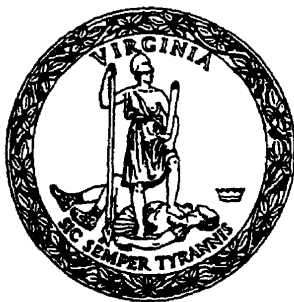


**REPORT OF THE  
DEPARTMENT OF HISTORIC RESOURCES ON**

**Virginia Route 5  
Byway Corridor Study**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 38**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1992**

## PREFACE

House Joint Resolution No. 457 (HJR 457, 1991) requested that the Virginia Department of Historic Resources (DHR) undertake further study of the need to and ways of preserving the historic, environmental and aesthetic integrity of the Virginia Route 5 Corridor as a two-lane Virginia Byway and make a report of its findings and recommendations to the Governor and 1992 General Assembly. The Department evaluated the effectiveness of various techniques for protecting the integrity of the existing byway corridor through analysis of existing studies, expert testimony, deliberations on study issues with citizen advisors and representatives of interested local governments, and solicitation of ideas and public comments at public hearings and in written form from various interested parties.

The Department gratefully acknowledges the contributions of the twelve citizens who accepted the Department's call to serve as advisors to the Department's study, to attend four committee meetings and to attend at least one of three public hearings held to receive public comment on the Study issues: Ms. Alicia J. Archer, Ms. Ridgely K. Copland, Mr. Robert W. Peay, and Ms. Yvonne D. Smith-Jones (Charles City County); Mr. J.T. Ferguson, Sr., Dr. Henry L. Nelson, Mr. Roy Props, and Ms. Donna Wirick (Henrico County); Ms. Victoria Gussman, Mr. Alexander Kuras, Mr. Fitzhugh Turner, and Mr. George Wright (James City County).

The Department wishes to thank all citizens who presented comments at the public hearings conducted by its staff in each of the counties through which Route 5 passes, all citizens who attended one or more of the three hearings, and all citizens and groups who otherwise submitted their ideas and comments on study issues in writing to the Department.

The Department acknowledges the assistance of the following staff members who were appointed in July, 1991 by the County Administrators of the counties of James City, Charles City and Henrico County to attend Citizen Advisory Committee meetings and participate in the Study deliberations: Mr. William R. Britton, Jr. (Charles City County); Mr. John T. Horne and Mr. Marvin Sowers (James City County), and Mr. David D. O'Kelly, Mr. Eric Millirons, and Mr. Robert C. Thompson (Henrico County).

The Department is indebted to the following persons who gave expert testimony at the Citizen Advisory Committee meetings: Ms. Patricia Jackson (Lower James River Association), Shelley Mastran (National Trust for Historic Preservation), Professor Keith Ready (Department of Recreation, Parks and Tourism, Virginia Commonwealth University) and Ms. Jane Yerkes (President, Preservation Alliance of Virginia).

The Department also recognizes the invaluable assistance of the following staff members of state agencies who participated in the Department's Advisory Committee meetings and attended public hearings: Mr. C. Derral Jones, Mr. John Davy and Mr. Art Buehler (Department of Conservation and Recreation); Mr. Philip Baker, Mr. J. Lynwood Butner, Mr. Frank Jenkins and Mr. J.B. Robinson (Virginia Department of Transportation) and Mr. David Zunker (Department of Economic Development's Division of Tourism).

Robert A. Carter, Senior Program Manager for the Division of Preservation Services, DHR, served as principal investigator for the study and moderator and reporter for the Citizen Advisory Committee. H. Bryan Mitchell, Deputy Director, DHR, and Mr. Carter conducted the three required public hearings in cooperation with Virginia McConnell, Easement Officer, DHR and Sandra D. Mayer, Senior Secretary, DHR. Department Director Hugh C. Miller and Public Information Director Margaret T. Peters also participated in Advisory Committee deliberations.

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**Report of the Department of Historic Resources  
on the Virginia Route 5 Byway Corridor  
Pursuant to House Joint Resolution 457**

**EXECUTIVE SUMMARY**

Pursuant to House Joint Resolution No. 457 (1991), the Department of Historic Resources completed further study of the need to and ways of preserving the historic, environmental and aesthetic integrity of the Virginia Route 5 Byway Corridor as a two-lane scenic byway. The Department evaluated the desirability and feasibility of using a range of possible policies and planning techniques for preserving the integrity of the byway corridor through analysis of existing studies, expert presentations, deliberations on study issues with citizen advisors and representatives of interested local governments, and solicitation of ideas and public comments at public hearings and in written form from various interested parties.

**MAJOR FINDINGS**

**The Need to Preserve Route 5's Integrity is of Statewide Interest**

- \* Route 5 and its immediate environs between Richmond and Williamsburg form a byway corridor of outstanding historical, cultural, scenic and environmental value. As a travel destination of international renown, the Route 5 corridor is an important economic as well as a historic and cultural asset of the Commonwealth deserving of effective conservation and promotion.

**The Integrity of the Existing Route 5 Byway Corridor is at Risk**

- \* The Virginia Department of Transportation is contemplating the addition of two more lanes at some indefinite future time. A recent estimated cost for these proposed modifications exceeds one hundred and sixty million dollars (\$161,173,000).
- \* In order to preserve Route 5 as it is, increased transportation capacity must be provided by the construction or improvement of other roads. Byway designation by itself has proven to have little influence on alterations that a road may require because of traffic or safety, notwithstanding a county's planning and zoning along the road.
- \* In the face of increasing development pressures, existing protection techniques and policies are achieving and can be expected to achieve only limited success in protecting the historic, aesthetic and scenic integrity of the Route 5 Byway corridor.
- \* Unless existing state and local policies affecting the Byway

are changed soon, the integrity of the Byway as a two-lane scenic byway will fall prey to insensitive development, too much development and more traffic than the road can safely handle.

#### Safeguarding Route 5 Requires Leadership and Citizen Participation

- \* Virginians have a civic responsibility to safeguard Route 5 and its resources so that residents, tourists and future generations can enjoy and transmit the rich heritage represented by and along the byway corridor.
- \* Route 5's preservation as a two-lane Virginia Byway will require a special initiative by the Commonwealth designed to encourage new intergovernmental relationships and responsibilities.
- \* State agencies should conduct their activities in such a way as to support and advance the protection of Route 5. Roads developed in the area should be designed to divert excessive traffic away from Route 5. Parks planned for the area should be designed to protect the Route 5 viewshed.
- \* The Intermodal Surface Transportation Efficiency Act of 1991 requires State Departments of Transportation to spend at least 10% of their allocation for enhancement projects. Virginia's share of transportation enhancement expenditures for 1992-1997 is estimated to be \$45.6 million. A wide range of state-initiated conservation activities will now be eligible to receive federal transportation funds, including landscaping and other scenic beautification, pedestrian and bicycle facilities, and acquisition of scenic easements.
- \* What is urgently needed at the local level is both a public forum to coordinate and encourage the separate conservation efforts of public and private agencies and groups and a collaborative planning initiative for wise management of resources in the Route 5 Byway Corridor.
- \* There is evidence of growing citizen and local government support for a more coordinated approach to planning for the future of Route 5 among different levels of public and private activity, provided it is respectful of local authority for land use decisionmaking, the particular needs of various communities, and the scenic and other attributes of the Byway and Byway Corridor.
- \* Growth along the Byway can be planned for and managed so that it does not overwhelm and destroy the outstanding values of the Route 5 Byway Corridor through promotion of policies and actions that address five basic needs:
  1. The need to save what needs to be saved.

2. The need to build what needs to be built.
3. The need to deal fairly with the dollar interests of landowners.
4. The need for private sector as well as public sector involvement.
5. The need for planning initiatives, not simply regulatory reaction.

#### **It is Feasible to Use Resource Easements to Protect Route 5**

- \* The technique of obtaining open space, historic and other resource easements on properties along the byway is one of the strongest and potentially most cost effective ways of protecting the integrity of the Route 5 Corridor.
- \* Limited promotion of easements by state and local agencies has so far yielded few easement donations from property owners along Route 5, notwithstanding the economic and philanthropic advantages of easement donations both to the individual property owner and the Commonwealth.
- \* The most effective way of promoting resource protection through easement acquisition within the Route 5 Corridor is to create an instrument for purchasing open space or historic easements from willing property owners at a minimum of public expense.
- \* A concerted program for easement acquisition should not commence until after completion of a survey and visual assessment of the entire corridor.

#### **It is Possible to Establish a Foundation to Safeguard Route 5**

- \* The role of private, voluntary initiatives in a concerted effort to preserve the integrity of the existing Route 5 Byway Corridor is critical.
- \* Citizen initiative in safeguarding the Route 5 Byway will need to capitalize on such private sector resources as land rights acquisition, land banking, creative development, property planning and property disposition.
- \* There currently exists no single entity commissioned for the single purpose of safeguarding Route 5. There is nothing to prevent the organization of a Route 5 foundation by private citizens as a private, not-for-profit educational organization.
- \* A strategic aim of a special Route 5 foundation would be to attract funds from grants, bequests, and other sources to



purchase easements. Such a foundation could also actively promote and coordinate a broad range of heritage education, heritage interpretation and heritage tourism efforts within the Byway corridor.

**Better Local Coordination and Greater Flexibility Are Needed**

- \* An examination of the local policies of Route 5 jurisdictions indicates that localities sharing the Route 5 Byway are not working together to protect the multiple values of the byway corridor.
- \* The integrity of the Route 5 Corridor would be better protected if localities addressed byway and greenbelt protection consistently and directly in their comprehensive plans, zoning ordinances, zoning districts, sign regulations and transportation plans.
- \* It is appropriate that the Commonwealth grant local governments authority to enact local land use controls for aesthetic and scenic purposes along Route 5. Federal law does not permit the amortization of nonconforming signs.

**It is Desirable to Establish A Four-Foot-Wide Bicycle Path Adjacent to the Byway**

- \* Public hearings conducted by the Department revealed public support for the establishment of a bicycle path or paths adjacent to the Byway but safety remains of paramount importance to motorists and residents on Route 5.
- \* There is evidence of local government support for the establishment of bicycle paths adjacent to the Byway, provided interested localities are partners in decisions on path location and design.
- \* Opinion remains divided in communities along the byway on what is the most safe, economical, conservative and feasible means to introduce bike paths along Route 5. The majority of the Department's Citizen Advisors support the introduction of four-foot-wide paved shoulders on both sides of the byway to accommodate bike paths and farm equipment and the planting of landscaping compatible with a parkway concept.
- \* There is widespread agreement that shared use of Route 5 by bicyclists and major truck traffic is incompatible and dangerous, especially with no bike lanes along the road at present. Dedicated bike paths will keep bikers out of the way of travelling motorists.

### **Stronger Byway Policy and Promotion are Needed to Safeguard Rt. 5**

- \* The Department of Transportation needs at once to develop special byway maintenance standards or concepts that address directly the effects any road alterations will have on the integrity of Route 5 as a two-lane byway, including the design of bike paths.
- \* VDOT and the Department of Conservation and Recreation through mutual agreement could implement specific byway management criteria, a formal review process and revocation procedures.
- \* A mechanism for broader state environmental review of byway project planning is available through a recently established interagency environmental coordinating committee. Proposed impacts on Virginia Byways now qualify as major projects under these new procedures.

### **MAJOR RECOMMENDATIONS**

#### **Create a Route 5 Advisory Board**

- \* The Department recommends establishment of a special Virginia Route 5 Byway Advisory Board with consultative authority to advise federal, state and local governments and agencies on actions potentially affecting the designated Byway and Byway Corridor; to oversee completion of a survey and visual assessment of the Byway's historic, aesthetic, environmental and scenic values by June 30, 1993; and to develop management recommendations and design guidelines by June 30, 1994 for consideration by local governments in land use decision making.
- \* The Department recommends that Board membership be broadly representative of the various communities of interest along the Byway, including citizens who own land and property on the Byway, citizens residing in each of the five interested jurisdictions, and citizens with expertise or experience in byway corridor-related/scenic design issues.
- \* It is recommended that no fewer than 7 and no more than 12 citizens be appointed by the General Assembly at the time of the Board's creation to serve on the Board until June 30, 1996 before which time the Assembly will consider whether such a Board shall continue to function.

#### **Strengthen Byway Policy, Management, Coordination and Promotion**

- \* VDOT should immediately establish special design criteria for the Route 5 byway and adjacent bicycle paths for review and comment by the state's interagency environmental coordinating

committee and interested local governments.

- \* As soon as practicable, the comments and concerns of the Route 5 Advisory Board should be taken into account in all state and federal undertakings with potential effects on the integrity of the Route 5 Corridor.
- \* VDOT and the Department of Conservation and Recreation through mutual agreement should implement specific byway management criteria, a formal review process and revocation procedures.

#### **Increase Easement Promotion by State and Local Agencies**

- \* A concerted program for easement acquisition should not commence until after the Advisory Board has overseen completion of the survey and visual assessment for the entire corridor.
- \* Consistent with that assessment, state agencies with a mandate to acquire conservation and other resource easements should increase promotional efforts to acquire resource easements within the Corridor in cooperation with interested property owners, local governments, the Route 5 Advisory Board and the Department of Transportation.

#### **Establish a Special Route 5 Foundation**

- \* The Department endorses the establishment of a special Route 5 Foundation dedicated to safeguard the Byway's integrity by acquiring protective easements from willing landowners within the Route 5 Byway corridor and by promoting the historic, educational, environmental, economic and other values of the Route 5 Byway Corridor.

#### **Give Local Governments Flexibility to Protect Route 5**

- \* The Department recommends enactment of stronger enabling legislation to make clear that local governments may act more flexibly in considering aesthetic and scenic values in managing growth and development along the byway.
- \* The Department also recommends granting local governments authority to permit the transfer of development rights of property owners along the Route 5 Byway to other areas more appropriate for development.
- \* The Department encourages each Route 5 jurisdiction to consider adoption of a Route 5 overlay district to reflect guidelines developed by a Route 5 Advisory Board.

### Study Feasibility of Bicycle Path Alternatives

- \* The establishment of bicycle paths adjacent to the Byway is recommended with the advice and consent of localities as regards location and design.
- \* The Department recommends that VDOT and the Department of Conservation and Recreation jointly cooperate in examining the feasibility, cost effectiveness, safety and appropriateness of various alternatives for placing a four-foot-wide bicycle path adjacent to Route 5 and report on their findings to the Advisory Board as soon as such Board is established.
- \* This study should include consideration of designs which are sensitive to the existing canopy of trees along the Byway and which are most appropriate to the actual conditions of Route 5. Also to be addressed is the feasibility of adapting the rights of ways of existing utility lines such as transmission powerlines and the Colonial gas pipeline for use as dedicated bike paths.

### Restrict Through Truck Traffic on Route 5

- \* Based on its deliberations with its Route 5 Citizen Advisory Committee, the Department recommends that through truck traffic on Route 5 be eliminated, provided that this prohibition not apply to local truck deliveries or trucks originating in the localities.
- \* In view of the recent finding by the Virginia Department of Transportation that possibly the majority of tractor-trucks are operating illegally on Route 5, the Department recommends vigorous and strong enforcement of existing laws restricting oversize and overweight trucks on Route 5.
- \* The Department requests that the section of the Code of Virginia which authorizes the purchase of a permit to allow trucks to carry excess weight on non-interstate roads be examined to determine the feasibility of its revision to exempt Virginia Byways such as Route 5 from the privilege, provided that local trucks and farm equipment be permitted to use the Byway for the welfare of the local community.

## INTRODUCTION

### Issues Addressed

House Joint Resolution No. 457(1991) required the Department of Historic Resources to study the Route 5 Corridor, including but not limiting its deliberations to the following seven critical issues:

- 1) the need to and ways of preserving the historic, environmental and aesthetic integrity of Virginia Route 5 as a two-lane scenic by-way;
- 2) the feasibility and desirability of obtaining open space, historic and other resource easements for properties along Route 5;
- 3) the possibility of establishing a foundation dedicated to safeguarding Route 5;
- 4) the feasibility of and appropriateness of granting local governments powers necessary to regulate and limit commercial encroachments on the Virginia Route 5 Corridor;
- 5) the desirability of establishing a four-foot wide bicycle path adjacent to the Virginia Route 5 Corridor;
- 6) the need to establish criteria to protect designated by-ways throughout the Commonwealth; and
- 7) the desirability of giving a state agency other than the Virginia Department of Transportation, the nontransportation responsibility for monitoring and planning for the future of existing by-ways.

In sum, the General Assembly of Virginia requested an evaluation of the effectiveness of various techniques for protecting the Route 5 Virginia Byway with special emphasis on easements, private foundations, techniques of local government protection, and the role of state agencies and policy in scenic byway protection, especially as related to Route 5. The Department gathered information on which to base its findings and recommendations through the media of presentations by experts, analysis of existing studies on Route 5, the deliberations of a Citizen Advisory Committee, public hearings, and written information provided to the Department by interested parties on the several study issues. The Department sought to provide a forum for organizations and groups who are working actively but separately toward the goal of Route 5's long-term preservation as a two-lane Virginia Byway of unparalleled scenic beauty and historical importance.

The five study issues which relate specifically to Route 5 provided the focus of the Department's deliberations with the Citizen Advisory Committee, and with the local governments and citizens of Henrico, Charles City and James City counties.

### Other Requirements of the Study

House Joint Resolution No. 457 further required that the Department:

- Begin Work Promptly
- Work Closely with Local Governments in Conducting the Study
- Work Closely with VDOT, drawing upon the Findings of its 1990 Route 5 Study
- Hold at least one public hearing in James City County, Charles City County and Henrico County
- Appoint 4 citizens from each of the three counties to assist in its deliberations
- Involve citizen members as well as state and local officials in Study Committee meetings.
- Complete its Report by December 1.

The Department substantially satisfied the Assembly's requirements, although submission of the final report to the Governor and the 1992 General Assembly was delayed beyond December 1 in order to address substantial comments received by the Department at the close of its study.

Following staff review of a number of existing studies of the Route 5 Byway Corridor, Department Director Hugh C. Miller appointed twelve citizens in June, 1991 to serve on a Citizen Advisory Committee to deliberate upon the various issues under study: Ms. Alicia J. Archer, Ms. Ridgely K. Copland, Mr. Robert W. Peay, and Ms. Yvonne D. Smith-Jones (Charles City County); Mr. J.T. Ferguson, Sr., Dr. Henry L. Nelson, Mr. Roy Props, and Ms. Donna Wirick (Henrico County); Ms. Victoria Gussman, Mr. Alexander Kuras, Mr. Fitzhugh Turner, and Mr. George Wright (James City County).

Joining the twelve citizen advisors at monthly committee meetings held in July, September, October and November, 1991 were the following representatives of the interested County governments: Mr. William R. Britton, Jr. representing Mr. Fred A. Darden, Charles City County Administrator; Mr. John T. Horne, representing Mr. David B. Norman, James City County Administrator; and Mr. David D. O'Kelly, and Mr. Eric Millirons, representing Mr. W.F. LaVecchia, Henrico County Administrator.

Representatives of state agencies participating in the Department's deliberations with the Committee included: Mr. C. Derral Jones, Mr. John Davy and Mr. Art Buehler (Department of Conservation and Recreation); Mr. Philip Baker, Mr. J. Lynwood Butner, Mr. Frank Jenkins and Mr. J.B. Robinson (Virginia Department of Transportation) and Mr. David Zunker (Department of Economic Development's Division of Tourism).

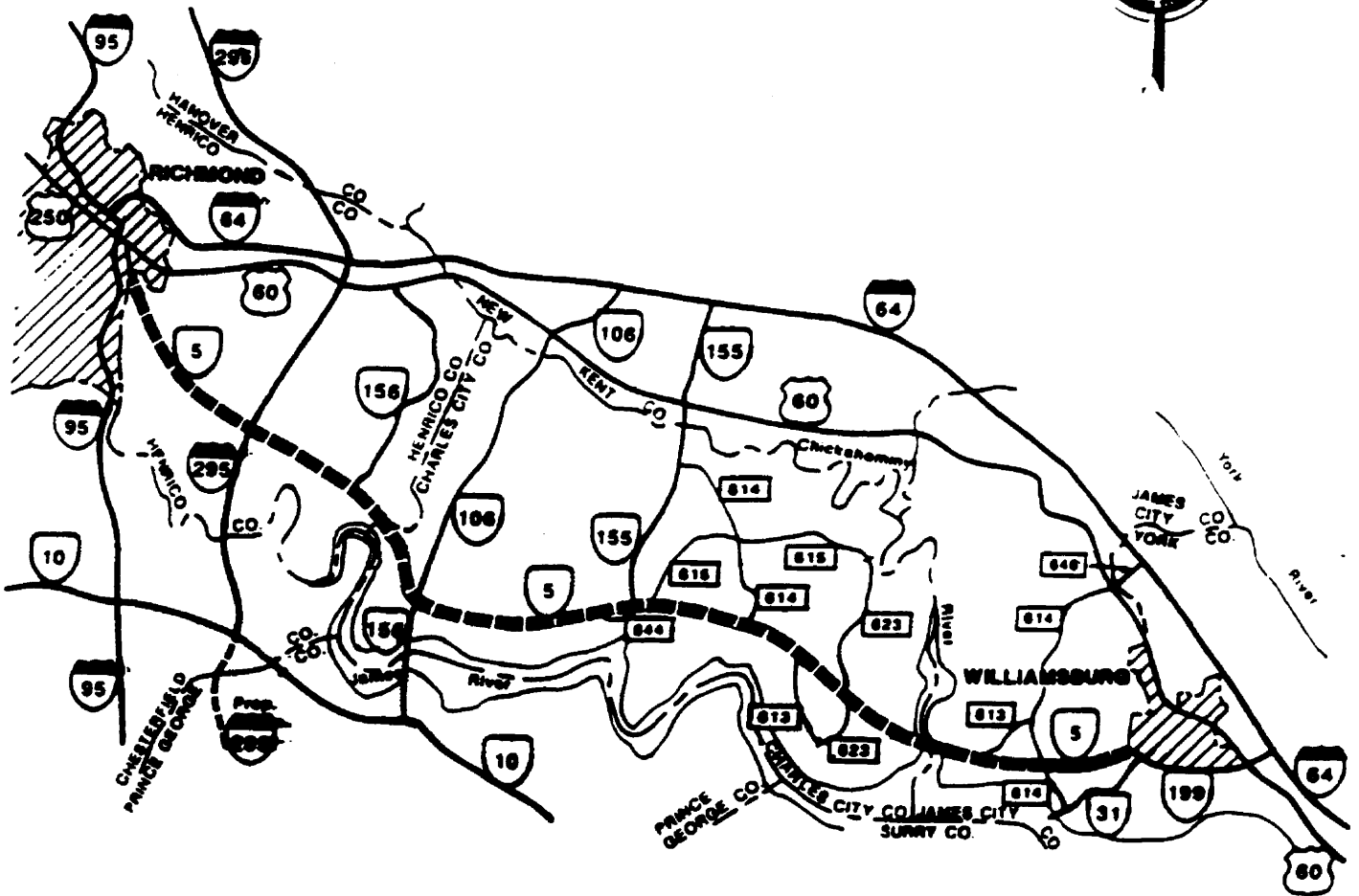
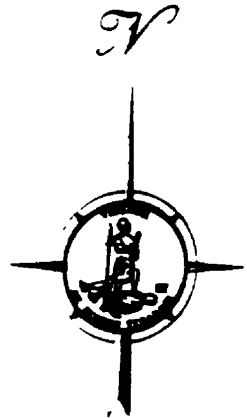
During the last week of September 1991, the Department conducted three public hearings, one in each of the three counties

of Henrico, Charles City and James' City, as required by HJR 457. The Department recorded and transcribed its deliberations with the Advisory Committee and the testimony heard at the three public hearings. These transcripts, together with copies of other pertinent written information gathered in the course of this study, are on record with the Department. A list of published sources consulted in the study and of various items of correspondence entered into the record of public participation in the Study may be found in the concluding sections of this report.

# ROUTE 5 CORRIDOR STUDY

## MAP

----- STUDY ROUTE





## DEPARTMENT FINDINGS

There is a compelling state interest in preserving the historic, environmental and aesthetic integrity of Virginia Route 5 as a two-lane scenic byway.

As indicated by the General Assembly in its preamble to HJR No. 457 (1991), Route 5 and its immediate environs between Richmond and Williamsburg form a Virginia Byway corridor of statewide and national significance, linking together historic places that possess outstanding cultural values in a setting of unparalleled beauty, on one of America's oldest road traces. Passing along the north bank of the James, a river which has significance in its own right as a state-designated scenic river, Route 5 retains scenic features that are rapidly disappearing elsewhere in central and eastern Virginia. The corridor possesses special value not simply because of the rarity of scenic attributes such as its canopied trees and open vistas but also for the association of these attributes with numerous 17th- and 18th-century plantations, historic churches and homes, a 1730 county courthouse, many historic and archaeological sites, and the Colonial National Historical Park which includes Greensprings National Historic Site, Jamestown and Yorktown Battlefield. Officially designated as Virginia Historic Landmarks within the corridor are more than thirty historic properties listed on the Virginia Landmarks Register and the National Register of Historic Places, with numerous other identified and yet to be identified Register-eligible buildings, structures, sites, districts, objects and cultural landscapes beside them. As a travel destination of international renown, the Route 5 corridor is an important economic as well as historic and cultural asset of the Commonwealth. In addition to scenic and historical resources, the Corridor contains a large concentration of the more fertile and productive soils of the Commonwealth, making much of the corridor suitable as prime agricultural and forest production areas. These areas provide a variety of habitats in field, forest, swamp and marsh to support an abundance and diversity of wildlife.

A state-initiated comprehensive study of the critical environmental values and sensitivity of what was identified in 1973 as "the Richmond-Williamsburg Natural, Scenic and Historic Corridor" preceded the designation of Route 5 as a Virginia Byway and supported it with this major summary conclusion:

...the Richmond-Williamsburg Natural, Scenic and Historic Corridor is particularly unique in that it is most doubtful that a comparable area exists elsewhere in the Commonwealth, or indeed, in the nation. The abundance of historical, architectural and archaeological sites, the gently sloping fertile coastal plain soils, the large farms with their crop,

pasture and forestlands, penetrated by a highway deserving of Scenic Byway status connecting Richmond and historic Williamsburg and Jamestown, make this a truly "Critical Environmental Area." Its ability to contribute to the economic, aesthetic and cultural wellbeing of both individuals and society is enormous; and it is essential that land use be planned and managed to protect these limited and unique values in a manner that recognizes and promotes their contributions to society. (Commonwealth of Virginia, Virginia Division of State Planning and Community Affairs. The Richmond-Williamsburg, Natural, Scenic and Historic Corridor: A Critical Environmental Area Plan, 1973, p 57.)

The Commonwealth's interest in protecting the historic, environmental and scenic integrity of the Virginia Route 5 Byway Corridor is as compelling today as it was twenty years ago. The significant loss or alteration of the historic, aesthetic, environmental and scenic attributes of the Byway and its environs would threaten to deface the character of one of America's oldest settled areas. Virginians have a civic responsibility to safeguard the route and its resources so that residents, citizens, tourists and future generations can enjoy the rich heritage represented by and along the corridor.

In 1975, Route 5 was designated a Virginia Byway by the Commonwealth in recognition of its outstanding historic, aesthetic, environmental and scenic qualities. The state Byway designation took place with the support of all but one of the interested localities through which the Byway passes (Charles City County) and with the expectation that the values of the Byway corridor would be protected through local comprehensive planning and zoning with necessary provisions for safety and orderly development along the roadway.

**The integrity of the Route 5 Corridor is at serious risk.**

All five jurisdictions through which Route 5 passes have adopted and updated comprehensive plans and zoning ordinances since the 1975 designation. However, these tools have protected the scenic and aesthetic values of the corridor with varying degrees of effectiveness. While the most remote portions of the byway do not currently face the pressures of suburbanizing growth, areas nearest to Richmond and Williamsburg have experienced considerable commercial, residential and industrial growth and development pressures.

While the Byway has remained for the most part a two-lane road, the Virginia Department of Transportation is contemplating

the addition of two more lanes at some indefinite future time. A recent estimated cost for these proposed alterations and enhancements to the Byway exceeds one hundred and sixty million dollars (\$161,173,000). While state transportation planners recognize the significance of Route 5 and are pledged to cooperate with state and local agencies to conserve its integrity, VDOT expects that, if current trends and policies continue, traffic on the Byway will continue to increase, and Route 5 will need to be improved and widened.

In the Department's judgment, the integrity of the Byway Corridor is most urgently threatened at the local level by the lack of a continuing public forum for discussing Route 5 issues of broad community concern, and by a lack of collaborative planning on Route 5 preservation, design and land use issues among citizens, their local governments, and state agencies whose decisions affect the condition of the byway corridor. In the face of increasing development pressures, existing local protection techniques can be expected to achieve only limited success in protecting the historic, aesthetic, environmental and scenic integrity of the Route 5 Byway corridor. Planning for the byway itself is necessary, not just for development along the road. It is necessary to plan now for what the Route 5 Corridor should look like. Commercial, residential and other types of development can then be planned within that larger context.

Unless existing policies affecting the Byway are changed soon, the integrity of the Byway will fall prey to insensitive development, too much development and more traffic than the road can safely handle. Without a change in the behavior of citizens and state and local governments, some citizens understandably fear that Route 5 will become a suburban shopping street, going the way of strip development on U.S. 60 in Chesterfield County or of the commercial and residential encroachment on the Ashley River Road between Charleston and Summerville, South Carolina.

Robert A. Lemire in his book Creative Land Development: Bridge to the Future (1986) affirms the hope that it is possible for communities to organize themselves effectively to deal with growth pressures and their resultant development initiatives, to arrange the saving of what needs to be saved and the building of what needs to be built within a context of fiscal stability, through proper planning and community commitment to the following five principles:

1. Addressing the need to save what needs to be saved.
2. Addressing the need to build what needs to be built.
3. Addressing the need to deal fairly with the dollar interests of landowners.
4. Addressing the need for private sector as well as public sector involvement.
5. Addressing the need for planning initiatives, not simply

regulatory reaction.

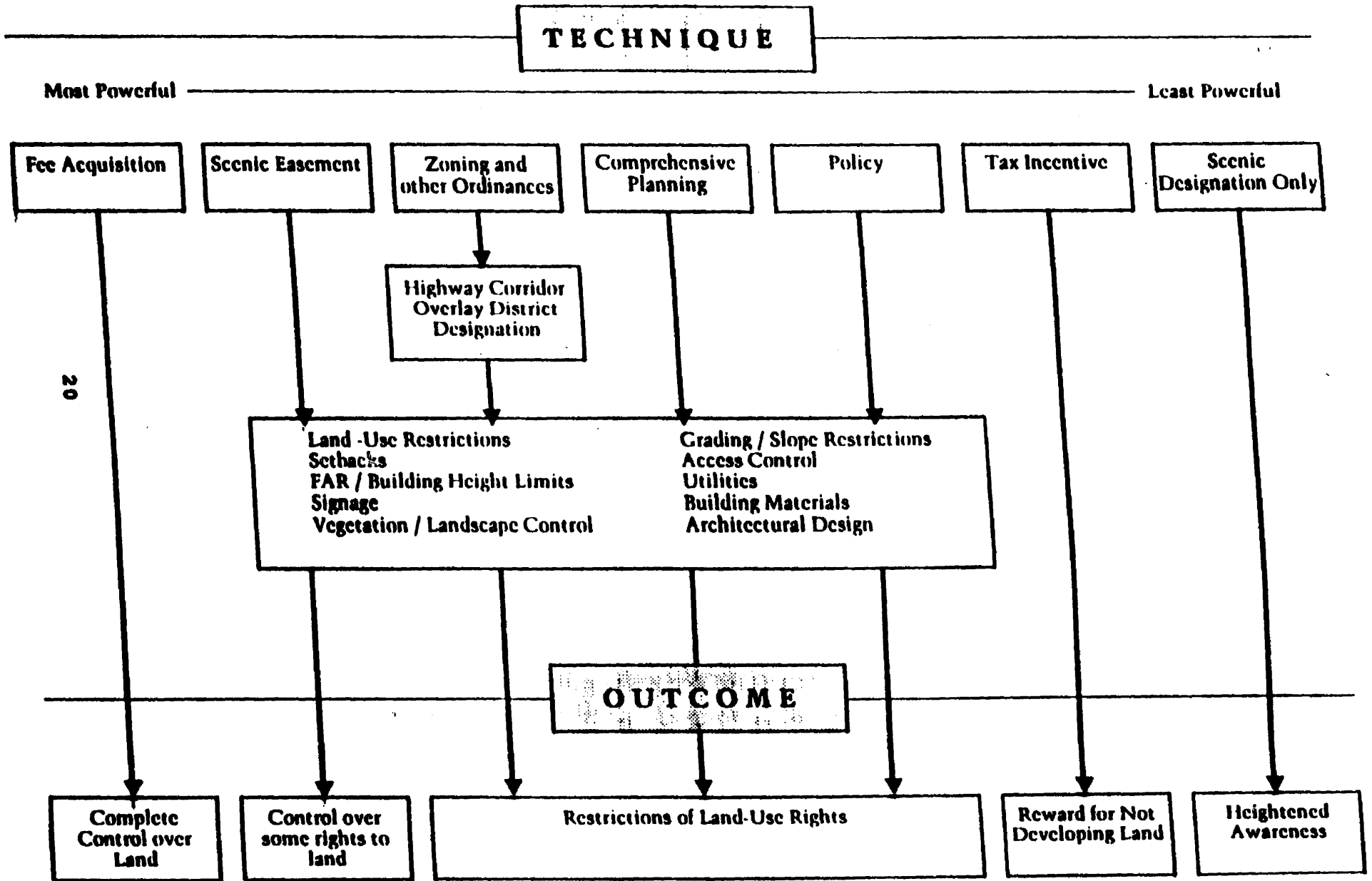
Route 5 offers a challenge for creative action of this high order. Policies designed to be effective in preserving the Route 5 Byway Corridor as a two-lane Virginia byway should be based on all five of these principles. Whatever the Commonwealth can or should do to strengthen the statewide Virginia Byway program as a whole for future as well as for existing byway designations, the treatment of the Route 5 Virginia Byway and its environs requires special consideration and a special approach, given Route 5's outstanding cultural and economic importance to the Commonwealth, its prior recognition as one of Virginia's first designated byways and the demonstrated strong public interest on behalf of retaining the integrity and designation for the Byway.

The Department of Historic Resources does not believe that growth in the Route 5 corridor can be stopped or should be stopped. However, growth along the Byway can be planned for and managed so that it does not overwhelm and destroy Route 5. Such planning will require an initial determination of the kinds and amounts of development which Route 5 can sustain throughout the corridor and calculation of the maximum foreseeable development in the area served by Route 5. To prevent growth from overwhelming the corridor, action is needed now to determine whether it is feasible and prudent to designate and acquire alternate corridor(s) to alleviate volumes of traffic that the existing Route 5 Byway is not designed to handle safely.

**A range of protection techniques are available to preserve the integrity of the Route 5 Byway Corridor.**

A recent study conducted for the Federal Highway Administration indicates that the techniques that have been used in the United States to protect scenic byway corridors range from fee-simple acquisition of land to designating a road as scenic. The most effective techniques give consideration to the entire highway and all its resources as a unit. A combination of public and private initiatives is required to achieve a comprehensive vision for managing change along a scenic byway. Fee simple ownership of the land and scenic easements provide the greatest land use control for preservation of a byway but they are relatively expensive instruments of public policy. Comprehensive planning and zoning ordinances, especially those that incorporate a highway corridor overlay district, can be effective techniques for ensuring adequate byway protection. Such districts specify architectural setbacks, height limitations, signage, vegetation control, and other design details for a specific road corridor that supersede other zoning restrictions. Less effective in dealing with increasing development pressures are public policy statements, tax incentives and local initiative. In practice, some of these techniques are used in combination and they can take many forms. Their most effective use

**FIGURE 1**  
**CONTINUUM OF RESOURCE PROTECTION TECHNIQUES**



will consider in advance the impact of tourism, so that future use of a byway corridor will not impair its scenic and historic quality. Wise management of byways encourages opportunities for tourist-related development within a process for orderly and coordinated land-use change.

**Route 5 Jurisdictions Treat the Route 5 Byway Corridor Differently.**

None of the localities through which Route 5 passes has used the technique of historic or open-space easements to protect the integrity of the Byway. However, each has a comprehensive plan and a zoning ordinance, but each treats Route 5 differently. The resulting inconsistency in corridor management is illustrated most clearly by reference to the policies and regulations of the three counties of Henrico, Charles City and James City.

Henrico was one of the first localities to request the Virginia Byway designation in 1974. The County submitted to the Commonwealth a proposed range of planning techniques which could be used to manage the designated byway. The County has used many of these techniques in its local land-use decisionmaking. The County has setback requirements enforced on a county-wide basis. The County's zoning ordinance imposes no minimum set back requirements specifically for Route 5 (outside of the residential townhouse district) and does not provide incentives to preserve the natural landscape in the open-space requirements. It is important to recognize that the County's requirements for agricultural districts include a 50-foot minimum setback, which combined with existing rights-of-way can result in as much as a 110-foot setback from the center line of the road. The County's comprehensive plan contains policies that address the protection of Rt. 5. Henrico manages other existing scenic byways and several other proposed byways are under consideration. The County's sign regulations, which are incorporated in the zoning ordinance are among the most comprehensive in Virginia. They ban bill boards, portable signs, pennants, banners, and streamers and regulate the placement, size and numbers of signs. While they address the dimensions of signs in various districts, they do not address the number of signs or their placement on an individual lot.

VDOT's plans for the possible addition of two lanes to the Byway at some indefinite future time are acknowledged in Henrico County's 1985 Major Thoroughfare Plan. The Byway has already been widened to four lanes at the intersection of Interstate 295 and Route 5 in Henrico County, and the intersection is expected to serve as a catalyst for new development unless existing policies are changed. The County administration has a major concern with maintaining Route 5 as a two-lane byway. The Board of Supervisors has consistently endorsed a parkway highway design for a future widening of Route 5.

Despite Charles City County's original opposition to Route 5's designation as a Virginia Byway, its use of the local zoning

ordinance has resulted in providing more protection for the Byway than techniques employed by its neighboring jurisdictions. Under its former comprehensive plan, all the land along Route 5 was zoned agricultural (A-1), permitting a number of land uses, but requiring a mandatory setback of 100 feet along the length of Route 5. This setback provision did not apply to signage, which has been separately regulated as to number and size but not as to placement. The County's recently adopted Comprehensive Plan (1990), which is to be implemented through a new zoning ordinance, explicitly provides for the protection of Route 5 by restricting future development adjacent to Byway to planned unit development within designated cluster village centers and by establishing an overlay "greenbelt" district with a setback requirement of 75 feet from the center line of the road. The purpose of the greenbelt overlay district is not to prohibit commercial development along Route 5 but to plan for its sensitive placement. Charles City's new comprehensive plan also calls for preparation of a Route 5 Corridor Visual Assessment, investigation of the possible designation of the length of the Route 5 Byway Corridor in Charles City County and other areas as rural historic districts, adoption of other measures to protect the Byway as a resource worthy of preservation, and adoption of a transportation plan that will reduce the County's dependence on Route 5 for east-west travel through establishment of an alternative corridor. These forward-looking new policies for Charles City County have yet to be tested or implemented, however.

James City County relies on similar mechanisms to protect Route 5. The County comprehensive plan directly addresses Route 5 as a "greenbelt" area, which is defined to include "woodland or other vegetation to screen development and open areas for scenic vistas." The preferred width of a greenbelt is 150 feet from the edge of the future right-of-way. However, the James City County zoning ordinance does not directly incorporate the greenbelt concept. The Route 5 corridor is primarily zoned agricultural (A-1) but near Williamsburg is zoned for business, with approximately 80 acres of commercially zoned land remaining to be developed. James City's greenbelt policy is generally applied to rezoning cases or as a condition for special use permits; a greenbelt setback becomes a proffer, or condition of development. In practice, the County's greenbelt policy has not provided an adequate buffer for large-scale development and has had very little impact on properties already zoned for commercial use. Recently, two major rezonings along Route 5 in the County indicate that it is possible for a developer to honor the greenbelt policy in way that facilitates the widening of the Byway. The Planning Commission is actively investigating establishment of an alternate corridor to alleviate the increasing volume of traffic on Route 5. James City County also has a signage ordinance which addresses both the size and location of signs but not their design. As with Henrico County and Charles City, the ordinance gives no special recognition or special treatment to signage along Route 5 as a Virginia Byway.

In sum, an examination of the comprehensive plans, zoning ordinances and related planning of the County Route 5 jurisdictions between Williamsburg and the City of Richmond indicates that:

-- Localities sharing the Route 5 Byway are not working together to protect the corridor;

-- The integrity of Route 5 would be better protected if localities addressed byway protection consistently in their comprehensive plans, zoning ordinances, zoning districts and sign regulations;

-- Route 5 jurisdictions are following transportation plans for the Byway that are inconsistent and in some ways incompatible with the historic, scenic and aesthetic integrity of the Byway;

-- There is little or no integration of byway issues and concerns in all zoning districts;

-- There is inconsistent regulation affecting byways, greenbelts and other important resources which span more than one zoning district; and

-- Ordinances do not adequately reflect the goals and objectives referenced in each comprehensive plan.

**It is desirable to obtain open space, historic and other resource easements for properties along Route 5.**

Along a continuum of methods used to protect scenic and historic resources within byway corridors, the technique of obtaining open space, historic and other resource easements on properties of open-space or historic value along scenic byways is among the most effective and cost effective methods available.

**Definition of a Resource Easement**

A scenic, conservation or historic easement involves the acquisition of certain limited rights to or interest in, real property. Essentially it is a voluntary agreement between the owner of the property and the holder of an easement that the land will be restricted from certain specific uses that might compromise its scenic, historic or other designated qualities. For example, the owner conveys certain rights with an easement such as the right to develop the land commercially, to erect signs, or to cut trees. The technique is used by numerous conservation and historic preservation organizations and public agencies, including the Department of Conservation and Recreation, the Virginia Department of Historic Resources, the Virginia Outdoors Foundation, and the newly constituted Historic Rivers Land Conservancy, which is a land trust enabled by the Virginia Conservation Easement Act to hold



easements.

A conservation easement or historic preservation easement gives the holder of the easement the right to restrict uses by the property owner that could compromise the values of the property that the easement is designed to protect. The Virginia Outdoors Foundation is chartered to acquire "open-space easements," which stipulate that development is going to be limited in some way to an amount and to a degree which would be compatible with the open space values of the property. The Virginia Board of Historic Resources holds easements on over 150 historic properties in the Commonwealth. Historic easements require property owners who seek to make permanent architectural changes in the historic structure, or undertake new construction on the properties to obtain approval of the Virginia Board of Historic Resources. Easements, at least at the state level, in Virginia are exclusively voluntarily given. The Commonwealth, acting through the Department of Conservation and Recreation, the Department of Historic Resources and the Virginia Outdoors Foundation, has not and does not condemn easements for the purpose of historic or open-space preservation. VOF has written open-space easements with provisions to deal with necessary transportation improvements.

#### Benefits of Easements to the Individual Property Owner

To the individual property owner, the voluntary transfer of easement rights through donation offers advantages which are economic and philanthropic. Citizens are allowed to continue occupancy and agricultural or other appropriate use of the land, while often receiving a reduction on income and real estate taxes as a benefit for donating a portion of their property rights for a charitable purpose. The federal government allows an income tax deduction equal to the value of the easement, which is calculated with reference to the property's value. Under state law, if the easement reduces the value of the property (because it is restricted in a way that did not previously obtain), then the local tax assessor has to take that reduction in value into account when calculating local property taxes. Donating an easement does not always result in a property tax benefit; often easements donated on land in agricultural use do not significantly reduce the value of the property in such a way as to allow a tax break. However, in places such as James City County or Henrico that are facing growing development pressures, the tax consequences may be considerable. For example, an easement donated on a 100 acre property that is zoned so as to permit sub-division into 2 acre lots, cannot be taxed for that development value because that development value now has been given to the state. Local government tax revenues are not so drastically cut by the use of easements as with the total loss of direct revenue from fee-simple acquisition by a public agency.

Donating an easement for preservation purposes often is the sign of good stewardship. Once one has donated an easement on one's

property, the important qualities of that property are going to be protected for ever, for historic preservation and open space easements are usually written for a perpetual term. If a property is transferred, the easement goes with the property. The next property owner is going to be subject to the easement's terms as well. Property owners who care about the historic integrity of their property or the open space quality of their property often desire to make sure that those qualities will always be protected.

Effective use of easements requires the adoption of clear guidelines by easement holders for the acquisition and management of easements, including specific instructions on how to structure them, when it is appropriate to use them, and what specific scenery the easements are to protect. For protection of a large corridor running through several jurisdictions, it is advisable to conduct a cultural resource assessment or landscape survey as the basis for any concerted easement acquisition plan as well as an active public education program to increase public understanding of the easement laws and procedures. While easements can create persistent management problems and ill will with landowners, if not administered well, easements have proven to be a successful land-protection technique along the nation's parkways, notwithstanding these predictable difficulties.

According to one standard definition, scenic easement lands are those where it is "desirable that the land remain in its present use and be perpetuated as a rural cultural or natural landscape." By that definition, much of the length and breadth of the Route 5 Corridor is a worthy and appropriate target for efforts to obtain open space and other resource easements for conservation purposes.

It is feasible to obtain easements within the Route 5 Corridor that will effectively protect the integrity of the existing Route 5 Corridor.

Several state agencies and conservation organizations administer easement programs that acquire and monitor open space and historic easements from willing property owners, including Route 5 property owners. To date, only the owners of Berkeley and Westover in Charles City County have donated preservation easements to the Virginia Department of Historic Resources. Any successful planning initiative to obtain easements within the Route 5 Corridor will be based on an understanding of why existing programs have so far yielded few resource easements from Route 5 property owners.

Why have so few easements been forthcoming?

- \* 1. The technique and its advantages are not well understood by property owners.

Citizens and property owners along the byway remain unaware

or uncertain that this land protection measure is available to them or that there are palpable advantages of owning property along a byway that is protected by scenic easements. Many of the questions by citizens at the public hearings demonstrated this fact.

- \* 2. There is serious concern by some citizens and by state transportation planners that widespread use of the technique may prevent necessary alterations to the byway for reasons of safety now or in the future.

This concern arises in recalling one notable instance where an easement affected necessary road improvements in Bowling Green, Virginia. The case involved the Department of Transportation's plans to build a bypass and one proposed alignment crossed an easement property. Because the easement was held by the Department of Historic Resources' Board, the Department of Transportation could not condemn that land in the easement and build the bypass without the permission of the Board. Under the provisions of the Open Space Land Act, which detail the conditions for release of an easement, VDOT essentially had to demonstrate that there was no feasible or prudent alternative to the proposed taking of the easement land. The Board declined to release the easement because there were other alternatives, and the proposed alignment was determined to be not essential to the orderly growth and development of the area, even though it was less expensive than others. Whatever the outcome of that particular case, the recent memorandum of agreement between the Secretaries of Natural Resources and Transportation establishes a new review procedure which should eliminate any future conflicts between road alignments and easement properties.

- \* 3. There is evident uncertainty about the Byway's future.

For property owners, that uncertainty translates into reluctance to come forward to negotiate easements without greater confidence in how change will be managed within the Corridor. For VDOT, that uncertainty translates into concern that easements would seriously affect or control needed improvements, foreclosing the possibility of improving the road in the future in a way respectful of its character and safe.

It is difficult to think realistically about the appropriate use of easements along the Byway without first identifying an easement corridor, which would establish limits, design considerations and a proposed acquisition schedule. Also needed is a property-by-property survey to identify, map and inventory property ownership for the purpose of determining areas within the corridor that can benefit from open-space or historic easements. For purposes of economy and efficiency,

such a survey should maximize the use of existing information on the attributes of properties in the Byway corridor, including data from the Virginia Department of Transportation's 1990 aerial surveys of Route 5.

- \* 4. The technique has not been promoted actively within the corridor either by the Department of Historic Resources, the Department of Conservation and Recreation, and the Virginia Outdoors Foundation or by the interested local governments.

Local government easement activity has been hampered by uncertainty about how to administer local easement programs effectively under the Open Space Land Act. However, this administrative barrier is likely to be removed following development by the Virginia Outdoors Foundation of model ordinances to demonstrate how such programs can be implemented. Dedication of a scenic easement when a development request is under consideration could be an effective way for local governments to provide for the protection of the Byway corridor.

- \* 5. A stronger promotional effort by public agencies and conservation organizations could be generally well received, if based on voluntary cooperation and free exchange of information.

Local government representatives and citizen advisors resident along the Byway endorsed a voluntary easement program, with the option of localities becoming the initial beneficiaries of private easements donated for preservation of aesthetic and scenic qualities along Route 5. However, local governments would reserve the right to assign the easement to some other qualified easement holder such as the Department of Conservation and Recreation, the Virginia Outdoors Foundation, and the Department of Historic Resources. Willing property owners can give easements to their local government, which like the state or the Outdoors Foundation would be required to hold the easement in trust for conservation purposes. One possible disadvantage to this particular use of the technique by local governments for long term conservation purposes is that the Department of Transportation or some other state agency could condemn both the land and the easement held by the local government, although there is no record that this has ever happened. Because VDOT could condemn property held under easement by local governments, it is not clear that tax benefits would be available to the property owners who donate easements in such cases. The easements must be held in perpetuity to qualify for income tax deductions.

- \* 6. The most critical reason for the paucity of conservation easements on Route 5 is the lack of strong financial

incentives to encourage individual property owners to maintain the scenic and historic quality of their property adjacent to the byway through easement donations. Numerous organizations and agencies legally can acquire and manage easements in the Corridor. However, no organization or agency is actively purchasing easements within the corridor.

Few easements are likely to come forth from private property owners along the byway unless financial incentives in support of an easement effort are greatly increased. The feasibility of obtaining easements is in great part a matter of how much money is available to purchase them. If sufficient funds were available, there would likely be a number of property owners who would sell easement rights. Local planning staffs and government bodies could promote easement acquisitions by providing information on easements to property owners within the corridor and many citizens thereby could benefit.

**It is possible to establish a foundation dedicated to safeguarding Route 5.**

The role of the private sector in any concerted effort to preserve the integrity of the Route 5 corridor is critical and indispensable. State funds cannot be expected to save all that needs to be saved or to build all that needs to be built within the corridor. Notwithstanding the authority of local governments to allow designs that respond to special development and resource protection needs, voluntary citizen efforts to safeguard the Route 5 Corridor will need to capitalize on such private sector resources as land rights acquisition, land banking, creative development, property planning and property disposition. The future of the existing Route 5 Byway and Corridor remains very much in the hands of property owners along Route 5 and in their willingness as stewards of the land to preserve the Corridor's historic, environmental and aesthetic integrity.

Alexis de Tocqueville observed that the strength of democracy is what is accomplished outside of government, especially by voluntary organizations chartered for some specific educational or other philanthropic aim. While there currently exists no single entity commissioned for the single purpose of safeguarding Route 5, there is nothing to prevent the organization of a Route 5 foundation by private citizens as a private, not-for-profit educational organization.

Given the existing lack of strong financial incentives for open space and historic easement acquisitions, a strategic aim of any foundation dedicated solely to the purpose of safeguarding Route 5 would be to attract funds from grants, bequests, and other sources to purchase easement rights.

While this guardian role would be primary, it is also clear

that sufficient funds will only become available to buy easement rights when citizens recognize the importance and potential of Route 5's educational and cultural value not only to the Commonwealth but to the nation and the world.

For that reason, in addition to promoting easement acquisitions, establishment of such a foundation would appear to offer the best means to promote and coordinate a broad range of heritage education, heritage interpretation and heritage tourism efforts within the Byway corridor, in cooperation with concerned public agencies, businesses, citizen organizations, and individuals.

While there already exist several state, local and private agencies which can legally acquire easements, there is precedent in Virginia legislation for chartering such a special foundation as a quasi-public entity for that purpose by following the model of the Virginia Outdoors Foundation. As with that organization, the Commonwealth's participation through establishment of the foundation, gubernatorial appointment of a board chairman and board members would be an important sign of public recognition and support for its aims.

The current economic recession makes it unlikely that state funding would be available to aid such an effort in the foreseeable future. Nevertheless, the concept of establishing a special foundation to safeguard Route 5 remains a sound one, however it might be made practicable.

Establishment of a dedicated foundation to safeguard Route 5 is supported by the Colonial Williamsburg Foundation and the Varina Beautification Committee. The Lower James River Association supports the goals of obtaining easements on Route 5 and conducting heritage education programs, but considers the establishment of a private foundation for this purpose as more practical than chartering a public one. The Department's Citizen Advisory Committee did not make a specific recommendation as to a foundation.

**Local governments have powers to regulate and limit commercial encroachment within the Virginia Route 5 Byway Corridor but additional authority is appropriate.**

Under state enabling legislation local governments have clear authority through their powers of comprehensive land-use planning to enact special local land use ordinances that provide for attention to setbacks, enhanced landscaping standards, consistent greenbelts, architectural design considerations and permitted signage, as well as other pertinent considerations. This existing authority can do much to ensure that future growth along the corridor evolves around major intersecting roadways and consists of cluster developments rather than strip developments. The recently

adopted Charles City Comprehensive Plan is exemplary in its regard for environmentally sensitive policies for encouraging village-like development with open space preserved outside proposed village areas. Such policies assume that density equal to normal suburban densities can be achieved while still preserving the vistas and feeling of country along Route 5.

One area in which sufficient local authority is not clear concerns permissive state authority to enact local land use controls for aesthetic and scenic purposes. It is appropriate that the Commonwealth grant such powers or clarify explicitly that the use of such powers is appropriate in planning for orderly development along Route 5. The General Assembly in 1988 permitted local jurisdictions to establish design standards for major routes of tourist access to historic districts or sites. Pursuant to this authority, the Town of Leesburg and the City of Williamsburg have established corridor protection districts that specifically recognize and protect streets and roadways having aesthetic or cultural value. Route 5 jurisdictions also seek authority to permit the amortization of nonconforming signs; however, federal law prohibits this on primary highways such as Route 5, according to VDOT.

Urgently needed is both a public forum to coordinate and encourage the separate conservation efforts of public and private agencies and groups interested in the Route 5 Byway Corridor and a collaborative planning initiative for wise management of the Route 5 Byway Corridor. Preserving Route 5 as a two-lane Virginia Byway will thus require the encouragement of new intergovernmental relationships and responsibilities.

There is evidence of growing citizen support for a more coordinated approach to planning for the future of Route 5 among different levels of public and private activity, provided that such efforts respect the authority of local governments and locally elected officials to make local land use decisions. Representatives of localities consulted by the Department in this study endorsed support for voluntary coordination of planning activities and design decisions affecting Route 5. Activities such as preparation of a Route 5 Corridor Visual Assessment as is recommended in the new Charles City Comprehensive Plan, or the development of design guidelines by individuals trained in design as well as land use regulation could be carried out in a cost effective manner for the Corridor as a whole through the agency of a Route 5 Advisory Board.

**It is desirable to establish a four-foot-wide bicycle path adjacent to the Virginia Route 5 Corridor.**

The safety of the Route 5 Corridor was the primary focus of the Department of Transportation's 1991 Route 5 Corridor Study and Special Truck Study, pursuant to HJR 88 (1990). The Department of Historic Resource's deliberations under this study revealed that

safety remains of paramount importance to motorists and residents on Route 5. A concern for safety was particularly evident in the Department's deliberations on the issue of a dedicated bicycle path.

Public hearings conducted by the Department revealed citizen support for the establishment of bicycle paths adjacent to the Byway. However, opinion was divided both in public hearings and in the deliberations of the Department's Citizen Advisory Committee on what is the most economical, safe and appropriate means to introduce bike paths for transportation and recreation purposes adjacent to the byway. A majority of Advisory Committee members called for a widening of Route 5 to a consistent 24-feet of roadway with four-foot wide smooth paved shoulders on both sides to accommodate bikers and over-width farm equipment. Without knowing all of the possible alternatives available, the Committee regarded this solution as the safest and most affordable one in sight to preserve Route 5 as a two-lane scenic byway. However, according to the Department of Conservation and Recreation and the Department of Transportation, these proposed alterations could result in significant changes in the character of the road by removing many trees and by shifting drainageways and ditches. VDOT Chief Engineer Jack Hodge informed the Department that widening the existing facility of Route 5 to a consistent 24-foot width and more to accommodate smooth paved shoulders and ditch would destroy Route 5's unique character. Among the likely impacts of introducing what VDOT calls a "3R Type Improvement" (a 24' Pavement 4' Bicycle Facility on a 6' wide shoulder and minimum width ditches) upon existing conditions along much of the Byway are :

- \* Much of, if not all, the existing canopy would be lost.
- \* Due to the nature of the remaining trees, this canopy may never be replaced. After as many as 15 to 20 years, some may be restored but not to the standard of quality and beauty as now exists.
- \* Significant loss of what appear to be upland hardwood wetlands.
- \* Relocation of utility cables would disrupt further widths outside road way improvements.
- \* Movement of guardrail would require further removal of trees to allow for deflection.
- \* Deeper than normal ditches due to water table.

Officials of both state agencies concur in the view that proper overall planning is needed to ensure conservation of the integrity of the roadway.



The Study Committee heard testimony from Professor Keith Ready of Virginia Commonwealth University's Department of Recreation, Parks and Tourism about the possibility of adapting the rights of way of existing utility lines such as the Colonial(gas) pipeline or electric power lines as a dedicated bike path. Use of these existing rights of way would appear to be a possibly cost effective way of providing a dedicated bikepath with minimal alteration to Route 5's historic, aesthetic and scenic integrity. Development of such a bike trail is a key strategy under consideration in Charles City County's new Recreation plan.

In the Department of Historic Resource's judgment, one in which the Department of Transportation concurs, the concept and feasibility of an adjacent bikepath are most effectively addressed within the broader context of special design guidelines for Route 5. The effect of any proposed alternative on tree canopy, which is an important attribute of Route 5 contributing to its special scenic quality, deserves particular consideration, in meeting the paramount need for safety. The following sequence of planning steps would therefore appear to be recommended for deciding how best to accommodate a bicycle path or paths adjacent to the Byway:

1. Immediate development and implementation by VDOT of special Route 5 Byway maintenance guidelines, including guidelines for the introduction of bicycle paths.
2. Consultation with appropriate state agencies, local governments and a Route 5 Advisory Board for review and comment on those guidelines before implementation.
3. Feasibility study on cost and appropriateness of various alternatives for bicycle paths within the corridor.

**It is desirable to eliminate through truck traffic from Route 5**

Since the completion of the Department of Transportation's Route 5 Corridor Study and Special Truck Study, pursuant to HJR 88 (1990), the Attorney General has expressed the opinion that the General Assembly has authority to restrict through truck traffic on Route 5, a primary highway. The General Assembly has exercised similar control by establishing a process for restricting through truck traffic on secondary highways. The term, "through truck" is meant to include any truck larger than a four-tire pick up truck or van that is not making a pickup or delivery on Route 5, or on roads only accessible from Route 5, between the city limits of Richmond and Williamsburg.

The Department found that the exercise of such authority by the Commonwealth would likely have citizen support within Route 5 jurisdictions, provided that this prohibition did not apply to local truck deliveries or trucks originating in the localities.

A recommendation to eliminate unnecessary through truck traffic from Route 5 was advocated by the Department's Citizen

Advisory Committee. Committee members regarded the issue as highly important to a balanced approach to promoting progress and the retention of the rich heritage and scenic values represented by and along Virginia Route 5. At issue in committee deliberations was concern for maintaining Route 5 with high standards for beauty and historical significance without sacrificing traffic safety. Committee discussions supported preservation of Route 5 as a two-lane byway for as long as possible and as is necessary to retain the curves and beautiful umbrella of trees. Requiring through truck vehicles to follow alternative routes which are better designed to carry them would maintain the human scale of the Route 5 Byway and the quality of life of residents and visitors. Residents on the Byway who are experiencing the increase of traffic and associated traffic accidents through a combination of increasing truck, tourist, cyclist and commuter traffic on Route 5 called for feasible and prudent actions to curb traffic that the road is not designed to handle safely and to direct it to where it is more appropriately and safely carried. There is widespread appreciation for the efforts of the Virginia Department of Transportation and local transportation planners and engineers to improve safety on the byway. However, there remains concern that the over-use of Route 5 by trucks is incompatible with the state interest in ensuring that state policies respect the values represented by Virginia Byway designation. This issue needs to be addressed for the safety of visitors and residents alike.

Elimination of through trucks was the recommendation of several interested parties who specifically commented upon it such as the Colonial Williamsburg Foundation and the Preservation Alliance of Virginia. The Alliance particularly advocates that the section of the code of Virginia which authorizes the purchase of a permit to allow trucks to carry excess weight on non-interstate roads be revised to exempt a scenic byway such as Route 5 from the privilege. Local trucks and farm equipment usage on Route 5 could be negotiated in the revision.

As present federal and state laws control truck traffic, a rewriting of Virginia's legislation to eliminate trucks from Route 5 and to change allowable weights would at least be required to impose new truck restrictions. It is important to note that the Virginia Trucking Association opposes the implementation of truck restrictions on Route 5 for lack of persuasive evidence that there are safety problems with trucks using the route. The Department of Transportation similarly holds that further restrictions are not so much warranted as vigorous enforcement of existing restrictions, in view of VDOT's recent finding that nearly half of the trucks operating on Route 5 are operating illegally.

There seems to be general agreement that shared use of Route 5 by bicyclists and major truck traffic is incompatible and dangerous, especially with no bike lanes along the road at present. Dedicated bike paths will keep bikers out of the way of travelling

motorists. A bike path adjacent to the Byway is not only desirable but essential unless the Assembly is willing to severely limit truck traffic on the Byway. According to VDOT Chief Engineer Jack Hodge, it is possible to design a bikepath that meanders along either side of Route 5 without compromising either the safety or the character of the Byway, given adequate funding.

**There is a need to establish criteria to protect designated byways such as Route 5.**

Virginia's system for byway designation under the Code of Virginia, with its basis in local government support and its assignment of designation authority to the Commonwealth's Transportation Board, creates a highly efficient method of identifying and designating Virginia byways. This efficiency, combined with the program's reliance on local government consultation, explains much of the Byway program's growing popularity. There are approximately 32 counties that now have Byways in place and there are 23 separate designations covering segments of over 64 different routes and over 800 miles of road. These numbers could easily double before the ultimate Virginia Byway network identified in the Virginia Outdoors Plan is designated. The need to complete the work of designation is and must remain the major priority of the state's Byway program.

The recognition accorded designated byways through state designation often has proven to be an effective educational and protection tool. In order to be elevated to the status originally envisioned for the program at its conception over 25 years ago, however, the Virginia Byways program needs increased emphasis and greater promotion. Byways need to be promoted as valuable resources for the use of all Virginians. Virginia Byways, if properly promoted, can be active economic assets in a tourism industry of the first magnitude. The logical state agency to promote Virginia Byways as assets in the state's tourist industry is the Department of Economic Development's Division of Tourism, however this role has never formally been assigned to any state agency.

Efforts to improve the Virginia Byway program should build upon the program's many strengths, especially upon its growing acceptance, recognition and support among the localities of the Commonwealth.

One of the program's greatest strengths is the preference given to roads with local protection mechanisms in place. However, the Department found evidence that there is a need to refine the criteria currently in use to protect designated byways. There is at minimum a need to establish clear criteria for revoking a designation once a byway has lost the attributes that made it eligible for the designation. The decision to revoke the state designation should be based on a comparison between the current

condition of the attributes of a Byway and a comprehensive recording of the scenic and historic attributes of the area at the time of designation. The Department of Transportation is currently working to develop criteria for the establishment of byways as well as revocation procedures should a designated route lose its scenic byway character.

The Department also found that the legislation and management criteria now in use by VDOT and DCR provide minimal direction or guidance to local governments on adequate byway protection. By law the Commonwealth Transportation Board's authority extends only over the public right-of-way. No state agency has the authority to mandate a special overlay zoning which it could impose upon a community in order to protect an existing scene, no matter how significant it may be, nor would any state agency prudently seek such authority. Inconsistent local management of byway corridors is a necessary consequence.

It is important to recognize that there are a variety of ways to meet the need to establish criteria for maintaining and managing designated byways such as Route 5. One approach that deserves immediate consideration is development and implementation of formal byway review procedures for Route 5 within the Virginia Byway program through a Byway Programmatic Agreement between the Virginia Department of Transportation, and the Department of Conservation and Recreation. Such an agreement would recognize the need to examine the impact of any proposed road alteration on Route 5, including bicycle paths, and an evaluation of alternatives which would avoid or mitigate disruptive effects.

A mechanism for such review is now available through a recently established Interagency Environmental Coordinating Committee(IECC). It is now the policy of state agencies to review major projects through this committee effort. Proposed impacts on Virginia Byways now qualify as major projects under these new procedures. Until the recent formation of the interagency coordinating committee, no formal review or evaluation was required for state-initiated byway improvements.

Both the Virginia Department of Transportation and the Department of Conservation and Recreation agree that maintenance and management criteria for Route 5 may not necessarily be appropriate for the Byway system statewide. According to both departments, based on research by Departments of Transportation from all over the country, as well as numerous federal agencies and state universities, no one has been able to identify criteria that will work on a system-wide basis, although the roads which have been designated have many of the same traits. Both departments are also agreed that VDOT has sufficient guidelines to design or maintain a road that is in harmony with its surroundings and that spot and safety improvements can usually be introduced so that the overall character of an existing Virginia Byway is not drastically altered. The Department of Transportation supports cooperation with

other state agencies and local governments in the establishment of specially designed criteria. VDOT is confident it has the capability of working with any one of these agencies to develop a special design that would fit the situation, assuming there is money to fund it.

Congressional passage of the Intermodal Surface Transportation Efficiency Act of 1991 will provide Virginia with a number of incentives and programs such as an Interim and National Scenic Byways Program, new management standards incorporating strategies for protecting and enhancing the landscape and view corridors, and Transportation Enhancement Funds that will make a wide range of state-initiated conservation activities eligible to receive federal transportation funds, including landscaping and other scenic beautification, pedestrian and bicycle facilities, historic preservation projects and acquisition of scenic easements. The new law requires State Departments of Transportation to spend at least 10% of their allocation for enhancement projects. Virginia's share of transportation enhancement expenditures for 1992-1997 will be \$45.6 million.

A major recommendation of the Citizen Advisory Committee addressed this specific management need. The committee has recommended that the Virginia Department of Transportation establish special roadway design criteria for the Route 5 byway as well as for other byways in the interested jurisdictions. The need for such criteria is urgent in James City County, where developers of Governor's Land are obligated by proffer to widen Route 5. These local jurisdictions requested that it be the local government option to select standard roadway design criteria or special byway design criteria for particular projects. Local governments also seek to become active participants in the design process for all byway improvements including ingress and egress. VDOT makes the distinction between design standards, which are for the construction of a facility, and maintenance standards, which are for maintaining an existing facility.

**It is desirable that the Department of Conservation and Recreation assume greater responsibility for the monitoring and planning for the future of existing byways.**

The Department recognizes that the General Assembly of Virginia has mandated that VDOT is responsible for transportation planning and implementation in the Commonwealth. The Department understands that VDOT is designed and dedicated to carry out this important mission. Nevertheless, it is the Department's finding that it is desirable that the Department of Conservation and Recreation assume greater responsibility for monitoring and planning for the future of existing byways, insofar as the effect of a byway designation covers a much wider corridor than the specific public right of way.

It is recognized that the Department of Transportation and the Department of Conservation and Recreation do have designation

criteria, review and designation procedures in place. However, there is a need to strengthen and clarify the role of the Department of Conservation and Recreation as the lead state agency offering assistance to local governments in the management of existing byway corridors. Given its mission as a natural resource management agency and its expertise in conservation and resource protection planning, the Department of Conservation and Recreation would appear to be the logical state agency to assume the appropriate nontransportation responsibilities for monitoring and assisting local governments in planning for the protection of the attributes of a Byway Corridor beyond the public right of way. DCR's current legal mandate is to cooperate with VDOT in the designation process not to lead it. Nor does our state legislation exhort the Department of Conservation or any other state agency to promote or publicize scenic roads, though many assume that this was originally intended as the role of the Virginia Department of Economic Development's Division of Tourism.

It is interesting to recall that the first management recommendations offered to guide the Byway program's development and promotion came from leading representatives of the state's travel industry. Offered as a 1965 supplement to Virginia's Common Wealth, the remarkable state paper that led to the creation of Virginia's Outdoor Recreation Commission, these recommendations urged the state to form area advisory committees, to secure permanent protection for scenic roads through adequate public control of rights of ways and corridors, and to provide landowners relief from taxes on easements where they would be deprived of land use. The report cited Route 5 as the first in a list of sample scenic roads envisioned for a Virginia Byway system.

VDOT and the Department of Conservation and Recreation through mutual agreement could strengthen byway designation and participation criteria, adopt a more formalized review process for specific byways and clarify procedures for administering Byway management guidelines and revoking designation, while strengthening DCR's hand in the designation, planning and local management assistance components of the program.

In order for Virginia Byways to be elevated in their status among the programs of the Commonwealth, the value of Virginia Byways such as Route 5 must first be recognized. This will require the combined educational and promotional efforts of state agencies such as the Department of Conservation and Recreation, the Department of Transportation and the Department of Economic Development's Division of Tourism, in combination with private initiatives.

A stronger role for the Department of Conservation and Recreation in the Virginia Byway program based on the preceding considerations would result in improved management of Virginia Byways, along with the Memoranda of Agreement and accompanying review procedures for specific transportation projects.

## CONCLUSION:

### THE DEPARTMENT'S RECOMMENDATIONS

Based on the Study findings, the Department recommends the following as effective ways of encouraging protection of the integrity of the Route 5 Byway Corridor as alternate transportation corridor(s), outside of the Route 5 Byway Corridor are explored and designed, consistent with local comprehensive plans:

#### Create a Route 5 Advisory Board

- \* The Department recommends establishment of a special Virginia Route 5 Byway Advisory Board with consultative authority to advise federal, state and local governments and to comment upon proposed actions or projects potentially affecting the integrity and resources of the Route 5 Byway Corridor; to seek funding for and oversee completion of a survey and visual assessment of the Byway's historic, aesthetic, environmental and scenic values by June 30, 1993; and to develop management recommendations and design guidelines by June 30, 1994 for consideration by local governments in land use decision making.
- \* The Department recommends that Board membership be broadly representative of the various communities of interest along the Byway, including citizens who own property in land on the Byway, citizens residing in each of the five interested jurisdictions, and citizens with expertise or experience in byway corridor-related/scenic design issues.
- \* It is recommended that no fewer than 7 and no more than 12 board members be appointed by the General Assembly at the time of the Board's creation to serve on the Board until June 30, 1996 before which time the Assembly will consider whether such a Board shall continue to function.
- \* The Board will continue the work already begun by the public participation process required under H.J.R. 457. Representatives of the interested local governments, the Department of Conservation and Recreation, the Department of Transportation, and the Department of Historic Resources should participate in board deliberations as appropriate.
- \* The Board will seek available funding to permit completion of the survey and visual assessment of the Corridor by June 30, 1993 and development of management recommendations and design guidelines by June 30, 1994 for consideration in local land use decision making.
- \* In completing its work, the Board should maximize the use of

existing information on the Corridor and should enjoy the cooperation of all state and local agencies in carrying out its mandate.

#### **Strengthen Byway Program Management, Coordination and Promotion**

- \* VDOT should immediately establish special maintenance standards or concepts for the Route 5 Byway including design criteria for bikepaths. These standards should be reviewed for comment by the state's interagency environmental coordinating committee and by the interested local governments before implementation. These standards will be used to guide interagency and local government participation in examining the impact of proposed road alterations and enhancements to the roadway and in evaluating alternatives which would avoid or mitigate harmful effects.
- \* As soon as practicable, the comments and concerns of the Route 5 Advisory Board and interested local governments should be taken into account in all state undertakings with potential effects on the integrity of the Route 5 Corridor.
- \* The Department recommends development and implementation of formal byway review procedures for Route 5 within the Virginia Byway program through a revised Byway Programmatic Agreement between the Virginia Department of Transportation and the Department of Conservation and Recreation. It is recommended that this agreement address the need for VDOT and the Department of Conservation and Recreation to implement specific byway management procedures and guidelines for Virginia byways including a formal review process and revocation procedures.

#### **Increase Easement Promotion by State and Local Agencies**

- \* A concerted program for easement acquisition should not commence until after the Advisory Board has overseen completion of the survey and visual assessment for the entire corridor.
- \* Consistent with that assessment, state agencies with a mandate to accept conservation and historic easements should increase promotional efforts to obtaining easements within the Corridor in cooperation with the interested local governments, the Route 5 Advisory Board and the Department of Transportation.

#### **Establish a Special Route 5 Foundation**

- \* The Department endorses the establishment of a special Route 5 Foundation dedicated to safeguard the integrity of the Byway Corridor by acquiring protective easements from willing



landowners within the Route 5 corridor and by promoting the historic, educational and other values of the Byway.

#### **Give Local Governments Flexibility to Protect Route 5**

- \* The Department recommends enactment of enabling legislation to make clear that local governments have the option to act more assertively and flexibly in considering aesthetic and scenic values in managing growth and development along the byway.
- \* The Department also recommends granting local governments authority to permit the transfer of development rights of property owners along the Route 5 Byway to other areas more appropriate for development.
- \* The Department encourages each Route 5 jurisdiction to consider adoption of a Route 5 overlay district to reflect guidelines developed by a Route 5 Advisory Board.

#### **Study the Feasibility of Bicycle Path Alternatives**

- \* The establishment of bicycle paths adjacent to the Byway is recommended with the advice and consent of localities as regards location and design.
- \* The Department recommends that VDOT and the Department of Conservation and Recreation jointly examine the feasibility, cost effectiveness, safety and appropriateness of various alternatives for placing a four-foot-wide bicycle path adjacent to Route 5 and report on their findings to the Advisory Board as soon as such Board is established.
- \* This study should include consideration of designs which are sensitive to the existing canopy of trees along the Byway and which are most appropriate to the actual conditions of the Route 5 Byway in Henrico County, Charles City County and James City County. Also to be addressed is the feasibility of adapting the rights of ways of existing utility lines such as transmission powerlines and the Colonial gas pipeline for use as dedicated bike paths.

#### **Restrict Through Truck Traffic on Route 5**

- \* Based on the Department's deliberations with its Route 5 Citizens Advisory Committee, the Department supports the elimination of through truck traffic on Route 5, provided that this prohibition does not apply to local truck deliveries or trucks originating in the localities.
- \* The Department recommends strong and vigorous enforcement of existing laws restricting oversize and overweight trucks on

Route 5.

- \* The Department requests that the section of the Code of Virginia which authorizes the purchase of a permit to allow trucks to carry excess weight on non-interstate roads be examined to determine the feasibility of its revision to exempt Route 5 from the privilege, provided that local trucks and farm equipment be permitted to use the Byway for the welfare of the local community and the Commonwealth.

**Other Recommendations for the Byway Program**

The Department recommends that the following changes in legislation and policy to improve the management of future designated Virginia Byways be considered:

- \* Wise management of byways by localities with the assistance of advisory boards or committees and of state agencies including development of a visual assessment, resource inventory and management plan in advance of byway designation, consistent requirements for signs along byways to maintain scenic character, and specific setback, greenbelt and landscaping requirements on designated byways.
- \* Protection of designated byways by local governments in their comprehensive plans and ordinances.
- \* Appointment of a study commission to examine the state byway program to determine whether establishment of a separate state byway or parkway commission may be warranted.

The Department recognizes that providing technical support to many different Byway advisory boards or committees would be physically impossible for the Department of Conservation and Recreation with present staff and resources. While establishment of a special Board to deal with Route 5 is urgently needed, the proliferation of byway boards and committees could render the program ineffective. If localities are required to prepare management plans in order to qualify for a future Virginia byway designation, the Department of Conservation and Recreation believes many will not support the designation. Preparation of management plans at the State level would require a full-time staff with several people and an appropriate budget to support their activity.

## MAJOR PUBLISHED SOURCES CONSULTED IN STUDY

Charles City County, Virginia Comprehensive Land Use Plan. Prepared for Charles City County by the Richmond Regional Planning District Commission. 1991.

Creative Land Development: Bridge to the Future. Robert A. Lemire. 1986.

Dealing with Change in the Connecticut River Valley: A Design Manual for Conservation and Development. Robert D. Yaro et al. for the Massachusetts Department of Environmental Management and Center for Rural Massachusetts. 1988.

An Evaluation of Land Use Protections Affecting the Route 5 Byway. S. Kathleen Pepper for Lower James River Association. 1990.

How to Identify and Evaluate Historic Roads: Draft Methodology and Application. Prepared by Land and Community Associates for the Department of Historic Resources. 1991.

Protection Techniques for Scenic Byways: Four Case Studies. Shelley Mastran et al. of the National Trust for Historic Preservation for the Federal Highway Administration. 1990.

The Richmond-Williamsburg, Natural, Scenic and Historic Corridor: A Critical Environmental Area Plan. Virginia Division of State Planning and Community Affairs. 1973.

Report of the Virginia Department of Transportation to the Governor and the General Assembly of Virginia on Route 5 Corridor Study (House Document No. 44). Virginia Department of Transportation. 1991.

Route 5, A Virginia Byway. Lower James River Association. 1990.

Route 5 Corridor Study with Bikeway: John Tyler Highway From City of Richmond to City of Williamsburg. Virginia Department of Transportation. May, 1991.

Saving America's Countryside: A Guide to Rural Conservation. Samuel N. Stokes et al. for the National Trust for Historic Preservation. 1989.

Special Truck Study for the General Assembly (HJR 88). Virginia Department of Transportation, Traffic Engineering Division. 1990.

Virginia's Commonwealth: A Study of Virginia's Outdoor Recreation Resources and the Virginia Outdoors Plan for Conserving and Developing Them for the Lasting Public Benefit. Virginia Outdoor Recreation Study Commission. 1965.

**THE RECORD OF PUBLIC PARTICIPATION**

**CITIZEN ADVISORY COMMITTEE MEETINGS**

**JULY 25, 1991 ADVISORY COMMITTEE MEETING**

**General Assembly Building**

**Richmond, 2:00 p.m.**

Major Items of Business:

This organizational meeting of the Committee's twelve citizen advisors and representatives of the interested jurisdictions featured a staff presentation on the Department's approach to the Route 5 Study pursuant to HJR 457 and presentations by National Trust for Historic Preservation, the Lower James River Association and the Virginia Department of Transportation on the findings and recommendations of three recent studies of the Route 5 Corridor.

Committee Members Present:

Alicia J. Archer	Alexander Kuras	Yvonne D. Smith-Jones
Roy Props	Fitzhugh Turner	
Donna Wirick	Ridgely K. Copland	
Robert W. Peay	J.T. Ferguson, Sr.	

County Planning Staff Present:

William R. Britton, Jr., Director, Charles City County Planning Department  
John T. Horne, Development Manager, James City County  
David D. O'Kelly, Jr., County Planner III, Henrico County  
Robert C. Thompson (for Eric Millirons), Henrico County.

State Agency Representatives Present:

J. Lynwood Butner, Traffic Engineer, Dept. of Transportation  
Frank Jenkins, Marty Long, Philip Baker, Dept. of Transportation  
C. Derral Jones, Environmental Program Manager, Dept. of Conservation and Recreation  
David Zunker, Editorial Services Manager, Virginia Division of Tourism

Guest Speakers: C. Derral Jones, Dept. of Conservation and Recreation

Shelley Mastran, National Trust for Historic Preservation  
Patricia Jackson, Lower James River Association  
Philip Baker, J. Lynwood Butner, Dept. of Transportation

Department Staff Present:

Hugh C. Miller, Director  
H. Bryan Mitchell, Deputy Director  
Robert A. Carter, Director, Division of Preservation Services  
Sandra D. Mayer, Recording Secretary

**SEPTEMBER 16, 1991 ADVISORY COMMITTEE MEETING  
James City Board of Supervisors Room  
James City County, 7:00 p.m.**

Major Items of Business:

This meeting featured a discussion by the Committee of the findings and recommendations regarding Route 5 presented by the National Trust, Lower James River Association, and VDOT, a staff presentation with questions and answers on resource easements, and recommendations by the Committee on the conduct of the Department's forthcoming public hearings, pursuant to HJR 457.

Committee Members Present:

Alicia J. Archer  
Ridgely K. Copland  
J.T. Ferguson  
Victoria Gussman  
Yvonne D. Smith-Jones  
Alexander Kuras  
Henry L. Nelson  
Robert W. Peay  
Roy Props  
Fitzhugh Turner  
Donna Wirick  
George Wright.

County Representatives Present:

William R. Britton, Jr.  
David D. O'Kelly, Jr.  
Robert C. Thompson  
Eric Millirons  
John T. Horne

State Agency Representatives:

J. Lynwood Butner  
Frank Jenkins  
J.B. Robinson  
Philip Baker

Department Staff Present:

Hugh C. Miller  
Robert A. Carter  
Virginia E. McConnell, Easement Officer  
Margaret T. Peters, Information Officer  
Sandra D. Mayer

OCTOBER 29, 1991 ADVISORY COMMITTEE MEETING  
Charles City County's Neighborhood Center  
Charles City, 7 p.m.

Major Items of Business:

This meeting featured discussion and approval by Committee members of ten specific recommendations for consideration by the Department in making its final report to the Governor and General Assembly. The recommendations are included on pages 47 and 48 of this report. Factored into the Committee's deliberations was discussion of eight recommendations of the respective County staff representatives on Route 5 Study issues. The meeting also included special presentations to the Committee by Jane Yerkes of the Preservation Alliance of Virginia, and Professor Keith Ready of Virginia Commonwealth University's Department of Recreation, Parks and Tourism. It concluded with the presentation of a petition to the Department by Marvin T. Ball, a Citizen of Henrico County, on behalf of 318 property owners and citizens, many of whom live on Route 5 in eastern Henrico County.

Committee Members Present:

Alicia J. Archer  
Yvonne D. Smith-Jones  
Robert W. Peay  
J.T. Ferguson  
Victoria Gussman  
Alexander Kuras  
George Wright  
Henry L. Nelson  
Roy Props  
Donna Wirick  
Fitzhugh Turner

County Representatives Present:

William R. Britton, Jr.  
David D. O'Kelly, Jr.  
Eric Millirons  
John Horne  
Marvin Sowers, James City County Planning Dept.

State Agency Representatives:

C. Derral Jones, Philip Baker, R. M. Long, F.E. Jenkins  
Kay Gardner representing the Virginia Division of Tourism

Guest Speakers:

Jane B. Yerkes, President, Preservation Alliance of Virginia  
Professor Keith Ready, Dept. of Recreation, Parks and Tourism,  
Virginia Commonwealth University  
Marvin T. Ball, Citizen of Henrico County

Department Staff Present:

Robert A. Carter, Sandra D. Mayer

**NOVEMBER 19, 1991 ADVISORY COMMITTEE MEETING**  
**General Assembly Building**  
**Richmond, 1:30 p.m.**

Main Item of Business:

Citizen Advisors offered comments page by page on a Working Paper prepared by DHR staff that presented the preliminary findings and recommendations of the Department's study pursuant to HJR 457. The Department's final report responds to specific comments and suggestions expressed by our Citizen Advisory Committee at their November 19, 1991 meeting and to the concerns expressed by the representatives of the interested local governments who attended every monthly committee meeting from July through November, 1991.

Committee Members Present:

Alicia Archer  
Ridgely Copland  
J.T. Ferguson  
Victoria Gussman  
Henry Nelson  
Robert Peay  
Roy Props  
Fitzhugh Turner  
Donna Wirick  
George Wright

County Representatives Present:

William R. Britton, Jr.  
John T. Horne  
David D. O'Kelly, Jr.  
Eric Millirons

State Agency Representatives:

J Lynwood Butner  
Philip Baker  
Frank Jenkins  
J.B. Robinson  
C. Derral Jones  
Art Buehler

Department Staff Present:

Robert A. Carter  
Sandra D. Mayer

## RECOMMENDATIONS OF CITIZEN ADVISORY COMMITTEE

### Citizen Advisory Committee Meetings October 29, 1991 and November 19, 1991

At the Citizen Advisory Committee meetings of October 29, 1991 and November 19, 1991 for the Route 5 Byway Corridor Study, the committee agreed on the following recommendations for consideration by the Department in its Route 5 Corridor Report to the Governor and 1992 General Assembly:

- 1. The Committee supports a voluntary easement program, with the option of localities becoming the initial beneficiaries of private easements donated for preservation of aesthetic and scenic qualities along Route 5. Local governments reserve the right to assign the easement to some other qualified easement holder( such as the Department of Historic Resources and the Virginia Outdoors Foundation).
- 2. The Committee supports the widening of Route 5 to a consistent width of 24 feet with 4 ft paved shoulders on each side to encompass a bike path adjacent to the byway, and the planting of landscaping compatible with a parkway concept. The establishment of bicycle paths adjacent to the Byway is recommended with the advice and consent of the localities as regards to location and design. Implementation of this recommendation would create a much safer situation for all travellers on Route 5.
- 3. The Committee recommends the appointment of a Route 5 advisory board to serve in the capacity of "watchdog" and to develop guidelines; that it consist of at least two citizens from each of the counties, at least one member from each government entity, one member from VDOT, one member from the Department of Historic Resources, and one member from the Department of Conservation & Recreation.
- 4. The Committee recommends that through truck traffic on Route 5 be restricted or eliminated, provided that this prohibition not apply to local truck deliveries or trucks originating in the localities.
- 5. The Committee supports the use of special local land use ordinances providing for attention to setbacks, enhanced landscaping standards, architectural design considerations and permitted signage, as well as other pertinent considerations to reflect guidelines developed by a Route 5 Advisory Board.
- 6. The Committee recommends that the enforcement of existing regulations pertaining to trucks using Route 5 should be strengthened to the maximum extent possible.



- 7. The Committee recommends that the Department of Transportation should establish special roadway design criteria for byways with local government option to select standard roadway design criteria or special byway design criteria. Whatever criteria are used, local governments should be active participants in the design process for all byway improvements including ingress and egress. Localities should voluntarily coordinate planning activities and design decisions impacting on Route 5.
- 8. The Committee recommends that any use of eminent domain powers by State agencies in regard to Route 5 should require local government input.
- 9. The committee recommends the granting of local option enabling legislation permitting local land use controls for aesthetic and scenic purposes and to permit the amortization of nonconforming signs.
- 10. The committee recommends that some alternate route to alleviate traffic on Route 5 be explored, consistent with local comprehensive plans.

**PUBLIC HEARINGS**

**CHARLES CITY COUNTY PUBLIC HEARING  
Charles City County Neighborhood Complex  
September 23, 1991, 7:00 p.m.**

Speakers:

Winston Matthews, Charles City Resident  
Dr. Thomas Bower, Rector, Westover Parish  
Lloyd Jones, Attorney, Charles City Resident  
Henry Hays, Charles City Resident  
Reverend David Perry, Paster of St. John Baptist Church, Route 106;  
President, N.A.A.C.P. (Charles City branch)  
Terry Jones, Charles City Resident  
Julian Boulware, Charles City Resident  
Harrison Tyler, Charles City Resident  
Frederick Fisher, Charles City Resident  
Jordan McCabe, Charles City Resident  
David L. Farley, Charles City Resident  
Nancy Carter, Charles City Resident  
Muschie Fisher, Charles City Resident  
Jack Honeycutt, Charles City Resident, Contractor

Citizen Advisors Present:

Alicia Archer  
Yvonne Smith-Jones  
Ridgely Copland  
George Wright  
Victoria Gussman  
Fitzhugh Turner  
Donna Wirick  
Roy Props  
J.T. Ferguson

County Representatives Present:

William R. Britton, Jr., Charles City County

Department Staff Present:

H. Bryan Mitchell, Hearing Officer  
Robert A. Carter  
Sandra D. Mayer

Other State Agency Representatives:

J. Lynwood Butner and Frank Jenkins  
C. Derral Jones

**JAMES CITY COUNTY PUBLIC HEARING**  
**James City County Board of Supervisors Meeting Room**  
**September 25, 1991, 7:00 p.m.**

Speakers:

Brian Gordineer, Charles City Resident  
Alec Gould, Superintendent, Colonial National Historical Park  
Carolyn Lowe, President, Historic Rivers Land Conservancy  
Deborah Lenceski, Transportation Planner and Civil Engineer working  
in James City County.  
Marsha Bush  
Bob Bush  
Paul Small, Civil Engineer  
Bill Holt  
Charles Yerkes

Citizen Advisors Present:

Victoria Gussman  
Fitzhugh Turner  
George Wright  
Yvonne Smith-Jones  
Ridgely Copland  
Alicia Archer  
Roy Props

County Representatives Present:

John T. Horne, Development Manager, James City County

Department Staff Present:

H. Bryan Mitchell, Hearing Officer  
Robert A. Carter  
Sandra D. Mayer

Other State Agency Representatives:

J. Lynwood Butner, Frank Jenkins, Philip Baker (VDOT)  
C. Derral Jones, Dept. of Conservation and Recreation

**HENRICO COUNTY PUBLIC HEARING  
Henrico Eastern Government Center  
September 30, 1991, 7:00 p.m.**

Speakers:

Margery Pinkerton, Attorney, Henrico County resident  
Marvin T. Ball, Henrico County resident  
Watson Marshall, Route 5 Resident  
Betty Stevens  
Laura Hewlett  
Lillian Goud, Route 5 resident  
Veora Waller, Eastern Henrico resident  
John Yahley, Route 5 resident  
Tom Moore, Henrico County resident  
Louis Jordan  
Shirley Daniel, Henrico County resident  
Reginald Nelson, Varina resident  
Cindy MacLeod, Resident of Ceder Cone Drive, Superintendent of  
Richmond National Battlefield Park  
John Nelson, Jr., Local resident  
Reverend Eddy Perry: 4401 N. Lakefront Drive., Pastor of a church  
in Charles City County  
Julie A. Currin, Esq., Varina resident  
Alberta Stoneman, local resident  
Jona Ray Williamson, local resident  
Paula Burnham, local resident  
David Drexler, Lumber Buyer for Stone Container of Hopewell  
Dick Gibbons, Route 5 property owner  
Addison Thompson, Historic Easement Donor and Owner of a Property  
Designated as a National Historic Landmark  
Mrs. A.W. Thimson, local resident  
Betty Sweeney, Route 5 resident  
Gatewood Stoneman

Citizen Advisors Present:

Donna Wirick  
Roy Props  
J.T. Ferguson  
Henry L. Nelson  
George Wright

County Representatives Present:

Anthony P. Mehfoud, Chairman, Henrico County Board of Supervisors  
David D. O'Kelly, Jr., Henrico County Planning Department  
Eric Millirons, Henrico County Traffic Engineering Department

Department Staff Present:

Robert A. Carter, Hearing Officer  
Virginia E. McConnell  
Sandra D. Mayer

Other State Agency Representatives:

Lynwood Butner, Philip Baker, Frank Jenkins

**LETTERS AND OTHER ITEMS OF CORRESPONDENCE RECEIVED**

- 05-08-91 Patricia A. Jackson, Executive Director, Lower James River Association. Letter to Hugh C. Miller requesting opportunity to meet to discuss upcoming Route 5 study.
- 05-13-91 S. Kathleen Pepper. Memorandum to Robert Carter offering comments on VDOT's Route 5 Corridor Study.
- 08-30-91 David D. O'Kelly, Jr., County Planner, Henrico County. Letter to Hugh C. Miller regarding the County's major concern with maintaining Route 5 as a two-lane byway.
- 09-16-91 Frederick S. Fisher, Co-Chairman, Varina Beautification Committee. Letter to Hugh C. Miller suggesting an outline of steps to follow in studying Route 5.
- 09-26-91 Margery B. Pinkerton, Attorney. Letter to Robert Carter regarding forthcoming public hearing in Henrico County.
- 09-25-91 Barbara H. Hager, Chairman, Civic Beautification Committee, Williamsburg Council of Garden Clubs. Letter to Robert A. Carter supporting the preservation of Route 5 as a two-lane Scenic Byway.
- 09-30-91 Alec Gould, Superintendent, National Park Service, Yorktown, VA. Letter to Robert Carter regarding Williamsburg public hearing and enclosing information pertinent to DHR study.
- Brian E. Gordineer. Position paper proposing a preservation plan for the Route 5 Corridor.
- 10-24-91 Montrose Heights Station (U.S. Postal Service), Mail Carriers. Unsigned letter to Robert A. Carter stating position of Montrose mail carriers on paramount issue of safety as related to study issues under HJR 457.
- 10-25-91 Carolyn Lowe, President, Historic Rivers Land Conservancy. Letter to Hugh C. Miller regarding the creation of a greenway system and interest in assisting in permanent protection of the Route 5 Corridor.
- 10-25-91 W.R. Britton, Jr., (Charles City Co., Planning) John T. Horne (Development Manager, James City Co.), David D. O'Kelly, Jr. (Henrico Co. Planning) Eric B. Millirons (Henrico Co. Department of Public Works). Letter to Hugh C. Miller making eight suggestions for consideration by the Citizen Advisory Committee and DHR.
- 10-29-91 John T. P. Horne, James City Co. Development Manager. Letter to Hugh C. Miller regarding the DHR Route 5 Study

and schedule for decisions regarding the Greensprings and Governor's Land at Two Rivers developments.

- 10-29-91 Jane Yerkes, President, Preservation Alliance of Virginia. Letter to Robert Carter enclosing position paper on the protection of Route 5 as a two lane scenic byway, presented at the Citizen Advisory Committee Meeting at Charles City County.
- 11-12-91 Marvin T. Ball. Letter to Robert A. Carter presenting petitions containing the signatures of 318 citizens of Route 5 localities and the Commonwealth of Virginia. The petitions oppose the designation of Route 5 as a historic district by any government, oppose state and federal intervention in local land use, oppose the establishment of a broad based Route 5 foundation, oppose the seeking of easements by federal and state agencies that would impede necessary transportation improvements, support county and VDOT mandates to monitor and plan for highways, oppose granting additional powers to local governments, oppose further restrictions on vehicular traffic, support resolution of bike path issue as one of safety, and demand a public hearing to review publically the final study report before its presentation to the General Assembly. The signatories are primarily residents of eastern Henrico County.
- Richard G. Gibbons, landscape architect and Route 5 resident. Position paper presented at the Henrico County public hearing.
- 11-13-91 Norman G. Beatty, Communications and Government Relations, Colonial Williamsburg Foundation. Letter to Hugh C. Miller regarding the possibility of a Route 5 Advisory Board and other matters.
- 11-18-91 Dale Winslow, Henrico County resident. Letter to Department regarding safety and rights of personal property owners on Route 5.
- 11-19-91 Thomas R. Moore, Henrico County resident. Letter to the Department regarding the rights of property owners and the importance of safety in resolving several issues under study by DHR.
- 11-19-91 Art Buehler, Division Director for Planning and Recreation Resources, Dept. of Conservation and Recreation. Memorandum to Hugh C. Miller offering comment on DHR Route 5 working paper.
- 11-22-91 Jane B. Yerkes, President, Preservation Alliance of Virginia. Letter to Robert Carter offering comment on DHR

Route 5 working paper.

- 11-22-91 P. Dale Bennett, Executive Vice President, Virginia Trucking Association. Letter to Robert Carter enclosing written comments on DHR Route 5 working paper.
- 11-27-91 Patricia A. Jackson, Executive Director, Lower James River Association. Letter to Robert Carter offering comments on DHR Route 5 working paper.
- 12-01-91 Frederick S. Fisher, Co-Chair, Varina Beautification Committee. Letter to Robert Carter offering comments on DHR Route 5 working paper.
- 12-05-91 Sally G. Oldham, President, Scenic America. Letter to Hugh C. Miller regarding the provisions of the Intermodal Surface Transportation Efficiency Act of 1991.
- 01-09-92 Ray D. Pethel, Commissioner, Virginia Department of Transportation. Letter to Hugh C. Miller offering comments on DHR Route 5 working paper.

**APPENDICES**

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# 1991 SESSION

LD7416468

1                                   **HOUSE JOINT RESOLUTION NO. 457**  
2                                   **AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
3                                   (Proposed by the House Committee on Rules  
4   on January 29, 1991)

5                                   (Patron Prior to Substitute—Delegate Grayson)

6 *Requesting the Virginia Department of Historic Resources to study the Virginia Route 5*  
7 *Corridor.*

8       WHEREAS, Virginia Route 5, the most historic continuously used road in our nation, not  
9 only physically connects Virginia's colonial capital, Williamsburg, to its present capital,  
10 Richmond, but also symbolically links dynamic, modern Virginia with her rich historical  
11 past; and

12       WHEREAS, Virginia Route 5 provides access for tourists to visit homes of presidents,  
13 plantations, and other historic sites along the banks of the James River; and

14       WHEREAS, Virginia Route 5 not only affords a path to the past, but also constitutes a  
15 scenic resource of considerable charm and beauty in its own right; and

16       WHEREAS, Virginia Route 5 from Williamsburg to Richmond City has been designated  
17 a Virginia By-Way in recognition of its historic and aesthetic value; and

18       WHEREAS, the very attributes which make the Virginia Route 5 Corridor valuable  
19 require sensitive planning and guidance to preserve the quality of the corridor for the  
20 benefit of visitors and residents; and

21       WHEREAS, it is in the interest of all Virginians, not only those who live and work  
22 along Virginia Route 5, that its attractiveness be maintained for the enjoyment of the  
23 present and future generations, and it is the sense of the General Assembly that the Route  
24 5 Corridor be preserved as a two-lane scenic by-way; and

25       WHEREAS, preservation efforts undertaken and supported by concerned local  
26 governments, businesses, citizen organizations, and individuals can more fully achieve their  
27 goals if conducted through a forum that will serve to coordinate and encourage their  
28 separate efforts; and

29       WHEREAS, the preservation of this Virginia By-Way, examined in 1990 by the Virginia  
30 Department of Transportation, is worthy of further study by the Department of Historic  
31 Resources; now, therefore, be it

32       RESOLVED by the House of Delegates, the Senate concurring, That the Virginia  
33 Department of Historic Resources is requested to study the Virginia Route 5 Corridor. The  
34 Department shall include in, but not limit, its deliberations to (i) the need to and ways of  
35 preserving the historic, environmental, and aesthetic integrity of Virginia Route 5 as a  
36 two-lane scenic by-way; (ii) the feasibility and desirability of obtaining open space, historic  
37 and other resource easements for properties along Route 5; (iii) the possibility of  
38 establishing a foundation dedicated to safeguarding Route 5; (iv) the feasibility and  
39 appropriateness of granting local governments powers necessary to regulate and limit  
40 commercial encroachments on the Virginia Route 5 Corridor; (v) the desirability of  
41 establishing a four-foot wide bicycle path adjacent to the Virginia Route 5 Corridor; (vi) the  
42 need to establish criteria to protect designated by-ways throughout the Commonwealth; and  
43 (vii) the desirability of giving a state agency other than the Virginia Department of  
44 Transportation, the nontransportation responsibility for monitoring and planning for the  
45 future of existing by-ways.

46       The Department of Historic Resources shall work closely with local governments during  
47 its examination of the aforementioned issues. The Department shall also work closely with  
48 the Virginia Department of Transportation, drawing upon findings in its report to the 1990  
49 General Assembly, pursuant to HJR 88. Other state agencies are urged to cooperate with  
50 the Department of Historic Resources as it undertakes this study. The Department shall  
51 hold at least one public hearing in each of the following counties: James City, Charles City,  
52 and Henrico.

53       The Department shall appoint four citizens from each of the above counties to assist in  
54 its deliberations. To the extent possible, meetings of the study committee should involve

1 citizen members from the three jurisdictions, as well as state and local officials. The  
2 citizen members shall neither be compensated for their services nor reimbursed for  
3 expenses incurred in attending meetings.

4 The Department shall begin its work promptly and complete its work in time to submit  
5 its findings and recommendations to the Governor and the 1992 General Assembly, no later  
6 than December 1, 1991, as provided in the procedures of the Division of Legislative  
7 Automated Systems for processing legislative documents.

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<b>Official Use By Clerks</b>	
<b>Agreed to By</b>	<b>Agreed to By The Senate</b>
<b>The House of Delegates</b>	
without amendment <input type="checkbox"/>	without amendment <input type="checkbox"/>
with amendment <input type="checkbox"/>	with amendment <input type="checkbox"/>
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Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

H.J.R. 457

Requesting the Virginia Department of Historic Resources to study the Virginia Route 5 Corridor.

LD7416468

(HJR 457) Virginia Route 5 corridor. Requests the Department of Historic Resources to study the Virginia Route 5 corridor. This study expands the Department of Transportation's 1990 study of Route 5. The Department of Historic Resources is requested to determine the need to and ways of preserving Virginia Route 5 corridor as a two-lane scenic by-way, including the feasibility and appropriations of granting local governing bodies powers necessary to limit commercial encroachments along the corridor.

Patrons--Grayson, Cooper and Marks; Senators: Fears, Cross and Lambert

Jan 22, 91 H Presented & ordered printed  
H Referred to Committee on Rules  
Jan 29, 91 H Reported from Rul. with substitute 9-Y 0-N  
H Substitute printed LD7416468  
H Full text inquiry name .fu HJ457H1  
H Committee roll call vote inquiry name = .vo HJ457T1  
Jan 31, 91 H Committee substitute agreed to  
H Engrossed by House  
H Agreed to by House by voice vote  
H Communicated to Senate  
Feb 1, 91 S Reading waived 38-Y 0-N  
S Referred to Committee on Rules  
Feb 17, 91 S Reported from Rul. 8-Y 0-N  
Feb 18, 91 S Reading waived 38-Y 0-N  
Feb 19, 91 S Passed by for the day  
Feb 20, 91 S Passed by for the day  
Feb 21, 91 S Read third time  
S Agreed to by Senate by voice vote

ARTICLE 5.

*Scenic Highways and Virginia Byways.*

§ 33.1-62. Designation.

The Commonwealth Transportation Board is hereby authorized to designate any highway as a scenic highway or as a Virginia byway. This designation shall be made in cooperation with the Director of the Department of Conservation and Recreation. Prior to designation, the local governing body and local planning commission, if any, in each county or city wherein the proposed scenic highway or Virginia byway is located shall be given notice and, upon request by any of the local governing bodies, the Commonwealth Transportation Board shall hold a hearing in one of the counties or cities wherein the proposed scenic highway or Virginia byway is located. (Code 1960, § 33-43.1; 1966, c. 11; 1970, c. 322; 1974, c. 319; 1984, c. 739; 1989, c. 656.)

The 1969 amendment substituted "Commonwealth Transportation Board" for "State Highway and Transportation Commission" in the first and last sentences; and in the second sentence, substituted "Director of the Department of Conservation and Recreation" for "Director of Conservation and Historic Resources."

ARTICLE 5.

§ 33.1-63. "Virginia byway" defined; preference in selecting.

For the purposes of this article, a "Virginia byway" is defined as a road designated as such by the Commonwealth Transportation Board, having relatively high aesthetic or cultural value, leading to or within areas of historical, natural or recreational significance. In selecting a Virginia byway, the Commonwealth Transportation Board and the Director of the Department of Conservation and Recreation shall give preference to corridors controlled by zoning or otherwise, so as to reasonably protect the aesthetic or cultural value of the highway. (Code 1950, § 33-43.2; 1966, c. 11; 1970, c. 322; 1984, c. 739; 1989, c. 656.)

The 1969 amendment substituted "Commonwealth Transportation Board" for "State Highway and Transportation Commission" in the first and second sentences, and substituted "Director of the Department of Conservation and Recreation" for "Director of Conservation and Historic Resources" in the second sentence.

§ 33.1-64. "Scenic highway" defined.

For the purpose of this article, a "scenic highway" is defined as a road designated as such by the Commonwealth Transportation Board, within a protected scenic corridor located, designed and constructed so as to preserve and enhance the natural beauty and cultural value of the countryside. (Code 1950, § 33-43.3; 1966, c. 11; 1970, c. 322.)

§ 33.1-65. Signs.

When the Commonwealth Transportation Board designates a highway as a scenic highway or as a Virginia byway, it shall be appropriately signed as such. (Code 1950, § 33-43.4; 1966, c. 11; 1970, c. 322.)

SCENIC HIGHWAYS AND VIRGINIA BYWAYS  
PROCEDURES AND CRITERIA

The Virginia Department of Conservation and Historic Resources, the Virginia Department of Transportation and the Commonwealth Transportation Board agree to the following procedures and criteria for reviewing and designating Scenic Highways and Virginia Byways under Title 33.1, Chapter 1, Article 5 of the Code of Virginia.

Procedures for Designation

The Department of Conservation and Historic Resources and the Department of Transportation will jointly:

1. Initiate the study of a potential Scenic Highway or Virginia Byway as a measure implementing the Virginia Outdoors Plan or upon the request of a local governing body.
2. Make onsite inspection of the route to determine if it meets the physical criteria.
3. Request a resolution or other assurance, indicating that the local governing body (bodies) is interested in scenic designation.

The Director of the Department of Conservation and Historic Resources will:

4. Coordinate within the Department, with the Virginia Outdoors Foundation, and with other appropriate state agencies to determine the location and significance of historic sites and/or other natural resources in close proximity to the road corridor.
5. Determine that local zoning and comprehensive planning programs of the locality and the planning district commissions are consistent with the management objectives established for Scenic Highways or Virginia Byways.
6. Recommend the designation of the potential scenic highway or Virginia Byway to the Commonwealth Transportation Board through the Commissioner of the Department of Transportation.

The Commissioner of the Department of Transportation will:

7. Submit potential scenic highways or Virginia Byways proposals recommended by the Director of the Department of Conservation and Historic Resources to the Commonwealth Transportation Board for their action.
8. Advise the Director of the Department of Conservation and Historic Resources of Board action.
9. Work with local governing agency to achieve the management objective(s).
10. Conduct annual inspections of the maintenance and improvements of the route.

#### Procedures for Designation Revocation

If the Department of Transportation's annual inspection indicates a Scenic Highway or Virginia Byway no longer meets minimum standards, the Commonwealth Transportation Board will request a joint investigation by the two Departments. Listed below are the procedural steps which should be followed:

1. The two Departments will notify the local governing body, the planning district commission, interested individuals and organizations of the requested investigation.
2. In coordination with the local governing body, the Departments will make an on-site inspection of the route and provide suggestions to the locality for corrections, improvements or restorations as necessary to maintain designation and a recommended time frame for action.
3. The Directors will recommend to the Commonwealth Transportation Board that the designation be revoked upon finding that the quality of the road segment cannot be restored to meet minimum standards.
4. The Commonwealth Transportation Board will take action concerning revocation of the designation upon recommendation of the Director and Commissioner.


#### Criteria

In order to be considered for designation as a Scenic Highway or Virginia Byway, a segment of road must substantially meet the tests of the following physical criteria:

1. The route provides important scenic values and experiences.

2. There is diversity of experiences as in transition from one landscape scene to another.
3. The route links together or provides access to significant scenic, scientific, historic or recreational points.
4. The route bypasses major roads or provides opportunity to leave high-speed routes for variety and leisure in motoring.
5. Landscape control or management along the route is feasible.
6. The route is susceptible to techniques to provide for user safety.
7. The route contributes to good distribution within the elements of the Scenic Highway and Virginia Byway system.
8. Preference shall be given to those corridors controlled by zoning or otherwise, so as to reasonably protect the aesthetic or cultural value of the highway.

AGREED:

  
\_\_\_\_\_  
Director  
Department of Conservation  
and Historic Resources

  
\_\_\_\_\_  
Commissioner  
Department of Transportation

May 6, 1987  
Date

May 1, 1987  
Date



COMMONWEALTH of VIRGINIA

Office of the Attorney General

May 30, 1991

Mary Sue Terry

Attorney General

Lane Kneeler

Chief Deputy Attorney General

Deborah Love-Bryant

Chief of Staff

Marshall Cook

Deputy Attorney General

Deputy Attorney General

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Deputy Attorney General

Deputy Attorney General

The Honorable George W. Grayson  
Member, House of Delegates  
P.O. Box 1969  
Williamsburg, Virginia 23187

My dear Delegate Grayson:

You ask whether the General Assembly has the authority to restrict "through trucks"<sup>1</sup> on State Route 5 between Richmond and Williamsburg.

I. Applicable Constitutional Provisions

Article IV, § 1 of the Constitution of Virginia (1971) vests the legislative power of the Commonwealth in the General Assembly. Article IV, § 14 provides that this legislative power shall extend to all subjects of legislation not forbidden or restricted by the Constitution and details 20 instances in which the General Assembly is prohibited from enacting a local or special law.

II. General Assembly Has Authority to Restrict Through Truck Traffic

Prior Opinions of this Office consistently conclude that the Constitution of Virginia vests plenary legislative power in the General Assembly. See Att'y Gen. Ann. Rep.: 1989 at 46, 49; 1987-1988 at 93, 94. None of the 20 prohibitions on local or special acts in Article IV, § 14 of the Constitution restricts the General Assembly's authority to regulate truck traffic. Indeed, the General Assembly has exercised this control in § 46.2-809 of the Code of Virginia by establishing a process for restricting through truck traffic on secondary highways. The Supreme Court of Virginia also has recognized the broad powers of legislative bodies to regulate the use of public highways. See *Funeral Directors' Ass'n v. Groth*, 202 Va. 792, 120 S.E.2d 467 (1961) (prohibition of parking on public streets to facilitate operation of funeral home); *Town of Leesburg v. Tavenner*, 196 Va. 80, 82 S.E.2d 597 (1954) (prohibition of parking on public street to allow space for common carriers to receive and discharge passengers); *Polglaise's Case*, 114 Va. 850,

<sup>1</sup>Based upon telephone conversations between you and a member of my staff, I understand that you use the term "through truck" to include any truck larger than a four-tire pickup truck or van that is not making a pickup or delivery on Route 5, or on roads accessible only from Route 5, between the city limits of Richmond and Williamsburg.




The Honorable George W. Grayson  
May 30, 1991  
Page 2

76 S.E.2d 897 (1913) (regulation of tire width for commercial haulers of railroad ties and lumber).

It is my opinion, therefore, that the General Assembly has the authority to restrict through truck traffic on Route 5 between Williamsburg and Richmond.

With kindest regards, I am

Sincerely,



Mary Sue Terry  
Attorney General

5:26/333-015

## **SCENIC AND HISTORIC RESOURCE PROTECTION IN THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991**

America's transportation policy has a tremendous impact on the scenic quality of the American landscape. The Intermodal Surface Transportation Efficiency Act of 1991 (H.R.2950) will recognize the protection of the scenic quality of the environment as an integral part of national transportation policy.

Of special note in H.R.2950 are provisions which establish a National Scenic Byways Program, reform the Highway Beautification Act, designate special funds for conservation activities, and require transportation projects to meet standards which protect historic and scenic values. These provisions are explained in more detail below.

### **SCENIC BYWAYS**

H.R.2950 establishes a National Scenic Byways Program to protect and enhance America's designated scenic roads. This program will provide \$80 million over six years to states for the purpose of creating and implementing planning, design and development of a National Scenic Byways Program. It includes:

- An Interim Scenic Byways Program to be implemented immediately with \$10 million annually from FY92-94. Funds are available for planning, safety and facility improvements, protection of historical and cultural resources and tourism information signage for the traveling public.
- A National Scenic Byways Program to be implemented based on recommendations from an advisory committee of 17 members on criteria for designation of national scenic byways and all-American Roads. Funding consists of \$1 million for FY92, \$3 million for FY93, \$4 million for FY94, and \$14 million annually from FY95-97. The Secretary of Transportation will provide technical and financial assistance to the states in planning, designing and developing state scenic byways program.
- Billboard construction is explicitly banned along state designated scenic roads on the federal aid highway system designated before as well as after enactment of this new law.
- As a part of the National Scenic Byways Program, the Secretary of Transportation is expected to create operation and management standards incorporating strategies for protecting and enhancing the landscape and view corridors.



## **BILLBOARD REFORM**

H.R.2950 includes several reforms to current billboard control laws including:

- \* New billboard construction is banned along designed scenic byways.
- \* Funds are provided to remove non-conforming billboards through cash compensation in three separate sections of the bill.
  - 1- A substantial portion of the funding for the National Scenic Byways program can be used to remove billboards along designated scenic byways.
  - 2- States can use apportioned highway funds set aside for "Transportation Enhancement Activities" for billboard removal (see below).
  - 3- States can use general transportation funds for billboard removal as part of their approved program of projects.

Illegal billboards must be removed by their owners within 90 day of enactment of this bill. If they are not removed, the state is required to remove the illegal sign and can charge the owner for this removal.

## **TRANSPORTATION ENHANCEMENT ACTIVITIES**

H.R. 2950 establishes a new program called "Transportation Enhancement Activities" which provides states with more than \$3.3 billion over the six year life of the bill to be spent on conservation activities. These funds will be divided among the states according to the apportionment formula in H.R. 2950 in an 80%/20% federal match.

Conservation activities eligible to receive Transportation Enhancement funds include:

- \* Control and removal of outdoor advertising.
- \* Acquisition of scenic easements and scenic and historic sites.
- \* Landscaping and other scenic beautification.
- \* Historic preservation.
- \* Pedestrian and bicycle facilities.
- \* Rehabilitation and operation of historic transportation buildings, structures, and facilities including historic railroad facilities and canals.
- \* Preservation of abandoned railway corridors including the conversion and use for pedestrian or bicycle trails.
- \* Archeological planning and research.
- \* Mitigation of water pollution due to highway runoff.

## **SCENIC AND HISTORIC DESIGN STANDARDS**

H.R. 2950 requires for the first time that highway projects carried out with federal transportation dollars be responsive to preserving historic and scenic values. Highway projects located in historic or scenic areas must be designed to standards "that allow for the preservation of such historic or scenic value."