

Module 6

Right-Of-Way, Other Land, and Utilities

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Section 1

Introduction to Right-Of-Way, Other Land, and Utilities

TxDOT has cooperated with Local Governments (LG) in the acquisition of real property and utility relocation for many decades. The intersections of LG roads with the State highway system and funding program requirements are the basis for close cooperation.

TxDOT ROW Division has developed the Real Estate Acquisition Guide for Local Public Agencies (LPA Guide). The Internet link to the Real Estate Acquisition Guide is as follows: <http://onlinemanuals.txdot.gov/txdotmanuals/lpa/index.htm>.

Procedures related to Right-Of-Way and Other Land

Land transactions that occur between TxDOT and Local Governments are divided into two broad categories for the purposes of these Local Government Project Procedures: (1) Right-Of-Way for roads; and, (2) interests in land used for other purposes.

1. Under the first category, Right-Of-Way, the following are the common situations:
 - The Local Government is receiving funds from TxDOT that will be used by the Local Government to purchase land for a LG system project or on-system project. In this case, the LG will use TxDOT's procurement process, policies and forms to acquire title to the property, and comply with the requirements of the federal and state funding program that is the source of the funds. For example, if state funds are utilized in any portion of the project, state processes, policies, procedures and forms will be utilized in addition to the requirement to comply with Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amendments thereto as required by the Texas Property Code, Section 21.046.

It should be emphasized that even where no federal funds are being utilized for right of way acquisition, due to the possibility of federal funds being utilized in almost all state system construction projects, all right of way acquired for state system projects and for LG system projects where federal funding is utilized, must fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the applicable Federal Regulations associated with this Uniform Act (both for the land acquisition process and procedures and for any associated applicable relocation procedures).

- The Local Government is not receiving funds from TxDOT, but there is federal participation in any part of an off-system project. In this case the LG will use local procedures, policies and forms to acquire title to the property, and comply with the federal funding program that is the source of the funds. The LG will comply with all requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amendments thereto, which is applicable to political subdivisions of the state under Texas Property Code, Section 21.046. The LG will maintain appropriate records to allow TxDOT to review the right of way acquisition process to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the applicable

Federal Regulations associated with this Uniform Act (both for the land acquisition process and procedures and for any associated applicable relocation procedures.

2. The second category, interests in land used for other purposes, relates to land that will be acquired for purposes other than highway Right-Of-Way. One example of such real property interest includes the acquisition of, or leasing of, real property for enhancement projects (such as the Frontiers of Flight Museum Project in Dallas at Love Field, which is on leased land.). A second example would be acquisition of land by a LG for an Intelligent Transportation System central communications building. In these cases, specific program rules may impose unique requirements on the LG. For example, a leasehold interest in real property for an enhancement project must be for at least 10 years and condemnation for property acquisition for an enhancement project is not allowable.

Note that if real property is acquired by the LG for a project other than roads, the same requirements that are listed under item #1 will be in effect.

For general procedures relating to both categories, there are two key sources of procedural information and legal requirements:

1. The Master Advance Funding Agreement (MAFA) Provision 13 provides a brief, but detailed, overview of legal requirements relating to this matter. This six-page provision covers the case of purchase by the LG for use on a LG road, as well as purchase by the LG for use on the State Highway System. The following link is to the MAFA: <ftp://ftp.dot.state.tx.us/pub/txdot-info/cso/mafafinal.pdf>
2. The Right-Of-Way Division Manuals provide several volumes of detailed information including links to necessary forms, extensive legal citations, and a process flowchart. Important summary material is found in Volume 1, Section 1 and Section 2, which include a Project Development Overview and examples of Contractual Agreements. Within this manual, Local Governments (LGs) are frequently referred to as Local Public Agencies (LPAs). In this manual, if a key word search is made on the term “LPA” nearly 600 citations will be found. The following link is to the Right-Of-Way Division Manuals:

<http://onlinemanuals.txdot.gov/manuals/AlphaList.html#l R>

Procedures Related to Utilities in the Right-Of-Way

If utilities are located in the highway Right-Of-Way, they will frequently need to be relocated to allow for construction of a highway project. Depending on the terms of the Advance Funding Agreement (described in Section 3 of the LGPP), either the Local Government or the State may be the party responsible for utility relocation.

The following are key sources of information and legal requirements:

- ◆ The Master Advance Funding Agreement (MAFA) Provision 6 provides a brief, but detailed, overview of legal requirements. This provision indicates that the Local Government is usually responsible for utility matters, however, by specific agreement, the State may assume this responsibility, particularly if the project is on the State

system. When the State assumes all of the utility adjustment responsibility it should be noted as inclusive of both funding and performing the physical coordination activities of the adjustment. If the State assumes a portion of the responsibility, either financial or the actual coordination of the adjustments, the responsibilities of both parties should be provided. The following link is to the MAFA:

<ftp://ftp.dot.state.tx.us/pub/txdot-info/cso/mafafinal.pdf>

- ◆ There are three important citations in the Texas Administrative Code that relate to this matter. These citations are:
 - State Participation in Relocation, Adjustment, and/or Removal of Utilities at [43 TAC §21.21-23](#)
 - Utility Accommodation at [43 TAC §21.31-21.56](#), inclusive.
 - Construction Cost Participation at [43 TAC §15.55](#)
- ◆ TxDOT Right-Of-Way Division *Utility Manual*. This manual is available in paper form and may be purchased from TxDOT through the publication list at the following website: <http://www.dot.state.tx.us/gsd/pubs/rowpubs.htm> or viewed on the TxDOT website http://www.txdot.gov/services/general_services/manuals.htm.
- ◆ Many TxDOT utility regulations are related to federal law, due to federal funding sources for many projects. The applicable federal regulations are found in [23 CFR Subparts 645\(A\) and \(B\)](#).

Procedures Related to Providing Utility Service to Projects

When it is necessary to extend utility service to projects such as a new building or rest area, the party that is constructing the project usually provides for extension of utilities such as water service, electric service or telecommunications service. Usually this is handled in the customary fashion of the local utility provider.

If a special form of contract is necessary, the TxDOT district office may contact the TxDOT Contract Services Office for a form Utility Extension Agreement that may be modified with the advice of legal counsel to handle special conditions. Alternatively, the LG may use its own legal counsel for this purpose, if the facility will be owned and operated by the LG.