

Overview

"A road way is to be provided for a foard [ford] crossing at appx sta 1094+50"



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mary Sue Terry
Attorney General

H. Lane Kneedler
Chief Deputy Attorney General

R. Claire Guthrie
Deputy Attorney General
Human & Natural Resources Division

Gail Starling Marshall
Deputy Attorney General
Judicial Affairs Division

Walter A. McFarlane
Deputy Attorney General
Finance & Transportation Division

Stephen D. Rosenthal
Deputy Attorney General
Criminal Law Enforcement Division

Deborah Love-Bryant
Executive Assistant

September 9, 1987

Mr. Anthony O'Connell
2337 South 13th Street
St. Louis, Missouri 63104

Dear Mr. O'Connell:

In response to our telephone conversation about discontinuance of maintenance of public roads in Virginia, particularly in Fairfax County, I enclose copies of sections from Title 33.1 of the Code of Virginia. The operative sections are §§ 33.1-150 to 33.1-155, § 33.1-147 referenced in § 33.1-150 and § 33.1-69 and § 33.1-229.

Sincerely,

A handwritten signature in cursive script, reading "John J. Beall, Jr.", written in dark ink.

John J. Beall, Jr.
Senior Assistant Attorney General

56-c4/JJB/263

cc: Edward J. White, Esq.

Enclosure

ANTHONY M. O'CONNELL
CONSERVATOR
2337 SOUTH THIRTEENTH STREET
ST. LOUIS, MISSOURI 63104

 (314) 776-4926

September 10, 1987

Mr. Edward J. White
118 South Royal Street
Alexandria, Virginia 22314

Mr. John Baell
101 North Eighth Street
Richmond, Virginia 23219

Dear Mr. White and Mr. Baell:

I feel very fortunate for you, Mr. White, to have given me access to Mr. Baell, and for you, Mr. Bael, to have given me your unique insight and copies of the pertinent statutes.

Thank you both for your valuable help yesterday.

Sincerely,

Anthony O'Connell
Anthony O'Connell

RIVER.WAT

(Rough draft. I can't find a
copy of the final letter.)

Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150
November 11, 1991

Mr. Joe Hassell
Virginia Water Control Board
4900 Cox Road
Richmond, Virginia 23060
{804} 527-5072

Note; Good Guy
Nationwide permit #14
for minor road crossing

or
Post Office Box 11143
Richmond, Virginia 23230
{804} 527-5200

Dear Mr. Hassell:

Several years ago I purchased a 139 acre farm in Highland County, Virginia, on US Route 220 approximately 11 1/2 miles south of Monterey, 2 1/2 miles south of Mustoe, and split by US 220 and the Jackson River. It is shown on the enclosed topographical map. As a possible aid in identification it is shown on the VDOT plat "From 0.663 miles north of Bath County Line to 2.310 miles south of Vanderpool", Sheet Number 13. At present I have no way to get to the eastern half of my property by vehicle because of the Jackson River.

May I have your permission to construct a ford across the Jackson River in order to get to this eastern half? The site I have in mind is south of the concrete culvert and adjacent to the trout farm. It is presently marked by blue surveyor's tape.

Thank you.

Yours truly,

Anthony O'Connell

R10 & R. MRC.

(Rough draft. I can't find a
copy of the final letter.)

Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150
{703} 971-2855
November 27, 1991

Ms. Jennifer McCarthy
Virginia Marine Resource
Post Office Box 756
2600 Washington Avenue
Newport News, Virginia 2
{804} 247-2276

Reference: Ford Across Jackson River

Dear Ms. McCarthy:

It was a pleasure to talk with you the other day.

Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150
(703) 971-2855
October 5, 1994

Mr. David R. Gehr
Commissioner
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Reference:
Relocation of VDOT bridge
#6001 presently on Rt 603
in Highland County, Va

Dear Commissioner Gehr:

I would like to thank you for your effort to preserve by relocation this historically significant bridge in Highland County.

I understand you are still open to considering sites, so I ask if you would consider a site at Route 220, approximately 1.1 to 1.2 miles north of Route 606 and approximately .68 to .78 miles south of Route 605 (enclosures 1 thru 4).

This site is on the inside of a gentle curve running directly alongside the Jackson River. Route 220 is a major north-south highway heavily traveled by tourists. The bridge would receive maximum public exposure, and showcase the 101 foot span.

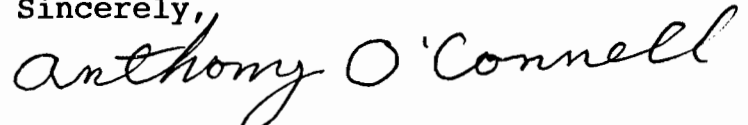
The site is historically appropriate in that; the bridge would be used for the purpose for which it was originally intended (to span a river), there is negligible visual disturbance, a log house is being restored to the east, and a similar bridge (VDOT #6002) spans the Jackson River 1.1 to 1.2 miles south at Route 606. I feel qualified to continue VDOT's high level of preservation for this bridge, in that historic preservation was my profession (MA in the Conservation of Historic and Artistic Works, State University of New York, 1975).

I believe funding the relocation could be done under the Code of Virginia 33.1-199 (enclosure 6).

The entrance to my property east of the river was destroyed when the river was channelized and moved east along the new road (enclosure 3). The steep slope of rip rap between the road and the river, and the river itself, is a physical barrier, and I believe, VDOT's ownership of the river and both banks, is a legal barrier, for me to try to build any access on my own. In short, I now have no access to any of my property east of the river. The previous owners apparently agreed to this loss of access in their deed to the Commonwealth (enclosure 5), but I have been advised that the Code of Virginia 33.1-199 would override.

I would like to thank the VDOT office in Monterey for the numerous times they have come to discuss my access problems, and for their consistently valuable help and expertise. If there is any additional information you might think helpful, please let me know

Sincerely,



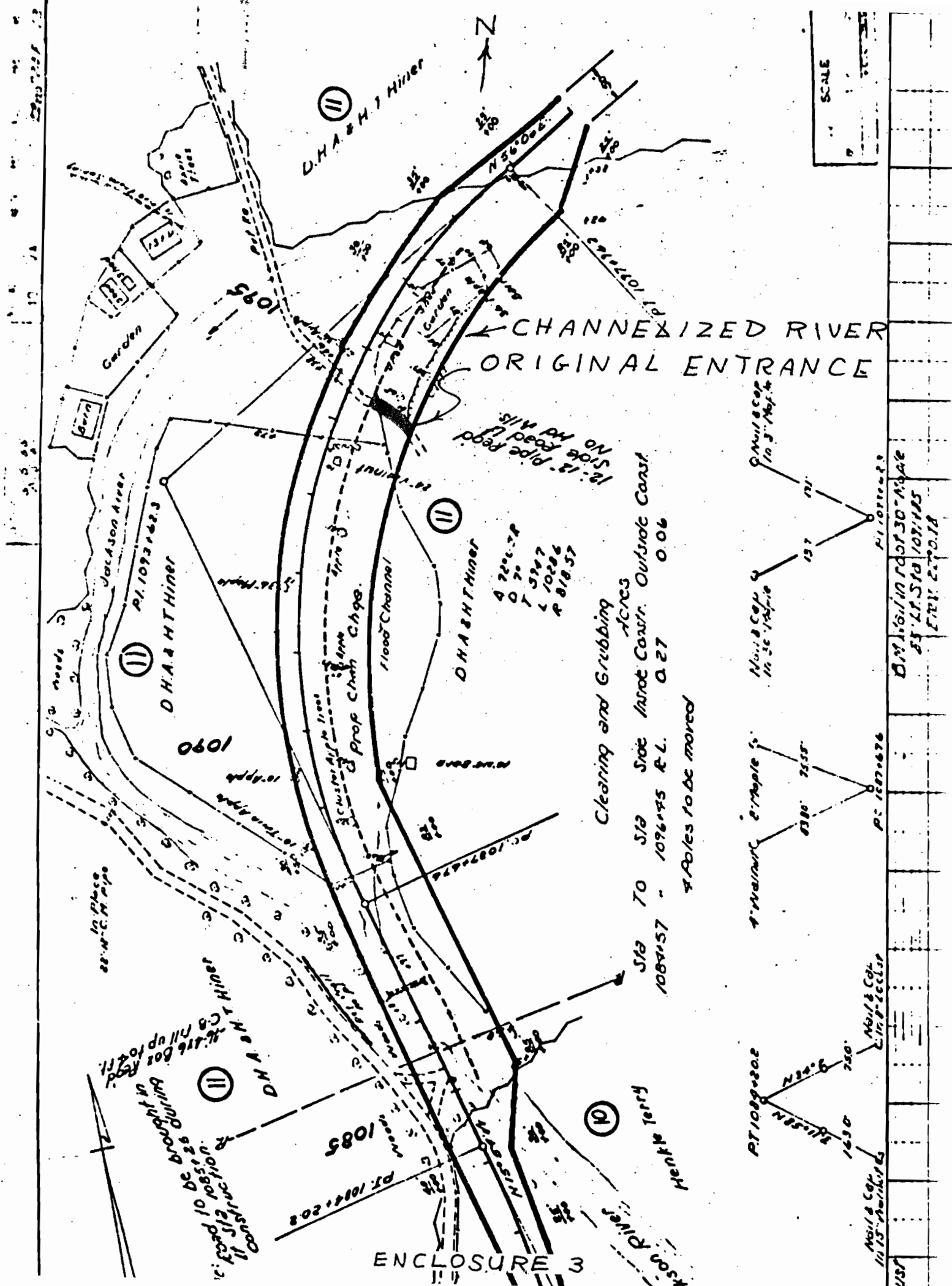
Anthony O'Connell

Enclosures:

- (1) Photographs of suggested site
- (2) Aerial photograph with my property outlined in white
- (3) Detail of sheet 13, Commonwealth of Virginia, Department of Highways, Plan and Profile of Proposed State Highway, Highland County, From 0.663 miles north of Bath County line to 2.310 miles south of Vanderpool, with notations
- (4) Detail of Highland County map, with notations
- (5) Deed to the Commonwealth of Va for Rt 220 and the Jackson River.
- (6) Code of Virginia 33.1-199

Copies to:

Ms. Suzanne Faught, Environmental Specialist, Senior Field
Mr. R. L. Moore, District Administrator
Mr. Jerry VanLear, Resident Engineer
Ms. Kitty Houston, Preservation Planner, and
Mr. Craig Lukezic, Cultural Resource Planner
Mr. Robert L. Marshall, Superintendent





COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219

DAVID R. GEHR
COMMISSIONER

JACK HODGE
CHIEF ENGINEER

November 17, 1994

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Dear Mr. O'Connell:

This is in response to your recent letter to Commissioner David R. Gehr concerning disposition of the Route 603 bridge (Structure No. 6001) in Highland County. At present, the Virginia Department of Transportation (VDOT) is working with the Virginia Department of Historic Resources and other agencies to determine whether the old bridge can reasonably be preserved off-site so a new bridge can be built at that location. VDOT's preference is to transfer ownership of the structure to another party for use on private property off the state highway system. I appreciate your desire to potentially relocate the structure for use on your property and will keep your interest in mind as our efforts continue over the next few months.

With regard to the provisions of Section 33.1-199 of the Code of Virginia, a distinction needs to be made between what preservation actions VDOT may take concerning disposition of the Route 603 bridge in relation to a contemporary highway improvement and what responsibilities the Department may, or may not have, concerning potential legal claims related to highway work completed in the 1930s. I presently cannot address the latter issue since it involves obtaining a legal opinion on the specific circumstances of your case in relation to the statute. The Department's focus at this time is to implement the highway improvement on Route 603 and balance that need, if possible, with valid preservation concerns. If project-specific preservation issues can reasonably be resolved by transfer of the structure to your ownership, then we will explore that option with you in the near future.

Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Hodge", with a long horizontal line extending to the right.

J. S. Hodge
Chief Engineer

Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150
(703) 971-2855
November 21, 1994

Mr. Jack S. Hodge
Chief Engineer
Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Re: Your letter of November 17, 1994

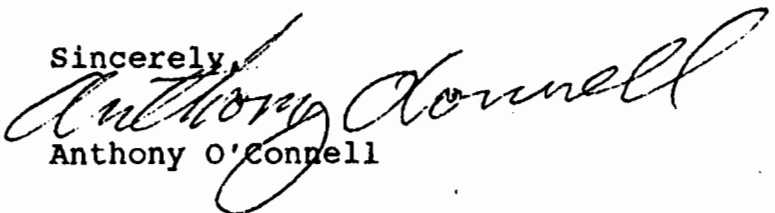
Dear Mr. Hodge:

Thank you for your letter of November 17, 1994, and for making it clear that preservation of the bridge on Route 603, and Section 33.1-199 of the Code of Virginia, are separate issues.

I understand VDOT's preference to transfer ownership of the bridge to private property, off the state highway system, and appreciate you keeping me in mind as a relocation site. I could put it on private property and still have it highly visible from Route 220. I sincerely hope it can be preserved in Highland County.

I will pursue resolution on Section 33.1-199 of the Code of Virginia, separately.

Sincerely,


Anthony O'Connell

Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150
(703) 971-2855
November 25, 1994

Mr. Robert E. Martinez
Secretary of Transportation
1401 East Broad Street
Room 414
Richmond, Virginia 23219

Dear Secretary Martinez:

I would like to thank you for providing Highland County with one of the best road systems in the Commonwealth. However, I need access to the eastern half of my farm.

The original entrance to the property east of the river was destroyed when the Jackson River was channelized and moved eastward along with the new road. The river, and the steep slope of rip rap between the river and the road, is a physical barrier, and state ownership of the river and both banks, is a legal barrier, for me to try to build any access on my own. The previous owners apparently agreed to this loss of access in their deed to the Commonwealth. I have been advised that the Code of Virginia, Section 33.1-199, would override this document (Does state official have the authority to execute a contract that is in conflict with the Code of Virginia?):

"33.1-199. Replacing entrances destroyed by Commissioner. - The Commonwealth Transportation Commissioner shall replace any entrance destroyed by him in the repair or construction of his highways and replace any such entrance and leave any such entrance in the same condition as it was prior to such repair or improvement. (Code 1950, 33-117; 1970, c. 2.)"

I respectfully request that the entrance be replaced.

Apparently the Commonwealth purchased the area of the river and both banks in order to construct the new channel for the river. Since that work is complete, I also ask that, as adjacent property owner, I be permitted to repurchase that area that is in excess of the normal highway right of way.

I would like to thank the VDOT office in Monterey for the numerous times they have come to discuss my access problems over the past five years, and for their consistently valuable help and expertise. If there is any additional information you might think helpful, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Anthony O'Connell". The signature is fluid and extends across the right side of the page.

Anthony O'Connell

Enclosures:

- (1) Aerial photograph with my property outlined in white
- (2) Detail of sheet 13, Commonwealth of Virginia, Department of Highways, Plan and Profile of Proposed State Highway, Highland County, From 0.663 miles north of Bath County line to 2.310 miles south of Vanderpool, with notations
- (3) Photographs of river, Route 220, and slope of rip rap
- (4) Deed to the Commonwealth of Va for Rt 220 and the river area.



COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

Robert E. Martínez
Secretary of Transportation

December 15, 1994

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Dear Mr. O'Connell:

Thank you for your recent letter concerning access to the eastern portion of your farm.

It appears that damages were paid to the previous property owner for removal of the entrance to the property east of the river. I am asking Department of Transportation's State Right of Way Engineer S. A. Waymack to research this matter and respond to you within the next two weeks.

A land use permit can be issued to you for access to the property east of the river. Construction of the entrance would be your responsibility.

With kind regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Martínez", with a stylized flourish at the end.

Robert E. Martínez

REM/ow

cc: Mr. David R. Gehr
Mr. S. A. Waymack



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
STATE RIGHT OF WAY ENGINEER

January 5, 1995

Route 220
Highland County

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Dear Mr. O'Connell:

Transportation Secretary Robert E. Martínez asked me to investigate the matter outlined in your November 25, 1994, letter and advise you of my findings.

The deed you provided indicated that the Hiners conveyed the necessary right of way to construct what is now known as Route 220 on October 21, 1935. As shown in the last paragraph, the Hiners agreed to a monetary compensation in lieu of damages to the residue. This is further documented by the attached copy of the option agreement, which confirms that the consideration included all damages to the residue including loss of the entrance.

In reviewing Section 33.1-199 of the Code of Virginia, we found it was enacted into law on March 12, 1938. Obviously, since this statute did not exist in 1935, it is not applicable to the acquisition of the Hiner property. It is our view that landowners do have a right to voluntarily waive various provisions concerning their property. Therefore--since the previous landowner agreed to give up the original entrance--you, as a successor in title, did not obtain a right to require that an entrance be constructed.

While the river is a physical barrier to your construction of an entrance, the Virginia Department of Transportation's (VDOT's) ownership of the river and both banks should not be a legal obstacle. As Secretary Martínez indicated, VDOT can issue a land use permit to you to construct an entrance across the highway right of way. The actual construction of the entrance would be your responsibility and VDOT would only need to review the plans with regard to safety and other aspects provided for in the permit.

It appears that VDOT does have some excess right of way through this property. If you are interested in acquiring some of this right of way, we need to know what portion you would like so it can be reviewed by all of our affected divisions. To pursue the repurchase of any of this property, mark the area on a print of the attached plan and return it to me. Please remember that you do not need to own the river or the banks in order to be able to construct an entrance to your property.

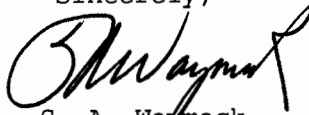
Letter to Mr. Anthony O'Connell

Page 2

January 5, 1995

I hope this clears up any issues regarding the original right of way acquisition and your options for constructing an entrance to your property. Should you wish to pursue the construction of an entrance, the permit requirements should be coordinated through our residency office in Verona.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. A. Wasmack', written in a cursive style.

S. A. Wasmack

State Right of Way Engineer

RRB:efs

Attachment

.cc: The Honorable Robert E. Martínez
Mr. David R. Gehr
bc: Mr. J. S. Hodge
Mr. J. J. Beall, Jr.
Mr. R. L. Moore
Mr. J. R. VanLear

Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150
(707) 971-2855
March 16, 1995

Mr. J. R. VanLear
Virginia Department of Transportation
Post Office Box 940
Verona, Virginia 24482
(703) 248-9320

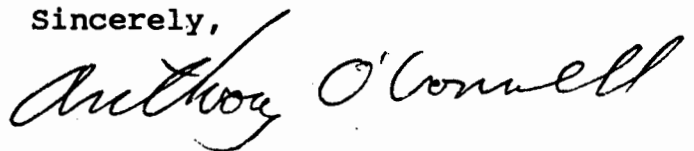
Dear Mr. VanLear:

Pursuant to our telephone conversation yesterday, I am writing to ask if I may get permission to grade both sides of the Jackson River, on your Right of Way, in the approximate area shown in blue, on the attached plat.

The purpose of the grading is to ford the river at that point. No work would be done in the river. I understand that if I do no work in the river, all those agencies responsible for the river, such as the Corp of Engineer's, the Marine Resources, the Soil and Water Conservation, etc., are not involved. I am asking permission to work only on the banks of the river, and only for permission for which VDOT is authorized to give me.

If there is any other information you might find helpful, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Anthony O'Connell". The signature is written in dark ink and is positioned above the printed name.

Anthony O'Connell

Enclosure: Plat

Copy: Mr. Robert Marshall

Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150
(703) 97-2855
March 16, 1995

Mr. Stuart A. Waymack
State Right of Way Engineer
Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
(804) 786-2923

Ref: Your letter of
January 5, 1995

Dear Mr. Waymack:

Thank you for the telephone conversation yesterday.

Would you please sell me the Right of Way colored yellow on the enclosed plat? If there is any other information you might find helpful, please let me know.

Sincerely,

Anthony O'Connell

Enclosures (2)



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

P.O. BOX 940
VERONA, 24482-0940

DAVID R. GEHR
COMMISSIONER

JERRY R. VANLEAR
RESIDENT ENGINEER
TEL (703) 248-9320
FAX (703) 248-9333

March 30, 1995

Subject: Route 220
Highland County

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, VA 22150

Mr. O'Connell:

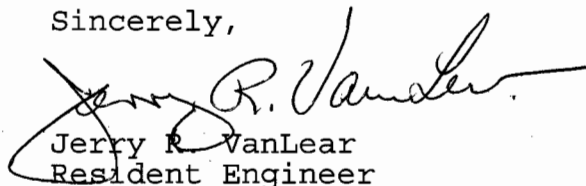
I received your letter requesting to perform work on the State right of way along Route 220 in Highland County. While I do not believe there will be any problem issuing you a permit for a private entrance at the location you indicated, there are a few issues that I need to review before I can issue the permit.

In reviewing the location, I believe there are some brush and trees that must be removed in order to insure the proper sight distance. This brush and trees are on the State right of way, so there will likely be no problem with permitting you to do this. Additionally, you indicated you wanted to perform some grading on the State right of way so you could ford the river.

While you did indicate you would not be doing any work in the river, I have asked the District Environmental Section to review your request to insure the Department is in compliance with all appropriate laws of the State by permitting you to perform this work.

I had hoped to have an answer for you by this time, but this is not the case. Hopefully, I will be able to give you some feedback in the near future. In the meantime, if you have any questions, please give me a call.

Sincerely,


Jerry R. VanLear
Resident Engineer

cc: Mr. Robert W. Jones
Mr. Robert L. Marshall, Jr.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

P.O. BOX 940
VERONA, 24482-0940

DAVID R. GEHR
COMMISSIONER

JERRY R. VANLEAR
RESIDENT ENGINEER
TEL (703) 248-9320
FAX (703) 248-9333

April 7, 1995

Subject: Route 220
Highland County

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, VA 22150

Mr. O'Connell:

I have reviewed the location you noted in your letter dated March 16, 1995. While the issuance of a private entrance permit is not, in and of itself, unusual, the location you identified did offer some interesting considerations.

You indicated you will only be involved with grading the river bank for the purpose to ford the Jackson River. I asked the District Environmental Manager to accompany me on my review. We observed the river and I do not understand how you plan to ford the river without doing any work in the river to shape the bottom for a crossing. However, I also recognize this is your concern, but I did want to mention it to you because any work done in the river will require you to consult with Virginia Marine Resources Commission (VMRC) or the Corps of Engineers (Corps).

Contacts are as follows:

Mr. Chris Frye
Virginia Marine Resources Commission
Environmental Division
P. O. Box 756
Newport News, VA 23607
(804) 247-8028

Mr. Jim Brogdon
U. S. Army Corps of Engineers
Western Virginia Field Office
HCR 32, Box 101-A
Staunton, VA 24401
(703) 886-4221

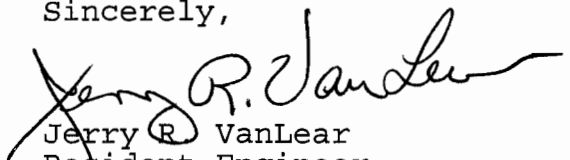
The Department of Transportation owns the land on which the Jackson River is located at this point. However, the VMRC indicated they "control" the river bottom. Further, the Corps has indicated they wish to participate in permitting any work done in the river because the river is designated as

a trout stream in this area. The Corps did indicate they would consult with the Virginia Department of Game and Inland Fisheries if necessary; you will not have to initiate this contact yourself.

Please contact Mr. Robert L. Marshall, Jr., Area Superintendent, for the location the private entrance permit will be issued. I believe there are several trees along the river bank that you will need to cut in order to obtain sufficient sight distance. The entrance permit should include all work on the right of way.

I hope this provides you the information you needed. Please let me know if I can be of further assistance.

Sincerely,



Jerry R. VanLear
Resident Engineer

cc: Mr. Robert W. Jones
Mr. Robert L. Marshall, Jr.
Mr. Chris Frye - VMRC

Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150
(703) 971-2855
May 12, 1995

Mr. Stuart A. Waymack
State Right of Way Engineer
Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
(804) 786-2923

Ref: My letter of
March 16, 1995

Dear Mr. Waymack:

In my letter to you of March 16, 1995, I asked if I could purchase the Right of Way shown in yellow on the enclosed plat.

Can you please tell me whether you will accept or reject my request? I thank you in advance.

Sincerely,



Anthony O'Connell

Enclosure (1)

FILE



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219-1939

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
STATE RIGHT OF WAY ENGINEER

May 17, 1995

Route 220
Project 724-F
Highland County

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Dear Mr. O'Connell:

SUBJECT: Former Property of Terry Henkle, Parcel 010 and
D. H. A. & H. T. Hiner, Parcel 011

Reference is made to your letters of March 16 and May 12, 1995, and your telephone conversation of May 12 with Mr. Art Taylor regarding your request to purchase surplus Virginia Department of Transportation's (VDOT'S) right of way on Route 220 in Highland County.

We have reviewed your request and have determined that the area indicated on the drawing attached to your May 12 letter is not available. Since VDOT constructed the channel change in this area we have a responsibility for any future maintenance that may be needed. Prior to our preliminary field review we thought there may have been more land than we needed beyond the river's bank on the east side. This was found not to be the case.

Your approach through an entrance permit would appear to be the most logical way to access the property.

Thank you for your interest in our property.

Sincerely,

A handwritten signature in cursive script that reads "S.A. Waymack".

S. A. Waymack
State Right of Way Engineer

AHT,III:jc

Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150
June 3, 1995

Stuart A. Waymack
State Right Of Way Engineer
Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219-1939

Re: Route 220 Project 724-F-Highland County
Former Property of DHA and HT Hiner, Parcel 011

Dear Mr. Waymack:

Thank you for your letter of May 17, 1995, concerning my inquiries regarding the crossing of the Jackson River to State Route 220.

I have a new question. I plan to build my home on this property I have been trying to access. To do this, there needs to be a private driveway for the house that would cross the Jackson River to connect to the pavement of Route 220. The driveway would be located generally in the area shown in yellow on the enclosed plat. In reading the Code of Virginia, Section 33.1-197 states that VDOT is required to permit the crossing of its right-of-way to the paved road for a private home. I also note that Section 33.1-198, covering commercial and subdivision entrances, states that such connections shall be permitted for commercial projects under certain conditions and at the expense of the developer. Section 33.1-197 concerning private driveways makes no reference to the connection across the shoulder/right-of-way being at the homeowner's expense, which leads me to conclude that the law requires that VDOT construct a connection across the unimproved portion of the right-of-way.

My questions thus are:

1. Am I correct that VDOT must permit me to cross the right-of-way (including the river) for a driveway for my home?
2. Am I correct that Section 33.1-197 requires VDOT to construct such connection?
3. If it is VDOT's position that the crossing must be permitted, but at my expense, what regulations, if any, apply? If I must have plans for the crossing approved, which agencies must approve them and what is their jurisdiction?

I appreciate very much your response to my earlier inquiries and your patience with my requests. I would like to thank the VDOT personnel in Monterey for the numerous times they have come to discuss my access problems, and for their consistently valuable help and expertise. I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Anthony M. O'Connell". The signature is fluid and elegant, with the first letters of the first and last names being capitalized and prominent.

Anthony M. O'Connell

Enclosure: Plat

Copies: Mr. Robert L. Marshall, Superintendent
Mr. Jerry VanLear, Resident Engineer



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219-1939

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
STATE RIGHT OF WAY ENGINEER

June 19, 1995

Route 220 - Highland County

Mr. Anthony O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Dear Mr. O'Connell:

I have received your June 3 letter and will try to answer the additional questions you have raised concerning access to your property.

Section 33.1-197 makes the Virginia Department of Transportation (VDOT) responsible for ensuring that any private road connected to the highway system is done in a safe manner. Having the responsibility to make decisions regarding the safe entry of the private road to the public road in no way implies an obligation on VDOT to construct or pay for the construction of a private driveway. Any differences between this statute and other statutes does not change that fact.

You are correct that VDOT must review and determine if a permit can be issued for you to have a driveway to your property at whatever location you propose. Our residency office will work with you and provide any safety concerns they may have regarding the location and any alternate sites available. If your proposed location meets VDOT's criteria, then the Department would be in a position to issue a permit for that portion of the work proposed within the right of way.

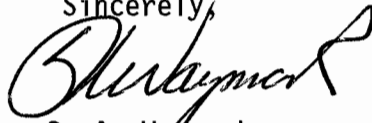
As indicated above, the answer to question 2. is that Section 33.1-197 of the Code of Virginia does not require or provide for VDOT to construct private driveways.

Your question 3. deals with other agencies that may have jurisdiction on the work you propose. VDOT's responsibility is to the traveling public and to ensure from our agency's standpoint that the proposed work can be constructed safely. Because your proposal involves crossing the Jackson River, the agencies responsible for the rivers may wish to review your proposed method of constructing the entrance. Mr. Jerry VanLear in his April 7, 1995, letter advised of contact persons for the Virginia Marine Resource Commission and the U.S. Army Corps of Engineers. These agencies will have to advise you on the information necessary for you to secure their permits to work within the river itself.

Mr. Anthony O'Connell
Page 2
June 19, 1995

I realize the involvement of other agencies further complicates your objective to have access to the property across the river. However, state and federal laws now require much greater control of this process.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. A. Waymack', written in a cursive style.

S. A. Waymack
State Right of Way Engineer

RRB:efs
cc: Mr. Jerry VanLear

Anthony M. O'Connell
216 Governor's Lane Apt 12
Harrisonburg, Virginia 22801
July 20, 1996

Mr. Stuart A. Waymack
State Right of Way Engineer
Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Ref. Your letter of January 5, 1995

Dear Mr. Waymack:

You mentioned in your letter of January 5, 1995, that the Hiners had agreed to a monetary compensation and that there was an attached copy of an option agreement. Would you be kind enough to send me any and all documentation concerning the specifics of that monetary consideration, and another copy of the option agreement? The copy you mentioned must have been lost.

I thank you in advance.

Sincerely,

A handwritten signature in cursive script that reads "Anthony M. O'Connell".

Anthony M. O'Connell

Enclosure: Copy of deed between the Hiners and the Commonwealth of Virginia

Anthony M. O'Connell
216 Governors Lane Apt 12
Harrisonburg, Virginia 22801
August 4, 1996

The Honorable John Warner
United States Senate
Washington, D. C. 20510

Dear Senator Warner:

My situation may be one of a kind.

The Highway Department destroyed the entrance to my property by running a river through it. The Highway Department's position is that the landowner is responsible for replacing the entrance. I believe they are responsible under the Virginia General Assembly Act Chapter 126 of 1938, Code of Virginia § 33.1-197 and § 33.1-199, and court precedences concerning ambiguous language.

Since changes in public policy change the interpretation of our laws, and you are on the forefront of our public policy, I am writing to ask if you would be willing to give your interpretation as to whether the Highway Department, or the landowner, is responsible for bridging the river.

Would you also forward this to Attorney General Gilmore, or to whomever you think necessary, to achieve a definitive ruling, one that leaves no room for ambiguity or confusion? If the ruling is that the Highway Department is responsible, I ask that it include the completion date of the bridge.

Sincerely,

Anthony M. O'Connell

Enclosures

Anthony M. O'Connell
216 Governors Lane Apt 12
Harrisonburg, Virginia 22801
August 19, 1996

The Honorable Warren E. Barry
P. O. Box 1146
Fairfax, Virginia 22030

This letter to Senator Barry is the same letter that I wrote to the 140 members of the Virginia General Assembly. I did not have a copy of the 1935 Agreement when I wrote this letter.

Dear Senator Barry:

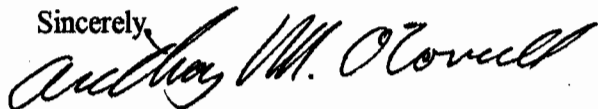
My situation may be one of a kind.

The Highway Department destroyed the entrance to my property by running a river through it. The Highway Departments position is that the landowner is responsible for replacing the entrance. I believe they are responsible under Virginia General Assembly Act Chapter 126 of 1938, Code of Virginia § 33.1-197 and § 33.1-199, and court precedences concerning ambiguous language.

Since interpretation is influenced by public policy and the General Assembly's intent, and you are the forefront of public policy and a General Assembly member, I am writing to ask if you would be willing to give your interpretation as to whether the Highway Department, or the landowner, is responsible for bridging the river.

Would you also forward this to Attorney General Gilmore and request an independent ruling? If the ruling is that the Highway Department is responsible, I ask that it include the completion date of the bridge.

Sincerely,



Anthony M. O'Connell

Enclosures



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219-1939

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
STATE RIGHT OF WAY ENGINEER

August 19, 1996

Route 220 - Project 724-F
Highland County
Former Property of D. H. A. &
H. T. Hiner - Parcel 011

Mr. Anthony O'Connell
216 Governor's Lane, Apt. 12
Harrisonburg, Virginia 22801

Dear Mr. O'Connell:

In response to your recent letter, attached is a copy of the option agreement between the Commonwealth of Virginia and the captioned landowners in consideration for our acquisition of this parcel. The agreement specifies \$750.00 as the monetary consideration for land, fencing, tearing down or moving 3 buildings, apple and sugar trees, and all damage to the residue.

Sincerely,

A handwritten signature in black ink that reads "S. A. Waymack".

S. A. Waymack
State Right of Way Engineer

SMC/bam
Attachment
bc: Mr. Jerry R. VanLear
Mr. A. H. Taylor, III

Anthony M. O'Connell
216 Governors Lane Apt 12
Harrisonburg, Virginia 22801
August 26, 1996

Mr. S. A. Waymack
State Right of Way Engineer
Department of Transportation
401 East Broad Street
Richmond, Virginia 23219-1939

Ref. Your letter of August 19, 1996

Dear Mr. Waymack:

Thank you for sending me a copy of the option agreement.

I'm having difficulty reading parts of it and don't want to misquote it. Is it possible to obtain a cleaner copy and a printed version of the handwritten portion?

Sincerely,


Anthony M. O'Connell



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

1401 EAST BROAD STREET
RICHMOND, 23219

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
STATE RIGHT OF WAY ENGINEER

August 29, 1996

Route 220 - Project 724-F
Highland County
Former Property of D. H. A. and H. T. Hiner
Parcel 011

Mr. Anthony M. O'Connell
216 Governors Lane, Apt. 12
Harrisonburg, Virginia 22801

Dear Mr. O'Connell:

The option agreement mailed to you on August 19 was copied from our microfilm records. I am sorry that you are having difficulty reading the handwritten portion of the agreement, but that is the clearest copy that we are able to provide.

If you would like to come to our office in Richmond to look at the document on the microfilm reader which may provide a clearer view of the document, we will be glad to make the necessary arrangements with our file room. You may contact Ms. Beverly Todd of this office at (804) 786-4366 to set up an appointment to view the records.

Sincerely,

A handwritten signature in cursive script that reads "S. A. Waymack".

S. A. Waymack
State Right of Way Engineer

BDT:awm

Anthony M. O'Connell
216 Governors Lane Apt 12
Harrisonburg, Virginia 22801
September 1, 1996

The Honorable Charles S. Robb
Democratic Bar-B-Q
Rockingham County Fairgrounds
Harrisonburg, Virginia

Dear Senator Robb:

My situation may be one of a kind.

The Highway Department destroyed the entrance to my property by running a river through it. The Highway Department's position is that the landowner is responsible for replacing the entrance. I believe they are responsible under Virginia General Assembly Act Chapter 126 of 1938, Code of Virginia § 33.1-197 and § 33.1-199, and court precedences concerning ambiguous language.

Since interpretation is influenced by public policy, I ask if you would be willing to give your interpretation as to whether the Highway Department, or the landowner, is responsible for building the bridge. I understand the river places this on a federal level (State Right of Way Engineer's letter of June 19, 1995) and VDOT's two billion dollar budget includes federal tax dollars.

My goal is to obtain a binding completion date for the bridge by the Highway Department, or an independent opinion on why the statutes are not applicable and the landowner is responsible for building the bridge on a public highway right of way.

Thank you for your attention.

Sincerely,

Anthony M. O'Connell

Enclosures

COMMONWEALTH OF VIRGINIA



KEVIN G. MILLER
26TH SENATORIAL DISTRICT
CITY OF HARRISONBURG, CULPEPER, PAGE,
AND RAPPAHANNOCK COUNTIES AND PART OF
FAUQUIER, ROCKINGHAM, AND STAFFORD COUNTIES
2 SOUTH MAIN STREET
SUITE 608
HARRISONBURG, VIRGINIA 22801

COMMITTEE ASSIGNMENTS
PRIVILEGES AND ELECTIONS, CHAIRMAN
FINANCE
TRANSPORTATION
RULES

SENATE

September 3, 1996

Mr. Anthony M. O'Connell
216 Governors Lane, Apt. 12
Harrisonburg, VA 22801

Dear Mr. O'Connell:

Thank you for the letter and package of documents relating to your property adjacent to Highway 220.

In reviewing your inquiries and the responses you received, it certainly appears to me that the responses by VDOT officials have been made in a prompt and courteous manner. It also appears that the responses have been thorough and accurate.

I am not a lawyer, but even if I were, I do not feel it would be appropriate for an individual legislator to take a position on an issue such as this.

Also, I can find no specific point of law at issue upon which a question to the attorney general could be propounded in a request for an official ruling.

Confident that the final resolution of your efforts will be fair to you, and to all Virginia Taxpayers, I am

Sincerely yours,

Kevin G. Miller
State Senator

Copy to: Honorable Robert E. Martinez, Secretary of Transportation
David R. Gehr, Commissioner - VDOT



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219

DAVID R. GEHR
COMMISSIONER

September 5, 1996

Route 220 - Highland County

The Honorable Malfourd W. Trumbo
Member, Virginia Senate
P. O. Box 44
Fincastle, Virginia 24090

Bo
Dear Senator Trumbo:

This is in response to your recent letter concerning Mr. Anthony M. O'Connell's request for assistance in obtaining an entrance to his property located in Highland County. From the information submitted by Mr. O'Connell, you are aware that the Virginia Department of Transportation (VDOT) has thoroughly reviewed this issue in order to resolve the situation.

Originally, VDOT acquired property from the Hiner family in 1935 for the construction of improvements to what is now known as Route 220—including the relocation of the river in this area. Subsequently, Mr. O'Connell acquired the remaining property in 1989 and has focused on the entrance that was affected by VDOT's construction and acquisition in 1935. The Hiners were compensated for the total impact to the property—including payment for damages to their remaining lands.

VDOT has determined that this agency does not have any legal or moral obligation to construct an entrance as requested by Mr. O'Connell. This has been explained to him through numerous letters—as has VDOT's willingness to issue a land use permit (in accordance with our policy) so that he can construct a private driveway.

Hopefully, this information will be helpful in responding to your constituent.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Dave".

David R. Gehr
Commissioner

COMMONWEALTH OF VIRGINIA



JOHN H. CHICHESTER
28TH SENATORIAL DISTRICT
STAFFORD, MAJOR PART:
WESTMORELAND, KING GEORGE, LANCASTER,
NORTHUMBERLAND; PRINCE WILLIAM, PART OF SOUTHERN
P.O. BOX 904
FREDERICKSBURG, VIRGINIA 22404

COMMITTEE ASSIGNMENTS:
AGRICULTURE, CONSERVATION AND NATURAL RESOURCES
COMMERCE AND LABOR
EDUCATION AND HEALTH
FINANCE

SENATE

September 9, 1996

Mr. Anthony M. O'Connell
216 Governors Lane, Apt. 12
Harrisonburg, VA 22801

Dear Mr. O'Connell:

Your August 20 letter and enclosures have been received. You asked my interpretation of who is responsible for bridging the river, owned by the Virginia Department of Transportation, or you, as the adjacent landowner.

I first contacted my colleague, Senator Kevin Miller, to determine if he was aware of this matter. This is common courtesy as he is the representative for your area. He had also received your letter and indicated he would notify me of his response.

An inquiry was made to Mr. Stuart Waymack at VDOT. He explained that the previous landowner, the Hiners', had an agreement with the State of Virginia in 1935. For whatever reason, this agreement was not fulfilled. When the property was sold to you, the "agreement" was not transferrable.

He further stated that VDOT has no moral or legal obligation to fulfill your request. If it did, they would have done so by now.

His determination of this matter was not based just on his opinion. It was based on findings from VDOT personnel and legal council.

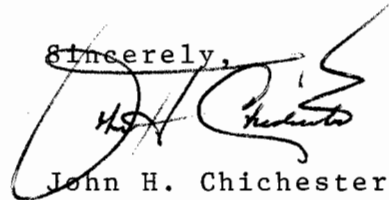
Since this inquiry, Senator Miller has provided me with a copy of his reply. I must agree in that it would not be appropriate for us to take a position on this.

Anthony M. O'Connell
September 9, 1996
Page 2

If you wish to continue this effort, I would encourage you to write the Attorney General yourself. At least you would conclude if you have any recourse.

Thank you for contacting me. With best wishes and kindest regards, I remain

Sincerely,

A handwritten signature in dark ink, appearing to read "JHC", is written over the word "Sincerely,". The signature is stylized and somewhat cursive.

John H. Chichester

JHC/bas

P.S. If you would like to have back the documents, please let me know.

Anthony M. O'Connell
216 Governor's Lane Apt 12
Harrisonburg, Virginia 22801
September 12, 1996


Senator John H. Chichester
P. O. Box 904
Fredericksburg, Virginia 22404

Dear Senator Chichester:

Thank you for your letter of September 9, 1996.

It is obvious that you gave considerable time and effort to my letter of August 20, especially so in contacting Mr. Waymack, and I genuinely appreciate that. We need more leaders like you.

It is not necessary to send the documents back.

Sincerely,

Anthony M. O'Connell



COMMONWEALTH of VIRGINIA

James S. Gilmore, III
Attorney General

Office of the Attorney General
Richmond 23219

September 20, 1996

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

The Honorable H. Russell Potts, Jr.
Member, Senate of Virginia
118 South Cameron Street
Winchester, Virginia 22601

*Re: Anthony M. O'Connell
Virginia Department of Transportation
Route 220; Highland County*

Dear Senator Potts:

The Attorney General asked me to respond to your recent letter you sent containing a packet of material that Mr. O'Connell, your constituent, had sent to you.

Mr. O'Connell has sent a similar package of material to a number of legislators, state and federal. I enclose the response that the Department of Transportation gave to Senator Trumbo. I also enclose a copy of the response that Senator Kevin Miller gave to Mr. O'Connell.

I have reviewed the material that you furnished. Mr. O'Connell's initial approach to the Department of Transportation sought to invoke § 33.1-199 in order to have the entrance that the Department acquired in 1935 replaced. That statute did not come into existence until 1938, so that statute cannot be used to require the Department to replace the entrance.

It appears, as well, that the Department and Mr. O'Connell's predecessor in title reached an agreement in 1935, which would bind all of Mr. Hiner's successors in title. With the passage of time any breach of that agreement made with Mr. Hiner cannot be enforced legally.

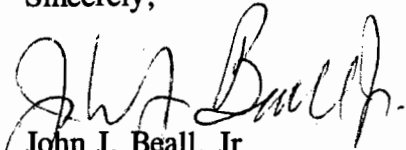
The second approach to the Department involves Mr. O'Connell seeking an entrance permit. The Department routinely grants those permits. The permittees then do the work required by the permit. I share with you a copy of an Official Opinion dated April 8, 1975 that opines that a landowner can be required to pay for items that are installed on the right-of-way pertaining to an entrance. With respect to working in or crossing the Jackson River, which the Commonwealth owns, the Department of Transportation has no jurisdiction over it, so

The Honorable H. Russell Potts, Jr.
September 20, 1996
Page 2

Mr. O'Connell was advised to deal with the Virginia Marine Resource Commission and the Corps of Engineers. It appears to me that the Department of Transportation has handled this matter in accordance with its policies and the law.

In sum, the Attorney General is not in a position to assist Mr. O'Connell. I hope that this is responsive to your letter.

Sincerely,



John J. Beall, Jr.
Senior Assistant Attorney General

56/157 (jjb: ltoconel.pot)

Enclosures



COMMONWEALTH of VIRGINIA

James S. Gilmore, III
Attorney General

Office of the Attorney General
Richmond 23219

September 20, 1996

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

The Honorable Kenneth W. Stolle
Member, Senate of Virginia
780 Lynnhaven Parkway, Suite 200
Virginia Beach, Virginia 23452

Re: Anthony M. O'Connell

Dear Senator Stolle:

The Attorney General asked me to respond to your recent letter in this matter. I do not believe an official ruling is necessary.

I have reviewed the material that you furnished. Mr. O'Connell's initial approach to the Department of Transportation sought to invoke § 33.1-199 in order to have the entrance that the Department acquired in 1935 replaced. That statute did not come into existence until 1938, so that statute cannot be used to require the Department to replace the entrance.

It appears, as well, that the Department and Mr. O'Connell's predecessor in title reached an agreement in 1935, which would bind all of Mr. Hiner's successors in title. With the passage of time any breach of that agreement made with Mr. Hiner cannot be enforced legally.

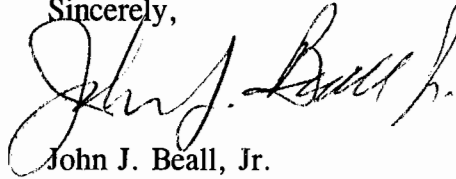
The second approach to the Department involves Mr. O'Connell seeking an entrance permit. The Department routinely grants those permits. The permittees then do the work required by the permit. I share with you a copy of an Official Opinion dated April 8, 1975 that opines that a landowner can be required to pay for items that are installed on the right-of-way pertaining to an entrance. With respect to working in or crossing the Jackson River, which the Commonwealth owns, the Department of Transportation has no jurisdiction over it, so Mr. O'Connell was advised to deal with the Virginia Marine Resource Commission and the Corps of Engineers. It appears to me that the Department of Transportation has handled this matter in accordance with its policies and the law.

With respect to any problem obtaining the entrance permit, the Department's Land Use Permit Manual provides a mechanism to appeal the Resident Engineer's denial of the permit, which the material that you furnished does not indicate has happened yet.

There is no requirement that the Department pay for the work done on the Department's right of way to construct a private entrance. Routinely, such permits are granted and when the entrance is constructed, curb and gutter are required as well as additional paving. I share with you an Official Opinion of the Attorney General dated April 8, 1975 which speaks to the issue of requiring persons to implement the entrance standards at his own expense. The opinion's conclusion is that such a requirement constitutes a valid exercise of the police power.

I hope that this is responsive to your letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Beall, Jr.", written in dark ink.

John J. Beall, Jr.

Senior Assistant Attorney General

56/157 (jjb: ltoconel.sto)



COMMONWEALTH of VIRGINIA

James S. Gilmore, III
Attorney General

Office of the Attorney General
Richmond 23219

September 20, 1996

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

Mr. Anthony M. O'Connell
216 Governor's Lane, Apt. 12
Harrisonburg, Virginia 22801

Re: Route 220; Highland County

Dear Mr. O'Connell:

You have apparently written to a number of legislators, state and federal, about the problem that you have in Highland County due to the Department of Highway's acquisition of property in 1935 that has left the Jackson River between your property and Route 220. Senator Robb and Delegate Flora Crittenden forwarded your letters to the Attorney General asking that he write you directly. The Attorney General asked me to respond. I have responded directly for the Attorney General to State Senators Potts, Stolle and Delegate Forbes.

You told Delegate Crittenden that your "goal is to obtain a binding completion date for the bridge by the Highway Department or a clear opinion that the landowner is responsible." You asked Senator Robb "for an independent ruling that leaves no room for ambiguity or confusion".

Section 33.1-199 was enacted in 1938, three years after the Department of Highways purchased the property from your predecessor in title. As a consequence that statute has no relevance to your issue.

The Department of Highways purchased the property that has led to the situation that you face in 1935. Any breach of that bargain with your predecessor in title would have had to be litigated long before now.

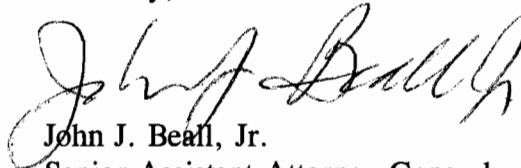
With respect to § 33.1-197, the Department of Transportation, successor to the Department of Highways, routinely grants entrance permits, subject to being satisfied that the safety of the users of such entrance and those on the main highway will not be compromised by the placement and utilization of the entrance. Construction of the entrance, however, is the responsibility of the landowner, including such items as curb and gutter or deceleration or acceleration lanes. The Attorney General in April 1975 was asked for an opinion whether a

Mr. Anthony M. O'Connell
September 20, 1996
Page 2

landowner can be required by the Department of Highways "to construct at his own expense, a turn-off or deceleration lane on the public right of way." It was the opinion of the Attorney General, then and it still is today, that the inherent police power that the Department possesses would permit the Department to require the landowner to construct those features. I enclose a copy of that opinion to then Delegate D. French Slaughter. While that opinion directly addressed § 33.1-198 (commercial entrances) the reasoning is equally applicable to § 33.1-197 (private entrances). Thus, the Department of Transportation has no responsibility under the entrance permit statutes to construct the bridge that apparently is necessary to reach Route 220 from your property.

I hope that this is responsive to your inquiries to Senator Robb and Delegate Crittenden.

Sincerely,



John J. Beall, Jr.
Senior Assistant Attorney General

56/157 (jjb: ltoconel.rob)

c: The Honorable Charles S. Robb
The Honorable Flora D. Crittenden



COMMONWEALTH of VIRGINIA

James S. Gilmore, III
Attorney General

Office of the Attorney General
Richmond 23219

September 23, 1996

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

The Honorable Jay Katzen
Member, House of Delegates
Post Office Box 3004
Warrenton, Virginia 22186

RE: Anthony M. O'Connell
Virginia Department of Transportation
Route 220; Highland County

Dear Delegate Katzen:

The Attorney General asked me to respond to your recent letter regarding this matter.

Mr. O'Connell has sent a similar package of material to a number of legislators, state and federal. I enclose the response that the Department of Transportation gave to Senator Trumbo. I also enclose a copy of the response that Senator Kevin Miller gave to Mr. O'Connell.

I have reviewed the material that you furnished. Mr. O'Connell's initial approach to the Department of Transportation sought to invoke § 33.1-199 in order to have the entrance that the Department acquired in 1935 replaced. That statute did not come into existence until 1938, so that statute cannot be used to require the Department to replace the entrance.

It appears, as well, that the Department and Mr. O'Connell's predecessor in title reached an agreement in 1935, which would bind all of Mr. Hiner's successors in title. With the passage of time any action on that agreement made with Mr. Hiner by the Department cannot be maintained.


The second approach to the Department involves Mr. O'Connell seeking an entrance permit. The Department routinely grants those permits. The permittees then do the work required by the permit. I share with you a copy of an Official Opinion dated April 8, 1975 that opines that a landowner can be required to pay for items that are installed on the right-of-way pertaining to an entrance. With respect to working in or crossing the Jackson River, which the Commonwealth owns, the Department of Transportation has no jurisdiction over it, so Mr. O'Connell was advised to deal with the Virginia Marine Resource Commission and the Corps

The Honorable Jay Katzen
September 23, 1996
Page 2

of Engineers. It appears to me that the Department of Transportation has handled this matter in accordance with its policies and the law.

In sum, the Attorney General is not in a position to assist Mr. O'Connell. I hope that this is responsive to your letter.

Sincerely,

A handwritten signature in cursive script, reading "John J. Beall, Jr.", written in dark ink.

John J. Beall, Jr.
Senior Assistant Attorney General

56/157 (jjb: katzen)

Enclosures

Start of Mr. Beall's enclosures

I believe the following six pages were included with Mr. Beall's letters of September 20, 1996, to Senator Potts and to Senator Stolle, and in his letter of September 23, 1996, to Delegate Katzen, as enclosures. To reduce file size and to try to keep it simple, they are only included once.

COMMONWEALTH OF VIRGINIA



KEVIN G. MILLER
26TH SENATORIAL DISTRICT
CITY OF HARRISONBURG, CULPEPER, PAGE,
AND RAPPAHANNOCK COUNTIES AND PART OF
FAUQUIER, ROCKINGHAM, AND STAFFORD COUNTIES
2 SOUTH MAIN STREET
SUITE 608
HARRISONBURG, VIRGINIA 22801

COMMITTEE ASSIGNMENTS
PRIVILEGES AND ELECTIONS, CHAIRMAN
FINANCE
TRANSPORTATION
RULES

SENATE

September 3, 1996

Mr. Anthony M. O'Connell
216 Governors Lane, Apt. 12
Harrisonburg, VA 22801

Dear Mr. O'Connell:

Thank you for the letter and package of documents relating to your property adjacent to Highway 220.

In reviewing your inquiries and the responses you received, it certainly appears to me that the responses by VDOT officials have been made in a prompt and courteous manner. It also appears that the responses have been thorough and accurate.

I am not a lawyer, but even if I were, I do not feel it would be appropriate for an individual legislator to take a position on an issue such as this.

Also, I can find no specific point of law at issue upon which a question to the attorney general could be propounded in a request for an official ruling.

Confident that the final resolution of your efforts will be fair to you, and to all Virginia Taxpayers, I am

Sincerely yours,

Kevin G. Miller
State Senator

Copy to: Honorable Robert E. Martinez, Secretary of Transportation
David R. Gehr, Commissioner - VDOT



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219

DAVID R. GEHR
COMMISSIONER

September 5, 1996

Route 220 - Highland County

The Honorable Malfourd W. Trumbo
Member, Virginia Senate
P. O. Box 44
Fincastle, Virginia 24090

Bo
Dear Senator Trumbo:

This is in response to your recent letter concerning Mr. Anthony M. O'Connell's request for assistance in obtaining an entrance to his property located in Highland County. From the information submitted by Mr. O'Connell, you are aware that the Virginia Department of Transportation (VDOT) has thoroughly reviewed this issue in order to resolve the situation.

Originally, VDOT acquired property from the Hiner family in 1935 for the construction of improvements to what is now known as Route 220—including the relocation of the river in this area. Subsequently, Mr. O'Connell acquired the remaining property in 1989 and has focused on the entrance that was affected by VDOT's construction and acquisition in 1935. The Hiners were compensated for the total impact to the property—including payment for damages to their remaining lands.

VDOT has determined that this agency does not have any legal or moral obligation to construct an entrance as requested by Mr. O'Connell. This has been explained to him through numerous letters—as has VDOT's willingness to issue a land use permit (in accordance with our policy) so that he can construct a private driveway.

Hopefully, this information will be helpful in responding to your constituent.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dave".

David R. Gehr
Commissioner

Commonwealth Transportation Board the cost of such oiling. This section does apply to any highway which is a part of the State Highway System or the secondary system of state highways. (Code 1950, § 33-112; 1970, c. 322.)

§ 33.1-197. Connections over shoulders of highways for intersecting private roads. — The Commonwealth Transportation Commissioner shall permit, at places where private roads leading to and from private homes intersect improved highways, suitable connections from such points of intersection, over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof, so as to provide for the users of such private roads safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways. (Code 1950, § 33-116; 1970, c. 322.)

§ 33.1-198. Connections over shoulders of highways for intersecting commercial establishment entrances. — The Commonwealth Transportation Commissioner shall permit, at places where commercial establishment entrances are desired to intersect improved highways, suitable connections from such points of intersection over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof, so as to provide for the users of such entrances safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways; provided, however, that any person desiring such an entrance shall first be required to obtain a permit therefor from the Commonwealth Transportation Commissioner and shall provide the entrance at his expense and construct or have constructed the same, including such safety structures as are required by the Commonwealth Transportation Commissioner, pursuant to "Minimum Standards of Entrances to State Highways" on file in the Department of Transportation, Richmond, Virginia, and in the office of the Highway District Engineer and Resident Engineers.

All commercial entrances whether or not constructed under this section shall be maintained by the owner of the premises at all times in a manner satisfactory to the Commonwealth Transportation Commissioner.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$5 nor more than \$100 for each offense. Following a conviction and fifteen days for correction, each day during which the violation continues shall constitute a separate and distinct offense and be punishable as such. Such person shall be civilly liable to the Commonwealth for actual damage sustained by the Commonwealth by reason of his wrongful act. (Code 1950, § 33-116.1; 1956, c. 91; 1966, c. 378; 1970, c. 322.)

§ 33.1-199. Replacing entrances destroyed by Commissioner. — The Commonwealth Transportation Commissioner shall replace any entrance destroyed by him in the repair or construction of his highways and replace any such entrance and leave any such entrance in the same condition as it was prior to such repair or improvement. (Code 1950, § 33-117; 1970, c. 322.)

§ 33.1-200. Paying for damages sustained to personal property by reason of work projects, etc. — The Commonwealth Transportation Commissioner is authorized and empowered, in his discretion, to pay and settle claims and demands against the Commonwealth arising as a result of damages sustained to personal property by reason of work projects or the operation of state-owned or operated equipment when engaged in the construction, reconstruction or maintenance of the State Highway System, unless said claims or

OPINIONS
OF THE
ATTORNEY GENERAL
AND
REPORT
TO THE
GOVERNOR OF VIRGINIA



From July 1, 1974 to June 30, 1975

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supplies
Richmond
1975

present ones do not. I believe that these applicable sections need no explanation.

In closing, I reiterate that your inquiry involves a factual determination which must be made within the legal parameters set out above.

HIGHWAYS—Commercial Entrances—Authority of Highway Commissioner to require landowner to construct right turn lane at own expense.

April 8, 1975

THE HONORABLE D. FRENCH SLAUGHTER, JR.
Member, House of Delegates

This is in response to your recent inquiry as to whether the Highway Department can require a landowner to construct, at his own expense, a turn-off or deceleration lane on the public right of way. As I understand it, the situation prompting your request involves an entrance from a highway onto private commercial property. You further indicate that §§ 33.1-12(3) and 33.1-198 of the Code of Virginia (1950), as amended, have been cited as authority for such requirement.

The general rule is that an abutting property owner has the right of ingress and egress to a public street, limited by the police power of the State to reasonably control the use of streets so as to promote the public health, safety, and welfare. *Highway Commissioner v. Easley*, 215 Va. 197, 207 S.E.2d 870 (1974); *Azalea Corp. v. City of Richmond*, 201 Va. 636, 112 S.E.2d 862 (1960); *Wood v. City of Richmond*, 148 Va. 400, 138 S.E. 560 (1927). Under § 33.1-198 of the Code, the State Highway and Transportation Commissioner has been delegated the responsibility to issue permits for connections over shoulders of highways for intersecting commercial establishments. That section provides:

"... any person desiring such an entrance shall first be required to obtain a permit therefor from the State Highway Commissioner and shall provide the entrance at his expense and construct or have constructed the same, including such safety structures as are required by the State Highway Commissioner, pursuant to 'Minimum Standards of Entrances to State Highways'..."

The manual of standards, as incorporated in this statute, has been duly adopted by the State Highway and Transportation Commission, pursuant to § 33.1-12(3) of the Code and provides at pages 14 and 15 that:

"The highway engineer shall require a right turn lane at any commercial entrance if, upon consideration of the nature of the commercial establishment, its potential growth and/or change, its present and future anticipated traffic volume, and the present and anticipated traffic volume along the state highway(s) affected by the entrance, such lane is desirable and reasonably appropriate to prevent the reduction of safe traveling conditions or the reduction of the traffic or to prevent the backing up of vehicles along the main traveled way of a State highway."

Pursuant to this authority the Highway and Transportation Commissioner may require construction of a right turn lane where a commercial entrance intersects with the right-of-way of a public highway.

Implicit in your inquiry is the additional question as to whether the legislature can constitutionally require a landowner to implement the minimum standards at his own expense. Although I can find no case law directly applicable to this point, it is my opinion that such requirement

constitutes a valid exercise of the police power. I base this conclusion upon a ruling of the Virginia Supreme Court in the analogous situation presented in *Sanitation Commission v. Craft*, 196 Va. 1140, 87 S.E.2d 153 (1955), in which it was held that the sanitation commission's requirement that a landowner connect with a public water system at his own expense was constitutional.

In summary, it is my opinion that § 33.1-12(3) of the Code provides adequate authority for the enactment of minimum standards and that § 33.1-198 of the Code is correctly interpreted to require that, in appropriate circumstances, a landowner construct a right turn lane for a commercial entrance at his own expense.

HIGHWAYS—County, Through Use of Its Police Powers, May Abandon or Impose Restrictions on Road to Protect Its Property.

BOARDS OF SUPERVISORS—Authority—Cannot on its own motion barricade road; Department of Highways has jurisdiction over secondary system of State Highways.

HIGHWAYS—Secondary System—Control, supervision and management vested in Department of Highways.

April 1, 1975

THE HONORABLE FORD C. QUILLEN
Member, House of Delegates

This is in response to your recent letter wherein you inquire as to whether a county can (1) on its own barricade a road that is within the Secondary System of State Highways or (2), in the alternative, request that the road be removed from the System and then barricaded.

According to your letter and additional information and plats supplied by Bruce K. Robinette, Director, Lenowisco Planning District Commission, the road in question, State Secondary Route 677, runs to an abandoned strip mine leased by Wise County as a sanitary landfill. The last house on this road is located about one-half mile from the terminus of the road. Beyond the house, the road serves two family cemeteries, the landfill in question, and land owned by a landowner who is in agreement with the road closure.

You further advise that at present the County of Wise is unable economically to control recurring malicious vandalism within the landfill area, and such vandalism is serious enough to endanger the continued operation of the landfill. The county represents that it could control the vandalism if it were to erect gates, with lights, across the road beyond the last house served thereby. These gates would be open from 8:00 a.m. until 4:30 p.m. on weekdays, and until 12:00 noon on Saturdays. The caretaker of the landfill would be available to admit those wanting to visit the cemeteries on weekends and holidays.

In answer to your first question, § 33.1-69 of the Code of Virginia (1950), as amended, vests the control, supervision, management and jurisdiction of the Secondary System of State Highways in the Department of Highways and Transportation, and specifically precludes governing bodies from exercising any of these powers. See Opinion of the Honorable W. Roy Smith, Member, House of Delegates, dated February 27, 1964, and found in Report of the Attorney General (1963-1964) at 9 and the case of *Ord v. Fugate*, 207 Va. 752, 152 S.E.2d 54 (1967). The Board of Supervisors, having no control over the road in question, may not, on its own motion, barricade the road.

In answer to your second question, as you are aware, the State Highway and Transportation Commission does not have the power to abandon secondary roads since this power is granted to the counties under § 33.1-151 of

End of Mr. Beall's enclosures



COMMONWEALTH of VIRGINIA

Richard Cullen
Attorney General

Office of the Attorney General
Richmond 23219

900 East Main Street
Richmond, Virginia 23219
804 - 788 - 2071
804 - 371 - 8948 TDD

September 16, 1997

Mr. Anthony M. O'Connell
216 Governor's Lane, Apt 12
Harrisonburg, Virginia 22801

Dear Mr. O'Connell:

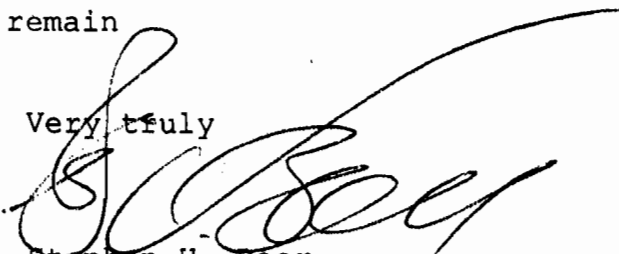
Attorney General Cullen asked that I respond to your letter dated September 23, 1997. In that letter you have asked the Attorney General to address a particular phrase in a 1935 contract between the Commonwealth and the Hiners.

A review of the materials you mailed with your September 3, 1997 letter (in particular, page 501-504) demonstrates that your concerns involve issues related to what may amount to a private cause of action. Accordingly, I would suggest that you consult with private counsel.

As I mentioned in my previous reply, a letter which you referenced, the Office of the Attorney General is the law firm for the various state agencies of the Commonwealth, accordingly, we are unable to assist you in this matter.

With kindest regards, I remain

Very truly


Stephen U. Baer
Assistant Attorney General

Book

Pages 501-504

Senior Assistant Attorney General,

~~*A roadway is to be provided for a crossing.....*~~

Police Power

Summary

The lawyer recommended that I call this Senior Assistant Attorney General concerning the access problems to Parcel 17 in Fairfax County (pages 208-209). If there are 143 attorney's in the Virginia Attorney General's Office,¹ the chances of getting this particular attorney at random would be 1 in 143.²

The same Senior Assistant Attorney General is obstructing the access to my property in Highland County (pages 512-515). If the chances of this Senior Assistant Attorney General being involved with my property in Highland County are also 1 in 143, the probability of this same individual being involved with both parcels, by chance, is approximately $143 \times 143 = 20,449$, or 1 in 20,449.

(I could not access my property³ in Highland County after more than six years of trying.⁴ I believed the law required the Commonwealth to replace the entrance they destroyed.⁵ After my request to grade both banks of the river for a temporary crossing was entangled in a bureaucratic knot (page 519), I wrote the 140 members of the Virginia General Assembly and asked for their interpretation of the law, and requested that they ask the Virginia Attorney General⁶ for an independent ruling (page 505). Immediately afterward, the Virginia Department of Transportation (VDOT) sent me a copy of the 9/11/35 Agreement that stated the Commonwealth was responsible for providing the entrance. The Senior Assistant Attorney General then denied the replacement, avoided any known mention of the words: *A roadway is to be provided for a crossing in the 9/11/35 Agreement (pages 510-511)⁷, and prevented an official ruling.⁸)*

¹ 108 Assistant Attorney Generals, 25 Senior Assistant Attorney General's, and 10 deputies, counsels, etc..
From the 1996-1997 *Report of the Secretary of the Commonwealth*.

² Aside from the recommendation source.

³ I am trying to keep this simple without being misleading. I can access a portion, but not the most usable portion where I wanted to build.

⁴ Based on the Commissioner's letter of 9/5/96 (page 521):*Mr. O'Connell acquired the remaining property in 1989 and has focused on the entrance that was affected by VDOT's construction and acquisition in 1935.*

⁵ Virginia Statues (pages 507-508)

⁶ I did not write the Attorney General's Office directly because of their previous instructions (page 454).

⁷ The 9/11/35 Agreement was apparently withheld from the General Assembly. Asking the 140 members if that were so would be helpful. To withhold it from the General Assembly, after VDOT sent it to me, means, in my mind, that the original withholding of it was the Senior Assistant Attorney General's agenda, and not VDOT's.

⁸ I believe the Senior Assistant Attorney General would not have done this if he did not have something to hide. I am guessing that anything he does unofficially, leaves him technically unaccountable.

The Senior Assistant Attorney General's enclosed letter to State Senator Stolle (page 512) is a sample of what was apparently given to the members of the General Assembly. It does not address the relevant issues in my letter, the 9/11/35 Agreement, or the law. The Senior Assistant Attorney General's letter is about power. It discredits me, prevents an official ruling, uses an irrelevant opinion on commercial entrances when mine is private, foresees the possibility of a more entangled entrance permit, is worded to leave the Senior Assistant technically unaccountable, and focuses on police power. Any doubts I had that the words: *A roadway is to be provided for a ...crossing...*, do not mean what they say, were dispelled by the Senior Assistant's flagrant avoidance of mentioning them. Providing a roadway across the river is the issue.

The 1 in 20,449 probability increases if the justifications for denying the replacement entrance are factored in:

If the probability that this same Senior Assistant Attorney General would deny a private entrance using an opinion based on commercial entrances, when separate codes apply to each (§ 33.1-197 vs. § 33.1-198, page 507-508), is also 1 in 143,⁹ the probability of all the above events happening, by chance, would be $143 \times 143 \times 143 = 2,924,207$ or 1 in 2,924,207.

If the probability that this same Senior Assistant Attorney General would deny a specific entrance without a known mentioning of the words: *A roadway is to be provided* [by the Commonwealth] *for a..... crossing.....* [across the river], contained in the recorded Agreement concerning that specific entrance, is also 1 in 143,¹⁰ the probability of all the above events happening, by chance, would be $143 \times 143 \times 143 = 418,161,601$, or 1 chance in 418,161,601.

If (and this is more difficult to quantify) the probability that the Attorney's General's office addressed my question when I trusted the lawyer (in 1987, pages 208-209), but none of the 143 attorneys did afterward¹¹ (1994, pages 453-454),¹² the probability of all the above events happening, by chance,¹³ is something between 1 in 2 and 1 in 143. If 1 in 5 is used, the probability of all the above events happening by chance would be $143 \times 143 \times 143 \times 143 \times 5 = 2,090,808,005$, or approximately 1 in 2 billion.¹⁴

⁹ This 1 in 143 probability could be tested for accuracy by asking 143 attorneys, uninfluenced by the fraud operation, to take an accountable position that would survive review.

¹⁰ This 1 in 143 probability could be tested for accuracy by asking 143 attorneys, uninfluenced by the fraud operation, to take an accountable position on the words: *A roadway is to be provided for a crossing.....* in the 9/11/35 Agreement between the Commonwealth and the previous landowner, and allow it to be reviewed.

¹¹ 4/20/88 was when I realized the lawyer had set us up, and, I believe, the lawyer knew I knew.

¹² The CPA and lawyer apparently felt comfortable to run another deception after I wrote the Attorney General on 10/12/94. See *Cover Ups and Deceptions on Estate Accounting*, # 9 (page 432).

¹³ Aside from the fact that the obvious answer would go against the lawyer in 1994.

¹⁴ This figure increases dramatically if the Senior Assistant Attorney General's other justifications are factored in (to discredit me, to deny an official ruling, to justify with police power, etc.,).

Similar pattern

(Plant obstacles to create conflict. Use other parties to carry out the agenda. Use the conflict to discredit and create animosity towards the targeted individual, by making that person appear responsible.)

The Senior Assistant Attorney General's defense and reinforcement of the obstructions, after I wrote the General Assembly, leads me to believe that he was behind it earlier. I believe that it was his agenda, and that he used VDOT to carry it out; just as the CPA and lawyer use a family member, or an honest lawyer like Mr. Mackall, to unwittingly carry out the CPA-lawyer agenda. I do not believe VDOT would do what they did unless they were advised or influenced from a powerful source.¹⁵ Using VDOT, environmental authorities, and police power, to sabotage and discredit another's efforts, would give the operation a great advantage in real estate scams.

A primary tool of the fraud operation is to discredit. This is what they do. They are very good at it. If I never contested the obstruction(s) (such as the withholding of the 9/11/35 Agreement and the ones mentioned on page 519), my failure to get access to my property in Highland County could be used to make my sisters believe I could not get access to parcel 17 in Fairfax County. I believe they would be right. If I petition for help, it can be made to appear that I am causing the conflict, that I am criticizing VDOT.¹⁶

If I never contested the letter discrediting me to Senator Stolle, the Senior Assistant could use it to counter a future petition for help elsewhere, like the lawyer used his letter discrediting me to Mr. Prichard (page 487), to counter my petition for help from Judge Kenny (page 466, 467). The letters have the appearance of truth because the reader assumes a person in that position would not mislead them. That appearance is reinforced if I, who am being discredited, don't contest it, and the lawyer¹⁷ who received it, doesn't contest it. The structure and dynamics are such that the letters appear to stand as the truth, unless they are contested.

¹⁵ It may be relevant that Senior Assistant Attorney General works in the Government Operations Division of the Attorney General's Office.

¹⁶ Using VDOT would be an especially effective tool in rural areas. To criticize VDOT in rural areas, where it provides good services and good employment, is a sure way to turn people against you:

	Area in square miles	Population	(1996-1997 Report of the Secretary of the Commonwealth)
Fairfax County	399	904,400	
Highland County	416	2,635*	

* I believe most of the people in Highland County have been given the *I-am-causing-VDOT-problems* version. The General Assembly could be used as a control group. Perhaps 3 of the 140 members knew anything about me before I wrote them on 8/19/96. Asking the 140 members if they were given the *I-am-causing-VDOT-problems* version, or if they were given the *A roadway is to be provided for a crossing ...* information, would be helpful.

¹⁷ On some level, I believe there is the tendency for a reader to assume a letter to another lawyer, if uncontested by that other lawyer, is true, even though it is unrealistic to believe that the other lawyer would have the time to investigate what all is behind it. That Senator Stolle was also a candidate for State Attorney General at the time, would add to that appearance.

Request

I believe the Senior Assistant Attorney General is the source of the trouble in Highland County, that he is part of the fraud operation, and that he is the most powerful part that I am aware of. I believe he has tried to provoke me into a conflict with VDOT and Highland County, using the same pattern that the lawyer and CPA have used to try to provoke me into a conflict with my mother and sister. Surrounding him with sunshine, preventing him from hiding behind any other person or device¹⁸, and trying to pin him down to an accountable position on the issues such as those on page 513, may lead to who else might be involved, by seeing who comes out to cover for him¹⁹. The problem is to keep him from using the power of his office to induce²⁰ or coerce honest people to unwittingly cover for him and implicate themselves. This makes it difficult to separate him from them. I ask that some authority warn the public, honest attorneys and public officials, state employees, etc., about this operation and how it works, so that they have a chance to understand what they would be getting into, before they get involved.

1	5	8	12
2	6	9	13
3	7	10	
4		11	

Highland County Entrance		Fairfax County Entrance	
14	15	16	17

¹⁸ Not:

- (1) The police power of the state or the police power of the county. I do not believe the enclosed opinion: *HIGHWAYS- County, Through Use of Its Police Powers, May Abandon or Impose Restrictions on Road to Protect Its Property*, is a coincidence (page 515).
- (2) Attacking my credibility.
- (3) VDOT's resident Engineer, VDOT's Right of Way Engineer, or the Commissioner.
- (4) That an entrance permit that may denied.
- (5) The people and public officials of Highland County
- (6) The members of the Virginia General Assembly (Since my 140 requests through the General Assembly for a ruling were dismissed, and the seems to be the reason, I assume the members of the Virginia General Assembly believed the Senior Assistant, and not me. He may also be able to get people to dismiss this work, under the guise that it is not from a credible source).
- (7) The Hiner descendants (Perhaps to try to get them to say that the Hiner's built the bridge that was there on the public right of way, and not the Commonwealth?)
- (8) To say that I am going to work in the river after I say I am not.
- (9) The Marine Resources Commission
- (10) The Army Corp of Engineers
- (11) Federal and State environmental laws.

¹⁹ Probably by discrediting me. That is an established pattern.

²⁰ Perhaps under the guise that they would be doing something noble, by stopping me from allegedly causing VDOT problems, causing lawyers problems, or causing my own family problems.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

1401 EAST BROAD STREET
RICHMOND, 23219

DAVID R. GEHR
COMMISSIONER

November 3, 1997

The Honorable Charles J. Colgan
Member, Virginia State Senate
P. O. Box 1650
Manassas, Virginia 20108-1650

Chuck
Dear Senator Colgan:

This is in reply to your letter dated October 17, 1997 regarding correspondence you received from Mr. Anthony M. O'Connell concerning access to his property in Highland County.

Mr. O'Connell has previously written two U.S. Senators, Congressman Bob Goodlatte, State Senators Malfourd Trumbo, H. Russell Potts, Jr., Kevin G. Miller, Kenneth W. Stolle, and Delegates J. Randy Forbes and Flora Davis Crittenden, as well as the Governor and the Department of Transportation. These individuals either responded directly to Mr. O'Connell or referred the matter to the Attorney General for response.

Mr. O'Connell had previously contacted the local Resident Engineer, Jerry R. VanLear, for a permit. The Department routinely grants permits of this type. The permittee then performs the work required by the permit. One aspect of Mr. O'Connell's request for a permit concerned fording the Jackson River, which the Commonwealth owns, over which the Department of Transportation has no jurisdiction. Therefore, Mr. O'Connell was advised to deal with the Virginia Marine Resources Commission and the Corps of Engineers. From my viewpoint, it appears the Department of Transportation has handled this matter in accordance with its policies and the law.

I believe this current issue has moved into the legal arena and the Attorney General's Office has already provided Mr. O'Connell with their opinion concerning his views. I do not know of any additional issues identified by Mr. O'Connell for which the Department of Transportation has authority.

If I can be of further assistance, please let me know.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Dave", written over a horizontal line.

David R. Gehr
Commissioner



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219-1939

DAVID R. GEHR
COMMISSIONER

STUART A. WAYMACK
DIRECTOR, RIGHT OF WAY AND UTILITIES

November 17, 1997

Mr. Anthony M. O'Connell
216 Governor's Lane, Apartment 12
Harrisonburg, Virginia 22801

Dear Mr. O'Connell:

As I promised when we met on Friday, November 14, 1997, enclosed is a copy of the September 15, 1935, agreement between VDOT and the "Hinners". Also enclosed is a copy of the actual deed conveying the property to VDOT, which is dated October 21, 1935, and recorded in the Highland County Courthouse in Deed Book 29, Pages 503 through 505.

For your benefit, the Virginia Department of Transportation reads the handwritten section of the agreement with the Hinners to be as follows:

Consideration: \$750.00 for land, fencing, tearing down or moving three buildings, apple and sugar trees, and all damages to residue.

It is agreed the State is to lay a 1" water line from the north side of road at Station 1077+90 to a point back of her house and construct a concrete watering trough 2' x 4' x 2'.

A road way is to be provided for a foard crossing at approximate Station 1044+50. The timber is reserved by the owner and is to be cut under the standard timber clause.

The owner agrees to clear the right of way before payment is made and in the event they should fail to do so, the State has the right to remove same and deduct the cost from the above consideration.

(Where handwriting was not clear, the words have been underlined and italicized.)

The correct station is 1094+50. Station 1044+50 is not on the landowners property.
Reference sheet 13 of State Highway Project 724-F.

Mr. Anthony M. O'Connell

Page 2

November 17, 1997

As I indicated to you, I have no reason to believe the consideration described was not provided to the Hiners some 62 years ago. Also, the Attorney General's Office has provided comments on the legal aspects of this situation.

Should you need to meet with me again in the future, an appointment arranged through my secretary will assure that I will be here.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Waymack", with a stylized flourish at the end.

S. A. Waymack, Director
Right of Way and Utilities Division

RRB:efs
Enclosures

This Agreement, Made this 11 day of Sept., 1935, by and between J. H. Hiner, Harry J. Hiner & Mary J. Hiner of Highland County, Virginia, of the first part, hereinafter called "Landowner," and COMMONWEALTH OF VIRGINIA, of the second part, hereinafter called "Commonwealth,"

Witnesseth: That, Whereas, It is proposed by the Commonwealth to construct or otherwise improve a part of the State Highway No. 18, Project 724 F, between Bath Co. Line and Vanderpool in Highland County, Virginia, in accordance with the plans and specifications thereof on file in the office of the Department of Highways, Richmond, Virginia;

Now Therefore, For and in consideration of the premises, and of the benefits accruing or to accrue to the landowner by reason of the location and construction, or other improvements of said road, and for the further consideration of one dollar in hand paid to the landowner, receipt of which is hereby acknowledged, the landowner doth hereby covenant and agree to grant and convey in fee simple unto the Commonwealth of Virginia by good and sufficient deed of general warranty, properly executed, acknowledged and delivered, and free from encumbrances, and with usual covenants of title, upon demand of the Commonwealth, and upon payment to the landowner of the additional consideration as hereinbelow detailed a strip or parcel of land as shown by the plat and survey of said road along, through or over said lands, said plat and survey being on file in the office of the Department of Highways, at Richmond, Virginia, identified as Sheet No. 13 & 14, Project No. 724 F, Route 18, all of the said strip or parcel of land being located in Highland County, Virginia, and briefly described as follows:

Beginning at a point on the center line of Route # 18 between Bath Co. Line and Vanderpool, shown on the plans as being Sta. 1085+60 and adjoining the lands of Henkle Terry thence N15°54'W 207.6 ft. to Sta. 1087+67.6 thence with a 7°-00 curve (right) 1028.6 ft. to Sta. 1097+96.2; thence N56°06'E 287.5 ft. to Sta. 1100+83.5; thence with a 16° curve (left) 7.5 ft. to the lands of J. E. Hiner, being Sta. 1100+91.

The land to be conveyed hereunder being a strip or parcel of varying width lying on the West (left) side of and adjacent to the herein above described centerline, and being 40 ft. in width at Sta. 1085+60 thence narrowing to 35 ft. at Sta. 1087+00; and to 30 ft. from Sta. 1088+50 to Sta. 1096+00; thence widening to 35 ft. at Sta. 1097+00 and thence narrowing to 25 ft. at Sta. 1098+00 and continuing 25 ft. to Sta. 1100+91.

Also a strip or parcel of varying width lying on the East (right) side of and adjacent to said centerline and being 85 ft. wide at Sta. 1085+60; thence narrowing to 83 ft. at Sta. 1088+00 and to 75 ft. at Sta. 1089+00; thence widening to 85 ft. at Sta. 1098+00; thence narrowing to 25 ft. at Sta. 1099+00 and continuing 25 ft. to Sta. 1100+91.

Said strips or parcels containing 3.55 acres, more or less, [REDACTED]

acres are included in the present right of way, leaving acres, more
or less additional land.

Consideration: \$750.00 for land, fencing, treeing down
or moving three buildings, apple and sugar
hues, and all damage to residence

It is agreed the State is to lay a 1" water
line from the north side of road at sta 1097+90
to a point back of here house and construct a
concrete watering trough 12 x 4 x 2.

A road way is to be provided for a foard
crossing at appx sta 1094+50 The timber is
reserved by the owner and is to be cut under
the Standard Timber clause.

55 the owner agrees to clear the right
of way before payment is made, and in the
event they should fail to do so, the State has
the right to ⁵⁰move said road and deduct the cost
from the above consideration.

In event the additional consideration hereinabove referred to is, in the opinion of the road officials of the Com-
monwealth, excessive, the Commonwealth shall not be obligated by this agreement.

This agreement shall be binding upon the landowner from and after execution thereof by the landowner, and shall
become null and void one year from the date hereof, and the rights of all parties shall cease and determine, unless
further extended by the landowner, or unless within that time, or any extension thereof, the Commonwealth shall have
commenced construction or improvement of said road, along, through or over said strip or parcel of land, or shall have
notified the landowner of its intention to demand deed under the provision hereof, or shall have demanded a deed.

The landowner covenants and agrees for himself, his heirs and assigns and successors, that the considerations
herein mentioned shall be in lieu of any and all claims to compensation and damages by reason of the location, con-
struction and maintenance of said road.

WITNESS the following signatures and seals:

"A road way is to be provided for a
foard crossing at appx sta 1094+50"

It is a Hine [SEAL]
Harry S. Hiner [SEAL]
mary S Hiner [SEAL]

STATE OF VIRGINIA,

COUNTY OF _____

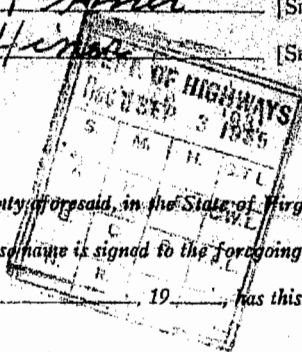
To-wit:

I, _____, a Notary Public, in and for the County aforesaid, in the State of Virginia,
do certify that _____ whose name is signed to the foregoing and
annexed writing, bearing date on the _____ day of _____, 19____, has this day
acknowledged the same before me in my County aforesaid.

Given under my hand this _____ day of _____, 19____.

Notary Public.

My Commission expires _____



En **Bred**

October 19, 1902

Nov. 10, 1936

Presented in office and, with certificate, admitted to record at 11 o'clock A. M.

led to record at 11 o'clock A. M.
[Signature] Clerk

Arcuit Court of Highland Co.

Recorded, Deed Book #29

Page 503 and 525

Paid \$ ^{1.50} paid by
L. B. Jones
 (No U. S. Revenue Stamp Required.)

This Deed. Made this 21st day of October, 1935, by
and between D. H. A. Hiner, Bartley T. Hiner and Mary T. Hiner

of Highland County, Virginia, hereinafter designated as grantor (even though more than one), and
the COMMONWEALTH OF VIRGINIA, Grantee:

Witnesseth: In consideration of the benefits accruing or to accrue to the said grantor, by reason of the location and
construction, or other improvement of part of Route No. 18 and Project No. 724-F between
Bath County Line and Vanderpool

State Highway System, along, through, or over the lands of the grantor, and for further consideration paid by the
grantee to the grantor, receipt of which is hereby acknowledged, the said grantor hereby grants and conveys unto said
grantee with general warranty of title, a strip or parcel of land over the lands of the grantor needed for the location and
construction or other improvement of said road, the said strip or parcel of land being as shown on a plat and survey of
the said road, along, through or over said lands, on file in the office of the Department of Highways at Richmond, Vir-
ginia, identified as Sheet No. 13 & 14, Project No. 724-F Route No. 18, the said strip or
parcel of land being in Highland County, Virginia, and described as follows:

Beginning at a point on the centerline of Rt. 18, between Bath County
Line and Vanderpool, shown on plans as Sta. 1085+60, adjoining the lands of
H. Henkle Terry; thence N. 15° 54' W., 207.6 Ft. to Sta. 1087+67.6; thence
with a 7° 00' curve to the right, 1028.6 Ft. to Sta. 1097+96.2; thence N.
56° 06' E., 287.3 Ft. to Sta. 1100+83.5; thence with a 16° curve to the
left, 7.5 Ft. to the lands of J. E. Hiner, et al, being Sta. 1100+91.

The land conveyed hereunder being a strip or parcel of varying width,
lying on the West (left) side of and adjacent to the hereinabove described
centerline, being 40 Ft. in width at Sta. 1085+60; thence narrowing to 35
Ft. at Sta. 1087+00; thence narrowing to 30 Ft. from Sta. 1088+50 to Sta.
1096+00; thence widening to 35 Ft. at Sta. 1097+00; thence narrowing to
25 Ft. at Sta. 1098+00; and continuing 25 Ft. in width to Sta. 1100+91.

Also a strip or parcel of varying width, lying on the East (right) side of
and adjacent to said centerline, being 85 Ft. in width at Sta. 1085+60;
thence narrowing to 83 Ft. at Sta. 1088+00; thence narrowing to 75 Ft. at
Sta. 1089+00; thence widening to 85 Ft. at Sta. 1098+00; thence narrowing
to 25 Ft. at Sta. 1099+00, and continuing 25 Ft. in width to Sta. 1100+91.

Said strips or parcels contain 3.55 acres, more or less.

The said grantor covenants that he has the right to convey the said land to the grantee; that he has done no act to encumber the said land; that the grantee shall have quiet possession of the land, free from all encumbrances, and that he will execute such further assurance of the said land as may be requisite.

The said grantor covenants and agrees for himself, his heirs and assigns and successors, that the considerations hereinabove mentioned and paid to him shall be in lieu of any and all claims to compensation and damages by reason of the location, construction and maintenance of said road.

WITNESS the following signatures and seals:

Ll H a Hiner [SEAL]
Harry G. Hiner [SEAL]
Mary G Hiner [SEAL]
[SEAL]

STATE OF VIRGINIA,

County of Highland, To-wit:

I, R. Turner Jones, a Commissioner in Chancery for the Circuit Court in and for the County aforesaid, in the State of Virginia, do certify that D. H. A. Hinar, Harry S. Hinar and Mary T. Hinar, his wife, whose names are signed to the foregoing writing, bearing date on the 21st day of October, 1935, have each acknowledged the same before me in my County aforesaid.

My term of office expires _____

Given under my hand this 10th day of November, 1936.

R. Turner Jones
Commissioner in Chancery

VIRGINIA--HIGHLAND COUNTY

to-wit:

In the office of the Clerk of the Circuit Court for the County
of Highland the 10th day of Nov., 1936

this deed was presented and with the certificate annexed, admitted to record at 11 o'clock A. M.

Teste:

S. H. Beverage
Clerk.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219-1939

DAVID R. GEHR
COMMISSIONER

November 19, 1997

The Honorable Charles S. Robb
Member, United States Senate
The Ironfronts, Suite 310
1011 East Main Street
Richmond, Virginia 23219

Dear Senator Robb:

In your letter of November 6, you requested assistance for the concerns of Mr. Anthony M. O'Connell and a direct response.

The Virginia Department of Transportation (VDOT) and the Virginia Attorney General's Office have been corresponding with Mr. O'Connell for several years. Mr. O'Connell wishes to use an agreement made between VDOT and the previous landowner dated September 11, 1935, to require that an entrance to his property be constructed by VDOT. He has been advised that there is no legal basis that would warrant the expenditure of public funds for a private entrance to his property.

Based on our previous correspondence with Mr. O'Connell, I do not feel that another reply is needed. Please let me know if I may be of further assistance.

Very truly yours,

A handwritten signature in black ink that reads "David R. Gehr".

David R. Gehr
Commissioner



COMMONWEALTH of VIRGINIA

Office of the Lieutenant Governor
Richmond 23219

John H. Hager
Lieutenant Governor

March 11, 1998

(804) 786-2078
FAX: (804) 786-7514
TTY/TDD: 1-800-828-1120
America Online: LtGovHager

Mr. Anthony M. O'Connell
216 Governor's Lane, Apt. 12
Harrisonburg, Virginia 22801

Dear Mr. O'Connell

My staff and I have examined the packet of information you sent relating to access to your property on the Jackson River in Highland County. I confess that we are at a loss to understand what it is, exactly, that you want me to do.

If you want the state to construct a crossing at its expense, I believe the absence of any such obligation by the state has been addressed in several letters. In S. A. Waymack's letter of Jan. 5, 1995, for instance, he points out that Section 33.1-199 was enacted three years after the acquisition of the Hiner property and is, therefore, not applicable.

If you want to construct a crossing of the Jackson River at your own expense, I see that the process for gaining such approval has been laid out in Jerry R. VanLear's letter of April 7, 1995.

The legal issue seems to me to have been clearly expressed in Mr. Waymack's aforementioned letter when he writes: "Therefore – since the previous landowner agreed to give up the original entrance – you, as a successor in title, did not obtain a right to require that an entrance be constructed."

I gather from your lengthy correspondence that you disagree with this interpretation. Therefore, it seems to me your next step would be to hire an attorney. I wish you well in your attempt to reach a favorable solution to this issue.

Yours very truly,

A handwritten signature in black ink that reads "John Hager".
John H. Hager

JHH/rw



COMMONWEALTH of VIRGINIA

Office of the Governor

James S. Gilmore, III
Governor

October 5, 1998

Shirley J. Ybarra
Secretary of Transportation

Mr. Anthony M. O'Connell
Apartment 12
216 Governor's Lane
Harrisonburg, Virginia 22801

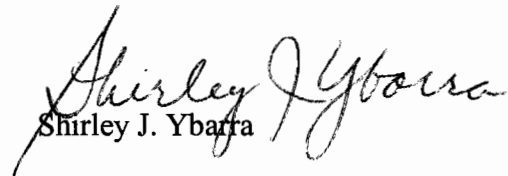
Dear Mr. O'Connell:

Governor Gilmore has again asked that I review the concern raised in your latest letter dated September 17 and respond directly to you.

The correspondence you provided, as well as the Virginia Department of Transportation's (VDOT's) file, continues to support VDOT's previous determination. The state has no legal or moral obligation to provide an entrance to property your family acquired in the late 1980s.

Should you wish to pursue an entrance permit, VDOT will continue to work you.

Sincerely,


Shirley J. Ybarra

SJY/smm

cc: Mr. David R. Gehr

From: "Waymack, Stuart A." <Stuart.Waymack@VDOT.Virginia.gov>
Subject: **RE: 1935 Agreement**
Date: June 13, 2005 7:43:49 AM MST
To: "South, Lynda J." <Lynda.South@VDOT.Virginia.gov>, "Anthony O'Connell"
<anthony@esedona.net>

Dear Mr. O'Connell,

Our Public Relation Department has requested that I respond to your request for information on a 1935 agreement.

In order to do so, I need more specific information as to the parties in the agreement, the location in the Commonwealth, and any other detailed information that might assist me in helping you with your request.

-----Original Message-----

From: South, Lynda J.
Sent: Monday, June 13, 2005 10:37AM
To: 'Anthony O'Connell'
Cc: Waymack, Stuart A.
Subject: RE: 1935 Agreement

Good morning. I have been out for some weeks due to an illness in the family and have just seen your message. I will pass this request on to our Right-of-Way Division here in VDOT. I'm unfamiliar with the clause that your refer to and will have someone in that division respond.

Lynda J. South
Chief of Communications
Virginia Department of Transportation
804 786-2715
Cell 804 317-3560

Please note new e-mail address: Lynda.South@vdot.virginia.gov

-----Original Message-----

From: Anthony O'Connell [<mailto:anthony@esedona.net>]
Sent: Friday, June 03, 2005 08:22AM
To: South, Lynda J.
Subject: 1935 Agreement

Dear Virginia Governor Warner, Attorney General Jagdmann, the Virginia General Assembly, VDOT, and to whom it may may concern,

There is a clause in a 1935 Agreement between the State and a landowner that says "A road way is to be provided for a foard crossing at appx sta 1094+50." This clause promises to provide a roadway for a ford crossing [of a river] at approximate station 1094+50. This clause has

been overlooked.

Can the landowner draw the State's attention to this clause? Please see the 1935 Agreement and past correspondence at www.roadway1094.com

Thank you.

Sincerely, landowner@roadway1094.com