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The Georgia Greenway Guidebook: A Tool for Governments, Communities, and Individuals

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**The Georgia Greenway Guidebook:
A Tool for Governments, Communities, and
Individuals
University of Georgia Land Use Clinic**

**Christine Clay
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Fall 2010

Land Use Clinic



university of georgia

School of Law & College of Environment and Design

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The UGA Land Use Clinic provides innovative legal tools and strategies to help preserve land, water and scenic beauty while promoting creation of communities responsive to human and environmental needs. The clinic helps local governments, state agencies, landowners, and non-profit organizations to develop quality land use and growth management policies and practices. The clinic also gives UGA law students an opportunity to develop practical skills and provides them with knowledge of land use law and policy.

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The Georgia Greenway Guidebook

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I. Executive Summary

The purpose of this guidebook is to provide a tool for local governments, community organizations and individuals that are considering launching or reinvigorating a greenway development project.

Section II of this guidebook explains the concept and use of greenways, as well as many of important steps and considerations for developing greenway projects from inception to completion.

Potential greenway corridors in Georgia are explored in Section III, such as riparian corridors, interstate and highway rights-of-

way, railway corridors, fuel pipeline easements, and transmission line easements along high-tension power lines.

Part IV explores aspects of greenway project development, including the need to create a vision statement, identify sources of funding, and develop government partnerships.

Land acquisition is discussed at a general level in Part V. Working effectively with landowners and promoting tax incentives available for land donation are highly relevant to all greenway projects. There is also a discussion of Rails-to-Trails program utilization.

II. Introduction

A. What is a Greenway?

According to Charles E. Little in *Greenways for America*, a greenway is defined as:

1. A linear open space established along either a natural corridor, such as a riverfront, stream valley, or ridgeline, or overland along a railroad right-of-way converted to recreational use, a canal, a scenic road or other route.
2. Any natural or landscaped course for pedestrian or bicycle passage.
3. An open-space connector linking parks, nature reserves, cultural features, or historic sites with each other and with populated areas.
4. Locally, certain strip or linear parks designated as a parkway or greenbelt.¹

Greenways may have many functions, such as hike-and-bike trails, exercise trails, nature trails, and equestrian paths.² In some instances a greenway may simply be a protected strip of land that has no trail.³

B. Why Establish a Greenway?

At a time when sedentary lifestyles and obesity are leading to serious health problems, the time is ripe for public health officials and recreational trail advocates to work together to provide more opportunities for people to get out and exercise.⁴ In

addition to recreation and health benefits, greenways can provide other benefits to the environment and the community. For example, greenways can enhance transportation by connecting people's homes, schools and workplaces. Greater connectivity in turn increases the health and wellness potential of greenways by providing the option of walking or bicycling to work in areas where many people would not feel safe walking or bicycling on the street.⁵ By providing a means of alternate transportation, greenways may also help mitigate air pollution and traffic congestion.⁶

Greenways also provide a conservation benefit by preserving historic and/or scenic areas and allow trail users to benefit from such sites.⁷ In Georgia, many historical landmarks are languishing in obscurity⁸ and a trail linking living centers to these sites would bring visitors to them and help to preserve Georgia history.⁹ When studying the effects of its greenway system, the Pennsylvania Greenways Partnership found that greenways also helped to preserve the rural character of several communities by

¹ Charles E. Little, *Greenways for America*, 1 (Johns Hopkins UP 1990).

² Russ Johnson, *Creating Connections: The Pennsylvania Greenways and Trails How-to Manual* 4-5 (Pennsylvania Greenways Partnership 1998), available at <http://www.pagreenways.org/toolbox/creatingconnections.pdf> [hereinafter *Creating Connections*].

³ *Id.*

⁴ Stuart McDonald and Rich Dolesh, "Fitness aspects of trails gain national attention." 33:1 *Trail Tracks* 10 (2004) available at

<http://atfiles.org/files/pdf/TT04newyears.pdf>.

⁵ Jane E. Brody, "Planning Healthier Suburbs: Where Cars Sit Idle and People Get Moving," AmericanTrails.org, <http://www.americantrails.org/resources/health/SuburbBrody.html> (last visited Oct. 19, 2010).

⁶ *Creating Connections*, supra note 2, at 7.

⁷ *Id.*

⁸ The Georgia Trust for Historic Preservation. "The Georgia Trust for Historic Preservation Announces its 2011 List of State's 10 'Places in Peril.'" *PRNewswire* Oct. 13, 2010, available at <http://www.prnewswire.com/news-releases/the-georgia-trust-for-historic-preservation-announces-its-2011-list-of-states-10-places-in-peril-104856719.html>.

⁹ An example of the historical conservation value of greenways is the preservation of numerous historical sites along the Schuylkill River Greenway in Pennsylvania; RBA Group, *Benefits of Greenways: A Pennsylvania Study*. 10-11 (June 2002), available at <http://www.pagreenways.org/toolbox/Benefits.pdf>

preserving farmland and surrounding open space.¹⁰ Greenways also help to preserve natural resources. For example, a greenway may help to preserve rivers and streams by absorbing runoff along riparian corridors.¹¹

In addition, the presence of a greenway trail may confer an economic benefit to the community in the form of higher property values along the trail and higher tax revenue as a result.¹² Home buyers value the recreational opportunities, scenic views and open spaces that greenways provide, which is often reflected in increased home values.¹³

Several studies have shown an increase in property values associated with proximity to parks, open spaces, and trails.¹⁴ Furthermore, consumers and real estate agents report that proximity to a trail is a selling point for suburban homes, farmland to be developed, and small town commercial properties.¹⁵ Subsequent increases in property tax revenues may help to offset the cost of the greenway.¹⁶ The trail may also attract businesses to the area to serve trail users. For example, Pennsylvania found that the Pittsburgh to Cumberland trail was an economic boon for the small, isolated communities along the trail because trail users began coming to these small towns to

eat, shop or stay the night before continuing along the trail.¹⁷ Additional spending in trailhead communities along that trail in 1998 ranged from 5.4 million to 14.1 million dollars.¹⁸ Overall, the communities that have been studied have largely found that the presence of a trail brought more money into the community and that home values along the trail rose, or at the very least, did not decline.¹⁹

III. Potential Greenway Corridors in Georgia

Many types of corridors for potential greenways exist in Georgia. The authors of the Conservation Fund guide to establishing greenways recommend that greenway organizers begin by defining a broad area of land as a “corridor of study” for the greenway and overlaying maps to determine all the possibilities for land acquisitions or easements.²⁰ Examples of potential corridors include: utility easements, abandoned railroads, state forests, wildlife sanctuaries, water corridors, land owned by ports, logging roads, and any land that cannot be developed for any reason.²¹

The Northeast Georgia Regional Commission completed a feasibility study of existing corridors in this region that might

¹⁰ RBA Group, *Benefits of Greenways: A Pennsylvania Study*, 5-7 (June 2002), available at <http://www.pagreenways.org/toolbox/Benefits.pdf> [hereinafter *Benefits of Greenways*].

¹¹ *Creating Connections*, supra note 2, at 7.

¹² *Benefits of Greenways*, supra note 10, at 7.

¹³ National Park Service. *Economic Impacts of Protecting Rivers, Trails, and Greenway Corridors: A Resource Book*. 4th ed. (1995), available at:

http://www.nps.gov/pwro/rta/econ_index.htm.

¹⁴ *Id.* at §§ 1-3 to 1-8.

¹⁵ *Id.* at §§ 1-7 to 1-8; “Trails are important to home buyers, survey shows,” Benefits of Trails and Greenways, AmericanTrails.org, <http://www.americantrails.org/resources/benefits/homebuyers02.html> (last visited Oct. 19, 2010).

¹⁶ National Park Service, supra note 13 at § 1-13.

¹⁷ *Benefits of Greenways*, supra note 10, at 9.

¹⁸ *Id.*

¹⁹ *Id.* at § 7-10; National Park Service, supra note 13 at §§ 1-3 to 1-10; Greenway Conservancy for the Hudson River Valley and Parks & Trails New York, *Getting Involved: A Community Trail Handbook for Landowners*, 22-23 (Sept. 2002), available at <http://www.ptny.org/pdfs/greenways/publications/LandownersGuide.pdf>.

²⁰ Flink, Charles A. and Robert M. Searns, *Greenways: A Guide to Planning, Design, and Development*, The Conservation Fund, 24-25 (Loring LaB. Schwartz ed., Island Press 1993).

²¹ *Id.* at 25.

be used to establish greenways.²² Its findings provide examples of the kinds of corridors that may be considered for greenway use.

The Regional Commission (RC) identified five major types of corridors in the region and discussed the feasibility of using each one: waterways, highway rights-of-way, rail lines, fuel pipeline easements, and transmission line easements.²³ First, the RC considered riparian corridors, such as the Oconee River and the Broad River, and found several opportunities for further development.²⁴ River and stream corridors are common sites for greenway development.²⁵ In Georgia, a buffer of at least twenty-five along all state waters is mandated by law.²⁶ Recreation foot trails are an acceptable reason for variance of the twenty-five foot buffer, provided that the impacts to the buffer are minimal.²⁷

Second, the RC examined interstate and highway rights-of-way such as I-85 and I-20 and Highway 316.²⁸ Highway corridors may be best used for bikeways, which would connect living centers that are miles apart. Interstate highways present an attractive opportunity for greenway development because the right-of-way is typically wide and the use of exit and entrance ramps means that the trail will not necessitate at-grade crossings.²⁹ If the trail is set far enough back from the highway, it will be

safe for cycling.³⁰ Rights-of-way along other highways, such as Highway 316, which connects Athens and the University of Georgia to Atlanta, were also considered as a possible site for multi-use trails in the RC's feasibility study.³¹ However, highways that have narrow rights of way and that do not have interstate-style exchanges may not be practical for greenway development.³² Other routes such as the National Forest Service Roads, may provide routes for additional greenway development.³³

Georgia law encourages the development of bicycle trails and bikeways and authorizes the Department of Transportation to construct them.³⁴ Transportation Enhancement funds, which are discussed below in Part IV, are available through GDOT to fund walking and biking trails, not only for trails along highways, but also for any trails that link to the intermodal transportation system.³⁵

Third, two categories of railway corridors were considered by the RC. Active rail lines might be suitable for rails-with-trails projects, provided that the railroads allow trails to be built along the rights of way. At this time, the policies of the railroad companies (CSX and Norfolk & Southern) in this region discourage this type of use; therefore, rails-with-trails are probably not currently a viable option in this region.³⁶ Certain inactive and abandoned rail lines may, however, offer possibilities for rails-to-trails, provided that the right of way can be acquired.³⁷ Further discussion of the

²² Northeast Georgia Regional Development Center, *Corridor Feasibility Study for Evaluation of Potential Greenway Networks in Northeast Georgia* (June 2008), available at <http://negplanning.org/transportation/plans>.

²³ *Corridor Feasibility Study*, supra note 22.

²⁴ *Id.* at 2-9.

²⁵ *Id.* at 2.

²⁶ O.C.G.A. § 12-7-6(b)(15)(A) (2010).

²⁷ Ga. DNR Rule 391-3-7-.05(2)(f) (2010).

²⁸ *Corridor Feasibility Study* supra note 22 at 12-15.

²⁹ *Id.* at 12.

³⁰ *Id.*

³¹ *Id.* at 14.

³² *Id.*

³³ *Id.*

³⁴ O.C.G.A. § 12-3-115(a) (2010).

³⁵ GDOT Rule § 672-12-.10(2010).

³⁶ *Corridor Feasibility Study*, supra note 22 at 17-19.

³⁷ *Id.* at 20.

particular opportunities and challenges of rails-to-trails projects and a regional case study may be found below in Part V.

Finally, the RC considered utility easements. Fuel pipeline easements pass through four counties in the region and may provide potential corridors for future trail development.³⁸ Transmission line easements along high-tension power lines also provide opportunities for greenways.³⁹ Many trails across the country follow overhead power lines.⁴⁰ Some concerns have been raised over electro-magnetic fields surrounding high voltage lines, but extensive research indicates that there are no harmful health effects.⁴¹ Transmission line easements run directly from one urban center to another, which makes them attractive for connecting cities; however, the varied topography along these easements may present challenges to trail builders.⁴² The easements are also useful for trails within urban areas because they provide wide swaths of open space in otherwise heavily populated areas.⁴³

The corridors that the Northeast Georgia Regional Commission identified in this region are some examples of the kinds of spaces that can be used for greenways. Easements that are under the control of one entity are attractive for greenway development because acquisition of the right of way is simplified. Additional examples

of potential corridors include lakes or, in coastal regions, wetlands.⁴⁴ Different corridors may be linked together to establish a particular greenway route or greenway system.

IV. Greenway Project Development

The impetus for greenway projects often comes from a non-profit organization or a community group.⁴⁵ For example, community groups often seek to establish a greenway along a stream in their area.⁴⁶ Of course, local governments may also take the initiative to start a greenway. The information in the following sections is intended primarily to aid non-governmental trail organizers in Georgia to navigate the initial planning stages and to involve local government in the project.

A. Create a Vision Statement

The first step that the greenway team should take after identifying the greenway corridor is to formulate a vision for the greenway.⁴⁷ The authors of the guidebook sponsored by The Conservation Fund suggest identifying

³⁸ *Id.* at 22-23.

³⁹ *Id.* at 25.

⁴⁰ National Trails Training Partnership, "Power Lines Along Trails," <http://www.americantrails.org/photoGalleries/cool/29-Trail-power-line-electric-utility.html> (last visited Dec. 20, 2010).

⁴¹ Gary Holisko, "Safe Management of Power Line Trails," National Trails Training Partnership, <http://www.americantrails.org/resources/land/PowerLineBC.html> (last visited Dec. 20, 2010).

⁴² *Corridor Feasibility Study*, supra note 22 at 25.

⁴³ "Power Lines Along Trails," supra note 40.

⁴⁴ Parsons Harland Bartholomew & Assoc., *The Virginia Greenways and Trails Toolbox: A How-to Guide for the Organization, Planning, and Development of Local Greenway and Trails Programs in Virginia* §1-11 (Oct. 2000), available at

http://www.dcr.virginia.gov/recreational_planning/documents/toolbox.pdf.

⁴⁵ *Creating Connections*, supra note 2 at 9; see also, e.g., Roanoke Valley Greenway Commission and Roanoke Valley-Alleghany Regional Commission, *2007 Update to the Roanoke Valley Greenway Conceptual Plan* §2-1 (2007), available at

<http://www.greenways.org/docs/greenwayplan.pdf>

⁴⁶ Telephone Interview with John Devine, Senior Planner of Northeast Georgia Regional Commission (Nov. 12, 2010).

⁴⁷ See *Creating Connections*, supra note 2, at 13.

a theme or objective for the greenway.⁴⁸ Is the objective to create a space for recreation, preservation, alternative transportation, economic development or another purpose?⁴⁹ One way to identify a theme is to make a list of the potential uses and benefits of the greenway.⁵⁰ One theme may be to create a safe path that will allow commuters and schoolchildren to bike or walk to work or school.⁵¹ Preservation of wildlife and natural resources is another common theme.⁵² Another example is preservation of a waterway corridor and protection of the natural habitat of wildlife that live along its banks.⁵³ Other themes may include water recreation, tourism, and historic and cultural preservation.⁵⁴

The next step is to articulate a vision statement that can be shared with community leaders and the public. Often the vision will involve starting small, by establishing one segment of the desired completed length.⁵⁵ The vision statement should be a short, one- to two-page description of the project.⁵⁶ It might include a preliminary map of the site and photos or sketches of some points of interest along the proposed corridor.⁵⁷ A general map of the corridor that does not identify the individual parcels of land will suffice.⁵⁸ At this early stage, trail supporters should be careful not to present the trail concept as a fixed plan to

avoid alarming landowners along the corridor.⁵⁹

At this point, the group should have a general idea of where the proposed corridor starts and ends, what some of the benefits will be to the community, and what the trail will look like when it is completed. In order to engage effectively local government and the public, the greenway organization should consider additional factors that will affect the success of the greenway. The following are some questions to consider before reaching out to the community: Who currently owns the corridor? What factors in the community might help or hinder the project? Who are potential partners? What are potential sources of funding?⁶⁰ A more detailed list of questions is listed in the Pennsylvania Greenways Partnership manual, which may help the trail group flesh out its concept plan.⁶¹

B. Identify Sources of Funding

Funding a greenway project is a complex effort, with resources coming from different organizations and supporters. Traditional fundraising methods include the establishment of annual membership campaigns and Buy-a-Foot (or Mile) Campaigns.⁶² Project merchandising can also be a continuous source of income, as can programs that offer trail tours for a small fee.⁶³ Greenway projects can also solicit foundation and advocacy group donations and money from government programs at the earlier stages of construction. A number

⁴⁸ Flink, Charles A. and Robert M. Searns, *Greenways: A Guide to Planning, Design, and Development*, The Conservation Fund, 1 (Loring LaB. Schwartz ed., Island Press 1993).

⁴⁹ *Id.*

⁵⁰ *Id.* at 12

⁵¹ *Id.* at 11.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 11-12.

⁵⁵ Interview with John Devine, *supra* note 46.

⁵⁶ *Creating Connections*, *supra* note 2, at 13.

⁵⁷ *Id.*

⁵⁸ Flink and Searns, *supra* note 48, at 12.

⁵⁹ *Id.*

⁶⁰ *Creating Connections*, *supra* note 2, at 13.

⁶¹ *Id.*

⁶² Skye Ridley, *Funding for trails and greenways: how to do it*, National Trails and Training Partnership, available at <http://www.americantrails.org/resources/funding/Funding.html> (last visited Nov. 3, 2010).

⁶³ *Id.*

of grant programs and alternative funding sources are described below.

Georgia Recreational Trails Program

Funding for establishing greenways can be acquired in the form of grants from the Georgia Recreational Trails Program (RTP). The RTP is federally authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).⁶⁴ The United States Congress appropriates funding and the Federal Highway Administration manages the RTP, but it is administered at the state level. In Georgia, staff of the Department of Natural Resources, Division of Parks, Recreation and Historic Sites administers the program.⁶⁵ The purpose of the RTP “is to provide and maintain recreational trails and trail-related facilities identified in, or that further a specific goal of, the Statewide Comprehensive Outdoor Recreation Plan (SCORP).”⁶⁶

RTP grants are generally awarded on an annual basis after the following process is complete: 1) parties submit applications, 2) RTP staff rank the applications, 3) the Trails and Greenways Advisory Committee reviews them, 4) the Director of the Division of Parks, Recreation and Historic Sites

reviews them, and 5) the Federal Highway Administration approves them.⁶⁷

There are several important restrictions to keep in mind when applying for an RTP grant. The program generally awards a minimum grant of \$25,000, and a maximum award of \$100,000.⁶⁸ Additionally, the program is a reimbursement program, which requires the greenway organizers to pay 100% of the cost of an item or service before submitting a request for reimbursement for 80% of eligible costs.⁶⁹ Donations of private funds and services at fair market value can be counted toward the remaining 20% match. If the project sponsor is a federal agency, the agency may provide its funding as the match; however, the sum of the grant plus the federal agency’s funds is not permitted to exceed 95% of total cost.⁷⁰ The partial reimbursement scheme is intended to ensure that state, local, and community sponsors are committed to the project.⁷¹ Additional guidelines for reimbursement procedures and restrictions are updated on an annual basis, and can be found within the program manual and application available for download from the

⁶⁴ *Introduction*, Georgia Recreational Trails Program Manual (2010), available at http://www.gastateparks.org/Content/Georgia/wor d/grants/09_2010/rtpapplic.pdf.

⁶⁵ Georgia Department of Natural Resources, Georgia Trails and Greenways Grants, Recreational Trails Program Overview, available at <http://www.gastateparks.org/item/18195?s=18195 .0.1.5#application>, (last visited Oct. 15, 2010).

⁶⁶ *Id.*; See also, *SCORP Priorities*, Georgia Department of Natural Resources, available at <http://www.gastateparks.org/item/152838> (last visited Nov. 5, 2010) (SCORP Program priorities include promoting health, fitness and livability of all communities, enhancing economic vitality, and conserving and properly using natural resources).

⁶⁷ Georgia Recreational Trails Program Manual (2010), available at http://www.gastateparks.org/Content/Georgia/wor d/grants/09_2010/rtpapplic.pdf.

⁶⁸ Georgia Recreational Trails Program Manual, Funds Available, (2010), available at http://www.gastateparks.org/Content/Georgia/wor d/grants/09_2010/rtpapplic.pdf.

⁶⁹ Georgia Recreational Trails Program Manual, Applicant Match, (2010), available at http://www.gastateparks.org/Content/Georgia/wor d/grants/09_2010/rtpapplic.pdf.

⁷⁰ Georgia Recreational Trails Program Manual, Introduction, (2010), available at http://www.gastateparks.org/Content/Georgia/wor d/grants/09_2010/rtpapplic.pdf. (The match formula in these projects would be 80% grant funds, 15% Federal agency funds, 5% contribution from a non-federal source.)

⁷¹ *Id.*

Georgia Department of Natural Resources' website.⁷²

Any greenway project that receives grant funding from the RTP must comply with State and federal laws and Executive Orders, including:

- National Environmental Policy Act (NEPA);
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646);
- Civil Rights Act of 1964, and related non-discrimination laws;
- Rules for Federal Grants and Cooperative Agreements and Subawards to State, Local, and Indian Tribal Governments (49 Code of Federal Regulations, Subtitle A, Part 18).

Special Purpose Local Option Sales Tax (SPLOST)

SPLOST is an optional one percent county sales tax used to fund capital outlay projects proposed by the county government and participating qualified municipal governments.⁷³ The tax is imposed when the county board of commissioners calls a local referendum which is then passed by the voters within that county.⁷⁴ The tax is collected on items subject to the state sales and use tax within the county, including the

⁷² *Grant Application*, Georgia Department of Natural Resources, available at <http://www.gastateparks.org/net/content/go.aspx?s=133768.0.1.5> (last visited Nov. 5, 2010).

⁷³ *Special Purpose Local Option Sales Tax: A Guide for County Officials*, Association [of] County Commissioners of Georgia (2008), available at <http://www.accg.org/library/SPLOSTGuideFinal2008.pdf>.

⁷⁴ *Id.*

sale of motor fuels.⁷⁵ The SPLOST is also imposed on the sale of food and beverages, which are not subject to the state sales tax.⁷⁶ Counties and municipalities may fund any capital project if it is owned or operated by a county, qualified municipality or a local authority.⁷⁷

SPLOST funding is often applied to greenway projects; for example, the SPLOST Greenway Fund in Chatham County provided a match for a state grant of \$400,000 for the Coastal Georgia Greenway project, a 141-mile trail through six coastal Georgia counties.⁷⁸

MillionMile Greenway Program

The MillionMile Greenway is an Atlanta-based nonprofit organization that offers Community Starter Grants, Community Marketing Grants, and Community Technical Grants to assist communities in identifying, building and conserving greenways.⁷⁹ Community Starter Grants include a cash award as well as donated marketing and geospatial consulting services, for a combined total of \$11,100.⁸⁰

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ O.C.G.A. § 48-8-111 (a)(1)(D) (2010).

⁷⁸ Chatham County, available at <http://www.chathamcounty.org/tools/splost-detail.asp?id=58> (last visited Oct. 10, 2010); SPLOST Projects, Chatham County Department of Engineering, available at http://engineering.chathamcounty.org/SPLOST/SPLOSTProjects.aspx?dnn_ctr2187_SPLOSTprojects_grdSPLOSTprojectsChangePage=3 (last visited Nov. 5, 2010) (SPLOST Greenway Fund provided a match for a state grant for \$400,000 for the Coastal Georgia Greenway project, a 141-mile trail through six coastal Georgia counties. The county's cost was \$505,431.).

⁷⁹ MillionMile Greenway, Grant Application, available at <http://www.millionmilegreenway.org/forms/mmg-community-starter-grant-application.pdf> (last visited November 5, 2010).

⁸⁰ *Id.*

The Community Marketing Grant includes a cash award as well as donated marketing consulting services, with a combined total of \$7,100 of value.⁸¹ The Community Technical Grant includes donated geospatial consulting services, with a total of \$4,000 of value.⁸²

The MillionMile Greenway program requires grant applicants to be part of a formally organized effort that is “committed to creating greenways that connect neighborhoods and larger communities to each other, to nearby natural areas, to recreation, and eventually to greenspace everywhere.”⁸³ After reviewing an application, the program will schedule an in-depth interview with each applicant.⁸⁴

Applicants must also obtain \$1500 in matching funds from individuals, local community businesses or other community organizations in order to be eligible for the Community Starter Grant or the Community Marketing Grant.⁸⁵

Georgia Department of Transportation Enhancement (TE) Grants

The Georgia Department of Transportation administers a number of local funding programs to fund projects that ease pressure on roadways, minimize emissions, and enhance Georgia’s roadsides.⁸⁶ The TE Program awards federal funding grants to local and state public agencies and universities for “community-oriented

projects that provide connectivity, beautify neighborhoods and highlight culture and heritage.”⁸⁷

The TE Program was established by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and enhanced by the Transportation Equity Act for the 21st Century (TEA-21) in 1998.⁸⁸ The program was “established as a means to enrich the traveling experience of motorists, bicyclists, and pedestrians through enhancements to our transportation system.”⁸⁹ Projects receive federal funding in order to provide beautification and transportation improvements to “historical, natural, and scenic areas.”⁹⁰ The Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires that each project receiving a grant must improve transportation and fall into one of twelve “eligible categories,” several of which could be applied to greenway development. Eligible categories that could be particularly fitting for a greenway project include:

- Provision of facilities for pedestrians and bicycles;
- Acquisition of scenic easements and scenic or historic sites including historic battle fields;
- Landscaping and other scenic beautification; and,
- Preservation of abandoned railway corridors including the conversion and use for pedestrian or bicycle trails.⁹¹

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Local Funding Programs*, Georgia Department of Transportation, available at <http://www.dot.ga.gov/localgovernment/FundingPrograms/Pages/default.aspx> (last visited Oct. 20, 2010).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Eligible Categories*, FY 2011 Call for TE Applications, Transportation Enhancement,

Federal Transportation Investments Generating Economic Recovery (TIGER) Grants

The American Recovery and Reinvestment Act of 2009 was enacted to preserve and create jobs by investing in transportation infrastructure to provide long-term economic benefits.⁹² The Recovery Act can disperse a total of \$1.5 billion through September 30, 2011 for Supplementary Discretionary Grants for a National Surface Transportation System, known as “TIGER Discretionary Grants.”⁹³ Grants are currently being awarded for “capital investments in surface transportation projects that will have a significant impact on the Nation, a metropolitan area or a region.”⁹⁴

For large-scale greenway projects that are intended to provide alternate transportation for pedestrians, cyclists and motorists in a given region, TIGER Grants could be utilized as an available source of funding. As an example, the Georgia Coastal Greenway Project applied for a TIGER grant in the fall of 2009, requesting just under \$20 million to develop portions of their 155-mile coastal greenway plan.⁹⁵ On the other hand,

TIGER Grants would not be appropriate sources of funding for small-scale greenway projects, because the preferred minimum grant is \$20 million, though the amount can be waived in special circumstances.⁹⁶

PATH Foundation Support

The PATH Foundation is a nonprofit organization based in Atlanta whose purpose is to develop a system of interlinking greenway trails throughout metro Atlanta for commuting and recreating. PATH acquires funding by forming partnerships with local governments to build greenway trails, and provides resources to assist new greenway projects with planning and design efforts.⁹⁷ In some cases, PATH will provide matching funds to finance the development of trails.⁹⁸

PATH has now developed more than 100 miles of trails throughout northern Georgia including The Silver Comet, Stone Mountain, Lionel Hampton, Westside, Arabia Mountain, Chastain Park, South Decatur Trolley, Northwest Atlanta, and Freedom Park Trails.⁹⁹

PATH is currently focusing its efforts on the construction of the Atlanta BeltLine project, but may be open to assisting new trail projects in the future.¹⁰⁰

Georgia Department of Transportation, *available at* <http://www.dot.ga.gov/localgovernment/FundingPrograms/TransportationEnhancement/Documents/FY2011/EligibleCategories.pdf> (last visited Oct. 20, 2010).

⁹² DOT Information Related to the American Recovery and Reinvestment Act of 2009 (Recovery Act), U.S. Department of Transportation, *available at*

<http://www.dot.gov/recovery/ost/faqs.htm> (last visited Oct. 20, 2010).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Transportation Investment Generating Economic Recovery (TIGER) Grant Application, Coastal Regional Commission, Coastal Greenway Alternative Transportation Project, *available at* <http://coastalgeorgiagreenway.org/TIGER/TIGER>

%20grant.pdf.

⁹⁶ DOT Information Related to the American Recovery and Reinvestment Act of 2009 (Recovery Act), U.S. Department of Transportation, *available at* <http://www.dot.gov/recovery/ost/faqs.htm> (last visited Oct. 20, 2010).

⁹⁷ About PATH Foundation, PATH Foundation Website, *available at* <http://www.pathfoundation.org/index.cfm?event=showPathInfo>, (last visited Oct. 20, 2010).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* See also, *Transit and Trails*, Atlanta BeltLine, *available at* <http://www.beltline.org/Implementation/TransitandTrails/tabid/1805/Default.aspx> (last visited Nov.

Alliance for Biking and Walking – Advocacy Advance Grants

For greenway projects that incorporate walking and biking trails, Advocacy Advance Grants from the Alliance for Biking and Walking are another great resource.¹⁰¹ The Alliance is an advocacy group dedicated to “improving and increasing biking and walking in local communities, states, and provinces.”¹⁰² Advocacy Advance Grants are awarded to state and local bicycle and pedestrian advocacy organizations to “develop, transform, and provide innovative strategies in their communities.”¹⁰³

The Alliance for Biking & Walking provided approximately \$225,000 in grants to member organizations in 2010.¹⁰⁴ The grants are for one year, and are awarded twice a year. Through a partnership with the League of American Bicyclists, the Alliance also provides technical assistance, coaching, and training to supplement the grants.¹⁰⁵

Alliance grants come in two types: Startup/Capacity Building Grants and Innovation Grants. Startup Grants award \$5,000 to \$30,000 of matching funds to leverage private and public investment and launch campaigns for biking and walking projects.¹⁰⁶ Startup Grants are for organizational development, staff hiring, and organization needs. Innovation Grants help

existing organizations increase biking and walking and improve safety.¹⁰⁷

The Conservation Alliance

The Conservation Alliance is an organization dedicated to protecting “threatened wild places throughout North America for their habitat and recreational values.”¹⁰⁸ The Conservation Alliance is a group of outdoor industry companies that makes grants to registered 501(c)(3) organizations. Grants are awarded to grassroots citizen projects, rather than general education or government-sponsored efforts. Grant criteria require that the project:

1. Seek to protect a specific wild land or waterway for its habitat and recreational values;
2. Engage grassroots citizen action in support of the conservation effort;
3. Be quantifiable with specific goals, objectives, and action plans, and include a clear measure for evaluating success; and
4. Have a good chance of closure or significant measurable results over a fairly short term (one to three years).¹⁰⁹

Before applying for funding, an organization must first be nominated by a Conservation Alliance member company. The only current Georgia-based member is The Vanishing America Project.¹¹⁰

5, 2010).

¹⁰¹ Advocacy Advance Grants, Alliance for Biking and Walking, *available at* <http://www.peoplepoweredmovement.org/site/index.php/site/memberservices/C528> (last visited Oct. 24, 2010).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ The Conservation Alliance, *available at* <http://www.conservationalliance.com> (last visited Oct. 30, 2010).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (“Outdoor companies of all sizes are encouraged to join the Conservation Alliance. Yearly membership dues are based on a

C. Develop Government Partnerships

After trail organizers have developed a vision statement and identified potential resources, it is time to develop partnerships in both the public and private sectors that can help get the project underway.¹¹¹ This section will discuss the involvement of public agencies in Georgia. Some governmental agencies have a regulatory function and will need to be consulted, while other agencies may be involved only peripherally.¹¹² Some may provide support and funding.¹¹³ In most cases, trail organizers will meet with local officials at the municipal and county levels first and involve state and federal agencies as the project progresses.¹¹⁴

Approaches to involving municipal government vary according to the size of the community and the makeup of the government. Larger communities have parks and recreation departments, professional planners and other staff who could bring government assistance to a greenway project.¹¹⁵ The initial challenge in such communities may be identifying the appropriate people to approach.¹¹⁶ In smaller communities that do not have a large staff, the mayor may be the contact person.¹¹⁷ For example, the organizers of

the Silver Comet Trail explained their vision to the mayor of Rockmart, Georgia, a small city along the proposed trail, and the mayor became a trail supporter who helped to bring community leaders on board.¹¹⁸ It is important to consider the best approach. Some officials prefer that the trail organizers contact the responsible staff person first.¹¹⁹

If the project has a transportation component (i.e., not simply a hiking trail), the appropriate Regional Commission (RC) may be a good place to start.¹²⁰ There are 12 RCs in Georgia that provide support to local governments.¹²¹ The RC can help with securing planning funds.¹²² The RC also presents projects to the Georgia Department of Transportation for state funding.¹²³ The RC can then give assistance on technical aspects of building the trail.¹²⁴

When approaching local governments, representatives of the greenway organization should be ready to explain how greenways have been an asset to communities that have embraced them.¹²⁵ A good strategy may be to present a successful greenway and show the benefits of the greenway to that community.¹²⁶

company's annual revenues, and are calculated at a rate of \$1,000 per \$1,000,000 in annual sales to a maximum of \$10,000. Companies with annual revenues under \$1,000,000 pay \$500 in membership fees." The Vanishing America Project chronicles the journey of an artist who promotes conservation and cultural awareness around the United States through photography and writing. More information is available at <http://www.vanishingamerica.net/>)

¹¹¹ Flink and Searns, *supra* note 48, at 50.

¹¹² *Creating Connections* *supra* note 2, at 25.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Interview with John Devine, *supra* note 46.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Georgia Association of Regional Commissions, web site, <http://garc.ga.gov/main.php?Home-7> (last visited Dec. 4, 2010).

¹²² *Id.*

¹²³ Interview with John Devine, *supra* note 46.

¹²⁴ *Id.*

¹²⁵ *Id.*; *See, e.g.*, Greenway Conservancy for the Hudson River Valley and Parks & Trails New York, *Getting Involved: A Community Trail Handbook for Landowners*, 22-23 (Sept. 2002), available at <http://www.ptny.org/pdfs/greenways/publications/LandownersGuide.pdf>.

¹²⁶ Interview with John Devine, *supra* note 46.

V. Land Acquisition

A. Working with Landowners

The most important aspect of the land acquisition process is fostering a successful relationship with landowners and the community as a whole. The key to this relationship is communicating effectively, and working with the landowners.¹²⁷ Open communication between trail proponents and landowners about the trail building plan, potential effects, and prospective benefits is essential.¹²⁸ As discussed above, a mission statement or letter, informing the community of the projects goals, should be provided to landowners.¹²⁹ This letter should be followed up by individual contact or meetings with landowners to provide information.¹³⁰ Being clear and upfront with this information and being available to answer questions and concerns from the beginning are key to building a successful relationship with the community.¹³¹

For landowners to feel comfortable and willing to participate in a trail building project they should be informed about the legal effects of any easement or other

property interest taken in the corridor.¹³² Additionally, property owners will likely have concerns about future property values, trespass and damage to their property, crime, landowner liability, and privacy, which should also be discussed.¹³³

For example, many landowners may initially have concerns that greenways attract crime, vandalism, and other disturbances.¹³⁴ In fact, there is very little evidence to support the fear that greenways cause crime or will produce disturbances affecting private landowners.¹³⁵ Another fear is that the greenway will negatively affect property values.¹³⁶ In fact, greenways tend to positively affect property values, making properties nearby easier to market.¹³⁷

To adequately address landowner anxiety and build a positive foundation for the trail building project, these concerns should be addressed early in the process.¹³⁸ Some

¹²⁷ Tamira Jones, California Coastal Trail Coordinator, *Landowner Outreach and Trail Planning* (presentation for Mendocino Land Trust, Nov. 3, 2007), available at <http://www.konoctitrails.com/helpful-trails-info>.

¹²⁸ *Id.*

¹²⁹ *Getting Involved: A Community Trail Handbook for Landowners*, Greenway Conservancy for the Hudson River Valley and Parks and Trails New York (Sept. 2002) available at <http://www.ptny.org/pdfs/greenways/publications/LandownersGuide.pdf>.

¹³⁰ *Virginia Greenways and Trail Toolbox*, Virginia Department of Conservation and Recreation, available at http://www.dcr.virginia.gov/recreational_planning/greenway.shtml (last visited Nov. 30, 2010).

¹³¹ *Id.*

¹³² E.A. Seagraves, *Residents disagree on greenway easements*, *The News & Record* (Oct. 26, 2008) available at http://www.news-record.com/content/2008/10/26/article/residents_disagree_on_greenway_easements.

¹³³ Mark Ivy, and Roger Moore, *Neighboring Landowner Attitudes Regarding A Proposed Greenway Trail: Assessing Differences Between Adjacent and Nearby Residents*, *Journal of Park and Recreation Administration*, Vol. 25, #2, 59 (Summer 2007).

¹³⁴ Crime and Vandalism, *The Conservation Fund's American Greenways Program Factsheets*, available at <https://www.msu.edu/~jaroszjo/greenway/facts/crime.htm> (last visited Nov. 30, 2010).

¹³⁵ *Id.*

¹³⁶ Mark Ivy, *supra* note 133, 59.

¹³⁷ Crime and Vandalism, *supra* note 134.

¹³⁸ James Bernard, *Clearing the Path to Successful Trail Projects: Creating Effective Partnerships with Government Officials and Private Landowners; Part One: Building and Implementing Landowner Contact and Outreach Capacity*, Mendocino Land Trust (Nov. 3, 2007) available at <https://sites.google.com/site/konoctitrails/helpful-trails-info>.

helpful information dissemination tools include providing a booklet and website explaining landowner options and incentives.¹³⁹ The more informed and aware the community is of the trail building project and its goals, the more support the project is likely to garner.¹⁴⁰

Once trail proponents have met individually with private landowners an open community meeting is a useful tool for introducing the greenway to the entire community, as well as to measure public response and rally support.¹⁴¹ At that meeting maps and vision documents representing the proposed trail maybe introduced to the community.¹⁴²

B. Tax Incentives for Landowners

In Georgia, landowners may donate the portion of their property that forms a greenway corridor to the municipality, relieving them of their tax obligations, and qualifying them for tax deductions.¹⁴³ The landowner could also qualify for a Conservation Use Assessment. Should the real property be devoted to a bona fide conservation use, it will be assessed at forty percent of its current value, reducing the property tax burden of to the landowner.¹⁴⁴

Alternatively, landowners could negotiate a bargain sale with the municipality for the portion of the corridor running through their land.¹⁴⁵ A bargain

sale is the sale of property at less than its fair market value (FMV).¹⁴⁶ The landowner would be eligible for tax benefits for the difference between the FMV and the bargain price sale.¹⁴⁷

Finally, landowners could place a conservation easement on the corridor preserving conservation values and the Right-of-Way (ROW) for the greenway. A conservation easement is a legally binding agreement in which the landowner agrees to permanent restrictions on the way the property is used.¹⁴⁸ Unlike some temporary conservation covenants, conservation easements never need renewal.¹⁴⁹ A conservation easement may provide the landowner with federal and state tax benefits, as well as property tax revaluation.¹⁵⁰ Landowners can claim the value of their donation on their federal tax returns.¹⁵¹ Georgia state tax credits must be certified by the Department of Natural Resources, which requires submittal of a completed application form with the recorded easement along with evidence of clear title.¹⁵² If approved the landowner

¹³⁹ *Getting Involved*, supra note 129.

¹⁴⁰ *Virginia Greenways and Trail Toolbox*, supra note 130.

¹⁴¹ *Id.*

¹⁴² Tamira Jones, supra note 127.

¹⁴³ Georgia Department of Revenue, *Local Government Services Division: Conservation Use Assessment*, available at <https://etax.dor.ga.gov/ptd/cas/cuse/index.aspx> (last visited Nov. 30, 2010).

¹⁴⁴ *Id.*

¹⁴⁵ *Summary of Tax Incentives for Donations of Conservation Lands or Conservation Easements on Land*, Georgia Land Conservation Program

(Jan. 2010), available at

http://glcp.georgia.gov/vgn/images/portal/cit_1210/20/8/83628676LC%20taxIncentives.pdf.

¹⁴⁶ Black's Law Dictionary, *Bargain sale* (8th ed. 2004).

¹⁴⁷ *Summary of Tax Incentives for Donations of Conservation Lands or Conservation Easements on Land*, supra note 146.

¹⁴⁸ *Conservation Easements*, Georgia Land Conservation Program, available at http://glcp.georgia.gov/00/channel_title/0,2094,82613131_87299211,00.html (last visited Nov. 30, 2010).

¹⁴⁹ Policy Guidance for Completing Conservation Easements in the State of Georgia, available at http://glcp.georgia.gov/vgn/images/portal/cit_1210/1/19/88547853Policy%20Guidance%20for%20Conservation%20Easements%20in%20the%20State%20of%20Georgia.pdf (last visited February 2, 2011).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

may attach the Certification Letter to their Georgia state tax return.¹⁵³ Additionally, landowners would be entitled to a property tax revaluation after completing a conservation easement.¹⁵⁴

C. Rails-to-Trails

The Rails-to-Trails system was enacted on March 28, 1983 as part of the National Trails System Act ("NTS Act") Amendments of 1983.¹⁵⁵ The purpose of the NTS Act is "to provide for the ever-increasing outdoor recreation needs of an expanding population and . . . to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the nation."¹⁵⁶ The NTS Act authorizes the use of discontinued railroad ROW as recreational trails until such a time when railroad transportation is reactivated.¹⁵⁷

If a local government or private organization agrees to maintain the ROW for possible future railroad use, including assuming liability and paying taxes, it may use the corridor on an interim basis as a trail.¹⁵⁸ The NTS Act expressly provides that the interim use shall not be treated as an abandonment of the use of the ROW for railroad purposes.¹⁵⁹ Rather, when a railroad ROW is converted to a public trail a new easement is created.¹⁶⁰ Therefore, the NTS Act retains the property as a possible future rail line, i.e. "railbanking," while allowing it to be used

in the interim as a recreational trail.¹⁶¹ To date every court that has reviewed the NTS Act has considered it to be constitutional and has found that the preemption of state law reversionary rights are a valid exercise of the Congress's power under the commerce clause, and not an impermissible impairment of contracts.¹⁶²

In order for a railroad to discontinue service over an out-of-service track, the trail proponent must file for one of several forms of "abandonment" proceedings provided by the Surface Transportation Board (STB).¹⁶³ The STB regulates the construction, operation, and abandonment of most railroad lines in the United States.¹⁶⁴ The STB is also responsible for railroad applications for abandonment.¹⁶⁵

VI. Conclusion

The guidebook is designed to provide a tool for community organizations considering development of a greenway project. With this information on project management, funding, land acquisition, and other considerations in hand, a group can take

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ 16 U.S.C. § 1247(d)(2010).

¹⁵⁶ 16 U.S.C. § 1241 (2010).

¹⁵⁷ 16 U.S.C. § 1247(d) (2010).

¹⁵⁸ 55 Fed. Reg. 4026 (1990).

¹⁵⁹ 16 U.S.C. § 1247(d) (2010).

¹⁶⁰ *Schneider v. United States*, 2003 U.S. Dist. LEXIS 27667.

¹⁶¹ 55 Fed. Reg. 4026 (1990).

¹⁶² *See Preseault v. ICC*, 494 U.S. 1, 16-18 (1990) (the Supreme Court held that the Rails-to-Trails statute was a valid exercise of congressional power under the Commerce Clause, and that even in the case of a taking the suit was premature given the compensation requirements were met under the Tucker Act); *Glosemeyer v. MKT*, 879 F.2d 316 (8th Cir. 1989); *National Wildlife Federation v. ICC*, 850 F.2d 694 (D.C. Cir. 1988).

¹⁶³ Surface Transportation Board, *Overview: Abandonments and Alternatives to Abandonment*, 4 (2008) available at http://www.stb.dot.gov/stb/public/resources_abandonment.html.

¹⁶⁴ *Caldwell v. United States*, 391 F.3d 1226, 1228 (Fed. Cir. 2004).

¹⁶⁵ Surface Transportation Board, *Public Information, Resources: Abandonment*, available at http://www.stb.dot.gov/stb/public/resources_abandonment.html (last visited Nov. 30, 2010).

steps to conserve land, encourage community engagement in outdoor activities, or even provide environmentally sensitive transportation alternatives through a greenway project. We hope this information guides governments, communities and individuals to create vibrant greenway projects across Georgia.