



Title Encumbrances

IRWA Puget Sound Chapter 4

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- What are title encumbrances?
- What are the risks of not removing them?
- How can encumbrances impact the project?
- How to remove encumbrances, based on type of acquisition, if necessary?
- Lessons Learned



**Have any of your projects
been held up due to title
encumbrances?**

What are title encumbrances?

An encumbrance allows someone besides the owner to make a claim against the property, limit or restrict the use of the property or create a liability against the property.

Encumbrances

- Mechanic's Lien
- Taxes
- Leases
- Deed Reservations
- Assessments
- Deed of Trusts
- Licenses
- Water rights
- Life Estates
- Real Estate contracts
- Option to Purchase
- Encroachments
- Defeasible Estate
- Mineral Rights
- Judgments
- Maintenance Agreement
- CC&R
- Utility Easement

Risks of not removing them

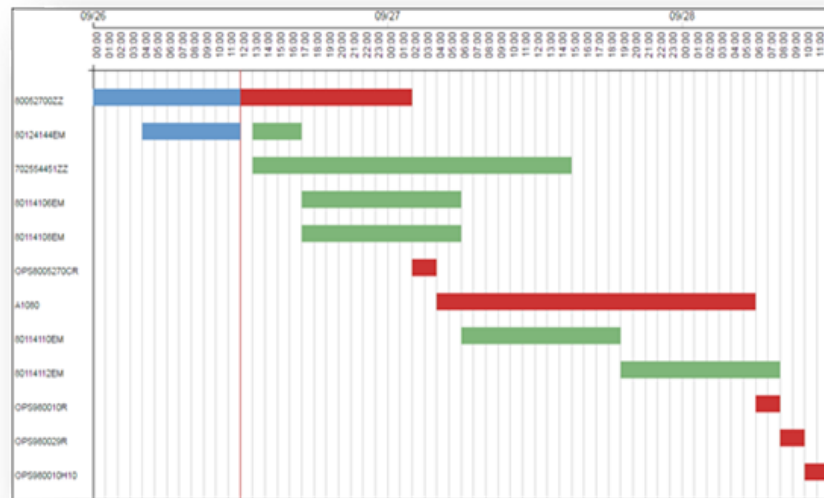
Encumbrances can...

- Limit/Restrict use of the property
- Cause financial burden
- Lessen the property's value
- Restrict the ability to transfer/dispose/sell



Potential Impact the project

- Delays can impact the project schedule and overrun the budget
- Federally Funded projects at risk



- Not removed can potentially impact the agency's ability to construct, operate and maintain

**It's in our best interest to
uncover any encumbrances
before the start of construction**

How To Remove an Encumbrance, if necessary?

- Type of Acquisition:
- Identify:
- Locate:
- Make a Determination:
- Take Action:
- Document Action:



- Type of Acquisition:
 - Fee, Easement, TCE
- Identify:
 - Review Title
 - Identify Encumbrance
- Locate:
 - Run the legal description
 - Site inspection
 - Is it the acquisition area?



At any phase during the review process an encumbrance may be eliminated

- **Document decision**

Make Determination

- Does it impact the acquisition area and/or create a financial burden?
- What are the project needs?
- Will it impact to project constructability?
- Does it restrict the ability to operate and maintain?

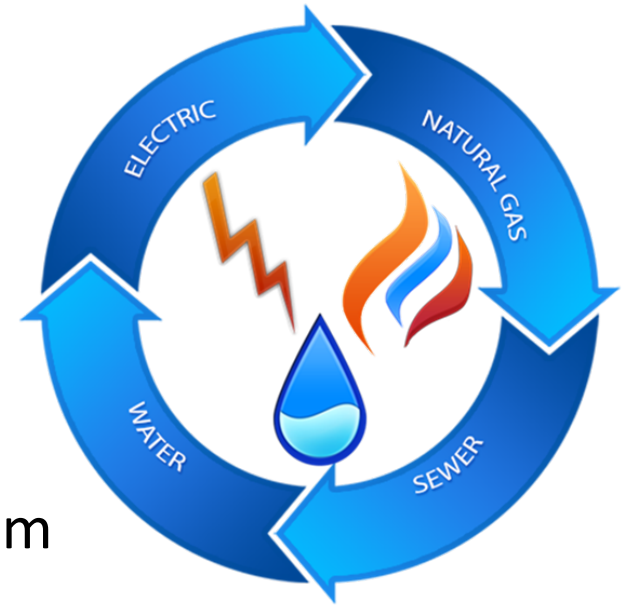
Document decision and authority level
“if not documented, it didn’t happen”

- Take Action:
 - Clear, “delete”, Remove encumbrance
 - Accept “subject to” allow it to remain
- Document Action Plan:
 - Document all steps and decisions made
 - Prepare necessary document to clear
 - If not clearing, document the risk analysis and authority level
 - Any deviation from standard policy or procedures, must have written authorization



Utility Easement

- Utility line discovered during construction
- Conducted Review
- Utility easement of record
- Lack of historical documentation
- Easement was unknown to the project team
- Cost to relocate utility \$95K
- Construction delayed over 6 months



Billboard Leasehold Interest

- Lease Agreement of record
- Declaration/affidavit lease terminated
- Construction prep commenced
- Leaseholder claimed ownership rights
- Construction on hold
- Paid Leaseholder for rights to the billboard & release of lease
- Construction delayed over 3 months



Partial Acquisition

- Private Deed of Trust was not cleared
- Construction commenced
- Lender's attorney filed inverse condemnation claim
 - Loan payments delinquent
 - Deed of Trust included a "Due on Sale" Clause
 - Lender started foreclosure proceedings
- Parcel avoided during construction
- Paid Lender & obtained Partial Reconveyance
- Over 3 months to clear



Private Road Easement



- Acquisition Closed 2009
- Access to the Construction site was blocked
- Reviewed title – lack of access not disclosed
- Filed title policy claim
 - Title Co unsuccessful
- Agency negotiations unsuccessful
- Started Condemnation proceedings
- Construction resumed in 2011 after settlement



- Encumbrances can impact your project timeline and budget
- To Remove or Not Remove
 - 1. Identify
 - 2. Locate
 - 3. Make a determination
 - 4. Take action
 - 5. Document action
- Carefully analyze the risks to prevent any delays to the agency's ability to construct, operate and maintain

**“If it isn’t
documented,
it didn’t happen!”**





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