



*Southern Sandoval County
Arroyo Flood Control Authority*

***Real Property Acquisition
Information Booklet***

Real Property Acquisition Information Booklet

**Southern Sandoval County Arroyo Flood Control Authority
(SSCAFCA)**

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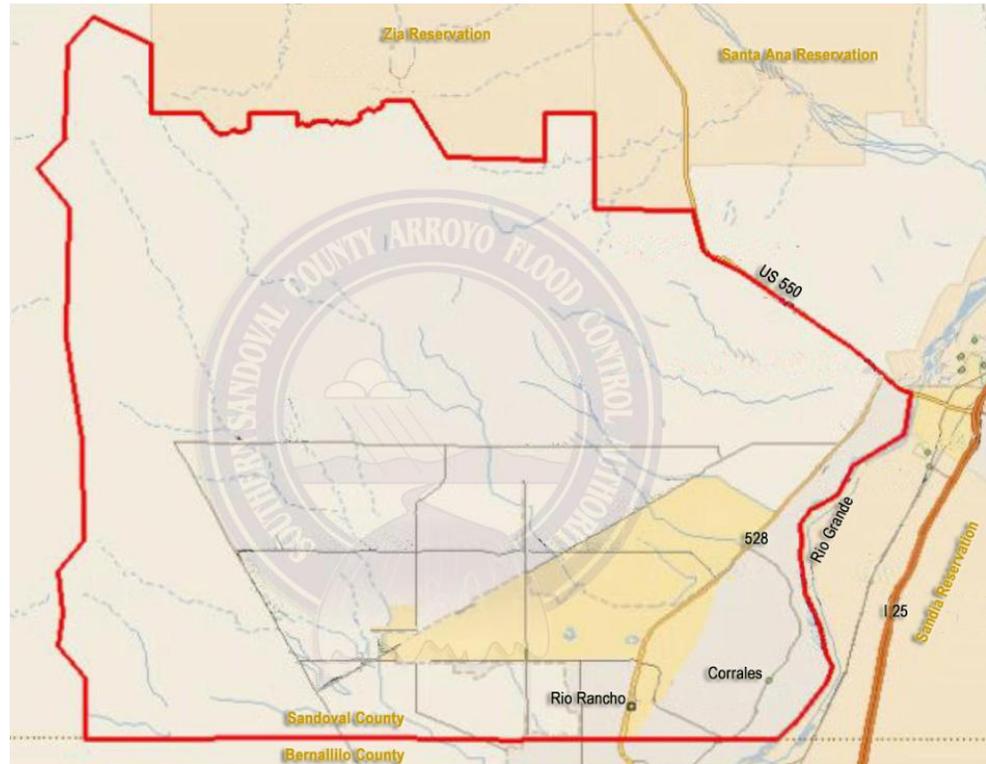
Introduction

Southern Sandoval County Arroyo Flood Control Authority, or SSCAFCA, is an independent political subdivision of the State of New Mexico, responsible for the management of all flood and storm water control facilities on streams and watersheds within its jurisdiction. As part of this responsibility, SSCAFCA occasionally finds it necessary to acquire private real property for the development of new facilities and improvement to existing facilities.

This booklet has been prepared to summarize the policies and procedures followed by SSCAFCA in purchasing such property, and to briefly explain your rights as a citizen involved in the process. Keep in mind, however, that this booklet is offered for informational purposes only and is not intended as a document of law, rule, or regulation.

Hopefully, this information will answer many of the questions you will have regarding the acquisition process. However, you will have the opportunity to discuss your individual case with a representative of SSCAFCA at a later date and ask any other questions you may have at that time.

SSCAFCA Jurisdictional Boundary Map



Public Need for Private Property

Our successful existence as a society requires the development of public services to improve our way of life, and we would be greatly handicapped without lands upon which to carry out the activities of government. Facilities that serve the public needs as a whole, such as schools, hospitals, utilities, highways, and, in this case, flood control facilities, would not exist if public agencies did not have the right to acquire private property to build and maintain them.

Therefore, by law, certain public agencies, such as SCAFCA, are afforded the right to acquire private property for public use (*eminent domain*). However, in the interest of fairness to those individual owners whose property is to be acquired, the law further provides that no private property shall be taken for public use without *just compensation*.

Why Your Property is Needed

If it is determined that your property is needed for a particular project, you can be sure that it is the result of a careful study of alternatives and a balanced consideration of the need for the public improvement and the impact it may have on private property.

Projects are not selected arbitrarily. SSCAFCA uses a systematic approach to assess engineering considerations, and the beneficial and adverse social, economic, and environmental effects of all proposed projects. Emphasis is given to creating the most appealing multi-use facilities possible.

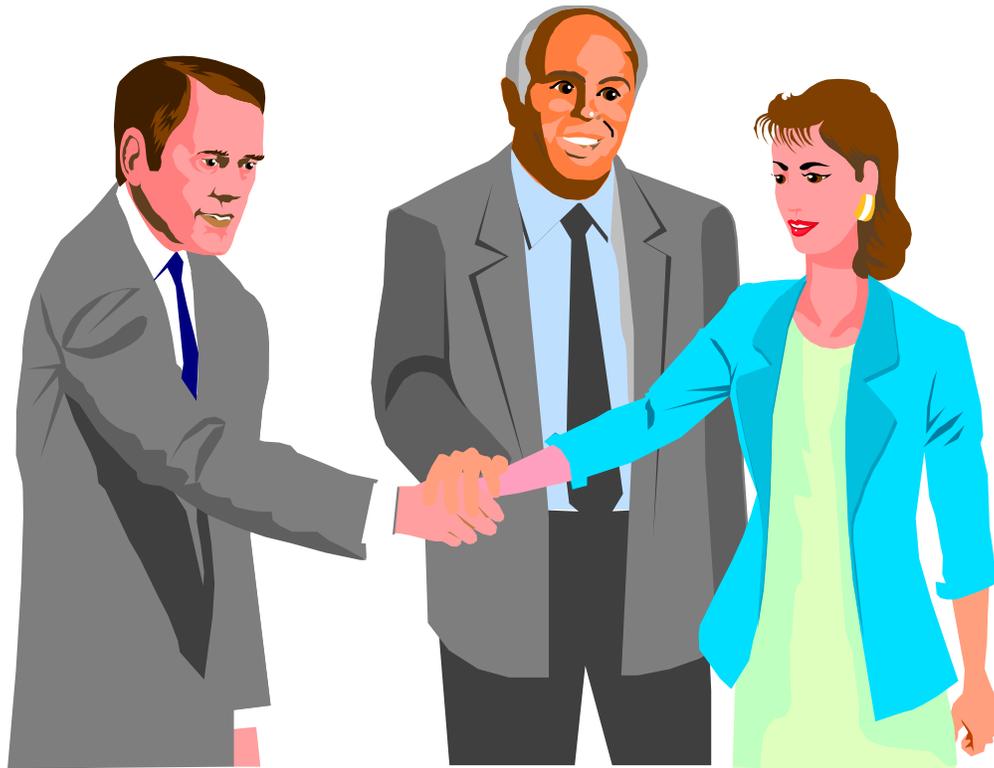
SSCAFCA sincerely hopes that, once the project location and design have finally been determined, all citizens will agree that fair and equitable consideration has been given to the property owners involved and that the selected location is in the best interest of the general public.

Acquisition Process

In most cases, SSCAFCA does not use federal-aid funds for its projects and, therefore, is not subject to federal regulations in acquiring private property for public use. However, in all cases, SSCAFCA is committed to fair and equitable dealings with property owners.

Generally, the steps in the acquisition process are as follows:

1. SSCAFCA will have an appraisal prepared for the real property to be acquired from you. Usually, you will be contacted by the appraiser prior to his or her inspection of the property.
2. Upon receipt of the appraisal, a representative of SSCAFCA will set up a time to meet with you, or contact you in writing, to present a written offer for the property to be purchased. You will be given a reasonable period of time to consider the offer.
3. If an agreement is reached, a formal closing of the purchase will be scheduled. Otherwise, you will be notified of the legal process that SSCAFCA must follow to continue the acquisition process.



Compensation

As a property owner, you have the constitutionally-guaranteed right to receive *just compensation* for all *real* property acquired from you. Real property is the physical land and generally whatever is permanently affixed to, erected on, or growing upon the land.

At a minimum, you will receive the same amount that you would have received if you had sold the property on the open market under normal circumstances. In addition, if only a portion of your property is being purchased, you will be paid for any loss in value to your remaining property caused by the acquisition.

In reviewing the amount of compensation offered to you for your property, you should take into account that payment will be made in cash, and you will not have to pay any sales commissions, loan fees, or closing costs.

Appraisal

Except in rare instances where the size of the property to be acquired is vacant and small, the amount of compensation offered for your property will be based on a written appraisal prepared by a qualified appraiser at the expense of SSCAFCA. In most cases, you, or a representative you designate, will be given the opportunity to accompany the appraiser on his or her inspection of the property to allow you to point out any of its unusual or hidden features.

In preparing an appraisal of the property to be acquired, the appraiser will not consider any increase or decrease in the value of the property that may result from the project and, in fact, will appraise it as though the facility had never been proposed.

When only a portion of your property is being acquired, the appraiser will also perform an analysis to determine if there is any impact on your remaining property as a result of the acquisition and/or the project. If a decrease in value is indicated, the compensation for your property will include this amount (referred to as *damages*) in addition to the value of property being acquired. However, you should be aware that, in many cases, these types of projects enhance, rather than damage, the remaining property.

Negotiations

Once the appraisal has been completed and/or compensation has been determined, a representative of SSCAFCA will present you with a formal written offer for the full amount of the compensation, together with an explanation as to how it was determined.

In cases where only a portion of the property is being acquired, the offer will also include a breakdown showing separate amounts for the property to be acquired and the estimated damages to the remaining property, if any. If the remainder is damaged by the acquisition to the extent that it has little use or value (referred to as an *uneconomic remnant*), SSCAFCA will offer to purchase the remainder in addition to the other property being acquired.

You will be provided with a copy of SSCAFCA's appraisal of the property upon request, and, if you had a separate appraisal prepared, you must make it available to SSCAFCA during the negotiation period.

You will be given a reasonable period of time to consider the offer, and SSCAFCA will not take any action that would coerce you into accepting its offer. However, your decision needs to be made as soon as possible so as to not unnecessarily delay the acquisition process.

If an agreement cannot be reached, SSCAFCA will give you notice of its intent to file a condemnation action, requesting that a court or jury give SSCAFCA possession and title to the subject property, and award you *just compensation*. In addition, this letter will advise you of your option to initiate a more formal procedure for negotiating a settlement, as provided by New Mexico Statutes (often referred to as the *three appraisal process*).

The last section of this booklet, Condemnation Procedures, NMSA 1978, includes a copy of this statute (Section 42A-1-5), as well as other pertinent statutes dealing with the condemnation process. For answers to any question you have regarding this process, you should refer to this section for the specific language of the statutes and/or consult your attorney.

Donations

As an alternative to receiving compensation, you do have the option of donating all or a portion of your property needed for the project.

Obviously, the funds saved when a property is donated may be utilized for construction of the facility or for other useful purposes. However, donations also help expedite the letting of construction contracts and lead to earlier completion of the project. In a situation where your remaining property will be significantly increased in value by the project, a donation of the portion needed by SSCAFCA may be to your advantage by allowing you more timely development of the remainder.

You may have other good reasons for donating or accepting reduced compensation for your property, and you are encouraged to discuss them with SSCAFCA at any time, preferably in the early stages of the acquisition process.



Possession

You are not required to surrender possession of your property until

- you have been paid the agreed upon price, or
- an amount equal to the compensation stated in SSCAFCA's appraisal of the property is deposited with the court for your benefit.

Reimbursement of Expenses

You are entitled to be reimbursed for fair and reasonable expenses you necessarily incurred for:

1. Recording fees, evidence of title, boundary surveys, legal descriptions of the real property, and similar expense incidental to conveying your real property to SSCAFCA.
2. Penalty costs, if any, for prepayment of any recorded mortgage encumbering your property, which was entered into in good faith prior to the date you were aware of SSCAFCA's intent to acquire your property.
3. The pro rata portion of real property taxes you have paid for the period after title passes to SSCAFCA, or the date of effective possession by SSCAFCA, whichever is earlier.

These costs will be paid to you at closing or as soon as possible after the date of payment of the agreed upon price.

Income Taxes

If your property is worth more today than when you bought it, you may be concerned about paying taxes on the difference when you sell it to SSCAFCA.

The sale of property for public purposes falls under the Internal Revenue Service (IRS) category of *involuntary conversion*. As result, you may not have to pay income or capital gains tax, depending on how you reinvest your profit from the sale. Payments for damages to the remaining property fall under this same IRS category. Therefore, you are urged to contact a tax specialist or the IRS directly to seek advice on this matter.

Civil Rights

All real property acquisition functions shall be conducted in such a way and manner as to assure that no person shall, on the grounds of race, sex, age, handicap, religion, or national origin, be denied the benefits to which the person is entitled.



Condemnation Proceedings, NMSA 1978

42A-1-3. Agreement

At any time before or after commencement of a condemnation action, the parties may agree to and carry out a compromise or settlement as to any matter, including all or any part of the compensation or other relief.

42A-1-4. Negotiation; Other Appraisals

- A. A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.
- B. Unless prohibited by federal law, if the condemnor or condemnee has had prepared appraisals for the property, he shall make such appraisals available to the other party during the negotiation period.

42A-1-5. Appraisal; Offer

- A. If the parties are unable to negotiate a settlement, the condemnee may, within twenty-five days after written notice by the condemnor of its intent to file a condemnation action in district court, give written notice to the condemnor requesting an appraisal to determine the amount that would constitute just compensation for the taking of the condemnee's property and obtained from:
1. one appraiser appointed by the condemnor;
 2. one appraiser appointed by the condemnee; and
 3. one appraiser jointly appointed by the appraisers for the condemnor and the condemnee.
- B. The condemnee and condemnor shall appoint their respective appraisers within fifteen days after notice has been given by the condemnee to the condemnor pursuant to the provisions of Subsection A of this section and the third appraiser shall be jointly appointed within fifteen days thereafter.

- C. The appraisals shall be in writing and signed by the appraisers. The appraisers shall deliver copies to each party personally or by registered mail or certified mail, return receipt requested.
- D. The fees and expenses of the appraisers shall be paid by the appointing parties; provided however, the condemnee and condemnor shall share equally in paying the fees and expenses of the jointly appointed appraiser.
- E. After receiving a copy of the appraisals provided for pursuant to this section, the condemnor may establish an amount which it believes to be just compensation and may submit to the condemnee an offer to acquire the property for the full amount so established. If the condemnor tenders an offer pursuant to this section, the amount offered for the property shall not be less than the amount of compensation shown by the final common appraisal of the three appraisers or if all three appraisers do not agree, the offer shall not be less than the appraisal prepared by the condemnor's appraiser. The condemnee must reject or accept the offer made by the condemnor pursuant to this section within fifteen days after the offer is tendered.

42A-1-6. Preliminary Efforts To Purchase

- A. Except as provided in Sections 42A-1-7 and 42A-1-27 NMSA 1978, an action to condemn property may not be maintained over timely objection by the condemnee unless the condemnor made a good faith effort to acquire the property by purchase before commencing the action.
- B. An offer to purchase made in substantial compliance with Sections 42A-1-3 through 42A-1-4 NMSA 1978 is prima facie evidence of good faith under Subsection A of this section.

42A-1-7. Purchase Efforts Waived Or Excused

A condemnor's failure or inability to make reasonable and diligent efforts to acquire property by negotiation, make appraisals available pursuant to Subsection B of Section 42A-1-4 NMSA 1978 or appoint appraisers upon the request of the condemnee pursuant to Subsection A of Section 42A-1-5 NMSA 1978 does not bar the maintenance of a condemnation action in the manner authorized by law, notwithstanding timely objection, if :

- A. compliance is waived by written agreement between the condemnee and the condemnor;

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- B. one or more of the condemnees of the property are unknown, cannot with reasonable diligence be contacted, are incapable of contracting and have no legal representative or own an interest which cannot be conveyed under the circumstances;
- C. due to conditions not caused by or under the control of the condemnor, there is a compelling need on the part of the condemnor to avoid the delay in commencing the action which compliance would require;
- D. the condemnee fails to provide any appraisals required pursuant to Subsection B of Section 42A-1-4 NMSA 1978; or
- E. the appraisers provided for pursuant to Section 42A-1-5 NMSA 1978 fail to submit the appraisals to the parties within thirty days from the date that the jointly appointed appraiser was appointed.

42A-1-8. Entry For Suitability Studies

A condemnor and its agents and employees may enter upon real property and make surveys, examinations, photographs, tests, soundings, borings and samplings, or engage in other activities for the purpose of appraising the property or determining whether it is suitable and within the power of the condemnor to take for public use, if the condemnor secures:

- A. the written consent of the owner and, if applicable, any other person known to be in actual physical occupancy of the property to enter upon the property and undertake such activities;
or
- B. an order for entry from the court.

42A-1-9. Court Order Permitting Entry For Suitability Studies

- A. If the condemnor is unable to secure the written consent of the condemnee pursuant to Section 42A-1-8 NMSA 1978 and, if applicable, any other person known to be in actual physical occupancy of the property, he may apply to the court in the county where the property to be entered is located for an order permitting entry.

- B. After notice by the condemnor to the condemnee and, if applicable, any other person known to be in actual physical occupancy of the property and unless good cause to the contrary is shown, the court shall make its order permitting and describing the purpose of the entry and setting forth a description of the property and the nature and scope of activities the court determines are reasonably necessary to accomplish the purposes of the proposed taking and authorized to be made upon the property. The order may include terms and conditions with respect to the time, place and manner of entry and authorized activities upon the property which will facilitate the purpose of the entry and minimize damage, hardship and burden, and may require a deposit pursuant to Section 42A-1-10 NMSA 1978.
- C. The condemnor shall have delivered any order issued by the court to the condemnee, if known and, if applicable, any other person known to be in actual occupancy of the property personally or by registered mail or certified mail, return receipt requested.

42A-1-10. Deposit of Probable Compensation

- A. An order permitting entry under Section 42A-1-9 NMSA 1978 shall include a determination by the court of the probable amount that will fairly compensate the condemnee and any other

person in actual physical occupancy of the property for damages, if any, for physical injury to the property and for substantial interference with possession or use of the property found likely to be caused by the entry and activities authorized by the order, and may require the condemnor to deposit with the court before entry that amount or a surety bond in that amount from a surety acceptable to the court.

- B. If a deposit is required, such funds shall be deposited in an interest-bearing account at an institution acceptable to the court. Interest on such deposit shall accrue for the benefit of the condemnor.
- C. Any amount deposited shall be retained on deposit until released by the court.
- D. Surety bonds shall remain in effect until the surety is released by the court.

42A-1-11. Modification of Court Order Permitting Suitability Studies

- A. After notice and hearing, the court may modify an order made under Section 42A-1-9 NMSA 1978.

- B. If a deposit or surety bond is required or the amount required to be deposited or the amount of the surety bond is increased by an order of modification, the court shall specify the time within which the required amount must be deposited or the surety bond increased, and shall direct that any further entry or specified activities or studies under the order as modified be stayed until the required deposit or increase in the surety bond has been made.

42A-1-12. Recovery of Damages, Costs and Expenses

- A. A condemnor is liable to the condemnee and, if applicable, to the person in actual physical occupancy of the property for physical injury to and for substantial interference with possession or use of property caused by its entry and activities upon the property made pursuant to Section 42A-1-8 NMSA 1978. This liability may be enforced in a civil action against the condemnor or by application to the court in the circumstances provided by Subsection C of this section.
- B. In an action or other proceeding for recovery of damages under this section, the prevailing claimant shall be allowed his reasonable costs. In addition, the court shall award the claimant his litigation expenses incurred in any proceeding under Section 42A-1-9 or 42A-1-11

NMSA 1978 if it finds liability pursuant to Subsection A of this section and that the condemnor:

1. entered the property unlawfully; or
 2. failed without just cause to substantially comply with or wrongfully exceeded or abused the authority of an order made under Section 42A-1-9 or 42A-1-11 NMSA 1978.
- C. If funds are on deposit or a surety bond has been required under Section 42A-1-10 or 42A-1-11 NMSA 1978, the condemnee or other person claiming damages under Subsection A of this section may apply to the court for an award of the amount he is entitled to recover. The court shall determine the amount and award it to the person entitled thereto and direct that the payment be made out of the money on deposit or pursuant to the provisions of the bond. If the amount on deposit or the amount of the surety bond is insufficient to pay the full amount, the court shall enter judgment against the condemnor for the unpaid portion.

42A-1-13. Entries Exempt

The provisions of Sections 42A-1-8 through 42A-1-12 NMSA 1978 apply only to entries for suitability studies made outside of the exterior boundaries of any municipality.

42A-1-14. Notice

If notice of a hearing or any other matter pursuant to Sections 42A-1-3 through 42A-1-12 NMSA 1978 is required, except for specific notice requirements as otherwise provided, notice shall be given:

- A. by mailing a copy thereof at least ten days before the time set for the hearing or determination of other matters by certified, registered or ordinary first class mail addressed to the person being notified;
- B. by service of a copy thereof at least ten days before the time set for the hearing or determination of other matters upon the person being notified in the manner provided by the Rules of Civil Procedure for the District Courts for service of summons and complaint; or
- C. if the address or name of any person is not known and cannot be ascertained by reasonable diligence, by publishing a copy thereof at least once a week for two consecutive weeks, in a newspaper of general circulation in the county in which the hearing is to be held, the last publication of which is to be at least five days before the time set for the hearing.

42A-1-15. Rules of Civil Procedure

Unless specifically provided to the contrary in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978], or unless inconsistent with its provisions, the Rules of Civil Procedure for the District Courts govern matters pursuant to that act.

42A-1-16. Application

- A. The provisions of Sections 42A-1-3 through 42A-1-16 NMSA 1978 apply to all condemnation actions brought pursuant to the laws of New Mexico including those actions brought pursuant to Sections 42-2-1 through 42-2-24 NMSA 1978.
- B. The provisions of Sections 42A-1-3 through 42A-1-12 NMSA 1978 shall not affect the right of possession and occupancy provided for in Sections 42A-1-22 and 42-2-6 NMSA 1978.

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