Slippery Slopes and The Briar Patch

Washington Division Office

What you need to beware of if your project uses Federal highway funding





What could possibly go wrong?

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Consider this!

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 Regarding land acquisition carried out by an LPA, FHWA regulations say the State DOT: "...shall monitor any such real property interest acquisition activities to ensure compliance with State and Federal law... ...and is responsible for informing such persons of all such requirements and for imposing sanctions in the case of material non-compliance."

[23 CFR 710.201(g)]

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So, what does that mean?

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If you, the LPA, go down the



of noncompliance

 WSDOT, your granting agency, will go into the



of lost Federal dollars



So, let's look at some of the "slippery slopes" of material noncompliance





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 "We don't require any right-of-way; we already own the property." If you acquire ANY
 property interest FOR a
 project, even if in advance
 of the start of the project,
 you have acquired ROW for
 your project. You *must* certify that you complied
 with the Uniform Act in
 such acquisition.



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 "We don't need any ROW; we only need an easement." Any right that is required to get onto private property for project work, whether by fee, easement (temporary or permanent), or other property right under eminent domain requires Uniform Act compliance.



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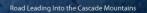
 "We are doing voluntary acquisition on a willing buyer willing seller basis." We won't use eminent domain. Virtually no highway or road project can be done by "voluntary acquisition"; the only exception is if the agency intends to walk away from the project if not all property owners sign up and will not come back under eminent domain.



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 "If the property owner isn't home, just leave a card. They will call you if they want to know about the appraisal process." The Uniform Act
 requires the agency to
 make a good-faith effort
 to notify the owners
 that they have a right to
 accompany the
 appraiser on her
 inspection of the
 property.





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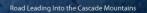
 "We didn't talk to the tenants; the landlord wouldn't let us contact them. We'll have to wait until we acquire the property." Tenants have a legal right under Federal law to proper and TIMELY notice of their rights to relocation assistance. Landlords do not have a legal right to abridge the tenants' rights under the law.



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- "We don't have the money to pay all of that relocation. See if they will waive their right to relocation and maybe we can give them a little more acquisition money or maybe landscape their remainder."
- Federal law prohibits
 soliciting or coercing a
 displaced person into
 waiving their right to
 relocation assistance.
 Doing so will guarantee
 a direct slide into the
 "Briar Patch".





 "Do we have to certify this project? We are not using any Fed funds in construction." Federal regulations
 require agencies to
 certify that the Federal
 and State laws and
 regulations were
 complied with. For
 Cert 3s, must protect
 owners & displacees.





 "Tell me again: What exactly is the 'Briar Patch'?



 It is a dark place devoid of Federal money



The Bottom Line

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23 CFR 1.9(a): Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in this title [23 CFR], and policies and procedures prescribed by the [FHWA] Administrator.



