F.R. 1734).

(2) Coordination of project with other agencies should be considered to utilize remainder interests and avoid severance damage payments.[3]

(3) Consideration should be given to providing access, water, etc., to severed properties, if consistent with purpose of taking, to minimize severance damages. Similar consideration might be given to excepting mineral interests.

c. *Consideration should be given to the ultimate cost of interests taken.*--A term for years may be cost-justified if the property is likely to be used for short-time intervals; it cannot be cost-justified if the terms are to be successively extended.

2. *Legislative authority for acquisition must be established in the following particulars:*

a. *The statutory basis for operating the program for which property will be used.*

(1) Authority for acquiring land.

(2) Appropriation from which just compensation is to be paid and limitations on the amount that can be spent for land acquisition.

(3) If fund is limited, a finding should be made as to whether a taking is required for an essential public purpose before just compensation is determined in condemnation proceedings.[4]

b. If defects in the agency's authority to condemn are found, or if the extent of that authority is unclear, it is recommended that clarifying legislation or an explicit authorization in an appropriation act be obtained before acquisition of properties is commenced.[5]

3. *Procure Surveys and Maps.*

a. *Planning map.*--A planning map on one sheet should be prepared showing the following:

(1) Exterior boundaries of the real property to be acquired and the parcels therein.

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[3]Sec. 301(9) of Pub. L. 91-646, approved Jan. 2, 1971, 84 Stat. 1894, 1905, provides as follows:

"(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property."

[4]Typical limiting statutes, and certifications required to accompany requests for condemnation, are set out at p.23, *infra*. A discussion of problems created by conditions precedent in authorizing acts appears in Appendix A, *infra*, pp.32.

[5]For a discussion and citation of authorities relating to statutory authorization to condemn, see *I Federal Condemnation Handbook*, sec. 1.100. For guidelines with respect to the right of the Government to acquire lands by donation or purchase subject to various reverter conditions, options, and use restrictions, see Regulations of the Attorney General issued on October 4, 1970, pursuant to Pub. L. 91-393, approved September 1, 1970, 84 Stat. 835 and page 4, *infra*.

(2) The general location of major improvements and structures.

(3) The location of proposed Government construction. This map should show the general outlines of the construction areas appropriately identified (runways, barracks and administration areas, housing areas, etc.). In any acquisition of real property where the requirement is based on technical criteria (such as airfields, ammunition storage areas, and communication stations), the planning map should show such criteria schematically.

(4) The location of existing rights-of-way for roads, highways, railways, utilities, etc.

(5) The proposed route of relocation of any of the rights-of-way mentioned in (4) above. If the proposed route of any proposed relocation of a right-of-way lies too great a distance from the real property proposed for acquisition to be shown in the vicinity map.

(6) The approximate location and direction of flow of natural water courses.

(7) A small-scale location insert showing the general location of real property.

(8) Any other pertinent information having a bearing on plans for the acquisition of the real property.

In order that project limits may be ascertained and difficult enhancement questions avoided, the maps should be sufficiently broad to include all property for which project use is a foreseeable possibility. Such other maps should be prepared as will be helpful in determining the type of terrain, the vicinity of the land, and its location in connection with the existing and proposed facilities.

b. *Map legend.*--Since any map is merely for intragovernment use, is not expressive of the final project, and cannot be relied on by landowners to indicate enhancement they may expect or special damage they may suffer, e.g., from proximity to a possibly harmful feature, all maps should be marked "This map is illustrative only. It does not, of itself, define the final approved project."

4. *Prepare Project Plans of Operation.*

In reservoir projects where flowage easements are acquired, there should be clearly designated plans of operation to avoid multiple litigation for subsequent changes in operation under the original project authorization.

B. PROCUREMENT OF TITLE EVIDENCE

1. *Agency to obtain title data expeditiously.*

An agency which has authority to acquire land should obtain all necessary title data for use in negotiations for purchase and later, if necessary, for use in condemnation proceedings.

2. *Use of Standards of Department of Justice.*

Title evidence obtained should conform to "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," issued by the Department of Justice, since the Attorney General must (with certain exceptions) approve titles and conduct condemnation proceedings, unless authority to do so has been delegated to the interested Department or Agency pursuant to Pub. L. 91-393, approved September 1, 1970, 84 Stat. 835.

3. *Contracting for Title Evidence.*

a. Contracts for title evidence should be let as soon as property needed is identified.

b. To assure the prompt delivery of the final continued abstract or final title certificate or title insurance policy, provision should be made for withholding a portion of the contract price until the actual delivery of the final form of the title evidence.

c. In condemnation proceedings where a declaration of taking has been filed:

(1) Generally it is not necessary to contract for a final certificate of title or title insurance policy when lands are acquired by the filing of a declaration of taking in a condemnation proceeding--although arrangements must be made for the continuance of the title data to disclose the pendency of the condemnation suit. Other than this exception, the standards and requirements for fee acquisition by direct purchase should be observed.

(2) Each agency will be primarily governed in all such cases by the requirements of the local representative of the Department of Justice charge with the prosecution of the condemnation proceedings, such as the necessity of obtaining an intermediate search or title certificate to cover the period from the date of the preliminary title examination to the date of the filing for recordation of either a lis pendens or the judgment on the declaration of taking in the local land records.

4. *Curative Data and Other Pertinent Information Not Disclosed by a Title Certificate or Abstract.*

a. The acquiring agency should obtain and furnish as specified hereinafter:

(1) Full information concerning owners, including information as to minors, incompetents, persons in possession,[6] adverse claims encountered, and any other information usually not included in title certificates, but which has a bearing on who must be made parties to a condemnation suit. The material furnished should include a detailed analysis of title data and conclusion by the acquiring agency on ownership.

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[6]In this connection, please see II-C-3-a-(1), *infra*, pp. 17, 18.

(2) As full information as possible regarding ownership, both in cases of direct purchase and condemnation.

(3) For the United States Attorney, without awaiting his request therefor, title curative data relating to tracts being condemned, such as affidavits of heirships, certificates as to persons in possession, or evidence of unrecorded conveyances.

b. When a title company fails to furnish promptly necessary continuation evidence in accordance with its contract, the acquiring agency should, without delay, furnish certificates of search prepared by agency personnel or by other qualified persons, or such other information as the United States Attorney may require.

C. PROCUREMENT OF APPRAISALS

1. *Compliance With Uniform Appraisal Standards.*

Appraisals should be prepared in compliance with the "Uniform Appraisal Standards for Federal Land Acquisitions" issued by the Interagency Land Acquisition Conference (1972).

2. *Number and Qualification of Appraisal Reports.*

a. In any acquisition of substantial value involving any significant need for condemnation proceedings the acquiring agency should obtain at least two appraisal reports by appraisers acceptable to the United States Attorney and meet the requirements of subparagraph 4 below.

b. Such reports should be obtained prior to any change in character of the property or use and should be reviewed and approved by the United States Attorney's office as a competent basis for expert valuation testimony prior to the *conclusion* of direct purchase negotiations whenever practicable.

c. By use of the procedure suggested, negotiations by the agency will be concluded on the same factual basis as a claim will be pressed in condemnation; it may even enable trial counsel to evaluate trial risks and participate in realistic negotiations for purchase of controverted tracts within the limits of agency compensation authority before condemnation proceedings are commenced.[7]

3. *Selection of Appraisers.*

a. The names of independent appraisers being considered should be submitted to the United States Attorney for his advance approval, thereby eliminating, in most instances, the necessity for the United States Attorney to employ another appraiser at a later date for trial purposes and avoid the

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[7]A recent directive to personnel of the Land and Natural Resources Division entitled "Preparation and Review of Appraisal Evidence for Trial" is reproduced in appendix A, *infra*, pp.34-37.

unfavorable inferences and problems caused by changing appraisers midway in what really is a single transaction.

b. This will insure that the appraisers who will testify at a trial are able to make their inspections at an early date, before the appearance of the property is altered.

c. If unqualified appraisers are employed who cannot be used in trials, this information is frequently obtained by opposing counsel who attempt to subpoena them, or use the fact to prejudice the Government's case in trials.

4. *Appraisal Contracts and Fees.*

a. After consultation with an appropriate representative of the Department of Justice, the acquiring agency should contract for the appraiser's services for trial preparation and testifying at trial, and for "updating" the appraisal, during the initial phase of contracting for the report.

b. If the property to be acquired has timber in commercial quantities, mineral deposits, growing crops, or any other element which may increase the value of the land, acre should be taken to insure that appraisers are employed who are qualified to evaluate the extent to which such timber, minerals, crops, etc., may enhance the market value of the land in that area. In the case of a highly specialized element of value such as uranium, refractory clay, or vast amounts of timber, experts in those fields should be obtained to determine amounts, quality, extractability, accessibility, commercial demand, etc. If possible, these experts should also be qualified to determine and testify to the extent to which the presence of such deposits or other elements, actually enhance the market value of the land.

c. Appraisers should be advised of the scope of appraisal desired and the guidelines set out in paragraphs 5 and 6 of this part IC; and they should specifically be instructed to consider so-called "severance damages" and project influence to assure an offset of benefits in partial taking cases, discussed infra, pages 7-9.

d. When it has been found advisable to employ an additional appraiser to evaluate property already appraised, such additional appraiser should conduct his investigation and prepare his report without benefit of prior appraisals to insure his arriving at an independent judgment.

e. Appraisal fees should be approved by the acquiring agency only after careful negotiation and investigation to determine whether they are reasonable in accordance with the rates customarily charged in that area for competent appraisals and valuation testimony.

5. *Appraisal Reports.*

a. Great care should be exercised that the appraisal is initially prepared on the legal basis which will be the Government's position in the event of trial. Therefore, it is suggested that where any tract presents unusual and complicated valuation or other legal problems, there should be coordination among the acquiring agency, the United States Attorney and the Land and Natural Resources Division of the Department of Justice in Washington, D.C., prior to abandonment of efforts to acquire the tract by direct purchase. Any communication between the agency and the Department should have the end in view os arriving at a consistent legal position and furnishing the appraiser at the outset with the legal guidelines which will continue to be controlling should the case go to trial.

b. The appraisal reports should be carefully reviewed with consideration given to these matters:

(1) The appraiser's qualifications.

(2) The factual data on which the appraisal report is based to insure that--

(a) an accurate plat of the property being condemned is included;

(b) the appraiser's evaluation is in accordance with and current to the correct valuation date and includes and pertinent market data occurring after any previous appraisal data;

(c) any necessary revisions have been made to reflect changes in project plans occurring up to the valuation date.

(3) Whether the appraiser has given proper consideration in his report to the effect, if any, on market value of all easements, rights-of-way or other encumbrances which burden the land being taken, or of present zoning requirements or possible future changes therein.

(4) The appraiser's determination of highest and best use, including--

(a) The basis for the determination and whether it can be supported by a showing of demand in the market for the property at that use.

(b) A showing, if possible, of lack of market demand or lack of economic feasibility, of any other possible uses.

(5) Market value should be arrived at exclusive of enhancement due to the Government project.

If the project for which the property is being taken is one which increases the value of the property in its vicinity, the appraiser should be required to investigate the market (a) to determine the time when

project influence became apparent in the market, and (b) to note sales which were excluded as comparable because of project influence. See *United States v. Miller*, 317 U.S. 369 (1943); *United States v. Crance*, 341 F.2d 161 (C.A. 8, 1965), cert. den. 382 U.S. 815. *United States v. Reynolds*, 397 U.S. 14 (1970).

(6) Benefits from the governmental project must be excluded.

(a) The Federal law is established that just compensation payable by the United States should be reduced by benefits to remaining lands arising from the governmental project. *Bauman v. Ross*, 167 U.S. 548, 584, (1897); *United States v. Miller*, 317 U.S. 369, 376 (1943); *Aaronson v. United States*, 79 F.2d 139 (C.A. D.C. 1935); *Dick v. United States*, 169 F. Supp. 491, 494 (C. Cls. 1959); *Lehigh Valley Coal Co. v. Chicago*, 26 Fed. 415, 416 (N.D. Ill. 1886); *United States v. Trout*, 386 F. 2d 216, 221-223 (C.A. 5, 1967); *United States v. Rands*, 389 U.S. 121 (1967). The doctrine of offsetting benefits is too often overlooked and so appraisal reports in partial taking situations should be carefully checked in this respect. This is particularly so because state law often differs with respect to the offsetting of benefits and appraisers whose experience is largely in state courts may not be familiar with this important aspect of Federal law.

(b) "A special benefit is nonetheless such because other lands in like situations are similarly benefitted." *United States v. 2,477.79 Acres of Land in Bell County, Texas*, 259 F.2d 23, 28 (C.A. 5, 1958); *Aaronson v. United States*, 79 F.2d 139, 141 (C.A. D.C. 1935); *United States v. River Rouge Co.*, 269 U.S. 411, 415-416 (1926); *United States v. Trout*, 386 F.2d 216 (C.A. 5, 1967); *United States v. Fort Smith River Development Corporation*, 349 F.2d 522 (C.A. 8, 1965); *United States v. Crance*, 341 F.2d 161 (C.A. 8, 1965); *Pokladnik v. United States*, 378 F. 2d 59 (C.A. 5, 1957), per curiam.

(c) It is important that appraisers clearly establish the facts supporting a claim of benefit to the remainder, since the extent of the benefit to a tract caused by the Federal project is a fact question. *United States v. 2,477.79 Acres of Land in Bell County, Texas*, 259 F.2d 23, 28-29 (C.A. 5,1958).

(7) Where only a part of a landowner's tract is taken, severance damage estimates, if any, should be supported.

(a) It should first be determined whither it will be the position of the Government on any trial of the case that the part taken is an integral part of a unitary whole within the meaning of the Federal law of eminent domain. *Sharp v. United States*, 191 U.S.

341, 354 (1903), affirming *Sharp v. United States*, 112 Fed. 893 (C.A. 3, 1902) at p. 896; *Baetjer V. United States*, 143 F. 2d 391, 395 (C.A. 1, 1944), cert. den. 323 U.S. 772; *Cole Investment Co. v. United States*, 258 F. 2d 203, 204 (C.A. 9, 1958); *United States v. Mills*, 237 F.2d 401, 404 (C.A. 8, 1956).

(b) There must also be unity of ownership. *United States V. Honolulu Plantation Co.*, 182 F.2d 172 (C.A. 9, 1950), cert. den. 340 U.S.820.

(c) There is no severance damage unless there is a diminution in the market value of the part remaining. The Federal law is that "strict proof of the loss in market value to the remaining parcel is obligatory." *Cole Investment Co. v. United States*, 258 F.2d 203, 204 (C.A. 9,1958); *United States v. Honolulu Plantation Co.*, 182 F. 2d 172, 179 (C.A. 9, 1950), cert den. 340 U.S.820; *United States v. 26.07 Acres of Land in Hempstead*, 126 F. Supp. 374, 377 (E.D.N.Y. 1954).

(d) The diminution in market value of the land remaining must be due to the taking of the part belonging to the condemnee and not to the taking of lands belonging to others. *Campbell v. United States*, 266 U.S. 368, 372 (1924); *Boyd v. United States*, 222 F. 2d 493, 494, 495 (C.A. 8, 1955); *Winn v. United States*, 272 F. 2d 282, 287 (C.A. 9, 1959).

(e) "Severance damages," like other elements of just compensation, must not be based upon speculation. *Sharpe v. United States*, 112 Fed. 893, 897 (C.A. 3, 1902), aff'd 191 U.S. 341; *Miller v. United States*, 137 F. 2d 592, 595 (C.A. 3, 1943).

(f) Any enhancement due to the project should be excluded from the value of the whole immediately prior to the taking. See (5) supra, page 7.

(g) Appraisers too frequently use "severance damage: as a catchall which tends to become the tail which wags the dog. Where appraisal reports have factual data such as sales, earnings, etc., to support the value of the part taken, too often so-called severance damages are simply stated as the appraiser's opinion without specification as to haw he got them.

(h) A claim for severance damage by reason of an alleged "invasion of privacy" has been denied. *United States v. 69.67 Acres of Land in Oyster Bay*, 152 F. Supp. 441, 444, 445 (E.D.N.Y. 1957), aff'd *sub nom. United States v. Chase*, 260 f. 2d 405, 410, 411 (C.A. 2, 1958).

(8) The appraisal techniques used should be clearly explained and supported in the report.

5. *Evaluation of Appraisal Evidence.*
The market data should be evaluated in the manner provided below:
a. Prior sales of property being acquired.

(1) Since the fair market value of the property at the time it is acquired is the measure of the just compensation to be paid for it. E.g. *United States v. Miller*. 317 U.S. 369, 373, 374 (1943); *Olson v. United States*, 292 U.S. 246, 255 (1934); *United States v. Toronto Nar. Co.*, 338 U.S. 396, 402-407 (1949); prior sales of the property being acquired, reasonable recent and not forced, are the best evidence of value. E.g., *Baetjer v. United States*, 143 F. 2d 391, 397 (C.A. 1, 1944), cert. den. 323 U.S. 772; *Bailey v. United States*, 325 F. 2d 571 (C.A. 1, 1963).

(2) Where the sale is between a willing buyer and a willing seller and is not so remote as to render the price of no bearing on the present market value, it is reversible error to reject evidence of such prior sale as proof of the value of the land. *United States v. Ham*, 187 F. 2d 265, 269, 270 (C.A. 8, 1951); *United States v. Certain Parcels of Land in Philadelphia (Wainwright)*, 144 F. 2d 626, 629, 630 (C.A. 3, 1944).

(3) In this connection it should be borne in mind that consideration of prior sales of the identical property has been sustained although the sales occurred several years before the acquisition by the Government. E.g., *Dickinson v. United States*, 154 F.2d 642, 643 (C.A. 4, 1946) (sale in 1937 held properly admitted when taking was in 1943); *Lore v. United States*, 141 F. 2d 981, 983 (C.A. 8, 1940; *United States v. Becktold Co.*, 129 F. 2d 473, 479 (C.A. 8, 1942) (sale in 1925 held properly admitted when taking was in 1939). Accordingly, make certain that prior sales of the identical property are properly considered.
b. Sales of other properties.

(1) With market value being the measure of just compensation, absent transactions involving the property itself, "Sales at arms length of similar property are the best evidence of market value." *Welch v. Tennessee Valley Authority*, 108 F. 2d 95, 101 (C.A. 6, 1939), cert. den. 309 U.S. 688; *Baetjer v. United States*, 143 F. 2d 391, 397 (C.A. 1, 1944), cert. den. 323 U.S. 772. Too often in appraisal reports the sales approach has been relegated to a position as simply one of three approaches to value, with more time and attention being given to income and reproduction approaches.

(2) Consideration should be given to why and how the sales used are more nearly comparable to the subject property; and, if the sales were of

property considered to be more or less valuable than the subject property, what adjustments were made.

(3) Verification of each sale should include, whenever possible, the names of the buyer and seller, broker and/or closing attorney, deed records, book and page number, and consideration paid. Contact should be made with at least one of the parties to the transaction and the motivation for the sale should be determined, if possible, and whether it was an arm's length transaction on the open market.

(4) A concise statement should accompany each sale used showing the appraiser's reason for considering it as a comparable, the degree of comparability, physically, economically and functionally, and any adjustments, plus or minus, in the comparison to the subject property.

(5) Whenever adequate sales data are available, other indicia of value, hereinafter discussed, should be used only as a check on the value arrived at by market data.

c. Capitalization of income.

(1) Where the sales data are not adequate and the property is income producing, capitalization of income produced by the property may be considered. It is essential in using this approach that the income and expenses be verified, and that the capitalization rate be established by the market, giving proper consideration to the type of interest being condemned and to any risks inherent in receipt of the income. It should be borne in mind that a very slight change in the capitalization rate will make a substantial change in the valuation.

(2) Too often the income approach is treated at such length that it tends to overshadow the sales data. Even when the property is income producing, it there are adequate sales of similar property to establish a fair market value there is little need to get into the capitalization of income with its great variables, such as capitalization rate, Inwood factors, gross income, effective gross income, net income before recapture, net income after all depreciation, residual techniques, etc. Such variables are generally so complicated and confusing to the evaluating body, in addition to being so subject to manipulations which are difficult to combat, that they render this approach a difficult one at best.

(3) Utmost care should be taken, in using this approach, to consider only income which property itself will produce--not income produced from the use of the property for a business enterprise. "The question for determination by the jury is the market value of the property taken, not

the damage to the business of the owner in operating that property." *United States v. Ham*, 187 F. 2d 265, 271 (C.A. 8, 1951); *United States ex rel TVA v. Powelson*, 319 U.S. 266, 282, 283 (1943); *Stipe v. United States*, 337 F. 2d 818, 821, 822 (C.A. 10, 1964), and cases there cited: *A. G. Davis Ice Co. v. United States*, 362 F. 2d 934, 937 (C.A. 1, 1966); *United States v. Sowards*, 370 F. 2d 87, 89 (C.A. 10, 1966); "It is the land which is appropriated, and not the business conducted thereon." *Matter of City of Rochester (Smith St. Bridge)*, 234 App. Div. 583, 587, 255 N.Y.S. 801 (1932).

d. Reproduction cost of new less depreciation.

(1) Albeit the least reliable indicia of value (e.g., *United States v. Certain Interests in Property in Champaign County, Ill.*, 271 F. 2d 379, 382 (C.A. 7, 1959), cert. den. 362 U.S. 974; 2 Orgel, *Valuation Under Eminent Domain* (2d ed. 1953), secs. 188-199, particularly page 57),[8] in the case of special purpose properties--so-called "unique" properties--which are not generally bought and sold, it is sometimes necessary to resort to reproduction cost new less depreciation for want of any more reliable method of valuation to determine "market value." Churches have long been given as an example of "unique" properties not generally bought and sold, but a number of sales of churches for use as churches have occurred in the Washington, D.C., area.

(2) The reproduction cost approach should never be used "when no one would think of reproducing the property." *United States v. Toronto Nav. Co.*, 338 U.S. 396, 403 (1949); *United States v. Benning Housing Corporation*, 276 F. 2d 248, 253 (C.A. 5, 1960); *Buena Vista Homes, Inc. v. United States*, 281 F. 2d 476, 478 (C.A. 10, 1960); *United States v. 49,375 Square feet of Land in Borough of Manhattan*, 92 F. Supp. 384, 387, 388 (S.D.N.Y. 1950), aff'd *per curiam sub nom. United States v. Tishman Realty & Constr. Co.*, 193 F. 2d 180 (C.A. 2, 1952, cert den. 343 U.S. 928. Since this approach almost invariably tends to result in the highest possible valuation and thus to implant in the minds of the factfinding body inflated figures which are difficult to erase, it should not be used even as a check upon more reliable methods without a showing that a reasonable prudent person would consider reproduction of the property involved. *United States v. Certain Interests in Property in the Borough of Brooklyn (Fort Hamilton)*, 326 F. 2d 109, 115 (C.A. 2, 1964), cert. den. 377 U.S. 978.

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[8] There after a rather comprehensive discussion, the author states as one of his conclusions that "structural cost should be recognized as an inferior measure of value, to be given weight only in those cases where more satisfactory evidence based on actual sales or on earning power is not available."

(3) It is important to bear in mind that, if resort is necessary to the reproduction cost method, all forms of depreciation--physical, economic and functional--must be considered.[9] The existence of such depreciating factors is so important that where other processes are possible the reproduction approach is properly rejected, and, even when used, must be scrutinized carefully. Dangers to be avoided in considering the cost of reproduction are well summarized in *United States v. 49,375 Square Feet of Land in Borough of Manhattan*, 92 F. Supp. 384, 387, 388 (S.D.N.Y. 1950), aff'd *per curiam sub nom. United States v. Tishman realty & Constr. Co.*, 193 F. 2d 180 (C.A. 2, 1952), cert. den. 343 U.S. 928.

6. *Appraisal Analysis.*

An appraisal analysis used by the United States Attorneys is set out in appendix B, *infra*, page 57. Use of this analysis by the acquiring agency will assure that the appraisals of the agency are suitable for trial. Where more than one appraisal has been obtained and there are substantial variances as to the area, quality or evaluation of the property, efforts should be made to reconcile the variances.

D. NEGOTIATION PROCEDURES AND CONTACTS WITH LANDOWNERS

1. In accordance with the requirements of section 301 of Pub. L. 91-646, approved January 2, 1971, 84 Stat. 1894, 1904, before the initiation of negotiations for real property, the head of the Federal agency must establish an amount which he believes to be just compensation therefore and make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less that the agency's approved appraisal of the fair market value of such property. The head of the Federal agency concerned must provide the owner of the real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for the damages to the remaining real property must be separately stated.

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[9] In his "Condemnation Appraiser's Handbook" (1938), George L. Schmutz points out (p.78) that elements of depreciation other than physical quite commonly constitute the major part of the total depreciation found in structures. In 2 Orgel, "Valuation Under Eminent Domain" (2d ed. 1953), sec. 188, p. 3, it is stated that "other forms of depreciation--obsolescence, inadequate or excessive size, and other forms in inadaptability--are often far more significant than mere physical deterioration." This authority warns that "whenever reproduction cost is offered as evidence, the court should make every effort to assure a full deduction for those elusive forms of depreciation, obsolescence and inadequacy, that are so often disregarded by all but the most careful appraisers." *Id.* sec. 199 at p. 57. Courts have long taken occasion to stress the necessity for a sufficient deduction for depreciation. E.g., *United states v. Boston, C.C. & N.Y. Canal Co.*, 271 fed. 877, 889 (C.A. 1, 1921); *United States v. 371 Acres of Land in Borough of Queens*, 50 F. Supp. 110, 112, 113 (E.D.N.Y. 1943).

2. At the initial contact, the landowners affected by a Government project should be given the pamphlet entitled "Progress, Property and Just Compensation," which is addressed to the public and describes the power of eminent domain.

3. The representative or the negotiator of the acquiring agency has perhaps the best opportunity to effect an excellent relationship with the landowners through his conduct. His patient explanations and courteous, considerate treatment of landowners can create an atmosphere which will be most desirable in getting public support with regard to the acquisition of property for a specific project.

4. Every effort should be made to convince the landowner of the competency and judgment of the appraisers who have been assigned the task of estimating the fair market value of the property and the thorough and detailed manner in which the evaluation has been completed. However utmost caution must be exercised before permitting any Government appraisals to be examined by the landowners or their attorneys. Indiscriminate or unilateral permission to examine Government appraisals can seriously jeopardize the United States in the trial of a difficult condemnation case.

5. The negotiator must be very explicit in detailing the expenses to be incurred by the property owner in effecting a settlement, such as the requirement that all delinquent taxes and all or that portion of the current taxes which are liens on the land must be paid in accordance with the requirements of the local taxing authorities. See II-C-3c, *infra*, pp.17-19.

6. The representative of the negotiator of the acquiring agency should be familiar with all of the benefits and payments provided for in Pub. L. 92-646, approved January 2, 1971, 84 Stat. 1894.[10]

7. Emphasize the avenues of savings whenever and wherever possible. These savings may be pertinent and, if so, should be brought to the owner's attention:

(a) *Cost of title search:* It is not unusual in a transaction between private parties to require the seller to furnish proof that there

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[10]Sec. 303 of Pub. L. 91-646, approved Jan. 2, 1971, 84 Stat. 1894, 1906, provides as follows:

"The head of a federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for--

"(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

"(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

"(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier."

are no legal liens against the property on the date of transfer. The Government, on the other hand, bears the expense of obtaining title evidence.

(b) *Costs for effecting transfer of title:* It is sometimes incumbent upon the owner to pay for the cost of preparing the necessary instruments to transfer his title and recording the instruments. The Government does most of this with no cost to the owner. But see II-C-3-h(1), *infra*, page 20.

(c) *No brokerage fees:* The majority of transactions are handled through a real estate broker with fees ranging from 3 to 10 percent. There are no brokerage fees in this transaction.

(d) *Payment in cash:* In some cases the seller does not receive the full consideration for some indefinite period of time or must accept a first of second trust (or mortgage) in order to complete the transaction. The Government will make full cash payment.

(e) *Retention of improvements may be possible:* Sometimes the owner has the option of retaining any of the improvements located on the property at their appraised salvage value.

6. Care should be taken to avoid any possible representations that the project as then planned is complete and that there will be no further need of additional property of the owner being acquired, for example, for access areas to a reservoir. Otherwise there is a risk of the Government being charged for enhancement contrary to the rule of *United States v. Miller*, 317 U.S. 369 (1943).

7. If agreement for direct purchase is reached, the negotiator should secure execution of an enforceable contract.

(a) Suggested forms of a sales contract (designated as "Offers To Sell real Property" and "Offer To Sell Easement") are attached as forms 2 and 3 respectively, appendix B. *infra*, pages 45, 48.

(b) Conformity to local requirements will prevent later attempts to have instrument voided for failure to do so.

II

ACQUISITION BY DIRECT PURCHASE

A. INITIATING REQUESTS FOR PRELIMINARY OPINIONS OF TITLE

1. After entering into a contract for the purchase of real property, of any interest therein, a preliminary opinion of title by the Attorney General will be obtained unless the interested department of agency has received a delegation of authority to approve titles pursuant to Pub. L. 91-393, approved September 1, 1970, 84 Stat. 835 (See B, *infra*), or unless not required by statute. For this, a "Purchase Assembly," containing the following items, should be transmitted to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

a. Any accepted option: an executed sales, donation or exchange agreement; or correspondence constituting an offer and acceptance.

b. Title evidence complying with the requirements set out in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States." If the title evidence is a title certificate, report or interim binder, an extra copy thereof should be transmitted. Any analysis of title data and conclusions on ownership made on behalf of the acquiring agency should accompany the title evidence.

c. May of plat of the land to be acquired, if available. (See pp. 2, 3, *supra*).

d. Certificates of inspection and possession, mechanics' lien claims, and other miscellaneous data consisting of documents which the agency may wish to be preliminarily considered, or which may be helpful in considering the sufficiency of the title, or explaining objections contained in the title evidence.

e. The original and a copy of the draft of the deed to the United States, if available.

f. A letter transmitting the purchase assembly, properly signed by an authorized official of the agency, which contains:

(1) A request for a preliminary opinion of title.

(2) A statement identifying the property by number of acres, parcel number, the name of the project for which it is being acquired, its location by city, county, and state, the name of the vendor, and the consideration to be paid for the property.

(3) A citation of the pertinent authorization and appropriation acts.

(4) Any additional comment of information which may be helpful in considering the sufficiency of the title.

2. A preliminary opinion will then be rendered and sent to the agency or its designated representative with the purchase assembly.

B. APPROVAL OF TITLES BY CERTAIN DEPARTMENTS AND AGENCIES

When the interested department or agency has received a delegation of authority to approve titles, subject to the general supervision of the Attorney General pursuant to Pub. L. 91-393, approved September 1, 1970, these departments and agencies must comply with the regulations issued by the Department on October 2, 1970. General criteria governing the established principles in approving the title to real property being acquired by the United states are set out in these regulations.

C. CLOSING A DIRECT PURCHASE ACQUISITION

1. If the Department of Justice is to handle the closing of a direct purchase acquisition:

a. The request from the agency to close the transaction should comply with the following:

(1) Enclose the purchase assembly, including the title evidence, contract of sale, copy of the preliminary opinion, draft of deed and related papers, and, unless an exchange or donation, a Treasurer's check for the full amount of the purchase price set forth in the contract.

(2) Make reference to and identify the enclosed check.

(3) Respond to the request for waivers as to outstanding oil, gas or mineral interests or easements if it is determined that such interests or rights will not interfere with the contemplated use of the property, and respond to the request for specific information necessary for use at the closing.

(4) Advise the name and address of its field representative who is to assist the closing attorney, at or before the closing, arrange for the payment of the costs for the recordation of the deed to the United States

if the Government is to pay such costs (see 3-g, *infra*, p.20), and state who is to take possession of the property in behalf of the acquiring agency.

2. If the closing of the purchase is by a closing attorney of any agency which handles its own closing: The field representative or closing attorney should follow strictly the closing procedure set out in the respective manuals prepared by his agency for such purpose, and the specific instructions received from his agency.

3. Action required for closing by either the Department of Justice or agency attorney:

a. Inspection of Property Immediately Prior to the Closing:

(1) Immediately prior to the closing of the purchase, the premises being acquired should be inspected by either the closing attorney, his assistant, or an authorized employee of the acquiring agency, for the purpose of ascertaining the rights or claims of persons in possession, and any unrecorded mechanics' liens for work or labor performed or material furnished within the statutory period. The result of this inspection should be evidenced by the execution of the Certificate of Inspection and Possession (form 4. appendix B, *infra*, p. 50).

(2) If any person is found in possession, his rights in the property should be determined and a duly executed disclaimer (form 5, appendix B, *infra*, p. 50), should be obtained.

(3) If the inspection discloses buildings or improvements which have been reserved by and are to be removed by the vendor subsequent to the closing, then a proper commitment or a clearance bond, if circumstances so require, should be obtained to assure such removal.

(4) If the inspection discloses any other questionable objection or outstanding right, such question or right must be eliminated or the matter should be reported to the Land and Natural Resources Division before the delivery of the check.

b. Preparation of the Closing Statement:

(1) A closing statement (form 6, appendix B, *infra*, p. 53) should be prepared covering in detail all charges to be deducted from the purchase price check, including all taxes and assessments constituting liens against the property, regardless of whether the amount of such taxes and assessments have been determined; outstanding judgments, both State and Federal; mortgages or deeds of trust; Internal Revenue stamps; amounts reserved under any performance or other bond for title requirements affecting the property; and all liens, statutory or otherwise.

c. Tax Liens or Assessments Not Payable on Date of Closing:

(1) If the closing is had after taxes or other assessments become a fixed or inchoate lien but are not payable, or the amounts thereof are not determinable at the closing, adequate provision must be made to assure the payment thereof.

(2) If the amount of such taxes and assessments are determinable, then a certified check from the vendor payable to the proper taxing authority should be held. If such amount is not determinable at the closing, an estimate thereof should be made after consultation with the proper taxing authority, and a certified check obtained from the vendor for a sum not less that the amount of the taxes or assessments on the property for the preceding year, plus 20 percent thereof, payable to the proper taxing authority.

(3) In the event the vendor is unwilling or unable to provide such check, the required amount in the form of a cashier's check payable to the proper taxing authority should be withheld from the purchase price.

(4) When these undetermined taxes and assessments become due, after obtaining an official tax statement, the certified check or cashier's check should be promptly forwarded to the tax collector, with the request that the tax receipts be returned to the sender with his check, payable to the vendor, in the amount of any refund due.

(5) The receipted tax bill, together with advice that any refund has been made, should be forwarded to the "acquiring agency" for inclusion in the purchase assembly, and a copy of the transmittal letter forwarded to the Land and natural Resources Division for its records.

d. Exception Where Title Company Assumes Responsibility for Outstanding Taxes:

Where the evidence of title consists of a title certificate or insurance policy, and funds are withheld for payment of taxes, the amount so withheld may e turned over to the title company, provided the company will agree to issue a final title certificate or policy in which no tax lien or unpaid taxes will be noted, or if noted, will be followed by the statement" for the payment of which provision has been made by the deposit of a sufficient sum with this company." The title company will enter into an escrow agreement with the vendor to hold such sum for the satisfaction of the taxes until they are due, and to return any excess to the vendor.

e. Preparation and Execution of Deed to the United States:

When all objections to the title and all requirements noted in the preliminary title opinion have been satisfied, and any subsequently

discovered adverse claim has been disposed of, the deed of conveyance to the United States prepared in compliance with the requirements set out in "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" prepared by the Land and Natural Resources Division should be executed, sealed and attested, where locally required, and acknowledge by the grantor and his spouse as would be the case of a private transfer under local law.

f. Documentary and Other tax Stamps:

Prior to the recordation of the deed to the United States, there should be affixed thereto all documentary stamps required in the state in which the property is located.

g. Recording Deed to the United States:

(1) If the cost for such recording is not otherwise provided for, the recording fee is to be paid by the Government, in either of the following ways:

(a) If the acquiring agency has a field representative attending the closing, the representative will arrange for the payment of such cost.

(b) Otherwise, since the Department of Justice has no authority to make such payment, the closing attorney should request the recorder of deeds to execute a voucher on form S-1034, and forward the same to the acquiring agency for payment.

(2) The required form and the name and address of the acquiring agency should be furnished the recorder.

h. Release of Mortgages, Deeds of Trust and Judgments:

(1) Prior to or at the time of closing, all mortgages, deeds of trust, judgments and all other encumbrances referred to in the preliminary title opinion, or discovered subsequent to the dated of the preliminary title evidence and prior to the dated of the recordation of the deed to the United States, should be satisfied, released or discharged, of record.

(2) Fees for the recordation of these instruments or other curative material, such as recordable affidavits, must be paid by the vendor.

i. Delivery of Treasurer's Check to Vendor:

(1) The purchase money check or the balance thereof in a cashier's or certified check payable to the vendor may be delivered to him, after:

(a) All objections to the title and requirements contained in the preliminary title opinion have been eliminated, and instruments

releasing all liens or encumbrances on the property and the executed deed to the United States have been recorded.

(b) The closing attorney has been advised by the abstracter or the title company, as the case may be, that the records have been rechecked to a date subsequent to the recordation of the deed to the United States, and the continuation evidence will show title to the property vested of record in the United States of America, subject only to those objections which have been administratively determined to be acceptable to the Government and have been waived as indicated in the closing instructions, and he has ascertained in the event the title evidence is to be a title certificate, or a title insurance policy, that such certificate or policy, together with any extra copy thereof, will be issued in the form set out in the above-mentioned "Standards."

j. Delay in Closing a Direct Purchase:

(1) If, for any reason, the transaction cannot be closed within 30 days from the receipt of the purchase price check, the closing attorney should report such delay to the Land and Natural Resources Division, or to the interested agency if the closing is assigned to its representative, giving reason for the delay, and stating when it is anticipated that the purchase will be closed.

(2) If for any reason the transaction cannot be closed, the closing attorney should return the purchase assembly and all related papers, together with the Treasurer's check to the designated officer or his agency, explaining fully the reasons for their return and recommending further action. Prompt action is necessary because delay may give the owner excuse to repudiate his contract. *United States v. 2,974.49 Acres in Clarendon County, S.C.*, 308 F. 2d 641 (C.A. 4, 1962).

C. FINAL TITLE ASSEMBLY REQUIRED FOR A FINAL TITLE OPINION BY THE ATTORNEY GENERAL

1. Upon receipt of the recorded deed to the United States, or a true copy thereof in the event the time required for its recordation unduly delays the transmittal of the Purchase Assembly, and the final title evidence showing title vested in the United States, such documents should be reviewed by the closing attorney. If found satisfactory, the completed purchase assembly, consisting of the following items, should then be forwarded to the Land and Natural Resources Division:

(a) All data constituting the contract of sale, donation or exchange, together with the plat or map of the property if available;

(b) Final title evidence, including the original of any certificate or policy; abstracts; etc.;

(c) Original or a true copy of the deed of conveyance to the United States;

(d) Certificate of Inspection and Possession extended to the date of closing and accompanying executed disclaimers, if any;

(e) Vendor's receipt for the purchase money; itemized closing statement; and the vendor's commitment or performance bond, if any, assuring the clearance of the site;

(f) Miscellaneous and related documents, such as affidavits, copy of pertinent portions of articles of incorporation, resolutions authorizing sale, certifications as to corporate standing, and all other related data obtained to show the elimination of the objections and the meeting of the requirements contained in the preliminary title opinion;

(g) Either the transmittal letter or any accompanying statement should explain how each objection or requirement set out in the preliminary title opinion, or subsequently disclosed by a continuation search, has been met;

(h) If the original deed is not forwarded with these papers, it should be submitted as early as possible.

2. A final opinion rendered by the Attorney General is delivered to the agency will all data and title evidence.

III

ACQUISITION BY CONDEMNATION PROCEEDINGS

A. MATERIAL AND INFORMATION TO BE FURNISHED WITH REQUEST FOR CONDEMNATION

The Act of August 1, 1888, 25 Stat. 347, 40 U.S.C. Sec. 257, provides in pertinent part:

> * * * in every case in which * * * any * * * officer of the Government has been, or hereafter shall be, authorized to procure real estate * * * he shall be * * * authorized to acquire the same for the United States by condemnation * * * and it shall be the duty of the Attorney General of the United States, upon every application * * * to cause proceedings to be commenced for condemnation * * *.

Thus, the Attorney General Shall institute proceedings to acquire land upon a determination of a need therefor by n acquiring agency.

To conduct condemnation proceedings properly, and to insure an ultimate conclusion which is just both to the public and the landowners, the Attorney General must be fully apprized of the background of the request for the taking. The following procedure is suggested as an aid to the end.

1. A request for acquisition of property by condemnation must be initiated by letter to the Attorney General signed by the head of the acquiring agency or his authorized representative containing the following in addition to the materials specified in paragraphs 2, 3 and 4 as appropriate:

   (a) Statement that the Agency Head has determined that the taking is necessary for the particular project. (If the request for acquisition is by an authorized representative rather than by the Agency Head, a recitation of the delegation of authority should be included.)

   (b) Statement whether immediate possession is needed for public purposes, or specification of date when possession is required together with information as to who will assume management responsibilities of the property when possession is obtained.

   (c) Before requesting possession of real property, compliance must be had with the provisions of Pub. L. 91-646, approved January 2, 1971, 84

Stat.1895, with particular attention being given to Subsections 301 (4) and 301 (5), which provide as follows:

> (4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less that the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.
>
> (5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

It is not considered that the provisions of Section 301 (5) will affect the right to immediate possession of properties where, without awaiting the 90-day period, motions for possession are filed to obtain possession of small portions of ranches, farms or other large properties and the owner or the person in possession may retain possession of a sufficient portion of the property in order fully to enjoy the possession of his home and there will be no interference with the operation of his business or farm.

(d) Statement whether declaration of taking is desired, in manner provided in 40 U.S.C. sec. 258a.

(e) A statement, where applicable, showing compliance with the provisions of Section 102 (c) of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852, 52 U.S.C., Sec. 4321 et seq., and the National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C., sec. 470.

(f) Designation of field representative to receive copies of instruments filed, to provide certificate of inspection and possession, and with whom action concerning the proceeding should be coordinated.

(g) Where an act authorizing acquisition of property for a Federal project limits the taking to lands described by metes and bounds (e.g. Act of Sept. 28, 1962, 76 Stat. 650; Act of Sept. 9, 1959, Sec. 8a, 73 Stat. 479, repealed by Act of June 8, 1962, Sec. 1, 76 Stat. 92) or otherwise limits the taking by reference to maps, etc. (e.g., Act of October 18, 1968, 82 Stat. 1188; Act of Sept. 11, 1964, 78 Stat.

1981 Revision of Subsections (e)
and (g) of Section III-A.1.

Section III-A.1. is hereby revised by deleting subsections (e) and (g) (see pages 24_25) and by substituting therefor the following new subsections (e) and (g):

(e)(1) A Statement showing compliance with the provisions of section 102(C) of the National Environmental Policy Act of 1969 (NEPA), 83 Stat 852, 52 U.S.C., sec. 4321 *et seq*,, or a statement that a determination has been made that an environmental impact statement is not required and the reason for such determination, and (2) a statement showing compliance with the National Historic Preservation Act of 1966, 80 Stat. 915, 16, U.S.C., sec. 470.

(g)(1) A Statement of any conditions precedent to the acquisition imposed by applicable statute(s) and a certification that such conditions precedent have been satisfied. If there are no conditions precedent applicable, a statement to that effect.

(2) A statement of every limitation on the acquisition imposed by applicable statute(s) and a certification that the acquisition will not exceed applicable limitations. In the case of acreage limitations, an additional statement that this acquisition will bring the acreage acquired to a total of so may acres. For this purpose, complaint only cases shall be considered acquisitions at the time of referral to this Department. If there are no limitations n acquisition, a statement to that effect.

928), or requires the consent of the state legislature (e.g., see 16 U.S.C. sec. 516), or precludes depriving owners of the use and occupancy of their property without their consent for a specified period of years (e.g., Act of Aug 7, 1961, sec. 4(a) (1), 75 Stat. 284, 288). or contains any other conditions precedent, the request for condemnation should include a certification that the taking complies with the limiting conditions in the authorizing act.

(h) Where the authorizing act contains a monetary limitation (e.g., Act of Aug. 6, 1956, 70 Stat. 1066; Act of Sept. 11, 1964, 78 Stat. 928, 933; Act of Aug. 7, 1961, 75 Stat. 284. 293; Act of Sept. 13, 1962, 76 Stat. 538, 541; Act of Sept. 28, 1962, 76 Stat. 650, 652), the request for condemnation should include a statement that, in the opinion of the requesting official, the acquisition should not exceed the limits prescribed by law.[11]

2. If the request for acquisition directs the filing of a declaration of taking, the letter shall be accompanied by the original and three copies of a declaration of taking.

The requirements of a declaration of taking are set forth in Title 40 U.S.C. sec. 258a. A suggested form of a declaration of taking, with exhibits "A" and "B", is attached as form 7, appendix b, infra, page 54.[12] Also submit a

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[11] Where there is doubt as to whether the award will be within the prescribed monetary limitation, the request should be for the filing of a complaint only, unaccompanied by a declaration of taking. For your guidance, a discussion of problems in this area is included in app. A, *infra*. pp.32-33.

[12] In complying with the requirements of 40 U.S.C., sec. 258a, the following precautions should be taken: In the statement of the authority for the taking all acts of Congress granting such authority should be cited, together with sufficiently broad language to embrace any pertinent statute. (E.g., "and acts supplementary thereto and amendatory thereof.") Please include in the cited authorities any acts appropriating funds for acquisition of the property. Also, in stating the public use for which the property is taken, as a precaution, language should also be included in terms sufficiently broad to obviate any future question. (E.g., "and for other uses incident thereto" and "for such other purposes as may be necessary in connection with said project.") If the project is an existing one, please state the date the original project was authorized, whether the property now being acquired was included within the scope of the original authorization, and if not, the date the present acquisition was authorized.

In Stating the amount estimated to be just compensation, please note that in view of the holding that "a blanket estimate and deposit covering several parcels and not attended by allocation among them is not an effective tender of any sum for any parcel" for the purpose of curtailing interest (*United States v. 355.70 Acres in Rockaway and Jefferson Townships*, 327 F. 2d 630, 632 (C.A. 3, 1964), allocation of a specific sum or portion of the total deposit should be made for each tract. In this connection, it should be noted that the cited case goes no further than to hold that the deposit must be allocated among *tracts* taken and does not--and should not-- require suballocation as to particular interests within

(continued...)

check representing estimated compensation for deposit in registry of court or advice as to who will furnish it.[13]

3. If the property is to be acquired by condemnation without a declaration of taking, the request shall be accompanied by:

(a) Statement of authority under which the land is to be taken,[14] the act appropriating funds for the acquisition, the public use for which the lands are to be acquired,[15] the estate or interest to be acquired and a description of the land sufficient for the identification thereof.[16]

(b) A plat or map showing the land to be taken including the following:

(1) The exterior boundaries of the property to be acquired and the parcels therein properly numbered.

(2) The descriptions shown on the map must agree with the written descriptions in all particulars.

(3) The general location of major improvements and structures situated on the lands to be acquired.

(4) The location of existing rights-of-way for roads, highways, railroads, utilities, and for other purposes.

(5) The proposed route of relocation of any of the rights-of-way mentioned in (4) above.

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[12](...continued)
a tract.

[13] Sufficient additional copies of the exhibits attached to the declaration of taking should be furnished directly to the United States Attorney for attaching to the instruments filed in the condemnation proceeding. The number of copies will be dependent upon the number of tracts to be included in the proceeding and the number of defendants, plus to others for attachment to various instruments.

[14] The acquiring agency has an affirmative responsibility with the Department of Justice to minimize costs. At any time when it appears that a deposit in a condemnation case may be inadequate, the acquiring agency should immediately communicate with the United States Attorney or other appropriate representative of the Department of Justice for prompt consideration of the advisability of making an additional deposit.

[15] See fn. 10, *supra*, p. 14.

[16] Suggested wording for various estates appears in appendix B, infra, pp. 39-44. The necessity for correct descriptions of land and accurate title data has been pointed up by the opinion in *United States v. Chatham*, 323 F. 2d 95 (C.A. 4, 1963). While it is believed that the Court of Appeals went too far in reversing the judgment of the district court in the *Chatham* case, the case does serve to demonstrate the care which must be exercised in effecting service upon the owners of the land. See also *United States v. 355.70 Acres in Rockaway and Jefferson Townships*, 327 F. 2d 630 (C.A. 3, 1964), where the United States was charged with interest on funds deposited because the parcel descriptions used prevented allocation of the deposit amongst the parcels.

(6) The approximate location and direction of the flow of natural water courses, if the land to be acquired is in an area where water may become an issue.

(7) All easements, if feasible.

4. If the value of the land to be acquired is estimated to be $4,000 or less, the request should be accompanied by a statement as to the need for condemnation.

5. All requests for condemnation of every nature shall also be accompanied by the following:

(a) Negotiators' reports showing time and place of negotiations, lowest offer made by landowners and highest counteroffer made to landowners.[17]

(b) All appraisal reports, whether or not they have been approved by the agency, together with all analyses and review reports prepared by agency representatives.

(c) Title report consisting of copy of preliminary title opinion, statement as to location of title evidence, and efforts to cure title defects, if any, prior to condemnation. If condemnation is requested because of title defects the reports should contain:

1. All title evidence.

2. An analysis of the defects and the agency's opinion as to the correct resolution of unresolved title issues;

3. A list of the attempts made by the field representative to have the title defects removed by the title company;

4. The curative data which has been obtained to remedy the defects, and

5. The contracts to purchase from the apparent owners.

[**Note.--The Attorney General** will determine whether waiver of the title defects is possible before filing the action, and, if not, the case can be filed and set for early trial disposition.]

B. PROCEDURE AFTER CONDEMNATION PROCEEDINGS ARE INSTITUTED

1. Upon notification that a declaration of taking has been filed, or whenever property is otherwise acquired on behalf of the United States,, it is recommended that the acquiring agency put a sign on the property stating

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[17] In this connection it is suggested that, following the review of appraisals, and updating revision or supplementation as necessary, the practice should be for the acquiring agency to determine a fair offer for each property and send to each owner, through is counsel, if any, a stipulation form setting out the fair offer which he need only execute and return. Some owners will no doubt execute and return the form and the property can then be acquired by the agency through the less costly direct purchase procedures. And, even where the proposed stipulation is not executed and returned, the copy of the form, forwarded with the condemnation assembly, will show the offer made in behalf of the Government.

"Property of the United States" or other language appropriate to the interest acquired.

2. Agency representatives should expeditiously order a continuation of existing title evidence to include a search of the records to a date subsequent to the date of establishment of a *lis pendens* and when received deliver it immediately to the United States Attorney; or , if preferred, instruct the title companies to deliver continuation reports to the United States Attorney and inform the United States Attorney that these instructions have been issued.

3. Appraisals should be updated to the date of taking.

4. Cooperation between the acquiring agency and the United States Attorney should continue after referral for condemnation.

a. After condemnation proceedings are instituted, the Department of Justice is charged with the successful completion of the acquisition. However, agency representatives should offer their assistance to the United States Attorney in connection with continued negotiations under his supervision. Where possible, the negotiation experience of acquiring agencies should be utilized.

b. Agency representatives should be available at pretrial and trial, and wherever practicable have the authority to give "on the spot" approval to settlements within the limitations of authority delegated to them.

c. The acquiring agency should offer to assist the United States Attorney by preparing trial exhibits, by furnishing maps, aerial photographs, and exhibits for attachment to pleadings (such as descriptions of property, estates taken, etc.), and by providing witnesses to testify on factual matters involved in the trial.

d. The United States Attorney should consult with agency representatives, where possible, *prior* to requesting specific trial or pretrial settings, and always should advise them promptly of all such settings.

e. Where some, but not all, of the interests in a tract have been purchased, the agency representative should advise the United States Attorney upon referral (for condemnation of outstanding interests) of those interests which were purchased.

f. After judgments determining the compensation have been entered which involve the payment of deficiencies, the United States Attorney will immediately submit to the Land and Natural Resources Division (for transmittal to the central office of the acquiring agency) or to the authorized representative of the agency if the award is based on a settlement or within a range of testimony which permits the representative to pay the deficiency, a certified copy and the required additional copies of such judgments. The agency should arrange for the prompt payment of the deficiency,

g. Upon the receipt of a trial report involving an award which is considered to be excessive , the interested agency should promptly submit to the Department of Justice its recommendations with respect to the filing of a motion for a new trial or appeal, together with a statement on any special reasons for appeal if errors are found from an examination of the trial record.

h. While distribution of the deposit of estimated compensation or of the award is the responsibility of the court, nevertheless, it is the policy of the Government to aid the court in this important function. Agency representatives can be of great assistance in securing curative data, obtaining releases, and other requirements of the court in order promptly to effect distribution. Accordingly, when called upon to do so, agency representatives should render every assistance necessary to make funds available to owners who are dispossessed and to close the case.

i. After the final judgment has been satisfied and the necessary data are received in the Land and Natural Resources Division, the final opinion of the Attorney General is rendered and transmitted to the interested agency, together with the final transcript of the proceedings.

C. SETTLEMENTS

1. Maximum effort should be made to settle land acquisition disputes prior to condemnation at a figure that will fairly reflect fair market value, trial costs and reasonable trial risks.

2. Unless properties are to be donated to the United States, owners should not be requested to consummate a settlement for less than the approved appraisal of the property.[18]

3. After condemnation proceedings are instituted, only in unusual circumstances should settlement be considered at a figure that is substantially higher than the Government's best precondemnation offer.

4. When settlement proposals are received, close cooperation between the United States Attorney and the agency representatives in the field is necessary to obtain prompt evaluation of the offer.

5. Where offers are outside the jurisdiction of field personnel and must be transmitted to the Washington office of the agency and to the Land and Natural Resources Division of the Department of Justice for action, (a) the United States Attorney should promptly be advised of the agency representative's recommendation for acceptance or rejection; (b) the United States Attorney should advise the agency field representative when the offer has been submitted to the

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[18] See Sec. 301(3), Pub. L. 91-646, approved January 2, 1971, 84 Stat. 1894, 1904.

Department of Justice and whether acceptance of the offer has been recommended; and (c) the agency representative should forthwith forward his own recommendation to his superiors, and notify the United States Attorney of his action.[19]

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[19] For your information and guidance, there is set out in appendix A, *infra*, p. 34, a statement of the policy followed by this Department in instances where owners insist that so-called "severance damages" be fixed in a definite amount for income tax purposes in the stipulation for settlement in condemnation cases.

APPENDIX A

No.	Title	Page
1	Conditions precedent in authorizing act	32
2	Settlements	33
3	Land and Natural Resources Division Directive No. 11-68 re Preparation and review of appraisal evidence for trial	34

1.

CONDITIONS PRECEDENT IN AUTHORIZING ACT

Typical conditions precedent appearing in various authorizing statutes are cited in the text of this brochure (*supra*, page 24). In the case of monetary limitations, it is recognized that the requirement for a statement that, in the opinion of the requesting official, the acquisition will not exceed the limitation constitutes a problem for the acquiring agency. This is because the determination of just compensation is a judicial rather than a legislative function (e.g., *Monongahela Nav. Co. v. United States*, 148 U.S. 312, 327 (1893); *United States v. New River Collieries*, 262 U.S. 341, 343-344 (1923), so that at the time of request for condemnation the amount of the award of just compensation is not known. Where there is doubt, however, as to whether the award of just compensation will be within the prescribed limitation, no reasonable alternative exists to filing a complaint only, unaccompanied by a declaration of taking. Under such procedure the acquiring agency is able to determine what the cost would be before irrevocable committing itself to acquiring the property.

Of course, absent a statutory limitation on acquisition cost, where it is known that the United States will acquire the property regardless of the amount awarded, it is normally better to file a declaration of taking and deposit the estimated just compensation since this both fixes the date of valuation and precludes the payment of interest on the amount so deposited. E.g., *United States v. Miller*, 317 U.S. 369, 381 (1943).

The possibility that the amount of the award exceeds the funds available is among the historic situations in which condemnation actions may be discontinued and dismissed when the complaint procedure has been used. See, *Carlisle v. Cooper*, 64 Fed. 472, 473-474 (C.A. 2, 1894); *United States v. Oregon Ry. & Nav. Co.*, 16 Fed 524, 528 (D. Ore. 1883). Use of a declaration of taking precludes such discontinuance and dismissal (except by stipulation with the former owners under 40 U.S.C. sec. 258f) since title passes to the United States upon the filing of a declaration of taking and deposit of estimated just compensation in the registry of the court. E.g., *United States v. Miller*, 317 U.S. 369, 380-381 (1943); *Catlin v. United States*, 324 U.S. 229 (1945).

The determination of when it is appropriate and desirable to file a declaration of taking and to make a deposit of the estimated just compensation is primarily for the acquiring agency to make but it is the view of this Department that where the authorization act sets an express ceiling, use of the complaint procedure is particularly appropriate. See, in this connection, S. Report No. 1597, 90th Cong., 2d sees. (1968, pages 5-6, where, with respect to national park authorization, the Senate Committee on Interior and Insular Affairs expressed the view " * * * declarations of taking should be the exception and no

longer the rule." (*Ibid.*, p. 6). Similar views were expressed on the Senate floor. 114 Cong. Rec. (daily ed.) S12099-S12100, S12104-S12105 (Oct. 4, 1968). While the Act then being considered and passed by the Senate (Act of Oct. 18, 1968, 82 Stat. 1188) contains no such express injunction, Senator Moss of Utah stated (114 Cong. Rec. (daily ed.) S12100):[20]

> * * * *it is absolutely mandatory in the view of the chairman and in my view that no declaration of taking could be entered in the acquisition of land for the Biscayne National Monument without prior consultation with the committee and authorization or acquiescence by the committee.*

In the light of such statement of understanding, where there are statutory monetary limitations and the possibility exists that the award would exceed the limitation, acquiring agencies may want to consult with the appropriate committee and obtain the authorization or acquiescence of the committee prior to requesting the filing of a declaration of taking. However, since it is an executive branch responsibility, the acquiring agency obviously can exercise administrative discretion to use declarations of taking without such authorizations or acquiescence if the agency concluded that such action is within its authority and for the best interest of the Government.

It is recognized that the complaint procedure may result in higher acquisition costs because, under such procedure, just compensation is determined as of the date of trial. However, in view of the penalty provisions for making expenditures or authorizing obligations under any appropriation or fund in excess of the amount available therein, no other means of protecting officers or employee of the United States are known in the present status of the law. The remedy appears to be to urge congress to make funds available for Federal projects at the time they are authorized so that prompt land acquisition can be achieved without a long period of possible price escalation.

2.

SETTLEMENTS

Supplementing the discussion which appears in the text (*supra*, page 29) concerning settlements, it was concluded that it would be helpful to have a statement of this Department's policy when an owner insists that "severance damages" be fixed in a definite amount for income tax purposes in the stipulation for settlement in condemnation cases. In negotiating settlements after condemnation cases have been filed, as a matter of policy this Department has in general not concerned itself with the tax incidence upon the individual landowners of settlements which are made with them. We have sought to arrive at a specified sum "inclusive of interest" without any breakdown of particular

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[20] Senator Hansen of Wyoming stated the preference that the view of the committee be included in the text of the legislation (*ibid.*, 9. S12104).

factors considered in arriving at the settlement figure. We adhere as closely as possible to the objective standard of the fair market value at the date of the taking, which the courts have long held to constitute the constitutional requirement of just compensation for the taking of private property for public use. We primarily rely upon the appraisal data reflecting the market value of the property but, as is normally the case in negotiating compromise settlements we consider the litigative risks in the particular case, interest which would have to be paid on any deficiency over the amount deposited as estimated compensation, and the equities involved. However, as indicated, we do not concern ourselves with the tax incidence upon the individual owners, which would be a subjective standard as contrasted to the objective standard which we endeavor to follow. Where an owner has insisted upon the amount allocated to severance damages being shown and it becomes necessary to do so effectuate an otherwise acceptable settlement, it has been our policy to agree to the severance damages being shown but not to exceed the amount determined by the Government's appraisals for that purpose.

3.

LAND AND NATURAL RESOURCES DIVISION
DIRECTIVE NO. 11-68

Re Preparation and Review of Appraisal Evidence for Trial--Condemnation Cases.

Competent appraisal evidence with respect to the fair market value of land taken for pubic use, as of the date of taking, is essential to the intelligent settlement or effective trial of land condemnation cases. Client agencies of this Division, having significant financial stakes in condemnation awards and settlement agreements, are vitally interested in uniform treatment of all landowners throughout each project area and in attainment of sound compensation awards; they consequently share a common interest with us in the development and review of such appraisal evidence. They desire to use appraisers and appraisals in pre-condemnation acquisitions of land, acceptable to trial attorneys in the event condemnation is required, and thereby achieve greater uniformity in appraisal standards between those employed by agency appraisers and those required of witnesses at trial.

As a result of interagency land acquisition conferences, field investigations of United States Attorneys' offices and Division experience over the past few months, we have concluded that the interest of the Government may suffer in some districts as a result of one or more of the following conditions:

1. Appraisals secured by acquiring agencies, either by staff of contract appraisers, are inadequate for trial use or unsound on appraisal criteria. In such cases, time and expense is lost in securing re-appraisals and injustices often result to some landowners or to the

Government from material changes in valuation data part way through a land acquisition program.

2. Supplemental appraisals, needed to provide competent trial evidence, cannot be secured because of changes in land characteristics during the lag period from the taking to settlement or trial.

3. Trial or settlement is approached without continued availability of such appraisal witnesses as are competent and effective for trial use.

4. Trial attorneys sometimes secure new appraisals at figures substantially above those established by agency appraisals and use the same in trial without benefit of either agency or staff appraisal review. There is no basis for assuming that the soundness of any appraisal varies directly with the valuation level or that the Government has an obligation us use it highest appraisal figure for trial or settlement, without regard to the appraisal analysis employed, merely because it was supplied under Government appraisal contract.

Client agencies of the Division have occasionally complained that: (i) accommodation appraisals are obtained in some instances by trial attorneys to support negotiated settlement figures, (ii) trial attorneys discredit agency appraisals, whether staff of contract, without any sound appraisal basis, and discard them as a matter of course when higher valuations are suggested, and (iii) the Department of Justice is not utilizing agency and Division review capabilities effectively.

To meet such objections, if they be justified, and to provide a vehicle for interchange of data between land acquisition agencies and the Department of Justice, the following appraisal policy is hereby adopted and its implementation directed by land acquisition attorneys in the Unites States Attorneys' offices and in this Division:

1. United States Attorneys should participate, whenever requested by client agencies, in the selection of agency appraisers and the establishment of appraisal criteria to facilitate the use of agency staff or contract appraisals at trial; such consultation should be conducted whenever practicable at the inception of each land acquisition project.

2. Promptly after any land acquisition proceeding is initiated and in all events within 3 months thereafter, the responsible attorney should review appraisals provided by the client agency, require their updating as necessary, and determine whether supplemental appraisals will be needed for trial.

3. Where supplemental appraisals are required, in such attorney's opinion, prompt arrangements should be made for any that are needed to value the property for settlement purposes under the legal criteria that control the case; and timely arrangements should be made for preparation of any supplemental appraisal that will only be required in the event of trial.

4. Whenever two or more appraisals of particular property, whether supplied by the agency or obtained by the trial attorney, have a valuation spread in excess of 10 percent of the high appraisal figure the trial attorney shall, whenever the exigencies of trial setting permit, submit such appraisals for review by the regional or central office of the acquiring agency as appropriate, together with a statement of his proposed use of such appraisals in the settlement or trial of the subject case.

5. If the acquiring agency office to which the appraisals have been submitted disapproves the valuation level of appraisals that are planned for use at trial or in connection with settlement negotiations, said appraisals and notice of disapproval shall be forwarded to the Chief of the Appraisal Section, Land and Natural Resources Division, for

(a) appraisal review,

(b) opinion whether either or any said appraisals is supported by sound appraisal criteria, and

(c) recommendation whether an additional appraisal should be obtained.

6. Whenever an appraisal has been disapproved by Appraisal Section review as above provided, the trial attorney shall not proceed to trial or settlement of the tract for which said appraisal has been made, unless:

(a) he determines, in the exercise of his best judgement, not to use the disapproved appraisal, or

(b) he secures a new appraisal of the property by an appraiser who is approved by the Chief of the Appraisal Section, uses appraisal criteria similarly approved, and substantially concurs in the valuation level of the disapproved appraisal, or

(c) he secures the authorization of the Chief of the Land Acquisition Section to proceed to trial or settlement on the basis of the disapproved appraisal.

7. Appraisers should be selected, or approved for agency use, not only with respect to their competency and effectiveness as witnesses, but also with respect to their potential longevity and availability for the period required to bring the matter to trial. Appraisers should be evaluated periodically on the basis of their litigative success or failure; and no further use should be made of those whose appraisals have been repeatedly determined to be either too liberal or too conservative.

Clyde O. Martz,
Assistant Attorney General

November 22, 1968

APPENDIX B

Table of forms

No.	Title	Page
1	Suggested wording for various estates in land	38
	a. Fee	38
	b. Flowage easement (permanent flooding)	38
	c. Flowage easement (occasional flooding)	39
	d. Access road easement	39
	e. Barrow easement	40
	f. Barrow pit and spoil area easement and right-of-way	40
	g. Drainage ditch easement	40
	h. Extinguishment of rights in cemetery	40
	i. Leasehold estate for unimproved land	41
	j. Moratorium on outstanding minerals	41
	k. Railroad easement	41
	l. Road easement	41
	m. Temporary easement for exploratory purpose	42
	n. Utilities an/or drainage easements	42
2	Offer to sell real property (option contract)	43
3	Offer to sell easement (option contract)	46
4	Certificate of inspection and possession	48
5	Disclaimer	50
6	Closing statement	51
7	Declaration of taking	52
8	Appraisal analysis form	55

Form 1

SUGGESTED WORDING FOR VARIOUS ESTATES IN LAND

a. **Fee**

The fee simple title (to Tract Nos._____, _____, and _____), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

b. **Flowage Easement (Permanent Flooding)**

The perpetual right, power, privilege, and easement permanently to overflow, flood, and submerge (the land described in Schedule "A"[21]) (Tract Nos. ____, and _____) [and to maintain mosquito control] in connection with the operation and maintenance of the _____ project as authorized by the Act of Congress approved _____, together will all right, title, and interest in and to the timber, structures, and improvements situate on the land [excepting . . . . (here, or in attached list, identify those structures not designed for human habitation which, the project representative determines, may remain on the land)], and the continuing right to clear and remove any brush, debris, and natural obstructions which, in the opinion of the representative of the United States in charge, may be detrimental to the project; provided that no structures for human habitation shall be constructed or maintained on the land, and provided further that no other structures shall be constructed or maintained on the land except as may be approved in writing by said representative of the United States in charge of the project,[22] reserving, however, to the landowner(s), their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

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[21] In takings related to navigable waters, the lower boundary line of the metes and bounds description should be ingeneral terms of the existing ordinary high watermark, rather that a specific contour line. This will avoid a posssible hiatus between the metes and bounds description of the tract taken and the old high watermark, in the event the agency engineer;s finding of the high watermark is challenged.

[22] Where the flowage easement estate is to be acquired in an area where there is active oil, gas or mineral development or there is potential development in the future, the following clause will be added to the above estate: "provided further that any exploration or exploitation of oil, gas and minerals shall be subject to Federal and State laws with respect to pollution and shall not create floatable debris."

c. **Flowage Easement (Occasional Flooding)**

The perpetual right, power, privilege, and easement occasionally to overflow, flood, and submerge (the land described in Schedule "A"[23]) (Tract Nos. ____, _____ and _____) [and to maintain mosquito control] in connection with the operation and maintenance of the _____ project as authorized by the Act of Congress approved _____, and to operate the project is such a manner as to fulfill the purposes of its construction and other purposes which may develop in the future and do not greatly vary from present purposes, together will all right, title, and interest in and to the structures and improvements now situate on the land [excepting . . . . (here, or in attached list, identify those structures not designed for human habitation which, the project representative determines, may remain on the land)]; provided that no structures for human habitation shall be constructed or maintained on the land except as may be approved in writing by said representative of the United States in charge of the project;[24] reserving, however, to the landowner(s), their heirs, and assigns, all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

d. **Access Road Easement**

A perpetual and assignable easement(s) and right(s)-of-way to located, construct, operate, maintain, and repair a roadway and utility lines in, upon, over and across (the land described in Schedule "A") (Tract Nos. _____, _____ and _____), together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right(s)-of-way; subject, however, to existing easements for public roads, highways, public utilities, railroads and pipelines; reserving, however, to the landowner(s), (his/her/its/their) heirs, executors, administrators, successors (if corporate owner), and assigns the right to use the surface of such land as access to their adjoining land.

Note: Use of the above reservation clause may decrease severance damage substantially. However, the using agency should be formally contacted to ascertain whether the nature of the installation requires exclusive use of the access road by the Government. Transmittal letter should indicate compliance.

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[23] See footnote 21 supra, page 38.

[24] See footnote 22 supra, page 38.

e. **Borrow Easement**

A perpetual and assignable right and easement to clear, borrow, excavate and remove soil, dirt, and other materials from (the land described in Schedule "A") (Tract Nos. _____, _____ and _____),[25] subject to existing easements for public roads and highways, public utilities, railroads and pipelines, and reserving to the owners, their heirs, and assigns all such rights and privileges in said land as may be used and enjoyed without interfering with or abridging the right and easement hereby acquired.

f. **Barrow Pit and Spoil Area Easement and Right-of-Way**

The temporary easement and right-of-way for a period not to exceed _____ _____, in, over, and across (the land described in Schedule "A") (Tract Nos. _____, _____ and _____) for the purpose of removing borrow material and/or of depositing waste material thereon in connection with the construction, operation and maintenance of _____ project;[26] together with the right to trim, cut, fell and remove timber, underbrush and other vegetation, structures, and any other obstructions or obstacles; reserving, however, to the owners of the said land, their heirs, administrators, executors, successors, and assigns, all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

g. **Drainage Ditch Easement**

A perpetual and assignable easement and right-of-way in, over and across (the land described in Schedule "A" (Tract Nos. _____, _____ and _____), to construct, maintain, repair, operate, patrol and replace a drainage ditch, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

h. **Extinguishment of Rights in Cemetery**

All outstanding right, title and interest (in the land described in Schedule "A") (Tract Nos. _____, _____, and _____), subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

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[25] The easement estate may be limited as to time, depending on project requirements.

[26] The easement estate may be permanent depending on project requirements.

i. **Leasehold Estate for Unimproved Land**[27]

A term for years ending June 30, 19___, extendible for yearly periods thereafter at the election of the United States until June 30, 19___, notice of which election shall be filed in the proceeding at least thirty (30) days prior to the end of the term hereby taken, or subsequent extensions thereof, together with the right to remove, within a reasonable time after the expiration of the term taken, or any extension thereof, any and all improvements and structures paced thereon by or for the United States, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

j. **Moratorium on Outstanding Minerals**

The free and unrestricted use of (the land described in Exhibit _____) (Tract Nos. _____, _____ and _____) free and clear of all rights of ingress and egress or all use of the surface thereof for any and all purposes, including exploration or removing oil, gas and other minerals therefrom for a period of years, or for such shorter period as may be determined by the Secretary of the _____; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

k. **Railroad Easement**

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule "A") (Tract Nos. _____, _____ and _____) for the location, construction, operation, maintenance, replacement, and/or removal of a railroad and appurtenances in connection with _____ project; together with the right to trim, cut, fell and remove underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs, executors, administrators, successors, and assigns, all right, title, interest and privileges as may be used and enjoyed without interfering with or abridging the rights thereby taken for said public uses; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

l. **Road Easement**

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule "A") (Tract Nos. _____, _____ and _____) for the location, construction, operation, maintenance, replacement, and/or removal or roads and highways and appurtenances thereto; together with the

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[27] Because leasehold estates for improved land necessarily vary widely no attempt has been made to set out a suggested form. The estate for a leasehold term for improved lands should describe adequately the location, structures, improvements, as well as appurtenances, etc.

right to trim, cut, fell and remove underbrush, obstructions, and other vegetation, structures, or obstacles within the limits of the right-of-way; [reserving, however, to the landowners, their heirs, executors, administrators, successors, and assigns, all right, title, interest, and privileges as may be used and enjoyed without interfering with or abridging the rights hereby acquired by the Government;][28] the above estate is taken subject to existing easements for public roads and highways, public utilities railroads and pipelines.

m. **Temporary Easement for Exploratory Purpose**

An easement in, across, and over certain land designated and described as Tract No. _____ for a period of ____ months beginning (date) (or with the date of possession under this proceeding), the estate consisting of the right of the Government, its representatives, agents, and contractors to survey, appraise, conduct test borings, and conduct other exploratory work necessary to the design of a public works project, subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs, executors, administrators, successors, and assigns all right, title, interest and privilege as may be used and enjoyed without interfering with or abridging the rights being acquired.

n. **Utilities and/or Drainage Easements**

A perpetual and assignable easement(s) and right(s)-of-way to locate, construct, operate, maintain, repair, patrol and remove utilities (specifically name them) and/or drainage easements (specifically name them) in, upon, over and across (the land described in Schedule "A") (Tract Nos. _____, _____ and _____), together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right(s)-of-way; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however to the landowner(s), (his/her/its/their) heirs, executors, administrators, successors (if corporate owner), and assigns all right, title, interest and privilege as may be exercised and enjoyed without interference with of abridgment of the easement(s) and right(s) hereby taken for said public uses.

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[28] The bracketed clause may be eliminated where advisable.

Form 2

OFFER TO SELL REAL PROPERTY

Project

Tract No.

Contract No.

The undersigned, hereinafter called the Vendor, in consideration of the mutual covenants and agreements herein set forth, offers to sell and convey to the United States of American and its assigns, the fee simple title to the following described land, with the building and improvements thereon, and all rights, hereditaments, easements, and appurtenances thereunto belonging, located in the County of _____, State of _____, bounded and described as follows:

_____

subject to the following rights outstanding in third parties:

_____

Excepting and reserving only the following rights and interests in the above described property: [namely:]

_____

The terms and conditions of this offer are as follows:

(1) The Vendor agrees that this offer may be accepted by the Unites States through any duly authorized representative, be delivering, mailing, or telegraphing a notice of acceptance to the vendor at the address stated below, at any time within _____ ( ) month(s) from the date hereof, whereupon this offer and the acceptance thereof become a binding contract.

(2) The United States of America agrees to pay to the Vendor for said land the sum of _____ ($_____), payable on the acceptance of this offer and approval of the Vendor's title; provided the Vendor can execute and deliver a good and sufficient general warrant deed conveying said land with the hereditaments and appurtenances thereunto belonging to the United States of American and its assigns, in fee simple, free and clear from all liens and encumbrances, except those specifically excepted or reserved above, together with all right, title, and interest of the Vendor in and to any streams, alleys, roads, streets, ways, strips, gores, or rail road rights-of-way abutting or adjoining said land.

(3) It is agreed that the United States will defray the expenses incident to the preparation and recordation of the deed to the United States and the procurement of the necessary title evidence.

(4) The Vendor agrees that all taxes, assessments, and encumbrances which are a lien against the land at the time of conveyance to the United States shall be satisfied of record by the Vendor at or before the transfer of title, and, if the Vendor fails to do so, the United States may pay any taxes, assessments, an encumbrances which are a lien against the land, that the amount of any such payments by the United States shall be deducted from the purchase price of the land; that the Vendor will, at the request of the United States and without prior payment or tender of the purchase price, execute and deliver the general warranty deed to the United States, pay the documentary revenue stamp ta, and obtain and record such other curative evidence of title as may be required by the United States.

(5) The Vendor agrees that los or damage to the property by fire of acts of God shall be at the risk of the Vendor until the title to the land and deed to the United States have been accepted by the United States through its duly authorized representative or until the right of occupancy and use of the land, as hereinbelow provided for, has been exercised by the United States; and, in the event that such loss or damage occurs, the United States may, without liability, refuse to accept conveyance of the title or it may elect to accept conveyance of title to such property, in which case there shall be an equitable adjustment of the purchase price.

(6) The Vendor agrees that the United States may acquire title to said land by condemnation or other judicial proceedings, in which event the Vendor agrees to cooperate with the United States in the prosecution of such proceedings; agrees that the consideration hereinabove stated shall be the full amount of the award of just compensation, inclusive of interest, for the taking of said land; agrees that any and all awards of just compensation that may be made in the proceeding to any defendant shall be payable and deductible from the said amount; and agrees that the said consideration shall be in full satisfaction of any and all claims of the Vendor for the payment of the right of occupancy and use hereinafter provided for in paragraph 7.

(7) As additional consideration for the payment of the purchase price hereinabove set forth, the Vendor hereby grants to the Unites States the right of immediate occupancy and use of the land for any purpose whatsoever from and after the acceptance by the United States of this offer until such time as said land is conveyed to the United States and, upon demand, the Vendor will immediately vacate the property and deliver possession to the United States.

(8) It is agreed that the spouse, if any, of the Vendor, by signing below, agrees to join in any deed to the United States and to execute any instrument deemed necessary to convey to the United States any separate or community estate or interest in the subject property and to relinquish and release any dower, curtesy, homestead, or other rights or interests of such spouse therein.

(9) The Vendor represents and it is a condition of acceptance of this offer that no member of or delegate to Congress, or resident commissioner, shall be admitted to or share any part of this agreement, or to any benefits that may

arise therefrom; but this provision shall not be construed to extend to any agreement if made with a corporation for its general benefit.

(10) The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the Vendor.

(11) All terms and conditions with respect to this offer are expressly contained herein and the Vendor agrees that no representative or agent of the United States has made any representation or promise with respect to this offer not expressly contained herein.

Signed, Sealed, and Delivered this ____ day of _____, 19____

Witness.[29]

_____ _____ (Seal)
Vendor

_____ _____ (Seal)
Spouse of Vendor

_____ _____ (Seal)
Vendor

_____ _____ (Seal)
Spouse of Vendor

Notice of acceptance of this offer is to be sent to:

_____
(Name and Address)

Acceptance of Offer to Sell Real Property

Date:

The offer of the Vendor contained herein is hereby accepted for and on behalf of the United States of America.

_____
(Name and Title)

Witness: _____

[29] These spaces will be used for witness signatures if required by State law.

Form 3

OFFER TO SELL EASEMENT

Project

Tract No.

Contract No.

The undersigned, hereinafter called the Vendor, in consideration of the mutual covenants and agreements herein set forth, offers to sell and convey to the United States of America and its assigns, a permanent and assignable easement for the purpose set forth in Exhibit B, in, upon, over, and across that certain tact of land described in Exhibit A. hereto attached and made part hereof.

The terms and conditions of this offer are as follows:

(1) The Vendor hereby agrees that this offer may be accepted by the United States, through any duly authorized representative, by delivering, mailing or telegraphing a notice of acceptance to the Vendor at the address stated below, at any time within _____ ( ) month(s) from the date hereof, whereupon this offer and the acceptance thereof become a binding contract.

(2) The unites agrees to pay to the Vendor for said easement and rights the sum of _____ ($_____), payable upon acceptance of this offer and approval of the Vendor's title; provided the Vendor can execute and deliver a good and sufficient general warranty deed conveying said easement and rights to the United States of American and its assigns, free and clear from all liens, encumbrances, said conveyance to be subject only to the existing easements and rights set forth in said Exhibit B.

(3) The Vendor agrees to satisfy of record, at or before conveying said easement and rights, such taxes, assessments, and encumbrances which are a lien against the land, as the United States may pay any taxes, assessments, and encumbrances which are a lien against the land; that the amount of any such payments by the United States shall be deducted from the purchase price of the easement; that the Vendor will, at the request of the United States and without prior payment or tender of the purchase price, execute and deliver the general warranty deed to the United States conveying the easement and rights herein described, pay the documentary revenue stamp tax , and obtain and record such other durative evidence of title as may be required by the United States.

(4) It is agreed that the United States will defray the expenses incident to the preparation and recordation of the deed to the United States and the procurement of the necessary title evidence.

(5) The Vendor agrees that the Unites states may acquire title to said easement and rights by condemnation or other judicial proceedings, in which event the Vendor agrees to cooperate with thee United States in the prosecution of such proceedings; agrees that the consideration hereinabove stated shall be the full amount of just compensation, inclusive of interest, for the taking of said easement and rights; agrees that any and all awards of just compensation that may be made in the proceeding to any defendant shall be payable and deductible from the said amount; and agrees that the said consideration shall also be in full satisfaction of any and all claims of the Vendor for the payment of the right of occupancy and use hereinafter provided for in paragraph (6).

(6) As additional consideration for the payment of the purchase price hereinabove set forth, the Vendor hereby grants to the United States the right of immediate occupancy and use of the land in which said easement is to be granted for the purpose of exercising any of the rights described in said Exhibit B from and after acceptance by the United States of this offer until such time as said easement is conveyed to the United States.

(7) The spouse, if any, of the Vendor, by signing below, agrees to join in and execute the deed to the United States.

(8) The Vendor represents and it is a condition of acceptance of this offer that no member of or delegate to Congress, or resident commissioner, shall be admitted to or share any part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

(9) The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the Vendor.

(10) All terms and conditions with respect to this offer are expressly contained herein and the Vendor agrees that no representative of agent of the United States has made any representation or promise with respect to this offer not expressly contained herein.

Signed, Sealed, and Delivered this ____ day of _____, 19____ Witness:

_____ _____ (Seal)
Vendor

_____ _____ (Seal)
Spouse of Vendor

_____ _____ (Seal)
Vendor

_____ _____ (Seal)
Spouse of Vendor

Notice of acceptance of this offer is to be sent to:

_____
(Name and Address)

Acceptance of Offer to Sell Easement

Date:

The offer of the Vendor contained herein is hereby accepted for and on behalf of the United States of America.

Witness:

_____

Contracting Officer

_____

Exhibit "A"

Description of Tract No.

_____

Exhibit "B"

Estate and rights to be conveyed to the United States of America and its assigns [Describe appropriate estate].

_____

Form 4

Certificate of Inspection and Possession[30]

I, _____, a _____ of the Department of _____, hereby certify that on the _____ day of _____, 19 ____, I made a personal examination and inspection of that certain tract or parcel of land situated in the County of _____, State of _____, designated as Tract No. _____, and containing _____ acres, (proposed to be) acquired by the United States of America in connection with the _____project, (from _____ _____) in the condemnation proceeding entitled _____ Civil No. _____.

_____

1. That I am fully informed as to the boundaries, lines and corners of said tract; that I found no evidence of any work or labor having been performed or any materials having been furnished in connection with the making of any repairs or improvements on said land; and that I made careful inquiry of the

_____

[30] To be prepared at or near taking date.

above-named vendor (and of the occupants of said land) and ascertained that nothing had been done on or about said premises within the past _____ months that would entitle any person to a lien upon said premises for work or labor performed or materials furnished.

2. That I also made inquiry of the above-named vendor (and of all occupants of said land) as to his (their) rights of possession and the rights of possession of any person or persons known to him (them), and neither found any evidence nor obtained any information showing or tending to show that any person had any rights of possession or other interest in said premises adverse to the rights of the above-named vendor or the United States of America.

3. That I was informed by the above-named vendor (and by all other occupants) that to the best of his (their) knowledge and belief there is not outstanding unrecorded deed, mortgage, lease, contract, or other instrument adversely affecting the title to said premises.

4. That to the best of my knowledge and belief after actual and diligent inquiry and physical inspection of said premises there is no evidence whatever of any vested or accrued water rights for mining, agricultural, and manufacturing, or other purpose; not any ditches or canals constructed by of being used thereon under authority of the development of coal, oil, gas or other minerals on said lands; and that there are no possessory right not in existence owned or being actively exercised by any third party under any reservation contained in any patent or patents heretofore issued by the United States for said land.

5. That to the best of my knowledge and belief based upon actual and diligent inquiry made there is no outstanding right whatsoever in any person to the possession of said premises nor any outstanding right, title, interest, lien, or estate, existing or being asserted in or to said premises except such as are disclosed and evidenced by the public records.

6. That said premises are now wholly unoccupied and vacant except for the occupancy of the following, from whom disclaimer(s) of all right, title and interest in and to said premises, executed on the _____ day of _____, 19 __, has (have) been obtained:

Name _____, Address _____, Statement of Interest Claimed _____

_____

Dated this _____ day of _____, 19 ____.

Approved:

_____

_____
(Name)

_____
(Title)

Form 5

Disclaimer

State of _____,
County of _____,

We (I) _____ (wife) (husband), being first duly sworn, depose and say (deposes and says) that we are (I am) occupying all (a part) of the land (proposed to be) acquired by the United States of America from _____, described as _____ acres, Tract No. _____, lying in _____ County, State of _____, and do hereby aver that we are (I am) occupying said land as the tenants (tenant) of _____; that we (I) claim no right, title lien or interest in and to the above-described premises or any part thereof by reason of said tenancy or otherwise and will vacate said premises upon demand for the possession of said lands by the United States of America.

We (I) further agree that this disclaimer may be presented to any court having jurisdiction over condemnation proceedings relating to the above-described property, and such court is authorized to enter an order dismissing the undersigned from said cause without compensation and without adjudication of costs against the undersigned.

Dated this _____ day of _____, 19 ____.

_____
(Tenant)

_____
(Spouse)

Witnesses:

_____

_____

Form 6

Closing Statement

Seller _____ Date of Closing _____ 19_____

_____ Address or description of property:

Sale price _____ _____

Address_____ _____

City_____ State_____ County_____ State_____

Sale price _____	* * * * * *	_____
_____	* * * * * *	_____
_____	* * * * * *	_____
Payment in full of principal of existing first mortgage	$_____	* * * * * *
To_____		
Interest thereon from _____ to_____	_____	* * * * * *
Payment in full of principal of existing second mortgage _____	_____	* * * * * *
To _____		
Interest thereon from_____ to _____	_____	* * * * * *
Payment of other liens to _____	_____	* * * * * *
_____	_____	* * * * * *
_____	_____	* * * * * *
Delinquent taxes for year _____ paid to County Treasurer _____	_____	* * * * * *
Taxes _____	_____	* * * * * *
Recording fees _____	_____	* * * * * *
Revenue stamps _____	_____	* * * * * *
Real estate sale commission		
_____	_____	* * * * * *
_____	_____	* * * * * *
_____	_____	* * * * * *
_____	_____	* * * * * *
Balance due seller _____	_____	* * * * * *
Balance Due United States of America _____	_____	* * * * * *
Total_____	$_____	$_____

The above is a completed, true and correct account of funds received and disbursed by me in closing the sale of property described at the head of this Statement.

_____

(Closing Attorney)

I/We have examined the above Statement and find it correct. This acknowledges that $_____ has been disbursed as above with my/our approval and for my/our account and benefit, which said sum is the sale price set forth in my/our Option Agreement with the United States of America, and I/we acknowledge receipt of the balance due me/us as shown above.

_____ _____

_____ _____

Form 7

In the United States District Court for the Southern District of Indiana at Evansville

Declaration of Taking

Civil Action No. _____

United States of America, Plaintiff
v.
125.48 Acres of Land, More of Less, Situate in Perry County, State of Indiana, And Charles E. Allen, Et Al., Defendants

To the Honorable, the United States District Court:

I, _____, Secretary of the Army of the United States, do hereby declare that:

1. (a) The land hereinafter described is taken under and in accordance with the Act of Congress approved February 16, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591), which act authorized the acquisition of land for river and harbor purposes; the Act of Congress approved March 3, 1909 (Pub. L. 317, 60th Congress, 2d Session), which act authorized the reconstruction and modification of existing river and harbor improvements; and the Act of Congress approved October 24, 1962 (Pub. L. 87-880), which act appropriated funds for such purposes.

(b) The public uses for which said land is taken are as follows: The said land is necessary adequately to provide for the improvement of rivers and harbors and for other uses incident thereto. The said land has been selected by me for acquisition by the United States for use in connection with the construction of Cannelton Locks and Dam, and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the land being taken is set forth in Schedule "A" attached hereto and made a part hereof, and is a description of the same land described in the complaint in the above-entitled cause.

3. The estate taken for said public use is the fee simple title, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

4. A plan showing the land taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the registry of the said court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said land probably will be within any limits prescribe by law on the price to be paid therefor.

In witness whereof, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this declaration not be signed in its name by said _____, Secretary of the Army, this ___ day of _____A.D. 19 ___, in the City of Washington, District of Columbia.

_____
Secretary of the Army.

Schedule "A"

The land which is the subject matter of this proceeding aggregates 125.48 acres of land, more or less, situate and being in Perry County, State of Indiana. A description of the lands taken, together with the names and addresses of purported owners thereof, and a statement of the sum estimated to be just compensation therefor, are as follows:

Tract No. 111

Situate in the State of Indiana, County of Perry, T 7 S, R 3 W, Sections 13 and 14, on the right bank of the Ohio River (720.5 mile), more particularly described as follows:

Beginning at a point in the center of Indiana State Highway No. 66, said point being common to the lands now (or formerly)owned by Tony Paulin, et ux, and the subject owner and being referenced Southwestwardly 225 feet, more or less, along the center line of said Highway from its intersection with the East-West Half Section line of Section 14; thence with center line of said Highway as it meanders

Noreastwardly 2,420 feet, more or less, to a point in the downstream property line of Conalee Van Hoosier Dauby; thence with the said Dauby's line

S 26° 10' E 470 feet, more or less, to a point in the low water mark of the Ohio River; thence downstream with the said low water mark as it meanders

Southwestwardly 2,320 feet, more or less, to a point in the upstream property line of Tony Paulin, et ux; thence with the said Paulin's line N. 38° 40' W 230 feet, more or less, to the point of beginning, containing 10.00 acres, more of less.

The above described land is the same land as that described in a deed for Conalee Dauby and August Dauby, her husband, to Charles E. Allen and Marie H. Allen, husband and

wife, dated 28 June 1955, recorded in Deed Book 57, Page 415, in the records of Perry County, Cannelton, Indiana.

Name and address of purported owner:
Charles E. Allen and Maria Allen, his wife
Route 1, Box 100
Cannelton, Indiana

Name and address of additional parties having or claiming an interest in the land:
American Cannel Coal Company, Inc.
Address Unknown
(Coal and mineral interest recorded in Deed Book 59, Page 304 of Deed Records of Perry County, Indiana)

John Sargent
Address Unknown
(Mineral interest recorded in Deed Book 59, Page 304 of Deed Records of Perry County, Indiana).

Nelda Kelly
Address Unknown
(1/64 interest in gross income from minerals recorded Miscellaneous Record "U" Page 530 of Miscellaneous Records of Perry County, Indiana)

Estimated compensation: $2,250.00

Schedule "B"

[Map]

Department of Justice

Land and Natural Resources Division

Appraisal Analysis

(For Use by Attorneys and Appraisers)

Analyzed by: Date:
Name of Acquiring Agency:
Identification of Property (Civil No., Tract No., etc.)

Reported Values Appraiser		Before Value	After Value	Compensation		
				Take	Damages	Total
(1) _____	Land	_____	_____	_____	_____	_____
	Imp.	_____	_____	_____	_____	_____
		_____	_____	_____	_____	_____
	Total	_____	_____	_____	_____	_____
(2) _____	Land	_____	_____	_____	_____	_____
	Imp.	_____	_____	_____	_____	_____
		_____	_____	_____	_____	_____
	Total	_____	_____	_____	_____	_____
(3) _____	Land	_____	_____	_____	_____	_____
	Imp.	_____	_____	_____	_____	_____
		_____	_____	_____	_____	_____
	Total	_____	_____	_____	_____	_____

INSTRUCTIONS: Items not applicable, indicate by N/A in appropriate blanks. Check ( ) if answer is affirmative; write (NO) if answer is negative. Use reverse side to explain all items marked (NO) as necessary.

A. Caption (Compare with Declaration of Taking or Complaint)		Appr. (1)	Appr. (2)	Appr. (3)
a. Project and Parcel No.	Correct?	_____	_____	_____
b. Owner's Name	Correct?	_____	_____	_____
c. Legal Description	Correct?	_____	_____	_____
d. Total Area of Property	Correct?	_____	_____	_____
e. Area Acquired	Correct?	_____	_____	_____
f. Area of Remainder	Correct?	_____	_____	_____

B. EFFECTIVE DATE OF APPRAISAL				
a. Coincides with D. of T.	Yes?	_____	_____	_____
b. Does not coincide with D. of T. but Is satisfactory	Yes?	_____	_____	_____
C. PURPOSE OF THE APPRAISAL				
a. Definition of value compatible with Federal law	Yes?	_____	_____	_____
b. Estate appraised correct	Yes?	_____	_____	_____
c. Taking accurately defined	Yes?	_____	_____	_____
D. PREMISES OF THE APPRAISAL				
a. Develops the applicable appraisal techniques	Yes?	_____	_____	_____
b. Follows the applicable legal rules	Yes?	_____	_____	_____
E. METHOD OF APPRAISAL				
a. Appraisal method and technique compatible with appraisal's				
(a) purpose	Yes?	_____	_____	_____
(b) premise	Yes?	_____	_____	_____
b. Before and after approach in partial taking supported	Yes?	_____	_____	_____
c. Omission of one or more value approaches justified	Yes?	_____	_____	_____
d. Were improvements and interests (mineral, gas, etc.) evaluated based on their contribution to the whole	Yes?	_____	_____	_____
e. Salvage value of improvements and growing crop values considered	Yes?	_____	_____	_____
F. PROPERTY DESCRIPTION				
a. Land description--including sail types, topography, etc.	Yes?	_____	_____	_____
b. Improvements--identified, located and described	Yes?	_____	_____	_____
c. Minerals, gas, oil, timber and growing crops identified	Yes?	_____	_____	_____
d. Description of property before and after taking	Yes?	_____	_____	_____
G. HIGHEST AND BEST USE				
a. Set forth and justified	Yes?	_____	_____	_____
b. Alternatives discussed	Yes?	_____	_____	_____
c. Highest and best use after the taking set forth and justified	Yes?	_____	_____	_____
H. MARKET DATA				
a. Prior sale of subject property considered				

		Appr. (1)	Appr. (2)	Appr. (3)
b. Cost data justified and supported	Yes?			
c. Depreciation, including physical, functional and economic obsolescence defined, analyzed and supported	Yes?			
d. Income, expense and capitalization rates analyzed and supported	Yes?			
e. Capitalization technique analyzed and supported	Yes?			
f. Comparable sales verified, described, analyzed and related to subject property	Yes?			
g. All sales reported whether or not comparable	Yes?			
I. DAMAGES AND OFFSETTING BENEFITS				
a. Appropriately outlined and discussed	Yes?			
b. Adequately analyzed and supported	Yes?			
c. According to Federal law	Yes?			
J. CORRELATION AND CONCLUSION				
a. Appropriate discussion	Yes?			
b. Conclusion sound and convincing	Yes?			
c. Mathematical computations are correct	Yes?			
K. CERTIFICATION				
a. Standard clauses included	Yes?			
b. Effective date of valuation established	Yes?			
c. Appraised values set forth	Yes?			
d. Signed	Yes?			
L. EXHIBITS				
a. Appropriate pictures	Yes?			
b. Date of pictures established	Yes?			
c. Map showing subject and comparables	Yes?			
M. QUALIFICATIONS OF APPRAISER				
a. In report	Yes?			
b. Well qualified	Yes?			
N. GENERAL				
a. Would appraiser be used as witness	Yes?			
b. Does Government have other appraisals; if (Yes) explain	Yes?			
c. Are additional appraisals warranted; if (yes) explain	Yes?			

INDEX

A

	Page
Abstract of title:	
See title evidence	3,21
Abstracter:	
Continuation evidence	24
Access road easement	39
Acquisition:	
By condemnation	23
By direct purchase	17
Compliance with conditions precedent	2,23,32
Legislative authority for	2
Necessity	1
Steps prior to	1
Administrative Officer:	
Determination by:	
Estate	1
Location	1
Operating program	2
Purpose	2
Statutory authorization	2
Affidavits of heirship	5
Appeal recommendations	28
Appendix A	31
Appendix B	37
Appraisal analysis form	55
Appraisals:	
Adequacy of to be determined	7,36
Analysis of	35
Appraisal techniques explained	6, 9
Compliance with Uniform Appraisal Standards for Federal Land Acquisitions	5
Consideration of easements, rights-of-way, or encumbrances on the land.	7
Consideration to project benefits	8
Contracts for:	
Trial services	6,35,36
Updating	.5,7,28,35
Disclosure of.	6,13
Fees for	6
Negotiations for	6

	Page
Correct legal basis	7
Date of taking	7
Factual data	7
Accurate plat.	7
Correct evaluation date	7
Highest and best use	7
Market data	9
Review	34,35
Independently made	5
Number of	5,35,36
Procurement of	5
Scope	6
Sent with condemnation request	27
To reflect date of taking	7,28
timber, mineral crops.	6
Severance damages	8, 9
Supplemental	35,36
When to be obtained.	5
Where variances substantial	13
Appraisers:	
Approval by United States Attorney	5,36
Landowners, relations with	13
Qualifications	5, 6
Selection of	5,36
Appropriation:	
Act shown in request	25
Limitations on acquisitions	2,25
Assessments.	19
Attorney General:	
Must approve titles	4
Institution of proceeding by	23
Letter to, re condemnation	23,24,25,26,27
Authority:	
Delegation of authority	16,17,23
For Federal program	2
Legislative, for acquisition	2
Legislative, establishment	2
Stated in Declaration of Taking	24
Statutory deficiency	2
To condemn	25
To purchase	16
Award:	
Distribution of	28

Page

Recommendation re 29

B

Benefits:
Extent of is a fact question 8
Legal citations justifying deduction for 8
Offsetting 9
Proper consideration for appraiser 8, 9
When other lands similarly benefitted 8
Borrow easement 40
Borrow pit and spoil area easement 40
Boundaries:
Exterior 2,25
Exterior, shown on map 2
Buildings:
Clearance bond 18,22
Brokerage fees 15

C

Capitalization of income:
Factors must be justified 11
Income-producing property 10,11
Income not considered 11
Used only as a check 11
Capitalization Rate 11
Cemetery:
Extinguishment of rights in. 40
Certificate of Inspection and Possession:
In direct purchase cases 16,18,22
In condemnation cases 22
Form 48
Certificates of search 4
Certificate of title:
See title evidence 3
Check:
Certified by vendor to pay tax liens 19
Deficiency 28
Deductions from purchase check 18
Direct purchase cases 17
Estimated compensation 25
Treasurer's check 17,20,25
Delivery to vendor 20
Clearance bond 18
Closing:

	Page
Action required for	17
Closing Statement	18
Form	53
Delay in closing	21
Deed to United States	20
Delivery of check to vendor	20
Documentary or Tax Stamps	20
Fee for recording deed	20
Inspection of premises	18
Releases	20
Tax liens or assessments	19
Attorney	17
By agency closing attorney	18
Agency manuals	18
By Justice	17
Comparable sales:	
Arm's length transactions	10
Best evidence of value	10
Factors of comparability	10
Complaint	32
Condemnation:	
General Statute	2,23
Limitations of power	2
Procedure prior to requesting	32
Procedure by agency after request for	27,32
Appraisals furnished (updated)	6,13
Assistance toward effecting distribution of award	28
Continuation of title evidence	27
Cooperation with United States Attorney	28
Advise of interests purchased	28
Availability at trial	28
Coordination regarding settlements	28
Furnishing exhibits	28
Trial or pretrial settings	28
Witnesses	28
Designation on property of United States ownership	27
Request for	23
Appraisal reports	27,28
Appropriation Act	24
Authority	24
Check for estimated compensation	25
Declaration of taking	25
Compliance with 40 U.S.C. 258a	25

	Page
Description of the estate	26
Description of property	26
Area to be designated	26
Parcel descriptions	25
Perimeter description	26
Designation of field representative	24
Determination of necessity	23
Judgment	28
Low-valued tracts	26
Negotiators' reports	26
Plat or map of land	26
Conformance with written description	26
Easements	26
Exterior boundaries	26
Improvements on land shown	26
Relocation of rights-of-way	26
Rights-of-way	26
Possession	23,24
Public use	23
Settlements	23,24
Title evidence	27
Without declaration of taking	26
Statutory Authority	25
Conditions:	
Precedent	24,34
Consent:	
Landowners	25
State legislature	25
Construction area:	
Identified on maps	3
Continuation evidence	27
Contract:	
Appraisals	6
Of sale	15,16,21
Title evidence in condemnation proceedings	3, 4
Title evidence in direct purchase cases	3, 4
Cost approach:	
See Reproduction Cost.	12
Cost justification	2
Crops:	
To be included in appraisal	6
Curative data.	4,27
Acquiring agency to obtain and furnish	4,27

D

	Page
Damage, severance:	
Considered in appraisal	9
Explanation for essential	9
Declaration of Taking:	
Form for	52
Number to be furnished	25
Requirements of	25
Congressional authority	25,26
Description	24
Estimate of compensation	32
Plat	26
Public use	23
Whether required	24
Deed records:	
To confirm comparable sales transactions	11
Deed of trust	18,20
Deed to United States	20,21
Draft of	16
Fee for recording	20
Part of final purchase assembly	7,20,22
Preparation of	20
Deficiency	28,32
Depreciation:	
Considered in appraisal approaches	12,13
Economical	13
Functional	13
Physical	13
Description:	
In Declaration of Taking	24
Necessity for correctness	24
Number of copies in Declaration of Taking cases	25
Determination of necessity	23
Direct purchase acquisition	16
Action required for closing	17,18
Closing by agency attorney	18
Closing by Justice	17
Requirements of acquiring agency	18
Delay in closing	21
Disclaimer	18
Form	50
Discontinuance and dismissal	32
Distribution of award	28,29

	Page
Documentary stamps	20
Donation	17,21
Drainage ditch easement	40
Drainage easement	42

E

Easements:	
Access road	39
Appraisal in include	7
Borrow	40
Drainage ditch	40
Flowage	38,39
Railroad	41
Road	41
Shown on map	26
Temporary, for exploratory purposes	42
Utility or drainage	42
Eminent Domain:	
Limitations of power	2
Use of power	2
Encumbrances:	
Appraisal to indicate	7
Fee to discharge	20
Release of	20
Enhancement, due to project, excluded	7
Estate:	
Determination re	1
Existing facilities	1
In Declaration of Taking	26
Other property under governmental control	1
Pending project	1
Suggested wording:	
Access road easement	39
Borrow easement	40
Borrow pit and spoil area easement	40
Drainage ditch easement	40
Extinguishment of rights in cemetery	40
Fee	38
Flowage easement, occasional	39
Flowage easement, permanent	38
Leasehold estate	41
Moratorium on outstanding minerals	41
Railroad easement	41

	Page
Road easement	41
Temporary easement for exploratory purposes	42
Utilities and/or drainage easements	42
Estimated compensation:	
Shown in Declaration of Taking	26
Exchange:	
Date re	16,21
Exhibits:	
Number of in condemnation cases	25,28
Trial purposes	28
Expenses:	
Landowners	14
Landowners' savings	15
Exploratory easement	42
F	
Federally owned land:	
Whether available	1
Whether suitable for project	1
Fee:	
Estate	38
For recording deed	20
Taking, whether preferable to lesser estate	1
Field representative for Agency:	
Designated in condemnation request	24
In direct purchase cases	17
Final opinion:	
Request for, purchase cases	21
Final title assembly:	
Requirements	21
Where a preliminary title opinion	21,22
Flowage easement	3,38,39
Forms, Table of	37
G	
H	
Highest and best use:	
Basis for	7
I	
Improvements:	

	Page
Retention of	15,18
Shown on map	2,26
Income Capitalization of:	
Elements considered	11
Income, gross	11
Income, net	11
After depreciation	11
Before recapture	11
Inspection:	
Certificates of	16,18,22
Of premises	16,18
Interest	32,34
Inclusive of	34
Inwood factors	11

J

Judgments:	
Against vendor	18,20
Awarding compensation	28,29
Release	20
Just compensation	25,32,34
Market value as measure	10

K

L

Land:	
Availability of other	1
Purchase of	2
Authorization, specific	2
Land, Federally owned	1
Land, remaining	8
Leasehold estate	41
Legal Officer:	
Determinations by.	1
Legal consultation	33
Letter requesting condemnation	23
Letter requesting preliminary title opinion	16
Liens:	
Assessments.	18
Not payable or determinable at closing	19

Page

Discharge by landowner 14,18,19
Taxes 14,18,19
Limitations on acquisition:
Conditions precedent 24,32
Monetary 24,32
Lis pendens 4,27
Litigative risks 34
Location of parcels 2
Low-valued acquisition:
Justification of need 26

M

Map:
In condemnation cases. 2,26
In direct purchase cases 16,21
Legend 3
Map, planning:
Contents of 2
Project limits 3
Market data 9,34
Capitalization of income 11
Comparable sales 10,11
In appraisal 10
Prior sales 10
Reproduction cost new less depreciation . . . . . .
. 12
Mechanics' lien claims:
Date re 16,18
Metes and bounds 24
Minerals:
Estate for moratorium on 41
In appraisal 6
Waiver 17
Miscellaneous data:
Title 17
Mortgages:
Release of 18,20

N

National Environmental Policy Act of 1969 24
National Historic Preservation Act of 1969 24
Necessity:
Determined by Administrative Officer 1

	Page
In condemnation request	23
Negotiation Procedures	13
Appraisal disclosures	13
Avenues of savings emphasized	13
Brokerage fees	15
Improvements	15
Payment in cash	15
Title search	15
Transfer of title	15
Execution of agreement	15
Need of landowner to discharge liens.	14
Preparation of sales instrument	15
"Progress, Property and Just Compensation".	14
Public relations	14
Settlements	29,34
Taxes incident to	34
With landowner, continuation after referral condemnation	28
Negotiators' reports:	
With condemnation assembly	26
New trial recommendations	28

O

Obsolescence	13
Offer to sell easement	46
Offer to sell real property.	43
Offer and counteroffer	26,27
Officer, Administrative:	
Determinations by	1
Opinion, Attorney General:	
After purchase of real property	22
Request for preliminary	16
Where not required	16
Option:	
Form for	43,46
With condemnation assembly	27
With purchase assembly	16
Ownership:	
Full information re	4
Sign indicating government	27
Unity	9

P

	Page
Parcel numbers	17
Parcel location	2
Payment in cash	15
Penalty provisions	15
Planning:	
Initial, for public project	1
Map, contents of	2
Plat--See Map.	7,16,21,26
Possession":	
Acquiring agency	18
Certificates of	4,18
Persons in	4,23
Request for	23
Justification, low-valued tracts	26
Management assumption	23
Prior sales	9
Considered in Appraisal	9
Remoteness of	9
Preliminary opinion	16,17
Requirements of request for	16
Transmittal letter for	16
Information with	16
Pretrial	28
Price escalation	33
"Progress, Property and Just Compensation"	14
Project:	
Coordination of	2
Influence of	7
Limits of.	3
Plans of	3
Property:	
Description	26
Perimeter	26
Identified in opinion request.	17
Location	2
Necessity of	23
Ownership sign on.	27
Parcel numbers assigned	17
Possession	18,23
Special purpose	12
Public Relations	14
Public use	23
Purchase Assembly:	

	Page
Contents of	16
Final	21
Return of	17,21
Purchase Money:	
When paid	20
Purpose:	
For taking	1

Q

R

Railroad easement	41
Real Property:	
Exterior boundaries	2
Location of, on maps	2
Receipt	22
Recorder of deeds	16,20,21
Recording fee:	
Payment of	17,20,21
Refund	19
Relocation	3,26
Report of trial	28
Reproduction cost less depreciation:	
Caution in use of stressed	10,12
Consideration when using	11,12
Reliability of approach.	12
Use for "unique" properties	12
When used	11,12
Revenue stamps	20
Rights-of-way:	
Appraisal to indicate	7
Identified on maps	3,26
Relocation of	26
Road easement	41

S

Sales:	
Agreement	15,16,43,46
Comparable	10
Adjustments to property acquired	10
Best evidence	10

	Page
Comparison to property acquired	10
How and why comparable	10
Verification	11
Whether arm's length transactions	11
Prior	10
Of same property, best evidence	10
Settlements	29,34
Coordinating consideration of	29
Severance damage:	
Appraiser to consider	6, 8, 9
Considered in determining estate	2
Invasion of privacy	9
Settlements	34
Steps to avoid	2
"Standards for the Preparation of Title Evidence"	4,16,20
Statutory authority	2,24,25
Adequacy of	2
Conditions precedent in	32
Survey maps:	
Contents of	2

T

Table of forms	37
Tax:	
Collector	19
Receipts	19
Refund	19
Stamps	18
Statement	19
Tax liens:	
Discharge by landowner	14
Not payable on closing date	19
How to discharge	19
Payment by title company	19
Tax settlement	34
Timber:	
To be included in appraisal	6
Title company:	
Payment of taxes by	19
When prompt action by, not taken	4
Title defects	4,19,27
Title evidence:	

	Page
Agency analysis	4,5,17
Agency, acquisition	3
Certificate of inspection and possession	48
Continuation of	4
Contract for	4
All terms to be incorporated	4
In condemnation proceedings	4
In direct purchase cases	4
Let when property is identified	4
Prompt delivery	4
Costs	15
Withholding payment	4
Intermediate search	4
Direct purchase cases	16
Explanation re objections	16
Final, in direct purchase cases	21,22
Form of	3
Insurance policy	4,27
Invitation to bid for	4
Number to be furnished	16
Procured by acquiring agency	3
Rechecked subsequent to recording deed	20,21
Standards for	3
Statement re, in condemnation request	27
Title certificate	4
Final	4,22
Title opinion:	
By Attorney General	3,22
Final	22
Preliminary	16
Transfer of title:	
Costs of	15
Treasurer's check	17,20,21
Trial:	
Assistance to United States Attorney	28
Recommendations	28
Report	28
Settings	28

U

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970	23,24

Page

Unique properties:
Valuation approach 12
Utility easement 42

V

Valuation, enhancement 6, 8,15
Valuation, estimate 7
Correct date 7, 8
Market data 10
Capitalization of income 11
Comparable sales 10
Prior sales 10
Reproduction cost new less depreciation 12
Vendor:
Discharge of all encumbrances 20
Receipt 22
Satisfaction of tax liens 19
When paid 19

W, X, Y, and Z

Waiver:
Mineral. 17
Water courses:
Shown on maps 3,26
Witnesses:
Re factual matters 28

CITATIONS

Cases:	Page
Aaronson v. United States, 79 F. 2d 139	8
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United States v. Oregon Ry. & Nav. Co., 16 Fed. 524 32
United States v. Rands, 389 U.S. 121. 8
United States v. Reynolds, 397 U.S. 14 8
United States v. River Rouge Co., 269 U.S. 411 8
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United States v. Trout, 386 F. 2d 216 8
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