REAL ESTATE MANAGEMENT PLAN FOR THE UMTRA PROJECT

September 1994

MASTER *EP*

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**URANIUM MILL TAILINGS REMEDIAL ACTION PROJECT
REAL ESTATE MANAGEMENT PLAN**

September 1994

**U.S. Department of Energy
UMTRA Project Office
Albuquerque, New Mexico**

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LIST OF ACRONYMS AND ABBREVIATIONS

<u>Acronym</u>	<u>Definition</u>
AG	Attorney General
AUM	animal unit month
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
CADSAR	comparative analysis of disposal site alternatives report
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CPD	Contracts and Procurement Division
DOE	U.S. Department of Energy
DOE-AL	Department of Energy Albuquerque Operations Office
DOE-HQ	Department of Energy Headquarters
DOI	Department of the Interior
DOJ	Department of Justice
EM-1	Assistant Secretary for the Office of Environmental Management
EPA	Environmental Protection Agency
FLPMA	Federal Land Policy Management Act
FMD	Financial Management Division
FPMD	Facilities and Property Management Division
FR	Federal Register
GJPO	Grand Junction Projects Office
HQUSACE	headquarters of the U.S. Army Corps of Engineers
IBLA	Interior Board of Land Appeals
IC	institutional control
LTSP	Long Term Surveillance Program
MOU	memorandum of understanding
NRC	Nuclear Regulatory Commission
NEPA	National Environmental Policy Act
OCC	Office of Chief Counsel
RAA	remedial action agreement
RAC	Remedial Action Contractor
RAP	remedial action plan
RCRA	Resources Conservation and Recovery Act
RRM	residual radioactive material
TAC	Technical Assistance Contractor
UMTRA	Uranium Mill Tailings Remedial Action
UMTRCA	Uranium Mill Tailings Radiation Control Act
USACE	U.S. Army Corps of Engineers

1.0 INTRODUCTION

1.1 PURPOSE AND SCOPE

This plan summarizes the real estate requirements of the U.S. Department of Energy's (DOE) Uranium Mill Tailings Remedial Action (UMTRA) Project, identifies the roles and responsibilities of project participants involved in real estate activities, and describes the approaches used for completing these requirements. This document is intended to serve as a practical guide for all project participants. It is intended to be consistent with all formal agreements, but if a conflict is identified, the formal agreements will take precedence.

1.2 BACKGROUND

The *Uranium Mill Tailings Radiation Control Act* (UMTRCA) of 1978, as amended (42 USC §7901 *et seq.*), assigns the DOE the responsibility to identify, initiate, and coordinate the acquisition of land to achieve UMTRA Project objectives. Cooperative agreements between the DOE and the affected states and tribes have been signed that delegate specific responsibilities for land acquisition. Under the cooperative agreements, the states and tribes, with DOE direction and guidance, are responsible for acquiring non-federal (private) land(s) and other interests associated with the designated processing and disposal sites.

The DOE has direct responsibility for the acquisition of land and other interests associated with federal, public, or private lands at locations other than at the designated site or the permanent disposal site. Memoranda of understanding (MOU) with the U.S. Army Corps of Engineers (USACE), the U.S. Department of the Interior (DOI), and the U.S. Nuclear Regulatory Commission (NRC) have been arranged by the DOE to provide support.

Sites on Indian land, in most cases, are on government owned land held in trust for the tribe; therefore, a fee acquisition is required for UMTRA Project access. The DOE and the tribe negotiate an appropriate legal instrument (i.e., land withdrawal or transfer of custody agreement) allowing DOE long-term access to the site and long-term custody of the residual radioactive materials (RRM) upon completion of remedial action. The DOI's Bureau of Indian Affairs (BIA) concurs with any such instrument.

The DOE is responsible for negotiating rights-of-entry, both temporary and permanent, to carry out the provisions of the UMTRCA. These rights are negotiated with private, corporate, or governmental entities and adhere to the U.S. Department of Justice (DOJ) standards for easements, in accord with the Bureau of Land Management's direction from the *Federal Land Policy Management Act* (FLPMA) (43 USC §1701 *et seq.* (1976)).

At some processing sites it may be necessary to protect the public from exposure to contaminated ground water prior to, or during ground water

compliance activities by implementing institutional controls (IC). Site-specific IC programs can be developed that will provide a comprehensive, planned approach to protect the public from the risk of exposure. Regulatory guidance for the use of ICs for the UMTRA Project is provided in the proposed U.S. Environmental Protection Agency (EPA) compliance standards, 52 FR 36000 (1987), and in the subsequent explanatory documents for these standards.

2.0 ROLES AND RESPONSIBILITIES

The UMTRCA assigns responsibility for implementation of the UMTRA Project to the DOE and other organizations. Figure 2.1 depicts the organizational relationships among those organizations with real estate responsibilities. In addition to the cooperative agreements with the affected states and tribes, the DOE entered into MOUs with several of these organizations. This section integrates the roles and responsibilities delineated in the formal agreements.

2.1 U.S. DEPARTMENT OF ENERGY

2.1.1 U.S. Department of Energy Headquarters

The Assistant Secretary for the Office of Environmental Management (EM-1) has primary responsibilities to carry out provisions of the UMTRCA applicable to the Secretary of Energy. The U.S. Department of Energy Headquarters (DOE-HQ) is responsible for the following:

- Consultation in the designation of the processing sites.
- Consultation in the negotiation and execution of cooperative agreements with the affected states and tribes.
- Concurrence of acquisitions in excess of \$250,000.
- Review and approval of *National Environmental Policy Act* (NEPA) (43 USC §4321 *et seq.* (1970)) documentation.

2.1.2 DOE Albuquerque Operations Office

The DOE Albuquerque Operations Office (DOE-AL) has been delegated authority to manage and execute project functions within established procurement and real estate approval thresholds. The DOE-AL has established a dedicated Project Office and delegated line management responsibility to the UMTRA Project Manager.

2.1.3 UMTRA Project Office

The UMTRA Project Office is assisted in meeting its real estate responsibilities by the DOE-AL and DOE-HQ staff matrix support in the areas of acquisition, procurement, property management, legal assistance, and finance and budget. The Project Manager is supported by the following: the UMTRA Project Office staff; DOE-AL's Facilities and Property Management Division (FPMD) and its Office of Chief Counsel (OCC); the DOE's Grand Junction Projects Office (GJPO); Jacobs Engineering Group Inc., the Technical Assistance Contractor (TAC); and the Remedial Action Contractors (RAC), MK-Ferguson, Co., and RUST-Geotech Inc.

FIGURE 2.1 REAL ESTATE ORGANIZATIONAL RELATIONSHIPS

— Line Management
 - - - Matrix Support

The UMTRA Project Office real estate responsibilities are to:

- Identify and plan for specific real estate requirements in consultation with FPMD and OCC.
- Coordinate project activities with local governments, tribes, states, property owners, and the public.
- Provide technical support to the contracting officer in administering the cooperative agreements with affected states and tribes.
- Prepare annual real estate budget requests and projections.
- Prepare right-of-way permits, monitor well agreements and remedial action, and access agreements.
- Prepare tribal land withdrawal or transfer of custody agreements and BLM land withdrawal requests.
- Notify the tribal site representative, either orally or in writing, prior to commencement of any activity or related series of activities under the cooperative agreements.

2.1.4 Facilities and Property Management Division

Acting through the Chief, Real Property Branch, FPMD is responsible for the following real estate activities:

- Review and recommend approval or disapproval of documented studies justifying the need for acquisition of property not owned by DOE.
- Assure that documented studies and proposals to acquire real property and plans for its utilization are made with full consideration of economy, efficiency, programmatic need, and all applicable laws and regulations.
- Approve all real property actions prior to authorization or execution.
- Ensure that title reports (i.e., appraisals) are reviewed and consistent with DOE Order 4300.1C, *Uniform Appraisal Standards for Federal Land Acquisition* (Interagency Land Acquisition Conference (1992); and *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1972* (42 USC 4601 *et seq.* (1971)).
- Review PO and contractor practices relating to the acquisition and management of real property for conformity with DOE Order 4300.1C.

2.1.5 Contracts and Procurement Division

The Contracts and Procurement Division (CPD) is responsible for the following activities:

- Administrate cooperative agreements and MOUs. Review proposed modifications to the interagency agreements to determine the type of modification required (i.e., supplemental agreement, change order, unilateral change, or administrative change).
- Issue funding authority, tasking, and contracting.
- Sign all correspondence affecting the terms of MOU, interagency agreements, or contracts. Respond to Project Office questions, and monitor actions of the contracting officer's representatives and other support personnel.

2.1.6 Office of Chief Counsel

The OCC provides legal assistance relating to implementation of real estate requirements pursuant to the UMTRCA and other applicable laws and regulations. The OCC is also responsible for the following:

- Provide advice and counsel on real estate issues.
- Assist in the preparation of remedial action and access agreements.
- Review real estate language that may be included in various documents (i.e., tribal custody agreements and BLM land withdrawal requests).
- Assist in drafting interagency agreements and MOUs between the DOE and other federal agencies.

2.1.7 Grand Junction Projects Office

After a site is brought under the general license issued by the NRC, the UMTRA Project Office transfers the Long Term Surveillance Program (LTSP) responsibility to GJPO. For disposal sites located at processing sites where ground water contamination exists, the UMTRA Project Office will maintain access to the site for ground water remediation activities. The primary responsibility of the GJPO is to administer and implement the LTSP.

2.2 U.S. ARMY CORPS OF ENGINEERS

The DOE's MOU with the U.S. Army Corps of Engineers (USACE) provides procedural guidance for the orderly and timely accomplishment of real estate actions by the USACE on behalf of the DOE. The USACE is assigned review of the title documentation compiled and submitted by the affected states; assist

the states in any curative actions required to ensure the deeds conveying ownership from the states to the DOE are free and clear of encumbrances; and finally, to accept title for the respective sites on behalf of the DOE.

According to the MOU, the USACE is to perform the work under the respective task orders and to include a monthly status report for each task assigned. The status report includes a task description with objectives; the current month and cumulative costs; a discussion of the overall status, including work planned over the next 2 months; an overall assessment of work expressed as a percentage of completion; and a cost and schedule variance.

Table 2.1 presents the steps and time frames for the issuance and acceptance of requests for real estate services by the USACE.

2.3 U.S. DEPARTMENT OF THE INTERIOR

The DOI administers and executes its responsibilities through the BLM and the BIA.

2.3.1 Bureau of Land Management

The BLM is managed under the direction of the Assistant Secretary for Land and Minerals Management. A MOU describes the procedures to implement Section 106 of the UMTRCA, as amended. Section 106 allows the DOI to permanently transfer public land under BLM jurisdiction to the DOE to facilitate the remediation of RRM. The activities associated with this process are described in detail in Section 4.2.

2.3.2 Bureau of Indian Affairs

The BIA administers certain activities affecting the custody and use of lands held in trust by the federal government on behalf of the tribes. The responsibilities of the BIA include:

- Concur with the terms of the cooperative agreements.
- Concur with the custody transfer agreement.
- Concur with the final remedial action plan (RAP).
- Approve the acquisition of any necessary interests of allottees, permittees, lessees, or other individuals with property interests in the vicinity of the mill site, the mill site, or the depository site.

2.4 U.S. NUCLEAR REGULATORY COMMISSION

The areas of cooperation between the DOE and NRC and the concurrence procedures for executing the NRC's statutory responsibilities under the

Table 2.1 Requesting real estate services from the USACE

Step	Approximate time frame
DOE-AL representatives initiate requests for real estate services to the USACE chief of real estate with civil works responsibility for the geographic area where the work is located.	1 week
The USACE chief of real estate either accepts the request for services, or forwards it for higher level review and acceptance. If a Corps district chooses to decline a proposed work assignment, the request is forwarded to the director of real estate, Headquarters of the USACE (HQUSACE), for consideration.	2 weeks
Once the request is accepted, individual task orders for the project are handled between the FPMD and the Corps district. However, major changes in the task order require the approval of the HQUSACE.	2 weeks
Upon approval of the request by the district office, the USACE estimates cost and schedule for completion.	2 weeks
The cost estimates are reviewed by the DOE Project Office, FPMD, and CPD. If approved by the CPD, they send a memo to the DOE's Financial Management Division (FMD), requesting obligation of funds, attaching copies of 1) the DOE/USACE MOU, 2) the task order, and 3) any correspondence updating cost estimate, statement of work, or amended task order.	2 weeks
Upon completion of work, the USACE sends an SF-1080 to FMD for payment.	1 week

UMTRCA are described in a MOU. The principal focus of NRC coordination and concurrence under the MOU is to assure compliance with the EPA standards in the DOE's selection of remedial action among reasonable remedial action alternatives and in implementation of such remedial action. According to the UMTRCA, the NRC's responsibilities include the following:

- Concur with each of the state cooperative agreements.
- Concur with DOE's decision to require state acquisition of the processing and/or disposal sites.
- Concur in the selection and performance of remedial actions undertaken by DOE pursuant to the UMTRCA, normally effectuated through the RAP for the processing site.
- Concur in the final certification report.
- Review of all land withdrawals, DOE land acquisitions, and tribal real estate agreements.

2.5 AFFECTED STATES AND TRIBES

2.5.1 Affected states

Section 103 of the UMTRCA authorizes the DOE to enter into cooperative agreements with affected states to perform remedial action at each designated processing site. According to the cooperative agreements, the acquisition of a processing site or a disposal site located on non-federal lands is principally a state responsibility. Acquisition of non-federal lands begins when the state is requested in writing by the DOE contracting officer to obtain the documentation specified in the cooperative agreement. The cooperative agreements require that the state submit the documentation within 90 days of the request by the DOE Contracting Officer. Upon such submittal, the DOE Project Office, in conjunction with FPMD and OCC, review the adequacy of the documentation.

The affected states, through cooperative agreements with the DOE, have the following responsibilities:

- Review the draft and final versions of the comparative analysis of disposal site alternatives report (CADSAR).
- Assist the DOE in the acquisition of the processing and disposal sites where deemed appropriate.
- Concur on the site RAP to include selection of the preferred disposal site.

- Grant the DOE, its authorized representatives, and contractors right of entry in, across, and over the mill site and immediate adjacent land for the purpose of conducting baseline characterization and remedial actions.
- Transfer custody of the RRM removed from a mill site by DOE or stabilized in place at a mill site by DOE.
- Assist the DOE in complying with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act* of 1971 (42 USC §4601 *et seq.*)
- Assist the DOE in assuring that any person who acquires a property interest in the mill site after the removal of RRM from such site or property shall be notified prior to acquiring such interests, through record notice or such notice required by regulations, of the nature and extent of RRM removed from the site, including notice of the date when such action took place and the condition of such property or site after action.
- Review the NEPA documentation.

2.5.2 Affected tribes

The affected tribes, through cooperative agreements with the DOE, have the following responsibilities:

- Review the draft and final CADSAR.
- Assist the DOE in the acquisition of the processing and disposal sites where deemed appropriate.
- Concur on the site RAP, including selection of the preferred disposal site.
- Grant the DOE, its authorized representatives, and contractors right of entry in, across, and over the mill site and immediate adjacent land for the purpose of conducting baseline characterization and remedial actions.
- Transfer custody of the RRM removed from a mill site or stabilized in place at a mill site to the DOE.
- Negotiate a transfer of custody agreement which transfers custody of the mill site to the federal government from the tribes, without affecting the trust status of the land.
- Assist the DOE in complying with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act* of 1971 (42 USC §4601 *et seq.*)
- Assist the DOE in notifying any tribal member or person, prior to acquisition, who seeks to acquire a property interest in the mill site after the removal of RRM from such site or property, of the nature and extent of RRM removed

from the site. Notification occurs through record notice or such notice required by regulations, and provides notice of the date when such action took place and the condition of such property or site after action.

- Review NEPA documentation.

2.6 TECHNICAL ASSISTANCE CONTRACTOR

The TAC assists the DOE in real estate acquisition and access activities. The majority of this assistance is provided by a dedicated real estate specialist responsible for assisting in all facets of real estate actions. The TAC's specific real estate responsibilities include:

- Assist in real estate acquisition activities by identifying requirements, developing fiscal year plans and annual real estate budgets, supporting and coordinating execution of plans, and reporting the status of ongoing activities.
- Assist the Project Office in coordinating with intergovernmental agencies to complete the requirements for the transfer of title for disposal sites from the states to the federal government.
- Coordinate legislative withdrawals and jurisdictional transfers of public land from the BLM to the DOE.
- Assist the Project Office in acquiring licenses and permits, including use agreements, rights-of-way, rights-of-entry, and monitor-well agreements.
- Coordinate with the BLM, USACE, and private property owners to extinguish existing mining claims and grazing permits.
- Draft correspondence to private, state, and federal agencies, and to local authorities.

2.7 REMEDIAL ACTION CONTRACTOR

The RAC manages the performance of remedial actions at the processing and disposal sites. Real estate responsibilities of the RAC include:

- Coordinate with DOE's OCC, private owners, and corporations to secure remedial action agreements.
- Obtain use agreements, BLM right-of-way reservations (SF-299s), construction permits, and railroad crossing licenses.
- Coordinate and manage the completion of all environmental permitting.
- Maintain programmatic plans and procedures.

- Provide annual and fiscal year planning and budget estimates to the Project Office.

3.0 PROGRAMMATIC REQUIREMENTS

3.1 INTERAGENCY REAL ESTATE SUPPORT

In addition to the cooperative agreements, the DOE has entered into project related agreements with various organizations. The purpose of these agreements, collectively referred to as MOUs, is to utilize the expertise of other federal agencies. The DOE has MOUs in place with the BLM and the USACE at present. The MOUs define in detail the respective stakeholder responsibilities. Periodically the DOE Project Office makes revisions to the statements of work in the task order of the MOUs for real estate support. The procedures for modifying the task orders are set forth under the "Management and Program Guidelines" section of the MOUs. The following procedures govern the issuance and acceptance of requests for real estate services:

- The UMTRA Project Office identifies the site-specific real estate work to be performed. A task order is drafted describing the work to be accomplished, and is submitted to FPMD.
- The FPMD reviews, signs, and forwards the work order to the responsible agency.
- The responsible agency provides an estimate to the FPMD of cost and schedule to complete the tasks on the work order.
- The FPMD reviews the estimate of cost and forwards the work order to the UMTRA Project Office for approval.
- The UMTRA Project Office approves the work order and forwards it to the DOE contract officer, who modifies the interagency agreement, adding the tasks and allocating the funds needed to complete the work.
- The DOE contract officer provides a copy of the approved interagency agreement modification to the respective agency, indicating that funding is in place.
- The respective agency begins work on the task order and on monthly reporting of progress and costs.

3.2 REAL ESTATE TRAINING

To ensure that properly trained and experienced personnel are available to the Project Office to plan and implement real estate actions, adequate education and training must be provided. The DOE has in place a real estate certification program offered by the General Services Administration. The program was created to ensure that appropriate real estate requirements are considered in management decisions, and, that implementation of the decisions are carried out

in a manner that meets the requirements of state and federal real property law, regulations, and "best management practices."

The TAC real estate coordinator is required to receive adequate real estate training. Other Project Office and TAC personnel receive training as needed, based on position and responsibilities.

4.0 PRE-REMEDIAL ACTION REAL ESTATE REQUIREMENTS

4.1 OVERVIEW

The site acquisition process begins after the preferred alternative is identified in the CADSAR. A number of acquisition strategies are developed, depending on whether or not the RRM will be stabilized on the site or moved to another location, and depending on the ownership of the site to be acquired. If the RRM will be moved to another location, the UMTRCA requires that use of public land, administered by the BLM, be given first consideration.

4.2 ACQUISITION OF PUBLIC LAND

4.2.1 General

Section 106 of the UMTRCA, as amended in the *Uranium Mill Tailings Remedial Action Amendments Act* of 1988 (42 USC §7922 *et seq.*), allows the DOI to permanently transfer public land under the BLM's jurisdiction to the DOE to facilitate the remediation, stabilization, disposal, and control of the RRM.

To accomplish this land transfer, the DOE Project Office must first apply for an administrative or temporary withdrawal under the BLM's *Federal Land Policy Management Act* (FLPMA). The FLPMA withdrawal is for a period of 5 years; however, before remedial action can begin at the site, the DOE Project Office must complete the NEPA requirements. Once these requirements have been met, the DOE Project Office can apply for a legislative withdrawal under the *Uranium Mill Tailings Amendments Act* of 1988 (42 USC §7922 *et seq.*). This legislative withdrawal allows for the permanent withdrawal of the land encompassed by the disposal site boundary via a transfer of jurisdictional control of the land from the BLM to the DOE.

A discussion of the administrative and legislative withdrawal processes follows.

4.2.2 Federal Land Policy Management Act administrative (temporary) withdrawal

Initiating this withdrawal begins with the DOE submitting a letter of application to the affected state BLM director's office requesting the temporary withdrawal of public lands from the public domain. The BLM reviews and approves the application and then publishes the FLPMA administrative withdrawal in the *Federal Register*. The information published in the *Federal Register* includes the purpose for the FLPMA withdrawal, the agency requesting the FLPMA withdrawal, legal description, and acreage of the land.

The FLPMA withdrawal includes a 2-year segregation, during which the lands are not available for the location of mining claims. The FLPMA withdrawal ensures that for an additional 3-year period any projected use of the surface and subsurface is compatible with the DOE's proposed use of the land. The

combined 5-year period is normally sufficient to allow the DOE time to comply with the requirements of the NEPA.

To accomplish the FLPMA withdrawal, the affected BLM state director's office having jurisdiction over the concerned lands will:

- Provide the UMTRA Project Office with available information to assist in the selection of potential disposal sites.
- Process the administrative and legislative withdrawal applications according to the appropriate regulations.
- Coordinate any land use planning required to accomplish the administrative and legislative withdrawal actions.
- Assist the UMTRA Project Office in identifying all potentially valid existing rights on the public lands to be transferred to the DOE.
- Provide assistance to the UMTRA Project Office in acquiring any valid existing rights or extinguishing any claims. As appropriate, these activities include BLM investigation of mining claim validity and contest proceedings against mining claims believed to be invalid.
- Administer all existing rights until they expire under the public land laws, including the mining and mineral leasing laws, on the public lands to be transferred to the DOE that are not acquired by DOE or declared invalid by BLM.

The UMTRA Project Office is required by the DOE MOU with the BLM to reimburse the BLM for all extraordinary costs above those normally associated with the usual withdrawal and transfer processing costs (i.e., contest proceedings against mining claims believed to be invalid).

The steps and time frames associated with a BLM FLPMA temporary land withdrawal are presented in Table 4.1.

Table 4.1 FLPMA temporary land withdrawal

Steps	Approximate time frame
DOE drafts and forwards letter of application for temporary land withdrawal to the BLM.	1 month
BLM state director reviews and approves the withdrawal.	1 to 2 months
BLM publishes <i>Federal Register</i> notice of withdrawal.	1 to 2 months
DOE develops NEPA case file.	12 to 24 months

4.2.3 Legislative (permanent) withdrawal and transfer of jurisdiction

In general, the steps leading to the transfer of jurisdiction are as follows:

- According to Section 106(2) of the UMTRCA, the DOE "consults" with the governor of the affected state in which the public lands are located. The consultation takes place via a letter informing the governor of the pending jurisdictional transfer. The governor in turn responds via letter acknowledging this information.
- Upon completion of the NEPA requirements (publication of the finding of no significant impact or record of decision), the DOE submits a letter application to the BLM state director's office requesting a permanent withdrawal and jurisdictional transfer of the site. The DOE includes in the letter a survey map that delineates the area to be withdrawn.
- Upon completion of the NEPA and governor's consultation requirements, the land will transfer to the DOE, subject to any valid existing rights that remain (i.e., oil and gas leases) within the withdrawal or the transfer area. The BLM will continue to administer these rights until they expire or are removed (i.e., validity examination determines that unpatented mining claims are null and void). Upon legislative transfer of the public lands, the DOE has full jurisdiction and liability for such lands and all activities conducted thereon.

The steps and time frames associated with a legislative withdrawal and transfer of jurisdiction are shown in Table 4.2.

Table 4.2 Permanent land withdrawal and transfer of jurisdiction

Step	Approximate time frame
DOE coordinates application with the BLM.	1 to 2 months
DOE drafts and forwards the application to BLM.	1 month
BLM obtains DOI headquarters concurrence.	1 to 2 months
BLM publishes the Public Land Order in the <i>Federal Register</i> .	1 month

4.2.4 Mining claims

The federal legislation dealing with mineral lands is commonly known as the Mining Law of 1872 (30 USC §22 *et seq.*). This law encourages the discovery and development of valuable mineral resources by rewarding and protecting

individuals who locate mineral deposits and show good faith and diligence in developing their claims. The claimant's basic right on the public lands is not a discretionary right subject to approval by the land managing agency (the BLM). It is a statutory right granted by Congress, the essence of which has been reaffirmed in numerous court decisions. In the eyes of the law, the claimant is not a trespasser nor a permittee of the BLM. The basic requirements the claimant must adhere to in establishing and maintaining a claim are as follows:

- Discovery of an economic mineral deposit.
- Posting of location notice.
- Marking the boundaries of the claim.
- Complying with state laws relative to location work, monumenting, and recordation of the location.

The legal basis for the first requirement, discovery, is an actual discovery of a valuable mineral deposit within the boundary of each claim. The discovery of a "valuable mineral" is the premise upon which the entire mining law is based.

Interpretation of what constitutes discovery requires the "prudent man test." The test states that in an area where minerals have been found and the evidence of discovery is of such character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with reasonable prospect of success in developing a valuable mine, the requirements of the statute have been met. Unfortunately, the courts did not define how "prudence" was to be measured.

Because of this lack, the DOI established another test referred to as the "marketability test." This test states that to qualify as a valuable mineral deposit, it must be shown that the mineral can be extracted and marketed at a profit, since the prudent person would not extract minerals which cannot be marketed at a price higher than the cost of production. This test is now applied by the courts for all mining claims, whether for building stone or precious metals.

Although a mining claim on public land cannot be struck down arbitrarily, the BLM has the authority and jurisdiction to contest mining claims on the grounds that they are invalid because of a lack of discovery. If, upon adequate hearing, the claim is found invalid due to lack of discovery, it is declared null and void.

The process leading up to a determination of lack of discovery is presented in Table 4.3, together with time frames required to complete each task.

Table 4.3 BLM validity examination process

Activity	Approximate time frame
A qualified BLM representative conducts a field investigation to determine if the subject mining claim is valid. The field work includes collecting and assaying samples from the claimed ground, reviewing the location history of the claims and conformance to regulations, relating site geology to the mining approach and mineral recovery expectations of the claimant, and conducting a general cost and benefit analysis of projected operations.	1 to 2 months
In the mineral report generated, the BLM identifies the valuable mineral associated with the unpatented mining claim and recommends that 1) the claim be considered valid and no further action be taken, or 2) a complaint be issued with a charge that the lands are nonmineral in character and that the claim is invalid for lack of discovery of a valuable mineral deposit.	1 to 2 months
If the BLM state director decides to initiate a contest, a complaint must be prepared and served on all interest holders of the claims. If the complaint is not answered within 30 days, the claim is declared null and void. If a party to the complaint answers within the required time, the matter is turned over to the BLM solicitor's office and the case is handled by attorneys from that office.	1 month
The case is heard before an administrative law judge who takes testimony and evidence as prescribed by the Administrative Procedures Act (43 USC §1201 <i>et seq.</i> (1971)). At the hearing, a mineral examiner (i.e., qualified BLM geologist or mining engineer) testifies for the government. The claimant at this time is given an opportunity to present his case, with or without expert witnesses or legal counsel.	1 to 2 months
When the government contests the validity of a mining claim, it bears the burden of presenting sufficient evidence showing the claim is invalid. The burden is then upon the claimant to overcome such showing and prove by a preponderance of the evidence that the claim is valid.	NA
The government's burden has been met when the BLM mineral examiner testifies that the mining claim and the workings have been examined, but there is no evidence of a valuable mineral deposit. If, based on the testimony, the administrative law judge rules that there has been no valid discovery, the claim is declared null and void.	NA
Any party adversely affected by such decision may appeal to the DOI's Interior Board of Land Appeals (IBLA). The review by the IBLA is based entirely upon the record and the decision appealed will be either affirmed, reversed, or the case remanded for further consideration under stipulations set out by the appeals board.	NA

4.2.5 Grazing allotments

Section 4110.5 of 43 CFR 10 (1994) states that when public lands are disposed of or devoted to a public purpose (i.e., UMTRCA) which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification before their grazing permit or grazing lease or preference may be canceled. A permittee or lessee may unconditionally waive the 2-year notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation. Compensation is based upon the animal unit months (AUM) and grazing and grazing capacity of a given area. The dollar value associated with an AUM ranges in value from \$25 to \$50.

4.3 ACQUISITION OF PRIVATE LAND

Section 104 (a) of the UMTRCA requires the state, where determined appropriate by the DOE, with concurrence of the NRC, to acquire any designated processing site, including, where appropriate, any interest therein. Subsection (b)(1) also requires that if removal of the RRM is necessary, the cooperative agreements with the affected states provide that the state is to acquire land to be used as a site for the permanent disposition and stabilization of the RRM. Acquisition by the state is not required if a site is to be located on DOE-owned land or on public land made available by the DOI.

If the RRM is moved off the processing site, a remedial action agreement (RAA) is negotiated between the site owner, the DOE, and the state. In this case, the state is not required to make such acquisition, but may consent to do so upon request of the DOE contract officer.

4.3.1 Windfall profits determination

Under the provisions of Section 104 (a) of the UMTRCA, the DOE determines whether the states must acquire the designated processing sites, or interests therein, based on a windfall profits determination. The determinations are based on the value appreciation of the land in a contaminated state and its use versus its future uncontaminated state and use. The premise is that since the owners do not share in the cleanup costs of the site, the possibility exists that a windfall profit would accrue to the owners if the sites are cleaned up without a change in ownership.

To determine the possibility of windfall profits, the USACE is assigned, through a task order from FPMD, to provide a value estimate for the property, based on an analysis of the market data for the area. If the determination is made that a windfall profit would accrue, the state is directed to proceed with acquisition. If no windfall profit potential exists, the processing site may remain in private ownership and the cleanup handled through an RAA negotiated with the owner.

4.3.2 Negotiated acquisition

If the appraised value of the site to be acquired exceeds \$250,000, the DOE-HQ must concur in the acquisition. Upon concurrence of the DOE-AL and DOE-HQ, the DOE contract officer for the respective state's cooperative agreement issues to the state a written request to acquire the site and identifies a maximum negotiation amount. The state then begins negotiations with the site owner. If the state is unable to negotiate with the owner within the maximum allowable amount, the state notifies the DOE contract officer and the contract officer (with the concurrence of the Project Office) either establishes a higher maximum amount or approves the initiation of condemnation proceedings.

In the process of acquiring the property, the owner is provided relocation assistance, consistent with *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* (DOT, 1989), for relocation of a business or purchase of a new residence.

The site acquisition process requires at least three-and-a-half months, and may be significantly longer if condemnation or owner relocation is required. Table 4.4 identifies typical activities and associated time frames required to complete the negotiated site acquisition process.

Table 4.4 State acquisition of private land

Step	Approximate time frame
The DOE Project Office assigns the USACE to perform a windfall profits determination.	2 weeks
If a windfall profit would accrue, then the DOE Project Office directs the state to prepare and submit Cooperative Agreement Appendix C documentation.	4 weeks
If the appraisal is greater than \$250,000, the DOE-HQ approval is required. If the appraisal is less than \$250,000, the DOE Project Office directs state to acquire the land.	4 weeks
The state negotiates with the owner.	4 weeks
If no settlement is reached, the DOE Project Office tasks the state to proceed with condemnation.	Varies in each state

4.3.3 State condemnation

Acquisition of needed land or property rights (i.e., easements) is primarily accomplished through negotiations under the purview of Title III of the "Uniform Relocation Assistance and Real Estate Property Acquisition Regulations for

Federal and Federally Assisted Programs; Final Rule and Notice," (49 CFR Part 24 (1989)). Where negotiations fail, acquisition through the power of eminent domain, or condemnation, is invoked. Condemnation provides for immediate possession of the land or right of entry for project purposes. The primary issue under condemnation is to establish the fair market value for the interest taken by the federal government. The fair market value is established through the courts after possession is obtained.

Under any acquisition action, an appraisal of the fair market value of the interest being acquired is obtained. Appraisals are prepared under *Uniform Appraisal Standards for Federal Land Acquisition* (Interagency Land Acquisition Conference, 1992), to establish fair market value, and are reviewed by the FPMD to be sure that the fair market value meets established guidelines. Although there is some difference between states, generally, the condemnation process proceeds in the same manner.

Subsequent to the ruling, the state is granted immediate access to the property pending the filing of a declaration of taking. The matter remaining before the court is to establish the fair market value to be paid to the owner. Once the steps outlined have been completed, the project can proceed with the planned use of the property.

Table 4.5 describes the steps the state is required to follow in acquiring the site by condemnation action.

Table 4.5 State land condemnation steps and time frames

Activity	Approximate time frame
The DOE Project Office notifies the state to proceed with acquisition of the real estate interest.	2 weeks
The state contracts with an appraisal company to appraise the property to be acquired.	2 to 4 months
The state enters into negotiations with the land owners based on the appraisal report.	1 to 2 months
If the offer to purchase is refused by owner, the state recommends condemnation action to the Project Office.	2 weeks
Upon Project Office concurrence, the case is forwarded to the state attorney general's (AG) office.	2 weeks
The AG's office files a petition to condemn in the state district court.	2 weeks
The court rules on the petition.	1 week

4.3.4 Federal condemnation

The federal condemnation process involves several steps that are essentially parallel to the state process described above. Federal condemnation procedures are outlined in *Procedural Guide for the Acquisition of Real Property by Governmental Agencies* (DOJ, 1972). The condemnation petition arises when the United States or a respective state wants to acquire real property for public use, but is unable to agree with the owner of the property on the amount of damages. The condemning entity may then begin a condemnation proceeding by filing a petition in the proper court. The petition must, at a minimum:

- Describe the property to be condemned.
- State the purpose for which the agency intends to use the property.
- State the name of the owner of the property, if the owner is known.
- State that the entity and the property owner are unable to agree on the damages.

4.3.5 Land owner appeals process in condemnation action

A party to a condemnation proceeding may object to the findings of the court by filing a written statement of the objections and their grounds. The party files with the court that has jurisdiction over the proceedings. If a party files an objection to the findings of the court, the court cites the adverse party and tries the case in the same manner as other civil cases; the primary issue being one of damages.

5.0 ACCESS AGREEMENTS

During the preconstruction, remedial action, and post-remedial action phases, access to the site is required to perform field work. Access may be required at several different locations simultaneously in relation to investigations at each UMTRA Project site. For example, investigations may be carried out at the processing site, on adjacent properties where wind-blown contamination or ground water contamination may be present, on one or more remote sites being considered as part of an alternate site selection process (in connection with plans for relocation of the tailings), or along routes being considered for transport of tailings to a remote disposal site. Table 5.1 describes the various permits and agreements that may be required at a given site and identifies the types of access agreements that may be required for various project activities.

5.1 USE AGREEMENTS

Use agreements are executed with the owner(s) of the designated processing sites, or with the owner(s) of proposed disposal sites under consideration, for permission and right of entry in, across, and over the property without payment of any land use charge. The purpose of the agreement is usually to perform data-gathering activities. Initially, however, all that may be required is verbal authorization for access to examine a site on private property. A use agreement may subsequently be developed for access and for the more thorough characterization that is required at a potential disposal site. Use agreements are normally executed by FPMD for a period of three years and may be extended over a period of time. There is usually no consideration paid for these types of agreements. Use agreements do not include work that is considered to be remedial action for the purposes of the UMTRCA.

5.2 MONITOR WELL AGREEMENTS

Monitor wells are of special concern at all sites because they fulfill a variety of functions. Monitor wells, piezometers, and well points that will be sampled over a long period of time normally each require a separate monitor well agreement. This agreement provides for the drilling, construction, and completion of the wells, and for access to accomplish sampling and monitoring of the wells. Well agreements are normally for a period of five years with a nominal consideration in the sum of \$75 typically paid to the landowner.

It is difficult to tell at the outset which wells will be useful in the future at a particular site. Initially, a state permit and monitor well agreement with the landowner will suffice as legal means of access for most wells. After the intended initial use, the well will normally be abandoned and the records will be closed at the state office. In some cases, the land owner may wish to retain the well, in which case it will be officially transferred via a letter from the DOE Project Office to the state agency responsible for the administration of monitor wells (i.e., state engineer's office) with a copy to the land owner. The letter requests that the ownership of the monitor well be transferred from the DOE to the land owner. Whether the well is abandoned or transferred to the land

Table 5.1 Access requirements

Activity	Types of agreement
CADSAR evaluation of site conditions.	private land - verbal use agreement federal land - verbal use agreement
CADSAR disposal site identification and adjacent property characterization and impact assessment and monitoring.	private land - verbal use agreement federal land - verbal use agreement
Assessment at designated processing site for remedial action plan development.	written use agreement
Assessment of adjacent properties.	if private land - written use agreement if federal land (i.e., BLM) - memoranda of understanding
Remedial action at designated processing site.	remedial action agreement
Construction of disposal embankment.	private land - fee ownership federal land - transfer of jurisdiction
Access or use of haul routes.	private land - right-of-entry for construction federal land - right-of-way (ROW) reservations
Use of public land as source of borrow material.	federal land - free use permit

owner, a written release must be obtained from the owner, and the records at the state office changed to record the closure or transfer to the land owner. Wells that are to be used in a LTSM program require the acquisition of a leasehold estate or perpetual easement to ensure long-term access to the well. The process for obtaining a perpetual easement is discussed in Section 5.7.

5.3 REMEDIAL ACTION AGREEMENTS

In instances where a determination has been made that no windfall profit would accrue to the property owner and where the remedial action agreement will be relocated, the DOE Project Office will enter into a remedial action agreement to complete the designated processing site cleanup. The remedial action agreement is usually drafted by OCC and signed by FPMD.

5.4 RIGHTS-OF-ENTRY FOR CONSTRUCTION

For remedial action in which immediate access is required, an agreement is executed with the landowner for right-of-entry for construction. Right-of-entry agreements provide for a complete range of characterization activities. This agreement may be used as an interim means of obtaining access while pursuing the purchase of a property, or to gain immediate access to a property pending the drafting and approval of a longer-term access agreement such as a remedial action agreement.

5.5 BLM RIGHT-OF-WAY RESERVATIONS

The BLM, in accordance with Section 507 of the FLPMA of 1976 (43 USC §1701), issues right-of-way reservations in the form of applications entitled "Transportation and Utility Systems and Facilities on Federal Land" (SF-299). The applications may be submitted for a variety of construction projects on BLM administered land, including the construction of haul roads, pipelines, monitoring stations, treatment facilities, and traffic by-pass lanes. The SF-299 authorizes the DOE to proceed with construction activities within the temporarily withdrawn areas used for staging heavy equipment, personnel parking, placement of borrow materials, etc. The BLM's approval of the application authorizes the UMTRA Project Office to proceed with construction activities contingent upon submittal of an approved plan of development, and in some cases, receipt of an approved mitigative action plan (MAP).

5.6 PERPETUAL EASEMENTS

Perpetual easements are required for those monitor wells that will be used in the LTSP. These easements are acquired by the USACE as part of their normal real estate support services. The acquisition requires the following:

- Determination of ownership
- An appraisal

- Negotiations with the property owner

The interests appraised and acquired are the right of ingress and egress and the area consisting of a fifteen foot radius from the center of the well cap.

6.0 POSTREMEDIAL ACTION REQUIREMENTS

The UMTRCA provides two separate authorities for land acquisitions; 42 USC 7914 *Acquisition and Disposition of Lands and Materials* (1978) of the UMTRCA is the more frequently used authority. It provides that the state in which a particular project is involved will acquire the mill site(s) and or disposal sites. Upon completion of a project, only the RRM and the disposal sites need be conveyed to the federal government for long-term monitoring. The mill sites and other remedial action sites can be reconveyed to the original owners, or to other private persons by open sales, or be retained by state or local government entities for public purposes. The following section describes the post-remedial action requirements associated with the project.

6.1 TITLE TRANSFERS

According to the cooperative agreements, the states agree to transfer title for the individual disposal sites that they acquired to the federal government upon completion of the remedial action. The USACE, on behalf of the DOE, serves as the DOE's agent in accomplishing these transfers.

To facilitate the title transfer, the USACE performs an analysis of title to identify any title objections, or encumbrances, which may interfere with the use of the land by the federal government. The respective states furnish the USACE with copies of all recorded deeds, easements, or interests for the state acquired lands to be transferred. The deeds and easements are accompanied by a title insurance policy or certificate of title for each ownership involved that discloses the name of the owner and the encumbrances of the title. In lieu of title evidence, title opinions generated by the respective state attorney general's office are submitted to validate each grantor's ownership and to aid in identification of potential encumbrances.

In addition to the above requirements, the states submit a signed certificate, asserting that the state has examined the title evidence, which consists of title insurance policies, certificates of title, or abstracts of title, and has confirmed the legal description in the land acquisition documents.

To facilitate the review by the USACE, the state furnishes a property map and list of parcels identifying the real estate to be transferred. The state includes any other items referenced in Appendix C of the cooperative agreements that assists the USACE in conducting its review of the site acquisition documentation. The state includes the name and phone number of the person(s) the USACE may contact.

Upon completion of its review, the USACE coordinates directly with the states to effect any necessary curative actions. Table 6.1 describes the sequence of activities and time frames for the title transfer process. The overall duration of this process is approximately fifteen months.

Table 6.1 Title transfer steps and time frames

Step	Approximate time frame
Title transfer is initiated by the UMTRA Project Office, which forwards a letter to the state requesting the title documentation per Article III of the cooperative agreements.	1 month
The state forwards the documentation to the USACE within 90 days of receipt of the letter.	4 months
The USACE contracts with an approved title company, abstractors, or attorneys for the preparation of title evidence. All paperwork documenting site ownership, mining claims, etc., is investigated by the title company.	3 months
Upon completion of the title investigation by the title company, the abstract is forwarded to the USACE and reviewed.	1 month
The draft deed(s) received from the state is reviewed for form, arrangement, and contents. Supplemental information such as curative data, title history, dates of execution, reservations, limitations or conditions, is reviewed for consistency and accuracy.	1 month
If, during the examination of the title, it is determined that the title is "clouded," the USACE forwards a letter to the state enumerating the encumbrances requiring curative actions. The IA with the USACE specifies that they are tasked to assist the state with completing the curative actions.	1 month
The state (Attorney General's Office) cures any title encumbrance(s).	2 months
Upon NRC's concurrence with the DOE's certification on the completion of remedial action, the state signs the deed transferring title to the federal government.	1 month
The USACE concurs that all title documentation and curative actions have been completed and recorded.	1 month
The USACE forwards the title documentation, together with the final title policy to the DOJ for final disposition. For project purposes, the USACE's recordation of the deed represents the final step required to complete the title transfer process.	N/A

6.2 RESTRICTIVE EASEMENTS

Before the NRC will certify that a processing site has met the surface remediation standards in 40 CFR Part 192, subpart B (1987), they require assurance that DOE will not be hindered in any way from completing ground water remediation once the site has been released to the land owner. To this end, the state takes such action as may be necessary, pursuant to the cooperative agreement, to assure that any person who purchases a mill site property after the removal of the RRM from the site shall be notified, prior to purchase, of the nature and extent of RRM removed from the site, including notice of the date when the action took place, and the condition of the site after the action. If the state is the owner of the site, the state notifies any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of such site. This assurance is contained in a recorded deed and includes the following:

- Provision to DOE of a right of access to the site for ground water remediation activities;
- Limitation of the landowner from conducting activities that would aggravate the present ground water contamination;
- Restriction of the landowner from conducting activities that would prejudice the completion of ground water remediation; and
- Assurance that the landowner does not disturb or alter any wells or monitoring devices installed by DOE.

6.3 CUSTODIAL CARE AGREEMENTS

Per the UMTRCA, 42 USC §7901 *et. seq.* (1978), as amended, and per the cooperative agreements between the affected tribes and the DOE, the DOE and respective tribes must negotiate, in good faith, an agreement that transfers the long-term care of the RRM to the DOE. This agreement shall stipulate that:

- The tribes will transfer the custody of the disposal site to the federal government effective on the date the tribe receives the final completion report. This action does not affect the trust status of the land.
- Custody of the site is to be automatically transferred by the tribes to the Government, effective on the date the tribes receive the final completion report.
- Beneficial title to the RRM to be reserved for the tribes.
- The DOE is to be provided with a permanent right-of-entry to maintain and monitor the disposal site.

- The tribes are not to designate, use, or empower anyone to perform any act which may be inconsistent with, or interfere with, the purposes of the agreement during the period when the disposal site and the RRM are in the custody of the federal government. Any use for purposes other than those within the scope of the agreements shall be subject to prior approval by the DOE, the tribes, and the concurrence of the BIA.

6.4 SITE LICENSING

Pursuant to Sections 104(f)(2) and 105(b) of the UMTRCA, NRC is to license the long-term monitoring, maintenance, and surveillance of a site after NRC concurrence with DOE's certification report. The DOE provides to the NRC, for its review and concurrence, the licensing support documentation (including the site LTSP). After its review and acceptance of the LTSP, the NRC issues a license to DOE to maintain the site according to the conditions of the licensing support documentation.

7.0 INSTITUTIONAL CONTROLS

For the purposes of the UMTRA Project, institutional controls are a means of restricting the use of contaminated ground water. Uranium-processing activities at most of the 24 UMTRA Project mill sites resulted in the contamination of ground water beneath and, in some cases, beyond the boundaries of the sites. At some processing sites it may be necessary, by implementing institutional controls, to protect the public from exposure, including drinking, bathing, and gardening with contaminated ground water, prior to or during ground water compliance activities. Site-specific institutional control programs will differ depending on the affected state or tribal statutes or regulations governing water rights.

7.1 REGULATORY DEFINITION AND GUIDANCE

Regulatory guidance for the use of institutional controls for the UMTRA Project is provided in the proposed EPA compliance standards (52 FR 36000 (1987)), and in the subsequent explanatory documents for these standards. The UMTRCA also requires the UMTRA Project regulations be consistent with other federal statutes such as the Resource Conservation Recovery Act (RCRA) (42 USC §6901 *et seq.* (1976)) and the Comprehensive Environmental Response Compensation Liability Act (CERCLA) (26 USC §4611 *et seq.* (1980)).

The EPA defines institutional controls, in a background document for the UMTRA Project Standards Final Rule, as nonengineering, restrictive mechanisms "which depend on some social order to prevent humans from coming in contact with wastes, such as controlling site boundaries, guarding a structure, land use policies, record-keeping, monitoring, etc." (EPA, 1989). The preamble to the proposed standards requires that institutional control measures have a high probability of protecting human health and the environment, satisfying beneficial uses of ground water in the interim, and receiving concurrence from the NRC. The preamble also states that institutional controls must have a high degree of permanence with enforcement delegated to a permanent government entity. As protective measures, institutional controls cannot guarantee against deliberate attempts to access contaminated ground water. They can, however, be employed as a deterrent to inadvertent and intentional use.

The proposed standards limit the period of application for institutional controls to 100 years at UMTRA Project processing sites where remediation can occur through natural flushing of the aquifer. The proposed standards do not, however, limit the application of institutional controls to only those sites that can be restored through natural flushing. The DOE may apply institutional controls to protect human health at sites that require no remediation because they qualify for supplemental standards or alternate concentration limits, or at sites undergoing active ground water remediation as an interim protective measure. Interim institutional controls may be used to protect public health prior to initiating any remediation strategy.

The regulatory guidance is not always consistent in the treatment of institutional controls. The *Background Information For Final Rule* (EPA, 1989) lists acceptable institutional controls in order of effectiveness. The institutional control listed as most effective is the use of marble and granite monuments. These warning devices depend on voluntary participation, and contradict the preamble which states that voluntary cooperation is inadequate.

"ICs that are not adequate include such measures as health advisories, signs, posts, admonitions, or any other measure that requires the voluntary cooperation of private parties" (EPA, 1987).

Institutional controls proposed under the Resource Conservation and Recovery Act and required under the Comprehensive Environmental Response Compensation and Liability Act (26 USC §4611 *et seq.* (1980)) differ from those in 40 CFR 192 draft final rule preamble (1994). Below are three examples of EPA's language for institutional controls in RCRA and CERCLA.

"The Proposed Rule for Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities," July 27, 1990, Required Notices (55 FR 30798 (1990)) states that:

The Agency may require the permittee to initiate an interim measure to address off-site ground water releases virtually immediately, including making available an alternative drinking water supply when drinking water supplies have become contaminated . . . As explained earlier in this preamble, the actual response action that may be required when ground water contamination is identified will be determined by a variety of site-specific factors. In any case, an early notification that an action level has been exceeded will alert the adjacent resident or owner to the potential problem and will allow their informed comment on further permitting actions taken at the facility if they have special concerns.

RCRA acknowledges the necessity of site specificity, and gives responsibility for implementing institutional controls to "permittees" which are not permanent government entities. The institutional control consists of notifying the adjacent landowner of ground water contamination. Notification requires the voluntary participation of stakeholders.

CERCLA requirements codified in 40 CFR 300.430(a)(1)(ii)(D) (1980) state:

EPA expects to use ICs such as water use and deed restrictions to supplement engineering controls as appropriate for short and long-term management to

prevent or limit exposure to hazardous substances, pollutants, or contaminants.

Here, the EPA does not require the performance of any specific action, but acknowledges that water use restrictions and deed annotations might be necessary. This provides for flexibility in developing site-specific institutional controls.

7.2 STAKEHOLDER INVOLVEMENT

Stakeholders for the UMTRA Project include states, tribal and local governments, and the public. Surveys of Superfund sites using institutional controls have indicated that "most ICs tend to work best if there is full cooperation at the state, local and general-public level" (NTIS, 1988). For example, it may be necessary for state legislatures to address the ramifications on water rights of long-term restriction on the use of contaminated ground water. As, if contaminated ground water cannot be put to some beneficial use, in some states the water right to the ground water may be forfeited after a period of time of "nonuse." Identification of stakeholder concerns is necessary to accomplish the following:

- Provide an early opportunity to design a more effective institutional control program that will have the cooperation of the involved parties;
- Provide a historical perspective which will help to deter the use of control measures tried in the past and proven to be unsuccessful;
- Avoid unnecessary duplication of effort, and assist with the development of an institutional control program that does not penalize parties who happen to live near a source of contamination;
- Assign responsibility for implementation, enforcement, maintenance, and monitoring to a stakeholder(s) who has the capability of enforcing the control measures and has an interest in seeing the control succeed (NTIS, 1988).

8.0 LIST OF CONTRIBUTORS

The following individuals contributed to the preparation of this document.

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43 CFR Part 10, "Public Land, Interior," Department of the Interior, 1994.

49 CFR Part 24, "Uniform Relocation Assistance and Real Estate Property Acquisition Regulation for Federal and Federally Assisted Programs; Final Rule and Notice," Federal Highway Administration, March 2, 1989.

APPENDIX A

DICTIONARY OF REAL ESTATE TERMS

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- Abandonment** - The relinquishment of the public interest in right of way or activity thereon with no intention to reclaim or reuse for right-of-way purposes; sometimes called "vacation".
- Abandonment of Proceedings** - The discontinuance of an action by the plaintiff after the filing of a complaint, either as provided by law or by implication.
- Abstract of Title** - A document showing the condensed history of the title to property, containing portions of all conveyances or other pertinent instruments relating to the estate or interest in the property and all liens, charges, encumbrances, and releases.
- Acceptance** - (1) the formal acceptance of a document by resolution of the public officials concerned; (2) certificate of such Resolution; (3) with private parties, legal signature constitutes acceptance.
- Access** - The way or means to approach, to enter, and to leave a privately owned tract of land from a public way without trespassing on other privately owned property.
- Access Connection** - Any roadway by which vehicles can enter or leave an arterial highway. Included are intersections at grade, private driveways and ramps, and separate lanes connecting with cross streets or frontage roads.
- Access Rights** - The right of ingress to and egress from a property that abuts upon a street or highway. Access is a private right as distinguishable from rights of the public. It is a well-established law in the United States that the right of access cannot be denied or unreasonably restricted unless other reasonable access is available or provided.
- Acknowledgment** - The act by which a party executing a legal document goes before an authorized officer or notary public and declares the execution to be his voluntary act and deed.
- Acquisition Appraisal** - An appraisal for marketing value of a property to be condemned and taken for some public use and purpose by a government body or other duly authorized condemning authority for the purpose of establishing the amount to be offered the property owner.
- Acquisition or Taking** - The process of obtaining right of way by negotiation and/or eminent domain proceedings. Negotiation would involve getting the owner to convey, dedicate, or possibly option the property to the public agency. Just compensation must be paid in all acquisitions or takings.
- Acre** - A measure of land equaling 160 square rods, or 4,840 square yards, or 43,560 square feet, or a tract about 208.71 feet square.
- Adverse Possession** - A claim made against the lands of another by virtue of actual, exclusive, open, notorious, hostile, and continuous possession and occupation of real property. The time required legally to obtain title by adverse possession varies from state to state.
- Agreement of Sale** - A written contract whereby the purchaser agrees to buy certain real estate and the seller agrees to sell according to terms and conditions set forth therein.
- A.L.T.A.** - (American Land Title Association). An extended-type coverage title policy issued by insurers for the benefit of lenders on real property or purchasers of real property.
- Appeal** - In civil practice, the complaint to an appellate court of an injustice done or error committed by a trial or lower court, whose judgment or decision the appellate court is called on to correct or reverse.
- Appellant** - The party who takes an appeal from one court or jurisdiction to another.

Appellate - Pertaining to or having cognizance of appeals. Often used to indicate the distinction between original jurisdiction (trial courts) and appellate jurisdiction (appeal courts).

Appraisal - An unbiased estimate of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and related personalty. See also "evaluation" and "valuation."

Appraisal Date - The date as of which the value estimate is applicable and valid.

Appraisal Methods - The three approaches used in the appraisal of real property: Cost Approach, Income Approach, and Market Data Approach.

Appraisal Report - A written document that contains (1) the estimate of value, (2) the date at which the value is estimated, (3) the certification and signature of the appraiser, (4) the purpose of the appraisal, (5) the qualifying conditions, (6) an adequate description of the neighborhood and the property, (7) the factual data, (8) an analysis and interpretation of the data, (9) the processing of the data by one or more of the appraisal methods, and (10) other descriptive material (maps, plans, charts, photographs).

Appraised Value - An opinion or estimate of an appraiser concerning the worth of goods or property based on an interpretation of facts and beliefs as of a stated date.

Appurtenance - An item of property accessory to, or an adjunct of, a more important property, title to which usually passes with title to the principal property. Something which passes as an incident to land, such as a right of way.

Assemblage - Putting together two or more lots to form a large parcel. To be distinguished from plottage, which is the result of assemblage.

Assignee - One to whom a transfer of interest is made, for example, the assignee of a mortgage or contract.

Assignment - The method or manner by which a right, specialty, or contract is transferred from one person to another.

Assignor - One who makes an assignment, for example, the assignor of a mortgage or contract.

Attorney's Lien - A lien or charge given by law on a judgment or on lands in those cases where an attorney has procured an award on behalf of his client.

Base Property - The private holdings of a rancher, either in the way of fee-owned land, water sources, or leased property that are used as the base property required for the issuance of a grazing permit on public domain under the Taylor Grazing Act.

Bench Mark - (1) A point of known elevation, usually a mark of some durable material such as stone or concrete posts; (2) a bronze plate to serve as a reference point in running a line of levels for the determination of the elevations.

Benefit, general - Advantage accruing from a given public improvement to a community as a whole, applying to all property similarly situated.

Bundle of Rights Theory - Fee ownership of a parcel of real estate embraces use and occupancy rights, mineral rights, air rights, disposition rights, etc. Any one, or several, of the rights may be transferred or conveyed to another, with the owner retaining those rights not conveyed.

Centerline of Survey - (1) The path followed by and identified by surveyors; (2) the longitudinal center of a right-of-way project.

Certificate of Title - A document based on a title search stating that the title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances.

Change, principle of - Holds that it is the future, not the past, that is of prime importance in estimating value; and that because economic and social forces are constantly at

work to modify real property the appraiser must always view real property and its environment in the light of its transition, not its permanence. Fundamentally the law of cause and effect.

Chattel - Personal property, such as household goods, movable fixtures, or an automobile.

Chattels-Real - All interests in real estate that do not constitute a freehold or fee estate in land; such chattels include leasehold estates and other interests issuing out of or annexed to real estate.

Clear Title - A title that is not encumbered or burdened with defects.

Clouded Title - An encumbered title. Examples of encumbrances are judgments, liens, or lower interests.

Color of Title - That which appears to be good title but which, in fact, is not title.

Commensurate Property - The measure of a rancher's ability to take care of livestock while not on public land, referred to as his commensurability. The property so used is his commensurate property. See also "base property."

Comparable - An abbreviation for comparable properties, rentals, incomes, etc. Used for comparative purposes in the appraisal process.

Comparative Sales Approach - A set of procedures in which an appraiser derives a value indication by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments, based on the elements of comparison, to the sale prices of the comparables.

Compensable Damages - Those damages for which compensation must be paid under condemnation law.

Compensable Interest - A property right, which if acquired for public purposes would entitle the owner to receive just compensation.

Conclusive Presumption - A statement of facts that must be accepted as conclusive evidence because the law will not permit its contradiction; for example, the resolutions of public bodies as to necessity and location of a property to be condemned must be conclusively presumed to be correct.

Condemnation - (1) The process by which property is acquired for public purposes through legal proceedings under the power of eminent domain; (2) the act of a federal, state, county; or city government or district or public utility corporation vested with the right of eminent domain to take private property for public use when a public necessity exists; (3) upon payment of just compensation, the act of a sovereign in substituting itself in the place of the owner and taking all or part of the rights of the owner.

Condemnation, inverse - A legal process that may be initiated by a property owner to compel the payment of just compensation where his property has been taken or damaged for a public purpose.

Condemnee - The party in a condemnation action from whom real property is being sought.

Consent to Dismiss and Waiver of Deposit - A formal document whereby a defendant in a condemnation action gives his consent to dismissal of the action and waives all claims to damages arising therefrom or claims to any money that may have been deposited in court in the case.

Consequential Damages - Loss in value of a parcel of land, no portion of which is acquired, resulting from a public improvement.

Consideration - The inducement that moves a party to enter into a contract.

Constructive Notice - Notice of title conditions as found on the public records.

Contract - An agreement between two or more persons, upon a sufficient consideration, to do or not to do a particular thing.

Control of Access - The condition where the right of owners or occupants of abutting land or the rights of other persons to access, light, air, or view in connection with a public improvement is fully or partially controlled by public authority.

Convey - The act of deeding or transferring title to another.

Conveyance - A written instrument by which a title, estate, or interest in property is transferred. Another term for deed.

Covenant - An agreement written into deeds and other instruments promising performance or non-performance of certain acts, or stipulating certain uses or non-uses for the property.

Cow-Year-Long (CYL) - The number of head of stock that can be nourished properly for a full year on a given piece of land without harming the natural vegetative cover on the land. Usually expressed in terms of the number of acres of land required for one adult cow or four or five adult sheep. The ratio of cattle to sheep varies in different localities.

Damages - In condemnation, the loss in value to the remainder in a partial taking of a property. Generally, the difference between the value of the whole property before the taking and the value of the remainder after the taking is the measure of the value of the part taken and the damages to the remainder. See also "consequential damages" and "severance damages."

Deed - Written instrument, usually under seal, by which the ownership of interests in land is transferred from one person to another.

Deed, quitclaim - A deed conveying, without warranty, any title, interest, or claim that the grantor may have in the estate conveyed.

Deed, warranty - A deed containing a covenant by the grantor to the grantee to warrant and defend the title of the estate conveyed.

Deed of Trust - Written instrument by which title to land is transferred to a trustee as security for a debt or other obligation.

Default - Failure to perform a duty or to discharge an obligation in accordance with an agreement or a contract.

Delivery - The final and absolute transfer of a deed from seller to buyer in such a manner that it cannot be recalled by the seller.

Deposition - The written testimony of a witness taken on oral questioning or interrogatories for use in the trial of an action in court.

Descent - Succession to the ownership of an estate by inheritance, or by any act of law, as distinguished from purchase. Title by descent is the title by which one person, on the death of another, acquires the real estate of the latter as the heir at law.

Direct Compensation - Payment for land or interest in land and improvements actually acquired for public improvement purposes; sometimes called "direct damages."

Disclaimer - (1) A renunciation by a defendant of all claim to damages resulting from the taking of the real property which is the subject of the complaint; (2) the instrument by which disclaimer is made.

Discovery - The procedure provided by law by which party to an action may take the testimony of any person, including the other party, by deposition taken on oral examination or written interrogatories for use as evidence in the action.

Dismissal with Prejudice - Dismissal of an action after adjudication of its merits; final disposition, barring the right to bring or maintain an action on the same cause.

Dispossess - To oust from land by legal proceedings; to eject, to exclude from realty.

Divest - To deprive of a right or title.

Donation - The voluntary conveyance by the owner of private property to public ownership and use, without compensation.

Drainage Easement - An easement for directing the flow of water.

Easement - A nonpossessing interest held by one person in land of another whereby the first person is accorded partial use of such land for a specific purpose. An easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of his land.

Easement - Sight line Easement - An easement for maintaining or improving the sight distance.

Economic Rent - (1) The reasonable income expectancy if the property were available for rent; (2) the rent being paid for comparable space, as distinguished from contract rent; (3) the market rental justifiably payable for the right of occupancy of vacant land or property.

Egress - The right to leave a tract of land. Often used interchangeably with "access."

Eminent Domain - The right or power of public and semipublic agencies to take private property for public purposes without the owner's consent on payment of just compensation.

Encroachment - A fixture, such as a house, sign, wall, or fence, that illegally intrudes on another's property.

Encumber - To burden a parcel of land with a lien or charge, such as a mortgage.

Encumbrance - Anything that affects or limits the fee simple title to property, such as mortgages, easements, liens, or restrictions of any kind.

Entirety - An estate in land held by husband and wife resulting in sole ownership by the survivor on the death of one.

Equity - The interest or value that an owner has in real estate, over and above any liens that may be against it.

Escheat - Reversion of property to the state in those cases where an individual dies without heirs or devisees and without a will.

Escrow - A procedure whereby a disinterested third party handles legal documents and funds on behalf of a seller and buyer.

Estate - A right in property. An estate in land is the degree, nature, or extent of interest that a person has in it.

Estate for Years - An interest in real property by virtue of a contract, possession of which is for a definite and limited period of time. A type of lease.

Estimate - (1) An opinion developed from analysis of adequate data by one qualified to develop such an opinion; hence the opinion of an informed person; (2) preliminary opinion, for example, the approximated cost of doing certain work.

Estoppel - A bar that precludes a person, in law, from asserting rights in contradiction of his previous position or representations.

Et al. - And others (from the Latin, "et alii").

Evaluation - A study of the nature, quality, or utility of a parcel of real estate, or interests in, or aspects of, real property, in which a value estimate is not necessarily required.

Eviction - (1) A violation of some covenant in a lease by the landlord, usually the covenant for quiet enjoyment; (2) the process instituted to oust a person from the possession of real estate.

Examiner - A title company employee charged with the duty of interpreting and passing upon the validity of documents dealing with real property, sometimes designated a Title Officer.

Exception - (1) In legal descriptions, that portion of lands to be deleted or excluded; (2) an objection to title or encumbrance on title.

- Excess Condemnation** - The condemnation of real property in excess of that which will actually be required for the proposed public use. Usually done in cases where the excess portion would be left in such condition as to be of little value or give rise to severance or other damage claims.
- Execution Sale** - A remedy afforded by law for the enforcement of a judgment. The usual process for the enforcement of a judgment for the payment of a sum of money. A writ of execution is followed by a levy, or taking of the property by the officer, usually the sheriff. The sheriff conducts a sale of the property and executes a deed of conveyance (sheriff's deed) to the purchaser.
- Execution, Writ of** - An order, issued by a court, directing the sale of property to satisfy a debt.
- Executor** - A person appointed by the probate court to carry out the terms of a will. "Executrix" if such person is a woman.
- Extension** - An agreement by which a lease is made effective for a period of time beyond its expiration date. Synonymous with "renewal."
- Fee** - An estate of inheritance in real property, that is, an estate in fee. See also "fee simple."
- Fee Simple** - The largest and most extensive estate, or full ownership, in property.
- Fee Simple Estate** - The greatest interest in a parcel of land that it is possible to own. Sometimes designated simply as "fee."
- Fiduciary** - A person in a position of trust and confidence, as between principal and broker; a broker, as fiduciary, owes certain loyalty that cannot be breached under rules of agency.
- Final Order of Condemnation** - The closing order of the court in a condemnation action made after the requirements of the final judgment have been satisfied. It passes title to the subject property to the condemnor.
- Fixture** - A movable chattel (such as a machine, heating plant, etc.) which by reason of its annexation to real property and adaptation to continuing use in connection with the realty is considered a part of the realty.
- Foreclosure** - A court process instituted by a mortgagee or a lien creditor to defeat any interest or redemption that the debtor-owner may have in the property.
- Forest Permit** - The permit issued by the U.S. Forest Service to a stock raiser that permits the grazing of a specified number of head on a national forest for a certain time or during a certain season.
- Fractional Appraisal** - (1) An appraisal of one of the component parts of property, for example, that land regardless of the building, or the building regardless of the land; (2) the appraisal of a lessee's or lessor's interest.
- Freehold** - (1) An estate of inheritance, and estate for life, or an estate during the life of a third person; (2) in appraising, the unencumbered property, that is, free of mortgage.
- General Warranty Deed** - A deed in which the grantor warrants the title against defects arising at any time, either before or after the grantor became connected with the land.
- Government Survey** - (1) The original rectangular system of subdividing public lands used by the federal government. The survey consists of a systematic numbering of square townships referenced to a principal meridian and accompanying base line; (2) a ground survey authorized by the Continental Congress in 1775 and by subsequent Congressional acts in which land was divided into townships approximately six miles square, each township normally containing 36 sections and

each section normally containing 640 acres. Also referred to as the U.S. Rectangular Grid System.

Grant - A transfer of real property.

Grant Deed - The word grant, when used in a conveyance, conveys fee title and any after-acquired title of the grantor, unless a different intent is expressed in the deed.

Grantee - A person to whom real estate is conveyed; the buyer.

Grantor - A person who conveys real estate by deed; the seller.

Gross Income - (1) The schedule income from the operation of the business or the management of the property, customarily stated on an annual basis; (2) total economic or market income a property could earn before any expenses are deducted.

Gross Lease - (1) A lease of property whereby lessor meets all property charges regularly incurred through ownership; (2) a lease under which the lessor pays all the expenses of operation of the property in addition to capital charges. See also "net lease."

Ground Rent - (1) Earnings of improved property credited to earnings of the ground itself, after allowance is made for earnings of improvements; (2) the payment made for use of unimproved land, usually on a basis that is completely "net" to the owner; (3) the net rent paid for the right of use and occupancy of a parcel of unimproved land, or that portion of the total rental paid that is considered to represent a return on the land only.

Guarantee Title - A title, the validity of which is insured by an abstract title or indemnity company. Sometimes called an "insured title."

Habendum Clause - The "to have and to hold" clause that usually follows the granting part of the deed, defining or limiting the quantity of the estate granted.

Heir - One who might inherit or succeed to an interest in lands under the rules of law applicable where an individual dies without leaving a will.

Heirs and Assigns - Terminology used in deeds and wills to provide that the recipient receives a "fee simple estate" in lands rather than a life estate.

Highest and Best Use - (1) The most productive use, reasonable but not speculative or conjectural, to which property may be put; (2) that use of property to produce income or benefits which when discounted to the present at the appropriate rate gives the property the highest value.

Historic Site - A building, monument, park, cemetery, or other site having public interest and national, regional, or state significance, which should be considered in the location and design of a highway.

Improved Land - (1) Land that has been developed for some use by the erection of buildings and other improvements pertinent thereto; (2) land that has been prepared for development, as distinguished from raw land and implying such things as grading, draining, and installation of utilities.

Improvements - Those additions to raw lands tending to increase value, such as buildings, streets, and sewer.

Improvements-on-Land - Structures erected permanently on a site to make it useable, such as buildings, fences, driveways, and retaining walls.

Improvements-to-Land - Usually additions to land to make adjacent property useable, such as curbs, sidewalks, street lights, sewers, drains and fills.

Incumbrance - A claim, lien, charge, or liability attached to and binding upon real property, such as a judgment, unpaid taxes, or a right of way; defined in law as any right to, or interest in, land that may subsist in another to the diminution of its value, but consistent with the passing of the fee.

Indenture - A deed to which two or more persons are parties and in which these enter into reciprocal and corresponding grants or obligations toward each other.

Ingress - The right to enter a tract of land. Used interchangeably with "access."

Institutional Property - Property of a public character owned and operated by nonprofit organizations or the government, such as hospitals, orphanages, private educational facilities, jails and reformatories.

Insured Title - See "guarantee title."

Interest - (1) A sum paid or calculated for the use of capital, usually expressed in terms of a rate or percentage of the capital involved, called the interest rate. (2) In property, may be the ownership of the entire property, or it may be a partial interest such as leasehold or leased fee.

Inverse Condemnation - The legal process by which a property owner may claim and receive compensation for the taking of, or damages to, his property as a result of a public improvement.

Involuntary Lien - A lien imposed against property without consent of an owner; for example, taxes, special assessments, or federal income tax liens.

Joint Appraisal - One prepared and signed jointly by two or more appraisers who concur in the analysis and conclusions.

Joint Estates - Two or more persons having concurrent and simultaneous estates or interests in the same parcel of land, whether or not the estate in land is fee simple, a life estate, or an estate for years. Such cases of co-ownership are called "tenancy by the entirety," "joint tenancy in common," and "community property."

Judgment - (1) The decision of a court of justice on the respective rights and claims of the parties to an action; (2) in a condemnation case, a decision as to the damages suffered by the condemnee; (3) in appraising, the ability to render an estimate of value usually depending on the experience and analytical ability of the appraiser. See also "judgment lien."

Judgment Docket - The record book of a County Clerk or Recorder where a judgment is entered in order that it may become a lien on the property of the debtor.

Judgment Lien - The charge upon the lands of a debtor resulting from the decree of a county properly entered in the judgment docket.

Just Compensation - That payment required by law for the loss sustained by the owner as a result of taking or damaging of private property for public purposes.

Land - In an economic sense, one of the major factors of production supplied by nature without the aid of a man; (2) in a legal sense, the solid part of the surface of the earth, as distinguished from water.

Land Classification - (1) The classification of specific bodies of land according to their characteristics or their capabilities for use; (2) the classification of soils into groups that have common features of position in the landscape, texture, drainage, slope, and erosion and including factors of soil type and topography.

Land Contract - A contract ordinarily used in connection with the sale of property in cases where the seller does not wish to convey title until all or a certain part of the purchase price is paid by the buyer, often used when property is sold on small down payment.

Land Improvements - Physical changes in, or construction attached to or appurtenant to land, of such character as to increase the utility and/or value of the land.

Land Use Map - An overall map of a community or section of a community that reveals the nature and character of the land uses therein and the extent and density of each use.

- Land Use Regulation** - Broadly, any legal restriction, such as zoning ordinances, that controls the uses to which land may be put. May include such controls as those established by restrictive covenants or by redevelopment or urban renewal plans approved by local governing bodies.
- Lease** - A contract, written or oral, by which possession of land and/or a building is given by the owner to another person for a specified period of time and for the rent specified.
- Lease Assignment** - In a lease assignment, the lessee assigns and the new lessee assumes all of the term of the original lease. The original lessee is relieved of further responsibility, and the rent is paid by the new lessee direct to the original lessor.
- Leased Fee** - (1) The title to a real estate subject to a lease; (2) a property held in fee with the right of use and occupancy conveyed under lease to another; (3) a property with the right to receive ground rentals over a period of time and an ultimate repossession.
- Leasehold** - (1) Property held under tenure of lease; (2) the right of the lessee to use and enjoy real estate for a stated time under certain conditions, such as the payment of rent.
- Leasehold Improvements** - The improvements and/or additions to leased property that have been made by the lessee.
- Leasehold Value** - (1) The worth of a leasehold interest, that is, right to the use, enjoyment, and profit existing by virtue of the rights granted under a lease; (2) the present (discounted) worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent.
- Legal Access** - A right that an owner of land that abuts a highway has to use the highway for ingress and egress.
- Legal Description** - A description recognized by law; a description by which property can be definitely located by reference to government surveys or approved recorded maps.
- Lessee** - One who acquires the right of use of the property of another, to whom the lease is granted or the property is rented under the lease.
- Lessee's Interest** - (1) The market value of the property less the value of the lessor's interest; (2) the leasehold, or right of the lessee to use and enjoy real estate for a stated time under conditions as stated in the lease.
- Lessor** - One who rents real property to another or conveys or leases the right of use of real estate to another; the landlord.
- Lessor's Interest** - The present (discounted) value of the contract (lease) rents in addition to the present (discounted) value of the reversion; a leased fee.
- License** - A personal privilege to do some act on the land of another.
- Lien** - A hold or claim that one person has on the property of another, such as a security for a debt or a charge, judgment, mortgage, or tax.
- Location** - (1) Position with respect to human activities. Location is considered one of the basic elements contributing to the value of a property; and accessibility is the principal measure of the value of location; (2) the fixed position of the highway on the ground, including curves and tangents.
- M.A.I. (Member Appraisal Institute)** - A professional designation conferred by the American Institute of Real Estate appraisers of the National Association of Real Estate Boards on appraisers who, through experience, education, extensive examination on appraisal procedures, and pledging to adhere to a specified code of professional ethics and regulations, are accepted to membership in the Institute.

Marketable Title - A title not subject to such reasonable doubt as would create a just apprehension of invalidity in the mind of a reasonable, prudent, and intelligent person; a title that a person of reasonable prudence and intelligence, guided by competent legal advice, would be willing to take and pay fair value for.

Market Value - The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

Fundamental assumptions and conditions presumed in this definition are: (1) buyer and seller are motivated by self-interest; (2) buyer and seller are well informed and are acting prudently; (3) the property is exposed for a reasonable time on the open market; (4) payment is made in cash, its equivalent, or in specified financing terms; (5) specified financing, if any may be the financing actually in place or on terms generally available for the property type in its locale on the effective appraisal date; (6) the effect, if any, on the amount of market value of atypical financing, services, or fees shall be clearly and precisely revealed in the appraisal report.

Mechanic's Lien - A lien allowed by statute to contractors, laborers, and materialmen on buildings, or other structures on which work has been performed or material supplied.

Merger of Title - The absorption of one estate into another.

Metes and Bounds - The limits and boundary of a tract of land. A metes and bounds description usually is a description that uses bearings (the angles east or west of due north or due south) and distances (usually in feet or chains) to describe the perimeter of a tract.

Monument - Visible marks left on natural or other objects by a surveyor to establish the lines and boundaries of land.

Mortgage - (1) A pledge of real property as security for the payment of a debt or the fulfillment of some obligation; (2) written document by which land is given as security of a debt with the right of redemption.

Necessity - When used in relation to power of eminent domain refers to reasonable necessity of the property for public purposes.

Negotiation - The process by which property is sought to be acquired for public purposes through discussion, conference, and final agreement on the terms of a voluntary transfer of the property.

Option - A written agreement granting a privilege to acquire property or an interest therein at a fixed price within a specified period.

Order for Immediate Possession - An order of the court allowing the condemnor possession and use of the property being condemned before a judgment is rendered, on deposit with the court by the condemnor of reasonably adequate security for payment of just compensation.

Parcel Plat - A map of a single parcel of property or portion thereof, showing the boundaries, areas, remainder, improvements, access, ownership, and other pertinent information.

Parent Property - The whole of the property of which a partial taking is being made.

Partial Taking - The acquisition of a portion of a parcel of property.

Parties in Possession - Those parties who occupy or have possession of the property being condemned.

Patent - (1) A grant of some privilege, property or authority made by the government or sovereign of a country to one or more individuals; (2) document or title issued by a

government or state for the conveyance of some portion of the public domain to an individual.

Perpetuity - A state of being continued forever; for example, an annuity that extends into the future without termination. Generally applied to an amount which accrues periodically for an indefinite number of installments, that is, without known or expected limitations.

Plaintiff - A person who brings an action. In condemnation cases it is the condemnor.

Plat - A map or plan of small piece of ground showing the boundaries, area, remainder, improvements, access, ownership and other pertinent information. Synonymous with "parcel plat."

Plot - The action of drawing a map or plan of a single parcel of property.

Plottage - The added value resulting from the combination of two or more parcels into a larger whole so as to develop one site having a greater utility than the aggregate of each when separately considered.

Police Power - (1) The inherent right of a government to pass such legislation as may be necessary to protect the public health and safety and/or to promote the general welfare; (2) the control by the state, under which public welfare is served and to which property rights are subject.

Power of Sale - A clause inserted in a will, deed of trust, or trust agreement authorizing the sale or transfer of land in accordance with the terms of the clause.

Practical Capacity - The maximum number of vehicles that can pass a given point on a lane or roadway during one hour under the prevailing roadway and traffic conditions, without unreasonable delays or restrictions to the driver's freedom to maneuver.

Prescription - The acquisition of property rights by an adverse user.

Price - (1) The quantity of one thing that is exchanged for another; (2) the amount of money paid, asked, or offered where sale is contemplated; (3) the money consideration that is expected or given in exchange for commodities or services.

Property - The right or interest that an individual has in lands and chattels to the exclusion of all others. Although technically the term means a right or interest in things rather than the things themselves, common usage makes it applicable to things rather than to the right or interest.

Property Line - The division between two parcels of land, or between a parcel of land and the street.

Property, real - (1) The bundle or rights that arise by reason of the ownership of physical real estate; the rights and interests possessed in land and those things affixed to the land; (2) land, and generally whatever is erected or growing upon or affixed to land.

Public Use - A use concerning the whole community as distinguished from particular individuals.

Quiet Title - A court action brought to establish title as to remove a cloud on the title.

Quitclaim Deed - A deed conveying, without warranty, any title, interest, or claim the grantor may have in the estate conveyed.

Realty - A brief term for real property.

Reconveyance - The transfer of the title of land from one person to the immediately preceding owner.

Recordation - Filing for record in the office of the county recorder.

Relinquishment - The release or quitclaim of an easement to the underlying fee owner of the property it affects. See "underlying fee owner."

Relocation Assistance - Advisory and/or financial aid to persons and businesses displaced by a public program to assist them in becoming re-established in areas not less

desirable, at rents or prices within their financial means, and in dwellings that are decent, safe, and sanitary.

Remainder - The portion of a parcel retained by the owner after a part of such parcel has been acquired.

Remainder Estate - An estate in property created at the same time and by the same instrument as another estate and limited to arise immediately upon the termination of the other estate.

Remnant - A remainder of land so small or irregular that it usually has little or no economic value.

Renewal Option - A lease covenant giving the lessee the right to extend the lease for an additional period of years on specified terms.

Reservation - A right retained by a grantor in conveying property.

Resolution Ordering Acquisition - A formal resolution adopted by the governing board of the condemning agency. It is a prerequisite to filing a condemnation action and is conclusive evidence of the necessity of the public improvement, the necessity of the property to be condemned and that the location is most compatible with the public good.

Restriction - (1) As used concerning real property, means the owner of real property is restricted or prohibited from doing certain things relating to the property, or using the property for certain purposes, for example, the requirement in a deed that a lot may be used for the construction of not more than a one-party dwelling, costing not less than \$10,000; (2) a legislative ordinance affecting all properties in a given area, for example, a requirement that improvements on property not be constructed any closer than 25 feet to the street curb.

Reversion - The right to repossess and resume the full and sole use and proprietorship of real property that temporarily has been alienated by lease, easement, or otherwise.

Right of Access - The right of an abutting landowner to enter or exit from a public road.

Right of Immediate Possession - The right to occupy property for public purposes, after preliminary steps for acquisition have been taken and before final settlement.

Right of Way - (1) The right to pass across the lands of another; (2) land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

Right-of-Way Appraisal - An expert opinion of the market value of property (including damages, if any) as of a specified date, resulting from an analysis of facts.

Right-of-Way Certification - The written certification that all real property rights necessary to effect the proposed construction have been acquired. Such rights could include fee title, easements, and permits for temporary uses such as construction work areas, detour areas, material disposal areas, and borrow sites.

Right-of-Way Estimate - An approximation of the market value of property (including damages if any) in advance of an appraisal.

Right-of-Way Map - A drawing of a proposed or existing improvement showing its relation to adjacent property, the parcels or portions thereof to be acquired, ownerships, and other pertinent information.

Riparian - Literally "river bank." That body of the law which has to do with those owners who live adjacent to rivers or other bodies of water.

Route - The general position of a highway relative to major features of topography, such as centers of population or important terrain features.

Section or Section of Land - A parcel of land comprising one square mile or 640 acres.

- Special Provisions** - Special directions, provisions, or requirements peculiar to the project under consideration and not otherwise thoroughly or satisfactorily detailed or set forth in the specifications.
- Special Warranty Deed** - A deed in which the grantor warrants the title against defect arising after he acquired the land but not against defects arising before that time.
- Specific Performance** - An action in a court of equity compelling the defendant to carry out the terms of the agreement or contract that was executed.
- Spot Zoning** - A provision in a zoning plan, or a modification in such a plan, that affects only the use of a particular piece of property or a small group of adjoining properties and is not related to the general plan for the community as a whole.
- Standard Depth** - The depth of a typical lot in a neighborhood or community, usually applied to lots of a particular use category, such as central business lots, outlying commercial lots, and lots of homogenous neighborhoods.
- Statute of Limitations** - A statute prescribing time limitations on the right of action in certain causes.
- Stopping Sight Distance** - The distance required by a driver of a vehicle traveling at a given speed to bring his vehicle to a stop after an object on the roadway becomes visible. The distances used in design are calculated based on the driver's ability to see a 6-inch object in the road ahead when his eye level is 3 3/4 feet above the roadway surface.
- Subdivision** - A tract of land divided into lots suitable for purposes of adding improvements.
- Sublease** - Usually considered synonymous with "sandwich lease," except that often a sublease involves the subletting of but a portion of the premises included in the prime lease.
- Subordination Clause** - Clause in a junior or second lien permitting retention of priority for prior liens. A subordination clause may also be used in a first deed or trust permitting it to be subordinated to subsequent liens as, for example, the liens of construction loans.
- Substitution** - The principle of substitution affirms that the maximum value of a property tends to be set by the cost of acquisition of an equally desirable and valuable substitute property, assuming no costly delay is encountered in making the substitution.
- Subsurface Easement** - The right to use the land at a designated distance below the surface of the land, such as for pipelines, electric and telephone circuits and cables, and storage facilities.
- Subsurface Right** - The right to the use and profits derived from the underground portion of a designated property. Usually refers to the right to extract oil, gas, other hydrocarbon substances, coal, and minerals or the right to construct and maintain tunnels, subways, subcellars, pipelines, sewers, and son on, as designated in the grant. Usually, the grant includes a right of way over designated portions of the surface.
- Surface Easement** - The right to use only the surface of the land, such as for easements of access, flowage, or rights of way.
- Take** - All property that the condemnor will permanently or temporarily deprive the owners use of.
- Taking** - See "acquisition or taking."
- Tenant** - One who holds or possesses lands or tenements by any kind of right or title, whether in fee, for life, for years, at will, or otherwise.

Thence - In surveying and in metes and bounds descriptions, designates that the course and distance given thereafter is a continuation of the course and distance given before.

Title - The evidence of a person's right to property or the right itself.

Title, certificate of - A document based on a title search stating that title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances.

Title, guarantee - A title, the validity of which is insured by an abstract, title, or indemnity company; sometimes called insured title.

Title Insurance - Insurance against loss or damage resulting from defects or failure of title to a particular parcel of real property.

Title Opinion - An analysis and interpretation by an attorney of a title search concerning present ownership, encumbrances, clouds on title, and other infirmities.

Title Report - A letter of commitment issued by a title insurance company before the policy for the purpose of indicating the condition of the title.

Title Search - An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, charges, encumbrances, and other interests.

Township - A territorial subdivision six miles long, six miles wide and containing 36 sections, each one mile square.

Transfer of Custody - the transfer to the Government of the sole right to control any activity on the surface or subsurface of the disposal site for that period of time during which the deposited and stabilized RRM shall remain a hazard to the public health, safety or the environment.

Tribal Land Withdrawal - the tribes withhold the disposal site from settlement, sale, location, or entry under some or all of the tribe's laws, for the purpose of limiting activities under those laws in order to maintain the activities of the Government under UMTRCA during the transfer of custody.

Trust Deed, or Deed of Trust - Written instrument by which title to land is transferred to a trustee as security for a debt or other obligation.

Underlying Fee Owner - The owner of fee title to the parcel encumbered by an easement.

Unity of Title - The rule, both in federal and state courts, is that a parcel to be considered a part of the remainder property must be held by the condemnee under the same quality of ownership as that from which the taking occurs.

Valuation - The process of estimating the market value, investment value, or other properly defined value of an identified interest or interests in a specific parcel or parcels of real estate as of a given date.

SOURCES

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