

GAO

Report to the Honorable  
Bob Graham, U.S. Senate

March 1988

# HIGHWAYS

## Acquiring Land for Federal-Aid Projects



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United States  
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Resources, Community, and  
Economic Development Division

B-227656

March 30, 1988

The Honorable Bob Graham  
United States Senate

Dear Senator Graham:

In response to your April 24, 1987, request, this report provides information on (1) requirements that govern land, or right-of-way, acquisitions for federal-aid highway projects, including procedures for acquiring right-of-way before environmental requirements are fully satisfied, (2) views of environmental/conservation groups and state officials about possible legislation to allow right-of-way acquisitions before environmental requirements are met, and (3) other federal agencies' approaches to acquiring land.

Although the states and local governments generally own and maintain the nation's highways, the federal government provides funding assistance for many highway construction and improvement projects. For federal-aid highway projects, states, with authorization from the Federal Highway Administration (FHWA), acquire the right-of-way and FHWA reimburses the states for a portion of the acquisition cost.

In summary, we found that key federal requirements governing the environmental aspects of the acquisition process stem from the National Environmental Policy Act of 1969 (Public Law 91-190). Among other things, the act requires an assessment of the environmental impact of certain federal actions, such as major highway projects, so that the impact can be considered during the project's developmental phase prior to federal project approval and funding. Generally, FHWA will not authorize federal participation in right-of-way acquisition costs until federal requirements have been met, and then will reimburse states for acquisition costs only if the acquired property is used in the final highway project.

In extraordinary cases, federal regulations allow FHWA to authorize federal funding of right-of-way acquisition costs incurred before environmental requirements are met. Under an approach known as advanced acquisition, FHWA can authorize such federal participation to alleviate a hardship to the property owner or to prevent imminent development of the land. Broadening these criteria to allow advanced acquisitions under circumstances other than these would require legislative authority. Representatives of environmental/conservation groups we interviewed

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and state funds were spent acquiring right-of-way for federal-aid highway projects.<sup>1</sup> For such projects, state highway agencies acquire the right-of-way and FHWA reimburses the state for a portion of the acquisition costs when federal requirements are met.

Key environmental requirements governing right-of-way acquisition stem from the National Environmental Policy Act of 1969. The act requires an assessment of the environmental impact of certain federal actions, such as a highway project involving the acquisition of substantial amounts of right-of-way, so that the impact can be considered during the project's developmental phase. For complex highway projects, meeting these environmental requirements can take 5 years or more. During this time period the cost of the right-of-way can increase dramatically because of inflation, development, and/or speculation.

FHWA's regulations implementing the act require coordination with the public and public agencies from the inception of a proposed project through its final approval. The regulations require one or more public hearings to give all affected parties the opportunity to participate in determining the need for a highway project as well as the project's specific location and design features.

To comply with the act's environmental requirements, FHWA regulations require either a basic environmental assessment or a detailed environmental impact statement for projects involving substantial amounts of right-of-way. An environmental assessment is required if the project's impact on the environment is not clearly established. Such assessments describe the scope of the project, project alternatives, and planned measures to mitigate any adverse environmental impacts. The environmental assessment finds that the project either does or does not significantly affect the environment. If FHWA approves a finding of no significant impact to the environment and the state provides public hearings transcripts, FHWA can authorize the state to acquire the right-of-way. Otherwise, a detailed environmental impact statement is required.

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<sup>1</sup>Under the cooperative federal-aid highway program, federal financial assistance has helped build and preserve 838,000 miles of federal-aid highways. Grouped into four systems—interstate, primary, secondary, and urban—nearly all of the federal-aid highways are owned by state and local governments. The federal share of the cost of projects on these highways varies depending on the system. For example, the federal share of interstate highway project costs is usually 90 percent. The federal share for projects on other highways is usually 75 percent.

A hardship acquisition may be authorized, for example, in the case of an elderly residential property owner who wants to sell his or her property and move but is unable to because the property is located within the right-of-way of a planned highway improvement. Because the federal environmental requirements have not been completed, FHWA would not normally approve the acquisition, and the state could not buy the property and be reimbursed by FHWA. However, with FHWA's advanced acquisition approval, the state can acquire the property, alleviate the hardship to the owner, and still be reimbursed by FHWA.

An example of imminent property development would be a case in which the state has planned to construct a new highway, but a local authority has issued permits for the construction of an office building on several acres of the proposed right-of-way. Rather than allow development to occur, the state could, with FHWA's approval, acquire the property in advance and avoid the higher cost of buying the property after it is developed.

FHWA's advanced acquisition approval procedures were tightened because of a 1976 federal circuit court ruling (National Wildlife Federation v. Snow, 561 F. 2d 227 (D.C. Cir. 1976)) that FHWA's earlier procedures were not selective enough and allowed FHWA to routinely reimburse states that acquire right-of-way prior to the states' meeting environmental requirements. Federal regulations also specify that reimbursement for advanced acquisition is dependent upon the acquired property actually being used in the final highway project. If the property is not used in the highway project, FHWA is not to reimburse the state for the acquisition costs.

As the following table indicates, federally reimbursable advanced acquisition has been used infrequently in the states we reviewed.

**Table 1: FHWA-Approved Advanced Acquisitions, 1984-87**

States	Total acquisitions	Advanced acquisitions	
		Hardship	Protective
California	5,255	65	22
Florida	2,882	0	2
Georgia	5,614	0	3
North Carolina	7,240	5	4
Texas	1,709	0	0

Note. Total acquisitions data were provided by FHWA. Data on advanced acquisitions were provided by state highway officials.

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that is acquired before the environmental requirements are satisfied and before the federal agency authorizes the acquisition. According to Urban Mass Transportation Administration officials, that agency, like FHWA, allows advanced acquisitions to alleviate a hardship to the property owner or to prevent the imminent development of the land. Agency officials stated that the Department of Housing and Urban Development permits advanced acquisition to alleviate a safety hazard on the property, such as when a building on the land is in danger of collapsing.

The Federal Aviation Administration, however, which reimburses grantees for properties acquired for airport development, has the authority under federal law to retroactively reimburse grantees for acquisitions completed before the environmental requirements are met. The grantee does not have to obtain authorization from the Federal Aviation Administration prior to the acquisition. This retroactive reimbursement was authorized by the Airport and Airway Development Act of 1970 (Public Law 91-258). In our review of the act's legislative history, we found no discussion of why this authority was granted.

Spokespersons for the four environmental/conservation groups stated they would be opposed to any legislative proposals that would allow FHWA retroactive reimbursement authority similar to the Federal Aviation Administration's. In their view, FHWA should be involved in the early decisions affecting federal-aid projects, and with retroactive reimbursement, FHWA might not be involved until after the right-of-way has been acquired. FHWA officials agreed that retroactive reimbursement could delay FHWA's involvement in federal-aid projects—which runs counter to normal federal-aid highway program procedure and practice.

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## Scope and Methodology

We obtained information for this report from FHWA headquarters and field offices and from highway agencies in five states—California, Florida, Georgia, North Carolina, and Texas. You highlighted these states in your letter as examples of states with growing populations and expanding highway capacity needs. At these offices we reviewed right-of-way acquisition procedures, discussed acquisition practices with program officials, and reviewed highway project files.

We interviewed officials from other federal agencies involved in land acquisition—the Department of Housing and Urban Development, the Federal Aviation Administration, and the Urban Mass Transportation

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# State-Funded Advanced Acquisition

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Federal regulations specify that if a state uses state funds only, it can engage in hardship and protective right-of-way buying for highway projects without prior FHWA approval. Although the cost of right-of-way acquired under these regulations is not eligible for federal reimbursement, using this acquisition approach does not jeopardize federal participation in subsequent project costs, such as highway construction costs—provided the state complies with applicable environmental, civil rights, relocation, and other acquisition policies and procedures. We obtained the following information from state highway officials on their use of state-funded advanced acquisitions.

- California acquired about 13 parcels over the past 3 years using state funds only. State highway right-of-way officials expect no increase in the number of state-funded advanced acquisitions in the near future.
- Florida, over the past 2 years, acquired five or six parcels without federal participation. The state highway agency's right-of-way chief plans to increase the number of state-funded advanced acquisitions in the future using a newly established special fund for such acquisitions.
- Georgia acquired no more than five parcels during the past 3 years. The state does not customarily use state funds for advanced acquisitions.
- North Carolina has not used state funds for advanced acquisitions.
- Texas' assistant right-of-way administrator acknowledged that some right-of-way parcels were acquired with state funds only, before the environmental assessments were completed, but he was unable to estimate how many.

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Administration—to obtain information on their land acquisition procedures for comparison with FHWA's approach. We selected these agencies with the assistance of FHWA and your office.

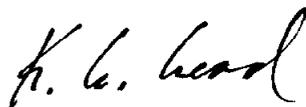
We also interviewed representatives of four national environmental/conservation groups—the National Trust for Historic Preservation, the National Wildlife Federation, the Rails to Trails Conservancy, and the Sierra Club—to obtain their views on possible changes to the right-of-way acquisition process. We selected these groups with FHWA's assistance on the basis of their activities, interest, and knowledge relating to environmental and land use issues.

Our review was conducted between May 1987 and February 1988. As requested by your office, we did not obtain official agency comments. We did, however, discuss the results of our review with federal and state program officials and have included their comments where appropriate.

As agreed with your office, unless you publicly announce its contents earlier, we will make this report available to other Members of Congress, the Secretary of Transportation, and other interested parties 30 days after the date of this letter.

Major contributors to this report are listed in appendix II.

Sincerely yours,



Kenneth M. Mead  
Associate Director

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Federal regulations specify that if a state uses state funds only, it can engage in hardship and protective right-of-way buying for highway projects before obtaining federal approval. Although the cost of right-of-way acquired under these regulations is not eligible for federal reimbursement, using this approach does not jeopardize federal participation in subsequent project costs, such as the cost of construction—provided the state complies with applicable environmental, civil rights, relocation, and other acquisition policies and procedures. As agreed with your office, we are providing information on the states' use of this approach (see app. I).

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## Environmental/ Conservation Groups' Views on Advanced Acquisition

To obtain their views on the possibility of broadening FHWA's advanced acquisition authority, we interviewed representatives of environmental and conservation groups that have been involved with the right-of-way acquisition issue—the National Trust for Historic Preservation, the National Wildlife Federation, the Rails to Trails Conservancy, and the Sierra Club. These representatives advised us that their organizations would oppose federal legislation that would allow more acquisitions before the environmental requirements are met. They would be opposed even if the legislation contained statements of assurance that (1) all alternative locations would be studied and considered and (2) the acquisition of the property would not influence the environmental assessment of project need and location. All four groups were convinced that, despite such statements of assurance, owning the property would influence the decision on whether to build a highway and where to build it.

We asked highway officials from the five states we reviewed for their reaction to the environmental/conservation groups' views. California, Florida, and Georgia officials said that owning the land would not influence their project decisions. The California official explained that the state could easily sell property that it did not use in the final highway project. Officials from North Carolina and Texas stated that owning the land could be a factor in their project decisions.

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## Other Federal Agencies' Approaches to Land Acquisition

We contacted three other federal agencies that are involved in land acquisition to compare their approaches with FHWA's. Two of the agencies have approaches similar to FHWA's: the Department of Housing and Urban Development, which provides funds to grantees for the development of blighted areas; and the Urban Mass Transportation Administration, which reimburses grantees for fixed rail right-of-way costs. These agencies do not normally reimburse grantees for the cost of right-of-way

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When a proposed highway project requires a detailed environmental impact statement, the preparation process is as follows:

1. A draft statement is prepared on the basis of environmental assessment information, where available. The statement identifies and discusses all project alternatives, studies, and reviews.
2. FHWA approves the circulation of the draft statement for comment to public officials, private interest groups, affected members of the public, and state and local agencies.
3. The comments are collected and analyzed.
4. The final environmental impact statement is published identifying the preferred alternative, discussing the comments received on the draft statement, and summarizing citizen involvement.
5. FHWA reviews and approves the final environmental impact statement.

With this approval, along with FHWA's acceptance of the hearings transcripts, FHWA can authorize the state to acquire the right-of-way. It should be noted that the National Environmental Policy Act does not preclude FHWA from authorizing right-of-way acquisition when it is found that the proposed highway project will adversely affect the environment, as long as the project's environmental impact has been considered.

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## Advanced Acquisition

Generally, FHWA waits until the environmental requirements are met before authorizing the state to acquire right-of-way. The state needs this authorization to ensure FHWA's reimbursement of right-of-way costs. In extraordinary cases, however, federal regulations permit federal participation in the cost of right-of-way that is acquired before federal environmental requirements are met—under an approach known as advanced acquisition. To ensure that the advanced acquisition is eligible for federal reimbursement, states must obtain FHWA's approval before undertaking each such acquisition. Advanced acquisitions are authorized by FHWA on a case-by-case basis to (1) alleviate a hardship to the property owner or (2) prevent imminent development of property, known as protective buying. FHWA officials stated that FHWA cannot approve advanced acquisitions under circumstances other than these without additional legislative authority.

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stated that their groups would oppose such legislation because, in their opinion, owning the property would influence the decision on whether to build the highway and where to build it. Officials from three of the five states we reviewed said owning the land would not influence these decisions. Officials from the other two states stated that land ownership could be a factor in their project decisions.

Of the three other federal agencies whose land acquisition approaches we reviewed, the Department of Housing and Urban Development and the Urban Mass Transportation Administration use approaches similar to FHWA's. The third agency, the Federal Aviation Administration, is authorized by law to retroactively reimburse grantees for land acquired prior to the agency's authorization of the acquisition and before the environmental requirements have been met. In reviewing the legislative history of the act that gave the Federal Aviation Administration this authority, we found no discussion of why the retroactive reimbursement authority was granted. Environmental/conservation groups' representatives said they would oppose legislation extending similar authority to FHWA. They stated that, in their view, FHWA should be involved in the early decisions affecting federal-aid projects, and retroactive reimbursement might preclude FHWA's involvement until after the right-of-way is acquired. FHWA officials agreed that retroactive reimbursement might preclude their early project involvement.

More detailed information regarding these issues is contained in the following sections.

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## Background/Federal Requirements

A continuing need exists to build new highways and improve existing ones. Acquiring the necessary land, or right-of-way, for highway projects can represent a sizeable portion of highway construction costs. While comprehensive data are not available, FHWA and state highway officials estimate that right-of-way acquisitions account for more than 10 percent of the cost of highway projects requiring right-of-way acquisition, and in some urban areas, could account for 50 percent of an individual project's cost. In fiscal year 1986, over \$840 million of federal

