

Right of Way

and Utilities

Scanning Tour



Written collaboratively by
members of the Scan Team.

*This article was adapted from the Right of Way
and Utilities Scan Tour held on March 13-25.*



During the last 20 years, the complexity of right of way acquisition and utilities accommodation has increased greatly. Likewise, the pressure to provide cleared right of way more quickly is constantly increasing.

The Federal Highway Administration (FHWA) developed a National Strategic Plan to enhance communities through highway transportation, involving innovative acquisition of right of way, relocation of affected residences and businesses, and relocation and accommodation of utilities, with minimal impact and disruption to communities.

As part of the American Association of State Highway and Transportation Officials' (AASHTO) Strategic Plan assignment, the Right of Way and Utilities Subcommittee recently completed a nationwide review of processes and procedures to identify best practices in the United States. This study addressed the following areas:

- Right of Way and Utility involvement in Project Development
- Property Appraisal and Appraisal Review
- Acquisition of total property rights, easements, and permits
- Relocation Assistance to owners, tenants, businesses, and farm operations
- Utility coordination, adjustments, and relocations for highway projects.
- Management Practices for effective right of way and utility operations
- Training programs and mentoring procedures for staff development

The objective of the scanning tour was to review and document procedures and best practices for the major functional work areas involved in the highway right of way and utilities processes in several European countries. The scanning team identified practices used in the countries that, when implemented in the United States, will help assure timely procurement and clearance of right of way and adjustment of utilities. Norway, Germany, the Netherlands, and England were recognized as countries where right of way issues and solutions in both urban and rural areas could relate to issues in the United States.

The dissemination and adoption of the European right of way and utilities techniques and best practices will enhance state and local agency ability to streamline delivery and otherwise improve the quality of right of way services.

Jointly sponsored by the FHWA, the Transportation Research Board (TRB) and AASHTO, the U.S. delegation included members representing the state departments of transportation in Maine, Michigan, Virginia and Washington State; the FHWA; and the private sector, including representatives from the International Right of Way Association (IRWA) and O. R. Colan Associates, Inc.

These panel members offered expertise in many right of way and utilities activities, including project development, appraisal and appraisal review, acquisition, property management, condemnation, relocation, and utility coordination and accommodation.

Appraisal and Acquisition

In the countries visited, there was an underlying philosophy of sensitivity to the needs of the property owner and, in some cases, this philosophy replaces the need to have prescriptive regulations on how to conduct appraisal and acquisition procedures. Practices used in these countries provided for more property owner input and involvement before completion of the final right of way plans. The number of people in contact with the property owner was limited to one person serving as the appraiser and negotiator for acquisition and relocation services. Moreover, negotiating time was reduced by minimizing the need for appraisal reviews and, with enabling legislation, streamlined the process. Settlements and payments to property owners were facilitated by the use of mediation and quick payment processes. These actions underscored the desire of these countries to provide a fair and equitable method for acquiring right of way.

Just Compensation and Relocation Assistance

All of the countries visited had a framework for compensation similar to that used in the United States. In many cases, the compensation included elements that are not always compensable in the US.

- **Land Consolidation**
 - This concept affords acquisition of lands outside of the project that are then either reassembled with lands severed by the project and/or traded with property owners directly affected by the project.
- **Business Damages**
 - All of the countries visited provided liberal payments to businesses that are impacted by property acquisition, project construction or operations. This involved a range of possibilities from liquidation/acquisition of the business, to the reimbursement of all legitimate moving/relocation costs incurred by the displaced business.
- **Relocation Payments and Services**
 - In several countries, this part of the program was less structured than in the US. Their programs were premised on the concept of reimbursing those costs that result from displacement.

Training

All four countries place great emphasis on formal training and continuous employee development. Their programs focus on college courses, internal training courses including small workshops, and mentoring.

Utilities

There are many interesting practices the countries use to relocate and accommodate utilities located on or near highway right of way. Effective practices include enhanced coordination, cooperation and communication; widespread use of undergrounding; joint use utility corridors; installation by highway



Dick Moeller is a real estate specialist/manager for the US Federal Highway Administration (FHWA) at its headquarters in Washington, DC. Mr. Moeller currently serves on a leadership team of three senior managers that directs the operation of the Federal Highway Administration's

Office of Real Estate Services. He is responsible for the development and issuance of national policy and procedures pertaining to the acquisition of real property for highway right of way. Specific responsibilities concern the valuation and acquisition of real property through negotiation and condemnation. This process of right of way procurement also includes assistance to residential and business occupants who are displaced as the result of the proposed construction activity. Mr. Moeller has served FHWA in various capacities in its highway right of way program for over 36 years. Mr. Moeller is a graduate of the University of Iowa and holds a Bachelors Degree in Business Administration. He currently serves as the Secretary of the American Association of State Highway and Transportation Officials (AASHTO) Subcommittee on Right of Way and Utilities.

Adele McCormick is a technical writer for the Washington State Department of Transportation (DOT) in Olympia, Washington. She is responsible for writing and editing reports, manuals, and studies developed by the Olympia Service Center Design Office and other Washington



DOT offices and teams. She is also web master for several Washington State Department of Transportation web pages covering Roadside and Site Development, Design-Build, Real Estate Acquisition, and Real Estate Asset Management. Ms. McCormick has served as technical writer for numerous Washington DOT value engineering studies and process improvement teams. She recently completed two comprehensive process improvement efforts covering Washington DOT real estate acquisition and real estate asset management. She is a graduate of Washington State University and holds a Bachelor of Arts Degree in Speech.



Joachim Pestinger, SR/WA, is the Director of Real Estate Services for the Washington State Department of Transportation, where he administers acquisition, appraisal, relocation assistance, title clearance, and property management activities. He approves up to 900 property purchases, mediated settlements, or stipulated judgments per year. He establishes policies and procedures for the department and other state and local public agencies. After graduating from Brigham Young University, he became an appraiser and manager for Clark County and then Property Supervisor for the City of Seattle. He is a Senior Member (SR/WA) of the International Right of Way Association, and has taught

courses in Appraisal, Negotiation, Engineering, Land Titles, Court Testimony, Real Estate Law, and Property Management throughout the United States and Canada. He was the lead author of Course #700, *Introduction to Property Management, and Course #801, Land Titles*. He serves on the Eminent Domain Faculty of Law Seminars International, Inc., and has been a guest speaker at appraisal conventions and education conferences for the Attorney General's Office. As a member of AASHTO, he represents 17 western states on the Executive Board of the Right of Way and Utilities Committee. Recently he was also appointed to the Special Committee on International Activity Coordination.

Paul Scott is a highway engineer for the US Department of Transportation's Federal Highway Administration (FHWA) in Washington, DC. Mr. Scott currently coordinates the relocation and accommodation of utilities on federal-aid highway projects. His current work includes wireless telecommunication towers, subsurface utility engineering, underground damage prevention programs, and utility pole crash reduction programs. Prior to undertaking his utilities responsibilities in 1989, he served the FHWA for 20 years in a number of highway engineering capacities. Mr. Scott is a graduate of the University of Tennessee and holds a Bachelor of Science Degree in Civil Engineering. He is a licensed professional engineer and serves on technical committees of the American Society of Civil Engineers, the International Right of Way Association, and the Transportation Research Board.



Myron Frierson is a division administrator for the Michigan Department of Transportation (DOT) in Lansing, Michigan. Mr. Frierson currently directs the department's real estate division, which provides direction and develops right of way policies and procedures for statewide right of way operations. His current administrative duties include providing administrative direction to all phases of right of way activities, such as, appraisal, acquisition, relocation, and property management. He administers Michigan DOT's oversize and overweight vehicle permitting, billboard permitting, and utility coordination programs. While in this capacity, he has emphasized cross training of staff and the concept of a generalist property analyst. He has implemented several process improvements that have resulted in processes that are more responsive to customer needs. In his 18 years with Michigan DOT, he has held administrative positions in highway district administration and in financial management. Mr. Frierson is a graduate of Michigan State University and holds a Bachelor's Degree in Accounting. He is a certified public accountant. He is an active member of the AASHTO Subcommittee on Right of Way and Utilities.

contractors; avoiding relocations; recognizing utilities to be a transportation mode; incorporating utilities into design-build contracts; and jurisdiction-wide master agreements with each utility.

Special efforts were made in most countries to enhance relationships between highway and utilities officials by improving coordination, cooperation and communication. All utilities in the Netherlands, except high-voltage transmission lines, and most utilities in the other countries have been placed underground. This has greatly improved roadside safety and beautified the surroundings. Utility corridors have been established in Norway and several countries for crossings, and in some cases for longitudinal installations. These corridors include empty conduit for future installations and joint trenching. Contractors had installed conduit and performed other work for the utilities in some countries. Germany has made efforts to avoid relocation of utilities in conjunction with highway construction projects, and in the Netherlands, utilities are recognized as a mode of transportation joining highway, air, water and rail transportation. In addition, utilities in England are included as essential components of design-build contracts. Master agreements are used in several countries to avoid dealing with utilities on every project.

The scan team observed other utility-related practices that include: cost sharing, acquisition of right of way for utilities, damage prevention activities, minimizing pavement cuts, Geographic Information Systems (GIS), accommodation of fiber optics and wireless communications, and risk analysis.

PROJECT DEVELOPMENT

The team found a number of interesting practices that could be used to reinforce and enhance project development practices in the United States. The findings are grouped into the principal categories of project management, planning and coordination, and right of way process.

Project Management

Several of the countries have adopted the project management approach to project development and the use of multidisciplinary teams. Practices include right of way participation beginning at the planning stage, budget and schedule commitments with a sign-off by functional representatives and project managers, and accountability for delivery on those commitments.

The European nations specifically define, usually during the planning process, the problems to be addressed by the project and how the project would achieve the intended results. Several countries also use broad feasibility reviews prior to acquisition.

England uses design-build practices extensively in its program. The scope of the contract includes utilities coordination, although right-of-way acquisition presently remains with the highway agency.

Planning and Coordination

Each of the countries have a comprehensive planning process that involves significant input from affected property owners, community members and local authorities. In several countries, zoning and land use plans prepared at the local or regional level govern decisions about the location of the transportation infrastructure.

Land consolidation permits several of the European countries to consolidate parcel ownership to minimize negative affects of a new alignment or significant widening.

A significant finding applicable to each country is that they budget sufficient time and funding to their projects to allow appropriately timed and scoped acquisitions.

Each country visited by the scan team engaged in more extensive public coordination than is typical in the United States. Two useful practices are:

- Field reviews by the project manager or designer, along with the right of way team member, to meet with affected property owners early in the development of the project.
- Encouraging owner participation in design issues at early stages of project development.

Right of Way Process

Each country has a method for facilitating early possession or acquisition. These methods, including advance payment and right of entry, provide a great deal of flexibility.

The right of way plans used by these countries are cleaner and easier to interpret than plans of many jurisdictions in the United States.

Each country is developing a system for managing data relevant to right of way functions. In addition to project file-data management, several use an integrated GIS system for right of way work.

Some countries also establish standard right-of-way acquisition limits, such as a minimum of 1 meter from the backslope of the ditch and 3 meters from the edge of the pavement.

Appraisal and Acquisition Recommendations and Implementation Strategies -

Early Involvement of Property Owners in the Design Process -

FHWA will encourage states to consult affected property owners in advance of the completion of project design in order to assess the impact of proposed design and to determine if a

Janet Myers is the Director of the Right of Way Division of the Bureau of Project Development for the Maine Department of Transportation (DOT) in Augusta, Maine. She is responsible for statewide policies, procedures, and operations for property valuation, acquisition, management, and relocation activities; as well as utilities, accommodation, and relocation functions. Maine DOT presently is pursuing significant program expansion, which calls for evaluating and streamlining many of the standards and processes relating to Maine DOT's right of way and utilities activities. Ms. Myers is an attorney with a background in real estate and environmental law. Prior to joining the Right of Way Division, she served as a trial attorney and Major Projects Manager for Maine DOT. Ms. Myers holds a Bachelor of Arts Degree in History from Stanford University and a Juris Doctorate from Boston University School of Law. She is a member of the AASHTO Subcommittee on Right of Way and Utilities and she currently serves as a research panel member on NCHRP 25-23, *Environmental Information Management and Decision Support System for Transportation*.



Stuart Waymack is the State Director of the Right of Way and Utilities Division of the Virginia Department of Transportation in Richmond, Virginia. He is responsible for statewide acquisition of all real property and the relocation of families, businesses, and utilities-both public and private-that

are in the path of or impacted by transportation improvement projects in the Commonwealth of Virginia. He is also responsible for developing strategies for implementation of new laws, both federal and state, that impact the transfer of private lands to the Commonwealth of Virginia for transportation projects. Mr. Waymack is a career employee with over 40 years of service with the Virginia Department of Transportation and has served as an appraiser, negotiator, District Right of Way Manager, and Assistant State Right of Way Engineer. He attended the University of Richmond in Richmond, Virginia, and has been active in several local and national right of way and appraisal organizations. Most recently, he has been a Federal Highway Administration Task Force member on the installation of fiber optics on the interstate system under the shared-resource concept.



Wayne Kennedy, SR/WA, IRWA; Myron Frierson, Michigan DOT; Richard Moeller, FHWA, and Catherine Muth, O.R. Colan Associates Inc.

Wayne Kennedy is International President Elect of the International Right of Way Association (IRWA), with headquarters in Gardena, California. He is responsible for the proper functions of the following committees: Ethics; Asset Management; Local Public Agency; Liaison; Pipeline; Relocation Assistance; Environment; Surveying; Transportation; Utilities; Valuation; and Professional Development. He has served as Federal Highway Administration's Director, Office of Right of Way, as well as New Mexico's Director of Right of Way, Florida's Manager of Appraisal and Appraisal Review, Appraiser for the US Army Corps of Engineers, and with the Federal Housing Administration for a total of 34 years. He is a graduate of San Jose State with Bachelor of Arts and Master of Science degrees in Business Administration, with a major in Real Estate. He also holds certificates in Real Estate and Public Administration from University Extension, University of California. He holds the International Right of Way Association's Senior Designation and the American Society of Appraisers' Senior and Master Governmental Appraiser designations.



Catherine Colan Muth is the President, CEO, and the owner of O. R. Colan Associates, Inc., a major right of way consulting firm that specializes in providing all phases of right of way acquisition required between design and construction of public works projects.

Her company's clients include departments of transportation, airport authorities, and local public agencies throughout the United States. She is the lead author for a study underway for the Transportation Research Board entitled *Innovative Practices to Reduce Delivery Time for Right of Way in Project Development*. After graduating from West Virginia University with a Bachelor of Science Degree in Political Science and English, she completed two additional years at Bluefield State College, where she studied computer science and accounting. She is a member of the International Right of Way Association, the Environmental Assessment Association, and a TEC Founding Member - Chapter 2004. In 1996, she was nominated as the Entrepreneur of the Year for the state of West Virginia.



Joachim Prestinger, Washington State DOT; Peter J. Weitershagen, Regierungsdirektor; Han Mandry, Dipl.-Ing Division for Road Construction Research & Development, International Cooperation in Road Construction, and Hans Stumpel, Landschaftsverband Rheinland

design revision is warranted. Appropriate use of this practice could result in more timely purchases and reduce damages to properties.

Property Owner Interviews -

FHWA will encourage states to use, when appropriate, a more extensive interview process with property owners to discuss the impact of the project and to get an understanding of how they use their property. The information obtained determines if further investigation of possible damages is necessary.

Limited Use of Appraisal Reviews -

FHWA will also adopt a risk management-based appraisal review system similar to those used in some of the European countries. The goal is to determine whether such a system (like auditing a sample, reviewing all complex appraisals, or setting review thresholds) can protect the quality and integrity of the valuation process while saving overall project time and costs. Pilot risk management-based appraisal review system in several states in conjunction with FHWA and the results will be the basis for applicable regulatory changes.

Appraisal and Negotiation Functions Performed by the Same Person -

Regulate a pilot program allowing several states to use the same agent to conduct both the appraisal and acquisition functions on a parcel.

Compensation

- Research the ability of states to accomplish voluntary land consolidation
 - Implement a pilot program to evaluate the benefits of such a program.
- Evaluate items eligible for reimbursement in the business reestablishment relocation category in the Netherlands and England. Propose inclusion of this in the business payments and services research contract that is currently underway and which will be the primary basis for the decision to recommend a change in the federal Uniform Act.
- Evaluate the use by various countries of rights of entry (ROE) and early acquisition methods to facilitate early entry onto property for purposes of construction. FHWA and the states should consider expansion of this concept using risk-management concepts, while ensuring that property owner rights are protected. Appropriate coordination should be undertaken with those having responsibility for environmental considerations.

Training

- Establish a pre-employment and post-employment education and training program through recruitment of one or more colleges to provide this service. In addition, promote a college degree program for right of way careers and a continuing education program using distance learning

UTILITIES SCANNING TOUR

techniques. This proposal would expand upon the federal government's possible establishment of an academy for real estate service.

The team proposes establishment of a panel consisting of FHWA, IRWA, AASHTO, and a private consultant representative to pursue this concept. The FHWA will act as the lead to contact colleges and on-line learning centers, with the goal of developing and implementing such curriculum by the fall of 2002.

- Evaluate current mentoring activities in each state through AASHTO's Internet connection. Summarize United States and European methods and recommend adoption to states.

Utilities

Institute pilot projects in the following areas:

- Investigation of techniques for avoiding the need to relocate utilities.
- Investigation of the feasibility of highway contractors installing utilities.
- Evaluation of the feasibility of recognizing utilities as a mode of transportation whereby pipelines will replace trucks to transport materials.

- Investigation of the feasibility of mapping utilities using GIS and other innovative techniques.

In accordance with the European right of way and utilities techniques, the FHWA and the AASHTO Subcommittee for Right of Way and Utilities will encourage state departments of transportation and utility companies to make efforts to work together more effectively, underground utilities, establish utility corridors and systematically locate facilities, include utilities in design-build contracts and utilize master agreements.

Project Development

Support the FHWA and AASHTO efforts to examine the feasibility of incorporating right of way functions, as well as utilities, into the design-build process.

Reevaluate methods for corridor preservation using the existing AASHTO report on the subject as a starting point. Propose a joint effort of AASHTO subcommittees responsible for statewide transportation planning, land use and environment, and right of way.

Support the evaluation of early acquisition and rights of entry described above.

Encourage the AASHTO Right of Way and Utilities Subcommittee to establish an information clearinghouse on right of way and utility databases, including GIS, for project development, tracking and management. ■

It's not by chance our reputation made us the largest land services consulting firm in the west.

Our growth is attributable to exceptional consulting services and our development and use of advanced technology. Now we're sharing our technology through a software program destined to become the industry standard.

PDQ is innovative software designed specifically to manage Real Property and Right of Way projects and data. With PDQ, you can scan, index, manage and retrieve essential information with one program.

In today's fast-paced, information critical environment, PDQ gives you power – power to harness and control data – power to make the right decision.

Please contact us to learn more about our services and our software.

Paragon Partners Ltd.

5762 Bolsa Ave., #201 • Huntington Beach, CA 92649
Ph: 714-379-3376 • Fax 714-373-1234
www.ParagonPartners.com

SERVICES INCLUDE

- Project Management
- Asset / Property Management
- Right of Way / Real Property Acquisition
- CEQA Permitting / Franchise Acquisition
- Title Research (Surface & Minerals)
- Litigation Support
- Feasibility / Valuation Studies
- Information Systems Consulting and Design

