

# Design Standards Letter

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**Section/Plan No.: None**

**Subject: Public Hearings, Federal-Aid Projects**

## Body

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U. S. DEPARTMENT OF COMMERCE  
BUREAU OF PUBLIC ROADS

Subject: Public Hearings, Federal-Aid Projects

Supplements: Policy and Procedure Memorandum 20-8, dated August 10, 1956.

### 1. PURPOSE

The purpose of this memorandum is to supplement existing memoranda relating to public hearings to further describe the various elements of PPM 20-8 and other memoranda regarding the subject, in order to assure similar application in all cases and uniform recognition of the intent and purpose of the hearings required by Section 128 of Title 23 USC, hereinafter referred to as Section 128.

### 2. OBJECTIVE AND INTENT OF PUBLIC HEARINGS

a. The responsibility for the selection or designation of Federal-Aid highway routes rests with the State Highway Departments as provided by Section 103/ The authority to approve such State action is vested in Secretary of Commerce, who has delegated such authority to the Federal Highway Administrator. There is no requirement under Title 23, USC, that there be a public hearing as a part of a State's action in selecting or designating a Federal-Aid highway route, nor for approval of such action by the Federal Highway Administrator.

b. Section 128 requires that there be a public hearing, or that there be opportunity afforded for one, prior to the time that a State highway department may proceed with certain Federal-Aid projects for the improvement of previously selected or designated Federal-Aid highway routes.

c. The objective of the public hearings is to provide an assured method whereby the State

can furnish to the public information concerning the State's highway construction proposals, and to afford every interested resident of the area an opportunity to be heard on any proposed Federal-Aid project for which a public hearing is to be held. At the same time, the hearings afford the State an additional opportunity to receive information from local sources which would be of value to the State in making its final decision as to which of possibly several feasible detailed locations should be selected.

d. The hearings are not intended to be a popular referendum for the purpose of determining the location of a proposed improvement by a majority vote of those present. They do not relieve the duly constituted officials of a State highway department of the necessity for making decisions in State highway matters for which they are charged with full responsibility. The public hearing procedure is designed to insure the opportunity for or the availability of a forum to provide factual information which is pertinent to the determination of the final location considered by the State to best serve the public interest and on which improvement projects are proposed to be undertaken.

### 3. REQUIREMENTS AND CONDITIONS

a. Section 128 requires that any State highway department which submits plans for a Federal-Aid highway project involving the bypassing of, or going through, any city, town, or village, incorporated or unincorporated, shall certify that it (1) has held public hearings, or has afforded the opportunity for such hearings, and (2) has considered the economic effects of such a location. Section 128 also requires that any State highway department which submits plans for an Interstate System project shall certify that it has held public hearings at a convenient location, or has afforded the opportunity for such hearings, for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed location of such highway. If hearings have been held, the State highway department shall submit a copy of the transcript of the hearings together with the required certification.

b. These requirements contemplate that the State highway department will fully inform the public concerning the general location and design features, and the general economic and other aspects of the proposed improvements together with possible alternate routes, all in sufficient detail to permit residents of the area to have full and reliable information as to the project.

c. Except as provided in this paragraph and in paragraph 4, a public hearing shall be held, or the opportunity for a public hearing afforded, with respect to (1) any Interstate project, and (2) any other Federal-Aid highway project (including any Secondary Road Plan project) which involves the bypassing of, or going through, any city, town or village, either incorporated or unincorporated. No public hearing is required where a project is for resurfacing or widening, the addition of traffic lanes, the replacement of existing grade separation structures, or similar improvements, if the project is within the limits of the existing right-of-way, if abutting real property is not adversely affected, and if the layout or function of connecting roads or streets is not changed. Public hearings are required with respect to projects which necessitate the acquisition of additional rights-of-way (including

rights of access, light, air or view) and projects which may have an adverse effect upon abutting real property, such for example as those which involve a material change of grade of an existing street or highway, the large scale removal of shade trees, or similar features of general public interest. A public hearing should be held, or the opportunity afforded therefore, in any case where doubt exists as to whether a public hearing is required by section 128.

d. As here used "economic effects" means the benefits or losses both to the motorists using the proposed improvement and the overall community affected thereby. The economic effects of a proposed location are proper matters for discussion at a public hearing held with respect to the project. However, the State highway department must certify that it has considered the economic effects of the proposed location, irrespective of whether the matter was discussed at a public hearing, or whether a public hearing was actually held.

#### 4. PROCEDURES

a. Public hearings required by Section 128 should be held before the specific location of a proposed project is selected, but not until after the State highway department has selected a corridor location from among the alternates studied, and has developed preliminary plans in sufficient detail to enable the public and the State to consider and discuss the principal features of the proposed project at the public hearing.

b. Reasonable advance notice must be given of scheduled public hearings or of the opportunity therefore, and the purpose thereof. Such notice shall include either a description or some specific identification of the proposed route or routes to be discussed. The notice shall be published at least once each week for two successive weeks in a newspaper having general circulation in the vicinity of the proposed project and shall also be publicized through other means, such as news releases to newspapers and radio and television stations, so as to provide reasonable assurance that the notice will come to the attention of all interested or affected persons. The use of graphic illustrations is desirable though not necessarily required. Reasonable advance notice of the location, date and time of each such public hearing should be supplied to the Bureau's division engineer.

c. A state highway department may arrange with the officials of the appropriate county, city, town or village, for holding a hearing (including giving notice thereof and obtaining a transcript of the hearing) for the State highway department, but the State highway department shall retain responsibility for insuring that the notice and hearing conform to the requirements of law and the procedures given herein and shall be responsible for submitting the certificate required by Section 128.

d. In order to fully inform the public, State highway departments should make available, well in advance of the public hearing, information concerning the location and design of the project, and the general economic and other aspects thereof. It is sometimes advisable to hold informal informational meetings, clearly identified as such, well in advance of the official hearing.

e. Public hearings are to be held at a place and time generally convenient for persons affected by the proposed project. Where a Federal-Aid project, or a route involving several Federal-Aid projects, affects a community and a rural area, or more than one of either, and the circumstances are similar, one combined public hearing may be held provided the place and time thereof are generally convenient.

f. Information and data concerning the proposed project should be available at the public hearing. A representative of or spokesman for the State highway department should explain the proposed project, its location and design, the general economic and other aspects thereof, and alternate routes, if any, that have been considered. If the project is one involving the bypassing of, or going through a city, town or village. incorporated or unincorporated, any person of the affected area or his representative who is present at the hearing should be allowed to express his views and present data and material concerning the project. If the project is an Interstate system project in a rural area, any person, or his representative, who is present at the hearing and through or contiguous to whose property the highway will pass must be given the opportunity to express any objections he may have to the proposed location of the highway.

g. A written transcript of the proceedings must be made and shall include all statements, together with a copy of or identifying references to exhibits, data and material submitted for the record of the hearing. Tape, wire, or similar recordings will not be accepted as a transcript. If, however, a recording of the proceedings is made, such recording shall be made available to the division engineer upon his request.

h. For each public hearing held, the State highway department is to submit a certificate which recites the date, time and place of the hearing accompanied by a copy of all notices of the hearing and a written transcript thereof. If the opportunity for a public hearing was afforded but a hearing was not held, the certificate is to explain how and when such opportunity was afforded, and why no public hearing was actually held. In either case, if the project involves the bypassing of, or going through, any city, town or village. incorporated or unincorporated, the certificate must contain a statement that the State highway department has considered the economic effects of the location.

i. The certificate referred to in paragraph 4(h) must be submitted to the division engineer of the Bureau of Public Roads no later than the date upon which plans for the project are submitted to him for approval except that certificates relating to projects under an approved Secondary Road Plan are to be submitted to the division engineer by the State prior to the execution of the project agreement.

j. The State highway departments are expected to assume the cost of conducting required public hearings as an administrative function without the use of Federal-Aid funds. However, data, charts, maps, models, photographs, and other documents or materials prepared or assembled with the aid of Federal funds, including highway planning survey funds, may and should be fully used in connection with public hearings.

## 5. ACTION BY PUBLIC ROADS

- a. The division engineer may authorize a State highway department to proceed with preliminary engineering of a programmed Federal-Aid project before a public hearing is held. Such authorization will be given, however, for only that work necessary for the development of preliminary plans to the degree proper for presentation at a public hearing. In addition, the division engineer may approve acquisition of certain parcels necessary for right-of-way in exceptional cases as provided under paragraph 4c of PPM 21-4.1.
- b. To provide coordination with the State highway department in carrying out the provisions of Section 128, it is desirable that the division engineer or his representative attend public hearings as an observer. While in attendance at a public hearing the division engineer, or his representative, may properly explain procedural and technical matters covered by Federal-Aid laws and regulations, but in no case shall he indicate a preference for any proposal advanced by the State highway department or by others.
- c. The division engineer may approve the location and authorize the State to proceed with the development of plans, right-of-way acquisition, and the actual construction of the proposed improvement only after (1) he has evaluated the information and factual data presented at the hearing together with other information and data available to him, (2) he is satisfied that the requirements of Section 128 and this memorandum have been fulfilled and (3) he has concluded that the proposed location and advancement of the project are in the public interest.

/s/ B. D. Tallamy