

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

3.572 ACRES OF LAND, MORE OR
LESS, SITUATED IN WEBB COUNTY,
STATE OF TEXAS; and GUILLERMO
CALDERA,

Defendants.

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CASE NO. 5:20-CV-039

**DEFENDANTS' RESPONSE AND OPPOSITION TO
MOTION OF THE UNITED STATES OF AMERICA
FOR IMMEDIATE ORDER OF POSSESSION**

The Defendants, by and through Defendant Guillermo Caldera, file this Response and Opposition to Plaintiff United States of America's (hereinafter "Government") Motion for an Order of Immediate Possession, in the following particulars:

I. Introduction

The Government filed a Complaint in Condemnation on March 11, 2020, seeking the taking of a temporary estate in real property consisting of a 12-month easement over an approximate 3.5 acre parcel of land within the city limits of the City of Laredo, on which property is situated Defendant Caldera's business. The Government seeks the immediate right to enter into all parts of the property for the purpose of conducting surveying, testing, and other investigatory activities for the siting of the Border Wall. The activities involve access onto the property over a period of 12 months, including the right to make borings, as well as trim and remove trees and vegetation, as well as structural objects which the Government determines interfere with its work.

The proposed summary taking is grounded on the Declaration of Taking Act (“DTA”), 40 U.S.C. §§ 3113 and 3114, and Rule 71.1 of the Rules of Procedure. The issue presented to the Court involve the Constitutional and statutory rights of Defendant Caldera under the Fifth Amendment to the Constitution, and the DTA, to just compensation before the Government may seize his property.

II. Background Facts

Defendant Caldera was approached on various occasions by agents of the Government prior to the filing of the herein Complaint in Condemnation, seeking his execution of a right of entry agreement (“ROE”) and temporary easement over his property, as described above. However, on no occasion did the Government offer any form of consideration for the property rights sought. The Government agents threatened to have this condemnation action filed if Defendant Caldera did not sign the ROE, advised him that he had no choice in the matter, that the property rights they sought were worthless, and that the Government did not need to offer any compensation for the ROE. Defendant Caldera was told to sign the ROE agreement or “we’ll condemn it anyway, and you’ll get nothing.” The Government agents further advised Defendant Caldera that no other land owners were being compensated for the rights of entry sought as part of the construction of the Border Wall, as they were also not entitled to compensation, and that the most he would receive for the ROE would be \$100 if he were willing to undergo the filing of a lawsuit against him. Defendant Caldera did not agree and refused to sign the proffered ROE agreement, resulting in the instant suit, and the deposit of \$100 in the Registry of the Court, as the

Government's supposed estimate of just compensation for the property rights sought in its motion for immediate possession.

By Minute Order of June 8, 2020, this Court directed the parties to discuss a mutually agreed resolution of this matter. After preliminary discussion with counsel for the Government, Defendant, by correspondence of July 6, 2020, offered to execute the 12-month ROE agreement sought by the Government for consideration of \$2,230.00. **Exhibit 1.** The Government responded that no compensation was due, and that it would not agree to any amount beyond its \$100.00 on deposit with the Court. **Exhibit 2.** In essence, the Government has responded to the Defendant's attempts to resolve this dispute by submitting that the temporary estate in real property that it seeks to take in its cause of action has no value.

III. Argument and Authorities

A. The Government Should Not be Granted Immediate Possession Because it Did Not Estimate and Deposit Just Compensation For the Property Sought to be Taken.

The Government correctly asserts in its motion that Section 40 U.S.C. 3114(a) has a dual purpose. It grants the Government immediate possession of the property rights it seeks, and it provides the owner with "immediate cash compensation to the extent of the Government's estimate of the value of the property." *United States v. Miller*, 313 U.S. 369, 381 (1943). The Government now contends that the deposit of \$100 in the registry of the Court constitutes the "estimated" just compensation authorizing its immediate taking under the DTA, as it asserts that there is no value to the rights proposed to be taken.

It has long been held that the power of eminent domain may be exercised only by giving the party "... whose property is taken or where use and enjoyment of such property is interfered with.... full and adequate compensation." *Backus v. Fort Street Union Depo Co.*, 169 U.S. 522,

573, 575 (1898). The right to just compensation for property taken for public use is enshrined in the Fifth Amendment, which states that private property shall not be taken for public use “... without just compensation.” This right is exercised to prevent the Government from forcing some people alone to bear public burdens which should be borne by the public as a whole. *Armstrong v. United States*, 364 U.S. 40, 49 (1960). Just compensation is defined as that which constitutes “a full and perfect equivalent for property taken.” *Monogahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893). Just compensation is measured “by reference to the use for which the property is suitable...or such as may be expected in the immediate future.” *Chicago B.&Q.R.R. v. Chicago*, 166 U.S. 226, 250 (1897). While the general standard for just compensation is what is commonly recognizing as fair market value, even where fair market value in a condemned property does not exist or cannot be calculated, resort must be had to other data which will yield a fair compensation. *United States v. Miller*, 317 U.S. at 374.

While the Government submits that its \$100 deposit constitutes an estimated just compensation for the 12-month easement it seeks to obtain, as required by 42 U.S.C. §3114(a), on its face the \$100 on deposit is nothing of the sort. It turns “just compensation” into “no compensation.” It is rather an arbitrary amount set at \$100 without any regard as to whether it provides fair and adequate compensation as required by the DTA. Indeed, the government admits that the \$100 on deposit in this case is not an actual estimate of just compensation for the property at issue, given that the Government “estimates” the sum of \$100 as just compensation for the hundreds of myriad other parcels affected by ROE condemnation litigation in its Border Wall Project. **Exhibit 3**. Since the Government has determined that the ROE agreement in its Border Wall Project are not entitled to compensation, the \$100 deposit in this case is no more than an estimate of no value. However, the property rights sought by the Government are capable of being

valued using commonly accepted appraisal methods. **Exhibit 4.** Rather than provide Caldera with immediate just compensation based on a legitimate and authentic estimate of just compensation, as required by 40 U.S.C. §3114(a), the Government submits a sham \$100 as a purported estimated consideration for the property it seeks to summarily take.

While the amount offered to a landowner by a condemnor is normally immaterial under §3114(a), it becomes so when the amount has a bearing on the question of whether the condemnor was acting in good faith. *United States. v. 1.04 Acres of Land*, 538 F.Supp.2d 995, 1011 (S.D. Tx 2008); *Transcont'l Gas Pipe Line Corp. v. 118 Acres of Land*, 745 F.Supp. 366, 369 (E.D. La. 1990). In the instant case, the so-called estimated just compensation for all intents and purposes is plainly a pretense and a fiction, amounts to no more than a simulated and token compliance with the DTA, and would result in a blatant violation of Defendant's Fifth Amendment rights if the Government's motion be granted.

The Court should not allow the Government to perpetrate this fraud and theft of private property rights. Defendant, and every other landowner affected in a similar way by the Government's taking of their property rights pursuant to its Border Wall Project, deserves to have an individualized evaluation and estimation by the Government of the value of the property rights sought in its proposed summary taking. While the Government may argue that it needs immediate possession of the property rights at issue, this should not allow it to violate the DTA, which calls for the deposit of an actual bonafide estimated cash amount of just compensation, instead of a token deposit that is not in any way related to just compensation. Accordingly, the Government's motion for immediate possession fails as it does not comply with the DTA.

B. The Government Should not be Granted Immediate Possession Because it did not Engage in Bonafide Negotiations on Payment for the Temporary Easement.

The Government's power to take the temporary estate pursuant to its Complaint in Condemnation is subject to 8 U.S.C. § 1103(b)(3) of the DTA, which does not authorize the filing of a condemnation action (or by implication the entry of an order of immediate possession) unless the owner and the Government are "... unable to agree upon a reasonable price." This Court has accordingly held, in a similar case involving a ROE, that the DTA creates a duty on the part of the Government to negotiate payment for its seizures in good faith and in a bonafide manner:

"The Government is required to put forth a bonafide effort to determine whether an agreement can be reached. The United States must provide this court with sufficient evidence for it to determine that the Government has made a bonafide effort to negotiate with Dr. Tamez for this interest in his land."

U.S. v. 1.04 Acres of Land, 538 F.Supp. 995 at 1012.

In the instant case, the issue before the Court, in measuring the bonafide effort of the Government in negotiating a price for the ROE, is not the amount which constitutes just compensation, but rather whether the temporary estate sought to be taken by the Government has any value whatsoever. As noted by this court; "(t)he amount offered to the landowner is material ... insofar as it may have a bearing on the question of whether the condemnor was in good faith." *Supra* at 1011, citing *Transcont'l Gas Pipe Line Corp.*, 745 F.Supp. at 369.

Defendant made an offer of \$2,230 for the temporary estate sought by the Government. However, the Government has refused to pay any amount for the property rights it seeks beyond its \$100 symbolic deposit, and has flatly rejected any compromise, contending that the granting of the rights at issue have no monetary value. Yet, landowners have typically gained payment for the temporary non-exclusive use of their private property. Construction easements, grazing and hunting rights, recreational easements, are examples of temporary, non-exclusive property rights

providing monetary value to landowners. Specifically, Defendant can show that the temporary estate sought by the Government herein in its Complaint in Condemnation does in fact have monetary value that can reasonably be ascertained using commercially recognized methods.

Exhibit 4.

The Government's arbitrary designation of the property it seeks to take from Defendant as having no value, its refusal to negotiate from that position, its sham deposit of \$100 as its "estimated" just compensation in seeking immediate possession - not only in this case but in all other similar cases within its Border Wall Project - are clear evidence of its utter failure to engage in the bonafide negotiations called for under 8 U.S.C. §1103(b), and as required by this Court. This Court has held that it has the power to direct further negotiations before entry of an order of immediate possession where it finds, as is evident in the instant case, negotiations to have been inadequate due to the Government failing to put forth a bonafide effort to negotiate terms for the property rights sought to be taken. *United States v. 1.04 Acres of Land*, 538 F.Supp. 2d at 1011-1012. It should do so in the instant case.

The Government's motion should not be granted absent proof that it has negotiated in good faith by submitting an offer to Defendant of an estimated just compensation based on a commercially acceptable valuation, and depositing its final and best offer of estimated just compensation in the registry of the Court if no agreement on payment is reached.

C. The Court Should Require the Government To Value the Property Pursuant to a Commercial Appraisal.

The DTA grants the Government the right to immediate possession of the property upon the filing of a suit in condemnation. However, in order to comply with the Fifth Amendment, the DTA grants the landowner the right to immediate cash compensation for the taking it is forced to

yield. The Government may thus avail itself of the summary seizure of private property under the DTA only if it deposits a legitimate and bonafide estimate of just compensation at the time it seeks to seize the property, and not upon a cursory deposit of an insignificant sum designed merely to subvert the statute's intent. *United States v. Miller*, 313 U.S. 369 at 381.

While the Court may not ordinarily question the amount offered to a landowner for its taking under the DTA, the Court is not bound to rubber-stamp an offer submitted by the Government, even if made in good faith. Rather, the Court should be guided by Section 301 of the Uniform Real Property Acquisition Policy Act, which calls for the appraisal by the Government of real property subject to condemnation, and requires the Government to negotiate for the purchase of the property rights it seeks based on its appraisal. 42 U.S.C. §§ 4651(2); 42 U.S.C. 4651(3). While Section 301 precludes judicial review of the Government's real property acquisition practices upon completion, Congress has set out therein its stated expression of policy regarding the manner by which the Government should proceed in its condemnation activities. *Barnhart v. Brinegar*, 362 F. Supp. 464, 472-473 (W.D.Mo.)

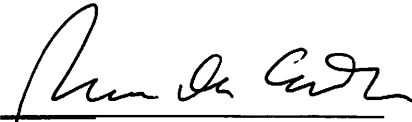
The right of the Defendant to have just compensation upon the summary taking of his property rights, as required by the Fifth Amendment and the DTA, calls for the Court to order the Government to show its compliance with the DTA, and with the bonafide negotiations requirements of this Court in *United States v. 1.04 Acres of Land*, by engaging in condemnation proceeding as designated by Congress under Section 301, and as followed by all after federal agencies, including the use of commercial appraisals in providing for payment. **See, Exhibit 5.** Otherwise, the protections afforded landowners by the Fifth Amendment and the DTA will be egregiously violated, the Constitutional and legal rights of hundreds of landowners in Webb and Zapata Counties will be cast aside, and the Court will be faced with assenting to unverified

estimates of supposed just compensation by the Government, as it summarily seizes the real property rights of landowners along more than a hundred miles of riverfront properties in Webb and Zapata Counties for no compensation.

IV. Conclusion

For the reasons set out above, the Court should set this matter for hearing, and after considering the evidence and arguments of counsel, deny the Government's Motion for Immediate Possession, order it to enter into bonafide negotiation with Defendant for payment for the property rights sought in its Complaint in Condemnation, including the provision of just compensation for the property rights at issue based on a commercial appraisal generated by the Government.

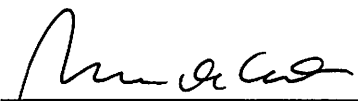
Respectfully Submitted,



Ricardo de Anda
De Anda Law Firm, PC
212 Flores Ave.
Laredo, Texas. 78040
Telephone: (956)726-0038
Facsimile: (956)727-2696
Email: deandalaw@gmail.com
SBN: 05689500

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on the 10th day of July, 2020, he electronically submitted a true and correct copy of the foregoing pleading with the court via the CM/ECF system, which serve a copy on all counsel of record.



Ricardo de Anda



Ana Perez <cperez.deandalaw@gmail.com>

Fwd: Case no 5:20-CV-039 US v Caldera

Ricardo de Anda <deandalaw@gmail.com>
To: Ana Perez <cperez.deandalaw@gmail.com>

Fri, Jul 10, 2020 at 3:26 PM

Pront

----- Forwarded message -----

From: **Ricardo de Anda** <deandalaw@gmail.com>
Date: Mon, Jul 6, 2020, 11:02 AM
Subject: Case no 5:20-CV-039 US v Caldera
To: DerGarabedian, Alexander (USATXS) <Alexander.DerGarabedian@usdoj.gov>

Dear Alex,
Guillermo Caldera is willing to negotiate a ROE agreement suitable for the government's needs, as set out in your complaint in condemnation, if it is willing to pay the sum of \$2230 for the 12 month easement estate which it seeks.
Thank you,
Ricardo de Anda





Ana Perez <cperez.deandalaw@gmail.com>

Fwd: Case no 5:20-CV-039 US v Caldera

Ricardo de Anda <deandalaw@gmail.com>
To: Ana Perez <cperez.deandalaw@gmail.com>

Fri, Jul 10, 2020 at 3:27 PM

Pront

----- Forwarded message -----

From: **DerGarabedian, Alexander (USATXS)** <Alexander.DerGarabedian@usdoj.gov>
Date: Tue, Jul 7, 2020, 7:40 AM
Subject: RE: Case no 5:20-CV-039 US v Caldera
To: Ricardo de Anda <deandalaw@gmail.com>
Cc: Garza, Vanessa (USATXS) [Contractor] <Vanessa.Garza@usdoj.gov>

Mr. de Anda,


As we have discussed before, we cannot negotiate the price of an unopposed ROE. If the ROE is signed willingly, no just compensation is given. If it is opposed and we must proceed with litigation, the land owner will get no more than \$100.00 (I am only speaking of the ROE specifically). I have yet to see the court, except in one very exceptional circumstance, impose more than \$100 for an ROE. So if this is your client's only concern, it is very highly likely he will still not get anywhere near that sum, even if he opposes it.

Additionally, is your client willing to sign the attached. If so, we must do so before our next hearing. If you prefer, just sign your end and I can fill out the rest.

From: Ricardo de Anda <deandalaw@gmail.com>
Sent: Monday, July 6, 2020 11:02 AM
To: DerGarabedian, Alexander (USATXS) <ADerGarabedian@usa.doj.gov>
Subject: Case no 5:20-CV-039 US v Caldera

Dear Alex,

[Quoted text hidden]

 **Consent to Mag Form.pdf**
13K





Ana Perez <cperez.deandalaw@gmail.com>

Fwd: ROE

Ricardo de Anda <deandalaw@gmail.com>
To: Ana Perez <cperez.deandalaw@gmail.com>

Sun, Jul 5, 2020 at 1:56 PM

Print email for Caldera

----- Forwarded message -----

From: **DerGarabedian, Alexander (USATXS)** <Alexander.DerGarabedian@usdoj.gov>
Date: Fri, Jun 12, 2020, 10:58 AM
Subject: RE: ROE
To: Ricardo de Anda <deandalaw@gmail.com>
Cc: Garza, Vanessa (USATXS) [Contractor] <Vanessa.Garza@usdoj.gov>

Mr. de Anda,







There is no compensation given for ROEs, unless of course they are opposed and in which case we put \$100 in the court registry. This is true for every opposed ROE regardless of acreage.

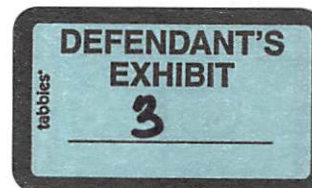
Please see attached for the documents you requested.

Finally, there are no proposed design plans for this tract that I am currently aware of since we have not been able to access and examine yet.

[Quoted text hidden]

6 attachments

-  **2020-03-27 Ltr to All re Dk 6.pdf**
527K
-  **2020-05-29 LTR to ALL re JDCMP.pdf**
132K
-  **2020-03-11 LTR to ALL re NTC PKT.pdf**
3842K
-  **Aerial Map LRN1043_Caldera_Webb.pdf**
410K
-  **2020-06-03 LTR to ALL re Order.pdf**
119K
-  **2020-04-09 LTR to ALL re Mt for P.pdf**
175K



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. 5:20-CV-039
	§	
3.572 ACRES OF LAND, MORE OR	§	
LESS, SITUATED IN WEBB COUNTY,	§	
STATE OF TEXAS; and GUILLERMO	§	
CALDERA,	§	
Defendants.	§	

DECLARATION OF RAY CHANCE BOLON

1. My name is Ray Chance Bolton, and I have personal knowledge of the matters contained in this Affidavit. I am a commercial real estate appraiser and the managing partner of Bolton Real Estate Consultants, Ltd. Our office is located at 3103 Bee Caves Road, Suite 225, Austin, Texas 78746.

2. I received a Bachelor of Business Administration Degree in Entrepreneurship from the University of Houston and I am a Certified General Real Estate Appraiser, licensed by the Texas Appraiser Licensing and Certification Board. Further, I am licensed as a Texas Real Estate Broker by the Texas Real Estate Commission. A copy of my qualification is attached to this affidavit.

3. I have been asked to determine whether the property rights sought by the Government in this suit have value. In preparation for investigation of the issue of whether the Caldera property has value, I examined documentation related to the subject property including the subject deed, legal description, Webb County tax information, maps, and aerial photographs. I have considered US Customs and Border Protection's proposed Right of Entry for Survey and Site Assessment



document provided to me by the property owner. Additionally, I have considered information from texts and publications that are relevant to the issue, including: Uniform Appraisal Standards for Federal Land Acquisitions – 2016, Real Property Valuation in Condemnation , and The Dictionary of Real Estate Appraisal .

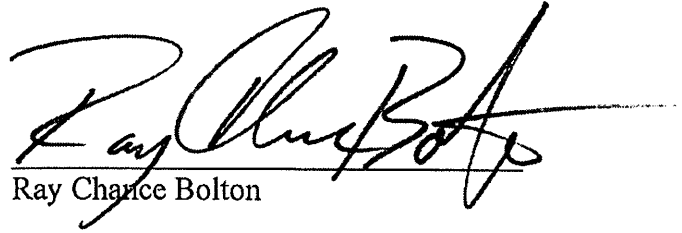
4. It is my opinion that the right-of-entry sought by the United States government on Mr. Guillermo Caldera's property has market value. It is a portion of the bundle rights innate in real property ownership. Real property, as defined by the Dictionary of Real Estate Appraisal, Fifth Edition (Appraisal Institute 2010) is "The interests, benefits, and rights inherent in the ownership of real estate."

5. The right-of-entry authority rests solely in the owner of a property. Should this right be bestowed by the property owner upon another, even in a non-exclusive fashion, the rights of the owner would become restricted or lessened. It is my opinion that in exchange, a property owner would have an expectation of compensation for relinquishing this right.

6. Though evidence of market transaction for rights-of-entry for survey inspections may not be readily available (and I have not researched such, at this time), similar limited duration right exchange examples do exist. For instance, temporary construction easements for utility infrastructure are purchased to facilitate construction of pipelines and powerlines when space is required outside of the purchased easement area. This type of easement usually has a limited duration and compensation for such right is typically based on a rate of return (or rent) on an annual basis. Another example would be a non-exclusive hunting or grazing lease. These leases are typically on an annual basis per gun or per acre value utilizing the property at prevailing market rates.

7. It is my opinion that the right-of-entry sought by the Government is a portion of the bundle of rights inherent in real property, and that these rights have value in exchange.

8. I declare under penalty of perjury that the following is true and correct. Executed on July 10, 2020 in Laredo, Texas.



Ray Chance Bolton



R. CHANCE BOLTON

APPRAISAL QUALIFICATIONS

EXPERIENCE

R. Chance Bolton is the Managing Partner of Bolton Real Estate Consultants, Ltd located at 3103 Bee Cave Road, Suite 225, Austin, Texas 78746. He has been with the firm since 2003. He oversees appraisal assignments throughout Texas involving vacant land, farm and ranch, industrial, office, retail and special use real estate. Mr. Bolton has qualified as a real estate valuation expert witness in special commissioner's hearings and county court-at-law.

EDUCATION

Business Bachelor of Arts (BBA) degree in Entrepreneurship from the University of Houston

Completion of fundamental, advanced and continuing education coursework focusing on real estate appraisal and brokerage, including:

15-Hour National USPAP Course	Principles of Real Estate I & II
Appraisal Principles	Law of Contracts
Appraisal Procedures	Law of Agency
Basic Income Capitalization	Principles of Commercial Real Estate
Appraising Convenience Stores	Commercial Sales & Exchanges
Sales Comparison Approach	Real Estate Brokerage
Income Approach I & II	Insider's Guide to Commercial Real Estate
Report Writing & Case Studies	TREC Legal Update MCE
Market Analysis & Highest and Best Use	TREC Ethics MCE
Business Practices & Ethics	Broker Responsibility
Real Estate Finance Statistics & Valuation Modeling	
Site Valuation & Cost Approach	
Advanced Market Analysis & Highest and Best Use	
Quantitative Analysis	
USPAP Update	
Advanced Income Capitalization	
Advanced Concepts and Case Studies	

ACCREDITATIONS

Texas General Certified Real Estate Appraiser (License #TX-1380325-G)
Texas Licensed Real Estate Broker (License #576982)
FAA Certified Small Unmanned Aircraft System Remote Pilot

ORGANIZATIONS/ASSOCIATIONS

Texas Appraiser Licensing & Certification Board (TALCB) – Board Member (2016-2022)
Appraisal Institute – Candidate for Designation
Texas Board of Realtors - Realtor
Lake Travis Education Foundation – Board Member (2013-2016)
State Bar of Texas – Law Focused Education Committee Member (2013-2016)
United States Navy Veteran



Real Property
ACQUISITION
Handbook

How the U.S. General Services
Administration Acquires Real Property
for Programs and Projects



GSA Public Buildings Service



Property Appraisal and the Determination of Just Compensation

PROPERTY APPRAISAL

The U.S. General Services Administration (GSA) determines the specific property to be acquired for a public program or project after the project has been planned and the government requirements have been established.

If a property, or a portion of it, needs to be acquired, the primary owner will be notified as soon as possible of:

- (1) GSA's interest in acquiring the property;
- (2) GSA's obligation to obtain any necessary appraisals; and
- (3) Any other useful information.

When GSA begins the acquisition process, the first personal contact with the property owner should be no later than during the appraisal of the property.

An appraiser will contact the property owner to make an appointment to inspect his or her property. The appraiser is responsible for determining the initial fair market value of the property. GSA will have a review appraiser analyze the appraisal report and recommend whether or not the agency should accept the report. The accepted appraisal report will become the basis for the agency's offer of just compensation for the property. The property owner, or a representative designated by the property owner, will be invited to accompany the appraiser when the appraiser inspects the property. The property owner, or his or

her representative, may point out any unusual or hidden features of the property that the appraiser might overlook. At this time, the property owner should advise the appraiser if any of these conditions exist:

- Other persons who have an ownership or other interest in the property, whether or not of record;
- Tenants on the property;
- Items of real or personal property located on the property that belong to another person; or
- Presence of hazardous materials, underground storage or utilities.

This is the owner's opportunity to tell the appraiser about anything relevant to the property's valuation, including other properties in the area that have sold recently.

The appraiser will inspect the property and note its physical characteristics. He or she will review sales of properties similar to the subject property to compare the facts of those sales with the facts about the property. The appraiser will analyze all elements that affect value.

The appraiser must consider any normal depreciation and physical deterioration that have taken place. By law, the appraiser must disregard the influence of the future public project on the value of the property. This requirement may be partially responsible for any difference in the fair market value and market value of the subject property.

The appraisal report will describe the property, and GSA will determine a value based on the condition of the property as of the day the

appraiser last inspected it compared with other similar properties that have sold.

Once the appraisal of fair market value is complete, a review appraiser from GSA will review the report to confirm that all applicable appraisal standards and requirements have been met. The GSA review appraiser will then determine the amount of just compensation to be offered for the real property. This amount will never be less than the fair market value established by the approved appraisal.

If GSA is acquiring only a portion of the property, there may be damages or ancillary benefits to the remaining property. Any allowable damages or benefits will be reflected in the offer of just compensation. GSA will prepare a written offer of just compensation for the property owner when negotiations begin.

BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS

Sometimes, buildings, structures or other improvements are located on the property to be acquired. If they are determined to be real

property, GSA must offer to acquire at least an equal interest in all buildings, structures or other improvements located on the real property to be acquired if they must be removed or if they will be adversely affected by the use to which the real property will be put. This includes any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration or earlier termination of the lease term, as discussed in greater detail immediately below.

JUST COMPENSATION TENANT-OWNED IMPROVEMENTS

Sometimes, a tenant leases real property and builds or adds improvements for his or her own use. Frequently, the tenant has the right or obligation to remove the improvements at the expiration or earlier termination of the lease term. If, under state law, the improvements would be considered to be real property, GSA must treat the improvements as real property and make an offer to the tenant-owner to acquire these improvements as though they were real

“An appraiser will contact the property owner to make an appointment to inspect his or her property. The appraiser is responsible for determining the initial fair market value of the property. ”

Property Appraisal and the Determination of Just Compensation

these improvements as though they were real property. To be paid for these improvements, the tenant-owner must assign, transfer and release to GSA all of the tenant-owner's right, title and interest in the improvements. In addition, the owner of the real property on which the improvements are located must relinquish all interest he or she has in the improvements.

In the case of a tenant improvement, the measure of just compensation is the amount the improvement contributes to the fair market value of the whole property, or its value for removal from the property (salvage value), whichever amount is greater. A tenant-owner may reject payment for the tenant improvements and obtain payment for his or her property interests in accordance with other applicable law. GSA is not authorized to pay for tenant-owned improvements if such payment would result in the duplication of any compensation otherwise authorized by law. If state law considers the tenant-owned improvements

to be personal property, then the tenant may be reimbursed for moving them under the relocation assistance provision.

GSA will personally contact a tenant who has made any such improvements to explain the procedures to be followed. Any payments must be made in accordance with applicable Federal and state laws and regulations. The Uniform Act requires that all rental property to be acquired must be appraised, but it also authorizes waiving that requirement for low-value acquisitions.

The regulations authorize an agency to waive the appraisal requirement under certain circumstances. If an owner elects to donate his or her real property and releases GSA from the obligation to obtain an appraisal, or if GSA believes acquisition of the real property is uncomplicated and a review of available data supports a fair market value likely to be \$10,000 or less, GSA may prepare a waiver valuation, rather than an appraisal, to estimate the property's fair market value.

EXCEPTIONS TO THE APPRAISAL REQUIREMENTS

If GSA believes acquisition of the real property is uncomplicated and a review of available data supports a fair market value likely to be greater than \$10,000, but less than \$25,000, GSA may prepare a waiver valuation, rather than an appraisal, to estimate the real property's fair market value, if the agency offers the property owner the option of having the agency appraise the property. If the owner elects to have GSA appraise the property, an appraisal must be obtained.



Negotiations

THE WRITTEN OFFER

After GSA approves the offer of just compensation, the agency will begin negotiations with the property owner, or his or her designated representative, by delivering the written offer of just compensation for the purchase of the real property. Whenever possible, the offer will be delivered in person by a GSA representative; otherwise, the offer will be mailed and followed up by a personal visit or phone call. All owners of the property with known addresses will be contacted, unless they collectively have designated one person to represent their interests. An agency representative will discuss the agency's offer to purchase the property, including the basis for the offer of just compensation and the agency's acquisition policies and procedures.

Along with the initial written purchase offer, GSA must give the owner a written summary statement of the basis for the offer of just compensation, which must include, at a minimum, the following information:

- The amount offered as just compensation;
- The description and location of the property and the interest to be acquired; and
- The identification of the buildings and other improvements that are considered to be part of the real property and included as part of the offer of just compensation.



The offer may list items of real property that the owner may elect to retain and remove from the property and the retention values associated with the individual items. If the owner decides to retain any or all of these items, the offer will be reduced by the value of the items retained. The owner will be responsible for removing the items from the property in a timely manner. GSA may elect to withhold a portion of the remaining offer until the retained items are removed from the property. Any separately held ownership interest in the property, such as tenant-owned improvements, will be identified by GSA. GSA may negotiate individually with each person who holds a separate ownership interest in the property, or it may negotiate with the primary owner and prepare a check payable jointly to all owners.

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GSA will give the owner a reasonable amount of time to consider the written offer and to ask questions or seek clarification of anything that is not understood. If the owner of the property believes that all relevant materials were not considered during the appraisal, he or she may present such information at this time. The owner also may request modifications to the proposed terms and conditions of the purchase and sale. GSA will consider any reasonable requests.

“ GSA may not take any action to force an owner to accept its offer. ”

PARTIAL ACQUISITION

In some cases, GSA will not need to acquire all of the owner's property. GSA usually will purchase only what it needs. If GSA intends to acquire only a portion of the property, the agency must state the amount to be paid for the part to be acquired. In addition, an amount will be stated separately for damages, if any, to the portion of the property to be retained by the property owner. If GSA determines that the remainder property will have little or no value or use to the owner, GSA will consider this remainder to be an uneconomic remnant and

will offer to purchase it. The owner will then have the option of accepting the purchase offer for the uneconomic remnant or keeping the property.

AGREEMENT BETWEEN THE PROPERTY OWNER AND GSA

If the property owner reaches an agreement with GSA on the terms and conditions of the offer, the owner will be asked to sign a purchase and sale agreement, an easement or some form of deed that GSA has prepared, as applicable. The owner's signature will affirm that the owner and the agency are in agreement concerning the terms and conditions of the acquisition of the property.

If the owner does not reach an agreement with GSA, the agency may suggest mediation as a means of coming to an agreement. If, after making every reasonable effort to acquire the property by negotiation, GSA reasonably believes that an agreement cannot be reached, it will initiate condemnation proceedings.

GSA may not take any action to force an owner to accept its offer. Prohibited actions include:

- Advancing the time of condemnation;
- Deferring negotiations;
- Deferring condemnation;
- Delaying the deposit of funds with the court for the owner's use once condemnation is initiated; or
- Taking any other coercive action designed to force an agreement on the price to be paid for the property.

PAYMENT

The next step in the acquisition process is payment for the property. As soon as all of the necessary paperwork is completed for transferring title to the property, GSA will pay off any liens against the property and pay the remaining equity to the property owner. The owner's incidental expenses also will be paid or reimbursed. Incidental expenses are reasonable expenses that the owner necessarily incurred as a result of transferring title to GSA, such as:

- Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses necessary to convey title to the property to GSA. GSA is not required to pay costs to perfect the owner's title, or to assure that the title to the real property is entirely without defect.
- Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.
- The pro rata share of any prepaid real property taxes that can be allocated to the period after GSA obtains title to the property or effective possession of it, whichever is earlier.

If possible, GSA will pay these costs directly to the property owner to eliminate claim reimbursement.

POSSESSION

GSA may not take possession of the real property until:

- The owner has been paid the agreed-upon purchase price, or
- In the case of condemnation, GSA has deposited with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of the property, or the amount of the court award of compensation in the condemnation proceeding for the property.

If GSA takes possession while persons still occupy the property, all persons lawfully occupying the property must receive a written notice to move at least 90 days in advance of the required date to move.

A lawful occupant of a residence cannot be required to move until at least 90 days after a comparable replacement dwelling has been made available for occupancy. Only in unusual circumstances, such as when continued occupancy would constitute a substantial danger to the health or safety of the occupants, may occupants of the property be required to vacate on less than 90 days advance written notice.

A Relocation Counselor will be appointed and made available to all occupants to explain their rights, respond to any questions and process all claims for reimbursement under the Uniform Act.

Settlement and Condemnation

SETTLEMENT

GSA will make every reasonable effort to reach an agreement with the property owner during negotiations. The owner may provide additional information and make reasonable counteroffers and proposals for GSA to consider. When it is in the public interest, GSA may use this information as a basis for an administrative settlement, as appropriate.

CONDEMNATION

If an agreement cannot be reached, GSA may acquire the property by exercising its power of eminent domain by instituting formal condemnation proceedings with the appropriate Federal court.

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LITIGATION EXPENSES

Normally, GSA does not reimburse a property owner for expenses he or she incurs as a result of condemnation proceedings. However, GSA will reimburse a property owner for any reasonable expenses, including reasonable attorney, appraisal and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- The court determines that GSA cannot acquire the real property by condemnation;
- GSA abandons the condemnation proceeding other than under an agreed-upon settlement; or
- The property owner files an inverse condemnation action and the court renders a judgment in favor of the owner or the agency settles the case.

