

Slippery Slopes and The Briar Patch



Washington Division Office

Road Leading Into the Cascade Mountains

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)]



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





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



Slippery Slope # 1

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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.



Slippery Slope # 2

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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.



Slippery Slope # 3

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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.



Slippery Slope # 4

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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.



Slippery Slope # 5

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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.



Slippery Slope # 6

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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”.



Slippery Slope # 7

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- “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.



Say what??

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- “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.





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