HIGHWAY CORRIDOR PRESERVATION: A SYNTHESIS OF PRACTICE

Michael A. Perfater
Research Scientist

Virginia Transportation Research Council
(A Cooperative Organization Sponsored Jointly by the
Virginia Department of Transportation and
the University of Virginia)

In Cooperation with the U.S. Department of Transportation
Federal Highway Administration

Charlottesville, Virginia

August 1989
VTRC 90-TA1

ADMINISTRATION & FINANCE RESEARCH ADVISORY COMMITTEE

A. W. COATES, JR., Co-Chairman, Assistant Commissioner, VDOT

J. W. ATWELL, Co-Chairman, Director of Finance, VDOT

G. R. ALLEN, Senior Research Scientist, VTRC

F. C. ALTIZER, Resident Engineer, VDOT

A. C. BAIRD, Administrative Services Officer, VDOT

R. J. BOYD, JR., Human Resources Administrator, VDOT

R. G. CORDER, Rail & Public Transportation Administrator, VDOT

J. L. CORLEY, District Engineer, VDOT

T. F. FARLEY, District Engineer, VDOT

CLAUDE D. GARVER, JR., Construction Engineer, VDOT

J. S. GIVENS, Assistant Budget Officer, VDOT

M. S. HOLLIS, Urban Engineer, VDOT

J. V. LUNETTA, Financial Manager, FHWA

E. T. ROBB, Assistant Environmental Quality Engineer, VDOT

ALEX SABO, Internal Audit Division Administrator, VDOT

CONSTANCE SORRELL, Management Services Administrator, VDOT

P. C. TARDY, Information Systems Manager, VDOT

S. A. WAYMACK, Right-of-Way Engineer, VDOT

G. A. WHIRLEY, Fiscal Manager, VDOT

PREFACE

This report was prepared in response to the commitment made in a 1987 report published by the Virginia Department of Transportation in response to Senate Joint Resolution No. 7 entitled Creating an Innovative and Productive Environment for the 21st Century to investigate opportunities for and restrictions on the advanced purchase of right of way where widenings are planned. Major portions of the report were derived from Highway Corridor Preservation: Options for Future Action by Frederick Skaer, a document presented at the Annual AASHTO Right of Way Subcommittee Meeting in Denver, Colorado, on April 25, 1988.

HIGHWAY CORRIDOR PRESERVATION: A SYNTHESIS OF PRACTICE

Michael A. Perfater
Research Scientist

INTRODUCTION

Rapid development in the suburbs and regions beyond them throughout the United States makes it incumbent upon the nation's transportation agencies to keep pace by providing an adequate highway network. Unfortunately, since new highways take years to plan and build, development is occurring faster than those agencies can build a network. Frequently, by the time a proposed highway project becomes a high enough priority to demand immediate attention, corridor options are both expensive and politically unattractive. In order to cope with such instances during the next 10 to 20 years, transportation agencies are looking to new methods of advanced planning. One such method that appears to have promise is highway corridor preservation.

Several states, including Florida, Missouri, North Carolina, and Nebraska, have instituted corridor preservation procedures that aid in integrating highway project development and land development. New processes for addressing environmental concerns, accelerating right-of-way purchases, and protecting critical highway locations are being experimented with in some states, and legislatures in others have or will shortly have been asked to enact laws that will facilitate advanced planning. Local governments are also seeking ways to provide additional highway capacity for developing areas. Developers are being asked to provide rights of way and to help fund the construction of new roads. Transportation assessment districts, traffic impact fees, developer-sponsored "road associations," and developer "proffers,"--all little known concepts 10 years ago--are being adopted by more and more local governments and developers (1). Also emerging at the local level is an increasing tendency for voters in some communities to express their displeasure with the haphazard coordination between public and private development planning by electing candidates committed to comprehensive land use and public facilities planning (2).

This report examines the general concept of planning for and protecting land designated to serve as new highway corridors in developing areas. It generally presents a review of the state of the practice by describing several methods for protecting potential highway corridors, some of which may be implemented immediately and some of which would require legislative or regulatory changes at either the federal, state, or local level. The report also presents a prospectus for future activities at the federal level regarding corridor preservation.

6

METHODOLOGY

Information was obtained through interviews with officials from the Federal Highway Administration (FHWA) as well as state highway departments in California, Florida, Georgia, North Carolina, Missouri, and Texas. These states were chosen because of their reputed experience with corridor preservation activities. Experts from the Virginia Department of Transportation's (VDOT) right-of-way office were also queried regarding right-of-way acquisition procedures and practices and the constitutionality of certain corridor preservation alternatives. Officials from other federal agencies involved in land acquisition were also interviewed so that their approaches could be compared with those of the FHWA. Two of these agencies, the Department of Housing and Urban Development (HUD) and the Urban Mass Transportation Administration (UMTA), have land acquisition approaches that are comparable to those of the FHWA. In addition, written information, both published and unpublished, was received from most of the aforementioned agencies.

CORRIDOR PRESERVATION OPTIONS AND ALTERNATIVES

A number of approaches exist that offer alternatives for protecting transportation corridors. Four such approaches are discussed in this section: (1) advance corridor approval, (2) protective buying, (3) accelerated right-of-way acquisition, and (4) zoning. Certain of these approaches, or their components, are immediately available to state highway agencies (SHAs), whereas others require either policy or statutory action prior to implementation.

Advance Corridor Approval

One alternative for protecting highway corridors allows SHAs to seek highway corridor location approval as soon as planning activities show the need for a project. Even though such corridor approval need not be based on detailed design information, an environmental analysis would have to accompany early studies that are conducted to determine corridor location. In Virginia, this analysis would thus be conducted earlier in the project development process than is currently the case. It could be in the form of either an environmental impact statement (for projects for which there is significant environmental impact) or an environmental assessment (for projects for which there is environmental uncertainty), depending on the anticipated severity of the environmental impacts. Once the environmental analysis is complete and the corridor location is adopted at the state and local level, it can be protected by local land use controls. One such control commonly used is the inclusion of the corridor on an official map (3). (This concept will be discussed in more detail in a later portion of this report.)

Once the project reaches the design phase, during which the specific design of the roadway to be located in the approved corridor is finalized, environmental issues would again have to be analyzed. This analysis would focus on the finalization of mitigation proposals, the issuance of permits, and design variations that avoid or minimize environmental impact. This design phase environmental analysis could be in the form of a new or supplemental environmental impact statement, an environmental assessment, or a written re-evaluation. A new full-scale environmental impact statement would be necessary only if significant new impacts were uncovered (3).

The advance corridor approval alternative can be immediately implemented by SHAs without any change in current statutes or regulations. To render it less prone to environmental snarls, however, two legislative changes seem desirable. First, to prevent federal agencies that grant various permits from resurrecting the question of alternatives at the permit application stage, a legislative provision is needed that would require these agencies to examine permitability and alternative locations during a project's location phase only and to concentrate solely on mitigation during its design phase. Legislative changes as to the manner in which the Section 4(f) Constructive Use Doctrine is applied also appear to be needed. Section 4(f), a part of federal law since 1966, specifies that transportation projects requiring the use of publicly owned lands will not be approved by the Secretary of Transportation unless there is no feasible alternative to the use of such land. (These lands include parks, recreation areas, wildlife refuges, and historic sites.) Constructive use of such lands occurs when the proximity impacts of a transportation project on a Section 4(f) site, without acquisition of land, are so great that the purposes for which the Section 4(f) site exists are substantially impaired. Advance corridor approval will work within the Section 4(f) framework only if the application of the constructive use doctrine is prohibited in the following instances: (1) when the highway is planned before the 4(f) resource is planned, (2) when the highway and the 4(f) resource are jointly planned, or (3) when the issue of constructive use on an existing 4(f) resource is dealt with by the FHWA in an environmental document and FHWA's decision that Section 4(f) does not apply is not challenged within 1 year (3).

Utilization of the advance corridor approval alternative has several advantages. First, it lets local governments and private developers know exactly where a highway is to be built so they can plan for it. Moreover, establishing the location of a highway while a great deal of the land is vacant helps avoid or at least minimize many social, economic, and environmental impacts. Finally, this alternative allows local governments to take advantage of developer proffers, dedications, and donations (3). On the negative side, the advance corridor approval alternative forces the SHA to devote greater personnel and monetary resources at an earlier stage than is normally the case. Location phase environmental work alone may cost several hundred thousand dollars. It also forces both the FHWA and the SHA to overcome the resistance to preparing two separate environmental documents, one at the location stage

and the other at the design stage. The likelihood of permit and 4(f) problems occurring late in the project development process is also fairly high, at least on some projects. Although the passage of the aforementioned legislation to minimize the delays that might occur as a result of 4(f) problems is desirable, past efforts to amend Section 4(f) have not been successful. Implementation of the advance corridor approval process will also force SHAs and local governments to monitor land development requests constantly to prevent incompatible development from occurring (3). This, too, will be a time-consuming and thus costly activity.

Protective Buying

A second alternative for protecting potential highway corridors is one in which the SHA purchases certain key parcels in advance of location approval. Such parcels usually consist of (1) those that lie in the path of one of the alignments being considered, and (2) ones for which the current owner has impending developmental plans. Acknowledging the fact that development will dramatically inflate the right-of-way costs and add to the environmental complexities, the SHA could realize substantial cost savings by acquiring such properties before the development occurs.

Although federal-aid participation on protective buying is limited, state governments do have considerable latitude in using it without jeopardizing federal-aid participation in subsequent right-of-way and construction activities. Current policy allows states to purchase properties if an alignment has been selected or a public hearing has been held, regardless of whether location approval has been received. Although states can engage in protective buying on any or all of the alternatives presented at the public hearing, current practice is for protective buying to be limited to one alignment. States can either request FHWA approval to engage in protective buying and be reimbursed as parcels are purchased or engage in protective buying without FHWA sanction with no reimbursement. Even if a state chooses to buy properties protectively without FHWA approval, it must comply with the requirements of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 and Title VI of the Civil Rights Act of 1964 in order not to jeopardize future federal participation in the project. In addition, current federal regulation pertaining to protective buying (Title 23 Section 712.204[d] of the Code of Federal Regulations) explicatively states that it is to be used "only in extraordinary cases or emergency situations and only for a limited number of parcels." It also mandates that protective buying actions cannot influence the environmental assessment of the project, the decision of whether or not to build it, or the selection of its location.

Use of the protective buying option has both advantages and disadvantages. On the positive side, protective buying affords SHAs the opportunity to use a portion of their acquisition funds to obtain only

key parcels, rather than exhausting them all, to purchase a substantial portion of the right of way. Moreover, parcels acquired in this manner that do not ultimately become part of the right of way can be sold, often at a profit. Finally, the FHWA and most SHAs are familiar with the protective buying concept; thus it is usually more readily understood and accepted than some of the other corridor preservation alternatives (3). On the negative side, since protective buying could be construed as land speculation, any SHA employing it could be subjecting itself to such accusations. Also, because protective buying occurs prior to location approval, public and private planning may be difficult to coordinate simply because the SHA employing it is more interested in preserving options than committing to a location (3).

As mentioned earlier, federal regulations do not permit protective buying to be used until an alignment has been selected or a public hearing has been held. Further flexibility would be realized if this regulation were changed to allow SHAs to engage in protective buying prior to alignment selection. Such a change would render the protective buying alternative one that could preserve options on several rather than on a single alignment.

Accelerated Right-of-Way Acquisition

The accelerated right-of-way acquisition alternative embraces both the advance corridor approval and protective buying alternatives but takes them a step further. Advance acquisition allows the SHA to begin acquiring right of way immediately after the environmental document and project location have been approved. Limits of the acquisition would be based on a typical highway cross section or template rather than on a definite road design. Although this alternative could reduce right-of-way costs considerably, it would require a substantial commitment of funds at a very early stage in the project development process, perhaps even before projects have been prioritized. (Typically, in VDOT's project development process, acquisition does not begin until the roadway design has been approved.) Thus, use of this alternative would be dictated by the SHA's ability to identify and employ a means for funding such projects. There are six possible options for financing advance acquisition that are available to SHAs. Of the six, which are described in the ensuing paragraphs, the first four are immediately available to SHAs, although options 3 and 4 could be enhanced considerably with the legislative actions noted. Options 5 and 6 would require enabling legislation before they could be employed.

1. Use the FHWA Right of Way Revolving Fund. States may request the use of this interest-free fund for specific projects. It can be used to fund the entire project up front, which will later be converted to a regular federal-aid project. Revolving fund monies must be repaid within 10 years. The amount currently available in the revolving fund is small--only about $45 million each year. In FY 1988, states submitted requests for $184 million in revolving funds, obviously far exceeding

what was available. Although increasing the size of the revolving fund account might provide an incentive for states to use the advance acquisition option, it is unlikely that it could be increased enough to meet demand. Further, if the practice of using advance acquisition became more widespread, it is likely that the demand for revolving funds could grow to an astronomical size. Thus, it does not appear that the revolving fund offers a great deal of promise as an appropriate mechanism for financing advance acquisition.

2. Use the advance construction mechanism authorized by Title 23, Section 115, of the United States Code. The United States Code provides a mechanism whereby a state can proceed with a federal-aid project without actually obligating federal funds. The project is reviewed and approved by the FHWA in the normal fashion as if regular funds were being obligated but is classified as an advance construction project. Ultimately, the state converts the project from advance construction status to regular status by obligating regular categorical funds. Although this alternative appears on the surface to be quite viable, in the event Congress does not pass a reauthorization bill in a timely fashion, SHAs using the advance funding mechanism could be forced to convert all advance construction projects at the end of the period covered by a highway authorization act. This puts the states at risk each time an authorization bill is about to expire. Also, a state using the advance construction mechanism must provide up front funding for project activities from its own revenue sources and be willing to dedicate a portion of its advance construction allotment to that project (3).

This funding option would be enhanced if legislation were passed allowing SHAs to carry over projects placed in advance construction status from one authorization cycle to the next. Such legislation would remove the need to convert advance construction projects at the end of the authorization cycle; in effect, the result would resemble a state and locally financed revolving fund (3).

3. Use regular federal-aid funds. This alternative, based on an FHWA location approval, allows the SHA to request FHWA authorization of a federal-aid project for right-of-way acquisition activities. SHAs usually employ this alternative only on high priority projects, since such funds are drawn from the current federal-aid apportionment.

4. Use state or local funds to acquire right of way, which will then serve as matching funds for a future federal-aid project. Section 146 of the 1987 Surface Transportation and Uniform Relocation Assistance Act allows the value of donated land to be used as the nonfederal match for federal-aid projects. If a similar provision were enacted to allow the value of right of way purchased without federal authorization to be used in the same manner, it would greatly enhance the utility of the advance acquisition alternative.

5. Obtain Stage 1/Stage 2 authorization. This option would allow the state or local government to provide funds for right-of-way acquisition with the understanding that those funds would be reimbursed at a later date when and if a decision were made to use regularly apportioned funds for the project. The FHWA would determine the date of eligibility for this reimbursement by reviewing the project and providing a Stage 1 authorization. The actual commitment of federal funds would occur later in the process (a Stage 2 authorization). Current regulations allow the Stage 1/Stage 2 authorization to be granted only for preliminary engineering and hardship/protective buying activities. Though promising, using this funding mechanism may put the state at risk since there is no guarantee that Stage 2 funds will be available when they are needed.

Although authorizing legislation at the federal level would be necessary for the Stage 1 approval option to be used, care would have to be taken to ensure that it was not made available for too broad a range of activities, or else it could completely undermine the advance acquisition option. This could result in unsound fiscal decisions by the states and could lead to a continuous shuffling of projects on their part to determine the ones that would eventually receive federal aid. If legislation were enacted authorizing a Stage 1 approval only for a limited range of activities specifically aimed at corridor preservation, such shuffling might possibly be eliminated.

6. Use state or local funds exclusively. State and local governments could fund right-of-way acquisition from their own coffers, while the land is inexpensive, and then seek federal-aid funding only for the construction phase of the project. In this case, the FHWA would have no involvement in the acquisition of the land. Its only involvement would be that regarding compliance with the Uniform Act and environmental requirements (3).

Zoning

Zoning can be used as a means for both preserving right of way and lowering the cost of acquisition. Since land must be purchased at its fair market value, the rezoning of vacant land to a higher intensity significantly increases right-of-way costs. If land adjoining a designated highway corridor is rezoned to a more intense use, under present practices, the highway corridor would be zoned to the same intensity. But, if the land within the corridor could be maintained as a reserved strip instead of being rezoned, the reserved strip could be purchased in the future at a substantially lower cost. The zoning alternative could also be applicable to the official mapping process once the alignment of the highway facility had been precisely determined. The zoning alternative appears to be particularly appropriate for reserving right of way for expressways and freeways since these types of projects are usually purchased rather than dedicated.

SYNOPSIS OF SELECTED APPROACHES FOR PURSUING CORRIDOR PRESERVATION

State and federal decision makers have reacted to the corridor protection issue in a variety of ways. In this section of the report, a thumbnail sketch of approaches used in Florida, North Carolina, and Virginia is presented. In addition, the federal position on the subject is summarized.

The Florida Approach

The Florida Department of Transportation (FDOT) has the authority to file and record maps of reservation that show the limits of proposed rights of way for both widenings and initial road construction. Before such maps are recorded, a public hearing must be held and all affected property owners must be notified at least 20 days in advance of the hearing. To preserve the corridor in question, a building setback line is established by recording a map of reservation within which no developmental permits may be granted by any governmental entity for new construction of any type. Renovation of an existing commercial structure whose cost exceeds 20 percent of its appraised value is also not permitted within the setback limits. There is no restriction on renovation or improvement of residential structures. Maps of reservation issued in Florida remain in effect for 5 years. This period can be extended for an additional 5 years providing property owners are notified and a new hearing is held.

Any landowner who objects to a map of reservation can request an administrative hearing on the matter. Such hearings are heard by a State Administration Hearing Section (SAHS) that is an extension of the courts. (In Florida, the SAHS is a state agency that exists solely to oversee hearings for all other state agencies.) If the decision rendered at that hearing is in favor of the property owner, FDOT must either acquire the property within 180 days or withdraw the map. The local and county government may issue any permits requested if FDOT fails to act.

FDOT officials interviewed on this issue also pointed out the following:

1. Landowners are alleging that maps of reservation are unconstitutional and amount to a "taking" of their property. Although such allegations continue in Florida, the constitutionality of maps of reservation has to date withstood all challenges. In fact, few cases proceed to the circuit court level since administrative hearings have usually been in favor of FDOT.

2. Local and county governments are not statutorily required to use existing police power regulations, such as zoning or setback, to protect right of way for state transportation purposes.

3. Filing maps of reservation during the project development process (depending on how early in that process they are filed) could result in an FHWA finding that FDOT had predetermined the location and alignment, an action that is not permitted by the National Environmental Policy Act (NEPA). Such a finding has not yet been issued, however.

In order to further its corridor preservation efforts in the state, the Florida legislature also recently enacted the following:

1. Local and county governments are required to use existing zoning, setback, density, etc. ordinances in preserving needed rights of way for the benefit of the state. A map of reservation, once filed, is then mandatorily considered in all land use decisions of the local government.

2. When hardship can be demonstrated, property tax relief is provided to the owner of all properties affected by a map of reservation.

The North Carolina Approach

In 1987, the North Carolina General Assembly provided a number of right-of-way preservation measures designed to clarify and enhance the ability of the Department of Transportation (NCDOT) and local governments in the state to preserve rights of way for important highway projects. Among those measures is the authority to adopt and establish roadway corridor official maps. The establishment of such maps places temporary restrictions on private property rights by prohibiting, for up to 3 years, the issuance of a building permit or the approval of a subdivision on property within a corridor for which an official map has been adopted.

Property owners affected by a roadway corridor official map may petition for a variance from the requirements associated with this designation by either requesting a public hearing on the matter or by outlining the reasons for the petition for variance in a letter to the NCDOT Program and Policy Branch Manager. If a hearing is granted, the manager provides written notice to the Mayor and the Chairman of the Board of County Commissioners of any affected city or county. A variance may be granted upon a showing that:

1. Even with the tax benefits authorized under this statute, no reasonable return may be earned from the land; and

2. The requirements of the statute result in practical difficulties or unnecessary hardships for the property owner.

Based on the facts of the case, the Program and Policy Branch Manager may either grant the requested variance, recommend that the

property be advanced purchased, or deny the request. A written record of the decision rendered is provided to the property owner within 30 days of either the hearing or the receipt of the written request for variance. If the property owner has reason to believe that the manager incorrectly interpreted the facts of the case, he or she may request a review of the case by the State Highway Administrator. When called upon to do so, the State Highway Administrator evaluates such cases and renders a decision in writing within 30 days.

Officials at NCDOT report that they believe official corridor mapping benefits the Department, the taxpayer, and the property owner. It allows the Department to purchase properties from willing sellers at a fair price and eliminates instances in which individuals owning property within the corridor are prevented from developing it. It also allows all parties--landowners, developers, the local jurisdiction, and the NCDOT--to know the location of transportation corridors earlier on.

The Virginia Perspective

In Virginia, additional flexibility in both securing rights of way and protecting prospective transportation corridors from pressures of development appears desirable. Without such flexibility, costs will be needlessly high, and attempts by VDOT to implement transportation plans in a timely fashion will be frustrated. At the same time, the Commonwealth must recognize the legitimate rights of individual property owners. Such rights are protected by both the state and federal constitutions and have recently been further defined by several decisions of the U.S. Supreme Court.

In its 1987 report, the Commission on Transportation in the 21st Century, which was appointed by the Virginia General Assembly and the Governor, recommended the following:

1. The VDOT should exercise its authority under the existing statute to acquire wider rights of way where planning flexibility is needed.

2. Section 15.1-458 of the Code of Virginia should be amended to clarify and simplify the requirements associated with official map procedures. Current law implies that a centerline should be established for all proposed transportation improvements shown in the comprehensive plan before the map becomes official. Further, Section 15.1-458 should be strengthened to enable local governments to acquire right of way once the statutory provisions of the official map are met.

3. VDOT's informal public hearing process and public information meetings to provide earlier public involvement in the formulation and selections of alternatives to be studied should be continued and enhanced.

4. The General Assembly may wish to consider amending Section 33.1-90 of the Code of Virginia to permit the State Transportation Commission to hold land acquired through purchase or through the powers of condemnations beyond the 20-year limit currently specified. The amendment could provide for an extension in cases where a project is included in the Six-Year Improvement Program of the Program for Secondary Roads for construction purposes and where clear actions have been taken to move forward.

5. The General Assembly may wish to consider a statutory amendment to provide a freeze of up to 3 years on the rezoning of, or improvements to, land designated by VDOT or local governments for road projects. The land so designated would be described by metes and bounds or a centerline and a typical cross section and would be required for projects in the Six-Year Improvement Program of the Commonwealth Transportation Board and the Six-Year Improvement Programs of local governments.

6. Finally, an additional amendment should be considered that would require railroads and electric utilities to advise VDOT well in advance of the cessation of use of any rights of way or lands held in fee and give VDOT priority in acquiring them for transportation purposes if it elects to do so.

These recommendations suggest that corridor preservation is a priority among the Commonwealth's top transportation managers and planners. The 1988 General Assembly enacted legislation for recommending items 2, 3, and 4. Senate Bill 227 (Appendix A), submitted in response to Recommendation 5, was carried over to the 1989 session but was subsequently stricken from the House Roads Committee docket.

During the last 15 years, several instances have occurred in Virginia in which the employment of one or more of the aforementioned initiatives as well as other corridor preservation alternatives may have reduced project costs significantly. A classic example is the Hershberger Road project in Roanoke and Salem. In the late 1970s, just prior to the initiation of right-of-way acquisition, the city of Salem granted the Kayo Oil Company a permit to install new canopy pumps and other modifications onto a proposed right of way. Once VDOT began acquiring the right of way, the modifications had to be underwritten by the Commonwealth in the amount of $36,000. In 1978, Shoneys, Inc. was allowed to construct a restaurant within the limits of this project after the land was rezoned from residential to commercial. Just 3 years later, the restaurant, lying within the proposed right-of-way limits, was acquired by the Commonwealth. The cost of the acquisition was $402,000. If VDOT had been in a position to acquire or somehow protect this parcel in advance of commercial rezoning and development, it is likely its cost would have been a fraction of what it turned out to be. Finally, in 1977 on the same project, Future Investment Corporation was granted a permit to construct a Western Sizzlin' restaurant. Four years later, the

property was acquired by the Commonwealth at a cost of $526,000. As in the previous example, had VDOT been able to purchase or protect this property in advance of its commercial rezoning and development, the savings would likely have been substantial.

The Federal Perspective

Corridor preservation is currently receiving a great deal of attention at the federal level. The FHWA, in concert with the states, is seeking to devise ways to preserve potential highway corridors. Anthony Kane, FHWA Associate Administrator for Right of Way and Environment, is encouraging approaches available under current FHWA authority to preserve highway corridors and to provide for earlier right-of-way acquisition. The FHWA encourages corridor preservation in rapidly developing areas because it saves money, results in less disruption, and leads to disciplined urban growth. Recently, the AASHTO Committee on Right of Way established the AASHTO Corridor Preservation Task Force, consisting of administrators from nine state transportation agencies and the FHWA, to investigate this issue (see Appendix B). The Task Force has set forth the following goals/activities:

1. Develop a definition for corridor preservation to be used as a focal point for task force activities and later initiatives by SHAs and the FHWA. This definition should include identification of the various elements applicable to corridor preservation (e.g., protective buying, accelerated ROW acquisition).

2. Determine the scope of right-of-way acquisition to pursue under corridor preservation initiatives (e.g., vacant land, developed property, transitional property). Evaluate whether different scopes of right-of-way acquisition will require different degrees of regulatory compliance.

3. Conduct a survey of the states regarding corridor preservation to learn

   - the extent of current involvement of the various states in corridor preservation
   - the extent of their interest in corridor preservation
   - techniques being used for corridor preservation
   - their view of impediments (regulations, funding, politics) to corridor preservation
   - the role of planning at both state and local levels in the corridor preservation process in the states

- o contributions from the planning processes of the states that are useful in corridor preservation.

4. Clearly identify the flexibility within existing FHWA regulations allowing federal participation in the various elements of corridor preservation.

5. Determine the extent to which SHAs have the latitude to initiate the various elements of corridor preservation with state funds without jeopardizing later FHWA participation.

6. Evaluate the extent to which early right-of-way acquisition procedures and policies used by other federal agencies, such as UMTA and FAA, may be applicable for highway corridor preservation.

7. Determine whether some of the right-of-way problems that corridor preservation initiatives are intended to solve could be better solved by streamlining the existing FHWA-NEPA process. If so, suggest ways in which streamlining could be accomplished.

8. Identify and evaluate innovative approaches for accomplishing corridor preservation under NEPA that do not involve the need for time-consuming and costly NEPA compliance.

9. Determine if the level of environmental documentation needed to allow right-of-way acquisition for corridor preservation can be reduced or eliminated. If so, evaluate possible risks and suggest measures to reduce vulnerability.

10. Evaluate whether the tiered EIS process could contribute to corridor preservation initiatives, and determine its pros and cons. (During this process, environmental examinations are conducted for alternative corridors on a broad scale but not to the same detail as the traditional EIS; the first tier usually analyzes the purpose and need for a project, and subsequent tiers consist of examinations of site-specific impacts and proposed mitigation.)

11. Identify and evaluate possible corridor preservation techniques that do <u>not</u> involve outright fee acquisition (e.g., easements, purchase options, maps of reservations, purchase of development rights).

12. Reevaluate the impact and interpretation of the Snow case. (This was the case of the National Wildlife Federation versus the FHWA. Action was brought challenging two FHWA regulations governing the number and timing of public hearings on federally assisted highways. The action charged that regulations allowing acquisition of right of way in advance of any public hearing on location and without an environmental impact

statement violated the Federal-Aid Highway Act, the National Environmental Policy Act, and the Clean Air Act. The decision rendered stated that federal funds cannot ordinarily be used to finance advance acquisition right-of-way parcels prior to a location hearing and that advance acquisition cannot preselect a corridor or negate the no-build alternative.) Determine whether FHWA regulations should be changed to allow federal participation in protective buying/hardship takes prior to public hearing and/or selection of a preferred alternative.

13. Identify the full range of the public benefits of corridor preservation, including any environmental benefits not otherwise apparent.

14. Advise and educate FHWA and the state highway departments on the techniques and authority available to them for implementing corridor preservation initiatives. Secure uniform FHWA support for corridor preservation initiatives at all levels of FHWA, and encourage FHWA to make more funding available for corridor protection.

15. Determine what corridor techniques are working in the various states. Encourage the various state highway departments to share these techniques and recognize the commonality of the federal process (and do so without imposing uniformity on the state highway departments).

It is the intention of the AASHTO Task Force to publish and distribute a final report in mid-1989. The report will include recommendations for small modifications of existing statutes as well as regulatory changes that FHWA can possibly implement without new legislation. It is anticipated that corridor preservation alternatives would then be included in Surface Transportation Assistance Act legislation due for renewal in 1991.

SUMMARY AND CONCLUSIONS

In an effort to ensure that viable locations will exist for building highways in developing areas, attention is being focused, both within the states and at the federal level, on methods for preserving transportation corridors and for earlier right-of-way acquisition. Although corridor protection activities have been under way in several states for some time, it is only recently that the highway community as a whole has begun to pursue highway corridor preservation strategies more aggressively. The FHWA is encouraging approaches available under current FHWA policy while at the same time challenging the states to develop innovative procedures for overcoming massive development within future potential

right-of-way limits. These efforts are being labeled as those that will lead to federal highway legislation for the post-1991 period that will revise many of the provisions affecting corridor preservation.

The response to the alternatives and options focused on in this report will, to a great extent, depend on the future overall direction of funding. In Virginia, funding tends to drive the project development process. It appears that for VDOT to employ any corridor preservation alternatives successfully, the conventional project development process, and thus certain funding procedures, will have to be altered. Such an alteration could result in a substantial change in a process that for years has had right-of-way acquisition activities immediately preceding construction activities such that the timing of the acquisition is dictated by the priority attached to the project's construction schedule. This is not to say that VDOT's conventional project development process needs a total revamping. But, for some projects on which it appears prudent to protect corridors from future development, a deviation from the norm will be necessary.

As discussed in this report, several states have chosen to seek legislative changes that offer opportunities for alterations in their project development processes. Legislation in Florida and North Carolina has allowed the transportation agencies in those states to proceed with corridor protection strategies in two decidedly different ways. The Florida approach, one that establishes building setback lines that reserve corridors for at least 5 years, is by far the most provocative of the two and, at this writing, is one that is being challenged in court. Meanwhile, the North Carolina official mapping approach appears to be working well there. Though somewhat limiting, the official mapping option may provide an avenue that can work in protecting certain corridors in Virginia. Since procedures in both states are relatively new, a thorough analysis of the pros and cons of each could not be made at this juncture, and it would thus be premature to judge one to be superior over the other. In this writer's opinion, since corridor protection activities are receiving so much attention at the national level, the most "tried and true" techniques will likely become well publicized fairly shortly. The aforementioned AASHTO Corridor Preservation Task Force, consisting of high ranking state and federal decision makers, has been charged to make an in-depth investigation of corridor protection measures. One member of this task force was heard to say that corridor preservation may be the most important and far reaching issue to be addressed by the states and federal government since the environmental movement that emerged in the 1960s.

RECOMMENDATION

There is without question a flurry of activity occurring nationally on the corridor preservation issue. It may be prudent for VDOT to take a "wait and see" approach before embarking on a corridor preservation course of action of its own, however. A report of the AASHTO Corridor

Preservation Task Force, due out in the summer of 1989, should provide a great deal more information and guidance than are currently available. Moreover, if the Task Force is able to endorse or recommend either one specific initiative or a series of initiatives that can be used by the states, and obtain AASHTO's endorsement of those initiatives, it is likely that the FHWA will generate a policy statement or endorsement regarding corridor preservation that it will pass on to the states.

REFERENCES

1. Curvero, Robert. 1986. Unlocking suburban gridlock. Journal of the American Planning Association, Autumn, p. 389.

2. Back to the suburbs. 1986. Newsweek, April 21, p. 60.

3. Skaer, Frederick. 1988. Highway corridor preservation options for future action. Paper presented at the Annual AASHTO Right of Way Subcommittee Meeting, April 25, Denver, Colorado.

APPENDIX A

SENATE BILL NO. 227

Senate Amendments in [ ] - February 4, 1988

A BILL to amend the Code of Virginia by adding a section numbered 33.1-89.2, relating to limitations on improvements to property intended to be acquired for highway purposes.

Patrons–Waddell, Andrews and Bird; Delegates: Parker, Dickinson, Ball, Cranwell and Dobyns

Referred to the Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 33.1-89.2 as follows:

§ 33.1-89.2. Limitations of land use of properties designated for acquisition for highway purposes.–Whenever the Commonwealth Transportation Board includes in the then current six-year improvement program of the Commonwealth Transportation Board any project for the interstate, primary, secondary and urban systems or a county board of supervisors includes any project in the six-year improvement program for secondary roads or a local government includes any highway project in its capital improvement plan and describes by metes and bounds or by centerline and typical cross-section based on Departmental standards for the class of intended road improvement, the location of lands to be acquired for such highway purposes, the locality, in consultation with the Department as appropriate, shall [, within 90 days of the action by the Commonwealth Transportation Board including the property in a project,] give written notice to the owners of such lands and to any governmental entity having zoning or other land use jurisdiction over such lands that such lands are to be acquired for highway purposes. After such notice has been given and until such time as any such property is acquired for highway purposes or three years from the date of such notice, whichever first occurs, no change in zoning classification of such land shall be made and no new improvements shall be made upon such lands other than those that are necessary for the continued use of such lands by the owner for the same purpose for which it was being used at the time of receipt of such notice. [~~After giving such notice, the government entity shall move expeditiously to acquire such property.~~]

Official Use By Clerks

Passed By The Senate		Passed By The House of Delegates	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

Clerk of the Senate | Clerk of the House of Delegates

APPENDIX B

APPENDIX B

AASHTO CORRIDOR PRESERVATION TASK FORCE

Leroy Irwin, Administrator
Environmental Analysis &
Technical Policy
Environmental Office
Florida Dept. of Transportation
605 Suwannee Street, M.5.37
Tallahassee, Florida 32301
Telephone No. (904) 487-1435
Telefax No. (904) 487-3403

Ken Bohuslav
Engineer of Environmental Studies
Highway Design Division
Texas State Dept. of Highways &
Public Transportation
11th and Brazos Street
Austin, Texas 78707
Telephone No. (512) 463-0264
Telefax No. (512) 463-6329

Robert Barnard
Chief Right of Way Agent
Land Management Branch
Washington Dept. of Transportation
Transportation Building
Olympia, Washington 98504
Telephone No. (206) 753-6052
Telefax No. (206) 753-6218
Attn: Robert Barnard

J. P. Rumley, Manager
Right of Way Branch
N.C. Dept. of Transportation
Division of Highways
P.O. Box 25201
Raleigh, North Carolina 27611
Telephone No. (919) 733-7694
Telefax No. (919) 733-9150

G. B. Saunders, Chief
Right of Way Operations Division
U.S. Department of Transportation
Nassif Building
400 Seventh Street SW
HRW-20
Washington, DC 20590
Telephone No. (202) 366-0142
Telefax No. (202) 366-0197 or
(202) 366-0198

F. Howard Zahn, Director
Division of Project Development
New Jersey Dept. of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625
Telephone No. (609) 530-2733
Telefax No. (609) 530-3893

Neil Pedersen, Director
Planning & Preliminary Engineering
Maryland State Highway Adm.
707 North Calvert Street
Baltimore, Maryland 21203
Telephone No. (301) 333-1110
Telefax No. (301) 333-1586

Kirk Brown, Director
Office of Planning & Programming
Illinois Dept. of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764
Telephone No. (217) 782-6289
Telefax No. (217) 782-6828

Kenneth M. Towcimak, Chief
Bureau of Right of Way
Florida Dept. of Transportation
Hayden Burns Building
605 Suwannee Street
Tallahassee, Florida 32301
Telephone No. (904) 488-2421
Telefax No. (904) 487-3403

Gary Toth, Section Chief
Division of Project Development
Bureau of Environmental Analysis
New Jersey Dept. of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625
Telephone No. (609) 530-2724
Telefax No. (609) 530-3893

Gene Cleckley
Federal Highway Administration
Nassif Building, Room 3232
400 Seventh Street SW
Washington, DC 20590
Telephone No. (202) 366-0106
Telefax No. (202) 366-9239