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January 30, 1976

MEMORANDUM FOR: JACK MARSH

**THRU: MAX L. FRIEDERSDORF
VERN LOEN**

FROM: CHARLES LEPPERT, JR.

SUBJECT: Property at Laguna Niguel, Calif.

Attached for your information is a copy of the Committee Report of the House Government Operations Committee on the federal acquisition of the above mentioned property.

The Committee findings are found at page 3 and the Committee recommendations at page 6.

cc: Russ Rourke



ACQUISITION BY GENERAL SERVICES
ADMINISTRATION OF PROPERTY AT
LAGUNA NIGUEL, CALIFORNIA

SEVENTH REPORT

BY THE
COMMITTEE ON GOVERNMENT
OPERATIONS



JANUARY 26, 1976.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

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(II)

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, D.C., January 26, 1976.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's seventh report to the 94th Congress. The committee's report is based on a study made by its Legislation and National Security Subcommittee.

JACK BROOKS, *Chairman.*

(III)

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Union Calendar No. 385

94TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES }

REPORT
No. 94-783

ACQUISITION BY GENERAL SERVICES ADMINISTRATION OF PROPERTY AT LAGUNA NIGUEL, CALIFORNIA

JANUARY 26, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations,
submitted the following

SEVENTH REPORT

BASED ON A STUDY BY THE LEGISLATION AND NATIONAL SECURITY
SUBCOMMITTEE

On January 22, 1976, the Committee on Government Operations approved and adopted a report entitled "Acquisition by General Services Administration of Property at Laguna Niguel, California." The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTION

This report is based on an investigation and hearings conducted by the Subcommittee on Legislation and National Security into the acquisition of a building by the General Services Administration at Laguna Niguel, California. The building, owned by the Rockwell International Corporation and appraised at \$20 million, was obtained by an exchange of properties and equipment owned by the Air Force that were declared excess to Air Force needs after negotiations for the exchange had begun. The circumstances surrounding the exchange suggested that it may not have been in harmony with the intent of Congress in assigning responsibility for the acquisition of Federal buildings, or in the exchange provision of the Federal Property and Administrative Services Act. It raised a question as to whether the exchange was in the best interests of the Government. The exchange of properties clearly merited congressional inquiry.

This matter was first called to the attention of the Government Operations Committee in the 93rd Congress. Chairman Brooks, then Chairman of the Government Activities Subcommittee, expressed his opposition to the exchange of the properties to the General Services Administration. The GSA proceeded, however, to consummate the exchange.

(1)



The formal investigation was conducted in the present Congress. Chairman Brooks, now Chairman of the Full Government Operations Committee and its Legislation and National Security Subcommittee, ordered an investigation and requested a report on the exchange from the General Accounting Office.¹ A hearing² was held on October 7, 1975, at which time testimony was taken from the Administrator of GSA. This report is based upon those hearings, the GAO report, and the investigation.

¹ "Acquisition of a Building in Laguna Niguel, California in Exchange for Government-Owned Properties," a report by the Comptroller General of the United States to the Committee on Government Operations, March 3, 1975, B-165511.

² "Acquisition by General Services Administration of Property at Laguna Niguel, California," hearing before a subcommittee of the Committee on Government Operations, House of Representatives, 94th Cong., 1st sess., October 7, 1975 (hereafter cited as "hearing").

II. FINDINGS

1. The GSA showed bad judgment in acquiring the Laguna Niguel building for government use.

(a) The exchange of properties was first initiated by Rockwell International Corporation. The GSA was offered the Laguna Niguel building in the summer of 1971 by Rockwell, which had no need for it and after it had been unable to sell it on the open market.

(b) The GSA proceeded to acquire the Laguna Niguel building without first establishing a need for it and without having sufficient firm commitments for use of the space.

(c) The Department of Housing and Urban Development recommended against acquiring the building, and its concerns were not resolved. The Department's studies in 1972 and 1973, as required by Executive Order #11512, had concluded that there was a scarcity of low and moderate income housing available in the area surrounding the building; therefore, it was inappropriate as a Federal office building.

(d) GSA never seriously considered the finding by the Environmental Protection Agency that public transportation in the area was practically nonexistent and that the increased traffic resulting from massive and long commutes might further degrade air quality in the Laguna Niguel area, an EPA "critical air basin".

(e) In January, 1972, an OMB memorandum characterized the building as a "white elephant" and "a building in search of a mission." Even when OMB finally approved the acquisition of the building in July 1974, it felt constrained to direct that "GSA should take steps to assure that the Laguna Niguel space is efficiently utilized and not just filled up."

(f) The conclusive evidence on the wisdom of acquiring the building is that now, a year-and-a-half later, less than 200 employees are occupying the structure, which was designed to handle 7,500 employees and that only 192,825 square feet of the 903,150 square feet of assignable space in the building is being occupied. It should be noted that GSA itself occupies the great majority of the space being used—162,000 square feet. GSA officials reported on October 7, 1975 that there were no firm commitments for further occupancy.

2. General Services Administration either misrepresented or did not fully present the facts of the case and GSA's intentions when the committees of the Congress inquired into the exchange.

(a) In an October 17, 1974 letter to Members of Congress, GSA Administrator Sampson stated that "adequate housing for employees is being developed." Contrary to this statement of action, Mr. Sampson testified before the Legislation and National Security

(3)

rity Subcommittee on October 7, 1975, that an affirmative plan to provide housing would not be developed and implemented until "the Federal employee population of Laguna Niguel warrants it."

(b) At the same time Mr. Sampson was assuring Chairman Brooks and others who questioned the transaction that housing was no problem, GSA representatives at Laguna Niguel were readily acknowledging the lack of housing in discussions with possible tenants.

(c) In his October 17, 1974 letter, Mr. Sampson, apparently anxious to convince Congress that GSA had tenants lined up and eager to move in, stated that "We expect the building to be fully occupied within 1½ years." However, in an attempt to diminish the negative impact of its Environmental Impact Statement, GSA represented to the Environmental Protection Agency on April 1, 1974 that "Occupancy of the building will be phased over a long period which will provide adequate time for resolution of all potential adverse impacts." At a later point the statement says full occupancy will not be reached for three to five years.

3. GSA took advantage of the exchange procedure to circumvent the need for Congressional action in acquiring the Laguna Niguel facility.

(a) Normally, public buildings are acquired under the Public Buildings Act, which sets forth policies to insure "equitable distribution of public buildings throughout the United States with due regard for comparative urgency of need of such buildings." Had GSA used this procedure, it would have been required to submit a prospectus to and get approval of the House and Senate Public Works Committee for acquisition of the building. Then Chairman Blatnik of the House Public Works Committee concluded that "the acquisition of the property by exchange under authority of section 203(e)(3) of the Federal Property and Administrative Services Act of 1949, as amended, is in proper order and does not require any formal authorization from the Public Works Committees."

(b) GSA further took advantage of the Public Buildings Act which says: "No appropriation shall be made to construct, alter, purchase, or to acquire any building to be used as a public building which involves a total expenditure in excess of \$500,000, if such construction, alteration, purchase, or acquisition has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively." As a result of imprecise regulations governing the assignment of cost to "alterations", the General Services Administration has maintained that only \$490,098 has been spent on alterations to the Laguna Niguel building out of the \$1.8 million spent on the building in the year and a half GSA has operated it.

(c) GSA readily admits that an additional \$2.4 million is needed to prepare the building for Federal occupancy. GSA's acquisition of the building committed the government to the payment of these funds if it is to be used and should have prompted GSA to submit the exchange to the Public Works Committees for approval.

(d) The Federal Property and Administrative Services Act of 1949 requires GSA to notify the Committee on Government Op-

erations in the House and Senate prior to consummating exchanges of property. This authority does not permit the Government Operations Committee to block the exchange by resolution. The Chairman of the Government Activities Subcommittee of the Government Operations Committee, Jack Brooks, did object to the exchange and recommended in a February 7, 1974 letter to Arthur F. Sampson, Administrator of General Services, that "negotiations for the exchange should at this time either be terminated, or such procedures as are necessary to receive formal authorization for the acquisition of the Laguna Niguel facility should be initiated." This recommendation was not followed by the General Services Administration.

4. GSA and the Air Force engaged in questionable activities to arrange for certain properties and equipment to be declared excess for use in the exchange.

(a) \$11.7 million of the \$19.5 million government property used in the exchange had not been declared excess to AF needs at the time negotiations were undertaken by Rockwell and GSA.

(b) GSA and Rockwell selected these additional properties to be used in the exchange and then arranged for the Air Force to declare them excess. The Air Force did agree to the declarations of excess for the plants and equipment in question and these declarations were approved as required by the Armed Services Committees of the House and Senate.

5. The appraised value of the property acquired by GSA was \$20,030,000. However, after the exchange was completed in March 1974, Rockwell had a new appraisal made on the acquired property and equipment which showed the value received in the exchange being worth \$27.31 million. This is a net increase of \$7.78 million over the 1972 appraisal of \$19.53 million. If the Air Force allows this higher appraisal, it will enable Rockwell to establish a higher tax base for assets acquired, and therefore, pay less income tax and charge the Government higher costs on cost-reimbursable contracts.

6. Rockwell convinced the Air Force to accept \$4.3 million in overhead costs related to the Laguna Niguel building which Rockwell purportedly incurred from April 1971 to March 1974. By this action, the Air Force is allowing Rockwell to pass along certain increased costs on Government contracts for the period involved for a facility which was not used in the performance of any Government contracts.

III. RECOMMENDATIONS

1. The General Services Administration should submit to Congress within 120 days proposals for the utilization of Laguna Niguel, along with a plan for its disposal, if no feasible alternative is available.

2. In the future, any report of an exchange to the appropriate committees of Congress pursuant to Section 203(e)(6) of the Federal Property and Administrative Services Act of 1949 should be accompanied by a statement that the other party to the exchange has agreed to the dollar values reflected in such report to the committees.

3. The General Services Administration should adopt a regulation defining the meaning of the term "alterations" and setting forth guidelines to assure that the \$500,000 limitation set by Section 7 of the Public Buildings Act of 1959 is not exceeded unless authorized by the Public Works and Transportation Committee of the House and the Public Works Committee of the Senate.

4. The Air Force should only declare property excess to its needs which it, not any other agency of Government such as GSA, has determined is excess to its needs.

5. Congress should consider adopting legislation that would amend section 203(e)(3) of the Federal Property and Administrative Services Act of 1949 to prohibit the disposal of government property by exchange unless the acquisition of the property resulting from the exchange has been specifically authorized by congressional action, where congressional authorization would be required if the property were purchased—as in this case, where the property being acquired by the government as a result of the exchange is to be used as a public building and, if purchased, would have to have been specifically authorized by resolutions of the Public Works and Transportation Committee of the House and the Public Works Committee of the Senate adopted in accordance with the provisions of Section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).

6. Congress should consider adopting legislation that would amend Section 7 of the Public Buildings Act of 1959 to prevent the acquisition of public buildings that have not been authorized in accordance with the provisions of that section whether the acquisition is being accomplished with the use of appropriated funds, the exchange of surplus property, or otherwise.

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IV. BACKGROUND

In 1968 North American Rockwell,³ a major defense contractor, started assembling a 1,335-acre tract of land in an area of barren, rolling hills in southern Orange County, California, known as Laguna Niguel. The site, about halfway between Los Angeles and San Diego, was acquired for a new plant for Rockwell's Autonetics Division. It was to be specially constructed, combining space for the manufacture of electronic guidance and control equipment with executive offices from which Rockwell's many West Coast operations could be directed. The ambitious project also included space for a residential community and an area for planned commercial development.

Construction of the main facility began on Nov. 1, 1968, and in the spring of 1971 it was completed—1 million square feet enclosed in an architecturally dramatic structure, surrounded by 58 acres of parking space, featuring high speed elevators and escalators, three cafeterias and sophisticated maintenance and security control devices—all designed and built to the specifications of Rockwell's Autonetics Division.

There was only one drawback. Less than a year after construction began, Rockwell's need for the facility had evaporated. The general downturn in the economy that began in 1969 was accelerated in Rockwell's case by the cancellation of one of its Air Force contracts and reductions in others. In February, 1970, company officials decided to sell the still uncompleted Laguna Niguel facility.

Because of the size and special nature of the building there were no ready buyers. Only one serious proposal was received and that involved an exchange of properties rather than the \$24,750,000 Rockwell was asking. Shortly after those negotiations fell through, in the summer of 1971, Rockwell representatives called on General Services Administration regional officials in San Francisco to see if the government would be interested in acquiring the Laguna Niguel building in exchange for Federal property.

In March, 1974, the trade was made. The GSA took over Laguna Niguel, which is appraised at \$20,030,000; Rockwell received title to two Air Force plants and a large amount of government-owned machinery with a total appraised value of \$19,531,446.

The exchange raises a number of questions about the practices and policies of the General Services Administration in three areas of major concern to Congress: the location and acquisition of Federal office buildings, the disposal of surplus property, and the use of the exchange method to meet the Federal Government's need for property.

³ The corporate name was changed to Rockwell International on Feb. 16, 1973.

PUBLIC BUILDINGS ACT

Recognizing the impact a Federal office building can have on a community and on the people who must work in it, both Congress and the Executive Branch have developed procedures to assure there is an equitable distribution of public buildings throughout the United States, and that they are located in readily accessible areas that have adequate housing for low- and middle-income employees.

Congress has established its authority to determine the location of federal office buildings in Public Law 92-313, the Public Buildings Act of 1959.⁴ Section 7 of the Act provides that:

No appropriation shall be made to construct, alter, purchase, or to acquire any building to be used as a public building which involves a total expenditure in excess of \$500,000 if such construction, alteration, purchase, or acquisition has not been approved by resolutions adopted by the Committee on Public Works of the Senate and the House of Representatives, respectively.

The Act further provides that to secure such approval, the GSA must submit to Congress a comprehensive statement establishing the need for the building, giving its location and cost, and setting out in detail the plan for its use.

Although this is the basic statute for determining where public buildings are to be located, the General Services Administration did not use it for the acquisition of Laguna Niguel. It turned, instead, to the Federal Property and Administrative Services Act,⁵ which, among other provisions, authorizes the GSA to exchange government-owned excess and surplus property for privately-owned property. Until then, the authority had been used chiefly to acquire building sites through an exchange of excess or surplus federal land, and no previous transaction had involved properties of such value. In fact, in the five previous years, there had been 38 exchanges in which a total of \$28.4 million worth of Federal property was disposed of, for an average of \$747,368 per transaction.

The Federal Property Act does not specifically require the GSA to get congressional approval for exchanges, but GSA must notify the House and Senate Government Operations Committees before it disposes of Federal property, and generally holds up any exchange a committee questions.

In a March 8, 1974 letter to GSA Administrator Sampson, then Chairman Blatnik of the House Public Works Committee concluded that since the acquisition of the Laguna Niguel building was being consummated under the Federal Property and Administrative Services Act of 1949, it did not require any formal authorization from the Public Works Committees.

The Committee believes that the Federal Property and Administrative Services Act of 1949 and the Public Buildings Act of 1959 should be amended to require appropriate congressional authorization for the acquisition of any properties to be acquired as the result of an exchange.

⁴ 40 U.S.C. 601.
⁵ 40 U.S.C. 471.

ALTERATION COSTS MUST BE AUTHORIZED

GSA, however, could not escape entirely from the requirements of the Public Buildings Act. A building constructed primarily for light manufacturing would need considerable alteration to be made suitable for an office building, and any expenditure for alterations over \$500,000 to ready the building for Federal occupancy would have to be authorized by Congress.

For more than a year, GSA has had a draft prospectus ready for submission to the appropriate committees that calls for spending an additional \$2.4 million to prepare Laguna Niguel for full occupancy, but has not yet chosen to present it. It appears that what GSA has done is commit Congress to an expenditure of almost \$3 million before requesting the authorization to spend it.

By its own account, GSA has already spent \$1.8 million fixing the place up and running it for the present limited number of occupants. But its breakdown of the expenses lists only \$490,098 of this as alterations, in an effort to keep GSA safely under the limit. All other expenses are lumped under "operations, maintenance and protection."⁶

The committee recommends that the General Services Administration promulgate regulations defining the meaning of the term "alterations" and setting forth guidelines to assure that the \$500,000 limitation on alterations set by section 7 of the Public Buildings Act of 1959 is not exceeded unless authorized by the Public Works and Transportation Committee of the House and the Public Works Committee of the Senate.

NEED FOR LAGUNA NIGUEL

GSA may feel that by resorting to the exchange method, it was relieved of the requirement to obtain prior congressional approval before proceeding to acquire Laguna Niguel. But it obviously was not relieved of the responsibility to establish the need for a 1 million square foot building in a predominantly rural area 50 miles from Los Angeles before surrendering title to \$19.5 million worth of government-owned property. Here is how GSA met this responsibility:

From the outset of its efforts to acquire Laguna Niguel, GSA assured the Office of Management and Budget, which must approve transfers of federal property, and any members or committees of Congress who questioned the transaction, that Laguna Niguel was needed to meet existing space requirements of federal agencies in southern California.

The validity of these assurances can be judged by the fact that after entering into negotiations with Rockwell, GSA contacted 104 agencies to see if they were interested in moving into Laguna Niguel. It held "open house" for agency officials, flying them in for tours of the building. It printed, and circulated throughout the government, an elaborate brochure⁷ extolling the advantages of Laguna Niguel, which reads like the high-powered promotion of a luxury resort. "Since the weather is mild even in winter outdoor sports continue year round," states the brochure. "A Southern Californian can play tennis or golf

⁶ Hearing, p. 39.
⁷ Hearing, app. 4.

on the coast in mid-winter and ski in the San Bernardino Mountains the same day. For those who enjoy swimming, surfing, hiking, fishing or picnics, Newport Beach, Huntington Beach, Laguna Beach and Dana Point are close by." And while all these efforts were going on, GSA was building three other federal office buildings in southern California through the regular procedures, one only 20 miles from Laguna Niguel in Santa Ana, and another, with more than 900,000 square feet, in San Diego.

The fact that the Laguna Niguel site is less than 10 miles from the San Clemente residence of former President Richard M. Nixon, which at the time of the acquisition was functioning as the Western White House, has given rise to speculation that the building was acquired to house Nixon's presidential papers.⁸ The role played by GSA in embellishing his San Clemente residence at public expense⁹ does nothing to discourage such speculation. Administrator Sampson has told the Committee the speculation is "pure nonsense," and stands by his explanation that the building was acquired to meet the existing needs of federal agencies for office space.¹⁰

The clear proof of GSA's misjudgment—if not misstatement—of the need for Laguna Niguel is that after four years of steady effort to fill it, GSA has been able to find only one agency in the entire Federal Government that has taken any appreciable amount of space—*itself*.

Of the 192,825 square feet of space occupied as of Sept. 25, 1975, (out of 903,601 square feet available), 162,702 square feet are being used by GSA to store records from the National Archives. GSA lists the occupancy rate as 21.3 per cent.¹¹ If its own occupancy is excluded, the rate is 3.3 per cent.

The then Administrator of General Services, Arthur F. Sampson, sought to place the blame for the vast, echoing emptiness of Laguna Niguel on congressional critics, who, he says, have given it a bad reputation.¹²

The fact is that agencies have been turning down efforts to move them into Laguna Niguel for solidly based reasons. Lt. Gen. Wallace H. Robinson Jr., director of the U.S. Materiel Command, spelled them out clearly to the GSA in a letter last Sept. 5 opposing GSA's efforts to move the Defense Contract Administration Services from its regional headquarters in Los Angeles to Laguna Niguel:

We are not aware, nor do we believe it to be the intent of Congress to maximize use of government owned facilities at the expense of the mission performance of this or any other federal agency or of placing extreme burdens and inconveniences upon portions of the federal workforce.

Your proposal to physically relocate our Los Angeles DCASR headquarters to the Laguna Niguel Federal Building will have precisely those results. Mission performance of the

⁸ The Washington Post, October 15, 1974.

⁹ "Expenditure of Federal Funds in Support of Presidential Properties," hearings before a subcommittee of the Committee on Government Operations, House of Representatives, 93d Cong., 1st sess., Oct. 10-15, 1973.

¹⁰ Hearing, p. 25.

¹¹ Information supplied to the subcommittee by Joseph Yiakis, Director, Space Management Division, Region 9, GSA on Sept. 24, 1975.

¹² Hearing, pp. 19-20.

DCASR, especially that associated with contract accounting and payment, will be degraded and our present workforce, a large proportion of which are minority and female employees, will be severely affected. For these reasons . . . your proposal is unacceptable.

OMB HAS RESERVATIONS

The glaring weakness of GSA's claim that the building was needed was recognized early by OMB. GSA officials met with OMB on Nov. 17, 1971, to discuss the needed approval for the exchange, and a memorandum of that meeting, prepared for OMB files,¹³ states the views of the agency at this time:

Based on our initial discussions, we have several reservations about the proposed transfer:

—the building appears to be a white elephant since North American was not able to sell it on the private market before approaching GSA.

—the building appears to be in search of a mission since GSA did not have sufficient requirements for the space to justify its acquisition.

—the building is located in a rather isolated area with no public transportation and may not be able to meet housing and other socio-economic objectives . . . (of Executive Order 11512, which will be discussed below).

The OMB memorandum of the meeting also includes this sentence:

GSA indicated that Robert Finch has called Mr. Kunzig to express his interests in the proposal.

Mr. Finch was a presidential counsel at the time. Robert Kunzig was Mr. Sampson's predecessor as Administrator of General Services.

When GSA pressed for final approval of the transfer in March, 1974, Walter D. Scott, OMB's associate director for economics and government, made it clear OMB's doubts had not been overcome. In a letter to Administrator Sampson dated July 31, 1974, Scott noted that only 250,000 square feet of space had been allocated, nearly all of it for GSA's own use.

"GSA should take steps to assure that the Laguna space is efficiently utilized and not just filled up," wrote Scott. "It is particularly important that GSA transfer federal activities from areas such as San Francisco, where such transfers can help defer new construction requirements."¹⁴

GSA officials are quick to point out that, whatever its reservations, OMB approved the transfer. In view of the final paragraph of Scott's letter, however, that is open to question.

"Conditioned on the above precautionary steps," wrote Scott, referring to the need to utilize the space efficiently and to transfer federal activities from other areas, ". . . I hereby approve the requested transfer." These conditions have not been met to this day.

¹³ OMB memorandum, dated Jan. 12, 1972, entitled "GSA Exchange of Property for the North American Rockwell Building, Laguna Niguel, California."

¹⁴ Copy of letter in subcommittee files.

CHAIRMAN BROOKS QUESTIONS EXCHANGE

The Office of Management and Budget was not alone in questioning the need for Laguna Niguel. When GSA formally notified the House Government Operations Committee of the proposed transfer—on March 6, 1973 (16 months after beginning to negotiate the exchange with Rockwell) the sheer magnitude of the transaction in relation to all previous exchanges prompted Chairman Jack Brooks to direct the staff of the Government Activities Subcommittee to take a close look. After a year of discussions which did not remove Chairman Brooks' concerns about the Government's interests being protected, he urged the Administrator on February 7, 1974 to either halt the negotiations for the exchange or seek formal authorization of it in Congress. The GSA did neither and, a month later, consummated the exchange.

MISLEADING STATEMENTS ABOUT THE EXCHANGE

During that year, Chairman Brooks directed a series of questions to Mr. Sampson, whose answers, particularly on the matter of the planned use of the building, proved consistently to be misleading.

In a letter to the Chairman dated June 28, 1973, Mr. Sampson made the flat statement:

The principal occupant (of the building) would be the Food and Drug Administration laboratory of the Department of Health, Education and Welfare, which would occupy 207,500 square feet.

At the time he made the statement, Mr. Sampson knew, or should have known, that the House Appropriations Committee was firmly opposed to the proposed consolidation of the FDA laboratories and had deleted the funds for it on three occasions. In addition, at its budget hearing before the Appropriations Committee in April 1974, Gerald F. Mever, Associate Commissioner for Administration of FDA, made the following statement:

FDA has made no firm commitments to GSA concerning the Laguna Niguel facility. Although we did request GSA in February 1972 to hold some space in reserve for FDA, this was not then and is not now considered to be a binding commitment. We have repeatedly stressed in our dealings with the GSA that our interest in the building is tentative.¹⁵

It is on the matter of the availability of housing for low- and moderate-income employees of Laguna Niguel, however, that GSA and the Administrator were the most deceptive in their dealings with Congress.

In Executive Order 11512, issued February 27, 1970, by President Nixon: a memorandum of understanding between GSA and the Department of Housing and Urban Development, and in various implementing regulations, GSA is given a clear set of guidelines to follow in its acquisition of public buildings.

The Executive Order lists "the availability of adequate low- and moderate-income housing (and) adequate access from other areas of

¹⁵ "Agriculture—Environmental and Consumer Protection Appropriations," hearings before the Appropriations Subcommittee on Agriculture and Related Agencies, House of Representatives, Fiscal Year 1975, part 6, p. 182.

the urban center" among the criteria GSA must consider in selecting sites for federal office buildings.

The memorandum of understanding provides that whenever HUD finds the supply of low- and moderate-income housing inadequate to meet the needs of employees at a proposed building site, "GSA and HUD will develop an affirmative action plan designed to insure that an adequate supply of such housing *will be available before the building or space is to be occupied or within a period of six months thereafter.*" (Emphasis added.)

The terms of the agreement with HUD, including the requirement that an adequate supply of low- and moderate-income housing be made available within six months of occupancy of a federal building, are implemented by Section 101-19.101-4 of the Code of Federal Regulations.

Despite these explicit, enforceable guidelines, 18 months after GSA assumed occupancy of Laguna Niguel there was virtually no low-cost or moderate-cost housing in the area, and no firm plans to provide any.

The absence of such housing is so clearly evident that Rockwell had planned to develop its own residential community as part of its original plans for the development of Laguna Niguel. If it had escaped GSA's notice before, it was made aware of the situation in March, 1972, early in its negotiations with Rockwell, when HUD, acting under the memorandum of understanding, notified GSA that low-income employees would have difficulty finding housing at reasonable costs within reasonable commuting distances, which HUD set at 10 miles. GSA's response was to ask HUD to resurvey the area within a commuting distance of 25 miles, which HUD declined to do. It informed GSA that a commuting distance in excess of 10 miles would impose severe and unnecessary hardships on low- and moderate-income employees.

On July 16, 1973, HUD submitted an updated housing report to GSA that reached two major conclusions:¹⁶

- low-income families would find it virtually impossible to buy housing at prices they could afford within a reasonable commuting distance of Laguna Niguel.
- no rental housing at all was available for low- or moderate-income families within 15 miles of Laguna Niguel.

Based on these findings and the further fact that there was no public transportation to the site from any place where adequate housing might be available, HUD recommended against acquisition of Laguna Niguel for a federal office building.

The recommendation was disregarded by GSA as were the facts on which it was based. On Oct. 17, 1974, responding to mounting criticism of the exchange in and out of Congress, Administrator Sampson wrote a letter which was sent to every member of the House and Senate.

"Laguna Niguel is not a 'no-man's land,'" said Sampson. "It is accessible by public transportation. Adequate housing for employees is being developed."

Sampson continued this deception of Congress in his testimony before the Legislation and National Security Subcommittee on Oct. 7,

¹⁶ Final Environmental Impact Statement for Occupancy of the North American Rockwell Building, Laguna Niguel, California, p. 31.

1975, when he again said there were specific plans to provide housing. "We have no problem with that," he said.

But the fact is HUD has repeatedly informed GSA that no housing plan can be developed until there is specific information on the number and income level of the employees who need housing, information GSA is unable to provide.

In his Oct. 7 testimony, Administrator Sampson displayed either total unfamiliarity with Federal Regulation 101-19.101-4 or arrogant defiance of it when he said:

We have received the assurances of both the public officials of Orange County and several Orange County developers that, *when the federal employee population of Laguna Niguel warrants it, an affirmative action plan to provide low- and middle-income housing for these people will be developed and implemented.*¹⁷

The regulation, which has the force of law, requires that:

Prior to the announcement of a site selected contrary to the recommendation of HUD, the involved Federal agency, GSA, HUD, and the community in which the proposed site is located will utilize the items indicated in the report of the HUD Regional Administrator as a basis for developing a written Affirmative Action Plan. The Affirmation Action Plan will insure that an adequate supply of low- and moderate-income housing will be available on a nondiscriminatory basis, and that there is adequate transportation from housing to the site before the building or space is to be occupied or within a period of 6 months thereafter.

As for any assurances the Administrator says GSA has received from Orange County officials, the county's Environmental Management Agency has sought the advice of the county counsel to see if HUD and GSA can be required to implement an affirmative action plan. The counsel has supplied a brief that could serve as the basis for a request for a court injunction to halt occupancy if no such housing plan is completed.

As a further example of GSA's deliberate misleading of Congress on the matter of adequate housing, at the same time Mr. Sampson was assuring Chairman Brooks and others who questioned the transaction that housing was no problem, GSA representatives at Laguna Niguel were readily acknowledging the lack of housing in discussions with possible tenants.

A report submitted to the House Appropriations Committee in 1973 by the Food and Drug Administration contains this statement:

Among the deficiencies noted by Mr. Garbarino (E. A. Garbarino, GSA building manager at Laguna Niguel) there is no public transportation in the area and no low-cost housing is available in the immediate vicinity.¹⁸

ENVIRONMENTAL IMPACT STATEMENT

There is additional evidence of the duplicity of GSA's approach to Congress in the Environmental Impact Statement it was required

¹⁷ Hearing, pp. 24-25.

¹⁸ "Agriculture—Environmental and Consumer Protection Appropriations," hearings before the Appropriations Subcommittee on Agriculture and Related Agencies, House of Representatives, Fiscal Year 1974, page 6, p. 892.

to file before taking occupancy of Laguna Niguel. Besides HUD's adverse findings on housing and transportation, the statement issued on April 1, 1974, shows that the Environmental Protection Agency had reservations about the exchange because of the 20 to 50 mile commuting distance made necessary by the lack of housing and public transportation. EPA said such increased driving would be inconsistent with its regulations for controlling air pollution. There was also strong and widespread opposition from local citizen's groups, based largely on the lack of housing and public transportation.

In order to diminish the overwhelmingly negative impact of the statement, GSA states repeatedly in the document that it intends to phase in occupancy of Laguna Niguel slowly. The statement opens on this note:

The adverse impacts listed below would be of a serious nature to the community if the facility is filled to capacity by employees in a brief time period. Occupancy of the building will be phased over a long period which will provide adequate time for resolution of all potential adverse impacts.¹⁹

At a later point the statement says full occupancy will not be reached for three to five years.²⁰

Yet, in his letter of Oct. 17, 1974, seeking to justify the exchange, Mr. Sampson, apparently anxious to convince Congress he had tenants lined up and eager to move in, told the members, "We expect to be fully occupied within one-and-a-half years."

EXCESS PROPERTY DISPOSAL

Equally as disturbing as GSA's maneuvering to evade the restrictions of law in the acquisition of a public building is the manner in which the former Air Force properties were turned over to Rockwell as surplus to the government's needs.

The Federal Property Act defines "excess property" as property under the control of a federal agency that is not required for its needs, *as determined by the head of that agency.*²¹ The property is then placed under the control of the GSA, which is supposed to determine that it is not needed by any federal agency before disposing of it as "surplus property." To anyone who might conclude from this that the Air Force informed GSA it didn't need the \$19.5 million in property transferred to Rockwell, and that GSA made a similar determination on behalf of the entire government, the testimony of Joseph E. Joers, Assistant Secretary of the Air Force for Industrial Resources, before the Legislation and National Security Subcommittee on October 7 should prove instructive.

Mr. Joers was asked where the idea of trading Air Force property for Laguna Niguel originated.

"It originated with Rockwell, to the best of my knowledge," he replied. "I have not been able to detect anyone else in the system who has any other indication. Rockwell presented the idea in the field."²²

¹⁹ Final Environmental Impact Statement for Occupancy of the North American Rockwell Building, Laguna Niguel, California, p. ii.

²⁰ *Ibid.*, p. 14.

²¹ 40 U.S.C. 472.

²² Hearing, p. 55.

At another point in his testimony, asked how the specific properties included in the exchange were selected, Mr. Joers said:

"As it happened, GSA made the determination in the course of the negotiations that a certain portion of the properties were equivalent to the value of the Laguna Niguel property."²³

GSA did, indeed, make the determination. In a letter to the management of North American Rockwell on Nov. 10, 1971, at the start of the negotiations, GSA informed the company:²⁴

"The government proposes to convey to North American Rockwell Corporation (NAR) as much of the property identified below as necessary to equal the estimated value of the Laguna Niguel facility . . ." Listed were six government-owned facilities "in order of priority for acquisition by NAR." The letter stated further:

The government agrees to order appraisals of the Laguna Niguel facility and the various government-owned properties as soon as required approvals have been received and the appropriate military agencies have forwarded to us reports of excess or preliminary reports of excess covering the property to be conveyed to NAR.

As it happened, the appraised value of two of the Air Force facilities selected by Rockwell—a storage facility at El Segundo, California, and a rocket engine plant in Canoga Park, California—came up short of the \$20 million appraised value of Laguna Niguel, so Rockwell was invited to choose what it wanted from among a wide array of government-owned machinery in Rockwell's manufacturing plant at Los Angeles Airport. The total value of the equipment was \$8.6 million, of which Rockwell picked out \$3.2 million.

"I cannot deny the contractor made the selection of which equipment he preferred to acquire," said Mr. Joers.²⁵

And so, despite the clear meaning and intent of the Federal Property Act, the plants and equipment Rockwell wanted were declared excess and transferred to corporate ownership.

The Air Force justified its part in the charade by citing a long-standing Department of Defense policy of requiring contractors to provide the resources needed to perform on defense contracts. This is a policy with which the committee is in solid agreement. According to the Air Force, they have disposed of 76 Government-owned plants since 1958 and now have 28 remaining. However, with regard to Government-owned equipment in the hands of private contractors, except for what might be needed as a mobilization reserve, the inventory has been reduced by only about \$100 million worth since the adoption of a five-year phaseout plan in 1970, and the Government still retains ownership of more than \$5 billion worth. Since this exchange was completed, in fact, the Air Force has placed 366 additional pieces of Government-owned equipment in Rockwell's plants.

The intent of the excess property law was abused by GSA in signing off on the transfer of one of the plants—a storage facility at El Segundo, California to Rockwell. GSA, itself, had an overriding need to acquire new storage space to house records it planned to move from an outmoded facility in nearby Bell, California. The Air Force plant at El Segundo, a former aircraft assembly plant, was being used solely for storing records—in this case Rockwell's. Yet GSA

²³ Hearing, p. 49.

²⁴ Copy of letter in subcommittee files.

²⁵ Hearing, p. 50.

transferred the plant to Rockwell and then declared that its need for record-storing space helped make it necessary to acquire Laguna Niguel.

WEAKNESS OF EXCHANGE METHOD

The great weakness of the exchange procedure as far as protecting the interests of the government are concerned is that it is based on appraised values, which provide no assurance that the government is receiving the highest value obtainable for the property it is disposing of. A recent study by the General Accounting Office²⁶ disclosed several instances in which federal property disposed of through an exchange was later sold by its new owner at a much higher price than the appraised value at which it was exchanged.

The independent appraisals obtained by the GSA in May, 1972 for the Air Force properties involved in this exchange were as follows:

Air Force Plant 56, Canoga Park-----	\$8, 500, 000
Storage facility, El Segundo-----	7, 820, 000
Machinery and equipment, Los Angeles-----	3, 211, 446
	<hr/>
	19, 531, 446

Since the Laguna Niguel facility was appraised at \$20 million, it would appear that the government had come out ahead in the deal, at least as far as values are concerned. But 10 days after taking title to the Air Force properties in March 1974, Rockwell obtained its own appraisal, as follows:

Air Force Plant 56-----	\$10, 025, 000
El Segundo facility-----	13, 425, 000
Machinery and equipment-----	3, 865, 000
	<hr/>
	27, 315, 000

In passing, it is interesting to note that in 1969, when the Air Force tried to sell the El Segundo facility to Rockwell, GSA set the price at \$9 million, but Rockwell would go no higher than \$6 million.

But the Rockwell appraisal does more than cast doubt on the GSA's horse-trading capabilities. It provides a basis for increased costs to the government through the depreciation charges Rockwell can assign to its defense contracts. Rockwell is using the \$27.3 million figure as its depreciation base in contract discussions now being held with the Air Force.

GSA's chief regional appraiser in San Francisco, asked by the Air Force to comment on the higher Rockwell appraisal, had this to say:²⁷

They (Rockwell's appraiser) have almost totally disregarded any of the three accepted valuation approaches. Their conclusion of value to the operator for continuation of de-signed usage is based primarily on bare opinion without supporting data. Theirs is a value conclusion that cannot be ascertained in the marketplace . . .

Nevertheless, under the exchange procedure the Air Force must deal with Rockwell's claim, since there is no firm basis for assigning depreciation costs. As Chairman Brooks pointed out in discussing the point

²⁶ "Changes in Law Recommended to Enable GSA to be More Effective in Selling Excess Properties and in Acquiring Public Building Sites," a report by the Comptroller General of the United States to the Congress, Feb. 15, 1974, B-165511.

²⁷ Letter to Samuel C. Stover, Corporation Administrative Contracting Officer, USAF from G. W. Crandall, Director, Regional Appraisal Staff, Public Buildings Service, GSA, dated August 29, 1975.

with Air Force witnesses at the hearing, use of the exchange method has caused difficulties, uncertainties and potentially increased costs to the Air Force.

OTHER COSTS TO GOVERNMENT

There are other costs resulting from the exchange that should be considered in determining whether it was in the best interests of the government.

—Rockwell is being permitted to charge \$4.3 million in overhead costs to its defense contracts for the three years the Laguna Niguel building lay idle before the exchange was completed.

—The Air Force's costs for storing Minuteman and other items presently in storage at the El Segundo facility have increased \$43,000 per month now that Rockwell owns it.

—Rockwell's reimbursable costs for using the former government-owned properties will add about \$1 million a year to the cost of the B-1 bomber program.

—When there is no reasonable low-cost housing available for federal employees, as in the Laguna Niguel area, the government pays the difference between 25 percent of the employee's salary and the fair market rental value of the housing available. Rep. Charles Wilson of Los Angeles, who is helping the Defense Contract Administration Services resist GSA's effort to move it to Laguna Niguel, has obtained figures indicating it would cost \$930,240 a year in rent supplement payments for DCAS's low-income employees if they were moved to Laguna Niguel.

A study by the Congressional Research Service,²⁸ balancing the costs incurred by the Government in the exchange against the receipts it has gained from it, finds the Government \$14.2 million in arrears on the ledger sheet.

CONCLUSION

It is clear the wide and varied problems stemming from this exchange are the result of GSA's action, in violation of the spirit and intent of the Public Buildings Act, in acquiring a \$20 million federal office building where there was no established need for it.

Asked at the hearing if GSA would have gone out and built such a building, GSA Administrator Sampson replied, "Probably not." Asked if he would have built any building at the Laguna Niguel site, he replied, "Probably not."²⁹ Where then, was the need, and where is the benefit to the government in acquiring such a building?

"A building in search of a mission" is what OMB called it nearly three years ago, and the description remains apt.

The Committee finds some comfort in Mr. Sampson's assurance that the Laguna Niguel transaction was an event so rare there is little likelihood of it occurring again.

"I don't think it has ever been done before," he said . . . "It will probably never happen again."³⁰

The Committee intends to do all in its power to see that it doesn't.

²⁸ Hearing, app. 5-B.

²⁹ Hearing, p. 21.

³⁰ Hearing, p. 37.