

13 Utilities Coordination

13.1 General

- A. All utility relocation and acquisition issues should be defined and coordinated at the District level prior to seeking assistance from the General Office.
- B. The following guidelines/definitions are to be used in identifying the disposition of existing utilities:
 - 1. Public Utilities located within existing right of way are typically there by one of the following means:
 - a. Legally by Encroachment Permit granted to the utility owner from GDOT
 - b. Legally by Right of Way/Easement granted to the utility owner from GDOT
 - c. Illegal encroachment of the utility owner
 - 2. Public Utilities located within required right of way are typically there by one of the following means:
 - a. Legally by Right of Way/Easement granted directly to the utility owner
 - b. Legally as fee simple owner of the parcel
 - c. Illegal encroachment of the utility owner
 - 3. Private Utilities located within existing right of way are typically there by one of the following means:
 - a. Legally by Encroachment Permit granted to the utility owner from GDOT
 - b. Legally Right of Way/Easement granted to the utility owner from GDOT
 - c. Illegal encroachment of the utility owner
 - 4. Private Utilities located within required right of way are typically there by one of the following means:
 - a. Legally by Right of Way/Easement granted directly to the utility owner
 - b. Legally as fee simple owner of the parcel
 - c. Illegal encroachment of the utility owner

13.2 REQUIRED ROW/Utility Coordination meeting

- A. This REQUIRED meeting will be coordinated by the assigned OPD Project Manager (PM). The PM will be responsible for conducting and recording the meeting minutes. The meeting minutes will serve as the ROW/UTL Checklist and will be added to the ROW plans 1st submission for review. If a ROW/UTL Checklist is not provided with the plans, the ROW Transportation Specialist will request the checklist before a plan review is completed.

This meeting is to be held after PFPR responses have been approved (approx. 30 days after PFPR). The purpose of this meeting is to address ALL utility concerns on a project to determine what impacts (if any) existing or proposed utilities (private or public) will have on the ROW Phase. The goal is to determine if any Utility Rights will need to be added to existing easements, or add additional easements, as well as identify specialty reports (Cost to Cures, etc.), extended titles, etc. prior to Pre-Acquisition activities.

Final comments/results of the meeting need to be completed approximately 60 days prior to ROW plan completion, to allow time for plan revisions (if needed). This meeting, if done correctly, should help avoid project delays concerning utility items.

- B. This meeting is REQUIRED, however, it is understood that certain projects will not need this meeting. To waive the meeting, the Project Manager will need concurrence from the District Utility and ROW offices.
- C. Below is a list of items that need to be discussed/addressed at the ROW/Utility Coordination meeting:
1. Identify/discuss ALL utilities located on the project.
 2. Discuss any proposed utility relocations that will be handled thru utility agreements.
 3. Discuss potential utility easement replacements, and how this will be handled.
 4. Discuss the possible use of easement-limited agreements in lieu of Replacement Easements.
 5. Discuss private utilities on the project, and how they will be handled.
 6. Discuss any potential Cost to Cure (CTC) situations and illegal encroachments, which may affect the appraisal. This includes discussion on the replacement of meters, back flow preventers, service lines, sewer/septic lines, etc.
 7. Discuss any "Prior Rights" and "Reserved Rights" situations.
 8. Discuss use of construction and maintenance permanent easements for the right to place utilities, I.E any conversion of easements to include utility replacement rights.
 9. Discuss property management items (structures, billboards, parking lots, etc.), that may need utility coordination.
 10. Review/Discuss Property Titles. *Include in discussion any titles that may need to extend beyond typical attorney research period*

13.3 Policy

The Utilities and Right of Way Coordination Meeting should address utility ownerships, utility relocations and any other matters affecting right of way acquisition in relation to utilities including, but not limited to, the following:

- A. Right of way which the Department is obligated to purchase for the relocation of utilities should be shown on the right of way plans and acquired together with the mainline right of way.
 - 1. If a utility owner desires the Department acquire replacement Right of Way/Easement, the request should be made in writing by the appropriate utility owner to the District Utilities Engineer and submitted to the General Office Right of Way Plans Review Section before right of way plans are approved.
 - 2. Utility owner should provide a valid copy of their existing recorded easement. An affidavit of prescriptive rights may be substituted on a pre-approved case-by-case basis.
- B. Utility information which may affect right of way cost or acquisition should be shown on the right of way plans.
 - 1. All separate easement areas to be acquired for the relocation of utilities, if not included as part of the mainline right of way.
 - 2. All utilities, public or private, on the right of way affecting the proposed construction that have a bearing on the right of way costs are to be shown on the right of way plans with a note such as "Owner to relocate utilities as a cost-to-cure item through the appraisal process."
 - 3. The name of each utility should be shown indicating the type of utility and ownership. Only such utilities which may have a bearing on the right of way cost including those that will be relocated and require additional Right of Way or Easement.
- C. If a utility owner claims Prior Rights, the Right of Way Acquisition Team must verify through the assigned project title attorney that the prior rights claim is legally valid. The prior rights claimed by a utility owner may be within existing right of way, within required right of way, or possibly within both existing and required right of way.
- D. Occasionally, a utility owner will desire to Reserve Rights. This request occurs when a utility owner owns the subject parcel in which right of way is being acquired and wants to maintain the right to use the right of way for existing utilities. Reserved Rights will also assure the utility owner maintains the right for reimbursement if the Department requires relocation in the future. Proper appraisal and negotiation guidelines should be followed.

- E. An Easement Limited Agreement (ELA) may be utilized by the District Utilities Office to mitigate situations where a utility owner has a confirmed legal Prior Right within the existing or required right of way. The District Utilities Office should advise the appropriate Acquisition Manager assigned to the project when this method will be used. An Easement Limited Agreement (ELA) replaces the need for a “Reserved Rights” Right of Way Deed or the need to purchase a Replacement Easement.

13.4 Procedures

A. Acquisition of Parcels with Prior Rights

1. Prior Rights claims by utility owners should be addressed by identifying them at the coordination meeting held with the District Utilities Office and verifying with the assigned project title attorney.
2. Prior Rights claims can be any of the three scenarios:
 - a. Within existing right of way
 - b. Within required right of way
 - c. Within both existing and required right of way
3. When Prior Rights are confirmed to legally lie within the required right of way or when lying partially within the existing right of way and partially within the required right of way, the Right of Way Acquisition Manager should coordinate with the District Utilities Office to assure the specific prior rights situation is handled appropriately.
 - a. The District Utilities Office may desire to handle the situation by utilizing the Easement Limited Agreement (ELA); or
 - b. May ask the Right of Way Acquisition Manager to acquire a replacement easement(s); or
 - c. May allow the utility company to acquire their own replacement easement(s), only on a case by case basis with pre-approval from both the State Utilities Office and the Office of Right of Way. A detailed cost should be submitted by the utility company and the Department will determine the most cost effective and timely approach to pursue.

B. Acquisition of Parcels with Reserved Rights

1. Some utility providers own their parcels of real estate within a proposed project and may request to Reserve Rights within the required right of way needed from their parcel. This must be pre-approved by the Department on a case by case basis. The utility provider landowner would then convey a limited title to the Department, subject to the right to relocate their utilities back on to the required right of way taken.
2. The Pre-Acquisition Manager or Negotiator should contact the assigned review appraiser and make the reviewer aware of the reserved rights request, so the appraiser may address these rights in the appraisal report and reviewer may address on the 532 review report.
3. These procedures may be applied to Georgia Power Company, Municipal Electric Authority of Georgia Power and other utility providers on a case by case basis as approved by the General Office of Right of Way.
4. If the Department requires a temporary or permanent easement only, and no fee simple right of way, there will be no need for the utility provider landowner to request to reserve rights. The utility provider landowner would still own the underlying land in fee simple, subject to the easement needed by the Department.

C. Acquisition of Georgia Power Company Owned Parcels

Georgia Power Company (GPC) owns parcels with and without utilities to be relocated back onto the proposed right of way. Because of the lengthy process of determining the need to relocate existing utilities, GPC owned parcels should be appraised with and without “Reserved Rights.” (See Chapter 4 for details regarding valuation process.)

GPC owns multiple parcels of land across the entire state of Georgia. At their request, the Department has agreed to provide one point of contact for parcels owned by GPC. All correspondence with GPC should be made through the Assistant State Right of Way Acquisition Manager. Including, but not limited to, property owner meeting notifications, appraiser first contacts and negotiations for acquisition.

Prior to preparing an offer package for negotiation, the Right of Way Acquisition Manager should review the preliminary title report in order to identify utility ownership.

1. If a parcel is owned by GPC, then the released appraisal should be sent to the Assistant State Right of Way Acquisition Manager for negotiations. Appropriate plan sheets associated with the GPC parcel should also be forwarded to the Assistant State Right of Way Acquisition Manager for use in preparing the offer package.
2. Parcels owned by all other utility companies will be negotiated by the Right of Way Acquisition Team assigned to the project.

Once the appraisal is released for negotiations, a double offer (with “Reserved Rights” and without “Reserved Rights”) should be made on all parcels where required right of way is needed. A double offer is not necessary for parcels where the acquisition is for easement only. Offer packages for GPC “owned” parcels should be addressed to the following:

Georgia Power Company
Land Sales Department
Attention: Mr. Alan Witherow
BIN 10151
241 Ralph McGill Blvd., N.E.
Atlanta, Georgia 30308-3374

In preparing an offer package to purchase fee simple rights, GPC owned parcels should include the following documents:

- a. Offer Letter (*with and without reserved rights*)
- b. Statement of Estimated Values (*with and without reserved rights*)
- c. Option for Right of Way (*with and without reserved rights including Attachment “A” and “B”*)
- d. Availability of Incidental Payments
- e. Right of Way Brochure & Receipt for Brochure
- f. Owner’s Acknowledgement of Plan Receipt
- g. Summary Compensation Page (*from GDOT appraisal*)

In regard to closings, after the option is executed on parcels that require “Reserved Rights,” it is important for the settlement check to be made payable to the GDOT closing attorney’s escrow account. The closing attorney should then be advised to make checks for closing payable to GPC’s land sales fund holder “LAWYERS TITLE INSURANCE CORPORATION” showing GPC’s F.E.I. number on the check. The Right of Way Deed should include the “less and except” clause paragraph attached to the Option for Right of Way.

If the acquisition is for easement only with no fee taking, then GDOT checks should be made payable to “GEORGIA POWER COMPANY”, not Lawyers Title Insurance Corporation. The “less and except” clause will not be necessary when easement only is required.

D. Condemnation

If a settlement cannot be reached in a timely manner, then a Right of Entry should be requested from GPC owned parcels. If neither an option nor a right of entry can be obtained, then you must seek approval from the Right of Way Administrator to condemn a parcel owned by GPC.

If GPC has an easement across a parcel owned by a third party; and, condemnation becomes necessary to acquire said parcel, GPC *should not* be named in the condemnation petition. In fact, no public utility companies should be named in a condemnation petition. If questions arise as to the need to name a utility company, then seek guidance from the State Right of Way Acquisition Manager before doing so.

13.5 Quality Assurance Quality Control

All activities concerning the acquisition of Right of Way from utility companies 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 5 of the Right of Way Manual, under Quality Assurance, Quality Control.

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.