

# Acquisition Of Uneconomic Remnants

By David Cavanaugh

Implementation of the uneconomic remnant provision of the Uniform Act has been overlooked. This article discusses the continuing reluctance to implement this provision and suggests a new definition of aid implementation.

## Background

A stated intention of Title III, Section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) was to "expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts. . . ." To further this intent, Congress mandated that "Federal agencies shall to the greatest extent practicable under State law," offer to acquire any remaining tract considered to be an uneconomic remnant. As stated in Section 301(9):

If the acquisition of only part of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.<sup>1</sup>

State agencies participating in a Federally assisted project must comply in accordance with assurances submitted to the Federal agency under Section 305 of the Act. These assurances mandate compliance unless specifically prohibited by State Law.

The uneconomic remnant provision of the Uniform Act was a result of agencies only acquiring property considered essential for construction of the public improvement. This resulted in numerous partial acquisitions; often leaving owners with property having little utility. Agency's responsibility would be limited to payment of damages to the remainder caused by the project. Only rarely, in clearly identifiable cases were project limits altered to include residual tracts outside the construction limits. More often, however, right-of-way limits were drawn to reduce acquisition and relocation costs with little consideration of the project impact on the owner's continued use of the remaining property.

<sup>1</sup>"Entire property has been interpreted to apply only to the uneconomic remnant(s). For example, the acquiring agency must offer to acquire a 3-acre landlocked tract severed from a 240-acre remaining wheat farm."

Identification of uneconomic remnants involves recognition of what constitutes a "taking" requiring payment of just compensation. In the broad sense of the term, a "taking" is any substantial interference with the owner's right to use, enjoy, or dispose of property. If acquisition of the various interests in property is so pervasive as to render the remaining property useless to the owner, a taking has occurred. Clear examples include the acquisition of property itself or *loss of access* rights to remaining property. However, in other instances, a "taking" is less apparent. This occurs when the property is reduced in size or access to the remnant has been limited to such a degree that it has destroyed the continued use of the property by the owner. In those instances, Congress directed that the acquiring agency make an offer and that such a "taking" would not occur without consent of the owner.

To encourage agency consideration of potential project impacts which may constitute a taking of remaining property, Congress provided an exemption to the general rule of nonrecovery for litigation expenses in condemnation cases. Under Section 304 of the Uniform Act, acquiring agencies are required to pay reasonable legal, appraisal, and engineering fees incurred when an owner successfully brings an action in the nature of inverse condemnation and obtains an award of compensation. This provision imposes a potentially costly sanction on acquiring agencies that should be considered when determining uneconomic remnants on Federally assisted projects.

## Definition

Congress recognized that the term "uneconomic remnant" may result in inconsistent implementation by acquiring agencies. Consequently, consideration was given to a definition presented to the Committee on Public Works who were reexamining needed changes in Federal property acquisition policy. The following definition was suggested by J. E. Moody, Deputy Administrator, General Services Administration:

The term "uneconomic remnant" means that portion of an ownership remaining after acquisition, the reten-

tion of which provides no benefit to the owner because of difficulty of access, a changed Highest and Best Use, remoteness or any other reason resulting in burdening the owner thereof with expenses or responsibilities not commensurate with retention of such ownership.<sup>2</sup>

The proposed definition emphasized "no benefit to the owner" or "costs associated with burdening the owner." It was not intended that value to some potential purchaser or some nominal amount be established for determining an uneconomic remnant. Nor was small size or shape a necessary requirement. Instead, Congress sought to establish a general policy standard that an acquiring agency offer to acquire any property whose continued use by the owner was terminated or extremely limited by the public project. As noted in the Committee Study which initially proposed inclusion of this provision, an agency "should take human consideration as well as engineering and other factors into account in fixing project boundaries."<sup>3</sup>

To facilitate uniform implementation among the Federal agencies, the Relocation Assistance Implementation Committee (RAIC) was established in January 1972 by the Office of Management and Budget. Although agreements approved by the committee were not binding on the agencies represented, they did represent a consensus of opinion on many legal and procedural differences between the Federal agencies. In March 1973, the committee adopted the following definition:

"A parcel of land remaining in fee ownership as a result of a partial ac-

<sup>2</sup>Testimony presented by J. E. Moody, September 12, 1968, to the Committee on Public Works.

<sup>3</sup>Reference was made to a specific case in which a town was acquired for a reservoir project isolating an elderly woman and her daughter on a 15-acre tract which adjoined the former town. "Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs." December 12, 1964.