

B O N N E V I L L E P O W E R A D M I N I S T R A T I O N

Real Property Acquisition Handbook

*How the
Bonneville Power
Administration
Acquires Real
Property for Programs
and Projects*





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“Federal projects designed to benefit the public may result in the acquisition of private property and sometimes in the displacement of people from their residences, places of business or farms.”

THE FIFTH AMENDMENT to the United States Constitution provides that private property may not be taken for public use without the payment of just compensation. To provide uniform and equitable treatment of people whose property is acquired for public use, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987. The law is commonly referred to as the Uniform Act. Implementing regulations for the Uniform Act are issued by the Department of Transportation and can be found in part 24 of title 49 of the Code of Federal Regulations. All federal, state and local government agencies, as well as others receiving federal financial assistance for public programs and projects that require the acquisition of real property, must comply with the policies and provisions set forth in the Uniform Act

The acquisition itself does not need to be federally funded for the Uniform Act to apply. If federal funds are used in any phase of the program or project, the rules and regulations of the Uniform Act apply.

The Uniform Act requires agencies to make “every reasonable effort to acquire expeditiously real property by negotiation,” 42 U.S.C. § 4615. The objective is to encourage agreements with property owners to minimize litigation and promote public confidence in federal and federally assisted land acquisition programs.

This brochure explains the rights of an owner of real property to be acquired for a federally funded program or project. An accompanying brochure, entitled “Relocation Handbook,” explains the rights and benefits of a displaced person under the Federal Relocation Assistance Program.

Common Terms Used in Acquiring Real Property

ACQUISITION

Acquisition is the process of gaining ownership or control of real property (real estate) or an interest in real property.

AGENCY

An agency can be a governmental organization (federal, state or local), a nongovernmental organization (such as a utility company), or a private person, using federal financial assistance for a program or project that acquires real property or displaces a person. (All reference to “agency” in this brochure refers to the Bonneville Power Administration, also shortened to BPA.)

APPRAISAL

An appraisal is a written statement prepared independently and impartially by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

CONDEMNATION

Condemnation is the legal process of acquiring private property for public use or purposes through the government’s power of eminent

domain. Condemnation is not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An agency then goes to the court to acquire the needed property.

EASEMENT

An easement is an interest in real property that affords a person the right to make a limited use of another person’s real property. An easement may be exclusive or nonexclusive and may be perpetual or expressly limited in duration. Examples of easements are (1) a right-of-way, (2) a right of entry for a stated purpose, (3) a right to the support of lands and buildings, (4) a right of light and air, (5) a right to place or keep utilities on another person’s property, (6) a right to the perpetual maintenance of drainage structures, (7) a right to allow construction of a road (8) a right to do some act that would otherwise constitute a nuisance.

EMINENT DOMAIN

Eminent domain is the right of the government to take private property for public use. In the United States, just compensation must be paid for private property acquired in connection with federally funded programs or projects.



FAIR MARKET VALUE

Fair market value is the price on the date of valuation that a property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

INTEREST

An interest is a right, title or legal share in something. People who share in the ownership of real property have an interest in the property.

INVERSE CONDEMNATION

Inverse condemnation is a term used to describe a situation in which the government takes private property but fails to pay the compensation required by the Fifth Amendment to the U.S. Constitution. To be compensated, the owner must then sue the government.

JUST COMPENSATION

Just compensation is the price an agency must pay to acquire real property. An agency official must make the estimate of just compensation to be offered for the property, which amount may not be less than the amount established in the approved appraisal report as the fair market value for the property. If the owner and BPA cannot

agree on the amount of just compensation, the amount will be determined in court

LIEN

A lien is a legal claim of one person upon the property of another person to secure the payment of a debt or the satisfaction of an obligation. Examples include mortgages, mechanics’ liens and tax liens. As a general rule, liens must be paid in full when the property is sold.

MARKET VALUE

Market value is the sales price that a willing and informed buyer would pay in cash to a willing and informed seller for a particular property.

NEGOTIATION

Negotiation is the act of discussing an issue between two or more parties with competing interests with an aim of coming to an agreement. It is the process by which BPA and the seller of property seek to reach an amicable agreement over the terms and conditions of the sale of property.

PERSON

A person is an individual, family, partnership, corporation or association.



“The Fifth Amendment of the Constitution states that private property shall not be taken for public use without the payment of just compensation.”

PERSONAL PROPERTY

In general, personal property is property that can be moved. It is not permanently attached to, nor a part of, the real property. Personal property is not to be included and valued in appraising real property.

PROGRAM OR PROJECT

A program or project is an activity or series of activities undertaken by an agency where federal financial assistance is used in any phase of the activity.


UNECONOMIC REMNANT

A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the agency has determined has little or no value or utility to the owner.

WAIVER VALUATION

The valuation process used and product produced when the agency determines that an appraisal is not required. A waiver valuation may be used for relatively low-value, non complex acquisitions. A waiver valuation is prepared instead of an appraisal.



A woman with blonde hair, wearing a teal blazer, is shown in profile, talking on a mobile phone. She is holding a rolled-up white document under her arm. The background is a blurred outdoor setting with greenery. A purple semi-transparent banner is overlaid on the lower half of the image, containing the title text.

Property Appraisal and the Determination of Just Compensation

Property Appraisal

The Bonneville Power Administration determines the specific property to be acquired for a public program or project after the project has been planned and 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. BPA's interest in acquiring the property.
2. BPA's obligation to obtain any necessary appraisals.
3. Any other useful information.

When BPA 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 fair market value of the property. BPA will have a review appraiser analyze the appraisal report and recommend whether 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 representative designated by the property owner, will be invited to accompany the appraiser when the appraiser inspects the property.

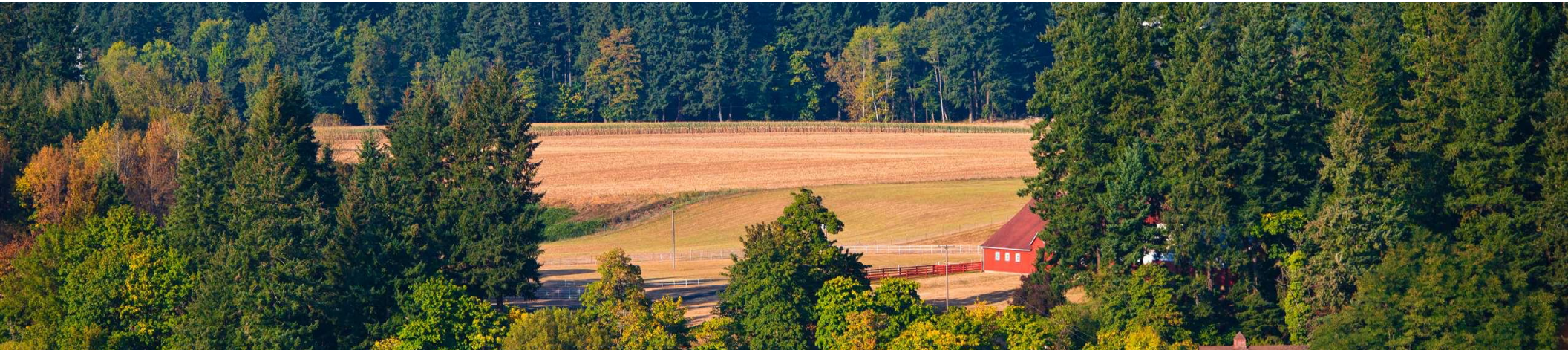
The property owner, or his or her representative, may point out any unusual or hidden features of the property that the appraiser might overlook. At this time, the property owner should advise the appraiser if any of these conditions exist:

- 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.
- 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 the 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 the market value of the subject property.

The appraisal report will describe the property, and BPA 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 BPA will review the report to confirm that all applicable appraisal standards and requirements have been met. The BPA 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 BPA 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. BPA will prepare a written offer of just compensation for the property owner when the 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, BPA must offer to acquire at least

an equal interest in all buildings, structures or other improvements located on the real property 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 or a tenant-owner who has the right or obligation to remove the improvement at the expiration or termination of the lease term.

Just Compensation

TENANT-OWNER 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 termination of the lease term. If under state law, the improvements would be considered real property, BPA must treat the improvement as real property and make an offer to the tenant-owner to acquire these improvements as though they were real property. To be paid for these improvements, the tenant-owner must assign, transfer and release to BPA 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 tenant improvements, 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 interest in accordance with other applicable law. BPA 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.

BPA will personally contact a tenant who has made any such improvements to explain the procedures to be followed. Any payment must be made in accordance with the applicable federal and state laws and regulations. The Uniform Act requires that all real 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 requirements under certain circumstances:

- If an owner elects to donate his or her real property and releases BPA from the obligation to obtain an appraisal.
- If the acquisition of the real property is uncomplicated and the fair market value is likely to be less than \$25,000.

EXCEPTIONS TO THE APPRAISAL REQUIREMENTS

If BPA believes acquisition of the real property is uncomplicated and a review of available data supports a fair market value likely to be less than \$10,000, BPA will prepare a waiver valuation, rather than an appraisal.

If the market value falls above \$10,000 the agency will appraise the property.

“The Uniform Act requires all real property to be appraised, but it also authorizes waiving that requirement for low-value acquisitions.”

A woman with short, dark, curly hair is shown in profile, looking towards the left. She is wearing a white pinstriped blazer over a dark top. Her hands are raised in a gesturing motion, with her fingers spread. She has bright pink nail polish. To her left, the back of a person with long blonde hair is visible. The background is a blurred green outdoor setting. A semi-transparent purple rounded rectangle is overlaid on the image, containing the word "Negotiations" in white text.

Negotiations

The Written Offer

After BPA 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 purchase of the real property. Whenever possible, the offer will be delivered in person by a BPA representative; otherwise, the offer will be mailed and followed up by a personal visit or phone call. BPA will contact all owners of the property with known addresses, 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, BPA 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.
- 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. BPA 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 BPA. BPA 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.

BPA will give the owners 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. BPA will consider any reasonable requests.

BPA may not take any action to force an owner to accept its offer.

PARTIAL ACQUISITION

In many cases, BPA will not need to acquire all of the owner's property. BPA usually will purchase only what it needs. If BPA 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 BPA determines that the remainder property will have little or no value or use to the owner, BPA 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.

AGREEMENTS BETWEEN THE PROPERTY OWNER AND BPA

If the property owner reaches an agreement with BPA 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 BPA has prepared. The owner's signature will affirm that the owner and the agency agree on the terms and conditions of the property acquisition.

If the owner does not reach an agreement with BPA, 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, BPA reasonably be-

lieves that an agreement cannot be reached, BPA will consider condemnation proceedings.

BPA 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.
- 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 the property title transfer, BPA 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 BPA, 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 BPA. BPA is not required to pay costs to perfect the owner's title or to assure that the property is entirely without defects.
- Penalty costs and other charges for prepayment of any pre-existing 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 BPA obtains title to the property or effective possession of it, whichever is earlier

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

POSSESSION

BPA may not take possession of the real property, or an interest in real property, until:

- The owner has been paid the agreed-upon purchase price.
- In the case of condemnation, BPA 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 proceedings for the property.

If BPA takes possession while the property is still occupied, anyone legally 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.

In most cases BPA acquires only a partial interest in real property, such as an easement or right-of-way, and therefore possession of BPA's interest in the real property rarely requires the relocation of a property occupant. If however, relocation is required, 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.

A man in a dark suit and a woman in a dark blazer are sitting at a table, looking at a laptop screen. The man is pointing at the screen with his right hand. The woman is holding a white mug of coffee in her left hand. The laptop is silver and has a keyboard. The background is a light-colored wall.

Settlement and Condemnation

Settlement

BPA 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 BPA to consider. When it is in the public interest, BPA may use this information as a basis for an administrative settlement, as appropriate.

CONDEMNATION

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

LITIGATION EXPENSES

Normally, BPA does not reimburse a property owner for expenses he or she incurs as a result of condemnation proceedings. However, BPA 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:

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

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



Project Contacts

This information is provided to assist you in understanding the requirements that BPA must meet, as well as the property owner's rights and obligations. If you have any questions, please contact the real property services representative.

PROPERTY ACQUISITION CONTACT

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MAILING ADDRESS: 905 NE 11th Avenue, Portland, OR 97232

NOTES

The Bonneville Power Administration is a nonprofit federal power marketing administration based in the Pacific Northwest. Although BPA is part of the U.S. Department of Energy, it is self-funding and covers its costs by selling its products and services. BPA markets wholesale electrical power from 31 federal hydroelectric projects in the Northwest, one nonfederal nuclear plant and several small nonfederal power plants. BPA provides about 28 percent of the electric power used in the Northwest and its resources — primarily hydroelectric — make BPA power nearly carbon free.

BPA also operates and maintains about three-fourths of the high-voltage transmission in its service territory. BPA's territory includes Idaho, Oregon, Washington, western Montana and small parts of eastern Montana, California, Nevada, Utah and Wyoming.

BPA promotes energy efficiency, renewable resources and new technologies that improve its ability to deliver on its mission. It also funds regional efforts to protect and rebuild fish and wildlife populations affected by hydropower development in the Columbia River Basin.

BPA is committed to public service and seeks to make its decisions in a manner that provides opportunities for input from all stakeholders. In its vision statement, BPA dedicates itself to providing high system reliability, low rates consistent with sound business principles, environmental stewardship and accountability.

BPA conducts its acquisition-related activities impartially. Landowners can expect to receive just compensation for real property purchased or real property rights acquired consistent with Federal rules, regulations, laws, and the public interest.

www.bpa.gov

BONNEVILLE POWER ADMINISTRATION
DOE/BP-4786 • February 2017