

APPENDIX I

CMPO 2025 Long Range Transportation Plan

Corridor Preservation Techniques

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I. Introduction

Recognizing future transportation needs and protecting transportation corridors is an important step in providing for the future needs and growth of a transportation system. Corridor preservation includes protecting future as well as existing transportation corridors.

Corridor preservation must coordinate the application of various measures to obtain control of or otherwise protect the right-of-way for a planned transportation facility . Corridor preservation techniques should be applied as early as possible after the transportation corridor is identified, either along a new alignment or along an existing facility, to:

- Prevent inconsistent development;
- Minimize or avoid environmental, social and economic impacts;
- Reduce displacement;
- Prevent the foreclosure of desirable location options;
- Allow for the orderly assessment of impacts;
- Permit orderly project development; and
- Reduce cost.

Corridor preservation measures need to be implemented where one or more of the following factors exist:

- Failure to protect a corridor could force the project into an environmentally sensitive area.
- Significant development in the corridor is imminent.
- Land values are escalating rapidly.
- The need for a project in the corridor has been identified.
- The proposed transportation improvement is expected to be a priority within the next 10 to 15 years.
- Failure to protect a corridor could ultimately result in many more relocations.
- Cooperation from local jurisdictions and the private sector can be obtained in protecting a corridor .

II. Benefits

Corridor preservation can play a significant role in the transportation planning and project development process, and in the avoidance of environmental

damage. Corridor preservation seeks to control development that may occur within a proposed corridor so that needed improvements can be provided. Studies done as the basis for corridor preservation should also result in the selection of transportation corridors that not only minimize environmental harm but also provide opportunities for environmental enhancements. A new location may not serve transportation needs as well as the original corridor and also may be more damaging environmentally.

Corridor preservation can also provide major benefits to local governments in their planning and land use control programs. It also can provide benefit to the development community by providing more predictability in the marketplace. By fixing the location of important transportation corridors that are a major determinant of new development, corridor preservation can allow developers to adjust their development strategies accordingly and thereby encourage more orderly and appropriate development in metropolitan and rural areas. In other words, uncertainties about the location of transportation facilities that otherwise would frustrate local planning and land use regulation are removed by corridor preservation. The designation of transportation corridors in a corridor preservation program provides certainty by indicating where major transportation improvements will be located. Developers and local governments can rely on these corridor designations when they plan and review new development projects.

Corridor preservation provides a basis for land acquisition and regulatory powers that maintains the integrity of transportation corridors. Corridor preservation provides the basis for protective "key parcel" acquisition when the integrity of a transportation corridor may be impacted by new development. Corridor preservation can also include regulatory powers that protect transportation corridors from intrusive development.

The remainder of this Appendix discusses methods for preserving existing or future corridors.

III. Techniques for Preserving Future Corridors

Transportation corridors can be designated at any point in the development cycle for a transportation project. To implement the mandate of Federal Law, states and regional agencies will at least have to "consider" corridor preservation in the preparation and adoption of long-range transportation plans.

Preservation also is useful to protect a preferred alignment selected and approved after completion of the full National Environmental Policy Act (NEPA) process and after other environmental requirements are satisfied. The use of corridor preservation at this later time, close to actual construction, has been the type of corridor preservation program historically used in the highway planning and construction processes.

The principal responsibility for land use planning, zoning, and development approvals is at the local government level. For corridor preservation to be done in a cost-effective manner, it will require the local jurisdictions to cooperate. The local government's decision-makers are the individuals who make land use policy for each jurisdiction. It is important that these policy makers are involved and informed through the entire process. Without their support, corridor preservation programs would not be possible at the local level.

IV. Alternative Techniques for Corridor Preservation

Among the measures most commonly used in corridor preservation are *regulatory powers* to prevent and control development in transportation corridors and the *acquisition of key parcels of land* in these corridors when development of these parcels is threatened. Statutes in many states authorize the use of these two measures, and a number of states and local governments have made use of this statutory authority. We define a state or local "corridor preservation" program as one in which either or both of these measures is used on a continuing basis in an effort to preserve corridors for transportation facilities.

In reviewing these measures keep in mind there is an important tradeoff between *police power measures*, that, if properly applied, do not require payment of compensation, and the *acquisition of land* for corridor preservation, which requires payment of compensation. Police power measures are the regulatory controls, such as zoning and subdivision controls, that local governments adopt to regulate land development. Police power measures are the preferred corridor preservation technique. The environmental review requirements in federal legislation do not apply because police power measures do not require federal or any other funding from government.

Because corridor preservation has important effects on land development, and because state transportation agencies do not exercise planning and development control powers, there is a tendency in corridor preservation programs to rely heavily on the exercise of these powers by local governments. State legislation, based on model acts published in the 1920s, has for decades authorized local governments to adopt comprehensive plans and to engage in zoning and the control of the land subdivision process. All of these powers are important in corridor preservation programs. Zoning controls land uses in transportation corridors. In the subdivision control process, local governments have required developers to dedicate to public ownership land they own that is located in transportation corridors.

Local governments also use other more recent and innovative development control techniques in corridor preservation. For example, local governments are often willing to transfer the density that could have been built on a developer's land within a corridor to the remaining part of the developer's land that is outside the corridor. Because the density allowed in a development is not decreased,

this density transfer should resolve the taking issue that could otherwise arise. Density transfer, like other innovative measures used in corridor preservation, is not usually authorized by state zoning legislation.

Other development controls, such as the exaction requirement noted above, may also require statutory authorization. Indeed, it is a major finding of this study that many of the applications of planning and development controls required in corridor preservation are not authorized by the typical state planning and development control act. Careful attention must be paid to providing the necessary authority for new and innovative controls if corridor preservation is to be effective.

Based on current federal and state laws, there are a number of different means of preserving future transportation rights-of-ways. The different techniques available for preservation and protection of rights-of-way fall into four main categories:

- A. Control of private property development through reasonable government regulation pursuant to that governments inherent police power and dedication by exaction. Examples of these techniques include zoning and setback ordinances. However, these must be done in context of the state enabling laws.
- B. Early governmental acquisition of fee simple interest in the property combined with "land banking" for the interim period.
- C. Acquisition of some interest in land less than fee simple or other right in order to preserve the property in a static condition. Examples include conservation easements, preservation easements, scenic easements, and development easements. This could also include the purchase of an "option" on the property for future fee purchase.
- D. Governmental inducements to property owners for maintaining open areas. An example of this is the technique of transfer of development rights which provides a method of compensating property owners in a non-monetary way for maintaining land in a static or undeveloped conditions.

One or a combination of the above methods should be given consideration when determining the best method to use for preserving a transportation corridor. Whatever technique is used for corridor preservation and property acquisition, it will be necessary to consider environmental factors. Also, the mutual communication and coordination in corridor protection of state and local government agencies and use of an appropriate combination of innovative regulation, early acquisition, and incentives for property owner donation will insure a successful program.

V. Preservation of Existing Transportation Corridors

Corridor preservation can also be applied to existing highways and other existing transportation facilities. Corridor preservation for existing transportation facilities, such as highways, can maintain and preserve capacity and safety, and retain options to enhance or increase existing capacity. This objective can be achieved through access management programs that improve traffic flow.

The haphazard development of land with little or no regard for the existing road networks will lead to a myriad of problems. As disjointed development takes place along a street, the proliferation of access points also increases. Indiscriminate and haphazard land development policies and poor access management controls will cause an existing transportation facility to lose its ability to maintain the traffic capacity and safety it was originally designed for.

VI. The Corridor Preservation Priority Checklist

Importance of the Corridor

How important will the corridor(s) be in the system needed to serve the area's development pattern in the early years of the twenty-first century ?

Immediacy of Development

How imminent is the threat of development? Will the transportation corridor or strategic parcels be lost .if nothing is done to prevent development before construction funding becomes available? Are there key locations (e.g., river crossings, environmental features that must be avoided, etc .) that are critical to successful project execution?

Risk of Foreclosing Options

If development does occur in the potential alignment, what options will be foreclosed? Will the remaining options be potentially far more damaging to environmental, economic, and social values ?

Opportunity to Prevent Loss of the Corridor

Is development in the corridor still sufficiently modest that early protective action can make a difference ? Are tools available - other than outright early acquisition of right-of-way that can be employed to protect the corridor?

Strength of Local Government Support

Will the affected communities do their share to help? Do they have tools at their disposal that can be employed?

VII. Steps in Strategy Formulation

Necessary corridor preservation steps are shown below:

- Inventory Available Powers and Resources (and initiate measures to secure needed legislation, demonstration project authority, funds, staff, etc.)
- Evaluate and Select Techniques
- Organize the Transportation Agency Internally to Perform the Tasks
- Cement External Support for Corridor Preservation

VIII. Selecting Techniques

The following techniques can be used for interim protection or preservation

Technique	Interim Protection	Preservation
Fee Simple Acquisition		XX
Development Easement Acquisition		XX
Landowner Donations		XX
Public/Private Partnerships		XX
Options to purchase at future date	XX	
Access Control and Management	XX	XX
Official Maps of Reservation	XX	
General Plan Corridor Designations	XX	
Zoning and Subdivision Controls Requiring Setbacks	XX	
Zoning and Subdivision Controls Requiring Dedications/Exactions		XX
Agricultural Zoning	XX	
Transferable Development Rights to Other Properties or Land Swaps		XX
Density Transfer Within Single Property	XX	
Interim Uses on Right of Way	XX	
Irrevocable Offers to Dedicate	XX	
Highway Right of Way Platting	XX	
Developer Agreements (commitment to preserve)	XX	
Tax Abatement	XX	
Voluntary Developer Reservations	XX	
Special Assessment Districts Involving Right of Way Dedications		XX

Preservation measures definitively ensure that right-of-way is, or will be, available for an approved transportation facility when needed. They invariably involve transfer of title or other rights to a public agency or, in the case of a toll facility, to a private transportation corporation

Interim protection measures are those which serve, or combined with other measures can help to hold land out of development until purchase can be made or title otherwise transferred. They buy time and provide temporary assurances, without ironclad guarantees that a particular site will actually be available for transportation purposes.

Preservation measures, except for landowner donations and required dedications, may require more capital outlay in the short run, e.g., for fee simple or easement purchases. They are best used when planning and environmental reviews have reached the stage for delineating right-of-way lines with some precision and/or when key parcels such as future interchanges are under such imminent threat that only early purchase can preclude development.

Interim protection measures, on the other hand, require minimal direct cash outlays, although they should be considered a prelude to ultimate acquisition by the transportation agency. Protection measures often require considerable staff work and close coordination with local government. Local government exercises many of these through the police power, through taxing power in the case of tax abatements, or through negotiations with developers. Protection measures are frequently employed well before alignments reach definitive design stage or final environmental clearance. These are useful prior to private sector construction when developers or owners dedicate, donate, or sell property to the transportation agency; and/or before the transportation agency has sufficient funds available for acquisition of the entire right-of-way.

Access management and control may reflect elements both of preservation and interim protection depending on the methods employed. Acquisition of partial interests in property is preservation (such as denial of access along a highway or acquisition of rights-of-way for access roads that results in removal of entrances onto an adjacent highway). Policies such as restricting entrances or setting minimum spacing requirements are typically interim protection measures involving the police power

In actual practice, most case studies of individual corridors demonstrate combinations of interim protection and preservation measures used at various points in the process of facility planning and design. Moreover, each State that follows a systems approach to statewide or regional preservation advocates (and employs) combinations of interim protection and longer-term preservation techniques.

There are risk factors associated with these measures. Until final environmental clearance is granted (for projects involving any kind of Federal action) there is always the risk that protected or preserved right-of-way may not be used for the transportation facility. Protection or preservation, by whatever means, cannot be permitted to prejudice the Environmental Impact Statement (EIS) process under NEPA rules. Presumably, the risk that no project will occur in the corridor lessens as the stages of planning and project development progress.

Which tools are better for early stages in the process and which are best used more extensively later? One generally applicable principle is to minimize the amount of capital tied up in long-term land holdings. This would mean emphasizing interim protection-type measures and voluntary agreements in the early stages and only gradually increasing investment-type outlays as the facility clears its successive approval hurdles.