Q&A for potential surplus property at the end of the I-81 Viaduct Project

Q1. What is the federal authority for disposal of federal aid highway property?

A1. The authority and requirements to dispose of surplus property when it is determined to be no longer needed for highway purposes is found under the federal law, Title 23 of the US Code and the regulations *23 Code of Federal Regulations (CFR) Part 710 – Right of Way and Real Estate* if Federal funds were used in the acquisition of the parcel. Under such regulations, states must establish procedures for managing federally funded property approved by the Federal Highway Administration, which NYSDOT has implemented via its NYSDOT Right of Way Manual.

Q2. Do State rules apply to federally-aided highways and the potentially surplus property?

A2. Yes, the New York State Constitution, NY Eminent Domain Procedure Law, and New York State Highway Law would also apply, including but not limited to, NYS *Highway Law Section 30(18) and NYS Highway Law Section 10(38).*

Q3. What does it mean exactly when a parcel (or a portion thereof) is deemed "surplus".

A3. Under 23 CFR 710.105 "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 of the United States Code. "Disposal" means the transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently or in the foreseeable future needed for highway ROW or other uses eligible for funding under Title 23 of the United States Code.

Q4. What parcel screening factors does New York State Department of Transportation (NYSDOT) consider when a request for a surplus property is made to the State?

A4:

- future transportation needs, including, but not limited to construction, reconstructions, maintenance, and operations
- size, shape, and topography
- independent economic viability and/or usefulness to an adjoining owner
- accessibility
- sight distance and clear zone needs
- environmental value - wetland, noise abatement, scenic enhancement, etc.
- hazardous materials history
- soil conditions
- snow storage and landscaping as well as staging of materials and equipment
- utility accommodations
- access control

Q5. Is property automatically deemed disposable as 'surplus'?

A5. No, NYSDOT has the authority to sell in whole or in part property acquired for the construction and reconstruction of state highways on terms beneficial to the state under *Highway Law Section 30(18),* and *23 CFR Part 409.*

Under the regulations, statutes and case law, NYSDOT is not required to dispose of any particular surplus property, and may retain the property indefinitely for whatever use the state deems appropriate.

Q6. Can NYSDOT consider conceptual uses of potential surplus property and discuss options, restrictions, and ideas from stakeholders while the project unfolds?

A6. Yes

Q7. What is the earliest point requests for a surplus parcel or portion thereof might be fully vetted and considered?

A7. Upon project completion. 23 CFR 710.403 provides that property interests acquired with federal funds are devoted exclusively for highway purposes until deemed excess by the state. Although the I-81 Viaduct project's design plans have preliminarily identified some potential surplus areas, the project has not yet been built. Design changes based upon field conditions may occur during the course of this 6-year long project. As noted previously, state highway property may also be needed for future access, maintenance or for other transportation projects, as well screening, or other remediation needs that may arise during the course of a project based on the circumstances. As such, there are no specifically mapped vacant parcels that can be considered for surplus disposal.

Q8. How does the value of the property come into play?

A8. Federal regulations at 23 CFR Part 710.403 provide that if real property was acquired by NYSDOT for transportation purposes using federal funds, current fair market value must be charged for the disposal of all real property interests. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. NYSDOT adopts the definition of market value from the Dictionary of Real Estate Appraisal, Appraisal Institute, 5th edition as: "*The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."*

Q9. How does that process work for a separately developable parcel where multiple entities or individuals may have an interest?

A9. It is NYSDOT general policy to dispose of separably developable surplus property at fair market value through public auction.

Q10. Are there exceptions to that general policy of public auction?

A10. Yes, under limited circumstances. 23 CFR Part 710.403(e) provides that "Exceptions to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations: *(1) When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's ROW manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal."*

Q11. What types of nonproprietary governmental uses have been approved by FHWA as exceptions to fair market value through the above process?

A11. NYSDOT's FHWA-approved Right-of-Way Manual (A02-5-30) provides that: *"Conveyances to government entities for continued public transportation use are the most common below market value conveyances approved by the Department. Below market value conveyances for other purposes may be approved by [NYSDOT] when the land and/or improvements are to be enjoyed directly by the general public. These purposes may include, but would not be limited to, (public) parks, open space, or public parking lots. Conveyances for government uses such as office buildings, court houses, public works facilities, or employee parking will typically not be approved for below market value sales, however, direct, fair market value sales for these government uses may, in certain circumstances, be considered (as opposed to public auction).*

Below market value sales to non-government entities typically will not be considered except for conveyances pursuant to specific, enabling legislation enacted by the State Legislature for the Department's sale for purposes of economic development."

Q12. Are there any additional considerations for any property that may have been originally acquired under Highway Law Article XII-B – State Arterial Highways Passing Through Cities?

A12. Yes, under Article XII-B enacted in 1944, many cities within the state were granted the ability to fund fifty percent of the costs of defined state highway arterial routes which run through such city, with certain additional input and involvement in the design and construction process. Where it can be confirmed such cities did contribute such fifty percent of the costs of the original property acquisitions of such arterial routes, those cities are generally granted a right of first refusal to purchase surplus parcels at fifty percent of the fair market value.

Q13. Were most of the preliminarily identified potential surplus areas identified in the I-81 Viaduct project's design plans funded under Article XII-B by the City of Syracuse?

A13. NYSDOT would need to conduct further detailed research when parcels are able to be fully identified as surplus property. Generally, property originally acquired for original construction of I-690 is more likely to have been funded fifty percent by the City of Syracuse under Article XII-B, than the property acquired for the later built I-81 Highway as it runs through the City of Syracuse.

Q14: Would the regulations related to potential surplus property described above apply to a community land trust?

A14: Yes. There are no special rights or status granted to a community land trust under the regulations; such a trust would be treated like other interested entities. It is the proposed use of the actual land that drives the analysis.