

3-1-1998

Long-Range Highway Corridor Preservation: Issues, Methods and Model Legislation

David A. Thomas

Robert S. Payne

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David A. Thomas and Robert S. Payne, *Long-Range Highway Corridor Preservation: Issues, Methods and Model Legislation*, 13 BYU J. Pub. L. 1 (2013).

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Long-Range Highway Corridor Preservation: Issues, Methods and Model Legislation

*David A. Thomas and Robert S. Payne**

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Arizona *California* *Colorado*

* Copyright © by David A. Thomas and Robert S. Payne. David A. Thomas is a Professor of Law at the J. Reuben Clark Law School, Brigham Young University, where he has been on the law faculty since 1974. He is the editor-in-chief and principal author of *Thompson on Real Property, Thomas Edition* (David A. Thomas ed., the Michie Co. 1994) (1924). Robert S. Payne, J.D. candidate, Brigham Young University, 1999, is a member of the Utah Department of Transportation Highway Corridor Preservation research team.

<i>Delaware</i>	<i>Florida</i>	<i>Illinois</i>
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<i>New York</i>	<i>North Carolina</i>	<i>Pennsylvania</i>
<i>Rhode Island</i>	<i>Texas</i>	<i>Utah</i>

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I. INTRODUCTION

This article explores property issues related to the dramatic increase in long-range highway corridor preservation activities by state and local governments. As more governmental entities seek to identify and obtain rights over lands that may be used for highways many years in the future, significant issues related to takings, land use planning, and development management confront highway planners and their legal advisers. This article identifies and analyzes those issues, surveys the current statutory approaches to those issues now found in nearly half the states, and proposes a model statute that attempts to strike a workable balance between the public planners' efforts and private property owners' rights.

A. *What Is a Highway Corridor?*

A highway corridor has been defined as “the path of a transportation facility that already exists or may be built in the future.”¹ More specifically, transportation corridors are “broad geographic areas which are served by various transportation systems that provide important connections between regions of the state for passengers, goods and services.”² Those who plan highway corridors are urged to consider not only the location of the highway itself, but also the peripheral areas that may increase access, serviceability and amenities connected with travel in the corridor. Communities planning for corridors must “evaluate traffic conditions, land use conditions, and historic, scenic, and environmental features,” all of which will help them “identify future problem areas and make broad recommendations for the [entire] area” of the corridor.³

A highway corridor may already exist or may simply be a location designated for future highway construction. This article is concerned with highway corridors in which highways have not yet been built or are intended for future expansion of existing highways.

B. *What Is Highway Corridor Preservation?*

Corridors intended for future highway construction must first be identified and located, often after a lengthy planning and review process. Once a corridor is identified the most urgent task is to maintain the corridor’s availability until time for construction. Referred to as “preservation,” this task is accomplished either through outright acquisition of the property or through mandatory restraints on private development. Preservation issues apply to both privately and publicly held land in the designated corridor.

Acquisition of property rights for highways, even over the objection of private landowners, is permissible under federal and state constitutions. Such “taking” of private property is allowed if the taking is for public purposes and just compensation is paid. These takings are achieved when the property rights are “condemned” under exercise of the

1. Federal Highway Administration, U.S. Dept. of Transportation, *Corridor Preservation: Study of Legal and Institutional Barriers* 1 (manuscript on file with the authors).

2. Oregon Department of Transportation, *Corridor Planning Overview* (visited Sept. 1, 1998) < <http://www.odot.state.or.us/tdb/planning/corridor/overview.html>>.

3. Elizabeth Humstone and Julie Campoli, *Access Management: An Overview*, 29 PLANNING COMMISSIONERS JOURNAL 5 of 6 (Winter 1998) <<http://www.plannersweb.com/access/accintro.html>>.

governmental entity's eminent domain power. Sometimes a taking is deemed to occur when some form of land use regulation falls so heavily on private property that most of its value is suppressed. Under current federal takings law, such a taking caused by excessive land use regulation is also compensable, as if the property interest had been taken directly by eminent domain power.

C. *What Issues Pertain Particularly to Long-Range Highway Corridor Preservation?*

Although direct acquisition of property rights for immediate use in highway construction is practiced widely, transportation planners are well aware that land needed for immediate use is often fully developed land whose taking for highways is usually expensive for the public and enormously inconvenient for the private landowners. Therefore, much attention has recently been given to long-range future planning for highways. The planning activities help identify possible corridors for those future highways, and seek ways to preserve the availability of the corridors until needed for actual construction. This long-range corridor preservation has the dual advantages of (1) limiting development on land that would ultimately be used for highways (which would have to be compensated for in an eminent domain proceeding),⁴ and (2) acquiring crucial land rights in the corridor before those rights become much too expensive.⁵ Long-range

4. As stated in one study, the goal of corridor preservation

is to prohibit, or at least minimize, development in areas which are likely to be required to meet transportation needs in the future. [T]hese areas include: lands adjacent to existing roadways which are projected to require capacity expansion; areas which might be needed to construct entirely new routes for urban bypasses or to serve new neighborhoods or commercial developments; and land needed for bicycle, transit and pedestrian facilities (e.g. bikeways, walkways, transit turnouts, busways and light rail corridors).

Joanne Lazarz, *Corridor Preservation and Access Management Guidance* (Wisconsin Department of Transportation, Jan. 1994) (visited Sept. 2, 1998) <<http://www.bts.gov/smart/cat/amg.html>>.

5.

When corridors are preserved in advance, negative land use and social impacts, as well as the costs of transportation improvements, are minimized. However, when land is not preserved for future needs, disruption of residences and businesses is a frequent result and the cost of obtaining the land to accommodate improvements is likely to be considerably higher. At times, the needed improvement can not even be made because the disruption and cost would be too great.

Joanne Lazarz, *Corridor Preservation and Access Management Guidance* (Wisconsin Department of Transportation, Jan. 1994) (visited Sept. 2, 1998) <<http://www.bts.gov/smart/cat/amg.html>>.

corridor planning may lead to identifying several alternative corridors, even though only one highway will eventually be built.

However sensible long-range highway corridor planning and preservation may seem financially, significant obstacles stand in the way of full implementation. None of these obstacles are insurmountable, but overcoming them may require careful guidance, some restraints, and some special enabling legislation. The main obstacles to long-range corridor preservation may be summarized as follows:

Preservation of alternative corridors for long periods of time may be unnecessarily expensive, even if initial acquisition costs for preservation of the corridors generally are lower when incurred long in advance of need.

Presumably obtaining a property interest less than a right of way or outright ownership of the land may preserve a corridor. The goal is to limit development, so states need to determine what property rights can be acquired at minimal expense to effectively limit development over a long period of time. If development is merely limited but not prohibited altogether, policies for authorizing and overseeing the permitted types of development must be adopted.

It must be determined whether environmental and other impact studies that are usually required in connection with corridor acquisition for immediate use — and are often very expensive — will also be required for long-term corridor preservation.⁶

<<http://www.bts.gov/smart/cat/amg.html>>

6. The National Environmental Protection Act requires an environmental impact statement for "proposals for . . . major Federal actions." 42 U.S.C. § 4332(C)(i). State governmental agencies contemplating state actions using federal funding also comply with this requirement, and, in practice, states that intend to use federal funds for protective purchasing of property interests in contemplated corridors also comply with the environmental impact statement requirement. By regulation, the responsible officers of agencies are permitted to designate certain projects as subject to a "categorical exclusion" from the environmental impact statement requirement, if it is concluded that the action contemplated does not require an environmental assessment; and this technique has been utilized in acquiring land as part of corridor preservation. Categorical exclusions may be applied to "categories of actions which do not individually, cumulatively over time, or in conjunction with other Federal, State, local, or private actions have a significant effect on the quality of the human environment . . ." 40 C.F.R. § 6.107(a). 40 C.F.R. § 6.107 (1998) is attached to this report as Appendix 1. The documentation for a categorical exclusions consists of "the application, a brief description of the proposed action, and a brief statement of how the action meets the criteria for categorical exclusion without violating criteria for not granting an exclusion." 40 C.F.R. § 6.107(b). Categorical exclusions thus take less time to prepare than full environmental impact statements. Categorical exclusions are more fully described in 23 C.F.R. § 771.117 (1998). In this section categorical exclusions are authorized for certain actions only after Administration approval is given, and among these actions of land for hardship or protective purposes. Protective acquisition is acquisition "done to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site." 23 C.F.R. § 117.113 (d)(12) n3. Excluded from this definition is advance acquisition for the sole purpose of reducing the cost of property for a proposed project. For actions which did not fit into any of the listed "approved"

It must be determined whether acquiring rights to limit development over alternative development corridors, some of which may never be used for highways, and at a time when no specific highway plans have been developed, is a public purpose that justifies governmental interference with private property rights.⁷

D. Important Concepts and Terminology

In the area of highway corridor preservation, a glossary of terms is almost a necessity. Ordinarily, such a glossary would be tucked away in the innocuous obscurity of the end of the article, and indeed the reader will find a glossary in Appendix 2. In this subject area, however, terms and concepts are crucial to an understanding of the issues, statutes and literature. Therefore, the following paragraphs present brief explanations of key terms.⁸

Corridor preservation is applicable to either long-term planning or to "preservation" of existing highways. In this latter sense, highway administrators may apply techniques of access management to preserve or enhance the serviceability of highways. Typically, access management could include limiting access to highways threatened with overuse or making early acquisition of land need to widen or improve existing highways. Long-range planning of all kinds is enhanced and enabled by use of COMPREHENSIVE PLANS, which are statements of goals and objectives for the future development of a community. To the extent the comprehensive map pertains to highway corridors, those corridors may be indicated on a CORRIDOR MAP, which in some jurisdictions gives official notice of the intent to acquire the land for a highway. If a property owner conveys land to the public authority for a public use, and that conveyance is accepted, then a DEDICATION of that land has occurred.

For long-range highway corridor preservation purposes, it is often not necessary to acquire the full, fee simple title to land intended for highway use, but merely to limit future development on that land until it is actually used for highway construction. Highway planners may therefore be con-

categories, the federal regulation authorizes the Administrator to initiate rulemaking proposing to add that type of action to the list of approved categories. 23 C.F.R. § 117.113(e). Presumably, other actions which do not meet the criteria for categorical exclusions already given presumptive regulatory approval under this provisions may still be proposed for categorical exclusion status under other pertinent regulations such as 40 C.F.R. §§ 6.107 and 1508.4.

7. The Utah Supreme Court, for instance, has held that if land is acquired before highway plans have been created, and no time frame and funding for the highway have been identified, the land acquisition is not grounded on any public purpose and may not be carried out. *Salt Lake County v. Ramoselli*, 567 P.2d 182 (Utah 1977).

tent with acquiring some kind of DEVELOPMENT EASEMENT, by which the public obtains some or all the development rights either permanently or temporarily.

The authority or power by which a governmental agency acquires property interests is usually referred to as the power of EMINENT DOMAIN, and the process by which the power is exercised is usually called CONDEMNATION.

II. SAMPLE STATE JURISPRUDENCE ON LONG-RANGE HIGHWAY CORRIDOR PRESERVATION: UTAH STATUTES AND CASES

Almost half the states have promulgated some statutory provisions that affect long-range highway corridor activities, although only a few have extensive legislation on the subject. For most of the states, determining what their legal limits on highway corridor preservation are requires analysis of state statutes and cases and often determining (or guessing) from analogy whether certain approaches are permissible. The authors' current state of residence, Utah, is very typical of such a state. The next paragraphs demonstrate the type of analysis of state law that would be required in the majority of states to determine how far highway planners can go in long-range highway corridor preservation.

A. *Analysis of Legally Authorized Techniques Available for Corridor Preservation in Utah*

Four categories of approaches to long-term corridor preservation are: advance corridor approval, protective buying, accelerated right-of-way acquisition, and zoning.⁹ Utah has no specific laws or regulations authorizing any specialized techniques of highway corridor acquisition or preservation. Instead, the traditional methods of acquiring property rights by governmental entities are available. These include acquiring the full title (fee simple) or right-of-way easement rights, imposing exactions of land on developers to help defray the costs of municipal facilities resulting from the development, rights to limit development through managing access to streets and highways, and zoning and other land use regulations.

9. Michael A. Perfater, *Highway Corridor Preservation: A Synthesis of Practice* (Virginia Transportation Research Council, Aug. 1989) (visited Sept. 2, 1998) <<http://www.bts.gov/NTL/DOCS/perfat.html>>.

1. *Acquiring fee simple or easement interests*

This report does not contain a complete or systematic statement of the law on the taking of private property for public purposes, which may be done directly through use of the eminent domain power, or indirectly through land use regulation. Full compensation is normally given for direct takings, while deprivation of some property rights through land use regulation traditionally has been considered an exercise of state police power for which no compensation need be paid to the private property owner. Today it is recognized that some forms of land use regulation are so oppressive, depriving the landowner of virtually all the value of the land, that a "taking" has occurred and compensation must be paid. The federal courts have dominated the judicial activity in this area, making "takings" an area of federal constitutional law that is often pre-emptive of and binding on state law.

Most recent U.S. Supreme Court decisions on takings issues have tended to protect private landowners from government actions. Although some land use regulation without compensation is an acceptable exercise of state police power,¹⁰ if it cannot be shown that a land use regulation or impact fee has no "essential nexus" to the need allegedly caused by the private land development, the acting governmental entity or agency must pay compensation.¹¹ Similarly, if a private landowner or developer is required to dedicate part of the development land for municipal purposes, the purpose must be related to and a consequence of the development—under the so-called "rough proportionality"¹² or "reasonable relationship" tests—or else compensation to the owner will be required for a taking.¹³ If the governmental action denies the private landowner of virtually all economically beneficial use of the property or constitutes a physical invasion, a taking requiring compensation to the owner has occurred.¹⁴

Utah has recognized the governance of federal constitutional law on takings in its legislation protecting private property owners from takings

10. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).

11. *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

12. A regulation or requirement is not proportional if the cost to the owner or developer to comply is far in excess of the benefit conferred by the regulation. For instance, "rough proportionality" might not exist if a developer is required to dedicate prime development land worth \$1 million for a park that will serve merely 100 families in the developer's project or will serve a large population of users from outside the developer's own project.

13. *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

14. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

caused by excessive regulation.¹⁵ These statutes consider an action a taking if so defined under either federal or state constitutional provisions, as interpreted by the courts.¹⁶

The Utah Constitution authorizes taking of private property by a governmental entity "for public use," but prohibits such taking "without just compensation."¹⁷ While taking private land for highways, either in fee simple or easement form, is clearly a public purpose,¹⁸ no Utah court has yet decided whether taking land many years in advance to preserve a highway corridor that is one of several alternatives and ultimately may never be used for that purpose would also be considered a public purpose. The Utah Supreme Court has adopted an expansive view of the phrase "highway purposes," so presumably the full range of possible uses in a highway corridor would constitute public purposes and thus be eligible for taking.¹⁹ However, the Utah Supreme Court has held that if land is acquired before highway plans have been created, and no time frame and funding have been identified, public need or purpose cannot be established.²⁰

2. *Requiring exactions of land from developers*

As is true in most other states, Utah governmental entities often require developers to pay sums of money or dedicate a portion of the development land to provide public facilities necessitated by the develop-

15. The legislation referred to is the Private Property Protection Act and the Constitutional Takings Issues Act. Utah Code Ann. §§ 63-90-1 to -4; 63-90a-1 to -4.

16. Utah Code Ann. §§ 63-90-1(1)(a) and (b); 63-90a-1(1)(a), (b) and (c).

17. UTAH CONST. Art. I, § 22.

18. See, e.g., *Colman v. Utah State Land Bd.*, 795 P.2d 622 (Utah 1990) (affirms state constitutional guarantee of just compensation for the taking of private property for public use); *Utah State Road Comm'n v. Miya*, 526 P.2d 926 (Utah 1974) (awarded compensation when a viaduct was built that obstructed a private landowner's view).

19. *Utah Dep't of Transp. v. Fuller*, 603 P.2d 814 (Utah 1979) (the phrase "highway purposes" includes a sewage lagoon for a roadside rest area).

20. See, *Salt Lake County v. Ramoselli*, 567 P.2d 182 (Utah 1977). In this case, the county attempted to condemn 11 acres of private land to be used as a park and recreation area. The trial court held that the county had "failed in its burden of proving need or public necessity and that the attempted condemnation was clear abuse of discretion." *Id.* at 184. The supreme court cited evidence at trial

that no defined plans had been adopted or approved, that no time frame of use within the reasonably foreseeable future had been determined, despite that fact that a voluntary acquisition of nearby property for public use some six years prior had not as yet been placed to its intended purpose, and that no funds had been requested, budgeted, appropriated or were presently in existence to place the property in question to use.

ment.²¹ These so-called exactions must be in some way related to municipal burdens imposed by the development²² and must not be excessive. Obviously, imposing exactions is of limited utility in any long-range corridor planning and preservation, since they would apply only to short-range situations where developments already commenced, and even then exactions only indirectly limit development.

3. *Limiting development through access management*

These same inadequacies apply also to so-called access management devices; that is, these devices normally apply only to projects already commenced. Some access management devices may be implemented without creating a "taking" that must be paid for,²³ but others do generate a compensable taking.²⁴

As is the case with exactions, access management would seem to have little utility in long-range corridor planning and preservation, even if a more tolerant view of compensable takings were adopted by the courts.

4. *Zoning*

Zoning is relevant to corridor planning and preservation if zoning is used to limit development on private land that is identified as possible corridor land. However, if the limitation on development suppresses a major part of the land's value, then a taking may occur and compensation would have to be paid. Numerous Utah cases have addressed this issue, but not in any systematic way.²⁵ If a highway corridor has been proposed

21. See, *Call v. West Jordan*, 606 P.2d 217 (Utah 1979) (a city ordinance required subdividers to dedicate 7% of the subdivision land to the city for flood control and parks).

22. This is the so-called "reasonable relation" test articulated by the U.S. Supreme Court in the case of *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

23. See, *Bailey Serv. and Supply Co. v. State Road Comm'n*, 533 P.2d 882 (Utah 1975) (construction of a viaduct that interfered with access to private land was held to have caused no diminution in the land's value so no taking occurred); *Holt v. Utah State Rd. Comm'n*, 511 P.2d 1286 (1973) (adversely affecting convenience of access by construction of a highway did not constitute a taking) (overruled on other grounds).

24. See, *Three D Corp. v. Salt Lake City*, 752 P.2d 1321 (Utah Ct. App. 1988) (adding a curb to a street in such a way that access to businesses was limited was considered a compensable taking); *Hampton v. Utah State Rd. Comm'n*, 445 P.2d 708 (1968) (blocking access to a portion of a driveway, substantially interfering with ingress and egress, is considered a taking).

25. See, *Smith Inv. Co. v. Sandy City*, 958 P.2d 245 (Utah Ct. App. 1998) (zoning regulation which does not eliminate all economically viable uses of the property is not a taking); *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602 (Utah Ct. App. 1995) (land use regulations are considered valid exercises of police power, unless they "do not rationally promote

and is undergoing study for environmental impact or investment impact, cities and counties are empowered to enact temporary zoning regulations to limit development in the area being studied.²⁶ Such zoning regulations may be in effect for up to six months. These statutory provisions, enacted in 1997, infer that governmental police power may be invoked to temporarily limit development in areas that are only being considered for a public purpose, such as a highway. This inference runs counter to the decision in the 1977 *Ramoselli*²⁷ case denying that land acquisition for a highway not yet planned was a public purpose.

5. *Individual statutory provisions*

Currently, the only Utah statutes relating specifically to corridor preservation are several provisions intended to generate funds for corridor acquisition.²⁸ Possibly inferred in these statutes is a legislative intent that purchase of land title, or at least development rights, is to be the principal method of corridor acquisition and preservation. If that is so, then the main task is to identify which rights will yield adequate corridor preservation at the least onerous level of public funds compensation required for takings.

It should also be noted that use of official maps of reservation, a common technique of highway corridor preservation in other jurisdictions, was abolished in Utah in 1992.

the public health, safety, morals and welfare"; provision for safe and efficient transportation is a legitimate objective to be served by zoning), *id.* at 606; *Cornish Town v. Koller*, 817 P.2d 305, 312 (Utah 1991) (mere diminution in value after zoning does not amount to a taking); *Banberry Dev. Corp. v. South Jordan City*, 631 P.2d 899 (Utah 1981) (constitutionality is presumed when a city exercises its zoning power; the burden of showing invalidity is on the challenger); *Western Land Equities Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980) (one who applies for subdivision approval or a building permit and who meets all the zoning requirements, with no countervailing public interest, is presumptively entitled to favorable action); *Crestview-Holladay Homeowners Ass'n v. Engh Floral Co.*, 545 P.2d 1150 (Utah 1976) (zoning is valid unless unreasonable, arbitrary or capricious).

26. UTAH CODE ANN. § 10-9-404 (Supp. 1998), § 17-27-404 (Supp. 1998).

27. *Salt Lake County v. Ramoselli*, 567 P.2d 182 (Utah 1977).

28. UTAH CODE ANN. § 59-12-1201 (Supp. 1998) (tax revenues designated for the Transportation Corridor Preservation Revolving Fund); § 63B-7-503 (Supp. 1998) (use of Transportation Corridor Preservation Revolving Fund revenue to repay bonds); § 72-2-117 (Supp. 1998) (creation and operation of the Transportation Corridor Revolving Loan Fund).

B. Summary of Legal Techniques for Long-Range Highway Corridor Preservation Available in Utah

In Utah, highway planners seeking to establish highway corridors long in advance of actual highway construction may use fee simple or easement acquisition to acquire land for, or limit development in, highway corridors. However, if no highway plan for that land has yet been created, the acquisition may be unconstitutional as not relating to a public purpose. Also, courts may impose time limits for beginning construction on condemned property.

Statutes authorize temporary land use regulations lasting no longer than six months. These statutes limit development in land being merely considered for a highway corridor in order to study impacts. Other statutes are intended to generate funds for corridor acquisition, suggesting that the Utah legislature expects corridors to be obtained by purchase rather than by limiting development through imposition of land use regulations.

Another statutory signal that payment may be preferred over regulation is found in the Private Property Protection Act²⁹ and the Constitutional Takings Issues Act.³⁰ In these acts state agencies and local governments are required to adopt guidelines that will help them identify which of their actions may possible constitute takings and then either avoid the takings or pay for them. This legislation is generally similar to that of other states, although effectiveness in respecting private property rights is questionable.³¹

C. Utah Statutory Constraints on Corridor Preservation Activities

Whether Utah officials choose to establish a long-range corridor preservation program by acquisition or by police power regulation, that program will be subject to several statutes that generally constrain all such activities. Chief among these statutes are those laws called the Utah Private Property Protection Act,³² the Constitutional Takings Issues Act,³³ the act authorizing the Private Property Ombudsman,³⁴ acts governing

29. Utah Code Ann. §§ 63-90-1 to -4.

30. Utah Code Ann. §§ 63-90a-1 to -4.

31. See David A. Thomas, *The Illusory Restraints and Empty Promises of New Property Protection Laws*, 28 *Urban Lawyer* 223-261 (Spring 1996).

32. UTAH CODE ANN. §§ 63-90-1 to -4 (1997).

33. UTAH CODE ANN. §§ 63-90a-1 to -4 (1997).

34. UTAH CODE ANN. § 63-34-13 (Supp. 1998).

city and county land use development and management,³⁵ the Agriculture Protection Areas Act,³⁶ and, of course, the statutory provisions governing highways³⁷ and eminent domain.³⁸

The Private Property Protection Act and the Constitutional Takings Issues Act require government agencies, including local governments, to adopt guidelines identifying when their actions may constitute a taking of private property, and enjoin such takings when feasible. The ombudsman is authorized to advise both private landowners and government agencies on guidelines and takings issues, and to mediate takings disputes between landowners and governments.

III. SUMMARY OF STATE STATUTORY PROVISIONS DEALING WITH LONG-RANGE HIGHWAY CORRIDOR PRESERVATION

No one state has addressed all of the long-range corridor preservation issues in its corridor preservation policies and programs. Only 23 states have any identifiable statutory provisions dealing even superficially with long-range highway corridor preservation. These exhibit a variety of approaches and depth of detail, as revealed in the following summary. At the end of the summary this material is presented in chart form for ease of comparison:

Arizona

Counties, cities and towns must provide a prioritized list of transportation corridors and suggested construction schedules for regional transportation plans. The Department of Transportation must adopt a budget process for corridors associated with the regional freeway system.³⁹ After a highway corridor resolution has been adopted and the precise highway location selected, the Department of Transportation must act within six months to acquire the property or pay damages for interfering with possession and use of the property.⁴⁰

California

35. UTAH CODE ANN. §§ 10-9-404, 17-27-404 (Supp. 1998).

36. UTAH CODE ANN. §§ 17-41-101 to -406 (Supp. 1998).

37. UTAH CODE ANN. §§ 72-1-102 (Supp. 1998).

38. UTAH CODE ANN. §§ 78-34-1 to -20 (1996).

39. ARIZ. REV. STAT. ANN. §§ 28-6308, -6352 (West 1998).

40. ARIZ. REV. STAT. ANN. § 28-7102 (West 1998).

Each transportation planning agency must prepare biennial regional transportation plans that may designate special corridors that have priority for long-term right of way preservation. Detailed procedures must be followed before such designations are made.⁴¹ Every three years the Department of Transportation may identify additional funding need for preserving and acquiring transportation corridors.⁴² The Department of Transportation may serve as a depository of property interests acquired by state or local governments to preserve corridors.⁴³

Colorado

Each metropolitan planning organization must produce a twenty-year plan that includes an emphasis on exploring opportunities for preservation of transportation corridors.⁴⁴

Delaware

Counties and municipalities are required to incorporate into their long-range development plans the transportation department's designation of highway routes requiring corridor capacity preservation. Routes requiring corridor capacity preservation may be proposed every three years in the Department of Transportation's development plans; the proposed routes are then subjected to review processes by which the actual routes are determined. The determined routes must then be incorporated into county and city comprehensive development plans, after which the Department of Transportation may carry out the projects.⁴⁵

Florida

Under Florida's extensive corridor legislation, comprehensive plans may include transportation corridors, and governmental agencies may acquire advance rights of way in designated transportation corridors consistent with those plans.⁴⁶ The Florida Transportation Plan is also required to identify future transportation corridors.⁴⁷ Designation of corridors and limitation of development in designated corridors may be accomplished by maps of reservation if authorized by locally enacted ordi-

41. CAL. PLANNING & ZONING CODE §§ 65080 to 65586.5 (Deering).

42. CAL. PUB. UTIL. CODE § 161026 (Deering Supp. 1998).

43. CAL. PUB. UTIL. CODE § 161021 (Deering Supp. 1998).

44. COLO. REV. STAT. § 43-1-1103 (1997).

45. DEL. CODE ANN. tit. 17, § 145 (1997).

46. FLA. STAT. ANN. §§ 163.3164, 163.3177 (West Supp. 1998).

47. FLA. STAT. ANN. § 339.155 (West Supp. 1998).

nance.⁴⁸ Official Florida legislative policy is that property interests for transportation corridors be acquired as far in advance as possible.⁴⁹

Illinois

Counties are required to develop and update 20-year plans including provision for long-range transportation plans. The plans are to show general corridors of future highways.⁵⁰

Indiana

Indiana's Transportation Corridor Planning Board is assigned to review priority lists of rights of way needed to carry out comprehensive transportation plans.⁵¹ A transportation corridor fund has been established.⁵²

Iowa

The state Department of Transportation may consider long-range, statewide corridor development in preserving rights of way for highways.⁵³

Louisiana

Separate regional corridor commissions have authority to preserve highway corridors, especially through studies and right of way acquisition.⁵⁴

Maryland

Transit plans may include the location of corridors to improve "inter-jurisdiction commuter transit services," but only corridors approved by local governmental entities are affected.⁵⁵

Michigan

48. FLA. STATE ANN. §§ 336.02, 337.2735 (West 1991).

49. FLA. STAT. ANN. § 337.273 (West Supp. 1998).

50. 605 ILL. COMP. STAT. ANN. 5/5-301, 5/7-301 (West 1993).

51. IND. CODE ANN. § 8-4.5-3-2 (Michie Supp. 1998).

52. IND. CODE ANN. § 8-4.5-3-7 (Michie Supp. 1998).

53. IOWA CODE ANN. § 307.36 (West 1997).

54. LA. REV. STAT. ANN. § 48:1684 (West Supp. 1998).

55. MD. CODE ANN., TRANSP. I, §§ 7-301, 7-303 (1993).

Governmental entities are directed to establish intergovernmental highway corridor planning preservation committees to develop corridor plans.⁵⁶

Minnesota

Governmental entities may file for record maps or plats that include transportation corridors, which filing constitutes notice that the governmental entity claims an interest in the lands in the corridor.⁵⁷ The state highway commissioner may propose trunk highway corridors by sending a report to affected local governments, which report details the expected general effect of the proposal on present and future use of the property in the corridor. An approval process must occur within several weeks following submission of the report.⁵⁸

Missouri

When the highway commission determines a corridor location, it may file a copy of the corridor map in each affected county,⁵⁹ but may not file a map for areas already heavily developed.⁶⁰ Applications for building permits or other land use changes in areas covered by the map must thereafter be referred to the commission. If the commission rejects the application, it will give notice of intent to acquire some or all of the affected property. The approval process for highway corridors must be repeated if construction in a previously approved corridor does not begin within ten years of the earlier approval.⁶¹

New Hampshire

New Hampshire's Corridor Protection provisions set forth criteria for designating a highway planning corridor.⁶² Once a planning corridor has been filed, no development may take place in the corridor without a corridor permit. Existing structures or uses in the corridor are not affected by the planning corridor designation. If the permit is denied, the state will be

56. MICH. COMP. LAWS ANN. § 247.665a (West 1998).

57. MINN. STAT. ANN. § 505.1792 (West 1990).

58. MINN. STAT. ANN. § 161.173 (West Supp. 1998).

59. MO. ANN. STAT. § 226.952 (West Supp. 1998).

60. MO. ANN. STAT. § 226.957 (West Supp. 1998).

61. State Highway Construction — Preservation of Corridors, 1998 Mo. Legis. Serv. HB 1596 (West).

62. N.H. REV. STAT. ANN. §§ 230-A:1 to A:17 (1993).

obligated to take property interests in the corridor in the form of deeded conservation restrictions that prohibit various forms of development for up to ten years. More extensive interests may be taken if justification is submitted.⁶³

New Jersey

When new highway locations are approved and maps filed in affected counties, applications for building permits or subdivision approval must be approved by the highway commissioner.⁶⁴

New York

The state Department of Transportation is empowered to negotiate for and secure reservation easements for development of transportation corridors. The easement assures the availability of property for a future transportation need, preventing uses inconsistent with that need.⁶⁵ The state commissioner of transportation must hold public hearings when considering various highway corridors.⁶⁶

North Carolina

Roadway corridor maps may be filed by various governmental entities, and once a map is filed, building permit and subdivision approval applications shall not be approved except through a variance procedure. In any event, no application may be delayed more than three years. Advance acquisition of property interests may also proceed after the map is filed.⁶⁷

Pennsylvania

Municipalities are authorized to establish transportation development districts to plan, acquire, develop, and construct transportation facilities and services.⁶⁸

Rhode Island

63. N.H. REV. STAT. ANN. §§ 21-L:12-a (Supp. 1997), 230-A:12 (1993).

64. N.J. STAT. ANN. §§ 27:7-66 and -67 (West Supp. 1998).

65. N.Y. TRANSP. LAW §§ 14, 14-e (McKinney 1994).

66. N.Y. HIGH. LAW § 17 (McKinney 1979).

67. N.C. GEN. STAT. §§ 136-44.50 et seq. (1993)

68. PA. STAT. ANN. tit. 53, § 1622 (West 1997).

The state Department of Transportation must undertake corridor studies.⁶⁹

Texas

Texas legislation authorizes preserving corridors for future highway construction.⁷⁰

Utah

The state has authorized non-lapsing funds and provided guidelines for corridor preservation.⁷¹ Counties and municipalities may enact temporary zoning regulations prohibiting development in a highway corridor for up to six months while environmental and other impacts are studied in the corridor.⁷²

Vermont

The highway-planning agency is directed to develop corridor studies, adopt a long-range multi-modal systems plan, and identify and prioritize specific projects.⁷³

Washington

The Department of Transportation is assigned to develop policies, together with local jurisdictions, for identifying and preserving transportation corridors.⁷⁴ A right of way preservation review process is established.⁷⁵ Right of way acquisition for up to ten years in advance of construction is authorized.⁷⁶

IV. GRAPHIC SUMMARY OF STATE STATUTORY PROVISIONS DEALING WITH LONG-RANGE HIGHWAY CORRIDOR PRESERVATION

69. R.I. GEN. LAWS § 42-13-2 (Supp. 1997).

70. TEX. GOV'T. CODE ANN. § 791.028 (West Supp. 1998).

71. UTAH CODE ANN. §§ 72-2-117, 63B-7-503 (Supp. 1998).

72. UTAH CODE ANN. §§ 10-9-404, 17-27-404 (Supp. 1998).

73. VT. STAT. ANN. tit. 19, § 10i (Supp. 1998).

74. WASH. REV. CODE § 81.104.060 (West 1996).

75. WASH. REV. CODE § 81.104.080 (West 1996).

76. WASH. REV. CODE § 47.12.242 (West Supp. 1998).

The chart below briefly summarizes state legislation that specifically addresses corridors.⁷⁷ The powers of eminent domain and land use regulation found in every state and in its local government entities are not mentioned in this chart unless they are mentioned specifically in the context of long-term highway corridor preservation.

The column headings in the chart below may be explained as follows:

CORRIDOR PLANNING refers to any statutory authority that specifically addresses the planning of long-range highway corridors.

CORRIDOR PRIORITIES refers to statutory authority to organize corridors by priority in the long-range planning.

REVIEW PROCESS refers to the statutory process of reviewing corridor planning activities and corridor priorities.

TIMING refers to the specific number of years given, if any, for advance planning of long-range corridors.

FUNDING refers to any specific funding authorized for long-range corridor preservation.

MAPS refer to official maps that describe and give notice of long-range corridors.

ACQUISITION refers to statutory authority to acquire fee simple or less than fee simple interests in property for the preservation of highway corridors.

DEVELOPMENT LIMITATION refers to statutory powers to limit development in long-range corridors by zoning, setback lines, subdivision regulations, exactions, access management, etc.

REVIEW OF ACTIONS refers to any statutorily authorized review process of **ACQUISITIONS** and **DEVELOPMENT LIMITATIONS**.

77. For clarity of presentation and to accommodate the tabular material, the chart is indexed with endnotes found at the end of this article.

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION					
	Corridor Planning	Corridor Priorities	Review Process	Timing	Funding
AZ	Annually cities, counties, and towns list corridors and suggested construction schedule in regional transportation plan. ¹ Department of Transportation (DOT) adopts a budget process. ²	Cities and counties provide prioritized list in regional transportation plans. ³	Public hearing on proposed changes. ⁴ Citizen transportation oversight committee hears complaints and makes recommendations. ⁵ Regional planning agency approves any changes. ⁶	Annual update. ⁷	
CA	Each transportation planning agency prepares a regional plan with proposed projects and budget. ⁸	Plan may designate which corridor has priority. ⁹	A public hearing is required before adoption of the plan. ¹⁰ Every three years the DOT submits a report to the Secretary of Transportation evaluating the program, the funding, and the need for additional corridors. ¹¹ Must comply with environmental protection laws. ¹²	20-year plan. ¹³	\$25 million budgeted for transportation purposes, including acquisition. ¹⁴
CO	Each Metropolitan Planning Organization produces a plan emphasizing transportation needs.			20-year plan. ¹⁵	

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION				
	Maps	Acquisition	Development Limitation	Review of Actions
AZ		After corridor is selected by resolution of necessity, DOT must make written offer on the property within six months or become liable to pay damages for interference with possession of property. ¹⁶		
CA		DOT may serve as repository for lands. ¹⁷ DOT may accept dedication of fee title, easements, development rights, or other interests. ¹⁸ Eminent domain for land necessary to the construction of the highway, but not for rest stops or other ancillary uses. ¹⁹		DOT reports to the Secretary of Transportation every three years evaluating DOT's programs. ²⁰
CO				

**LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN
CURRENT STATE LEGISLATION**

	Corridor Planning	Corridor Priorities	Review Process	Timing	Funding
DE	Comprehensive development plans and DOT's long-range plans propose routes requiring corridor preservation. ²¹		Local governments have ninety days to review and hold a public hearing. ²² Corridor routes are approved by the Transportation Council and adopted by the State General Assembly. ²³	Three-year update for "long range plans." ²⁴	
FL	Local government comprehensive plans include transportation corridors. ²⁵ State comprehensive plan prepared by Executive Office of the Governor shall provide guidelines for corridors. ²⁶ Florida Transportation Plan must identify future transportation corridors. MPO's shall develop long-range plans to include corridors. ²⁷	Dot's Florida transportation Plan shall identify corridors for which action is most needed to prevent destruction or loss. ²⁸	Each MPO has a citizen advisory committee. ²⁹ Each MPO shall assist DOT and local government in mapping planning boundaries. ³⁰	20-year plan. ³¹	
IL	Long-range transportation plans updated by each County Superintendent of Highways. ³²			20-year plan. ³³	

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION				
	Maps	Acquisition	Development Limitation	Review of Actions
DE		Fee simple of lesser interests. Acquisition by gift, devise, purchase, or eminent domain. ³⁴	Power to regulate subdivision streets. Power to regulate access to and from state highways. ³⁵	Planned acquisitions reviewed by committee of five governmental officials. ³⁶
FL	County Commissioners and municipalities may file maps of reservation recorded in public land records after a public hearing, and after notice is given to all affected persons and governmental entities. ³⁷ DOT may file right-of-way maps for acquisition of real property rights. ³⁸	DOT may purchase, lease, exchange, or otherwise acquire any land or buildings (including personal property) necessary for corridor. ³⁹ All or a portion of the property may be acquired by donation, purchase, or eminent domain. With a showing of public interest, any right-of-way may be acquired at any time to protect a corridor from development or undue hardship on a property owner. ⁴⁰	Local government may adopt a transportation management ordinance regarding the filed map. The ordinance should contain a list of: the criteria used to manage land within the corridor, construction restrictions, permitted land uses, a public notice process, a variance and appeal process, and a governmental coordination process. ⁴¹ If a property owner alleges that the map depicts (1) unreasonable or arbitrary regulation or (2) the map denies a substantial portion of beneficial use for the property, the county holds a hearing and has 180 days to acquire the property, withdraw the map, or use eminent domain. ⁴² Local government shall give reasonable notice to DOT prior to granting any permit for the property in the map corridor. ⁴³	Before recording the map, there must be a public hearing, with notice to all affected property owners and governmental bodies. ⁴⁴ DOT must negotiate for acquisitions in good faith and provide _____ to the fee owner that all, or a portion of the property is necessary for a corridor, the nature of the project, the district office of DOT where the owner may obtain right-of-way maps, the fee owner's statutory rights, and the fee owner's rights and responsibilities. ⁴⁵ Submission process for property appraisal report and business damage claims. ⁴⁶
IL	Plan is filed with Secretary of DOT and clerk of each municipality over 5000 population showing general corridors.			

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION					
	Corridor Planning	Corridor Priorities	Review Process	Timing	Funding
IN	Comprehensive transportation plan includes list of future rights of way. ⁴⁷	Departments set priorities for future rights of way. ⁴⁸	Transportation Corridor Planning Board of nine persons reviews list of priorities. ⁴⁹	Annual report for potential future uses. ⁵⁰	Transportation Corridor Fund. ⁵¹
IA ⁵²	DOT should determine need for corridor development.			Long-range.	
KS ⁵³		SOT creates schedule of priorities for existing corridors.			
LA	Separate regional commission may gather information on right of way acquisition. ⁵⁴		DOT may advise regional commission. ⁵⁵		
MI ⁵⁶	County road commissioners, cities, and villages shall establish intergovernmental highway corridor. A planning preservation committee actually develops the plans.				
MN	State Highway Commissioner proposes trunk highway corridors. ⁵⁷		Each municipality or agency affected shall hold public hearings, and may approve or deny proposals. ⁵⁸	For future use. ⁵⁹	

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION				
	Maps	Acquisition	Development Limitation	Review of Actions
IN		DOT may acquire abandoned railroad's right of way interest. ⁶⁰		Public meeting in each county affected by acquisition. ⁶¹
IA		DOT may preserve right-of-way by acquiring options, easements, rights of first refusal, or other interests less than fee title.		
KS		SOT may acquire right of way sufficient to accommodate eventual construction of corridors.		
LA		DOT may acquire property rights through gifts, devise, purchase or eminent domain. ⁶²	Separate regional corridor commission may tax, limited to user fees or charges that bear relationship to the highway project. ⁶³	
MI				
MN	Governmental entities may file, solely for informational purposes, a map or plat that includes transportation corridors. ⁶⁴		Map does not transfer title, but it gives notice that municipality claims interest in lands. ⁶⁵	

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION					
	Corridor Planning	Corridor Priorities	Review Process	Timing	Funding
MO			Commission approves location of highway corridor after a public meeting. ⁶⁶	Up to twelve years. ⁶⁷	
NB					
NH	Commissioner of Transportation (COT) may adopt rules for creation of highway planning corridors. ⁶⁸			Up to ten years. ⁶⁹	
NJ	COT may find that areas are growth corridors. ⁷⁰				

**LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN
CURRENT STATE LEGISLATION**

	Maps	Acquisition	Developmental Limitation	Review of Actions
MO	Corridor map may be filed with each regulatory authority and with recorder of deeds but not in area already well developed. ⁷¹	All or part of subject property may be acquired after map is filed if building conditions are rejected by private property owner(s). ⁷² Any regulatory authority may take any lawful action to enforce the corridor.	Recorded map establishes building setback line, stay on building permits, and moratorium on new construction without approval from DOT, with a 45-day notice to DOT. ⁷³ Any regulatory authority may incorporate zoning ordinances, setback lines, or take any lawful action to enforce the corridor. ⁷⁴	Notice and a public hearing are required before filing of the map. ⁷⁵ If no construction begins within twelve years, the notice and hearing requirements are reestablished. ⁷⁶
NB	Current map of state roads and corridors transmitted to each county clerk or officer who issues building permits. ⁷⁷		Map requires building permit with a 60-day freeze pending action by Department of Roads for any structure over \$1000 and gives six months for negotiations to occur. ⁷⁸	
NH	Highway planning corridor shall be filed. ⁷⁹	Corridor protection restrictions of up to ten years may be taken in real property. ⁸⁰	Filed corridor freezes subdividing, new development, and alterations to structures without a corridor permit. DOT has 60 days to act on requests. ⁸¹ DOT has 180 days to take property or corridor permit is granted. ⁸² Municipality may take above actions in addition to creation of official map. ⁸³	Prior to filing a corridor planning map, a public hearing in each affected county is required. ⁸⁴
NJ	Map of proposed highway development may be filed. ⁸⁵		Transportation development district may assess development fees. ⁸⁶ Filed map provides freeze on development permits for 45 days to allow DOT to acquire property. ⁸⁷	Residents of affected areas may express objections at public hearing prior to filing of map. ⁸⁸

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION					
	Corridor Planning	Corridor Priorities	Review Process	Timing	Funding
NY	DOT may prepare plans for development of transportation. ⁸⁹		COT holds public hearings on corridor locations and designs. ⁹⁰		
NC					
PA⁹¹	Municipality may establish transportation development district.				
RI⁹²	DOT may undertake corridor studies.				
TX	Tri-State Corridor Commissioner may make recommendations on highway development. ⁹³				

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION				
	Maps	Acquisition	Developmental Limitation	Review of Actions
NY		DOT may secure reservation easement in necessary land. ⁹⁴		Before DOT action, municipality must enter into agreement with COT. ⁹⁵
NC	Board of Transportation or city may adopt roadway corridor official map. ⁹⁶	After map is filed, city of DOT may make advance acquisitions when in best public interest. Public interest shown when advance acquisition protects corridor from development or when undue hardship shown. ⁹⁷	No building permit issue without ten day notice to Highway District. Approval may be delayed up to three years. ⁹⁸ Variance from map only allowed with showing of (1) no reasonable return possible from land and (2) unnecessary hardships. ⁹⁹ City or county may require enactment of ordinances and require dedication of right-of-way. ¹⁰⁰ City or county may allow transfer of density credits. ¹⁰¹	Hearing required before filing of the map. ¹⁰² EIS required within one year of filing. ¹⁰³
PA		Municipality may exercise all powers granted by law including: appropriation of funds; acquisition by gift; acquisition by purchase; or acquisition by eminent domain of land or rights of way.		
RI				
TX		DOT may acquire interest in real property by purchase, gift, and eminent domain. Commissioner's Court of County may acquire right-of-way. ¹⁰⁴		

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION					
	Corridor Planning	Corridor Priorities	Review Process	Timing	Funding
UT					Transportation Corridor Preservation Revolving Loan Fund financed by motor vehicle rental tax. ¹⁰⁵ Bond authority up to \$10 million.
VT	Highway planning agency may develop corridor studies, adopt a long-range multi-modal systems plan, and prepare manual on planning process. ¹⁰⁶	Projects shall be indentified and prioritized. ¹⁰⁷	Planned projects subject to approval by voters of each town within one year of a hearing. ¹⁰⁸ After suspension of a project, legislature may order completion or discontinuance of project.	"Long-range." ¹⁰⁹	
WA	DOT develops policies for identifying and preserving transportation corridors. ¹¹⁰ Cities and counties make proposals for projects in right-of-way preservation. ¹¹¹		Regional transportation organizations review proposals of cities and counties. ¹¹²	Six-year plan. ¹¹³	

LONG RANGE CORRIDOR PRESERVATION ISSUES ADDRESSED IN CURRENT STATE LEGISLATION				
	Maps	Acquisition	Developmental Limitation	Review of Actions
UT			County or municipality may enact ordinances establishing temporary zoning regulations to protect corridor with finding of compelling, countervailing public interest or if area is unzoned. ¹¹⁴ No impact fees are permitted. ¹¹⁵	No hearing prior to enacting the ordinances. Regulation may not exceed six months. ¹¹⁶
VT				
WA		Property and property rights may be acquired, not more than ten years in advance. ¹¹⁷		Any property or rights acquired must be in designated corridors, for projects approved by the Commission or included in state's route development planning. ¹¹⁸

V. PROPOSED MODEL STATE LEGISLATION TO FACILITATE LONG-RANGE HIGHWAY CORRIDOR PRESERVATION

A. *The Objectives of the Model Legislation*

As is evident from the summary of Utah and other state legislative provisions governing long-range preservation activities, little of it is orderly or systematic, and many significant issues are not addressed in any particular state. The model legislation proposed here is intended to address all of the significant issues. If the method of resolving any one issue is not acceptable to the reader, at least the model legislation has served to raise the issue so it can be satisfactorily addressed in whatever legislative or regulatory provisions may eventually be adopted. Following is a list of issues to be addressed by the model legislation, together with brief explanations of the issues:

State clearly that the objective of the legislation is to promote long-range planning and preservation of highway corridors, proclaim this as a policy favored by the state, and identify it as a legitimate public purpose for exercise of eminent domain and police powers.

Define highway corridors and the activity of long-range highway corridor preservation.

Declare how long in advance of highway construction a highway corridor may be acquired.

Create or identify sources of funding for highway corridor preservation and determine how the funds are to be used.

Declare which techniques are authorized for preservation of highway corridors, such as maps, acquisition of fee simple and less than fee interests, and limitation of development rights. Set forth processes and guidelines for use of any such authorized methods.

State whether preservation of alternative corridors, some of which may never be used in highway construction, is an appropriate public purpose for obtaining rights in private property and, if so, what are the proper dispositions for corridor lands which are eventually not used for highways.

B. The Text of the Model Legislation

[STATE] HIGHWAY CORRIDOR PRESERVATION ENABLING ACT

§ 1. Title of the Act.

This Act shall be known as the [State] Highway Corridor Preservation Enabling Act.

§ 2. Policy of the State.

It is the policy of this state to encourage and promote long-range advance planning of major highways and, to this end, to promote planning, review, and preservation of highway corridors well in advance of the need for and the actual commencement of highway construction.

§ 3. Definitions.

For purposes of the this act:

a. **ACCESS MANAGEMENT** means protecting existing highway routes by controlling access rights from adjacent lands.

b. **CORRIDOR** means the path or proposed path of a transportation facility that already exists or may be built in the future. A corridor may include not only the land occupied (or to be occupied) by a transportation facility but also any other land that may be needed for expanding a transportation facility or for controlling access to it.

c. **CORRIDOR PRESERVATION OR PROTECTION** means planning or acquisition processes intended to protect or enhance the capacity of existing corridors and to protect the availability of proposed corridors.

d. **DEVELOPMENT** means the subdividing of land, the construction of improvements, expansions or additions, or any other action that will appreciably increase the value of and the future acquisition cost of land.

e. **OFFICIAL MAP OR MAP OF RESERVATION**: A map, drawn up by local or state authorities and usually recorded in county recording offices, which shows actual and proposed rights of way and centerline alignments and setbacks for streets and highways, restricts development

in those rights of way or between those setbacks, and allows authorities time to purchase reserved land.

f. **TAKING:** An act or regulation, either by exercise of eminent domain or other police power, whereby government puts private property to public use or restrains use of private property for public purposes, and which may require compensation to be paid to private property owners.

§ 4. Public Purpose

It is hereby declared that the planning and preservation of highway corridors is a public purpose, that the acquisition of public rights in private property for possible use as a highway corridor up to 25 years in advance is a public purpose, and that the acquisition of public rights in private property for possible use as alternative highway corridors is a public purpose, even if one or more of the alternative corridors is eventually not used for a public purpose.

§ 5. Declaration and Delegation of State Powers

The following powers, which are held by and may be exercised by the state, and are hereby authorized to be exercised by entities of local government, for the furtherance of highway corridor preservation. This list of delegated powers is not exhaustive and does not limit delegations of state powers under any other provision of this code:

- a. To act in cooperation with other governmental entities;
- b. To undertake planning, review, and preservation processes;
- c. To acquire fee simple rights and other rights of less than fee simple, including easement and development rights, or the rights to limit development, including in alternative corridors, and to make such acquisitions up to 25 years in advance of using those rights in actual highway corridor construction.
- d. To acquire property rights, including less than fee simple rights and the rights to limit development, for highway corridor preservation by direct acquisition, by land use regulation, by official maps of reservation and other techniques, as authorized in regulations promulgated by the state department of transportation.

e. To permit and by regulation prescribe procedures for approving limited use of and limited development in highway corridors until the time highway construction begins.

§ 6. Disposition of Excess Corridor Rights

To the extent a governmental entity has acquired property rights in land in proposed corridors, and some or all of that land is eventually not used for the proposed corridors, the entity may dispose of such rights on terms most favorable to the entity, but only after first offering the rights to the private owner from whom they were obtained at the same consideration originally paid by the governmental entity.

§ 7. Respect for Private Ownership Rights

Governmental entities conducting highway corridor preservation activities shall observe all protections conferred on private property rights under state constitution, laws, and regulations, including requirements of compensation for takings and other forms of private property rights protections. Private property owners from whom less than fee simple rights are taken for highway corridors or corridor preservation have the right to petition the state to acquire the entire fee simple interest in the affected property, according to procedures prescribed by regulation.

§ 8. No Impact Statements Needed for Corridor Preservation

No state or local government entity shall require an environmental or other impact statement for lands included in corridors that are only proposed or that are only alternative corridors.

§ 9. Funding

Administrative and acquisitions costs associated with highway corridor planning and preservation by the state shall be funded by the following means:

§ 10. Regulations

The state department of transportation is authorized and charged to promulgate all regulations required for the implementation of these statutory provisions.

APPENDIX 1

Title 40, Code of Federal Regulations, Section 6.107 (40 C.F.R. § 6.107)

40 C.F.R. § 6.107

CODE OF FEDERAL REGULATIONS

TITLE 40--PROTECTION OF ENVIRONMENT

CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER A--GENERAL

PART 6--PROCEDURES FOR IMPLEMENTING THE REQUIREMENTS OF THE COUNCIL ON

ENVIRONMENTAL QUALITY ON THE NATIONAL ENVIRONMENTAL POLICY ACT

SUBPART A--GENERAL

Current through October 1, 1998; 63 FR 52946

§ 6.107 Categorical exclusions.

(a) General. Categories of actions which do not individually, cumulatively over time, or in conjunction with other Federal, State, local, or private actions have a significant effect on the quality of the human environment and which have been identified as having no such effect based on the requirements in § 6.505, may be exempted from the substantive environmental review requirements of this part. Environmental information documents and environmental assessments or environmental impact statements will not be required for excluded actions.

(b) Determination. The responsible official shall determine whether an action is eligible for a categorical exclusion as established by general criteria in § 6.107 (d) and (e) and any applicable criteria in program specific subparts of Part 6 of this title. A determination shall be made as early as possible following the receipt of an application. The responsible official shall document the decision to issue or deny an exclusion as soon as practicable following review in accordance with § 6.400(f). For qualified actions, the documentation shall include the application, a brief description of the proposed action, and a brief statement of how the action meets the criteria for a categorical exclusion without violating criteria for not granting an exclusion.

(c) Revocation. The responsible official shall revoke a categorical exclusion and shall require a full environmental review if, subsequent to the

granting of an exclusion, the responsible official determines that: (1) The proposed action no longer meets the requirements for a categorical exclusion due to changes in the proposed action; or (2) determines from new evidence that serious local or environmental issues exist; or (3) that Federal, State, local, or tribal laws are being or may be violated.

(d) General categories of actions eligible for exclusion. Actions consistent with any of the following categories are eligible for a categorical exclusion:

(1) Actions which are solely directed toward minor rehabilitation of existing facilities, functional replacement of equipment, or towards the construction of new ancillary facilities adjacent or appurtenant to existing facilities;

(2) Other actions specifically allowed in program specific subparts of this regulation; or

(3) Other actions developed in accordance with paragraph (f) of this section.

(e) General criteria for not granting a categorical exclusion. (1) The full environmental review procedures of this part must be followed if undertaking an action consistent with allowable categories in paragraph (d) of this section may involve serious local or environmental issues, or meets any of the criteria listed below:

(i) The action is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other Federal, State, local, tribal or private actions;

(ii) The action is known or expected to directly or indirectly affect:

(A) Cultural resource areas such as archaeological and historic sites in accordance with § 6.301,

(B) Endangered or threatened species and their critical habitats in accordance with § 6.302 or State lists,

(C) Environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones in accordance with § 6.302, or

(D) Other resource areas identified in supplemental guidance issued by the OEA;

(iii) The action is known or expected not to be cost-effective or to cause significant public controversy; or

(iv) Appropriate specialized program specific criteria for not granting an exclusion found in other subparts of this regulation are applicable to the action.

(2) Notwithstanding the provisions of paragraph (d) of this section, if any of the conditions cited in paragraph (e)(1) of this section exist, the responsible official shall ensure:

(i) That a categorical exclusion is not granted or, if previously granted, that it is revoked according to paragraph (c) of this section;

(ii) That an adequate EID is prepared; and

(iii) That either an environmental assessment with an FNSI or a notice of intent for an EIS and ROD is prepared and issued.

(f) Developing new categories of excluded actions. The responsible official, or other interested parties, may request that a new general or specialized program specific category of excluded actions be created, or that an existing category be amended or deleted. The request shall be in writing to the Assistant Administrator, OEA, and shall contain adequate information to support the request. Proposed new categories shall be developed by OEA and published in the Federal Register as a proposed rule, amending paragraph (d) of this section when the proposed new category applies to all eligible programs or, amending appropriate paragraphs in other subparts of this part when the proposed new category applies to one specific program. The publication shall include a thirty (30) day public comment period. In addition to criteria for specific programs listed in other subparts of this part, the following general criteria shall be considered in evaluating proposals for new categories:

(1) Any action taken seldom results in the effects identified in general or specialized program specific criteria identified through the application of criteria for not granting a categorical exclusion;

(2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EIS; and

(3) Whether information adequate to determine if a potential action is consistent with the proposed category will normally be available when needed.

[47 FR 9829, Mar. 8, 1982; 50 FR 26315, June 25, 1985; 51 FR 32610, Sept. 12, 1986]

APPENDIX 2

GLOSSARY OF IMPORTANT TERMS IN HIGHWAY CORRIDOR PRESERVATION⁷⁸

ACCESS MANAGEMENT: Corridor preservation policies for the protection of existing highways. Public authorities may use capacity protection or access management to prevent overuse of existing highways either by limiting access to them (such as by restricting curbcuts) or by protecting adjacent land needed to widen or improve existing highways in anticipation of increased use. Access management is the protecting of the capacity of existing routes and systems by controlling access rights from adjacent properties. This practice may be described as “entrance permit requirements” in some States.

COMPREHENSIVE PLAN: A statement of the goals and objectives for the future development of a community. The comprehensive plan usually contains sections or “elements” on land use, community facilities, transportation and housing. The plan also contains a map that translates the goals and policies of the plan into land use designations indicating where different types of public and private development should locate. The planning policies and map together provide a basis for decisions on land use in the land use regulation process.

CORRIDOR: The path or proposed path of a transportation facility that already exists or may be built in the future. A corridor may include not only the land occupied (or to be occupied) by a transportation facility but also any other land that may be needed for expanding a transportation facility or for controlling access to it.

CORRIDOR MAP: A legal description of the area within a highway corridor, accompanied by a map. The legal description shall govern in any case of an inconsistency with the drawn corridor on the map.⁷⁹

CORRIDOR PRESERVATION OR PROTECTION: The techniques that public authorities may use to protect the capacity of existing corridors, to

78. Unless otherwise noted, the majority of definition materials have been taken from the most comprehensive federal highway study on corridor preservation. Federal Highway Administration, U.S. Dept. of Transportation, *Corridor Preservation: Study of Legal and Institutional Barriers* Appendix A (manuscript on file with the authors).

79. State Highway Construction – Preservation of Corridors, 1998 MO. LEGIS. SERV. H.B. 1596 (West).

protect planned corridors from inconsistent development or to preserve intact transportation or utility corridors that are or may be abandoned, such as abandoned railroad rights of way. The purposes of corridor preservation or protection include; minimizing or avoiding adverse environmental, social or economic impacts; reducing displacement; preventing the foreclosure of desirable location choices for transportation facilities; allowing for the orderly assessment of impacts flowing from the construction of such facilities; permitting orderly project development; and reducing construction costs. The tools of corridor preservation or protection fall into three general categories: acquiring property rights in land within a corridor; regulating the use of such land; and negotiating with owners of such land for its preservation in an unimproved condition.

CORRIDOR PROTECTION RESTRICTION: A deeded conservation restriction which conveys to the government the right to wholly or partially prohibit development within a corridor for a stated maximum period of time, typically up to 10 years,⁸⁰ but it could be longer.

DEDICATION: A property owner's conveyance of land or of an easement in land to the public for its use, and the public's acceptance of that land or easement. Dedications may be among the exactions imposed on developers by subdivision ordinances which, as a prerequisite to the approval of any proposed subdivision of land, require that developers dedicate transportation and utility rights of way to serve the subdivided lots. Unless they serve the specific needs of proposed subdivisions, however, dedications that are uncompensated may be unconstitutional takings. For example, a subdivider's uncompensated dedication of land to widen an adjacent highway would probably constitute a taking. A street-widening dedication in exchange for a density transfer may be constitutional, however.

DENSITY TRANSFER: The assignment of development density credits attributable to a proprietor's land within a corridor to that proprietor's contiguous lands outside it, in exchange for the proprietor's dedication of the land in the corridor to the public.

DEVELOPMENT means the subdividing of land, the construction of improvements, expansions or additions, or any other action that will appreciably increase the value of and the future acquisition cost of land.

80. N.H. REV. STAT. ANN. § 230-A:1 (1993).

DEVELOPMENT EASEMENT: A temporary or permanent property interest in developing or developable land, which interest a governmental entity may purchase to protect land in transportation corridors from development. Because the development easement is a lesser interest in land than an estate in fee simple, the development easement may cost less to buy. Local officials who have experimented with the purchase of development easements, however, report that the savings are negligible.

DEVELOPMENT PERMIT: This includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or other official action of local government which permits the development of land.⁸¹

EMINENT DOMAIN (OR CONDEMNATION): The power of federal, state or local governments to take private property for public purposes; a power constitutionally limited by the requirement that government pay just compensation to the owner of the property taken.

ENVIRONMENTAL IMPACT STATEMENT (EIS): A "detailed statement" on the environmental consequences of proposed governmental actions as well as "alternatives" to proposed governmental actions.

EXACTION: A mandatory contribution by a developer, including the dedication of property, whereby the developer bears the costs of infrastructural improvements made necessary by the development.

HIGHWAY PLATTING: Developers' voluntary creation of separate lots for right of way where developers expect public authorities eventually to purchase those lots.

IMPACT (OR FACILITY) FEE: A fee imposed by government on developers to recover costs of infrastructure improvements which their developments make necessary. Like dedications, impact fees are constitutionally valid only insofar as they recover costs directly attributable to the development.

LAND USE: The development that has occurred on the land, that is proposed by a developer on the land, or that is permitted on the land under

81. FLA. STAT. ANN. § 163.3164 (West 1997).

an adopted comprehensive plan, land development regulations, or land development codes.⁸²

METROPOLITAN PLANNING ORGANIZATION (MPO): Established by the Federal Highway Act of 1973 to coordinate highway and transit planning on a regional or metropolitan scale in urban areas with populations above 50,000, and to coordinate the efforts of local planning agencies.

OFFICIAL MAP OR MAP OF RESERVATION: A map, drawn up by local or state authorities and usually recorded in county recording offices, which shows actual and proposed rights of way and/or centerline alignments and setbacks for streets and highways, restricts development in those rights of way or between those setbacks, and allows authorities time to purchase reserved. Filing of such a map may constitute notice that the governmental entity has “taken” rights to land shown on the map.

RESERVATION: The designation of a proposed highway’s or street’s right of way, either on an official map or on a subdivision plat approved under a subdivision ordinance, in order to prevent development within the reserved right of way.

RESERVATION EASEMENT: Rights in real property, acquired by the state for the purpose of assuring the availability of the property for future transportation needs and to prevent the landowners from using the property in a way that is inconsistent with that need.⁸³

RIGHT OF WAY: A party’s property right to pass over the land of another; an easement, or land that is occupied by a transportation facility such as a railroad or that may be needed for a proposed transportation facility.

SETBACK: A zoning requirement that buildings be a certain distance from property boundary lines or streets.

SUBDIVISION ORDINANCES: Local ordinances, enacted pursuant to state enabling legislation, regulating the subdivision and platting of land into lots and blocks and roads, usually for residential development.

82. § 163.3164.

83. N.Y. TRANSP. LAW § 14-E (McKinney 1994).

TAKING: An act or regulation, either by exercise of eminent domain or other police power, whereby government puts private property to public use or for a public purpose restrains use of private property, and which action may require compensation to be paid to private property owners.

TRANSFERABLE DEVELOPMENT RIGHT (TDR): A government created and marketable right to develop land, which owners of undeveloped land in transportation corridors may sell or retain for their own use on other parcels.

TRANSPORTATION CORRIDOR MANAGEMENT: The coordinated planning of designated future transportation corridors by land use planning and regulation within or adjacent to the corridor, promoting orderly growth and maintaining the integrity of the corridor.⁸⁴

TRANSPORTATION FACILITY: General term designating all means of transportation and the uses and improvements of land that they require.

84. FLA. STAT. ANN. § 163.3164 (West Supp. 1997).

ENDNOTES

1. ARIZ. REV. STAT. § 28-6308(B) (1997).
2. ARIZ. REV. STAT. § 28-6352.
3. ARIZ. REV. STAT. § 28-6308(A).
4. ARIZ. REV. STAT. § 28-6354(A).
5. ARIZ. REV. STAT. § 28-6356(G).
6. ARIZ. REV. STAT. § 28-6353(A).
7. ARIZ. REV. STAT. § 28-6308(C).
8. CAL. PLAN. & ZONING CODE § 65080 (DEERING 1997).
9. CAL. PLAN. & ZONING CODE § 65081.3(A).
10. CAL. PLAN. & ZONING CODE § 65080(A).
11. CAL. PUB. UTIL. CODE. § 161026 (DEERING 1997).
12. CAL. PUB. UTIL. CODE § 161031; CAL. STS. & HY. CODE § 103.65 (DEERING 1997).
13. CAL. PUB. UTIL. CODE § 161028.
14. CAL. PUB. UTIL. CODE § 161030.
15. COLO. REV. STAT. § 43-1-1103(1).
16. ARIZ. REV. STAT. § 28-7102.
17. CAL. PUB. UTIL. CODE § 161021.
18. *Id.*
19. CAL. PUB. UTIL. CODE § 161023.
20. CAL. PUB. UTIL. CODE. § 161026.
21. DEL. CODE ANN. TIT. § 17, § 145(C)(1) (1997).
22. DEL. CODE ANN. TIT. 17, § 145(D).
23. *Id.*
24. *Id.*
25. FLA. STAT. ANN. § 163.3177 (WEST 1997).
26. FLA. STAT. ANN. § 186.009(1)(2)(F).
27. FLA. STAT. ANN. § 187.201(20)(A), (B)(14).
28. FLA. STAT. ANN. § 339.155(2)(P).
29. FLA. STAT. ANN. § 339.175(5)(D)(1).
30. FLA. STAT. ANN. § 339.175(5).
31. FLA. STAT. ANN. § 339.155(1).
32. 605 ILL. COMP. STAT. 5/5-301 (1998).
33. 605 ILL. COMP. STAT. 5/5-301; 5/7-301.
34. DEL. CODE ANN. TIT. 17, § 145(D).
35. DEL. CODE ANN. TIT. 17, 145(E).
36. DEL. CODE ANN. TIT. 17, 145(C)(2).
37. FLA. STAT. ANN. § 336.02(1)(B).
38. FLA. STAT. ANN. § 335.02(2).
39. FLA. STAT. ANN. § 335.02(2).
40. FLA. STAT. ANN. § 337.243(2).
41. FLA. STAT. ANN. § 337.273(6).

42. FLA. STAT. ANN. § 337.2735(4).
43. FLA. STAT. ANN. § 337.243.
44. FLA. STAT. ANN. § 335.02.
45. FLA. STAT. ANN. § 337.271.
46. FLA. STAT. ANN. § 337.271(4)(5).
47. IND. CODE ANN. §-4.5-3.1 (MICHIE 1998).
48. *Id.*
49. IND. CODE ANN. §§ 8-4.5-2-2, 8-4.5-3-2.
50. IND. CODE ANN. § 8-4.5-3-6.
51. IND. CODE ANN. 8-4.5-3-7.
52. IOWA CODE ANN. § 307.36 (1997).
53. KAN. STAT. ANN. § 68-2301 (1997).
54. LA. REV. STAT. ANN. § 48:1684 (1998).
55. LA. REV. STAT. ANN. § 48:1684(4).
56. MICH. STAT. ANN. § 9.1097(15A) (1997).
57. MINN. STAT. § 161.173 (1997).
58. *Id.*
59. *Id.*
60. IND. CODE ANN. § 8-4.5-4-1.
61. IND. CODE ANN. § 8-4.5-4-3.
62. LA. REV. STAT. ANN. § 48:2031.
63. LA. REV. STAT. ANN. § 48:1684(A)(6).
64. MINN. STAT. § 505.1792.
65. *Id.*
66. MO. REV. STAT. § 226.952 (1997).
67. MO. REV. STAT. § 226.955.
68. N.H. REV. STAT. ANN. § 21-C:12(A) (SUPP. 1993).
69. N.H. REV. STAT. ANN. § 230-A:11.
70. N.J. STAT. § 27:1C-13.
71. MO. REV. STAT. § 226.952(1), 226.957(4).
72. MO. REV. STAT. § 226.959.
73. MO. REV. STAT. § 226.961.
74. MO. REV. STAT. § 226.959.
75. MO. REV. STAT. § 226.952.
76. MO. REV. STAT. § 226.955.
77. NEB. REV. STAT. ANN. §§ 39-1311, 1311.01 (MICHIE 1997).
78. NEB. REV. STAT. ANN. §§ 39-1311.02, 1311.03.
79. N.H. REV. STAT. § 230-A:6.
80. N.H. REV. STAT. § 230-A:11.
81. N.H. REV. STAT. § 230-A:9.
82. N.H. REV. STAT. § 230-A:10.
83. N.H. REV. STAT. § 230-A:17.
84. N.H. REV. STAT. § 230-A:3, A:4.

85. N.J. STAT. § 27:7-66.
86. N.J. STAT. § 27:1C-2(C).
87. N.J. STAT. §27:7-67.
88. *Id.*
89. N.Y. TRANSPORTATION LAW § 14-E (CONSOL. 1998).
90. N.Y. TRANSPORTATION LAW § 17.
91. PA. STAT. ANN. § 1622 (WEST 1997).
92. R.I. GEN. LAWS § 42-13-2 (1997).
93. TEX. GOV'T CODE § 764.002 (1998).
94. N.Y. TRANSPORTATION LAW § 14-E.
95. *Id.*
96. N.C. GEN. STAT. § 136-44.50(A) (1997).
97. N.C. GEN. STAT. § 136-44.53(A).
98. N.C. GEN. STAT. § 136-44.51.
99. N.C. GEN. STAT. § 136-44.52.
100. N.C. GEN. STAT. § 136-66.10(1).
101. N.C. GEN. STAT. § 136-66.10(A)(12).
102. N.C. GEN. STAT. § 136-44.50(A)(1)(A).
103. N.C. GEN. STAT. § 136-44.50(D).
104. TEX. TRANSPORTATION CODE §§ 203.051, 224.003 (1998).
105. UTAH CODE ANN. §§ 72-2-117, 63B-7-503 (1998).
106. VT. STAT. ANN. TIT. 19 SEC. 10I (1998).
107. *Id.*
108. VT. STAT. ANN. TIT. 19 SEC. 1511.
109. VT. STAT. ANN. TIT. 19 SEC. 10I.
110. WASH. REV. CODE ANN. § 47.12.242 (1997).
111. WASH. REV. CODE ANN. § 81.104.080.
112. *Id.*
113. WASH. REV. CODE ANN. § 47.12.242.
114. UTAH CODE ANN. §§ 10-9-404(A), 17-27-404.
115. UTAH CODE ANN. §§ 10-9-404(1)(C).
116. UTAH CODE ANN. §§ 10-9-404, 17-27-404.
117. WASH. REV. CODE ANN. § 47.12.242.
118. WASH. REV. CODE ANN. § 81.104.080.