

## Ecology

# Section 404 Local Coordination Procedures - Overview

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## APPLICABILITY

The Local Coordination Procedures (LCP) framework describes a process to fulfill the Section 404(b)1 Guidelines of the Clean Water Act. The LCP (as signed in August 2019) applies to projects with substantial impacts to Waters of the US. These are projects that require an Individual Permit (IP) or a Regional General Permit (RGP) 35 through the US Army Corps of Engineers (USACE). Although the primary focus of the LCP is on major widening and new location projects, it applies to any project type anticipated to need an IP or RGP 35.

The LCP improves consistency between GDOT, USACE, and (for federal-aid projects) the Federal Highway Administration (FHWA). The GDOT role described herein will apply to in-house staff and consultant staff) for GDOT approval.

The LCP steps typically begin during early project planning and must be completed before environmental approval and permit application. This timing enables effective coordination between design and environmental disciplines to avoid and minimize impacts during concept development. At any stage of the LCP, GDOT, FHWA, and USACE can determine that a specific project no longer requires further coordination because it would avoid impacts to Waters of the US or minimize them below the thresholds for an IP or RGP 35.

The intent of the LCP is to guide projects through sequential steps to support development of practicable alternatives and identification of the preliminary least environmentally damaging practicable alternative (LEDPA) as defined in the Section 404(b)1 Guidelines. The term practicable means “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” The preliminary LEDPA considers the impacts to Waters of the US as well as cultural resources and other environmental constraints.

## REGULATIONS, GUIDANCE, AND POLICY

Federal regulations as well as GDOT policy require that projects avoid and minimize impacts to Waters of the US. The LCP also aligns with GDOT's Plan Development Process (PDP) to include sequential steps that support the development of alternatives with the goal to avoid and minimize environmental impacts.

The major laws and policies that guide the LCP are:

- > Section 404 of the Clean Water Act gives USACE permitting authority for impacts to Waters of the US and describes the goal to identify the least environmentally damaging practicable alternative (LEDPA), as defined in the CWA Section 404 Guidelines;
- > The National Environmental Policy Act (NEPA) ensures that federal agencies consider alternatives and environmental consequences when developing projects and programs; and
- > Other laws may be involved, such as Section 106 of the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act, and Section 7 of the Endangered Species Act. Requirements to address these laws will be based on applicable regulations and agency procedures in effect at the time of a pre-application meeting or draft permit application. These requirements must be addressed prior to USACE authorization of the permit.

## AGENCY PARTICIPATION

### Lead Federal Agency and Key Agencies

The key agencies involved in the LCP are GDOT, USACE, and, for federal-aid projects, FHWA. FHWA acts as the lead federal agency (LFA) on all federal-aid projects. FHWA involvement occurs only on those projects committed to federal funding for right-of-way and/or construction, or otherwise having another federal nexus that requires FHWA NEPA approval prior to permitting. For state-funded projects, USACE typically acts as the LFA if jurisdictional waters would be impacted.

### Commenting Resource Agencies

Commenting resource agencies are those with specific responsibilities for environmental resource protection. The resource agencies are invited to participate and comment throughout the LCP. Those agencies are the following:

- > Environmental Protection Agency (EPA);
- > US Fish and Wildlife Service (USFWS);

- > Georgia Department of Natural Resources (GDNR):
  - Environmental Protection Division (EPD);
  - Wildlife Resources Division (WRD);
  - Historic Preservation Division (HPD); and
  - Coastal Resources Division (CRD) where marshlands or tidally influence waters are involved.

In addition, for projects with tidally-influenced waters, marine species, or anadromous fish species, the following agencies may be invited to comment:

- > National Oceanic and Atmospheric Administration (NOAA) / National Marine Fisheries Service (NMFS); and
- > US Coast Guard (USCG).

Other agencies with a potential interest in a project should be invited by GDOT if warranted.

### Correspondence and Information

To maintain efficient communications through the LCP, all parties are encouraged to use email as a preferred method of correspondence and information exchange. For large files, options include GDOT's secure ftp site or any other electronic method approved by the parties involved the share files. Deliverables for LCP meetings may be a combination of electronic files and paper handouts depending on unique conditions of each project.

### Meetings

Key agencies and commenting resource agencies will discuss projects in the LCP process on a regular schedule. While meetings at GDOT offices will be a primary means of regular coordination, project-specific conditions can be considered in setting meetings or determining alternative means of communicating including email and phone/video conferencing. Further details about coordination meetings include:

- > An option will be offered in the regular schedule of coordination meetings between GDOT, FHWA, USACE and other resource agencies at quarterly Interagency Review Team (IRT) meetings, which are held in January, April, July, and October.
- > GDOT can arrange alternative meeting dates for projects where the IRT schedule does not accommodate the project schedule.
- > GDOT can arrange for the meeting to be held in or near the project area.
- > Additional project meetings or other communications can be scheduled at a time/date agreeable to Key Agencies and the relevant Commenting Resource Agencies.

## CHECKPOINTS

Consistent with GDOT's PDP milestones including procedures to address state and federal environmental laws, a project completing the LCP will have a series of checkpoints to complete prior to concept approval and the eventual permit application. As every project is different, the LCP allows for flexibility in how a project enters and exits each checkpoint. The checkpoints are described below:

### Checkpoint 1—Early Coordination / Project Need & Purpose

As part of the Project Team Initiation Process (PTIP) for a project, the GDOT project team will develop details such as basic justification and general location along with preliminary schedule and budget. Once GDOT develops the preliminary Need and Purpose and criteria for evaluating alternatives prior to field work, the project will be ready to introduce into the LCP. The project team will prepare for and request to attend the initial meeting with the key agencies, as Checkpoint 1. The purpose will be to introduce the project and describe the preliminary Need and Purpose, known existing constraints, project termini, funding source, and proposed approach to identifying the range of alternatives. The overview of known constraints should include available desktop data on Waters of the US, cultural resources, parklands, wildlife refuges, cemeteries, churches, neighborhoods, topographic challenges, and any unique environmental resources. The funding source is important to identify so that GDOT can notify FHWA to participate as LFA on federal-aid projects. Subsequent changes in LFA (i.e., switches between federal and state funding) may require a project to re-enter the LCP process, at the discretion of the LFA.

Following the meeting, GDOT will prepare a letter to document the findings from Checkpoint 1 and request agencies to agree with those findings, along with recommendations about the need to proceed with Checkpoint 2. The GDOT letter will serve as written summary of the Checkpoint 1 discussion and the agency input provided to date. The Commenting Resource Agencies will respond to the letter in writing with any agency concerns (red flags) regarding the proposed project and potentially affected resources, the preliminary need and purpose including project termini, proposed evaluation criteria, and the proposal to proceed to Checkpoint 2. The Key Agencies will provide agreement (or disagreement) with the preliminary project termini as well as a determination on the need to advance to Checkpoint 2.

### Checkpoint 2—Pre-Application / Alternatives

For projects proceeding to Checkpoint 2, GDOT will follow the PDP scope in applying conceptual engineering data and desktop research to narrow the range of alternatives based on the agreed upon selection criteria. When the supporting data is compiled, GDOT will begin preparing for Checkpoint 2. The timeline between Checkpoints 1 and 2 may vary depending primarily on the environmental resources located in the project area. A minimum

of two to four months is recommended to allow time for coordination with concept development tasks. For certain project types such as major widening, GDOT can recommend combining Checkpoints 1 and 2 into one meeting.

Checkpoint 2 provides an opportunity to describe the range of alternatives being considered for advancement and any relative comparisons conducted to date based on desktop analysis, such as number of resources within the alternative corridors. No field work is required for this level of analysis. In preparation for Checkpoint 2, GDOT will prepare and submit a pre-application package at least 15 business days in advance of the meeting to allow time for agency review and preparation. Resource agencies can submit questions/comments in advance based on review of the pre-application package or discuss them during the meeting for inclusion in the meeting minutes. The purpose of the pre-application meeting is to discuss potentially affected resources, alternatives considered to date, and optimal methods of field data collection. The discussion should include:

- > Proposed the level of field work.
- > Survey boundaries for each alternative.
- > Proposed determination on the need to advance to Checkpoint 3.

Following the meeting, GDOT will prepare a letter to document the findings from Checkpoint 2 and request agency consensus, including determination of the need for Checkpoint 3. The GDOT letter will serve as written summary of the Checkpoint 2 discussion and the agency input provided to date.

Within 20 business days of the Checkpoint 2 pre-application meeting, Commenting Resource Agencies will respond in writing with comments to GDOT regarding the alternative(s) carried forward. Based on the comments received and project details, USACE will determine whether the project will require a Practicable Alternatives Review (PAR) report and notify Key Agencies and Commenting Resource Agencies of the determination in writing. A PAR report will be needed if project impacts may require an RGP 35 or IP based on the desktop findings of Checkpoint 2.

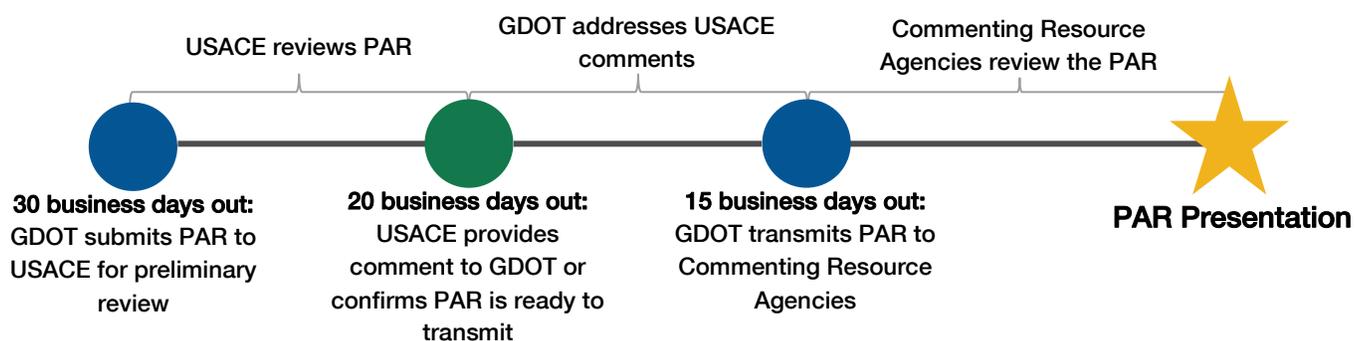
If the project is advancing to Checkpoint 3, a decision also will be made regarding the level of field work required prior to Checkpoint 3 and if the PAR presentation will be held in an office and/or at the project site.

### Checkpoint 3—PAR Presentation / Preliminary LEDPA

For projects proceeding to Checkpoint 3, the LCP defines steps to develop and present the PAR report. The PAR report will describe the range of alternatives investigated by GDOT and will compare estimated impacts. The PAR report is required only for those projects anticipated to require RGP 35 or an IP.

The two major milestones by GDOT for Checkpoint 3 are to prepare a PAR report and to present it to the Key and Commenting Resource Agencies. To ensure the presentation is effective, the PAR report will follow milestones for agency review prior to the meeting as shown in Figure 1:

Figure 1 – PAR Timeline



During the meeting, GDOT will present a summary of Checkpoints 1 and 2; discuss how any FHWA, USACE, and Commenting Resource Agency comments or recommendations were addressed; discuss how and why alternatives were considered; and discuss how and why the preferred alternative was identified and proposed as the preliminary LEDPA. Current best practices and preferences include use of electronic files for the presentation, which should be provided in advance of the meeting as well as the report.

Commenting Resource Agencies can provide comments on the PAR and preliminary LEDPA discussion during the PAR presentation or in writing within 10 business days of receiving PAR package. If the agencies agree at the outcome of Checkpoint 3, USACE will complete its analysis of the project within 10 business days of the meeting.

USACE will provide a letter to GDOT stating the agency agreement on the preferred alternative being the preliminary LEDPA. However, if USACE disagrees with the preliminary LEDPA, USACE will conduct an independent analysis and notify GDOT of its findings within 20 business days of the meeting.

## OTHER PROCEDURES

### Projects Determined by USACE to be Non-Compliant

In a rare instance, a project with substantial impacts to Waters of the US may not fit within the framework of this LCP. If a proposed project cannot comply with the LCP or its preferred alternative is determined by USACE not to be the preliminary LEDPA, the options allowed in the LCP are either to revise the project and re-initiate the LCP process at Checkpoint 2 Pre-Application; or to proceed at risk, ultimately to prepare and submit an

Individual Permit Application for the project, as proposed, and request a draft permit decision from USACE. The project team should consider schedule implications, such as the potential need to reopen agency consideration of alternatives late in the project schedule.

### New Rules, Regulation, Guidance or Procedures

If changes occur to applicable Federal or State laws affecting the LCP, GDOT, FHWA, and USACE will discuss how the new guidance or rulemaking will affect their respective roles or decisions. Any relevant changes will be updated in the guidebooks for LCP.

## *Guidebook Revision History*

Revision Description	Relevant Sections	Revision Date
Initial Publication	All	10/8/2020