

ROW Real Estate Acquisition Guide for Local Public Agencies



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Manual: *ROW Real Estate Acquisition Guide for Local Public Agencies*

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Purpose

This revision is intended to update the *ROW Real Estate Acquisition Guide for Local Public Agencies* to match current requirements.

Changes

In [Chapter 3, Section 3 Negotiations](#), clarified that the LPA must approve just compensation values.

Added new [Chapter 5](#) regarding the Transportation Alternatives Set-Aside Program.

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Archives

Past manual notices are available in a [pdf archive](#).

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Chapter 1 — Introduction

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Section 1 — Purpose of this Guide

Purpose

The right of way acquisition process is highly complex. It is also governed by federal and Texas laws. This guide is not intended to be an in-depth instructional on acquiring right of way. Instead, the purpose of this guide is to provide local public agencies (LPAs) a basic understanding of the right of way acquisition process.

For more detailed treatment of the right of way acquisition process, the LPA should consult the Texas Department of Transportation's (TxDOT's) right of way manuals. This guide contains links to the corresponding TxDOT manuals for further information.

LPA Compliance Duties

A LPA project that is federally funded (in any part) must demonstrate that it will use approved right of way procedures for acquisition and other real estate activities, and that the LPA has the ability to comply with federal requirements. The LPA can do this through one of the following methods:

- ◆ certify in writing that the LPA will adopt and use TxDOT's right of way manuals;
- ◆ submit its own right of way manual for review and determination whether it complies with federal and Texas requirements, together with a certification that once the reviewing agency approves the manual, the LPA will use the approved manual;
- ◆ submit for review and approval a Real Estate Acquisition Management Plan (RAMP) that describes the procedures the LPA intends to follow for a specified project, along with a certification that if the RAMP is approved, the LPA will follow the approved RAMP for the specified project(s).

Note that the RAMP may be used by a LPA only if the LPA infrequently carries out Title 23 projects, and the project is non-controversial and not complex.

If the LPA is acquiring right of way for a TxDOT project, it will make its certification (or submission) to TxDOT. TxDOT will be responsible for monitoring the LPA's compliance with federal law on any project that involves federal funds, even if the project is not a TxDOT project.

Section 2 — Authority

Authority

The Fifth Amendment of the Constitution of the United States and Article 1, Section 17 of the Texas Constitution protect private property rights. Accordingly, a LPA may acquire private property for public use only under certain conditions. Both federal and Texas laws provide the conditions under which a LPA may acquire right of way.

Federal Law

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly called the *Uniform Act*, is the primary law for acquisition and relocation activities on federal or federally-assisted projects and programs. This law was intended to make public acquisition of private property as fair and equitable as possible.

Failure to comply with the provisions of the Uniform Act will result in a denial of federal participation in current and future project costs, even if no federal funds were used to acquire right of way.

State Law

[Texas Transportation Code](#), Chapters 201-250 and [Texas Property Code](#), Chapter 21, are the primary sources of state law for acquisition and relocation activities related to the state highway system. These statutes are supplemented with administrative rules provided in [Title 43 of the Texas Administrative Code \(TAC\), Part 1](#), Chapters 1, 2, 5, 6, 15, and 21.

Section 3 — ROW Acquisition Overview

Phases of Acquisition

The right of way acquisition process can be divided into five general phases:

Funding. This phase involves a written agreement between TxDOT and the LPA. The agreement determines which party will acquire the right of way, and how much funding (if any) each party will contribute for right of way acquisition.

Right of Way Acquisition. In this phase, the acquiring party appraises the right of way needed for the project, negotiates its purchase, or, if necessary, condemns the interests to be acquired. A [Right of Way \(ROW\) Acquisition Flowchart for LPAs](#) is available in PDF format.

Utility Accommodations. In this phase, the acquiring party relocates any utilities in conflict with the project.

Relocation. This phase deals with making provisions for the fair and equitable treatment of persons displaced as a result of federal or federally-assisted and state programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

Project Closeout. The LPA submits to TxDOT its project records, acquisition instruments, and a certification that it has complied with TxDOT policies and applicable federal and Texas laws.

Note that the Acquisition, Utility Accommodation, and Relocation phases occur simultaneously, rather than sequentially.

Section 4 — Answers to Your Questions

TxDOT Contacts

TxDOT's Right of Way Manuals, *ROW Appraisal and Review Manual*, and *ROW Utilities Manual*, **and especially** TxDOT Right of Way personnel should be consulted for answers to specific questions and problems. Please contact your local TxDOT District Office LPA Coordinator. [District](#) office addresses and telephone numbers may be accessed through the Internet.

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Section 1 — Types of Right of Way Agreements

Overview

An agreement must be executed by TxDOT and the applicable LPA on all projects with state reimbursement. The agreement will give details about the project and will specify which party is responsible for the acquisition of the right of way. In any case, the purchase of right of way on any designated highway on the state highway system must be in accordance with the [Uniform Act](#) if federal funds are used in any phase of the project, including construction.

The standard type of Right of Way Agreement is the Agreement to Contribute Right of Way Funds (Fixed Price). Under the standard agreement, the LPA's financial contribution is a fixed amount. That amount can be adjusted only under certain circumstances. Please see [43 TAC 15.52\(3\)\(A\)\(i\)](#) for those circumstances. If the project comes in under budget, the LPA does not receive a refund of the difference.

The other type of agreement is the Agreement for Right of Way Procurement. Under this kind of agreement, the LPA contributes a specified percentage of the actual right of way costs, capped at ten percent. This agreement may be used only if approved by TxDOT's Executive Director.

Regardless of the type of agreement used, the acquiring agency is responsible for all aspects of the acquisition process as detailed in the agreement between the parties.

Through these agreements, TxDOT will authorize and request the LPA to proceed with ROW acquisition and agrees to reimburse the LPA for its share of costs incurred according to the agreement's provisions. The agreement dictates that the LPA has the responsibility to acquire all needed right of way and to obtain acceptable title in the name of the State of Texas.

Section 2 — Economically Disadvantaged Counties

Procedure

Acquisition procedures for counties designated as economically disadvantaged are the same as for non-designated counties, or are as stipulated in the agreement, except that the Texas Transportation Commission may adjust the amount of local funds to be contributed. Note that all cities situated in a county that has been designated as “economically disadvantaged” are also eligible for adjustment of their participation ratio. Refer to [Appendix A](#), Disadvantaged Counties, in this guide for eligibility requirements.

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Section 1 — TxDOT's Monitoring of LPA Acquisition

Overview

Federal law requires any governmental entity that acquires right of way to maintain adequate records of its acquisition and displacement (relocation) activities with enough detail to demonstrate compliance with the Uniform Act. These records must be retained for at least three years after each property owner or person relocated from the property receives his or her final payment. It is imperative that the LPA keep and retain these records.

Federal regulations also require TxDOT to document that the LPA has complied with the Uniform Act. TxDOT will be unable to determine compliance if the LPA does not maintain adequate records. While TxDOT reviews the LPA's compliance, the LPA must still certify that it has complied with all applicable laws by signing the following certification:

“ .certify that right of way for_____ has been acquired according to policies of the Texas Department of Transportation and in accordance with applicable Federal and State laws governing the acquisition policies for acquiring real property. Documentation for compliance with these requirements is available for audit in our files. “

A standard form for this certification has not been printed because some LPAs may prefer to furnish it in the form of a resolution while others may wish to have it signed by a LPA official. Certificates are required for each project.

Section 2 — Administrative Requirements to Begin Right of Way Acquisition

General Requirements

Before a LPA can acquire right of way for a project on the state highway system (on-system), the following requirements must be met:

- ◆ Texas Transportation Commission (Commission) approves the project.
- ◆ The project receives environmental clearance.
- ◆ TxDOT approves a right of way map, property descriptions and parcel plats (See the *ROW Preliminary Procedures for the Authority to Proceed Manual*, [Chapter 4, Surveying, Maps, and Parcels](#)).
- ◆ Federal and/or state funding for right of way acquisition has been approved.

Once all prerequisites have been met, TxDOT's LPA Coordinator will advise the LPA when it may begin acquisition activities.

Advanced Acquisition

In limited circumstances, a LPA can acquire right of way before a project receives environmental clearance. Any acquisition made before environmental clearance must come from the LPA's funds and is done totally at the LPA's sole risk. See the *ROW Acquisition Manual*, [Chapter 3, Section 6, Advance Acquisition of Right of Way \(for LPA\)](#).

Required Processes and Procedures

If state funds are used on any portion of an on-system project, the LPA must follow TxDOT's processes and policies, and use TxDOT's forms in the purchase of right of way. In addition, the LPA must comply with the Uniform Act for all on-system projects and for any off-system projects that receive federal funding.

Section 3 — Negotiations

Overview

This section provides a brief overview of the negotiation process. For more details, see the *ROW Acquisition Manual*, [Chapter 5, Right of Way Property Acquisition](#).

Policy Regarding Interests to be Acquired

For on-system projects, two types of property interests are acceptable: fee simple title and easements. Normally, fee simple title, less oil, gas and sulfur will be acquired. In rare circumstances, TxDOT will accept right of way easements. See the *ROW Acquisition Manual*, [Chapter 15, Section 1, Title Requirements: Policy Regarding Title to be Acquired](#) for more information.

Informational Notices

The LPA must notify property owners of its intent to acquire the property owners' property for right of way purposes. The LPA must also give the property owner the opportunity to accompany the appraiser during the inspection of the property. This may be offered in the informational notice, or in another pre-appraisal contact. See the *ROW Acquisition Manual*, [Chapter 5, Section 3, Informational Notice to Owners Required](#).

Appraisal

Before initiating negotiations, the LPA must appraise the property in order to establish an amount the LPA believes is just compensation for the interest to be acquired. The LPA must approve the just compensation value as this task is not delegable to a consultant. In limited circumstances, an appraisal is not required.

Federal law requires two levels of appraisal: value appraisal and review appraisal. The value appraiser cannot also conduct the review appraisal. For both levels of appraisal, the LPA must use appraisers approved by TxDOT.

See the *ROW Appraisal and Review Manual*, [Chapter 8, Section 2, LPA Appraisal Guidelines](#) for in-depth treatment on appraisal standards and review requirements, and [Chapter 3, Section 5, Procedures on Appraisals of Specific Types & Situations](#) for guidance on specific appraisal situations such as advertising sign interests and fences.

Offers

Under Texas law, two offers must be made: an initial offer and a final offer.

Once the LPA has established the just compensation for the property, it must promptly make its initial written offer to purchase the property for no less than the full amount believed to be just compensation. This initial offer must be sent certified mail, return receipt requested, and also include a copy of the appraisal on which the offer is based. The initial offer must also include any and all appraisals produced or acquired by the LPA that relate to the owner's property and were prepared within the 10 years preceding the date of the offer. TxDOT also strongly suggests that the LPA include a copy of the Landowner's Bill of Rights with the initial offer, as that document must be given at least seven days before a final offer is made.

The property owner must be given at least 30 days to review the initial offer. After at least 30 days from the date the initial offer is made, the LPA should send a final offer letter to the property owner. If not already included with the initial offer, include a copy of the written appraisal, a copy of the conveyance instrument sought, and a copy of the Landowner's Bill of Rights.

See the *ROW Acquisition Manual*, [Chapter 5, Section 7, Landowner's Bill of Rights and Written Initial Offer to Purchase as Required Elements of a Bona Fide Offer](#) for additional guidance.

Special Acquisition Situations

The acquisition process can differ based on the type of property owner involved or due to legal constraints. These situations include but are not limited to the acquisition of federal land, state land, railroads, cemeteries, and advertising sign interests. Consult the [ROW Acquisition Manual](#), Chapters 5, 7, 10 and 11 for further guidance.

In addition, a property owner may choose to donate his or her property to the LPA. See the *ROW Acquisition Manual*, [Chapter 6, Section 6, Procedures for Receiving Donations \(for LPA\)](#).

Section 4 — Eminent Domain

Overview

If a LPA cannot obtain a conveyance by negotiation, it will initiate condemnation proceedings. But, the LPA must not initiate condemnation proceedings until TxDOT authorizes such action. While the LPA is responsible for conducting the condemnation proceedings, TxDOT has the right to become a party to those proceedings.

The *ROW Eminent Domain Manual*, [Chapter 4, LPA Acquisition by Eminent Domain](#) has a detailed breakdown of the eminent domain process.

Section 5 — Closing

Prerequisites to Closing

Before the LPA can close the sale of a property, it must provide clear title, title insurance and resolve outstanding property tax liabilities. For more information on clouds on title and title insurance, see the *ROW Acquisition Manual*, [Chapter 15, Title Requirements and Title Insurance](#).

For past-due taxes, the means of resolving tax liability will depend on if the property is a whole taking or a partial taking. Condemnation may be necessary. For current taxes on whole takings, the LPA must cooperate with taxing agencies for payment of taxes on a prorated basis. If the property owner and the taxing agencies cannot agree on a method for payment, the LPA should pay the property owner without regard to taxes. See the *ROW Acquisition Manual*, [Chapter 15, Section 4, Title Insurance Requirements: Donations, Taxes \(for State and LPA\)](#).

Instruments of Conveyance

Instruments of conveyance will be prepared on TxDOT standard forms. TxDOT will accept full warranty deeds, TxDOT form [ROW-N-14 Deed](#). In those cases where a property owner refuses to sign a full warranty deed, TxDOT will accept a special warranty deed, provided that the title company will guarantee title without an exception due to the special warranty language. For more information on preparing deeds, see the *ROW Acquisition Manual*, [Chapter 13, Section 2, Standard Conveyance Forms](#).

In addition, there are some special clauses approved for use in conveyance instruments covering situations such as retained improvements, bisected improvements, and pass privileges. See the *ROW Acquisition Manual*, [Chapter 14, Special Clauses for Conveyance Instruments](#) for more details. Aside from these special clauses, no changes to TxDOT's conveyance instruments are permitted.

Recording

The LPA is responsible for recording at its own expense deeds, judgments, or other instruments in the real property records of each county in which the property is located.

Section 6 — Utility Adjustments

Rights of Utilities

Public utilities have a statutory right to occupy highway and road rights of way. But, these rights are subordinate to those of the public. Utilities located in a road right of way frequently need to be relocated to allow for construction of a transportation project. The right of way agreement specifies which party is responsible for utility relocation.

Procedure

Utility relocation is often a lengthy process. It is part of the right of way acquisition process and is critical to clearing property for construction. Utility conflicts should be identified early in the acquisition process and addressed as soon as possible.

See the [ROW Utilities Manual](#) for an in-depth treatment of utility adjustments.

Section 7 — Relocation

Legal Authority

Individuals and businesses displaced by highway projects receiving federal funding are entitled to relocation assistance payments. If the state participates in funding the project, the LPA must comply with TxDOT's instructions on relocation assistance. If the state does not participate in funding, the LPA must comply with the minimum requirements of the Uniform Act.

Notices and Services

Persons to be displaced by a right of way project are entitled to various notices and services, including notice that the person will not be required to move without at least 90 days' advanced written notice and that the person will be given relocation advisory services. The LPA may also be required to aid the person in finding replacement housing. Certain re-establishment expenses may be available to displaced businesses.

Relocation assistance is complex and, most importantly, affects the day to day lives of the displaced persons. Failure to comply with the Uniform Act could jeopardize federal funding on current and future projects. Relocation assistance procedures are detailed in the [ROW Relocation Assistance Manual](#).

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Section 1 — Acquisition Reimbursements

State Reimbursement for LPA-Acquired Right of Way

TxDOT will promptly reimburse LPAs under the terms of the right of way agreement. But, the LPA must first initiate a request for reimbursement. The LPA does not need to complete all acquisitions or expenditures on the project before requesting reimbursement. Reimbursement requests may be made when all of the reimbursable expenditures on a particular parcel are completed.

For in-depth treatment of reimbursements, see the *ROW Acquisition Manual*, [Chapter 18, Section 11, State Reimbursement for LPA Acquired Right of Way](#).

Incidental Expenses on Transfer of Real Property

Property owners whose property is acquired for state highway purposes are entitled to reimbursement for certain expenses necessary and incidental to the transfer of the property. Where a project uses either state or federal funds, the LPA is responsible for the reimbursement of these incidental expenses.

Transfer fees (including recording fees) incidental to conveying property to the state are eligible for reimbursement.

See the *ROW Acquisition Manual*, [Chapter 19, Incidental Expenses on Transfer of Real Property](#) for more information.

Section 2 — Project Closeout

Preparation for Closing Right of Way Projects

In order to close out a right of way project, the following must have occurred:

- ◆ all required right of way is acquired;
- ◆ all condemnation cases are closed by a final judgment (including on appeal);
- ◆ all utility adjustments are completed;
- ◆ all relocation assistance is completed;
- ◆ all charges owed by the state are paid;
- ◆ the LPA has requested reimbursement on all eligible expenses; and
- ◆ all LPA records have been reviewed by TxDOT for compliance with the Uniform Act.

Submit the request for final closing of the project to TxDOT along with a certification that the LPA has complied with the applicable laws, regulations and policies. See the ROW Real Estate Acquisition Guide for Local Public Agencies, [Chapter 3, Section 1, TxDOT's Monitoring of LPA Acquisition Activities](#) for an example of the certification.

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Section 1 — Program Information

General

The Fixing America's Surface Transportation Act (FAST) established the Transportation Alternatives (TA) Set Aside Program as part of the Surface Transportation Block Grant. The TA program provides funding for a variety of alternative transportation projects and is codified in 23 USC section 133(h).

TxDOT's Public Transportation Division (PTN) administers the TA funding for population areas of 200,000 or less. Metropolitan Planning Organizations are responsible for administering TA funding in urbanized areas with populations greater than 200,000. The Texas Transportation Commission authorized TxDOT TA program rules in 2016, limiting federal TA funding for construction only and limiting eligible TA activities to construction of bicycle and pedestrian infrastructure.

These Transportation Alternatives projects (TA Project) may involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses. To the extent that they do, they are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the CFR, except as specified below.

Requirements

1. Acquisition and relocation activities by a local public agency for TA projects are subject to the Uniform Act.
2. When a person or agency acquires real property for a project receiving federal highway grant funds on behalf of an acquiring agency with eminent domain authority, the requirements of the Uniform Act apply as if the acquiring agency had acquired the property itself.
3. When, subsequent to federal approval of property acquisition, a person or agency acquires real property for a project receiving federal highway grant funds, and there will be no use or recourse to the power of eminent domain, property owners should be advised of that fact during negotiations.

Property Management and Disposal of Property Acquired for TA Projects

23 CFR 710.401-.409 governs the management and disposal of real property interests acquired with TA funds, including alternate uses authorized under ROW use agreements. A TA project involving acquisition of any real property interest must have a real property agreement between FHWA and the local project sponsor that identifies the expected useful life of the TA project and establishes a pro rata formula for repayment of TA Project funding by the sponsor if:

1. The acquired real property interest is used in whole or in part for purposes other than the TA project purposes for which it was acquired; or
2. The actual TA project life is less than the expected useful life specified in the real property agreement.

Appendix A — Disadvantaged Counties

Overview

The majority of the following information is taken from the “*Economically Disadvantaged Counties Program, Program Information, Texas Department of Transportation, September, 2001*”.

Background

Senate Bill 370 of the 75th Legislature amended the Transportation Code in §222.053 to:

...require the [Texas Transportation] Commission, when evaluating a proposal for a highway improvement project in a local government that consists of all or a portion of an economically disadvantaged county, to adjust the minimum local matching funds requirement after evaluating the local government’s effort and ability to meet the requirement.

Texas Administrative Code rules implementing the legislation became effective January 1, 1998. [43TAC, §§15.50-15.56](#), describe federal, state, and local responsibilities for cost participation in highway improvement projects. The rules prescribe criteria the commission will consider in evaluating a request for an adjustment. §15.55 prescribes cost participation ratios for local governments in those projects.

Definition

The legislation defines an economically disadvantaged county as a county that has, in comparison to other counties in the state,

- ◆ below average per capita taxable property value,
- ◆ below average per capita income, and
- ◆ above average unemployment.

TxDOT will identify economically disadvantaged counties for each fiscal year based on data obtained from the Texas Comptroller of Public Accounts. After the determinations are made, the Transportation Planning and Programming (TPP) Division will notify each of TxDOT’s local district offices that contain all or a portion of an economically disadvantaged county.

Project Eligibility

To be eligible, an on-system project must be both commission-authorized and not yet let. An off-system project is eligible if it is not yet let and commission-authorized or -approved within a district bank balance program.

Appendix B — State Infrastructure Bank

Introduction

As the population of Texas grows, the challenge becomes harder to meet the demand for a safe and efficient transportation system. Local demands for transportation improvements greatly outnumber the funds available to meet them under traditional federal and state funding methods. One tool to help TxDOT address the growing transportation needs of this state is the State Infrastructure Bank, or SIB.

Background

In November of 1995, the President of the United States signed *Public Law 104-59*, known as the *1995 National Highway System Designation Act*. *Section 350* of that law allowed the United States Secretary of Transportation to designate a maximum of ten states as pilot projects for the [State Infrastructure Bank](#) program. Texas was selected as one of the initial pilot states.

A State Infrastructure Bank, or a SIB, operates chiefly as a revolving loan fund and may provide a wide range of financial assistance in addition to loans. The purpose of the pilot program is to attract new funding into transportation, to encourage innovative approaches to transportation problems, and to help build needed transportation infrastructure. The law provides that each designated state may transfer up to ten percent of certain federal dollars, match those funds with state funds, and deposit them into a State Infrastructure Bank. The greatest benefit of this program may well be the creation of a self-sustaining, growing, revolving loan fund.

In 1997, the 75th Texas Legislature passed *Senate Bill 370* that adopted [Transportation Code, Chapter 222, Subchapter D](#), which created the State Infrastructure Bank to be administered by the Texas Transportation Commission. In September 1997, the Texas Transportation Commission approved the administrative rules that govern the State Infrastructure Bank, which are located in 43TAC, [Chapter 6](#).

Purpose

The SIB program arose out of the need to improve, rehabilitate, and renovate transportation facilities. Transportation needs are increasing while federal, state and local financial resources are constant or declining. The SIB program is one of the ways that the federal government is utilizing innovative financial techniques to address growing transportation needs.

The purpose of the SIB is to:

- ◆ Encourage public and private investment in transportation facilities, including facilities that contribute to the multimodal and intermodal transportation capabilities of the state;
- ◆ Expand the availability of funding for transportation projects and reduce direct state costs; and
- ◆ Improve the efficiency of the state transportation system.

The mission of the SIB is to provide loans and other financial assistance for improving the transportation infrastructure in Texas. To accomplish this mission, TxDOT will operate the SIB as a self-sustaining, growth-oriented fund. TxDOT will also ensure projects satisfy all appropriate federal, state and local planning and programming requirements.

TxDOT has designed the SIB to enhance the ability of borrowers to access capital funds at lower-than-market interest rates. The success of the SIB program will depend on maintaining strong credit standards and successfully leveraging funds to increase the program's activity through a revolving loan fund structure. The quality and diversification of the SIB's financial assistance will have a direct impact on the interest rates paid by borrowers.

How Does the SIB Work?

Much like a private bank, the SIB offers eligible customers a range of loans and credit enhancement services. The SIB will offer its financial services to finance or financially enhance transportation projects that meet its selection criteria. As loans are repaid to the SIB, additional assistance will be granted for more transportation projects. The SIB, in effect, is a revolving loan fund.

Advantage to Local Communities

Why would a local entity want to borrow money from the SIB when historically they have not had to pay for local transportation projects? The answer is twofold: time and money.

Currently, TxDOT expects to be able to fund only about one third of the needed transportation projects in Texas. TxDOT will continue to fund as many needed projects as possible. In many cases however, a project considered a very high priority by one community, may not be ranked high enough on a statewide basis to receive funding for several years.

If the local community wants the project completed faster, it could borrow money from the SIB and advance the project by several years. In addition, if the proposed transportation project would generate additional economic development, the local community may receive enough revenue from the increased tax base to easily pay for the financial assistance from the SIB.

Thus, the community could get its project completed much sooner with little or no additional cost.

For more information, please contact the [Transportation Planning and Programming Division](#) (TPP) of TxDOT at (512) 486-5000.