



C. W. Phillips

C. W. Phillips was born Watertown, Tennessee, in 1895, and was graduated from the public school system of Watertown in 1913. He then entered Cumberland University and was graduated with an A.B. degree in 1917. With the beginning of world War I, he entered the service of his country in the 30th "Old Hickory" Division, 117th Infantry.

Following the war, he returned to Cumberland University and was graduated from the School of Law in 1920 with an LL.B. degree.

Mr. Phillips practiced law in the State of Tennessee until 1927 when he was elected County Judge of Bedford County, Tennessee, which position he held until 1939. His first highway experience came during this period, when he also served as chairman of the Bedford County Highway Commission from 1927-1939. While County Judge, he was elected president of the County Judges Association of Tennessee.

In 1939 he was appointed to the position of Commissioner of Highways and Public Works for the State of Tennessee, and served in this capacity until January 17, 1949, at which time he accepted the position as Chief of the Real Estate and Right-of-Way Branch, Legal Division, Bureau of Public Roads.

On May 5, 1957, due to reorganization, Mr. Phillips and his staff were transferred to the Office of Engineering. As Chief of the Right-of-Way Division he now has the full responsibility for coordinating and administering policy and procedure pertaining to Federal reimbursement of right-of-way costs.

During his long career in the highway field, Mr. Phillips helped organize and served as president of the Southeastern Association of State Highway Officials, and in 1946 became President of the American Association of State Highway Officials.

## POLICY AND PROCEDURE FOR FEDERAL REIMBURSEMENT FOR COST OF RIGHT OF WAY

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It is indeed a pleasure to appear before the Tenth Annual Kentucky Highway Conference. The University of Kentucky College of Engineering and the Kentucky Department of Highways are to be complimented on initiating, planning and bringing about this conference.

Before we get into the subject assigned it probably would be appropriate to give some background of the Bureau-State relationship. It seems logical that you would be interested in the working arrangements of one of the greatest highway teams the world has ever known—the Bureau of Public Roads and the State highway departments.

The philosophy of Federal-State relationship has fundamentally stood the test of time with very few changes for four decades. The period from 1916 through 1921 may be considered the formative stage of the Federal-State relationship. The 1916 Act inaugurated Federal-aid to States for road construction; however, The Federal Highway Act, approved November 9, 1921, greatly strengthened the Federal-State relationship and materially advanced highway development.

Although Federal-aid legislation was first enacted in 1916 it was not until 1921—five years later—that much of the Federal-aid procedure was formalized. Twenty-seven years after the passage of The Federal-Aid Road Act, Congress recognized that right-of-way cost should be considered a participating item and the cost therefor was made eligible by broadening the definition of the term “construction” to include the cost of rights-of-way as expressed in the Amendment of July 13, 1943.

Since 1943 there has been a constant attempt to get proper recognition of the right-of-way problem in Bureau-State highway operations. Much opposition has been encountered—some believing that right-of-way costs should never be eligible for Federal participation, and others believing that rights-of-way should be furnished, without cost to the State, as a contribution by subdivisions through which such highways were to be built. However, since the passage of the 1956 Act much of this philosophy has changed—in fact, as I see it we are in a transition period, particularly as to the Interstate System, as we are going from the conventional land service road to the traffic service controlled access highway. Therefore, before the States can successfully conquer the right-of-way problem they must recognize its importance and equip themselves to face it.

The Federal Highway Act of November 9, 1921, provides, among other things, that:

“The term ‘State Highway Department’ includes any State department, commission, board, or official having adequate powers and suitably equipped and organized to discharge to the satisfaction of the Secretary of Agriculture (Commerce) the duties herein required.”

This applies equally today as it did in 1921, and covers all phases of highway construction, including rights-of-way. If a State is deficient in its organization and procedures concerning the acquisition of rights-of-way it cannot be said that it is “suitably equipped and organized” to discharge the duties required of it by the Secretary. This Act further provides that the construction (including the costs of rights-of-way under the Amendment of July 13, 1943) and reconstruction work

and labor in each State shall be done in accordance with its laws and under the direct supervision of the State highway department, subject to the inspection and approval of the Secretary of Commerce and in accordance with rules and regulations pursuant to the Act.

At this time I would like to give some background of the manner in which Bureau right-of-way procedure has evolved. Some seem to think there is a lot of red tape in right-of-way reimbursement. I think I can safely say that both the Bureau and State right-of-way committees who have participated in drafting Right-of-Way Policy and Procedure believe that Bureau requirements are no more than what each State should have in its files if right-of-way expenditures are properly justified.

As more States started claiming right-of-way costs it became necessary to clarify our requirements and procedures. On November 3, 1953, the Bureau issued a general administrative memorandum on right-of-way procedure. The purpose of this memorandum was to establish uniformity of operation and understanding of the principles applicable to the participation of Federal funds in the cost of rights-of-way acquired for Federal-aid projects. This memorandum required the acquiring agency to fully document its records with supporting data such as appraisals, economic studies, descriptions, photographs, etc., as would enable it to acquire the right-of-way at a fair and reasonable price and justify the amount paid for each parcel.

After the passage of the Federal-Aid Highway Act of 1954, which was followed in a few months by the submission to the President of the Clay Committee Report on "A Ten-Year National Highway Program," it was realized that if such an enlarged highway program was enacted by Congress much greater emphasis would have to be placed upon the acquisition of rights-of-way. In anticipation of this increased right-of-way activity the Bureau made a survey of all the States with a view to determining whether the right-of-way divisions in the State highway departments could handle the added load of right-of-way acquisition which would be brought about if legislation, pending at that time, should be enacted. This was followed by a study of right-of-way organizations and procedures, not only in the Bureau's organization but also in that of each State highway department.

In July 1956 the Commissioner appointed an Assistant to the Commissioner for Right-of-Way to coordinate and direct the various right-of-way activities of the Bureau. To aid the Assistant Commissioner for Right-of-Way, the Commissioner appointed a special right-of-way committee within the Bureau of Public Roads to review and recommend what the Bureau's policy and procedure should be on right-of-way.

Realizing the importance of having the States' viewpoint in the review of right-of-way procedure, the Commissioner requested the President of the American Association of State Highway Officials to appoint a special AASHO Right-of-Way Committee to cooperate with the Bureau in such review. An outstanding committee composed of men thoroughly familiar with right-of-way was appointed. This action has been one of the outstanding efforts in establishing Bureau-State relationships in matters pertaining to right-of-way acquisitions.

As a result of the cooperative efforts of the Bureau and Special ASSHO Right-of-Way Committee, the Bureau's memorandum establishing policy and procedure for the acquisition of right-of-way in which Federal-aid funds may participate was issued December 31, 1956.

The Federal-Aid Highway Act of 1956 declares that early completion of the Interstate System is essential to the national interest. One of the first requirements will be the acquisition of an adequate right-of-way. In order to accomplish this it was realized that the right-of-way organizations and procedures, of both Bureau and the States, were of vital importance. Since few States had requested right-of-way participation in the past it was not necessary to have as complete liaison between the Bureau and State concerning right-of-way matters, as it is today. In

order to meet the present need plans were made to appoint right-of-way men in each of the regional and division offices to aid the States in such matters. The Bureau's main purpose in appointing these men is to provide close and continuing contact between State and Bureau right-of-way personnel so that many right-of-way problems can be solved administratively and documented in such a way that the fiscal officer will have the entire picture of each transaction before him when final vouchers are audited. This procedure should eliminate many petty annoyances heretofore encountered by the States at the final voucher stage, which sometimes is months after the completion of the project. It is not anticipated that division right-of-way men will appraise every parcel which has been appraised and acquired by the State, but by close contacts with State right-of-way personnel, they will be able to observe the type of personnel and the manner in which the State carries on its appraisal work in conformance with Bureau policy. They often may have to make spot appraisals and call the State's attention to any inadequacy found therein so that additional documentary information may be furnished by the State to support its claim. Such transactions should, if carried out administratively and in an attitude of helpfulness, produce a documentary file for each parcel which will enable a more prompt and effective fiscal audit.

In order to provide for consultation, coordination and assistance in the handling of all phases of right-of-way acquisition there has been created in the Office of Engineering in Washington, a Right-of-Way Division. The former Assistant Commissioner for Right-of-Way has been appointed as Chief of this Division.

In order that the Administrator may have firsthand information as to the organization, policies, practices and procedures of the various State right-of-way offices, Right-of-Way Policy and Procedure Memorandum 21-4.1 issued January 31, 1958, requires each State to submit, under the signature of the chief officer of the State highway department, information as to the regulations, procedures, and manner in which right-of-way matters are handled by such State. There are listed some 21 separate items on which the Bureau requested specific information. These statements have been furnished the Bureau by all States and have, with modifications in some instances, been found acceptable. If at any time the division engineer feels that the practices and procedures as submitted by the State are not being followed, or have become inadequate, he will notify the State highway department and immediately notify the Commissioner. Approval of Federal participation in right-of-way costs will thereupon be suspended until such time as the State has improved its practices and procedures to the satisfaction of the Administrator. The State may submit changes in or modifications of the practices and procedures for consideration by the Administrator.

In order that the cost of right-of-way and damages to property can be given consideration in determining the location and design of a highway it is considered necessary that right-of-way personnel be consulted during the period when the location and design are being considered.

I am sure that those attending this conference will agree that we should spend a few minutes in the discussion of the importance of sound appraisals. The foundation of an effective right-of-way acquisition program is a sound pre-appraisal procedure under which the fair-market value of the land to be acquired is established and the damage to the remaining property, not taken, is determined, prior to the start of negotiations, or the commencement of condemnation proceedings. Therefore, the Policy and Procedure Memorandum, as revised, specifically requires that before negotiation, or hearing in condemnation, the State highway department shall secure at least one appraisal of each parcel to be acquired, or damaged, and at least two appraisals of all improved properties where the first appraisal of the right-of-way to be taken is in excess of \$25,000. Additional appraisals may be required by the division engineer in any case where he deems such action necessary.

When the State acquires a parcel of right-of-way at a price which substantially differs from the appraisal, justification of such settlements are to be made

available to Public Roads. In cases where the division engineer deems appropriate he may require written justification of any settlement made by the acquiring agency. All of the State appraisals and other records supporting the prices paid for right-of-way are required to be open for Bureau inspection at all times. As an added safeguard the memorandum requires that the same person who appraises a parcel shall not negotiate therefor. This is required in order that there will be no possibility that one function will affect the other.

Under Bureau Policy and Procedure payments may be made on progress vouchers as the acquisition, of individual parcels, progresses provided such vouchers are audited before payment, and are supported by information required for final vouchers. A final audit is made when the project is completed.

Under the provisions of the Federal-Aid Highway Act of 1956, the Secretary of Commerce probably will have to acquire some rights-of-way on the Interstate System, where it is shown that the State is unable to acquire necessary lands, or interests in lands including the control of access or is unable to acquire the same with sufficient promptness. To prescribe the policies and procedures relating to the acquisitions by the Secretary of Commerce, the Administrator issued on March 25, 1957, Policy and Procedure Memorandum 21-4.2. This memorandum also covers the acquisitions under the Defense Highway Act of 1941.

There has been so much said and written about what States should do regarding the acquisition of a right-of-way that many are confused as to what method is best. It is my opinion that in most States right-of-way acquisition simply amounts to negotiation with property owners. (Very small percentage goes to condemnation.) Negotiations should be accomplished through the efforts of good, conscientious and honest buyers, equipped with an adequate appraisal of the property, made by someone other than himself. There is no yardstick, or exact science, by which fair-market value of property, or damage thereto can be measured. The only general rule is the "before and after taking" method, which can only be determined by adequate appraisals.

Before we go further into the discussion of appraisals we must recognize that the handling of right-of-way acquisition is different, and, almost foreign, to the normal requirements of highway engineers. Estimates of construction cost are, in most instances, substantiated by competitive bidding of contractors. This, so to speak, creates a shield of protection to the original construction estimate. A right-of-way estimate, or appraisal, does not have such a protective shield. Appraisals must be of such caliber that they can withstand the test of any future attack which might be made against them. Right-of-way settlements (except under condemnation) always remain as negotiated contracts; therefore, negotiations or settlements must be surrounded by all the information, supporting their justification, as it is possible to obtain.

It has been my observation that throughout the 48 States there are various ideas of what constitutes an appraisal. An appraisal is a supportable estimate of value—an opinion of value made by an informed person whose training and experience makes his opinion worthy of regard, and who backs up his opinion with logical, reasonable valuation data and documentation. The appraisal is simply an opinion of value. In the light of Bureau policy an *adequate* right-of-way appraisal should be a written estimate of value, duly signed, supported and documented, so that a reviewer or auditor, who has never seen the property or the appraiser, can visualize the property, and follow the appraiser's presentation of data and his thinking to a logical conclusion of value.

An appraiser should take into consideration all the uses to which a property is adaptable and for which there is a reasonable demand. The courts have held that any projected use to a different and higher use must be of a very probable nature, reasonably likely to occur in the near future, as distinguished from a conjectural, fanciful or remote possibility. It seems that sometimes appraisers come up with such improbable uses, with correspondingly unreasonable values. In this connection appraisers should keep in mind the law of supply and demand before

arbitrarily assuming that highway frontage, for instance, is a potential commercial site for motels, service stations, etc. Common sense dictates that just so many motels and filling stations are economically feasible on any given stretch of road.

In the early years of highway building, rights-of-way, in most instances, were donated, or acquired by local agencies who were anxious to get road improvement in their communities. Today it is quite different. Greater responsibility, therefore, rests upon the men who locate and design roads. They must recognize that a road can, and many times does, cause a complete shift in business and residential areas. Slum areas have been converted into profitable business districts by the construction of a street or highway. It should always be borne in mind that communities and individuals should be disturbed as little as possible in the location and construction of a highway. Acquiring agencies should adopt a fair and honest policy and each problem should be solved in such a way that a feeling of ill will toward the highway department is not left throughout a community. A highway department is not left throughout a community. A highway department can create a feeling of good will by a fair, conscientious, and tolerant attitude on the part of its right-of-way division in dealing with the public.

One of the problems many right-of-way divisions face today is insufficiency of time for the acquisition of a right-of-way. As soon as construction plans are completed right-of-way personnel is under constant pressure to acquire the right-of-way immediately in order that the job can be advertised at once. This does not give sufficient "lead" time for such acquisition. The property owner also knows that the right-of-way personnel is under this pressure, and this creates unnecessary obstacles for right-of-way personnel. Therefore, the greatest help which may be given those whose duty it is to acquire rights-of-way is that they be given ample time in which to acquire the same in an orderly manner. To relieve this, to some extent, a few States have gone into the question of acquiring rights-of-way some time in advance of actual construction. This should have a twofold effect. As it has been pointed out it relieves the stress of time for acquisition of the right-of-way, and more important still, it provides for more orderly development of property adjacent to highways well in advance of highway construction. It also prevents the pyramiding of land values ahead of right-of-way acquisition, which is often the case where right-of-way is acquired shortly before construction.

The purchase of land for a right-of-way involves so many local and variable factors that no simple formula can be given to test true value.

In order to eliminate any possibility of unfair and unbalanced prices being paid for property, each land transaction must be scrutinized carefully. Unlike items of road construction, where competitive bidding is a safeguard against excessive prices, it must be recognized that right-of-way acquisition is one of negotiation (except in condemnation), and each negotiation must be surrounded with every possible safeguard. The standard of fairness to the property owner, as well as to the acquiring agency must be recognized.

There are other important phases in connection with right-of-way acquisition, such as immediate possession, or right of entry, which, for lack of adequate State legislation, or because of constitutional restriction, often delay construction work. We could also discuss control of access and encroachments, but time does not permit.

Again let me express my appreciation for the opportunity of discussing with you participation in right-of-way cost under Federal-aid procedure.

The right-of-way problem cannot be solved by regulations and restrictions alone. The special right-of-way committees have helped formulate a policy that is workable. The continued support of everyone interested in right-of-way matters will be needed by the Bureau and the States if adequate organizations are to be established.

U. S. DEPARTMENT OF COMMERCE Bureau of Public Roads	POLICY AND PROCEDURE MEMORANDUM 21-4.1 Date of issuance: January 31, 1958
PROGRAM AND PROJECT PROCEDURES	
SUBJECT: RIGHT-OF-WAY PROCEDURES (State Acquisitions under Federal-aid Procedures)	
Supersedes: PPM 21-4.1, dated December 31, 1956.	

### 1. PURPOSE

The purpose of this memorandum is to prescribe the policies and procedures relating to Federal participation in right-of-way and property damage costs for which reimbursement is requested by the State under Federal-aid procedures, in Region 1 to 9 inclusive.

### 2. GENERAL PROVISIONS

a. Under Federal law and regulations, participation of Federal funds is permitted in right-of-way and property damage costs incurred by the States for highway projects financed in whole or in part with Federal funds under the circumstances and to the extent set forth below:

- (1) When such costs are actually incurred subsequent to the date of authorization to proceed with the right-of-way portion of a project which has been approved by Public Roads under established program procedures.
- (2) When such costs actually result in disbursements from public highway funds of the acquiring agency in obtaining rights-of-way over lands owned by a State or its subdivisions.
- (3) When such costs are incurred and paid pursuant to and in conformity with State law, except as provided in paragraph 5i.
- (4) On projects financed with Federal-aid funds other than Interstate funds Federal participation may not exceed one half of such costs plus the authorized increase in public-land States.
- (5) On projects located on the National System of Interstate and Defense Highways and financed with Interstate funds, Federal participation may not exceed: 50 percent of such cost when using 1952 Act funds, 60 percent when using 1954 Act funds, or 90 percent when using 1956 Act funds, plus the authorized increase in public-land States.
- (6) On projects financed pursuant to the provision of Section 5(a) of the Federal-Aid Highway Act of 1944, for the elimination of hazards of railway-highway crossings, participation in the cost of right-of-way may not exceed one half of such cost with no increase in public-land States.
- (7) On public-land projects, and on defense access road projects as defined in Section 6 of the Defense Highway Act of 1941, as amended, the extent of Federal participation will be in accordance with arrangements between Public Roads and the State highway department.
- (8) In no case may participation exceed the aforementioned pro rata of such costs actually paid or obligated to be paid, by the State or its subdivision from public funds available to them.
- (9) Reimbursement for such cost shall be made only after the project agreement has been executed.

b. Participation of Federal funds is permitted, to the above extent, in severance or consequential damages resulting from a highway improvement upon an affirmative showing that the State highway department or other political subdivision of the State is obligated to pay such damages under State law.

### 3. STATE RIGHT-OF-WAY ORGANIZATION, POLICIES AND PROCEDURES

a. The State shall transmit under the signature of the chief officer of the State highway department, in triplicate, to the division engineer information as to the regulations, procedures, and manner in which right-of-way matters are handled by the State. Such information shall include, but not be limited to, the following:

- (1) Statement as to how the right-of-way division is organized, and equipped, and its relative level in the highway department.
- (2) Whether the right-of-way division has its own legal staff, uses the Attorney General's office, or is a part of the legal division of the highway department.
- (3) Whether the right-of-way division takes an active part in determining highway location.
- (4) Whether appraisers are regular employees of the right-of-way division, other State employees, or are outside appraisers.

- (5) The qualifications required of appraisers, both regular employees and outside appraisers.
- (6) Whether all properties are appraised prior to negotiation, and if not, the exceptions.
- (7) Whether appraisal procedures vary depending upon location and value of the property.
- (8) A statement as to how appraisals are made, and their form, including practice as to number of appraisals required.
- (9) Whether appraisals are signed by the individual making the appraisal, and whether they are available to Public Roads.
- (10) Whether negotiations are conducted by the appraisers, by other State employees, or by outside negotiators.
- (11) Qualifications of negotiators, both regular employees and outside negotiators.
- (12) Who approves negotiated settlements and determines when to condemn.
- (13) Whether there is written justification in the States' records, available to Public Roads when a negotiator exceeds the appraisal.
- (14) Type of title taken.
- (15) Time within which possession can be obtained.
- (16) Whether control of access can be obtained and the manner of obtaining it.
- (17) Percentage of acquisitions that go to condemnation, or if all right-of-way is condemned, the percentage that go to trial.
- (18) Who conducts condemnation cases and who approves settlements after condemnation is filed and whether written justification is required for the project files.
- (19) Who decides when an appeal shall be taken from an award or adverse judgment.
- (20) Statement as to whom the chief officer of the State highway department has delegated authority to sign the right-of-way certificate and other supporting documents.
- (21) Copy of all regulations and procedural directives governing the operations of the right-of-way division.

b. Upon receipt of the information requested in paragraph 3a, accompanied by the recommendations from the division and regional offices, the Administrator will cause an examination to be made of such submission and any other information he may deem necessary.

c. In the event the practices and procedures of the State are not considered adequate, in the opinion of the Administrator, he will so notify the State highway department, or if at any time the division engineer feels that the practices and procedures as submitted by the State are not being followed or have become inadequate, he shall so notify the State highway department and immediately notify the Commissioner. Approval of Federal participation in right-of-way costs will thereupon be suspended until such time as the State has improved its practices and procedures to the satisfaction of the Administrator. The State may submit changes in, or modifications of, the practices and procedures for consideration by the Administrator.

d. It shall be the primary obligation of the State highway department to acquire the rights-of-way in the cost of which Federal funds are expected to participate. However, the State highway department may utilize the services of well qualified and suitably equipped land acquisition organizations of counties, municipalities, or other local subdivisions, acting under its direction, for acquiring such rights-of-way, provided that such organization shall be utilized only if its practices and procedures are in substantial conformity with the State practices and procedures as submitted to the Administrator. In exceptional cases and under circumstances approved by the Administrator such local land acquisition organizations may be permitted to submit, through the State highway department, a statement of their practices and procedures for review in the same manner as required of the State in paragraphs 3a, b, and c. When such procedures are found to be acceptable, the State may use the services of such political subdivision in acquiring rights-of-way. In any case it shall be the responsibility of the State to insure that the right-of-way acquisition is in conformity with the accepted procedure, and the State shall so certify to the division engineer. No part of the cost of maintaining the central office of any publicly maintained land acquisition organization that may be utilized by the State highway department shall be paid with Federal funds.

#### 4. REQUIREMENTS

a. The division engineer shall maintain liaison with the State highway department to assure that the practices and procedures of the State and its subdivisions used to acquire right-of-way are in conformity with those submitted to the Administrator.

b. At the program stage the State shall furnish Public Roads the best possible estimate of the cost of rights-of-way to be acquired. Such estimates shall be made or approved by the right-of-way division of the State highway department and shall constitute a basis for the approval of the program.



c. Either at the time of program approval or subsequently, Public Roads shall issue a letter of authorization to the State to proceed with (1) studies to determine the relative right-of-way costs and other factors pertinent to alternate construction locations including incidentals connected with the acquisition of rights-of-way on a selected construction location, or (2) to actually acquire rights-of-way on a selected construction location including incidentals connected therewith, or (3) for both. In cases (2) or (3) the authorization to proceed with the acquisition of right-of-way is not to be issued until the State has indicated on maps or by drawings or other records the proposed general location of the highway together with the approximate areas or limits of the right-of-way to be acquired and they are found acceptable by Public Roads. In exceptional cases, but after program approval, Public Roads may authorize the State to acquire certain parcels prior to acceptance of the proposed general location for the entire project, when it is found that the certain parcels are within the limits of the conceived proper location, and it is agreed such action is necessary to protect the public interest.

d. The estimate of the cost of right-of-way required by paragraph 4b, may be accepted for use in the project agreement provided: (1) the division engineer has accepted the proposed general location of the project and the approximate right-of-way limits therefor, (2) a sound appraisal of each parcel has been made by or for the State highway department or the State assures that such parcel appraisals will be made by or for the State highway department prior to negotiations therefor or hearings in the condemnation thereof, and (3) assurance has been given by the State that, in the event settlements differ substantially from such appraisals, justification of such settlements will be available to Public Roads. If he deems it appropriate, the division engineer may require written justification of any other settlement regardless of the amount of the appraisal. Prior to or at the project agreement stage the State shall submit for approval by the division engineer, a right-of-way map for the entire project showing lands anticipated to be acquired.

e. Project agreements covering the acquisition of rights-of-way shall contain a clause providing for the reimbursement of any payments made by the Federal Government in the event that actual construction of a road on such rights-of-way is not undertaken by the close of the fifth fiscal year following the fiscal year in which the agreement is executed.

f. All project agreements for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved in the plans for such project, without the prior approval of the Administrator. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor-vehicle users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize a State or political subdivision thereof to use the air space above and below the established grade line of the highway pavement for the parking of motor vehicles, provided such use does not interfere in any way with the free flow of traffic on the Interstate System.

g. Reimbursement may be made under progress vouchers of the Federal share of deposits placed by the State in court in connection with condemnation proceedings to the extent that such deposits are supported by adequate appraisals.

h. Before negotiation or hearing in condemnation the State highway department shall secure at least one appraisal of each parcel to be acquired, or damaged, and at least two appraisals of all improved properties where the first appraisal of the right-of-way to be taken is in excess of \$25,000, except where the State has submitted a different plan or operation and it has been reviewed and found acceptable. Additional appraisals may be required by the division engineer in any case where he deems such action necessary. Such appraisals may be made by either regular State employees or independent appraisers, so long as they are properly qualified. The appraisal reports shall be written and fully documented and include photographs of all principal above-ground improvements or unusual features affecting the value of the property to be taken or the amount of damages. All such appraisals shall be reviewed by a supervisor in the State right-of-way division competent to approve right-of-way appraisals, prior to the start of negotiations or condemnation. Such appraisals shall include a tabulation of all sales of the subject property for the five years immediately preceding the date of the appraisal showing the parties to the transaction, date of purchase, and wherever possible to obtain, the verified purchase price. Similar information for sales between the date of the appraisal and the acquisition date shall be ascertained by the State and made a matter of record.

i. Federal participation will not be allowed in the cost of any parcel of land where the negotiations therefor were carried on by the same person who made the appraisal thereof.

j. A right-of-way representative from the State and from Public Roads should make inspections in company with the location and design engineers at both the preliminary and final stages of location of the highway.

k. When right-of-way is acquired by negotiation, the complete agreement between the highway department and the property owner shall be embodied in written instruments appropriately executed.

l. All vouchers submitted to Public Roads for reimbursement of expenditures made for right-of-way, are subject to audit before payment.

m. Any progress voucher containing the State's claim for reimbursement of the expenditures made for right-of-way shall be supported by the following:

(1) A copy of a right-of-way map indicating the relation of the parcels acquired to the right-of-way limits of the project or reference to a right-of-way map previously submitted.

(2) Certificate of acquisition and cost of right-of-way (suggested form attached) signed by the chief officer of the highway department, or his duly authorized representative, certifying that all of the applicable right-of-way procedures of the State, or any political subdivision whose services were utilized in acquiring the right-of-way, as submitted to the Administrator, have been followed in establishing the appraisals and determining the settlements made for each parcel, and showing for each parcel acquired and included in the voucher:

- (a) Parcel identification number
- (b) From whom acquired
- (c) Area in square feet or acres
- (d) Character of title acquired
- (e) Date when acquisition of title was consummated
- (f) Total consideration, reporting separately the amounts paid for real property taken, including damages; for interest; and the actual or estimated cost of items of work performed or to be performed by the State for the property owner in settlement for right-of-way acquired. The State at its option, may breakdown the amount paid for real property taken into the costs of lands and improvements thereon, and the amounts assigned to damages.

and on a project basis:

- (a) All net credits to the project, such as rentals, sale of improvements, and salvage
- (b) Incidental expenses
- (c) That the amount paid for each parcel is based on appraisals and written justification in the State files.

(3) A tabulation of all appraisals of parcels covered by the progress voucher showing the total amount of the value of the real property taken and damages, if any, to the remaining real property, for each parcel acquired, and containing a certification that the tabulation contains all appraisals made and that no changes or alterations have been made therein since their preparation or submission, except as noted in said tabulation.

n. The final voucher containing the State's claim for reimbursement of the cost of rights-of-way shall be supported by the following, unless such data have previously been submitted in connection with a progress voucher and there has been no change in the interim:

(1) A copy of a right-of-way map corrected to show accurately the parcel identification numbers, area acquired, property lines of the area acquired, and any other pertinent data affecting the cost of the right-of-way such as structures, improvements, and fences.

(2) A final certificate of acquisition and cost (as set forth in paragraph 4m(2) which may include by reference any prior certificate submitted with a progress voucher, and shall indicate any changes or adjustments made in costs for all parcels since the submission of the progress vouchers.

(3) A final tabulation of all appraisals (as set forth in paragraph 4m(3) which may include by reference any prior tabulation submitted with a progress voucher, and shall indicate any changes or alterations made in the appraisals since the submission of the progress vouchers.

o. When lands are acquired for right-of-way purposes, all private installations thereon, except utility facilities the retention of which is clearly justified, shall be cleared therefrom prior to acceptance of the completed construction project, and any encroachments on or private use of the right-of-way in the future shall be prevented. When right-of-way acquired includes areas for future construction, the State should determine a definite and prescribed right-of-way limit, within the overall right-of-way acquired, needed for the immediate construction and such area shall be cleared of encroachments. This limit shall be shown on the right-of-way and construction plans.

p. Within the area or strip between this definitely prescribed right-of-way line and the overall right-of-way line (area acquired for future construction), the State may, subject to the approval by the division engineer of the general use plans therefor, lease, rent, or permit the use of such area or strip with the provision that upon notice that it is needed for highway purposes, the use or occupancy thereof

would cease and it would be immediately vacated so that the highway authority could enter thereon. Any such agreement shall provide for complete and prompt vacation of the right-of-way occupied when notice by the State is given that it is required for highway purposes and shall also provide that no improvements are to be made upon the property during the period of occupancy. On the Interstate System, no direct access is to be permitted to the main traveled portion of the highway from the area or strip or right-of-way leased, rented, or permitted to be used as provided in this paragraph. No additional amount will be paid to the owner at the time the property is to be vacated unless such amount is specifically set out in the acquisition agreement.

q. If the full cost to the State is paid by the State at the time of the initial acquisition, Federal funds could participate in all such costs, less rentals, and salvage. If the State desires to close out the project before the net amount of rentals or salvage has been established, the matter may be settled on the basis of the present worth of the estimated future net rentals and salvage, without allowance for tenant relocation.

r. All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, and other data and documents relative to the acquisition of the rights-of-way shall be available for inspection by authorized representatives of the Bureau of Public Roads at all times. If the division engineer determines that amount claimed for any parcel is not adequately supported, he may approve Federal participation in the amount he determines is adequately supported.

s. Right-of-way for all Federal-aid highways shall be unlimited in vertical dimension, subject to the enjoyment by others of rights beneath the surface of the earth that will not impair the highway or interfere with the free and safe flow of traffic thereon, and except as shown in the approved construction plans or as may otherwise be approved by the Commissioner in particular instances.

#### 5. ELIGIBILITY

a. Any normal expenditure incident to the acquisition of rights-of-way, either by negotiation or condemnation, such as those made for surveys, plats, appraisals, abstracts of title, title certificates, title insurance, court costs and disbursements, witness fees, recording fees, advertising, economic studies, salaries, fees, and travel expenses of field representatives of the State, county, or city while engaged in right-of-way acquisition work, and of attorneys engaged in the preparation or trial of condemnation cases, are eligible for Federal participation if properly supported and shown as incidental expenses on the certificate submitted with the voucher and chargeable to highway funds. The administrative and headquarters expenses of the right-of-way offices or of field offices are not eligible for Federal participation. When right-of-way is made available without cost to the State, the above-mentioned incidental expenses if actually incurred will be eligible for Federal participation to the same extent they would have been had the right-of-way been purchased.

b. The authorization by the division engineer to proceed with acquisition of rights-of-way shall constitute approval of the necessity for the right-of-way to be acquired and the general eligibility for Federal participation in the cost of right-of-way items. Such authorization shall be in accordance with paragraph 4c.

c. Where the whole of a property is acquired and only a portion thereof is needed for the right-of-way, Federal participation is limited to the cost of the lands actually used for the right-of-way, plus the severance damages to the remainder adequately supported by appropriate appraisals. Any remnant so small that its retention as a part of the right-of-way would be justified may, if the State so desires and the division engineer approves be included as part of the finally accepted highway and shown on the right-of-way plans. In such event the cost thereof would be eligible for Federal reimbursement. Where lands in excess of those needed for the right-of-way have been acquired and the acquiring agency uses them in payment, or part payment, for other lands needed for the right-of-way, Federal participation in the purchase of these lands will be for their cost, including the value of such excess lands used for payment, based upon appropriate appraisals. Otherwise the disposition of the excess taking is for determination by the State highway department and it is not necessary for the State to secure Public Roads approval thereof.

d. The cost of adjustment or re-establishment of improvements may properly be considered eligible for Federal participation, provided such adjustment or re-establishment results in an appropriate reduction in the amount which it would have been necessary to have paid the property owner if such adjustment or re-establishment had not been carried out. Justification for such action must be documented by the State.

e. Federal funds will not participate in the cost of any real property unless Public Roads representatives have been afforded an opportunity to examine such property before the removal or alteration of improvements located thereon and before the commencement of highway construction upon any part of such property. Unless such examination has previously been made, the State shall give written notice

to Public Roads of proposed changes to be made to the property, and anticipated date of commencement thereof in sufficient time for such examination to be accomplished. This notice can be given on a project basis.

f. Where improvements are acquired with no rights reserved to the prior owner, the cost of clearing the right-of-way of such improvements and the cost of safety and protective measures are eligible for Federal participation as either a right-of-way or construction item in accordance with State practices, subject to appropriate program approval and authorization to proceed. When the clearing of the right-of-way is performed as a right-of-way item, the agency in charge thereof shall have evidence of record that competition was secured in all cases where practicable. Such contracts are subject to review by the division engineer but prior approval thereof is not required. When the clearing of the right-of-way is performed as a construction item, the usual requirements for a construction contract shall apply.

g. Federal participation will not be permitted in the payment of taxes. However, the State may pay taxes or assessments for the property owner in disbursing the consideration to be paid for the right-of-way acquired.

h. Where an acquiring agency is obligated to move improvements to accommodate the construction of the highway, any additional costs resulting from complying with the local governing laws or ordinances would be eligible for Federal participation.

i. Payments made for personal property or the cost of moving personal property, tenant relocation, loss of business, diversion of traffic, and other items of damage or value, not generally compensable in eminent domain, are not considered eligible for Federal participation.

j. Where, under State law, benefits may be offset against compensation to be paid, consideration shall be given thereto in determining the amount the property owner is entitled to receive as a result of the taking of his property.

k. The employment of private individuals or firms to acquire right-of-way for Federal-aid projects or to render other services, including legal services, in connection therewith for purposes other than the preparation of appraisals or title evidence or serving as witnesses in condemnation proceedings, must be approved in advance by the division engineer of Public Roads. Such approval shall be granted only in those instances where it is clearly shown that such procedure is in the public interest, that individuals or firms to be employed are qualified to perform the services, and (1) the acquiring agency does not maintain an organization adequate for acquiring such right-of-way as a part of its normal operating staff, (2) that the amount of the fee is not determined on a percentage basis, and (3) that the fee is just and reasonable.

l. Federal participation will not be permitted in payment made to a city or county attorney for work performed in connection with the acquisition of rights-of-way where he is obligated to perform such work without additional compensation. In those cases where the normal duties of the attorney for which he is compensated do not include the acquisition of property for highway purposes, Federal funds may participate in payments to him for services performed upon a proper showing of the facts.

m. The cost of incidental work in connection with rehabilitating abutting property, required to give the project a completed status, is eligible for Federal participation. If such work is to be accomplished under a construction contract, it should be shown or noted on the right-of-way map or be shown on the construction PS&E.

n. Where it is necessary to adjust improvements and to construct betterments or additions to private property as part of the consideration for the right-of-way acquired, the cost of such work is to be supported to the same extent as any other right-of-way item and is eligible for Federal participation. Where, as assurance to the property owner, certain construction features are recited in the right-of-way agreement, reimbursement to the State for the cost of such features will not be made until the work has been completed.

o. The cost of acquiring lands or interests in lands outside the normal right-of-way for obtaining road building material is not eligible for Federal participation as a right-of-way item. The cost of acquiring lands or interests in lands outside the normal right-of-way for temporary use during clearing of the right-of-way or construction is eligible for Federal participation as either a right-of-way or construction item, in accordance with State practices, subject to appropriate program approval and authorization to proceed. The cost of any lands or interest in lands remaining as a permanent part of the highway is eligible for Federal participation as a right-of-way item.

p. Where a highway is legally declared to be a controlled or limited access highway, Federal participation in the cost of acquiring existing access rights, whether or not other property is acquired, is permissible if otherwise eligible. Where right-of-way is acquired for a controlled access highway on new location, Federal participation will not be permitted in payments made to the owners of abutting properties for access rights, unless it is specifically shown that such payments are required under the State laws. If a highway is on any Federal-aid System, and it is determined to control the access

thereon, Federal funds could participate in the cost of controlling such access even though no further construction is contemplated.

q. The amounts paid for lands in public ownership shall be justified in the same manner and to the same extent as though the acquisition involved a private owner.

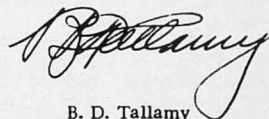
r. When real property is acquired by a State or by a public utility or railroad to replace real property transferred by a public utility or railroad to the State for highway purposes, the cost of such real property will be considered as the cost of the right-of-way for the highway project. The transaction and the cost should be properly supported.

#### 6. PROHIBITION AGAINST DISPOSITION OF A RIGHT-OF-WAY

After final acceptance of a project, the right-of-way for Federal-aid highways may not be disposed of without prior approval of the Administrator. This would not prevent the disposal or relinquishment of title, without such prior approval, of a segment of the right-of-way provided there is an abandonment of a section of highway inclusive of such segment.

#### 7. EFFECTIVE DATE

The changes made by this revision are effective as of the date hereof with respect to all acquisitions which have not yet been made. Acquisitions subsequent to December 31, 1956, and prior to the date hereof shall be supported in accordance with PPM 21-4.1 issued December 31, 1956. Acquisitions prior to December 31, 1956, shall be supported in accordance with Section 3 of GAM 343 issued November 3, 1953.



B. D. Tallamy  
Federal Highway Administrator

Attachment

STATE OF \_\_\_\_\_

CERTIFICATE OF RIGHT-OF-WAY COSTS - FEDERAL-AID PROJECT \_\_\_\_\_

(Number)

PROGRAM APPROVED \_\_\_\_\_

(Date)

<u>Tract or Parcel</u>	<u>Grantor</u>	<u>Between Survey Stations</u>	<u>Area</u>	<u>Nature of Title</u>	<u>Date of Taking</u>	<u>Real Property taken and Damages</u>	<u>Interest</u>	<u>Items of work chargeable to R/W Cost</u>		<u>Total</u>
								<u>Actual</u>	<u>Estimated</u>	

INCIDENTAL EXPENSE

SUMMARY

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<u>Item</u>	<u>Amount</u>
Court costs, recording costs, fees, etc.	\$ _____
Appraisers' fees	_____
Salaries	_____
Automobile mileage:	
State or other publicly-owned	_____
Privately owned	_____
Removal and Demolition costs not shown in construction contract and not included in property settlements	_____
Incidental items	_____
Total	\$ _____

<u>Item</u>	
Real Property taken and Damages: Interest; and work performed chargeable to Right-of-Way	\$ _____
Incidental Expenses	_____
Total right-of-way costs	\$ _____
Credits	_____
Net right-of-way costs	\$ _____

I certify the above data are correct: that the right-of-way necessary for the project has been acquired in the name of \_\_\_\_\_ in accordance with (State or its appropriate subdivision) procedures as submitted to the Administrator, and that the prices paid are based on appraisals and written justification in the State files.

Dates: \_\_\_\_\_ Title: \_\_\_\_\_