What About That Excess Real Property?

By Lisa Barnes, VP of Training, ORC

If you spend a lot of your time managing right of way acquisition projects, or meeting with property owners to make offers and negotiate settlements, you are focused on acquiring the real property needed for the project. You probably don't think very much about what happens when a settlement includes real property outside the project limits for construction. Often, this additional acquisition becomes what we call "excess real property."

What is excess real property?

Federal funding agencies define this term a little differently, but the basic meaning is the same.

FHWA – Excess real property means a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code. (23 CFR 710.105(b)

FTA – Excess property: means property that the recipient determines is no longer required for its needs or fulfillment of its responsibilities, and has not met its useful life under the recipient's Grant or Cooperative Agreement. (FTA Circular 5010.E, Chapter 1, Paragraph 5. Definitions and Acronyms)

FAA – Excess property – Any property that is not required to meet the mission needs of the owning entity. The term may be applied to both real and personal property and to salvageable component items associated with real property that are otherwise referred to as related personal property. (FAA Real Estate Guidance, 5.9.1 Appendix A)

How does an agency acquire excess property?

It is not that uncommon for a public agency to take title to real property that it doesn't need, but people may wonder how or why that happens. If you have a set of plans that designate certain property boundaries, why spend money paying for something extra?

An agency's purchase of an uneconomic remnant is probably the most apparent example. The Uniform Act regulations define an uneconomic remnant as "a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value to the owner." [§24.2(a)(27)] When the agency makes this determination, it must offer to acquire the uneconomic remnant, however, the owner chooses whether to sell the remnant or keep it. [§24.102(k)] The purchase of these uneconomic remnants usually become part of an agency's excess property inventory.

The purchase of additional property beyond the needs of the project may also become an issue during negotiations. Although the owner's remainder property is economically viable, the agency may use an administrative settlement to purchase a part or all of the remainder if it can demonstrate it is a reasonable use of public funds.

Let's say, the DOT is going to construct new medians and turn lanes because of increased traffic on Pecan Road, where Sue Mahoney owns and occupies a 3-bedroom house, along with her two young children. The new ROW line comes within a foot of her large front porch, where her children play most afternoons. Although the DOT only needs part of Sue's property, and the appraisal report includes damages to the remainder, Sue insists during negotiations that she cannot continue to live there with the road so close to her house and children. The DOT can agree to purchase Sue's entire parcel, with the appropriate justification. The house on the remainder property will become excess property for the agency.

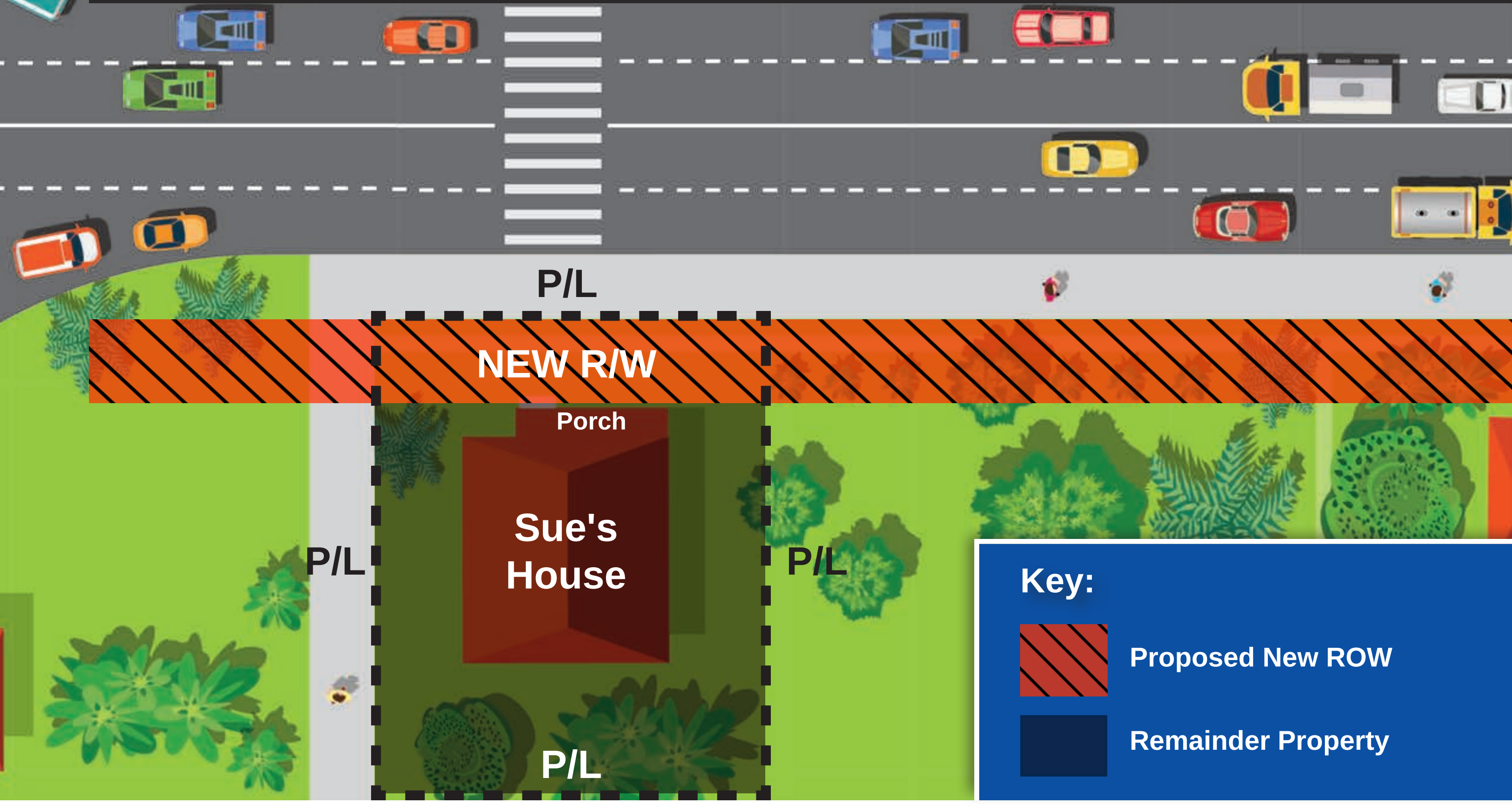
An agency may also have a change in its system - a roadway shifts or a park-and-ride location is no longer needed. Regardless, the real estate becomes excess.

What are the agency's responsibilities for managing the excess property?

Agencies have different policies and procedures for managing excess property, depending on the federal funding agency. During the acquisition phase, there should be an inventory of the acquired properties, which typically includes all land, structures, machinery, equipment and fixtures acquired. The agency will need to dispose of any improvements prior to construction using demolition, owner retention, public sale or other approved methods. After project construction, a critical management component is to establish an accurate inventory of the excess, i.e., what do we own that we no longer need. Public agencies should have procedures in place to decide how and when to declare real property excess, or surplus, to its needs.

For example, some DOTs have an automatic 2 or 3-year review period for all excess properties in its inventory. Information about these properties is routed to various departments for comments and feedback about whether there is a foreseeable need for the property. You certainly don't want to sell property this year, only to find out you need it for another project a few years from now.

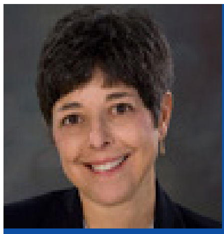
In our example, the new ROW comes within a foot of Sue's home, and the front porch where her children play. Sue insists that she cannot continue to live in the home with the road being so close to her house. As such, the DOT can agree to purchase her entire parcel. The house on the property then becomes the remainder.



Agencies may dispose of excess real property either through lease or sale. The value is usually at fair market value, but there are exceptions to this, and the federal agency regulations or guidelines must be followed. The actual disposal process may also depend on the federal funding agency. FHWA requires agencies to address the process in either the Right-of-Way (ROW) manual or the Real Estate Acquisition Management Plan (RAMP). Most other federal agencies have more direct input into the process and approval of the disposal funding.

For example, the FTA Regions work with a grantee to dispose of any excess through lease or sale. The FAA requirements for disposal of noise land self-funds the program for the following year by allowing reinvestment of the sale proceeds in an approved noise compatibility project.

Remember, the next time you acquire some excess property, it doesn't just get absorbed into the overall project you are working so hard to complete. Someone else will be responsible for managing that real property and maybe returning some revenue back to eligible projects for your agency – but check those federal funding agency rules! ■



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