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1 LAND ACQUISITION

1.1 Land Guidance

1.1.1 Applicability

This document provides general guidance for the procurement of all real property land interests by lease, purchase, condemnation, or otherwise. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24) is **mandatory** and establishes the minimum Real Property Acquisition Policies for appraisal, negotiation and property possession standards and requirements.

1.1.2 Background

The Federal Aviation Administration has been relieved from the requirements of the Competition in Contracting Act, Federal Acquisition Regulations (FAR), Brooks Act, Prompt Payment Act, and other restrictive regulations and laws. This document provides general guidelines for the procurement of real property land interests taking into consideration the changes in laws, rules and regulations.

1.1.3 Guidelines Revised 4/2012

Normally land interests needed by the FAA are for on-airport sites or are site specific and will be acquired through a single source. Acquiring interests in land by the competitive method should be used when the possibility exists that more than one acceptable site exists within the delineated area that could satisfy the FAA.

1.1.3.1 Environmental / Sustainability / Energy Revised 10/2016

During the land acquisition process, Real Estate Contracting Officers (RECOs) are required to follow the requirements as set forth below in the following laws, executive orders, regulations, policies and orders, as applicable:

1. Energy Policy Act (EPAct) of 2005, Publ.L.No.109-58
2. Energy Independence and Security Act (EISA) of 2007, Pub.L.No.110-140
3. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
4. National Environmental Policy Act (NEPA)
5. FAA EDDA Order 1050.19B: "Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions" and any revisions thereto or subsequently published Orders pertaining to environmental compliance
6. Resource Conservation and Recovery Act (RCRA)
7. Executive Order 11988, Floodplain Management
8. Guidelines for Implementing EO 11988, Floodplain Management, Oct. 8, 2015
9. Executive Order 11990, Protection of Wetlands

10. Implementing Instructions – Sustainable Locations for Federal Facilities, Sept. 15, 2011

A. Environmental Due Diligence Audits (EDDA) Requirements

FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. After the EDDA process, the determination of whether to waive the performance of an EDDA must be completed prior to the execution of contracts for the acquisition or disposal of real property per 1050.19B.

Off-airport land acquisitions of new sites, or that result in the expansion of an existing site, require an EDDA per 1050.19B. All on-airport leases or no-cost on-airport acquisitions that utilize the Memorandum of Agreement (MOA) template will use the Hazardous Substance Contamination clause, preferably the version included in the template, unless an EDDA is required pursuant to FAA Order 1050.19B. In accordance with FAA Order 1050.19B, any revisions to the Hazardous Substance Contamination clause must be reviewed by and concurred by the appropriate Regional Counsel's office or the Office of the Assistant Chief Counsel for Acquisition and Commercial Law (AGC-500). Any revisions to the Hazardous Substance Contamination clause will not be approved if such revisions result in a provision that increases FAA's potential environmental liability beyond that which can be proven to have resulted directly from FAA's use of the site and/or operation of equipment on site.

<u>Question and Answers concerning FAA Order 1050.19B</u>

Q 1: Is the RECO required to obtain a memorandum as stated in paragraph 1050.19B 1-9b(3) or an environmental due diligence audit (EDDA) if the RECO is executing a new or succeeding lease or exercising an option to renew the land lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B, the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. See additional information below:

- No additional EDDA documentation is required when exercising an existing renewal option where the terms of the option were negotiated during the original leasing action.
- For new acquisitions (new locations or increasing the size of the existing location) or for disposals/terminations (in whole or in part), the RECO is not to finalize the real estate transaction until the appropriate documentation (EDDA report, memorandum and/or waiver) is approved by the line of business (LOB).
- For succeeding leases in the same location where there are no changes in the area under lease (either increasing or decreasing in size), if EDDA documentation (EDDA report, memorandum and/or waiver) is not provided by the LOB upon request by the RECO, the RECO can proceed with the succeeding lease award but must document the lease file showing evidence of the attempt to secure the documentation from the LOB.

Q 2: Are we required to use the "hazardous substance clause" in its entirety for an airport lease or MOA?

A 2: If the requirements imposed upon the Airport Sponsor by FAA conflict with that Sponsor's requirements under state law, and provided that any revisions to, or deletions from the clause which received the concurrence of the appropriate FAA Regional or Center Counsel or the Office of the Chief Counsel for Acquisition and Commercial Law (AGC-500), then the RECO has the authority to revise the Hazardous Substance Contamination clause found in the "Land On Airport Lease Template" (clause #21) and the "MOA". However, under no circumstances may the clause be revised to increase FAA's potential liability beyond that incurred as a direct result of FAA's actions installing, operating, and/or maintaining of the facility or equipment that FAA has placed on the demised premises. An example of an acceptable revision to the Hazardous Substance Contamination clause is set forth below:

> HAZARDOUS SUBSTANCE CONTAMINATION (MAY-00): The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the (type of facility) facility. The Lessor agrees to remediate at its sole cost, any and all other hazardous substance contamination found on the leased premises.

B. National Environmental Policy Act (NEPA) Requirements

In accordance with the requirements of FAA Order 1050.1E, Change 1, Policies and Procedures for Considering Environmental Impacts, before acquiring (by lease, purchase, or otherwise) any additional land (new sites or expanding existing sites), the FAA must comply with the requirements of the National Environmental Policy Act (NEPA) to the extent applicable to such acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist.

The three levels of environmental review include:

- Categorical Exclusion (CATEX),
- Environmental Assessment (EA), or
- Environmental Impacts Statement (EIS).

In the absence of Extraordinary Circumstances (e.g., the presence of wetlands), most real property acquisition transactions can be categorically excluded by the program office from further environmental review. Chapter 3 of FAA Order 1050.1E, Change 1 provides information on CATEXs and the application of extraordinary circumstances. Specifically, paragraph 310 provides the list of categorical exclusions for FAA actions involving facility siting, construction and maintenance.

If there are extraordinary circumstances directly applicable to the site acquisition, and consequently, the action cannot be categorically excluded from further environmental review then the EA must be initiated by the Environmental Specialist. If the impacts are not significant the environmental review will end with a Finding of No Significant Impact (FONSI).

If any impact to the site attributable to FAA's acquisition or the proposed use of the site, is found to be significant and cannot be mitigated then an EIS must be initiated by program office. The EIS process ends in a Record of Decision.

The environmental review process must be complete before negotiating the acquisition of any new and additional land interests. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met, which would include all required EDDA documentation, prior to proceeding with the land acquisition including all required EDDA documentation. The written notification and additional documentation must be placed in the real estate lease file. Once the RECO receives the written notification, the RECO can proceed with the real property transaction for any new or additional land acquisition. The office requesting the land acquisition is responsible for keeping the official documentation for the NEPA review. It is not necessary for the RECO to obtain copies of the CATEX, EA, FONSI, EIS or Record of Decision.

1.1.4 Request

The process for procurement of real property interests can be initiated informally such as a request for market information, potential costs, or availability. Prior to conducting formal negotiations, or awarding of a contract a formal written request certified by an authorized requesting official must be received. At present, formal certification is normally provided by means of a Procurement Request (PR); however, a memo or other form of document can be used as a formal request as long as the document contains an original signature of an authorized requesting official.

If costs are involved in the procurement, a certification of funding must be received prior to obligation of any funds for any purpose or award of a contract.

1.1.5 Requirements **Revised 1/2015**

Requirements received from the customer may be general in nature or can be very specific. The Real Estate Contracting Officer must ensure that whatever requirements are received, they contain sufficient detail to assure the customer's needs are met. The Real Estate Contracting Officer should work with the customer to clarify unclear or incomplete requirements and verify that the procurement requested is in conformance with applicable regulations. When appropriate, the Real Estate Contracting Officer should advise the customer of any alternatives available to satisfy the requirement.

Improvements to the land accomplished by the property owner (i.e. gates, grading, paving, clearing, fencing, etc.), as requested by the FAA, may be included in the procurement. Costs of improvements shall be evaluated to assure they are fair and reasonable. Payment for costs of these improvements can be by lump-sum payment or amortized over the term of a lease.

On requests for renewal of existing leases, the Real Estate Contracting Officer should determine if the property continues to meet the FAA's needs without any changes. Any changes required in the lease terms should be negotiated and included in the succeeding lease.

Legal description, title information, market survey/appraisal, Environmental Due Diligence

Audit (EDDA), Environmental Impact Statement (EIS), Environmental Assessment (EA) or Finding Of No Significant Impact (FONSI) should be obtained as early as possible in the land procurement process. This information is required prior to making a final offer to the property owner(s) for a new land lease/purchase. The requiring office shall provide the EDDA, EIS, EA or FONSI.

The Real Estate Contracting Officer makes the determination of the appropriate method of procurement to be used to satisfy the requirement, either competitive or single source. A preliminary assessment of potential available sources may be needed to assist in the determination of the procurement method.

1.1.5.1 No Cost Land on Airport Memorandum of Agreement (MOA) Revised 4/2012

The MOA template **must** be used for the acquisition of land on an airport only when the airport sponsor is issued an Airport Improvements Project (AIP) Grant (reference AMS Policy Section 4.2.3.2, Requirements). As defined in the AIP Grant Assurance 28, the airport sponsor is to provide land without cost to the Federal Government for the purpose of any air traffic control or air navigation activity. Although a large majority of airports have received AIP Grant funds, some airports have not. The Real Estate Contracting Officer (RECO) can obtain a list of airports that have received AIP grants through the FAA Regional Airport Division, AXX-600.

GENERAL INFORMATION:

It is recommended that the MOA term be for the greatest number of years (life expectancy) of a FAA facility (as this is a no-cost agreement). Although the grant obligates the airport sponsor to give FAA 20 years of land use at no cost, the airport sponsor, most of the time, continues to get AIP grants that extend the 20-year period for no cost from the date of the last signed AIP grant. Millions of dollars in grant funds will have to be paid back by the airport sponsor if they do not give FAA land use or try to remove FAA facilities from their airports, because the airport sponsor has agreed to Grant Assurance 28.

As mentioned earlier, the RECO **must** use the MOA for all new no-cost land agreements on Airports where AIP Grants are in place. If there is a lengthy list of leases being terminated and superseded by the MOA, the RECO needs to reference an attachment that lists all the leases being superseded. There is an exception to using the MOA on an airport that received an AIP Grant. If there is a provisional agreement attached to an expiring lease, for example, an Air Traffic Control Tower (ATCT), the RECO **must** use the ATCT MOA with the Operating Agreement for Tower (under the land section of the real estate template library).

If facilities need to be added to or deleted from the MOA, the RECO will modify the contract agreement by deleting the old List of Facilities and replacing it with a revised list ensuring the new date change is made on the List of Facilities. A written notice will be sent to the Airport Sponsor and the RECO will retain the latest copy in the acquisition file.

If the RECO needs to change or add clauses to this agreement, they can work with their Regional Counsel to effect any changes on a case-by-case basis. The changes worked with the Regional Counsel should not become a standard for the region but an exception for that case. Any

permanent changes that are found necessary to the standard business practice for the regions need to be worked in conjunction with ALO-200 and AGC-500.

THE MOA PROCESS:

1. The RECO must acquire the new contract number from the PRISM system.

2. The RECO will send out the MOA Template to the Airport Manager. If unsure which clauses are mandatory and required, look up information on the Lease Land Matrix.

3. The RECO should explain as part of the initial discussion with the Airport Manager or the Airport Manager representative the purpose and benefits of the MOA. The MOA is less labor intensive, easier to administer, sign, and provides potential cost savings for both the FAA and the airport sponsor.

4. The list of facilities must be made a part of the MOA agreement. The attached List of Facilities is a sample table used to validate facilities, their GSA number and the associated runway. If the facility is not associated with a runway the term, support, is listed in the R/W column**.** It is recommended that if a clear zone radius and location(s) is not on the ALP, then the facilities clear zone criteria will be noted at the bottom of the attached list of facilities by reference to the appropriate FAA siting criteria order, i.e., ILS clear zone is in the current FAA Order 6750.16C, Siting Criteria for Instrument Landing Systems. The Operations and/or Field and Equipment (F&E) Engineers can help the RECO in determining the latest siting criteria order. Other options are the most recent ALP depiction referenced or if required, a drawing showing the location and size provided by the engineer.

5. If additional facilities are required on the airport, adding the new facilities to the attachment entitled List of Facilities can modify the MOA. A copy will be sent to the airport sponsor and a copy retained in the acquisition file.

6. The RECO should ask the local Service Support Center (SSC) or on-site technician to review the Airport Layout Plan (ALP) and the List of Facilities to verify both the accuracy of the list and location of the facilities. Also the RECO should contact the Airport Manager or their representative and request that they verify the facilities as well. If there is a discrepancy between the lists given by the SSC or the Airport Manager, the RECO will notify the appropriate parties and work on a solution with the SSC.

7. Highlight the FAA facilities on the ALP before putting the drawing in the contract file on the documentation side for informational purposes. The most recent ALP is part of the MOA only by reference, because it allows the ALP to change as new ALP updates occur. This reduces the amount of mandatory modifications and takes care of the situations in which FAA Real Estate has not been notified when changes occurred on the ALP drawing. It is recommended that Logistics Service Area Real Estate office work with their Regional Airports Division to be notified of new ALP updates when FAA Airports Division receives them.

8. The policy of the FAA is not to restore. However, Restoration Clause - Alternative A

may be used on a case by case basis when non-restoration is not feasible or appropriate. If the RECO is using this alternate restoration clause, they must get the line of business to provide written concurrence on use of this alternate clause. Another alternate is the MOA can remain silent and not have any reference to restoration or non- restoration if the airport sponsor will agree.

9. Once executed, the RECO must provide copies of the MOA to the airport sponsor; input the MOA in the Real Estate Management System (REMS); and appropriately document the real estate file.

1.1.5.2 Succeeding Leases/Lease Renewals Revised 7/2012

General Requirements: In general, when a lease for land for an off-airport NAS facility is expiring, the requirements are not re-competed, unless a compelling reason to relocate is established. This is due to the long service life of facilities installed on the leased land, as well as the cost of installation. Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. If the tenant organization indicates a need to remain in the same location, the RECO may initiate filling in the single source justification form and send to the tenant organization for concurrence prior to initiating the procurement. Legal review is not required when exercising an option to renew or executing a succeeding lease at the same location where the RECO is either establishing a new lease term and/or a new rental price (as agreed in the previously negotiated option or negotiated new price in the succeeding lease) and no material provision is changed. In such instances, the RECO is not required to complete the Single Source Justification Form. The RECO must ensure that all new and revised clauses are incorporated in the succeeding lease agreement. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses that may be added by reference.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport navaid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. This time period should be extended if the RECO is aware of issues that could jeopardize timely

completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

1.1.5.2.1 Holdover Tenancy Revised 1/2015

If a continuing need has been determined and it appears the lease will expire without a Supplemental Lease Agreement for a short term extension, or succeeding lease has not been awarded, then the RECO must follow the steps in the AMS policy as per 4.2.3.2.1.2 Emergency Reservation of Expiring Funds for Continued FAA Occupancy. In those instances where FAA continues to occupy leased facilities after the expiration of the lease term, the FAA is considered a “holdover tenant.” If the expired lease does not have a “holdover” clause, the laws of the state in which the facility is located will determine FAA’s rights of occupancy.

As mentioned under the policy, the RECO must notify his manager, regional counsel, and the LOB Budget office of issue.

If the RECO is unable to get the lessor to sign a temporary agreement, then the RECO must take steps to ensure that sufficient funds are either reserved, or set aside for settlement of the holdover period. A holdover period should not exceed 6 months. Prior to the end of the current fiscal year, the RECO will notify the affected LOB of the potential need to reserve the minimal funds necessary to pay for the FAA's occupancy during the continued occupancy period, and provide an estimate. If the LOB wishes to reserve funds from the soon to be expiring budget year, they shall provide a requisition to the RECO, and the RECO will reserve the estimated rent as an emergency contract. The RECO will send a formal memo to the Accounting office of the emergency reservation of funds, and to await further instructions from the Accounting on when to make any payments. Note: The RECO must document in the file a justification for the emergency reservation of funds. Below is information for dealing with holdover tenant with accounting in the financial system.

1. FAA cannot use its holdover status to avoid its obligation to pay for leased facilities. This may necessitate a memo for the emergency reservation of funds or temporary supplemental lease agreement so that PRISM can accept the obligation without a signed contract. The interim contract number will be the old lease number with an “OH” suffix to the old lease number, or will be a new lease number.

2. Delphi Miscellaneous Obligating Documents (Delphi MOD) will be used only for FY200X funds that are due to the lessor of a holdover lease where funds have not yet been obligated or paid in FY200X for the time already lapsed. Instructions for recording in Delphi in accordance with year-end closing instructions are on the Delphi website (FAA only). The Delphi M.O.D. is regularly used to accrue utilities, credit card purchases, etc. in Delphi for transactions that will not clear before year-end. A Delphi M.O.D. will not be used for leases where FAA is a holdover tenant except in the instance mentioned above.

3. Note if the LOB validates, it can pay the back rent from current year funds, it is not necessary to perform the emergency reservation of funds.

During this period the RECO must continue to negotiate a lease extension even if considering a condemnation posture. Once the RECO has negotiated a final lease agreement, the RECO must perform a modification to the emergency lease to document the conversion to a fully executed lease contract. Any difference in lease rental payment should be settled and paid at that time.

1.1.6 Procurement Method Revised 10/2019

Competition is appropriate when the requirement is not site or location specific and the reasonable possibility exists that there is more than one provider that can meet FAA needs. Competition should be utilized whenever practical and reasonable. Competition is obtained by providing two or more sources an opportunity to express an interest in satisfying the requirement. Advertising is not required. Interest may be expressed either orally or in writing.

The single source method of procurement is appropriate when technical requirements, business practices, or programmatic needs have determined that specific location, site, or unique need is required to meet the FAA's mission, or when it has been determined that only one source is reasonably available that can meet the requirement. See AMS Policy 3.2.2.4 and AMS Guidance T3.2.2.4.

1.1.7 Advertising

If the requirement is not for a site specific location and multiple sources may be available to meet the requirement, then advertising to allow for competition may be appropriate. When advertising the Real Estate Contracting Officer should utilize the publicizing method most likely to result in receipt of offers appropriate to satisfy the specific requirement. Advertisements in most cases will be by local or area wide newspapers; however, this is not limited and may include commercial trade journals, electronic bulletin boards, and the Commerce Business Daily. Multiple advertising may be utilized if considered necessary.

The Real Estate Contracting Officer determines need or requirement for advertising. Data from a market survey may be used to determine the need for advertising.

1.1.8 Right Of Entry Revised 4/2012

The Real Estate Contracting Officer should ensure that a "right of entry" permit to the property for any purpose has been obtained from the land owner prior to ingress by an FAA employee or any of its agents. Legal counsel should be consulted for the proper action to take if the landowner refuses to grant a "right of entry" permit. Entry onto private property without appropriate rights may constitute trespass.

1.1.9 Survey / Title / Appraisers

Competition for obtaining the services of surveyors, appraisers, or title companies, is not required, however, obtaining competition for providing these services is encouraged as a sound business practice and should result in award of a contract at the most reasonable cost. Ranking of surveyors as required by the Brooks Act, does not apply to the FAA.

1.1.10 Market Survey / Appraisal Revised 4/2012

A market survey or appraisal should be accomplished for each land procurement where costs are involved.

Market survey data can be used to: determine the availability of properties within the delineated area; eliminate unsatisfactory properties from consideration; determining the willingness of landowners to provide property for the FAA's use; determining fair market rents; determining suitability of responses to advertisements; and, determining estimated cost for the purchase of property.

An appraisal is a formal written statement that a qualified appraiser prepares independently and impartially, giving an opinion, as of a specified date, of the defined value of a described parcel of real property, supported by the presentation and analysis of relevant market information. An appraisal is used to determine the fair market rent, and value or just compensation for purchase of a specific property.

1.1.10a. Market Survey

A market survey is required for each new land lease or renewal where rent will be paid. The survey does not need to be formal; however the RECO **must** document the lease contract file with the market survey results starting September 30, 2006. In general, the more expensive the lease the more information is required to support the rental amount. If there is a lack of survey data then an appraisal may be appropriate.

Market survey data may be used to determine fair market rent and to determine the estimated cost for the purchase of property for a lease vs. purchase analysis. Market surveys can be conducted by telephone, mail, on-site visits, or a combination of methods. The survey can be informal - just data gathering, or formal - where a request for written data is made.

When determining estimated market values, data should be obtained from a minimum of three sources. Sources may include, but are not limited to: local real estate offices; other lessees, city/county/parish/township assessors; local appraisers; internet sites; and, governmental offices dealing with land such as the Soil Conservation Service, Bureau of Land Management, and Forest Service.

The RECO **must** develop his own format for writing market surveys; however, any format must contain the following four basic parts.

- Property Identification – The subject property should be identified as accurately as possible using legal descriptions, plats, FAA drawings, state, county, land lot numbers,

tax map number, parcel number, and acreage.

- Data – Sources should be reliable and accurate. Some surveys may require more detailed information than others. Data incorporated into the survey should be verifiable and the name, company, and telephone number of the person supplying the data should be included; data should be the most current available and, in any event, should not be more than one year old. Examples of data sources are: City and County Tax offices, Farm Credit Services, Farmers Home Administration, appraisal companies and real estate sales people. The data is typically dates of sale/lease, size, and sales price or lease amount, price per acre, current use and probable highest and best use.
- Analysis – Once data is gathered, the information needs to be analyzed. Any sales or lease information that is used should be from arms-length transactions with willing buyers/sellers or lessees/lessors. Any unusual circumstances should also be recognized and considered. Sales or lease data for property that is most similar to the subject usually provides the best indicator of value what FAA should pay.
- Conclusions of Value – After analyzing the data, a value range can be established and conclusion of value can be reached. Analyze and compare each sale/lease, and then make adjustments to the subject. Correlation of the information results in a conclusion of value that amount to be paid is justified and reasonable.

1.1.10b. Appraisal

An Appraisal is a formal written statement that a qualified appraiser prepares independently and impartially, giving an opinion, as of a specified date, of the defined value of a described parcel of real property, supported by the presentation and analysis of relevant market information. The appraisal of the market value of any real estate interest is not a matter of exact determination, and appraisers do not "establish" or "determine" the value. An appraisal is an estimate of the current value based upon, and supported by, an analysis of all the factors, physical, economic, and social which influence the present and future benefits to be derived from the ownership of the property appraised.

A. The need for or use of appraisals:

Before the initiation of negotiations, the FAA shall establish an amount which it believes is the just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.

The RECO sends out an appraisal request letter (create link) to request appraisal services. The RECO must use the Appraisal SOW (create link) . This SOW provides the information that should be given to the appraiser for inclusion in the appraisal, such as:

- legal description of property
- ownership data/title information
- results of the EDDA
- on new property the results of the EIS, EA or FONSI
- any other data that could have an effect on the property. s value

Note: Attached to the SOW is a certification for the appraiser to sign regarding his/her service to the FAA.

- No appraisal is required for:
  - Purchase of properties where the just compensation is estimated by the Real Estate Contracting Officer to be less than $2,500.00. (An appraisal is required for any property to be purchased whose value is estimated to be $2,500.00 or greater);
  - the owner's is donating the property and releases the FAA from its obligation to appraise the property:
- A value finding appraisal (opinion of value) can be used for properties whose value is estimated to be $2,500.00 to $5,000.00.
- The Real Estate Contracting Officer shall determine the appropriate type of appraisal method to be used.
- The real estate appraisals should be performed in accordance with generally accepted appraisal standards as set by the Appraisal Standards Board of the Appraisal Foundation.
- For the purchase of real property the appraisal should include a before and after valuation of the property to determine the value of any severance damage.

B. Requesting Funding from ALO for Appraisals

When a RECO is requesting funding for an appraisal, the RECO must fill out the ALO Appraisal Questionnaire (create link). This questionnaire can be sent electronically to ALO. Upon receipt of the Questionnaire, the RECO will receive a response within fifteen (15) working days regarding the status of the request. If ALO requires further information, they will notify the RECO within the same time frame of 15 working days.

C. Information on determining a Qualified Appraiser

The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

Most states have various levels of licensing which are based on the appraiser's experience. Only individuals may hold appraiser licenses. There are no appraisal licenses issued to business entities. An appraiser that is licensed or certified has received a State designation based on the quantity and type of appraisal assignments. They then take a state exam and become either licensed or certified by that State (depends on how the state issues it). Some states have Reciprocity in that they will recognize and allow appraisers from other states to appraise in their state for a small fee.

The RECO must use an appraiser which is qualified as a State Licensed or Certified appraiser with a national designation of MAI or SRPA

- MAI is a national designation which stands for "Member of Appraisal Institute". There is also another designation from the Society of Real Estate Appraisers. It is broken down into SRA for residential appraisals and SRPA for all types of appraisals. About 10 years

ago, the two merged and at the present time, is still hanging on to their designations. For most types of appraisal assignments the RECO must use an appraiser who has either an MAI or SREA in addition to the State Certification. It would be acceptable to use appraisers who are certified as both MAI and SREA so that should be fine.

D. Review appraiser

The term "review appraiser" is used rather than "reviewing appraiser," to emphasize that "review appraiser" is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the FAA's real property valuation needs and the appraiser.

Appraisals and review reports must comply with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions.

The review appraiser is responsible for ensuring that the appraisal report and its conclusions are reasonably supported by market information and complies with agency regulations, as well as, Federal and professional appraisal standards.

The RECO must note that the review appraiser qualifications are the same as above and should look for a State licensed or certified appraiser with national designation MAI or SRPA.

The RECO can acquire the services of a review appraiser in two ways:

1. Directly contract for a review appraiser; or

2. Contract with DOI center for excellence appraisal service.

Other resources

BLM Land Exchange Regulations:
https://www.gpo.gov/fdsys/pkg/CFR-1998-title43-vol2/pdf/CFR-1998-title43-vol2-part2200.pdf

U.S. Department of Justice Uniform Appraisal Standards for Federal Land Acquisitions: http://www.justice.gov/sites/default/files/enrd/legacy/2010/11/16/Uniform-Appraisal-Standards.pdf

The Appraisal Foundation: http://www.appraisalfoundation.org/

The Appraisal Subcommittee National Registry of state certified and licensed appraisers: http://www.asc.gov/

Professional Appraisal Organizations

American Society of Farm Managers and Rural Appraisers: http://www.asfmra.org/

American Society of Appraisers: http://www.appraisers.org/

Appraisal Institute: http://www.appraisalinstitute.org/

1.1.11 Lease versus Purchase Analysis Revised 4/2012

Except as noted below, a lease versus purchase analysis must be made for all new land interests to be acquired and existing land leases to be renewed, taking into consideration the expected term the property will be needed. The analysis is used to determine the most cost-effective method of procurement - purchase or lease. Data from a market survey or appraisal must be used for input into the analysis. If the analysis shows purchase to be the most effective method of procurement, the RECO must initiate land purchase action in accordance with established procedures.

If cost is not a determining factor, such as when a landowner is unwilling to allow FAA use of the property or demands unreasonable lease terms, and eminent domain proceedings are needed, a lease versus purchase analysis is not required.

The RECO should note that the FAA does not routinely accept ATCT towers from nonfederal entities due to the maintenance and repair and final disposition costs. It is not fiscally sound to undertake ownership even if it is offered at no-cost. All purchases of ATCT should be reviewed by legal counsel and ALO corporate real estate office.

1.1.12 Term Of Lease

As provided in 49 U.S.C., Section 40110 (b)(2)(A) the FAA has authority to lease an interest in real property for not more than 20 years, without regard to FAA annual appropriations. This means the FAA has authority to enter into "firm-term" leases without violating the Antideficiency Act. FAA authority to lease real property does not allow lease terms in excess of 20 years, including all renewal options.

For purposes of this guidance a firm-term lease is defined as the period or length of time the lease or portion thereof cannot be canceled without the approval of the lessor.

Each region/center will determine when and how this authority will be used within the limitations set forth below. In using this firm-term authority, FAA Order 2220.1, Legal Participation in Procurement and Contracting, or its replacement order, must be followed.

Caution must be exercised in implementing firm-term lease authority. A firm-term lease commits the FAA to future rental payments. The FAA must be willing to commit future annual appropriations for the term of occupancy. If funding is not committed the FAA would be in default of the lease and subject to claims by the lessor. Funding is the responsibility of the using organization and must be understood up front.

The cost or terms of the longer firm-term lease must be advantageous to the FAA as compared to a one-year lease with renewal options. Prior to executing a firm-term lease the real estate acquisition team should advise and provide the organization responsible for funding with an analysis of potential lease costs and/or savings. Also prior to executing the lease the real estate

acquisition team should obtain a written statement that acknowledges the terms and funding requirements of the firm term lease, including future budget year requirements. This written funding statement will be maintained in the real estate lease file.

A firm-term lease shall not be entered into if, in the judgment of the real estate contracting officer (CO), there is any doubt about the long term need of the user. The objective in leasing a facility is to obtain what is best not only for the user but also for the FAA. In some cases obtaining the lowest cost is not always the best, even though it is an important consideration.

There is no requirement to use firm-term authority. Firm-term leases are a tool in obtaining what is best for the FAA. If firm-term authority is used, the manner in which contract documents are written must be consistent. In establishing that consistency Regions/Centers should consider establishing, at least for some interim period, an appropriate level of firm-term lease review above the real estate CO.

1.1.12a. Firm-term authority for land leases only:

Regions/Centers:

> 1-20 Years Firm-term Unlimited. Leases not exceeding 20 years including all renewal periods. Unless a firm-term lease is clearly advantageous to the FAA, suggest the "TERM" clause in the standard land lease that provides for 30 day termination by the Government be used.

However, all FAA leasing actions in Headquarters organizations in Washington D.C. must be coordinated through the Real Estate Policy Branch (ASU-140), in order insure all relevant planning and policy issues are taken into consideration prior to using this authority. All requests shall be sent through channels to the attention of the Real Estate Policy Branch (ASU-140).

1.1.12b. Other Lease Considerations:

To provide some protection to the FAA the lease should include a clause allowing the FAA to sublease the premises in whole or in part.

1.1.13 Evaluation / Negotiation Revised 4/2012

Based on the results of market surveys or appraisals the Real Estate Contracting Officer must negotiate with property owners to obtain the necessary land interests at a fair and reasonable cost.

Costs of any improvements to the real property to be included in the procurement must be evaluated to ensure they are reasonable.

When using the competitive method of procurement, all offers received must be evaluated to ensure they can satisfy FAA needs. The total cost to the FAA should be a consideration in

making the final selection. In addition to land costs, items such as the following should be considered for each site: site preparation costs, costs for construction of access roads, special maintenance considerations, environmental considerations, and utility service availability and cost.

If multiple offers are received and a competitive range is established, any offer falling within this range may be selected for final negotiation without further consideration of selection factors.

Purchase or lease costs must be comparable to costs charged to the general market. The value of the Government's enhancements, or intended use should not be used in determining the procurement or lease cost of the real property.

When appropriate, environmental cleanup costs for existing conditions must be considered in the negotiations. If environmental contamination is found, the requesting office must state in writing that they request continuation of the procurement.

All reasonable efforts should be made to conclude negotiations to the satisfaction of the concerned parties. Determining when to cease negotiations with landowners who demand unreasonable fees or are unwilling to allow the FAA use of their property is at the discretion of the Real Estate Contracting Officer. Eminent domain proceedings, in accordance with established procedures, should be initiated when negotiations have reached an impasse and a satisfactory conclusion to the procurement cannot be reached. Protracted negotiations are generally not in the best interests of either party.

1.1.14 Contract Execution Revised 1/2015

The Real Estate Contracting Officer will make any necessary changes or additions to the contract based on negotiations with the landowner. RECO must have legal review where deviation from standard clauses is made in a contract. Legal review is required on purchase contracts and legal counsel shall provide an opinion of title. The Department of Justice rules on condemnation and title requirements must be followed

The Prompt Payment Act does not apply to the FAA; however, the FAA should make payments within 30 days after acceptance or as provided in the contract. As determined by the Real Estate Contracting Officer, the FAA may apply late payment interest to payments made within the scope of real property contracting actions.

The Government is to make all payments through the use of EFT (P.L. 104-134). See Section D., Real Estate Asset Management, for guidance.

The Real Estate Contracting Officer shall send an appropriate number of contracts to the property owner for signature and return for final execution. All off-airport leases and purchase documents (deeds) shall be recorded in the appropriate County/Parish/Township office.

1.1.15 Documentation for Land Contracts and Files Revised 7/2014

Sufficient documentation must be developed to explain and justify the real estate acquisition action taken. RECO's are to use the appropriate checklists (file and/or contract) to ensure the adequacy of contract clauses and to ensure required documentation is in the file to support the acquisition. RECOs must use a 6 part folder for all acquisition files.

Contract Review Process (Land)

RECOs must fill out the appropriate Contract Clause Review Checklist and determine if the contract requires secondary review in accordance with ISO 9001 Real Estate Contract Review Work Instructions. If secondary review is required, the RECO must submit the contract to the designated reviewer prior to sending it out for signature. Any changes made to the contract after the initial review must also be reviewed. A copy of the secondary review, signed by the reviewer, must be placed in the file

File Review Process (Land)

The File Review is intended to provide a quality control check of the file for completeness. The review is not intended to replace the judgment exercised by the contracting officer. RECOs must fill out and sign the appropriate File Review Checklist and determine if the file requires secondary review in accordance with ISO 9001 Real Estate File Review Work Instruction. If secondary review is required, the RECO must submit the file to the designated reviewer. A copy of the secondary review, signed by the reviewer, must be placed in the file.

1.1.16 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24).
(https://www.fhwa.dot.gov/real_estate/policy_guidance/non_regulatory_supplement/index.cfm) and (http://www.fhwa.dot.gov/real_estate/archives/uafnl99.cfm).

This Act was intended to establish a uniform policy for the fair and equitable treatment of persons who are displaced as a direct result of programs or projects that are undertaken by a Federal agency **or** with Federal financial assistance. The ACT ensures that displaced persons shall not suffer disproportionate injuries as the result of programs and projects designed for the benefit of the public as a whole and minimizes the hardship of displacement on such persons. **The ACT also establishes minimum Real Property Acquisition Policies for appraisal, negotiation and property possession standards and requirements.**

The Uniform Act applies to any Federal or federally assisted program or project if Federal funding is used in **any phase** of the program or project. **Provisions of the Uniform Act are mandatory and are applicable to each Federal agency that administers programs or provides financial assistance for projects, which involve land acquisition or relocation assistance**.

The Uniform Relocation Act of 1970 was enacted January 2, l971 and amended by: the 1987 Uniform Act Amendments, 1991 Public Law 102-240 and the Nov 1997 Public Law 105-17. The

Final Rule on the 1997 amendments was published in the February 12, l999 Federal Register (Volume 64, Number 29, pages 7127-7133), http://www.fhwa.dot.gov/real_estate/archives/uafnl99.cfm. This final rule provides that "an alien not lawfully present in the United States shall not be eligible to receive relocation payments or any other assistance provided under the Uniform Act unless such ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child and such spouse, parent, or child is a citizen or an alien admitted for permanent residence". The final rule requires that persons seeking relocation payments or assistance under the Uniform Act certify, as a condition of eligibility, that they are citizens or are otherwise lawfully present in the United States. The format of the certification is left up to each Agency. The certifications may be for individuals or a family [in which case the head of household may certify as to the status of other family members (see section 24.208(a)(2))]. FHWA has determined that the final rule applies to businesses as well as individuals and believes the prohibition on benefits must be applied differently to differing "ownership" situations, such as: a sole proprietorship, a partnership or a corporation. Any payments that a business is eligible to receive should be reduced by a percentage based on the prorated shares of the ownership between eligible and ineligible owners.

The Uniform Act designates the Department of Transportation (The Department) as the lead agency for implementing the Uniform Act. The Department has delegated this responsibility to the Federal Highway Administration (FHWA) [49 CFR 1.48(cc)]. Pursuant to section 213 of the Uniform Act, the FHWA promulgated a single government–wide regulation for implementing the Uniform Act, at **49 CFR Part 24** (https://www.fhwa.dot.gov/real_estate/policy_guidance/non_regulatory_supplement/index.cfm).

Note that as of 6/30/1999 the final rule has not yet been incorporated into 49 CFR Part 24; therefore, to obtain text of the final rule go to: http://www.fhwa.dot.gov/real_estate/archives/uafnl99.cfm

Helpful Reference Material Available from Federal Highways (Available in hard copy or on the Internet at http://www.fhwa.dot.gov/real_estate/):

- ***Your Rights and Benefits as a Displaced Person Under the Federal Relocation Assistance Program*** – Publication No. FHWA-PD-95-010
- ***Acquiring Real Property for Federal and Federal-Aid Programs and Projects*** – Publication No. FHWA-PD-92-006 HRW-11/5-92(20M)E
- ***The Appraisal Guide*** – Publication No. FHWA-PD-93-032 HRW-22/9-93(15M)P

Other Helpful Reference Material:

1. ***FAA Order 5100.37A, Land Acquisition and Relocation Assistance for Airport Projects, dated April 4, l994***. This order is written for the Airports Grant Program, but contains a lot of information that may be useful to the Real Estate Contracting Officer.

1.1.17 Outgrant Revised 1/2015

Outgrants, formerly known as outleases, are used when there is a secondary need for unutilized

or underutilized FAA leased/owned land or space by either another government entity or third party and such use does not interfere with current or known future FAA needs for the property.

Maximum Term: Starting October 1, 2014, outgrants, new or succeeding, are not to exceed a 5-year term. If the FAA does not own the underlying land or building/structure but is leasing it from someone else, the term of the outgrant cannot exceed the term of the underlying FAA contract or 5 years, whichever is less. Unexercised options are not to be included when calculating the remaining term of the underlying contract. For instance, if FAA is leasing land for a Very High Frequency Omni-directional Range (VOR) and the underlying lease has 3 years remaining on the original term and one unexercised 5 year option, the maximum term for any outgrant shall not exceed three years.

Cancellation Rights: Starting October 1, 2014, outgrants, new or succeeding, must contain the right by the FAA to cancel at will -- at any time and for any reason. Cancellation rights by the grantee are allowed but should require sufficient notice to the FAA to inspect the property and to determine if any restoration is required.

Outgrant (Application Form 1.3.18 for land or 2.6.31 for space): Requesting parties will be required by the RECO to fill out an Application for Outgrant Form found in the Real Estate Template Library for all outgrant requests, including new uses, modification to existing uses, or to request a succeeding outgrant. The RECO will review the request against current real estate records to determine the status of the property, including whether FAA holds sufficient legal interest in the property, and real estate restrictions, if any, on FAA's ability to grant the use. The RECO will forward the Application for Outgrant, along with pertinent information identified during the real estate review, to the head of the line of business (LOB) or LOB designee responsible for the property.

LOB Concurrence: The LOB shall conduct a thorough review and analysis to ensure the secondary use will not interfere with FAA's primary use of the property and that the benefits from the secondary use outweigh the cost and potential for increased liability. Prior to issuing a new outgrant, revising an existing outgrant, or issuing a succeeding outgrant, the RECO must obtain, in writing, concurrence from the LOB, along with any stipulations imposed by the LOB as a condition of issuing the outgrant.

LOB Non-Concurrence: If the LOB does not concur with the outgrant request, the LOB will provide the reason for non-concurrence to the RECO in writing. The RECO will send a letter to the requestor denying the request.

Retention Period and Document Location for Denied Applications: Letters of denial for new requests and the initial application form shall be kept in a central file location within the Real Estate office for a minimum of 1 year after denial. After 1 year, the documentation can be destroyed. All letters of denial to modify existing outgrants or to enter into succeeding outgrants shall be filed in the official outgrant project file.

Permit and License (Outgrant) Forms: The RECO must use the appropriate Outgrant Permit Form or the Outgrant License Form. The Permit form is used solely for Federal government entities. The License form is used for all other entities, including State or Local governments and third parties. The Office of the Chief Counsel or the appropriate Regional Counsel must approve any modifications to the standard template.

Questions and Answers:

Q1. Outgrant vs. Reimbursable: How is cost captured in an outgrant (either license or permit) and is it different from a reimbursable agreement?

A1. An outgrant license or permit is not considered a reimbursable agreement because it does not result in the direct provision of a supply or a service by the FAA. Rather, an outgrant gives the grantee permission to utilize an FAA real property asset. Utility, janitorial, or other services that may be provided because of the outgrant are incidental to the use of the subject real property. The RECO must use the award designation letter J under the PRISM system for an outgrant award number.

A signed original outgrant document is sent to the Accounts Receivable department in accounting. With respect to amounts paid as consideration for the outgrant, the FAA may retain all outgrant proceeds in the account established pursuant to 49 USC 45303(c). Please check with ALO-200 for the account number. The RECO must make every effort to negotiate a payment amount that is equal to the Fair Market Value (FMV) of the outgrant, which should represent a fair market value for use of the property and the cost of any additional services and overhead costs provided by the FAA.

Q2. Cost Structure: How can the cost be structured in an outgrant?

A2. The RECO will structure the cost of the outgrants in the following order of preference:

- Based upon fair market value along with any additional services and overhead provided to grantee;
- Based upon the FAA cost and overhead only; or
- A no cost outgrant that specifies the non-monetary consideration of both parties.

Q3. Waiving Rent: Under what circumstances should a RECO waive 1) collecting the fair market value for an outgrant and only charge for services provided or 2) collect no monetary consideration at all?

A3. If the grantee is providing non-monetary consideration to the FAA that is of a direct benefit to the National Airspace System and the cost of any services provided by the FAA to the grantee are minimal, then the RECO may waive collecting monetary consideration with LOB approval. The value of the non-monetary consideration should be of equivalent or greater value than the fair market value waived. The RECO should not waive the cost of the services and related overhead in the outgrant if the FAA is providing more than minimal services to the grantee.

Q4. Specify Use: Should the outgrant specify the use of the property?

A4. Yes. The outgrant must state the specific use of the property. Examples: agricultural use including type of crops and maximum height of crops allowed; grazing use including type and maximum number of animals; mining rights, including what is being mined and exactly how it will be extracted; communication site, including type, maximum number of frequencies, etc.

Q5. Options: Can outgrants have options?

A5. No.

Q6. Termination: Must outgrants be revocable by the FAA?

A6. Yes. The FAA must be able to terminate an outgrant at any time and for any reason during the term of the outgrant. All outgrants will contain an FAA revocation clause. Outgrants are considered a form of temporary disposal until the property is needed by the FAA or the FAA elects to permanently dispose of the property. FAA must be able to regain control of the property at any time. A grantee looking for a more permanent use should seek other property. For outgrants on property that the FAA does not own (e.g. leased property), the revocation clause in the outgrant must be structured to ensure the FAA can comply with all contractual termination rights of the underlying contract (lease).

Q7. Transferability: Can the licensee or permittee transfer the rights of the outgrant?

A7. No. Outgrants are issued exclusively to the licensee/permitee for limited time and for a specific purpose, the licensee/permitee has no rights under license/permit, subject to FAA's right to revoke the outgrant at will.

Q8. Emergency Service Providers: Can we waive the fee for an emergency service agency that requests an outgrant from the FAA?

A8. The criteria to charge rent to an emergency provider is not whether they provide emergency services but whether the grantee is a state or local government or the grantee is a private entity. If the emergency service or 911 provider is another government entity, such as a state, county, or city government, the RECO can waive the rent for use of the property. However, the government entity should make their own improvements, be liable for what it does on the property, and pay for any FAA-provided services based on actual costs and overhead (i.e. utilities, pro rata share of road maintenance, and any other services that FAA renders for the grantee).

If the emergency service provider is a private entity, then the RECO will need to charge fair market value for use of the property along with any FAA provided services. The FAA must not give an unfair advantage to one private entity over another. Further, if other private property is available nearby, the emergency service provider should be encouraged to seek use of the private property and not the FAA property.

Q9. Liability Insurance: Is the grantee, as a condition of the outgrant, required to carry general liability insurance?

A9. It depends on whether the grantee is a Federal agency, a State or local government entity, or a private entity (all others). As a general policy, the FAA requires that any use of FAA property by a grantee is adequately covered against potential liability and/or damage caused by the use. In addition to general liability insurance, this must include coverage of costs due to potential damage to the environment (e.g. wetlands, endangered plants, etc.) or through the

release of hazardous substances or petroleum products on the property. RECO's must obtain a copy of the Certificate of Insurance prior to allowing any new or continuing use (in the case of a succeeding lease) of the property and place the copy in the real estate file. Since insurance policies are generally written for only one year, the RECO is to obtain a copy of any successive insurance coverage period from the grantee during the term of the outgrant.

- Other Federal Agency: Federal agencies are self-insured and are generally prohibited from paying for insurance. In lieu of insurance, the Federal agency agrees to pay for any damage caused to the property subject to the availability of appropriations.

- State/Local government: All State and local government entities are required to provide insurance; however, if the government entity is prohibited from providing insurance due to state or local law, the RECO will need to work with the government party, the LOB, and FAA legal counsel to develop an acceptable alternative liability clause.

- Private Entity: Effective October 1, 2014, all private entities must obtain and maintain a general liability insurance policy as a condition of use of FAA property. All outgrant licenses with private entities shall contain the standard general liability insurance clause found in the Outgrant License Form for non-Federal entity.

1.1.18 Contracting Officer Representative (COR) Added 1/2007

a. Designating a Contracting Officer's Representative. The RECO may designate an individual representative, such as a COR to facilitate administration of a lease or contract. The RECO will designate a representative by written memorandum describing the specific authorities and responsibilities delegated to the representative. The RECO should ensure that the assigned representative has adequate training at the time of the assignment or will receive training within three months of being assigned the responsibility. Based on the yearly anniversary date of the lease/contract, the RECO should also obtain from the appointed representative, an annual validation that the representative has participated in adequate refresher training during the year.

The RECO provides a delegation memorandum to the appointed COR at the time the assignment is made or changed in any way.

b. Authority of the Representative. A duly-assigned representative is authorized to perform the actions delegated by the RECO. The representative of the RECO may assume the designated authorities when appointed, provided the COR has demonstrated adequate training. If the COR does not have adequate training at the time of the assignment, the COR may assume designated authorities for a provisional period, not to exceed three months, until completion of adequate training. While performing as a representative, the COR maintains current knowledge of the COR duties and responsibilities through formal training or other means and advises the RECO annually. The RECO should consider the specific requirements and needs of the lease/contract in determining the support required from the representative and clearly enumerate the authority granted to the COR in a written memorandum of delegation. A sample delegation memorandum is included herein. One memorandum of delegation for all situations may not be appropriate since contractual situations are distinct and have varying needs. Therefore, the sample memoranda may be modified to reflect the specific needs of the lease/contract and the RECO.

c. Changing the COR. To change the COR on a lease/contract, the RECO must revoke the previous delegation and issue a succeeding delegation to the new COR, Both of these memoranda must be in writing and issued concurrently.

d. Information to the Lessor/Contractor. The RECO furnishes copies of all memoranda of delegation, revocation, changes in authority, or re-delegation to the lessor/contractor to make them aware of the authorities and limitations of the COR. A sample lessor/contractor notification letter is included herein and may also be modified to reflect the specific needs of the contract and the RECO.

1.1.19 Condemnation Added 4/2009

When negotiations reach an impasse and FAA has a need for real property, the FAA may initiate eminent domain proceedings. Generally, protracted negotiations are not in the best interests of either party. Legal participation is required on all condemnations. The Department of Justice rules on condemnation and requirements for title must be followed when real property is acquired through purchase or condemnation proceedings.

The FAA almost exclusively uses Declarations of Taking (DT) when it acquires property by eminent domain since the majority of FAA acquisitions involve property that the FAA currently leases and which already support FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a DT to acquire immediate title to the property, which permits the agency to continue operating the facility on the property. The Agency should avoid using condemnation for short-term acquisitions.

The RECO must follow the FAA procedural guide on "Acquisition of Real Property by Eminent Domain". When preparing the condemnation file, the RECO must use the condemnation checklist.

Exceptions to the procedural Guide for FAA on Acquisition of Real Property by Eminent Domain

- Condemnation Package may be decided by Service Area such as RECO prepares the condemnation assembly for legal counsel who then puts the declaration of taking together and sends the package to DOJ. (reference to FAA guide page 11, Special Consideration for Expiring Leaseholds, paragraph 3 and page 15, Preparing a Condemnation Assembly, paragraph 1)
- Each Service Area needs to work with the Assistant US Attorney; however some service area the legal counsel receives the name of the AUSA and works with them and other service areas the RECO works with the AUSA. (Reference to FAA Guide on page 21, Post-Transmittal Activities, paragraph 1.)

A. WHEN CONDEMNATION IS NECESSARY

- Price disagreement
- Title defects

- Missing or unknown landowner
- Landowner violates terms of contract for sale
- Landowner's request or necessity
- Landowner unwilling to sell at any price

B. PRE-CONDEMNATION PROCESS

It is extremely important for the RECO to start lease renewal process at least 18 months prior to lease expiration allowing sufficient time for the agency to make an economic decision whether to institute a "straight" (complaint-only) condemnation (with full adjudication) or the DT. The agency will decide if it is in its best interest to condemn, continue leasehold, or possible relocate the facility. Should a "straight" condemnation not be fully adjudicated prior to expiration of the lease, a lease extension or leasehold condemnation should be completed.

A feasibility study or business case should be prepared by the using service/requesting office to determine the remaining operational facility life. This is especially important with changing technology and the agency's plan to decommission facilities. The feasibility study or business case will be approved by AJA-62. The using service/requesting office will provide the determination to the RECO on the continuing need requirement of the facility

A lease versus purchase analysis must be conducted in order to determine the most economical acquisition method.

If it is determined it is in the best interest of the Government to acquire the property by direct purchase the RECO will follow the standard procurement process as outlined in AMS. The RECO will determine the estates to be acquired, obtain an accurate survey, obtain title evidence, obtain an initial appraisal report and assess any environmental issues.

If leasing property it is particularly important for the RECO to conduct a market survey and document the lease file. This information will be extremely important if the RECO ends up with a condemnation situation.

C. ACQUISITION OF REAL PROPERTY BY CONDEMNATION

The FAA should not automatically file a DT in every condemnation but should consider using the "straight" condemnation, if determined to be in the agency's best interest. Finally, for each condemnation, a written determination and decision paper should be developed on whether the "straight" or DT condemnation should be used.

Note: The purpose of the "straight" condemnation would be to minimize large adverse awards by the Court under the DT method, and to give FAA flexibility to cease the condemnation action should it be determined not to be in the agency's best interest at a later time.

In addition to condemning the fee or fee and restrictive easement, leasehold condemnations should also be considered. Leasehold condemnations may be appropriate when there is a very high risk of a large adverse award for a fee condemnation or the remaining facility operational life is ten years or less.

- A survey will be conducted on the property. The survey should define all the property the FAA needs to operate the facility to include the site (plot), access right-of-way (ROW), building restrictions easement, tree cutting easement, metal fencing easement, etc.
- The title company should be provided with complete and accurate survey information so it can conduct a title search over the appropriate number of years. Copies of recorded documents should be obtained (which could be voluminous). The title search should also include any out grants or leases given by the former owners.
- In cases where facilities require clear zones, because of potential interference with the operations of the facility, then fee simple of the entire property should be valuated, and also the value of fee only for the site with a perpetual easement for the clear zone area. In all appraisal assignments, the value of leasehold for the facility life should be provided.
- The real estate contracting officer (RECO) actions must be consistent with the FAA Order 1015.19B, Environmental Due Diligence Audits, in the Conduct of FAA Real Property Transactions when a condemnation is in process.

The RECO is prohibited from providing the landowner with a copy of the appraisal report

Note: If the FAA is paying rent and the lessor accepts the rental payment. The FAA is still considered in a holdover tenancy.

1. Time line for submissions to DOJ

- When using the Declaration of Taking method the submission of the condemnation assembly to DOJ must be at least sixty days prior to the date of lease expiration.

    - Note: RECO please remember to clearly state all the estates that you are taking under the Declaration of Taking. For further information please see Acquisition of Real Property by Eminent Domain, Appendix Four paragraph 6 subparagraph c.

- If the FAA determines that a “straight” (complaint-only) condemnation is appropriate, then the condemnation assembly should be sent to the DOJ at least one year before lease expiration.

- The FAA does not have to get title insurance policy however the FAA is required to get a title opinion from either DOJ, or someone to whom that authority is delegated in FAA.

2. Key Points for a RECO to remember regarding condemnation

- Condemnation is the process by which property of a private owner is taken for public use, without his consent, but upon the award and payment of just compensation. Condemnation is the right of the state to reassert its domain over any part of the soil of the state on the account of public exigency and for the public good. For all practical purposes the terms “condemnation” and “eminent domain” are synonymous.

- An available option to the US Government under the Constitution.
- You have the authority and responsibility to recommend when condemnation is appropriate.
- Cost/benefit of condemnation should be considered; a value issue: "what is in the best interest of the U.S. Government?"
- Used after earnest negotiations with property owner reaches impasse.
- A "Declaration of Taking" is a document used in a condemnation to give the government immediate use of the property.
- Involve FAA attorneys as early in the process as possible and consult with regional/center and headquarters counsel regarding condemnation issues.
- Document, document, document!
- The negotiator's report is extremely important documentation in a condemnation case
- DOJ rules must be followed (4.2.3.7& "Preparing Condemnation Assemblies for Submission to the Department of Justice")

1.1.19.1 Acquisition of Real Property by Eminent Domain - Procedure Guide for the FAA

Revised 7/2016

Acquisition of Real Property by Eminent Domain

A Procedural Guide for the Federal Aviation Administration

Written by the Land Acquisition Section of the Department of Justice [1]

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FOREWORD

It gives me great pleasure to introduce the Federal Aviation Administration's instructions contained in this pamphlet. These instructions, written to meet present-day concerns and conditions encountered by FAA realty specialists involved in acquiring real property by eminent domain, are designed to achieve two very important goals of the FAA. Those goals are (1) to establish uniformity concerning the necessary steps for preparing a condemnation action, and (2) to promote the timely filing of condemnation actions in conjunction with the expiration of current FAA leaseholds. I am confident that the FAA's goals will be substantially achieved if these instructions are followed carefully.

Although this pamphlet represents a major step in developing uniform procedures for acquiring real property by condemnation, it is expected that those procedures will continue to evolve. As experience is accumulated in the preparation of condemnation assemblies and new regulations affecting real estate acquisitions are implemented, it is our hope that the FAA will accordingly revise and update this pamphlet.

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Introduction

A. Overview of Eminent Domain

Eminent domain (also known as condemnation) is an essential attribute of government power. Without this power, a landowner could thwart agency objectives that depend on the acquisition of his property by refusing to sell the property at any price, or by demanding an exorbitantly high price based upon the agency's need for the property.[2] Eminent domain resolves such potential problems by enabling the agency to initiate a proceeding in federal court to acquire title to the property in exchange for "just compensation."

The Fifth Amendment of the Constitution states that "Nor shall private property be taken for public use without just compensation." This language has been interpreted by the Courts to mean that (1) condemnation must be for a public use, and (2) just compensation must be paid for the property taken. The term "public use" has been interpreted liberally by the Courts to mean a use that is rationally related to any valid public purpose or legitimate governmental activity.[3] The term "just compensation" usually means the "fair market value" of the property taken.[4]

There are two types of condemnation actions that may be filed: (1) declaration of taking cases, and (2) "straight," or complaint-only cases. In a declaration of taking case, the agency takes title to the estate as soon as the case is filed and an estimated amount of just compensation is deposited in the registry of the court. Once a declaration of taking case is filed, the agency is committed to the condemnation, and the land cannot be given back to the landowner without the landowner's consent. Moreover, the agency is committed to paying whatever amount of just compensation the court ultimately awards for the taking. By contrast, in a "straight" or complaint-only condemnation case, the agency does not take title until after the condemnation case is fully adjudicated and the court determines the amount of just compensation owed for the estate. At that point, the agency can decide based on the price whether it wants to acquire the estate, or whether it wants to abandon the condemnation because the price is too high.

The FAA almost exclusively uses declarations of taking when it acquires property by eminent domain. This is because the majority of FAA acquisitions involve property that the FAA currently leases and which already contain FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a declaration of taking to acquire immediate title to the property, which permits the agency to continue operating the facility on the property.

B. When Is Condemnation Necessary?

Although the agency is required by statute and agency policy to acquire real property by negotiation and direct purchase whenever possible, there are certain circumstances that necessitate acquisition by condemnation. Examples of situations that typically require condemnation are:

1. The **landowner is unwilling to negotiate or sell at any price** the property or interest therein.

2. The agency and the property owner agree in principle to most of the terms and conditions for direct purchase of the property or interest therein, but are **unable to agree on the price**.

3. An examination of title evidence discloses **title defects** that are too numerous or complex for curative action, or that can only be cured through condemnation proceedings.

4. It is **impossible to locate the owners** of the property or interests therein to be acquired.

5. The property **owners refuse to comply with the terms and conditions** of an executed offer-to-sell agreement.

6. The **owners request that condemnation be used** to acquire title to their property or

interests therein, or where owners, such as fiduciaries, states, cities, or other public bodies **are without legal authority to sell** or otherwise dispose of real property or interests therein.

The Pre-Condemnation Process

Outlined below are the initial considerations and steps that should be undertaken by realty specialists contemplating the use of condemnation to acquire property. Note that most of these same steps and considerations would apply to acquisition by purchase as well.

A. Verify the Long-Term Need for the Property/Facility

The FAA uses eminent domain whenever it cannot negotiate a long-term interest or a direct purchase of real property. Given the degree of difficulty, the length of time, and the considerable expense involved in litigating a condemnation action, the FAA seeks to avoid acquisition of non-permanent interests such as short-term leaseholds by condemnation. Rather, the agency encourages the use of condemnation primarily for the acquisition of the permanent fee simple or easement interests. Accordingly, when considering whether condemnation is the appropriate method of acquisition, the realty specialist should first ascertain whether there is a well-established, long-term need for the property that the agency seeks to acquire. Thus in the FAA's typically effort to acquire property on which a particular facility already exists. The real estate contracting officer (RECO) should determine whether there is a long-term need for the particular facility. In order to make this determination, the realty specialist should contact appropriate personnel in the following lines of business and staff office: Air Traffic Organization (ATO), Terminal Services, En Route Services, Oceanic Services and Technical Operations, Aviation Safety (AVS) , and/or Security and Hazardous Material (ASH) to advise of the agency's intention to acquire the property underlying the facility, and to solicit their feedback about whether there is a long-term need for the facility. Similar inquiries should be directed to the District Office Manager, who should also be asked to provide his input on local concerns pertinent to the planned acquisition.

At this stage of the process, it may be appropriate for the RECO to visit the facility or the FAA office serviced by the facility to interview agency personnel about the long-term need for the property and the facility. At this point, the RECO should also attempt to become more knowledgeable about the local area, obtain listings of local surveyors, appraisers, and title companies/attorneys, and possibly initiate preliminary negotiations with the property owner.

B. Determine the Estate(s) to be Acquired

The RECO must next determine what estate(s) should be acquired in order to meet the agency's needs, and then draft language describing such estate(s). The typical long-term interest FAA acquires is fee interest. Depending on the particular needs and circumstances of each acquisition, it may be necessary for the agency to acquire other estates as well. For example, if the acquired parcel is not accessible by public road, it will be necessary for the agency to acquire an access easement to ensure ongoing access to the facility. Similarly, if the agency plans to build a new facility on the acquired parcel, it may be necessary to acquire a temporary construction easement on adjacent property. In addition to access and construction easements, proper operation of the facility may require the acquisition of restrictive easements on adjacent property, such as limits on nearby tree height or restrictions on residential development.

When drafting the language to describe each estate, the RECO should attempt to meet the agency's goals while minimizing encroachment on neighboring property interests whenever possible. For example, the estates taken should exclude all existing easements of record for public roads and highways, public utilities, railroads and pipelines when doing so does not conflict with the agency's needs. As discussed further in Part D below, an examination of the title evidence should reveal whether any such easements exist, while the appropriate Air Traffic Organization personnel should be able to determine whether such easements would interfere with the agency's needs. In cases where the agency must acquire an access easement, the RECO should consider drafting the easement so that it is non-exclusive, or so that the easement could be shifted to another location at the landowner's request. All estates should be drafted in a manner that most closely resembles an estate recognized under state law.

C. Obtain an Accurate Survey

For any real property acquisition, it is necessary to obtain an up-to-date survey that accurately describes the area of each property interest that the agency seeks to acquire. An accurate survey should define all the property the FAA needs to operate the facility to include the site (plot), access right-of-way (ROW), building restrictions easement, tree cutting easement, metal fencing easement, etc. It will be essential for negotiations with the landowner (to depict the exact area of the interests the agency seeks to acquire), and is also a necessary part of the condemnation assembly that will be sent to the Department of Justice if the agency chooses to acquire by condemnation. The RECO should refer to The Department of Justice Title Standards 2001, Section 5(d), for additional information concerning surveys.

In cases involving multiple or overlapping property interests, it is advised that the realty specialist obtain separate legal descriptions for each interest, and that all the interests should then be depicted on one single plat. The appropriate Air Traffic Organization (ATO) office should review and approve the estates, property descriptions and plats for technical accuracy and to ensure that operational requirements are being met by the proposed acquisition.

D. Order Preliminary Title Evidence

At the outset of the acquisition process, it is imperative to obtain and review up-to-date title evidence of the property, which generally will be in the form of a title insurance commitment. The realty specialist should refer to the Department of Justice Title Standards 2001 for additional information concerning title matters.

The title evidence should identify all interests such as leases, easements, liens and other recorded documents that affect the property. These interests will be listed as exceptions on the title insurance policy, and they all must be further researched to determine what impact they may have on the conveyance of good title to the United States

. Some title exceptions, such as the rights of a mortgage holder, can usually be extinguished at or prior to closing and, when extinguished, will not affect the conveyance of good title.

In some instances, the existence of certain easements and other property interests may adversely impact the operation of some types of FAA facilities. For example, gas/oil exploration agreements and utility easements that grant rights over or across the property may interfere with

the operation of certain FAA facilities. In these cases, it is imperative for the RECO to inform the appropriate Air Traffic Organization office of the existence of these property interests and determine whether they would adversely affect operation of the facility prior to making the acquisition. In cases where an existing easement conflicts with agency needs, appropriate FAA officials must determine whether the easement should be acquired and extinguished (often at significant cost), or alternatively, whether the agency should seek other property to meet its needs. For example, if an existing utility easement would interfere with the operation of an FAA facility, the FAA may choose to relocate the facility rather than pay the cost associated with acquiring the easement.

RECO should discuss any title problems that are discovered with the title company as well as with the Regional Counsel or Headquarters Counsel. The Assistant Chief Counsel has been delegated authority from the Department of Justice to pass on the sufficiency of title to lands being acquired by the agency (see Appendix 2), which he/she will do by issuing a preliminary opinion of title prior to the acquisition and a final opinion of title afterwards. However, researching, clearing title defects and providing an opinion as to the sufficiency of title is generally the responsibility of the RECO. If title cannot be satisfactorily cleared, condemnation to clear title may prove to be the only recourse.

E. Obtain an Initial Appraisal Report

Prior to any real estate acquisition, it is necessary for the agency to obtain an up-to-date and approved appraisal report. The information and analysis contained in the appraisal report, such as the determination of the highest and best use for the property and market data utilized by the appraiser, will provide the realty specialist with vital information for use in negotiations with the landowner. In situations where the appraised amount for property containing an existing facility is exorbitantly high (as defined by the FAA), the realty specialist should contact Technical Operations to explore the option of relocating the facility rather than proceeding with the acquisition.

The agency is required by statute to offer to purchase the property from the landowner for an amount that is not less than the value stated in an approved appraisal report.[5] If the agency chooses to acquire the property by condemnation, then the appraisal report must be updated to the date of taking and will be used as the primary evidence for establishing the amount of just compensation owed for the property.

Given the various purposes that the appraisal report must serve, the quality and professional nature of the report, along with the qualifications of the appraiser who prepared it, must be able to withstand intense scrutiny. Accordingly, it is strongly encouraged that the realty specialist select the appraiser with care. If the acquisition presents complex issues, such as a disagreement with the landowner about the possible highest and best use of the property, it is strongly recommended that the agency seek an appraiser who is qualified as an MAI (Member of the Appraisal Institute).

It is imperative that the RECO provide the appraiser with all necessary information pertaining to the estates that are sought to be acquired. If the agency seeks to acquire an estate in fee simple and an estate for an access easement, the appraiser should be instructed to determine market value in accordance with ***Uniform Appraisal Standards for Federal Land Acquisitions,***

December 20, 2000, hereafter referred to as the Yellow Book. If there are any questions concerning whether additional should be given instructions to give the appraiser, particularly in situations presenting complex valuation problems, the realty specialist should consult with FAA counsel or contact the Land Acquisition Section.

If condemnation is necessary and the case proceeds to trial, it will be up to the Department of Justice and the AUSA to determine whether the initial appraisal report is adequate for use at trial. If the initial report is not deemed adequate, it is the responsibility of the FAA to provide funding for an appraisal report that meets with DOJ approval. To avoid having to obtain a second appraisal for use at trial, the RECO should select the initial appraiser carefully, and provide the appraiser with all necessary information and instructions for the preparation of an adequate report. Although the agency may be required to select the "lowest bidder" when choosing an appraiser, the realty specialist can attempt to ensure a high quality appraisal report by adding qualification requirements to the scope of work, such as the requirement that the appraiser must be qualified as an MAI, or that the appraiser must have prior experience in federal condemnation actions.

F. Assess Any Environmental Issues

Agency policy requires that prior to acquisition of any real property, testing must be conducted to determine if the property contains any hazardous materials ("HAZMAT"). Under applicable environmental legislation, the current owner/operator of the property may be liable for cleanup and remediation of certain hazardous materials that exist on the property. Thus, in cases where the FAA has occupied the site for a number of years under a leasehold agreement, the agency may be jointly or severally liable for any contamination that exists on the property. Even when the FAA is not responsible for the contamination on the property, the cost of remediation and potential future liability risk should be factored in as part of the cost of acquisition. Accordingly, it is imperative that the property be inspected for hazardous material contamination prior to making the final decision to acquire the property.

In instances where the agency seeks to acquire the property by condemnation, the agency must certify that all applicable environmental regulations and procedures, including testing for hazardous material contamination, have been complied with. If cleanup or remediation of hazardous materials is necessary, it is not required that the cleanups be completed or even underway at the time of filing a condemnation action. Rather, the agency must inform the Department of Justice that hazardous materials exist on the site and explain the efforts that will be or have been taken to redress the contamination. Be aware that environmental contamination is a factor to be considered in determining property value.

Special Considerations for Expiring Leaseholds

The FAA currently holds leasehold interests on many of the properties that it seeks to acquire. Because these leasehold arrangements often impose unfavorable economic terms for the agency, upon expiration of the lease the agency usually seeks to acquire the fee simple interest to the underlying property. In cases where the landowner is unwilling or unable to convey fee simple to the property, the agency must resort to condemnation in order to acquire the property.

In situations where an existing leasehold is about to expire, it is imperative that the

RECO be prepared to acquire an interest in the property as soon as the leasehold expires. Otherwise, once the lease expires the agency will enter into a "holdover tenancy," meaning that the agency remains as the tenant on the property without paying rent, which gives rise to an inverse condemnation claim for the landowner. In addition to the inverse condemnation claim, a holdover tenancy will likely complicate any potential negotiations for acquisition by purchase or for settlement of a condemnation case, and may also add to the agency's overall cost of acquiring the property.

Accordingly, the RECO must be aware of the expiration dates of existing leases, and proceed with plans for acquiring the underlying property accordingly. If the RECO determines that a condemnation action may be necessary, then the Declaration of Taking condemnation assembly should be prepared and sent to the Department of Justice at least sixty days prior to the date of expiration of the leasehold. Negotiations to purchase the property from the landowner may continue after the condemnation package has been sent to the DOJ; however, any agreement to purchase the property must be made before the declaration of taking is filed.

If the agency is already in holdover status before the condemnation package has been sent to the Department of Justice, the Declaration of Taking should include a retroactive taking of a leasehold interest for the holdover period. The agency must separately appraise the value of the holdover leasehold interest, and include an estimated amount of just compensation for this holdover leasehold. Note that the property owner may challenge the holdover (retroactive) portion of the taking and there is a possibility that he may succeed because, technically, a Declaration of Taking cannot have a retroactive effect. This is a matter to be decided by the Court, but if the property owner's challenge succeeds, the agency could be liable for attorney fees. Moreover, if the landowner subsequently brings an inverse condemnation claim for the holdover period and is successful, the agency will be liable for attorneys fees associated with that action as well. Thus, it is in the agency's best interests to avoid holdover situations altogether by preparing to file a condemnation action as soon as the existing leasehold expires.

Negotiations to Purchase the Property

Prior to initiating a condemnation action, an agency should first attempt to acquire the property by negotiation and direct purchase. The Uniform Relocation Assistance and Real Property Acquisition Policy Act, 42 U.S.C. § 4651, requires the agency to make "every reasonable effort to acquire expeditiously real property by negotiation." The Act states in pertinent part that:

Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

42 U.S.C. § 4651(2). The Act goes on to state that

Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such

amount be less than the agency's approved appraisal of the fair market value of such property . . . The head of the Federal agency concerned shall provide the owner of 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 damages to remaining real property shall be separately stated.

See 42 U.S.C. § 4651(3).

Although the Act requires the Agency to provide the landowner with a "written statement" and summary of the basis for the estimated just compensation, the realty specialist is **strongly discouraged from providing the landowner with a copy of the appraisal report**, in case the negotiations are not successful and the property must be acquired by condemnation.

Frequently, once the realty specialist has made an offer to purchase the property, the landowner will wish to suspend the negotiations while the landowner retains an attorney and/or his own appraiser. This may cause several months to one year of delay, depending on how expeditiously the landowner chooses to proceed. The RECO should therefore establish a time frame in which the landowner is to respond to the Government's initial offer. Moreover, it is crucial for the RECO to initiate negotiations well before the existing leasehold is to expire, in order to avoid adding the pressure of an impending deadline to the negotiations process.

Early in the negotiations for the purchase of the property, the RECO should urge a the landowner to make a counteroffer. If the property owner is unresponsive to repeated requests for a counteroffer, it is probably appropriate to advise the owner that you will continue the acquisition process through condemnation. The exercise of tact at this critical juncture may result in the realization by the property owner that delaying tactics and unreasonable counteroffers will serve no useful purpose and he or she will begin to negotiate in good faith. The RECO should be open to any reasonable counteroffer from the property owner that will immediately lead to the prompt purchase of the property. Be wary of minor concessions made by the property owner in an effort to reopen negotiations where substantial differences still exist.

In some cases, however, the RECO will conclude that further negotiations are fruitless, and that acquiring the property through condemnation is necessary. In such cases, the RECO should provide the property owner with a certified letter outlining the progress of negotiations to date, make a final and best offer, and establish a deadline for a response from the property owner. The letter should also inform the landowner that if no response is made by the deadline, the agency will initiate a condemnation action to acquire the property, and that thereafter all negotiations would involve the Department of Justice and the United States Attorney's office. This letter may be sent at any time but should be sent at no later than 90 days before expiration of current leasehold rights.

The preparation and submission of the condemnation assembly to the Department of Justice does not prevent continued negotiations and settlement up to the date of filing the Declaration of Taking. Generally, the Declaration of Taking will be drafted so that the taking will become effective on the day of the expiration of the leasehold. Coordination with the appropriate U.S. Attorney's office should resolve any issues regarding last minute negotiated agreements.

Please note that it is crucial to document all offers and counter-offers made during the negotiation process. This information will be useful to the U.S. Attorney's office and prevents duplication of negotiations by that office after the filing of the Declaration of Taking.

Statutory Authority for Condemnation and Financing the Acquisition

The basic authority for FAA to acquire property by condemnation is contained in Section 303(a)(i) and 307(b) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40110(a)(1) et seq and 49 U.S.C. 106 (L6-N1A). This basic authority has been delegated from the Administrator of the Federal Aviation Administration to the Director of the Aviation Logistics Organization, ALO-1. Authority to acquire property by declaration of taking is set forth in the Declaration of Taking Act, 40 U.S.C. § 3114.

Funding for acquisitions is generally made available by appropriations acts, which change from year to year. It is important to note that funding for acquisitions is valid for only three years after enactment of the appropriations statute. This means that all funds must be obligated (though they need not actually be spent) within three years of passage of the statute. Accordingly, RECO must be aware of the applicable deadlines on which particular funding will expire, and must be prepared to expedite the acquisition process if the three-year deadline is fast approaching. If there is some doubt as to which appropriations act applies to a given acquisition, you should contact the Service Center budget office or, alternatively, ABU- for guidance.

In some condemnation cases, the ultimate award of just compensation, or the settlement amount agreed to by the parties, may exceed the amount of funding provided by the original appropriations legislation. In those cases, it is imperative that the RECO contact ATO or the appropriate LOB to attempt to secure additional funding to cover the shortfall. The RECO should identify potential funding shortfalls as soon as possible to maximize the agency's ability to acquire additional funding. For example, if the landowner's appraiser produces a credible report concluding that the value of the property is in excess of the total funds provided by the appropriations legislation, the RECO should alert the ATO or the appropriate LOB of the possibility that there could be a funding shortfall for the acquisition, so that Service Center Logistics Manager may begin to plan for this contingency.

Preparing a Condemnation Assembly

In order to acquire property by condemnation, the realty specialist must send a condemnation assembly to the Department of Justice. This section describes the necessary contents of the condemnation assembly.

Given the lengthy amount of time needed to prepare all the necessary elements of a condemnation assembly, RECO are strongly encouraged to begin assembling these materials well in advance of the expiration of any existing leasehold. Once the condemnation assembly has been completed it should be forwarded to the regional Assistant Chief Counsel and headquarters counsel for final review. Upon completion of this review, the condemnation package should be forwarded to the Director of the Aviation Logistics Organization, ALO-1for signature and mailing to the U.S. Attorney General. Regional procedures vary but in all instances the condemnation package should be tracked to insure that the package is mailed to

Department of Justice at least 60 days prior to the expiration of the current lease agreement.

A. The Transmittal Letter

The first part of a condemnation assembly is the Transmittal Letter from the FAA to the Attorney General of the United States. Generally, the Transmittal Letter will be signed by the Director of the Aviation Logistics Organization, ALO-1. The Transmittal Letter should contain the following information (see Appendix 3 for a sample Transmittal Letter):

1. GENERAL AUTHORITIES AND APPROPRIATIONS ACT The letter should contain a recitation of the FAA's general authority to acquire real property by condemnation, as well as a recitation of the delegation of that authority from the FAA Administrator to the Director of the Aviation Logistics Organization, ALO-1. It is also necessary to include the correct appropriations act that provides the funds to acquire the property.

2. NECESSITY STATEMENT

The letter should include a statement that the taking is necessary for a well-established long-term need for a particular property or facility. A simple statement usually will suffice. For example, "The Remote Communications Air/Ground facility is a vital part of future FAA navigational aids and is a critical element of the National Airspace System. It is in the best interest of the Government to utilize the facility in its present location. There will be a continuing need for the facility throughout the foreseeable future."

3. IMMEDIATE POSSESSION STATEMENT

The letter should contain a statement as to whether immediate possession of the property being acquired is needed. If the property is currently under lease, the letter should note when the leasehold is set to expire. If the FAA is continuing its existing occupancy, no order of possession is required.

4. DECLARATION OF TAKING STATEMENT

If applicable, the letter should include a statement that the agency seeks to acquire the property by a Declaration of Taking (DT). A Declaration of Taking will vest the property with the United States immediately upon filing the action and depositing the estimated amount of just compensation in the appropriate District Court.

5. COMPLIANCE WITH UNIFORM RELOCATION ACT

The letter should include a general statement that the agency has complied with the provisions of Uniform Relocation Assistance and Real Property Acquisition Policy Act, 42 U.S.C. § 4601.

6. ENVIRONMENTAL COMPLIANCE STATEMENT

If the acquisition will result in the construction of new facilities, the Transmittal Letter should indicate compliance with the provisions of the National Environmental Policy Act, 42 U.S.C. § 4332 and, if applicable other statutes such as the National Historic Preservation Act of 1966, 16 U.S.C. § 470f. If the acquisition is for an existing facility that will not undergo any site

changes or modifications, environmental proceedings are excepted by 42 Fed. Reg. 32467 Appendix 5, Paragraph 5f. In such cases, a statement referencing this exception will suffice.

7. LIMITATION STATEMENT

If there is any limitation that may be imposed on the acquisition by any statute, a statement as to the limitation must be included. The Federal Aviation Act does not impose any limitations on the acquisition of land for technical facilities except that of funding imposed by annual appropriations acts. It is unlikely that any individual acquisition will exceed the appropriation for all the land acquisitions funded in any particular year. Accordingly, a general statement that the acquisition will not exceed statutory limitations will serve to meet this requirement

8. POINT OF CONTACT

The letter should contain the name and contact information of the agency official who has been involved in the negotiations and preparation of the condemnation assembly.

B. Attachments to the Transmittal Letter

Several attachments must be included along with the transmittal letter, the most notable being the Declaration of Taking which will be discussed in detail in the next section. Other attachments are described below:

1. PAYMENT OF ESTIMATED JUST COMPENSATION

A Treasury check payable to the Clerk of the Court for the appropriate federal district should be enclosed. If doubt exists as to what district the case will be filed in, contact the Assistant Chief Counsel's office. The estimated amount of just compensation should be not less than the appraised value for the rights and/or interests being acquired. Be mindful that checks issued by the Treasury expire one year after the date of issue.

2. APPRAISAL REPORTS AND REVIEWS

Copies of all appraisal reports, including all unapproved and outdated appraisal reports and updates, along with the appraisal reviews should be included as an attachment to the transmittal letter.

3. TITLE EVIDENCE AND PRELIMINARY TITLE OPINION

A title package should be prepared that includes a copy of the title evidence (usually a title insurance commitment with copies of the documents mentioned therein), preliminary title opinion, a statement as to the location of title evidence (name and address of the local recorder of deeds, registrar, etc.), and all efforts made to cure title defects, if any. For those cases where a condemnation is being requested because of title defects, the following information is also required:

A. An analysis of the defects and the agency's opinion as to the correct resolution of those title defects.

B. A listing of the attempts to cure title defects made by the realty specialist.

C. A summary of all discussions with the title company to have title defects removed.

D. Any curative data obtained to remedy title defects.

E. A Contract-to-Sell signed by the property owners, if applicable.

Additional Guidance can be found in the Department of Justice Title Standards 2001, Section 7.

4. NEGOTIATOR'S REPORTS

A copy of the negotiator's report that lists the time and place of all negotiations, offers and counter-offers made, and any other relevant information concerning discussions with the property owner(s).

5. HAZARDOUS MATERIALS NARRATIVE

In accordance with FAA policy, DOJ should be provided with an explanation of all HAZMAT testing and remediation efforts that are planned for or underway on the property being acquired.

6. CERTIFICATE OF INSPECTION AND POSSESSION

This form should be completed, signed and dated by an individual employed by the acquiring agency who has recent knowledge of the property being acquired. (See the Department of Justice Title Standards 2001, Section 4(b) “Instructions” and 10(b) “Required Forms”).

7. DECLARATION OF TAKING

A minimum of one copy of the Declaration of Taking (described in Part C below), signed by the Director of the Aviation and Logistics Organization, ALO-1, along with the necessary attachments (described in Part D below), must be included with the Transmittal Letter to the Attorney General. If more copies are requested by the Department of Justice, more will be provided.

C. The Declaration of Taking

The format and content of a Declaration of Taking is standardized, and must include the following information (see example in Appendix Four).

1. CASE CAPTION

A case caption should be set at the top of the Declaration of Taking, setting forth the name of the United States District Court, with the names of the parties set forth below. In all cases, the Plaintiff in the condemnation action will be “THE UNITED STATES OF AMERICA.” The Defendants are identified by stating the property interest by size and location (for example

“32.945 Acres of Land, More or Less, Situated in Montgomery County, Maryland”), and listing at least one individual who possesses an interest in the property (usually the primary landowner). Leave the Civil Number as a blank; the number will be assigned by the clerk after the case has been filed.

2. AUTHORITY FOR THE TAKING AND CERTIFICATIONS

The body of the DT begins by identifying the individual possessing the authority to acquire the property. This will be the Director of Aviation Logistics Organization, ALO-1 in most cases. The DT continues with a number of certifications that identify FAA's authority to take the property including the funding appropriation, the public uses for which the land is being taken, the estimated compensation for the taking, a legal description of the property and the estate(s) being taken, and a plat showing the estate(s) being taken. The legal description, estates being taken, and the plat are usually schedules that are attached to the DT.

3. CLOSING

The DT closes with an authorizing statement, date, signature, and signature block.

D. Attachments to the Declaration of Taking

1. Attachment A

The first attachment should be labeled "Schedule A" and should consist of a legal description of the property being acquired. In instances where more that one parcel is being acquired, each parcel should be separately identified (Parcel 1, Parcel 2, etc.) and described. It is strongly recommended that, rather than re-type legal descriptions from a title report or land survey, that such legal descriptions instead be copied in order to avoid mistakes or omissions. Label and number successive pages as "Schedule A, page 1 of 3", to avoid confusion with other schedules.

2. Attachment B

The second attachment should be labeled "Schedule B" and should consist of the survey plat(s) of the property being acquired. The plats should be easy to read and understand, but contain sufficient information to be useful. As a practical matter, try to avoid plats drawn on excessively large size paper.

3. Attachment C

The third attachment should be labeled “Schedule C” and should describe the interest(s) or estate(s) to be acquired. The types of estates taken may include the fee simple title and perpetual easements of various kinds (i.e., restrictive use, utility, access, etc.). Exercise care in describing the estates you wish to acquire as errors are common. For example, if you need an easement that will provide access and serve as a utility corridor, you should call it an access and utility easement, and not simply an access easement.

Each interest or estate being acquired should be matched to the appropriate parcel identified in Schedule A. Schedule C should also include a listing of all entities by name and address that

may have an interest in the property being acquired. This list should include not only all the owners but also all persons shown by the title evidence as potentially or actually having an interest in the property, if we are taking that interest. Depending on the estate taken this could include the local tax assessing office, mortgagees, lienholders, utility companies with rights-of-way interests, lessees, as well as holders of gas, oil, timber, and mineral rights, etc. If an interest, or class of interests, is excluded from the estate taken, the holder of such interest need not be named. For example, if the estate taken is "fee simple, subject to existing easements for public roads and highways, public utilities, railroads and pipeline.", then holders of utility easements need not be owners and parties in interest is required because all holders of any interest in the property being taken must be given notice by the Assistant U.S. Attorney that the property is being acquired for public purposes. If all individuals with an interest in the property are not served, the possibility exists that the acquiring agency may have to pay twice for the property being taken.

Post-Transmittal Activities

Once the Condemnation Assembly is sent to the Department of Justice, it is reviewed by an attorney in the Land Acquisition Section of the Environment and Natural Resources Division. That attorney may contact the realty specialist to discuss details of the taking and/or the assembly package. Typically, the condemnation assembly is then sent to the appropriate U.S. Attorney's office in the federal district where the subject property is located, where it will be assigned to an Assistant U.S. Attorney (AUSA). Once the realty specialist receives the name and contact information for the AUSA handling the condemnation, the RECO should initiate a call to the AUSA and offer any assistance possible in preparing the case for trial. This initial contact should begin a period of close cooperation between the AUSA and the realty specialist. A meeting between the RECO and the AUSA at this stage may provide the AUSA with insight about property valuation issues as well as negotiation prospects with the property owner.

In Declaration of Taking cases, the estimated amount of just compensation is deposited in the registry of the court at the time that the case is filed. Distribution of the estimated amount of just compensation to the appropriate parties is the responsibility of the court. However, the realty specialist and the AUSA should make every effort to assist the court in this endeavor.

As soon as the AUSA files the Declaration of Taking, or notice of lis pendens, the RECO should coordinate with the AUSA and file a copy of the Declaration of Taking (or, in complaint-only cases, a notice of lis pendens) in the local land records for the county in which the subject property is located. The RECO should also obtain updated title evidence, usually in the form of a title insurance policy (see the Department of Justice Title Standards 2001, Section 5(a)). to include a search of all records through the date of recording of the Declaration of Taking or the lis pendens. This updated title report should be promptly furnished to the AUSA. In addition, the initial appraisal report will need to be updated to the date of taking. In some cases, the AUSA may ask the acquiring agency to obtain a new appraisal or to assist in locating and retaining expert witnesses such as environmental or land use experts.

The RECO should offer to attend pre-trial meetings and negotiation sessions and should have full authority from the agency to recommend settlement prior to trial based on detailed knowledge of the circumstances surrounding the case and on advice of the AUSA. Prior to any negotiation session, the RECO should contact ABA to determine exactly what funding

limits may apply to settlements due to budgetary constraints. As the case proceeds to trial the RECO should offer to assist in the preparation of any exhibits that may be required. In many instances the official property file will contain photographs or plats that may be useful during the trial.

Finally, the RECO should plan to attend the entire trial proceeding. Negotiations and settlements have been known to occur up until the day of the trial itself, or during the trial. DOJ officials are the ones who negotiate and settle matters after a case has been filed. The realty specialist should consult the AUSA handling the case regarding how the realty specialist should participate in the settlement process.

Post-Trial Activities

When a court award (or a negotiated settlement) has been made that exceeds the estimated amount of just compensation deposited in the registry of the court, the AUSA will provide a certified copy of the judgment to the realty specialist. The RECO should then take immediate steps to arrange for prompt payment of the deficiency (with interest) by Treasury check to the Clerk of the Court. The Land Acquisition section can assist in the calculation of the amount of interest due.

In those instances where compensation is awarded that is significantly higher than the Government's appraised amount, the title insurance policy may need to be increased to correspond to the higher property value (see the Department of Justice Title Standards 2001, Sections 5(c) and 7(d)(1)). However, that portion of the compensation awarded for damages to the remaining property should not be considered as part of the value of the property taken when determining how much title insurance to acquire. Unfortunately, the compensation awarded does not always provide a distinction between the value of property taken and any severance damages to the landowner's remainder parcel.

When the judgment involves an award which is considered to be excessive, the RECO should discuss the possibility of an appeal with the AUSA and ALO-200. Those discussions should focus on the potential success of an appeal and be weighed against the additional litigation costs associated with the appeal process. Specific procedures are required for filing an appeal; contact ALO-200for guidance concerning appeal procedures. See the Department of Justice Title Standards 2001, Section 7(e) for guidance on recording the judgment fixing compensation and proof of payment, if the condemnation action is a compliant only action.

APPENDIX ONE

Definitions

Appraisal

An appraisal is an estimate of value of property. Usually an appraisal is a written statement setting forth an opinion of value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant data.

Assistant

United States Attorney (AUSA)

An attorney employed by the Department of Justice who works under the supervision of a United States Attorney in one of the 94 United States Attorneys offices located throughout the United States. There is a United States Attorney in each federal judicial district.

Condemnation

The process by which property of a private owner is taken for public use upon the award and payment of just compensation. Condemnation is the right of the state to reassert its dominion over any part of the soil of the state on account of pubic exigency and for the public good. For all practical purposes the terms "condemnation" and "eminent domain" are synonymous.

Complaint

A complaint is the first or initial pleading on the part of a plaintiff in a civil action. A complaint will generally contain a statement of facts constituting a cause of action and a demand of relief to which the plaintiff supposes himself entitled.

Declaration of Taking

A document in the form and content specified in the Declaration of Taking Act, 40 U.S.C. § 3114, prepared by an acquiring agency and signed by an authorized agency official. The filing of a declaration of taking in a condemnation action together with a deposit into the registry of the court of estimated compensation thereby immediately vests title to the property in the United States. The amount of compensation due for the taking is adjudicated in subsequent proceedings and any difference between the estimated and actual just compensation with interest thereon computed from the date of taking is due the property owner.

Department of Justice

Department of the Executive branch of the Federal government responsible for, inter alia, prosecuting condemnation actions on behalf of other agencies of the Federal government.

Easement

An interest which one person has in the land of another, normally for the benefit of adjoining land. There are two types of easements. One is an “appurtenant” easement, which is an easement across a servient estate for the benefit of another property. An access easement is one example of an appurtenant easement. (For an example of a “Floating” access easement, see Appendix Four, Paragraph 6, subparagraph b.) The other is an “easement in gross”, or “restrictive” easement, which is an easement that restricts what an owner can do with his property.

Fee

An absolute estate, subject only to the limitations of eminent domain, escheat, police powers, and/or taxation, where the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs upon his death intestate.

HAZMAT

An acronym referring to any substance or class of substances that may be hazardous to the health and well being of the human population. Environmental regulations recommend that testing for hazardous substances be conducted prior to the acquisition of real estate in order to limit the liability of the property owner or user to correct any contamination discovered on the property regardless of who caused the contamination.

Interest

A very general term that denotes a right, claim, or share in real estate or chattels.

Inverse Condemnation

This is a claim brought by a property owner against a governmental agency to recover damages for the taking of property as a result of the government's activities when no compensation has been made to the property owner. A frequent basis for an inverse condemnation claim is damage to property due to airplane overflights which, by noise and vibration, cause a diminution of the property below the flight path.

Just Compensation

The full and fair monetary equivalent for the property taken for public use.

Lease

A written document by which the rights of use and occupancy of land and/or structures are transferred by the owner to another person for a specified period of time in return for a specified rent or other recompense.

Leasehold

An estate in realty held under a lease. The right of use by a lessee to use and enjoy real estate by virtue of a lease agreement.

Plat

A map or representation on paper of a piece of land, usually drawn to a scale. Plats will generally show property lines, and may also show other features such as roads, abutting ownerships, building locations, topographical features, vegetation, etc.

Property Description

This is an unequivocal identification of a specific piece of land. Several methods of have been devised for adequately describing tracts of land such as the metes and bounds system and the Government Survey system (also called the Township/Section system).

Public Use

This means a use concerning the whole community as distinguished from particular individuals. Each member of the community need not be equally interested in such use, or be personally or directly affected by it; if the object is to satisfy a public want or exigency, that is sufficient.

Title Insurance

This is insurance against loss or damage resulting from defects or failure of title to a particular parcel of real estate, or from the enforcement of liens existing against it at the time of the insurance. In some locations the Torrens system of land registration exists in which the sovereign governmental authority issues title certificates covering the ownership of land which tends to serve as title insurance.

Vest

This means to give a fixed and indefeasible right. To have vested rights to a property means that rights have been so completely and definitely accrued to or settled in a person that they are not subject to being defeated or cancelled by the act of any other private person.

APPENDIX TWO

Title Information

The Attorney General has redelegated his authority to pass on the sufficiency of title in land acquisitions to the Department of Transportation, Federal Aviation Administration. That redelegation is recited below.

FEDERAL REGISTER, VOL. 35 NO. 251 - 29 DECEMBER 1970

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

REGIONAL COUNSELS AND CENTER COUNSELS AND/OR HEADQUARTERS COUNSEL

Notice of Redelegation of Authority to Approve

Sufficiency of Title to Land

Section 355 of the Revised Statues, as amended by Public Law 91-393, 84 Stat. 835 (40 U.S.C. 255) authorizes the Attorney General to delegate to other departments and agencies his authority to give written approval of the sufficiency of the title to lands being acquired by the United States. The Attorney General has delegated to the Assistant Attorney General in charge of the Land and Natural Resources Division the authority to make delegations under that law to other Federal departments and agencies (35 Fed. Reg. 16084; 28 C.F.R. 0.66). The Assistant Attorney General, Land and Natural Resources Division has further delegated certain responsibilities in connection with the approval of the sufficiency of title to land to the department of Transportation as follows:

DELEGATION TO THE DEPARTMENT OF TRANSPORTATION FOR THE APPROVAL

OF THE TITLE TO LANDS BEING ACQUIRED FOR FEDERAL PUBLIC PURPOSES

Pursuant to the provisions of Public Law 91-393, approved September I, 1970, 84 Stat. 835, amending R.S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

i. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at $100,000 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

A stated in the above-mentioned act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render an opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of title.

This the 2nd day of October, 1970

SHIRO KASHIWA, Assistant Attorney General, Land and Natural Resources Division.

The above authority was delegated to the General Counsel of the Department of Transportation by Amendment 1-41 to Part 1 of Title 49, Code of Federal Regulations, 35 F.R. 17658, November 17, 1970

Finally, the authority was redelegated to the Chief Counsels of the operating administrations of the Department of Transportation, including the Federal Aviation Administration (35 F.R. 18412, December 3, 1970).

In consideration of the foregoing and pursuant to the authority delegated to me as chief counsel of the Federal Aviation Administration by the General Counsel of the Department of Transportation, the Regional Counsels and Center Counsels of the Federal Aviation Administration are hereby authorized to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of the Federal Aviation Administration. This delegation is subject to the limitations imposed by the Assistant Attorney

General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegations of this authority may only be made by the Regional Counsels and Center Counsels to one attorney within their respective staffs.

Issued in Washington, D. C. on December 22, 1970.

GEORGE U. CARNEAL, JR. General Counsel

APPENDIX THREE

Sample Transmittal Letter

The Honorable Name, Attorney General

c/o Land Acquisition Section

P.O. Box 561

Washington, DC 20044

Dear Mr. Attorney General:

It is respectfully requested that you acquire, by condemnation, fee simple title to certain land situated in Perry County, Illinois, for use as a land site for radio communication link (RCL) facility. The land is more fully described in the Declaration of Taking.

This request is made pursuant to 49 U.S.C. § 40110, 40 U.S.C. §§ 3113-14, and in accordance with the authority delegated by the Administrator of the Federal Aviation Administration to the Director of the Aviation Logistics Organization, ALO-1. Funding was apportioned to the Federal Aviation Administration for the purchase of this property by the Transportation and Related Agencies Act of 1993 (Public Law 107-388), dated April 3, 2001.

The radio communication facility link facility provides a voice and data link between air traffic control facilities and is critical to the operation of the National Airspace System. There will be a continuing need for the facility throughout the foreseeable future.

The government has operated and maintained this facility under a lease agreement since 1977. The owners have rejected all government offers to purchase the subject property. The current lease will expire on September 30, 2004, and continued possession is required on October 1, 2004. Thus, immediate possession is necessary and a Declaration of Taking is therefore requested.

Since this acquisition is for an existing operational facility that will not undergo any site change, environmental processing is exempted by our procedure 42 Fed. Reg. 32647 (Appendix 5, paragraph 5f).

I certify that the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policy Act (Pub. L. 91-646) have been complied with in our attempts to acquire this property. I also certify that there are no statutory limitations imposed on this acquisition and that the

ultimate award for said land will probably be within any limits prescribed by law on the price to be paid therefore.

Enclosed herewith are the following:

1. An original and three copies of the Declaration of Taking with Schedules "A", "B", and "C" attached.

2. U.S. Treasury Check No. 786,465,982 in the amount of $86,500, said sum being the amount estimated as just compensation for said property with all buildings and improvements thereon.

3. Four copies of the complete condemnation assembly package.

If you or your staff need any assistance or additional information in connection with this request, please contact (insert and telephone number of point of contact) of FAA's Great Lakes Region Real Estate and Utilities office.

Sincerely,

Director of the Aviation Logistics Organization, ALO-1
Enclosures

APPENDIX FOUR

Sample Declaration of Taking

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States,)
)
Plaintiff,) CIVIL NO. _____
)
vs.)
)
32.945 ACRES OF LAND, MORE)
OR LESS, SITUATED IN MONTGOMERY)

COUNTY, MARYLAND, AND FRED)

JOHNSON, AND UNKNOWN OWNERS)

)

Defendants.)

DECLARATION OF TAKING

I, Name, Director of the Aviation Logistics Organization, ALO-1, Federal Aviation Administration, Eastern Region, do hereby declare that:

1. The land, hereinafter referred to as the "property," is hereby taken under and in accordance with 49 U.S.C. § 40110, 40 U.S.C. §§ 3113 and 3114, and Public Law 107-87, dated December 18, 2001, which appropriated funds for such purposes, and the authority delegated by the Administrator of the Federal Aviation Administration (FAA) to the ALO-1 of the FAA (27 Fed. Reg. 3773).

2. A determination has been made by me that the subject property is necessary for public use to provide a site for the continued operation and maintenance of a Non-Directional Radio Beacon facility. This facility is used by aircraft for navigational purposes and is a critical element to the National Airspace System.

3. A general description of the property being taken is set forth in "Schedule A" attached hereto and made a part hereof.

4. A plan showing the property taken is attached hereto as "Schedule B" and made apart hereof.

5. The owner and any parties having or claiming an interest in the subject property are listed in "Schedule C," attached hereto and made a part hereof.

6. The estates being acquired here for public use are:

a. As to the Non-Directional Radar Beacon facility lot, containing 32.00 acres of land: fee simple, subject to existing easements for public roads and highways, public utilities, railroads, and pipelines.

b. "Floating" Easement - A perpetual and assignable easement and right-of-away to locate, construct, operate, maintain, and repair a roadway in, upon, over and across the land described in "Schedule A", together with the right to trim or remove any vegetative or structural obstacles that interfere with the right-of-way; subject, to existing easements for public roads, highways, public utilities, railroads and pipelines; reserving, however, to the landowner, its heirs and assigns, to 1.) the right to use the surface of such land as access to their adjoining land or for any other use consistent with its use as a road; 2) the right to relocate said right-of-way at any time, provided a) the United States shall have continuous access during the relocation process; b) the relocated easement and right-of-way shall provide access as passable as that of the existing road, and it shall be located on a reasonably convenient route from

described in Schedule "A" to the public road; c) the relocated easement and right-of-way shall be of equal width as the road described in Schedule "A", and shall be clearly described in the same manner as the original easement in a properly recorded instrument; and d) the relocated easement and right-of-way is clearly described in a recordable instrument, and the United States must sign said instrument to acknowledge that it has received notice of the relocation, which signature shall not be unreasonably withheld.

c. The estate(s) taken for said public uses is (list estate(s) or interest being taken – fee simple, perpetual easement such as utilities, cabling, leasehold, leasehold than fee simple or term of years then fee simple for holdover situations, etc.) and is further set forth in "Schedule A" which is attached thereto and made a part hereof.

7. A plan showing the property taken in the form of a survey is attached hereto as "Schedule B" and made a part hereof.

8. The owner and any parties having an interest in the subject property are listed in "Schedule C" attached hereto and made a part hereof.

9. The sum of money estimated by me as just compensation for the acquisition of said property interest is ninety-five thousand five hundred dollars ($95,500.00). It is my opinion that the ultimate award of just compensation for this acquisition will be within any limits prescribed by law on the price to be paid therefore.

10. I herewith deposit ($95,500.00) in the registry of the court for use and benefit of the persons entitled thereto.

In witness whereof, the United States of American has caused this Declaration of Taking to be signed in its name by me, as Director of the Aviation Logistics Organization, ALO-1, Federal Aviation Administration on this __ day of _____, 2005 at Jamaica, New York.

_____

_____

Name

ALO-1

Federal Aviation Administration

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[1]/This document is a revision to the 1993 pamphlet Preparing Condemnation Assemblies for Submission to Department of Justice

[2]/ The Supreme Court has stated that "[Condemnation] authority is essential to [the]

independent existence and perpetuity [of the United States]. . . . If the right to acquire property . . may be made a barren right by the unwillingness of property holders to sell . . . the constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of . . . a private citizen. This cannot be." Kohl v. United States, 91U.S.367, 371 (1875).

[3]/ See, e.g., Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984); Berman v. Parker, 348 U.S. 26 (1954).

[4]/ See, Kirby Forest Industries v. United States, 467U.S.1 (1984).

[5]/ See Uniform Relocation Assistance and Real Property Acquisition Policy Act, Pub. L. 91-646, 42 U.S.C. § 4651(3) (1987).

1.1.19.2 Condemnation Procedures Checklist Added 1/2008

CONDEMNATION PROCEDURES CHECKLIST	
DESCRIPTION	**DATE**
Receive & Prepare PR for Land Acquisition	
Prepare Right-of-Entry for Survey and Appraisal	
Solicit Survey	
Award Survey	
Review Survey	
Solicit Appraisal	
Award Appraisal	
Preparation of Appraisal Report by Contractor	
Receive Appraisal	
Review Appraisal and take any necessary corrective action	
Solicit, award and review title evidence	
Physical Inspection of Land	
Prepare Certificate of Inspection and Possession	
Lease vs. Purchase Analysis (This should be completed prior to the initiation of the condemnation action)	
Negotiate Purchase	
Letter of Condemnation Notification to Owner	
Prepare DT Package	
Letter to Attorney General	
Declaration of Taking (DT)	
Schedule A Property Description	
Schedule B Plat of Survey	

Schedule C Owners of Record & Interested Parties (Tax/Liens, etc)	
Schedule D Estate to be Acquired	
Appraisal Copies	
Check to Clerk of District Court - coordinate with the DOJ attorney handling the case	
Update Appraisal if requested by Office of Council	
Forward DT to DOJ	
DT File to AUSA	
Title Assumed by FAA Record DT in Land Records Update Title Insurance through date of recording (typically the updated title evidence is a title insurance policy)	
Order new Appraisal or update if necessary	
Pretrial Work including as appropriate discovery information and settlement negotiations	
Hearing	
Court Award	
Obtain & Deposit Deficiency Judgment (plus interest)	
Receipt of Final Judgment (If you have recorded the DT, it is not necessary to record the final judgment)	
Report Final Cost	