

General State-funded Environmental Process

Overview
Environmental Legislation for State-Funded Projects
GDOT State-Funded Environmental Process
Reminders

OVERVIEW

GDOT delivers its Construction Work Program (CWP) through a variety of funding mechanisms. Because the federal environmental review process is only required when federal funds are used or there is a federal action, GDOT has developed a separate environmental process for state-funded projects. The process must be followed for projects using only state funds for ROW and Construction (CST) activities. However, if a state-funded project requires a federal action, such as the need to acquire an easement from a National Park Service (NPS) unit, then the project may involve the federal environmental review process. As a result, not every state-funded project follows the same environmental compliance process.

This guidebook details the environmental legislation governing state-funded projects, provides a description of the state-funded environmental process, and offers reminders for dealing with some of the special circumstances related to state-funded projects.

ENVIRONMENTAL LEGISLATION FOR STATE-FUNDED PROJECTS

The Georgia Environmental Policy Act (1991)

The 1991 Session of the Georgia Legislature passed the Georgia Environmental Policy Act (GEPA) and Governor Zell Miller signed it into law on April 23, 1991. On July 1, 1991, the Georgia Environmental Protection Division (EPD) published GEPA Guidelines as directed by the law to serve as an information source to a decision maker in the implementation of GEPA. Under the guidelines, each accountable government official is ultimately responsible for determining whether or not a proposed government action may have a significant adverse effect on the quality of the environment.

Georgia Environmental Policy Act, Georgia Environmental Protection Division

Senate Bill 346

In 2016, the Georgia General Assembly passed Senate Bill 346 which amended GEPA. The Official Code of Georgia was amended to state “When a project of a department, municipality, county, or authority to construct or improve a public road or airport does not exceed \$100 million in costs, such project shall not constitute a proposed governmental action which may significantly adversely affect the quality of the environment and the requirements of this article shall not be applicable, except that an environmental evaluation shall be considered in the decision-making process, consistent with paragraph (3) of Code Section 12-16-2, when it is probable to expect significant adverse impact on historical sites or buildings and cultural resources.”

The above amendment does not eliminate the need for environmental studies on state-funded projects but does define which projects require a GEPA document and not. Other additional environmental laws may apply to a proposed project regardless of funding and must be complied with prior to construction activities. Environmental technical studies are still required even when a GEPA document is not required.

GEPA or NEPA

Funding

As an early project activity, the Environmental Analyst should determine the project funding source(s) for the ROW and CST phases. To advance a project under the state-funded environmental process, both the ROW and CST phases should be solely funded by state dollars, which is most often represented by the funding code HB170 (this may change over time so please verify with your GDOT Project Manager [PM]). In some instances, a combination of state and local (city or county) funds may be utilized which would not prevent the project from advancing through the state-funded process. However, any use of federal funds for ROW or CST would require environmental compliance through the National Environmental Policy Act (NEPA) process. Funding can be checked using the GDOT Preconstruction Status Report (PSR); however, the funding should always be verified with the GDOT PM.

Where can I find funding information?

1. Visit GDOT’s Project Database “GeoPI” <http://www.dot.ga.gov/DS/Maps/geopi>
2. Type in your project number in the search bar and hit enter
3. Locate your project under the “Search Results” on the right and click the “More

Details” button ()

Federal Action

Funding is not the only project action that determines if a project or portion of a project requires NEPA compliance. State-funded projects may have a federal action and may

General | State-Funded Environmental Process

require that GDOT prepare a NEPA document even if there is not federal funding. Examples of projects include:

- > Improvements to interstate facilities which could require the whole project or a portion of the project to comply with NEPA. For example, a corridor widening that makes improvements to an interstate interchange may require NEPA considerations just for the interchange while the remainder would follow the state-funded process. This type of scenario should be coordinated with the lead federal agency and logical termini considerations applied to that federal action early in the environmental process.
- > Federal permits may require GDOT or the permitting agency to comply with NEPA prior to the issuance of their permits. Early in concept development, an evaluation of the project corridor for other federal permits should be completed by the Environmental Analyst to determine if any other NEPA actions may be required so that they can be accounted for in the project delivery workplan and schedule. The GDOT Project Team Initiation Process (PTIP) should complete an early evaluation for these requirements but the analyst should do their own due diligence at the project start up activities.
- > ROW or easements from within federally owned lands (e.g., NPS, US Forest Service [USFS], or the Tennessee Valley Authority [TVA]) likely would require NEPA compliance just for the ROW acquisition activity. In these instances, early coordination should take place with the federal owner of the property to determine the NEPA needs. Most federal agencies have slightly different NEPA requirements that need to be identified early so they can be implemented during the Resource Identification and Technical Studies phases. In addition, if a NEPA document is required, the document would likely need to be approved prior to the finalization of the ROW activity. Thus, the GDOT Environmental Analyst would coordinate with the federal landowner to determine who will be responsible for completing the NEPA document and any other associated studies and to ensure the proper timing is incorporated into the baseline schedule.

Lead Agency Identification

The resource identification activities, studies, and reports are not any less stringent for state-funded projects; however, the identification of the potential lead federal agency does not occur until later. For federal-aid projects, the Environmental Analyst most often knows the lead federal agency based on who is funding the federal portion of the project (typically either the Federal Highway Administration [FHWA] or the Federal Transit Administration [FTA] for most of GDOT's federal work program). For most state-funded projects, the involvement of a lead federal agency may not be identified until the environmental team gets into the Technical Studies phase and determines if any federal actions are required. The lead federal agency for GDOT's state-funded program will most often be the United

General | State-Funded Environmental Process

States Corps of Engineers (USACE) due to the need for a Section 404 permit. If a state-funded project has no federal actions, there likely would not be federal agency involvement.

Scoping-Only Projects

Please note that GDOT also has scoping-only projects with no ROW or CST funds programmed. The goal of the scoping project is typically identified when it is programmed and should be included as part of the project justification statement. Some scoping-only projects have the goal of identifying the least impactful alignment – say for a bypass. Other scoping-only projects may be a review of a corridor to identify if one large project or several smaller projects need to be programmed. Scoping-only projects may or may not include the full resource identification activities, are dependent on several factors, and may consist only of a desktop review. The PTIP process typically identifies the level of environmental review to be completed. When a more detailed environmental review will be completed, it will most likely follow the state-funded process as ROW or CST funds are not typically identified. The Environmental Analyst should check with the GDOT PM to determine the environmental review expectations for any scoping-only project.

GDOT STATE-FUNDED ENVIRONMENTAL PROCESS

Initiation of Resource Identification

The Environmental Review process for state-funded projects begins when Design delivers the Environmental Survey Boundary (ESB) to the Environmental Analyst. Once received, the Environmental analyst will distribute to the Environmental Subject Matter Experts (SMEs) to start the Ecological and Cultural Resources resource identification for the subject project. Environmental resource identification on state-funded projects mirrors the effort made during the NEPA process. Please refer to the GDOT ESB Guidance and other Environmental Procedure Guidebooks for specific resource identification requirements.

Environmental Survey Boundary (ESB) Guidance,
Georgia Department of Transportation

Early Coordination with Other Agencies and Stakeholders

State-funded projects require the completion of early coordination with a variety of federal, state, and local environmental agencies and stakeholders just as federal-aid projects. Early coordination requirements for GEPA can be found on GDOT's Office of Environmental Services' (OES) SharePoint site within the NEPA library. In compliance with GEPA, the Cultural Resources team will send out a Notification Letter to the 20 federally recognized tribes who claim Georgia as their ancestral homeland as well as to other entities with knowledge of historic properties in the project area. A Section 106 notification letter will be transmitted much later in the project development process once impacts to Waters of the US (WOTUS) are known. As with all projects, the Ecologist conducts early coordination with US Fish and Wildlife (USFWS) and the Georgia Department of Natural Resources (GADNR)

General | State-Funded Environmental Process

to identify federal and state protected species. Please refer to each section's SharePoint site for more guidance on early coordination activities.

Identification of Other Federal or State Actions

During the Resource Identification phase for state-funded projects, the Environmental Analyst should also review the project area to determine if there are any federal or state actions that require environmental compliance. The topographic survey team typically creates a landowner database which would identify federal- and state-owned properties. In addition, the PTIP review minutes likely will identify government-owned properties. State properties tend to have fewer environmental implications than federally owned parcels as state-owned properties are not subject to NEPA. However, state properties might include mitigation bank sites which could affect the permit or could be properties with liens (which should be coordinated with the GDOT ROW office). Typically, federal properties identified in Georgia include NPS units, USFS lands, USACE property, military bases, and TVA properties. If the parcel can be completely avoided, additional NEPA requirements for that parcel are not typically required.

Other federal actions could include interaction with the interstate, impacts to a lake regulated by the Federal Energy Regulatory Commission (FERC), or others. Not all federal actions automatically require GDOT to comply with NEPA (e.g., a Section 404 permit does not require GDOT to complete a NEPA document). When identified, coordination with the proper agency staff should be completed early to understand any environmental compliance requirements and roles and responsibilities.

Local Coordination Procedures

During the early project activities for larger state-funded projects, the project team should evaluate the need to begin agency coordination through GDOT's Local Coordination Procedures (LCP) for Section 404(b)(1) for the Clean Water Act. The LCP is part of GDOT's Plan Development Process (PDP) which includes sequential steps to support development of alternatives and identification of the preliminary Least Environmentally Damaging Practicable Alternative (LEDPA). The LCP is comprised of three checkpoints with Checkpoint 3 being the Practicable Alternatives Review (PAR), which is needed for a Regional General Permit 35 or an Individual Permit. Checkpoint 1 can occur as soon as the development of a preliminary purpose and need and the project location has been identified. Checkpoint 2 can occur prior to the completion of fieldwork with its primary purpose to include the confirmation of the alternatives being carried forward. While primarily for new location and widening projects, the LCP does apply to any project with a potential to substantially impact WOTUS. Therefore, early identification of the need to follow the LCP is critical to maintain the project's schedule.

Avoidance and Minimization Measures Meeting

The completion of the resource identification activities phase for state-funded projects concludes with the completion of the survey reports for Cultural and Ecological resources and the delivery of delineations to design. During the Resource Identification phase,

USACE's jurisdiction within the project has not been determined. Thus, agency concurrence on the resource survey reports will not be obtained at this time. The next step would be to advance the project to the Avoidance and Minimization Measures Meeting (A3M). The purpose of this meeting is to consider the potential impacts and agency consultation requirements for each environmental resource. The Designer shall consider avoidance and minimization measures and the feasible design efforts. If avoidance and further minimization is not feasible, mitigation options should be discussed. Please refer to the February 16, 2018 Interdepartmental Correspondence for more guidance on the A3M process:

A3M Process February 16, 2018 Interdepartmental Correspondence, GDOT Office of Environmental Services

At the conclusion of the A3M, the project Designer will prepare Preliminary Plans based off the A3M so that the assessments of effects (AOEs) can advance, beginning what is referred to in the P6 schedule as the Technical Studies phase.

Technical Studies Phase

Scope of Analysis

As a first step during the Technical Studies phase, a Scope of Analysis (SOA) request should be submitted by the Ecologist to the USACE project manager. The SOA request includes a map of the impacted WOTUS so that USACE can determine their jurisdiction; consequently, the SOA cannot be coordinated until impacts to WOTUS are determined unavoidable. Once USACE determines their SOA, the Section 106 process can begin. An SOA determination from the USACE is always required regardless of the presence or absence of cultural resources. A Section 106 Notification Letter is prepared at this time for the area under USACE's jurisdiction. For more information on the SOA process, please refer to:

USACE Coordination Instructions, GDOT Office of Environmental Services

Assessments of Effects

While the SOA is underway, preparation of the Ecology Assessment of Effects Report (AOER), Air AOER, and Cultural Resources AOER will begin. Please note that while Noise Impact Assessments are not completed for state-funded projects, noise coordination may be needed for the Cultural Resources AOER. The SOA results do not affect the Ecology and Air AOERs. If USACE takes full jurisdiction over a project area, the full reports for cultural resources are sent to the State Historic Preservation Officer (SHPO) to begin the Section 106 process. If USACE takes jurisdiction over only a portion or portions of the project corridor, all Cultural Resource reports must be repackaged and only results within the

General | State-Funded Environmental Process

jurisdictional areas are transmitted to the SHPO and USACE. The jurisdictional area varies project to project and the Section 106 process cannot start until USACE makes this determination. For more information on the Section 106 Process for both state-funded and federal-aid projects, please refer to GDOT's Section 106 Cultural Resources Manual and the Cultural Resources Environmental Procedures Guidebooks.

Section 106 Cultural Resources Manual,
GDOT Office of Environmental Services

If a state-funded project does not have any impacts to WOTUS or any other federal actions, the Technical Studies phase is considered complete once GDOT has approved all AOERs, and for Cultural Resources, once any required mitigation for adverse effects is complete (see Cultural Resources Environmental Procedures Guidebooks). For most projects, this completes the environmental studies required prior to Preliminary Field Plan Review (PFPR). For any project with a cost over \$100 million, the Environmental Analyst would complete the appropriate GEPA document.

If a state-funded project does have impacts to WOTUS, report coordination with USACE based on the SOA should start. Once USACE has completed any coordination required for agency consultation processes like Section 7 Consultation under the Endangered Species Act or Section 106 under the National Historic Preservation Act, the Technical Studies phase would be considered complete.

GEPA

The Scoping (SCP) or PE phases of a project are not subject to NEPA or GEPA so it is only funds for the ROW or CST phases that determine the environmental compliance requirements. For projects that the ROW and CST phases are completely state-funded, the Environmental Analyst needs to determine the appropriate level of documentation required to comply with GEPA, if any. If any portion of the ROW or CST phases are federally funded, the project would need to comply with NEPA. Most projects are exempt from GEPA documentation because total project cost are generally below \$100 million. If a state-funded project's total cost exceeds \$100 million, GEPA documentation would be required: GEPA Type A, GEPA Type B, or Environmental Effects Report (EER). If needed, the type of GEPA documentation required is based off the project type and impacts. More information concerning the documentation requirements can be found in the OES SharePoint NEPA Library.

Permitting

Just like a federal-aid project, a state-funded project may require a USACE permit or Buffer Variance from Georgia EPD. For state-funded projects, OES adheres to the same permitting schedule as federal-aid projects which require certifications 11 weeks prior to the let date to be considered on-time. Therefore, the design team is still required to produce lock down

plans per the baseline schedule to allow enough time for the permit to be obtained prior to the deadline for environmental certification. Please refer to the GDOT Section 404 permit and buffer variance guidebooks for more information.

REMINDERS

- > Projects within the GDOT CWP are often split-funded to deliver projects on-time based on the availability of funds. Typically, the funding of either the ROW or CST phases with federal funds requires compliance with NEPA. The Environmental Analyst should always look up the funding type and verify as correct with the GDOT PM. Once confirmed, the funding type or types should be shared with the environmental team and a determination to follow either the state-funded or federal-aid process should be made. In some instances, GDOT may decide to adhere to the federal process and state-funded process if they want to retain the ability to utilize federal funds in the future. This information should be relayed to the environmental team by the GDOT PM.
- > Section 6(f) refers to a section of the Land and Water Conservation Fund (LWCF) Act of 1965. Per information presented by NPS, the LWCF Program provides grants to States and local governments for the acquisition and development of public outdoor recreational areas and facilities. Section 6(f)(3) of the LWCF Act prohibits the conversion of property acquired or developed with grants from this fund to a non-recreational purpose without the approval of the NPS. Most importantly to GDOT's state-funded program, Section 6(f) applies to all transportation projects involving possible conversions of the property whether or not federal funding is being utilized for the project. This differs from Section 4(f) of the USDOT Act which applies only to USDOT projects – typically through the use of federal funds from those agencies for project construction. For state-funded projects, the Environmental Analyst should identify if any LWCF recreational areas exist and if so, begin coordination with NPS.
- > For all projects, it is very important that the environmental project team coordinate closely with each other. For state-funded projects, coordination is particularly important because impacts to WOTUS determine the scope of USACE jurisdiction and the extent to which Section 106 review is required for a given project.
- > State-funded projects do have some opportunities for schedule flexibility between the environmental and engineering deliverables in that ROW funds can be authorized prior to the conclusion of technical studies; however, the recommendation is for all technical studies and agency coordination be complete prior to the PFPR. Adhering to this process mitigates any risk of agency disagreement which could result in revisions to the environmental studies, design, and purchased right-of-way. Any deviation from the standard process should be discussed with the GDOT PM and GDOT Environmental Team as soon as the deviation is determined as a possible need.

General | State-Funded Environmental Process

Guidebook Revision History

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