

# Acquisition of Easements over Tribal Lands

- \* Establishing an effective government-to-government relationship between the State and the Tribe. We have Executive Order #39 in effect since Governor Doyle
- \* Engaging Tribes in the transportation planning process as a way of helping to provide early notification about projects and thus facilitating the later acquisition of right-of-way.
- \* Utilizing centralized or specialized resources within the State Department of Transportation to act as a coordinator for Tribal acquisitions.

# Establishing an effective Government-to-Government Relationship

- \* Establishing an effective government-to-government relationship is essential to strengthening ongoing communication and collaboration between States and the Tribes.
- \* Such a relationship provides a valuable, initial framework upon which to discuss Memorandums of Understanding or other project specific agreements that would more specifically define acquisition processes.
- \* These agreements can also help to establish the tone and basis for working collaboratively to resolve issues, which could arise as part of individual project level acquisition negotiations.

# Engaging Tribes in the Transportation Planning Process

- \* Actively engaging Tribes in the transportation planning process will help to ensure early notification and involvement of the Tribes in the project development process, which consequently helps to facilitate the later acquisition of right-of-way.
- \* This will allow for all the parties to develop time lines and work through some of the issues that may develop during the process

# Centralized or focused resources to work on Tribal acquisition issues

- \* With the Oneida Tribe, we have one person specifically that work with the BIA on easements and ROW. That is Diane Wilson, Property Manager at the Division of Land Management

# Issues and Opportunities

- \* Tribal leaders often do not feel engaged in the acquisition process.
- \* States do not always provide timely notification to the Tribes about the need for an easement.
- \* There is considerable confusion and misunderstanding about the controlling authority for acquisition processes involving Native American lands.
- \* There is ambiguity concerning the ability of States to permit utilities within the highway right-of-way across Indian lands.
- \* Acquisition of easements across Tribal lands is viewed by many State staff as an extremely time consuming process.
- \* There are some deviations from the standardized right-of-way acquisition process across various Tribes and/or BIA regions based on local customs and business practices.

# Tribal officials do not feel engaged in the acquisition process

- \* The Tribe was not involved in the transportation planning and/or project programming process. This could be the result of one or more of a combination of factors:
  - \* The Tribe actually was not involved in the decision-making process.
  - \* Another office in the Tribal government may have been involved in the process but the specific right-of-way official we interviewed was not and any information about the project that another Tribal official may have had was not shared with the right-of-way staff member within the Tribe in a timely way.
  - \* There had been a change of Tribal leadership and a particular project may have been discussed with prior members of the Tribal leadership; in some cases, for example, Tribal Council members hold their positions for only two to three years.

# Lack of timely notification by States of the need for an easement

- \* The lack of timely notification by the States of the need for an easement and the subsequent request by a State for the Tribe to process the easement request on an expedited basis so as not to affect a proposed letting date for a construction project.
- \* The short timelines presented by the State places a burden on Tribal land offices, much as they do on resource agency staff, to accommodate the workload and still maintain the normal office functions and activities.
- \* In addition, the turnover at the BIA places a burden on the state too. The BIA also has to accommodate the workload and still maintain normal office functions and activities.

# Confusion and misunderstanding on the acquisition processes

- \* The process for acquiring an easement over Tribal lands needs to be clearly differentiated from the more familiar private land acquisition process that the State Department of Transportation deals with regularly.
- \* For Oneida, fee land and tribal land is treated differently

# Length of the process for acquiring easements over Indian lands

- \* Impacts on Tribal resources are not always sufficiently considered with regard to the increased workload created by a large right-of-way acquisition. In one instance, a single Tribal employee was assigned the responsibility for all of the trust right-of-way acquisitions on a major project and yet retained all of his regular office program functions.
- \* The extensive amount of time required by State Department of Transportation staff or their consultants to prepare all of the paperwork required for BIA processing; this process is sometimes elongated by the State Department of Transportation staff's lack of experience with preparing the BIA package and the need to address differences in appraisal standards. The time required to obtain approval of the appraisal from the BIA Regional Office can be quite lengthy, sometimes requiring several months.

# Length of the process for acquiring easements over Indian lands

- \* The length of time required to complete review by the Tribal Legal Office. The longer than desired time for this review process may be a function of both Legal Office staffing and workloads with some Tribes, as well because of some issues with the quality of the documents submitted.
- \* The number of errors and omissions on right-of-way documents which then require some degree of correction and re-work. From the interviews our team conducted, we received a number of examples where, during Tribal Legal Review, there were errors identified in legal descriptions, consent agreements etc. In some cases, these changes required substantial and often time-consuming rework such as getting all of the consents again.

# Length of the process for acquiring easements over Indian lands

- \* There can be a need to work with many landowners on a single parcel of allotted land where multiple heirs must be contacted. In addition, some allottees may never consent to the right-of-way easement. Finding a way to shorten the timeline for getting consent forms back, and limiting the number of attempts that must be made to gain majority consent is a key area for potential improvement.
- \* Determination of land values from recent or current land sales can be difficult because the Tribe often does not record the sales. This can make it hard to determine the true fair market value of the trust lands.
- \* Some Tribes own Tribal fee (non-trust) lands, which require special processing, by both the Tribe and the State.
- \* There are often issues related to fencing, trees, scrubs, etc. which need to be resolved.

# Length of the process for acquiring easements over Indian lands

- \* There can be boundary line issues that require resolution where surveyed boundaries did not agree with perceived landowner boundaries or fenced boundaries.
- \* There can be unique negotiations items, which need to be resolved. Any encroachment will need to be resolved.
- \* Oneida had monthly meetings with meeting minutes with WisDot to help with the deadlines and communication of any issues that may arise during the process.

# Limited information & training opportunities related to the acquisition of right-of-way over Tribal lands

- \* There is limited guidance material, training courses or information exchange opportunities available related to the acquisition of easements over Indian lands.
- \* There is limited formal guidance material, training courses or workshops available for state transportation agencies related to acquiring easements over Tribal Lands.
- \* Perhaps a brochure could be produced by each tribe for the next conference