

## **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 and Revised in 2015 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 Governments. This Acquisition Guide affords a comprehensive written documentation for those duties and activities.

Please reference 23 CFR 710.201 (g) and (h) for the authority of working with Local Governments.

### **8.2 Purpose**

The General Office State Local Government Coordinator will provide guidance to District Local Government Coordinators, Local Governments, and other General Office managers when determining appropriate right of way procedures to be followed by local governments, as a condition of obtaining funds through the various transportation-funding programs administered by the Department. This document serves to provide guidance 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 Local Governments.

### **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.

3. On-System Projects - Rights of way lying on a designated state or federal route.
4. Off-System Projects - Rights of way lying on a non-designated state or federal route.

## **8.4 Policies**

As a condition of obtaining funding, either state or federal, through the Department for transportation projects, a local government must agree to acquire any necessary right of way in conformity with the requirements contained in the guidelines below. These guidelines will apply regardless of whether federal, state, or local funds 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 prepared in the General Office by the State Local Government Coordinator. This Right of Way contract is executed between the Department and the Local Government, and sets forth payments which are made to Local Governments as reimbursable right of way costs to include land, improvement costs, and other costs as specified in 23 CFR 710.203(b). 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 a term which identifies the calendar year in which the contract will expire. However, documentation required for reimbursements must consist of the following:
  - a. By Deed or Easement – When a project is On-System, a properly executed Department approved deed or easement, which describes, by distance and bearings, the area acquired and transfers title to the Georgia Department of Transportation is required. In contrast, when a project is Off-System, a properly executed Department approved deed or easement, which describes, by distance and bearings, the area acquired in the Local Government’s name will remain in the Local Government’s name.  
The Local Government must ensure at the time of closing that the current, approved deed or easement document reflects the latest revised or current required right of way description and/or easement(s) description.

- 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 – In the event of a condemnation, rights of way lying on a designated state or federal route (On-System) requiring condemnation are to be condemned in the local government’s name and then transferred to the department by quit claim deed after the condemnation is complete, and after the local government has full and final possession of the right of way. A copy of the filed/recorded condemnation petition, copy of receipt for monies deposited in court, and a copy of the quitclaim deed from the local government to the department (On-System projects only) will be submitted with a claim for reimbursement of any type of court order paid. 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.

Before any reimbursement of costs occurs, the Local Government shall certify in writing to the Department that title to all parcels has been acquired and that all property management, all demolition and all relocation has been completed. Said certification will include a statement that “All parcels are vacant and immediately available for construction purposes”.

- 2. Non-reimbursable Contracts: All Non-Reimbursable contracts will be prepared by the District Local Government Coordinators. This Right of Way contract is executed between the Department and the Local Government, for let to construction specified projects, for which all costs for the acquisition of right of way are incurred solely by the Local Government. Further, the Local Government 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.
  - a. When acquiring rights of way lying on an On-System project, rights of way are to be acquired in the Department’s name by the Local Government when closed by deed. However, when acquiring rights of way lying on an Off-System project, rights of way are to be acquired in the Local Government’s name by the Local Government when closed by deed and remain in the Local Government’s name.  
The Local Government must ensure at the time of closing that the current, approved deed or easement document reflects the latest revised or current required right of way description and/or easement(s) description.

- b. Rights of way lying on an On-System project requiring condemnation are to be condemned in the Local Government's name, and then transferred to the Department by quit claim deed after the condemnation is complete, and after the Local Government has full and final possession of the right of way. Rights of way lying on Off-System project requiring condemnation are to be condemned in the Local Government's name and remain in the Local Government's name.

The Local Government will provide without cost to the Department, all legal counsel and services associated with the Acquisition of Rights of Way, including, but not limited to, the preparation and filing of all condemnation petitions in the name of the Local Government.

## **B. State and Federal Highway Projects**

All right of way and/or easements acquired on a designated state or federal highway system funded by or through the Department, it is recommended that the local government acquire all right of way and/or easements in compliance with all current Georgia State Laws, including but not limited to Georgia Codes Title 22 and 32, where applicable, and all Federal Laws or Codes as referenced within Georgia State Laws, including but not limited to CFR 49 Part 24, and CFR 23 covering the acquisition of real property, relocation of occupants and/or their personal property, and property management as applicable for the above referenced project. Parcels lying on or adjacent to a State or Federal route must be acquired in accordance with all GDOT and FHWA policies and procedures.

## **C. Federal Non-State Highway System Projects**

All right of way and/or easements acquired for projects with federal funds in any phase of the project must be acquired in compliance in compliance with all current Georgia State Laws, including but not limited to Georgia Codes Title 22 and 32, where applicable, and all Federal Laws or Codes as referenced within Georgia State Laws, including but not limited to CFR 49 Part 24, CFR 23 and covering the acquisition of real property, relocation of occupants and/or their personal property, and property management as applicable for the above referenced project. Parcels lying on or adjacent to a State or Federal route must be acquired in accordance with all GDOT and FHWA policies and procedures.

State or Federal Funds can be utilized for on-system or off- system projects. Federal funds must be utilized in accordance with CFR 23 Part 710.203.

## **D. Non-Federally Funded and Non-State Funded Projects**

Where a project is located on a local or county road, and being funded by or through the Department without any federal participation in any phase of the project, it is recommended that the local government acquire all right of way and/or easements in compliance with all current Georgia State Laws, including but not limited to Georgia Codes Title 22 and 32, where applicable, and all Federal Laws or Codes as referenced within Georgia State Laws, including but not limited to CFR 49 Part 24, and CFR 23 Part 710.203 covering the acquisition of real property, relocation of occupants and/or their personal property, and property management as applicable for the above referenced project. Parcels lying on or adjacent to a State or Federal route must be acquired in accordance with all GDOT and FHWA 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 a non-state highway; 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 who are familiar with Department policies, Section 32-8-1 of the Official Code of Georgia Annotated, and Federal guidelines to include Title 49 Code of Federal Regulations Part 24; Title 23 Code of Federal Regulations Part 710, and the Uniform Relocation Assistance, and Real Property Acquisition Policies Act of 1970, as amended.

1. Any consultant contracted for negotiation services for the acquisition of right of way for the Local Government Agency must hold an active Real Estate License and be affiliated with a Broker, or hold an active Real Estate Broker's License. Said consultant must attend any present and all future mandatory training classes required by the DEPARTMENT
2. Every acquisition agent must keep a current, detailed negotiation record for each parcel. The agency must make timely, thorough and detailed notes in the negotiation records covering every contact, meeting, telephone calls, etc., with any interested party. These entries must be made as soon as possible after each contact to ensure accuracy. The negotiation records may be used as an evidentiary document in a court proceeding

## **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 District Local Government Coordinator(s) and a copy to the State Local Government Coordinator.

A General Certified Appraiser and other valuation damage experts, who is on the Department's approved list, must utilize an appropriate valuation method (appraisal/data book/cost estimate) as determined by the Department. 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.

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.

### **1. Reimbursable Projects:**

Acquisition activities including making of offers cannot be made until the following has been completed:

- a. an acceptable detailed right-of-way cost estimate has been submitted to the District Local Government Coordinator, reviewed and approved;
- b. right of way funds have been authorized in accordance with 23 CFR Part 710; and,
- c. the Department has issued a Notice to Proceed to the Local Government Agency for any eligible, reimbursable right of way acquisition activities.

### **2. Non-Reimbursable Projects:**

- a) Once the environmental clearance is obtained and the right of way plans are approved,
- b) the Department will issue a Notice to Proceed to the Local Government Agency and acquisition activities can begin.

Refer to Chapter 4 of this manual– Appraisal and Review

#### **D. Relocation Package Review**

1. The Local Government Agency will designate a party to be responsible for accepting, reviewing, and preparing responses to appeals of Relocation Assistance Benefits.
2. The Local Government Agency will be responsible for determining benefits and preparing relocation assistance packages. Packages must be submitted to the Department for review and approval prior to offers of benefits being made.

Refer to Chapter 11 of this manual - Relocation

#### **E. Deed Preparation**

The Local Government Agency will be responsible for the preparation of deeds, legal descriptions and plats. The Local Government Agency shall ensure at the time of closing that the current, approved deed or easement document reflects the latest revised or current required right of way description and/or easement(s) description. It will be up to the Local Government or their attorney to provide the front signature page of the deed.

#### **Condemnations**

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.

Rights of way lying on a non-designated state or federal route (off-system) requiring condemnation are to be condemned in the **LOCAL GOVERNMENT'S** name and remain in the **LOCAL GOVERNMENT'S** name.

Rights of way lying on a designated state or federal route (on-system) requiring condemnation are to be condemned in the **LOCAL GOVERNMENT'S** name and then transferred to the **DEPARTMENT** by quit claim deed after the condemnation is complete and after the **LOCAL GOVERNMENT** has full and final possession of the right of way.

#### **F. Counter Offer Authorization (Reimbursable Contracts)**

Local Sponsor (Reimbursable): **10% or \$20,000, whichever is greater**

The **LOCAL GOVERNMENT** has the authority to approve a counter offer or an administrative settlement up to \$20,000 or 10% above the approved Fair Market Value. On legal settlement authority for condemned parcels, the **LOCAL GOVERNMENT** authority level is

20% or \$20,000, whichever is greater. All other counter offers, administrative settlements and legal settlement authority on condemned parcels must be reviewed and approved by the **DEPARTMENT**, if the **DEPARTMENT** is to participate in any increased cost. Any modification whatsoever or any special provision included as an agreement to any document must first be approved and appropriately accepted by the **DEPARTMENT**.

Once a determination has been made by the General Office, the DLGC will notify the **LOCAL GOVERNMENT**, in writing, of either approval or rejection of the submitted proposal.

The **DEPARTMENT** will not participate in any portion of a counter proposal which is closed prior to **DEPARTMENT** review, approval and acceptance

#### **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** will be responsible for providing a current monthly status of the right of way acquisition to the District Local Government Coordinator or State Local Government Coordinator. The status should include the following:

- Outstanding parcel status
- Parcels under negotiation
- Parcels under review
- Parcels being appraised
- Condemnations pending/filed
- If relocation is involved; Date of 1<sup>st</sup> contact ; If the parcel(s) is vacant or occupied

#### **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 Governments 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](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.

## **8.8 Acquisition of Right of Way from State Agencies**

Once the acquisition has been identified, a copy of the title report, the legal description, colored plats and location map are to be sent to the State Local Government Coordinator for acquisition. An emailed copy of the legal description and colored plats are the preferred method of submittal. A request for Transfer of Custody must be sent to the State Agency. Once executed, the final transfer of custody is made through the State Properties Commission.

## **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.

## **8.11 Property Management**

All Local Governments are responsible for their Property Management – UST's and Demolition. They are to follow all GDOT Policies and Procedures as described in Chapter 9. GDOT does not require local governments to use our contractors. If they acquire property in the name of the Department they must use contractors on our Specialty Contractors List to ensure all GDOT Policies and Procedures are followed. Whether property is acquired in GDOT or the Locals name and they use their own contractors they will be responsible for all work being done and the work will not be Reimbursable.

**Policies and Procedures of the Department in this chapter may be waived, altered, or modified at any time and at the full discretion of the Department and FHWA as necessary to accomplish the overall goals and objectives of the Department and FHWA, and as long as any waivers, alterations, and modifications of said policies and procedures are not in direct violation or contradiction with state and federal codes, of which will rule over any recommended waivers, alterations, or modifications.**