

take the land

*Al. Highways - 13*



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
WASHINGTON 25, D. C.

MAR 19 1957

Memorandum

To: The Solicitor  
Director, Bureau of Sport Fisheries & Wildlife  
Director, Geological Survey  
Commissioner, Bureau of Indian Affairs  
Director, Bureau of Land Management  
Director, Bureau of Mines  
Director, National Park Service  
Commissioner, Bureau of Reclamation  
Director, Office of Territories  
Administrator, Bonneville Power Administration

From: Acting Director, Technical Review Staff

Subject: Bureau of Public Roads Policy and Procedure Memorandum  
21-4.3; Right-of-Way Procedures (Public Lands and  
Reservations)

<i>Handled X/C 3-20</i>		
FILED		

This memorandum already has been approved by the Federal Highway Administrator. Its date of issuance will be sometime in March. The memorandum is an internal operating instruction within the Bureau of Public Roads and for use by the State Highway Departments.

The Department of the Interior has been asked to review the attachment and furnish, at an early date, any comments it may have concerning any additional instructions which should be issued by the Bureau of Public Roads from the standpoint of Interior, and an indication of how Interior proposes to operate in this relationship.

Will you please have these instructions reviewed and designate a Bureau representative to meet with me at 10:00 A.M., March 27, 1957, in Room 7258, prepared to submit, in writing, any additional instructions which may be required and to discuss any problems confronting the Bureau with respect to these right-of-way procedures.

TO : MR. BENNETT  
FROM : MR. [unclear]

RECEIVED

*John B. Bennett*  
John B. Bennett

Attachment

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<b>U. S. DEPARTMENT OF COMMERCE</b> Bureau of Public Roads	<b>POLICY AND PROCEDURE MEMORANDUM 21-4.3</b> Date of issuance: March 27, 1957
PROGRAM AND PROJECT PROCEDURES	
SUBJECT: RIGHT-OF-WAY PROCEDURES (Public Lands and Reservations)	
Supersedes: Memorandum dated April 2, 1923, (Temporary Topic 20-D)	

#### 1. PURPOSE

The purpose of this memorandum is to prescribe the policies and procedures relating to the acquisition by the States of interest in public lands or reservations of the United States for highway purposes.

#### 2. SECTION 17 OF THE FEDERAL HIGHWAY ACT OF 1921

a. This section authorizes the transfer of public lands and reservations of the United States to the State highway departments on determination by the Secretary of Commerce that such lands are reasonably necessary for the right-of-way for any highway or forest road; as a source of materials for the construction and maintenance of such roads and highways; for maintenance and stockpile sites; or for roadside and landscape development. It does not authorize transfers to Territories.

b. This section has been interpreted as applying only to projects located on a Federal-aid system or which are being constructed in whole, or in part, with Federal funds.

c. Applications under this section should be filed by the State highway department and not by a subdivision of the State, through Public Roads with the appropriate Federal agency. No special form of application is required but it should state the purpose for which the land is to be used and should specify that the applicant agrees that the acquisition, if approved, will be subject to the terms and conditions of the applicable regulations of the department making the grant.

d. Each application should be accompanied by (1) a map prepared on tracing linen and four print copies thereof, showing the survey of the land desired, properly located with respect to the public land surveys, so that it may be accurately located on the ground by a competent engineer or land surveyor, and (2) a description (original and four copies) of the lands desired in terms of the public land surveys or by metes and bounds and showing the approximate area. If the project to be constructed is a controlled access project, the extent of such control should be specifically set out in the application.

e. Upon approval or disapproval of the State's application, notice is given by the agency which controls the lands. Normally such notice will be routed through the Washington office of Public Roads, but where the State is notified direct, it should advise Public Roads.

f. If and when the need for the land acquired under this section shall no longer exist, notice of that fact must be given by the State highway department to the Secretary of Commerce, and such lands will immediately revert to the control of the Federal agency from which they were appropriated.

#### 3. SECTION 109(d) OF THE FEDERAL-AID HIGHWAY ACT OF 1956

a. This section authorizes the Secretary of Commerce to make necessary arrangements with the agency having jurisdiction over the land, for rights-of-way including control of access whenever such right-of-way on the Interstate System are required over public lands or reservations of the United States.

b. Applications under this section will be processed in the same manner as applications under Paragraph 2.

#### 4. SECTION 2477, REVISED STATUTES

This statute grants right-of-way for the construction of highways over public lands not reserved for public uses. The grants of right-of-way by this section become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands not reserved for public uses. No application should be filed under Revised Statutes 2477, as no action on the part of the Government is necessary. The Bureau of Land Management will not receive and record on its tract books rights-of-way acquired under this section. This section does not grant the right to take materials for roads from the public lands nor does it properly document the control of access. In such cases Section 17 of the 1921 Act or Section 109(d) of the 1956 Act should be used. This law is in the nature of an offer of the right-of-way, and an acceptance is necessary before the public right becomes effective. If

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superior adverse rights have accrued, the State or other public authority would have to take the land subject to such rights.

#### 5. EXECUTIVE ORDER NO. 10355

a. By this order the President delegated to the Secretary of the Interior the authority to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States in the continental United States or Alaska for public purposes, including the authority to modify or revoke withdrawals and reservations of such lands.

b. The head of any Federal or State agency desiring lands owned or controlled by the United States to be withdrawn or reserved under the authority of said Executive Order for use of the agency, should file an application for such withdrawal or reservation with the manager of the land office of the area in which the lands are situated, or, if there is no land office for the area, with the Director of the Bureau of Land Management, Department of the Interior, Washington 25, D. C. Such application should conform to the requirements of Department of Interior Circular 1830 (43 CFR Sections 295.9 through 295.11).

c. The application for material sites on forest land should not be filed as a withdrawal under Executive Order No. 10355 but should be filed as a request for a special use permit under the Mineral Materials Act, as amended July 23, 1955, and pursuant to Regulation U-13 of the Secretary of Agriculture (36 CFR 251.4).

#### 6. INDIAN LANDS

The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way across Indian lands. All applications for the use and occupancy of Indian lands for right-of-way purposes should, therefore, be filed with the Superintendent of the Indian Agency or other superintendent in charge of the reservation on which the lands involved are situated, in accordance with the regulations of the Bureau of Indian Affairs contained in 25 CFR, Part 256.

#### 7. FOREST AND PARK LANDS

a. The Forest Service and the National Park Service, as a rule, do not grant rights-of-way through their reservations under Section 17 of the 1921 Act. Both of these agencies resort to a "special use permit." These permits contain certain conditions with which the States must comply and are in the nature of revocable licenses.

b. Applications involving lands under the jurisdiction of the Forest Service or National Park Service should follow the procedure for applications under Section 17 and should be forwarded through the Washington office of Public Roads.

#### 8. OTHER LAWS

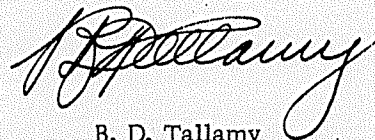
a. Some departments have special legislation for granting rights-of-way over lands under their jurisdiction and often prefer to proceed under their own laws rather than under Section 17. The Department of Defense has such a provision in the Act of July 24, 1946 (43 USC 931b) as amended by the Act of October 25, 1951 (50 USC 171-1), and the Veterans Administration has a similar provision in the Act of May 31, 1947, (38 USC 11i).

b. Where it is known that an agency desires to proceed under its own laws, the State may file application direct with such agency; but where Section 17 is to be invoked, the procedure outlined in Paragraph 2 hereof should be followed. When there is doubt as to which law will govern, the application should be filed under Section 17. The granting agency will then determine which act it will follow.

#### 9. GENERAL

a. If a State's application is forwarded to Public Roads, it is suggested that in order to expedite approval a copy of the application be forwarded directly to the local office of the Federal agency having jurisdiction over the land involved.

b. Applications should be made sufficiently in advance of the need for the right-of-way to provide ample time for action thereon.



B. D. Tallamy  
Federal Highway Administrator

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