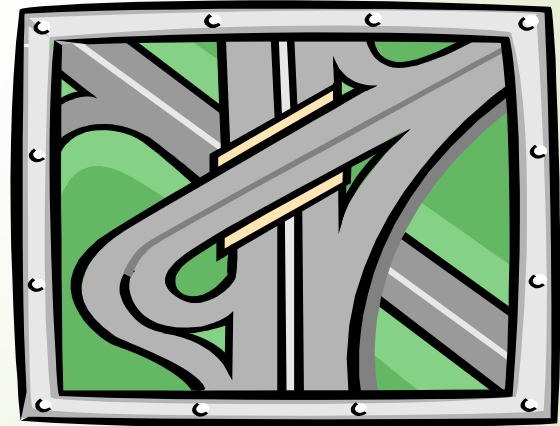


Federal Requirements for Right of Way





Training Objectives

- Identify the constitutional basis for paying just compensation to property owners.
- Define the major elements of the Uniform Relocation Act.
- Define the major steps in the right of way process for federally funded projects.

The Fifth Amendment, U.S. Constitution

"...nor shall private property be taken for public use, without **just compensation.**"

Question: What is *just compensation*?



Uniform Relocation Act

- ▶ 1970: **Public Law 91-646**—“Uniform Relocation Assistance and Real Property Acquisition Policies Act”
- ▶ 1987: **Public Law 100-17**—“Surface Transportation and Uniform Relocation Act Amendments”



Purpose of the URA

- For acquisition: Treat owners fairly and consistently, encourage acquisition by agreement, minimize litigation, and promote confidence.
- For displaced persons: Treat individuals fairly, equitably, consistently, and do not cause disproportionate injury.
- For agencies: Act efficiently and in a cost-effective manner.



Uniform Relocation Act— Title I

Purpose: “To provide for uniform and equitable treatment of persons displaced ... and to establish uniform and equitable land acquisition policies....”

- Person/displaced person
- Comparable replacement dwelling
- Displacing agency
- Appraisal



Uniform Relocation Act— Title II

Purpose: “To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs....”

- Relocation assistance
- Moving expenses
- Replacement housing payments

Uniform Relocation Act—Title III

Purpose: “In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners...(the) agency shall make every reasonable effort to acquire expeditiously real property by negotiation.”

- **Appraisal**
- **Acquisition**
- **Condemnation**



Just Compensation

“In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property.”

[Title III, Sec. 301(3)]



Uniform Act Implementing Regulations

- Code of Federal Regulations--49 CFR Part 24
- Purpose:
 - Promulgate rules to implement the URA
 - Ensure property owners are treated fairly
 - Ensure displacees are treated fairly
 - Ensure agencies implement regs in an efficient and cost effective manner

The R/W Process Under the Uniform Act

- * Plans and Title
- * Appraisal
- * Appraisal Review
- * Acquisition
- * Condemnation
- * Relocation



Plans and Title

R/W plans and title work must be sufficient to ensure properties to be acquired, in whole or in part, are adequately identified, and show:

- Property lines
- Topography
- R/W lines
- Widths to be acquired
- Centerline/stationing
- Limit of slope
- Easements, etc.



Plans and Title continued

Title work may include:

- * Ordering title reports
- * Obtaining title insurance
- * Writing legal descriptions
- * Examining the condition of title

NOTE: R/W plans and title work are based on State laws, regulations, and practices





Question: What is An Appraisal?



An appraisal is:

- A written statement independently and impartially prepared ...
- by a qualified appraiser ...
- setting forth an **opinion** of defined value ...
- of an adequately described property ...
- as of a specific date ...
- supported by the presentation and analysis of relevant market information.



What is “fair market value”?





Fair market value is:

The most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

[Boyce, "Real Estate Appraisal Terminology" 1984]



The Appraisal Process

- * Define the Appraisal Problem
- * Collect Data
- * Determine Highest & Best Use
- * Consider the 3 Approaches to Value:
 - Cost,
 - Income,
 - Market
- * Conclude and Report Value



What is an “**approved**” appraisal of fair market value?





Appraisal Review

Appraisals must be reviewed for:

- Compliance
- Value

NOTE: The reviewer may be delegated the responsibility for establishing **just compensation**



Waiver of Appraisal

Appraisal may be waived if:

- Low value
- Uncomplicated

Regulations include two thresholds:

- \$10,000
- \$25,000



Acquisition/Negotiations

Title III – Uniform Relocation Act:

- * Written offer based on just compensation
- * Adequate time to review & consider offer
- * If offer not accepted, agency may make an administrative settlement--the URA emphasizes amicable negotiations

Adequate Interest

The Uniform Act

- ▶ The Agency “...shall make every reasonable effort to acquire expeditiously real property by negotiation.”

23 CFR 1.23(a)

- ▶ “The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project.”



The Bundle of Rights

- The total range of ownership interests in real property is called the “bundle of rights”. The bundle of rights contains all the interests in real property, including the right to use it, sell it, lease it, enter it, divide it, give it away.
- Each “stick” in the bundle can be separated from the bundle and traded in the market.

Acquiring “Sticks” from the Bundle

- ▶ You can acquire the entire bundle of sticks, giving you all of the rights of ownership of the real property.
- ▶ When you own the “bundle of sticks”, you can do anything the law allows you to do with that property—sell, lease, subdivide, grant easements, etc.
- ▶ You can acquire some of the sticks in the bundle. You can acquire a portion of the property; you can acquire an easement, which may be short or long-term; you can lease it; etc.
- ▶ When you acquire ANY of these rights from the property owner to use for a public purpose, what are you subject to?



For the Owner's Benefit

Q: What if the work you are doing is "for the owner's benefit"? Do you have to offer just compensation?

A: The provisions of the Uniform Act implementing regulations "...do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached."

>>>>>Okay, what's the catch?

For the Owner's Benefit continued

The provisions of the Uniform Act implementing regulations "...do not apply to temporary easements or permits needed **solely** to perform work intended **exclusively** for the benefit of the property owner, **which work may not be done if agreement cannot be reached.**"

Acquisition by Condemnation

- * If no settlement is reached, condemnation is filed
- * Process of condemnation in accordance with State law

NOTE: Agency may consider mediation, binding arbitration, or other alternative dispute resolution.





Relocation Assistance

Displaced Person: “Any person who moves from real property or moves personal property from real property.” May be:

- Residential owner
- Residential tenant
- Business owner
- Business tenant
- Farm
- Nonprofit organization
- Personal property



The Relocation Process

- * Relocation planning during NEPA
- * Interview, collect information
- * More planning
- * Find comparable replacement housing
- * Provide advisory services
- * Provide notices: Eligibility, 90-day
- * Provide moving expenses
- * Provide replacement housing payments
- * Provide last resort housing



Relocation Assistance

RHP for Owners - Sample Calculation

- * Price of Comparable Replacement Dwelling
\$230,000
- * Acquisition Price of Subject Property
\$220,000
- * Maximum purchase supplement
\$10,000

RHP includes closing costs and mortgage interest differential

Relocation Assistance

RHP for Tenants - Sample Calculation

* Comparable Rent and Utilities	\$720
* Subject Rent and Utilities	<u>\$600</u>
* Difference (comp less subject)	\$120
42 Times the Difference	<u>x 42</u>
* Maximum Rent Supplement	\$5,040



Relocation Assistance

Moving Expenses—Nonresidential (Business, Farm, NPO)

- * Actual costs or lower of two bids
- * Reestablishment expenses (\$10,000 maximum)
- * Fixed payment in lieu of other moving expenses



Related Right-of-Way Regulations

- ▶ 23 CFR 710: Ensure prudent use of Federal funds in
 - ▶ Acquisition,
 - ▶ Management, and
 - ▶ Disposal of real property
- ▶ Applies when Federal assistance under Title 23 USC is used



Property Management

- Clearance of R/W
- Rodent control
- Disposal of improvements
- Maintenance
- Leasing
- Disposal of real property
- Asset management



R/W Certification Process

Three types of Certifications:

1. All R/W acquired, occupants moved.
2. Not all R/W acquired, but right of entry obtained, occupants moved.
3. Acquisition not complete, some occupants still on project.



R/W Certification 3

- ▶ May result in contractor claims if ROW is not acquired (FHWA may decline to participate in those costs)
- ▶ Cannot result in unnecessary inconvenience, disproportionate injury, or coercion



Questions and Comments!

Information on Right-of-Way, including links to the Uniform Act and the regulations, can be found at the following website:

www.fhwa.dot.gov/realestate

How about a bonus slide: Three secrets to meeting your ROW schedule?



3 Secrets to Streamlining ROW

Secret 1: Bring ROW into project early in the development process; NEPA scoping is a good place to start. Keep ROW involved throughout the project.

Secret 2: If your schedule gets blown in preliminary design or NEPA, change Ad date—don't squeeze ROW.

Secret 3: Reduce or eliminate plan changes that increase or decrease ROW taking. (You might make an exception to this if the change is requested by, or determined to be of benefit to, the property owner and the project after negotiations have begun.)