



DUE DILIGENCE, NEW DILIGENCE

It's time for community due diligence



BY LESLEY CUSICK

It is clear that success starts with project structure, organization and perhaps most importantly, the right team for the job. In consideration of how the public's expectations for engagement on projects have increased in recent years (see "Citizen's Awakening – the Paradigm Shift," in the March/April 2019 IRWA magazine), projects need a new structural paradigm to accommodate the challenges. Due diligence—and the function of different types of communicators within the process—is a place to start.

Due diligence has focused historically on legalities, land ownership, environmental factors, fixed features and the past history of a project area. While a sizeable list, it has a gap. It lacks the input and knowledge of the people impacted by the project, as well as those who are interested in the changes it will bring to their environment. Public reactions to projects are increasingly “mixed” at best. It is all but guaranteed that fossil fuel-related projects will be protested. Are you prepared for the challenges that these heightened citizen expectations are bringing? Perhaps an additional way of understanding due diligence, beyond the traditional types, can help your project be successful.

What is Community Due Diligence? In the same way that natural systems are evaluated to understand their characteristics (functions, values, extent, carrying capacity, etc.), communities have the same characteristics and warrant your attention.

Types of Due Diligence and the Responsibilities of Communicators Within Them

One type of due diligence is that associated with acquiring land rights and easements, going house to house, business to business, and being the on-the-ground “face” of the project. The land agent is crucial to the project team and not enough can be said about their value in setting the project tone and creating awareness of management’s accessibility in the effort to gain agreements. While not a community engagement professional by job description, this is exactly what the land agent is doing in their particular project function. Their temperament in executing their tasks is the literal groundwork for future arrangements that may be needed such as for project changes (e.g. for obtaining an additional right of access or a changed footprint).

Another type of due diligence is research into spill and release records for CERCLA (40 CFR §312.21), which includes “all appropriate inquiries” which take place to determine if your project footprint has environmental contamination in its history. This effort involves more than a records request; it involves access to perform on-the-ground due diligence. The observational skill-sets of these diligence investigations are critical, but no less critical than engagement skills that involve observation, patience and listening. Interaction with others is necessary – it’s not just a desk exercise.

Be aware of the differences between a cultural resource and a heritage resource. A heritage resource casts a much larger net.

The more traditional type of environmental due diligence, such as that found in the implementing regulations of the National Environmental Policy Act, seeks to identify a number of features such as wetlands and floodplains, rare, threatened or endangered species and critical habitats. Cultural resources are also studied at this time.

On a related point, it is worth noting that the term “cultural resources” has evolved into “heritage resources” over the past several years. This evolution is very important to those seeking to build projects because it is an expansive and subjective term. Heritage resources are a much larger group of resources than National Register of Historic Places listed properties, with their specific eligibility criteria. Heritage resources, by contrast, consider Traditional Cultural Properties, Cultural Landscapes and other areas that are valued by communities and/or tribal members. They are *defined and identified by the community* on their own schedules and in their own cultural (e.g. not linear) time. Your project’s schedule is yours and can be perceived as antagonistic to tribes and communities not sufficiently engaged in the change you propose. This is another touch point for interaction. Do you have the right personnel in place for this sensitive interaction?

A Unique Due Diligence Challenge

As discussed above, there also may be overlapping due diligence findings with environmental and cultural resources. The coexistence of these resources is especially important to a linear infrastructure project that may travel along a river valley or one that may need to go through a geologic gap or other type of constraining feature. These paths of least resistance are no less attractive to project developers today as they were to pioneers and railroad builders in the 1800s or to prehistoric Native Americans 1800+ years ago.

Natural and cultural resources are often found together. To the communities in these areas, your firm is one in a line of project developers that need something from them (be it rights of access, easements or the greater challenges of understanding, acceptance or support). Emotions can run high when projects intersect natural and cultural resources (and social structures); the Dakota Access Pipeline and Keystone XL are telling examples. Who is in place on your project team to both anticipate the situations and potentially



help your project avoid unnecessary conflict? Who is listening to the impacted or affected community? Do you have skilled and trained personnel in place for this critical interaction?

Community Due Diligence

Straightforward, checklist-type due diligence efforts do have their place in project planning, but they are insufficient to understand community interests and concerns. What is Community Due Diligence? In the same way that wetlands, floodplains and plant and animal species are studied to understand their characteristics; communities have the same characteristics and warrant your attention. Communities are dynamic systems and the attributes that apply to natural systems also apply to communities. Consider these pertinent questions when strategizing about how to build support for your project:

- How does the community in your project area function?
- What does it value/what holds it together?
- What is its mapped extent and how does it differ from its social and cultural extent?
- What are the thresholds that define its carrying capacity for change?
- What are the threats to its survival?
- How is its economic health?
- What are the demographics and is the community growing or declining?

Understanding the ways to obtain the answers to these questions is vital to Community Due Diligence. Patiently seeking to engage with the people who can offer answers and insights to you can shape the progress, timing and success of the project. Carrying out Community Due Diligence will have positive effects on your project's schedule, budget, your reputation and your client's reputation. Corporate reputations rest upon the foundation of project success/performance and stakeholder opinion. Community goodwill – engagement, listening and accountability – is the mortar of stakeholder opinion.

Going Forward with Community Due Diligence

Even the most insightful and communications-skilled project manager will benefit from the addition of a communications/engagement professional on the project team. They will be able to provide *objective leadership* on engagement strategy, messaging, issue identification and management. Each of these elements are a part of community due diligence. This is a cooperative arrangement; they will learn from you about

the project (so that they can share the information, as appropriate) and you will learn from them about the community that will be affected by the project. They can help you anticipate and recognize the sensitivity snares that can trap or entangle you when engaging a community *without* a Community Due Diligence strategy and process. All of your project's due diligence information taken together enables you and your team to select, adjust or eliminate a site or a route among those that were studied or develop alternatives that are more acceptable to the parties, thus avoiding sustained conflict.

There have been a number of prior IRWA Magazine Social Ecology articles on how communities are structured and how to reach out *and in* to them to assist your project. Much has to be learned, especially because many projects are now encountering the community's expectation of granting (or withholding) a "social license" to operate. How, when and at what level your project integrates communication/engagement support within the Community Due Diligence process needs your attention as a decision-maker and leader.

Are You Ready?

Community Due Diligence is the investment of cost, time and the talents of a communications professional on the project team along with all other due diligence efforts of the project. It happens in parallel and it serves to inform downstream efforts. Adding a "communications recovery team" in haste, after there is community upset or protests will add cost and time to a project and subtract corporate goodwill and reputation.

Is there a community engagement staff member integrated into your project team? Have they been there from the start? Do they have the responsibility to make or influence decisions? Is the person known to team members as a resource by name? Have they met and developed a working relationship with community members? Do you rely on them for insight and do you listen to them when they give you advice or recommendations on how and when to interface with community issues? If you can answer "yes" to these questions, you are on the new and right path to project success. ✪



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