Managing Corridor Development

A Municipal Handbook

Center for Urban Transportation Research

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Note to Users

The contents of this report reflect the views of the authors who are responsible for the facts and the accuracy of the information presented herein. The report does not constitute a standard, specification, or regulation. Local governments should seek professional planning and legal assistance in developing a corridor management program. Coordination with the Department of Transportation, the metropolitan planning organization, and other affected transportation agencies is strongly recommended.

Contents

INTRODUCTION

The challenge of managing corridor development lies in the dynamic interaction between transportation and land use. The land use plan used to predict transportation needs inevitably changes as new highways stimulate real estate speculation, rezoning, and growth. At the same time, competing demands on the corridor may damage long term transportation and development objectives.

New development may foreclose opportunities to expand or interconnect roads where needed. Buildings may be constructed too close to the roadway. Thoroughfare frontage may be subdivided into small lots or strip zoned for commercial development, with little attention to access control. Poorly coordinated access systems force more trips onto the arterial, traffic conflicts multiply, and congestion increases. Road improvements are needed sooner than expected, and the cycle begins again.

Transportation and land use problems are interdependent and require coordinated solutions. One solution is better collaboration between the agencies involved in transportation and development planning. Another solution is to integrate corridor management into local development planning and regulation.

What is Corridor Management?

Corridor management encompasses *right-of-way preservation, advance acquisition,* and *access management* techniques. It involves the application of measures to:

- prevent or minimize development within the right-of-way of a planned transportation facility or improvement,
- acquire right-of-way well in advance of construction need, and
- preserve the safety and efficiency of existing facilities through access management.

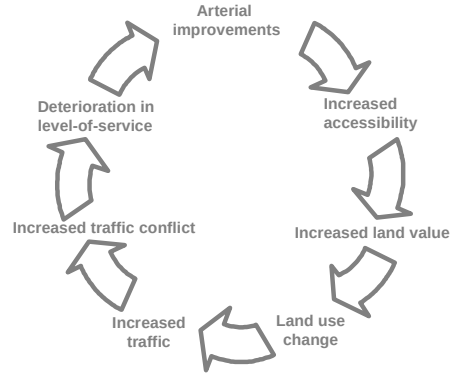
Florida planning law defines corridor management as "coordination of the planning of designated future transportation corridors with land-use planning within and adjacent to the corridor . . . ." (Chapter 163.3164(30), F.S.).

Why is Corridor Management Important?

Corridor management promotes orderly development of a transportation network to serve land development. This helps to assure that transportation facilities will be adequate to serve existing and planned development, thereby maintaining concurrency as required under Florida growth management law.

Effective growth management hinges on the ability to integrate transportation and land use decisions. Corridor management is one such strategy.

The Transportation-Land Use Cycle



Source: Stover and Koepke, Transportation and Land Development, ITE, 1988

Failure to adequately preserve or acquire property for needed transportation facilities seriously impedes the ability of governments to plan for future growth.

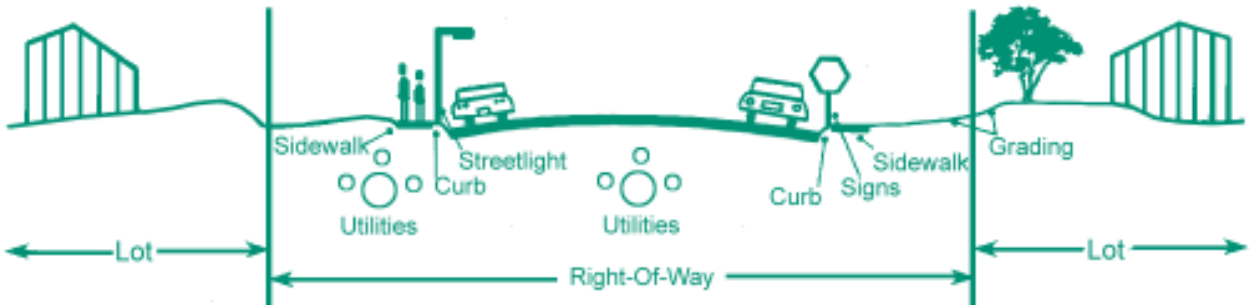
Corridor management benefits communities, taxpayers, and property owners by:

- reducing property damage and displacement of homes and businesses,
- minimizing environmental, social, and economic impacts of the corridor,
- preventing foreclosure of desirable locations,
- permitting orderly project development, and
- reducing the costs of transportation facilities.[1]

The private sector benefits from greater clarity of public intentions regarding the location and timing of roadway improvements and the desired level of access control. This reduces risk associated with timing and phasing of development projects. It also enables developers to plan projects and site-related improvements compatible with the transportation functions of the corridor.

If land for new roads and highways is *not* set aside as development occurs, then the corridor may be blocked by development, and a new location must be found. The corridor may need to be relocated into more environmentally sensitive areas that could otherwise have been avoided or cause greater damage and disruption to neighborhoods. In turn, plans must be redrawn, project development is delayed, administrative costs go up, and inflation consumes more of the budget.

Allowing development in planned rights-of-way also increases costs of acquiring right-of-way, at a time when many state and local governments are facing a transportation revenue shortfall. The costs are highest in Florida's growing urbanized areas, making it difficult to keep pace with the need for transportation improvements.



What is Right-of-Way?

Transportation right-of-way is the strip of land occupied or intended to be occupied by a road, railroad, utilities, walkways, bikeways, bus turnouts, street trees, or other special uses.

Why is it Difficult to Protect Future Right-of-Way?

A problem associated with the protection of future transportation right-of-way is uncertainty of the precise location or alignment and whether the facility will ultimately be constructed. For federally funded projects, a lengthy and comprehensive project development and environmental study must first be undertaken before right-of-way can be acquired.

The Florida Department of Transportation (FDOT) has similar requirements for State Funded projects. Eminent domain cannot be exercised by FDOT until environmental documentation is complete and the Department receives location and conceptual design acceptance. In addition, years may elapse between completion of project studies and construction of the facility. In the meantime, public support may have eroded, funds may no longer be available for the improvement, or other impediments may arise.

This uncertainty makes it difficult for local governments to discourage development in the right-of-way. In anticipation of the facility, property owners may strive to rezone property for more intensive development, or expedite their development projects. Local ability to minimize development in the right-of-way is constrained if the precise alignment has not been defined, the time frame for acquisition is unclear, and there is no guarantee of construction.

Uncertainty as to when and if the facility will ultimately be constructed or improved is also problematic for developers and property owners. Public designation of a future highway corridor

Barriers to Corridor Management

Funding constraints. Future thoroughfare maps often include roadway projects scheduled over a long range planning time frame, typically five or more years. In Florida, local governments and MPOs are charged with prioritizing projects and allotting funds for property acquisition and improvements. However, given tight local budgets and pressing capital improvement and service needs, local governments may resist designating funds for roadway projects scheduled for completion in the distant future.

Political conflicts. Local governing bodies are elected to represent the interests of their constituents. When a government requires land dedications, condemns property, or restricts access, the interest of private property owners is challenged. Citizens may oppose a proposed transportation improvement due to concern over the impact on their neighborhood or business. Although the broader public may benefit from the improvement, they may be a silent majority. Elected officials, caught in a political tug-of-war, must weigh project need and importance against the concerns of a select number of citizens.

Legal uncertainty. An air of uncertainty surrounds the authority of local governments to acquire future right-of-way through the police power. Concern over public liability for regulatory taking has increased further with the passage of the Florida Private Property Rights Act. As a result, many agencies are apprehensive to fully apply existing right-of-way protection policies or have decided not to adopt corridor management regulations until legal issues are resolved.

Rising right-of-way costs. The development of a future roadway can involve decades of planning and designing. During this time, property owners affected by the corridor become increasingly aware of the proposed alignment through the public hearing process. Some property owners possessing needed right-of-way take advantage of the situation, hoping to "cash-in" at the expense of taxpayers. They may resist agency offers and pursue court proceedings in an effort to increase their award. Some developers may attempt to advance projects through site plan review and begin pulling building permits to inflate the value of their land.

Uncertain future alignment. Although a local government may be ready to initiate corridor preservation strategies or be financially prepared to begin property acquisition, the final alignment of the corridor may still be uncertain. An alignment decision may be delayed for several reasons, including last-minute attempts to avoid sensitive properties, uncertainty over the amount of funds and support bestowed to the project, and public opposition.

Development requests. A new roadway corridor provides a variety of economic benefits to communities in its path. However, short term benefits of proposed development projects may receive greater political attention than the long term economic benefits of transportation improvements. Concerns may arise over loss of development potential where a substantial amount of right-of-way is needed. If a project is proposed in the future alignment, local officials must weigh the public benefits of a new roadway corridor against the added tax base generated by a large scale project.

Developers who participated in a focus group on corridor management concluded that "the key to successful protection of future rights-of-way and the expansion of existing rights-of-way [is] advanced planning of corridor locations, early negotiations with land owners, and involvement of both local government and FDOT in the process."

"Corridor Protection Techniques," FDOT Office of Policy Planning, 1994.

can increase property values due to the potential for more intensive development, but it can also depress property values and increase the risk of developing if the timing and actuality of construction are uncertain.

The Importance of Collaboration

Corridor management requires participation of a variety of individuals, groups, and agencies. Primary responsibility for corridor management rests with the (FDOT), metropolitan planning organizations, and local planning and development departments in communities that share the corridor. These are the agencies that plan and set transportation improvement priorities. Other agencies that may be involved in the process include local expressway authorities, transit agencies, and regional planning councils.

Local elected officials establish local development policy, decide on major development proposals, and determine when to allow changes to the development plan or regulatory requirements. Prospective developers and property owners actively influence decisions and development outcomes in and along the corridor. Business groups may favor or oppose corridor management, depending upon perceived effects on economic development. Environmental groups work to minimize environmental damage from corridor projects. And the general public has an interest in decisions that affect community development and local quality of life.

With so many groups and agencies influencing the process, and the practical problems that may arise, corridor management is a continuing challenge. Interagency conflict, political impasses, private lawsuits, and public opposition can delay or derail the process and greatly increase the cost of providing transportation facilities. **Meaningful public involvement early in project planning and broad- based collaboration throughout decision-making help avoid costly delays down the road.**

References

[1] American Association of State Highway and Transportation Officials, Report of the AASHTO Task Force on Corridor Preservation, Washington, D.C., July 1990, pp. 1-2.

PLANNING

Corridor management requires collaboration between the agencies involved in transportation and land use planning. Coordinated planning can streamline project development, increase opportunities to preserve needed right-of-way, and accelerate right-of-way acquisition. To advance these goals, the 1995 Florida legislature established a new direction for corridor management in Florida. This chapter explores the legislative changes, the roles of various agencies in the process, and other planning considerations related to corridor management.

Corridor Designation

In 1995, state and local planning law in Florida was amended to promote an expanded local role in managing corridor development. The intent was to coordinate transportation and land use planning through local comprehensive plans. Rather than designating corridors for preservation in the Florida Transportation Plan, the law calls for *designation of corridors in local comprehensive plans*, consistent with growth management policy.

The amendments also shifted the policy emphasis from "*corridor protection*" to "*corridor management*." The new term reflected the desired emphasis on providing for compatible development along designated corridors, as opposed to strictly limiting development. Roles of various agencies in carrying out the process are described below.

The State Role

The Florida Department of Transportation enacted a new Corridor Management Procedure in 1996, consistent with the legislative changes. The purpose of the procedure is to establish a process to:

- guide districts in identifying high-priority transportation corridors for purposes of corridor management;
- encourage local governments to designate corridors and adopt corridor management ordinances;
- facilitate development of District work programs;
- monitor land development activity in designated corridors; and
- fulfill requirements leading to advance right-of-way acquisition.[1]

Under the new procedure, each FDOT District prepares a **Corridor Management Report** that identifies high-priority corridors in the District and documents the need for including those corridors on the Department's Corridor Management List. **Corridor Management Lists** are based on approved Corridor Management Reports and allow each District to prioritize projects and begin development of District work programs.

Coordinated planning can streamline project development, increase opportunities to preserve needed right-of-way, and accelerate right-of-way acquisition.

Highway Improvement Process

Systems Planning	Transportation needs analysis in state, metropolitan and local plans Coordination between FDOT, MPOs, local governments Identification of areawide corridor-level projects
Programming	MPO Transportation Improvement Program FDOT Transportation Improvement Program Local Capital Improvement Program
Project Development and Environment Process (PD&E)	Feasibility study Corridor location and preliminary design Environmental review
Design	Project engineering and design Plans, specifications, and estimates Right-of-way acquisition plan Acquisition negotiations with property owners Settlements Eminent Domain proceedings, if necessary
Construction	Bids received Contract awarded Construction Inspection Completion

At this point, the District may begin conducting project development and environmental (PD&E) studies. Under federal and state requirements, eminent domain proceedings may not be initiated until the PD&E report is complete and right-of-way acquisition is scheduled. By helping to expedite the PD&E process for priority projects, the new corridor management procedure increases opportunities for advance acquisition of right-of-way.

The legislation also allows the FDOT to acquire any right-of-way within a locally designated corridor at any time, where it is in the public interest to protect the corridor from development or when the corridor designation creates an undue hardship on the property owner. This is subject to certain restrictions, however, as described in Chapter 5 (see Early Acquisition).

It is important that FDOT take a leadership role in promoting designation of state transportation corridors in local comprehensive plans. Local governments need to be informed of the new procedures and issues, as well as projects proposed in their area. FDOT Districts could take the following steps upon identifying a potential corridor or widening project:

- Meet with the jurisdiction(s) in which the right-of-way is located to discuss the issue and identify concerns of both parties.
- Initiate a plan amendment either as the applicant or in support of the jurisdiction as applicant.
- Participate fully in local workshops and public hearings regarding the proposed plan amendment. [2]

The Role of MPOs

Metropolitan planning organizations (MPOs) can play a leadership role in corridor management through their long range planning and programming activities. Federal transportation law (ISTEA) requires metropolitan transportation plans to address corridor preservation and to identify corridors in most need of action to prevent destruction or loss. ISTEA also directed MPOs to work toward greater consistency of transportation plans and programs with local land use plans.

Metropolitan transportation plans could include an element that addresses the need for corridor management and measures to be pursued. MPOs can also provide technical assistance to local governments on corridor management and facilitate state and local coordination. For example, MPOs could assist in developing procedures for monitoring development activity in designated corridors. In addition, MPOs can raise local awareness of the need for corridor management and encourage action.

Transportation improvement programs are a tool for coordinating the corridor designation and management activities of the respective local governments and FDOT. Specific corridor studies, such as those described later in the chapter, can be included in the MPO work program to provide a focal point for agencies and municipalities to join in evaluating needs and establishing corridor management measures.

The Local Role

Local governments establish the foundation for corridor management in the comprehensive plan. This can be accomplished by designating corridors in the transportation element of the comprehensive plan; enacting goals, objectives and policies that advance corridor management; and including a future transportation map that depicts the location and width of designated corridor rights-of-way.

The plan should include local corridors, as well as corridors identified in the FDOT District corridor management reports, project development studies, major investment studies, rail corridor management plans, or other related plans and studies. According to statute, corridor designations may be amended without the concurrence of FDOT.

If a designated corridor is part of the State Highway System, the local government is responsible for notifying the FDOT before approving any rezoning, building permit, subdivision change, or other permitting activity that would *substantially impair* the future viability of the corridor for transportation purposes. According to statute, local governments will not be held liable for failing to notify FDOT of the described land use changes. However, timely communication on these issues is important to the success of corridor management efforts.

When FDOT is notified of pending development approval, it can determine whether to purchase the affected property or initiate eminent domain proceedings. Early monitoring of corridor development activity also provides the Department an opportunity to identify problems and negotiate acceptable alternatives.

Local participation in corridor designation and management is not mandatory; however, Rule 9J-5 of the Florida Administrative Code requires local governments to include objectives and policies for right-of-way preservation and access control in their comprehensive plan (Rule 9J-5.019(4), F.A.C.).

Corridor Management Policies in the City of Orlando

Objective 1.11—The City shall establish a priority schedule for the protection of rights-of-way needed for transportation system improvements.

Policy 1.11.1—The City shall review through the Technical Review Committee process all proposed developments for consistency with future road projects planned in the Traffic Circulation Element in order to protect needed rights-of-way.

Policy 1.11.2—The City's Major Thoroughfare Plan, as depicted in the Land Development Code, shall be used as the basis for acquisition and reservation of rights-of-way, and for review of all development proposals and subdivision plats.

Policy 1.5.3—The City shall preserve the movement function of the Major Thoroughfare Network by requiring development of parallel roads or cross access easements connecting developments as they are permitted along arterial roadways.

Policy 1.7.1—New residential subdivisions shall include an internal street layout which shall continuously connect to the streets of surrounding developments to accommodate travel demand between adjacent neighborhoods without the necessity of using the major thoroughfare system.

Source: City of Orlando Growth Management Plan.

In addition, designation of corridors in the local comprehensive plan is a statutory precondition to adopting a transportation corridor management ordinance (see Chapter 3).

Establishing Priorities

A variety of factors may be considered when determining transportation improvement priorities. These include safety, existing deficiencies, level of service, environmental issues, physical or policy constraints, required right-of-way needs, and contribution of the facility to continuity of the transportation system.

Corridor Planning in Hartford

The Capitol Region Council of Governments (CRCOG)—the metropolitan planning organization for the Hartford, Connecticut metropolitan area—is undertaking corridor studies for four key routes. Objectives are to prepare a transportation master plan for each corridor that defines transportation management strategies and needed improvement projects.

An access management plan will be prepared for each town on the affected corridors. These plans will address traffic signal location, median improvements, and problems with existing curb cuts. The study will review and evaluate development regulations in each town and identify options for integrating access management into local regulatory practice. Curb cut and median design plans will also be prepared.

The work program calls for extensive public involvement activities. Special corridor committees will be formed to guide the study, including a technical committee of planners and engineers from each town, and an advisory committee composed of planning and elected officials as well as business representatives and residents. These committees will address development trends and regulations, assess the viability of alternatives, and provide guidance on key policy issues.

The Connecticut DOT will actively participate, and special meetings will be held with each affected town council and planning commission, as well as separate meetings with the general public, at appropriate points in the planning process. At a minimum, these meetings will be held during analyses of existing and future conditions, analysis of alternatives, and development of the corridor plan. Newsletters will be prepared and distributed to keep citizens and local officials informed along the way.

Some factors for determining which highway corridors should receive high priority for corridor management, include:

- Is the highway part of the Florida Intrastate Highway System?
- Has the corridor been identified as a priority in the local comprehensive plan and state corridor management list?
- How important is the corridor to the local and regional transportation system (i.e., hurricane evacuation route, transit route, truck route, economic development, etc.)?
- What is the immediacy of development in the corridor?
- Are there opportunities to prevent development in the future right-of-way?
- What is the risk of foreclosing location options entirely?
- What is the level of support for the project?

Corridor Studies and Plans

Corridor studies enable communities to evaluate problems and opportunities of a corridor in detail. They also provide an opportunity for extended public involvement and improved intergovernmental coordination on corridor management decisions. Such studies may be initiated by a local government, MPO, or FDOT District and can be used in developing action plans and design concepts for management and improvement of high priority routes.

This may involve preparation of a master plan for each corridor that defines transportation management strategies and needed improvement projects. Development plans and regulations in affected communities can be evaluated to identify options

for integrating right-of-way preservation and access management into local regulatory practice, and to explore complementary land use strategies. An access management plan with concepts for reducing access problems may also be prepared for segments of the affected corridors.

Thoroughfare Plans

Thoroughfare or trafficways plans establish future transportation routes and prioritize improvements to the existing street network. Thoroughfare planning involves detailed analysis of the operation and management of major thoroughfares in a city or county. Topics include existing and needed rights-of-way, traffic volumes and congestion, accident rates and safety hazards, design deficiencies, and land use issues.

In a thoroughfare plan, roadways are classified according to function, from local roads to arterials and highways, and the general alignment is mapped. Right-of-way needs are established and ordinances are adopted to preserve future right-of-way along mapped corridors and advance access management objectives.

Access Management Plans

An access management plan is a long-range planning guide that coordinates access to public roads with surrounding developments. The plan can either identify future access points along a planned facility, or provide access management solutions to problems along an existing highway.

Access management plans:

- improve long range planning for highway access;

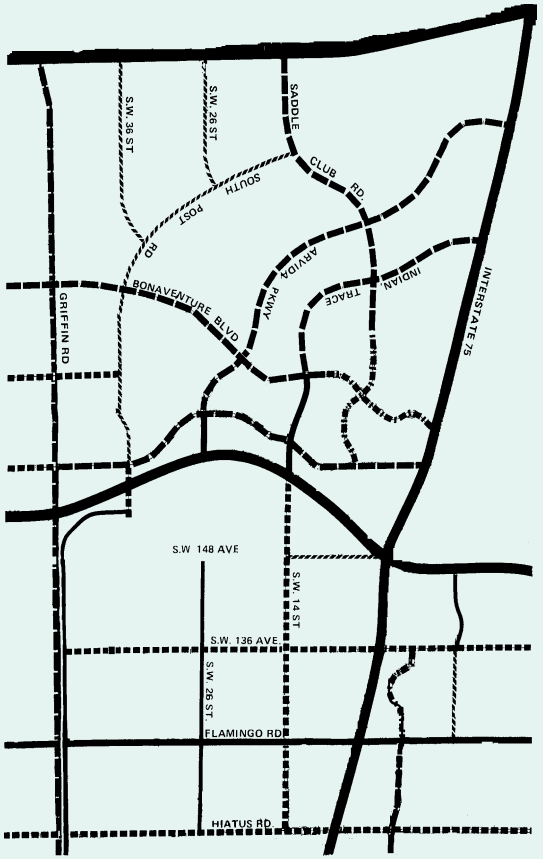
Broward County Trafficways Plan

Broward County, Florida, has established a countywide Planning Council "to promote coordinated, comprehensive, long-range planning throughout the County through the joint cooperation and participation of all local governments, public officials, and private citizens." The Council encompasses twenty-nine local governments and addresses problems, such as traffic congestion and solid waste disposal, that cannot be managed effectively by a single jurisdiction.

The Council administers a Trafficways Plan for reserving future transportation rights-of-way. The plan is implemented through County and municipal development review to ensure that plats and other development proposals set aside land for right-of-way in accordance with the Trafficways Plan.

Requests to amend the plan are reviewed for availability of right-of-way, system capacity, land use impacts, and other considerations. The Broward County Trafficways Review Group—comprised of technical staff from the County, the Florida Department of Transportation, and the South Florida Regional Planning Council—provides comments to Council staff, which submits a recommendation to the Council Land Use / Trafficways Committee. The full Council takes final action.

Although right-of-way dedication is administered on a voluntary rather than mandatory basis, the Trafficways Plan program has been highly successful. Keys to success include early consultations with developers, flexibility in allowing reasonable adjustments to the plan, and equal representation on the Council.



CLASSIFICATION	R/W	SYMBOL
LIMITED ACCESS CONTROLLED	*325'	
ARTERIAL	200'	
	144'	
	120'	
	110'	
	106'	
	100'	
COLLECTOR	94'	
	80'	
	70'	
ONE-WAY PAIR	54'	
	42'	

The K-150 Highway Access Management Plan

The City of Overland Park, Kansas, has been administering an access management plan along the K-150 Highway for approximately 10 years. It is a proactive effort of Overland Park and the neighboring communities of Leawood and Olathe to preserve the transportation function of the corridor and surrounding street network, while accommodating expected growth. The plan was conceived when the corridor was largely undeveloped. Overland Park enacted a moratorium on all new development proposals along the corridor during the two years it took to complete the study. Since that time, the corridor has experienced substantial residential and commercial development. The plan provides for a divided multi-lane highway with median breaks at half-mile intervals, right-turn-only access at quarter mile points between median openings, and policies on driveway spacing. In addition, a system of parallel access roads was planned to provide alternative access for higher intensity development. Despite periodic pressures to provide exceptions, City staff have been largely successful in achieving the access management objectives. Reasons include consistency of recommendations, adequate preparation and analysis of proposed deviations, adherence to principles of good access design, periodic refresher sessions on the plan for public officials, and a willingness to "roll with the punches."

Source: Mark J. Stuecheli, "Trials and Tribulations of Enforcing a Locally Established, Corridor-Wide, Restrictive Access Plan - Implementation of the K-150 Study," August 1996.

- provide a coherent framework for planning and location of future access points;
- promote intergovernmental consistency and coordination on access decisions; and
- facilitate administration of access regulations and permitting.[3]

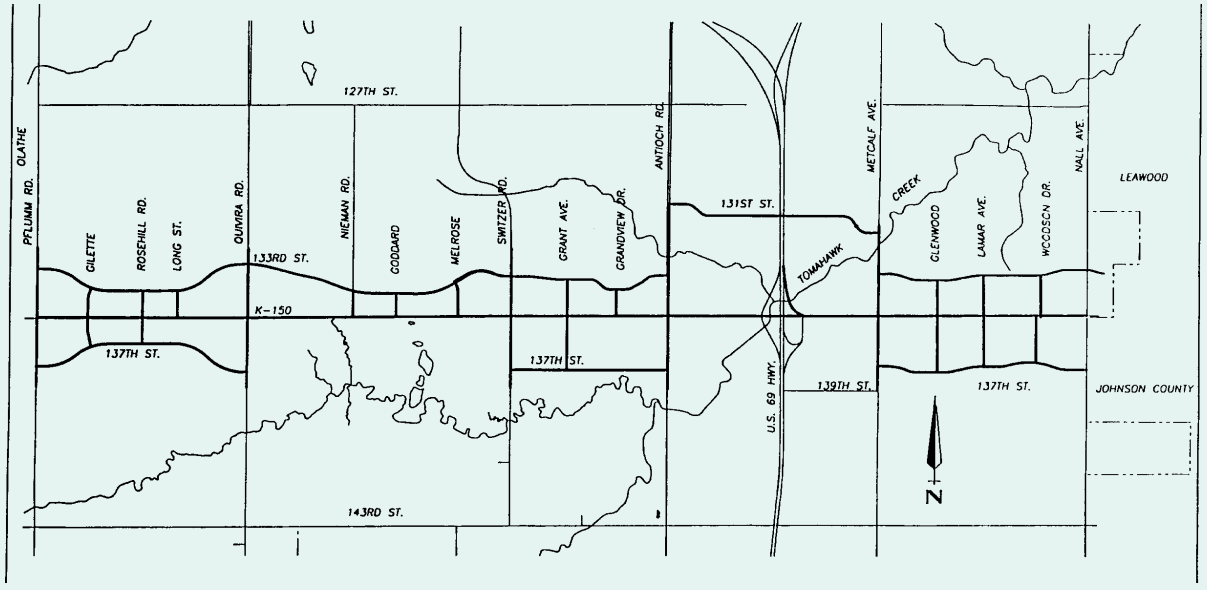
Access management plans typically include a map and report establishing desired access outcomes. Maps display existing access points, temporary and future access points, zoning, lot ownership, building outlines, and related information. The report addresses future land use, design concepts, implementation strategies, any interagency agreements, and related information. This provides guidance to developers regarding consolidation of access points for contiguous lots and identifies areas where access agreements may be required with adjacent properties.

Access management plans are especially helpful for integrating land development and access management on roadways under state jurisdiction. In these cases, the plan may take the form of an interagency agreement and comprise decisions made by all involved agencies.

Local governments in Florida may collaborate with the Florida Department of Transportation on an access management plan for a state roadway, in accordance with Rule 14-97.004(6).[4] The rule provides for access management plans that specify site-specific standards for connections, medians, intersections, and signals.

Involving the Public

A characteristic of successful corridor management programs is early and continuing public involvement. State and local governments could



host special meetings or workshops to inform property owners of the corridor designation process and involve community leaders or interest groups in these decisions. This will help increase public awareness of the importance of the corridor and the benefits of corridor management.

Corridor committees can be formed to allow interested citizens, technical staff, and elected officials an active role in guiding the study and developing recommendations. Active participation of the FDOT is essential where a state corridor is involved. These committees can be asked to address development trends and regulations, assess the viability of alternatives, and provide guidance on key policy issues.

Methods for involving the broader public include special meetings with planning boards and elected bodies, town meetings, open house meetings, and individualized meetings with interest groups at appropriate points in the planning process. Newsletters, public access television, newspaper features, radio and other media can be used to keep the public informed and solicit opinions and comments.

Intergovernmental Coordination

Corridor management requires intergovernmental coordination among local governments that share a corridor and across the agencies involved in transportation and land development. As stated in a study of corridor management techniques conducted for the FDOT:

> "The development of partnerships between FDOT and local governments and a cooperative planning process is absolutely necessary if improvements in the preservation and protection of future rights-of-way are expected."[5]

Corridor management practice is changing both on a state and local level. Therefore, local governments need to work closely with their respective MPO and FDOT District on corridor management and clarify respective agency roles and commitments. These roles and commitments can be formalized through intergovernmental agreements or joint policy resolutions. Establishment of a corridor management task force or program on a state or regional level is another method of facilitating interagency collaboration on corridor management.

References

[1] Corridor Management Procedure, Florida Department of Transportation, Office of Policy Planning, Topic No: 525-030-140b, April 18, 1996.

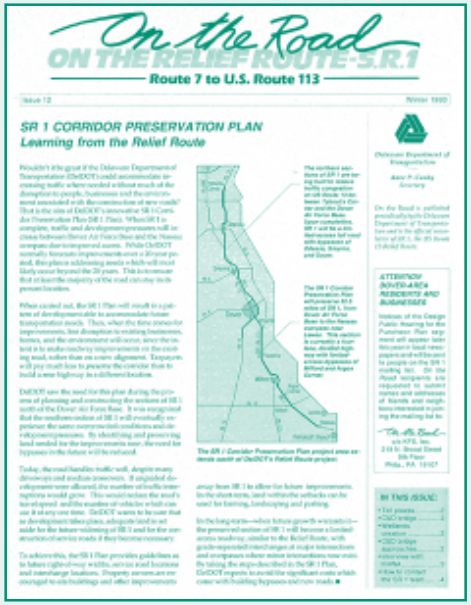
[2] Florida Department of Transportation, *Corridor Management Technical Report*, prepared by FDOT Office of Policy Planning, Parsons Brinkerhof, Apgar and Pelham, 1996.

[3] Koepke and Levinson, *NCHRP Report 348: Access Management Guidelines for Activity Centers*, Washington D.C.: National Academy Press, 1992, pp. 24-26.

[4] Rules of the Department of Transportation, Chapter 14-97, State Highway System Access Management Classification System and Standards, FDOT Systems Planning Office, Tallahassee, Florida.

[5] *Corridor Management Technical Report*, op. cit., p. 52.

Citizens and interest groups are more likely to accept a corridor management program, if they have been fully informed and treated fairly in the decision-making process.


On the Road
ON THE RELIEF ROUTE-S.R.1
Route 7 to U.S. Route 113
SR 1 CORRIDOR PRESERVATION PLAN
Learning from the Relief Route

Newsletters like this one from Delaware help to keep the public informed about major corridor preservation projects.

UPDATING REGULATIONS

After corridors have been designated for protection, the next step is to update local regulatory tools used to preserve right-of-way for existing and future corridors. The 1995 changes to Florida planning law authorized local governments to adopt transportation corridor management ordinances to manage development in and adjacent to *designated* corridors. It is important that land development regulations be consistent with the latest changes in legislation, case law, and corridor management practice. Below are suggestions for updating a local regulatory program.

Adopt a Corridor Management Ordinance

A corridor management ordinance establishes procedures to preserve and acquire needed right-of-way to protect transportation corridors for future growth or expansion of the transportation network. It also establishes which corridors will be affected by these requirements. Local governments with thoroughfare protection programs will need to revisit their regulatory requirements to assure that they fulfill the statutory requirements for corridor management ordinances. According to statute, corridor management ordinances should include the following:

Criteria to manage the land uses within and adjacent to the corridor. This might include a combination of conventional zoning measures, such as setbacks and lot dimensional requirements, as well as innovations such as on-site density transfers and cluster zoning. Although not specified in statute, techniques for managing access are an essential part of a comprehensive corridor management strategy.

Restrictions on residential and nonresidential construction within the corridor. Establish a basic requirement that restricts development within the designated right-of-way without a variance or special permit.

Uses that are permitted within the corridor. These are uses that do not involve substantial structural improvements–such as agriculture, nurseries, or outdoor storage. Allowances for interim uses provide for some economically beneficial use of reserved land until it is needed for the transportation facility.

A public notification process. Include a procedure for notifying affected property owners of the corridor designation, and for notifying the Florida Department of Transportation of any rezoning, building permits, subdivision changes, or other permitting activities that would substantially impair the future viability of a state corridor.

Sources of sample ordinance language include:

- FDOT Office of Policy Planning: Model Ordinance for Protection of Corridors and Rights-of-Way
- FDOT Systems Planning Office: Model Land Development and Subdivision Regulations that Support Access Management.

When weighing land use alternatives, consider the following transportation objectives:

- *Minimize the number of local trips that must be made on the major thoroughfare network.*
- *Minimize the number of through trips that are made on the local street network.*

A variance and appeal process. Providing for special exceptions, waivers, and variances is an essential part of a legally defensible corridor management ordinance. Such flexibility allows communities to work with the unique circumstances of each development site and accommodate reasonable requests for deviation from standards.

A process for intergovernmental coordination. This may include an interlocal agreement to coordinate corridor management activities with other communities that share the corridor. Corridor management programs are strongest where there is consistency of standards among the participating local governments. Coordination can also be achieved through information sharing, collaboration, and intergovernmental agreements among the state DOT, MPO, and local planning agencies on land development and transportation decisions affecting right-of-way and access management.

Update Zoning and Subdivision Regulations

Review existing zoning and subdivision regulations in light of local corridor management objectives. In determining the need for zoning changes, it is helpful to test existing zoning at buildout against the local transportation system. When weighing potential alternatives, **consider the transportation impacts and advantages of various land use options.** Evaluate how the resulting trips will affect traffic patterns on the corridor and cross streets. This broadens the pool of potential alternatives and can lead to better long term solutions.

Communities often evolve in a linear fashion, with primary commercial activity strewn along major highways and arterials. This mixes daily local traffic with through-traffic and magnifies demand on the arterial system. As congestion increases, bottlenecks occur and traffic may overflow into surrounding neighborhoods.

To minimize this effect, simply **avoid strip zoning highway frontage** for high intensity development. Instead, vary the intensity of zoning districts along a corridor and **establish commercial activity centers** that are well linked to the surrounding area. Evaluate land use needs on a neighborhood level, and plan for a mix of uses to bring shops and services closer to the people they serve.

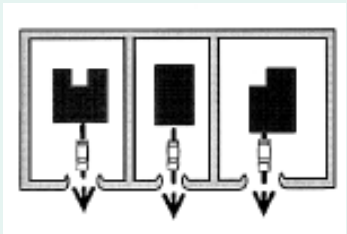
Zone for higher volume uses, such as neighborhood convenience centers and grocery stores, near intersections of through streets. Then **require corner lots to be larger** to accommodate such uses, and establish a minimum corner clearance for driveway connections at intersections and corners.

A Zoning Strategy for Route 70

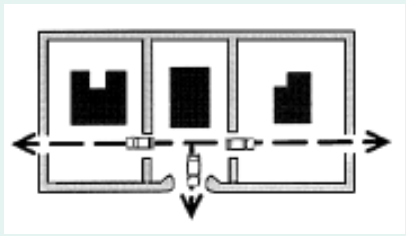
The plan for Route 70 in Medford, New Jersey involved a choice between building a new highway to offset congestion on Route 70, or reducing zoned densities on the corridor. Planners found that the need for a new highway could be avoided by a change in the existing zoning plan, widening the existing facility, and adding jug-handles at key intersections. Recommended was a change from all high intensity zoning along the highway, to a transition of districts from highest to lowest intensity, with the highest intensity uses clustered near town.

Source: New Jersey Department of Transportation, *Managing Transportation In Your Community*, January 1992.

Link Adjacent Land Uses



Avoid



Preferred

Promote **internal connections between adjacent land uses** and require commercial and residential development to be designed with **complete on-site circulation.** Joint and cross-access between establishments helps to improve overall accessibility of corridor businesses, by enabling customers to enter from a side street, the thoroughfare, or from an adjacent use. At the same time, this improves access control on through-streets. Sidewalks can also be linked across properties and connect at side streets and bus stops to **enhance pedestrian and transit access.**

Determine Adequate Setbacks and Lot Dimensions

Lot size, lot frontage, setbacks, and lot width-to-depth ratios are established in land development codes for various zoning districts. Minimum lot frontage requirements set the minimum lot width on a public road. Lot width-to-depth ratios specify the maximum depth for a particular lot width. Building setbacks establish minimum front, side and rear yard setbacks to separate buildings from each other and set them back from the roadways for a desired distance.

Carefully coordinate lot dimensions and setbacks with corridor management objectives. Specifically, **lots should be deeper and wider along arterials,** to provide adequate area for road widening and cross access or service drives, while maintaining sufficient area for development.

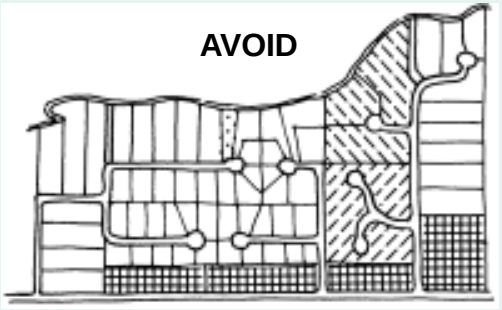
Adequate building setbacks help minimize property damage if the abutting roadway is widened. They also help to assure clear views at intersections, allow for emergency access, and buffer buildings from through traffic. Width-to-depth ratios prevent creation of long and narrow or irregularly shaped lots that can increase the number and length of private access drives.

The width of lot frontage affects the spacing between driveways. Minimum lot frontage requirements should be high enough to prevent land along thoroughfares from being subdivided into small lot frontages. On high priority corridors, minimum lot frontage requirements could be tied to minimum driveway spacing standards. Smaller lot frontages could be permitted where there are alternatives to direct, individual highway access.

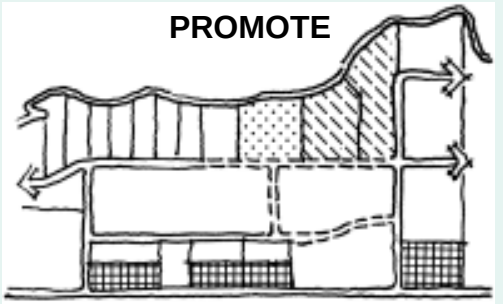
Incorporate Corridor Management into Development Review

Development review procedures will need to be updated to facilitate the corridor management program. Examples include:

- administrative procedures and time periods for evaluating impacts and deciding on development requests in mapped rights-of-way;
- minimum contents for site plans and development applications, including access features and any mapped right-of-way in the vicinity of the project;
- traffic impact analysis requirements to assist the muncipality with access management decisions;
- conditions for allowing special exceptions, waivers, and variances from corridor management requirements;
- procedures for notifying the Florida Department of Transportation of development proposals in the future corridor;



Disconnected street systems



Coordinated road and access easements

Lot splits are typically created with little attention to areawide circulation. Disconnected internal street systems force more trips onto through streets and impede pedestrian and bicycle travel. Requiring dedication of right-of-way or easements in accordance with an areawide plan will promote an integrated street system. Such plans would need to be developed in coordination with property owners.

Source: "A Guide to Land Use and Public Transportation—Volume II: Applying the Concepts," Snohomish County Transportation Authority

A development agreement is a contract between a local government and developer that establishes rights and obligations of both parties regarding development of a site for a fixed time period. Local governments in Florida may enter into development agreements, provided they are consistent with the comprehensive plan and land development regulations.

Preparing Legally Defensible Ordinances

To withstand legal scrutiny, corridor management ordinances should:

- have a clear and reasonable statement of purpose and intent
- have a strong foundation in the comprehensive plan
- be linked to concurrency and other growth management policies
- provide for variances and administrative flexibility
- include mitigation measures and incentives.

- a combined review process for coordinated state and local review of major projects requiring access to the State Highway System; and
- a process for extending reservation periods and amending maps of reservation.

During subdivision and site plan review, look for opportunities to improve access and avoid right-of-way encroachment. Sometimes this can be accomplished through minor changes in site design or subdivision layout. Negotiate for dedication of right-of-way or creative access management strategies in exchange for something of value to the project, such as flexibility in site design. Allowances for interim uses may also be administered through development agreements.

Adopt Traffic Impact Analysis Requirements

Traffic impact analysis is a special study of the transportation needs and traffic impacts of a development project on the surrounding roadway system. Local regulations need to establish when a traffic impact analysis will be required. Some situations that may require a traffic impact analysis include: rezonings, annexations, projects or land use changes that will generate more than 100 new peak hour vehicle trips, and determination of developer contributions to major roadway improvements.[1]

Consider a Temporary Moratorium

Local governments may enact a temporary moratorium or "planning pause" for the purpose of studying a corridor and establishing appropriate regulations. By doing so, development pressures do not foreclose opportunities to protect right-of-way or manage access while the municipality is developing its regulatory program. Temporary moratoria that are enacted in good faith, further a valid public purpose, and are of reasonable duration can withstand constitutional attacks.

The City of Woodbury, Minnesota, enacted a two-year moratorium to develop an access improvement plan for a major highway interchange. The purpose of the moratorium was to protect the planning process and avoid construction that could adversely affect road design and public health and safety. Although challenged, it was upheld by the court as essential to preserving the City's planning process.[2]

References

[1] Koepke and Levinson, NCHRP Report 348: Access Management Guidelines for Activity Centers, Transportation Research Board, Washington, D.C.: National Academy Press, 1992.

[2] *Woodbury Place Partners v. City of Woodbury*, Minnesota, 492 N.W. 2d 258, Minn. App. 1992.

PRESERVING RIGHT-OF-WAY

Through the use of police power, local governments can place restrictions on private property to manage corridor development. Zoning, for example, relegates uses to certain districts, establishes the allowable intensity of development, and requires buildings to be set back a certain distance from the road.

Subdivision regulations and street design standards establish minimum requirements for new streets and site-related improvements as land is subdivided for development. Maps of reservation and mapped streets ordinances identify and protect future right-of-way needed to expand the transportation network. This chapter reviews police power techniques local governments can use to preserve future rights-of-way.

Maps of Reservation

A map of reservation establishes the location of future rights-of-way and guides the subdivision of land to ensure that new plats conform to the existing and planned road system. It is an ordinance in map form, that is supplemented by regulations and administrative procedures contained in the land development code or mapped streets ordinance.

A local **official map** is a technique for carrying out the traffic circulation system and capital improvements envisioned in the local comprehensive plan. It translates the more general plan proposals for future streets, street extensions and widening, parks, recreation sites, schools, public utilities, and other public buildings into locations on a legally binding map.

A **thoroughfare protection map** depicts the general location and right-of-way widths of future collectors, arterials, and limited access roadways within a city or county. This is the official listing of road rights-of-way to be reserved. It is less comprehensive than the local official map, as it addresses only transportation thoroughfares.

Local governments may also rely on a **future right-of-way needs map** in the traffic circulation element of the comprehensive plan, as opposed to preparing a separate map of reservation. In Florida, comprehensive plans may be amended twice per year, at which time the community could update or change the right-of-way needs map.

By guiding future development and the provision of public facilities, maps of reservation are an essential tool for community planning. The adoption of an official map can improve connectivity and continuity of the street network and enhance the overall transportation system of a community. In addition, it helps prevent the loss of needed transportation corridors to development, minimizes disruption to property owners, and reduces the public financial burden of providing needed transportation facilities and improvements.

Adoption of an official map apprises citizens, property owners, and developers of the location of future public facilities and land slated for public acquisition. It also promotes better coordination among the agencies involved in transportation planning.

North Carolina's Roadway Corridor Official Map Act

In 1987, North Carolina enacted new legislation permitting local governments to reserve future right-of-way for priority highway projects. The Act allows cities to adopt an official map for this purpose. Projects may be included on the official map provided at least a portion of the corridor project has been included in a current transportation improvement program (TIP), or in a comprehensive (street) plan and capital improvement plan of ten (10) years duration or less. Landowners receive an 80 percent reduction in their property taxes for any land included on the official map.

The official map is recorded with the register of deeds. Thereafter, the city or State has one year to begin preliminary engineering or environmental studies on mapped corridors or the map is invalidated for that corridor. Cities may deny building permits and subdivision requests within mapped corridors, but the city or State must purchase the affected right-of-way within three years following the development application or the restrictions become void.

Preparing the Map

Maps of reservation originate from state and local plans, which may imprecisely sketch out the desired location of future facilities. Where known, the alignments of future transportation corridors may be specific and established through detailed engineering surveys. In other cases, aerial photographs may be used to establish approximate alignments with a metes and bounds description by a licensed surveyor required when the municipality acquires mapped land. As planning proceeds, and more detailed engineering studies are completed, then the map may be amended to show the more precise alignment.

Projects indicated on an official map should be fairly well defined and programmed for completion in a reasonable time period. Otherwise, the community may be prematurely pressured into preserving or acquiring land for a future facility only for the location or priorities to change. For these reasons, official maps need to be carefully coordinated with capital improvements plans and programs, including the transportation improvement program (TIP) of the MPO or DOT. The map should be updated periodically (preferably every year) to coincide with additions or changes to the capital improvements program or TIP.

Public Notice

Prior to designating a corridor and adopting a map of reservation, local governments need to notify affected property owners and hold a public hearing. However, it is essential to provide opportunities for meaningful public involvement in corridor designation and management decisions prior to the public hearing. The nature and extent of public involvement will vary according to the size of the project, the level of controversy, and the relative impacts on the community. A public involvement plan should be prepared for each corridor management project to establish the appropriate level and sequence of public involvement activities.[1] The plan can also be an avenue for facilitating joint public involvement activities across the agencies involved in corridor management decisions.

Mapped Streets Ordinances

Maps of reservation are implemented through adoption of a regulatory ordinance that restricts building within the mapped rights-of-way without a variance. Building setbacks are measured from the future right-of-way line. Property owners are compensated for the value of land reserved when right-of-way is ultimately acquired and, in some cases, may be required to dedicate land for future right-of-way.

Future right-of-way requirements are included on the official map or tied to road width requirements in local land development codes. Most ordinances are oriented toward new construction, but some also restrict improvements to buildings in place when the land was mapped, similar to nonconforming use standards in zoning.

Other typical requirements include:

- all lots must abut a public street shown on the official map;
- building permits shall not be issued unless the abutting street is already built or funded for installation by the property owners;
- access to principal uses is required before the building permit is issued; and

Local Official Mapping in Pennsylvania

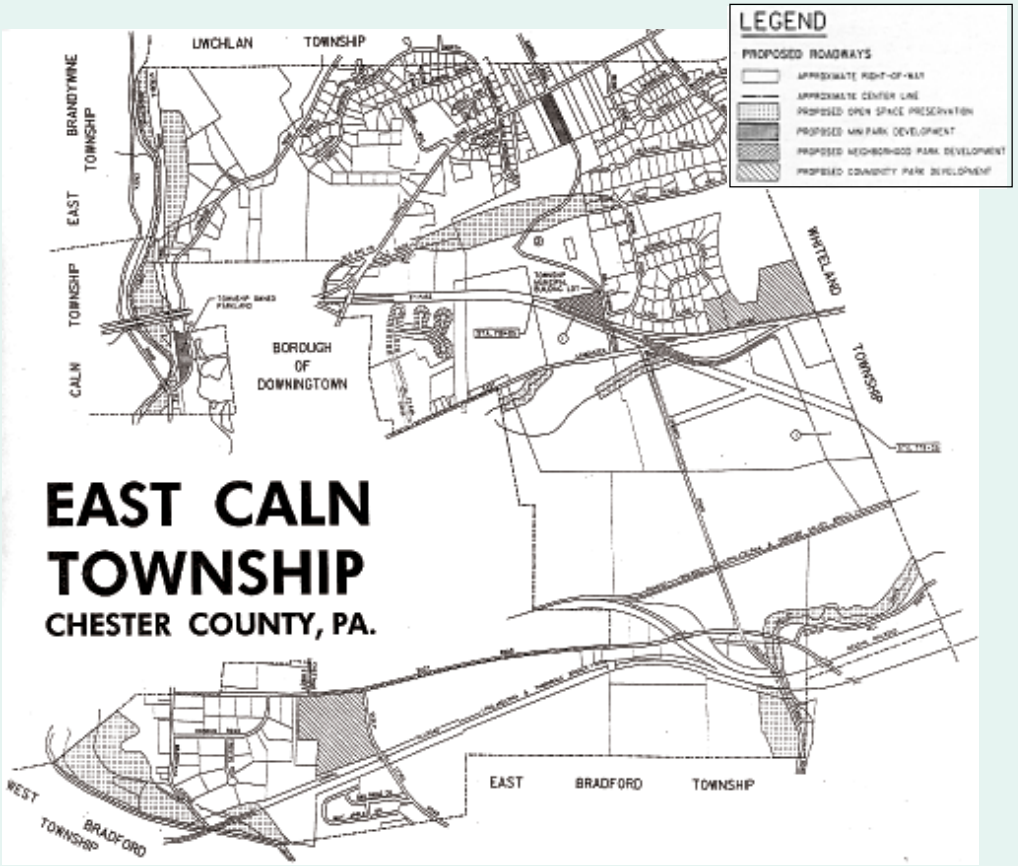
Local governments in Pennsylvania are authorized by enabling legislation to adopt official maps that establish the location of existing and proposed public lands or facilities outlined in the comprehensive plan. The maps may include public streets, transit rights-of-way, waterways, public parks, open spaces, pedestrian ways, flood-ways, and other public facilities in the comprehensive plan. Aerial photographs may be used in developing the map, but a metes and bounds description by a licensed surveyor is required when the land is acquired.

Adoption: Before the official map and ordinance are adopted, they must be reviewed by the local and county planning agencies, and other interested parties. This includes adjacent municipalities affected by future road extensions. If no objections are received within 45 days, the local government may proceed with adoption. The local government must also provide for public notice and hold a public hearing before the map is formally adopted.

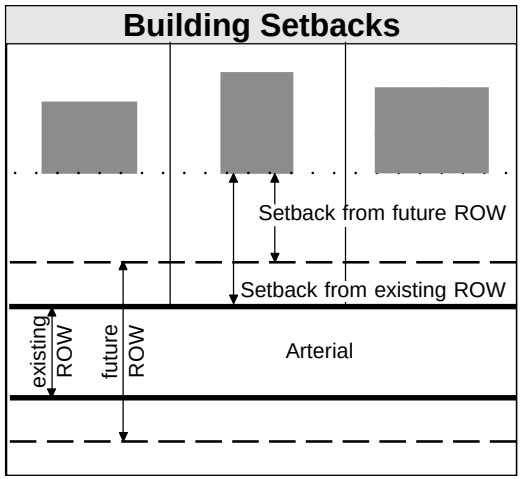
Within 60 days following adoption, the map and ordinance must be recorded with the county to ensure adequate public and legal notice of the map and its effects on property owners. If a county adopts an official map, a copy of the map, ordinance, and all future amendments must be given to each municipality within the county. If a municipality adopts an official map, it must be sent to the county and to any adjacent municipalities affected by the map.

Administration: Following adoption of an official map, building is generally prohibited within the mapped area for a time period set by the local government. All proposed road widths must meet specifications established in the local subdivision regulations. Any approved plat submitted in accordance with the provisions of the official map ordinance are included as an amendment to the map; such inclusion does not require additional public hearings.

If, during the reservation period, a property owner applies for a building permit within the mapped right-of-way, the governing authority must act within one year to purchase the property, initiate condemnation, or grant the permit. If the map would leave a property without a reasonable return, the property owner may qualify for a special encroachment permit. The reviewing authority must decide within 30 days whether to issue the special permit and must hold a public hearing on the matter. Permit denials may be appealed to the variance review board.



Violations: If a property owner builds in the mapped right-of-way without acquiring a building permit, no compensation will be given for the improvements or structures at the time the land is purchased for public use. The property owner must also pay for removal of the improvements. Failure to comply with the provisions of an adopted official map may also result in a fine and subsequent penalties for each day of the violation. Such penalties may be assessed as a lien against the property.



- subdivisions and site plans must continue and extend streets depicted on the official map.[2]

Setback Requirements

Building setbacks are required distances from the street, right-of-way line, property lines, and building lines within which development or construction is not permitted without a variance. For the purposes of corridor management, local governments may require setbacks to be measured from the future right-of-way line. Unless otherwise established, the future right-of-way line is generally determined as one-half the required right-of-way as measured from the centerline. Therefore, setback requirements are only effective where the centerline of a facility is known or can reasonably be estimated.

Flexibility should be provided where a reduction of the setback is warranted, such as where setbacks of varying depth are needed to avoid encroachment into the corridor. For example, a model corridor management ordinance prepared for the Florida Department of Transportation allows up to a 10% reduction in setbacks by administrative approval.[3]

Although setbacks may be increased along major transportation corridors, this should be accomplished in relation to police power objectives, such as preserving light, air, and open space, protecting public safety, or reducing noise. Setback requirements imposed solely for the purpose of right-of-way preservation will likely be invalidated by the courts as a back door method of taking private property without compensation.

Interim Use Allowances

Although structural improvements are restricted in the right-of-way, some uses are typically allowed. These include uses with low structural investment that can be relocated or discontinued in the future. Allowances for interim uses assure that property owners have some economic use of property reserved for a future corridor until the right-of-way is acquired.

Interim uses that may need to be relocated are those directly related to and needed by the development. These may include stormwater retention, parking areas, entry features such as signs or gatehouses, or temporary sales or leasing offices for the site. Applicants must agree to relocate the uses in accordance with the terms and conditions of a development agreement. Relocation sites should be identified and reserved on the approved development plan. In some cases, stormwater retention facilities could be incorporated into the retention facilities for the future roadway.

Interim uses that could be discontinued may include recreational facilities, produce stands, periodic events or sales, plant nurseries or landscape material yards, agricultural uses, outdoor storage yards, outdoor advertising, and golf driving ranges. Allowance for these uses would be subject to a development agreement that the uses will be discontinued at a specific date. This time period may be lengthy, especially for new corridors, and could be extended periodically where needed. Other provisions could address buffering from adjacent uses, impervious surface ratios, and compliance with setbacks.

Development Review

Development applications must include information on any mapped streets that would be affected by the project. This could be required of proposed projects that cross, abut, or are within 1000 feet of a mapped street.[4] Development proposals are reviewed for impacts on the future corridor and local staff could work with applicants to explore alternatives for avoiding encroachment into the future right-of-way (see Chapter 2).

Variances

Communities may face a variety of circumstances where the official map necessitates a variance or special exception. This may include areas with exceptionally shallow lots and little buildable area, inability to meet impervious surface requirements, or where setbacks must be reduced to avoid encroachment into the right-of-way.

A variance or special exception is appropriate when the nonconformity is attributable to the corridor management program. Variation from standards could be accomplished on an administrative level, rather than through a formal appeals board, to assist the applicant and streamline the approval process. If compliance would prove impractical or prevent the owner from obtaining any reasonable return on the land, then it may be necessary to issue a building permit or acquire the property. Alternately, it would be reasonable to deny a variance where it can be demonstrated that no substantial injury would accrue to the property owner by placing a building outside of the mapped right-of-way.

Dedications and Exactions

Monetary payments or contributions of land may be required of an applicant by a government agency as a condition of development approval. Such exactions are typically determined through open-ended negotiations between a municipality and a developer.[5] In this way communities may acquire right-of-way without purchase or condemnation. In turn, developers contribute their fair share of the cost of providing transportation facilities.

Otay Mesa Pilot Project

The Otay Mesa area is located in southern California and is under the jurisdiction of the City of San Diego, the City of Chula Vista, and San Diego County. With projections of high growth, the need for additional highway corridors was great. Two corridors were planned for the area, State Road 905 and State Road 125, but corridor acquisition and construction remained unfunded.

Caltrans joined the City of San Diego and San Diego County, under the Advance Transportation Systems Development (ATSD) program, to devise low cost strategies for protecting the SR 905 corridor. The ATSD program was organized by Caltrans to oversee the planning, preservation, and financing of future right-of-way projects.

Strategies applied for preserving future right-of-way included police power techniques, coordination among the affected local and state agencies, and informal negotiations with developers. First, ATSD and the City of San Diego devised a method to plat the future right-of-way within a subdivision as a separate lot. With the property owner's approval, the "lot" would remain reserved and undeveloped until property acquisition commenced. Secondly, interim uses were allowed within the future corridor.

Finally, because San Diego County factors land use encumbrances when calculating property value, property owners received a tax benefit when reserving property. On-site density transfers were permitted from reserved right-of-way to the remainder of the property, but this option was not available from dedicated property or property overlaid with a development easement. These techniques and negotiations proved successful and the majority of SR 905 right-of-way was reserved.

Source: Rivkin Associates, Corridor Preservation: Case Studies and Analysis of Factors in Decision-Making, December 1993, prepared for FHWA, unpublished.

Right-of-Way Preservation Practices in Selected Florida Counties

	Map of Reservation	Setbacks Measured from Future ROW	Interim Uses Allowed	Dev. Rights Transfer or Credit	Impact Fee Credits	Mandatory Dedication
Brevard County	no	no	n/a	yes	yes	no[1]
Broward County	yes	yes	yes	yes	yes	no[1]
Hillsborough County	no[2]	no[1]	no	yes	yes	yes[3]
Indian River County	yes	no	yes	yes	yes	yes[3]
Lee County	no[2]	no[1]	yes	yes	yes	no
Metro-Dade County	no	yes	no	no	no	yes
Palm Beach County	yes[4]	no[5]	yes[6]	yes	yes[7]	yes[8]
Pasco County	yes	yes	yes	no	yes	no[1]
Pinellas County	yes	yes	yes	yes	yes	yes[3]
St. Lucie County	no[2]	yes	yes[9]	yes	yes[10]	yes[3]

Respondent Comments:

[1] Strongly encouraged, but not required.

[2] Future right-of-way needs are identified on a future right-of-way needs list or informal map.

[3] Compensation provided as appropriate (responses included: where development impacts are less than the right-of-way needs; dedications beyond that needed to bring the road up to local road standards; dedications that are not site-related).

[4] Thoroughfare right-of-way identification map for planning purposes.

[5] Building setbacks measured from base building line established 40 feet beyond the existing ROW. Can be waived on a case-by-case basis.

[6] By special agreement only.

[7] Provided where developers are required to acquire right-of-way off site. Density credit is provided for dedications from their site.

[8] Where there is a rational nexus.

[9] No structures permitted within the future right-of-way.

[10] Credits are available to developments along a future ROW programmed for improvement in the TIP or CIP.

Mandatory Dedication

Subdivision regulations provide for dedication of land for roads needed to serve that development and any site-related improvements. However, this must be differentiated from mandatory dedication of right-of-way for thoroughfares, which is subject to constitutional limitations. This is because the facility is needed by the general public, and not just the proposed development.

Mandatory dedication of right-of-way is best accomplished in the context of a local five year capital improvements program (or the three year period used for concurrency determinations). It is advisable to establish a method for determining the amount of land to be dedicated, based on the proportionate impact of a development on the transportation facility (see Phoenix example). Compensation would need to be provided for any additional land needed.

Impact Fee Credits

Impact fees are assessed based on the number of new trips a development adds to the transportation network. If a development were assessed impact fees for transportation improvements, the local government could credit the developer for dedicating right-of-way. The value of the dedication would be applied to and deducted from the total impact fees for that project. This effectively combines collecting the fee and purchasing the right-of-way into one transaction.

To provide impact fee credits for right-of-way dedications, impact fee ordinances should address right-of-way costs in the fee structure and calculations. Credit need not be given for any right-of-way deemed site-related.[6] Impact fee credits may also be transferred to offset impact fees payable by that developer elsewhere, provided this is within the same impact fee district that they are earned.

Phoenix Wrestles with Rough Proportionality

In early 1995, Phoenix, Arizona developed a "proportionality" process that standardized right-of-way dedication and improvement requirements, in response to the *Dolan* case. The new procedure ensures that "the principles of connectivity and proportionality are publicly known and documented." The process establishes progressive tiers of requirements that can be supported by individual analysis. These are based on minimum standards, health and safety factors, development impacts, and exactions.

The first tier requires every developed site to be adjacent to a paved public street, served by sewer and water, and meet drainage requirements. Improvements can include construction of curb, gutter, sidewalk and street lights. If any item is missing, the applicant must provide the missing elements. If a development abuts a street not paved to its ultimate width, the developer must "contribute cash or donate right-of-way equal to the value of the curb, gutter, and sidewalk."

The second tier of exactions addresses potential health or safety hazards the development may create in the right-of-way. Among other things, second tier exactions can include right-of-way for turning lanes, paving connections to the nearest paved street, and/or curbs for access control. An individual analysis determines whether the developer must abate any hazards.

The third tier of exactions addresses the number of new trips generated by a project. For this grouping, improvements may comprise right-of-way dedication for a major street, street paving, or contribution of funds in lieu of paving. The fourth tier of exactions involve discretionary items that add to the aesthetic value and function of the project. These include requests for right-of-way dedication for a local or collector street, paving, landscaping, or multi-trail easements. Fourth tier exactions are voluntary, unless an individual analysis states otherwise.

Unlike the new standardized procedures, the former exaction process was based on "informal exaction formulas" and proportionality "was regarded more as a financial equity issue." According to the City Development Services Department, administration of the standardized procedures will reduce the amount of right-of-way dedications and improvements by about $2.8 million annually.

Source: City of Phoenix, Arizona. *City Council Report Regarding Proportionality*, April 1995.

In California, landowners may make irrevocable offers to dedicate *right-of-way, but title to the land is not transferred until the development proceeds or the highway is programmed.*

—FHWA, Preservation of Transportation Corridors, Rivkin Associates, 1993

Negotiated Exactions and Voluntary Dedication

Many communities rely on voluntary and informal measures to preserve future right-of-way. Developers may voluntarily set aside or dedicate right-of-way for improvements essential to the success of contemplated projects. Informal negotiations may occur early in the project planning , through special meetings and public involvement efforts. Negotiations may also occur during development review where developers and local staff can compromise on the location of structures, parking, and in some cases, the future alignment of the corridor.

Voluntary dedication and negotiated exactions are methods of acquiring right-of-way for improvements that are planned, but not programmed for completion in the five-year capital improvements program. Property owners may voluntarily agree to dedicate land within mapped rights-of-way to advance public or private development objectives.

Improved public awareness of the need for transportation facilities and flexibility in negotiating with property owners can result in increased voluntary dedication. Madera County, California, for example, relied on informal negotiations to preserve right-of-way for two essential corridors, State Route 1 and State Route 49.[7] Although funds were not yet programmed for the improvements, state and local officials were determined to protect the corridor. Property owners were encouraged to voluntarily dedicate property or sell future rights-of-way located within their development.

However, voluntary dedications can raise concerns over favorable treatment to a developer whose project is approved following a land dedication or monetary contribution. Also, if environmental documentation is not yet complete, the dedication will be subject to the requirements of the National Environmental Protection Act (NEPA).

Working With Developers in San Jose, California

Within its General Plan, the City of San Jose includes a future right-of-way map which shows the location and width of future corridors. Preservation of these corridors is handled during site plan review. Historically, the City has worked closely with developers on right-of-way preservation. According to City staff, informal negotiations are very successful and developers routinely agree to locate structures outside the future corridor and setback area. In rare instances where a developer refuses to comply, and the property can be developed without encroachment into the corridor, then the City exercises its discretion to require compliance.

The partnership between the City of San Jose and developers to preserve future corridors is exemplified in the development of State Route 85, which was originally planned in the late 1950s. The corridor was placed on the County and City general plans and corridor acquisition soon began. However, the project lost political support on the state level and property acquisition ceased. Nonetheless, the City and County maintained that the freeway was imperative to development of the southwestern portion of the City. Soon, the Chamber of Commerce, developers, and citizen groups joined the City and County in support of the facility.

Eventually, developers began to seek approval of projects that impacted State Route 85's right-of-way corridor. With no funds to acquire property, the City relied on informal negotiations and incentives to prevent property owners from developing the corridor. The City allowed density transfers from the proposed right-of-way to other locations within the project site.

Additionally, developers could place interim uses, such as nurseries, overflow parking, and golf ranges, within the corridor. In the 1980s, after the completion of an Environmental Impact Statement supporting the project and endorsement by a citizen task force, property acquisition for State Route 85 continued; the freeway was completed in 1994.

Source: Rivkin Associates, Corridor Preservation: Case Studies and Analysis of Factors in Decision-Making, prepared for FHWA, December 1993.

Flexible or Cluster Zoning

Flexible zoning relaxes conventional lot dimensional requirements in zoning and allows a developer to aggregate density and cluster structures in a way that works with the natural features of a

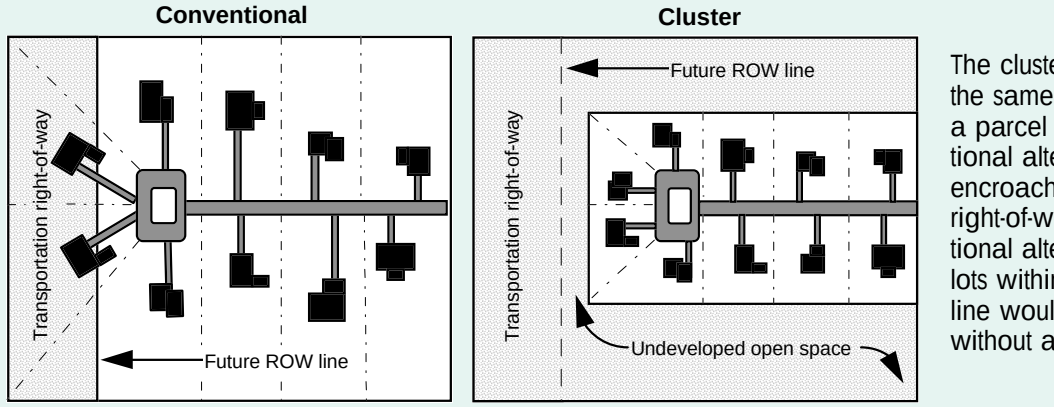
site. Performance standards and bonus points may also be included to address the need for right-of-way preservation and access control. This facilitates unified access and circulation and increases opportunities for avoiding encroachment of development in future right-of-way. A model corridor management ordinance prepared for FDOT allows for clustering of structures with a streamlined administrative approval process for reducing setbacks or other site design requirements.

Transfer of Development Rights

Transfer of development rights programs permit a property owner to transfer the right to develop from one area to another. The "right to develop" is based on the zoned use and density or intensity allowed under current regulations. TDR programs are established by forming two areas: a sending area, and a receiving area. The **sending area** is generally established around a particular resource in need of protection from development. In this case, it may be the future right-of-way intended for reservation. The **receiving area** for the development rights may be an area intended for higher intensity uses or clustered development. The property owner has the ability to develop property in the receiving area at increased densities, or sell the development rights on the open market to a prospective buyer.

Development rights may also be transferred to another portion of the same property. For example, the mapped street ordinance could provide for an on-site density transfer from the area of the property being reserved or dedicated for future right-of-way, to the remainder of the property.

Each of three players in the transfer of development rights stands to gain from the transfer. The property owner can benefit from selling the rights to develop at a profit or incorporating them into higher allowable densities on the same property. The buyer can benefit from acquiring added density to an existing structure where conditions would otherwise limit the expansion. And the local government can benefit from acquiring and preserving needed right-of-way.



The cluster option allows the same gross density on a parcel as the conventional alternative, without encroaching into the future right-of-way. In the conventional alternative, the two lots within the right-of-way line would be unbuildable without a variance.

Transfer of Development Rights in Orange County, Florida

Orange County, Florida, is developing a TDR program to allow property owners to donate right-of-way needed to construct limited access expressways or principal arterials, in exchange for an increase in density or development rights at another location. Development rights may be transferred onto the remainder of the subject property or within ¼ mile of the right-of-way sending area. Net density in Village or Town Centers may be increased from 5.0 dwelling units per acre to 16 dwelling units per acre where the TDRs are utilized.

The TDR program is part of an ambitious plan to replace piecemeal development with integrated towns and villages. Each settlement is to include an integrated mix of land uses and maintain a greenbelt averaging 500 feet wide around its boundary. Limited access expressways and principle arterials are prohibited within the villages, but may be located in the greenbelt provided they are separated from the village by a permanent buffer zone of at least 150 feet.

Combating Commercial Strips in Acton, Massachusetts

To avoid strip commercial development and congestion, Acton, Massachusetts rezoned commercial land to lower densities along its main highway corridor, Route 2A. In 1990, citizens of Acton approved a transferable development rights program to offset possible devaluation of land in areas that had been downzoned.

The process involved "upzoning" other residential and commercial areas into "limited business" districts where the increases in density could be used. The idea was to cluster commercial and residential development into higher density areas to create a mixed-use "urban village" and further the master plan's goal of fostering a sense of community.

At the same time that the program was adopted, the state's economy began to decline and growth pressures waned, decreasing market demand for development rights. Consequently, no permits for the TDR program have been filed to date. Local officials anticipate a higher demand for additional development rights as economic conditions improve and growth pressures increase.

With the sale or transfer of the right to develop, the cost of acquiring the property may be reduced. Additionally, the property remains in the possession of the landowner until it is needed and acquired. The property owner is also responsible for maintaining the property and paying all taxes until the time of acquisition.

TDR programs do not work well where rezoning approval is easily obtained or where market demand is otherwise insufficient. In addition, increased density in the receiving area needs to be compatible with surrounding land uses, which may have originally been planned at lower densities, and with planned or available infrastructure. Citizens may also oppose higher densities in receiving areas.

TDR programs can be used to avoid a regulatory taking by compensating property owners for the loss of development rights. To ensure the permanence of the transfer, communities considering a TDR program should require that it be recorded with the deed to the land. A special permit could be required to transfer the rights, which will help ensure consistency among transfers.

Overlay Zones

An overlay zone adds special requirements onto an existing zoning district, while retaining requirements of the underlying zone. It is a popular method of managing corridor development, because it enables communities to tailor standards to the unique circumstances of a corridor.

Overlay districts are applied to a specified area on either side of the designated corridor. The FDOT model corridor management ordinance includes corridor overlay provisions for projects within 1,000 feet of a future transportation corridor. Standards for corridor management overlay districts may address a variety of issues, such as: right-of-way reservation, right-of-way dedication, allowances for interim uses, setbacks on designated corridors, cluster zoning, transfer of development rights, joint and cross access provisions, limitations on new driveways, driveway spacing standards, and so on.

References

[1] For further information, see K. Williams + M. Marshall, *A Public Involvement Handbook for Median Projects*, Center for Urban Transportation Research, October 1995.

[2] Charles Reed, "The Official Mapped Streets Ordinance-A Powerful Zoning and Subdivision Tool," *The Zoning Report*, Vol. 7, No. 1, Jan. 27, 1989.

[3] Henigar & Ray, Hamilton Smith & Associates, and Apgar, Pelham, Pfeiffer & Theriaque, Model Ordinance for Protection of Corridors and Rights-of-way, in *Corridor Protection Techniques*, FDOT, 1995.

[4] Henigar & Ray et al., Model Ordinance, *op cit.*

[5] Arthur Nelson and James Duncan et al., *Growth Management Principles & Practices*, American Planning Association, Chicago, Illinois: Planners Press, pp. 119-120.

[6] James Nicholas et al., *A Practitioner's Guide to Development Impact Fees*, American Planning Association, Chicago, Illinois: Planners Press, pp. 266-268.

[7] Rivkin Associates, *Corridor Preservation: Case Studies and Analysis of Factors in Decision-Making*, December 1993: pp. 33-35.

RIGHT-OF-WAY ACQUISITION

Eminent domain is the Constitutional right of government to take private property for necessary public use. Through this authority, the government may acquire land for transportation purposes. This occurs through condemnation and public acquisition and does not require a property owner's consent. However, a property owner whose land is taken through eminent domain must be fairly compensated. This chapter addresses the process of acquiring right-of-way through eminent domain, criteria for early acquisition, and alternatives to fee simple purchase of land.

Eminent Domain and Condemnation

When a government entity begins the process of acquiring land through eminent domain, the property owner is presented with a good faith estimate of value based on an appraisal of each parcel.[1] Typically, eminent domain proceedings lead either to settlement negotiations to reach a purchase price, or to mediation.

If a settlement cannot be reached, the case will proceed to trial. Before the trial begins, the condemning authority may issue a written offer of compensation to the property owner, known as an offer of judgment. The property owner may also make an offer for a selling price under $100,000. A written response to an offer must be received within a specified time frame or the offer is deemed null and void, and the case goes to jury trial. If the monetary award received through trial is equal to or less than the offer of judgment, all costs incurred by the property owner after the offer was rejected must be borne by the property owner. If the jury award is higher, all costs are paid by the state.

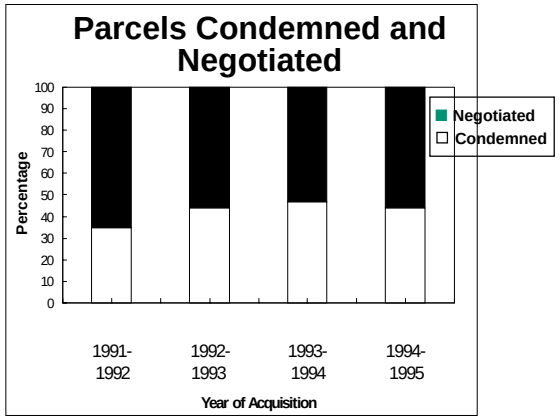
If the final alignment of a corridor changes and the land is no longer needed, the condemning authority may either: 1) sell the land back to the original property owner for fair market value, in cases of a partial taking or 2) initiate a bidding process open to the public, in cases of whole property taking.

Procedures for sale of unused land vary from state to state. Missouri law, for example, provides that if the location of the corridor changes after the State Highways and Transportation Commission acquires property, "the person from whom the property was acquired shall have the right of first refusal to reacquire the property at a cost of not more than the compensation paid by the commission to such person for the property."[2]

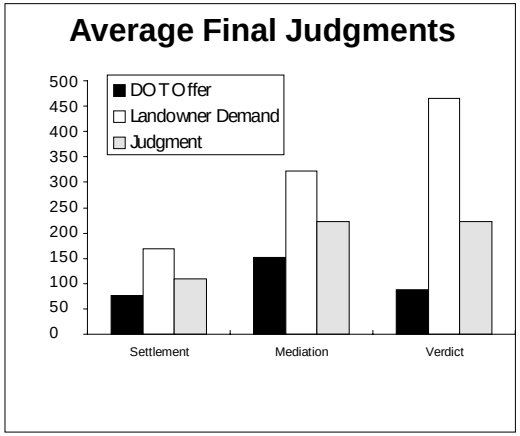
How is Compensation Determined?

When determining the extent of compensation in a condemnation trial, a 12-panel jury may weigh several factors, including:

Before eminent domain may be initiated for a project involving federal or state funding, environmental documentation required under the National Environmental Policy Act must be completed, and location and design criteria must be met.



In Florida, an increase in property value resulting from a new transportation facility, may be used to offset business or severance damages awarded to a property owner.



- the value of the property;
- any damages accruing to the remainder of the property as a result of a partial taking (severance damages); and
- the effects of a partial taking on an operating business (business damages)—provided it has operated at the same location for at least five years.

Juries are typical in condemnation cases in Florida but are not required by the State Constitution. A proposed alternative, to be submitted for consideration in the 1997 legislative session, would allow eminent domain actions to be tried by a three-member commission, in lieu of a twelve-panel jury.

In Florida, if the property being taken has increased in value as a result of the proposed improvements to or construction of a new transportation facility, that increase—known as a special benefit—may be used to offset the business or severance damages awarded to the property owner. This increase may not be used to reduce the initial cost of the land being taken.

Limitations on Eminent Domain

There are limitations on when the power of eminent domain may be used. For example, it may only be used to achieve a public, not private, purpose, and it may only be used when acquisition is necessary to achieve that purpose. What constitutes a "public use" and "necessity" has been loosely defined and enforced by the courts. Additionally, except in certain circumstances, the power of eminent domain may only be used to condemn the amount of land needed to achieve the public purpose.

Attorney's Fees

In Florida, the state is responsible for paying the property owner's attorney's fees as well as "all reasonable costs incurred" in the defense of the eminent domain proceedings, including business damages or independent property appraisals. In 1994, the Florida legislature amended Section 73.092, Attorneys Fees, establishing a formula for determining attorneys fees, based solely on the benefit achieved for the property owner.

In eminent domain cases, attorney's fees are not deducted from the award given to the property owner, as in civil or personal injury trials, but are paid above and beyond the compensation award. If the eventual settlement is less than the final offer of judgment, the state pays only those fees up to the time the offer was rejected. In 1995, the State paid $34.9 million in attorneys' fees for right-of-way cases alone.[3]

Excess Condemnation

Condemnation of land beyond what is needed for a particular public purpose is known as "excess condemnation." The different methods of excess condemnation are protective and supplemental. Use of the latter technique may require direct statutory allowance.

Protective condemnation is the condemnation of land adjacent to a transportation facility for the purpose of controlling its use. The land may be held or resold with use or access restrictions which require future land uses to be compatible with the new facility. It is likely that a strong safety or operational justification would be required to condemn in this manner.

Supplemental condemnation involves the acquisition of land surrounding a transportation facility, where the land is not actually needed for construction. The intent is to purchase land prior to the development, when costs are lower, then sell the land following construction of the facility when the land is in greater demand and a higher return may be obtained. The money earned would help offset the cost of building the facility, and the purchase would alleviate the potentially negative impacts of development in the corridor.

Whether "supplemental condemnation" is a legitimate exercise of the power of eminent domain is not clear in cases of corridor preservation. A U.S. Supreme Court case in Cincinnati questioned the constitutionality of a state statute enabling the government to condemn in excess of what was needed, if the taking would definitively serve a public use (see: *City of Cincinnati v. Vester, 281 U.S. 439 (1930)*. Although it has been upheld for redevelopment of blighted areas, it is doubtful whether it would be upheld for corridor management without specific statutory guidance.

Early Acquisition

There are two types of early acquisition: parcel advance acquisition, and project advance acquisition. The former is the acquisition of a specific parcel of property when an advantageous purchase opportunity is identified, and with eminent domain used only in limited situations. Partial environmental documentation is required to the extent that it provides sufficient information to begin to acquire individual parcels. The latter is the advancement of entire right-of-way projects using completed project development studies. This section describes parcel advance acquisition.

Acquiring land in advance of final approval of a transportation facility may occur in several instances:

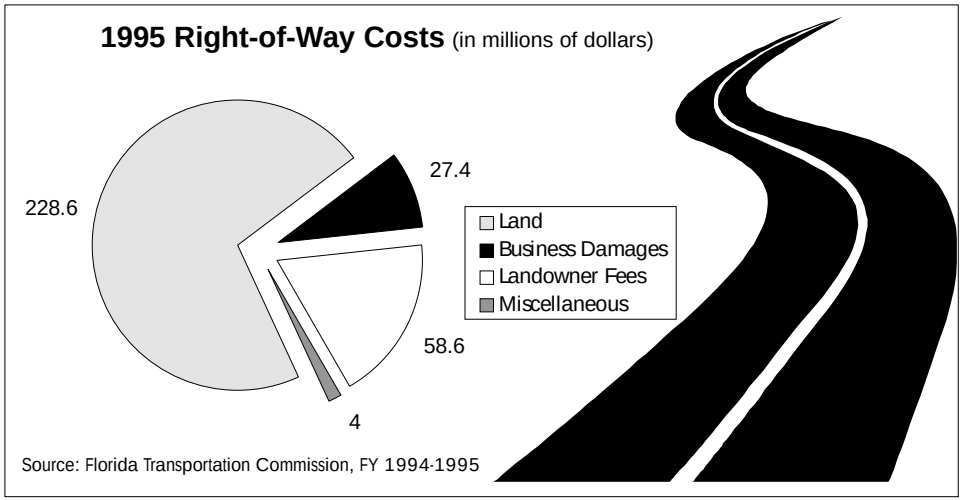
- when the opportunity arises to purchase advantageous parcels in a developing corridor;
- in response to an inverse condemnation claim;
- when the corridor is threatened by imminent development (protective buying); and
- in hardship cases.

Eminent domain acquisition may only proceed following completion of environmental documentation and location and conceptual design acceptance; therefore, most parcel advance acquisition cases would not invoke the use of eminent domain.

Additionally, parcel advance acquisition is usually not possible on projects that will receive federal funding, until location and conceptual design acceptance is granted by FHWA. An exception or "categorical exclusion" may be provided for

"The appreciated value of property near interchanges—resulting solely from the presence or proposed location of a new highway—should revert to the state. If this land were purchased with highway acquisition funds and resold or leased to developers as improved land, the proceeds would help underwrite a substantial part of the total highway program."—Urban Advisors to the FHWA, 1968.

The Freeway in the City, U.S. Government Printing Office: Washington D.C., 1968.



Chapter 337, F.S., authorizes the Florida Department of Transportation to, "purchase, lease, exchange or otherwise acquire any land or buildings or other improvements" which are needed, "to secure or utilize transportation rights-of-way for existing, proposed, or anticipated transportation facilities on the State Highway System."

protective buying or hardship acquisition actions that would not limit the evaluation of alternatives that may be required during the NEPA process.[4]

Protective Buying

On projects receiving federal funding, advance parcel acquisition by negotiated purchase may be initiated under limited circumstances, through protective buying. Protective buying is the acquisition of land within a mapped corridor on which the owner has impending plans to develop the property. The land may only be acquired to prevent imminent development that would preclude future transportation use.[5] In the event a negotiated purchase agreement cannot be reached, the state may initiate eminent domain proceedings to acquire the land.[6]

Protective buying does not help to guarantee the specific alignment of the facility. In fact, if the eventual alignment of the roadway does not incorporate the acquired land, and the land is later sold, it can give the appearance of public land speculation—especially if the land is sold for a profit. However, protective buying provides an avenue whereby a state highway agency could strategically purchase and preserve some critical parcels along a corridor without having to purchase the entire right-of-way.

Hardship Acquisition

Early parcel acquisition on projects receiving federal funding may also occur when there is a demonstrated hardship on the property owner. In hardship cases, a property owner may request a purchase on the basis of a particular financial or health-related hardship. For example, the government agency may acquire a property where a highway project renders it unsaleable in a manner that poses a particular hardship on the property owner, that is unique to that property in contrast to others.

Hardship acquisition may also be justified when the property owner can provide documentation that on the basis of health, safety, or financial reasons, that remaining on the property poses an undue hardship. Financial hardship may arise from a loss of employment, retirement, litigation, and so on. Health hardships may include advanced age, debilitating illness, or major handicap, whereby the current housing facilities are no longer suitable.

Business and Severance Damages

Florida is one of the few states to award business damages in right-of-way taking cases. Payments are made to a business owner who has operated a business on the same site for at least five years, to mitigate any impacts caused to the business as a result of a partial taking of property through eminent domain.

A property owner can make a claim to receive business damages for a number of circumstances including relocation costs, loss of profit, losses from sale of equipment, and loss of goodwill (i.e., damage to a long-standing reputation in the community or loss of a specific client base, due to relocation, etc.). These payments are different from severance damages, which are paid to a property owner to compensate for damage to the value of the remainder of the property during a partial taking.

Florida's eminent domain legislation provides few guidelines for determining the extent or duration of the taking's impact on the property owner, making it difficult to determine an accurate business damage award. Often, business damages are so high that they cause the state to invoke a whole taking (allowed only when the amount of the claim exceeds the value of the remaining property).

According to the Florida Transportation Commission, Florida spent a total of $303.5 million on right-of-way expenditures during 1995. Of that total, 4% or $12.4 million was spent on business damages. Concern over the rising costs of acquiring right-of-way in Florida has led some policy makers to call for reconsideration of the methods for determining business damage allowances.

Options to Purchase

An option to purchase property is a voluntary contract between a property owner and a buyer, in which the property owner agrees to reserve the property at a given price for a specified period of time, in exchange for a deposit payment on the land. During this time, the buyer is the sole party eligible to purchase the property, and may exercise this option at any time during the contract. If the purchase has not been made during the designated time frame, the property owner is no longer obligated to sell the property to the original buyer.

To help preserve a corridor, the state or local government can negotiate an option to purchase specific property for a set price, and make a deposit on the land for lower cost than would be paid for an outright purchase. This technique would be viable as a short term protection strategy. Options to purchase are financially attractive to the public agency, because they do not require much initial spending, but may help preserve a critical parcel from development. If the property is not needed, there are no additional costs; the purchasing agent may simply let the contract period expire without purchasing the property. The public agency also benefits from assurances that no development activity will occur during the contract period. Additionally, option contracts allow the property to remain on tax rolls until the time of purchase.

Purchase of Development Rights

Development rights can be separated from other property rights or from the remainder of the property and purchased, donated, sold, or condemned for public purposes. A government agency may purchase development rights from a property owner—in essence, compensating the property owner for maintaining the property in an undeveloped state. Property owners may typically farm the land or use it for purposes other than development.

The purchase of these rights in the form of a development easement may be permanently recorded with the deed to the property, thereby ensuring that development will never occur. This strategy preserves right-of-way from development, without condemning and paying for an entire property.

Right-of-Way Taking for Access Control

Through the power of eminent domain, FDOT may "condemn all necessary lands and property, including rights of access, air, view, and light, whether public or private, for the purpose of securing and utilizing transportation rights-of-way, including, but not limited to . . . areas necessary for management of access."

The statute also permits FDOT to acquire a lot, block, or tract of land beyond what is actually needed for the facility, if the cost of the larger acquisition will be equal to or less than the cost of acquiring only a portion of the property. This is part of the normal condemnation process and is not considered to be "excess condemnation."

The State Highway System Access Management Act, §335.181, F.S., provides the FDOT with authority to regulate access to the state highway system. The Act states that while a property owner has a right to reasonable access to an abutting state highway, there is not always an implicit right to direct, unregulated highway access. The FDOT may restrict or regulate the means of access to an abutting highway to further the state's access management goals.

The statute enables the department to acquire additional right-of-way to build service roads along a state highway. A property owner whose land abuts a service road would then be entitled to reasonable access to that service road, but not direct access across the service road to the state highway. Another potential application of this authority is the provision of access roads to parcels abutting an interchange that are otherwise unable to meet connection spacing requirements.

A difficult aspect of administering a PDR program is establishing a fair purchase price for development rights. The price could be fairly assessed as the difference between the land's present value and its market value based on zoned density. Under some market conditions, however, the price of purchasing a development easement may be close to the cost of an outright purchase. In these cases, PDR would pose no advantages over fee simple acquisition.

References

[1] Eminent Domain, Chapter 73.032, F.S.

[2] Senate Bill No. 212, 88th General Assembly, Section 226.954(7) (repealing Section 238.400, RSMo 1994.)

[3] "Performance and Production Review of the Department of Transportation: Year End FY 1994/1995," Florida Transportation Commission, October 1995, p. 15.

[4] National Environmental Policy Act, Title 23, Code of Federal Regulations, Sec.771.117.

[5] 23 CFR Section 771.117(d)(12).

[6] FDOT Right-of-Way Procedures Manual, Chapter 8, Section 1, Part XIX; March 1993.

Access Management

Access management is a process for providing access to land development, while preserving traffic flow on surrounding roadways in terms of safety, capacity, and speed. This is achieved by managing the location, design and operation of driveways, median openings, and street connections to a roadway. It also involves use of auxiliary lanes, such as turn lanes or bypass lanes, to remove turning vehicles from through-traffic movement.

Roadways are classified for access control based upon their importance to local and regional mobility. The greatest access control is applied to roadways intended to serve more through traffic, beginning with interstate freeways or expressways, followed by arterials and collectors. The least access control is applied to local streets—including minor collectors, residential access streets, frontage roads, and alleys.

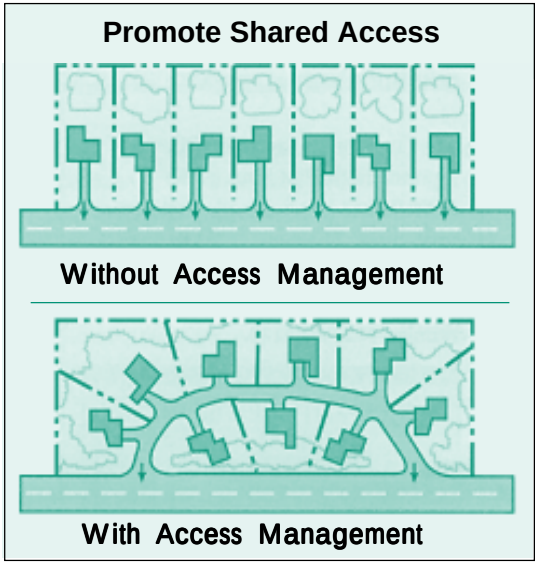
Benefits of Access Management

Public purposes behind access control include improved safety of vehicular and pedestrian travel, preservation of roadway level of service, and enhanced community character. By preserving roadway level of service, access management helps protect the substantial public investment in transportation and reduces the need for expensive improvements. Studies conducted in Florida and Colorado suggest that poor spacing, design, and location of driveways could reduce average travel speed, whereas improvements in access management could increase roadway capacity substantially.

Research has consistently shown that access management helps reduce the rate and severity of traffic accidents. Good definition and spacing of driveways also improves pedestrian and bicycle safety, by reducing the potential for conflicts with turning vehicles. Safety hazards on transportation corridors translate into significant social and economic costs. Colorado DOT reported that access-related accidents on Colorado roads cost society approximately of $900 million in 1994 alone.

From a land development perspective, access management requirements further the orderly layout and use of land and help discourage poor subdivision and site design. The quality of site access is also important to the success of a development project. The Urban Land Institute's *Shopping Center Development Handbook* warns that "poorly designed entrances and exits not only present a traffic hazard, but also cause congestion that can create a negative image of the center."

Reducing the number and frequency of driveways and median openings also improves the appearance of major corridors. More area is available for landscaping, the appearance of asphalt is reduced, and scenic or environmental features can be



Florida Access Management Requirements

- State Highway System Access Management Act, Chapter 335.18, F.S.
- State Highway System Connection Permits, Administrative Process, Rule 14-96.
- State Highway System Access Management Classification System and Standards, Rule 14-97.
- FDOT Median Opening Decision Process, Topic No. 625-010-020-a.

Driveway Spacing Standards

- Adopt minimum spacing standards for driveways
- Reinforce with minimum lot frontage and joint access requirements

For more information on driveway spacing standards see the Transportation Research Circular Number 456, *Driveway and Street Intersection Spacing*, Washington D.C.: Transportation Research Board, March 1996.

protected. For this reason, access management is a part of many plans aimed at improving the image of streetscapes and gateways and attracting economic development.

Access Management Techniques

Access management requires careful coordination of land use and transportation objectives. Local regulations must address the interdependence of land division and access and integrate access management principles throughout the planning and regulatory program. Below are some specific steps local governments can take to improve and manage access:

- Regulate driveway spacing, corner clearance, and sight distance.
- Increase minimum lot frontage and setback requirements along thoroughfares and regulate lot width-to-depth.
- Restrict the number of driveways per existing parcel or lot and consolidate access wherever feasible.
- Establish driveway design elements and warrants for use of those design features.
- Promote internal connections between adjacent land uses and encourage unified circulation and parking plans.
- Treat properties under the same ownership and those consolidated for development as one property for the purposes of access control.
- Discourage the location of driveways along acceleration or deceleration lanes and tapers at street intersections or interchanges.
- Restrict flag lots and regulate private roads and access easements.
- Minimize commercial strip zoning and promote mixed use and flexible zoning.
- Require subdivisions along arterials and collectors to be designed with internalized access (reverse frontage).
- Minimize subdivision exemptions and review lot splits to prevent access and right-of-way problems.
- Optimize driveway location and overall access in subdivision and site plan review.

Driveway Location and Design

Driveway location and design affects the ability of a driver to safely and easily enter and exit a site. If not properly placed, exiting vehicles may be unable to see oncoming vehicles and motorists on the roadway may not have adequate time to stop. If driveways are too narrow or have an inadequate turning radius, then vehicles will be unable to maneuver quickly and comfortably off the roadway. If the turning radius and width are excessive, then rapid maneuvers onto the site pose safety hazards for pedestrians, bicycles, or vehicles. The storage length of a driveway also needs to be adequate so vehicles need not wait in through lanes to enter the site.

Driveway Spacing Standards

Driveway spacing standards establish a minimum distance that should be maintained between driveways. Reasonable spacing between driveways is important to the safety and capacity of roadways, as well as the appearance of a corridor. Managing driveway spacing is essential on roads

intended for higher speeds. At higher speeds travelers have less time and space to react to the unexpected. Therefore, the minimum distance needed between driveways is greater as speed limits increase. This is why driveway spacing standards are more stringent for highways and arterials.

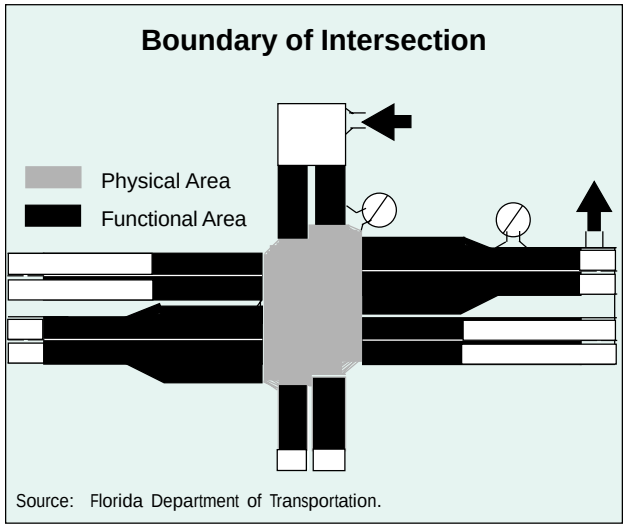
Driveway or connection spacing standards are derived from traffic engineering principles, driver behavior, and vehicle dynamics. Considerations in establishing spacing standards include highway function, access classification and speed, location of streets and driveways, volume of trucks, driver expectancy, and separation and reduction of conflicts. Some communities vary spacing standards depending upon the development intensity or traffic volume to be served on a site and that of adjacent sites. Single family homes are typically exempt. Driveway spacing standards for state roads are set by the Florida Department of Transportation.

Corner Clearance

Corner clearance is the distance from an intersection of a public or private road to the nearest access connection. Corner clearance standards preserve good traffic operations at intersections, as well as the safety and convenience of access to corner properties. Assuring an adequate lot size with appropriate corner clearance will protect the development potential and market value of corner properties. It will also help assure that these properties do not experience access problems as traffic volumes grow on the adjacent thoroughfare.

Joint and Cross Access

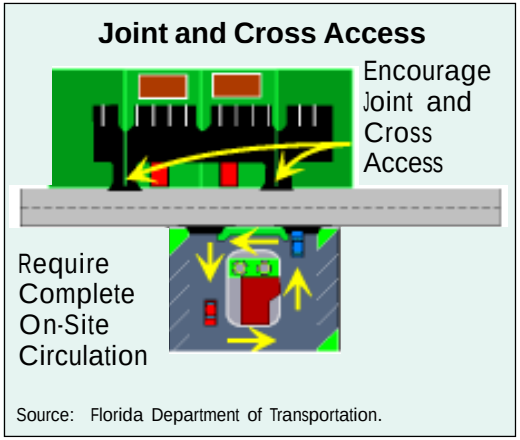
Joint and cross access requirements connect adjacent land uses and consolidate driveways serving more than one property. This allows vehicles to circulate between adjacent businesses without having to re-enter the arterial. Joint access requirements are used to connect major developments and to improve driveway spacing where highway frontage has been subdivided into small lot frontages. This technique allows intensive development of a corridor, while maintaining traffic operations and safe and convenient access to businesses.



Source: Florida Department of Transportation.

Joint and cross access is applied to selected corridors as follows. Property owners unable to meet driveway spacing standards are required to provide for joint and cross access easements wherever feasible. Abutting properties under different ownership are encouraged to comply, but generally not required until they redevelop or expand. In the meantime, the applicant is allowed a temporary driveway. The easement is recorded with the property records, along with a joint maintenance agreement and agreement to close the temporary driveway when the joint access system is complete.

Flexibility is needed on an administrative level to work with the unique circumstances of each development site. Communities could relax driveway spacing standards for properties that agree to consolidate access, and provide for variances where compliance proves impractical. Some ordinances provide incentives, such as density bonuses, for combining access points, or relax parking and dimensional requirements where necessary to achieve shared access.



Source: Florida Department of Transportation.

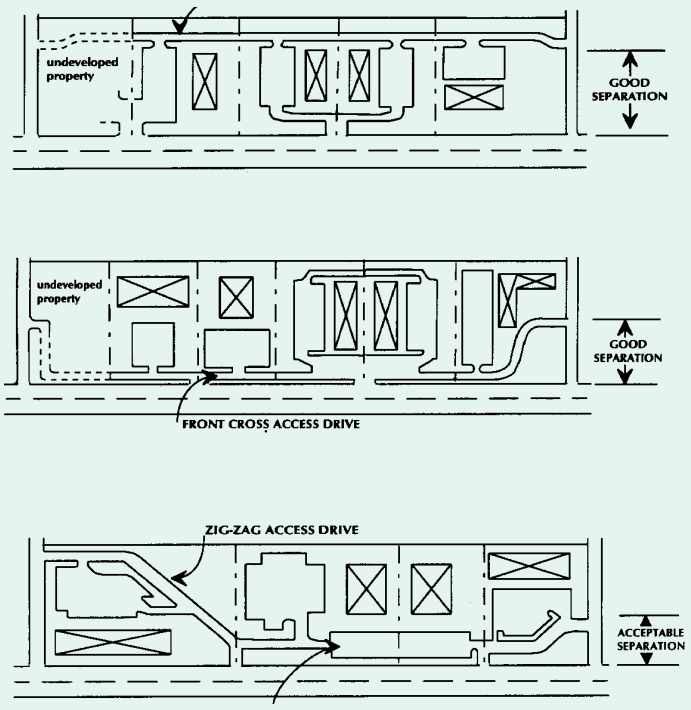
Orlando's Joint Access Requirements

Orlando, Florida, is improving driveway spacing by applying joint access and cross access requirements to designated "cross access corridors." Joint use driveways and cross access easements must be established wherever feasible and the building site must incorporate a unified access and circulation system. Properties that comply with these requirements may be granted less restrictive driveway spacing.

Cross access corridors are indicated on the zoning map, along with portions of the corridor where easements have been recorded. Standards require:

- A continuous linear travel corridor extending the entire length of each block it serves, or at least 1,000 feet of linear frontage along the thoroughfare, and having a design speed of 10 mph.
- Sufficient width to accommodate two-way travel aisles designed to accommodate automobiles, service vehicles and loading vehicles in accordance with [design] requirements;
- Stub-outs and other design features that make it visually obvious that the abutting properties may be tied in to provide cross-access;
- Linkage to other cross-access corridors in the area.

Source: City of Orlando, Florida, Orlando Code of Ordinances, Land Development Code, Chapter 61, Roadway Design and Access Management, 1991.



Reverse Frontage

When land is subdivided for residential use, lots abutting the thoroughfare should not be allowed to obtain driveway connections on the thoroughfare. Instead, the subdivision should be designed so these lots obtain access from an interior street or frontage street. Landscaping, berms, or other barriers may be provided at the rear of these properties to buffer them from the noise, debris, and traffic on the thoroughfare. This also reduces the potential for dangerous conflicts between high-speed traffic and residents entering and existing their driveway.

Frontage Roads

Frontage roads can be useful for eliminating driveway connections along high-speed arterials. However, if not carefully managed, frontage roads can create operational problems at intersections—especially when combined with high traffic volumes associated with commercial and higher density residential areas. If frontage roads connect close to major intersections, the result may be severe congestion, long delays, and high accident rates. These potential impacts are even greater with two-way frontage roads, and those planned to accommodate higher intensity development.

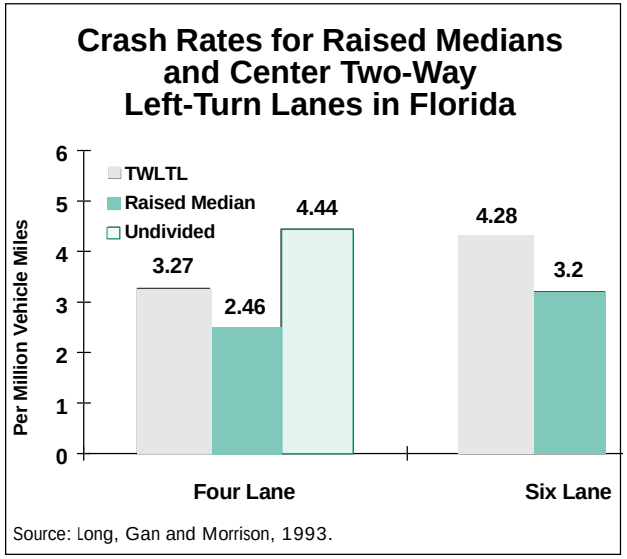
Problems associated with frontage roads can be overcome through careful attention to design and placement. Below are some considerations related to frontage roads:

- "Backage" roads with development along both sides, are preferable to frontage roads, as they allow for a greater distance between the connection and the intersection.
- One-way frontage roads generate fewer conflicts than two-way frontage roads. For retrofit situations, one-way frontage roads that enter and leave the main road without crossing intersections are preferred.
- Restricting left turns into and out of a frontage road helps to reduce conflicts. This could be accomplished with restrictive medians.
- Maintain adequate separation between the frontage road and the future right-of-way line for pedestrian refuge and landscaping.[3]

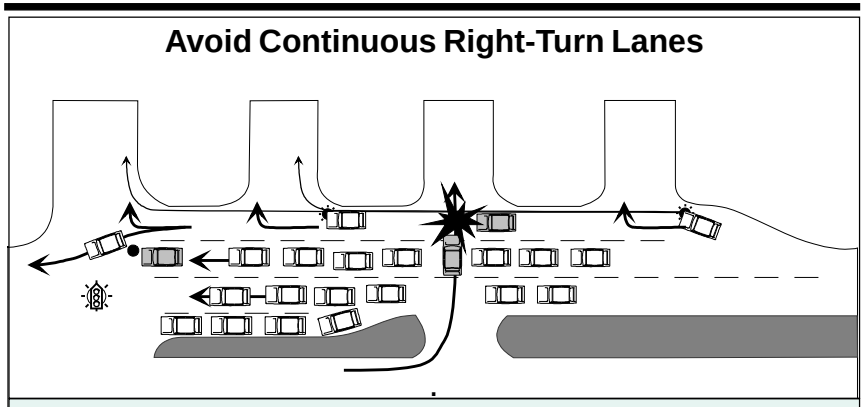
Medians

Raised or grassy medians in the center of a road separate opposing lanes of traffic and restrict turning and crossing movements. Studies from Florida and around the nation show that thoroughfares with raised medians are safer than those with undivided thoroughfares or center two-way left turn lanes.[1] Medians also provide a refuge for pedestrians as they cross thoroughfares and can be landscaped as part of a corridor beautification program.

Median landscape plans need to be developed with careful attention to maintaining adequate sight distance and visibility for turning and crossing vehicles.[2] As with driveways, the spacing and design of median openings is important to the safe and efficient operation of the roadway. Safety benefits are reduced where median openings have inadequate storage or are too close together.



Source: Long, Gan and Morrison, 1993.



Auxiliary lanes are helpful in removing turning vehicles from through-traffic. However, if right-turn lanes are not broken periodically, drivers may use them as through-lanes, causing confusion as to where cars will turn. Frequent curb cuts and unpredictable turning and weaving movements result in hazardous driving conditions.

Source: Florida Department of Transportation.

Retrofitting Existing Corridors

One of the challenges in managing access is how to improve access on already developed corridors. The level of demand on our transportation system has changed and so has our understanding of the issues and problems. As communities grow and change, roads originally intended to provide access to homes or businesses may be needed to serve through traffic. In addition, some of the access problems we now see are the result of poor subdivision and zoning practices made in the past. It is much more difficult to manage these competing demands and solve access problems after the fact.

The Florida Department of Transportation has a policy of designing all new or reconstructed multi-lane highways with restrictive medians, except four-lane sections with design speeds of 40 mph. Facilities with design speeds of 40 mph or less are to include sections of restrictive median.

One strategy is to prepare access management plans for the higher priority corridors in the community. Restrictive medians with carefully designed crossovers are useful for controlling turning movements and improving safety on already developed corridors. Special corridor zoning and overlay zones can be designed to address the unique circumstances of the corridor while advancing access management objectives. Local ordinances can also include retrofitting standards that specify when existing uses must come into compliance with the new standards. Such conditions might include substantial enlargements or improvements, significant changes in trip generation, or when new connection permits are requested.[4]

References

[1] Vergil G. Stover, *Median Access Management and Design*, (course manual), prepared for the Florida Department of Transportation, 1995.

[2] See *The Florida Highway Landscape Guide*, prepared by Tampa Bay Engineering for the Florida Department of Transportation, Environmental Management Office, 1995.

[3] Koepke and Levinson, *NCHRP Report 348: Access Management Guidelines for Activity Centers*, TRB, Washington, D.C.: National Academy Press, 1992.

[4] See FDOT/CUTR *Model Land Development and Subdivision Regulations that Support Access Management*, 1994.

FUNDING

Due to regulatory constraints on use of state and federal funds for advance right-of-way acquisition, as well as revenue shortfalls, alternative methods of funding are always being sought. Potential funding options for right-of-way acquisition include right-of-way revolving funds, local option gas taxes, impact fees, and special assessment districts. Public-private partnerships, such as transportation corporations, are another alternative. This chapter describes these and other funding alternatives for the acquisition of transportation right-of-way.

Right-of-Way Revolving Fund

The federal right-of-way revolving fund was developed to assist states in acquiring right-of-way in advance of project construction. This interest-free funding source is available for state and local governments for a 10-year time limit (extended by ISTEA to 20 years), and allows the advance purchase of right-of-way for highway facilities. The fund is limited compared to the demand for dollars; estimates indicate that for every dollar available annually, three to four dollars in loans are requested.[1] To be eligible for funding, the state must comply with the:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- Civil Rights Act of 1964;
- National Environmental Policy Act;
- Endangered Species Act; and
- all other applicable environmental laws.

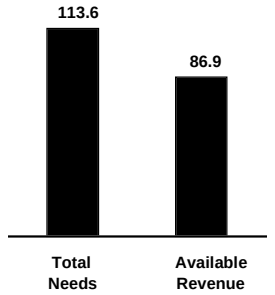
Funds may be used to pay the entire costs of right-of-way acquisition, including moving and relocation payments. Actual construction for a project for which these funds have been utilized must begin within 20 years.

State Transportation Trust Fund

Currently, the Florida Department of Transportation pays for right-of-way acquisition with allocations from both the *State Transportation Trust Fund,* and on certain federal-aid highway projects, from the federal revolving fund. Revenues collected from fuel taxes, rental car surcharges, motor vehicle fees, and the new initial vehicle registration surcharge comprise the State Transportation Trust Fund, which totals approximately 1.5 billion dollars annually. Right-of-way projects to be funded through this source must be specifically identified in the FDOT five year work program, which indicates the year in which construction is scheduled to begin (section 339.135 [4.b.3]).

Due to fluctuations in tax and fee revenues, the Florida legislature enabled the sale of *bonds* in 1990 to fund right-of-way acquisition. Up to six percent of the STTF may be transferred annually to the

Florida's Transportation Shortfall



State and local governments in Florida are facing a revenue shortfall of $27 billion over the next 20 years, just to maintain existing transportation conditions. (Estimates are in current dollars and include roads, transit, ports and airports.)

Source: Center for Urban Transportation Research, Statewide Transportation Needs and Funding Study, State Transportation Policy Initiative, 1995.

Hillsborough County, Florida collects $.10 worth of gas taxes which generate approximately $31.5 million per year. The county has the $.02 Constitutional gas tax; the $.01 county gas tax; the $.01 "9th penny" gas tax; and the $.06 local option gas tax. It has not authorized the "ELMS" five-penny tax.

Right-of-Way Acquisition & Bridge Construction Trust Fund, for the purpose of meeting debt service obligations on bonds. Ninety percent of this may go to pay debt service on bonds; the remaining 10% must remain in the fund as coverage. Bonds to acquire right-of-way may be issued annually to the extent that debt service on those bonds does not exceed the 90% available.

State Infrastructure Bank

State infrastructure banks were identified under ISTEA as a mechanism for meeting some of the challenges of financing transportation projects. Under an state infrastructure bank, states would utilize state or federal funds in much the same manner as a private lending institution. Through the infrastructure bank, the state could make loans, secure loans, and use its funds as collateral when issuing bonds. The funds within the infrastructure bank could also be used to purchase right-of-way for transportation projects

The money to create the bank comes in part from the overall federal allocations to the state. Each state can also fund the bank through its existing surface transportation program funds. A recent ten-state pilot program, passed as part of the National Highway System Designation bill, enabled states to use 10% of their apportionments over two years to establish the bank.[2] Florida was one of the ten states chosen to participate.

The primary benefit of establishing a state infrastructure bank is increased flexibility in selecting projects and managing costs. The U.S. Department of Transportation's report on infrastructure banks describes the benefits of state infrastructure banks as:

- facilitating projects that would otherwise be delayed or infeasible;
- offering many types of financial assistance for transportation projects;
- enabling states to tailor financing to fit project need;
- enabling states to "recycle" funds by re-loaning funds as they are repaid;
- and using limited grant funds more effectively, thereby freeing up grant funds for projects that most need traditional funding.[3]

Local Option Gas Taxes

Chapter 336, Florida Statutes, authorizes local governments to levy three different gas taxes to fund transportation improvements, including right-of-way acquisition. The first of the three is called the "one-to-six penny" gas tax. Adopted in 1983, the tax enables local governments to assess—by a super majority vote of the commission or a public referendum—up to $.05 to fund a variety of transportation expenditures.

The second is known as the "one-to-five penny" gas tax, or the "ELMS" gas tax. It was authorized in 1993, and allows local governments to assess up to a nickel for any transportation expenditures needed to meet the requirements of the capital improvements program in an approved comprehensive plan. Revenue from each of these two taxes is divided between the county government and the municipalities within it.

The third tax is called the "ninth penny" tax, and is a one-cent assessment to fund costs of operation and maintenance of existing transportation facilities, including right-of-way acquisition. It is

especially authorized for counties alone, but counties are not precluded from sharing the revenues with their municipalities.

State-Shared Revenue Sources

Florida has two sources of "state-shared revenue" which may be used for right-of-way acquisition and transportation improvements. The first is authorized by the Florida Constitution, and is a $.02 motor fuel tax. The revenues from this are collected by the Department of Revenue and administered by the State Board of Administration (SBA). Eighty percent of the total revenue generated is allocated for debt service on bond issuance; the remaining 20% is allocated to local governments. The second type is a $.01 county gas tax which is also used for county debt service.

Public/Private Partnerships

A public/private partnership is, "the pairing and cooperation of public and private resources to achieve an end that will benefit both the private developer and the public sector."[4] Public/private partnerships can be beneficial to all participants in corridor management. The local government may benefit from the construction of a needed facility at low cost and in a more expeditious manner than could be accomplished by the government. The private enterprise may benefit from the profits earned through operation of the facility. In some cases, the private sector may generate the funding for a facility and operate it for a designated period of time to recapture expenditures; the roadway may then revert to state ownership for long-term maintenance and operation (see case example: Dulles Greenway Project).

Transportation Corporations

Florida transportation finance and planning law provides for the creation of transportation corporations (339.401, F.S.). These are nonprofit corporations authorized to act on behalf of the Florida Department of Transportation to assist with project planning and design, assemble right-of-way and financial support, and promote projects. "Project" is defined as any improvement to an *existing* highway that is included in an adopted work program. The legislation is aimed at increasing private sector financial support for road expansion projects.

Special Assessment Districts

Special assessment districts are gaining in popularity as a method of funding transportation improvements. Special assessment districts are areas designated for the purpose of levying a tax on property owners who will benefit from specific improvements. These may be initiated by local governments, or by developers and property owners wishing to expedite the improvement (*see* Route 28 Transportation Improvement District).

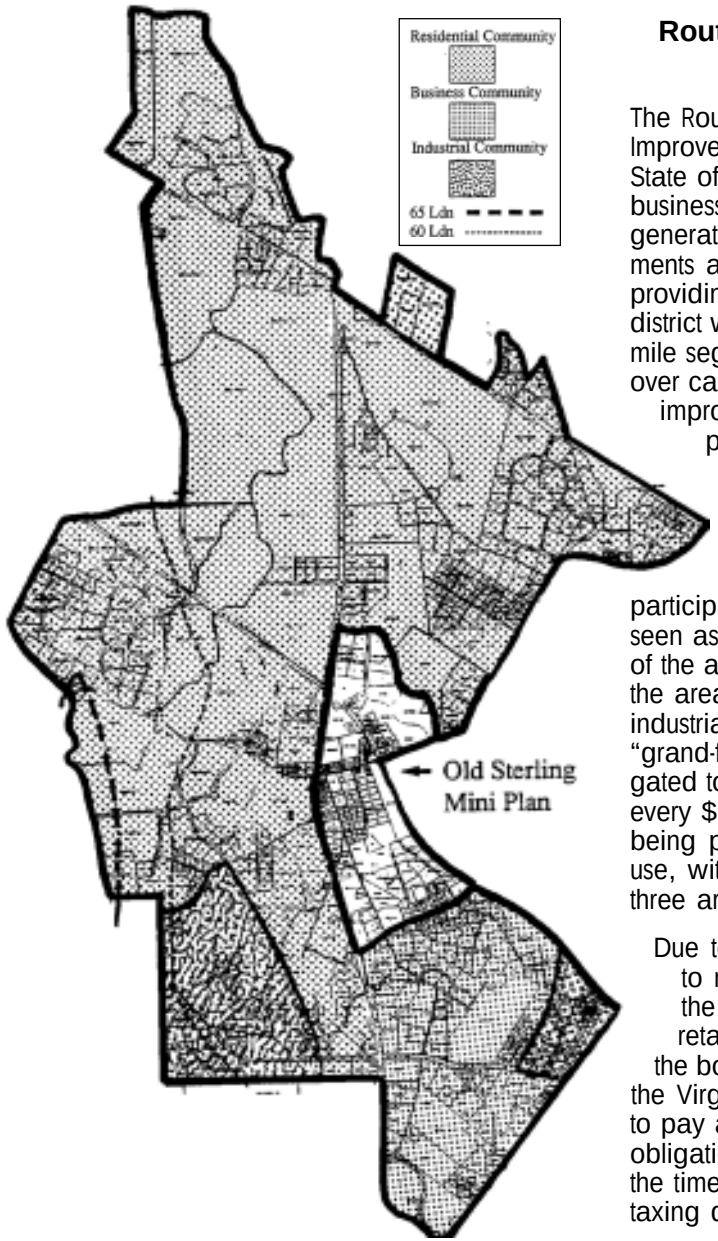
A parameter of special assessment districts is that property owners must not pay more then they receive in special benefits. Assessment methods are typically uniform across a district, although some areas vary the fee according to the level of benefit received. One option might be to reduce special assessments for property owners that dedicate transportation right-of-way. Typically, a revenue bond is issued, backed by the expected revenue stream, to cover the cost of a transportation improvement. Local governments must be careful in rezoning properties within the district to ensure that expected revenues are not reduced.

Powers of Transportation Corporations

Transportation corporations may engage in a variety of activities aimed at advancing state highway projects, including:

- acquiring, holding, investing, and administering property and transferring title to the FDOT for project development;
- performing preliminary and final alignment studies;
- receiving contributions of land for right-of-way, and cash donations to be applied to the purchase of right-of-way or design and construction projects;
- making official presentations and groups concerning the project and issuing press releases and promotional materials.

Source: Florida Transportation Finance and Planning Law, Chapter 339, Section 412.



Route 28 Highway Transportation Improvement District

The Route 28 Highway Transportation Improvement District was established by the State of Virginia at the request of local business owners as a mechanism for generating revenue for roadway improvements along Route 28, a major corridor providing access to the Dulles Airport. The district was created in 1985 to widen a 14 mile segment of Route 28, which was badly over capacity, to six lanes. The Route 28 improvement was completed for approximately $138 million—$12 million under budget and years earlier than if the state had financed the project.

Loudoun and Fairfax Counties participated in the improvement district, seen as essential to the economic viability of the area. When the district was created, the area was largely commercial and light industrial. The few residential uses were "grand-fathered in," and were not obligated to meet the special tax of $.20 per every $100 of assessed. The district is being preserved for business and industrial use, with residential land uses restricted to three areas off the Route 28 corridor.

Due to increasing frequency of requests to rezone property for residential use, the State devised a mechanism to retain the level of revenue needed for the bond issue. Section 15.1-1372.7 of the Virginia Code requires property owners to pay a lump sum to the county for the tax obligation on the rezoned property from the time it is rezoned through the life of the taxing district.

One benefit of special assessment districts is a potential reduction in cost to the state for construction of transportation facilities, due to the ability to proceed with a project without having to wait for the release of state funds. There may also be a considerable reduction in the time it takes to see a highway project come to fruition. An advantage to property owners is the potential for a higher economic return on their property following construction of a new transportation facility.

Rules governing special assessment districts in Florida are established in Chapter 170, F.S., *Supplemental and Alternative Method of Making Local Municipal Improvements.* This statute, specifies the allowable uses of special assessments, including "the payment of all or any part of the costs" of public road construction, reconstruction, improvements, and so on.

Impact Fees

Impact fees are charges levied against a development project to help fund the cost of off-site capital improvements that benefit that development. The fee is determined by assessing the projected impact the development will have on surrounding public facilities. These fees must not exceed the proportionate share of the cost of serving a given development.

The basic process involves establishing a facility service area or impact fee zone, defining the adequacy of existing facilties, measuring and pricing unit impacts, and establishing a system for administering revenues and expenditures. The fees must be spent in reasonable proximity to the development paying the fee and within a reasonable time.

Dulles Greenway Project

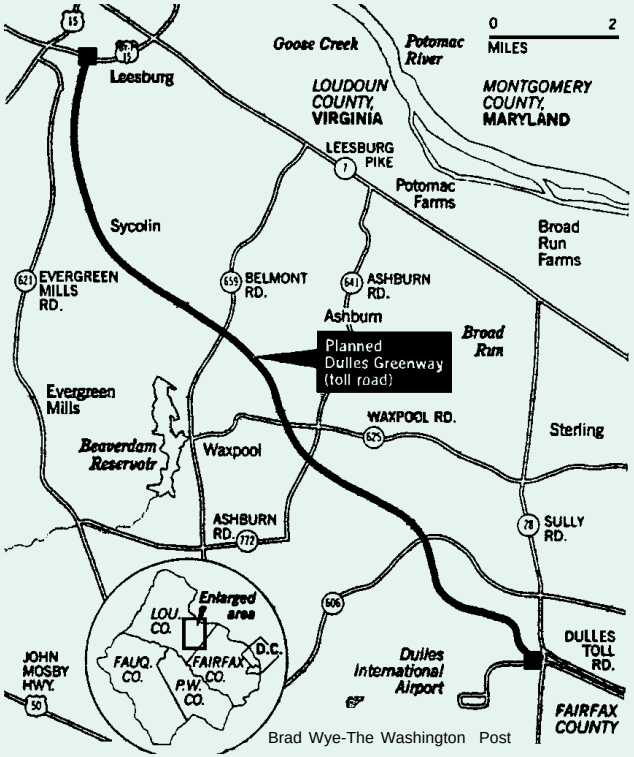
Loudoun County benefited from a public / private enterprise during the Dulles Greenway road construction project in the Washington, D.C. metropolitan area of Virginia. To build the Dulles Greenway—the new northwest extension of the Dulles Toll Road running from the Dulles Airport to Leesburg, Virginia—private sector developers needed an expanse of land 250 wide and 14 miles long, plus additional land for construction purposes and to meet environmental requirements. The four-lane, divided roadway project was devised to relieve much of the congestion off Route 7 (Leesburg Pike), which runs nearly parallel to the new toll road.

The road was funded by a partnership led by private investors and will be privately owned and operated on a for-profit basis for the next thirty years, at which time it will revert to state ownership. The road was scheduled to be completed in spring of 1996 but opened ahead of schedule in September, 1995. The total cost of the project was approximately $300 million, much of which was invested by the principals in the project.

The property owners whose land was needed for the expansion project were initially asked to donate the right-of-way. While not all agreed, many of the landowners did donate the land with the expectation of higher future earnings at the road's completion. Most of the landowners opted to negotiate for a price, which the partnership paid as opposed to exercising eminent domain.

The project had broad support among local business owners and residents within the County. Many residents recognized that benefits could arise from rezoning property adjacent to the corridor from residential or agricultural to commercial or light industrial. Future access was also a consideration for property owners along the proposed route. The prospect of future earnings resulting from improved access led many of the property owners whose land would contain the interchanges to be more enthusiastic in selling or donating their land.

Dulles Roadway Extension



Brad Wye-The Washington Post

Impact fees are a source of supplemental funding for local governments to acquire right-of-way or improve transportation infrastructure. They are an equitable system of generating revenue, as the charge assessed to the developer is representative of the development's impact on the surrounding facilities. They cannot be used to address existing deficiencies; in other words the need for new facilities must be attributable to new development.

References

[1] Rivkin Associates, "Corridor Preservation: Case Studies and Analysis Factors in Decision-Making," FHWA, 1993.

[2] U.S. Department of Transportation, "State Infrastructure Banks: A Primer," FHWA/FTA/FRA 1995.

[3] *State Infrastructure Banks: A Primer,*: op. cit., p. 2.

[4] Freilich and Nichols, "Public Private Partnership in Joint Development: The Legal and Financial Anatomy of Large Scale Projects," 7 *Municipal Finance Journal* 5, 6 (1986).

LEGAL CONSIDERATIONS

Concerns over regulatory taking and private property rights laws have made local governments cautious in their regulatory efforts. Many communities are reluctant to fully apply existing right-of-way preservation policies, especially those involving mandatory dedication. Others are disregarding existing regulations until legal issues are more clearly resolved.

Although corridor management law is still evolving, regulatory guidelines and principles are emerging from the courts. Complicating the issue is the fact-sensitive nature of regulatory takings decisions and the subjective balance that must be achieved among competing interests. In other words, corridor management actions may or may not constitute a regulatory taking, depending upon their effect *in that particular case*. This section addresses principle considerations in developing a legally defensible corridor management program.[1,2]

Establish a Foundation in the Comprehensive Plan

In determining the validity of local regulatory actions, courts review whether the action is consistent with and based upon a local comprehensive plan. Regulatory programs are more likely to be found reasonable where they are based on a comprehensive plan which has been officially adopted in accordance with due process requirements.

The comprehensive plan is a legislative tool that serves as a land use "constitution" by establishing policies and directions for future development. In addition, planning studies establish the factual basis and need for corridor management efforts. Policies in the plan indicate an overall public commitment to corridor protection, rather than an arbitrary approach that singles out property owners for special treatment. Corridors intended for management should be designated in the comprehensive plan and development regulations should be enacted pursuant to the plan.

Clarify Purpose and Intent

A regulation must be clearly designed to achieve a legitimate public purpose. Corridor management regulations with the stated purpose of furthering comprehensive planning and growth management objectives are more likely to be upheld as valid, than regulations with an unclear purpose or which appear to be aimed primarily at reducing condemnation costs.

Florida's growth management legislation requires local comprehensive plans to include a traffic circulation or transportation element indicating the location and extent of existing and proposed major

"The imposition of land use controls by a local government to ensure the adequate provision of land needed for future transportation facilities has been found to be a legitimate exercise of the local government's police powers under Florida law."

FDOT Corridor Management Directive, October 26, 1995: p. 28

State Official Map Found Unconstitutional

In *Joint Ventures v. Dept. Of Transportation*, 563 So.2d at 625, 626 (Fla. 1990), the Florida Supreme Court rejected an official map statute as unconstitutional and a violation of due process provisions of the constitution. The statute prohibited local governments from issuing development permits within mapped right-of-way for five years after the FDOT recorded an official map for the state highway system. This could be extended for an additional five years, without a commitment by the state to purchase the reserved land.

The stated purpose of the statute was to freeze or otherwise hold down land values in anticipation of a future condemnation (563 So.2d at 626). The FDOT argued that allowing development permits to be issued in mapped rights-of-way would increase the cost of future land acquisition if the state were to initiate condemnation proceedings.

Weighing eminent domain law and the lack of a commitment by the state to purchase the land within the possible 10 year reservation period, the court concluded that the statute was "a thinly veiled attempt to 'acquire' land by avoiding the legislatively mandated procedural and substantive protection," and a deliberate attempt to "depress land values in anticipation of eminent domain proceedings."

transportation corridors. Rule 9J-5 of the Florida Administrative Code requires these plan elements to establish measures to control access to roadways and to preserve and acquire existing and future transportation rights-of-way. Florida law also requires land development regulations to be consistent with the policies and objectives in the comprehensive plan.

A central requirement of the growth management legislation—advanced by corridor management—is the need to maintain concurrency. Public facilities and services needed to support development must be available concurrent with the impacts of that development. Local governments must adopt level of service (LOS) standards, eliminate existing service deficiencies, and provide adequate transportation facilities to accommodate new growth reflected in the comprehensive plan. A right-of-way preservation and access management program is needed to carry out the desired future network and help maintain level of service for concurrency.

Provide Mitigation Measures to Offset Hardship

Courts are much more likely to uphold a corridor management ordinance that includes measures and procedures for mitigating hardships on affected property owners. At a minimum this should include variance procedures and standards. A variance procedure provides an avenue for relieving development restrictions where the corridor management program would deny a property owner of all economically beneficial use of property.

Courts typically require property owners to first exhaust available administrative remedies, including appeals to the local board of adjustment, before the case is "ripe" to be heard. If appeal procedures exist and the property owner sues before first pursuing a variance or other remedial action, the case may be invalidated on this basis.

Other mitigation measures include allowances for interim uses in the right-of-way, on-site density transfers, or administrative flexibility in addressing nonconformities posed by the corridor management program. Financial incentives could also be used to offset hardship, such as impact fee credits or tax abatements, wherein the value of the reserved property is deducted from the total amount of assessed value.

It is important to gauge the economic impact on properties affected by the corridor management requirements, and provide for interim uses or other measures to assure some economically beneficial use of land. If the right-of-way preservation program would deny all reasonable use of an affected property, then the options should be to purchase, condemn, or issue a building permit.

Apply a Reasonable Reservation Period

The duration of a right-of-way reservation should be reasonable, based on a public commitment by the local government to acquire the right-of-way. It is more likely that the courts will invalidate a regulation with an unlimited or lengthy period of time than one with a shorter reservation period, with a clear public commitment to acquire the right-of-way in the future. For example, communities could provide for a five year reservation period, tied to a capital improvements plan and program, with an option to extend the period after that time pursuant to a public hearing.

However, courts do not rely solely on the duration of the reservation in evaluating the legitimacy of reservation programs. Daniel Mandelker, in his landmark analysis of highway reservation laws, explains:

> Just how short a reservation period must be is not clear, and one court held that even a one-year reservation period required compensation. The courts have upheld zoning moratoria that lasted for several years, but would probably balk at a highway reservation that remained in effect for so long a time... The inclusion of remedial provisions that mitigate the burden of a reservation on a landowner should help resolve the uncertainty problem and support the use of highway reservation early in the planning process.[3]

Dedications and Exactions

In evaluating the character of regulations, courts look to whether a legitimate state interest is being served and whether an "essential nexus" exists between the impacts of the project and the permit conditions, *Nollan v. California Coastal Commission*, (US 1987). In addition, individual property owners should not be required to carry a disproportionate share of burden for a public benefit. As stated by the U. S. Supreme Court in *Dolan v. City of Tigard* (US 1994), regulatory exactions should be "roughly proportional," both in nature and degree, to the impacts of the regulated activity.

In *Dolan*, the U.S. Supreme Court weighed a city action requiring dedication of land for a pedestrian/bicycle pathway as a condition of permit approval to expand an existing hardware store. Questioning the constitutionality of the condition, the court transferred the burden of proof to the city to demonstrate a "rough proportionality" between the impacts of the development and the nature and degree of the exactions. Allowing that the relationship need not be "precisely quantified," the court

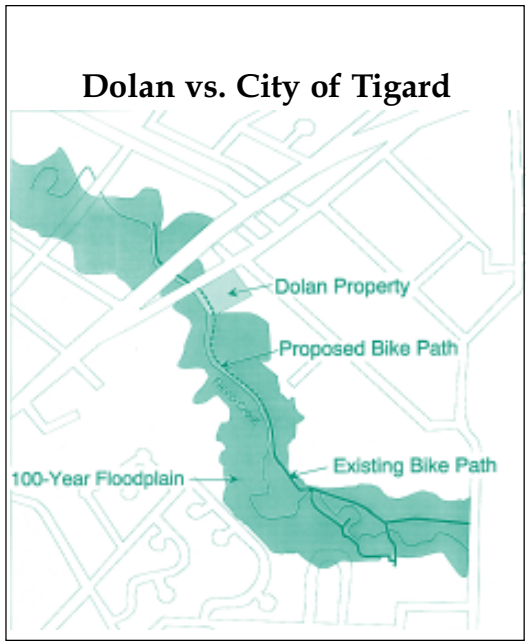
Court Upholds Local Thoroughfare Plan

In *Palm Beach County v. Wright*, 612 So.2d 709 (Fla. 4th DCA 1993), the Florida Supreme Court considered whether the County's thoroughfare plan map was the same as the map of reservation that was declared unconstitutional in *Joint Ventures*. The thoroughfare plan map had been adopted as part of an approved comprehensive plan, under the requirements of the Florida Growth Management Act, and was used to reserve corridors needed for transportation facilities. Any land use activities in the mapped corridors that would impede the development of the future transportation network were prohibited by the comprehensive plan.

The Court affirmed the constitutionality of the thoroughfare plan map, distinguishing it from the state official map in *Joint Ventures* for several reasons. The Court noted that providing adequate transportation facilities was necessary to achieving the concurrency requirements of Florida growth management law, avoiding the need to curtail development and thereby benefitting affected property owners.

Third, the Court strongly emphasized the map's foundation in the comprehensive plan. The map was designed to preserve existing and future transportation rights-of-way, consistent with Rule 9J-5.007(3)(b-c)(4), F.A.C. and corresponding objectives in the comprehensive plan. By meeting the statutory objectives of planning for future growth and development, the thoroughfare plan map was viewed by the Court as an invaluable planning tool and a proper subject of the police power. Said the Court: "the County's ability to plan for future growth would be seriously impeded without the Thoroughfare Map." This was in contrast to the map of reservation in *Joint Ventures*, which was perceived as primarily for the purpose of reducing future right-of-way acquisition costs.

Finally, it was this basis in the comprehensive plan which afforded the local government an opportunity to amend it on two occasions per year. This flexibility was viewed by the Courts as important for mitigating any hardships incurred by affected property owners, unlike the FDOT requirements challenged in *Joint Ventures*, which precluded issuance of any development permits in mapped corridors. In its analysis, the court stated that the thoroughfare map outlines generalized corridors, and therefore a takings claim cannot be determined until the property owner submits an actual development application. When the thoroughfare map is implemented, an aggrieved owner could then bring an inverse condemnation proceeding to determine if a taking had occurred.



Private property owners may not be required to carry a disproportionate share of a public burden. Regulatory exactions, such as mandatory dedication of transportation right-of-way, must be roughly proportional, both in nature and extent, to the impact of the proposed development. Dolan v. City of Tigard *(US 1994).*

held that "the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development...beyond a conclusory statement that the dedication 'could offset some of the traffic demand' generated by the development."

A recent Washington Supreme Court case illustrates this burden of proof. The case involved applications for four short plats submitted by a property owner. The reviewing County conditioned approval of the plats on dedication of rights-of-way (ranging from 5 feet to 25 feet) for future improvement of the abutting public roads. Supporting information included current road widths, road standards, and current and projected road use. The Court upheld the dedication requirements, stating: "[the] report prepared by the county planning office for each short plat documented deficiencies in right-of-way width and surfacing of adjoining streets, and [the] county calculated [an] increase in traffic and specific need for dedication of right-of-way based on individual and cumulative impacts of [a] series of short subdivisions."[4]

Guidelines For Regulating Access

The Florida Supreme Court has defined the right of access as one of reasonable access to the system of public ways. In determining whether access is reasonable, Florida courts look to whether access has been substantially diminished. Because circumstances of individual properties vary widely, the availability of reasonable access must be determined on a case-by-case basis. This is evaluated on a continuum from relatively minor route changes, which are not usually compensable, to extremely circuitous rerouting of access, which may be compensable.

Below are general guidelines commonly applied by courts in cases involving access control:

- a complete loss of access is always a taking;
- a substantial loss of access to private property may result in a taking and warrant compensation, even though no physical appropriation of property has occurred;
- loss of the most convenient access, or increase in circuity of access, is not usually compensable where other suitable access continues to exist;
- governmental actions that diminish traffic flow on an abutting road, such as installation of a raised median, are not a taking;
- damages must be peculiar to that property and not common to the public at large for compensation to be paid; and
- recoverable damages are limited to the reduction in property value caused by the loss of access, but if the property is landlocked the entire parcel may have to be purchased.[5]

The Florida State Highway System Access Management Act prohibits local governments from imposing access management standards on state highways more restrictive than those of the Florida Department of Transportation. This restriction does not apply to roadways under local jurisdiction. Where inconsistencies arise between state and local governments in driveway permitting on state highways, courts have determined that states have the final say. An appellate court in New York ruled that the state DOT's authority to impose conditions on a driveway permit along a state highway was not affected by the local government's removal of those same conditions, *(White v. Westage Development Group* (N.Y. App., 1993).

The Florida Private Property Rights Protection Act

Florida's new property-rights law establishes a procedure whereby property owners may be compensated for new regulations restricting the use of their property. Property owners must first demonstrate that the new rule inordinately burdens their property or a vested right to a specific use. An "inordinate burden" is one that permanently violates reasonable investment-backed expectations, or requires the landowner to bear a disproportionate share of a burden that should be borne by the public at large.

The landowner must present a claim within a year of the regulatory action. The government has six months to reach a settlement, uphold its decision, or change the rule. If no settlement is reached, the case may be brought to court and heard by a jury. This does not apply to preventing a public nuisance or barring noxious uses of property. Nor does it apply to governmental actions that involve operating, maintaining, or expanding transportation facilities, or to existing eminent domain laws related to transportation.

Cases Involving Joint Access

Holmes v. Planning Board of the Town of New Castle, (NY AD. 1980)—conditioning development approval on the provision of interconnected parking lots and common access drives along a portion of an arterial "is not inherently confiscatory. The burdened property is capable of a reasonable return and no evidence has been presented by the petitioners to contradict this conclusion." However, because the condition was based solely on a vague concept plan, the court directed the town to prepare a clear implementation strategy.

O' Neal, et al. vs. City of Sharonville, (1992 Ohio App)—an Ohio court upheld Planned Unit Development (PUD) zoning which required installation of a shared rear access drive along a highway corridor on the basis that, "the ability to control all of the traffic serving the subject site and the 11 lots north of the site is greatly enhanced by the uses of the access roads and the single traffic light . . . Such circuity of access and the resulting inconvenience is not a compensable taking."

Kline v. Bernardsville Assn., Inc., (N.J. 1993)—Courts may compel properties adjacent to a development site to relocate an existing easement, where the change is minor and the easement holder's right-of-way is not significantly burdened. However, relocation of an easement without the mutual consent of the parties "should be grounded in a strong showing of necessity." The New Jersey Supreme Court also held that "a planning board is not vested with the power to compel relocation of an easement at the expense of a property owner who is not an applicant."

Paradyne Corporation v. Florida Department of Transportation, (Fla. App. 1988)—involved a challenge to a state driveway permit condition requiring a corner property to share access at its boundary line with the adjacent property. The court held that Paradyne may be required to concede its property rights only where the condition "furthers a public purpose related to the permit requirement, the elimination of undue disruption of traffic or the creation of safety hazards. The condition cannot be imposed simply to further the private interests of an abutting landowner."

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[1] Apgar, Pelham, Pfeiffer & Theriaque, *"Corridor Protection Techniques: Implementation of Recommendations,"* June 23, 1994: pp. 40-41.

[2] D. Mandelker, "Interim Development Controls in Highway Programs: The Taking Issue," *Journal of Land Use and Environmental Law;* Vol. 4, No. 2, Winter 1989, pp. 167-213.

[3] D. Mandelker, "Interim Development Controls in Highway Programs: The Taking Issue," *op.cit.*, p. 211.

[4] *Sparks v. Douglas County*, 125 Wash.2d__, 904 P.2d 738 (1995).

[5] K. Williams and J.R. Forester, *NCHRP Synthesis 233: Land Development Regulations that Promote Access Management*, Transportation Research Board, Washington D.C.: National Academy Press, 1996.

Conclusion

Corridor management links transportation, land use, and environmental planning. It also promotes improved coordination within and across the agencies responsible for transportation improvements. For this reason, it is an avenue for strengthening the quality of transportation decisions at every level of government.

However, some issues must still be resolved. Key among these is the need to address land use and environmental considerations earlier in the transportation planning process. Although this requires more time for transportation systems planning, it will save time and money in the long run. It will also promote greater consistency of transportation and growth management decisions.

The primary role in preserving right-of-way and managing corridor development lies with local governments—through comprehensive planning and land development regulation. States and metropolitan planning organizations will need to work with local governments to develop appropriate corridor management strategies. Rather than focusing on property acquisition, agencies responsible for transportation improvements should emphasize corridor preservation techniques.

This handbook has addressed a variety of techniques. As demonstrated in the case studies, no single approach fits all. Communities will need to select techniques that are suitable to their circumstances and administrative capacity. Whatever the approach, it is important to adhere to legal guidelines that have emerged from the courts, to coordinate with other transportation agencies, and to provide opportunities for early and continuing public involvement.

Corridor Management Techniques

Property Acquisition	Planning and Regulations	Mitigation Measures	Collaborative Approaches
Eminent Domain	Thoroughfare Plans	Transfer of Development Rights or Density Credits	Informal Negotiations
Fee Simple Purchase	Maps of Reservation	Special Exceptions Waivers, and Variances	Intergovernmental Coordination
Advance Acquisition	Access Management	Impact Fee Credits	Public / Private Partnerships
Purchase of Development Rights	Dedications & Exactions	Tax Abatement	Transportation Corporations
Options to Purchase	Building Setbacks	Interim Use Agreements	Public Involvement
Land Swaps	Corridor Overlay Zones		
	Downzoning		
	Cluster Zoning		

Glossary of Terms

Access—A way or means of approach to provide vehicular or pedestrian entrance or exit to a property.

Access Classification—A ranking system for roadways used to determine the appropriate degree of access management. Factors considered include functional classification, land use and zoning, subdivision of abutting properties, and existing level of access control.

Access Connection—Any driveway, street, turnout or other means of providing for the movement of vehicles to or from the public roadway system.

Access Management—The process of providing and managing access to land development while preserving the regional flow of traffic in terms of safety, capacity, and speed.

Access Management Plan (Corridor)—A plan illustrating the design of access for lots on a highway segment or an interchange area that is developed jointly by the state, the metropolitan planning organization, and the affected jurisdiction(s).

Arterial—A highway intended primarily for through traffic and where access is carefully controlled.

Corridor Overlay Zone—Special requirements added onto existing land development requirements along designated portions of a public thoroughfare.

Cross Access—A service drive providing vehicular access between two or more contiguous sites so the driver need not enter the public street system.

Collector Roads—Roads intended to move traffic from local roads to secondary arterials.

Dedication—a conveyance of property by a private owner to the public.

Deed—A legal document conveying ownership of real property.

Exception—Permission to depart from design standards in an ordinance due to unique circumstances of the site or project. This does not require the same findings of hardship as with variances, but does involve findings of fact to support the need for an exception.

Easement—A right-of-way granted, but not dedicated, for limited use of private land for a public or quasi-public purpose and within which the owner of the property shall not erect any permanent structures.

Exactions—Contributions or payments required as an authorized precondition for receiving a development permit. (Exactions may refer to mandatory dedications of land for road widening, or monetary assessments, such as transportation impact fees. In all cases, there must be a nexus and rough proportionality between the amount of the exaction and the purpose for which it is used.)

Frontage Road—A public or private drive which generally parallels a public street between the right-of-way and the front building setback line. The frontage road provides access to private properties while separating them from the arterial street (see also Service Roads).

Functional Area (Intersection) —That area beyond the physical intersection of two controlled access facilities that comprises decision and maneuver distance, plus any required vehicle storage length, and is protected through corner clearance standards and driveway connection spacing standards.

Functional Classification—A system used to group public roadways into classes according to their purpose in moving vehicles and providing access.

Future Traffic Circulation Map—A map in the Traffic Circulation Element that depicts the general location of future collector, arterial, and limited access roads and related transportation facilities. The map must depict functional classifications of roads as principal, major, or minor and must identify the proposed number of lanes for future roadways.

Highway, Controlled Access—A roadway designed for through traffic, and to which abutting properties have no legal right of access except in accordance with the requirements of the public authority having jurisdiction over that roadway.

Highway, Limited Access—A freeway or expressway designed for through traffic and to which abutting properties have no legal right to direct access.

Inverse Condemnation—The taking or reduction in the value of private property as a result of governmental activity, without any formal direct exercise of eminent domain.

Joint Access (or Shared Access)—A driveway connecting two or more contiguous sites to the public street system.

Local Road—Road whose primary purpose is to provide direct access to abutting properties and to roads of a higher functional classification.

Median—That portion of a roadway separating the opposing traffic flows. Medians can be depressed, raised, or flush.

Median Opening (Crossover)—An opening in a raised median that allows turning movements.

Official Map—An ordinance in map form adopted by the governing body that shows the location and width of proposed streets, public facilities, public areas, and drainage right-of-way (the purpose of which is to prevent private development from encroaching on sites for proposed public improvement).

Outparcel—A lot adjacent to a roadway that interrupts the frontage of another lot.

Plat—An exact and detailed map of the subdivision of land.

Private Road—Any road or thoroughfare for vehicular travel which is privately owned and maintained and which provides the principal means of access to abutting properties.

Public Road—A road under the jurisdiction of a public body that provides the principal means of access to an abutting property.

Reservation—a) A provision in a deed or other real estate conveyance that retains a right for the

existing owner if other property rights are transferred; b) a method of holding land for a public use by designating public areas on a plat, map, or site plan as a condition of approval.

Restrictive Median—A physical barrier in the roadway that separates traffic traveling in opposite directions, such as a concrete barrier or landscaped island.

Right-of-Way—A strip of land occupied or intended to be occupied by a street, sidewalk, crosswalk, railroad, road, electric transmission line, gas pipeline, water main, sanitary or storm water main, shade trees, or for another special use. (Land in which the state, a county, or a municipality owns the fee simple title or has an easement dedicated or required for a transportation or utility use)

Service Road—A public or private street or road, auxiliary to and normally located parallel to a controlled access facility, that maintains local road continuity and provides access to parcels adjacent to the controlled access facility.

Sight Distance—The length of roadway visible to the driver of a vehicle, as measured along the roadway to a specified height above the roadway.

Thoroughfare Plan Map—A map that depicts all roadways contained on the long range traffic circulation map and identifies the right-of-way widths for each roadway. The thoroughfare plan map is the official listing of rights-of-way to be reserved.

Traffic Circulation Element—The portion of a comprehensive plan designed to establish the desired and projected transportation system in local jurisdictions and plan for future motorized and non-motorized traffic circulation systems.

Waiver—Permission to depart from the requirements of an ordinance where required conditions are satisfied (see also Exception).

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Florida's 1995 Corridor Management Legislation

Section 2. Subsection (30) is added to section 163.3164, Florida Statutes, to read:

163.3164 Definitions. —As used in this act:

(30) "Transportation corridor management" means the coordination of the planning of designated future transportation corridors with land-use planning within and adjacent to the corridor to promote orderly growth, to meet the concurrency requirements of this chapter, and to maintain the integrity of the corridor for transportation purposes.

Section 3. Paragraph (b) of subsection (6) of section 163.3177, Florida Statutes, is amended to read:

(b) A traffic circulation element consisting of types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways. Transportation corridors, as defined in s. 334.03, may be designated in the traffic circulation element pursuant to s. 337.273. If the transportation corridors are designated, the local government may adopt a transportation-corridor-management ordinance.

Section 25. Section 337.243, Florida Statutes, is amended to read:

337.243 Notification of land use changes in designated transportation corridors

(1) If a local government designates a transportation corridor that includes a facility on the State Highway System in its local government comprehensive plan and has adopted a transportation-corridor-management ordinance, the local governmental entity shall give reasonable notice by certified mail to the department prior to approving any substantial zoning change or subdivision plat changes or granting of a building permit or development permit, as defined in s. 380.031(4), for land use or the erection, alteration, or moving of a building for property within the designated transportation corridor which would substantially impair the viability of the corridor for future transportation uses. This notification requirement shall not apply to any routine maintenance or emergency repairs to existing structures. Upon notification, the department shall determine whether to purchase the property affected or to initiate eminent domain proceedings. The department's determination shall not affect the granting or denial of the permit by the local government. The local government shall not be liable to the department for failure to make notification to the department pursuant to this section.

(2) Any right-of-way located within a designated transportation corridor may be acquired at any time by the department when the acquisition is determined by the department to be in the public interest to protect the designated transportation corridor from development or when the transportation corridor designation creates an undue hardship on the affected property owner.

Section 26. Subsections (7) and (8) of section 337.273 Florida Statutes, are repealed, and paragraphs (a), (b), and (d) of subsection (2) and subsections (1), (3), (4), and (6), of that section are amended to read:

337.273 Transportation Corridors. —

(1) It is hereby found and declared that:

(a) Immediate and decisive action must be taken to plan, designate, and develop transportation corridors within this state in order that the public health, safety, and welfare may be protected, preserved, and improved by planning for future growth, coordinating land-use and transportation planning, and complying with the concurrency requirements of Chapter 163.

(b) Traffic congestion and facility overcrowding on the State Highway System constitutes a serious and growing problem; impedes the development of an effective transportation system; results in increased incidents of traffic accidents, personal injury, and property damage or loss; causes environmental degradation; impedes sound economic growth; impairs effective growth management, including the ability to meet concurrency requirements and coordinate land-use decisions and transportation planning; discourages tourism; aggravates social discord; increases maintenance costs; shortens the effective life of the transportation facility; delays public evacuation for natural storms and emergencies; impairs national defense and disaster response readiness; delays response time for emergency vehicles; significantly increases public infrastructure needs and associated public costs, such as police, fire, accident, medical, and hospital costs; and otherwise is injurious to the public health, safety, and welfare.

(c) The designation and management of transportation corridors and the planning and development of transportation facilities within transportation corridors will substantially assist in allowing government to alleviate traffic congestion and transportation facility overcrowding, aid in the development of an effective transportation system that is coordinated with land-use planning, assist in planning for future growth, enable compliance with concurrency requirements, and alleviate the heretofore described health, safety, and welfare liabilities to the public.

(d) The designation and management of transportation corridors can best be achieved through the inclusion of transportation corridors in the local government comprehensive plans that are developed, reviewed, and adopted pursuant to Chapter 163, in order to ensure comprehensive planning for future development and growth, improved coordination between land use and transportation planning, and compliance with concurrency requirements.

(2) It is further found and declared that:

(a) Investments in transportation corridors cannot be adequately coordinated with land-use decisions without timely preservation, management, or

acquisition of property necessary to accommodate existing and planned transportation facilities within the corridor.

(b) The inability to timely protect or acquire property necessary to accommodate a transportation facility in a transportation corridor constitutes an economic, health, safety, and welfare liability that imposes increasingly onerous burdens on public revenues, seriously impedes the ability to plan for future growth, substantially impairs or arrests sound growth, impedes the provision of transportation infrastructure concurrent with the impact of development, retards the provision of an adequate transportation system for the people in the state, aggravates traffic problems, and substantially hampers the elimination of traffic hazards and the improvement of traffic facilities.

(d) The prevention and elimination of traffic congestion on the State Highway System and the protection, management, and early acquisition of property to accommodate future transportation facilities is a matter of state policy and state concern in order that the state, counties, and municipalities shall not continue to consume an excessive proportion of limited resources on the extra services required for police, fire, accident, hospitalization, and other forms of public protection services and facilities as a result of inadequate transportation facilities.

(3) It is the intent of the Legislature that governmental police powers be utilized to the greatest extent possible by each governmental entity, and by two or more entities through corridor-management agreements, to manage land uses necessary for transportation corridors; that property acquisition by donation, purchase, or eminent domain occur as far in advance of construction need as possible; and that property, needed to manage transportation corridors, be acquired and retained for future use to avoid the public liabilities for health, safety, and welfare heretofore outlined.

(4) It is recognized by the Legislature that advance acquisition of property to manage land uses in transportation corridors for future use will, of necessity, require acquisition without design plans and profiles, project development, and construction information; and it is intended by the Legislature that such advance acquisition, including acquisition utilizing the power of eminent domain, must nevertheless occur to avoid the social, economic, health, safety, and welfare liabilities heretofore declared.

(6) A local government may designate a transportation corridor by including the corridor in the entity's comprehensive plan traffic circulation or transportation element. A transportation-management ordinance may be adopted for designated transportation corridors. The transportation-corridor-management ordinance should contain the criteria to manage the land uses within and adjacent to the transportation corridor, the types of restrictions on nonresidential and residential construction within the designated corridor, identification of permitted land uses within the designated corridor, a public notification process, a variance and appeal process, and an intergovernmental coordination process that provides for the coordinated management of transportation corridors that cross jurisdictional boundaries with the plans of adjacent jurisdictions. Local governments may adopt such additional ordinances and regulations as necessary to manage designated transportation corridors.

Managing Corridor Development

A Municipal Handbook

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