

Office of Real Estate Services - Project Development Guide

Chapter 5

Early Project Development

**National Environmental Policy
Act of 1969 (NEPA), as amended**

FHWA Environmental Review Toolkit
<http://environment.fhwa.dot.gov/index.asp>

FHWA Environmental Handbook
<http://environment.fhwa.dot.gov/guidebook/index.asp>

ENVIRONMENTAL RESOURCES

Early project development is that stage following the inception of the project when much of the preliminary planning is accomplished. This chapter describes the role of the right-of-way (ROW) section during this critical phase of a project.

5.1. PRELIMINARY ROW STUDIES

One of the earliest activities involving the acquisition section will be preliminary engineering and the environmental process. ROW cost estimates and other studies regarding acquisition and relocation impacts will be needed and requested periodically.

5.1.1. RIGHT-OF-WAY COST ANALYSIS AND OTHER STUDIES

During this phase of a project, the ROW staff will become involved in preparing various estimates and other studies, including compiling special information for the environmental impact assessment, required for all projects. ROW staff will be asked to inspect various alignments, and make note of special problems or unusual circumstances that are not revealed by aerial photography. ROW is expected to deliver accurate cost estimates of the property value on the various alignments. A thorough understanding of the real estate market in the project area is important to provide reliable cost estimates.

This chapter describes the role of the ROW staff during early project development.

SUMMARY

ROW staff may be expected to assist with identifying and providing cost impacts covering the following:

- Noise abatement. This may involve a cost analysis of appropriate mitigation measures (i.e., noise walls, berms, cuts, and fill) to achieve noise reduction on adjacent property.
- Property access. Most state laws require that reasonable access be maintained. If reasonable access is not maintained, then appropriate damages may be considered as part of the cost estimate.
- Neighborhood boundaries.
- School districts.
- Fire and police protection.
- Recreational facilities.

Wetland and floodplain impacts are mainly the purview of engineering and environmental personnel. Mitigation can be a ROW matter where alternatives are needed for properties located in flood plains or wetlands.

IMPACTS AND MITIGATION

- Wetlands and/or floodplain impacts.
- Land use impacts. Participation in the descriptions of current development trends and researching state/local plans with regard to land use and growth in the project area may be assigned to ROW.
- Sites required for disposal or borrow areas. Acquisition costs are often necessary requirements of the preliminary engineering phases of a project.
- Historic properties.

ROW staff should be involved early in the public meeting phase of the project. Public involvement is advantageous because local reaction to a project is expressed. Public involvement in this function is a method of broadening an agency's knowledge of the project area so as to plan the highway facility to meet the needs of the majority of citizens. This forum provides an excellent opportunity to discuss the general ROW acquisition and relocation impacts with those affected persons. It can also serve as an initial relocation contact.

5.1.2. PUBLIC HEARINGS

Per 23 Code of Federal Regulations (CFR) 771.111(h), for the Federal-aid highway program each state must have an approved procedure to carry out public involvement. Public hearings provide a forum through which citizens can have input in the planning process. Regulations require that the public be informed early, even during the planning process. Public involvement techniques may involve town hall meetings, informal meetings around a table, or formal public hearings. The state Departments of Transportation (DOTs) have developed different types of public involvement techniques to assure that the public is adequately informed of the project. If a formal public hearing is held, the property acquisition phase is described within that setting. The most difficult part of any project is the acquisition of property and/or displacement of people and businesses that results because of the project. Difficult, because it is the phase when the acquiring agency has to deal with the people that are most affected by the project. Most often, the property owners that live directly on

and adjacent to the project do not see its importance when balanced against their desires and needs. Often the project means disruption of their business, or disruption of their lifestyle with their friends, families, and neighbors. As a result, the property owners from whom the ROW must be purchased are often hostile and unwilling to consider reaching a friendly agreement. The public hearing can be their first informational contact with project authorities and become a forum for getting and giving information. State DOTs have procedures approved by the FHWA for public involvement or public hearing programs pursuant to 23 U.S.C. 128 and 40 CFR, parts 1500-1508. See <http://environment.fhwa.dot.gov/projdev/tdmpubinv2.asp>.

The public involvement or public hearing procedures provide for:

- Coordination of public involvement activities and public hearings with the entire NEPA process.
- Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.
- One or more public hearings or the opportunity for hearing(s) to be held by the state DOT at a convenient time and place for any Federal-aid project which requires significant amounts of ROW, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.
- Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice shall also provide information required to comply with public involvement requirements of other laws, Executive Orders, and regulations. See 23 CFR 771.111(h).

Acquisition agents can make a significant contribution in the public involvement process. Through attendance at the public hearings, the agent can be a public relations asset to the highway agency. It is at this stage of the planning process that many citizen concerns can be alleviated by answering questions and making ROW acquisition and relocation brochures available. At the hearing the ROW staff will be asked many questions about the effects of the project on the area and properties. The ROW staff should be able to sensitively and accurately answer the questions posed. If an answer cannot be given, the agent should refer the individuals in the right direction for the answer. The agent should be fully informed about the project but should not engage in speculations or assumptions. Misinformation can do much to damage the credibility of the agency, therefore it is important to present the facts in an open manner. This becomes even more important as the acquisition process progresses to the negotiation stage. As the project progresses and the location and design become more defined, the acquiring agency may conduct an additional meeting to address only ROW issues on major projects. This type of meeting offers those property owners affected by the project a more detailed look at the process that lies ahead for them.

5.1.3. WHOLE AND PARTIAL ACQUISITIONS

During the early phase of a project the ROW needs may not be defined clearly enough to

differentiate between what will be a whole take and what will be a partial take. Cost estimates may consider only whole parcels to be acquired if that would provide useful data. Costs of partial acquisitions including damages to the remaining properties and project overhead can be factored into an estimate, usually based on actual cost experience on completed projects.

5.1.4. ENVIRONMENTAL STUDIES

An environmental impact assessment is required by the NEPA of 1969, as amended. The purposes of NEPA are generally:

"To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere (that life zone, from 1000 feet above the surface to 500 feet below the surface) and stimulate the health and welfare of man..."

NEPA mandates a *systematic, interdisciplinary approach be used in assessing the impact of a project*. The level of this analysis will vary with the type of project being proposed. A project on new alignment probably will require an extensive analysis (an environmental impact statement). On the other hand, an environmentally non-complex intersection improvement project, such as a signal project may not require any analysis (a categorical exclusion). Regardless of the type of project encountered, early involvement in the environmental process by ROW is necessary. ROW can contribute to the process by assisting in the identification of wetlands, park lands, historical sites (which include land as well as buildings), flood plains, and archaeological sites. By using its knowledge to provide estimates and evaluations when and where necessary, ROW can play an important role in the early project development process. ROW should be proactive rather than reactive in this area. Experience dictates that in the environmental area in particular, early identification and verification of sensitive issues can save an enormous amount of pain and aggravation over the long term.

A proposed project has three possible levels of environmental assessment: Categorical Exclusion (CE), Environmental Assessment (EA) or Environmental Impact Statement (EIS). Project actions which do not individually or cumulatively involve significant social, economic, or environmental impacts result in a CE or EA.

A further mandate of NEPA is to *insure that presently unquantifiable environmental amenities and values may be given appropriate consideration* in the decision making process along with economic and technical considerations. This means that environmental amenities which may be identified but not measured can be taken into consideration during the decision making process along with the cost to mitigate an impact and the technical ability to mitigate an impact.

A third mandate of NEPA is to *insure that environmental impacts and project alternatives are developed prior to the implementation of Federal-aid programs*.

The primary purpose of this process is to serve as a decision making tool to ensure that environmental objectives are considered in the highway development process. This process is the

basis for decision making and provides a record of supportable actions which are taken to avoid, or at least minimize, adverse impacts or which enhance the quality of the human environment.

In addition to Federal requirements there are often additional state laws and regulations that are taken into consideration. With the exception of hardship and protective buying, the environmental process must normally be completed before ROW authorization to acquire using Federal-aid funds can be given.

During the environmental analysis process, the ROW agent can assist project development staff by actively participating and identifying environmental problems and solutions caused by:

- Social and economic impacts
- Acquisition impacts
- Relocation impacts
- Other project impacts

The list highlights conventional areas where past ROW involvement has taken place. Another area in which ROW staff can assist is environmental mitigation efforts. For example, if a dwelling or household is severed from its subdivision, it may be acquired due to its isolation from the larger community.

There is usually a requirement that no net loss of wetlands occur as a result of a project. This may dictate that the agency buy replacement land for the wetlands taken. It is important for ROW staff to work closely with their environmental counterparts in order that sensitive environmental areas involving ROW issues are addressed appropriately.

5.1.4.1. RELOCATION SURVEYS

The early stage of project development is the best time to identify and estimate the impact of the project on potential displaced persons, businesses and farms. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) Section 205(a) requires that programs or projects be planned so that the problems associated with displacements are identified at an early stage and resolution of those anticipated problems is provided. For relocation, the objective is an orderly and humane relocation of persons displaced by a project without creating adverse impacts or costly delays to the project. Relocation studies should be initiated during early project development, be continued through the environmental analysis, and culminate in a relocation study appropriate for the particular project. The factual information should indicate if orderly relocation can be achieved. If problems are revealed early in the planning process, various solutions may be considered. Solutions could include extension of lead time, alignment and plan changes prior to construction, or undertaking clearly defined mitigation measures.

While a formal relocation plan is not required for approval of a project to proceed, relocation planning is required. Therefore, an agency may find it advantageous to prepare a relocation study. Such a relocation study should be performed in concert with the EA. Study preparation is not difficult and involves several logical steps:

1. The preparation of an inventory of characteristics and needs of individuals, families, businesses and non-profit organizations and farms to be relocated.
2. A survey of the real estate market to determine if an adequate supply of comparable replacement housing and suitable replacement locations for businesses and farms will be available to meet the needs of the displaced persons in a timely manner.
3. An analysis of the problems anticipated in the relocation of the occupants including any special relocation advisory services that may be necessary.
4. Proposed solutions for resolving anticipated problems.

After the final alignment has been identified the detailed relocation planning process can begin. The first step is to find out who and what will be displaced by the project. A review of the project and surrounding area will provide general information about potential displaced persons. In addition, checking with public and private agencies may provide more information about services to the area.

How data on relocation is compiled will depend on the number of displacements, lead time to do the work, and its purpose. The best way to ascertain who will be displaced and to learn about potential problems is to conduct personal interviews with those affected by the project. Information so obtained should be accurate, but will require more time than surveying secondary sources such as government offices and securing census data. Census data is usually several years old before it is available and is based on a geographic section of the population which will not necessarily be coincident to a strip acquisition. Information about the project and the potential relocation benefits and assurances should also be provided to counteract rumors or other misinformation.

The survey form designed for obtaining the inventory data should be adequate to address, as a minimum:

- family size;
- owner or tenant status;
- income range;
- special needs (handicapped, elderly, etc); and
- size of dwelling and number of bedrooms.

Businesses, farms, and non-profit organizations should be surveyed and interviewed to determine the type of operation, number of employees, and relocation needs. Either a preliminary survey form or an occupant needs questionnaire can be used to conduct interviews. At this early stage, if the occupant needs questionnaire is used, only those items necessary for planning purposes need be completed. A sample of a residential relocation occupant needs questionnaire is attached at the end of this chapter.

After completing the survey, a tabulation can be made of replacement housing required based on the standards for comparable replacement housing, including price or rental range, number of bedrooms required, and size. Other correlation items should be added, as appropriate. A similar tabulation should be completed for businesses and farms.

The inventory of characteristics and needs should indicate possible problem areas concerning the various methods to be used in providing replacement housing where shortages are discovered. The relocation information should be summarized in sufficient detail to adequately explain the relocation situation including anticipated problems and proposed solutions. The relocation estimates must be accurate enough so that the writers of the environmental documents will be able to assure an adequate:

- a. Estimate of the number of households to be displaced, including the family characteristics (e.g., minority, ethnic, handicapped, elderly, large family, income level, and owner/tenant status). However, where there are very few displacees, information on race, ethnicity and income levels should not be included in the environmental document to protect the privacy of those affected.
- b. Discussion of available comparable (decent, safe, and sanitary) housing in the area with the housing needs of the displacees. The comparison should include:
 1. price ranges;
 2. size of dwellings and number of bedrooms; and
 3. occupancy status, i.e., owner or tenant.
- c. A discussion of any affected neighborhoods, public facilities, nonprofit organizations, and families having special composition (e.g., ethnic, minority, elderly, handicapped, or other factors) which may require special relocation considerations and the measures proposed to resolve these relocation concerns.
- d. A discussion of the measures to be taken where the existing housing inventory is insufficient, does not meet relocation standards, or is not within the financial capability of the displacees. A commitment to last resort housing should be included when sufficient comparable replacement housing may not be available.
- e. An estimate of the numbers, descriptions, types of occupancy (owner or tenant), and sizes (number of employees) of businesses and farms to be displaced. Additionally, the discussion should identify:
 1. sites available in the area to which the affected businesses may relocate;
 2. likelihood of such relocation; and
 3. potential impacts on individual businesses and farms caused by displacement or proximity of the proposed highway, if not displaced.
- f. A discussion of the results of contacts, if any, with local governments, organizations, groups, and individuals regarding residential and business relocation impacts, including any measures or coordination needed to reduce general and/or specific impacts. These contacts are encouraged on projects with large numbers of displaced persons or complex relocation requirements. Specific financial and incentive programs or opportunities (beyond those provided by the Uniform Act) to residential and business displaced persons to minimize impacts may be identified, if available through other agencies or organizations.
- g. A statement that :
 1. the acquisition and relocation program will be conducted in accordance with the

Uniform Act; and

2. relocation resources are available to all residential and business displaced persons without discrimination.

5.1.4.2. SURVEY OF REPLACEMENT PROPERTIES

It is advisable to prepare a survey of available comparable replacement housing, business and non profit organization sites, and farm properties. The inventory of characteristics and needs should reflect the types of units to be included in a survey of replacement properties. This survey may be prepared at the early stage of project planning and later updated before the acquisition stage of the project.

The survey and subsequent analysis must indicate the availability of sufficient comparable replacement housing for those individuals and families to be displaced. Otherwise the use of Housing of Last Resort should be considered. The standards for comparable replacement housing must be used as the basis for this inventory and the housing selected must be decent, safe, and sanitary. Listings of currently available, comparable residential units for sale and for rent in the general price range and rental range of the properties to be acquired can be collected from multi-list services, realtors, newspapers and magazines. The listings should be adequate for comparison with the needs inventory and should equal or exceed the number of units being acquired. The determination that an adequate supply of comparable housing and other required properties will be available, should be well-supported. In the same manner, available businesses and farm properties should be analyzed.

If acquisitions and relocations are expected to cover a significant time span, additional consideration should be given to properties that would become available over such a time span. For example, one could analyze available properties for rent and for sale, over a representative period in the past, and project future availability. Such projections should evaluate and consider social or economic impacts that are likely to occur over the projected time period.

In developing these impacts, social or economic occurrences of the recent past that may have a distorting effect on the present real estate market should not be overlooked. Problems of today may also affect the real estate market in the near future. Some examples to keep in mind are:

- a. Industries coming into or leaving the community.
- b. Increasing interest rates affecting home purchases.
- c. Tight mortgage money.
- d. Increasing prime interest rate affecting builders.
- e. Tight money for housing contractors.
- f. Industrial and business expansion with increasing employment.
- g. Economic recession and increasing unemployment.
- h. Economic inflation.

- i. Rate of growth or decline of population in the community.
- j. Project area population trends.
- k. Building moratoriums.
- l. Housing starts and rental vacancy rates.
- m. Zoning or other land use plans.
- n. Local rent controls.

After a sufficient inventory of currently available residential units has been collected, the properties for sale or rent should be tabulated to correlate with the requirements of the displaced persons. For example, one category of the needs survey may indicate that 28 single family, three bedroom dwellings between the price range of \$75,000 to \$80,000 are necessary. The survey of available housing may indicate that 40 units are available in this category. The tabulation will show 28 required, 40 available. The same procedure will hold true for requirements in other price ranges and types of residential units. A tabulation of the needs and availability of rental units should be recorded similarly, but separately. If the number of displacements warrant, it may also be appropriate to tabulate replacement farm properties, businesses and non profit organizations.

5.1.4.3. ANALYSIS OF CURRENT GOVERNMENT DISPLACEMENTS

Coordination with Federal, state, and local governmental agencies is necessary to determine if any of their current or planned programs might also cause displacements or conversely, if there are programs planned to increase housing availability. Any planned or concurrent project in the community could have an effect on the supply and demand for replacement properties and could be competing. For this reason coordination with other agencies becomes extremely important.

The number of potential displacement properties should be compared with the number of available replacement properties. If problems are discovered or anticipated at this stage of the study, ways to resolve the problems, including the use of replacement Housing of Last Resort should be planned.

5.1.4.4. ANALYSIS OF RELOCATION PROBLEMS

At this point, a comprehensive analysis of the anticipated relocation impacts should be relatively simple to make. The facts have been gathered, the displaced persons have been identified, the available or anticipated resources are known, and the factors affecting supply and demand have been analyzed. A relocation study can now be written, complete with recommendations to resolve anticipated problems and a timetable for orderly and humane relocation of the persons to be displaced.

5.1.5. HAZARDOUS WASTE SITES

During early project development hazardous waste sites need to be identified. Hazardous waste is an area of concern to highway builders, as the potential liability of a hazardous waste site or sites within the project alignment can seriously affect our proposed projects.

During field reviews for a proposed alignment, the ROW agent should look for indications of toxic waste sites or where one may have existed. When a site is identified during the planning stage, the agency is in a better position to deal with the situation. The agency may be able to avoid the site or require the property owner to clean it up prior to the transfer of the property to the state. The state environmental agency can be a key partner in resolving these issues. Early contacts with resource agencies are important during the planning phase of a project.

A basic concern in contaminated sites involves the application of legal requirements. Because a wide variety of Federal and state laws may apply, each hazardous waste site presents unique legal issues. These involve the identification and disposal of hazardous wastes, and may touch on property, constitutional, environmental, tort, or bankruptcy law. While it has been stated that any substance generally considered to contain combustible, corrosive, flammable, reactive, or poisonous properties is hazardous, there may be variations among the laws and regulations of differing jurisdictions as to which chemicals or substances are hazardous. Again, the state environmental agency can assist.

The primary thrust of laws dealing with hazardous waste is to prevent the hazardous substance from spreading and to see that sites are cleaned up. Once hazardous waste is identified, consideration should be given to avoiding the site. However, if a contaminated parcel cannot be avoided, or it has already been acquired, the main objective generally is to contain the waste and to arrange for its treatment and/or disposal. The cost of the clean up of such sites can be substantial and may involve questions as to the liability of current or former owners for such costs. If hazardous waste is identified before acquisition, its existence and anticipated clean up costs should be considered when developing the offer of just compensation.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund) mandates that an action against responsible parties be brought to recover any Federal cleanup costs of hazardous waste sites. The government is given authority to require private parties to clean up such sites if they can be enjoined. Section 9607 of the Act states in part:

- (2) Any person who...owned or operated any facility at which...hazardous substances were disposed,
- (3) Any person who...arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment, of hazardous substances...at any facility...,
- (4) ...from which there is a release, or threatened release which causes the incurring of response costs, of a hazardous substance, shall be liable for---

- (a) All costs of removal or remedial action incurred by the United States government...
- (b) Any other necessary costs of response incurred by any other person...; and
- (c) Damages for injury to, destruction of, or loss of natural resource... resulting from such a release."

CERCLA 1980

This potential for liability is a concern. As a result, the person responsible for field review of proposed alignments should attempt to identify potential hazardous waste sites *as early in the planning stage as possible*. This affords the agency the maximum opportunity to avoid the site.

Acquiring a contaminated property may result in the state becoming liable for the cleanup costs. In some cases, the cost of cleanup may approach or exceed the entire cost of the ROW project.

5.2. TITLE DOCUMENTS

Highway agencies generally acquire fee simple title to property needed for highway projects. Understanding that state requirements vary throughout the country, fee simple acquisition may not be possible on all takings. Agencies generally need to be assured that the titles of acquired properties are clear of any liens and encumbrances before constructing the highway project, thus creating the need for title information.

Highway agencies have relied historically on title abstracts and title opinions to assure the nature of the property title to be acquired. Title insurance and certificates of title are other forms which can be used for evidence of title. A brief discussion of each of these forms of title evidence may provide some insight into streamlining the title information process.

5.2.1. TITLE ABSTRACT AND TITLE OPINION

A title abstract can be the most detailed, time consuming, and costly form of title search. It requires the searching of title records from the original governmental grant, then all subsequent deeds, mortgages, release deeds, wills, judgments, liens, foreclosure proceedings, tax sales, and other matters affecting the title. If the abstract discloses a clouded title, an opinion of title or a title commitment may be required to clarify the defects and encumbrances.

Such documentation may be warranted by acquiring agencies on properties involving high value, whole or large partial takings or complex acquisitions. On small strip takings and low value acquisitions where the remainder values exceed the taking, abstracting expenses could exceed the cost of the taking.

5.2.2. TITLE INSURANCE

Title insurance is another form that is utilized for title assurances. It is a contract to make good a loss arising through defects in the title to real estate or liens or encumbrances thereon. Title insurance provides for the shifting or transferring of risks such as forgery, defective deeds, etc., to a responsible insurer. Companies which provide title insurance, disregard many of the technical objections that would be raised as part of an abstract examination. Through the use of title insurance, a limited abstract can be made of a property's title.

5.2.3. CERTIFICATE OF TITLE

A certificate of title is the form of title assurance in which an abstract is eliminated. An attorney

examines the public records and issues his certificate of title which is his opinion of title based on the public records that he has examined. The attorney is liable, however, only for damages occasioned by his negligence. The use of this form is ideal for the small strip takings and low value acquisitions, even though the state can broaden its applicability.

5.2.4. RECOMMENDED TECHNIQUES

Alternate methods being used by several state DOTs have proven useful in streamlining the title information process on minor or low value acquisitions. Before implementing an alternate technique, the acquiring agency should make a risk assessment of the title information process. In the title process, the risk involves acquiring property without a complete title abstract on minor takings or easements to reduce the agency's overhead cost and title processing time. The risk is minimal however when the acquisition has little or no effect upon the after value of the property. The recommended techniques may not be applicable under some state laws.

There are several questions to consider before using any of the recommended techniques:

- a. Does there appear to be some irregularity in the title?
- b. Is there a question of ownership?
- c. Is it necessary to determine accurately the location of property lines?
- d. Will the acquisition include any improvements?

If there are questions or irregularities, then use of an alternate technique may not be appropriate.

5.2.4.1. TEMPORARY AND PERMANENT EASEMENTS

The agency would determine property title ownership through county tax assessment records. Verification of the ownership would occur through examination of the last deed of record. A staff ROW agent or technician could perform this search.

5.2.4.2. MINOR ACQUISITIONS

The agency could conduct a search of the last owner of record on minor takings of \$2,500 or less. This information would be provided to the agency attorney or a contract attorney. The attorney would issue a certificate of title based on the information provided on the form. The liability of the certificate of title would be borne by the acquiring agency, not the issuing attorney. An example of a minor acquisition is a strip taking for highway widening or a taking for a driveway modification.

5.2.4.3. NOMINAL AND LOW VALUE PARTIAL ACQUISITIONS

The agency could establish threshold values in which the title information is either abbreviated or a limited search is made. A threshold value of \$2,500 to \$10,000 could be set for low value partial acquisitions, but could be higher. The agency can make that determination based on the risk for possible loss by paying the wrong person. An abbreviated title search of the last owner of record or last transaction could be submitted to the agency attorney who would issue a certificate of title. This search could be performed by a staff ROW agent or technician and documented on a form. For

partial or low value acquisitions, a limited title search of at least five years, or the last three title transactions, could be made by a qualified ROW agent, the agency attorney, or a contract attorney. A certificate of title could be issued by the agency attorney or a contracted attorney. The liability for the certificate will be borne by the acquiring agency, not the issuing attorney.

The agency can establish the threshold for which title information can be abbreviated, or a limited title search is required.

5.3. ROW PLANS

ROW plans are the paper drawings which show the project alignment, its centerline, existing and proposed ROW, construction limits, terrain features, property lines, and property and other principal above ground improvements, among other things. These plans are vital to the development, explanation, and selling of the project. They give those affected by the project a pictorial view of what the project will look like in a real estate context. ROW agents should be familiar with ROW plan terminology, how to read and interpret plans, and how to explain what is contained in the plans to the property owner. ROW agents may find it necessary to obtain training to read plans in order to understand and explain highway plans better.

For many state DOTs, it is standard procedure to prepare ROW plans that are separate and distinct from highway construction plans. ROW plans should contain all of the information necessary for the acquisition of the required ROW that is found on the design plans plus any additional information that will be used in the acquisition process. Because these plans are the basis for the acquisition of affected properties, it is important to know what information they should contain so that the agent can proceed with negotiations in an intelligent and informed manner. By thoroughly reviewing the plans for a project, the agent may be able to anticipate concerns property owners may have about the project such as slope dimensions and proximity of ROW lines. Armed with this knowledge, the agent is more likely to successfully complete the acquisition of the property.

ROW plans containing essential data needed in connection with appraisal and negotiation activities should show the property lines, topography, ROW lines, the widths to be acquired, centerline and stationing with appropriate ties to intersecting property lines, and changes in ROW widths. The proposed limit of slope should be shown on the ROW plans except where it has been determined that such information is adequately depicted on the construction plans or other available documents. The lines and area of any additional easement areas, either temporary or permanent, that are required to accommodate intersecting roads and streets, land, access and temporary roads, drainage areas, material storage areas, utilities, railroads, and for any other special uses, should also be designated and shown.

For each parcel to be acquired, the plans should show:

- the project identification number;
- a parcel identification number;
- property owner names; and
- the area in square feet or acres of the property to be acquired, and of each remainder of a partial taking.

All pertinent data affecting the cost of the ROW such as structures, land service or access roads, improvements, and fences should be shown.

On projects where the access rights have been or are to be acquired, the access control lines and all approved points of entry to, or exit from, traffic lanes should be shown, even where the ROW lines and access control lines are coincident.

ABBREVIATED TITLE INFORMATION

I.D. _____

State Project _____ Federal-aid Project _____

Property Owner(s) _____ Parcel No. _____

Tax Map No. ___ Block & Lot No. _____ Township _____

Property Address _____

Deed(s) Executed and Recorded: Date ____ Book _____ Page _____

Stamp _____ Plat _____ Book _____

If Lot or Lots, Name of Subdivision _____

Map Book _____ Page _____

Acreage in Property According to Deed(s) _____

Easements of Record _____

If Acquired by Will: Date ____ Book _____ Page _____

Total Acreage Owned by Deed(s) and/or Will: _____

Have there been any Out-Conveyances? ____ If so, how many? ____

Acreage conveyed ____ Date of Out-Conveyance(s) _____

Total acreage less Out-Conveyance(s) _____

Property Bounded By on the: North _____,

South _____, East _____, West _____

Has property changed hands within the last five years? _____

If acquired by Intestate, name of person inherited from _____

If conveyance made to present owner, Deed recorded in:

Book _____, Page _____

Name of spouse of the deceased: _____

Names and addresses of all Heirs to the estate other than the spouse. If minors, give age: _____

Comments: _____

Information obtained from: _____ Information obtained by:
 _____, ROW Agent Date: _____

Figure 5-1

5.4. CORRIDOR PRESERVATION

Escalating land cost, rapid growth, and development has focused attention on the need to pursue highway preservation strategies. This is a means to ensure that viable locations will exist for building future transportation infrastructure in the developing fringes of metropolitan areas. Development activities in or adjacent to planned corridors will demand early and decisive actions by state and local governments. Corridor preservation concepts afford the best opportunity for state and local governments to overcome the problem of massive development occurring within potential ROW project limits of a highway corridor.

The concept of corridor protection can also apply to existing corridors. Capacity protection can be applied in almost every state by using techniques such as purchasing access control, denying new entrances, requiring greater setbacks for any new buildings, construction of access roads or other alternative access to remove conflicts, and preserve the ability of arterial roads to perform their function.

There are several approaches under existing regulations that state DOTs and local public agencies (LPAs) can use to protect prospective transportation corridors from competing uses. A number of techniques have been attempted by governmental agencies with varying degrees of success to protect and preserve open space. These techniques will be discussed briefly in this chapter.

5.4.1. TIERED ENVIRONMENTAL DOCUMENTS

Location approval may be given following completion of a first tier environmental document, showing compliance with the NEPA. This level of documentation must assist in making a

decision on reasonable alternative alignments; however, it need not fully address all environmental issues, provided a mechanism is established for revisiting environmental issues during the second tier and the design phase. Issues that can be deferred include detailed mitigation proposals, the environmental consequences of various design options, and the application for environmental permits.

5.4.2. LAND USE CONTROLS

Local governments, and in some cases state DOTs in conjunction with local governments, may be able to use land use controls to protect the selected highway corridor. Local land use plans and official highway maps can be used to guide compatible land development. Local governments can work cooperatively with land owners and developers to preserve ROW for a transportation project by using police power, where applicable, or by accepting donations and dedications. Agencies should be cautious in the application of land use control or police power because its use may result in inverse condemnation actions.

A local government could face litigation if its action could be considered to go beyond the proper exercise of police power and possibly be judged to be a taking in the constitutional sense, thus requiring the payment of just compensation.

POLICE POWER

Examples of land use control include zoning, setback ordinances, and official maps of reservation. Another example of land use control is to withhold permits or rezoning for a period of time, such as 3 years, while providing the property owner a tax break during the holding period. In some instances, developers may construct a portion of the highway or share in the cost of the construction.

Some land use controls can be used earlier. Keep in mind that actions to preserve options can not be taken by the state or local government in order to predetermine the selected alignment under the NEPA process.

5.4.3. ACCELERATED ROW ACQUISITION

State DOTs or local governments can acquire ROW using their own funds, based on a generalized highway design concept, if they have the legal authority to do so. Federal participation or reimbursement for parcel acquisition prior to completion of the NEPA process is limited to hardship and protective purchases. See 23 CFR 710.501 and 503.

The critical element in accelerating acquisition is securing a source of funding. There are several options:

- a. Use of regular Federal-aid funds;
- b. Use of state DOT, local government, or private funds, with no FHWA reimbursement but with FHWA participation in construction so long as requirements of 23 CFR 710.501 are met; and
- c. Use of donated property for ROW per 23 CFR 710.503.

5.4.4. PROTECTIVE BUYING (See chapter 14)

Protective buying is a method that a state DOT or LPA can use to preclude development from occurring within a potential highway corridor which may limit the choice of highway alternatives. The purpose of protective buying is to keep highway location options open. Protective buying is purchasing a limited number of parcels within the line of a proposed transportation project prior to completing the environmental process. It should not be undertaken to sway the location decision toward one alternative, thereby resulting in predetermination of the alignment.

Federal-aid funds can be used in costs for protective buying provided the FHWA authorizes the acquisition of the parcel or parcels. An acquiring agency can finance protective buying without FHWA participation and not jeopardize future FHWA participation as provided by 23 CFR 710.501.

5.4.5. OTHER APPROACHES TO CORRIDOR PRESERVATION

Other techniques available for preservation and protection may include:

- a. Acquisition of an interest in land, which is less than a fee simple interest, in order to preserve the property in a static condition. Examples include conservation easements, preservation easements, scenic easements, and development easements. This can include the purchase of an option on the property for possible future fee purchase; and
- b. Governmental inducement to property owners to maintain an open area. An example of this is the technique of transferring development rights. This provides a method to compensate property owners in a non-monetary way for maintaining land in a static or undeveloped condition.

The above techniques have limiting conditions which should be considered in light of state and local law and regulation. Options available to corridor preservation under the police power include:

- Exactions or dedications in connection with zoning, subdivision or building construction permits (mandatory contributions).
- Proffer zoning (trades negotiated during the subdivision process).
- Setback ordinances.
- Maps of reservation.
- Moratoriums on rezoning or construction within the project limits.

- **Options**
- **Purchase of development rights**
- **Transfer of development rights**
- **Leases**
- **Less Than Fee Simple Interest**

There are voluntary actions which can be solicited of landowners and developers by the local government. These include:

- Transfer of development rights.
- Density transfers and cluster development to provide for comparable density of development while still protecting the needed ROW.

- Tax abatements in return for preserving corridor.
- Voluntary platting of highway corridor as a separate parcel in subdivision plans.

A number of opportunities exist also for public/private partnerships:

- Property exchanges.
- Purchase of fee interest by the state with lease back for a short term or lease of future air rights.
- Special financing in return for a donation (e.g. tax exemption, revenue bonds, tax increment bonds, or mortgage backed bonds).
- Fast-track approval of rezoning, subdivision approvals, or construction of a highway in return for donated ROW.
- Joint acquisition projects or shared use of the ROW.

The report published by the American Association of State Highway And Transportation Officials (AASHTO) entitled *Report of the AASHTO Task Force on Corridor Preservation*, dated July 1990, discussed these techniques in more detail, as well as other aspects of corridor preservation.

