

*Regulations of the Attorney General
Governing the Review and Approval of Title for
Federal Land Acquisitions
(2016)*



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Land Acquisition Section
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Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016) supersedes all prior title regulations of the Attorney General, including those adopted under Order No. 440-70, dated October 2, 1970, as amended in 1974 and 1990; and Title Standards 2001.

**Statement of the Assistant Attorney General
Environment and Natural Resources Division**

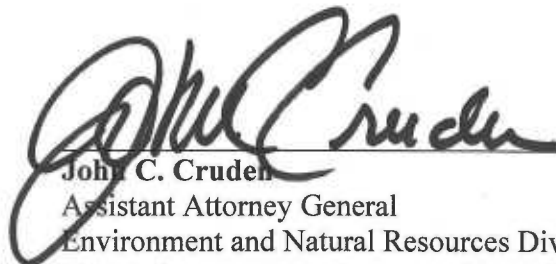
Welcome to the new edition of the *Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions*. Each year, Congress authorizes and funds the acquisition of real property needed to meet the many responsibilities entrusted to the federal government by its citizens, from establishing national parks and wildlife refuges to storing the nation's Strategic Petroleum Reserve and constructing care facilities for military veterans, among many others. The title to every property to be acquired must be examined, cleared of liens and defects, and determined sufficient for the purposes for which the federal government seeks to acquire it before the United States may take ownership.

By statute, responsibility for ensuring that real property titles meet this standard begins with the Attorney General. See 40 U.S.C. § 3111(a). As Assistant Attorney General for the Environment and Natural Resources Division ("ENRD"), I have the honor of overseeing execution of that responsibility. Title reviews are conducted by attorneys in ENRD's Land Acquisition Section, and by counsel for federal departments and agencies to whom the Attorney General's responsibility has been delegated. All are guided by regulations promulgated on behalf of the Attorney General under authority of 40 U.S.C. § 3111(b)(1).

This newest edition of the Attorney General's title regulations replaces all prior title regulations and standards, including those adopted under Order No. 440-70 of the Attorney General, dated October 2, 1970, as amended in 1974 and 1990, and the companion *Title Standards 2001*. The 2016 edition of the Attorney General's title regulations assembles all Department of Justice title review guidance in one document. It is an essential companion to the *Uniform Appraisal Standards for Federal Land Acquisitions* (2016), also known as the Yellow Book. Where questions arise or additional guidance is needed, the ENRD Land Acquisition Section should be consulted.

On behalf of the Attorney General, I thank each of the many users of this publication – the attorneys, realty specialists, contracting officers, real estate appraisers and other federal employees entrusted with acquiring real property on behalf of the United States – for your public service.

12/20/2016
Dated


John C. Cruden
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Environment and Natural Resources Division

Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions

(2016)

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Part 1: Legal Authority for the Review and Approval of Title to Real Property

1.1 The Attorney General’s responsibility; exercise within the Department of Justice

The Attorney General holds responsibility for the review and approval of title to real property before it may be acquired for use by the federal government.¹ Within the Department of Justice, this responsibility is assigned to the Assistant Attorney General for the Environment and Natural Resources Division (ENRD).² Designated attorneys in ENRD’s Land Acquisition Section conduct the review and approval of title on behalf of the Attorney General.

1.2 Delegation of the Attorney General’s responsibility outside the Department of Justice; supervision and training

In 1970, Congress authorized delegation of the Attorney General’s responsibility for the review and approval of title to real property to federal government entities outside the Department of Justice, subject to two conditions: general supervision by the Attorney General, and exercise in accordance with regulations issued by the Attorney General.³ Multiple federal departments now hold delegations from the Assistant Attorney General, ENRD, for the review and approval of title.⁴

The general supervision by the Attorney General required for review and approval of title conducted outside the Department of Justice is provided by designated attorneys in ENRD’s Land Acquisition Section. The ENRD Land Acquisition Section responds to agency requests for information and guidance, provides training to agencies holding delegated authority, and reviews title opinions prepared by agency counsel exercising delegated authority.

Federal departments without a delegation of the Attorney General’s authority must have title review and approval conducted by ENRD’s Land Acquisition Section, except where the Department of the Army is authorized to acquire land on behalf of another federal entity or otherwise provide land acquisition support services. The Department of the Army’s delegation of authority permits it to conduct these additional reviews.

¹ 40 U.S.C. § 3111(a) (“Public money may not be expended to purchase land or any interest in land unless the Attorney General gives prior written approval of the sufficiency of the title to the land for the purpose for which the Federal Government is acquiring the property.”). This statute creates a pre-condition for exercise of authority to acquire real property on behalf of the United States.

² 28 C.F.R. § 0.65(c).

³ 40 U.S.C. § 3111(b)(1).

⁴ The Attorney General’s authority to delegate title review and approval authority outside the Department of Justice is also assigned to the Assistant Attorney General, ENRD. 28 C.F.R. § 0.66(b)(1).

1.3 Authority for issuance of the Attorney General’s title regulations; form of citation

This publication constitutes the current regulations of the Attorney General issued under authority of 40 U.S.C. § 3111(b)(1). The regulations may be cited as *Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016)* or, in subsequent references within the same document, as *The Attorney General’s Title Regulations (2016)*. Questions regarding these regulations are to be directed to ENRD’s Land Acquisition Section.

The Attorney General’s Title Regulations (2016) supersede all prior title regulations of the Attorney General, including those adopted in Order No. 440-70 dated October 2, 1970, as amended in 1974 and 1990, and the Department of Justice *Title Standards 2001*.

The Attorney General’s Title Regulations (2016) have the full force and effect of federal regulatory law. Promulgation is exempt from notice and comment rulemaking via the Federal Register and from publication in the Code of Federal Regulations.⁵

1.4 Federal land acquisitions governed by the Attorney General’s title regulations

The Attorney General’s Title Regulations (2016) apply to all real property acquisitions by the federal government unless excluded by Congress. Subpart 1.5, below, identifies the most commonly encountered exclusions.

1.4.1 Purchases, condemnations, donations, and exchanges

Purchase as the term is used in 40 U.S.C. § 3111(a) and in these regulations includes conveyances by deed and acquisitions by exercise of eminent domain. Donations of real property and exchanges of land are also deemed to be purchases.⁶ Information obtained during the title review and approval process is needed to inform land management following acquisition without regard to whether consideration is paid.

1.4.2 Fee simple and other interests in real property

Land or any interest in land as the phrase is used in 40 U.S.C. § 3111(a) and in these regulations encompasses all estates in real property recognized by applicable laws,⁷ including

⁵ *E.g.*, 5 U.S.C. § 553(a)(2).

⁶ 36 Comp. Gen. 616, 618 (1957).

⁷ The applicable law will normally be that of the state where the land is located unless there are overriding federal considerations. *E.g.*, *United States v. Little Lake Misere Land Co.*, 412 U.S. 580 (1973).

but not limited to fee simple and lesser estates such as leases for terms of more than 30 years, access easements, conservation easements, and restrictive covenants. The phrase does not include rights that do not meet applicable legal definitions of real property, for example, revocable permits and licenses.

1.5 Federal land acquisitions not subject to the Attorney General’s title regulations

Congress has expressly exempted some agencies and programs from the requirement for review and approval of title by the Attorney General contained in 40 U.S.C. § 3111(a) and, it follows, from compliance with these regulations.⁸ Other land acquisitions do not require review of title under authority of 40 U.S.C. § 3111(a) because they are not purchases of real property for federal government use. The latter include but are not limited to real property acquired or recognized in defense of litigation brought against the United States, and acquisitions of land in fulfillment of trust responsibilities to Native Americans. Finally, leases with terms of 30 years or fewer are exempted from compliance with these regulations for reasons explained in Subpart 1.5.3, below.

1.5.1 Ownership acquired or recognized in defense of litigation

Transfers of title to the United States that are recognized as a result of entry of judgment in lawsuits brought against the United States are not purchases of land contemplated under 40 U.S.C. § 3111(a). However, counsel engaged in this or other litigation involving title to land may use the title examination process described in these regulations to obtain information needed to litigate effectively, or to identify and clear liens prior to a conveyance of record title to the United States. Knowledge of existing easements, restrictive covenants, and other matters running with title will also facilitate management of the land following a transfer of ownership to the United States.

1.5.2 Acquisitions in trust for Native Americans

The Secretary of the Interior has discretion to acquire land in trust for individual Indians and tribes.⁹ Acquiring title to real property as a fiduciary presents challenges and responsibilities distinct from those applicable to lands purchased for use and possible eventual disposal by federal agencies. Regulations applicable to the review and approval of title to land acquired in trust under authority of 25 U.S.C. § 5108 have been promulgated by the Department of the Interior and appear at 25 C.F.R. Part 151.

⁸ Express exemptions include land acquisitions on behalf of the Tennessee Valley Authority (“TVA”) and the U.S. Postal Service. The TVA exemption appears at 40 U.S.C. § 3111(d). The U.S. Postal Service exemption is found at 39 U.S.C. § 410(a).

⁹ *E.g.*, 25 U.S.C. § 5108.

1.5.3 Leases not exceeding 30 years

Leases to be acquired with terms of no more than 30 years have been expressly exempted from compliance with prior regulations issued on behalf of the Attorney General under authority of 40 U.S.C. § 3111(b)(1). While all leases constitute interests in real property, the absence of evidence of loss or litigation arising from exemption of these shorter term leases merits continuing the exemption in the Attorney General’s Title Regulations (2016). Agencies with leasing programs reported use of alternative means for verifying ownership and control of properties and, where relevant, obtaining subordination or non-disturbance agreements from lienholders prior to award of leases. These approaches have proven sufficiently protective of the federal interest in preventing financial loss and avoiding foreseeable litigation without requiring purchase of record title evidence. Physical inspection of all properties under consideration for leasing as set forth in Part 4 of these regulations is nonetheless strongly encouraged.

Part 2: Beginning the Title Review and Approval Process

2.1 Confirming authority to acquire real property; identifying funding

Confirmation that Congress has authorized and funded an acquisition of real property is an essential prerequisite to title review and approval.¹⁰ Acquisition authority may be granted expressly, or by implication.¹¹ In determining whether authorization is implied, agency counsel must look to the plain language and legislative history of statutes, case law interpreting the statutes, and principles of statutory construction. Where defects in an agency’s authority are found, or the extent of authority is so unclear as to raise serious doubts regarding its interpretation, the agency may need to seek a legislative remedy from Congress. Acquisitions must comply with all conditions precedent created by Congress.¹²

2.2 Determining the interest to be acquired

The agency authorized to make an acquisition must determine the interest it needs if Congress has not specified the estate to be acquired. Multiple factors may influence this

¹⁰ “Land may not be purchased by the Federal Government unless the purchase is authorized by law.” 41 U.S.C. § 6301(c).

¹¹ *E.g.*, *United States v. Kennedy*, 278 F.2d 121 (9th Cir. 1960) (authorization of a federal program and an appropriation to pay for it may imply authorization to acquire the property necessary to carry out the program); *Polson Logging Co. v. United States*, 160 F.2d 712, 714 (9th Cir. 1947) (statutory authorization to procure real estate may be evidenced by the making of an appropriation as well as by a specific authorization to acquire).

¹² For example, land acquisition authority is sometimes limited to a specific geographic area, or to transactions with willing sellers.

decision, including some beyond the scope of these regulations.¹³ However, review and approval of the interest to be acquired is an element of the sufficiency of title determination required of the attorney who will review title on behalf of the Attorney General (the reviewing attorney).¹⁴ If uncertainty exists regarding the estate to be taken, the acquiring agency must consult with the reviewing attorney before ordering a title examination or appraisal. This will enable the title examination and appraisal to proceed in a cost-effective manner and avoid delays in approval of title and compensation of landowners.

The following subparts contain guidance regarding acquisition and examination of title for two property rights about which questions often arise: mineral interests and water rights.

2.2.1 Mineral interests

Ownership of minerals¹⁵ or of rights to minerals may be severed from and conveyed independently of ownership of the surface of land. Absent specific legislative direction from Congress, an agency considering a purchase of land from which mineral interests have been severed will need to decide whether to acquire the outstanding mineral interests in addition to the surface estate. The rights accompanying minerals ownership and leasing are largely defined by the laws of the state where a property is located. In many states, ownership of mineral interests includes an implied right to use as much of the associated surface as is reasonably necessary to develop the underlying minerals. ***Acquiring agencies and reviewing attorneys must understand the scope of outstanding mineral interests in order to assess the risk that such rights could be exercised in a manner that would interfere with the federal government's intended use of the land or endanger its investment in the property (including any planned improvements).***

Mineral interests may be excluded from an acquisition if an acquiring agency concludes that it has no need for the minerals and the reviewing attorney determines that legal rights attaching to ownership and extraction of the minerals are unlikely to interfere with the United States' reasonably foreseeable use of the property being acquired. These determinations are case-specific and must be evaluated separately for each acquisition.

A determination of noninterference may be based on the present improbability of development of the minerals, but the potential for changed circumstances in future must also be considered; for example, technology may advance or market prices increase so as to create incentives for mining or drilling. Should this occur, a subsequent acquisition of the mineral

¹³ See, e.g., Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, *et seq.*, and its implementing regulations.

¹⁴ 40 U.S.C. § 3111(a). Subpart 6.1 of these regulations contains guidance on determining the sufficiency of title.

¹⁵ "Minerals" is used in these regulations to encompass interests in oil, gas, coal, sand, gravel, and all other subsurface resources other than water that may be owned separately from the surface estate in any jurisdiction.

interests at an increased cost may become necessary to protect the federal government's investment. These situations are to be avoided to the extent reasonably foreseeable.

Solutions to concerns created by outstanding mineral interests vary according to circumstances. An agreement to subordinate the minerals owner's right to use the surface may be an option (for example, if directional drilling from an adjoining parcel of land is physically and legally possible). In instances where a subordination agreement cannot be obtained, and reasonably foreseeable risk of exercise of the mineral interests (or the surface rights associated with the mineral interests) exists, such rights may have to be acquired through purchase or condemnation if title to the surface acquisition is to be approved.

Examination of title to the minerals will be necessary if a decision is made to acquire mineral interests. Abstracts of mineral titles may be obtained from specialized providers of this data in the western United States; private attorneys' title opinions are offered more frequently in the east. Title evidence may also be prepared by federal agency personnel with the requisite subject matter expertise to do so upon approval of the reviewing attorney. The acceptability of the qualifications of the abstractor or other provider of title evidence must be confirmed with the reviewing attorney prior to contracting for title evidence.

Title insurance companies generally do not search title to mineral interests, but may agree to note the existence of related transactions found in the course of examining record title to the surface estate. Consideration should be given to requesting this information: The data obtained may lead to reevaluation of an initial decision to exclude mineral interests. If, for example, the title examination reveals mineral leasing, an agency will need to investigate the status of the leases.¹⁶ Alternatively, if some or all of the mineral interests are found to be held by the current surface owner, an agency should consider purchasing those minerals with the surface estate in order to reduce or eliminate the possibility of subsequent minerals leasing.

2.2.2 Water rights

Water rights may be owned separately from the surface estate, particularly in the western United States, under a variety of regimes recognized by state laws. Federal agencies acquiring water rights with the intent of exercising them – or preventing their exercise by removing them from the marketplace – must confirm title to the water rights. Title insurance companies generally do not offer this service. The acceptability of the qualifications of a water rights attorney or other independent water rights expert who can provide title evidence must be confirmed with the reviewing attorney prior to contracting for a water rights examination. Title evidence for water rights may also be prepared by federal agency personnel with subject matter expertise upon approval of the reviewing attorney.

¹⁶ The validity of minerals leases may not be determinable solely from a records examination because the leases often contain no fixed expiration date, providing instead for continuation so long as extraction is occurring or rentals are being paid to the lessor. Inspection of the land and interview of the surface estate and minerals owners and lessors may be necessary to resolve validity. See Part 4 of these regulations for guidance regarding such non-record title evidence.

2.3 Acquiring agency's responsibility for obtaining title evidence; transfer of title by deed or by exercise of eminent domain

The acquiring agency must procure all information and documentation needed for the review and approval of title on behalf of the Attorney General – the title evidence. Title evidence must be obtained in a timely manner to avoid delay in compensating landowners for direct purchases and enable identification of interested parties for service of process in condemnation proceedings. Except where otherwise authorized by law or provided by contract, the expenses of procuring title evidence may be funded from appropriations for the acquisition of land or appropriations made for the contingencies of the acquiring agency.¹⁷

The means by which title will be transferred to the United States may not be determined until after an agency obtains title evidence and conducts negotiations with the landowner(s). This uncertainty should not affect the title examination process, which requires the same forms of title evidence without regard to whether land will be conveyed by deed or acquired by condemnation. Where title will be transferred by deed, subsequent steps in the review and approval of title diverge as explained in Parts 6, 7, and 8 of these regulations. Part 9 addresses title review and approval requirements for condemnation cases.

2.4 Required forms of title evidence: record and non-record

Review and approval of title to real property requires gathering and examining record and non-record title evidence. Examination of title is incomplete without both.

- Record title evidence. Written evidence of title is found primarily in deeds and other documents recorded in the official public land records of the county, parish, or recording district (as applicable) where the real property of interest is located. Options for obtaining an examination of record title evidence are identified in Part 3 of these regulations.
- Non-record title evidence. Other important information regarding title may be discoverable only from physical inspection of a property or inquiry of its owners and occupants. The inspection and interview process for non-record title evidence is addressed in Part 4 of these regulations.

¹⁷ 40 U.S.C. § 3111(c).

Part 3: Obtaining Record Title Evidence

3.1 Search and reporting requirements

The examination of the public land records must consist of a reasonably diligent search of the records, considering both the property's character and value and the interests to be acquired.¹⁸ The resulting written report must disclose the name of each person or entity in whom title is vested, and all additional parties identified in the records as having or claiming an interest in the property to be acquired. The latter may include tenants revealed by recorded leases, lienholders, beneficiaries of easements, taxing authorities, owners' associations, and heirs or devisees of a deceased owner where these successors in interest can be identified from public records. Legible copies or accurate transcriptions must be obtained of all documents affecting the present owner's title and those creating interests that run with title to the land.

3.2 Selecting a title examiner

The record title examination must be obtained from a title examiner or title insurance company deemed competent to provide it by the reviewing attorney. Nationwide, title insurance companies are the most readily available sources for title examination. Title insurers authorized by state law to conduct business in the jurisdiction where the subject land is located and who hold membership in the American Land Title Association (ALTA) or Texas Land Title Association (TLTA) may be considered competent to examine title in the absence of adverse information. Subpart 3.6 of these regulations provides an overview of the process for obtaining title insurance.

At a minimum, a provider of title evidence must be licensed if licensing is required by applicable laws in the state where the real property is located. Title examiners must have no financial interest in the land to be acquired, nor be related to or affiliated with a seller or donor. Agencies may adopt their own standards and procedures for approving providers of title

¹⁸ This requirement tracks Rule 71.1(c)(3) of the Federal Rules of Civil Procedure, which governs the United States' responsibility for identifying interested parties when acquiring title by condemnation. The Advisory Committee notes explain that the requirement protects both landowners and the United States:

Where a short term interest in property of little value is involved, as a two or three year easement over a vacant land for purposes of ingress and egress to other property, a search of the records covering a long period of time is not required. Where on the other hand fee simple title in valuable property is being condemned the search must necessarily cover a much longer period of time and be commensurate with the interests involved. But even here the search is related to the type made by competent title searchers in the vicinity. A search that extends back to the original patent may be feasible in some midwestern and western states and be proper under certain circumstances. In the Atlantic seaboard states such a search is normally not feasible nor desirable. There is a common sense business accommodation of what title searchers can and should do.

evidence in addition to these basic requirements. The Department of Justice does not maintain a list of approved title examiners.

3.3 Required period of search for public land records

The time period of the historical public land record that must be examined will vary from state to state, in part as a result of laws limiting the effectiveness of documents recorded before a given period of years.¹⁹ Specification of a search period is generally unnecessary when title insurance is obtained, because title insurance policies do not routinely limit liability for information revealed by documents recorded before a given date. However, agencies must consult a reviewing attorney for guidance regarding the necessary period of search when relying on forms of title evidence that do explicitly limit liability based on recording date. If the reviewing attorney concludes that uncertainty exists under applicable laws, the following periods of search will apply.

- A minimum of 60 years for acquisitions of real property valued at \$50,000 or more, except those listed below.
- A minimum of 40 years for acquisitions of real property valued at less than \$50,000, except those listed below.
- A search identifying the owner under the most recent deed of record and encumbrances against the owner's title for acquisitions of easements valued at less than \$25,000 that will not be the primary access to a property and are not acquired with the intent of constructing permanent improvements of substantial value thereon.²⁰

Values may be estimated based on the best information available at the time a title examination is requested.

3.4 Search of federal court records

Examination is required of federal court records in the federal court district where the land is situated to identify judgment liens, decrees, and pending cases that could affect title in

¹⁹The Model Marketable Title Act was created to standardize the records review process nationwide. Where adopted, the Act limits the necessary search period to 30 years, with some exceptions. States not adopting the Act may nonetheless have limited search periods by alternative legislation. Statutes governing the filing of specific types of liens may also prescribe periods of effectiveness.

²⁰ The determination of what constitutes a permanent improvement of substantial value is left to the acquiring agency, subject to the concurrence of the reviewing attorney. The phrase is not intended to encompass ordinary signage or pedestrian trail development; however, paved parking lots and roads may qualify, depending on costs of construction. In cases of uncertainty the likelihood that the acquiring agency's planned use will continue in perpetuity may be considered in deciding whether to approve title.

any state which has not enacted a statute authorizing judgments and decrees of United States courts to be recorded or otherwise conformed to the rules and requirements relating to judgments and decrees of the courts of the state.

In states that have enacted conformity statutes in accordance with 28 U.S.C. § 1962, no search of federal court records is necessary unless, under state law, judgments and decrees of the state courts become liens on property upon entry in the court where rendered, in which case search of the federal court records is necessary if those records are located in the county, parish, or recording district in which the land is located.

3.5 Acceptable formats for reporting title examination results

The following written formats for reporting the results of examination of the public land records may be accepted by reviewing attorneys. As a practical matter, selection may be limited by regional practices affecting availability in the marketplace.²¹

- Title insurance commitments (sometimes known as binders, preliminary reports on title, etc.) followed by issuance of title insurance policies on forms approved by the Department of Justice for use in federal land acquisitions
- Abstracts of title records
- Certificates of Title using the form set forth in the Appendix to these regulations
- Copies of public records authenticated by an official custodian
- Owners' duplicate certificates of title issued under the Torrens system
- Other evidence of title acceptable to the reviewing attorney, including title opinions prepared by a private attorney or law firm and abstracts of title records prepared by a federal employee or contractor deemed competent to examine title by the reviewing attorney

3.6 Overview of title insurance

Title insurance is selected to document the results of the public records search for most federal land acquisitions because of its wide availability and proven reliability. Title insurance providers are generally members of the American Land Title Association, which promulgates standardized title insurance forms for use throughout the country, including the ALTA U.S. Policy developed in conjunction with the Department of Justice for federal land acquisitions.

²¹ See, e.g., Subparts 2.2.1 and 2.2.2 of these regulations regarding mineral interests and water rights.

Title insurance is provided in two steps. The insurer first prepares a written summary of findings from its examiner's initial public records search. The information is usually formatted as a title insurance commitment, described in Subpart 3.6.1 of these regulations. Together with a Certificate of Inspection and Possession prepared by the acquiring agency for non-record matters (see Subpart 4.2), the title insurance commitment will enable the reviewing attorney to conduct the pre-acquisition title review.

Following completion of a purchase or filing of a condemnation action, the title insurer proceeds to the second step in the title insurance process: updating its initial search of the public land records to confirm the United States' deed (for a purchase) or notice of condemnation has been recorded in those land records with no intervening adverse changes to title. A title insurance policy will then be issued as set forth in Subpart 3.6.2 of these regulations.

Title insurance commitments and title insurance policies may be amended after issuance for a variety of reasons, including updating the initial search where excessive time has elapsed (for a commitment), adding or deleting exceptions to coverage based on new information brought to the insurer's attention, and otherwise modifying coverage. These amendments are styled as endorsements. Each endorsement must reference the commitment or policy it is amending, and should be appended to the commitment or policy. Endorsements become a part of the record title evidence and must be provided promptly to the reviewing attorney.

3.6.1 Title insurance commitments

The title insurer's summary of its initial records examination is usually formatted as a title insurance commitment, but may also be described by the provider as a binder, preliminary report, or litigation guarantee. The term "commitment" is used in these regulations for ease of reference. There is no required format for the commitment when the United States will be the insured party; however, the report received from the title insurer must:

- Encompass the interests in real property to be acquired by the United States.
- Disclose the full name of every person and entity in whom title to any interest to be acquired by the United States is vested, as shown by the public land records or otherwise known to the insurer.
- Identify all documents affecting any interest to be acquired by the United States (*e.g.*, liens, easements, rights-of-way, affirmative and restrictive covenants, and competing records of ownership) revealed by the records search. Exceptions from coverage for these interests must specifically identify each holder.
- Provide addresses for all parties having or claiming any interest to be acquired by the United States if disclosed by the public records or known to the insurer. This will facilitate service of process if condemnation is needed to acquire title.

- Include complete, legible copies or accurate transcriptions of all recorded instruments listed in the title insurance commitment as affecting any interest to be acquired by the United States.
- Identify all local taxing authorities, including lien due dates for each and amounts for all assessments that have not been paid as of the date of the commitment. The acquiring agency or reviewing attorney must obtain this information from other sources if it is omitted.
- Allow sufficient time for completion of acquisition by the United States without expiring and requiring purchase of a new commitment. A commitment with no expiration date is preferable. Reviewing attorneys have discretion to require an update prior to closing if they deem it advisable to address staleness.

The commitment should name the United States of America as the proposed insured and identify the title insurance policy form to be issued as one currently approved by the Department of Justice for use in federal land acquisitions. Errors in this information must be reported to the commitment issuer so they are not carried over to the title insurance policy.

Prior to closing, the acquiring agency or reviewing attorney must confirm with the title insurer that any changes to the commitment requested by the United States are acceptable. In lieu of an endorsement (described in Subpart 3.6, above) the reviewing attorney may accept a *pro forma* of the title policy to be issued or a mark-up of the title insurance commitment.

3.6.2 Title insurance policies

When a title insurance commitment is obtained as evidence of record title it must be followed by issuance of a title insurance policy. The appropriate trigger for issuance of the policy will depend on whether an acquisition is completed by acceptance of a deed, or by initiation of a condemnation case.

For a conveyance by deed, the title insurer may act as the closing agent, recording the deed to the United States in the public land records and updating the records search from the date of the title insurance commitment. The title insurer will then issue a title insurance policy on the ALTA or TLTA form required for federal land acquisitions.²² The policy will be used by the reviewing attorney to confirm that the interest contracted for by the acquiring agency vested in the United States. Subpart 8 of these regulations governs review of title following an acquisition by deed.

²² The current policy form is the ALTA U.S. Policy 9-28-91 (Revised 12-3-12), except in Texas, where the TLTA T-11 and T-12 are in use. Copies of the forms appear in the Appendix to these regulations. Reviewing attorneys should consult the ENRD Land Acquisition Section or the ENRD internet website (www.justice.gov/enrd) periodically to identify newer forms.

For a condemnation action, notice of the U.S. District Court suit must be recorded in the public land records as soon as possible after filing of the complaint in court. The initial title examination must then be updated to confirm recordation of the notice and identify any changes in title that occurred between the time of issuance of the title insurance commitment and recording of the notice of condemnation.

The title insurance policy will be used by the Department of Justice to confirm recording of the notice of condemnation and verify that all parties identified in the public land records as having or claiming an interest in the condemned estate have been named as defendants to the suit. Additional defendants will be added if necessary as a result of changes to the status of title in the interval between issuance of the title insurance commitment and policy. Subparts 9.3, 9.4, 9.5, and 9.6 of these regulations address title review following the filing of a condemnation case.

3.6.3 Limits on liability

The federal government purchases title insurance to obtain a convenient and reliable examination of the public land records; the insurance provided with the title examination results is a secondary benefit. A liability amount of at least half the consideration paid for the property is recommended. However, the amount of insurance or liability amount chosen is left to the discretion of the acquiring agency, subject to approval by the reviewing attorney. State regulations or company rules may prevent title insurers from issuing a policy based on less than the full purchase price of a property.

For a donation or exchange of real property, the insured amount may be based on the best available estimate of value. It is not necessary to secure an appraisal in order to estimate value for purposes of purchasing title insurance, or to include the value of planned improvements in the liability amount.

3.6.4 Asserting claims against title insurance policies

The process for asserting claims against American Land Title Association policies is described in and governed by the “Conditions and Stipulations” in the ALTA U.S. Policy. A prompt notice requirement appears in section 3 of the ALTA U.S. Policy 9-28-91 (Revised 12-3-12). For real property in Texas, the claims process is described and governed by conditions and stipulations found in the TLTA U.S. Policy.

The major differences between the standard ALTA and TLTA private owners’ policy forms and those used by the federal government relate to the right of subrogation and the right to defend suits for which the insurer might be liable. Lawsuits filed by and against the United States must ordinarily be prosecuted and defended by the Department of Justice. Thus, the ALTA U.S. Policy provides that a title insurer shall cooperate in the defense of any related claims and render reasonable assistance in defending suits, but preserves to the Department of Justice the ultimate control of any litigation. However, the policy also provides that insurance coverage will be forfeited if the Department elects not to follow the advice of the insurer.

3.7 Overview of abstracts of title

An abstract of title is an organized collection of documents that were found to affect title during a search of the public land records. The reviewing attorney must analyze each document in the abstract in order to determine current ownership. Review of a title abstract may be very time consuming, depending on the amount and type of activity revealed by the public records search.

Title abstracts are compiled primarily when title insurance is unavailable, generally for mineral interests and water rights (see Subparts 2.2.1 and 2.2.2). In some regions of the United States, abstracts of title may be obtained from an incorporated title company, or a certified individual title examiner. Elsewhere, abstracts are prepared by an attorney or law firm that may supplement the abstract with a chronological history of ownership and an attorney's title opinion. The private attorney's title opinion should facilitate review of title on behalf of the United States, but the reviewing attorney must form his or her own opinion and memorialize approval of title in writing before the acquisition.

3.7.1 Required contents

An abstract of title must clearly identify the subject land and contain photocopies or summaries of all documents found to affect title after examination of the public land records. The contents of a title abstract must be clearly organized. Where multiple parcels sharing a common preceding chain of title are to be acquired, a master abstract should be prepared and supplemented by an individual abstract for each related parcel. The abstractor's certification must appear on each abstract.

Abstracts containing illegible photocopies are unacceptable and must not be relied on for review and approval of title until corrected. Abstracts containing extraneous documents irrelevant to the title being examined may also require revision at the discretion of the reviewing attorney.

Where documents are summarized rather than photocopied, the abstract must contain a sufficient summary of the material portions of each instrument to enable the reviewing attorney to determine the nature and effect of the instrument. The information necessary will vary, depending on controlling property law in the state where the land is located. Basic data that must be included are recordation information (date, book and page, or instrument number) for each instrument; identification of any unpaid mortgages, deeds of trust, and liens; and notice of any reservations, limitations, or conditions on ownership, *e.g.*, easement grants and affirmative and restrictive covenants. Releases of homestead, dower, and other statutory rights must be affirmatively shown in jurisdictions where these rights are recognized at law.

Questions raised and encumbrances or clouds on title revealed by the abstract must be addressed in the reviewing attorney's pre-acquisition title opinion. Subpart 3.7.3 of these

regulations focuses on title abstractors' responsibilities to supplement abstracts of title with information that can be used by a reviewing attorney to assess the sufficiency of title.

3.7.2 Abstractor's certification

The abstractor's certificate will generally be acceptable if it is in the form approved by a title association of recognized standing in the state where the land is located and if the abstractor certifies that he or she has examined all relevant public records pertaining to title for the required period of search, and that all matters of record affecting title are correctly shown in the abstract. The certificate should specify the number of pages contained in the abstract, and must be dated and signed by the abstractor.

Professional liability must not be limited by vague language in the certification. In jurisdictions where the liability of the abstractor is based on the contract to search title, the certificate should state that the abstract is furnished to the United States of America. The reviewing attorney must be satisfied with the sufficiency of the abstract and the certificate.

3.7.3 Special challenges in reviewing title abstracts

When title examination results are summarized in a title insurance commitment, the commitment should identify all additional documentation required for a transfer of clear title to the United States.²³ By contrast, where an abstract of title is obtained, it may be necessary for the reviewing attorney to make those determinations. The following subparts provide guidance in circumstances where additional research and documentation are found to be necessary following the initial record title examination.

3.7.3.1 Deceased landowner; determination of heirship

When a conveyance will follow the death of the most recent owner of record, confirmation must be made that the deed to the United States will be signed by the party or parties with legal authority to transfer title. As a practical matter, the ability to satisfy requirements for conveying title by deed created by a landowner's death will depend largely on whether administration (*i.e.*, probate) of the landowner's estate has occurred and, if not, whether the landowner's successors in interest (generally, heirs or devisees, but also potentially lienholders) can be identified and located and will cooperate in conveying title. If this proves impractical, the reviewing attorney should contact the ENRD Land Acquisition Section for guidance regarding the use of condemnation to clear title.

²³ Reviewing attorneys may consider it appropriate to make independent determinations of the documentation required even if a title insurance commitment is obtained. There is an affirmative duty to do so if reviewing attorneys deem information provided in the title insurance commitment or abstract to be incomplete.

The following points are offered to guide attorneys in reviewing abstracts of title when the record landowner is deceased.

- Wills must be reproduced in full if the landowner died testate. Essential portions of probate proceedings, beginning with the petition for probate, must be shown.
- If title will be conveyed by devisees of a will, the abstract must show whether there has been final distribution of the estate, discharge of the executor, and closing of the estate.
- When title has passed without a will, the abstract must indicate whether administration of the estate has occurred and, if so, contain sufficient portions of the record of the proceeding to establish that statutory requirements essential to validity were observed.
- When title is to be conveyed by an estate administrator or executor's deed, the probate court's order or other authority of the fiduciary to act for the estate must be shown.
- If administration of an estate has occurred, but title is to be conveyed by deed of the landowner's heirs as established in the probate proceeding, the abstract must show the correct names of all persons determined to be heirs; whether debts and charges, including all taxes against the estate, have been paid or provided for; and whether final distribution of the estate and discharge of the administrator has taken place.

3.7.3.2 Conveyances by a trustee or fiduciary

When land will be conveyed to the United States by a trustee or other fiduciary, the reviewing attorney must verify that the trustee or fiduciary has legal authority to make the sale. The abstract of title must contain all essential parts of trust instruments, powers of attorney, and records of any court proceedings conferring authority for conveyances to enable the reviewing attorney to determine the legal effect of such sale and confirm that all legal requirements for validity were observed.

3.7.3.3 Conveyances by a corporation or other business entity

When land will be conveyed to the United States by a corporation or other business organization (*e.g.*, general or limited partnership or other limited liability entity created by the filing of organizational documents), it is necessary to establish that the entity has authorized the sale and that the individual signing the deed is empowered to do so. Research into the business organization laws of the state where the entity is established and the state where the real property to be acquired is located (if different) may be necessary following review of an abstract of title.

As an example, the list below summarizes the information usually required for conveyances by corporations.

- Sufficient portions of the corporate charter or comparable records to confirm the power of the corporation to hold and convey real estate, and any specification of the corporate officer(s) with authority to execute the deed
- A certificate of incumbency (usually from the secretary of the corporate seller) identifying the names and titles of the current corporate officer(s) who will sign the deed
- In jurisdictions where corporations must file annual reports or pay franchise taxes, a certificate or statement of good standing and/or payment of taxes from the proper state officer
- When the land to be acquired is not located in the state of incorporation of the seller, a certificate of authority to do business in the state where the land is located
- A certified copy of the resolution of the proper corporate body authorizing the conveyance to the United States
- In some states, for conveyances of all, or substantially all of the real estate of a corporation, a certified copy of a resolution authorizing the conveyance

3.7.3.4 Foreclosures, tax sales, or other judicial proceedings

When foreclosure proceedings appear in the chain of title and the time for redemption, appeal, or reopening the matter has not expired, the abstract must provide sufficient information to enable the reviewing attorney to determine the validity and effect of the foreclosure. If the foreclosure is by judicial proceeding, the abstract must identify all defendants and contain sufficient portions of the court record to confirm the regularity of the proceeding and compliance with provisions of the foreclosure statute. If foreclosure is under a power of sale, the terms of the power and evidence of compliance with applicable statutory provisions must appear.

An abstract must fully disclose sufficient portions of the records of all sales by receivers, execution sales, tax sales, distributions as a result of divorce, and other judicial proceedings affecting title to enable the reviewing attorney to determine the legal effect of such sales or proceedings and confirm that statutory requirements were observed and the time for redemption, appeal, or reopening the matter has expired.

3.7.3.5 Special assessment districts; property owners' associations

Abstracts containing references to property assessments of any kind, including but not limited to those imposed by drainage, school, special improvement, water, paving, sewer and homeowners' and other property owners' associations, must set out the current and delinquent assessment amounts and reference the statutes or recorded development regimes establishing the assessment rights.

3.7.3.6 Ownership of streets and alleys

When land to be acquired by the United States will encompass vacated streets or alleys, the abstract of title must include all information of record affecting ownership, including identification of the legal proceeding that permitted vacation. Public utility equipment may exist above or below public rights-of-way without recorded easements. Inquiry must be made of the local governing jurisdiction and public utilities to identify any utility equipment and rights of use still present after vacation. If vacation of a street leaves an abutting landowner without access, state law may provide that landowner with a private access easement over the former public road. All such rights must be understood by the acquiring agency and reviewing attorney. The information should also be provided to appraisers who may be assigned to value the property.

3.7.3.7 Public records lost or destroyed

If public land records for all or a portion of the period of title examination have been lost, destroyed by fire or natural disaster, or otherwise become unavailable, an abstract of title must begin with the first available record and be supplemented by a certificate of the abstractor as to the following: unavailability of the records; that no reservations, limitations, encumbrances, or defects in the title are known to the abstractor; and that the beginning point of the abstract is accepted by competent attorneys in the community as adequate evidence of record title. The title abstractor must also provide proof of compliance with requirements of statutory proceedings, if any, to establish titles affected by the loss or destruction of records.

3.8 Other acceptable formats for reporting title examination results

3.8.1 Certificates of Title

The Certificate of Title appearing in the Appendix to these regulations was developed before the federal government began accepting title insurance. Agency use of Certificates of Title has been largely supplanted by title insurance, but remains acceptable. Because it provides a summary of ownership, a Certificate of Title is simpler to review than an abstract of title.

3.8.2 Copies of official records authenticated by a custodian

Copies of official records authenticated by a custodian of the records may be accepted as title evidence when no documentation of ownership appears in the regular public land records. This unusual situation may occur when a federal agency acquires land that was previously transferred from the United States into state ownership, with no subsequent conveyances of title by the state. An official custodian of the state's records may review and report on the contents of state files regarding the land, which may be found to include such matters as grazing leases and utility easements. The report should include a certification of accuracy and completeness from

the custodian. A suggested template for a Title Certification on Behalf of a State Government appears in the Appendix to these regulations.

3.8.3 Owners' duplicate certificates of title issued under the Torrens system

The Torrens system provides for registration of land ownership through judicial action. It exists in a variety of forms in multiple states, but is used actively in only a few. A reviewing attorney who encounters this form of title evidence will need to understand the operation of the system as it exists in the state where the land is located before relying on it to approve title for the United States.

3.8.4 Other evidence of record title acceptable to the reviewing attorney

An attorney exercising delegated authority to review title on behalf of the Attorney General has discretion to accept title examination results presented in additional formats. Potentially acceptable evidence of record title includes but is not limited to title opinions prepared by an attorney or law firm licensed to practice in the jurisdiction where the land is located and abstracts of title prepared by a federal employee or contractor deemed competent to examine title by the reviewing attorney. The reviewing attorney must fully review and understand all such title evidence and must sign and append his or her written approval of title.

Part 4: Assembling Non-record Title Evidence

4.1 Purpose

Search of the public land records cannot provide all of the information necessary to confirm the sufficiency of title; interests in land may also be created in ways not revealed in the public land records. Examples include oral or written but unrecorded leases, liens securing payment for labor or construction that may have attached by operation of law but not yet been filed of record, and claims to ownership arising from physical occupation over a statutorily set time period (adverse possession). An inquiry of the landowner, physical inspection of the property, and preparation of a Certificate of Inspection and Possession are required in every federal land acquisition governed by these regulations to identify such title risks.

Other, non-title related matters of concern may also be identified during the inspection and interview process, including environmental contamination, structures qualifying for historic preservation protection, or the presence of cultural resources. All must be addressed by the acquiring agency and reviewing attorney under laws and regulations applicable to those concerns.

4.2 Preparing a Certificate of Inspection and Possession

A Certificate of Inspection and Possession (CIP) template appears in the Appendix to these regulations. Acquiring agencies may use the form provided or develop their own if it includes all of the investigations and representations found in the template and is approved by the reviewing attorney.

Completion of a CIP must be based on an interview of the landowner(s) and all parties in possession or making use of the land (unless any of the foregoing decline to be interviewed or cannot be located) and a physical inspection of the property. The basis for possession or use of the land by anyone other than a landowner must be determined. Written disclaimers of interest or quitclaim deeds must be obtained if uncertainty exists regarding whether compensable rights have vested. The Appendix to these regulations contains a suggested disclaimer of interest. The acquiring agency may need to obtain a formal survey if the physical inspection reveals a suspected encroachment or other encumbrance usually investigated by survey. Subpart 4.4 of these regulations provides additional guidance regarding surveys.

Interview, inspection and preparation of the CIP are the responsibility of the acquiring agency. It may be most convenient for the realty specialist assigned to negotiate purchase to prepare the CIP. For efficiency and cost savings, the physical inspection may be scheduled to coincide with site visits for other purposes, including suitability studies, survey, appraisal, or environmental studies.

Where budgets and circumstances permit, preparation of the CIP should occur soon after a property has been identified for acquisition and repeated again as close in time to accepting a deed or referring a condemnation case as is feasible. This allows early detection of issues that may require time to resolve, and verification that no material changes have occurred just before acquisition.

A reviewing attorney may determine that extenuating circumstances justify a modified inspection schedule. However, because of the fundamental importance of the information contained in a CIP, the reviewing attorney may not waive the requirement for a CIP entirely without written approval of the ENRD Land Acquisition Section.

The CIP should be included with the record title examination results submitted to the reviewing attorney for approval of title. Alternatively, the reviewing attorney may issue the pre-acquisition title opinion prior to completion of the CIP if the opinion is made subject to a requirement that a CIP be completed and submitted before closing a purchase.

Where title will be acquired by condemnation, the CIP must accompany the condemnation referral to the ENRD Land Acquisition Section. Any interested parties revealed by the CIP who have not released their claims via disclaimer, quitclaim deed, or other writing will be named as defendants to the condemnation.

Information contained in the CIP may also be needed by appraisers preparing valuation estimates.

4.3 Concerns revealed by physical inspection

The table below lists possible claims to title commonly identified by a physical inspection of real property and recommended avenues of inquiry.

Occupied improvements; agriculture or grazing	Does a building have tenants or subtenants? Is farming or grazing occurring? If so, what documents (perhaps unrecorded leases) establish the rights of the occupants and other users of the building or land?
Roads or trails, bike or equestrian paths	Can they be matched to easements or other documents recorded in the public land records? If not, who are the users, for what purposes, and by what claims of right (unrecorded easements, prescriptive claims, etc.)?
Utility lines	Do they correspond to easements and rights-of-way recorded in the public land records? Utilities above and below public streets may be present by local government permission, requiring inquiry of governments and utility companies to confirm the nature and extent of use.
Fences and other potential encroachments	Do fences appear to follow known boundary lines? Are there other potential encroachments on boundaries, such as building corners, driveways, or utility lines? If so, do recorded or unrecorded easements, leases, or other documents govern the encroachments?
Wells (water, gas, oil, environmental monitoring, etc.)	Can each well be matched to a recorded document? Who is using the well? Under what claim of right? Are pipelines, utilities, or access roads appurtenant to the well?
Personal property	Do vehicles, construction materials, crops or livestock suggest active land use by someone other than the landowner? Under what claim of right?
Cemeteries	Descendants of the interred may have rights to visit and maintain cemeteries under state law.
Ditches, dikes, and tile lines	Are there associated access rights and maintenance agreements? Does water flow out, through, or into the property?

Evidence of minerals exploration	Are there proven minerals in the area or physical evidence of mining or drilling? If so, who is conducting the work and under what claim of right?
Railroad rights-of-way	Are the rail lines active, or formally or informally abandoned? What interest did the railroad acquire originally: fee simple or an easement? Do crossing rights exist?

4.4 Formal surveys and real property descriptions

All descriptions of land used in deeds to the United States or in condemnation referrals to the Department of Justice must be adequate to enable location of the boundaries of the property on the ground. When land is part of a subdivision, a copy of the subdivision plat showing the land to be acquired must be obtained and reviewed.

A current survey of the property to be acquired may provide valuable information about encroachments and other possible title issues, and acquiring agencies are therefore encouraged to consider obtaining a survey. Factors to consider when evaluating the benefits of a survey include the value of the property to be acquired, the intended use of that property such as whether the acquiring agency intends to construct permanent improvements on it, whether the United States already owns some or all of the adjoining lands, the current and reasonably foreseeable uses of adjoining nonfederal lands, and whether an inspection of the property provided evidence of encroachments from or onto adjoining lands.

A new survey may also produce a more precise description of boundaries. If so, both the pre-existing and new descriptions should be used in a deed to the United States or the agency's condemnation referral to the Department of Justice and connected by the surveyor's certification that they encompass the same land (*e.g.*, "being the same property previously described of record as . . ."). This practice links the two descriptions in the chain of ownership.

Title insurance commitments routinely except matters not shown in the public land records from policy coverage. The exceptions will be deleted if a survey meeting American Land Title Association standards is provided to the title insurer. If a survey is obtained for other purposes and title insurance will be acquired, agencies should consider providing the survey to the title insurer in order to obtain the enhanced coverage.

Part 5: Requesting the Attorney General's Review and Approval of Title

5.1 Overview

A federal agency intending to acquire an interest in land by any method must obtain record and non-record title evidence as described in these regulations and provide it, together with the supporting information set forth in Subpart 5.3, with a request for a pre-acquisition opinion of title to an attorney authorized to exercise the Attorney General's delegated authority for review and approval of title. The pre-acquisition opinion will analyze the title evidence and supporting information and set forth the requirements that must be met before title can be deemed approved.

5.2 Required qualifications for reviewing attorneys

Review and approval of title to real property under authority of 40 U.S.C. § 3111(a) requires a delegation of authority on behalf of the Attorney General to the reviewing attorney's employing federal department and that the reviewing attorney hold an active license to practice law somewhere in the United States of America. Delegation of review authority is addressed in Subparts 1.1 and 1.2 of these regulations. Authority to practice law is required because issuance of an opinion of title is deemed to constitute the practice of law. Reviewing attorneys may be assisted as permitted under applicable rules of professional responsibility by non-licensed law school graduates, paralegals, realty specialists, and other individuals with appropriate knowledge and training. Attorneys who will exercise the Attorney General's delegated authority to review title should have at least two years of experience reviewing title to real property. If a less experienced attorney will review title, that attorney's work product must be reviewed and countersigned by an attorney with the requisite experience.

5.3 Documents and information to be submitted with request

A suggested list of documents and information to be provided with a request for a pre-acquisition title opinion on behalf of the Attorney General follows. Agencies may customize this information in a form for use by realty specialists and others charged with obtaining title evidence.

- A written request containing
 - Citation to the statutory authority for acquisition and appropriation(s) of funding
 - Identification of the project for which the real property is to be acquired sufficient to enable confirmation that the project falls within the acquisition and funding authorities

- Identification of the property adequate to enable the reviewing attorney to determine the title to be reviewed, including the formal legal description, if available
- The name(s) of the seller(s) or donor(s)
- The consideration to be paid for the property
- Any additional information that may be helpful in determining sufficiency of title
- Any purchase, donation, or exchange agreements or correspondence constituting an offer or acceptance
- Record title evidence in compliance with the requirements set forth in Part 3 of these regulations, including legible copies or transcriptions of all documents listed in the title evidence as affecting the estate to be acquired
- Evidence of non-record matters affecting title as set forth in Part 4 of these regulations, including a Certificate of Inspection and Possession
- Maps, plats, and surveys of the land to be acquired, if available
- A draft copy of the deed to the United States, if available

Part 6: Conducting the Pre-acquisition Title Review

6.1 Determining sufficiency of title

The statute underlying these regulations requires approval of “the sufficiency of the title to the land for the purpose for which the Federal Government is acquiring the property.”²⁴ Title must be clear of material defects, and it must allow use of the property for the purpose intended by the acquiring agency. Outstanding rights, liens, or claims that might adversely affect or possibly defeat the government’s title or cause losses to the United States must be eliminated prior to approval of title. A standard of reasonableness applies: Technical defects in record title that are highly unlikely to result in either loss or litigation must be identified and analyzed in the reviewing attorney’s opinion on behalf of the Attorney General, but will not preclude approval of title. For example, an unreleased lien that has exceeded a statutory time limit for enforcement could be an approvable defect, particularly where the lienholder cannot be located to obtain a lien release. By contrast, an enforceable lien, or a lien the enforceability of which is disputed by its holder, will almost always need to be released of record or cleared by condemnation before title may be approved.

²⁴ 40 U.S.C. § 3111(a).

A determination that the title under review will allow use of the real property for the purpose intended by the acquiring agency is also mandated by 40 U.S.C. § 3111(a). Reviewing attorneys must compare the title evidence with the requirements of the project for which a property is needed. Conflicts may arise, for example, from limitations imposed by restrictive covenants or by rights associated with outstanding mineral interests. Subpart 6.2.1 of these regulations provides guidance regarding restrictive covenants; Subpart 2.2.1 addresses mineral rights. No outstanding rights may be approved that could foreseeably prevent the acquiring agency's intended land use.

Reviewing attorneys must exercise sound legal judgment in determining the sufficiency of titles to real property; in case of doubt, the ENRD Land Acquisition Section must be contacted for guidance prior to an approval of title.

6.2 Analyzing limitations on title

Economic and administrative concerns arise when an agency proposes to acquire real property subject to provisions limiting use of the land: restrictive covenants have potential to impede an acquiring agency's intended use, prevent re-use of a property by a successor federal agency, or render the property unattractive to potential buyers upon disposal by the United States. When coupled with provisions for automatic reverter of title in the event of violation, restrictive covenants can cause an uncompensated loss of federal ownership.²⁵

Reviewing attorneys may approve limitations on title in accordance with the guidance provided in the following subparts. The ENRD Land Acquisition Section must be contacted for guidance if uncertainty exists: Covenants and conditions in deeds to the United States or in prior

²⁵ For these reasons, the 1970 edition of the Attorney General's title regulations prohibited most acquisitions of land encumbered by restrictive covenants or provisions for reverter of title. However, the categorical prohibitions proved overly broad in practice: Many restrictive covenants were found to support the purposes for which acquisition was sought, in circumstances where government resale was unlikely to occur or to be negatively affected. In other situations, title examinations revealed restrictive covenants irrelevant to any foreseeable land use by the United States or a subsequent buyer. The burden and expense of eliminating such restrictions was deemed unjustified. The regulations were amended in 1990 to recognize the authority of the Assistant Attorney General, ENRD, to waive them and permit acquisition subject to limitations on title in individual instances when warranted in the interests of the United States. Standards for analyzing requests for waiver developed within the ENRD Land Acquisition Section, which was charged with review and recommendation. Decisions by Assistant Attorneys General, ENRD, proved consistent across time. Acquiring agencies became familiar with the standards for waiver, and the process of requesting and receiving waivers from compliance with the relevant sections of the Attorney General's title regulations (1970 edition, as amended) became largely perfunctory. We are aware of no instance in which grant of a waiver resulted in litigation or created a land use or disposal problem for the United States. As a result, the Attorney General's Title Regulations (2016) do not categorically prohibit acquisition of land subject to restrictive covenants and rights of reverter, but instead require an acquisition-specific analysis by reviewing attorneys. See Subparts 6.2.1 (restrictive covenants) and 6.2.2 (reverters).

deeds that may foreseeably prohibit or impede use of the property by the acquiring agency or successor agencies or inhibit resale upon disposition are unacceptable in the absence of clear authorizing legislation.

6.2.1 Restrictive covenants

The following three-part test must be applied by reviewing attorneys in evaluating whether to approve title subject to restrictive covenants running with title or proposed for inclusion in the deed to the United States unless applicable statutory authority clearly allows acceptance of title subject to such covenants.²⁶

- **Will a restrictive covenant interfere with the acquiring agency’s intended use?** The reviewing attorney must compare the wording of the restrictive covenant with the statutory authority for acquisition and the acquiring agency’s project purpose(s). Research into state law that would apply to interpretation of the covenant may also be needed. Are the covenant terms and intended use compatible, or likely to result in conflict and litigation?
- **Will the federal government as a whole have a foreseeable need to use the land for a purpose that would violate a restrictive covenant?** This analysis requires consideration of the likelihood of alternative uses by the acquiring agency and by other agencies to whom the property might be transferred administratively. Physical location of the property as it affects the likelihood of reassignment to another federal agency may be considered.
- **Will the restrictions negatively impact the federal government’s investment in the property?** Relevant considerations include whether a property is to be purchased or donated, and the cost of any planned site improvements. Is the property one potentially to be sold as excess someday? If so, the covenant must not foreseeably prevent the federal government from recovering its investment.

Legal research will be necessary if the interpretation or enforceability of a restrictive covenant is questionable. Where the restrictive covenant and intended federal use appear compatible to the reviewing attorney, written confirmation of non-interference must be obtained from an agency representative who will have administrative authority for management of the land before approving title. If the restrictive covenants are coupled with rights of reverter, the additional considerations set forth in Subpart 6.2.2 must be analyzed. The reviewing attorney

²⁶ For example, the Fish and Wildlife Act expressly permits the Secretary of the Interior to accept gifts of real property for benefit of the U.S. Fish and Wildlife Service subject to the terms of “restrictive or affirmative covenant[s], . . . if such terms are deemed by the Secretary to be in accordance with law and compatible with the purpose for which acceptance is sought.” 16 U.S.C. § 742f(b)(1); *see Sabine River Auth. v. U.S. Dep’t of Interior*, 745 F. Supp. 388, 403-404 (E.D. Tex. 1990) (noting statute “specifically authorize[d]” Secretary’s acceptance of easement subject to terms restricting public access).

must contact the ENRD Land Acquisition Section for guidance if uncertainty exists regarding whether to approve title subject to a restrictive covenant.²⁷

If the restrictive covenant is deemed unacceptable by the reviewing attorney, the acquiring agency must obtain a release or satisfactory amendment of the covenant before proceeding. Absent release or amendment, the agency will need to authorize condemnation of the rights of enforcement,²⁸ forego the acquisition, or seek a waiver of this regulation from the Department of Justice. See Subpart 6.3 for information regarding requesting a waiver.

Examples of frequently encountered restrictive covenants that may be approvable, depending on case-specific circumstances, under the above three-part test include the following.

- Conservation easements encumbering real property to be acquired for conservation or preservation purposes so long as the consideration paid for the property reflects the limited estate to be acquired
- Institutional controls imposed for environmental remediation or other public health and safety purposes where the consideration paid for the property reflects the limited estate to be acquired
- Development regimes for commercial office parks and other planned unit developments that are designed to maintain property values within the development if the property will be acquired for a use compatible with the development regime

²⁷ See, e.g., *Calf Island Cmty. Trust v. Young Men's Christian Assoc. of Greenwich*, 392 F. Supp. 2d 241 (D. Conn. 2005), and 263 F. Supp. 2d 400 (D. Conn. 2003). This condemnation action was filed after the Department of Justice declined a request to waive the Attorney General's then-existing title regulations in order to allow an acquisition of land for a wildlife refuge subject to a restrictive covenant limiting the property to residential uses. Opponents of the acquisition asserted that the government's planned land use would violate the restrictive covenant. In what is probably *dicta* (the court first held the restrictive covenant had been eliminated by the condemnation), the court applied Connecticut property law to find the opponents' analysis of the restrictive covenant incorrect. 392 F. Supp. 2d at 252-253. Analyzing the same covenant under the laws of other states may have produced a different conclusion.

²⁸ Elimination of restrictive covenants by condemnation is administratively burdensome if a large number of properties are benefitted by the covenants. All owners of these properties must be identified and joined as defendants to the condemnation case. This requires at a minimum a last owner search of record title for every benefitted property. In the case of older restrictive covenants where the benefitted property or properties may have been subdivided after imposition of the covenants, specialized research in the land records and survey expertise may be needed to identify the presently benefitted properties. The acquiring agency will also need to estimate just compensation owed to the owners of each benefitted lot. To do this, an appraiser would determine the market value of each benefitted lot with, and without, the right to enforce the restrictive covenants against the property to be acquired by the United States. The difference in value would be the measure of just compensation. The resulting figures may not be uniform for each benefitted property. See *Uniform Appraisal Standards for Federal Land Acquisitions* (2016).

Restrictive covenants related to racial and religious use and occupancy sometimes appear in older land records as historical artifacts. They are legally unenforceable and must be ignored.

6.2.2 Rights of reverter

Restrictive or affirmative covenants coupled with an automatic transfer of title upon violation of a covenant (a right of reverter) arise in one of two ways. A would-be seller or donor of land to the United States may seek to convey title subject to provisions for the reversion of title if the property ceases to be used for a specified purpose. Alternatively, an examination of record title may reveal that such provisions were imposed by a prior landowner and already encumber title. Such defeasible titles (*i.e.*, ownership subject to an automatic transfer to another after a triggering event) are ordinarily not acceptable when permanent improvements of substantial value²⁹ are to be erected on real property unless Congress expressly authorized acquisition subject to these limitations.

A defeasible fee title may be acquired by purchase or donation when no permanent improvements of substantial value are to be erected on land, provided the statute authorizing acquisition does not preclude approval, the interest to be acquired is sufficient to permit the contemplated land use, and the purchase price reflects the market value of the limited interest. *If the provision for reverter will be created in the deed to the United States, the reviewing attorney must insure that it is clearly written and not susceptible of inadvertent violation. The ENRD Land Acquisition Section must be contacted for guidance if uncertainty exists.*

When real property is donated to the United States for the purpose of erecting specified permanent improvements or facilities on the land, the donor may seek to reserve a right of reverter in the event construction has not begun before a specified date. To be acceptable, such a right of reverter must terminate immediately upon the expenditure of any funds appropriated for construction in order to avoid an inadvertent reverter caused by contracting award challenges, weather, or other uncontrollable delays.

6.2.3 Interests held by other federal agencies

Examination of record title may occasionally reveal pre-existing interests held by another component of the federal government. As an example, when one agency obtained title evidence in preparation for acquiring a fee estate, it showed a conservation easement already held by a second agency. In these situations, applicable federal programmatic and state property laws should be researched to assess whether acquisition of a superior estate would result in automatic merger and extinguishment of the lesser estate. The answer may be unclear. Whatever the interpretation reached, the later arriving agency must initiate communications with the agency holding the pre-existing interest before proceeding. If the pre-existing use is compatible with the intended use of the land, agreement should be reached to document the respective rights of each agency in a memorandum of understanding or other appropriate document. If the existing

²⁹ See footnote 20 for guidance regarding what may constitute permanent improvements of substantial value.

federal interest is incompatible with the new intended use, the two agencies must determine how to proceed. The second acquisition should not take place until the conflict is resolved.

6.3 Requesting a waiver of title regulations

If an agency proposes a real property acquisition that cannot be approved by a reviewing attorney under these regulations because of a defect in title, but the agency and reviewing attorney conclude the acquisition should nonetheless proceed in the best interest of the United States, the reviewing attorney may request a waiver of the Attorney General's Title Regulations (2016) from the Department of Justice to allow the approval of title subject to the identified defect. The ENRD Land Acquisition Section will review the request for waiver and provide the Assistant Attorney General, ENRD, or other authorized decision maker with a recommendation. *Circumstances justifying request for, and grant of, a waiver of the Attorney General's Title Regulations (2016) are expected to be rare.*

6.4 Preparing the pre-acquisition title opinion

The reviewing attorney must examine all record and non-record title evidence provided by the acquiring agency and prepare a pre-acquisition title opinion (sometimes referred to as a preliminary title opinion). The opinion will report the existing status of title and set forth all requirements to be met before completing the acquisition.

A template for a pre-acquisition title opinion appears in the Appendix to these regulations. Reviewing attorneys may also develop and use their own preferred title opinion forms following the guidance below. Whatever the format used, the pre-acquisition title opinion must indicate that title will be deemed approved on behalf of the Attorney General as required by 40 U.S.C. § 3111(a) when all requirements set forth in the pre-acquisition title opinion have been met.³⁰ The reviewing attorney nonetheless retains discretion to require documented verification of resolution before the agency may proceed to closing.

All pre-acquisition title opinions must include the following information.

- Address, acreage, legal description, and/or any other information sufficient to identify the property to be acquired with certainty
- Name(s) of the seller(s) or donor(s)
- Names of all other persons or business entities found to have or claim an interest in the property

³⁰ Subpart 8.1 of these regulations requires a post-acquisition examination of updated title evidence by the reviewing attorney to verify the vesting of title in the United States; however, title is deemed approved upon compliance with the requirements of the pre-acquisition title opinion.

- Citation to the statutory authorities for acquisition and appropriation(s) of funding
- Identification of the project for which the property is to be acquired sufficient to enable confirmation that the project falls within the acquisition authority
- Itemization of all materials provided by the acquiring agency and used in preparation of the opinion, *e.g.*, the issuer, date and time of the record title examination results; agency Certificate of Inspection and Possession; purchase contract or donation agreement; and draft deed to the United States, if available.
- The full consideration to be paid for the property
- All requirements that must be met before the acquiring agency may complete the acquisition. These would include, for example, satisfaction of existing liens as well as taxes that are due and payable, certification on behalf of the acquiring agency that all remaining matters affecting title will not interfere with agency use of the property, and receipt and recordation of a deed vesting title in the United States of America.
- A statement that title will be deemed approved under authority of 40 U.S.C. § 3111 when all requirements and conditions set forth in the pre-acquisition title opinion are met.

If the reviewing attorney concludes that title is defective beyond the agency's ability to cure, the reviewing attorney must issue a pre-acquisition title opinion analyzing the title defect(s), and declining to approve title. Where clearing title by use of condemnation is an option available to the agency, the title opinion must list all interested parties who should be named in a condemnation action. The pre-acquisition title opinion must be included in any resulting condemnation referral submitted to the Department of Justice.

Part 7: Completing an Acquisition by Deed

7.1 Overview

The closing of an acquisition by deed³¹ may be conducted by the title insurer when a title insurance commitment is obtained as evidence of record title. An escrow agreement and bank account maintained by the title insurer may be used to facilitate conveyance of the deed and payment of funds to sellers and any lienholders.

³¹ A closing entails recording of the deed and any other documents necessary to convey clear title to the interest contracted for to the United States of America, and disbursement of the purchase price to the appropriate parties.

A closing may alternatively be conducted by an attorney for the acquiring agency. In the absence of an escrow procedure the purchase money for the balance due after payment of costs chargeable to the seller may be paid to the seller after:

- All objections to the title and requirements contained in the pre-acquisition title opinion have been eliminated, and instruments releasing all liens or encumbrances on the property and the executed deed to the United States have been recorded in the public land records.
- The reviewing attorney has been advised by the examiner of record title that the public land records have been re-checked to a date subsequent to recordation of the deed to the United States, and that the post-closing title evidence will show title vested in the United States of America, subject only to those exceptions approved by the reviewing attorney in the pre-acquisition title opinion.

7.2 Payment of taxes, liens, and assessments

Prior to or at the time of the acquisition of fee simple interests in real property, all tax and other assessments that have attached as liens against title must be paid. When such taxes or other assessments are liens on property at the time of acquisition by the United States, but not yet payable, adequate funds must be withheld to permit payment when due.

In the acquisition of less than fee simple interests in land, title may be approved subject to the lien of the current taxes and other assessments not yet due and payable without provision for payment if the consideration paid for the property by the United States does not exceed fifty percent of the market value of the land, as estimated by the acquiring agency or by the local tax assessor, or the total tax bill will not exceed \$1,000. If the consideration to be paid by the United States for a less than fee simple interest is more than fifty percent of the estimated value, and the current taxes and other assessments are likely to exceed \$1,000 but are not yet payable, funds must be withheld from the purchase price to pay the taxes and assessments when due.

Title to less than fee simple interests in land may be approved subject to outstanding mortgages, deeds of trust, and vendors' liens, where (a) obtaining a release of the interest to be acquired by the United States requires payment of an administrative fee to the lienholder that is deemed prohibitively expensive by the acquiring agency and the reviewing attorney, and (b) a property is not encumbered in excess of fifty percent of its reasonable value and the purchase price being paid by the United States does not exceed twenty percent of the value of the tract, as value is estimated by the acquiring agency or by the local tax assessor.

7.3 Requirements for the deed to the United States

The deed to the United States must conform to state and local statutory and recording requirements. Additionally, it must:

- Contain a general warranty of title except under the following circumstances. The acquiring agency should always request a general warranty of title. However, some grantors may be unable or unwilling to generally warrant title for reasons that do not signal a defect in title. A reviewing attorney has discretion to approve a special warranty or quitclaim conveyance under the following circumstances: The acquiring agency must verify that it requested a general warranty of title and provide a justification for the landowner's refusal to comply that is not based on defects in title to the land. Frequently encountered examples include state and local governments lacking legal authority to warrant title, grantors acting as fiduciaries, and large corporations with a fixed policy against generally warranting title. In some jurisdictions special warranty deeds are simply the norm; however, a proposal to convey by quitclaim deed or deed without warranty where the grantor is not a government body must be carefully scrutinized. Such deeds are historically used in clearing clouds on title, not in conveying good title. ***In all instances, the title evidence must satisfy the reviewing attorney that title is sufficient, and that inability to obtain a general warranty of title does not indicate a defect in title.***
- Recite the full consideration paid. The goal of this requirement is public transparency. Examples of consideration include the purchase price, exchange for another identified parcel of land, settlement of identified litigation, or in consideration of community goodwill and without monetary consideration.
- Convey the land to the "United States of America and its assigns" unless Congress has specified that title be taken differently. This occurs rarely.
- Contain a reference to the name of the agency for which the lands are being acquired. The suggested location is in a declarative sentence following the description of the land, for example: "The acquiring federal agency is the U.S. Department of the Interior, National Park Service." The agency reference serves to identify the agency with initial responsibility for managing the land and provides a point of contact for subsequent title examiners. It is in no way intended to limit or restrict use or ownership of the land to a single federal agency.
- For fee acquisitions, convey all right, title, and interest of the grantor in and to any alleys, streets, ways, strips, or gores abutting or adjoining the land; except that when land is being conveyed by a state or local government, the land abuts a public road, alley, *etc.*, maintained by the local government, and the road will remain a public road, it is appropriate for that government to reserve its public road easement rights.
- Contain no reservations or exceptions not approved by the reviewing attorney. When land is to be conveyed encumbered by easements or other rights thought to be outstanding in third parties, those rights must not be "excepted" from the conveyance; instead, the deed should convey the grantor's interest "subject to" such outstanding rights, unless the contract or option expressly provides otherwise.

7.4 Acceptable forms of post-acquisition title evidence for a conveyance by deed

The pre-acquisition examination of record title must be updated through the date of recordation of the deed to the United States. The provider of the initial title evidence will normally perform this service. When preliminary title evidence consists of a title insurance commitment, a title insurance policy issued on the required ALTA or TLTA policy form must be obtained. See Subpart 3.6.2 of these regulations for additional information. The policy must have an effective date no earlier than the recording date for the deed to the United States and must insure the title of the United States to the interest conveyed and described in the deed.

When other forms of pre-acquisition title evidence are used, the post-acquisition title evidence must show that the pre-acquisition records examination has been continued from the date of the preliminary title evidence to and including recordation of the deed to the United States.

Part 8: Conducting the Post-acquisition Title Review Following an Acquisition by Deed

8.1 Confirming sufficiency of title; preparing a post-acquisition title opinion

The statutory requirement for review and approval of title on behalf of the Attorney General, 40 U.S.C. § 3111(a), mandates review of title to real property prior to acquisition. A reviewing attorney must also conduct a post-closing examination of title evidence updated through recordation of the deed to the United States to confirm that all requirements set forth in the pre-acquisition title opinion were met. ***The post-acquisition review of title must occur within a reasonable time following closing so that any errors or omissions can be identified and corrected in a timely manner.*** The ENRD Land Acquisition Section must be consulted if uncertainty exists regarding the need for corrective action, or the acceptability of a proposed method of correction.

The post-acquisition review should be memorialized in a formal writing from the reviewing attorney to the appropriate agency official. Two acceptable templates for post-closing confirmation of title review appear in the Appendix to these regulations. Reviewing attorneys may develop and use their own preferred formats so long as the writing confirms that (1) title is vested in the United States subject only to encumbrances deemed acceptable to the acquiring agency and reviewing attorney, and (2) all requirements for approval of title set forth in the pre-acquisition title opinion were met. The reviewing attorney's approval of title and related title evidence should be maintained in the agency's real property records.

8.2 Documents and information to be submitted to the reviewing attorney

The acquiring agency must provide copies of the following documents and information to the reviewing attorney as soon as possible after completing an acquisition by deed.

- The contract of sale, donation, or exchange
- Deed to the United States with confirmation of recordation in the public land records
- Pre-acquisition and post-closing title evidence
- A statement explaining how each requirement set forth in the pre-acquisition title opinion was met
- Documents and data showing the elimination of objections and the meeting of requirements contained in the pre-acquisition title opinion, *e.g.*, affidavits, disclaimers of interest, corporate certificates of good standing
- Confirmation on behalf of the agency that the remaining matters affecting title will not interfere with the contemplated use of the land
- A plat or map of the property, if available
- All other information or documents requested by the reviewing attorney

8.3 Materials to be submitted to the Department of Justice following the post-acquisition title review

Agencies holding the Attorney General's delegated authority to review and approve title for federal land acquisitions under 40 U.S.C. § 3111(b) are subject to the general supervision of the Attorney General as required by the statute. To facilitate supervision and better assist reviewing attorneys, copies of the following materials must be submitted as PDF files to the ENRD Land Acquisition Section at DelegatedTitles.ENRD@usdoj.gov following closing.

- Pre-acquisition opinion of title by the reviewing attorney
- Confirmation of post-acquisition review of title by the reviewing attorney
- Post-acquisition title evidence
- Deed to the United States showing its recordation in the public land records
- Certificate of Inspection and Possession

The e-mail must provide contact information for the reviewing attorney but should not be used to ask questions or transmit information requiring a response. (The ENRD Land Acquisition Section may be contacted directly if a response is sought.) The ENRD Land Acquisition Section will review a sampling of materials submitted to the email address. The acquiring agency may be asked to provide additional supporting documentation if questions arise during review.

Part 9: Acquiring Title by Condemnation

9.1 Introduction to eminent domain

The power of the federal government to condemn title to real property is coextensive with its power of purchase.³² Congressional authority and funding to acquire land will enable use of eminent domain to transfer title to the United States, unless Congress has acted to limit or prohibit that use. An acquiring agency must review its acquisition authority to confirm the extent of its authority to condemn before proceeding. *The information provided below is limited to that necessary to an understanding of the role of title review and approval in the condemnation process. The ENRD Land Acquisition Section should be contacted for detailed guidance in preparing a condemnation case referral.*³³

Exercise of eminent domain results in the affirmative taking of a property interest. The United States has a constitutional mandate to ensure just compensation is paid to the owners of condemned property. Just compensation has been defined by federal courts as the market value of a property on the date it is appropriated by the government.³⁴

Eminent domain may be useful to transfer title to the United States under a variety of scenarios, most commonly when an agency requires property that it is unable to purchase. This may occur when a landowner and agency cannot agree on a purchase price, defects in title prevent the apparent landowner from being able to convey clear title, a landowner is missing or unidentifiable, or a landowner lacks legal authority to convey land.

Condemnation cases are filed in the federal district court with geographic jurisdiction over the subject property. The ENRD Land Acquisition Section assigns case responsibility to Land Acquisition Section trial attorneys, to U.S. Attorneys' Offices, or to both acting jointly.

³² *United States ex rel. Tenn. Valley Auth. v. Welch*, 327 U.S. 546, 554 (1946); *Hanson Lumber Co. v. United States*, 261 U.S. 581, 587 (1923).

³³ Familiarity with Federal Rule of Civil Procedure 71.1, 40 U.S.C. §§ 3113 and 3114, and the *Uniform Appraisal Standards for Federal Land Acquisitions* (2016) is also advised.

³⁴ *E.g., Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1 (1984).

9.2 Two methods of federal condemnation

Condemnation cases are initiated in one of two forms: with a Declaration of Taking under the procedure prescribed in 40 U.S.C. § 3114, or with a complaint only, using 40 U.S.C. § 3113. The fundamental differences between the two are outlined below.

- Declaration of Taking (DT). In Declaration of Taking cases, the United States acquires ownership immediately upon filing a complaint accompanied by a Declaration of Taking and depositing estimated just compensation into the court registry. The court will usually grant a motion by the government for an immediate transfer of possession to the United States. The Declaration of Taking acts as a unilateral deed, but at a purchase price yet to be determined. The just compensation owed will be decided by litigation of the condemnation case. Valuation will be as of the date of taking, usually the date estimated just compensation was deposited. The acquiring agency must pay any judgment amount awarded above the deposit, with interest accrued from the date of deposit. Use of a Declaration of Taking gives an agency immediate access to real property while halting accrual of interest on the deposited amount. Landowners are not entitled to recover litigation expenses unless they qualify for reimbursement under the Equal Access to Justice Act.³⁵
- Complaint-only condemnation. A complaint-only condemnation is initiated without a Declaration of Taking or a deposit of estimated just compensation. It does not convey title or allow the transfer of possession to the United States at the outset of a case. Instead, it enables an acquiring agency to litigate the just compensation that would be owed while retaining the right to dismiss the condemnation case if the price is deemed too high. In essence, the United States obtains an option to buy a property for the judgment amount. The interest in land described in the complaint is valued as of the date of trial, which may follow months or years of discovery and motions practice. The defendant landowners will remain in possession and may develop the land or use it as they see fit until judgment is entered and paid by the acquiring agency. If the United States dismisses a complaint-only condemnation without paying the judgment, the acquiring agency must pay the landowner's reasonable litigation expenses.³⁶

9.3 Title review and approval for condemnation cases

The procedures for obtaining and reviewing record and non-record evidence of title for a condemnation case are the same at the outset as those for conveyances by deed. See Parts 3 and 4 of these regulations for guidance. If condemnation is requested by the acquiring agency, the title evidence will be used to identify all parties who may have or claim an interest in the property so they can be joined as parties and awarded just compensation. Regardless of whether suit is filed with a Declaration of Taking or a complaint only, the pre-acquisition title evidence must be updated

³⁵ 28 U.S.C. § 2412.

³⁶ 42 U.S.C. § 4654.

promptly after filing suit and recording notice of the taking in the public land records. Subparts 9.4, 9.5, and 9.6 of these regulations explain this procedure in detail.

9.4 Obligation to record notice of suit in the public land records

Immediately after a condemnation case is filed, the United States must record notice of the pending litigation in the public land records. The burden will then shift to anyone acquiring an interest in the property after filing of the notice to come forward and assert a claim in the condemnation proceeding.

For Declaration of Taking cases, the Declaration of Taking must be recorded because it is the functional equivalent of a deed. The Declaration of Taking may also serve as adequate notice of the pending litigation (a *lis pendens*), depending on state recording laws. Both the Declaration of Taking and a *lis pendens* must be recorded if uncertainty exists regarding whether the Declaration of Taking alone will constitute sufficient notice of litigation. A *lis pendens* must always be filed at the outset of a complaint-only case.

The acquiring agency is responsible for recording of Declaration of Taking and/or *lis pendens* in the public land records, in consultation with Department of Justice trial attorneys. At the same time it arranges recordation, the agency should instruct its provider of record title evidence to update the initial title evidence through filing of the Declaration of Taking or *lis pendens*. This is required to identify any changes to title that may have occurred after the initial title examination, but before filing of the notice of litigation. If additional claimants to the land or just compensation proceeds (typically lienholders) are revealed by the updated title search they will be added as parties to the condemnation suit by the Department of Justice.

When a complaint-only case concludes in acquisition of ownership by the United States, the court's final judgment must be recorded in the land records to provide public notice that title has transferred to the United States. The judgment should include the property's legal description, the estate taken, confirmation that title vested in the United States, and confirmation that payment of just compensation was made. The acquiring agency is responsible for recordation of a copy of the final judgment, which should be requested from the court clerk or Department of Justice trial attorneys. Alternatively, a release of the *lis pendens* must be recorded in the public land records if a complaint-only case is dismissed without acquisition of the subject property.

9.5 Preparation of title insurance policies for condemnation cases

In a condemnation case, a title insurance policy confirms and insures that all persons who have, may have, or claim to have, an interest in the subject property as disclosed by a search of the public land records have been identified.³⁷ Identifying these parties is critical so the United

³⁷ Insuring Provision 5 in the ALTA U.S. Policy - 9/28/91. Parties with interests not of record must be identified by a physical inspection of the property as described in Part 4 of these regulations

States can fulfill its constitutional obligations to provide notice and pay just compensation. If the policy reveals persons with an interest not previously known, they will be added as parties to the condemnation action.

The effective date of the policy must be on or after the date of filing the Declaration of Taking or *lis pendens* in the public land records. The policy must contain the following information.

- **“Schedule A”**

- Name “the United States of America” as the insured
- Identify the estate in land acquired by the United States (*e.g.*, fee simple)
- In complaint-only cases, identify the present owner(s) of the estate being acquired
- For Declaration of Taking cases, show title vested in “the United States of America” and identify every owner in whom title was vested immediately prior to the acquisition by the United States. For example:

Title to the estate or interest in the land is vested in:

THE UNITED STATES OF AMERICA

Immediately prior to the acquisition of title by the United States, title was vested in Jane Smith and John Doe as tenants in common by virtue of a deed dated December 6, 2006, recorded December 7, 2006, in Book 1156, page 138, of the Public County land records.

- Provide the land’s legal description

- **“Schedule B”**

Schedule B must confirm recording of the Declaration of Taking and/or *lis pendens* in the public land records. It must also list all other matters of record which affect the land, including those previously revealed in the title insurance commitment and any recorded subsequent to the effective date of the commitment. If encumbrances listed in the commitment were released or otherwise satisfied of record before the filing of the Declaration of Taking or *lis pendens*, they should be deleted from the title insurance policy. Any new parties in interest revealed by the updated title evidence must be joined in the condemnation action by the Department of Justice.

9.6 Preparation of title opinions for condemnation cases

Agencies holding delegated title review authority from the Attorney General under 40 U.S.C. § 3111(b) must submit the reviewing attorney’s pre-acquisition title opinion and the

record and non-record title evidence described in Parts 3 and 4 of these regulations to the Department of Justice, ENRD Land Acquisition Section, when making a condemnation referral. Agencies lacking delegated authority must submit the record and non-record title evidence when making a condemnation referral.

Department of Justice attorneys in the ENRD Land Acquisition Section will review the title evidence and condemnation referral prior to filing suit. A title opinion will be issued to the acquiring agency confirming that title to the interest sought by condemnation will vest in the United States by virtue of the filing of the Declaration of Taking and the deposit of estimated just compensation under 40 U.S.C. § 3114 or upon payment of the judgment entered in a complaint-only case.³⁸

³⁸ See, e.g., *United States v. City of Tacoma*, 330 F.2d 153, 155-156 & n. 6 (9th Cir. 1964).

CERTIFICATE OF INSPECTION AND POSSESSION (“CIP”)

Agency Tract No. or other Property Identifier: _____

I hereby certify that:

- ◆ I personally inspected the real property identified in Part A, below, on _____ (DATE).
- ◆ I spoke with the owner(s) identified below on _____ (DATE).
- ◆ If additional occupants of the land are identified below, I spoke with them as follows:
(NAMES AND DATES OF INTERVIEWS)

On the basis of my inspection and inquiry, I certify that the pre-printed statements in Part B of this CIP are accurate _____, not accurate _____. If not accurate I have explained my findings on this form _____ on an attached sheet _____.

Date

Signature

Printed name

Professional title and telephone number

A. Identification of the real property and project:

1. The acquiring federal agency is:

2. The contact information for the landowner(s) is:

3. The property is identified as follows:

4. The estate(s) to be acquired by the United States is/are: (*e.g.*, fee simple, lease, easement, *etc.*)

Certificate of Inspection and Possession, Page 2

Agency Tract No. or other Property Identifier: _____

B. Certification:

1. I am aware of the legal boundaries of the real property identified above.
2. I spoke with the landowner(s) and adult occupant(s) of this property and obtained no evidence or information tending to show that any person or business entity other than the landowner(s) may have or claim rights that would conflict with the interest to be acquired by the United States. These include but are not limited to rights of possession arising from unrecorded leases, easements or rights-of-way obtained by continued usage, agricultural crops, or cemeteries.
3. I neither found, nor became aware of, any work or labor having been performed or materials having been furnished in connection with repairs or improvements on the property within the past _____ months. (Must equal or exceed number of months within which a mechanics or materials lien may be filed under applicable state law.)
4. The property to be acquired by the United States is unimproved, unoccupied, and vacant unless indicated below or on an attachment. If there are occupants I have identified them and obtained disclaimers of interest unless indicated below. All such disclaimers are attached.

(Identify all buildings, roads, paths, cemeteries, fences, or other improvements observed and describe all land uses. Identify and provide contact information for all persons using the land. Determine what rights, if any, they claim to continue use or occupancy. Request disclaimers where appropriate. Seek guidance from agency counsel where uncertainty exists regarding the need for disclaimers.)

5. I neither found, nor am aware of any rights in, or claimed by, parties other than the owner(s) in any of the following:
 - ◆ water rights for mining, agricultural, manufacturing, or other purposes
 - ◆ ditches or canals constructed by or being used under authority of the United States
 - ◆ exploration for or removal of coal, oil, gas, sand, gravel, timber, or any other substance
 - ◆ possessory rights claimed or being exercised under any reservation contained in a patent previously issued by the United States

DATE

SIGNATURE

DISCLAIMER OF INTEREST IN REAL PROPERTY

Prepared for acquisition by the United States of America of the real property described below.

State of _____

County of _____

I, _____ (name or names), am occupying or using all or part of the real property proposed to be acquired by the United States of America and described as

(Insert address and other information sufficient to fully identify the real property, including references to surveys or plats if available.)

I confirm that I claim no right, title, or interest in the above property for which I am owed payment and that I will vacate it immediately upon notice of transfer of ownership to the United States of America.

I agree that this disclaimer of interest may be presented to any court having jurisdiction over condemnation proceedings brought by the United States of America to acquire the above-described property. I authorize such court to enter an order dismissing me as a defendant, with no compensation owed to me.

Date: _____

Signature

Printed Name

Signature

Printed Name

Witness(es): (recommended)

Signature

Printed Name

Signature

Printed Name

TITLE CERTIFICATION ON BEHALF OF A STATE GOVERNMENT

Agency Tract No. or other Property Identifier: _____

I, _____, (name) _____ (office held)

for the State of _____, do hereby certify that:

I am custodian of the public land records of the State under authority of _____ (state constitution or code section). The State has organized and does maintain a central records unit for lands owned or held in trust by the State, its agencies, departments, institutions, and instrumentalities.

The land records of the State show that the real property described on the attached exhibit was acquired by the State from the United States of America on or about _____ (date) under authority of _____ (source of land grant).

I or my staff have made a thorough search of State records regarding title to the lands described on the **attached exhibit**, beginning with the date of transfer of title by the United States to the date of this certification. I hereby certify that according to State records as of this date, fee simple title to the lands described remains vested in the State free and clear of all encumbrances, defects, interests, and all other matters whatsoever, either of record or otherwise known to the State, affecting the title to said property, except as identified below:

Witness my hand and official Seal of the State on _____ (Date)

[OFFICIAL SIGNATURE]

PRE-ACQUISITION TITLE OPINION

MEMORANDUM

To: _____, Secretary
[DEPARTMENT SECRETARY]

Attention: _____
[NAME AND TITLE OF PERSON WHO REQUESTED OPINION]

From: _____, Attorney
Office of General Counsel

Re: **Pre-acquisition review of title to** [IDENTIFY REAL PROPERTY TO BE ACQUIRED]

The following pre-acquisition opinion of title to real property was prepared under authority of 40 U.S.C. § 3111 as delegated to this Department by the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice. Title may be deemed approved and the proposed acquisition may proceed when all of the requirements set forth in this opinion have been met. [ALTERNATIVELY, IF TITLE DEFECTS WERE IDENTIFIED THAT CANNOT BE CURED, DESCRIBE THE TITLE DEFECT(S) AND DECLINE TO APPROVE TITLE. IF THE ACQUISITION AUTHORITY PERMITS CONDEMNATION, IDENTIFY ALL PARTIES DISCLOSED BY THE TITLE EVIDENCE WHO SHOULD BE JOINED IN ANY CONDEMNATION ACTION BROUGHT FOR THE PURPOSE OF CLEARING TITLE.]

An examination has been made of title data relating to [IDENTIFY REAL PROPERTY DESCRIBED IN THE TITLE EVIDENCE PROVIDED]. A [DESCRIBE] estate in this land is to be acquired by [PURCHASE, DONATION, EXCHANGE, IN SETTLEMENT OF LITIGATION] for consideration of \$_____ [IF A PURCHASE. IF NOT, SPECIFY DONATION OR LAND XCHG] on behalf of the United States of America for administration by [ACQUIRING AGENCY]. Legal authority for the acquisition is provided by ___ U.S.C. § _____. Funding [IF A PURCHASE] was appropriated in [IDENTIFY PUBLIC LAW OR STATUTE].

[IDENTIFY PURCHASE CONTRACT, OFFER TO DONATE, OR LAND EXCHANGE AGREEMENT BY DATE AND PARTIES. ALTERNATIVELY, STATE THAT NONE WAS PROVIDED AND REQUIRE A COPY PRIOR TO CLOSING TO ENABLE CONFIRMATION THAT IT INCLUDES THE EXACT PROPERTY FOR WHICH TITLE EVIDENCE WAS OBTAINED.]

Results of a record title examination were provided for review by our office in the form of a title insurance commitment numbered _____, issued by _____ as agent for _____ Title Insurance Company, with an effective date and time of _____. [OR IDENTIFY OTHER FORM OF RECORD TITLE EVIDENCE SUBMITTED. LIST ANY DEFICIENCIES IN OR CONCERNS REGARDING THE RECORD TITLE EVIDENCE. CONFIRM THAT IT COVERS THE INTEREST IN LAND DESCRIBED IN THE AGREEMENT TO ACQUIRE.]

Title evidence for non-record matters was provided in the form of a Certificate of Inspection and Possession (“CIP”) prepared on behalf of the acquiring agency and dated _____. [IF NOT RECEIVED, SUBSTITUTE A REQUIREMENT THAT, PRIOR TO CLOSING, A CIP BE PREPARED AND SUBMITTED FOR REVIEW AND APPROVAL AS REQUIRED IN PART 4 OF THE ATTORNEY GENERAL’S TITLE REGULATIONS (2016).]

The title evidence discloses ownership of the interest to be acquired by the United States to be vested in _____ subject to the exception and conditions set forth below. [ALTERNATIVELY, INCORPORATE BY REFERENCE SCHEDULES “A” AND “B” OF THE TITLE INSURANCE COMMITMENT IF THE EXCEPTIONS ARE SATISFACTORILY SET FORTH IN THE COMMITMENT.]

1. The following matters not disclosed by recordings in the applicable public land records.
 - a. Rights or claims of parties in possession, if any.
 - b. Easements, or claims of easements not memorialized in a recorded agreement, if any.
 - c. Discrepancies, conflicts in boundary lines, shortages in area, encroachments, and other facts which a correct survey and inspection of the premises would disclose.
 - d. Any lien, or right to a lien, for services, labor, or materials furnished to the property but not yet paid for as such a lien may be imposed by operation of law but not yet recorded in the public land records.

NOTE: The CIP provided for our review disclosed no evidence of these matters. [IF CIP DID DISCLOSE CONCERNS, SET FORTH CORRECTIVE ACTION REQUIRED. IF CIP NOT RECEIVED, REQUIRE SUBMISSION PRIOR TO CLOSING.]

2. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public land records or attaching subsequent to the effective date of the record title evidence, but prior to the date the United States acquires the subject property. **REQUIREMENT:** The title evidence must be updated to the date and time of recording of the deed to the United States in the public land records [OR NOTICE OF CONDEMNATION IF ACQUISITION WILL OCCUR BY EXERCISE OF EMINENT DOMAIN]. If acquisition will occur by deed and the update reveals any adverse matter, the deed to the United States should not be recorded until our office has been consulted. A title insurance policy in approved form (ALTA U.S. Policy 9/28/91 (revised 12/3/12)) must be obtained and submitted to this office as soon as possible following an acquisition by deed [OR TO THE ASSIGNED DEPARTMENT OF JUSTICE TRIAL ATTORNEY FOR AN ACQUISITION BY CONDEMNATION FOLLOWING RECORDING OF THE NOTICE OF CONDEMNATION IN THE PUBLIC LAND RECORDS.]
3. All taxes and assessments not yet due or payable. The title evidence disclosed the following taxes and assessments: [LIST] **REQUIREMENT:** All taxes and other assessments must be paid through the date of closing, or provision made for their proper disposition in accordance with *The Attorney General’s Title Regulations (2016)*, Subpart 7.2. The post-acquisition title evidence submitted for our review must provide confirmation that all were paid or otherwise addressed as required.
4. [PROCEED TO LIST ALL LIENS AND OTHER MATTERS REVEALED BY THE TITLE EVIDENCE THAT MUST BE RELEASED.] **REQUIREMENT:** [SATISFACTION (AS TO LIENS) AND RELEASE OF RECORD]

5. [LIST MATTERS REVEALED BY THE TITLE EVIDENCE THAT MAY BE DEEMED ACCEPTABLE BY THE ACQUIRING AGENCY IF DETERMINED NOT TO INTERFERE WITH THE INTENDED LAND USE, E.G., UTILITY EASEMENTS] **REQUIREMENT:** COMPLETE, LEGIBLE COPIES OF EACH PRIOR TO CLOSING IF NOT PROVIDED WITH THE REQUEST FOR TITLE REVIEW. IF PROVIDED, REVIEW TO CONFIRM NONINTERFERENCE WITH SUFFICIENCY OF TITLE. REQUIRE WRITTEN CONFIRMATION OF NONINTERFERENCE WITH THE INTENDED LAND USE ON BEHALF OF THE ACQUIRING AGENCY.]

Our office was provided with a draft deed to the United States of America for review. The draft deed meets requirements set forth in the *Attorney General's Title Regulations (2016)*, Subpart 7.3 and is legally sufficient. [OR IDENTIFY DEFICIENCIES AND REQUIRE CORRECTION. IF A DRAFT DEED WAS NOT PROVIDED ADD THE FOLLOWING:] **REQUIREMENT:** A deed meeting all requirements set forth in the *Attorney General's Title Regulations (2016)*, Subpart 7.3, from the landowner(s) to the United States of America must be duly executed under proper authority, and recorded in the local public land records. [CONSIDER REQUIRING SUBMISSION FOR REVIEW AND APPROVAL PRIOR TO CLOSING.]

As soon as practical after an acquisition by deed, it is also a **REQUIREMENT** that your agency submit copies of the recorded deed, updated title evidence, and other information set forth in the *Attorney General's Title Regulations (2016)*, Subpart 8.2, [OR ITEMIZE DESIRED DOCUMENTATION] to this office to enable confirmation that title to the real property contracted for vested properly in the United States of America. The documents submitted with the request for this pre-acquisition opinion of title will be retained in the interim.

Any questions regarding review and approval of title for this acquisition should be directed to [OPINION AUTHOR] at [TELEPHONE] or [EMAIL].

POST-ACQUISITION TITLE OPINION (detailed)

MEMORANDUM

To: _____, Secretary
[DEPARTMENT SECRETARY]

Attention: _____,
[NAME AND TITLE OF PERSON REQUESTING OPINION]

From: _____, Attorney
Office of General Counsel

Re: **Post-acquisition review of title to** [IDENTIFY REAL PROPERTY ACQUIRED]

The following post-acquisition opinion of title to real property was prepared under authority of 40 U.S.C. § 3111 as delegated to this Department by the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.

A re-examination has been made of title data relating to [IDENTIFY REAL PROPERTY DESCRIBED IN THE TITLE EVIDENCE]. A [DESCRIBE] estate in this land was conveyed to the United States of America by deed from [IDENTIFY GRANTOR(S)] dated _____, recorded among the local public land records on [DATE] as Instrument Number _____. The consideration recited in the deed is \$_____. The acquiring federal agency was _____. Legal authority for the acquisition was provided ____ U.S.C. § ____.

The updated title evidence listed below, is satisfactory:

- ✓ For record title matters: Title insurance policy no. _____ issued by _____ with an effective date of _____; [SUBSTITUTE ALTERNATIVE FORM OF TITLE EVIDENCE IF USED]
- ✓ For non-record title matters: A Certificate of Inspection and Possession dated _____, prepared and signed on behalf of the acquiring agency by _____ as [TITLE].

The deed and updated title evidence confirm that title to the estate identified above has vested in the United States of America, subject to the exception and conditions set forth below. [LIST SPECIFICALLY OR INCORPORATE BY REFERENCE TO THE TITLE INSURANCE POLICY OR OTHER POST-ACQUISITION TITLE EVIDENCE.]

- 1.
- 2.
- 3.

The acquiring agency has advised that the foregoing matters will not interfere with the contemplated use of the land.

The original deed, title insurance policy, opinions of title, and other information prepared for this acquisition should be retained by the acquiring agency in accordance with applicable federal records schedules. Copies of the pre- and post-acquisition opinions of title prepared by this office, together with all other documents listed in the *Attorney General's Title Standards (2016)*, Subpart 8.3, [MUST BE SUBMITTED BY THE ACQUIRING AGENCY OR WILL BE SUBMITTED BY THIS OFFICE] to the U.S. Department of Justice, Land Acquisition Section, via e-mail at DelegatedTitles.ENRD@usdoj.gov.

Questions regarding this post-acquisition opinion of title should be directed to [OPINION AUTHOR] at [TELEPHONE] or [EMAIL].

POST-ACQUISITION TITLE OPINION (summary)

MEMORANDUM

To: _____, Secretary
[DEPARTMENT SECRETARY]

Attention: _____
[NAME AND TITLE OF PERSON REQUESTING OPINION]

From: _____, Attorney
Office of General Counsel

Re: **Post-acquisition review of title to** [IDENTIFY REAL PROPERTY ACQUIRED]

The following post-acquisition opinion of title to real property was prepared under authority of 40 U.S.C. § 3111 as delegated to this Department by the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.

A re-examination has been made of title data relating to [IDENTIFY REAL PROPERTY DESCRIBED IN THE TITLE EVIDENCE]. A [DESCRIBE] estate in this land was conveyed to the United States of America by deed from [IDENTIFY GRANTOR(S)] dated _____, recorded among the local public land records on [DATE] as Instrument Number _____. The acquiring federal agency was _____. Legal authority for the acquisition was provided ____ U.S.C. § ____.

The deed and updated title evidence are satisfactory to confirm that (1) title has vested in the United States of America subject only to encumbrances deemed acceptable to the acquiring agency and this office, and (2) all requirements for approval of title set forth in the pre-acquisition title opinion were met.

The original deed, title insurance policy, opinions of title, and other information gathered for this acquisition should be retained by the acquiring agency in accordance with applicable federal records schedules.

Copies of the pre- and post-acquisition opinions of title prepared by this office, together with the other documents listed in the Attorney General's Title Standards (2016), Subpart 8.3, [MUST BE SUBMITTED BY THE ACQUIRING AGENCY OR WILL BE SUBMITTED BY THIS OFFICE] to the U.S. Department of Justice, Land Acquisition Section, via e-mail at DelegatedTitles.ENRD@usdoj.gov.

Questions regarding this post-acquisition opinion of title should be directed to [OPINION AUTHOR] at [TELEPHONE] or [EMAIL].

ALTA U.S. Policy 9-28-91 (Revised 12-3-12)

**UNITED STATES OF AMERICA
POLICY OF TITLE INSURANCE**

Issued by

BLANK TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. In instances where the insured acquires title to the land by condemnation, failure of the commitment for title insurance, as updated to the date of the filing of the *lis pendens* notice or the Declaration of Taking, to disclose the parties having an interest in the land as disclosed by the public records.
6. Title to the estate or interest described in Schedule A being vested other than as stated therein or being defective:
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the land occurring prior to the transaction vesting title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the public records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under the policy;
 - (c) resulting in no loss or damage to the insured claimant; or
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under insuring provision 6).
4. This policy does not insure against the invalidity or insufficiency of any condemnation proceeding instituted by the United States of America, except to the extent set forth in insuring provision 5.
5. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the title as shown in Schedule A is:
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in insuring provision 6.

SCHEDULE A

Name and Address of Title Insurance Company:

Policy No.:

Amount of Insurance or Premium:

Date of Policy: at a.m. or p.m.

1. Name of Insured: The United States of America

2. The estate or interest in the land which is covered by this policy is:

3. Title to the estate or interest in the land is vested in: The United States of America

4. The land referred to in this policy is described as follows:

If Paragraph 4 is omitted, a Schedule C, captioned the same as Paragraph 4, must be used.

SCHEDULE B

File No. Policy No.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- 1.
- 2.
- 3.

[Etc., as needed.]

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful

act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(e) Notwithstanding Conditions and Stipulations Section 4(a-d), the Attorney General of the United States shall have the sole right to authorize or to undertake the defense of any matter which would constitute a claim under the policy, and the Company may not represent the insured without authorization. If the Attorney General elects to defend at the Government's expense, the Company shall, upon request, cooperate and render all reasonable assistance in the prosecution or defense of the proceeding and in prosecuting any related appeals. If the Attorney General shall fail to authorize and permit the Company to defend, all liability of the Company with respect to that claim shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest defenses and actions as it shall recommend should be taken, and the Attorney General shall present the defenses and take the actions of which the Company shall advise the Attorney General in writing, the liability of the Company shall continue and, in any event, the Company shall cooperate and render all reasonable assistance in the prosecution or defense of the claim and any related appeals.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Unless prohibited by law or governmental regulation, failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) Subject to the prior written approval of the Attorney General, to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs 6(b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation. Failure of the Attorney General to give the approval called for in 6(b)(i) shall not prejudice the rights of the insured unless the Company is prejudiced thereby, and then only to the extent of the prejudice.

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the land described in Schedule [A][C] consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy or an accurate facsimile for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit

the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

(c) No Subrogation to the Rights of the United States.

Notwithstanding the provisions of Conditions and Stipulations Section 13(a) and (b), whenever the Company shall have settled and paid a claim under this policy, the Company shall not be subrogated to the rights of the United States. The Attorney General may elect to pursue any additional remedies which may exist, and the Company may be consulted. If the Company agrees in writing to reimburse the United States for all costs, attorneys' fees and expenses, to the extent that funds are recovered they shall be applied first to reimbursing the Company for the amount paid to satisfy the claim, and then to the United States.

14. ARBITRATION ONLY BY AGREEMENT.

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters shall be arbitrated only when agreed to by both the Company and the Insured.

The law of the United States, or if there be no applicable federal law, the law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

TEXAS LAND TITLE ASSOCIATION (TLTA) U.S. POLICY FORM T-11

POLICY OF TITLE INSURANCE

Issued by Blank Title Insurance Company

Policy Number

Amount \$

Blank Title Insurance Company, a blank corporation, herein called the Company, for a valuable consideration

Hereby Insures

The United States of America

hereinafter called the Insured, against loss or damage not exceeding \$ _____, together with costs and expenses which the Company may become obligated to pay as provided in the Conditions and Stipulations hereof, which the Insured shall sustain by reason of: any defect in or lien or encumbrance on the title to the estate or interest covered hereby in the land described or referred to in Schedule A, existing at the date hereof, not shown or referred to in Schedule B or excluded from coverage by the General Exceptions: All subject, however, to the provisions of Schedules A and B and to the General Exceptions and to the Conditions and Stipulations hereto annexed: all as of the _____ day of _____, _____, the effective date of this policy.

In Witness Whereof, Blank Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Countersigned:

Blank Title Insurance Company

By _____

President

By _____

Secretary

SCHEDULE A

1. The estate or interest in the land described or referred to in this schedule covered by this policy is:

(Will be shown as a fee or such lesser estate or interest owned by the person or party named in paragraph 2 of this Schedule.)

2. Title to the estate or interest covered by this policy at the date hereof is vested in:

4. The land referred to in this policy is situated in the County of _____, State of Texas, and is described as follows:

(This phraseology may be modified to eliminate a specific description by including it by reference to the description as contained in a specific instrument.)

SCHEDULE B

This policy does not insure against loss or damage by reason of the following:

1. Current and delinquent taxes and assessments as follows:

(List all taxing districts in which the land is situated and other taxing authorities that have jurisdiction over said land for the levy of taxes: showing lien date for each and amounts for all such assessments that have not been paid on the date of the policy.)

2. *(Continue with the Special Exceptions such as recorded easements, liens, etc., showing in addition the persons or parties holding such interests of record, and who the Company would require to convey such interest or who would be the proper parties defendant in a condemnation proceeding to eliminate such matter. The writeup could be substantially as follows: An easement for road purposes conveyed to _____ by deed recorded _____.)*

GENERAL EXCEPTIONS

Governmental Powers

1. Because of limitations imposed by law on ownership and use of property, or which arise from governmental powers, this policy does not insure against:

- (a) consequences of the future exercise or enforcement or attempted exercise or enforcement of police power, bankruptcy power, or power of eminent domain, under any existing or future law or governmental regulation;
- (b) consequences of any law, ordinance or governmental regulation, now or hereafter in force (including building and zoning ordinances), limiting or regulating the use or enjoyment of the property, estate or interest described in Schedule A, or the character, size, use or location of any improvement now or hereafter erected on said property.

Matters Not of Record

2. The following matters which are not of record at the date of this policy are not insured against:

- (a) rights or claims of parties in possession not shown of record;
- (b) questions of survey;
- (c) easements, claims of easement or mechanics' liens where no notice thereof appears of record; and
- (d) conveyances, agreements, defects, liens or encumbrances, if any, where no notice thereof appears of record; provided, however the provisions of this subparagraph 2(d) shall not apply if title to said estate or interest is vested in the United States of America on the date hereof.

Matters Subsequent to Date of Policy

3. This policy does not insure against loss or damage by reason of defects, liens or encumbrances created subsequent to the date hereof.

Refusal to Purchase

4. This policy does not insure against loss or damage by reason of the refusal of any person to purchase, lease or lend money on the property, estate or interest described in Schedule A.

CONDITIONS AND STIPULATIONS

Notice of Actions

1. If any action or proceeding shall be begun or defense asserted which may result in an adverse judgment or decree resulting in a loss for which this Company is liable under this policy, notice in writing of such action or proceeding or defense shall be given by the Attorney General to this company within 90 days after notice of such action or proceeding or defense has been received by the Attorney General; and upon failure to give such notice then all liability of this Company with respect to the defect, claim, lien or encumbrance

asserted or enforced in such action or proceeding shall terminate. Failure to give notice, however, shall not prejudice the rights of the party insured, (1) if the party insured shall not be a party to such action or proceeding, or (2) if such party, being a party to such action or proceeding be neither served with summons therein nor have actual notice of such action or proceedings, or (3) if this Company shall not be prejudiced by failure of the Attorney General to give such notice.

Notice of Writs

2. In case knowledge shall come to the Attorney General of the issuance or service of any writ of execution, attachment of other process to enforce any judgment, order or decree adversely affecting the title, estate or interest insured said party shall notify this company thereof in writing within 90 days from the date of such knowledge; and upon a failure to do so, then all liability of this Company in consequence of such judgment, order or decree or matter thereby adjudicated shall terminate unless this Company shall not be prejudiced by reason of such failure to notify.

Defense of Claims

3. This company agrees, but only at the election and request of the Attorney General of the United States, to defend at its own cost and expense the title, estate or interest hereby insured in all actions or other proceedings which are founded upon or in which it is asserted by way of defense, a defect, claim, lien or encumbrance against which this policy insures, provided, however, that the request to defend is given within sufficient time to permit the Company to answer or otherwise participate in the proceeding. If any action or proceeding shall be begun or defense be asserted in any action or proceeding affecting or relating to the title, estate or interest hereby insured and the Attorney General elects to defend at the Government's expense, the Company shall upon request, cooperate and render all reasonable assistance in the prosecution or defense of such proceeding and in prosecuting appeals.

If the Attorney General shall fail to request and permit the Company to defend, then all liability of the Company with respect to the defect, claim, lien or encumbrance asserted in such action or proceeding shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest such defenses and actions as it shall conceive should be taken and the Attorney General shall present the defenses and take the actions of which the Company shall advise him in writing, then the liability of the Company shall continue; but in any event the Company shall permit the Attorney General without cost or expense to use the information and facilities of the Company for all purposes which he thinks necessary or incidental to the defending of any such action or proceeding or any claim asserted by way of defense therein and to the prosecuting of any appeal.

Compromise of Adverse Claims

4. Any compromise, settlement or discharge by the United States or its duly authorized representative of an adverse claim, without the consent of this Company shall bar any claim against the Company hereunder; provided, however, that the Attorney General may at his election submit to the issuing company for approval or disapproval any proposed compromise, settlement or discharge of any adverse claim and in the event of the consent of the issuing company to the proposed compromise, settlement or discharge it shall be liable for the payment of the full amount paid.

Statement of Loss

5. A statement in writing of any loss or damage sustained by the party insured, and for which it is claimed this Company is liable under this policy, shall be furnished by the Attorney General to this Company within 90 days after said party has notice of such loss or damage and no right of action shall accrue under this policy until 30 days after such statement shall have been furnished. No recovery shall be had under this policy unless suit be brought thereon within one year after said period of 30 days. Failure to furnish such statement of loss or to bring such suit within the times specified shall not affect the Company's liability under this policy unless this company has been prejudiced by reason of such failure to furnish a statement of loss or to bring such suit.

Policy Reduced by Payments of Loss

6. All payments of loss under this policy shall reduce the amount of this policy pro tanto.

Amendment of Policy

7. No provision or condition of this policy can be waived or changed except by writing endorsed hereon or attached hereto signed by the President, a Vice President, the Secretary, and Assistant Secretary or other validating officer of the Company.

Notices, Where Sent

8. All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at (insert proper address).

TEXAS LAND TITLE ASSOCIATION (TLTA) U.S. POLICY FORM T-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. Schedule A of the above policy is hereby amended in the following particulars:
 - (a) Paragraph 1 of Schedule A is hereby deleted and the following is substituted:
 1. The estate or interest in the land described or referred to in this Schedule covered by this policy is:
 - (b) Paragraph 2 of Schedule A is hereby deleted and the following is substituted:
 2. Title to the estate or interest covered by this policy at the date hereof is vested in:

THE UNITED STATES OF AMERICA

(Follow with identification of the deed or condemnation filing transferring title.)
 - (c) Paragraph 3 of Schedule A is hereby deleted and the following is substituted:
 3. The land referred to in this policy is situated in the County of _____, State of Texas, and is described as follows:

(Here give description of land actually acquired.)
2. Schedule B of the above policy is hereby amended in the following particulars:
 - (a) Paragraphs numbered _____, _____, and _____ of Schedule B are hereby deleted.

(Enumerate those paragraphs eliminated by proper releases, conveyances, etc.)
 - (b) Schedule B of the above policy is amended by adding the following paragraphs numbered _____ to _____, inclusive.

3. Subparagraph 2(d) of the General Exceptions of the above policy is hereby deleted.
4. The effective date of the above policy is hereby extended to _____, _____.
(Date of recording of Deed or Notice of Condemnation.)

The total liability of the Company under said policy and this endorsement thereto shall not exceed, in the aggregate, the sum of \$ _____ and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, General Exceptions and the Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated:

Blank Title Insurance Company

By: _____

(Authorized officer)

CERTIFICATE OF TITLE

Name of title company _____ Address _____ - _____.

To (_____ and) United States of America:

The _____, a Corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, certifies that it has [made] [obtained a report showing] a thorough search of the title to the property described in Schedule A hereof, beginning with the ____ day of _____, _____, and hereby certifies that the title to said property was indefeasibly vested in fee simple of record in _____ as of the ____ day of _____, _____, free and clear of all encumbrances, defects, interests, and all other matters whatsoever, either of record or otherwise known to the corporation, impairing or adversely affecting the title to said property, except as shown in Schedule B hereof.

The maximum liability of the undersigned under this certificate is limited to the sum of \$_____.

In consideration of the premium paid, this certificate is issued for the use and benefit of (said _____ and) the United States of America (and each of them).

In Witness Whereof, said Corporation has caused these presents to be signed in its name and behalf, sealed with its corporate seal, and delivered by its proper officers thereunto duly authorized, as of the date last above mentioned.

(Name of title company)

By _____

(Name and Title of executing officer)

Attest:

(Name and Title of attesting officer)

SCHEDULE A

The property covered by this certificate is accurately and fully described as follows:

SCHEDULE B

The property described in Schedule A hereof is free and clear from all interests, encumbrances, and defects of title and all other matters whatsoever of record, or which, though not of record, are known to this corporation to exist, impairing or adversely affecting the title to said property, except the following:

- 1.
- 2.
- 3.