Who May Benefit from this PowerPoint the Most?

- Local public agencies (LPAs)
- Consulting firms (i.e., engineering firms) offering turnkey services to LPAs
- Sub-contractors who provide Right of Way Services to either of the above
- Last but not least, ALDOT personnel who have had no exposure to this, but, may in the future

So, why the focus on LPAs?

Local public agencies, and those who work with them on projects, may not do many projects with federal reimbursement very often—they don’t know what they don’t know.

Uniform Act

This presentation is just a 20 minute± overview, a detailed presentation would take days... and days of listening to me would result in (the following slide)

WHAT IS THE PURPOSE OF THE UNIFORM ACT?

- Mandates fair and consistent treatment of property owners
- Mandates fair and consistent treatment of displacees (tenants)
- Mandates that agencies consistently implement the law efficiently and effectively

About the word consistent, yes, everyone on a project is in favor of the concept of fair treatment for all, but human nature being what it is, some individuals want to be treated more fairly than ‘everyone else’. This is why the word ‘consistent’ is there, to maintain a balance in how property owners and renters are treated relative to the others affected. Everyone on the project has to be treated ‘relatively’ equal.”
Applicability of the Uniform Act

- It applies to any program or project that receives any federal financial assistance.
- Applies either if federal funding is used in the land acquisition or not.
- So, if any federal funds are used in any phase of a project, the Uniform Act has to be and has to have been followed; this is very important as a compliance issue.

Example: the land for a project was bought ten years ago by the city, today they have a project planned which includes federal money and they want reimbursement for the land. Did the city have to follow the Uniform Act ten years ago when buying the land?

YES

Example 2: the county never planned to be reimbursed for some land they bought; but, now they have a county road planned for part of it & they just want the federal money for construction. Is the county required to have followed the Uniform Act in buying the land?

YES

Who Does Compliance with the Uniform Act Protect?

The Uniform Act protects:

- The Project Agency
- Property Owners
- Displaced families and businesses
- The Taxpayer
- The Project Agency
- The agency doing the project, the agency getting federal monies, by making sure the rights of those affected are protected.
- The rights of the property owners are protected, when all or part of their property is taken for a project.
- The taxpayers are protected by the regulatory assurance that our money (federal tax dollars) is being used expeditiously and efficiently.

Federal Regulations and ALDOT Manuals can be found online

- The federal regulations can be found at www.fhwa.dot.gov/realestate
- ALDOT information can be found at www.dot.state.al.us/tweb for the Local Transportation Bureau and at www.dot.state.al.us/rweb for the Right of Way Bureau, and it takes a little bit of searching to find the manuals or whatever you are looking for, but be patient.

There are a few laws, regulations, codes, acts, and more... to know

- 42 USC Ch. 61: Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs
- 23 CFR, Subpart H, Right of Way and Environment, Part 710, Right Of Way and Real Estate
- Map-21, Moving Ahead for Progress in the 21st Century Act
- ALDOT LPA Manual
- ALDOT Right of Way Manual

ALDOT's function is to provide (to LPA's) procedural approvals, contracting approvals, guidance, and recommendations

- The LPA & ALDOT are to have an initial Scope Meeting to determine what right-of-way is to be acquired and from whom (if neither have sufficient preliminary tract information, both have to attend the 30% inspection meeting)
- The LPA and ALDOT points of contact have to be determined early on
- ALDOT is to provide the LPA with an Acquisition Checklist & establish deliverables expected from the LPA for ALDOT’s oversight
- ALDOT is to establish, in advance, all items the LPA must provide in the ROW certification for acceptance by ALDOT
- At the time of certification of a project, ALDOT will review the completion of required items from the Acquisition Checklist, the LPA will have to provide any additional information required

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- There is a lot a consulting firm or LPA needs to know.
- The LPA has to have someone on their staff who gets to know the requirements. Or
- The LPA needs to hire a consulting firm AND the LPA still needs to know all the requirements to be responsible for what the consultant does.
Who's Responsible?

- The agency (LPA) who's project it is, has the full responsibility of full compliance.
- The responsibility cannot be abdicated to ALDOT or a consultant
- “No one told us” just won’t fly

Get the word out First: Affected landowners will have questions and concerns

- Consistent with the Uniform Act, the potentially affected landowners need to be notified in writing. A formal notice of intent (Formal Notice letter) shall be provided including the basic protections provided to the landowner under the Uniform Act.
- Such documentation should be hand-delivered or sent either certified/return receipt requested or registered mail.
- The letter should be in plain language that is easy to understand, including agency contact information in case the persons contacted have questions.
- There is an FHWA publication that explains the process to property-owners, it can be found on the FHWA website under Realty Publications

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- Real Estate appraisals, by certified appraisers, in compliance with all state and federal laws and regulations, which conclude values for what is to be acquired
- The UA requires a formal appraisal review process, by certified appraisers, in compliance with all state and federal laws and regulations, which establishes market value for each property (before any negotiations with owners)
- The UA requires a negotiation process with a written offer presented to the property owner(s) equal to or more than the approved fair market value (an example of the offer being more, the LPA adds $5 to re-fence an area for cows)
- The UA requires Relocation Advisory Assistance to find replacement properties for those who must move
- The UA requires Relocation Assistance payments to provide financial assistance for the purchasing or renting of a replacement property and the moving of personal property

Each appraisal requires a scope of work & it depends on the complexity of each property

The Scope is the set of instructions to the appraiser on what to include (important!). At a minimum each appraisal must contain the following:
- Documented evidence the property owner was given the opportunity to inspect the property with the appraiser
- An adequate description of the physical characteristics of the property along with; encumbrances, location, zoning, present use, highest and best use and 5-year sales history
- All relevant approaches to value (improved market, income and cost approaches)
- Description of comparable sales verified by a party of each sale
- A statement of value of the acquired property & if a partial acquisition, both a Before and After analysis (it is 2 appraisals in 1 report)
- Appraisal date, effective date of value, and a signed appraiser certificate

Reviewing the Appraisal:

- The review appraiser has to be as qualified, if not more qualified, than the appraiser (the CFR specifically says the review appraiser has to be qualified!)
- The level of the review analysis depends on the complexity of the appraisal problem
- The review appraiser has 3 options; recommend a $5 amount for approval based on the appraisal, accept the report, but, rely on another report (where there is more than one report), or not accept it. Under the 1st option, the LPA will approve the $5 amount believed to be a fair offer using the appraisal as the basis
- All review reports have to be written
WAVIER VALUATIONS

➢ You will see, in the federal regulations, language allowing for a valuation option that is not an appraisal, this option is not available to ALDOT or any LPA in Alabama. Alabama law says any type of valuation of real estate is an appraisal, so, Alabama law excludes the use of waivers.

➢ If a property owner wants to donate the property needed for the project, the agency can be released by the property owner from its obligation to appraise the property, however, the property owner has to be informed of their right to an appraisal (document this).

DONATIONS

The Acquisition Process

➢ Promptly, after establishing the amount to acquire the property, a written offer, with a written statement of the basis for the offer, is to be presented to the owner. If any remaining property has no use to the owner, an “uneconomic remnant” alternate offer needs to be included as well.

➢ If at all possible, make the offer in person; mailing the offer is an impersonal way to handle a very personal situation for the property owner.

➢ The owner(s) must be given a reasonable time to consider the offer (at least 30‐days).

➢ Do not provide the owner with a copy of the appraisal, Alabama Law considers the report privileged work product not to be provided to the property owner or their attorney.

➢ It is important not to take any coercive action to induce an agreement on the price to be paid for the property.

➢ The purchase price may exceed the offer under an administrative settlement, however, written justification that supports the settlement must be prepared.

What happens if the rules and regulations are not followed?

Your project can be audited... okay you won’t lose your head, but you can lose federal funding!!

50 Ways to Lose Federal Funds

The FHWA developed a Powerpoint presentation titled 50 Ways to Lose Your Money and as it points out there are actually more than 50 ways. Due to time constraints, this presentation will point out 13 of them.

1. Don’t give the property owner an opportunity to accompany the appraiser when the property is appraised – “and you lose federal funds”

2. Fail to offer fair market value based on an appraisal (unless the property is donated) – “and you’ll fail to be reimbursed”

3. Don’t give the owner a written offer – “don’t expect any fed money”

4. Fail to offer advisory services

5. Don’t offer to purchase the uneconomic remnant from the owner

6. Coerce or pressure the property owner into signing an agreement

7. Don’t negotiate in good faith with the property owner

8. Fail to offer advisory services

9. Don’t pay eligible replacement housing payments (RHP’s)

10. Fail to allow a residential displacee adequate time to purchase or lease a replacement dwelling

11. Be inadequately staffed and not able to carry out the Uniform Act

12. Fail to allow adequate time to conduct ROW activities

13. Don’t have adequate documentation (there is a saying, “if it isn’t documented, it didn’t happen” and all agencies should follow this as their golden rule)

You can lose all or part of the funds on one tract, more than one tract, or on the whole project; it depends how bad you messed up and how often.

The following has not been covered in this presentation, however, the rules and regulations are just as important for these and failing to follow them can also result in losing federal funding reimbursement.

➢ Residential Relocation Assistance

➢ Business Relocation Assistance

➢ Property Owner Advisory Services

➢ Property Owner Financial Assistance

➢ Property Management

The ALDOT Local Transportation Bureau and ALDOT Regional Area Right-of-Way personnel will advise you on the above and answer any questions you may have on what was and was not covered today.