

Taking Recovered Material: Eminent Domain, Just Compensation, and Title Disputes

Version 1.10 · October 2026 · nhilaw.com/issues/e1.html

Version 1.10, October 2026. Legal information, not legal advice. Published by the [Emergent Frontiers Institute](#) (NHI Law is not a law firm). Citations checked in October 2026; check every citation before relying on it.

Key points

- A physical appropriation of personal property is a per se taking (*Horne; Cedar Point*), but property seized as evidence under the police power is not taken for public use (*AmeriSource*).
 - Title comes first: government-furnished property stays the government's (FAR 52.245-1), and material found on private land likely belongs to the landowner ([Issue E3](#)).
 - H.R. 8800 §1767 would direct a taking with no procedure or compensation mechanism; the Fifth Amendment and the Tucker Act would fill the gap.
 - Valuation of material with no market will turn on alternative methods (*Commodities Trading; Toronto, Hamilton & Buffalo*) and on authentication.
 - Holders should document provenance and chain of custody and never transfer material without a written reservation of rights ([Form E1-1](#)).
-

1. Summary

The House-passed UAP Disclosure Act provides that “[t]he Federal Government shall exercise eminent domain over any and all recovered technologies of unknown origin and biological evidence of non-human intelligence that may be controlled by private persons or entities in the interests of the public good.” H.R. 8800 (EH) §1767(a) ([Issue A3](#)). Whether or not it is enacted, a disclosure would bring disputes over who owns recovered material and what the government must pay to take it.

Four questions organize the analysis:

1. **Does the holder own anything?** Contractors may hold material as government-furnished property (title in the United States), contractor-acquired property under cost-type contracts (title often passes to the government), or property the contractor claims to own outright. Private individuals may hold material found on private land, purchased, or inherited. Where the United States already holds title, there is no taking.

2. **Is the government's action a taking?** A physical appropriation of personal property is a per se taking. *Horne v. Department of Agriculture*, 576 U.S. 350, 359-61 (2015) (“Nothing in this history suggests that personal property was any less protected against physical appropriation than real property.”); see *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) (government-authorized physical invasion is a per se taking). Seizure of contraband or property subject to forfeiture under police power is not a taking. The closest modern precedent is the Kennedy assassination films. In *Nix v. United States*, 174 Fed. Cl. 260 (2024), the son of the man who filmed the assassination from the side opposite Abraham Zapruder alleged that the JFK Records Act took the original film by permanently transferring it to the National Archives. The court held that the claim plausibly alleged a physical taking under *Horne*, *id.* at 269-70; that the government's failure to run any compensation process (as it had for the Zapruder film) was irrelevant, because “[t]he real question is always whether the government has taken an interest in property,” *id.* at 270-71; and that the limitations period had not run where the owner was diligent and the government concealed its possession, *id.* at 267-68. A UAP disclosure statute that vests records or material in the government would raise the same claims, and an owner who learns of government possession only on disclosure has an accrual argument.
3. **What process applies?** Direct condemnation in federal district court (40 U.S.C. §§3113-3118; Fed. R. Civ. P. 71.1, which governs proceedings “to condemn real and personal property”) if the government condemns; otherwise inverse condemnation in the Court of Federal Claims under the Tucker Act (28 U.S.C. §1491) for claims over \$10,000.
4. **What is just compensation?** Fair market value at the time of taking, measured by what a willing buyer would pay a willing seller. *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979). For unique items with no market, courts use alternative methods (cost of substitute, income, comparable sales of analogous items) and exclude value created by the government's own project.

The deepest problem is valuation. Material of non-human origin has no market, its value depends on knowledge the government may withhold, and much of its value may derive from the government's own classification and interest. The Area 51 condemnation litigation (*United States v. 400 Acres of Land*, 2017 WL 4797517 (D. Nev. Oct. 24, 2017)) previews the fight: landowners offered survey-based valuations premised on public fascination with “extraterrestrials and/or government conspiracies,” and the government moved to exclude them.

2. The proposed eminent domain provision

- **Text.** §1767(a) directs a taking “in the interests of the public good.” §1767(b) requires that material be made available to the Review Board for examination “at a location suitable to the controlling authority”; §1767(c) has the Board decide whether material is technology of unknown origin or biological evidence of NHI “beyond a reasonable doubt,” whether it qualifies for postponement, and what change in disposition is needed.
- **Gaps.** The provision names no condemning official, supplies no procedure or timetable, and says nothing about compensation. The Fifth Amendment would supply the compensation

duty, and the Tucker Act the forum. The general condemnation statute authorizes an officer “authorized to acquire real estate” to “acquire the real estate for the Government by condemnation” (40 U.S.C. §3113) and does not reach personal property; Congress may need to authorize condemnation of personal property expressly, or the government may proceed by physical seizure and leave owners to inverse condemnation. Existing statutes that reach personal property are narrow. The Defense Production Act no longer contains a requisition power (the current chapter, 50 U.S.C. §4501 et seq., has none). The 1917 wartime procurement statute lets the President, “[i]n time of war,” place compulsory orders for “ships or war material” (defined to include “any form of aircraft, and the parts thereof”) and “requisition and take over” factories, with “just compensation” set by the President, payment of 50 percent of that amount if the owner objects, and suit for the rest under 28 U.S.C. §1346 or §1491 (50 U.S.C. §82(a), (b), (d)). It is limited to wartime and aimed at production, so it would not support peacetime seizure of a privately held artifact. Military land-acquisition authority (10 U.S.C. §2663) covers only “interest[s] in land.” Absent new legislation, then, a taking of recovered material would most likely occur by physical seizure followed by a Tucker Act claim.

- **“Controlling authority”** (§1773(5)) includes any “commercial company, academic institution, or private sector entity in physical possession” of the material, and state and local governments. Takings of state property raise intergovernmental issues (federal power to condemn state property exists, *Oklahoma ex rel. Phillips v. Guy F. Atkinson Co.*, 313 U.S. 508 (1941)).
- **Public use.** National security, scientific study, and public disclosure plainly qualify. *Kelo v. City of New London*, 545 U.S. 469 (2005) (broad public purpose).

3. Title questions

3.1 Contractors

- **Government property clause**, FAR 52.245-1(e): “The Government shall retain title to all Government-furnished property,” and title is not affected by incorporation into or attachment to non-government property. Under cost-reimbursement and time-and-material contracts, title to property purchased as a direct cost “shall pass to and vest in the Government upon the vendor’s delivery,” and title to other reimbursable property vests on issuance for performance, commencement of processing, or reimbursement. Under fixed-price contracts without financing or title provisions, the contractor retains title to property acquired for use on the contract except deliverable end items.
- **Classified contracts** may contain special property and security clauses; title to material provided under a SAP is likely in the government.
- **IRAD-funded work:** material acquired with contractor IRAD funds may be contractor property unless a contract or agreement says otherwise; §1687(b) ([Issue A3](#), D2) affects cost allowability and leaves title untouched.
- **Implication.** If the government furnished the material, a contractor holding it has no takings claim and must return it on demand; disputes go to the contracting officer and the

Contract Disputes Act (41 U.S.C. §§7101-7109), with the *General Dynamics* constraint if state secrets block litigation.

3.2 Private finders and owners

Under the common law of finds, property found on private land generally belongs to the landowner if mislaid or embedded, and to the finder if lost, subject to state statutes. Meteorites are treated as part of the land in most U.S. jurisdictions (*Goddard v. Winchell*, 86 Iowa 71 (1892)); on federal land, the government claims them ([Issue E3](#)). Material on federal land, or from a craft the government claims, raises federal ownership claims (Property Clause; ARPA analogies).

3.3 Government claims without taking

The government may assert that material is government property (for example, debris from a government operation), contraband, or subject to forfeiture. One forfeiture statute already reaches some craft: an “unmanned aircraft” seized under DoD’s counter-drone authority “is subject to forfeiture to the United States” (10 U.S.C. §130i(c)), and the definition of “unmanned aircraft” turns on the absence of “direct human intervention from within or on the aircraft” (49 U.S.C. §44801(11)), which literally fits a craft with non-human occupants ([Issue F2](#), §2.1). The authority applies only to threats to designated DoD facilities, so it would not reach material a private person found elsewhere. Police-power seizures of contraband are not takings (*Bennis v. Michigan*, 516 U.S. 442 (1996)), and the Federal Circuit applies the same rule to property seized as evidence: “[p]roperty seized and retained pursuant to the police power is not taken for a ‘public use’ in the context of the Takings Clause.” *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1153 (Fed. Cir. 2008). That is the government’s best answer to a takings claim for material seized in an investigation (for example, debris taken as evidence of a crash or of a security violation). The holder’s reply is that the seizure was not in fact for a law enforcement purpose, or that the government kept the material after any investigation ended for a different use, which is a taking. DoD’s own procedure for material its forces recover is the Joint Staff’s 2023 reporting order, which directs that recovered “UAP objects and material” be secured under Foreign Material Exploitation policies and transferred to AARO-designated locations within 30 days with a chain-of-custody record (§3.F.1); it does not address material held by private parties. Joint Staff J3 GENADMIN, “Unidentified Anomalous Phenomena Reporting and Material Disposition,” DTG 191452Z May 2023, released under FOIA as DoD 24-F-0067. Classification does not by itself transfer title; information may be classified, but the physical object’s ownership is a property question.

3.4 How contractors have treated recovered material

A former director of the Navy’s UAP Task Force describes a 2009 effort to have a contractor transfer a recovered craft to the Defense Intelligence Agency under a new special access program, which stalled when a CIA official refused to approve it (Jay Stratton, *Out of the Shadows* chs. 8-9 (2026)). If accurate, the episode bears on title: an offer to “transfer” material to the government is evidence that the contractor treated itself as the holder, while the government’s control over whether the transfer could happen points to government ownership. Either way, counsel for a contractor should find the contract, task order, or agreement under which the material is held before any dispute begins.

4. Process

- **Direct condemnation:** the government files a complaint in condemnation and deposits estimated compensation (Declaration of Taking Act, 40 U.S.C. §3114); title passes on filing and deposit; a jury or commission determines compensation.
- **Inverse condemnation:** the owner sues in the Court of Federal Claims; six-year limitations period (28 U.S.C. §2501); classified evidence handled under the CFC's guidelines ([Issue A1](#)).
- **State secrets:** the government may assert the privilege in valuation proceedings; courts should not allow the government to take property and then refuse to litigate its value. If the privilege prevents valuation, courts may fashion remedies or Congress should supply a statutory compensation scheme.

5. Valuation

- **Fair market value** is the standard; for items without a market, courts accept other methods. *United States v. 50 Acres of Land*, 469 U.S. 24 (1984) (substitute facilities not required for public condemnees).
- **Project influence rule:** value attributable to the government project itself is excluded.
United States v. Miller, 317 U.S. 369 (1943). The government will argue that any value of UAP material depends on the government program and on classified knowledge.
- **When there is no market:** “when market value has been too difficult to find, or when its application would result in manifest injustice to owner or public, courts have fashioned and applied other standards.” *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123 (1950). Where there is “no market” for the property, scattered sales of similar items still count, at reduced weight, *United States v. Toronto, Hamilton & Buffalo Navigation Co.*, 338 U.S. 396, 402 (1949), and evidence of an unusual demand that would ordinarily be excluded may be considered, *id.* at 408-09. A temporary taking (for example, a government “examination” that keeps material for a period) is measured by the rental value for the period held. *Kimball Laundry Co. v. United States*, 338 U.S. 1, 6-7 (1949).
- **Scientific and cultural value:** courts have struggled to value unique objects (meteorites, fossils, artifacts). Comparable sales of meteorites and rare specimens may supply a floor. The Zapruder film, taken under the JFK Records Act, was valued through a negotiated arbitration rather than litigation (see *Nix*, 174 Fed. Cl. at 270), which is a model for a statutory valuation panel.
- **Speculative value:** expert opinions premised on speculative uses or public fascination face exclusion under Rule 702, as in the *400 Acres* motions.
- **Authentication:** before value, the claimant must prove what the material is. Federal Rule of Evidence 901 requires evidence “sufficient to support a finding that the item is what the proponent claims it is”; for material of unknown origin that means an unbroken chain of custody, documented testing by an accredited laboratory, and experts who can explain why the material cannot be attributed to known manufacture ([Form E3-1](#)).

- **Statutory compensation:** Congress can provide a compensation formula (for example, appraisal by a panel with cleared experts, or a schedule), which reduces litigation over unknowable value.

5A. Tax, foreign origin, and biological evidence

- **Tax.** Compensation for property taken is an amount realized; gain can be deferred if the owner reinvests in similar property within the replacement period for an involuntary conversion (26 U.S.C. §1033).
- **Foreign origin.** Material that entered the United States from abroad may be subject to cultural-property import restrictions (19 U.S.C. §2601 et seq.) and to the foreign state's claims, which affects both title and value.
- **Biological evidence.** H.R. 8800 would take "biological evidence of non-human intelligence" as property. If NHI are persons ([Issue F1](#)), remains of a person are not ordinary property, and the analogy is to human-remains law and NAGPRA ([Issue E3](#)), not to condemnation.

6. Practice points

- **For holders of material:** document provenance and chain of custody; identify any contract, grant, or agreement affecting title; preserve evidence of costs and research investment; avoid transfers that could be characterized as voluntary relinquishment; consult counsel before any government request to "examine" material.
- **For contractors:** review property clauses; determine whether material is government property; assess disclosure duties (Issues D1, D2).
- **For the government and legislators:** add to §1767 a condemning authority, procedure, deposit mechanism, valuation method, and Court of Federal Claims jurisdiction; address scientific access and return of non-qualifying material.