

APPALACHIAN REGIONAL COMMISSION (ARC)
LOCAL ACCESS ROAD PROJECT GUIDELINES
UNDER
The Infrastructure Investment and Jobs Act (IIJA)

FUNDING:

Section 9.5 of the ARC Code as amended in October 2019 authorizes each ARC State to request approval from ARC to use funds that have been apportioned to it for completion of the Appalachian Development Highway System (ADHS), except funds specifically designated by Congress for Corridor construction, for local access roads (LAR). States with uncompleted ADHS sections may only use up to \$5,000,000 annually from the balances of ADHS funds for LAR projects. Additional funding for local access road projects is permitted with ARC's Area Development funds or with funds from non-ARC sources unless otherwise restricted.

LAR projects using ADHS funds balances apportioned through TEA-21 and SAFETEA-LU legislations are subject to obligational limitation either from the state's balances of ADHS special obligational limitation or from the state's general annual obligational limitation across all federal-aid highway programs. ADHS funds authorized and apportioned through the Highway Infrastructure Program of IIJA are also eligible for LAR projects. ADHS funds are made available for local access roads through various sub-funding program codes within the ADHS program codes under FHWA's Fiscal Management Information System (FMIS).

Section 1435 of FAST Act amended Section 1528 of MAP-21 (40 U.S.C. 14501, Public Law 112-141) making the Federal share payable for the cost of constructing ADHS and local access roads *'shall be up to 100 percent, as determined by the State'*. Section 226 (c) (2) of the Appalachian Regional Development Act of 1965 (ARDA) prohibits funding local access road projects in counties that have been designated as **Attainment Counties** by the ARC. Section 226 (c) (1) of ARDA restricts the maximum federal participation to 30% in counties designated as **Competitive Counties**.

The Federal-aid Highway Program is a reimbursable program; that is project recipients only receive reimbursement for the cost actually incurred.

A State may also choose to fund a local access road project with ARC Section 214 Area Development (non-highway) funds and have the State DOT and the FHWA administer the local access road project. In this case, after ARC's approval of the project, the ARC will transfer the specified amount of Area Development (non-highway) funds to the FHWA's highway funds via the U.S. Treasury Department (Form 1151). These funds are added to FHWA fiscal records under an appropriation code unique to the ARC's non-highway funds and are then available for obligation by that State.

ELIGIBLE WORK:

The basic eligibility criteria for local access road projects are contained in Section 9.6(b) of the ARC Code. The ARC may approve local access road projects, which serve industrial and commercial areas, residential developments, recreational areas, and educational areas.

Local access road funds may be used for preliminary engineering, right-of-way and/or construction. LAR funds are available for the initial construction of local access road projects. Local access road funding **is not** allowed for resurfacing/rehabilitation, upgrading and/or safety improvements on roads previously built with ARC local access road funds.

Specific items that may be included in construction projects include:

- Clearing and grubbing
- Grading
- Drainage
- Erosion & settlement control
- Relocation of utilities **if** required by the construction
- Base
- Pavement
- Traffic control devices
- Highway lighting
- Materials testing
- Project management/inspection

Specific items that may **not** be included in construction projects include:

- Utilities to serve residences or businesses
- Fire hydrants

Specific items that may be included in right-of-way projects include:

- Appraisal
- Acquisition
- Condemnation cost
- Relocation assistance

Specific items that may be included in preliminary engineering projects include:

- Surveys
- Design
- Environmental assessments/clearance
- Permits
- Project management

STANDARDS:

Section 201 of the Appalachian Regional Development Act requires projects to be designed and constructed in accordance with Federal-aid highway procedures. Federal-aid procedures require:

Projects on the National Highway System (NHS) to be designed in accordance with the American Association of State Highway and Transportation Officials (AASHTO) publication entitled “*A Policy on Geometric Design of Highways and Streets*” (The Green Book) as provided in 23 CFR 625.

Projects not on the NHS to be designed in accordance with State design standards. This is in accordance with 23 U.S.C. 102 as amended in the 1991 ISTEA.

Chapter V of the Green Book also deals with local roads and streets, which are applicable to local access roads.

State and Local officials should recognize that the standards included in the guidance noted above are minimum design requirements for local access road projects. Care must be taken to ensure that the design of the road will perform the intended function for the design life of the facility. This means providing pavement design and geometrics that will accommodate the types and volumes of traffic that are anticipated for the 20-year period following construction. For this reason, the ARC recommends that 12-foot lanes, 4-foot shoulders and 2-½ foot ditches be used in open sections and a 36-foot roadway be provided in curb and gutter sections. Horizontal and vertical curves, including cul-de-sac radii, serving industrial parks are to be designed to accommodate a WB-50 design vehicle.

Proposed local access road projects into industrial parks, ports, land fills, and schools are to include acceleration, deceleration, and turning lanes on the main road/highway leading into the local access road.

COORDINATION WITH THE STATE DOT

Local access road projects financed by IJA or funds apportioned under previous federal transportation legislation are subject to the provisions of Title 23 of the United States Code (23 USC) and the Federal-aid procedures issued by the FHWA [Section 9.6(b) of the ARC code]. Under the FHWA stewardship with the States, the State DOTs take the lead in the planning, design, and construction of highway projects. After the construction is completed the States have the responsibility for maintenance or causing the highway project to be maintained. All federal highway funding, regardless of the project sponsor, flow through the State DOTs. This means that federally funded highway projects must also meet State DOT requirements. Therefore, close coordination with the State DOT is essential.

To ensure that adequate funding and obligational authority is available, the State ARC Program Office should notify the State DOT of their intention to submit a local access road project to the ARC and to use a portion of their State’s ADHS funds or other federal-aid highway funds, if agreed upon with the State DOT, for local access road projects. This programmatic notification is necessary so those local access road projects can be included in the State’s multi-year Transportation Program. In addition, annual updates should be given in sufficient time for the State DOT to have specific local access road projects included in the annual element of STIP, which is a fiscally restrained document. The STIP is typically prepared in July of each year so

that it can be approved prior to the beginning of the federal fiscal year (October 1st). Individual State procedures vary, so close coordination between the ARC State Program Office and the State DOT is essential.

All federal actions, including local access road projects, affecting the human environment must comply with the provisions of the National Environmental Policy Act (NEPA). All projects impacting wetlands and other aquatic resources are also subject to Section 404 of the Clean Water Act. Projects impacting historical or archaeological resources must also comply with Section 106 of the National Historic Preservation Act and projects impacting park or recreational areas are subject to the provisions of Section 4(f) [23 USC 138]. These and other federal statutes require close coordination with and the approval of several Federal agencies.

ARC PROJECT APPROVAL PROCESS:

The ARC may approve local access road projects that meet the project eligibility criteria in Section 9.6(b) of the code. Local access road projects must be approved by the ARC on a project-by-project basis. i.e., the ARC must approve each individual local access road project. Local access road projects can only be submitted to the ARC by the State's ARC Alternate.

ARC's transportation staff review local access road project submissions and make recommendations to the ARC's Federal Co-Chair. Approval by ARC's Federal Co-Chair signifies concurrence that the proposed project meets the goals of the ARC and the State's Local Access Road program and approval for the State to use a portion of their ADHS funds or other eligible federal funds to complete the project. It is important that ARC's approval of the LAR project also formally identifies the project to be ARC LAR project, thus exempts the project from the federal-aid highway eligibility rules (under Title 23 USC) and allows the federal-aid highway funds (e.g., ADHS or other federal-aid highway funds) to be used for the project regardless which level of "highway functional class" the road is classified.

It should be noted that the ARC's Co-Chair's approval is for a specified dollar amount (as opposed to a cost-to-complete). If a local access road project requires additional funding for completion, the ARC must approve the additional funding prior to reimbursement being made. **ARC's approval of the project does not guarantee the availability of funding, nor does it obligate federal funding for the project!**

After the ARC's Federal Co-Chair approves a local access road project, the ARC notifies the FHWA of their approval action. This notification allows the FHWA to obligate ADHS funds for a local access road project.

ARC's Project Approval vs FHWA's Obligation of Funds

ARC's Federal Co-Chair approves local access road projects. This approval signifies ARC's concurrence that the proposed project meets the goals of ARC and the State's Local Access Road program and permits the State to use a portion of their ADHS funds or other agreed federal-aid highway funds to complete the local access road project.

The FHWA's obligation of local access road project funds only occurs when the State DOT has reviewed the project, certifies that the project meets all of the administrative and legal requirements, and request the FHWA's concurrence in using a portion of their funds and obligational authority to finance the project. Obligation of federal funds is a legal agreement (Project Agreement) between the federal government (FHWA) and the State DOT, which commits the federal government to reimburse the State DOT for the federal share of the cost incurred on that local access road project. The FHWA must authorize and enter the project into their financial system (FMIS) in order for the State DOT to be reimbursed for cost incurred on that project.

In order for a local access road project to be obligated by the FHWA, the State DOT must have the funds available **and** enough obligational authority to cover the full amount of the federal share of the project.

If a local access road project has not been advanced to construction within 18 months after the ARC's approval of the project, the ARC reserves the right to withdraw their approval of the local access road project.

PROJECT SUBMISSIONS TO ARC

Project application should demonstrate how the project meets one or more of the objectives in the State's approved Annual Strategy Statement. (Sections 5.3, 5.4, 5.5 and 6.4 of the ARC Code).

In addition to the normal submission requirements for ARC Area Development projects, local access road project submissions must also include:

- ARC Form 2 (no Form 1 required).
- The roadway typical section(s), pavement structure, and design criteria.
- Itemized cost estimate (roadway related).
- A letter from the State Department of Transportation (DOT) stating that:
 - They have reviewed the project and the proposed design criteria meets their design standards.
 - The DOT will make the necessary funds available from their ADHS account or other federal-aid highway funding account, if agreed, along with the obligational authority available (if subject to) for this project when the project is ready to be advanced/advertised.
 - The DOT (or other public agency) will administer the project (design, right-of-way and/or construction).

The ARC highly recommends that the State ARC Alternate get the State DOT to agree to administer all local access road projects. If the State DOT is not going to administer the local access road project, the submission must include a statement of concurrence from the State DOT since all federal-aid highway funds (including ADHS funds) flow through the State DOTs.

- The status of the project and the schedule for completion. The status should include a **brief** description and/or completion dates for:
 - Inclusion in the Statewide Transportation Improvement Program (STIP) [Section 9.6(b) of the ARC Code],
 - Securing matching funds
 - State DOT and FHWA approval of the environmental document
 - Engineering plans
 - Right-of way clearance
 - Advertisement of the construction project
 - Completion of the construction project

- If the project is for an existing road, a statement should be submitted with the application indicating that ARC local access funds were not used previously in building or improving the road.