

Tri-Level Approach

BY JEFFREY ZAHAREWICZ

Builds Relationships

When the FHWA/AASHTO international scan team visited Australia and Canada in 2008 to identify effective right of way and utility processes that might be implemented in the U.S., little did they know that so many new initiatives would emerge.

Of the nine key priorities established, enhancing relationships rose to the top of the list. It was learned that the use of a multiple-level Memorandum of Understanding (MOU) is highly effective at facilitating the cooperation and coordination process, as well as optimizing the relationship between transportation agencies and utility interests. The MOU is an effective tool because it helps address, rather than completely resolve, the challenges faced by transportation agencies and utility companies in achieving their goals.

Australian Tri-Level Approach

While the MOU structure is one of many available communication tools, Australian officials agree that it is only as effective as the commitment and dedication that individuals at all levels bring to the table. An Australian MOU typically uses a tri-level structure as follows:

- 1) Upper management and leadership of both agencies develop the “high-level” MOU to establish general principles and describe the intent of both parties to work cooperatively.
- 2) Agency middle management develop the “mid-level” MOU with detailed communication and partnership considerations, roles and responsibilities, and methodology for conflict resolution. Technical information and other initiatives would also be included.

- 3) The third level includes all “project-specific/contract-level” agreements, which would outline details of the contract-specific provisions not addressed elsewhere in the MOU.

Research and Analysis

To further investigate the potential of this approach, the scan team commissioned a research project, which was completed in August 2009. The findings noted that one key difference resulted from different reimbursement policies and access requirements of each country. In Australia, utility companies are fully reimbursed for relocations, and some have unlimited access to the right of way. In the U.S., transportation agencies maintain full stewardship and control of the highway right of way, and the majority of states only reimburse utility companies for required relocations if they have prior property rights.

Another significant difference was in the stated conditions for noncompliance to the terms of the agreements. The Australians employ a “shared risk” process based on the MOU terms, conditions and objectives, while U.S. agreements are often considered to be “non-binding,” and provisions, if any, for noncompliance only involve termination clauses.

Application in the U.S.

In the U.S., agreements are generally developed and managed at lower organizational levels without the same level of involvement and commitment at the top strata. The team is now pursuing an Australian

approach that fosters effective relationships at all organizational levels.

While the use of utility company partnering agreements is not a new concept in the U.S., only one state department of transportation surveyed (Maine DOT) uses a structure similar to the Australians. According to the team, applying the Australian multiple-level MOU template in the U.S. has enormous potential, provided advocates are identified from both sides of the relationship. An encouraging sign is that ten departments of transportation surveyed expressed a strong interest in piloting the MOU concept using the template language provided as a guide.

As the findings from the MOU research report are shared, the team will continue their education and outreach efforts, as well as consult with those states interested in utilizing multiple-level MOUs. A means to measure the effectiveness and benefits will also be established in hopes of enhancing the programs, projects and relationships between key stakeholders.



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