

RG 30 RECORDS OF THE BUREAU OF  
PUBLIC ROADS

WASHINGTON OFFICE

GENERAL CORRESPONDENCE AND  
RELATED RECORDS, 1912-65.

1955-1959

ALASKA-BRIDGES & STRUCTURES BY NAME 1956-59  
THRU

ALASKA FOREST HWYS-GENERAL 1955-56

BOX NO.  
1130

HM 1991

## Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. A. C. Clark, Deputy Commissioner, Wash. D.C. DATE: February 29, 1956  
 ATTN: Mr. George Williams

FROM : Chr. E. Wyller, District Engineer, Juneau, Alaska

SUBJECT:

Reference is made to your request through the Division office for information concerning previous commitments made by the Territory of Alaska in the matter of right-of-way acquisition on Forest Highways. In searching the old files, we have found six cooperative agreements which have a paragraph that refers directly to the right-of-way acquisition. Photostatic copies of these agreements are attached.

We also found several other cooperative agreements which make no mention of right-of-way, but which stipulates Territorial contribution to surveys, construction and maintenance. Among these cooperative agreements are the three mentioned in Mr. Andrew's memorandum of February 4th about the same subject and we understand that his office will forward copies of these three agreements.

In looking over these agreements, program letters and Forest Highway expenditure records, it is apparent that the Territorial cooperation was considerably larger, percentagewise, in the earlier years than it has been in the later years. As the Forest Highway authorizations increased, the Territorial Board of Road Commissioners felt that what Territorial money was available for road construction should be spent in the sections of the Territory which did not benefit from the Forest Highway appropriations. Cooperation on construction projects therefore just about ceased in about 1930 except that the Territory did cooperate later in the construction of a few isolated projects in which the Territorial Board was particularly interested. The cooperation in maintenance did, however, continue in accordance with the original agreements up to about fiscal year 1935. We have been unable to find any written cancellation of previous agreements, but we know that since that year we have had no Territorial funds for maintenance.

It is noteworthy that while cooperation of construction projects became more infrequent and the cooperation in maintenance ceased altogether, the Territorial Highway Engineer continued with full cooperation in the matter of acquiring rights-of-way. The two cooperative agreements attached dated August 9, 1939 and August 27, 1940 respectively, make no reference to cooperation in maintenance, but do specify the Territorial obligation to obtain the right-of-way and pay for it. Both agreements state that Bureau of Public Roads will cooperate with actual plats, surveys, etc.

February 29, 1956

The general procedure which was established in the early years prior to 1926, which is as far back as I have any personal knowledge in the matter was for Bureau of Public Roads to do the actual survey work, prepare the plats and easement forms and actually negotiate with the property owners for the right-of-way. In practically all cases, right-of-way could be obtained for a nominal sum, usually \$1.00, and this, together with any recording fees required, was paid personally by the Bureau of Public Roads engineer handling the matter. The Territorial Highway Engineer's office reimbursed the Public Roads employee on a Territorial Voucher. Only if it became impossible to obtain the right-of-way for a nominal sum did the Territorial Highway Engineer enter into personal negotiations with the property owners. This happened, for instance, on Project 2-A9, Salmon Creek Bridge, which involved relocation of a section of Glacier Highway. The property owners made an exorbitant demand of \$5,000 for the right-of-way involved and refused to negotiate any further. Mr. William Hesse, at that time Territorial Highway Engineer, then took over the case and by threatening condemnation, obtained the right-of-way for \$500.00.

This general procedure continued up through the years and there was complete agreement and harmony between the Territorial Highway Engineers and the Bureau of Public Roads in this matter until about 1948, when Mr. Frank Metcalf took over as Territorial Highway Engineer. He objected to paying for right-of-way, but after being informed of the long standing of the agreement and the established procedure, he agreed to continue providing the right-of-way. In order to avoid any future misunderstanding, an agreement was drawn, which was signed by Mr. Metcalf for the Board of Territorial Road Commissioners and Mr. H. A. Stoddart for the Bureau of Public Roads. One of the original copies of this agreement which was dated December 2, 1949 is attached.

It soon became apparent that the special program financed by the special appropriation for Tongass National Forest would involve extensive right-of-way acquisitions and that considerable sums of money would be involved. An agreement relating to acquisition of rights-of-way on Alaska Forest Highways was entered into by the Territorial Board of Road Commissioners, the U. S. Forest Service and the Bureau of Public Roads on May 16, 1950. An original copy of this agreement is attached. Subsequently, specific agreements were executed covering the acquisition of specific right-of-way parcels, which it appeared would have to go to condemnation. Copy of an agreement dated February 1, 1951 for right-of-way for Project 2-D4, F6 and a copy of an agreement dated September 22, 1952 for right-of-way on Tongass Highway are attached.

It will be noted that in these latter agreements, the U. S. Forest Service entered as a third party, agreeing to handle condemnation suits that may be necessary. This was because the Bureau of Public Roads did not have the right-of condemnation and at that time the Territorial laws of condemnation were inadequate. The Forest Service, on the other hand, could condemn and also had the right of immediate taking of land under authority granted the Secretary of Agriculture. The Forest Service later ruled that due to the 1948 act transferring appropriations for Forest

Highways to the Department of Commerce, the Secretary of Agriculture no longer had the authority to condemn lands for Forest Highway purposes. In 1953 the Territorial Legislature passed a modern condemnation law including a law providing for taking possession by Eminent Domain. The Territory therefore has the legal machinery required for expeditious handling of right-of-way acquisitions.

The funds used by the Territory to pay for the rights-of-way were the portion of the Forest receipts which have been turned back to the Territory for highway use. For some years past, these funds have been held in escrow pending settlement of the Indian Aboriginal Claim. When funds accumulated previously had been exhausted, the Territorial Attorney General ruled that the receipts under the Alaska Gas Tax Law could not be used for right-of-way acquisition. The Territorial Highway Engineer therefore pleaded that he did not have any funds to use for this purpose. This was changed, however, in the last session of the Territorial Legislature, which in 1955 changed the Gas Tax Law so that these moneys now can be used for purchase of right-of-way, as well as other highway purposes. The income from the Territorial Gas Tax to the highway fund is now approximately \$2,600,000 per annum. Incidentally, Mr. Reed, the present Highway Engineer did not push either the condemnation laws or the change in the Gas Tax Law and it was largely through the efforts of the U. S. Forest Service and the Bureau of Public Roads that these laws were enacted.

The difficulties inherent in the Bureau of Public Roads obtaining rights-of-way are well described in Mr. Andrew's memorandum of February 24th. We had an experience in how difficult it is in the Territory of Alaska to obtain a title search and generally conduct right-of-way acquisition to meet Federal standards back in 1942 when we obtained some rights-of-way on Project DA-WR3 which were paid for by access funds. In acquiring the right-of-way from a Mr. and Mrs. Danner, we started negotiations in March and April of 1942. Mr. Boykin required an abstract of title and we were instructed to obtain bids from lawyers for this work. All lawyers refused to bid and the abstract was finally obtained from the U. S. Commissioner. We obtained the abstract on September 30, 1942 and all papers were forwarded to Washington a short time thereafter. The last reference in our files to this case is a copy of a wire dated September 13, 1943 to the Washington office from Mr. M. D. Williams asking that the payment for the right-of-way obtained be accelerated. The project had been completed on July 31, 1943. It was only because the owners were cooperative and more than reasonable in their attitude that we did not get in serious difficulties. The fact that it was wartime probably had some bearing on the owners attitude.

We have discussed this matter of rights-of-way acquisition with Mr. Wm. B. Adams, Chief of the Real Estate Branch of the Alaska Road Commission. He states that the Alaska Road Commission has the authority to purchase right-of-way with Federal funds and that they obtain easements in the name of Alaska Road Commission, that is, the Federal Government. For this latter reason, Territorial funds are not being used for

February 29, 1956

right-of-way purchases. Their policy is to negotiate the easement with the owner for free or for a nominal \$1.00 payment. It is usually successful, because the Alaska Road Commission generally operates in sparsely settled areas, but occasionally they do have to pay a more substantial purchase fee. They so far have had only one case come to condemnation. It took one year and a half to complete this case, which was handled through the Justice Department and the local District Attorney's office. We know that the District Attorney's offices in Alaska are so swamped that any case handled through their offices will be subject to long delays.

Mr. Adams further commented on the general problems connected with acquiring real estate in Alaska. He has found, as have we, that it is necessary to conduct title searches of our own to get any idea of the validity of the deed granted by the present occupant of the property. Mr. Adams is an experienced real estate officer from the states and said that he was amazed when he came to Alaska some five or six years ago in this work, to find the chaos that exists in the majority of the real estate titles. He estimates that at least 90% of all real estate titles in Alaska are cloudy and will not permit the owner to give a clear warranty deed without going through the court with a suit to quiet title. We are convinced that if we are to obtain the right-of-way for the U. S. Government and pay for it with government funds, we would have to employ an real estate officer, who is experienced in abstracting titles and who could devote his entire time to right-of-way acquisition. We would probably also need the part time services of a lawyer to process the cases in court. Assuming that we had these services, it would still take at least a year to clear the titles for the right-of-way on one project. Just what procedure we would follow in case it became impossible to come to an agreement with a property owner, we do not know, since it is our understanding that the Department of Commerce and the Bureau of Public Roads do not have the right of condemnation and Eminent Domain.

We have Project 16-A4,C4,D3,E2, which is scheduled for construction this coming season, and which will require the acquisition of approximately 50 different parcels of right-of-way. We do not expect any particular difficulty on this acquisition, and believe that if we can obtain quitclaim deeds in the name of the Territory under the procedure which has been in force heretofore, we can accomplish the acquisition by approximately July 1st. If we have to obtain the deeds in the name of the U. S. Government with Forest Highway Funds and satisfy the more stringent requirements of the Federal Government in matters of this nature, we are certain that we cannot get the project ready for construction before 1957.

In considering this matter of right-of-way acquisition in conjunction with the general cooperation by the Territory, it appears to us that the Territory instead of gradually assuming more and more functions and obligations, which they will have to assume if and when the Territory becomes a state, it is trying to do less and less in the matter of cooperation. The original cooperation in surveys, construction, and maintenance

February 29, 1956

has gradually been dropped so at the present time the only form of cooperation is in the acquisition of rights-of-way. It appears to us that this tendency to shove more and more onto the Federal Government is inconsistent with the statement generally made that the Territory is ready for statehood and is in financial position to operate a state government. It is also inconsistent with the fact that the Territorial funds available for highway purposes are now much greater, percentagewise, than they were when there was far greater cooperation in the Forest Highway Program. We do not believe that there is any justification for granting any further exceptions to the established procedures in the states than there are already in existence. We therefore do not recommend that rights-of-way be obtained by Bureau of Public Roads with Forest Highway Funds, but that the rights-of-way acquisition continue as a Territorial obligation as a matter of cooperation. We furthermore do not believe that the Bureau of Public Roads should be involved in the actual acquisition since it does actually mean the expenditure of Territorial funds by a government employee not directly responsible to the Territory. However, until the Highway Engineer's office is in a position to handle this work, we would have no objection to doing the negotiating as heretofore on the request of the Territorial Highway Engineer.

Attachments

Files

Previous Agreements.

Jimmy

Juneau, Alaska  
September 2, 1952

In accordance with a conference between officials of the Territory of Alaska, the United States Forest Service, and the Bureau of Public Roads on the matter of securing rights-of-way for portions of the South Tongass Highway, Alaska Forest Highway Route 1, through the properties of Mr. and Mrs. Bernard H. Moran and Thomas and Gretchen Givan near Bugge Beach, it is mutually agreed that:

- (1) The Territory of Alaska will pay all necessary expense incident to the condemnation proceedings and such sum as may be awarded by the Court due as payment for such rights-of-way.
- (2) The United States Forest Service will request the Secretary of Agriculture to take such steps as to insure condemnation proceedings against Mr. and Mrs. Bernard H. Moran and Thomas and Gretchen Givan.
- (3) The Bureau of Public Roads will furnish copies of survey notes, maps, and such other records as the Court may require.

9/5/52

/s/ Ernest Gruening  
**CHAIRMAN, TERRITORIAL BOARD OF  
ROAD COMMISSIONERS**

9/5/52

/s/ Frank A. Metcalf  
**MEMBER, TERRITORIAL BOARD OF  
ROAD COMMISSIONERS**

9/5/52

/s/ Henry Roden  
**MEMBER, TERRITORIAL BOARD OF  
ROAD COMMISSIONERS**

9/2/52

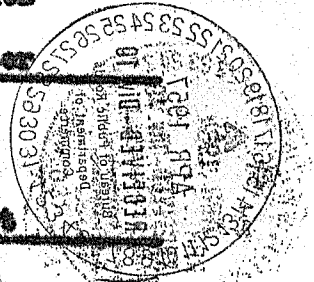
/s/ A. V. Blackerby  
**FOR U. S. FOREST SERVICE**

Acting Regional Forester  
**Title**

9/2/52

/s/ Hugh A. Steddart  
**FOR BUREAU OF PUBLIC ROADS**  
**Title: Division Engineer**

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ALASKA  
BUREAU OF PUBLIC ROADS





COOPERATIVE AGREEMENT

2 Copies

Juneau, Alaska  
February 1, 1951

Conferences have been held between officials of the Territory of Alaska, the U. S. Forest Service and the U. S. Bureau of Public Roads, regarding securing required rights-of-way for relocation of a portion of Alaska Forest Highway, Route 2, Glacier Highway, project 2-D4, P6, on properties owned by James P. DeHart (Lot No. 2 of U.S. Survey No. 2664), Helen M. Burnett (U.S. Survey No. 2291), and Thomas McCaul (Lot H1 of U.S. Survey 2391). It is therefore mutually agreed that:

- (1) The Territory of Alaska will deposit sufficient funds in the Cooperative Work Fund of the U. S. Forest Service to cover all necessary expense incident to obtaining the rights-of-way as defined below. The first deposit will be \$1,500.00. Subsequent deposits will be paid upon request of the U. S. Forest Service in such amounts as the Forest Service deems necessary. Deposits in excess of the actual amount needed will be refunded to the Territory of Alaska.
  - (a) Appraised value of improvements, as determined by the U. S. Forest Service, for that portion needed of the James P. DeHart property and,
  - (b) Appraised value, for an out of court settlement, of the land and improvements as determined by the U. S. Forest Service, on those portions needed of the Helen M. Burnett and Thomas McCaul properties, and/or,
  - (c) Such sums as may be awarded by the court to James P. DeHart, Helen M. Burnett, and Thomas McCaul as payment for the subject rights-of-way and,
  - (d) Costs of all abstracts of title that may be needed.
- (2) The U. S. Forest Service will attempt to arrange settlements out of court. If not successful, the Secretary of Agriculture will be requested to take action to start condemnation proceedings and filing of declarations of taking against Helen M. Burnett and Thomas McCaul.
- (3) The Bureau of Public Roads will furnish copies of survey notes, maps, and such other records as the Court may require.

February 1, 1951

/s/ FRANK A. METCALF  
For Terr. Board of Road Commissioners  
Title: Territorial Highway Engineer

February 1, 1951

A. W. BLACKBURN  
For U. S. Forest Service  
Title: Acting Regional Forester

February 1, 1951

/s/ V. M. BLACKWELL  
For Bureau of Public Roads  
Title: Highway Engineer

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FEB 3 1951  
ALASKA DEPARTMENT OF PUBLIC ROADS

RECEIVED  
FEB 1 1951  
ALASKA DEPARTMENT OF PUBLIC ROADS

MEMORANDUM OF AGREEMENT RELATING TO THE ACQUISITION  
OF RIGHTS-OF-WAY ON ALASKA FOREST HIGHWAYS

May 16, 1950

Recognizing that the growth of population and attendant increase in volume of traffic has caused the previously constructed Forest Highway system in the National Forests of Alaska to become obsolete and inadequate for present and prospective traffic, the Bureau of Public Roads is beginning a program of highway reconstruction with the approval of the Forest Service and the Territorial Board of Road Commissioners of Alaska. Reconstruction requires additional rights-of-way for wider roadway and improved alinement. The Forest Highways lie partially through private lands and rights-of-way acquisition involved purchase of property from private ownership. With the Federal Government bearing the cost of construction of roads that are of great benefit to the Territory, the Territorial Board is willing to extend the cooperation in purchase of rights-of-way, that has been nominal until this time, to assume the greater cost necessary for rights-of-way for modern highways. This agreement by the Territorial Board of Road Commissioners, the Forest Service and the Bureau of Public Roads sets forth the understanding of these organizations regarding rights-of-way acquisition subject to the following conditions:

1. The Territorial Board of Road Commissioners agrees to make and hold available \$50,000 in funds that may be used for the purpose of rights-of-way acquisition.
2. The Bureau of Public Roads agrees to make the necessary surveys, prepare rights-of-way plats and documents, and negotiate for the property acquisition subject to approval of the Territorial Board of Road Commissioners.
3. All property will be acquired for and all titles will be held in the name of the Territory of Alaska.
4. To permit construction of facilities of adequate standard and to prevent encroachment of adjacent property owners on new roadways, minimum widths of rights-of-way through privately owned land of 80 feet and through publicly owned land of 100 feet have been adopted.



5. Rights-of-way through Forest areas will be made available by the Forest Service.

6. In the event that rights-of-way cannot be obtained at a fair price by negotiation, the Forest Service agrees to initiate condemnation action under proceedings and authority available to the Department of Agriculture.

7. The Territory agrees to pay such damages as may be awarded to property owners as a result of condemnation proceedings.

8. This agreement is effective immediately and will continue in effect for two years or until available funds are exhausted. Since the Forest Highway program is expected to continue at its present level, or on an increased scale, the agreement is expected to be renewed periodically with such modifications as become necessary or appear desirable at the time of renewal.

/s/ H. S. Stoddart  
H. A. STODDART  
Division Engineer

U. S. FOREST SERVICE

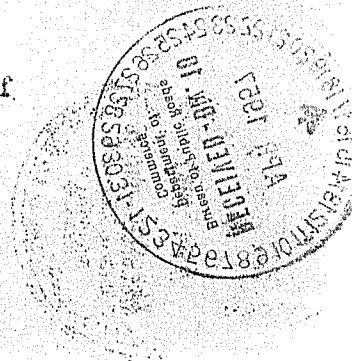
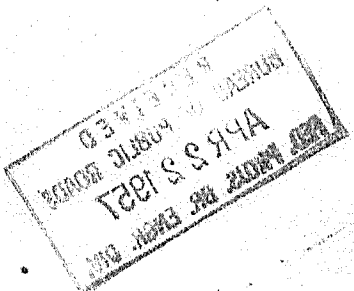
By /s/ Chas. H. Forward  
Acting Regional Forester

TERRITORIAL BOARD OF ROAD COMMISSIONERS

By /s/ Lew M. Williams  
Acting Chairman

By/s/ Henry Roden  
Member

By /s/ Frank A. Metcalf  
Highway Engineer



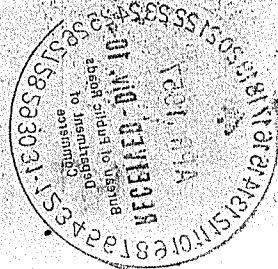
**MEMORANDUM AGREEMENT**

The following Agreement is hereby entered into by the Territorial Board of Road Commissioners, represented by the Territorial Highway Engineer, Territory of Alaska, and the U. S. Bureau of Public Roads, Division 10, Alaska.

Inasmuch as the construction or reconstruction of Forest Highways in Alaska from time to time require acquisition of new or additional Rights-of-Way, and inasmuch as all construction funds are provided under the Federal Highway Act, except in special cases where Territorial cooperative funds are provided, the Territorial Highway Engineer agrees to cooperate with the Bureau of Public Roads in construction of Alaska Forest Highway to the extent that all expenses in connection with the acquisition of the necessary Rights-of-Way will be paid from Territorial Highway funds. The Territorial Highway Engineer further agrees to reimburse all expenditures made in this connection by the Bureau of Public Roads or its representative.

The Agreement covers only nominal expenses including the payment of \$1.00 for each Right-of-Way and the cost in connection with the recording of Right-of-Way deeds. Any major expenses in connection with Right-of-Way acquisition will be discussed and agreed upon by the two parties before any commitment or payment is made.

The Right-of-Way deeds are drawn in favor of the United States of America or the Territory of Alaska, and will be kept on file in the District Offices of the Bureau of Public Roads and will be available to the Territorial Highway Engineer at any time.



This Agreement shall take effect immediately after it has been signed by both parties and shall remain in effect indefinitely until cancelled in writing by either one of the two parties.

Date: December 2, 1949

TERRITORIAL BOARD OF ROAD COMMISSIONERS

By /s/ Frank A. Metcalf  
FRANK METCALF

Title Territorial Highway Engineer

Date: December 2, 1949

BUREAU OF PUBLIC ROADS, DIVISION 10

By /s/ Hugh A. Stoddart  
HUGH A. STODDART

Title Division Engineer

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BUREAU OF PUBLIC ROADS  
DIVISION 10



(Alaska) F. H. R/u

7/29/53 -

A L A S K A

Agreement Data  
(Right-of-Way)

Miscellaneous:

Letter March 31, 1927 - Commissioner to Governor of Alaska relative to providing Federal-aid to Alaska.  
(Maintenance discussed - page 2)

Letter August 22, 1922 - Assistant District Engineer to Secretary to the Governor of Alaska - see reference bottom page 2 relative to mutual agreement Alaska Road Commission, Forest Service, and Bureau on maintenance of roads in Alaska.

Session Laws of Alaska 1919 -

- Provide (1) Cooperation between Territorial Board of Road Commissioners and Federal Road Authorities.  
(2) Establishes lawful width of right-of-way as 60 feet.

Federal Aid Road Act of 1916 - Sec. 8 -

Funds made available to States and Territories provided: They enter into cooperative agreement for the survey, construction, and maintenance, upon a basis EQUITABLE to both State, Territory, or County and the United States.

Federal Aid Road Act of 1921 -

- (1) Included right-of-way as part of construction cost.  
(2) Sec. 17 provides for right-of-way through Government land to be transferred to the State highway departments.  
(Apparently not applicable in Alaska as they have no State highway department as such)

Letter of September 16, 1924 - Commissioner, Public Roads to *Forester MacDonald* - - - - Right-of-way to be secured by the local authorities as a standard practice, however, there may be exceptions in extraordinary cases.

Teletype of February 3, 1953 - Commissioner to Stoddard and related correspondence. Bureau does not have authority to obtain right-of-way by eminent domain for Forest highways - Agriculture does - Territorial Board, if not now empowered, should seek legislation to authorize acquisition this method.

GROSS REFERENCE

File No. *(Alaska) F.H.*  
Date 2/29/56

FROM : written by Mr. HASKELL

TO :

SUBJECT: ALASKA

Agreement<sup>s</sup> with Territorial Board of Road Commissioners  
Routes 1, 2, & 31, in the Vicinity of Juneau & Ketchikan.

\*\*\*\*\*

Teletype of Feb. 3, 1953- Commissioner to Stoddard & related correspondence.  
Bu. does not have authority to obtained right-of-way by eminent domain for  
Forest hwys.- Agriculture does- Territorial Board, if not now empowered,  
should seek legislation to authorize acquisition this method.

See File No. *(Alaska) F.H. R/w. + F.H. Alaska Rte 1*

BUREAU OF PUBLIC ROADS

## Office Memorandum • UNITED STATES GOVERNMENT

AIR MAIL

To : A. C. Clark, Deputy Commissioner  
 Washington, D. C.

FROM : ~~E. T. Andrews~~  
 E. T. Andrews, Division Engineer  
 Portland, Oregon

SUBJECT: ~~Rights-of-Way~~  
 Rights-of-Way

DATE: February 28, 1956

*Ymar*  
*4/13/56*  
*66-60*

Reference is to our telephone conversation and memorandum of February 24, 1956 on the above subject.

There are enclosed copies of the three co-operative agreements mentioned in our memorandum. We do not know whether this is a duplication of one of the agreements referred to in District Engineer Wyller's telegram to you of yesterday or not. We presume not since no reference is made therein to right of way acquisition. Further, we have no knowledge here in Division regarding the action taken with respect to the sharing of maintenance costs by the Territory. To our personal knowledge the Territory has not contributed to such costs for the past 7 years. In such case, these agreements cover only short sections of what are now considerably longer routes. Hand signed copies of these co-operative agreements are in Division Files.

To date we have found no other agreements or other pertinent data in Division Files regarding this subject. Possibly such information would be in old Western Headquarters Files, in which case Alaska District will have located it and included it in data sent directly to you.

An additional thought has also occurred to us regarding direct acquisition of right-of-way by the various states rather than by the Bureau. We find, particularly in Oregon, that in many instances the State prefers to acquire a standard width right-of-way wider than we may indicate on our plans as the minimum we require. This, for the reason that it will take care of any future reconstruction to a higher standard, fits State widths on adjacent state sections of the highway and renders maintenance to the same standard when the state eventually takes over the maintenance. Undoubtedly, were we to directly acquire the right-of-way ourselves it would be to minimum required widths.