This article will discuss if and when an Agency can deviate from the requirements of the Uniform Act and 49 CFR, Part 24 through the use of waivers.

Discussion:

Since the Uniform Act (URA) is a law, it is not possible for an Agency to not follow, or deviate from, its provisions. For example, under Title III, Section 301(2) of the URA, the owner or owner’s designated representative has to be given the opportunity to accompany the appraiser during the inspection of the property. This requirement cannot be waived. (Owner accompaniment is not a requirement, however; if a “waiver valuation” is being used as it is not an appraisal.)

Unlike the URA provisions, which cannot be waived, the Federal Regulations do contain a waiver provision at 49 CFR § 24.7:

§24.7 Federal Agency waiver of regulations.

The Federal Agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

For example, there may be an elderly couple and their adult son living in a five-bedroom house. They are being displaced by a city transit project, which has federal funding. There are no five-bedroom comparable dwellings available, but there are four-bedroom houses with similar square footage. The URA’s definition of “comparable replacement dwelling” indicates that it must be adequate in size to accommodate the occupants, so a four-bedroom dwelling would be adequate and the four-bedroom comparable does not represent a reduction in

(continued next page)
assistance. The displacing Agency should ask the FTA for a waiver, using a written justification for not offering a five-bedroom comparable replacement dwelling.

Note: Some Agencies may not seek a waiver in the above described situation, since it may view the similar amount of square footage and larger rooms as a trade-off for the fifth bedroom. [49 CFR 24.2(a)(6)(i)] Other Agencies, however, may not consider a four bedroom dwelling comparable to a five bedroom and would seek the waiver as a precautionary action to preserve federal funding.

Another example could be a veterinary clinic with boarding kennels displaced by a highway widening in a rural area by a State DOT. There are no available existing replacement buildings that are suitable for the business. Usually reestablishment expenses cannot be used for the construction of a replacement site/building, however, under 49 CFR, 24.7 the DOT could request a waiver from FHWA.

Reestablishment expenses in excess of $10,000 and a fixed payment for a business in excess of $20,000 cannot be waived by the Federal funding Agency, since these amounts are limited by the URA. The search expense amount of $2,500, however, is established by regulation, so a waiver could be requested, if the displacing Agency justifies the higher amount as reasonable and necessary.

An Agency cannot request that a displaced person waive his relocation benefits:

§24.207(f) No waiver of relocation assistance.

A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

A displaced person can refuse relocation assistance benefits or just not claim them, but the Agency should have documentation that the person was advised of the type of benefits available, including amounts of replacement housing payments and approximate amounts of moving and related expenses.

Welcome Ben Ciravolo, Esq. as Senior PM, Indianapolis Office

O. R. Colan Associates announces the addition of Senior Project Manager Benedict G. Ciravolo, Esq. to our nationwide team of right-of-way professionals. Mr. Ciravolo will be leading ORC’s project team in Indianapolis, IN, and he will work closely with Chief Operating Officer Steve Toth and ORC’s Business Development team to strengthen our existing relationships within the State of Indiana.

As a duly admitted attorney in the States of Indiana and New Jersey, Ben Ciravolo comes to ORC from the State of Indiana Attorney General’s office, where he actively litigated more than 125 cases - including cases involving right of way acquisition, quiet title, relocation of condemnation displacees, all phases of eminent domain actions, tax liens, title claims, contracts, utilities, mineral rights – on behalf of the Indiana Department of Transportation. Mr. Ciravolo also has significant litigation experience in all chapters of the United States Bankruptcy Code. He previously served as the Assistant Municipal Prosecutor for the Township of East Hanover, NJ, and he founded and managed his own legal practice, which concentrated in real estate, real estate litigation and business law/consulting (contract development, negotiations, financial consultation, risk analysis, and business planning).

Mr. Ciravolo earned his B.A. in Political Science from Seton Hall University (South Orange, NJ). He then studied law at the John Marshall Law School (Chicago, IL), earning his Juris Doctor (J.D.) in 1985. He has been admitted to practice in the States of Indiana and New Jersey; the United States District Courts in New Jersey and Indiana; the United States Court of Appeals - Third Circuit; and the United States Supreme Court.
Located in Greater Kansas City, MO, the kcICON project represents a $245 million endeavor to improve Interstate 29/35 in Clay and Jackson Counties. The ORC Team was hired by the Missouri Department of Transportation to provide relocation advisory services for the project, which spans 4.7 miles from North Kansas City to the Downtown Loop in Kansas City, crossing the Missouri River via the new Christopher S. Bond Bridge, a landmark, cable-stay expanse.

ORC provided relocation assistance to businesses affected by this DB project, including a large manufacturing facility, a commercial trash hauler, an underground cable installer, a national construction company, a landscaping contractor, and signage for a casino.

Each year, Roads and Bridges magazine sponsors the “Top 10 Roads” and “Top 10 Bridges” competitions. Nominated road and bridge projects must have been in the design or construction phases within the past 18 months to be considered, and winners are determined by the magazine’s editorial staff. Roads and Bridges praised the design-build process for providing the project with the flexibility necessary to modernize the downtown Kansas City corridor described as “pinched in an urban/industrial environment.” As Roads and Bridges stated, the D/B process enabled the culmination of overriding infrastructural goals “while still abiding by a fiscally strict $245 million budget.”
ORC Training Teams With APRE to Offer a Uniform Act Designation

ORC Training, LLC is teamed with APRE (Association of Public Sector Real Estate Professionals – formerly known as NAPREP) to provide training related to a Uniform Act Designation (UAD) program being offered by APRE. APRE’s mission is to provide professional development, education, and support to the public sector real estate community. APRE is also considering offering certifications and/or designations in Federal Leasing and Federal Property Disposition.

Ken Towcimak, Retired Director of Right of Way for the Florida Department of Transportation, is a member of the Board of Directors for APRE. At the 2009 AASHTO meeting in Oklahoma City, Ken introduced Jamie Scruggs, President of APRE (formerly NAPREP), at the Executive Session, and provided an opportunity for AASHTO to participate in the final curriculum design for APRE’s Uniform Act Designation program.

Through the Uniform Act Designation, APRE provides a career path for the public sector real estate professional who is seeking knowledge and expertise in the Uniform Act and the implementing regulations. The program also establishes uniform standards for experience and training. Following is an overview of APRE’s URA Designation Program:

The APRE Level I Candidate Program allows individuals with no prior experience to begin a career path as a public sector real estate professional.

The APRE Level I designation is intended for the entry level public sector real estate professional. The curriculum for this level consists of basic acquisition, relocation and appraisal courses. This Level I designation denotes a basic functional knowledge of the URA, and the person achieving this level can perform acquisition/relocation for non-complex parcels with supervision. This level is currently open for candidacy.

The APRE Level II is the next step in the career path for the public sector real estate professional. A candidate at this level may either pursue a Generalist track or specialize in Acquisition, Relocation or Appraisal. The curriculum includes intermediate acquisition, relocation and appraisal courses. The person must also demonstrate three years of experience in acquisition, relocation or appraisal under the URA to complete Level II. The Level II designation indicates complete knowledge of the URA with regard to the area selected (Acquisition, Relocation, Appraisal, or Generalist). Those who earn the Level II designation will be fully functional in their chosen field. Level II will be open for candidate registration July 1, 2011.

The APRE Level III designation signifies a public sector real estate professional who has achieved a comprehensive, functional knowledge of the Uniform Act, and has completed all four areas of the Level II training. The curriculum includes specialized and advanced acquisition, relocation and appraisal courses. The candidate must demonstrate five years of acquisition, relocation or appraisal experience under the URA. Level III will be open for candidate registration in 2012.

The curriculum obviously emphasizes training that is focused on Uniform Act requirements. It includes ORC Training courses, as well as courses offered through the National Highway Institute (NHI), the Appraisal Institute, IRWA, and other organizations.

As part of our teaming agreement with APRE, ORC Training is administering the URA Designation Program on behalf of APRE. This is an exciting opportunity to provide training and support for a program that recognizes and designates individuals for their knowledge and expertise in the Uniform Act and the implementing regulations, and encourages them to pursue a career path in public sector real estate.

For more information please visit www.uniformact.com. You can also find information about the training program and register for ORC Training courses at www.orctraining.com.
O. R. Colan Associates/ORC Training, LLC was recently awarded a five-year Indefinite Delivery/Indefinite Quantity (ID/IQ) contract from the Federal Highway Administration (FHWA) to develop, update and deliver nationwide real estate training for the National Highway Institute (NHI). This work requires skilled, knowledgeable and experienced subject matter experts who team up with instructional system designers to develop new curriculum materials or update existing training materials. For training delivery, NHI requires instructors with superior subject matter expertise and topic-related practical experience who embrace adult learning theory.

Under an ID/IQ contract, individual task orders are separately awarded for specific assignments. ORC/ORC Training successfully proposed and received awards to deliver the following NHI Real Estate courses over the next five years:

- Basic Relocation under the Uniform Act
- Advanced Relocation under the Uniform Act
- Business Relocation under the Uniform Act
- Appraisal for Federal-Aid Highway Programs
- Appraisal Review for Federal-Aid Highway Programs
- Introduction to Federal-Aid Right-of-Way Requirements for Local Public Agencies

ORC has delivered the NHI Relocation courses for many years, and completed the updates of these courses in the last few years to incorporate the 2005 revisions to the federal regulations, as well as integrate adult learning principles. ORC has also delivered the NHI Appraisal and Appraisal Review courses for the last 5 years.

ORC/ ORC Training is proud and excited to continue its long, well-established relationship with the National Highway Institute, the training arm of the Federal Highway Administration. We look forward to the successful delivery of NHI real estate courses that enhance the training experience for the transportation community.

Sam Michael Grombacher: IRWA SARPA Scholarship Award Winner

Congratulations to Sam Grombacher, who will be honored at the Awards Ceremony and Luncheon of the IRWA Annual Conference this year in Atlanta, Georgia as the winner of the SARPA Scholarship Award for 2011. He is pursuing a degree in Civil Engineering at Arizona State University. Sam’s long term goal is to earn a Master’s Degree and secure a position with an engineering firm that specializes in structural design with a focus on sustainability and renewable energy. He was a Peer Mentor in the ASU’s Obama Scholars Program and is an active member of Chi Epsilon, the Civil Engineering honorary fraternity. Some of his extracurricular activities include a week with the children at Nuestros Pequenos Hermanos orphanage in Miaucatlan, Mexico and time volunteered at St. Mary’s Food Bank, the Stratford Square Alzheimer’s facility and the Boys and Girls Club. Sam is the son of Charles and Teresa Grombacher of ORC’s Scottsdale, Arizona office.
Knowledge Transfer – Capitalizing on the Generational Divide

by Kathy Rupar, VP of HR (a recent Toastmaster’s Speech)

Five years ago in our strategic planning we decided to roll-out two initiatives to help us with a technical knowledge transfer that we knew had to take place over the course of the next 10 years: a Trainee Program and development of our Knowledge Base database. We have an average age close to 50 years old in our company so we knew from a “baby boomer” perspective that we would begin to lose our most technically knowledgeable employees to retirement in the very near future. Both initiatives we put in place at the same time.

First we implemented a college recruiting program to go after candidates with a Real Estate/Finance degree. We recruited at those Universities that had top notch Real Estate curriculums. A significant investment was made over a five year period to recruit and train what we hoped would be the future leaders of our company. Generationally these “trainees” were in the “X” and “Y” categories that we hear so much about today. We put them through a two year learning plan where they spent 33% in the classroom; 33% with their mentor; and 33% “OTJ” completing repetitive tasks that are a part of the big picture of what we do which is facilitating ROW transactions for public agencies. After two years they either continued on a specialized training path or began following a management training program for the next three years. So our first step in this knowledge transfer was the implementation of our trainee program and adding Gen “X” and “Y” to our headcount.

Secondly, we implemented a new proprietary Knowledge Base technical database search site and began populating it by asking our new trainees to assist by constantly asking the database questions as they went through the learning plan training and their individual work experiences. This search engine software acted just like a Google search engine where you can key word search or find answers to questions posed to the Knowledge database. We also populated the database with lots of other internal documentation which had already been written on industry topics and current training materials, as well as with public domain data relevant to the Right-of-Way industry. The questions asked of the database were then researched, answered, and peer-reviewed by the top talent in our organization who have all this technical and industry specific knowledge in their heads.

The next step of the process was to have the experienced top talent of our organization ask the trainees to research certain technical topics and present the information in written format to the top talent. Since the trainees had just come out of degree programs they were comfortable educating themselves in this manner. Their information submittals were reviewed and adjusted for accuracy and content and then placed into the Knowledge database. Needless to say, our technical knowledge holders were impressed.

Finally, a monetary prize was offered to the employee who could ask the most questions of the database. We promoted and talked up the contest hyping some competitive spirit within the company.

The purpose of this in the early years of the Knowledge Base database was purely to get content into it. Our technical experts worked diligently to respond to all questions with technical knowledge and accurate research to respond. If additional public domain information could be pulled into the database as a means of responding to the questions, that was done as well.

We now have 5 years of data in the Knowledge Base and are contemplating how we might be able to market and/or sell the use of our technical knowledge database to potential clients and/or our competitors. In addition we have some top talent developing within the organization for future management roles.

But the best benefit of our leadership development strategy to bring together the generational divides turned out even better than we expected. Our newer employees now have a solid working relationship with our technical experts and there is a collaboration that occurs with one helping the other. There couldn’t have been a better outcome to Knowledge Transfer – Capitalizing on the Generational Divide and developing future leaders for ORC at the same time.
We are saddened to announce the loss of our dear friend and co-worker, Jim Gladwin. Jim’s career with ORC began in 1998, when he was hired as a Technical Writer to assist Bob Merryman in revising various State DOT Right of Way Manuals. Jim co-wrote the ORC Introduction to Real Estate Services course, which has been offered to new employees and trainees. During his tenure in the St. Louis office, Jim became increasingly involved in project work and in 2005 transferred to Little Rock, Arkansas as Deputy Project Manager at Little Rock National Airport. Shortly thereafter, he was promoted to Project Manager. Jim successfully completed numerous projects for the Airport and developed new business in the region. Through Jim’s continuous, diligent efforts, ORC has been awarded numerous contracts throughout Arkansas and Mississippi during the past 6 years, including a recent two year on-call Statewide Right of Way Services contract with Arkansas Highway & Transportation Department.

Jim’s passion was reading and writing. He fueled this interest by joining Literacy Action of Central Arkansas (LACA), first as a volunteer tutor and subsequently serving as Member of the Board of Directors and eventually, Vice President of the Board. To quote fellow LACA Board Member Allison Stephens, “Jim will always be remembered as a dedicated and loving supporter who never said no when asked for help. At our annual fundraiser, Shine a Light on Literacy, to be held Thursday, June 2 at the Governor’s Mansion, we plan to honor all that Jim contributed to positively impact literacy in Arkansas.”

Jim will be missed dearly by his family, including son, Christopher, friends, associates and students. We will always fondly remember his intellect, dry wit and common sense approach. In lieu of flowers, his family is requesting donations to Literacy Action of Central Arkansas, 100 Rock Street, Suite 532, Little Rock, AR 72203, or on-line at www.literacylittlerock.org.
In the Works – Contracts Awarded October 2010 to March 2011
by Steve Toth, Chief Operating Officer

Appraisal Services
- City of Kettering – Wilmington Pike
- City of Eaton – Park Street Reconstruction
- ODOT CEAO - PIK TR338-2.20
- Village of Grafton – Waste Water Treatment Plant Expansion
- City of Dayton – MOT - Ridge & Hoover Avenue
- City of Carlisle – WAR - Central Avenue (SR 123)
- City of Cleveland – 1061 Holmden Avenue
- City of Cleveland – Lakes to Lakes Trail
- SR 5 Phase 1 – Putnam County – Appraisal Review Services
- ODOT SW Region - MOT 75-6.36 Project
- Cincinnati MSD – West Fork Road
- ODOT NW Region – ALL 117/309 – 18.65/15.17
- CUY 6 – West Shoreway – Cost Estimating Services

Arizona
- ADOT – Phoenix Casa Grande – Salt River to Baseline Road
- NRP/Native American Connections – Madison Pointe & Encanto Pointe Rehabilitation Project
- ADOT – Bob Stump Memorial Parkway (SR 303)
- ADOT – I-10 (Salt River to Baseline Road)
- Phoenix, AZ – Washington Pointe
- ADOT – Bob Stump Memorial Parkway (SR 303) Camellia Road to Olive Avenue
- ADOT – 71st Avenue to 43rd Street (SR 303)
- SR 303L Waterline Extension

Arkansas
- Arkansas Highway Department – On Call RW Services Contract
- AHTD – Armstrong Ave. – Stone Bridge Rd. (Fayetteville)

Federal/Training
- NTI – Task Order #3 – Modification for additional training
- FTA PMOC San Diego, CA
- FTA PMOC Orlando, FL – Central Florida Commuter Rail
- FTA PMOC San Francisco
- Volpe Center - Alternative Fuel Technologies and Energy Facilities in the Right-Of-Way
- FHWA DTFH61-10-F-00097 – Business Relocation Retrospective Study
- NHI – IDIQ 5 Year Contract for Course Development and Instruction

Florida
- Palm Beach Airport – Acquisition Services for Parcel W-328

Illinois
- Illinois Tollway Authority – Contract renewal
- City of Rockford, IL – Phase 1 West State Street
- Southern Illinois Airport – Relocation Services

Indiana
- Indianapolis – I-645 West Leg Reconstruction project – TO #8
- City of Shelbyville – Storm water retention project
- On-Call agreement for the Town of Fishers, IN
- City of Seymour, IN – West 2nd Street – Title Research Services
- City of New Castle, IN – East Side Bypass
- City of Greenfield – Franklin Street
- Lafayette, IN – 1 South Street - Wabash River Enhancement Corporation
- Union Chapel Road
- South Bend – US 31 Reconstruction project – Task order #
- Lake County, IN – SR 912 – Title research services
- Allen County – Fluffer Road
- INDOT - SR 25 (Hoosier Heartland) Task Order #5
- Kokomo Airport
- Indianapolis – I-645 West Leg Reconstruction project – TO #9
- City of Avon - Dart Jones Road @ CSX Railroad
- City of Plymouth, IN – South Downtown Gateway
- Indianapolis Department of Public Works

Kentucky
- Louisville VA Hospital Expansion

Louisiana
- LADOTD – I-49 North (Martin Luther King Drive to LA 1) Caddo Parish Segment “J”

Michigan
- Hillsdale Airport – WO #2 – Land Acquisition

Missouri
- City of DeSoto, MO – DeWitt Street
- City of St. Charles, MO – Fairgrounds Extension – Phase II
- Wilmer Road – St Charles PWSD #2
- South County Connector – RW Cost Estimating
- City of Herculaneum, MO – McNutt Street
- Hazelwood, MO – Missouri Bottom Road Project
- AHEPA – Tesson Ferry Road
- Lindsey Road Water Project – Lincoln PWSD #1
- Decker Road Water Project - PWSD #3 of Franklin County
- Warson Road Phase 2
- Parts Project for St. Louis MSD
- Bucklick School Road Bridge
- City of Clayton Flood buyout program
- St Louis Development Corporation – On Call Contract
- Sullivan Airport
- City of DeSoto – Boyd Street Project

North Carolina
- City of Charlotte – On Call RW Services Agreement
- Gastonia Multi-Modal Center (Phase I)

New Jersey
- Perth Amboy – On call relocation services contract
- Somerset County – On call relocation services contract

New York
- Jamaica Station Plaza Project – Prepare a RAMP

Ohio
- City of Akron – S. Main Street
- Stark County Engineer – Trump Avenue & Georgetown Street
- Clark County Engineer - CLA 794-0.60
- City of New Franklin - SUM 619-4.73
- ODOT LOR-20-22.19 – Center Ridge Road
- LOR-57-19.92 (Steps 4 through 6 of the PDP)
- SUM-Hines Hills (Steps 1 through 3 of the PDP)
- MOT 741-03.15 (ODOT SW Region)
- SUM B2 – CR12-0.05 – Title research
- City of Campbell – Industrial Parkway
- SR 82 – North Royalton – Cuyahoga County Engineer
- Old Mill Road – CR Bridge #162
- SUM B2-CR12-0.05 Ravenna Road over Tinkers Creek Bridge
- City of Strongsville – CUY SR 42 (Pearl Road)
- PIK – CR 472-2.20 ODOT CEAO Contract
- Euclid, OH - Highland Road Bridges #156, 157, 158 & 226
- Huron County – Standardsburg Road
- ODOT - ALL I-75-6.10
- Wadsworth Airport
- Beavercreek School District Dayton-Xenia Road Improvements
- City of Steubenville - John Scott Highway/Mall Drive
- City of Lebanon - SR 123 / SR 63 Connector Project
- SR 5 Phase II – Putnam County – Title Research Services
- City of Painesville, OH – LAK 20 Enhancement project
- City of Heath – LIC - CR 134 Culvert Project

Pennsylvania
- Erie Airport – Provide Land Sale services
- Harrisburg Airport – Phase II – Land Acquisition Services

Rhode Island
- TF Green Airport – contract amendment for the FEIS
- Tri Town Relocation
- Town of Johnston – River Drive & River Street

S. Carolina
- City of Rock Hill, SC – White Street – Phase II

Virginia
- Lonesome Pine Airport, Wise, VA