

8 Local Government

8.1 General

The Georgia Department of Transportation Local Government Program is managed by the State Local Government Coordinator located at the General Office in Atlanta. One District Local Government Coordinator located in each of the seven Georgia Department of Transportation District Offices helps to carry out this program statewide.

As an aide to this chapter, the link below has been included for reference. In 2008, an [Acquisition Guide for Local Public Agencies](#) was created by the Department as part of a Department wide program to help facilitate better understanding between the Georgia Department of Transportation and all statewide Local Sponsors. This Acquisition Guide affords a comprehensive written documentation for those duties and activities.

Reference [23 CFR 710.201 \(g\) and \(h\)](#) for the authority of working with Local Sponsors.

8.2 Purpose

The General Office Local Government Section will provide guidance to District Local Government Coordinators and other General Office managers when determining appropriate right of way procedures to be followed by local public agencies as a condition of obtaining funds through the various transportation-funding programs administered by the Department. This Guidance Document also provides direction regarding appropriate right of way requirements for projects on the State Highway System that are not in the Department's work program but are funded and constructed by entities other than the Department.

8.3 Definitions

Federal Project – Any project with federal participation in any project phase. For the purposes of this document, the term federal will include those projects where there is the anticipation or intent to use federal funds in any project phase. Anticipation includes discussion by local and/or state officials regarding the intended or potential use of federal funds in any phase of the project.

1. State Highway System Projects – Any project that is part of or anticipated to become part of the state highway system
2. Right of Way – Any real property interest acquired for construction or support of a transportation facility.

8.4 Policies

As a condition of obtaining funding, either state or federal, through the Department for transportation projects, a local public agency must agree to acquire any necessary right of way in conformity with the requirements contained in the guideline. This guideline applies regardless of whether federal or state monies are used in the acquisition of the right of way.

A. Federal and State Highway System Projects

All right of way acquired for federalized state highway system projects must be acquired in compliance with [Public Law 91-646](#), Uniform Relocation Assistance, and Real Property Acquisition Policies Act of 1970, as amended and all state laws and rules governing right of way acquisition by the Georgia Department of Transportation.

1. Reimbursable Contracts: All Reimbursable Contracts will be processed in the General Office. A Right of Way Contract executed between the Department and the Local Government setting forth payments to be made to local governments as reimbursement for land acquisition expenditures specified in the contract. Additionally, the contracts are signed as a part of the agreement between the Department and the Local Government identifying the duties and activities of the Local Government and the Department. All contracts must have a financial cap amount identified and also must contain a deadline identifying the fiscal year the project must be completed, however, generally, documentation required for reimbursements must consist of the following:
 - a. By Deed or Easement – A properly executed deed or easement, which describes, by distance and bearings, the area acquired and transfers title to the Georgia Department of Transportation.
 - b. A Final Title Certificate and legal closing statement shall accompany the deed. These items should be reviewed and placed in the deed file for permanent record.
 - c. By Court Action – The court order, certified by the Clerk of Superior Court, will be submitted with a claim for reimbursement of any type of court order or certificate of payment. In addition, the trial report is also required.

The Local Government, or its designated representative, will prepare all Condemnation Petitions in the name of the Local Government and will provide all legal counsel and/or litigation associated with acquiring properties through condemnation at Local Government expense.

After receipt of the approved and accepted certification from the Local Government to the DEPARTMENT and after all acquired parcels, whether

acquired by deed or by condemnation, have been executed, and quitclaimed from the Local Government and recorded in the name of the DEPARTMENT, the DEPARTMENT will reimburse the Local Government.

2. **Non-Reimbursable Contracts:** All Non-Reimbursable contracts will be processed in the Districts. A Right of Way contract executed between the Department and the Local Sponsors for let to construction specified projects for which all costs for the acquisition of right of way are incurred solely by the Sponsor. Further, the Sponsor will, without cost to the Department, defend and hold harmless the Department for any and all suits, if any should arise, involving property titles associated with the acquisition of Right of Way, any liability or consequential damages resulting from personal injury, property damages, or inverse condemnation, with few exceptions.

B. State Highway Projects

All right of way acquired for state highway system projects funded by or through the Department must be acquired in compliance with all laws and rules governing right of way acquisition of the Georgia Department of Transportation. See the Georgia Department of Transportation Acquisition Guide for Local Public Agencies hyperlink in Chapter 8 – General.

C. Federal Non-State Highway System Projects

All right of way acquired for projects with federal funds in any phase must be acquired in compliance with [Public Law 91-646](#), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. State or Federal Funds can be utilized for State Route or Temporary State Route highway system projects.

D. Non-Federalized Non-State

Where a project is being funded by or through the Department and is not a state highway system project without any federal participation in any phase of the project, the local public agency may utilize its own acquisition policies and procedures.

E. State Aid Projects involved in Acquisition of Property Rights with Compliance Federal Regulations Uniform Relocation Assistance, and Real Property Acquisition Policies Act of 1970, as amended

All right of way acquired on non state highway, with no state or federal funds, Local Public Agency (LPA) may utilize its own acquisition policies procedures; partially state highway projects all right of way acquisition must be acquired in compliance with all laws and rules governing right of way acquisition by the Georgia Department of Transportation if portion is in 3 year State Transportation Improvement Program.

8.5 Procedures

A. Use of Qualified Personnel

Local Government Agencies are required to use qualified personnel for both Pre-Acquisition and Acquisition activities and who are familiar with all State and Federal Guidelines and Uniform Relocation Assistance, and Real Property Acquisition Policies Act of 1970, as amended.

Any consultant contracted for negotiation services for the acquisition of right of way for the Local Government Agency either must hold an active Real Estate License in the State of Georgia or Hold an active real Estate Broker's License in the State of Georgia and must have attended the Georgia Department of Transportation/Federal Highway Administration training class every three (3) years and hold an active certificate of attendance. (Reimbursable/Non-Reimbursable Contracts)

Every acquisition agent must keep a current, detailed written diary for each parcel. The agency must make timely, detailed entries in the diary covering every contact, meeting, telephone call, etc., with any interested party. These entries must be made as soon as possible after each contact to ensure accuracy. Since the diary may be an evidentiary document in a court proceeding, diary entries should be thorough, but limited to a recitation of the facts.

The Local Government Agency will designate a party to be responsible for accepting, reviewing and preparing responses to appeals of Relocation Assistance Benefits. (Reimbursable/Non-Reimbursable Contracts)

B. Pre-Appraisal Field Review

A pre-appraisal field review shall take place to determine the type of appraisal needed and if any specialty reports are required.

This review shall be attended by the District Local Government Coordinator, the Georgia Department of Transportation Review Appraiser, a representative of the right of way consultant firm hired to acquire (if Applicable), and the Georgia Department of Transportation approved appraiser hired to do the appraisals.

Upon completion of the review, the reviewer will complete the checklist and distribute this list to the Local Government Coordinators and a copy to the State Local Government Coordinator.

All offers will be made in accordance with the Georgia Department of Transportation's guidelines and accordance with when Federal funds are utilized in

Preliminary Engineering, Right of Way, or Construction phase of the project. Refer to Chapter 4 of this manual – Appraisal and Review

C. Appraisal Review

Appraisals must be reviewed and released by Georgia Department of Transportation Review Staff. Refer to Chapter 4 of this manual– Appraisal and Review

D. Relocation Package Review

Relocation packages must be reviewed and released by the Georgia Department of Transportation’s Relocation Staff. Refer to Chapter 11 of this manual - Relocation

E. Deed Preparation

Preparation of deeds for projects that are on or off the State Highway System where locals are funding the right of way acquisition, the department will provide the Local Government with legal descriptions and colored plats. It will be up to the Local Government or their attorney to provide the front signature page of the deed.

Preparation of deeds for projects that are on the State Highway System where the Department is funding the right of way acquisition, the Department will provide a complete deed package (deed cover, legal description, and color plat). The Local Government will purchase the right of way in the name of Department.

F. Counter Offer Authorization

Local Government Agencies have the authority to approve counter offers or administrative settlements up to 10% above the fair market value but not to exceed an amount of \$10,000 above the fair market value. (Reimbursable Contracts)

G. Local Government Condemned Parcel Settlement Authority (Reimbursable Projects)

Local Sponsor will submit to the State Local Government ROW Coordinator on Local Government Sponsor Letterhead a **Settlement Authority Request Letter** when Settlement Authority Requests are outside the Local Government Sponsor’s approval authority level range of 20% or \$20,000 (whichever is greater) over the FMV amount paid into court. The Settlement Authority Request Letter will be formatted with Project Number; P.I. Number; Parcel Number; Pay-in Amount; Date of Take; Update Appraisal Date, if one; Update Appraisal Amount, if one; Condemnee’s Demand; Settlement Authority Request Amount; Copy of Original Released Appraisal & 532 Review Appraiser’s Report; Copy of Update Appraisal, if one; Proper Justification written into the letter; sufficient support documentation and attachments for proposed settlement amount attached to the letter; sufficient reasoning in the letter why the Department should approve the recommended Settlement Authority Request (i.e. – risks associated with a jury trial, etc.).

G. Option Executable

The Local Government must use the executable form of option or agreement when purchasing right of way in conjunction with a Georgia Department of Transportation construction project.

A Copy of the executed options for all parcels must be provided to the construction project engineer for their reference during construction should a problem arise.

H. Provide Project Status

The Local Government Agency must provide every Monday the status of the progress of the right of way acquisition.

I. Files, Documents Subjects to Inspection

All files, records, reports, notes, negotiation records, statements, court records, and/or documents in connection with any project acquired by the locals for the Georgia Department of Transportation, are subject to inspection by the Federal Highway Administration/Georgia Department of Transportation's right of way personnel at any time.

J. Review of Closing Documents

All closing documents from Local Government Agencies must be checked by the District Local Government Coordinator verifying that the plats and descriptions for acquired areas correspond with the approved right of way plans. This verification may be performed either on a periodic basis throughout the acquisition process or once all property rights have been acquired prior to right of way certification.

K. Office of State Aid

Certifies City/County contracts and obstruction of clearance reports administered by the office of State-Aid.

L. Local Government Certification to Georgia Department of Transportation

The Local Government Agency will certify to the Department that title to all parcels acquired by deed is vested in the name of the Department for all federal aid projects and that all property management and demolition has been completed.

M. Certification, Parcel is Vacant

The Local Government Agency will certify all parcels are vacant and immediately available for construction purposes.

N. Final Title Certificate

A Final Title certificates must accompany every right of way certification submitted to the General Office. The Final Title certificate must be signed by the county or city attorney. If by chance a parcel has been closed, but the deed has not been returned from being recorded, the attorney must note on the certificate and attach a copy of the executed deed and closing statement. Once the deed has been recorded, the recording information must be provided to the department within 30 days of recording.

8.6 References

[49 CFR, Part 24](#)

[23 CFR, Part 710](#)

[Acquisition Guide for Local Public Agencies and Sponsors](#)

http://www.dot.ga.gov/localgovernment/Documents/AcquisitionGuide_2008_10-23-08.pdf

8.7 Acquisition of Right of Way for Governmental Agencies

A. Purpose

The purpose of this section is to provide procedures for the Georgia Department of Transportation to use when acquiring right of way from governmental agencies

B. Definitions

1. Federal Lands: All lands controlled by the Federal Government of any of its agencies, such as the U.S. Military, Veteran's Administration or the Bureau of Indian Affairs.
2. Functional Replacement: The replacement of real property acquired for a transportation facility or purpose, with lands or facilities, or both, which will provide equivalent utility. The replacement may be accomplished by construction of a new facility or renovation of an existing facility, whichever is cost effective, feasible and agreed to by the parties to the functional replacement agreement.
3. State Lands: Those under the control, use and benefit of State Agencies.

1.8 Acquisition of Right of Way from State Agencies

- A. Notify the General Office State Local Government Coordinator immediately upon identifying any pending acquisition from a State or Federal Government Agency. NOTE: These properties should be identified at the Preliminary Field Plan Review (PFPR). The form entitled "Preliminary Field Plan Review Checklist" which is found in District Resources should be used when attending a PFPR.

(See Chapter 5.17 Acquisition)

1. Once the acquisition has been identified, the District Right of Way Team Manager should send an e-mail to State Local Government Right of Way Coordinator identifying all State and Federal owned parcels in order to allow for early notification of project involvement. A copy of the title report, five copies of the legal description, five colored 8 ½ x 11 plats and location map are to be sent to the State Local Government Coordinator for acquisition. .

2. A request for Transfer of Custody by a Revocable License Agreement and Resolution must be sent to the State Agency and State Properties Commission.

3. After the Revocable License Agreement is executed by the Department and State Properties Commission, the final transfer of custody is made through the State Properties Commission
4. If Legislation Action is required before conveyance, or if House Bill 495 (HB 495) is applicable, the State owned parcels will be still considered an outstanding parcel and comments will be entered into TPRO tracking system the date of Legislation session year and date of conveyance.
5. If Legislation Action is not required before conveyance, or if House Bill 495 (HB 495) is applicable, State owned parcels will be entered in TPRO tracking system as Acquired by Easement ("E") and date the Revocable License Agreement was executed.
6. The final transfer of custody is made through the State Properties Commission.
7. The Department retains the recorded easement and its recording information. The other executed easement is transmitted to the agency with jurisdiction.
8. A copy of the recorded easement and map with the recording evidence is then transmitted.

8.9 Federal Land Transfers

- A. When highways cross lands owned by the United States and administered by Federal Agencies (Controlling Agency), a property interest, generally by highway

easement, can be conveyed to Georgia Department of Transportation or its nominee (i.e. city, county, town, public-private partnership) to grant the rights necessary to construct, operate and maintain the roadway. A property interest for a material site may also be conveyed to a State Department of Transportation or its nominee. Authority is provided through 23 U.S.C. 107(d) and 317 to the Secretary of Transportation, who has further delegated the authority to the Federal Highway Administration to effectuate the transfer. The process is referred to as a Federal land Transfer.

- B.** The Federal Highway Administration, pursuant to the process set forth in [23 CFR 710.601](#), assists Georgia Department of Transportation in obtaining property rights necessary for projects, including necessary material sites, on or eligible for the Federal-aid system. This process is optional as Georgia Department of Transportation can sometimes deal directly with the Controlling Agency under other statutory authorities.
- C.** When project development begins and potential right of way needs over Federal lands are identified, the first step is to identify the Controlling Agency with jurisdiction over those lands. Once the Controlling Agency is identified, it should be notified of the project's potential use of its land and should be invited to be a cooperating agency in the environmental process.
- D.** The Department must file an application for lands or interests in lands needed for highway purposes and owned by the United States. The application shall be filed with the Federal Highway Administration pursuant to 23 CFR. An exception to this directive will be made for lands or interests that are managed or controlled by the Army, Air Force, Navy, Veterans Administration, or Bureau of Indian Affairs. In those cases, the application shall be made as follows:

 1. Army or Air Force: The application should be submitted directly to the Installation commander and the appropriate District Engineer, Corps of Engineers, Department of the Army.
 2. Navy: The application should be submitted directly to the District Public Works Officer of the Naval District involved.
 3. Veterans Administration: The application should be submitted directly to the Director, Veterans Administration, in Washington, D.C.
 4. The Bureau of Indian Affairs: Application should be submitted directly to the Bureau of Indian Affairs, Washington, D.C., for right of way across tribal lands or individually owned lands held in trust by the United States or encumbered by Federal restrictions. All other lands held by the Bureau of Indian Affairs are transferred under 23 U.S.C. 107(d); 23 U.S.C. 317

E. Information Requested

All requests for Federal Land Transfers shall contain the following information:

1. The purpose for which the lands are to be used
2. The estate or interest in the land required by state statute
3. The federal aid project number and PI number
4. The name of the federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land
5. The name and phone number of the contact person at the federal agency exercising jurisdiction
6. A commitment to construct the highway on or to remove materials from the lands to be transferred within a period of not more than ten (10) years following the transfer of the lands to the state
7. Ten copies of the right of way plat of the lands to be acquired. The map must correspond with all information in the legal description. Each course and distance in the legal description must appear on the map, or be readily derived from it.
8. Ten copies of a legal description of the land needed. A metes and bounds description is preferred by the Federal Highway Administration and should be used when possible.
9. A statement regarding compliance with the [National Environmental Policy Act of 1969, 42 U.S.C. 4332, et seq.](#), and the [Historical Preservation Act, 16 U.S.C. 470 \(f\)](#) with provisions for [Preservation of Parklands, 49 U.S.C. 1653\(f\)](#), if applicable.
10. After the Federal Highway Administration concurs in the application for the transfer, the Department prepares the deed of conveyance. Before this is done, a list of special conditions for the transfer should be obtained from the agency with jurisdiction. These special conditions are incorporated in the deed of conveyance.
11. After the deed for the conveyance has been prepared, it along with a copy of the Department's approval right of way map is transmitted to the Federal Highway Administration. The Federal Highway Administration's Counsel and Staff review the submitted document and coordinate the resolution or any remaining issues with the Georgia Department of Transportation's Counsel and Staff as appropriate. At the conclusion of this review, the Federal Highway Administration's Counsel determines if the appropriate process has been

followed and if the deed is legally sufficient under federal law and documents such findings.

12. After the Federal Highway Administration concurs in the deed, the Federal Highway Administration Division Staff transmits the deed to the Georgia Department of Transportation for acceptance and signatures by the appropriate state official. The Department transmits the deed to the agency with jurisdiction for concurrence. A letter of concurrence is secured from the agency.
13. A letter of Consent with a right of entry is often used for new location and upgrade projects to grant permission to enter on Federal Lands and construction the project. The scope of the letter generally includes the required terms and conditions identified by the Controlling Agency as necessary to protect its resources and mission from potential adverse impacts from the transportation use. These terms and conditions would be incorporated into the highway easement deed if applicable to the operation and maintenance of the facility. The letter of concurrence and two originals of the approved deed with maps are then transmitted to the Federal Highway Administration. The Federal Highway Administration executes the deeds and transmits them to the Department for recording.
14. One of the deeds is recorded by the Department. The Department retains the recorded deed and its recording information. The other executed deed is transmitted to the agency with jurisdiction.
15. A copy of the recorded deed and map with the recording evidence is then transmitted.

8.10 Quality Assurance Quality Control

All activities concerning the acquisition of Right of Way from Local Governments must adhere to the policies and regulations of the Uniform Relocation Assistance, and Real Property Acquisition Policies Act of 1970, as amended. [Reference 49 CFR 24](#). The checks and balances for these procedures can be found in Chapter Five of the Georgia Department of Transportation Right of Way Manual - Quality Assurance Quality Control.

The explanation is clear that The Local Sponsors are required to comply with the Uniform Relocation Assistance, and Real Property Acquisition Policies Act of 1970, as amended if any part of a project receives Federal-aid funds or federal financial assistance, even if Federal-aid is not used in the right of way portion of the project.