
Chapter 5: Acquisition of Interests in Real Property

ESTABLISHING THE NEED

When newly authorized programs or expansion needs produce a requirement for additional real property, the responsible program office should develop the necessary justification for the project. Such justification should include a detailed explanation of the purpose, the estimated land area required and the square footage for any improvements, the location, and the estimated time period for the need. Development of the justification is a collaborative effort by the program office, counsel, and the fiscal/budgetary offices, along with the realty representative. The realty specialist is responsible for assuring that pertinent information is obtained from all involved offices. In developing the need, information of the type outlined in former DOE Order 4300.1C, Real Property Management, Chapter I, paragraph I.e. (See Appendix 5-1) should be included.

If the program need can be satisfied on Government-owned property, it must be utilized. Property in the DOE inventory must be screened first. If none is available, the General Services Administration (GSA) and other Federal property holding agencies should be contacted. Reasons for not using available Government-owned property must be documented in the project file.

If office space is needed to house Federal employees, it will normally be provided by GSA, unless the location falls within the area in which DOE has been delegated lease acquisition authority by GSA. (See Chapters 6 and 7 on leasing).

A temporary need for space may be solvable with relocatable personal property; however, it should be noted that the DOE Strategic Plan has a goal of eliminating all trailers currently being used by DOE to house personnel or other program needs by 2009.

PRELIMINARY REAL ESTATE PLAN

Prior to initiating action to acquire real property by fee acquisition, lease (where term exceeds 5 years and total rent exceeds \$500,000 per annum), construction (line item projects exceeding \$5 million), or transfer of excess property or withdrawal from the public domain, a real estate plan should be developed. The plan will serve as the basis for subsequent site selection activity and should reflect the agreement of all concerned DOE elements, including program, budget, procurement, and real estate. Chapter I, paragraph 2.e. of Order 4300.1 C (Appendix 5-1) describes the information that should be included in such a plan.

SITE INVESTIGATION AND SELECTION

The determination to acquire privately owned property for a project triggers a request for the necessary appropriated funds. Pending approval, site acquisition planning should continue. If it is determined that only one site can satisfy the project need, a sole source justification should be prepared.

When more than one site will be considered, a site investigation team should be formed. The Good Practice Guide, "Site-Selection Process" (GPG-FM-024), describes the process for team formation (see Section 2.1). GPG-FM-024 is included in this Desk Guide as Appendix 5-2.

When acquisition of real property interests is involved in a site selection, the realty specialist from the acquiring field office must be a member of the team. The team's primary role is to develop information and provide advice on possible sites. In preparing its recommendations, the team will make sure that its actions are in compliance with the Rural Development Act of 1972 which gives first priority to the location of new offices and other facilities in rural areas, Executive Order 12372 (Intergovernmental Review of Federal Programs), and will arrange for public notice of the site investigation. Information that should be included in an advertisement of the proposed site review is outlined in Chapter 1, paragraph 3.e. (2) of Order 4300.1C (Appendix 5-1).

Inspection of Sites and Site Evaluation

The team members will contact owners of potential sites that were not offered in response to the ad to determine their interest in selling their property, will thoroughly inspect all offered sites, will collect and evaluate information on the sites, and prepare a site evaluation report.

A central element of the documentation developed for the recommendation of a specific site is information and data on environmental impacts. DOE site selection decisions must be supported by the National Environmental Policy Act (NEPA) assessment process. The DOE NEPA guidance manual and 10 CFR 1021 provide information on the appropriate level of documentation for various levels of actions within the site-selection process. Considerations regarding toxic and hazardous substances at potential sites are covered in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). A thorough investigation of properties being considered for acquisition should be made to assure that no contamination exists. (See 4300.1C, Chapter I, paragraph 3.f (2) and (3), Appendix 5-1.)

The documentation will also include a description of the parcels and the estate(s) to be acquired, a list of the owners, the current use being made of the parcels, and an indication of the degree of compliance with seismic standards. If subsurface rights exist on any of the parcels, they should be clearly identified, as well as any submerged areas adjacent to high lands, and any easements, licenses, leases or other third-party rights affecting the property. Detailed maps indicating the property to be acquired, and its general vicinity, should be included in the documentation, along with an indication of any significant features that might affect the acquisition.

Cost Estimates

The realty specialist should develop an estimated acquisition cost for the proposed site. The estimate would include both the total property cost and any charges or fees for related obligations and services such as appraisals, relocation (pursuant to Public Law 91646), title search, and moving costs. If leasing is being considered, a market survey of the area to determine prices per square foot would be required. Information on local taxes, including the assessed value of the property to be acquired, should also be obtained.

Use of the Army Corps of Engineers

In instances where DOE realty expertise is not available, the services of another Federal agency, such as the Corps of Engineers or GSA, may be sought. Generally, reliance will be placed on the assistance of the Corps of Engineers, since that agency has historically provided real estate service to DOE and its predecessor activities. The Corps can perform major acquisitions or small, single-action services such as an appraisal. It can also provide service in other real estate functional areas such as out granting and disposal.

In accordance with a Memorandum of Understanding (MOU) between DOE and the Corps (see Appendix 5-3), each Field Office of DOE can work directly with each Corps Field Office, without Headquarters involvement, whenever needed. Only very large projects, such as the acquisition of property for the Strategic Petroleum Reserve, require Headquarters approval of both DOE and the Corps.

Figure 5-1 is a generic Task Order that can be utilized to request the Corps, under the MOU, to perform a specific real estate service.

Site Selection

Once the site evaluation report, along with the team's recommendation, is completed, it is forwarded to the site selection official for decision. After a site has been selected, the acquiring office may proceed with acquisition of title.

U. S. DEPARTMENT OF ENERGY	
1. Work Order No.	3. Date Prepared
2. MOU No.	
4. Name of Project Manager Location and Telephone No.	5. DOE Office (Office of Primary Technical Responsibility)
6. Description of Acquisition (use reverse side or additional sheet if necessary)	
7. Performance: Start Date: _____ Completion Date: _____	
8. Estimated Cost and Fund Citations	
9. Remarks	10. DOE Field Office Approval Date
	Requiring Office _____
	Administrative Office _____
Approvals and Acceptance	
For the Corps of Engineers	For the Department of Energy
Name _____	Name _____
Title _____	Title _____
Date _____	Date _____

Figure 5-1
Generic Task Order for Requesting Corps of Engineers Real Estate Services

ACQUISITION OF SELECTED SITE

Necessary Data for Acquisition of Property

Once a site has been selected, the acquiring office initiates the purchase of the property. **Ownership information**, including a complete legal description for each parcel, should be assembled, if not already obtained during the selection stage. The services of a title service company should be secured early in the acquisition process. A **preliminary title report** should be obtained for use by the appraiser and the negotiator.

Appraisals are necessary for all acquisitions of real property. Procurement of appraisal service is discussed in more detail on page 9 of this chapter. Finally, a **boundary survey** may be needed to identify individual parcels and land rights, and to verify the legal description contained in the title evidence.

Negotiation

Pursuant to PL 91-646, the owner(s) of the property to be acquired must be furnished a written statement of, and summary of the basis for, the amount established by DOE as just compensation (see Appendix 5-4). An **Offer to Sell** should accompany the **Statement of Just Compensation**. In advance of initiating negotiations with the property owner(s), the negotiator should be thoroughly familiar with the Federal project, and should review the appraisal, title evidence, and preliminary title report in detail. The negotiator should be sure that all matters that could affect title or property value have been addressed. (Copies of an ownership disclaimer, an Affidavit of Heirship, and a Certificate of NonInterference are included in Appendix 5-5.)

Negotiations should be conducted in a businesslike and courteous manner, and the owner(s)' right to relocation assistance, if applicable, should be fully explained. An offer, in writing, should be made to the owner(s) for the amount determined to be just compensation. Normally, it should take no more than three negotiating sessions to either produce an acceptable agreement or establish there is an insurmountable impasse.

A written report of negotiations on each parcel must be prepared by the negotiator (see Appendix 5-6). It should set forth the chronological history of the discussions, and document the basis for the negotiator's conclusions for acceptance or rejection.

Purchase options for real estate needed in connection to a DOE project may be obtained only at no cost to the Government (see Option Agreement, Appendix 5-7). Contractors may not acquire options if the cost is to be ultimately paid by DOE under contract.

Conditions or Exceptions in Contract to Sell

Reservations for crops, timber, or improvements will be allowed if determined to be in the best interest of the Government. Generally, all **subsurface rights** to minerals, oil, coal, and gas should be obtained. Following acquisition, the property may, if circumstances permit, be **outleased** to former owners or tenants pending need for Government purposes.

Deed Preparation

The deed to the property acquired should be prepared in accordance with the Department of Justice (DOJ) requirements. Once executed, it should be promptly recorded in the local jurisdiction. When an acceptable title document has been received, it should be forwarded to DOJ for approval. Property may not be acquired until DOJ has approved title.

Closing

Closing of the fee acquisition takes place following DOJ title approval. When the closing attorney determines that the title is clear, the owner may be paid for the property. At the same time, DOE takes possession of the property. As soon as DOE assumes possession, a DOE employee should inspect the acquired property, and prepare a “**Certificate of Inspection and Possession,**” (Appendix 5-8).

Following closing, a final title assembly is submitted to the Attorney General with a request for a preliminary and final title opinion. The Attorney General's title opinion and related documents will be made part of the DOE official property file maintained by the acquiring office.

ACQUISITION BY TRANSFER

The General Services Administration (GSA), pursuant to Section 202(a) of the Federal Property and Administrative Services Act of 1949 is authorized to transfer excess real property among Federal agencies. Notices regarding available excess property are issued frequently by GSA. A request for transfer of property, for which the receiving agency pays fair market value, should be submitted to the GSA together with a completed GSA Form 1334, "Request for Transfer of Excess Real Property and Related Personal Property" (see Appendix 5-9).

ACQUISITION BY WITHDRAWAL FROM THE PUBLIC DOMAIN

The Department of the Interior (DOI) is delegated responsibility for withdrawing and reserving public domain land. Pursuant to PL 95-91, DOE may request that DOI withdraw public domain land for DOE usage. The program office, in conjunction with the real property representative, develops the requirements. The field element prepares an application in accordance with the requirements in 43 CFR 2310, and submits it to the appropriate Bureau of Land Management (BLM) office. See DOE Order 4300.1C, paragraph 5.b.(2) for information on preparation of the justification for withdrawal.

If the request for withdrawal exceeds 5,000 acres, the Secretary of the Interior must notify both houses of Congress. Congress has a minimum of 90 days in which to respond or take no action.

When approved by DOI, a public land order, to be published in the Federal Register, is issued by that Department, withdrawing the property for DOE use. New withdrawals are for a maximum of 20 years, at which time they must be rejustified and reapproved by DOI (see Section 204(e) of PL 94-579 (90 Stat. 2743)). Needs exceeding 20 years must be approved by Congress.

ACQUISITION BY EXCHANGE OR DONATION

Like other acquisitions, exchanges and donations require programmatic justification. The procedure for acquiring properties through these means are the same as for fee purchase. Appraisals must be obtained on all properties involved, and the owner conveying property to the Government must receive full value unless a written waiver is signed. Donated property must be approved by the Secretary of Energy, and a formal agreement signed which sets forth the terms and conditions.

ACQUISITION BY LEASE

Often, budgetary and management considerations will lead to the conclusion that acquisition of a leasehold interest in real property is more beneficial to the Government than fee ownership.

The Department of Energy has authority to lease certain types of property pursuant to PL 95-91 (91 Stat. 565). The Department may also authorize its contractors to acquire leased space to house contractor personnel, but DOE is responsible for overseeing the lease procurement of its contractor when the rental is directly reimbursed under the DOE contract; however the contractor may procure such space under its own corporate authority which is not reimbursed under the DOE contract without DOE approval. The General Services Administration is generally responsible for the acquisition of general-purpose office and related space needed by DOE (See Chapter 6 of this Guide), but has delegated to DOE authority to lease certain types of space. These various authorities are examined in detail in DOE Order 4300.1C, paragraph 7(a-f). Specific guidance on the lease acquisition process is contained in the United States Department of Energy Leasing Handbook (June 1990), as revised. (See Chapter 7 and Appendix 7 of this Guide.)

ACQUISITION OF OTHER INTERESTS IN REAL PROPERTY

In some instances, a real property interest less than fee or leasehold will satisfy a particular requirement. In such cases, the need may be met by procurement of an easement (permanent or temporary), a permit or license, or through acceptance of gift property.

Easements

Easements give the grantee the right to make limited use of the grantor's property. Property

owners may grant permanent easements permitting rights-of-way over or through their property, or they may issue temporary easements for short-term needs, such as access to a property. If the cost of the easement exceeds \$10,000, an appraisal is required. In some cases, it will be necessary to acquire permanent easements by condemnation. (See DOE Order 4300.1C, paragraph 8.a.)

Licenses and Permits

Temporary use of real property may also be obtained through permits or licenses. "Permits" normally refer to use of federally controlled property, while "license" applies to the use of privately owned property. No permanent improvements may be placed on property being used under these temporary interests. Licenses and permits must be approved as to form and content by legal counsel. Contractors may obtain temporary use of property through licenses and permits. (See DOE Order 4300.1 C, paragraph 8.b.)

ACQUISITION BY CONDEMNATION

If the Government is unable to negotiate an acceptable agreement for the acquisition of the needed property, DOE may, as a last resort, request the institution of condemnation action by the Department of Justice under the Government's right of eminent domain. DOE Order 4300.1C, chapter IV, paragraph 2, outlines circumstances where condemnation may be necessary.

Recommendations for condemnation are approved by the Office of Counsel of the appropriate field element, and submitted to Headquarters Real Estate for review. A condemnation assembly is prepared in accordance with the Department of Justice's "**Procedural Guide for the Acquisition of Real Property by Government Agencies.**" Owners should be notified that the Government intends to pursue condemnation, and be given sufficient time to accept the final offer.

Upon the filing of the Declaration of Taking (see examples, Appendix 5-10), a check for the estimated just compensation is deposited into the Registry of the Court, and the court establishes a time and the terms on which the property will be surrendered, and issues an appropriate Order of Possession or right of entry. Property owners may be allowed to remain on the property under an outlease agreement pending need by the Government.

Following filing of the Declaration of Taking, the field organization acquiring the property should: post the property to indicate Government ownership; inspect the property and complete a "**Certificate of Inspection and Possession;**" and update the title evidence and appraisals to the date of taking.

If a **settlement agreement** on the amount of just compensation can be reached with the former owner(s), a stipulation, approved by the U. S. Attorney involved, may be executed. If a **court award** results in an amount in excess of the deposit, the U. S. Attorney will request a deficiency check be deposited by DOE into the Registry of the Court. Should the U. S. Attorney consider the award unreasonable, he will contact DOE regarding possible appeal.

All legal documents related to the condemnation action should be maintained in the real property files at the installation.

APPRAISALS

The procurement of appraisal service is a necessity in virtually all real estate transactions. Independently prepared estimates of property value are needed in connection with planning decisions, and are an essential element in acquiring, leasing, and disposing of real estate. Appraisals are also mandatory for property being acquired in accordance with the requirements of Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894), and pursuant to certain acquisition and disposal sections of the Federal Property Management Regulations (d. section 101-18; section 101-47).

PROCUREMENT OF APPRAISAL SERVICE

Qualified appraisers, preferably with an MAI (Member of the Appraisal Institute) designation, should be obtained to prepare appraisals for DOE. Specialists in certain areas of appraisal may be needed for unique or complex property acquisitions or disposals.

Appraisals are generally used to establish:

Fair Market Value - needed for the acquisition and disposal of fee ownerships and permanent easements.

Fair Rental Value - needed for the leasehold acquisition and outleasing of real property.

Value for Offsite Removal- needed in cases where real property is acquired or disposed of without the underlying fee, and must be moved from the site.

The above terms are defined in more detail in DOE Order 4300.1C, Chapter III, paragraph l.d.-g.

Usually, appraisal service may be obtained through the Corps of Engineers pursuant to the DOE-USACE Memorandum of Understanding (see Appendix 5-3). This service may also be secured through the General Services Administration or by DOE itself through informal solicitation. In an informal solicitation, at least three qualified appraisers should be asked to submit letters outlining their proposals. If the appraisal fee will exceed \$10,000, formal procurement procedures must be followed.

Appraisals must be consistent with the “Uniform Appraisal Standards for Federal Land Acquisition of 1973”, and other professional standards. A professionally prepared appraisal should thoroughly explain and fully document the basis for the appraised value.

REVIEW OF APPRAISAL

The appraisal must be reviewed before the proposed real estate action is undertaken, and before the appraisal fee is authorized. Appraisals may be reviewed by Certified Realty Specialists or, if necessary, by other agency appraisers, a fee review appraiser, or by Headquarters Real Estate. An Appraisal Checklist (Appendix 5-11) may be used in the appraisal review.

PUBLIC LAW 91-646

Acquisition of property from private individuals must be in accordance with PL 91646, Title III, which requires full disclosure by the acquiring agency of information bearing on its valuation of the owner's property. Paragraph 2.e. of DOE Order 4300.1C, Chapter III, lists the requirements under PL 91-646, Title III.