

Summary and Recommendations: Dedications along Existing Public Rights-of-Way, Balancing Property Rights with Local Authority over Land Use Regulation

When subdividing his property to build a new house in 2016, a property owner in Putnam County was surprised to learn that as a condition for approving the subdivision of the property, the county would require him to dedicate a portion of his land along the existing roadway. Dedication occurs when property owners give land or the right to use that land to the local government for public use. Local governments commonly condition subdivision approval on these dedications and typically do not pay for them.

Because of situations like the one in Putnam County, the Tennessee Association of Professional Surveyors has questioned whether requiring owners to dedicate land along existing public rights-of-way without compensation is constitutional, especially in cases where the property may be subdivided into only a few lots—though stakeholders don't necessarily agree on what "a few lots" would be. They also question why local governments don't pay for dedications like the Tennessee Department of Transportation (TDOT), which pays for rights-of-way that it acquires. And they argue the land is not used by local governments for many years after being dedicated. In response to these concerns, Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams in the 112th General Assembly would prohibit local governments from requiring a property owner to dedicate land along an existing public right-of-way as a condition of approving any application made to develop the property. Local officials opposed to the bill say whether to require dedications as a condition of subdivision approval should be a local decision so local governments can ensure their land use regulations meet their local needs, and the bill might significantly increase local expenditures because the land that would otherwise be dedicated would have to be purchased. Local officials also say there are a number of reasons why a dedication may be required beyond widening a highway or other road. The Lieutenant Governor and House Speaker requested that the Commission study the bill.

Courts have held that it is constitutional for governments to require dedications that meet the requirements of the Nollan/Dolan test.

The US Supreme Court has ruled that dedications that are required as a condition of local government permit approval are constitutional if they pass the *Nollan/Dolan* test, a two-prong test developed in two cases, *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. In *Nollan*, the court held that there must be an "essential nexus" connecting whatever condition a local government imposed on property owners and a valid

government purpose. In *Dolan*, the court held that there must not only be a nexus between the effects of a development and the required dedication, but that there should also be a “rough proportionality” between the two. For example, in *Dolan* a property owner applied for a permit from the city to expand her store. As a condition for approving the permit, the city required that she dedicate a strip of land beside the store to be used for a pedestrian and bicycle path to help offset increased vehicle traffic to the store. The US Supreme Court ruled that there was an essential nexus because there theoretically could be an increase in traffic resulting from the store’s expansion, but the amount of land being required in this case was in excess of the likely impact. The Court held the dedication was unconstitutional.

Dedications that meet the *Nollan/Dolan* test do not violate the Takings Clause of the Fifth Amendment of the US Constitution, the clause that prohibits the government from taking private property for public use without just compensation. The Tennessee Constitution has a similar takings clause in Article 1, Section 21, which the Tennessee Supreme Court ruled in the 2014 case of *Phillips v. Montgomery County* “should be interpreted no different than the Takings Clause of the Fifth Amendment.”

Property owners can contest a dedication requirement in court if they think the dedication violates the state or federal constitution. One researcher conducted an informal review of appellate court decisions involving the *Nollan/Dolan* test and found that property owners prevailed in about half the cases. However, litigation is expensive and may take considerable time to resolve.

Dedication requirements can also be challenged during the land development approval process at the local level before a permit is approved. In the 2016 Putnam County example mentioned earlier, after the owner objected to the dedication requirement, the county changed its subdivision regulations so that no land dedications were required along state roads. Property owners can also request a variance from the zoning or subdivision regulations if they are unhappy with a dedication requirement. However, property owners who don’t work in land development may not be familiar with the process.

Although the bill would benefit property owners, it would shift more of the costs of development to other taxpayers.

Senate Bill 1604 and House Bill 366 attempts to address the issues created when local governments condition permit approval on dedications that don’t meet the requirements of the *Nollan/Dolan* test by prohibiting all dedication requirements along existing roads. It would effectively require local governments to pay for land that they might have otherwise acquired through dedications without compensating property owners.

Currently, only one state, Massachusetts, has a statute that prohibits local governments from conditioning approval of new subdivisions on dedications of land without compensating property owners. A few other states have restricted dedications in certain circumstances—such as subdivisions of farmland, subdivisions containing fewer than a specified number of parcels, and based on the gross area of the proposed subdivision—regardless of whether the dedications would pass the *Nollan/Dolan* test. Similarly, citing a hypothetical subdivision of a family farm among heirs, proponents of the bill said they considered setting a threshold so that dedications could be required only for subdivisions that result in a large number of new parcels. However, because there is no agreed upon criteria to determine such a threshold, representatives for local officials said that a threshold would likely be arbitrary.

Tennessee has a long-standing tradition of local control regarding land use regulation, which allows local communities to manage land development in ways that meet their unique needs. In this vein, local officials say that requiring dedications of land along existing roadways can be beneficial for communities because these dedications help local governments meet the demands of new land development. The additional land might be used for widening the road but also for any number of other purposes, such as building or maintaining utility lines and drainage ditches that may be needed to meet infrastructure needs created by the new development. By dedicating a segment of property, the property owner bears some of the cost of any new infrastructure construction or improvements created by the change in how the property is used, and the total cost does not have to be borne by the community. As described by a representative of the Tennessee Municipal League at the September 2021 Commission meeting, dedications “reduce the cost to be borne by taxpayers associated with the construction of improvements that are necessary to mitigate the effects of the development.”

Citing TDOT’s practice of paying for rights-of-way that it acquires along state roads, proponents of the bill question why local governments do not pay for dedications they require for subdivision approval. Proponents also noted TDOT does not accept land dedicated to local governments along state roads for its road-widening projects and questioned why local governments would require dedications along these roads. But unlike TDOT, local governments are engaging in land use regulation when they require property owners to dedicate property as a condition of subdivision approval. And local governments utilize dedicated properties for purposes mentioned above other than road widening. The property owner is changing how the property will be used without which there might not be a need for new infrastructure to accommodate the change. In contrast, TDOT is initiating its infrastructure projects.

Because courts have found dedications that meet the *Nollan/Dolan* test are a constitutional means for governments to regulate land use, because new developments can and often do add to a community's infrastructure needs and costs, because dedications can help offset those costs so that they don't fall solely on community taxpayers, and because of Tennessee's long-standing tradition of local control regarding land use regulation, **the Commission does not recommend the proposed legislation.**

Some states have laws to protect property owners' rights while maintaining local authority to require dedications.

Because there is no comprehensive data regarding dedications required by local governments in Tennessee, TACIR staff could not determine whether or to what extent local governments in Tennessee might be requiring dedications in violation of the *Nollan/Dolan* test or how often land required to be dedicated is not utilized by the local government. Several states have enacted laws to help ensure that property owners' rights are protected while also maintaining local governments' authority to require dedications. For example, five states—Arizona, Colorado, Florida, Minnesota, and Utah—have incorporated the language of the *Nollan/Dolan* test into state statute, which provides guidance to local governments to help ensure that the dedications they require meet the *Nollan/Dolan* test. Although Texas law does not include the “essential nexus” language from the test, it does specify that the dedication should be roughly proportionate to the costs of the development. Additionally, some states go further by requiring local governments to provide written analysis justifying required dedications.

Based on the actions taken by these other states to protect property owners' rights while maintaining local authority to require dedications and to provide guidance to local governments, **the General Assembly should codify in state law the *Nollan/Dolan* test, the constitutionally-based standard that has been established and applied by the US Supreme Court for dedications.**

Analysis: Senate Bill 1604 and House Bill 366

Local governments in Tennessee may require property owners to dedicate land to the local government as a condition of land use permit approval. Dedications occur when property owners give land or an easement¹ on that land to the public for public use.² Local governments typically do not pay owners for their dedications. However, some stakeholders have questioned the fairness and the constitutionality of the practice of local governments requiring dedications along existing rights-of-way without compensation being paid to property owners. For these reasons, Senate Bill 1604 by Senator Bailey and House Bill 366 by Representative Williams was filed in the General Assembly last year (see appendix A). The proposed legislation would prohibit local governments from requiring a property owner to dedicate land along an existing public right-of-way as a condition of approving any application. Last year the Lieutenant Governor and House Speaker sent a letter to the Commission requesting that it study the bill (see appendix B).

Dedications can appear to create a tension between individual property rights and public interests. However, the question of how to balance these has been addressed before. Courts at both the state and federal levels have found dedications to be a constitutional means for governments to regulate land use, and there are already established means to ensure that dedication requirements do not go too far.

Dedications help local governments meet the infrastructure demands of new land development.

While new construction can benefit a community by providing additional living space for residents, creating new jobs, or adding amenities, it can also generate costs for the same community. For instance, a large housing development or shopping center on a two-lane road could increase traffic, requiring the installation of turn lanes or traffic lights for the sake of safety. Parking lots and other impermeable surfaces could increase rainwater runoff, requiring the construction of new drainage to avoid flooding of neighboring properties. Not all construction requires new infrastructure—residential developments for retirees who have few if any school-aged children won't increase the need for new schools, for example—but new developments can and often do add to a community's infrastructure needs, and local governments must find some way to meet these needs.

¹ An easement is the right of use over the property of another. *Black's Law Dictionary*, 6th Ed. (1990), s.v. "easement."

² *Tennessee Jurisprudence* § 2, s.v. "dedication," and *Black's Law Dictionary*, 6th Ed. (1990), s.v. "dedication."

Local governments have several ways to finance these infrastructure needs, including adequate facilities taxes and impact fees. Some local governments are also authorized to levy adequate facilities taxes, also known as development taxes, which are privilege taxes on development, and revenue collected from these taxes (unless earmarked) is deposited into the general fund.³ Impact fees, by contrast, are user fees on new development that are based on a standard formula and a pre-determined fee schedule.⁴ The funds raised from impact fees are put into a separate fund and not deposited into the general fund.⁵

These days, however, there are limits on which local governments can impose impact fees and adequate facilities/development taxes. From the late 1980s to the early 2000s, local governments in Tennessee were authorized to impose impact fees or adequate facilities/development taxes through private acts. In 2006, the General Assembly passed the County Powers Relief Act that prohibited enactment of any new private acts that authorize impact fees or adequate facilities taxes.⁶ The act grandfathered-in existing private acts. Counties that meet certain growth requirements were authorized to enact adequate facilities taxes earmarked for education (see appendix C).⁷ The result is that many local governments in Tennessee lack the authority to levy impact fees and adequate facilities/development taxes to pay for costs associated with new construction. For many such governments, dedications are now one of the few means they have to ensure there is adequate infrastructure for new development.

Dedications, fees in lieu of dedications, and impact fees are collectively known as exactions.⁸ An exaction is simply a condition that local governments can require of property owners in return for approval of land use permits,⁹ and it can be required at any stage of the land development process.¹⁰ Dedications can take many different forms, but one common type of dedication—and which the current bill would prohibit local governments from requiring—is dedication of a strip of land that runs alongside an existing road. This might be used for widening the road, but also for any number of other purposes, such as building or maintaining utility lines and drainage ditches.

³ Green and Eldridge 2004.

⁴ Ibid.

⁵ Ibid.

⁶ Green et al. 2006.

⁷ Tennessee Code Annotated, Sections 67-4-2901 et seq. (County Powers Relief Act).

⁸ Cordes 1995.

⁹ Fenster 2004 and Matlock 2015.

¹⁰ Cordes 1995.

Local officials say that requiring dedications can be beneficial for communities. They save taxpayers' money and "reduce the cost to be borne by taxpayers associated with the construction of improvements that are necessary to mitigate the effects of the development."¹¹ Dedications enable highway departments to work on things such as ditches and driveway tiles which they cannot do if the property has not been dedicated by the owner and accepted by the local government.¹² Once the land is dedicated, local governments will begin maintaining the shoulders, ditches, and related facilities at taxpayer expense so the property owner does not have to pay for it alone.¹³

Some, however, argue that requiring dedications can have negative effects for a community. Dedication requirements are one of the factors that reduce the number of buildable lots of subdivision developments.¹⁴ The additional expenses of complying with land use controls, including exactions such as dedications, "drive up the cost of residential and commercial property thus reducing the amount of affordable housing and driving away commerce."¹⁵ Other stakeholders say that dedications take the dedicated land off property tax rolls, reducing local revenue, that the dedicated land is rarely used, and that the land is not used by local governments for many years after being dedicated.¹⁶ Moreover, they argue that requiring dedications along existing roads as a condition of plat approval without just compensation is unconstitutional.¹⁷

Proponents of the bill have cited the Tennessee Department of Transportation's (TDOT) practice of paying for rights-of-way that it acquires along state roads as an example of government paying compensation for land and questioned why local governments cannot do the same for right-of-way dedications. But unlike TDOT, local governments

¹¹ Kevin Rigsby, Smyrna Town Planner, Testimony before Tennessee Advisory Commission on Intergovernmental Relations, filmed September 15, 2021, video of testimony, https://www.youtube.com/watch?v=fdWxtznY_Fo.

¹² Sandra Knight, Bradley County Highway Superintendent, Tennessee County Highway Officials Association representative, Testimony before Tennessee Advisory Commission on Intergovernmental Relations, filmed September 15, 2021, video of testimony, https://www.youtube.com/watch?v=fdWxtznY_Fo.

¹³ Text from Calvin Clifton, business development manager, Mattern & Craig, September 15, 2021.

¹⁴ Charles Schneider, CEO, Home Builders Association of Tennessee, Testimony before Tennessee Advisory Commission on Intergovernmental Relations, filmed September 15, 2021, video of testimony, https://www.youtube.com/watch?v=fdWxtznY_Fo.

¹⁵ Curtin 2003.

¹⁶ Benjamin Moorman, legislative chair, Tennessee Association of Professional Surveyors, Testimony before Tennessee Advisory Commission on Intergovernmental Relations, filmed September 15, 2021, video of testimony, https://www.youtube.com/watch?v=fdWxtznY_Fo.

¹⁷ Ibid.

are engaging in land use regulation when they require property owners to dedicate property as a condition of subdivision approval. The property owner is changing how the property will be used, without which there might not be a need for new infrastructure to accommodate the change. In contrast, TDOT is initiating its infrastructure projects. By dedicating a segment of property without compensation, the property owner bears some of the cost of any new infrastructure construction or improvements created by the change in how the property is used, and the total cost does not have to be borne by the community as a whole.

Local governments sometimes require dedications of property along existing roads as a condition of subdivision plat approval.

When a property owner applies to their local planning commission to subdivide a property, they must go through what is called a subdivision approval process. What is involved in that process, however, largely depends on local regulations. Most counties and cities in Tennessee have subdivision regulations, a set of local government regulations that can help “prevent traffic congestion, inadequate streets, undersized water lines and small and overcrowded lots.”¹⁸ They may have infrastructure improvement requirements governing how roads and other infrastructure and facilities are constructed. Of Tennessee’s 95 counties, 70 (74%) have subdivision regulations, and of Tennessee’s 345 cities, 267 (77%) have subdivision regulations¹⁹ (see appendix D).

In a community that has adopted subdivision regulations, any subdivision of property will be subject to approval by the planning commission if the owner is dividing any tract or parcel into two or more lots, sites, or other divisions requiring new street or utility construction and any division less than five acres for sale or building development.²⁰ This is not limited to private citizens, either; requirements for dedications can also apply to other local governments. For example, cities may require counties to dedicate sidewalks when county property is within city limits. This can result in additional costs for the county.²¹ Cities state that they have an interest in consistent development throughout their territory.²²

¹⁸ Tennessee Department of Economic and Community Development 2003.

¹⁹ Status of Planning in Tennessee Counties and Cities 2020.

²⁰ Tennessee Code Annotated, Sections 13-4-301 and 13-3-401.

²¹ Rogers Anderson, county mayor of Williamson County, Comments at Tennessee Advisory Commission on Intergovernmental Relations meeting, filmed September 15, 2021, video of testimony, https://www.youtube.com/watch?v=fdWxtznY_Fo.

²² Interview with Chad Jenkins, deputy director, Tennessee Municipal League, on December 7, 2021.

The subdivision approval process can be a multi-step process.

The subdivision regulations will outline the steps of the subdivision review process (see figure 1). Many local governments' subdivision regulations differentiate between major and minor subdivisions and define what these are. For example, Knoxville's regulations define a minor subdivision²³ as a subdivision of land of less than six lots that doesn't qualify for administrative plat²⁴ or concept plan²⁵ review. The regulations will outline a shorter and less complex review process for minor subdivisions. An example is the city of Millersville's subdivision regulations which require a preliminary plat²⁶ for a major subdivision but not a minor one.²⁷

Oftentimes, the subdivision regulations will require property owners to have a preapplication conference with the planning commission or planning staff to receive guidance before proceeding further in the subdividing process. The property owners will submit drawings showing the general layout of the proposed subdivision of property. The plat approval process really begins with the submission of a preliminary plat. After approval of the preliminary plat, the property owner can proceed with the development of the final plat and begin construction of any required infrastructure and lot preparation. The development standards in effect on the date of approval remain in effect for three years, provided the applicant obtains final development plan approval, secures permits, and commences site preparation within the vesting period.²⁸

Sometimes roads don't meet the minimum street width requirements of the local government's major thoroughfare plan. State law requires local governments to adopt a

²³ Knoxville, Tennessee Subdivision Regulations, Section 45.

²⁴ An administrative plat "divides the tract into no more than two (2) lots thereby creating only one (1) new lot, where the plat combines existing lots into no more than two lots, where an adjustment is made to the lot line(s) between two (2) existing recorded lots, where a plat is required for recording an easement or new information and no subdivision of land is involved, or, where the plat meets the requirements for an exempt or corrected plat." Knoxville, Tennessee Subdivision Regulations, Section 46.

²⁵ A concept plan is "required for any subdivision that will divide land into six (6) or more lots or include the construction and dedication of a public street." Knoxville, Tennessee Subdivision Regulations, Section 42.

²⁶ A plat is a plan, map, or chart of a piece of land with actual or proposed features (such as lots). Merriam-Webster's Dictionary (2021), s.v. "plat."

²⁷ Millersville, Tennessee Code of Ordinances Section 2-101.

²⁸ Tennessee Code Annotated, Sections 13-3-413 and 13-4-310.

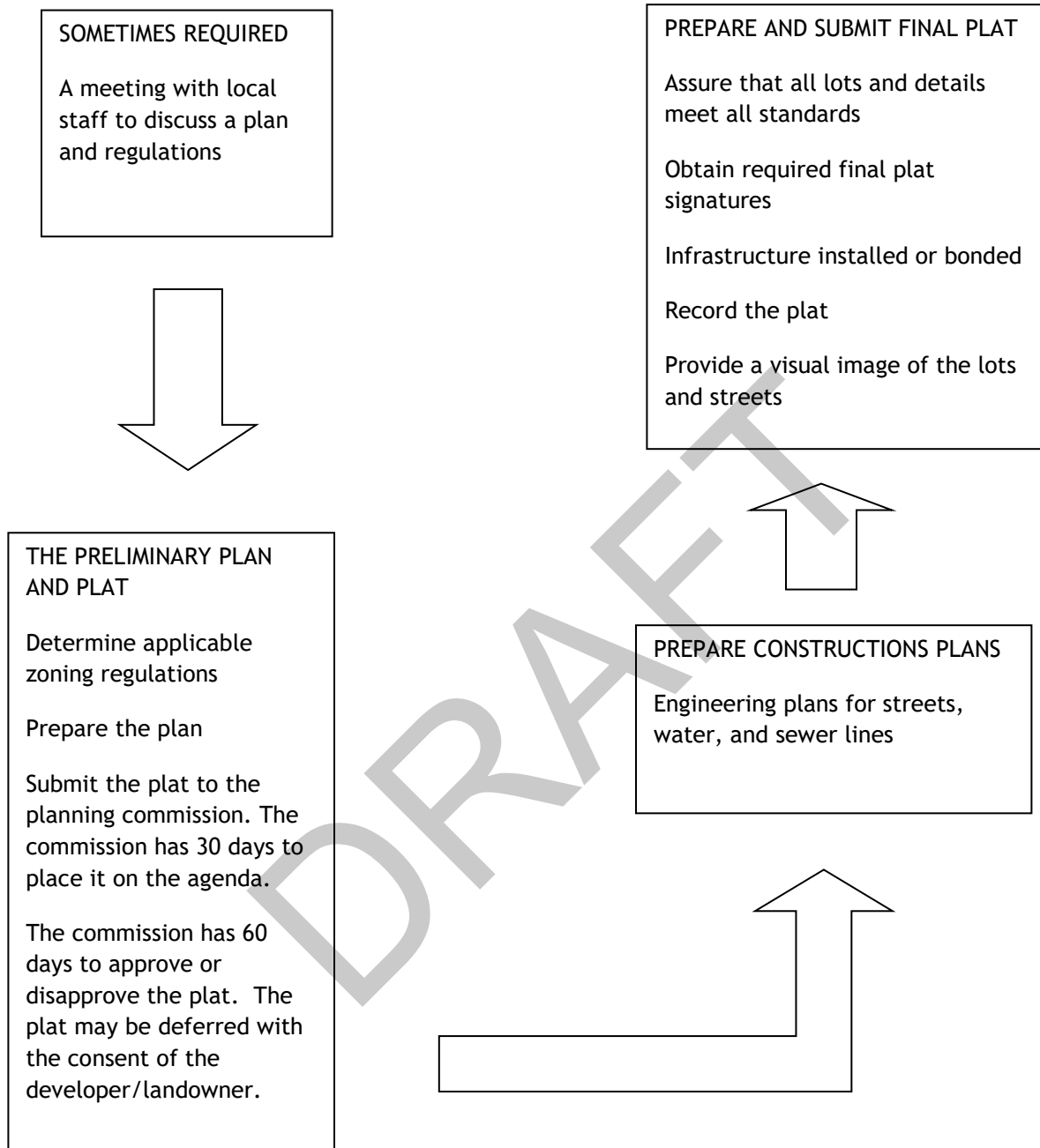
major thoroughfare plan²⁹ before subdivision regulations can be enforced.³⁰ These plans include recommended minimum street widths that vary across cities and counties, by type of road (e.g. local, collector, or arterial), and by whether the road includes a median, parking, bikeways, or sidewalks. There are no requirements in the state law that the plans be updated on a regular basis. Local governments vary on how often they update the thoroughfare plans. To meet the minimum street width requirements, subdivision

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²⁹ Major thoroughfare plans are also known as “major street plans” or “major road plans.”

³⁰ Tennessee Code Annotated, Sections 13-3-405 and 13-4-305 (determining adequacy); Tennessee Code Annotated, Sections 13-3-402 and 13-4-302; Tennessee Department of Economic and Community Development 2003 (requiring adoption).

Figure 1. Subdivision Plat Approval Process



regulations may require subdividing property owners to dedicate right-of-way along existing roads. For example, Putnam County's subdivision regulations state that:

subdivisions that adjoin existing roads and highways shall dedicate additional right-of-way to meet the above minimum street width requirements (e.g. The minimum for local roads is 50 feet).

(1) The entire right-of-way shall be provided where any part of the subdivision is on both sides of the existing street.

(2) When the subdivision is located on only one side of an existing street, one-half (1/2) of the required right-of-way, measured from the center line of the existing roadway, shall be provided.³¹

These thoroughfare plans drive the amount of property required to be dedicated by property owners.

Approval of the final plat comes next. Once the planning commission is assured the plat complies with the standards in the subdivision regulations and that improvements will be installed, then the plat should receive final approval. Several certificates are required to be signed on a final plat prior to recording the plat with the county register's office. These include a certificate signed by the property owner which says that they dedicate streets, rights-of-way, and any sites for public use.³²

There is no statewide information available on the number of dedications that have been required over the years.

There is no available information that shows how many dedications have been required over the years or the amount or value of the property that has been dedicated statewide. The Tennessee Division of Property Assessments doesn't have information on how much property has been dedicated to local governments.³³ In the absence of such data, it is difficult to assess any claims about gains or losses to property tax revenue from dedicated

³¹ Putnam County, Tennessee Subdivision Regulations, Article III Design and Specifications, B. Streets, 2. Design (k).
<https://putnamcountyttn.gov/sites/default/files/downloadable/PutnamCountySubdivisionRegulations.pdf>.

³² See Putnam County, Tennessee Subdivision Regulations, Article II Procedure for Plat Approval, C. Final Plat Requirements.

³³ Email from Ryan Duggin, assistant director, Comptroller of the Treasury Division of Property Assessments on October 25, 2021.

property, or how much it might cost local governments if they were required to pay compensation for dedications.

Commission staff conducted a survey of local planning and development staff to try to get information on dedications that have been required by local governments around the state. Respondents could not provide detailed information on the dedications that have been required by their local governments. None of the ten respondents said they track the number of dedications required each year or the amount of land dedicated. Seven (70%) respondents did say that their local government usually or always requires an owner to dedicate land along a right-of-way as a condition of subdivision plat approval; three (30%) said they rarely did. Eight (80%) respondents said they usually or always require dedication of property along the existing rights-of-way as a condition of subdivision plat approval for developments of five parcels or less; two (20%) said they rarely did so. Eight (80%) respondents said they usually or always require dedications along existing rights-of-way as a condition of plat approval for plats being transferred to a family member; two (20%) said they rarely did so (see appendix E).

Federal and state courts have held that local governments can require dedications subject to certain limitations.

Proponents of Senate Bill 1604 and House Bill 366 argue that requiring dedications along existing rights-of way as a condition of plat approval is a taking³⁴ without just compensation and therefore unconstitutional. The issue of dedications and whether requiring them is constitutional has been raised in courts of law, both at the state and federal levels. And the answer that has emerged over the years is, in brief, that the constitutionality of dedications depends on the facts of specific cases and whether they meet the requirements of a two-prong test developed from a pair of Supreme Court cases (which are discussed below). Some dedications may be unconstitutional, but other dedications may be a legitimate exercise of a local government's police power—specifically, the power to regulate health, safety, and public welfare. The difference comes down to the exact facts of each case.

Both the US and Tennessee constitutions prohibit the taking of private property without just compensation.

It is true that both federal and state constitutional law do prohibit the taking of private property without compensation as a general principle. The Takings Clause of the Fifth

³⁴ A taking is the seizure of private property or a substantial deprivation of the right to its free use or enjoyment that is caused by government action and especially by the exercise of eminent domain and for which just compensation to the owner must be given according to the Fifth Amendment to the U.S. Constitution. Merriam-Webster's Dictionary (2021), s.v. "taking."

Amendment in the US Constitution states “nor shall private property be taken for public use, without just compensation.” In the case of *Chicago, Burlington, & Quincy Railroad Co. v. City of Chicago*, the US Supreme Court determined that this applied to the states through the Due Process Clause of the Fourteenth Amendment.³⁵ Moreover, Article 1, Section 21 of the Tennessee Constitution requires just compensation for takings, saying “that no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefore.”

These constitutional provisions limit governments’ exercise of the power of eminent domain, which is the power to acquire private property for public use.³⁶ However, there is another government power, the police power, which is the power to regulate health, safety, and public welfare.³⁷ The exercise of this power can affect the use or value of private property such as when governments regulate land use.³⁸ Typically, a government’s exercise of the police power does not constitute a compensable taking, but if the exercise of that power is unreasonable it may result in a compensable taking.³⁹

Legal precedents reaching back across the past century have affirmed that local governments do have broad authority to regulate land use.⁴⁰ This was addressed in the 1926 landmark case of *Village of Euclid v. Ambler Realty Co.*⁴¹ In that case, the village council of Euclid, Ohio, passed a zoning ordinance to define and regulate such things as types of development, building heights, lot areas, and so on. At the time, zoning ordinances were a relative novelty, and the Ambler Realty Company, a local developer, sued the village council, claiming such ordinances were a violation of due process. The US Supreme Court recognized that local governments can regulate land use as an exercise of their police power.

Yet even as it upheld local governments’ authority to regulate land use as part of their police power, the Court made it clear that there were still limits to how far a government’s police power extended, as it held in the 1922 case of *Pennsylvania Coal Co. v. Mahon*. Many years before the case arose, the Pennsylvania Coal Company had deeded the surface

³⁵ *Chicago, Burlington, & Quincy Railroad Co. v. City of Chicago* 166 U.S. 226 (1897).

³⁶ Grimes 1996.

³⁷ Huffer and Murphy 2007.

³⁸ Grimes 1996.

³⁹ *Ibid.*

⁴⁰ Kersten 2000 and Ledman 1993.

⁴¹ *Village of Euclid v. Ambler Realty Co.* 272 US 365 (1926).

rights for a parcel of land to an individual, Mahon, who built a house there. The coal company, however, retained the mining rights to coal located underneath the land, and in the deed, Mahon expressly accepted the risks that might arise from that mining. Decades later, the Pennsylvania state legislature passed a law known as the Kohler Act, which prohibited any underground coal mining that, among other things, might cause the land above to subside and endanger housing. Mahon then filed a lawsuit to stop the coal company from mining under his land claiming it was a violation of the Kohler Act.

At issue, therefore, was the nature of the Kohler Act as a form of land use regulation and whether the law could effectively limit the coal company's right to extract coal from land that it legally owned, even if it was in the name of defending public safety. In this instance the US Supreme Court held that the Kohler Act went too far and amounted to a violation of the Takings Clause of the Fifth Amendment, depriving the company of its property rights without compensation. This was the first time that the Court ruled a regulatory act could constitute a taking, which is known as a regulatory taking.⁴²

The US Supreme Court has upheld dedication requirements subject to certain limitations.

The question of how to balance governments' police power and private property rights eventually extended to the question of dedications as well. The test for distinguishing whether a dedication is legitimate is known as the *Nollan/Dolan* two-prong test, derived from the US Supreme Court cases of *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, and then further elaborated on by subsequent cases like *Koontz v. St. Johns River Water Management District*.⁴³

In the 1987 case *Nollan v. California Coastal Commission*, a couple living in California wished to obtain a building permit to tear down a beachfront home and build a larger one in its place. Before granting approval for the permit, the California Coastal Commission required the owners to dedicate a strip of the beachfront on their property as an easement so that members of the public could pass along the shore on their way to public beaches located north and south of the property. The Nollans objected to this condition, and the suit they brought against the California Coastal Commission made its way to the US Supreme Court. There, the California Coastal Commission argued that the

⁴² A regulatory taking is an appropriation or diminution of private property rights by a governmental regulation which exceeds the government's legitimate police power (as the power to enact safety regulations) and for which the owner may seek a writ of mandamus, declaratory relief, or just compensation (as by inverse condemnation). Merriam-Webster's Dictionary (2021), s.v. "regulatory taking."

⁴³ *Nollan v. California Coastal Commission*, 483 US 825 (1987); *Dolan v. City of Tigard*, 512 US 374 (1994); *Koontz v. St. Johns River Water Management District*, 570 US 595 (2013).

new and larger house would be a “psychological impediment to public access,” somehow keeping pedestrians passing along the street from being able to see that there was also public access on the beach. The Court did not find that argument persuasive, and it ultimately deemed the easement a taking.

However, it is crucial to note that the Court did not rule dedications in general to be unconstitutional. Rather, it held that there must be an “essential nexus” between whatever condition a local government imposed on property owners and a legitimate government purpose:

The government's power to forbid particular land uses in order to advance some legitimate police power purpose includes the power to condition such use upon some concession by the owner, even a concession of property rights, so long as the condition furthers the same governmental purpose advanced as justification for prohibiting the use.⁴⁴

In this instance, the Court determined that the easement being required across the Nollans’ property was not sufficiently connected to a legitimate government purpose, and for that reason it amounted to a taking. Had the California Coastal Commission only been able to connect the easement to a valid purpose, the Court noted, it would have been permissible.

The second case came in 1994. In *Dolan v. City of Tigard*, a hardware store owner in Tigard, Oregon, sought a permit to expand her store. As a condition of approval for the permit, the city required that she dedicate a strip of land beside the store for a greenway with a pedestrian and bicycle path easement, the stated purpose of which was to help offset increased traffic. The store owner sued, and the case came before the US Supreme Court. Here, the Court agreed that there was an essential nexus: a new development could theoretically create increased traffic, and local governments do have a legitimate interest in alleviating traffic. However, the Court determined that the amount of land being required in this case was in excess of the likely impact. The Court therefore held that there must not only be a nexus between the legitimate government interest and the required dedication, but that there should also be a “rough proportionality” between the dedication and the effects of the development.

[A] term such as “rough proportionality” best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized

⁴⁴ Nollan, 483 US 825 (1987).

determination that the required dedication is related both in nature and extent to the impact of the proposed development.⁴⁵

In short, the US Supreme Court has held that local governments can indeed require land dedications, provided they meet the two criteria of essential nexus and rough proportionality. Together, these two conditions have come to be known as the *Nollan/Dolan* test, and to put people on notice, several states have codified the constitutionally-based test into their statutes.⁴⁶

The *Nollan/Dolan* test has been augmented and reinforced by a subsequent court decision. In the 2013 case of *Koontz v. St. Johns River Water Management District*, a Florida property owner sought a new permit to develop more of his land than the original permit allowed. As the property included wetlands, Florida state law required the developer to offset the impacts to the local environment, and to that end he offered to deed a conservation easement to the St. Johns River Water Management District. The District felt this was insufficient and presented the developer with a choice of either reducing the size of the planned development while also dedicating a conservation easement, or to make improvements to wetlands located some distance away. Koontz then sued the district, and these conditions were found to be a violation of the *Nollan/Dolan* standards. After several appeals, the US Supreme Court further elaborated on *Nollan/Dolan* by holding that, one, a government entity must still meet the *Nollan/Dolan* requirements even when denying a permit application, and two, impact fees are also subject to *Nollan/Dolan*.

The Tennessee Supreme Court has held that the Tennessee Constitution encompasses regulatory takings in the same manner as the US Constitution.

In Tennessee itself there is no dedication statute; case law governs instead.⁴⁷ The Tennessee Supreme Court has held that Article 1, Section 21 of the Tennessee Constitution encompasses regulatory takings in the same manner as the Takings Clause of the US Constitution. In the case of *Phillips v. Montgomery County* in 2014,⁴⁸ property owners in Montgomery County, Tennessee, sought to subdivide a roughly 15-acre parcel of property, but their application was denied by the local planning commission, allegedly because there were tentative plans for a state highway extension that would have crossed the property. The Phillips argued that this was a regulatory taking; Montgomery County

⁴⁵ Dolan, 512 US 374 (1994).

⁴⁶ Arizona Revised Statutes, Sections 9-500.12 and 11-832; Colorado Revised Statute, Sections 29-20-201-29-20-205; Florida Statute, Section 70.45; Minnesota Statutes, Section 462.358; Utah Code Annotated Section 10-9a-508; Texas Local Government Code, Sections 212.904 and 232.110.

⁴⁷ 9 Tennessee Jurisprudence § 2 Smith v. Black, 547 S.W.2d 947 (1977).

⁴⁸ Phillips v. Montgomery County, 442 S.W.3d 233 (2014)

argued that the Tennessee Supreme Court did not recognize takings under the Tennessee Constitution. The Tennessee Supreme Court took up the case and ruled that “Article I, Section 21 of the Tennessee Constitution should be interpreted no different than the Takings Clause of the Fifth Amendment.”⁴⁹ This was the first time the Tennessee Supreme Court held that this section of the state constitution encompasses regulatory takings. The Court then remanded the case to a lower court to determine if a regulatory taking had in fact taken place.

The Tennessee Court of Appeals upheld a dedication in the 1993 case *Copeland v. City of Chattanooga ex rel. its Board of Commissioners*.⁵⁰ In this case, a property owner wished to rezone a parcel of land to build a shopping center. The local government said that, for this rezoning to go ahead, the property owner would need to dedicate 12 feet of right-of-way to allow for the construction of an acceleration/deceleration lane to mitigate the expected increase in traffic on the existing roadway. The property owner objected and brought a lawsuit claiming that this requirement for a dedication amounted to a taking without compensation. The Tennessee Court of Appeals ruled on the case, finding that the requirement for a dedication was a legitimate exercise of the government’s police power.

All told, there is a century of case law that pertains to dedications and strikes a balance between private property rights and the power of governments to regulate land use for the sake of public safety and welfare. And while it is possible for dedications to go too far and become regulatory takings that require compensation, courts have also determined that they can be a legitimate tool to ensure that property developers are responsible for the infrastructure costs that directly result from individual developments. The key to distinguishing between dedications that go too far and those that don’t lies in the *Nollan/Dolan* test of essential nexus and rough proportionality.

Property owners can challenge dedications in and out of court.

Dedication requirements can be challenged during the land development approval process at the local level. An example of this occurred in Putnam County in 2016. Senate Bill 1604 and House Bill 366 stemmed from a development along State Route 136, north of Cookeville, which is called Hilham Highway. The county required a right-of-way dedication of 25 feet from the centerline along a state highway. After the owner objected to the dedication requirement, the county changed its subdivision regulations so that no

⁴⁹ Ibid.

⁵⁰ *Copeland v. City of Chattanooga ex rel. its Board of Comm'rs*, 866 S.W.2d 565 (1993).

right-of-way dedications were required along state roads.⁵¹ Property owners can also request a variance from the zoning or subdivision regulations if they are unhappy with a dedication requirement.⁵² However, ordinary property owners who don't work in land development may not be familiar with the process.

Property owners can contest a dedication requirement in court if they think a regulatory taking has occurred. However, litigation is expensive and may take considerable time to resolve. An owner could file a claim under Tennessee's inverse condemnation statute seeking compensation for a regulatory taking,⁵³ but there is a one-year statute of limitation on bringing the claim.⁵⁴ A lawsuit can also be filed in federal court.⁵⁵ One author did an informal review of appellate court decisions involving the *Nollan/Dolan* test and found that the property owners prevailed in about half the cases.⁵⁶ He went on to write that "Property owners' impressive litigation results using *Nollan* and *Dolan* have undoubtedly been noticed by lawyers representing local governments and have led to the abandonment of certain kinds of exactions that they would have imposed prior to *Nollan*, *Dolan*, and *Koontz*."⁵⁷

Senate Bill 1604 and House Bill 366 would prohibit a local government from requiring dedications along existing rights-of-way.

Stakeholders who brought Senate Bill 1604 and House Bill 366 to the bill sponsors told Commission staff that they were motivated to bring the bill to try to protect property owners from what they believe to be excessive dedications that amount to takings.⁵⁸ Simply put, the bill would prohibit property owners from being required to dedicate

⁵¹ Telephone interview with Kevin Rush, Putnam County planning director, on October 29, 2021. Interview with Charles Whittingham, president, Tennessee Association of Professional Surveyors, Vivian Paris, lobbyist, Steve Bivens, lobbyist, Benjamin Moorman, legislative director, Tennessee Association of Professional Surveyors, on November 5, 2021. See Putnam County, Tennessee Subdivision Regulations Article III Design and Specifications, B. Streets, 2. Design (k)(3).

⁵² Tennessee Code Annotated Sections, 13-7-207 (3), 13-7-109 (3), 13-3-402 (d) 13-4-302 and 13-4-310.

⁵³ Tennessee Code Annotated, Section 29-16-123.

⁵⁴ Tennessee Code Annotated, Section 29-16-124.

⁵⁵ *Knick v. Township of Scott*, Pennsylvania 862 F. 3d 310 (2018).

⁵⁶ Echeverria 2015.

⁵⁷ *Ibid*.

⁵⁸ Interview with Charles Whittingham, president, Tennessee Association of Professional Surveyors, Vivian Paris, lobbyist, Steve Bivens, lobbyist, Benjamin Moorman, legislative director, Tennessee Association of Professional Surveyors, on November 5, 2021.

along existing rights-of-way whether or not the dedications meet the *Nollan/Dolan* test and would be considered a taking.

The bill does not prohibit voluntary dedications. A landowner could still volunteer to dedicate a portion of their property if they wished. Although a governmental entity would not be able to require a dedication under this bill, it could instead require a reservation on a landowner's property. The exact extent of a reservation would be negotiated with the property owner.

If the governmental entity were to later choose to take possession of the property and make use of the land, it would be obliged to pay compensation to the property owner at that time. There would be no compensation for simply placing a reservation on a piece of property, though, and while the reservation was in place, no permanent buildings could be put within it, restricting the owner's use of that part of the property. There is also no limit on how long a reservation may be kept in place. Moreover, a real estate agent would have no duty to inform property buyers or any other party to a real estate transaction that there was a right-of-way reservation on a given piece of land.

The stakeholders who brought the bill added that their primary concern was not larger real estate developments, but small property owners who might subdivide their land into just a few lots—such as a family farm being divided among several heirs—and, during the platting process, unwittingly agree to dedicate some portion of their property. They said that they had entertained the option of limiting the bill's effects only to such smaller subdivisions while leaving dedications in place for larger developments, but opponents of the bill had not accepted this as a compromise, and stakeholders don't necessarily agree on where the threshold should be.⁵⁹ In its current form, the bill would prohibit governmental entities from requiring dedications on any property, regardless of size or intended use.

Some local governments do use reservations on occasion. Planning staff for the Metropolitan Government of Nashville and Davidson County said that they often require dedications, but they require reservations only in relatively limited circumstances.⁶⁰ Nashville's subdivision regulations address reservations in section 3-10 subsection 2(C) and 3:

c. Planned Routing. When applicable, the layout of a street(s) within a subdivision shall conform to the routing depicted upon the Major Street

⁵⁹ Ibid.

⁶⁰ Email from Lisa Milligan, land development manager, Metropolitan Nashville Planning Department, on October 26, 2021.

Plan or Collector Plan. The amount of right-of-way for the type of street required shall be dedicated up to a maximum of 60 feet in width. Where any street so depicted requires a right-of-way greater than 60 feet then the developer shall show on the face of the plat an additional area “reserved for future right-of-way” and any required yard area shall be measured from the reservation line.

3. Developed Property. When property containing existing structures is being divided simply to place each structure on a separate lot and the future right-of-way will fall within the existing structure footprint, then the applicant shall be required to note on the face of the plat any additional area necessary for compliance with the Major Street Plan “reserved for future right-of-way.” The plat shall also contain a note stating, “When any existing structure is demolished, the setback requirements for any new structure shall be measured from the reservation line.”

The bill’s proponents argue it would not significantly increase local government expenditures and that any tax revenue paid by property owners on the reserved properties would cover the local governments’ costs if they later had to buy them. The bill’s fiscal note originally estimated an increase in local government expenditures exceeding \$1,000,000 in FY21-22 and subsequent years. The note was later revised, and the new estimate predicted an increase in local government expenditures exceeding \$250,000 in FY21-22 and subsequent years.

Local officials say that whether to require dedications as a condition of plat approval or not should be a local decision. Tennessee has a long-standing tradition of local control regarding land use regulation, which allows local communities to manage land development in ways that meet their needs. They argue against placing restrictions on dedications because the line between what types of dedications should be allowed and which should be prohibited could be arbitrary and stakeholders may not agree on the threshold. Local officials also state that this bill would significantly increase local expenditures since the tax revenue from these strips of land would not completely cover the property appraisal and legal costs if they had to purchase the property or condemn it.

Other states have adopted a variety of approaches that may help to protect property owners’ rights.

Although Tennesseans can sue local governments if they feel dedications are a taking, Tennessee, like many states, has no statute that places limits on dedications. No other state has prohibited local governments from requiring any dedications as proposed in

Senate Bill 1604 and House Bill 366. The state that comes closest is Massachusetts, where local governments must pay compensation for dedications, but even so they can still require dedications as a condition of plat approval.⁶¹ Other states have more targeted restrictions on dedications.

A few states place restrictions on when dedications can be required.

Three states place restrictions on when dedications can be required or how much land can be dedicated. Property owners in Delaware can't be required to dedicate right-of-way along a state highway if the property being subdivided is farmland and a right-of-way is not deemed by the state department of transportation to be necessary due to safety issues that would be directly caused by the requested subdivision. There is also a requirement that the parcel being subdivided is divided into no more than two parcels which will continue to be used as farmland or the parcels are transferred to a family member to be used as farmland or their principal residence.⁶² A California law prohibits local governments from requiring dedications for parks or recreational purposes in subdivisions containing less than five parcels and not used for residential purposes.⁶³ Louisiana has a law that limits dedications to no more than 5% of the gross area of a proposed subdivision in New Orleans.⁶⁴ These states' statutes restrict dedications regardless of whether the dedications would pass the *Nollan/Dolan* test.

A number of states have laws that help ensure that dedication requirements are constitutional.

Other states have instead chosen to incorporate the constitutionally based language of *Nollan/Dolan* into their statutes. Five states, Arizona, Colorado, Florida, Minnesota, and Utah, have laws that require dedications to comply with the requirements of the *Nollan/Dolan* test.⁶⁵ Texas's law does not include the "essential nexus" language from the test but it does specify that the dedication should be roughly proportionate to the costs of the development.⁶⁶

⁶¹ Massachusetts ALM GL ch. 41, Section 81Q.

⁶² 17 Delaware Code Section 530.

⁶³ California Government Code Section 66477.

⁶⁴ Louisiana Revised Statutes Section 33:112.

⁶⁵ Arizona Revised Statutes, Sections 9-500.12 and 11-832; Colorado Revised Statute, Sections 29-20-201-29-20-205; Florida Statute, Section 70.45; Minnesota Statutes, Section 462.358; Utah Code Annotated Section 10-9a-508.

⁶⁶ Texas Local Government Code, Sections 212.904 and 232.110.

Three states that did not incorporate the *Nollan/Dolan* language into their statutes did add language that the dedications should be reasonably necessary or reasonably related to the infrastructure need. The language only applies to certain types of dedications. In Louisiana, the requirement applies to dedications for parks, playgrounds, and public schools in New Orleans.⁶⁷ Nevada authorizes local governments to require dedications of land for parks and playgrounds that are reasonably necessary to serve a subdivision.⁶⁸ North Carolina requires a dedication for a right-of-way to be reasonably related to the traffic to be generated by the subdivision.⁶⁹

Local governments are required to do written analysis of dedications in three states. Texas requires local governments to complete a takings impact analysis before they can require a dedication.⁷⁰ The analysis must describe the specific purpose of the dedication and identify whether and how it substantially advances its stated purpose and describe the burdens imposed on private real property and the benefits to society resulting from the proposed use of the property. The analysis should include a determination of whether the required dedication will constitute a taking. It also needs to describe reasonable alternative actions that could accomplish the specified purpose, and determine whether they would constitute a taking.⁷¹ Local governments also are required to retain a professional engineer to determine whether a required dedication is roughly proportionate to the costs of the proposed development.⁷² In Washington state, local governments are required to make written findings that appropriate provisions are made for the public health, safety, and general welfare and that the public use and interest will be served by the platting of such subdivision and dedication before approving it.⁷³ Idaho authorizes private property owners to request that a local government do a written takings analysis of a regulatory or administrative action.⁷⁴

⁶⁷ Louisiana Revised Statutes, Section 33:112.

⁶⁸ Nevada Revised Statutes Annotated, Section 278.4979.

⁶⁹ North Carolina General Statutes, Section 136-66.10.

⁷⁰ It only applies to municipalities if they take an action that has effect in the extraterritorial jurisdiction of the municipality, excluding annexation, and that enacts or enforces an ordinance, rule, regulation, or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction of the municipality. Texas Government Code, Section 2007.003.

⁷¹ Texas Government Code, Section 2007.043.

⁷² Texas Local Government Code, Sections 212.904 and 232.110.

⁷³ Revised Code Washington, Section 58.17.110.

⁷⁴ Idaho Code, Section 67-8003.

Four states require local governments or the state attorney general to develop guidelines for local governments to help them evaluate their actions to ensure they are constitutional. Utah requires local governments to enact an ordinance establishing guidelines to assist them in identifying actions involving the physical taking or exaction of private real property that may have constitutional taking issues, and they must consider the guidelines when taking any action that might result in the physical taking or exaction of private real property.⁷⁵ Idaho and Washington each require the state attorney general to develop a checklist for local governments to use to evaluate whether a proposed regulatory or administrative action is a taking.⁷⁶ Texas requires the state attorney general to develop guidelines for local governments to assist them in evaluating whether the adoption and enforcement of ordinances, resolutions, and actions that require a physical invasion of property or a dedication may result in a taking.⁷⁷

Some states have laws governing how owners can contest dedication requirements.

Arizona law authorizes property owners to appeal dedication requirements through an administrative hearing process.⁷⁸ The local government is required to notify the owner that he or she has the right to appeal the government's action and must provide a description of the appeal procedure. The owner has 30 days to file an appeal with a hearing officer appointed by the local government. Local governments have the burden of establishing that there is an essential nexus between the dedication and a legitimate governmental interest and that the proposed dedication is roughly proportional to the impact of the proposed use of the property. If the local government fails to meet their burden, the hearing officer can modify the dedication or delete the requirement altogether. A property owner who is aggrieved by the hearing officer's decision may file a case in court.

Three states authorize property owners to file lawsuits if government actions result in a reduction in the value of property. Not all the laws are specifically targeted at dedications. Texas law authorizes owners to file suit in court if a dedication would result in a reduction of at least 25% in the market value of the property.⁷⁹ In these cases, a court could invalidate the dedication requirement.⁸⁰ The law applies to cities only in limited

⁷⁵ Utah Code Annotated, Section 63L-4-201.

⁷⁶ Idaho Code, Section 67-8003 and Revised Code Washington, Section 36.70A.370.

⁷⁷ Texas Government Code, Sections 2007.041 and 2007.043.

⁷⁸ Arizona Revised Statutes, Sections 11-832 and 9-500.12.

⁷⁹ Texas Government Code, Sections 2007.002, 2007.003, and 2007.021.

⁸⁰ Texas Government Code, Section 2007.023.

circumstances.⁸¹ In Florida, if laws, regulations, or ordinances inordinately burden private property without amounting to a taking, property owners can file a lawsuit seeking compensation for the loss in value due to the inordinate burden to the property.⁸² The Right to Farm Act in Louisiana authorizes compensation if a government action diminishes the fair market value or economic viability of agricultural or forest land by 20% or more.⁸³

In Oregon, property owners may file a claim for compensation with the Department of Land Conservation and Development (DLCD) if a local government land use regulation restricts a residential use or a farm or forest practice and reduces the fair market value of their property.⁸⁴ If DLCD finds that a claim is valid, the owner can get compensated or can be authorized to use property without the land use regulation being applied to the extent necessary to offset the reduction in the property's fair market value. This law does not apply to land use regulations that restrict or prohibit activities for the protection of public health and safety.⁸⁵

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⁸¹ It only applies to municipalities if they take an action that has effect in the extraterritorial jurisdiction of the municipality, excluding annexation, and that enacts or enforces an ordinance, rule, regulation, or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction of the municipality. Texas Government Code, Section 2007.003.

⁸² Florida Statutes, Section 70.001.

⁸³ Louisiana Revised Statutes, Section 3:3610.

⁸⁴ Oregon Revised Statutes, Sections 195.300-336.
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⁸⁵ Oregon Revised Statutes, Section 195.305.

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Persons Contacted

Senator Paul Bailey Tennessee District 15	Rodney Carmichael, Former Executive Director Tennessee County Highway Officials Association
Chris Cignoli, Director of Public Works City of Springfield, Massachusetts	Calvin Clifton, Business Development Manager Mattern & Craig
Bob Freudenthal, Executive Director Tennessee Association of Utility Districts	Kevin Hensley, Associate Director of Public Policy Tennessee Farm Bureau
Jeff Hoge, Director, Right-of-Way Division Tennessee Department of Transportation	Brett Howell, Executive Director Tennessee County Highway Officials Association
Chad Jenkins, Deputy Director Tennessee Municipal League	Sandra Knight, Highway Superintendent Bradley County
Stefan Maupin, Director of Public Policy Tennessee Farm Bureau	Lisa Milligan, Land Development Manager Metropolitan Nashville Planning Department
Benjamin Moorman, Legislative Chair Tennessee Association of Professional Surveyors	Vivian Paris, Lobbyist Bivens & Associates
Kevin Rigsby, Town Planner Town of Smyrna	Charles Schneider, Chief Executive Officer Home Builders Association of Tennessee
Brian Schults, Director, Development Services Regional Planning Agency Chattanooga-Hamilton County	Amber Torbett, Director of Planning Sullivan County
Ben York, Engineering Manager Department of Transportation Metropolitan Nashville	Jon Ward, Director of Planning City of Cookeville

Charles Whittenburg, Property Surveyor
Whittenburg Land Surveying

Representative Ryan Williams
Tennessee District 42

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Appendix A: Senate Bill 1604 by Bailey, House Bill 366 by Williams

HOUSE BILL 366
By Williams

SENATE BILL 1604

By Bailey

AN ACT to amend Tennessee Code Annotated, Title 13;
Title 62 and Title 66, relative to property located
along existing rights-of-way.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 7, is amended by adding the following language as a new part:

13-7-701.

As used in this part:

(1) "Governmental entity" means this state or any political subdivision of this state, including, but not limited to, a municipal, county, or regional planning commission, or an applicable legislative body;

(2) "Major road plan" means the major road plan adopted by the applicable regional planning commission in accordance with § 13-3-402(a), whereby a certified copy of the major road plan has been filed in the office or offices of the county register or registers of the county or counties lying in whole or in part in the region;

(3) "Major street plan" means the major street plan adopted by the planning commission of a municipality in accordance with § 13-4-302(a), whereby a certified copy of the major street plan has been filed in the office of the county register of the county in which the municipality is located;

(4) "Regional planning commission" means any regional planning commission established under § 13-3-101; and

(5) "Right-of-way reservation" means:

**Appendix A: Senate Bill 1604 by Bailey, House Bill 366 by Williams
(continued)**

(A) An agreement between a landowner and a governmental entity whereby the landowner is prohibited from erecting a permanent building within an area designated as the location of a future right-of-way in the major road plan or major street plan; and

(B) A reservation that does not affect the application of the existing right-of-way for determining the placement of easements or setbacks.

13-7-702.

(a) A governmental entity shall not require a right-of-way dedication that requires a landowner to transfer ownership of any portion of the landowner's property located along an existing public right-of-way to the governmental entity as a condition of approving any application made to the governmental entity.

(b)

(1) Subject to subdivisions (b)(2)-(5), a governmental entity may require a right-of-way reservation as a condition of approving any proposed subdivision of a property.

(2) If a governmental entity requires a right-of-way reservation pursuant to subdivision (b)(1), then the landowner has the choice of agreeing to a right-of-way reservation or a right-of-way dedication.

(3) If a landowner, who has agreed to a right-of-way reservation pursuant to subdivision (b)(2), transfers the applicable property to another person, then that new landowner may convert the right-of-way reservation into a right-of-way dedication through a process determined by the governmental entity.

(4) If the governmental entity diminishes the distance of the required right-of-way in the adopted major road plan or major street plan, as applicable,

**Appendix A: Senate Bill 1604 by Bailey, House Bill 366 by Williams
(continued)**

following the creation of a right-of-way reservation, then the right-of-way reservation automatically diminishes to reflect the new distance in the adopted major road plan or major street plan, as applicable.

(5) If a governmental entity takes possession of the property covered by a right-of-way reservation, then the landowner of the property is entitled to just compensation as required by law.

SECTION 2. Tennessee Code Annotated, Title 62, Chapter 13, Part 4, is amended by adding the following as a new section:

Notwithstanding §§ 62-13-403, 62-13-404, and 66-5-206, a real estate licensee has no duty to inform any party to a real estate transaction concerning a right-of-way reservation or any rights attached to the real estate with regard to § 13-7-702.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.

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**Appendix B: Letter from Speaker of the Tennessee House Cameron Sexton
and Speaker of the Senate Randy McNally**

RANDY McNALLY
LIEUTENANT GOVERNOR AND
SPEAKER OF THE SENATE

425 5TH AVENUE NORTH, SUITE 700
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-6806



CAMERON SEXTON
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

425 5TH AVENUE NORTH, SUITE 600
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-2343

April 1, 2021

TACIR
226 Anne Dallas Dudley Boulevard
Suite 508
Nashville, Tennessee 37243

To Whom It May Concern,

Speaker of the House Cameron Sexton and Speaker of the Senate Randy McNally formally request TACIR commission a study on HB366/SB1604 by Rep. Ryan Williams and Sen. Paul Bailey.

Thank you,

Handwritten signature of Randy McNally in black ink.

Handwritten signature of Cameron Sexton in black ink.

Randy McNally, Lieutenant Governor
SENATE

Cameron Sexton, Speaker
HOUSE OF REPRESENTATIVES

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Appendix C: Adequate Facility Taxes and Impact Fees of Tennessee's Counties and Cities

County	City	Earmark	Authorizing Legislation
Bedford		Education capital projects; education debt service	TCA 67-4-2901 et seq. (County Powers Relief Act)
Cheatham	Ashland City	Capital Projects	Private Acts of 1997, Chapter 52
Cheatham	Kingston Springs	Capital Projects	Private Acts of 1997, Chapter 54
Cheatham	Pegram	Capital Projects	Private Acts of 1997, Chapter 53
Cheatham		\$500 parks and recreation, \$750 general fund, \$2,500 education debt fund	Private Acts of 1997, Chapter 28; Private Acts of 2000, Chapter 145; Private Acts of 2011, Chapter 20
Cheatham		Education debt service	Private Acts of 1997, Chapter 89
Cheatham		Education debt service	Private Acts of 1997, Chapter 68
Cheatham		Education debt service	Private Acts of 1997, Chapter 69
Davidson		Public Facilities	Public Chapter 1022, Acts of 1988 (TN Cooperative Public Facilities Financing Act; never levied; superceded by the County Powers Relief Act)
Dickson		Education capital projects	Private Acts of 2000, Chapter 158; Private Acts of 2002, Chapter 162
Fayette	Piperton	Public Facilities related to new development	Private Acts of 2000, Chapter 146
Fayette		Capital projects fund	Private Acts of 2001, Chapter 69; Private Acts of 2003, Chapter 38
Hickman		None	Private Acts of 2000, Chapter 97
Hickman		Capital projects fund	Private Acts of 2003, Chapter 21
Jefferson		Education capital projects; education debt service	TCA 67-4-2901 et seq. (County Powers Relief Act); Resolution 2007-35
Loudon		Education capital projects; education debt service	TCA 67-4-2901 et seq. (County Powers Relief Act)
Macon		None	Private Acts of 2002, Chapter 172
Macon		Capital projects fund	Private Acts of 2004, Chapter 138 (amended 2021)
Marshall		Capital projects fund	Private Acts of 1996, Chapter 211
Marshall		Public Facilities related to New Development	Private Acts of 2000, Chapter 157
Marshall		Capital projects fund	Private Acts of 2001, Chapter 22; Private Acts of 2007, Chapter 61

Appendix C: Adequate Facility Taxes and Impact Fees of Tennessee's Counties and Cities (continued)

County	City	Earmark	Authorizing Legislation
Maury		Local purpose fund	Private Acts of 1991, Chapter 118; Private Acts of 2000, Chapter 123
Maury	Columbia	None	Private Acts of 1994, Chapter 194
Maury, Williamson	Spring Hill	None	Private Acts of 1988, Chapter 176; Ordinance 94-02
Maury, Williamson	Spring Hill	Public Facilities related to new development	Private Acts of 1988, Chapter 173; Ordinance 15-04
Montgomery		Education capital projects and education debt service	Private Acts of 2004, Chapter 90
Robertson	White House	Public Facilities related to new development	TCA 6-2-201 (Mayor Aldermanic)
Robertson		Capital improvements, debt	Private Acts of 1996, Chapter 213
Rutherford	La Vergne	None	TCA 6-2-201 (Mayor Aldermanic)
Rutherford		Capital improvements, debt	Private Acts of 1996, Chapter 215
Rutherford	Smyrna	None	Private Acts of 1999, Chapter 42; Private Acts of 2000, Chapter 68
Sevier	Gatlinburg	Capital Improvement Fund	Private Acts of 1989, Chapter 56
Sevier	Gatlinburg	Special Benefit Account	Private Acts of 1990, Chapter 167
Sumner		Education capital projects	Private Acts of 1999, Chapter 57
Sumner, Robertson	Portland	None	Private Acts of 2003, Chapter 31
Trousdale		None	Private Acts of 2000, Chapter 71
Trousdale		Education capital projects; education debt service	TCA 67-4-2901 et seq. (County Powers Relief Act)
Williamson	Brentwood	Capital Improvement Fund	Private Acts of 1987, Chapter 115
Williamson	Brentwood	Public Facilities related to new development	Private Acts of 1987, Chapter 119
Williamson	Brentwood	Public Transportation	Private Acts of 1987, Chapter 115
Williamson	Fairview	Capital Improvement	Private Acts of 1987, Chapter 116
Williamson	Fairview	Public Facilities related to new development	Private Acts of 1987, Chapter 121
Williamson	Franklin	Roads	Private Acts of 1987, Chapter 117; Ord. No. 2000-24
Williamson	Franklin	Public Facilities related to new development	Private Acts of 1987, Chapter 114
Williamson		School (residential), fire service and highways (commercial)	Private Acts of 1987, Chapter 113
Williamson		Public Facilities related to New Development	Private Acts of 1987, Chapter 118

Appendix C: Adequate Facility Taxes and Impact Fees of Tennessee's Counties and Cities (continued)

County	City	Earmark	Authorizing Legislation
Williamson		Schools, roads, parks and recreation, fire protection	Private Acts of 1987, Chapter 120
Williamson	Nolensville	None	TCA 6-2-201 (Mayor Aldermanic); Ord. #07-12, June 2007
Williamson	Nolensville	Public Facilities related to new development	Private Acts of 1997, Chapter 100
Williamson	Fairview	Public Facilities related to new development	Private Acts of 1998, Chapter 150
Wilson	Mt. Juliet	Public Transport	Private Acts of 1998, Chapter 965
Wilson		Two-thirds to the general debt fund and one-third to the capital projects fund	Private Acts of 2003, Chapter 60; Private Acts of 2007, Chapter 22

Sources: TCA, Private Acts, Local Resolutions and Ordinances, 2004 TACIR Financing Growth

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Appendix D: Counties and Cities in Tennessee with Subdivision Regulations

County	County Has Subdivision Regulations?	Cities in the County WITH Subdivision Regulations	Cities in the County WITHOUT Subdivision Regulations
Anderson	Yes	Clinton, Norris, Oak Ridge, Oliver Springs, Rocky Top	None
Bedford	Yes	Bell Buckle, Shelbyville, Wartrace	Normandy
Benton	No	Camden	Big Sandy
Bledsoe	No	None	Pikeville
Blount	Yes	Alcoa, Friendsville, Louisville, Maryville, Rockford, Townsend, Vonore	None
Bradley	Yes	Cleveland	Charleston
Campbell	Yes	Caryville, Jacksboro, Jelico, LaFollette, Rocky Top	None
Cannon	Yes	Woodbury	Auburntown
Carroll	Yes	Atwood, Bruceton, Huntingdon, McKenzie	Clarksburg, Hollow Rock, McLemoresville, Trezevant
Carter	Yes	Elizabethton, Johnson City, Watauga	None
Cheatham	Yes	Ashland City, Kingston Springs, Pegram, Pleasant View	None
Chester	No	Henderson	Enville, Milledgeville, Silerton
Claiborne	Yes	Harrogate, New Tazewell, Tazewell	Cumberland Gap
Clay	Yes	Celina	None
Cocke	Yes	Newport, Parrottsville	None
Coffee	Yes	Manchester, Tullahoma	None
Crockett	Yes	Alamo	Bells, Friendship, Gadsden, Maury City
Cumberland	Yes	Crossville, Pleasant Hill	Crab Orchard
Davidson	Yes	Belle Meade, Berry Hill, Forrest Hills, Goodlettsville, Nashville, Ridgetop	None
Decatur	No	Parsons	Decaturville, Scotts Hill
DeKalb	Yes	Liberty, Smithville	Alexandria, Dowelltown

**Appendix D: Counties and Cities in Tennessee with
Subdivision Regulations (continued)**

County	County Has Subdivision Regulations?	Cities in the County WITH Subdivision Regulations	Cities in the County WITHOUT Subdivision Regulations
Dickson	Yes	Burns, Charlotte, Dickson, White Bluff	Slayden, Vanleer
Dyer	Yes	Dyersburg, Newbern	Trimble
Fayette	Yes	Braden, Gallaway, Grand Junction, LaGrange, Moscow, Oakland, Piperton, Rossville, Somerville	Williston
Fentress	No	Jamestown	Allardt
Franklin	Yes	Cowan, Decherd, Estill Springs, Huntland, Monteagle, Tullahoma, Winchester	None
Gibson	Yes	Gibson, Humboldt, Kenton, Medina, Milan, Rutherford, Trenton	Yorkville
Giles	No	Ardmore, Pulaski	Elkton, Lynnville, Minor Hill
Grainger	No	None	Bean Station, Blain, Rutledge
Greene	Yes	Baileyton, Greenville, Mosheim, Tusculum	None
Grundy	No	Monteagle	Altamont, Seersheba Springs, Coalmont, Gruetli-Laager, Palmer, Tracy City
Hamblen	Yes	Morristown, White Pine	None
Hamilton	Yes	Chattanooga, Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Signal Mountain, Soddy-Daisy, Walden	None
Hancock	No	Sneedville	None
Hardeman	Yes	Bolivar, Grand Junction, Middleton, Whiteville	Hickory Valley, Hornsby, Saulsburly, Silerton, Toone
Hardin	No	Adamsville, Savannah	Crump, Milledgeville, Saltillo
Hawkins	Yes	Bulls Gap, Church Hill, Kingsport, Mount Carmel, Rogersville, Sugoinville	None

**Appendix D: Counties and Cities in Tennessee with
Subdivision Regulations (continued)**

County	County Has Subdivision Regulations?	Cities in the County WITH Subdivision Regulations	Cities in the County WITHOUT Subdivision Regulations
Haywood	Yes	Brownsville, Stanton	None
Henderson	No	Lexington, Parker's Crossroads	Sardis, Scotts Hill
Henry	Yes	McKenzie, Paris, Puryear	Cottage Grove
Hickman	Yes	Centerville	None
Houston	No	Erin, Tennessee Ridge	None
Humphreys	Yes	McEwen, New Johnsonville, Waverly	None
Jackson	No	Gainesboro	None
Jefferson	Yes	Baneberry, Dandridge, Jefferson City, Morristown, New Market, White Pine	None
Johnson	Yes	Mountain City	None
Knox	Yes	Farragut, Knoxville	None
Lake	Yes	Ridgely, Tiptonville	None
Lauderdale	Yes	Halls, Henning, Ripley	Gates
Lawrence	No	Lawrenceburg, Loretto, St. Joseph	Ethridge
Lewis	No	Hohenwald	None
Lincoln	Yes	Ardmore, Fayetteville, Petersburg	None
Loudon	Yes	Farragut, Greenback, Lenoir City, Loudon, Philadelphia	None
McMinn	Yes	Athens, Englewood, Etowah, Niota, Sweetwater	Calhoun
McNairy	No	Adamsville, Bethel Springs, Selmer	Eastview, Finger, Guys, Michie, Milledgeville, Ramer, Stantonville
Macon	Yes	Lafayette, Red Boiling Springs	None
Madison	Yes	Humboldt, Jackson, Medon, Threeway	None
Marion	Yes	Jasper, Monteagle, New Hope, Orme, South Pittsburg, Whitwell	Powell's Crossroads
Marshall	Yes	Chapel Hill, Cornersville, Lewisburg, Petersburg	None

**Appendix D: Counties and Cities in Tennessee with
Subdivision Regulations (continued)**

County	County Has Subdivision Regulations?	Cities in the County WITH Subdivision Regulations	Cities in the County WITHOUT Subdivision Regulations
Maury	Yes	Columbia, Mount Pleasant, Spring Hill	None
Meigs	Yes	Decatur	None
Monroe	Yes	Madisonville, Sweetwater, Tellico Plains, Vonore	None
Montgomery	Yes	Clarksville	None
Moore	Yes	Lynchburg	None
Morgan	No	Harriman, Oliver Springs	Oakdale, Sunbright, Wartburg
Obion	No	Hornbeak, Kenton, Obion, South Fulton, Union City, Woodland Mills	Rives, Samburg, Trimble, Troy
Overton	Yes	Livingston	None
Perry	No	Linden	Lobelville
Pickett	No	None	Byrdstown
Polk	Yes	Benton, Copperhill, Ducktown	None
Putnam	Yes	Algood, Baxter, Cookeville, Monterey	None
Rhea	Yes	Dayton, Graysville, Spring City	None
Roane	Yes	Harriman, Kingston, Oak Ridge, Oliver Springs, Rockwood	None
Robertson	Yes	Adams, Coopertown, Cross Plains, Greenbrier, Millersville, Portland, Orlinda, Ridgetop, Springfield, White House	Cedar Hill
Rutherford	Yes	Eagleville, LaVergne, Murfreesboro, Smyrna	None
Scott	No	Huntsville, Oneida, Winfield	None
Sequatchie	No	Dunlap	None
Sevier	Yes	Gatlinburg, Pigeon Forge, Pittman Center, Sevierville	None
Shelby	Yes	Arlington, Bartlett, Collierville, Germantown, Lakeland, Memphis, Millington	None
Smith	Yes	Carthage, Gordonsville, South Carthage	None
Stewart	No	Cumberland, Dover, Tennessee Ridge	None

**Appendix D: Counties and Cities in Tennessee with
Subdivision Regulations (continued)**

County	County Has Subdivision Regulations?	Cities in the County WITH Subdivision Regulations	Cities in the County WITHOUT Subdivision Regulations
Sullivan	Yes	Bluff City, Bristol, Johnson City, Kingsport	None
Sumner	Yes	Gallatin, Goodletsville, Hendersonville, Millersville, Portland, Westmoreland, White House	Mitchellville
Tipton	Yes	Atoka, Brighton, Covington, Garland, Mason, Munford	Burlison
Trousdale	Yes	Hartsville	None
Unicoi	Yes	Erwin, Unicoi	None
Union	Yes	Maynardville, Plainview	Luttrell
Van Buren	Yes	Spencer	None
Warren	Yes	McMinnville, Morrison	Centertown, Viola
Washington	Yes	Johnson City, Jonesborough, Watauga	None
Wayne	No	Clifton, Waynesboro	Collinwood
Weakley	No	Dresden, Gleason, Greenfield, McKenzie, Martin, Sharon	None
White	Yes	Sparta	Doyle
Williamson	Yes	Brentwood, Fairview, Franklin, Nolensville, Spring Hill, Thompson's Station	None
Wilson	Yes	Lebanon, Mount Juliet, Watertown	None

Source: Status of Planning in Tennessee's Counties and Cities 2020.

Appendix E: Local Planning and Development Staff Survey Results

1. *How often does your local government require an owner to dedicate a right-of-way easement as a condition of subdivision plat approval?*

Response	Percentage
Always	40%
Usually	30%
Rarely	30%
Never	0%

2. *How often does your local government require an owner to dedicate land along a right-of-way and transfer ownership of that land to the local government as a condition of subdivision plat approval?*

Response	Percentage
Always	20%
Usually	20%
Rarely	30%
Never	30%

3. *Does your office track the number of dedications required each year and the amount of land dedicated?*

None of the planners said they tabulate data specific to dedications.

4. *How does your office determine the amount of land to be dedicated?*

Answers varied but the majority of respondents stated it was based on the minimum right-of-way standards in the subdivision regulations or on thoroughfare plans.

5. *Are dedications required by your local government ever challenged in court by property owners?*

Appendix E: Local Planning and Development Staff Survey Results (continued)

None of the planners reported ever having dedication requirements challenged in court.

6. *Does your local government require dedication of property along existing rights-of-way as a condition of subdivision plat approval if the property will be transferred to a family member of the owner?*

Response	Percentage
Always	40%
Usually	40%
Rarely	20%
Never	0%

7. *Does your local government require dedication of property along the existing rights-of-way as a condition of subdivision plat approval for smaller developments of five parcels or less?*

Response	Percentage
Always	50%
Usually	30%
Rarely	20%
Never	0%

8. *Does your local government ever offer dedicated property that it no longer needs to the adjoining property owner?*

Response	Percentage
Yes	70%
No	30%

9. *Does your local government give the adjoining property owner the opportunity to purchase the dedicated property if it is no longer needed by the government?*

Appendix E: Local Planning and Development Staff Survey Results (continued)

Response	Percentage
Yes	57%
No	43%

10. *Does your local government give the property to the adjoining property owner free of charge if the dedicated property is no longer needed by the government?*

Response	Percentage
Yes	71%
No	29%

11. *In your opinion, what are the main impacts you currently see from development in your area and that your local government tries to manage with land dedications, specifically?*

Response	Percentage
Increased road traffic	90%
Water drainage/stormwater runoff	80%
Installing/expanding utility lines	70%