

ABSTRACT

A PROPOSAL FOR FREEWAY RESERVATION POLICIES FOR THE LANSING TRI-COUNTY REGION

by Robert Louis Kuehne

Reserving land for streets and highways was a problem which perplexed local governmental units in the 1800's. Today the problem has been greatly magnified with the introduction of the freeway which requires wide swaths of right-of-way, unlike the relatively narrow rights-of-way required for nineteenth century roads.

And the demand for freeways in the Nation is greater than ever before due to an exploding population, higher incomes, increased car ownership, more leisure time, and sprawling settlement patterns. At the same time new subdivisions, industrial complexes, apartment buildings, and shopping centers are springing up on what was previously undeveloped land. Much of this land would be ideal for the needed freeways. However, oftentimes building construction is not guided to keep potential rights-of-way free from the clutches of urbanization. Hence, in many cases, excessive sums are paid for these freeway rights-of-way.

Certainly part of the reason for the problem is that adequate legislation has not been enacted, however good use

is often not being made of existing legal resources. For instance, adopting an official map and enforcing it is legally sound. However official map legislation is often not employed. Another illustration is that subdivision regulations are not being designed and adopted. Also inadequate financial resources have prevented local and state governmental agencies from acquiring future freeway rights-of-way in advance of construction. However, some states have applied certain freeway reservation techniques which have been quite successful, such as the revolving fund concept.

Many of these same shortcomings, which exist at the national level, are also being experienced in the Lansing Tri-County Region. The purpose of this thesis is to delve into and recommend solutions to the problem of minimizing freeway rights-of-way acquisition costs in the Tri-County Region.

As a point of departure, policies presently being used in other states throughout the Nation are reviewed in regard to their description, extent of use, legality, implementing procedures, and advantages and disadvantages. Then, these policies are evaluated as potential solutions to the problem as it exists in the Tri-County Region.

The major freeway reservation policies proposed as solutions in the Tri-County Region have been separated into short and long range proposals. The short range proposals

are those which could be implemented under existing legislation. The development of detailed plans, employment of advance acquisition procedures and official map ordinances, and interpretation of "futuraity" are among the short range freeway reservation policies suggested in this thesis.

The long range proposals would require additional legislation before they could be enacted. These proposals include the creation of a revolving fund, extension of official map powers to townships, and formation of an inter-county highway commission.

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CHAPTER I

INTRODUCTION

Effective street reservation has been hindered by . . . (a) extensive lack of understanding--by the public, by administrators, and by the courts--of the principles involved and of the public advantages to be derived; (b) the frequent inadequacy of enabling legislation, as well as failure to make effective such enabling legislation as already exists; (c) apprehensions as to legality, resulting in fear on the part of legislative bodies to adopt, and of administrative agencies to enforce, suitable measures; and (d) the lack of well-defined, well-thought-out, and uniform methods of procedure.¹

Russell Van Nest Black

BACKGROUND

The adequate and economical provision of land for roads has been a governmental concern in the United States since the 1800's. In the early days of the republic, at least four of the original thirteen colonies protected locations designated for future streets from encroachment by private buildings.²

¹Russell Van Nest Black, Building Lines and Reservations for Future Streets (Cambridge: Harvard University Press, 1935), p. 148.

²American Society of Planning Officials, Protecting Future Streets: Official Maps, Setbacks, and Such, Planning Advisory Service, Information Report No. 119 (February, 1959), p. 2.

Official maps,¹ indicating the precise location of selected or all existing and future streets and highways, were often adopted by local governmental units. No building costs would be reimbursed if such construction took place in the paths of future streets designated on an official map without legal and/or judicial consent. In 1836, for example, a Brooklyn landowner who chose to build within the bed of a proposed street was denied compensation for his building when the street was finally opened.² However, changes in judicial attitudes and state constitutions during the nineteenth century soon rendered most of the original anti-encroachment statutes unconstitutional,³ one of the main reasons being that no variance provision was included in the statutes.

During the late twenties and thirties of the twentieth century, however, new legislation was enacted in many states which enabled local communities to adopt ordinances protecting future street beds from building activity. In

¹An official map is a map with or without accompanying text, adopted by the legislative body, showing the precise location of existing and proposed streets. Sometimes open spaces, parks, and other public facilities are also shown. An official map ordinance is a recorded document which prohibits the erection of buildings and structures within the boundary lines of designated areas, which would have to be removed when the street is opened or the area developed.

²In re Furman Street, 17 Wend. 649 (New York, 1836).

³Shortly after the turn of the twentieth century, only the State of Pennsylvania retained an anti-encroachment statute without providing any variance procedure. American Society of Planning Officials, op. cit.

addition, zoning ordinances and subdivision regulations were often adopted by local governmental units and served as fairly effective instruments to control land development in the beds of future streets and highways.

Meanwhile, the Nation's population and automobile ownership increased substantially, resulting in a crying need for new and better roads. In an attempt to meet this demand, a type of road new to the highway system in the United States was introduced which would significantly reduce accident rates¹ and increase rates of traffic flow. This road was the freeway.²

The Federal government included provisions in the Federal Aid Highway Act of 1944 which encouraged states to

¹"The U. S. Bureau of Public Roads conducted studies in thirty different states, involving some twenty-seven billion vehicle miles of travel on 2,590 miles of highway. Based on 100 million vehicle miles of travel, freeways in urban areas showed a fatality rate of 2.0, compared with a rate of 4.0 on roads with no control of access. . . . In terms of total accidents, . . . for every 100 million vehicle miles, the national urban freeway accident rate is 186, compared to 526 for conventional roads." Automotive Safety Foundation, What Freeways Mean to Your City (Washington, D. C., January, 1964), p. 14.

²A freeway is a divided arterial highway for through traffic with full control of access. The highway passes under or over all intersecting crossroads, and permits continuous, uninterrupted flow. Its entrances are located only at specifically designated points, and there is no direct access from abutting property. (They may be toll roads or toll free.) An expressway, on the other hand, is a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections. American Association of State Highway Officials, A Policy on Geometric Design of Rural Highways (1954), Appendix B, p. 629, at 632 and 633.

build these freeways. The Act authorized 50 per cent matching funds to states which would take part in constructing the 33,920 mile¹ national system of interstate highways established in the Act. This system would link together the major urban centers of the Nation for the purposes of national defense and the public welfare. However, little freeway construction resulted from the passage of the 1944 Act.

In the years following World War II, the need for freeway construction continued to increase with the rapidly expanding population, changing settlement patterns; and increasing car ownership. Population spiraled from 132.5 million in 1945 to almost 180 million in 1960, an increase of 36 per cent.² A significant portion of this increase occurred in the suburban areas outside of the major urban centers of the nation,³ as people flocked to the new subdivisions springing up on the urban fringe. In fact, between 1947 and 1962 some 14.5 million single-family houses were

¹Wilbur Smith and Associates, Future Highways and Urban Growth (United States of America, 1961), p. 2.

²Bureau of Business and Economic Research, Michigan State University, Economic and Population Base Study of the Tri-County Region (East Lansing: Michigan State University, 1958), Table 1, p. 271; and U. S. Bureau of the Census, U. S. Census of Population, 1960: General Social and Economic Characteristics, PC (1) IC (Washington, D. C.: U. S. Government Printing Office).

³While the population in central cities increased by 10.7 per cent, the areas within the Standard Metropolitan Statistical Areas outside of central cities increased by 48.6 per cent. U. S. Bureau of the Census, ibid.

constructed in the United States, of which approximately ten million were located in the suburbs.¹ In spite of this move to the suburbs, people continued to work in the urban centers. At the same time, car ownership increased in an attempt to keep pace with the population boom and changing settlement patterns. The number of private automobiles in the Nation increased from 25.7 million in 1947 to 65.7 million in 1962, an increase of 156 per cent.²

Triggered by these population and car ownership increases, the use of existing freeways mushroomed between 1950 and 1960. During this ten year period, freeway travel increased by more than 250 billion vehicle miles,³ a gain of approximately 53 per cent. It has been estimated that, by 1980, the number of vehicle miles traveled on freeways will have increased from the 1960 figure of 720 billion miles to 1,160 billion miles.⁴ With the Nation's population eclipsing 245 million people by 1980,⁵ the number of miles of freeways required in the Nation will exceed 54,000, an increase of about 42,000 miles.⁶ The right-of-way needed for

¹Homer Hoyt, "The Effect of the Automobile on Patterns of Urban Growth," Traffic Quarterly, XVII, No. 2 (April, 1963), p. 295.

²Ibid., p.294-95.

³Smith, op. cit., p. 31.

⁴Ibid., p. 325.

⁵Ibid., p. 7.

⁶Ibid., p. 325.

this 42,000 miles approximates 153,500 acres, much of which will be ripe for urban development long before the freeways are actually constructed.

In response to the increasing demand for a modern road system, the 1956 Federal-Aid Highway Act was passed which provided for 90 per cent of the total cost of interstate freeways to be financed by the Federal government.¹ This proved to be the necessary stimulus to successfully launch the nation-wide program of constructing a national interstate system, now expanded to include 41,000 miles of freeways with complete access control.²

The State of Michigan assumed an active role in the freeway building program. By 1964, Michigan had completed

¹The present National System of Interstate and Defense Highways was initiated with the Federal-Aid Highway Act of 1956 and, when completed in 1972, will connect about 90 per cent of the cities exceeding 50,000 population (central cities) and forty-two state capitals.

²The 1944 Federal-Aid Highway Act provided that the Commissioner of Public Roads could not, as a condition of a project, "require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, gutters, ditches, and side slopes and sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking." 58 Stat. 838, Article 2 (1944). The 1956 Federal-Aid Highway Act added the provision that the State highway department agree that the State will not add any points of access to, or exit from, a project on the Interstate System in addition to those approved by the Secretary of Commerce in the plans for such project, without the prior approval of the Secretary (23 U.S.C. Article III).

and opened to traffic about three-fourths of the 1,078 miles¹ of interstate freeways it was authorized to build. In addition, another 270 miles² of non-interstate freeways had been opened to traffic as of the same date. In the Tri-County Region,³ about forty-six miles⁴ of interstate, and no non-interstate, freeways had been constructed as of 1964.

Most of this freeway construction occurred in the rural portions of the State and the Region, thus minimizing land acquisition costs. However, most of the remaining miles of freeway to be constructed will be built in urban or rapidly urbanizing areas. Hence the problem of acquiring the needed land at a low cost will be extremely difficult,⁵

¹Michigan State Highway Department.

²Ibid.

³The Tri-County Region is composed of Clinton, Eaton, and Ingham counties having a combined 1960 population of 298,949. The Region is defined by the U. S. Bureau of the Census as being a Standard Metropolitan Statistical Area with Lansing, 1960 population of 107,807, being the central city. The Tri-County Region encompasses 1,700 square miles and will be the area used for the case study presented in Chapter III of this thesis.

⁴The Michigan State Highway Department estimates that 46.3 miles of Interstate freeways had been completed within the Region as of January, 1964.

⁵"It has been estimated that of the total cost of the National System of Interstate and Defense Highways, eleven per cent of the cost of the rural portions and thirty-one per cent of the cost of the urban portions will need to be spent on rights-of-way." National Academy of Sciences-National Research Council, Acquisition of Land for Future Highway Use, Highway Research Board Special Report No. 27 (Washington, D. C., 1957), p. 1.

especially since the legality of the police power is doubtful when dealing with the wide swaths of land required for freeways. And to acquire the land under eminent domain statutes¹ results in the taking authority paying the land owner compensation for the limitation placed on land development as well as for the land itself--oftentimes a very costly method of land acquisition.

A more reasonable cost figure could be achieved, however, if land in the path of these future freeways could be reserved in its undeveloped state until purchased by the public.² The reduced cost of purchasing the undeveloped land would result in a savings to the taxpayer and, at the same time, minimize the disruption of families, businesses, and industries caused by requiring them to relocate. Therefore, governmental policies which would reserve land for future freeways seem to constitute a justifiable need in that they would protect the public interest.

¹Eminent domain is the inherent power of the sovereign state, not conferred by the constitution or statute, but rather is limited thereby. The power of eminent domain authorizes the state to take any private property within its jurisdiction for public use without the consent of the owner, subject to the condition of payment of just compensation in accordance with the methods prescribed by law. The power of eminent domain is a state power which is not inherent in municipal corporations but must be conferred by the state.

²A time lag necessarily exists between the time a particular freeway is planned and the time of actual construction. During this time lag, previously vacant or undeveloped land is often converted to urban use, thereby substantially increasing the cost to the public of acquiring the land for freeway purposes.

PURPOSE OF THE THESIS

The premise of this thesis, then, is that governmental policies regarding land reservation for future freeways can be adopted which will substantially reduce the land purchase cost element of freeway construction expenditures. It is hoped that a detailed investigation of this premise will lead to the fulfillment of the general purpose of the thesis which consists of recommending a set of effective and practical freeway reservation policies for the Lansing Tri-County Region.

The thesis, while concerned with freeway reservation policies employed throughout the Nation, focuses on their applicability in the Lansing Tri-County Region.¹ The land reservation policies to be investigated are restricted to those pertaining to freeways, although many of these policies could also be employed for reserving land for other purposes.²

¹The reasons that the recommended solution (expressed in the form of policies) was restricted to the Tri-County Region are as follows: (1) case study data was readily available, (2) the Region is a small enough area to apply the various policies in theory to ascertain their adequacy, yet large enough to experience freeway location difficulties, and (3) a regional planning commission exists which serves as a vehicle to establish an inter-county highway commission and to encourage the adoption of freeway location places.

²The reasons for dealing strictly with freeways in analyzing the land reservation problem are as follows: (1) land acquisition costs for freeways is currently a problem of paramount importance in the Tri-County Region, and (2) the amount of right-of-way needed for freeways exceeds that required for other highway types. Hence, if policies are adequate for freeway land reservation, it is probable that they are also adequate for other types of highways.

Within these limitations, the specific purposes of this thesis include the following:

1. To investigate existing freeway reservation policies being employed in the Lansing Tri-County Region.
2. To describe freeway reservation policies not being employed but which could be within the realm of the present legal framework.
3. To determine freeway reservation policies which could be employed if new legislation were enacted in Michigan.
4. To recommend a set of freeway reservation policies for the Lansing Tri-County Region.

METHODOLOGY

The process of evaluating the premise and satisfying the objectives of this thesis has been divided into a research phase and an analysis phase. The research phase includes the following steps:

1. Investigate existing freeway reservation policies being employed in the State of Michigan.
2. Determine all existing legal provisions in the State of Michigan Statutes which regulate the reservation of land for freeways.
3. Describe reservation policies employed in other states.
4. Describe instances in the Lansing Tri-County Region where failure to reserve land for future freeways has resulted in unnecessarily high land acquisition costs or costly re-routing.
5. Determine the legal and financial framework of government in the Tri-County Region as it relates to implementing freeway reservation policies.

Each of the reservation policies are discussed making note of their description, extent of use, legality, means of implementation, and advantages and disadvantages.

The analysis phase includes the following steps:

1. Evaluate the various freeway reservation policies being either presently employed or which could be employed under existing State enabling legislation.
2. Determine and evaluate additional policies which could be employed pending changes in existing State enabling legislation.
3. Evaluate the policies determined in steps one and two as they relate to the Lansing Tri-County Region.
4. Recommend freeway reservation policies which would be most feasible, effective, and efficient in the Lansing Tri-County Region.

The first three steps in the research phase and steps one and two in the analysis phases are achieved in Chapter II. Steps four and five of the research phase and step three of the analysis phase are covered in the case study of the Lansing Tri-County Region presented in Chapter III. Finally, Chapter IV will accomplish step four of the analysis phase as it contains a recommended set of freeway reservation policies for the case study area, the Tri-County Region.

CHAPTER II

REVIEW OF FREEWAY RESERVATION POLICIES

INTRODUCTION

The purpose of this chapter is to describe the various freeway reservation policies being employed throughout the Nation, including any policies which are still in the embryo stage. These freeway reservation policies, in general, involve one of two processes. One is to reserve rights-of-way by placing the land, or certain rights to the land, in public ownership as soon as the need has been determined. Advance acquisition is an example of this process. The other is to "freeze" the land development until it is needed for actual construction of the freeway and purchase it at that time. Official map procedures employ this approach. Some policies encompass both processes. Highway reservation statutes illustrate this combination. These statutes restrict development in, and adjacent to, the right-of-way beds of future freeways--"freeze" the land, so to speak. However, if a hardship is caused by such a restriction of development, the land is acquired.

No matter which process is used, however, the possibility for success of a particular freeway reservation policy usually is enhanced when the need is based on a plan.

A comprehensive plan, or a highway plan in lieu of a comprehensive plan, serves as the basis to show that a need definitely exists for particular lands. Furthermore, such a plan tends to indicate that it is certain such a road will actually be constructed. The legislation supporting the various freeway reservation policies usually state that suggested courses of action shall be based on a plan. Therefore, before reviewing the various freeway reservation policies, the characteristics and use of a plan are described.

The freeway reservation policies to be reviewed in this chapter consist of the following: (1) advance land acquisition, (2) development rights acquisition, (3) official map procedures, (4) highway reservation statutes, (5) inter-county highway commission authority, (6) subdivision controls, (7) urban renewal procedures, (8) extraterritorial powers of home rule cities, (9) zoning controls, and (10) information dissemination. Each of these freeway reservation policies are discussed in regard to their description, extent of use, legality, implementing procedures, and advantages and disadvantages. In investigating many of these policies, the conflict between the inherent property rights of the individual and the welfare of the public eventually becomes evident. The significance of this issue in determining the value of various reservation policies is described. Finally, the relative success of many of these policies will be briefly discussed.

THE "PLAN"

A plan adopted by the local governing body and filed with the county register of deeds provides an instrument upon which various implementing tools can be legally upheld. Ideally, the plan should be comprehensive in nature. That is, it should apply, through recognized planning procedures, a long range view to all development problems faced by a community. The plan should seek to accomplish at least the following five objectives:

1. To guide the physical growth and economic development of the community toward determined objectives of public policy.
2. To provide a harmonious and efficient allocation and arrangement of land uses.
3. To facilitate the development of an economical and effective transportation system, one portion of which would be an efficient network of streets and highways.
4. To promote good design and protect valuable land uses.
5. To preserve and enhance economic and social values.

In general, the plan should be composed of a land use element, a transportation element, a public utilities element, and a public facilities element. As an interim measure, however, a freeway location plan can serve as this plan; realizing that eventually a total transportation plan containing expressways, arterials, and collectors, as well as freeways, will be prepared and adopted. This transportation plan

should, in turn, be part of a comprehensive plan consisting of the above four elements.

All of the freeway reservation procedures described in this thesis make mention of a plan. The State of Michigan's advance acquisition procedure states that a freeway plan must be developed in conjunction with the local units of government. The Mapped Improvements Act requires the adoption of a master plan by the city or village. The various zoning enabling acts in the State of Michigan state that the zoning ordinance provisions shall be based upon a plan designated

to encourage the use of lands in accordance with their character and adaptability and to limit the improper use of land, to avoid the overcrowding of population, to lessen congestion on the public roads and streets, to reduce hazards to life and property, to facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, education, recreation and other public requirements. . . .¹

The primary reason that such a plan is required in these procedures is that it assists in the determination of public necessity. The plan, based upon detailed studies, reflects the community's need for various land developments such as freeways. By specifying definite locations for these freeways, again determined by these same or additional detailed studies, the local governing body can justify the

¹Act 183, P.A. 1943, County Rural Zoning Act, Section 3.

need for a specific parcel and is less likely to have the selection contested as being confiscatory or arbitrary.

The participants in the Sagamore Conference on Highways and Urban Development further emphasized the need for a plan as they recommended that

State Highway Departments, in cooperation with local governments, should develop a tentative program of urban highway improvement for a period of at least five years in advance, as a basis for planning at the local level. This program should be in accordance with a jointly agreed-upon, long-range plan.¹

The actual development and adoption of the plan would involve several steps. The freeway location portion of the comprehensive plan would probably be prepared by the Michigan State Highway Department. In the case study area, it would then be reviewed by the Tri-County Regional Planning Commission, adopted by the affected local governing body, and filed with the county register of deeds' office and the county plat board's office. Prior to adoption by the local governing body, the freeway location plan would be submitted to the local planning commission (if one exists) of the local governmental unit for review and recommendation.

Once adopted by the local governing body, the freeway location plan would serve as a basis for determining public necessity in zoning changes, establishing setbacks,

¹National Conference on Highways and Urban Development (held October 5-9, 1958), The Sagamore Conference on Highways and Urban Development, p. 2.

denying building permits, and acquiring the development rights or fee simple title to the land. All of the following ten freeway reservation policies would, undoubtedly, operate more effectively if a plan were the basis for action.

ADVANCE ACQUISITION

Acquisition of land needed for future freeways in advance of their programmed land acquisition period reduces the cost that would otherwise be paid were the land allowed to be developed. In some states, monies are provided by state legislation in the form of funds created specifically for the purpose of financing advance acquisition. However, in order to exercise the inherent power of government to take land for a public use, specific laws which authorize such taking must be enacted and adequate compensation must be given to the landowner when the taking does occur.

As of 1962, 21 states (of which Michigan is one) had statutes which authorized acquisition of land for future highway use.¹ This authority is contained in the Michigan

¹In 1957 there were 15 states with statutes authorizing the acquisition of land for future highway use. These were Arkansas, California, Colorado, Florida, Idaho, Louisiana, Maryland, Nebraska, Nevada, New Jersey, New York, North Dakota, Oklahoma, Virginia, and Wisconsin. Six states adopted "future use" legislation between 1957 and 1962. Michigan was one of these six (Mich. Stats. Ann. Section 9. 1097(13a)). The other five were Alaska, Indiana, Montana, New Mexico, and Washington. "Future" here is defined to be at least two years between acquisition and the start of construction. See G. Graham Waite, "Techniques of Land Acquisition for Future Highway Needs," Highway Research Record No. 8, Highway Research Board of the National Academy of Sciences,

Highway Act (Act 51 of P.A. 1951, as amended) which provides that

the state highway commissioner, the several county road commissions and incorporated cities and villages of the state, acting individually or jointly in accordance with a contract therefore, may acquire by purchase or condemnation, in advance of actual construction programming, private property situated within the rights-of-way of any highway projects planned for future construction by the governmental unit, and may expend for the advance acquisition of right-of-way moneys received by the governmental units and from the motor vehicle highway fund.¹

Michigan Highway Law also provides that the state highway commissioner may contract with boards of county road commissioners and incorporated cities and villages to perform work on any highway, road or street, and that any of the contracting parties may acquire the needed rights-of-way by purchase or condemnation to perform the said work.²

While the State of Michigan has been authorized to acquire land for future highway use, the statutes do not

National Research Council, Washington, D. C. (January, 1963), p. 61.

¹Act 51, P.A. 1951, as amended, Section 13a.

²" . . . the state highway commissioner may enter into agreement with boards of county road commissioners and with incorporated cities and villages to perform work on any highway, road or street, and such agreements may provide for the performances by any of the contracting parties of any of the work contemplated by such contract including engineering services and the acquisition of rights-of-way in connection therewith, by purchase or condemnation by any of the contracting parties in its own name, and such agreements may provide for joint participation in the costs, but only to the extent that the contracting parties are otherwise authorized by law to expend moneys on such highways, roads, or streets." Ibid., Section 11g.

specify what the word "future" means. In fact the State of Washington legislature¹ is one of the few² that even hinted at how many years equals "future." The number of years that highway land can be acquired prior to construction has historically been left to court interpretation under the principle that such time allowance must be determined by the court on the basis of the reasonableness of each specific acquisition proposal.³ Some of the conditions which should be considered in determining "reasonableness" include the following:

1. "Is there a high probability that actual construction will occur within the particular right-of-way acquired? . . .
2. "Will advance acquisition result either in substantial savings in acquisition costs or in material

¹"A special fund was established to finance advance acquisition of rights-of-way required for a 10-year highway program. Since the life of the appropriation is 2 years, if the entire program is to be accomplished it is conceivable that land may be acquired which will not be used for upwards of 10 years. However, no existing statute specifically authorizes the acquirement of land in advance of its use aside from this appropriation act. (Washington Laws of 1955, Ch. 383, H.B. 639.) National Academy of Sciences-National Research Council, Acquisition of Land for Future Highway Use, Highway Research Board Special Report No. 27, Washington, D. C. (1957), p. 39.

²In addition to Washington's 10 year futurity implication, Virginia allows 12 years for roads that are part of the Interstate System and six years for other highways, Ohio provides a maximum lead time of eight years for all highways, and Florida a lead time of seven years. None have been tested for constitutionality. G. Graham Waite, op. cit., p. 69.

³Ibid., p. 63.

help in planning the highway net and in meshing the highway plans with community development? . . .

3. "Is it reasonably likely that the effects suggested by question 2 will be present throughout the lead time being considered?"¹

In general, then, the reaction of the courts to future land acquisition proposals will likely depend on whether a definite "certainty" (implied in question 1) and "necessity" (implied in question 2) exists. This "certainty" and "necessity" will be more clearly established if there is evidence that careful planning for the over-all future highway needs has preceded the proposal.²

It appears that the "certainty" of a freeway proposal is enhanced if it is to be a part of the National System of Interstate and Defense Highways. A 1960 Florida court case tends to support this theory.³ The increased degree of certainty of ultimate highway use apparently stems from the fact that 90 per cent of the funds are provided by the Federal government and the project is part of a long-range construction program which the Federal government is not likely to abandon.⁴ In addition, Congress has authorized a

¹Ibid., pp. 69-70.

²Ibid., p. 69.

³Ibid., p. 63.

⁴Ibid., p. 70.

lead time not to exceed seven years,¹ which is a maximum in excess of that generally upheld by the courts.

The advance acquisition procedure followed by the Michigan State Highway Department is based on the stipulations of Federal and State legislation and directives of the State Highway Department. Any land to be acquired in advance must be indicated as part of a right-of-way on a plan which has been:

1. Presented at a public hearing.
2. Supported by detailed engineering drawings and cost figures.
3. Approved by the State Highway Commissioner and the involved local governmental agencies.

Then, the freeway project must be programmed and funds made available² before the advance acquisition of rights-of-way

¹"For the purpose of facilitating the acquisition of rights-of-way on any of the Federal-aid highway systems, including the Interstate System in the most expeditious and economical manner, and recognizing that the acquisition of rights-of-way requires lengthy planning and negotiation if it is to be done at a reasonable cost. . . . The agreement between the Secretary of the State highway department for the reimbursement of the cost of such rights-of-way shall provide for the actual construction of a road on such rights-of-way within a period not exceeding seven years following the fiscal year in which such request is made." Public Law 85-767, 85th Congress, H.R. 12776, 72 Stat. 885, August 27, 1958, 23 U.S. Code, 108.

²Funds are obtained by the State from the motor vehicle highway fund and from the involved local units of government, who also obtain moneys from the motor vehicle highway fund. Each local governmental unit can borrow through the public sale of bonds as needed to pay its share of the costs. The State Highway Department may be a contracting party. Loans must be repaid within thirty years and pledges may not

can take place. In the case of federal-aid roads, a two-step approval by the Bureau of Public Roads is also required as a condition for advance acquisition authorization. A detailed advance right-of-way acquisition procedure, used by the Michigan State Highway Department, is presented in Appendix A.

While the advance acquisition procedure employed by the Michigan State Highway Department leaves no doubt as to the certainty and necessity of a proposed freeway, it would be difficult to develop plans in this detail with this level of approval, for all freeways needed in the State for the next five to ten years. Court cases in other states seem to indicate that this degree of careful planning is not necessary to assure court approval of the need for acquisition.¹ Hence, it would appear that more future planning, adequate to support advance acquisition, could be accomplished if the criteria of existing procedures were made less stringent.

exceed a stated percent of the previous year's receipts from highway taxes. Mich. Stat. Ann., Section 9.1097(18d) and Ziegler V. Witherspoon 331 Mich. 337 49 N.W. 2d 318(1951).

¹"In Florida, the State Road Department, in connection with constructing a limited-access Interstate highway, wished to acquire a tract before funds had been allocated for construction and before detailed engineering plans, construction drawings, and specifications had been completed and adopted--even before the Department was able to say with certainty when the highway construction would be started. Still the court held . . . that public necessity for taking the land was not a gross abuse of discretion," and the land was obtained by the State. G. Graham Waite, op. cit., p. 63.

Even with more future planning taking place, the Michigan State Highway Department would be hard-pressed to obtain the additional moneys needed for advance acquisition. Funds obtained from current motor vehicle funds are adequate to meet existing acquisition and construction costs only. However, when a Federal-aid road is involved, and providing the State has Bureau of Public Roads approval, Federal moneys are available on a reimbursement basis to the State for advance acquisition purposes. The actual construction of the road, then, must occur within seven years following the fiscal year in which the request was made.¹ Consequently, the State Highway Department still must bear the initial advance acquisition cost until reimbursed by the Federal government.

A financing procedure used effectively by some states is keyed to a special revolving fund.² The process involves establishing a fund by state legislation from which moneys can be appropriated to acquire future rights-of-way. A modified version of the revolving fund principle is used by Ohio. The Highway Department borrows money from certain pension funds, designated by law, to acquire future rights-of-way.

¹Public Law 85-767, 85th Congress, H.R. 12776, 72 Stat. 885, August 27, 1958, 23 U.S. Code, 108.

²As of 1957, California, New Mexico, New York, Ohio, Washington, and Wisconsin had established special revolving funds. National Academy of Sciences-National Research Council, op. cit., pp. 42-46.

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When the road is constructed, the money is paid back into the fund from current highway appropriations.¹ Significant savings have been realized by using these techniques.² In order for Michigan to employ either the special revolving fund or Ohio's technique, additional state enabling legislation would be required.

DEVELOPMENT RIGHTS

The purchase of development rights to land needed for the construction of future freeways insures that the land will remain in a condition which minimizes acquisition costs without actually acquiring the title to the land. For example, the Michigan State Highway Department would acquire the development rights of a given parcel, or parcels, from the property owner but not the land itself. The Highway Department could then refuse the owner permission to construct buildings, but allow him to use the land for "open" uses, such as agriculture. When the land was needed for freeway construction, the Highway Department would acquire the fee simple title to the land from the property owner.

¹G. Graham Waite, op. cit., p. 74.

²California claims a savings of five dollars for every one invested due to the use of their \$30 million revolving fund established by 1952 and 1953 State enabling legislation. National Academy of Sciences-National Research Council, op. cit., p. 42.

At present, the State of Michigan has the authority to acquire only the rights of access, air, light, and view.¹ The legality of purchasing the development rights to land has not been tested in the State of Michigan and has had little trial in the remainder of the United States.² Such a procedure would, undoubtedly, require new State enabling legislation permitting the acquisition of development rights by State or local governments.

If such legislation were enacted, the procedures of purchasing development rights would be similar to those followed in advance acquisition. One difference would be that instead of purchasing all rights to the land, only the development rights would be obtained. This could be accomplished in the following manner:

1. Purchase the development rights with an option to purchase the land at a later date at an agreed upon price, or purchase the development rights with no such option.
2. At the time when the land is needed for freeway construction, acquire the fee simple title to the land.

¹Act 140, P.A. 1945. See Appendix E for the legal status of each state regarding the purchasing of access, air, light, and view rights to land.

²A highway reservation agreement is used in Ohio. It is "a contract between the State or its subdivisions and the landowner, under which the right of the owner to construct or develop land contiguous to the highway is purchased by the State. The owner would still possess the fee title to the land, but he has sold certain of his rights in the land adjacent to the highway." National Academy of Sciences-National Research Council, op. cit., p. 48.

The principal advantage of this procedure is that it would effectively restrict development on certain lands without necessitating the large capital outlay required to acquire the land. It should be recognized that the greatest financial savings is realized when development rights are obtained on low value properties, such as rural land or blighted areas in urban centers. This procedure is usually not recommended for reservation of rights-of-way in urban and suburban areas, as the cost of acquiring the development rights approaches the full value of the property.

OFFICIAL MAP PROCEDURES

The official map is one of the most effective tools which can control the development of land designated for future street and highway use. The official map procedure involves designating the rights-of-way for future streets and highways on a map, having the map officially adopted by the local legislative body, and prohibiting development within the proposed rights-of-way.

The device used to enforce the official map is the building permit. A landowner desiring to construct a building in any of the rights-of-way designated on the adopted official map will be denied a building permit, hence preserving the land in its vacant state. No compensation is paid to the deprived landowner for restricting development prior to acquisition as this procedure is sanctioned under the

police power of the State of Michigan and legally upheld by the courts providing the official map procedure is reasonably applied. As this method of acquisition constitutes a restriction on the property rights of the individual, it is deemed advisable to protect the official map procedure against any challenge to its constitutionality by including provisions for exceptions and variances in the official map ordinance. If the landowner can prove "that his land is not yielding a fair return, [he] may be granted a permit by a quasi-judicial board of appeals for a building that will increase as little as possible the future cost of opening or widening the street or highway."¹

"Something more than one-half of the States now have regulatory legislation authorizing the official mapping of streets and their protection from encroachment before acquisition."² The legal authority to employ the official map procedure in Michigan is provided by Act 222, P. A. 1943 (Mapped Improvements Act). The Act states that

¹K. W. Bauer, "Use of Official Map Procedure to Reserve Land for Future Highways," Highway Research Record No. 8, Highway Research Board of the National Academy of Sciences-National Research Council, Washington, D. C. (January, 1963), p. 83.

²Daniel R. Mandelker, "Highway Reservations and Land Use Controls Under the Police Power," Highway Research Record No. 8, Highway Research Board of the National Academy of Sciences-National Research Council, Washington, D. C. (January, 1963), p. 56.

the legislative body of any city or village may provide by ordinance that no permit shall be issued for and no building or structure or part thereof shall be erected on any land located within the proposed future outside lines of any new, extended or widened street, avenue, place or other public way . . . shown on any certified and adopted plat.¹

To assure constitutionality, the Act provides

that the zoning board of appeals, if the municipality has such a board, or if not, that a board of appeals created for the purpose in such ordinance, shall have the power on appeal filed with it by the owner of such land to authorize the granting of a permit for and the erection of a building, or structure, or part thereof, within the lines of any such mapped street, playground or other public ground in any case in which such board finds, upon the evidence and arguments presented to it on such appeal, (a) that the entire property of the appellant located in whole, or in part, within the lines of such mapped street, park, playground, or other public ground cannot yield a reasonable return to the owner unless such permit be granted, and (b) that, balancing the interest of the municipality in preserving the integrity of the adopted map, and the interest of the owner of the property in the use and benefits of his property, the granting of such permit is required by considerations of justice and equity.²

In addition, the Mapped Improvements Act requires that the city or village planning commission shall record on the certified plat an estimate of when the land acquisitions should be made.³

¹Act 222, P.A. 1943, Section 4.

²Ibid.

³"The commission shall transmit an estimate of the time period within which the land acquisitions for public use indicated on the certified plat should be accomplished."
Ibid.

The procedures to be followed in employing the official map to reserve rights-of-way for future freeways are diagrammed in Appendix B. In general, the procedures consist of the following five steps.

1. The city or village planning commission must adopt a master plan.
2. The city or village planning commission must certify the official map, or modifications or amendments thereto.
3. The city or village legislature must adopt by ordinance the official map, or modifications or amendments thereto.
4. No building permits shall be issued within the lines shown on the certified and adopted official map.
5. The zoning board of appeals will rule on appeals of building permit denials.

The key advantages of the official map procedures are that it is unquestionably legal¹ and it is effective for reserving undeveloped land in all parts of any city or village in Michigan. In fact,

the official map is the only arterial street and highway system plan implementation device that operates on an areawide basis in advance of land development and can thereby effectively assure the integrated development of the street and highway system.²

In order to operate on an areawide basis, however, precise street and highway locations, widths, and general design

¹"No official map law that has been challenged has been held unconstitutional in the past 50 years." Daniel R. Mandelker, op. cit.

²K. W. Bauer, op. cit.

must be recorded on a certified and adopted official map. The technical problem of devising an official map depicting the entire future network of roads in time to prevent urban encroachment on these desired future road beds is often unsurmountable. Therefore, it might not be possible to reserve needed land, using the official map procedure, in every desired instance.

Another possible shortcoming regarding the use of official map procedures lies in the fact that freeways require wide swaths of rights-of-way, often engulfing entire parcels of land. Under such conditions it is likely that the courts would declare the reservation action confiscatory, and a variance would necessarily be granted. And "to the extent that variances will have to be granted, they will defeat the purpose of the reservation, because a variance is simply a licensed encroachment on the reserved right-of-way."¹ Further, the length of time such a map can be enforced in advance of actual construction has not been adequately determined. Court decisions regarding what is a reasonable time period have been too few to make a definite conclusion.²

¹Daniel R. Mandelker, op. cit.

²In holding that the constitutional requirement of necessity is not satisfied by the ability to save money by such acquisition, the court stated that the petitioner must prove that the land will be used immediately or within the near future. The petitioner failed to prove such use. Board of Education vs. Baczewski, 340 Mich. 265, 65 N.W. 2d 810 (1950).

Finally, considerable urban development is taking place in areas outside of city and village corporate limits; however, the Mapped Improvements Act pertains only to cities and villages.¹ If the official map procedure is to attain its full effectiveness, the Act should be amended to allow townships to enact official map ordinances.

STATE HIGHWAY RESERVATION
STATUTES

State highway reservation statutes, establishing procedures similar to the official map procedures, can effectively reserve land needed for future freeway construction. Such statutes include those authorizing the reservation of land needed to widen existing rights-of-way (ultimate width statutes) and those authorizing the reservation of land for future freeways. As in the official map procedures, outside right-of-way lines would have to be designated on a plan and land development could then be controlled, for a usually limited time period,² within and adjacent to the specified rights-of-way.

¹Act 222, P.A. 1943, Section 1.

²The State of Washington in its state legislation specified that "the establishment of any highway location as set forth in Sec. 1 of this Act shall be ineffective after one year from the filing thereof, if no action to condemn or acquire the property within said time limit has been commenced within said time." Washington Laws of 1955, Ch. 161, H.B. 246.

While very few state highway departments are authorized to reserve highway rights-of-way¹ per se, Michigan is among those states which have been granted certain highway reservation powers. The Michigan State Highway Department has been granted the power, by ultimate highway width statutes, to control new subdivisions along state highways and compel dedications for highway rights-of-way.² The escape clause in existing highway reservation statutes is usually different from the hardship variance principle established in official map acts. Most reservation statutes "afford relief to the affected property owner by requiring the highway agency to purchase restricted property if a petition is filed requesting it to do so."³ In some cases, however, the owner is granted a conditional permit if the restriction constitutes a hardship, as is done in the official map procedure.

The procedure for reserving land for future freeways under Michigan State Highway Reservation Statutes includes the following steps:

1. Prepare a state highway plan indicating the location and right-of-way width of State highways.

¹California, Pennsylvania, Washington, and Wisconsin have fairly comprehensive state highway reservation statutes. National Academy of Sciences-National Research Council, op. cit., p. 49. Also Daniel R. Mandelker, op. cit., p. 57.

²Mich. Stat. Ann., Sections 26.451-26.467(1953).

³Daniel Mandelker, op. cit.

2. Have the state highway plan adopted by the state and county governing bodies, and filed in the office of the county register of deeds.
3. Forward proposed plats affecting any road described on the State highway plan to the State Highway Department for approval following county plat board approval. (See subdivision controls section in this chapter for further detail.)
4. Approve or reject proposed plat depending on whether it conforms to the state highway plan.¹

Highway reservation statutes have several advantages. They provide a means to implement a total highway network, not just those portions located within cities and villages. Also, as they are not hampered by the self-defeating hardship variance clause found in official map acts, highway reservation statutes can more effectively reserve future freeway rights-of-way. However, in spite of these advantages, the fact remains that most existing highway reservation statutes are actually ultimate width statutes; that is, they regulate the rights-of-way of existing highways, not future freeway road beds.

Certain new highway reservation techniques are being suggested which will effectively reserve the rights-of-way of future freeways. The establishment of highway conservation zones is one such concept. Such zones would cover adjacent areas on both sides of the right-of-way as well as the bed itself.² The idea includes the following phases:

¹Mich. Stat. Ann., Sections 26.451-26.467(1953).

²Daniel Mandelker, op. cit.

1. Prepare and adopt a state highway plan indicating the location and right-of-way widths of state highways.
2. Establish conservation zones along the highway routes designated on the state highway plan.
3. Review all proposed subdivision plats, building permits, and zoning change requests within the designated conservation zones.
4. Approve or disapprove such land development proposals depending on how such proposals affected the highways shown on the state highway plan.

Use of such a technique would not only reserve land effectively but also foster a more harmonious relationship between transportation facilities and land use. In order to employ such a technique in Michigan, however, additional state legislation is needed.

INTER-COUNTY HIGHWAY COMMISSION

An inter-county highway commission, empowered by State law, operates in a manner similar to the official map procedure to reserve land in the beds of future freeways. Two or more counties join together to develop an inter-county highway plan which is then used as the basis for approving or denying a building permit or plat submittal.

The legal basis for the formation and operation of the inter-county highway commission rests in Act 381, Public Acts of 1925, as amended by Act 195, Public Acts of 1955 (see Appendix C). The Act authorizes

certain counties to combine for the purpose of planning systems of inter-county highways, super-highways and limited access highways . . . to

authorize the establishment of inter-county highway commissions; to prescribe their powers and duties; to provide for the appropriation of funds therefor; and to empower counties to legislate with respect thereto.¹

In order to create this commission, a resolution must be adopted by a two-thirds vote of the board of supervisors of each participating county. The resolution shall be binding on all parties for five years, and can be renewed for additional five-year periods. The membership of the commission, as specified in Act 195, shall consist of the state highway commissioner or his deputy, and six members from each of the participating counties. If a regional planning commission exists, its director shall be an ex-officio member. Further, Act 195 explicitly states that it shall be the duty of the inter-county highway commission to prepare a highway plan indicating the location and right-of-way width of future highways in the participating counties and to review all building permits concerning land located within these proposed rights-of-way.²

The procedures to be followed by the commission in reserving rights-of-way for future highways consist of the following steps:

1. The commission shall prepare an inter-county highway plan for the participating counties.

¹Act 195, P.A. 1955 (see Appendix C).

²Ibid., Section 4.

2. The plan must be approved by the governing body of each city and village in the participating counties.
3. A copy of the plan must be recorded in the office of the register of deeds of each participating county.
4. All plat proposals and building permit applications not conforming to the plan shall be denied unless approved by the commission.

The principal advantages of using Act 195, instead of Act 222, to reserve land for future freeways are twofold. First, the plan itself has broader coverage as it includes the location and width of highways located not only in cities and villages, but also in the remaining portions of the counties. And second, no saving clause providing for variances is set forth in Act 195, which increases its effectiveness as long as the entire act is not declared confiscatory by the courts. Actual experience with Act 195 is limited to the Inter-County Highway Commission of Southeastern Michigan, which was established in 1956 under the provisions of Act 195. Cities and villages which are affected by the Inter-County Highway Network Plan are encouraged not only to approve the plan, but also to aid in its enforcement by adopting official map procedures through local ordinances.¹ The Southeaster Commission has been "a cooperative, grass-roots effort to assure sufficient rights-of-way for

¹See recommended "model" ordinance approved by the Detroit Metropolitan Area Regional Planning Commission for consideration by local units of government, April 8, 1958.

tomorrow's needs prior to mushrooming urban expansion monopolizing the needed land."¹

SUBDIVISION CONTROLS

As subdivision regulations control street layout and design in areas being platted, these regulations can be used to effectively reserve land for future freeways. "Subdivision controls probably protect more future streets more effectively than any other type of governmental action."² For example, a city may require a particular subdivider to dedicate the land for a major street, found to conform to the location and design standards adopted in the city's major street plan, as a condition of plat approval.

"Practically all states now confer enabling authority on municipalities, and often counties, to regulate new subdivisions."³ In Michigan such enabling authority is conferred on cities, villages and townships.⁴ The Plat Act (Act 172, Public Acts of 1929) is the legal basis for controlling subdividing practices in the State of Michigan.

¹John C. McKie, "Regionalism in Practice," Regional Reporter, Detroit Metropolitan Area Regional Planning Commission, Detroit, Michigan (October, 1961).

²American Society of Planning Officials, op. cit., p. 5.

³Daniel R. Mandelker, op. cit., p. 55.

⁴Act 172, P.A. 1929, Section 2.

However, in viewing the provisions of the Act, it is important to note that the Plat Act pertains only to plats of five parcels or more. Local units of government are empowered to adopt local subdivision ordinances which will regulate the location and design of future streets proposed in any new plat, providing a major street plan has been adopted in accordance with Act 285 of the Public Acts of 1931.

The Plat Act specifies that

whenever any plat is submitted to the county plat board it shall carefully examine the same to determine . . . as to whether the highways and streets on the plat conform in location and width to plans for state trunklines and federal aid roads on file in said office.¹

Also, that

if a plat appears to include lands on State trunklines or federal aid roads, or have endorsed on same the certificate of the county plat board that the plat affects such roads, the auditor general shall upon receipt of the plat at once forward it to the state highway commissioner who shall approve or reject it within 10 days after receipt.²

The procedures to be followed in employing subdivision regulations to reserve land for future freeway construction are diagrammed in Appendix D. Some conditions which should be emphasized in the plat approval process include the following:

¹Ibid., Section 28.

²Ibid., Section 35.

1. Subdivision regulations should state the design standards for streets and highways, including freeway standards.
2. A freeway location plan, which has met the approval of the Federal, State, and involved local units of government should be adopted by the local subdivision reviewing authority.
3. As any plat proceeds through the proposed plat and final plat stages, various opportunities are available to insure that adequate land is being reserved for future freeway rights-of-way according to the specifications of the adopted freeway location plan. (See Appendix D.)

While subdivision regulations are effective in obtaining the dedication or reservation of land for streets in areas newly subdivided into five or more parcels, there are cases in which such controls do not apply. For instance, subdivisions of four parcels or less are not subject to the requirement of the Plat Act. Neither are land developments where no subdividing takes place such as land being used for the construction of shopping centers or industrial buildings.

Another significant limitation is inherent in the use of subdivision regulations to reserve land for freeways. The streets which must be dedicated by a subdivider must bear some relationship to the subdivisions.

Thus, while few would question the propriety of insisting on dedication of 80-foot or perhaps even 120-foot streets, it seems manifestly unjust to require dedication of a 300-foot right-of-way for a proposed freeway that would bisect a 20-acre residential subdivision.¹

¹American Society of Planning Officials, op. cit., p. 6.

However, reservation of a 300-foot right-of-way could be required as a condition of plat approval, providing the reservation would be required for a "reasonable" time period and adequate compensation would be paid to the landowner¹ when the land was actually purchased.²

URBAN RENEWAL

In the older built-up sections of a community, land for a future freeway can be effectively reserved through urban renewal practices. Since one of the functions of freeways is to provide adequate access into major urban centers, it is often necessary to locate freeways in areas already developed. Certain portions of these built-up areas may qualify for redevelopment under the provisions of the 1954 Housing Act, as amended. The land in these designated redevelopment areas can be purchased and used, in part, for freeway purposes.

Urban renewal legislation refers directly to the application of renewal in striving for improved traffic

¹A letter dated May 26, 1958 from John B. Heinrich, County Counsel of Sacramento County, California, addressed to the county's planning commission contains a carefully considered opinion that reservation of land for freeway rights-of-way can be required. Ibid.

²Krieger v. Planning Commission, 224 Md.320,167A.2d 885(1961).

conditions. Section 110 of the Housing Act of 1954 states that the urban renewal plan

shall conform to the general plan of the locality as a whole and to the workable program referred to in Section 101 hereof and shall be consistent with definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements. . . .¹

The 1959 Housing Act expands the scope of the urban renewal plan to encompass the entire community by providing Federal grants "for the preparation or completion of community renewal programs."²

Once an area qualifies for urban redevelopment, the local governmental unit acquires and clears the land. The Michigan State Highway Department then purchases the land needed for the freeway at its fair market value from the local governmental unit. By this process, the needed land can be effectively reserved for future freeway construction.

One of the distinct advantages of this procedure is that the Federal government absorbs two-thirds of the net cost of obtaining and clearing the land. In addition, "practice has demonstrated that land acquired from a redevelopment body costs much less if the highway agencies acquired the

¹Housing and Home Finance Agency, Federal Laws, Urban Renewal, Excerpts from Housing Act of 1949 and Related Laws as amended through June 30, 1961 (Washington, D.C.: U.S. Government Printing Office), p. 19.

²Ibid., p. 11.

property in the first instance."¹ Another favorable aspect is the fact that there is no time limit stated in regard to a project completion date, thus the land may be acquired and cleared years in advance of the actual construction date. One of the limitations, of course, is the fact that an area must qualify for urban renewal before this procedure can be utilized.

EXTRATERRITORIAL POWERS OF HOME RULE CITIES

Home rule cities have extraterritorial powers up to three miles beyond their municipal boundaries which, if employed, can effectively reserve land for freeway rights-of-way. The authority to acquire land may be exercised by home rule cities in the three mile band immediately outside their corporate limits.

The authorization to invoke this power stems from city home rule legislation which states that "each city (home rule) may in its charter provide . . . for a plan of streets and alleys within and for a distance of not more than three miles beyond its limits."² The Municipal Planning Commission Act reinforces this provision as it requires that master plans shall be developed for such three mile areas as it specifies that

¹National Academy of Sciences-National Research Council, op. cit., p. 54.

²Act 279, P.A. 1909, Section 4.h.

it shall be the function and duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries, which in the commission's judgment, bear relation to the planning of such municipality. Such plan, . . . shall show the commission's recommendations for the development of said territory, including, among other things, the general location, character, and extent of streets. . . .¹

Based on such a plan, then, a home rule city may acquire lands necessary for roads either inside or outside its corporate limits for future roads as designated in the adopted plan.²

The principal asset of this technique is that it assists in harnessing the urbanizing thrust in areas which are often "ripe" for development. The limitations are that only home rule cities can legally wield extraterritorial powers, and areas not within the three mile band are not controlled. Further, it appears that only the power of acquisition can be employed as other implementing procedures such as subdivision controls, zoning controls, and official maps are not explicitly included in the provisions of the Act.

¹Act 285, P.A. 1931.

²"Each city may in its charter provide for the acquisition by purchase, gift, condemnation, lease, construction or otherwise, either within or without its corporate limits and either within or without the corporate limits of the county in which it is located, of the following improvements including the necessary lands therefor, viz: . . . boulevards, streets, alleys," Act 279, P.A.1909, Section 4.e.

ZONING ORDINANCES

Zoning, because it controls land development, can often be used effectively to assist in reserving land for future freeways. Zoning regulates the use of land, the size and type of improvements, and setback or front yard distances. Zoning, since the Village of Euclid v. Ambler Realty Company case,¹ has steadily gained stature as a lawful means of achieving a rational land development pattern. Today the "courts are no longer required to find legal support for such (zoning) ordinances."²

The authority to zone is a power conferred by the State of Michigan, through State enabling legislation, to counties, villages, cities, and townships.³ It is a police power interpreted to be a reasonable governmental regulation of occupations and property uses to protect the public safety, morals, health, and general welfare. All states have such zoning enabling legislation.⁴

¹272 U.S. 365, 47, S.Ct. 114, 71 L.Ed. 303 (1926).

²Donald H. Webster, Urban Planning and Municipal Public Policy (New York: Harper & Brothers, 1958), p. 290.

³Acts 183 (County Rural Zoning Act), 184 (Township Rural Zoning Act), and 207 (City and Village Zoning Act).

⁴National Academy of Sciences-National Research Council, op. cit., p. 50.

The procedure consists of adopting a master plan,¹ enacting a zoning ordinance based on the adopted master plan, and controlling the issuance of building permits depending on the landowners conformance to the provisions of the zoning ordinance. An exception or variance is granted in cases where the restrictions of the zoning ordinance place an undue hardship upon the landowner.

The key contribution that zoning controls can make to the reservation of future freeway rights-of-way lies in the ordinance's legal ability to regulate the use of land. A zoning change which would permit the erection of a shopping center or industrial plant within or adjacent to the proposed freeway right-of-way can be postponed or denied pending final freeway construction. It must be shown, however, that this action is being taken to protect the public safety and general welfare.

Another way that zoning can aid in reserving land for future roads is through setback restrictions. However, setback restrictions are legally upheld by the courts only when their purpose is to promote safety such as protecting the line of sight on a curve or at a corner, but not when the purpose is to reserve front yard areas for future street

¹"The provisions of the zoning ordinance shall be based upon a plan designed to promote the public health, safety, morals, and general welfare. . . ." Act 183, P.A. 1943 (County Rural Zoning Act), Section 3.

widenings.¹ While it is often difficult for the courts to detect the real purpose of setback provisions, it would be highly unlikely that a right-of-way of the width required for a freeway could be successfully disguised as protecting the public safety. Finally, even if successfully disguised a setback is useful only for street widenings. It cannot be applied to new locations, where construction on adjacent frontages is not contemplated until the highway is acquired.²

INFORMATION DISSEMINATION

Land can often be held in its present state of development if the general public, financiers, land developers, and local governments are kept informed as to what definite freeway developments are planned and programmed for the future. It has been estimated that 98 per cent of the property owners will voluntarily refrain from building on land that they know is to be taken for public use in the foreseeable future.³

The general public is officially informed of Federal-aid highway projects, including Interstate freeways, at a

¹Daniel R. Mandelker, op. cit., p. 54. Likewise the purpose of front yard requirements is to provide adequate light and air, not to reserve land for future street widenings. American Society of Planning Officials, op. cit., p. 4.

²Ibid., p. 55.

³American Society of Planning Officials, op. cit., p. 2.

public hearing held by the Michigan State Highway Department. This procedure is required by Federal law.¹ While the law states that a public hearing is required, no date, related to the construction date, is specified as to when the public hearing should be held. In practice, the Michigan State Highway Department follows the Bureau of Public Road's policy that a public hearing must be held within three years of actual freeway construction. Local governments are usually informed of the Michigan State Highway Department's freeway plans prior to the public hearing as the State Highway Department discusses such plans with the local governmental units before determining the final freeway route location.

Further, the Federal-Aid Highway Act of 1962, in Section 9 specifies that both individuals and local governing bodies will be involved in the transportation planning

¹"Any State highway department which submits plans for a Federal-aid highway project involving the bypassing of, or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic effects of such a location. Any State highway department which submits plans for an Interstate System project shall certify to the Secretary that it has had public hearings at a convenient location, or has afforded the opportunity for such hearings, for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed location of such highway." Title 23, United States Code, as amended to October 30, 1963, Section 128.

decision-making process.¹ This process includes the following actions:

1. "Assist governing bodies and official agencies in determining courses of action and in formulating attainable capital improvement programs in anticipation of community needs.
2. "Guide private individuals and groups in their planning decisions which can be important factors in the pattern of future development and redevelopment."²

Also a set of formal procedures to effect cooperation shall be established, supported by written memorandums of understanding,

between the State highway departments and the governing bodies of the local communities for carrying out the transportation planning process in a manner that will insure that the planning decisions are reflective of and responsive to both the programs of the State highway department and the needs and desires of the local communities.³

The procedures to be followed in disseminating information should include:

¹" . . . after July 1, 1965, the Secretary shall not approve under section 105 of this title any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperatively by States and local communities in conformance with the objectives stated in this section." Ibid., Section 134.

²U.S. Department of Commerce, Bureau of Public Roads, "Instructional Memorandum 50-2-63," March 27, 1963, p. 1.

³Ibid., p. 4.

1. Local and regional comprehensive plans should be developed, adopted, and used as one basis to determine future right-of-way needs and to inform the general public of probable future land developments.
2. Copies of freeway plans of the Michigan State Highway Department, and plans of local governmental units affecting a given community, should be filed with the governing body and plat board of said community.
3. Construction programs for the ensuing year should be published including the following: (a) each county road commission's basic yearly construction schedule, and (b) the Michigan State Highway Department's yearly construction program.
4. Construction programs for periods of five and ten years should be presented in the following: (a) capital improvements programs of each municipality, (b) long range county programs, and (c) five and ten year plans of the State of Michigan.
5. A fact sheet presenting and discussing plans, problems, and progress should be distributed twice a year to all local governing bodies, planning commissions, developers, financiers, and other interested citizens.

In addition, a memorandum from the Bureau of Public Roads is forthcoming "prescribing the policies and procedures governing the approval of programs for projects in urban areas of more than fifty thousand population after July 1, 1965.

. . ."¹ It is probable that this memorandum will specify the means to disseminate transportation planning information to governing bodies, official agencies, and private individuals and groups.

It is important for the local units of government to be informed of future freeway plans as they are instrumental

¹Ibid., p. 1.

in the reservation of land (the Michigan State Highway Department can only acquire, not reserve, needed land for freeways). Also, cooperation among all levels of government will aid in the administration of the freeway plan and in the coordination of construction. One type of administrative assistance that information dissemination provides is that of usually reducing the number of hardship and condemnation cases.

SUMMARY

Each of these ten policies for reserving rights-of-way for future freeways has been discussed in regard to their description, extent of use, legality, implementing procedures, and advantages and disadvantages. However, the success of each of these policies may be the true measure of their applicability to freeway reservation matters. One attempt at determining the success of such policies was undertaken in Wisconsin in 1961.¹ The results of this study indicated that urban renewal and official mapping were two of the most effective reservation procedures, while zoning was one of the least effective. This was the concensus of opinion of professional planners; professional city, traffic, and highway engineers; mayors; city managers; aldermen; large-scale land developers; and citizen leaders, including newspaper editors.

¹K. W. Bauer, op. cit., pp. 84-85.

CHAPTER III

CASE STUDY OF THE TRI-COUNTY REGION

HISTORICAL DEVELOPMENT OF THE CASE STUDY AREA

Freeways are a recent arrival to the Lansing Tri-County Region. The Region's first freeway, I-96, was opened in 1962. It traversed the Region in a generally east-west direction. Then, I-496 was constructed from I-96 north to Kalamazoo Street and opened in 1963 making a total of about 46 miles of freeway¹ in all. Both of these facilities are located through primarily rural or undeveloped areas, thereby minimizing the costs of acquiring the land for the needed rights-of-way. Today many additional miles of freeway are planned and proposed. A high percentage of these miles will pass through the built-up portions of the Region where land acquisition costs are high. The problem is how to minimize the cost of acquiring these lands needed for the Region's future freeways.

This problem did not furrow the brow of the Region's first settlers in 1826 as they made their homes in the northern portion of Clinton County at the place now known as

¹The Michigan State Highway Department estimates that 46.3 miles of Interstate freeways had been completed within the Region as of January, 1964.

Maple Rapids.¹ Nor did it concern William and Jerry Ford, who were among the City of Lansing's first urban planners, as in 1835 they designed "Biddle City," later changed to Lansing, into a 65 block metropolis.²

However as the years passed by, the Lansing area grew steadily. It became the home of the State capital in 1847,³ the Michigan Agricultural College in 1855,⁴ and the Oldsmobile industry in the 1890's.⁵ By 1900, the five townships⁶ which now encompass Lansing, East Lansing, and Michigan State University boasted a population of 23,549, about 24.4 per cent of the Region's total population of 96,622. By 1930, a population of 103,160 was realized in this same five township area or 59.8 per cent of the Region's 172,489 residents. And by 1960, the figure for this same area had swelled to 198,142, over 66.5 per cent of the 298,949 inhabitants of the Region, indicating that the Tri-County Region was following the national trend of urbanization.

¹Tri-County Regional Planning Commission, History of the Tri-County Region, Information Report No. 7 (no date), p. 1.

²Ibid., p. 24.

³Ibid., p. 4.

⁴Ibid., p. 25.

⁵Tri-County Regional Planning Commission, Summary of General Economic and Population Information for the Lansing Tri-County Region (Lansing, Michigan, February, 1963), p. 3. (Unpublished report.)

⁶The five townships consist of Delhi, Delta, DeWitt, Lansing, and Meridian (see Map 1 for their location in the Region).

While the movement of people from the country into urban areas continued, a second movement from the urban centers to the urban fringe began to take place. The spaciousness of the suburbs and the peacefulness of outlying communities lured people away from the bustling center of Lansing. Although settling in the outlying areas, most people continued to work in offices, commercial establishments, educational institutions, and industries located in the center of the Lansing-East Lansing complex. This settlement pattern increased the number and length of home to work trips--trips toward the urban centers. As people began to be blessed with more leisure time, due primarily to technological changes, the number of trips away from the urban center to major recreational areas also increased.

One of the major factors which stimulated both of these travel patterns was increased car ownership, made possible by higher incomes and more attractive credit financing policies.

In 1900, very few automobiles traveled the roads in the Tri-County Region; however by 1930, the number of automobiles registered in Clinton, Eaton, and Ingham counties rose to 49,015 or 285 cars per 1,000 population. By 1960, the figure was 110,485, or 369 cars per 1,000 persons.¹

¹Vehicle registration records from the office of the Secretary of State for the State of Michigan.

Meanwhile, the road system was being continually improved--first to keep the "horseless carriages" introduced near the turn of the century from getting stuck in the mud, and now to accommodate the hundreds of thousands of trips which are made on the Region's roads each day. The plank road, later graveled, moved highway traffic satisfactorily from Lansing to Detroit during the latter half of the nineteenth century,¹ but by the middle of the twentieth century even the best highways were hard pressed to meet the gigantic travel demands imposed upon them. Hence, the introduction of the most modern of all highways--the freeway.

The first freeway, I-96, was constructed primarily to provide a route for traffic traveling into, through, or out of the Region. This tended to reduce the traffic on those highways cutting through the populated Lansing-East Lansing area. The second freeway, I-496, afforded quick access to the center of the urban complex from the southern and eastern portions of the Region. Future freeways will permit traffic originating in the remainder of the Region to reach downtown Lansing more quickly and safely than ever before.

¹"By 1852 the first highway in the Region, a plank road connecting Lansing and Detroit, was completed along the Grand River Trail. In 1866 this plank road became a graveled arterial, and early settlers using it could make the Lansing to Detroit trip in ten hours. Now the same drive takes approximately two hours on U.S.-16." Tri-County Regional Planning Commission, Transportation, An Inventory (Lansing, Michigan, January, 1962), p. 4.

EXISTING CONDITIONS IN THE CASE
STUDY AREA

Less than one-half of the freeways which have been proposed for construction in the Tri-County Region have been completed. The location of the existing 46 miles of freeway are indicated on Map 1. Also shown are the routes of freeways in the following stages of planning and development:

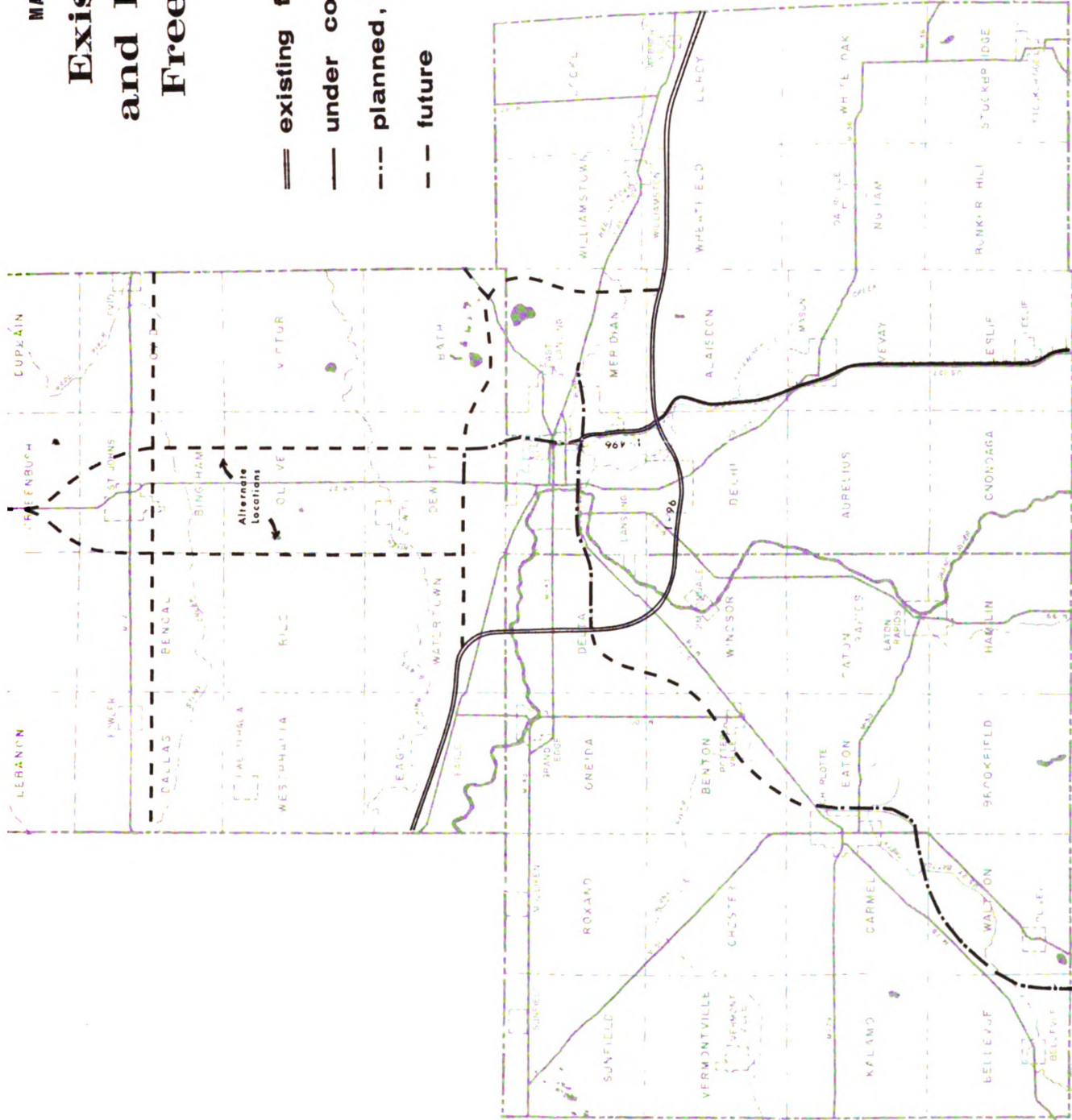
1. Under contract at the present time, or by 1967.
2. Planned for construction during the 1967-72 five-year period.
3. Proposed for construction sometime in the future when land development warrants their construction, but not before 1972.

This freeway system is supplemented by arterial highways radiating from the center of the Lansing-East Lansing area. These radial routes, also shown on Map 1, connect the City of Lansing with the other major cities in Southern Michigan and with all of the cities in Clinton, Eaton, and Ingham counties.

The freeway system will assume some of the functions now undertaken by these arterial routes. The freeway system will connect Lansing with the other major cities in the State and with the smaller major urban centers in the Region, the three county seats and other selected communities. The arterial system will continue to serve the smaller urban centers in the Region and the various sub-areas of the Lansing-East Lansing complex.

Existing and Future Freeways

- == existing freeways
- under contract by 1967
- - - planned, 1967-'72
- future



Existing land use patterns reflect the urbanization and move-to-suburbia trends as the Lansing-East Lansing area continues to expand.¹ Industry is concentrated in the Lansing-East Lansing area with some industries being located in the three county seats, which are experiencing urbanization to a lesser extent than Lansing. It appears that the planned freeways have been designed to accommodate the Region's home-to-work trips, while the home-to-recreate trips road needs will be met by freeways in other stages of development.

Certain land development controls are available to assist in protecting the land needed to construct these freeways. Seventy governmental units of the seventy-five in the Region either have their own zoning ordinances or are under county zoning. Three planning commissions have adopted subdivision controls. While one planning commission has adopted an official map, no legislative bodies have done so. (See Appendix F for a detailed listing of all local governmental units in the Region and the land development controls which they currently employ or have available to employ.)

¹Tri-County Regional Planning Commission, Alternatives for Growth (Lansing, Michigan, 1965).

DETAILED ANALYSIS OF TWO FREEWAY
PROPOSALS FOR THE CASE STUDY AREA

Using this Regional freeway-arterial system and available development controls as a framework, a detailed analysis will be made of those future freeways which present the land acquisition problems of the highest magnitude. In this case, the planned freeways, I-496 and US-127, have been selected as they:

1. Are located entirely within the five township area, previously referred to, which houses a significantly high percentage of the Region's total population.
2. Penetrate into the heart of the Lansing urbanized area whereas the existing freeways are located primarily in the rural areas around the urbanized Lansing area.
3. Cross county, township, and city political boundaries thus necessitating both city and township, or county, land development controls to reserve all of the future freeway rights-of-way.
4. Have already posed land acquisition problems as costly buildings have been proposed and constructed in the paths of these future freeways.
5. Are scheduled for construction a sufficient number of years in the future to permit freeway reservation policies to be effectively employed.

For analysis purposes, study corridors for each of these planned freeways have been established, approximating a one mile wide belt with one-half of the belt on each side of the





freeway.¹ Within these study corridors, the land acquisition problem will be described and the possible application of freeway right-of-way reservation policies investigated.

A first step in determining the magnitude of the land acquisition problem is to map land use. Such a map indicates which freeway routes will probably be most economical. For instance, land used for agricultural purposes will be relatively inexpensive, whereas the cost of industrial and commercial land would usually be prohibitive. Map 2 portrays the 1964 land use within the two study corridors. The proposed route of the east-west I-496 freeway is through areas that are in predominantly open use (mainly agricultural areas and railroad rights-of-way), and low and medium density residential use. The proposed location of the north-south extension of US-127 has been diverted around recently constructed apartment buildings and a medical building, so it likewise is scheduled to be constructed in areas characterized by predominantly open or residential land uses. However, both of the proposed routes and corridors contain some intensely developed commercial and industrial properties which must be acquired before freeway construction can be undertaken.

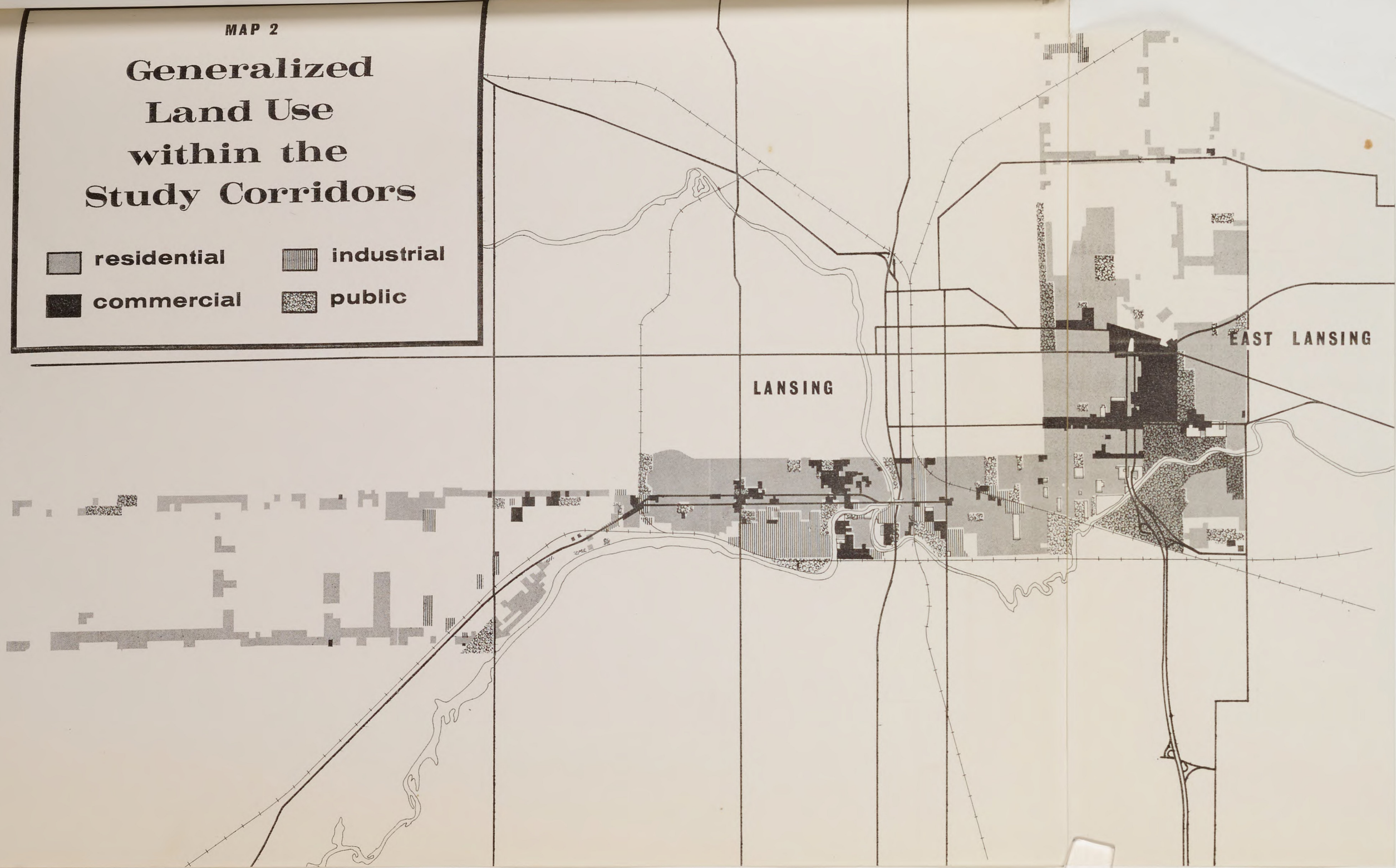
¹This corridor width was suggested as a possible width of a highway conservation zone. "In most cases, the conservation zone would extend a reasonable distance on both sides of the highway, perhaps one-half mile each way, and thus would enable the highway department to control effectively the area in which the new highway could be expected to have an influence on land use." Daniel R. Manelker, op.cit., p. 57.



Generalized Land Use within the Study Corridors

- | | |
|---|--|
|  residential |  industrial |
|  commercial |  public |

60



EAST LANSING

LANSING

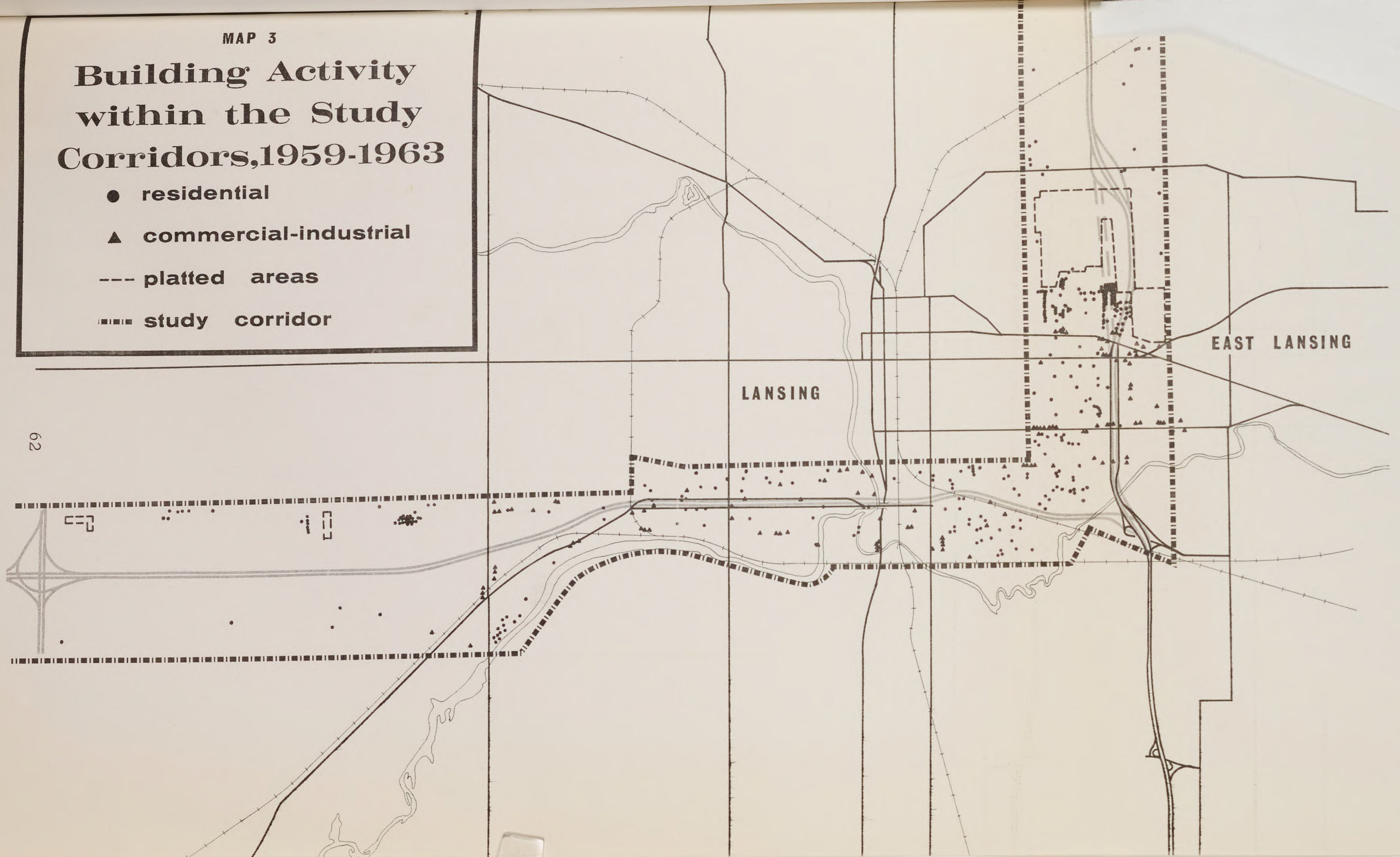
A second step in determining the magnitude of the land acquisition problem is to plot building activity. The pattern of building activity designates where in the study corridors the application of freeway reservation policies are most necessary to minimize land acquisition costs. Map 3 portrays the building activity¹ which has taken place within the study corridors in the years 1959 through 1963. Such a five year period is the usual time period designated by the courts as a reasonable length of time to restrict land development without actually acquiring the fee simple title. During the five year period beginning in 1959 and ending in 1963, some 463 building permits were issued in the two study corridors. Of this total, 213 building permits were issued in the City of Lansing, 189 in Lansing Township, 53 in Delta Township, seven in DeWitt Township, and one in the City of East Lansing (see Appendix G for these and additional building activity figures).

This building activity, when compared to the generalized land use in the two study corridors, points out the following pattern:

¹Only substantial building activity has been indicated on Map 3. Substantial is defined, in general, as any building permit listing an estimated project cost of over \$1,000. This eliminates most garages and other construction which would not seriously affect the final selection of a right-of-way for a future freeway.

Building Activity within the Study Corridors, 1959-1963

- residential
- ▲ commercial-industrial
- platted areas
- study corridor



1. The concentration of new construction to the north of Grand River Avenue in the vicinity of the original location of the US 127 freeway.
2. The location of many new subdivision plats north of Grand River Avenue in the US 127 corridor.
3. The suggested concentration of new residential construction west of the City of Lansing in the I-496 corridor.
4. The scattered pattern of building activity in the already built-up areas in both study corridors.
5. The primarily vacant areas both west and north of the City of Lansing which are becoming more attractive as locations for expanding urban growth.

The fact that, on the average, more than 90 building permits of over \$1,000 were issued during each of the five years in the two study corridors seems to indicate a need for controlling the location and type of building taking place in, and adjacent to, the beds of future freeways.

A third step in determining the magnitude of the land acquisition problem is to assess the additional cost of future freeway rights-of-way incurred by current building activity. This step is actually an expansion of step two. In the initial freeway right-of-way bed of the two proposed freeways (indicated with solid gray lines except where broken gray lines are shown on Map 3), the cost of new construction from 1959 through 1963 was estimated to be \$1,747,000. Due to the high capital outlay which would be required to purchase the necessary rights-of-way for this route, an alternate route was selected which circumvented the intensive urban development located north of Grand River

Avenue. Still the cost of new construction which occurred in the rights-of-way of the alternate route from 1959 through 1963 amounted to over \$115,000 (see Appendix G). The additional moneys necessary to acquire the needed rights-of-way could probably have been saved if adequate freeway reservation policies had been employed.

A fourth step in determining the magnitude of the land acquisition problem is to locate newly platted areas. New subdivision plats located in the path of, or adjacent to, a future freeway if developed may adversely affect plans for that freeway. It could cause the location of the proposed freeway to be altered, or result in an increase in the cost of land acquisition if the freeway route remains unchanged. Map 3 portrays the areas which have been platted from 1959 through 1963 in the two study corridors. During the five year period, the subdivision plats which have been submitted for approval have contained 957 lots. Of those, 475 were in subdivision plats which had received final approval. The newly platted areas which would have the greatest effect on freeway costs are those located north of Grand River Avenue in the US-127 study corridor. Both the initial and revised proposed locations of US-127 pass through that newly platted area.¹

¹One of the reasons that so many plats were approved was that local subdivision reviewing authorities were not furnished a plan indicating the location of proposed US-127. It is the practice of both the City of Lansing and Lansing Township to encourage plat designs which incorporate the

A fifth step in determining the magnitude of the land acquisition problem is to assess the number and types of governmental units involved. The legislation regarding the different freeway reservation policies varies for the different types of governmental units. For instance, official map acts can be legally adopted by cities and villages under the authority of Act 222, but not by townships and counties. Another example is the case of the home rule city which has extraterritorial powers regarding subdivision control, but other types of cities, all villages, townships, and counties have no such power. The two study corridors pass through several different governmental units, possessing different legal powers to reserve freeway rights-of-way, which are as follows:¹

1. City of Lansing which became a home rule city in 1912. It can presently employ the following freeway reservation policies: advance acquisition, subdivision control, urban renewal, extra territorial power, zoning control, and information dissemination.

road patterns established in street and highway plans. However, even with such plans it is apparent that local governmental units are sensitive to the rights of the individual and will not emphatically enforce the plan. This is true in regulating building permits as well as subdivision proposals.

¹The type of governmental unit and date of organization for each governmental unit in the case study area were obtained from the following publication: Tri-County Regional Planning Commission, History of the Tri-County Region, Information Report No. 7 (no date), pp. 32-38.

2. City of East Lansing which became a home rule city in 1944. It can presently employ the following freeway reservation policies: advance acquisition, subdivision control, urban renewal, extraterritorial power, zoning control, and information dissemination.
3. Delta Township which was organized as a charter township on February 16, 1842. It can presently employ the following freeway reservation policies: advance acquisition, urban renewal, zoning controls, and information dissemination.
4. DeWitt Township which was organized as a general law township on March 23, 1836. It can presently employ the following freeway reservation policies: advance acquisition, subdivision control, urban renewal, and information dissemination. (The township is under county zoning control.)
5. Lansing Township which was organized as a charter township on February 16, 1842. It can presently employ the following freeway reservation policies: advance acquisition, urban renewal, zoning control, and information dissemination.

For a complete listing of all governmental units in the Tri-County Region and the freeway reservation policies which they can legally employ see Appendix F.

FREEWAY RESERVATION PROBLEMS IN THE CASE STUDY AREA

The case study area is beset with the same freeway reservation problems which are being experienced throughout the State and across the Nation. Rising land acquisition costs due to the inadequate control of land development in the paths of future freeways continue to hinder economical construction of modern roads to meet the transportation demands of the over 300,000 inhabitants of the Tri-County Region.

Some of the problems existing in the case study area regarding the reservation of land in the beds of freeways include the following:

1. Plans specifying the location of future freeways are not being developed far enough in advance of actual freeway construction to permit the preservation of land in its present state of development. For example, the plan for US-127 was approved by the State Highway Commissioner in October, 1964,¹ long after substantial current construction had taken place in the bed of the freeway finally approved by the Commissioner.
2. Advance acquisition procedures are not being instituted far enough in advance by the State Highway Department or the local governmental units in cases where intensive land development is imminent. For example, proposed US-127 has been relocated due to development which has taken place in the path of the initial proposed location.
3. Official map ordinances have not been adopted by any villages or cities in the Region.² Consequently, numerous building permits are being approved allowing expensive construction on land in the paths of future freeways. Proposed I-496 and US-127 illustrate this problem.
4. Subdivision control ordinances have only been adopted by three villages, cities, or townships in the Region.³ Hence, in some cases, proposed subdivision

¹Michigan State Highway Department, US-127 Relocation, Engineering Report 1688 (October, 1964).

²Based on the results of telephone calls and personal interviews conducted in 1964 and 1965. The City of Lansing has an official map ordinance which is pending city attorney approval after having been approved by the Planning Board on November 2, 1964. It has not yet been adopted by the City Council.

³Based upon a survey conducted by the Tri-County Regional Planning Commission in 1965. Results of the survey are in note form only.

plats for land in future freeway rights-of-way have been approved without freeway right-of-way reservation being a condition of plat approval.¹

5. Extraterritorial powers are not being employed by home rule cities to acquire land in advance.²
6. Zoning control ordinances have been adopted by most of the local governmental units in the Region (see Appendix F), however usually land use is not controlled with respect to future freeway locations.
7. Coordination among the local units of government in the Tri-County Region is a problem of paramount importance as freeways traverse all types of local governmental units. The fact that powers, which can be used to reserve freeway rights-of-way, vary among these different local governmental units makes it difficult to assure adequate freeway reservation practices.

The effect of these shortcomings is unnecessarily high acquisition costs for land needed for future freeway construction in the Tri-County Region. Even when a future freeway is relocated to skirt mushrooming intensive land developments, the costs are often greater than need be. This is true in the case of the US-127 proposal.

In the future, if these land acquisition costs are to be minimized, additional freeway reservation policies must be employed. Many such policies can be effective under existing State enabling legislation. Others will require additional laws to assure their legality. Chapter IV will present two sets of recommended freeway reservation policies

¹Both the initial and the relocated proposed paths for US-127 north of Grand River Avenue pass through land recently platted.

²Based on the results of telephone calls and personal interview conducted in 1964 and 1965.

for the case study area, the Tri-County Region. The first set will be policies which can be employed under existing laws, while the second set will require additional legislation.

CHAPTER IV

RECOMMENDED FREEWAY RESERVATION POLICIES FOR THE TRI-COUNTY REGION

INTRODUCTION

It is evident that freeways are needed, but that their cost of construction is unnecessarily high due to intensive land development. It is likewise evident that each of the freeway reservation procedures or policies available under existing State legislation has its limitations. For instance, the official map policy is applicable only in the Region's cities and villages. Subdivision controls apply only to land newly subdivided into five or more parcels. Zoning ordinances control the use of land, but not the buildings on the land. Extraterritorial powers permit the control of development beyond the boundaries of cities, but only home rule cities and for a maximum distance of three miles. However, while each policy has its inherent limitations, it appears that, when used in concert, the policies with legal sanction can fairly effectively reserve future freeway lands. These policies are referred to in this chapter as short range policies; that is, they can be immediately employed without any unnecessary delay which may be caused by needed legislative actions.

On the other hand, it is apparent that future freeway rights-of-way could be reserved more effectively if additional enabling legislation were passed or if a region-wide authority were established. The passage of an act creating a revolving fund to finance advance acquisition of future freeway lands is one example. Another is expanding Act 222 to extend official map powers to township governments, in addition to cities and villages. But even under existing legislation, a regional authority may be created such as an inter-county highway commission. These actions are long range in nature as considerable time is necessary to overcome the hurdles of establishing such a regional authority, just as time is required to pass additional legislation.

Procedures which could be presently implemented under existing legislation to reserve future freeway lands are presented below as a short range set of policies. Additional techniques which require a longer period of time to implement have been noted as being long range policies.

SHORT RANGE POLICIES

The legal tools useful in freeway reservation presently available in the Tri-County Region are listed by governmental unit in Appendix F. Suggested freeway reservation policies, based on these existing legal tools, consist of the following:

1. A freeway location plan should be prepared by the Michigan State Highway Department.

Such a plan should show the proposed right-of-way lines for future freeways and state the estimated time of construction. In addition, it should be adopted by ordinance by the affected townships, villages, and cities. The freeway location plan should correspond to comprehensive plans, if such exist, for any of the affected local governmental units. If comprehensive plans have not been adopted, these plans should be prepared and adopted by the local governing body. Following adoption by the local governmental unit of either the freeway location plan or the comprehensive plan, the plan should be filed with the county register of deeds and the county plat board. Prior to the adoption of either plan by the local governing body, the plan should be reviewed by the Tri-County Regional Planning Commission and the planning commission of the affected local governmental unit, if one exists. (See Appendix H for a sample ordinance.)

Whether the Michigan State Highway Department is able or willing to prepare freeway location plans far enough in advance to maximize the benefits of such a plan in reserving land is an unknown quantity. At present, the State Highway Department prepares detailed freeway location plans three to five years in advance of construction. Perhaps the Highway Department could prepare less detailed plans still further in advance of construction without adversely

affecting their current planning and construction operation. Such plans might indicate the general location of the proposed freeway without indicating the relationship of the freeway to each individual parcel. This type of freeway location plan was upheld by the courts in the Florida case referred to previously.

2. Advance acquisition procedures should be initiated by the Michigan State Highway Department.

Documents such as memorandums of understanding should be filed with the affected local units of government. Such documents should express the State Highway Department's intent to purchase lands in the paths of freeways shown on the freeway location plan which would otherwise be developed. Moneys should be budgeted specifically for these advance acquisition purposes. In addition, more extensive use should be made of the local units legislative authority to borrow money for advance acquisition through bonding.

At present the Michigan State Highway Department is reluctant to enter into an extensive advance acquisition program. The reason for this hesitancy is that evidently adequate moneys are not available. Therefore, to effectuate this policy, certain revisions would be required including, perhaps, budgetary changes.

3. Official map ordinances should be adopted by the legislative bodies of the cities and villages in the Tri-County Region affected by freeway location plans.

Such an ordinance could be part of the ordinance adopting the freeway plan. (See Appendix H for a suggested ordinance.) Based on this ordinance building permits would be denied within the rights-of-way of the freeways designated on the adopted free location map. A Board of Zoning Appeals should be provided for in the ordinance if one doesn't exist. (See Appendix B for detailed procedures.)

Even though official map ordinances are recognized as being effective, only the City of Lansing in the Tri-County Region has even attempted to employ this procedure. Whether any city or village legislative body will cooperate by adopting official map ordinances is questionable, since none have done so in the past twenty years.

4. A resolution of intent to assist in the effectuation of freeway plans, by regulating subdividing and zoning activities should be signed by each township, village and city in the Tri-County Region affected by adopted freeway location plans.

By signing such a resolution, the township, village or city would agree to deny plat approval unless the freeway right-of-way was dedicated or reserved as a condition of plat approval. Also zoning change requests would be refused which adversely affected the construction and operation of freeways shown on adopted plans. (A suggested resolution is presented in Appendix J.)

In many cases, the signing of resolutions of intent would have to be preceded by educational meetings with the various local governmental units. In the Tri-County Region the Governmental Coordinating Committee, which was established as a working element in the Tri-County Regional Planning Commission's Land Use-Natural Resource-Transportation Study, could serve as the vehicle to encourage local governmental unit cooperation.

5. Extraterritorial powers should be utilized by home rule cities in the Tri-County Region to preserve future rights-of-way.

Future freeway rights-of-way should be acquired by the city when intensive development of such lands is imminent. The moneys for such land acquisition could be obtained from the home rule city's share of the motor vehicle highway fund and through the public sale of bonds. The success of this policy depends on whether home rule cities would cooperate in this effort. Also, the problem of obtaining adequate funds would be a decisive factor.

6. A cooperative program of information dissemination should be established by the Michigan State Highway Department.

Detailed information regarding future freeway construction should be distributed to the affected local governmental units between five and ten years in advance of actual freeway construction. The local governing bodies

should then assure the widest possible distribution of this freeway plan information.

7. The current court interpretation of "futuraity" should be tested.

Recommendations numbered 2, 3, 4, 5, and 6 should be employed five to ten years in advance of the actual construction date. Also, the opinion of the State of Michigan's Attorney General should be obtained in regard to what constitutes a reasonable length of time between reservation and construction.

LONG RANGE POLICIES

As each of the freeway reservation policies possible under present legislation have certain limitations, additional State enabling legislation is necessary to assure more effective reservation of freeway lands. This additional legislation and the accompanying freeway reservation policies include the following:

1. A revolving fund should be created by State legislative action.

Either moneys should be appropriated in the State's annual budget or authority should be granted to the Michigan State Highway Department to use moneys from various pension funds. The State Highway Department would utilize the moneys in the revolving fund to acquire those parcels in the paths of future freeways which would otherwise be intensively

developed. Heretofore the Michigan State Highway Department has not expressed a keen interest in encouraging legislative action which would create such a fund.

2. Townships in the Tri-County Region should be granted the legal authority to adopt official maps and restrict construction within the rights-of-way designated on said maps through building permit denial.

This could be accomplished by amending Act 222 (Mapped Improvements Act) to include townships, as well as cities and villages. (See Appendix I for a suggested procedure for townships to follow in employing the official map technique.) As mentioned in the short range policy discussion, the official map technique would only be as valuable as the township's desire to employ such procedures.

3. An Inter-County Highway Commission should be created by resolution among the county boards of supervisors of Clinton, Eaton, and Ingham Counties.

The initial step toward achieving such a resolution could be taken by the Tri-County Regional Planning Commission which could develop and submit a proposed organization and schedule of duties to the three county boards of supervisors. The membership of the inter-county highway commission would consist of the state highway commissioner or his deputy, the three road commissioners from each Clinton, Eaton, and Ingham counties, the chairman and two members of each of the three county boards of supervisors, and the director of the

Tri-County Regional Planning Commission who shall be ex-officio. The duties of the commission would be to reserve the land in the beds of highways in the manner set forth in Act 195. (See Appendix C for a copy of this Act.)

4. The possibility of Highway Reservation Statutes being enacted by the State of Michigan Legislature authorizing the establishment of freeway conservation zones should be explored.

The authority would be vested in the Michigan State Highway Department to delineate such zones. The zones would be based on freeway location, or comprehensive development, plans reviewed by the Tri-County Regional Planning Commission and adopted by the affected local governmental units. Once the zone boundaries had been determined, they would be reviewed and approved by the Tri-County Regional Planning Commission, the road commissioners of the affected counties and/or the inter-county highway commission if such exists, and the governing body of the affected local units of government. Once the conservation zones had been approved by all affected parties, the State Highway Department would be endowed with the power of review, and possibly approval, regarding building permits, new plats, and proposed land use changes pertaining to land within the freeway conservation zones.

CONCLUSION

Although these suggested policies provide the procedural framework for reserving land for future freeways, several key issues still confront the individual landowner, highway engineer, and planner. For example, the following questions remain partially unanswered:

1. Should the State Highway Department exercise control of land development in the paths of future freeways and other State highways, leaving the reservation responsibility for county, city and village roads in the hands of the respective local units of government?
2. Does the Michigan State Highway Department favor new legislation regarding reservation of freeway rights-of-way?
3. Who should act as coordinator for freeway reservation efforts in the Tri-County Region?

While the answers to these questions are difficult, it is hoped that these short and long range policies suggested for the Tri-County Region will remove some of the hinderances of effective street reservation of which Russell Van Nest Black spoke. For instance, the level of understanding by the public and the administrators will be enhanced by having local governmental officials sign resolutions of intent, by establishing a sound cooperative program of information dissemination, and by using the inter-county highway commission as a vehicle to foster well-defined, well-thought-out, and uniform freeway reservation procedures.

Better use of existing enabling legislation and the passage of additional legislation, another on Black's list

of hinderances, constitute the backbone for many of the policies which have been suggested in this chapter to promote effective freeway reservation. Apprehensions as to the legality of certain freeway reservation procedures may be allayed as these policies are put into effect. It seems probable that the courts will uphold the various short range policies, and the long range policies also pending additional enabling legislation legalizing these policies.

The judgment of the courts, however, will undoubtedly be based on the basic issue of individual rights versus the public welfare. As the use of 300 foot swaths of land are removed from the jurisdiction of the individual, a considerable deprivation of rights is often involved. The people of the United States are blessed with a Constitution which protects the rights of the individual. At the same time, it is recognized that the wise use of resources is paramount. Therefore, as these suggested reservation policies for future freeways are employed, care should be exercised to respect the rights of the individual while fulfilling the needs of the community as a whole.

APPENDIX A

ADVANCE RIGHT-OF-WAY
ACQUISITION PROCEDURE

FREEWAY PLAN DEVELOPMENT	The freeway plan is formulated by the State Highway Department in conjunction with local units of government.
FREEWAY PLAN APPROVAL	The engineering report must be approved by the Michigan State Highway Commissioner and reviewed by the Bureau of Public Roads. Local governmental agencies must approve the Freeway Plan.
PUBLIC HEARING	A public hearing is held by the State Highway Department and all interested parties may comment upon the proposed freeway routes.
IMPLEMENTATION OF FREEWAY PLAN (PROGRAMMING)	The project or projects necessary to carry out the approved freeway plan must be programmed. Funds must be available before purchase of project designated rights-of-way may be authorized.
RIGHT-OF-WAY ACQUISITION APPROVAL	A two-step approval of the Bureau of Public Roads is required before acquisition can be initiated. Step one approval is for appraisal and title search and involves the State Highway Department showing necessity for purchase. Hardship or potential development cases should be cited. Step two approval is for acquisition. (This phase is only necessary if monies from the Bureau of Public Roads are involved.)
ADVANCE PURCHASE	Right-of-way portions of the freeway plan should indicate total takes and describe partial takes. Purchase should be made, at the minimum, of lands (1) where an owner can indicate a hardship and (2) where pending development makes purchase advantageous.

NOTE: "ACQUISITION OF PRIVATE PROPERTY WITHIN RIGHTS-OF-WAY OF PLANNED PROJECTS; EXPENDITURE OF MONEY; REVENUES, DISPOSITION.

Sec. 13a. The state highway commissioner, the several county road commissions and the incorporated cities and villages of the state, acting individually or jointly in accordance with the contract, therefore, may acquire by purchase or condemnation, in advance of actual construction programming, private property situated within the rights-of-way of any highway projects planned for future construction by the governmental unit, and may expend for the advance acquisition of right-of-way monies received by the governmental unit and from the motor vehicle highway fund."

SOURCE: C.L. Section 247.663(a) and M.S.A. Section 9.1097 (13a); and Michigan State Highway Department, Route Location Division in the Office of Planning, Letter dated December 26, 1963.

APPENDIX B

OFFICIAL MAP PROCEDURE UNDER ACT 222, P.A. 1943
MAPPED IMPROVEMENTS ACT

STEP #1

ADOPTION OF MASTER PLAN BY CITY OR
VILLAGE PLANNING COMMISSION

Master plan is for the entire local governmental unit or for one or more major sections or divisions thereof.

Additions to the adopted master plan may be made and certified to the legislative body by the planning commission, with procedures stated under the modification or amendment step being in effect.

STEP #2

CERTIFICATION OF PRECISE PLATS (OFFICIAL
MAP) BY CITY OR VILLAGE
PLANNING COMMISSION

Plats show the exact location of the proposed future outside lines of 1 or more new, extended or widened streets, avenues, places, or other public ways shown on the adopted master plan.

Planning commission transmits to the legislative body an estimate of the time period within which the land acquisitions for public use indicated on the certified plat should be accomplished.

MODIFICATION OR AMENDMENT

Both the legislative body and the planning commission can initiate modifications and amendments.

Modifications of certified plat before passage of adopting ordinance and any amending ordinance originating in the

legislative body shall be submitted to planning commission for its approval.

Legislative body can over-rule disapproval of commission by a recorded vote of not less than $2/3$ of its entire membership.

Failure of planning commission to report on any such modification or amendment within 30 days shall constitute approval thereof.

STEP #3

ADOPTION OF PRECISE PLATS (OFFICIAL MAP) BY CITY OR VILLAGE LEGISLATIVE BODY

City or village legislative body may by ordinance adopt any precise plat certified to it by the planning commission.

Notice of time and place for consideration of certified plat for final passage shall be sent by mail to the record owners of land located within or abutting on the new lines of such proposed streets.

STEP #4

REVIEW OF EXCEPTIONS AND VARIANCES BY CITY OR VILLAGE ZONING BOARDS OF APPEALS

Zoning Board of Appeals shall have the power to authorize the granting of permit for the erection of a building or structure within the lines of any mapped street.

A public hearing shall be held before any action may be taken regarding a building permit. At least 10 days notice of the time and place of the hearing shall be given to the appellant by mail at the address specified by the appellant in his appeal petition.

Zoning Board of Appeals shall have the power to specify the exact location, ground area, height, and other details and conditions of size, character and construction, and also the duration of the building, structures, or part thereof to be permitted.

APPENDIX C

INTER-COUNTY HIGHWAY COMMISSION ACT

Act 381 of 1925

As Amended by Act 195 of 1955

AN ACT to authorize certain counties to combine for the purpose of planning systems of inter-county highways, super-highways and limited access highways; to define the terms "super-highways" and "limited access highways" to authorize the establishment of inter-county highway commissions; to prescribe their powers and duties; to provide for the appropriation of funds therefore; and to empower counties to legislate with respect thereto.

Section 1. Any 2 or more counties may by their boards of supervisors contract for the purpose of planning a system of inter-county highways, super-highways and limited access highways for such counties, and may bind themselves thereto by resolution adopted by a 2/3 vote of the board of supervisors of each county so combining, for a term of not to exceed 5 years; and when the term of any contract made hereunder shall have expired, such contract may be renewed from time to time for additional terms of not to exceed 5 years subject to the other provisions of this act.

Section 2. The term "super-highway" shall include any highway of a width ranging from 120 to 204 feet or more and in special instances of a width of not less than 106 feet and when established shall be deemed a public highway. The term "limited access highway" shall include such highways as are especially designed for through traffic, and over, from or to which owners or occupants of abutting land have no easement or right of light, air or access by reason of such abuttal. Super-highways or limited access highways may be parkways, with or without landscaped roadsides, from which trucks, buses or other commercial vehicles may be excluded; or they may be motorways open to use by all common forms of highway traffic.

Section 3. When any 2 or more adjoining counties combine under the terms of this act, they shall establish an inter-county highway commission which shall be composed of the state highway commissioner or his deputy, and 6 members from each of the counties participating, as follows: the county road commissioners, the chairman of the county board of supervisors, and 2 members selected by the board of supervisors who shall be members thereof: Provided, however, That if a

roads and bridges committee has been established by said county board of supervisors, the chairman of such committee shall be 1 of the 2 members thus selected: Provided further, That if a regional planning commission, created under the provisions of Act No. 281 of the Public Acts of 1945, as amended, being sections 125.11 to 125.23 inclusive, of the Compiled Laws of 1948, has been or shall be formed in any of the counties participating hereunder, the director of such regional planning commission shall be an ex-officio member of the inter-county highway commission.

Section 4. It shall be the duty of said commission to prepare an inter-county highway plan for the participating counties and to designate thereon the proposed highways, their width, the counties through or into which they will run, and if these are existing highways, the additional right-of-way requirements therefor necessary to obtain the width desired. After such plan has been approved by the governing body of each incorporated city and village affected thereby, the commission shall record a copy thereof in the office of the register of deeds in each participating county. After the plan has been recorded as aforesaid, no plat of land in said district shall be accepted which is not in conformity with said plan. No structure shall be built on the land within the lines of any proposed highway except on a permit granted by said commission. The counties may in their contract provide rules and regulations governing the procedure of the said commission.

Section 5. Members of the commission shall receive actual expenses necessarily incurred in the performance of their duties.

Section 6. The commission shall name its officers from its membership, except as herein otherwise provided, and shall have power to engage such engineers, attorneys, officers, agents and such other employees as may be necessary, within the limitation of funds provided by the participating counties. It shall keep a record of its proceedings and designate 2 or more of its members to sign and countersign all warrants and orders on its treasurers. It shall make an annual report to each county in the district of money received and expended. It may designate a national bank, a state bank, or a trust company organized under Michigan law as the depository or depositories of its funds and arrange for interest on daily balances.

Section 7. The commission shall appoint the county treasurer of 1 of the participating counties in the district as the treasurer of said commission, for all funds of the commission.

He shall serve without compensation for this service and shall under his bond be responsible for the safe keeping of said money, and shall pay out said money only on warrants and orders signed and countersigned as said commission under the terms hereof may determine.

Section 8. Each participating county shall pay annually into the treasury of said commission such sums as shall have been agreed upon under contract executed pursuant to section 1 hereof, and such additional sums as may from time to time be approved by a majority vote of the members elect of the board of supervisors of each county. The sums of money so received shall together constitute the inter-county highway fund which shall be disbursed as said commission may determine.

Section 9. (This section repealed in 1955.)

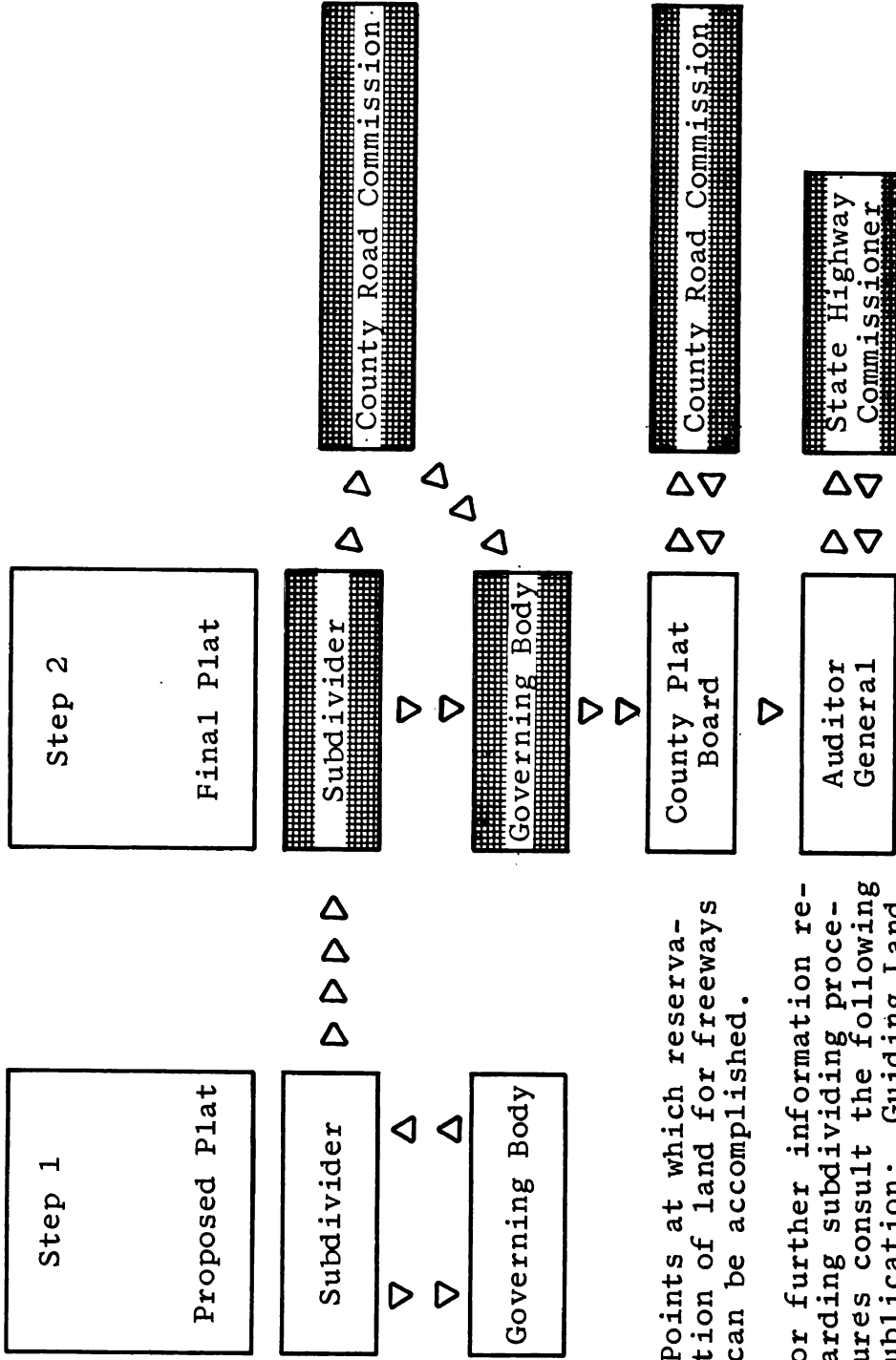
Section 10. After contracting to participate for the purposes hereof, no act or happening shall excuse any county from its obligations hereunder.

Section 11. The board of supervisors of each county participating hereunder, shall have power to pass all ordinances which shall be necessary and proper for carrying into execution the foregoing powers, and may by ordinance regulate and control the rights-of-way established under any inter-county highway developed hereunder until such rights-of-way are acquired as provided by law.

Section 12. Nothing herein shall be construed to take from the state highway department any jurisdiction that it may have over any state trunk line highway now or hereafter established.

APPENDIX D

PLAT ACT PROCEDURE FOR SUBDIVIDING--ACT 172, P.A. 1929



Points at which reservation of land for freeways can be accomplished.

NOTE: For further information regarding subdividing procedures consult the following publication: Guiding Land Subdividing, Part One--Procedures, November, 1961, published by the Tri-County Regional Planning Comm., Lansing, Michigan.

APPENDIX E

SUMMARY OF CERTAIN EXPRESSWAY STATUTE PROVISIONS¹
AND FREEWAY RIGHT-OF-WAY RESERVATION POLICIES²

Name of State	Advance Acquisition	Fee Simple Interest	Revolving Fund	Rights to Access	Rights to Air	Rights to Light	Rights to View	Intergovernmental Agreements
Alabama	...	...	...	X	X	X	X	X
Alaska	X	...	...	...	...	...	...	...
Arizona	...	...	...	...	...	...	...	...
Arkansas	X	X	...	X	X	X	X	X
California	X	...	X	X	...	...	...	X
Colorado	X	...	...	X	...	...	...	X
Connecticut	...	...	...	X	...	...	...	...
Delaware	...	X	...	X	X	X	X	X
Florida	X	X	...	X	X	X	X	X
Georgia	...	X	...	X	X	X	X	X
Hawaii	...	X	...	...	...	...	...	...
Idaho	X	...	...	X	...	...	...	...
Illinois	...	...	...	X	X	X	X	...
Indiana	X	X	X	X	X	X	X	X
Iowa	...	...	...	X	X	X	X	X
Kansas	...	X	...	X	X	X	X	X
Kentucky	...	...	...	X	X	X	X	X
Louisiana	X	X	...	X	X	X	X	X
Maine	...	...	...	X	...	...	...	...
Maryland	X	...	...	X	...	...	...	...
Masachusetts	...	X	...	X	...	...	...	...
Michigan	X	X	...	X	X	X	X	X
Minnesota			No Statute					
Mississippi	...	...	...	X	X	X	X	X
Missouri			No Statute					
Montana	X	...	...	X	X	X	X	X
Nebraska	X	X	...	X	X	X	X	X
Nevada	X	...	...	X	...	...	...	...
New Hampshire	...	X	...	X	X	X	X	...
New Jersey	X	...	...	X	...	...	...	...
New Mexico	X	...	X	...	...	...	...	...
New York	X	...	X	...	...	...	...	...

Summary--Continued

Name of State	Advance Acquisition	Fee Simple Interest	Revolving Fund	Rights to Access	Rights to Air	Rights to Light	Rights to View	Intergovernmental Agreements
North Carolina			No Statute					
North Dakota	x	x	...	x	x	x	x	x
Ohio	...	...	x	x	...	...	...	...
Oklahoma	x	...	...	...	...	...	...	...
Oregon	...	x	...	x	x	x	x	x
Pennsylvania	...	...	...	...	...	...	...	...
Rhode Island	...	...	...	x	x	x	...	...
South Carolina	...	...	...	x	...	...	...	...
South Dakota	...	...	...	x	x	x	x	x
Tennessee	...	x	...	x	x	x	x	x
Texas	...	...	...	x	...	...	...	...
Utah	...	x	...	x	x	x	x	x
Vermont	...	x	...	x	x	x	x	x
Virginia	x	...	x	x	x	x	...	...
Washington	x	x	x	x	x	x	x	x
West Virginia	...	...	...	x	x	x	x	x
Wisconsin	x	x	x	x	...	...	...	x
Wyoming	...	x	...	x	x	x	x	x
Total	21	20	8	40	27	27	25	26

¹The source of all information in the table, except for the advance acquisition column, was obtained from the National Academy of Sciences-National Research Council, Expressway Law, An Analysis, Highway Research Board Special Report No. 26, Washington, D.C. (1957), p. 3. Statistics for Alaska and Hawaii are not shown as they were not states at the time of the inventory.

²No state by state figures were available for the freeway reservation policies other than advance acquisition. Word accounts of the status of these policies, as of January, 1963, are recorded here however: (1) Advance Acquisition: figures and breakdown shown in table is as of January, 1963; (2) Development Rights Acquisition: few States have such legislation; (3) Official Map Procedures: "something more than one-half of the States now have regulatory legislation." (4) Highway Reservation Statutes: very few state highway

departments are authorized to reserve highway rights-of-way per se; (5) Inter-County Highway Commission Authority: information not available; (6) Subdivision Controls: "Practically all States now confer enabling authority on municipalities and often counties, to regulate new subdivisions"; (7) Urban Renewal Procedures: urban areas in all States become eligible by satisfying the seven points of the workable program; no special state legislation required that doesn't already exist; (8) Extraterritorial Powers of Home Rule Cities: information not available; (9) Zoning Controls: all States have zoning enabling legislation; (10) Information Dissemination: one form of information dissemination is through use of intergovernmental agreements (status of these is shown by State in the table).

APPENDIX F

FREEWAY RESERVATION POLICIES AND RELATED TOOLS
AVAILABLE TO GOVERNMENTAL UNITS LOCATED IN THE
CASE STUDY AREA - THE TRI-COUNTY REGION

	Official Plans	Planning Commission	Advance Acquisition	Development Rights	Official Map ¹ Ordinance	State Highway Res- ervation Statutes	Inter-County Highway Commission	Subdivision Controls	Urban Renewal	Extra Territorial Powers	Zoning Ordinance	Information Dissemination
Alaiedon Twp.	a ²	a	a	::	::	::	::	a	a	::	x	a
Aurelius Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Bath Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Bellevue Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Bellevue Vil.	a	a	a	::	a	::	::	a	a	::	x	a
Bengal Twp.	a	a	a	::	::	::	::	x	a	::	x	a
Benton Twp	a	a	a	::	::	::	::	a	a	::	x	a
Bingham Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Brookfield Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Bunker Hill Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Carmel Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Charlotte City	a	x	a	::	a	::	::	a	a	a	x	a
Chester Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Dallas Twp.	a	a	a	::	::	::	::	x	a	::	x	a
Dansville Vil.	a	a	a	::	a	::	::	a	a	::	x	a
Delhi Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Delta Twp.	x ³	x	a	::	::	::	::	a	a	::	x	a
DeWitt City	a	a	a	::	a	::	::	a	a	::	x	a
DeWitt Twp.	a	a	a	::	::	::	::	x	a	::	x	a
Dimondale Vil.	a	a	a	::	a	::	::	a	a	::	x	a
Duplain Twp.	a	a	a	::	::	::	::	x	a	::	x	a
Eagle Twp.	a	a	a	::	::	::	::	a	a	::	x	a
Eagle Vil.	a	a	a	::	a	::	::	a	a	::	x	a
East Lansing City	x	x	a	::	a	::	::	x	a	a	x	a
Eaton Twp.	a	a	a	::	::	::	::	a	a	::	x	a

Appendix F table--Continued

	Official Plans	Planning Commission	Advance Acquisition	Development Rights	Official Map Ordinance	State Highway Reservation Statutes	Inter-County Highway Commission	Subdivision Controls	Urban Renewal	Extra Territorial Powers	Zoning Ordinance Information Dissemination
Eaton Rapids City	a	a	a	..	a	..	..	a	a	a	X a
Eaton Rapids Twp.	a	a	a	..	..	..	..	a	a	..	X a
Elsie Vil.	a	a	a	..	..	..	..	a	a	..	X a
Essex Twp.	a	a	a	..	..	..	..	X	a	..	X a
Fowler Vil.	a	a	a	..	..	..	..	a	a	..	X a
Grand Ledge City	X	X	a	..	a	..	..	a	a	a	X a
Greenbush Twp.	a	a	a	..	..	..	..	X	a	..	X a
Hamlin Twp.	a	a	a	..	..	..	..	a	a	..	X a
Hubbardston Vil.	a	a	a	..	a	..	..	a	a	..	.. a
Ingham Twp.	a	a	a	..	..	..	..	a	a	..	X a
Kalamo Twp.	a	a	a	..	..	..	..	a	a	..	X a
Lansing City	X	X	a	..	X	..	..	X	X	a	X a
Lansing Twp.	a	X	a	..	..	..	..	a	a	..	X a
Lebanon Twp.	a	a	a	..	..	..	..	X	a	..	X a
Leroy Twp.	a	a	a	..	..	..	..	a	a	..	X a
Leslie Twp.	a	a	a	..	..	..	..	a	a	..	X a
Leslie Vil.	a	a	a	..	a	..	..	a	a	..	X a
Locke Twp.	a	a	a	..	..	..	..	a	a	..	X a
Maple Rapids Vil.	a	a	a	..	a	..	..	a	a	..	X a
Mason City	a	X	a	..	a	..	..	a	a	a	X a
Meridian Twp.	a	X	a	..	..	..	..	X	a	..	X a
Mulliken Vil.	a	a	a	..	a	..	..	a	a	..	X a
Olivet City	a	a	a	..	a	..	..	a	a	a	X a
Olive Twp.	a	a	a	..	..	..	..	a	a	..	X a
Oneida Twp.	a	a	a	..	..	..	..	a	a	..	X a
Onondaga Twp.	a	a	a	..	..	..	..	a	a	..	X a
Ovid Twp.	a	a	a	..	..	..	..	X	a	..	X a
Ovid Vil.	a	a	a	..	a	..	..	a	a	..	X a
Pottersville City	a	a	a	..	a	..	..	a	a	a	X a
Riley Twp.	a	a	a	..	..	..	..	X	a	..	X a

Appendix F table--Continued

	Official Plans	Planning Commission	Advance Acquisition	Development Rights	Official Map ¹ Ordinance	State Highway Res- ervation Statutes	Inter-County Highway Commission	Subdivision Controls	Urban Renewal	Extra Territorial Powers	Zoning Ordinance	Information Dissemination
Roxand Twp.	a	a	a	..	..	..	..	a	a	..	x	a
St. Johns City	a	x	a	..	a	..	..	a	a	a	x	a
Stockbridge Twp.	a	a	a	..	..	..	..	a	a	..	x	a
Stockbridge Vil.	a	a	a	..	a	..	..	a	a	..	x	a
Sunfield Twp.	a	a	a	..	..	..	..	a	a	..	x	a
Sunfield Vil.	a	a	a	..	a	..	..	a	a	..	..	a
Vermontville Twp.	a	a	a	..	..	..	..	a	a	..	x	a
Vermontville Vil.	a	a	a	..	a	..	..	a	a	..	..	a
Vevay Twp.	a	a	a	..	..	..	..	a	a	..	x	a
Victor Twp.	a	a	a	..	..	..	..	a	a	..	x	a
Walton Twp.	a	a	a	..	..	..	..	a	a	..	x	a
Watertown Twp.	a	a	a	..	..	..	..	x	a	..	x	a
Webberville Vil.	a	a	a	..	a	..	..	a	a	..	..	a
Westphalia Twp.	a	a	a	..	..	..	..	x	a	..	x	a
Westphalia Vil.	a	a	a	..	a	..	..	a	a	..	..	a
Wheatfield Twp.	a	a	a	..	..	..	..	a	a	..	x	a
White Oak Twp.	a	a	a	..	..	..	..	a	a	..	x	a
Williamston City	a	a	a	..	a	..	..	a	a	a	x	a
Williamston Twp.	a	x	a	..	..	..	..	a	a	..	x	a
Windsor Twp.	a	x	a	..	..	..	..	a	a	..	x	a

¹An official map was adopted by the Lansing Planning Board on November 2, 1964. The ordinance has not been adopted by the City Council as it is presently being reviewed by the City Attorney. The map designates the location of planned US-127, a freeway, north of Grand River Avenue.

²The "a" indicates that the policy or tool is available for use by the governmental unit but not being employed.

³The "x" shows that the policy or tool is being executed to reserve land for some type of future highway construction.

APPENDIX G

VOLUME AND COST OF BUILDING ACTIVITY IN STUDY AREA--1959-1963

Volume and Cost Characteristics	Total Study Area	Delta Township	Dewitt Township	Lansing Township	City of E.Lansing	City of Lansing
Number of Building Permits	463	53	7	189	1	213
Proposed Freeway R/W	14	0	0	5	0	9
Remainder of Area	449	53	7	184	1	204
Cost of Construction Permitted						
Initial Freeway R/W	\$1,747,350	\$0	\$0	\$1,690,200	\$0	\$57,150
Relocated Freeway R/W	\$ 115,350	\$0	\$0	\$ 58,200	\$0	\$57,150
Platted Area (in Number of Lots)	957	33	0	0	0	924
Tentative Plat	480	0	0	0	0	480
Final Plat	475	33	0	0	0	442

Source: Township clerks of Delta, Dewitt and Lansing Townships, and the building department of the cities of East Lansing and Lansing.

the Register of Deeds of said County. THE (governing body)
 OF THE (township, village, or city) OF (name of township,
village, or city) COUNTY OF (name of county), STATE OF
 MICHIGAN, DO ORDAIN AS FOLLOWS:

Section 1. There is hereby adopted¹ a (Master Plan, Master
Thoroughfare Plan, or Freeway Plan) for the (township,
village, or city) of (name of township, village, or city),
 County of (name of county), State of Michigan.

Section 2. Said (Master Plan, Master Thoroughfare Plan, or
Interim Freeway Plan) is set forth on a map or series of
 section maps. Such map or section maps, together with all
 notations, information and data contained thereon, and here-
 by made a part of this ordinance and constitute Sections 3,
 3a, 3b and other sections thereof, each of which other sec-
 tions is designated the number "3" followed by a letter of
 the alphabet.

Section 4. The aforesaid (Master Plan, Master Thoroughfare
Plan, or Interim Freeway Plan) is adopted to accomplish a

¹Prior to adoption by the local governing body, the
(Master Plan, Master Thoroughfare Plan, or Interim Freeway
Plan) shall be submitted to the local planning commission
 (if one exists) of the local governmental unit and to the
 regional planning commission (if one exists) for review and
 recommendation.

coordinated, adjusted and harmonious development of the (city, village, or township) and its environs which will, in accordance with present and future needs, best protect and promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.

Section 5. For the full accomplishment of the purposes of this ordinance, the official plan lines of streets, highways, or freeways which are a part of the aforesaid Plan are hereby established showing the outside right-of-way lines of said streets, highways, or freeways, as particularly set forth on maps each of which is entitled "Official Plan Lines of _____ (official name of street, highway, or freeway) _____ being a part of the _____ (Master Plan, Master Thoroughfare Plan, or Interim Freeway Plan) _____ of the _____ (township, village, or city) _____ of _____ (name of township, village, or city), County of _____ (name of county) _____, State of Michigan." Said maps and all notations, information, and data appearing thereon, are hereby made a

part of this ordinance and constitute Sections 6, 6a, 6b, and other sections hereof, each of which other sections is designated by the number "6" followed by a letter of the alphabet.

Section 7. No permit shall be issued for, and no new building or structure or part thereof, shall be erected or placed within the official plan lines of any new, extended or widened freeway, highway, street, or other public way, as established by this ordinance, except that this provision shall not apply to garden and agricultural crop planting and such ordinary farm and front yard fences and such more or less nonpermanent structures as will not defeat the purposes of this ordinance.

Section 8. The Zoning Board of Appeals, created by Ordinance No. (number), Zoning Ordinance of the (township, village, or city), shall have the power on appeal filed with it by the owner of such land affected by this ordinance to authorize the granting of a permit for the erection of a building, or structure, or part thereof, within the lines of any such mapped street, highway, freeway, or other public way in any case in which such board finds, upon the evidence and arguments presented to it on such appeal, (a) that the entire property of the appellant located in whole, or in part, within the lines of such mapped freeway, highway, street, or

other public way cannot yield a reasonable return to the owner unless such permit be granted, and (b) that, balancing the interest of the (city, village, or township) in preserving the integrity of the adopted plan, and the interest of the owner of the property in the use and benefits of his property, the granting of such permit is required by consideration of justice and equity.

The local planning commission (if one exists) and the regional planning commission shall review appeals and shall make their recommendations upon said appeals to the said Zoning Board of Appeals within thirty (30) days after receipt of the appeal application from said Zoning Board of Appeals. In recommending the granting of any exception or variance under the provisions of this section, the local and/or regional planning commissions shall designate such conditions in connection with the granting of such appeal as will, in their opinion, result in the exception or variance causing the minimum possible interference with the purposes of this ordinance and with the ultimate accomplishment of the objectives of the aforesaid (Master Plan, Master Thoroughfare Plan, or Interim Freeway Plan). In reporting its decision to the said Zoning Board of Appeals, the said local and/or regional planning commission shall report its findings with respect to the said appeal and shall specifically and fully set forth any exception or variance which is recommended and the conditions designated in connection therewith. Failure

of said local and regional planning commissions to report on any such appeal within thirty (30) days shall be deemed to constitute an approval thereof.

Before taking any action on said recommendations, the said Zoning Board of Appeals shall hold a public hearing thereon, at least ten (10) days notice of the time and place of which shall be given to the appellant by mail at the address specified by the appellant in his appeal petition. In the event that the Zoning Board of Appeals decides to authorize a building permit specified improvement within official plan lines, the said Zoning Board of Appeals shall have the powers to specify the exact location, ground area, height, and other details and conditions of size, character and construction, and also the duration of the building, structure, or part thereof to be permitted.

Section 9. The (governing body) of said (township, village, or city) is hereby instructed to cause to be recorded in the office of the Register of Deeds of said County a full, true and correct copy duly attested, of all maps establishing official plan lines which are contained in Section 6 of this ordinance and of each map of official plan lines which is hereafter added to this ordinance by amendment.

Section 10. The adoption of the aforesaid (Master Plan, Master Thoroughfare Plan, or Interim Freeway Plan) shall in all particulars have the full force and effect provided by law. Compliance with the official plan lines established by the adoption of the maps contained in Section 6 of this ordinance and/or established hereafter by additional maps by amendment may be enforced by proceedings for injunction, prohibitory or mandatory, and the same shall be deemed a cumulative remedy and not a bar to prosecution under any other circumstances.

Section 11. If any section, sub-section, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 12. This ordinance shall become operative and effective on the _____ day of _____ 19____.

Made, passed, and adopted the _____ day of _____ 19____.

Signatures of Approving Officials:

APPENDIX I

SUGGESTED OFFICIAL MAP PROCEDURE FOR GOVERNMENTAL
UNITS NOT COVERED UNDER ACT 222

STEP #1

ADOPTION OF MASTER PLAN BY
TOWNSHIP PLANNING COMMISSION

In lieu of a master plan, cities and villages with no planning commission and townships may substitute a transportation plan specifying the exact freeway location or a freeway location plan alone for the master plan.

Consultant--usually the State Highway Department--in cooperation and agreement with local and regional planning commissions, and local legislative bodies prepares the transportation plan or freeway location plan.

STEP #2

CERTIFICATION OF PRECISE PLATS (OFFICIAL MAP)
BY PLANNING COMMISSION

This step is deleted in this procedure if no planning commission exists.

MODIFICATION OR AMENDMENT

Both the legislative body and the consultant can initiate modifications and amendments.

Modifications of the transportation plan or freeway location plan originating with either the consultant or the legislative body shall be submitted to the other party for review and approval before passage of an adopting or amending ordinance.

STEP #3

ADOPTION OF PRECISE PLATS (OFFICIAL MAP) BY
TOWNSHIP LEGISLATIVE BODY

Local legislative body may adopt the transportation plan or freeway location plan by ordinance.

Transportation plan or the freeway location plan ordinance will show the general location of the proposed future outside lines of 1 or more new or extended freeways shown on the freeway location plan.

State Highway Department transmits to the legislative body an estimate of the time period within which the land acquisition for the transportation plan or freeway location plan should be accomplished.

Notice of time and place for consideration of the transportation plan or freeway location plan for final passage shall be sent by mail to the record owners of land located within or abutting on the new lines of such proposed streets or freeways.

STEP #4

REVIEW OF EXCEPTIONS AND VARIANCES BY
TOWNSHIP ZONING BOARD OF APPEALS

Zoning Board of Appeals shall be formed and given the power by ordinance to authorize the granting of a permit for the erection of a building or structure within the lines of any mapped street or freeway.

Public hearing shall be held before any action may be taken regarding a building permit. At least 10 days notice of the time and place of the hearing shall be given to the appellant in his appeal petition.

Zoning Board of Appeals shall have the power to specify the exact location, ground area, height, and other details and conditions of size, character and construction and also the duration of the building, structures, or part thereof to be permitted.

APPENDIX J

SUGGESTED POLICY RESOLUTION REGARDING
SUBDIVISION AND ZONING POLICIES

RESOLUTION NO. (number)

RESOLUTION OF INTENT TO ASSIST IN THE EFFECTUATION OF FREE-
WAY PLANS, BY REGULATING SUBDIVIDING AND ZONING ACTIVITIES,
FOR THE (township, city, or village) , OF (name of town-
ship, city, or village) , STATE OF MICHIGAN.

Whereas, In the (township, village, or city) of (name of
township, village, or city) , State of Michigan there (is,
is not) now in effect a set of subdivision regulations re-
quiring the dedication of street and highway rights-of-way
set forth in the State of Michigan Trunkline Right-of-Way
Widths Plan and (if such exists) the (major street, thorough-
fare, freeway or transportation plan) of (township, vil-
lage, or city) , and

Whereas, There (is, is not) now in effect a (township, vil-
lage or city) zoning ordinance regulating the development
of land within said (township, village, city, or county)
of (name of township, village, city, or county) , and

Whereas, It is in the interest of the public convenience, order, prosperity, and welfare to accomplish the coordinated, adjusted and harmonious development of the (township, vil-
lage, or city) and its environs while insuring efficiency and economy in the process of that development;

Therefore, Be It Resolved, that the (township, village, or city) of (name of township, village, or city), State of Michigan shall disapprove all new subdivisions of land within the rights-of-way of future freeways as described in the Interim Freeway Plan unless said freeway rights-of-way are dedicated or reserved as a condition of plat approval and the design of said subdivisions of land will facilitate the optimum future location, development and operation of proposed freeways and freeway interchanges.

Be It Further Resolved, That the (township, village, city, or county) of (name of township, village, city, or county), State of Michigan shall disapprove all appeals for zoning change which may adversely affect the optimum future location, development, and operation of proposed freeways and freeway interchanges.

Be It Further Resolved, That the establishment of said future freeway rights-of-way in accordance with the Interim Freeway Plan does not constitute a taking of private property,

but is a declaration of intention by the (legislative body) of the (township, village, city, or county) to make adequate provision for public convenience, order prosperity, and welfare.

Be It Further Resolved, That a copy of this resolution be furnished the county road commission of the involved and adjacent counties, the departments governing the development of streets and highways in the cities located within the involved county, the Tri-County Regional Planning Commission of Lansing, Michigan, and the Michigan State Highway Department.

Signatures of Approving Officials

Adopted (date of adoption)

Location (place where adoption took place)

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