

PRESERVING TRANSPORTATION CORRIDORS

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The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) mandates that states and metropolitan planning organizations consider the preservation of rights-of-way for future transportation projects in the development of transportation plans and programs. Such preservation is intended to promote more consistent and less costly development of transportation facilities; minimize their environmental, social, and economic effects; reduce the number of displacements resulting from their implementation; and give departments of transportation and transit agencies the opportunity to develop projects in a deliberative fashion. However, efforts to obtain control of or otherwise protect the rights-of-way for planned transportation facilities have historically been too informal and uncoordinated to realize these benefits.

Despite federal support of corridor preservation, the performance of many states in this area has been inconsistent. This performance has been attributed to budgetary issues and regulatory constraints. Advance fee-simple land acquisition, a traditional corridor-preservation technique, has posed a variety of problems. Other techniques, particularly those raising regulatory takings issues, have presented various challenges. However, several recent federally sponsored pilot projects are demonstrating that states can successfully pursue corridor preservation.

NATIONAL ATTENTION TO CORRIDOR PRESERVATION

Corridor preservation was formally elevated to the level of national importance by ISTEA. One of the act's important provisions was to require the Secretary of Transportation to consult with states and MPOs in drafting a report containing a national list of rights-of-way, an estimate of the cost to protect them, and a strategy for preventing their loss. "Preservation of Transportation Corridors: Report of the Secretary of Transportation to the United States Congress," which was released in 1993, listed 1,561 corridors—586 of which were identified by local gov-

ernments and MPOs and 975 of which already exist—that should be preserved. These corridors, totaling more than 30 000 kilometers (18,000 miles), are currently associated with existing transportation facilities or are earmarked for future passenger and light rail lines, highways, pedestrian and bike paths, and recreational trails. The report estimated the cost of preserving the existing corridors at nearly \$3 billion (Table 1) and the cost of preserving the proposed corridors at nearly \$2 billion (Table 2).

The Federal Highway Administration has actively promoted corridor preservation, initiating three projects to research pertinent issues and educate the transportation community. The first project, a series of case studies from the states of Arizona, California, Delaware, Florida, Georgia, Nevada, North Carolina, Oregon, and Utah, culminated in the 1993 FHWA publication *Corridor Preservation, Case Studies and Analysis of Factors in Decisionmaking*. The second project involved the development of a two-day training course on successful corridor-preservation techniques, which the administration has offered to state transportation officials (1). The third project is an ongoing study addressing barriers to such preservation. In addition, the administration has sponsored pilot projects demonstrating such techniques in Delaware, New Jersey, and North Carolina.

Even before the enactment of ISTEA, the American Association of State Highway and Transportation Officials had highlighted the importance of corridor preservation. In 1990 the AASHTO Task Force on Corridor Preservation published a report that was followed by a series of research efforts to analyze the specific benefits of and barriers to corridor preservation. In general these reports and studies have promoted formal programs and strategies to meet the goals of such preservation.

PRESERVATION TECHNIQUES

Many techniques have been used to preserve transportation corridors. One traditional technique is protective buying, whereby land for trans-

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portation projects is acquired well in advance of project implementation. Aided by a revolving fund made available through FHWA, states have sporadically engaged in protective buying for more than 25 years. Environmental compliance issues, lack of funding, and the difficulties of long-term property management have discouraged wider use of this technique.

In light of these obstacles, states perceive protective buying to be one of the least desirable ways to preserve transportation corridors. They have turned instead to a variety of measures that do not involve fee-simple land acquisitions—for example, exacting property from landowners, prudently applying subdivision control and development ordinances, transferring or buying development rights, purchasing options, and creating access management programs to protect the capacity of existing facilities.

The exercise of these regulatory powers is preferred to fee-simple acquisitions because it avoids long-term property investments while preserving the local tax base. But this exercise is not without drawbacks and limitations. Two primary concerns are the need for close coordination between state and local officials and the issue of regulatory takings—government-imposed limits on the private use of property that are deemed excessive by the courts. Many court decisions have shaped the current law dealing with regulatory takings, including *First English Church v. County of Los Angeles*, 482 U.S. 304 (1987); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992). The issue of regulatory takings is particularly germane in the context of maps of reservation.

RESERVATION OR REGULATORY TAKING?

A map of reservation, which is also referred to as an alignment-preservation map or corridor map, enables land within a proposed transportation corridor to be reserved for possible future acquisition. The map is typically recorded or otherwise filed with county and local agencies responsible for issuing land-development approvals. The primary purpose of such a filing is to provide notice of the project sponsor's intent. In general, approvals of subdivision, site plan, building permit, or similar development-related applications are withheld by the approving authority for a statutorily determined period of time, giving the project sponsor the opportunity to purchase all or part of the property in question or otherwise negotiate an agreement with the landowner concerning competing land uses.

TABLE 1 Existing Corridors

		Corridors	Mileage	Cost (Millions)
Local	RR	100	1,496	383
	Other	397	3,146	665
	Total	497	4,642	1,048
State	RR	110	2,889	144
	Other	368	6,921	1,780
	Total	478	9,810	1,924
Total		975	14,452	2,972

Note: Costs are based on 635 corridors or roughly 65 percent of the existing corridors listed in the Secretary of Transportation's 1993 report to Congress.
Source: "Preservation of Transportation Corridors: Report of the Secretary of Transportation to the

TABLE 2 Proposed Corridors

		Corridors	Mileage	Cost (Millions)
Local		379	1,892	845
State		207	1,951	1,086
Total		586	3,843	1,931

Note: Costs are based on 341 corridors or nearly 60 percent of the proposed corridors listed in the Secretary of Transportation's 1993 report to Congress.
Source: "Preservation of Transportation Corridors: Report of the Secretary of Transportation to the United States Congress, 1993"

Since their inception, maps of reservation have been controversial. Government has viewed such mapping as the legitimate exercise of police powers. But it has been argued that maps of reservation result in the unconstitutional taking of property without just compensation because they prohibit development, albeit temporarily.

Florida's experience with maps of reservation is noteworthy because of the ways in which its supreme court has regarded their constitutionality. In 1988 the Florida legislature adopted a transportation bill that proactively supported corridor preservation. The statute, which enabled the Florida Department of Transportation and the state's municipalities to designate and protect critical transportation corridors, included a provision for the preparation and recording of maps of reservation. The Florida Supreme Court declared the statute unconstitutional. In *Joint Ventures, Inc., v. Department of Transportation*, 563 So. 2d 622 (Fla. 1990), the court found no distinction between the moratorium on development and the depression of land values in anticipation of condemnation proceedings.

In response to the *Joint Ventures* decision, the Florida legislature modified the statute but continued to provide for the filing of "roadway corridor official maps" to inform the public of planning efforts and to help avoid conflicting development.

Local jurisdictions are now required to notify the department of proposed zoning changes and applications by landowners for subdivisions or building permits affecting the mapped right-of-way. Such notification must occur at least 60 days before the local jurisdiction takes any action. Within 45 days thereafter, the department must inform the property owner of its intention to acquire the property and must then acquire the property within 120 days or otherwise initiate condemnation proceedings.

Pursuant to Florida's revised legislation, Palm Beach County filed a thoroughfare map to protect and acquire existing and future rights-of-way in keeping with the county's comprehensive plan. Distinguishing the county's circumstances from those present in the *Joint Ventures* case, the Florida Supreme Court upheld the constitutionality of this map. In *Palm County v. William Wright et al.*, 641 So. 2d 50 (Fla. 1994), the court considered the county map to be somewhat analogous to a setback requirement. Specifically the court found that the county's map affected development only "to the extent necessary to ensure compatibility with future land use" and that without the map,

"the county's ability to plan for future growth would be seriously impeded." While the court concluded that the occurrence of a taking can only be decided on a case-by-case basis, the *Palm County* decision remains significant as one of the first judicial acknowledgments of alignment-preservation mapping as a legitimate long-range planning tool.

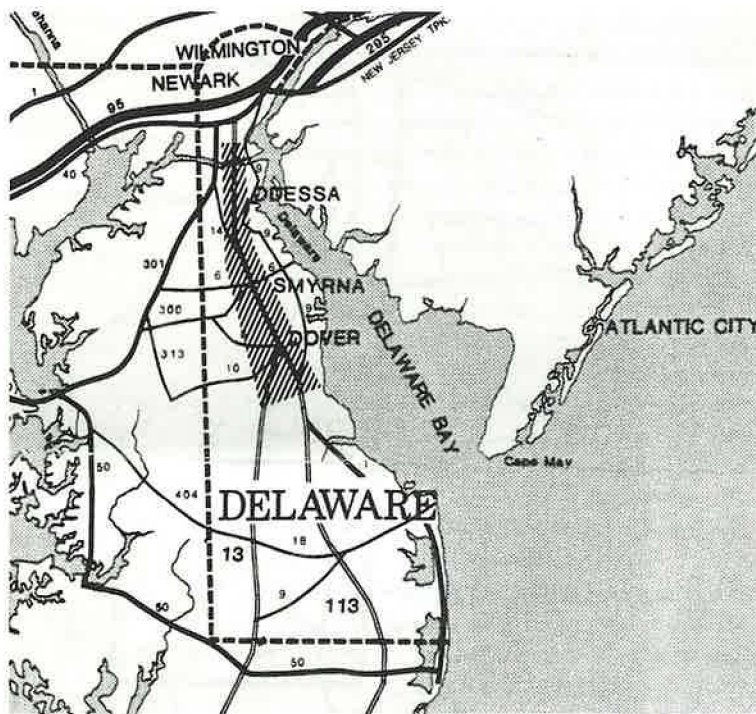
PILOT CORRIDOR PRESERVATION PROJECTS

The Intermodal Surface Transportation Efficiency Act emphasizes the need for advance systems planning and community involvement in efforts to protect transportation corridors. The importance of these proactive steps is demonstrated by the FHWA-sponsored program of pilot projects to promote innovative corridor preservation measures. These projects, which are taking place in North Carolina, Delaware, and New Jersey, are described in *NCHRP Synthesis of Highway Practice 197, Corridor Preservation* (2).

Projects in the Asheville urban area and the North Wilkesboro-Wilkesboro area of North Carolina have focused on involving resource agencies and the local community in the early stages of planning for transportation systems. As part of this effort, the North Carolina Department of Transportation performed an environmental and alternatives analysis during the systems planning phase to address the transportation needs of five locations in the Asheville urban area. In assessing these corridors, the department sought and received considerable input from federal and state agencies, local and regional governments, and the public.

In a report on the first phase of its environmental analysis, the department documents the public-involvement process and coordination efforts among stakeholders and resource agencies that led to the identification of preferred alternatives. Representatives of the area metropolitan planning organization and several state and federal resource agencies indicated their concurrence by signing the report, acknowledging early corridor protection of thoroughfare alignments as a primary goal. In addition, local and county officials signed several resolutions contained in the report to protect the preferred corridors from development to the extent possible.

The goal of Delaware's pilot project is to protect the capacity of U.S. Route 113/SR-1, a major north-south artery. This goal is being achieved by using access-management techniques and implementing a process for identifying rights-of-way that may be beneficial for future highway



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improvements. The effectiveness of the plan hinges on the coordination of county transportation planning and the uniform application of subdivision and access criteria to properties and land uses within individual corridors. Given that these criteria are being more consistently used in the state's transportation planning, and county and local governments are now collaborating with the Delaware Department of Transportation in that planning, the project is no longer viewed as a pilot effort.

The goal of New Jersey's pilot project is to preserve a corridor proposed for a bypass of existing Route 31 in Flemington. The planned roadway consists of approximately 6.6 kilometers (4 miles) of new alignment that is intended to reduce through traffic on Route 31 in Flemington Borough and improve traffic flow at the Flemington Circle. But proposed development throughout the corridor has threatened the environmentally preferred alternative. Without the preservation of key land parcels, the project would be forced into environmentally sensitive areas and perhaps abandoned as a result.

Like DelDOT, the New Jersey Department of Transportation embarked on a program of close coordination with local and county government. In this case, however, the primary planning tool was an alignment preservation map. Traditionally, NJDOT files such a map after an environmental impact statement is approved. In the case of the Route 31 Flemington Bypass project, the department filed the map before approval to avoid the possibility of losing the corridor to development during the environmental approval process. This proactive step, which was taken during the early planning stages of the project, gave stakeholders, authorities with approval powers, and the general public notice of the department's serious intent to advance the bypass project. The department was able to acquire key parcels when FHWA made federal revolving funds available for advance acquisitions during the development moratorium created by the map filing. To date, approximately \$7 million of federal funding has been dedicated to such acquisitions as New Jersey moves the bypass project toward construction.

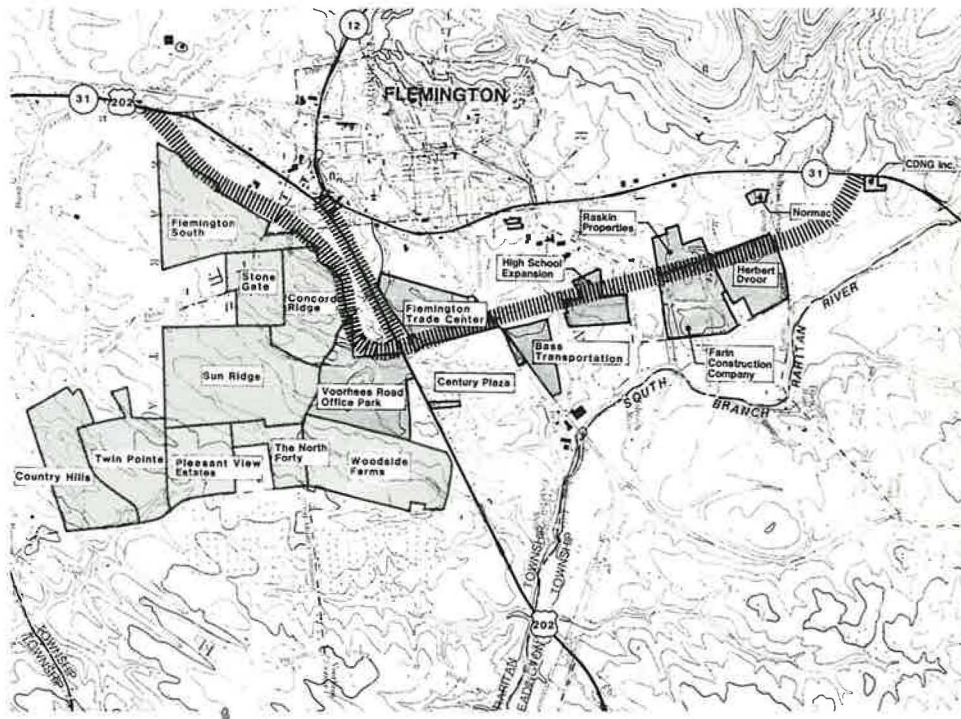
RECOMMITTING TO CORRIDOR PRESERVATION

States have a clear interest in preserving transportation corridors. Congress has recognized this interest by giving corridor preservation a place in federal transportation law. However, policy and practice in this area remain inconsistent. Lack of funding, coupled with a slowdown in growth in

the 1990s, has eroded the momentum generated by AASHTO's Task Force on Corridor Preservation. It is now up to the states to recommit themselves to corridor-preservation programs, thereby reducing the direct costs of transportation projects and minimizing their environmental, social, and economic effects. States can do this by taking advantage of ISTEA's general systems planning and public involvement mandates; by promoting joint efforts with county and local governments; and by reasonably interpreting environmental regulations in the context of the congressional intent to preserve corridors. The successful preservation of transportation corridors will serve the public well by giving agencies the opportunity to assess project impacts and undertake project development in an orderly and deliberative fashion.

REFERENCES

1. Rivkin Associates, Inc. *Corridor Preservation*. Training Course Manual Prepared for National Highway Institute/Federal Highway Administration. April 1992.
2. Maiorana, J. *NCHRP Synthesis of Highway Practice 197: Corridor Preservation*. TRB, National Research Council, Washington, D.C., 1994.



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