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27 DEC 1961

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Honorable Clifford Davis
Chairman, Subcommittee on
Real Property Acquisition of
the Committee on Public Works
House of Representatives
Washington 25, D. C.

Dear Mr. Davis:

Thank you for your letter of 15 December 1961 to Mr. McCone regarding the studies to be undertaken by your Subcommittee on Real Property Acquisition.

This Agency does not have a land acquisition program nor is such a program contemplated in the future. The Central Intelligence Agency has authority under Section 8(a)(1) of Public Law 81-110 (1949) to acquire necessary land and to construct buildings and facilities. In the past, however, any acquisition of land has been accomplished generally by utilizing the assistance and services of other departments of the Government.

Mr. John S. Warner, the Agency Legislative Counsel, has already been in touch with Mr. Henry H. Krevor, Chief Counsel and Staff Director of the Subcommittee. Mr. Warner will be glad to assist the Subcommittee and the staff in whatever way possible. Mr. Warner can be reached by telephone on

[Redacted]

Sincerely,

SIGNED

C. P. Cabell
General, USAF
Deputy Director

File

[Handwritten signature]

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MEMORANDUM FOR: ~~THE DIRECTOR~~
THRU : THE DEPUTY DIRECTOR

Attached is a proposed letter for your signature answering Representative Davis' request for information on our land program. Davis' letter to the Agency was a form letter sent to all agencies. Basically, our situation is of no interest to the Subcommittee. However, the Staff Director did request that we answer that letter insofar as possible.

Recommend signature *JSW*

cc: DDCI

JOHN S. WARNER
Legislative Counsel
22 December 1961
(DATE)

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MEMORANDUM FOR: Director of Central Intelligence
THROUGH : 1. *A*/Deputy Director (Support) *JKZ* 26 DEC 1961
2. Deputy Director of Central Intelligence
SUBJECT : Real Property Acquisition

The attached correspondence for your signature is in reply to an inquiry from Congressman Clifford Davis concerning studies to be conducted by a Congressional Subcommittee to be chaired by Congressman Davis. It cites the Agency real estate acquisition authority and indicates that the Agency does not have a continuing land acquisition program.

[Redacted Signature Box]

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JAG
JAMES A. GARRISON
Director of Logistics

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HENRY H. KREVOR
CHIEF COUNSEL
RUTH HERITAGE
CLERK

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

SELECT SUBCOMMITTEE ON REAL PROPERTY ACQUISITION
OF THE COMMITTEE ON PUBLIC WORKS

December 15, 1961

61-9687

Honorable John A. McCone
Director
Central Intelligence Agency
Washington 25, D. C.

My dear Mr. Director:

As you probably know, on August 24 of this year, the Committee on Public Works of the House of Representatives created a Select Subcommittee on Real Property Acquisition, of which I am privileged to serve as chairman.

In recent years, there has been increasing concern over the question of adequacy of payments to persons affected by public improvements under traditional eminent domain principles. The Congress and many state legislatures are being urged constantly to correct alleged inequities in existing law. Many Members of Congress have introduced bills to meet specific problems, and several have sponsored legislation to provide for a study of the over-all subject of just compensation. Also, the Bureau of the Budget has stated that the Administration believes there is a real need for such a study.

The purpose of this bipartisan subcommittee, therefore, is to make an objective, comprehensive study of existing laws, practices, and procedures in the acquisition and evaluation of real property required for Federal and Federally-assisted programs to determine whether they are unfair either to property owners because of inadequate payments or to the taxpayers because of overpayments; and to produce a considered report with sound recommendations and legislative proposals, if appropriate. The enclosed copy of an address which I presented before the American Association of State Highway Officials at its annual meeting this year, gives further details concerning the purpose and objectives of the subcommittee. I want to emphasize that this is to be an impartial, objective study project and is not designed as an investigation into alleged improprieties or irregularities.

We expect to work closely with affected or interested Federal and state governmental agencies, among others, and to seek their comments and suggestions from time to time as the study progresses. Full cooperation and assistance, particularly in the collection of data during the early stages of the study, will be of material help in accomplishing our objectives.

During the first several months of the study, the staff will devote the major part of its time to compiling and correlating pertinent laws and judicial decisions, and the existing property acquisition practices and procedures of the various agencies. This alone will be a difficult task. To help assure that we have complete and comprehensive information, it would be deeply appreciated if you would do the following:

First, let us have a narrative summary of the programs administered by your agency for which you acquire real property, or for which other Federal, state, or local agencies acquire real property with Federal funds participation; also, a general description of the real property acquisition activity, including the property interests acquired and the size of the program in terms of dollars, acreage, and number of parcels acquired annually.

Second, furnish us with copies of the Federal laws and the regulations and procedures of your agency governing such real property acquisition activity, and arrange to keep us informed of any changes.

Third, appoint a representative of your agency to serve as a contact for the subcommittee, to answer questions, furnish information, and possibly meet with the staff from time to time. Mr. Henry H. Krevor is our chief counsel and staff director, and you may address inquiries or information to him at the staff headquarters in Room 415, George Washington Inn.

The work of the subcommittee is just getting underway, and the success of the study will depend, in large measure, upon the action taken in the early stages. If you have any thoughts as to specific problem areas which should be explored, or any other comments or suggestions concerning the study, they will be most welcome.

With all good wishes, I am

Very sincerely yours,

Enclosure

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ADDRESS BY CLIFFORD DAVIS, (TENN.) BEFORE THE
AMERICAN ASSOCIATION OF STATE HIGHWAY OFFICIALS,
DENVER, COLORADO
OCTOBER 9, 1961

I should like to talk with you today about a Congressional study which is just getting under way and which will be of great importance to the Federal-aid highway program and to you personally. On August 24 of this year, the Committee on Public Works of the House of Representatives created a Select Subcommittee on Real Property Acquisition, on which I am privileged to serve as chairman.

This subcommittee is bipartisan, with five Democrats and four Republican members. We are charged with the responsibility of making an impartial, non-political, objective, and comprehensive study to determine if existing laws, practices, and procedures in the acquisition and evaluation of real property acquired for Federal and federally-assisted programs are unfair either to property owners because of inadequate payments or to the taxpayers because of over-payments.

It is now estimated that the study will require about 2½ years to complete. Our study will include the acquisition of real property for Federal projects by the Departments of Justice, Defense, Interior, Agriculture, Post Office, and Health, Education and Welfare; and by the Atomic Energy Commission, Veterans Administration, General Services Administration, Federal Aviation Agency, Tennessee Valley Authority, Capitol Architect, and others.

The Federal-aid program to be embraced in the study will include acquisitions of real property for highways, airports, urban renewal, and others. We are particularly interested in the Federal-aid highway program, for it involves the acquisition of more property at greater expenditure of public funds than any other single program, and it directly affects people throughout the entire country.

As you know, the cost of right-of-way for the 41,000 mile Interstate System alone is estimated to be over \$6-1/4 billion, almost 16 percent of the total cost of the Interstate System. This is a lot of money.

I know that you share the desire of the members of the subcommittee to assure that this money is properly expended in return for value received, and at the same time to assure that property owners are adequately compensated.

In recent years, there has been growing attention, at the Federal, State, and local levels, to the question of adequacy of just compensation under the traditional concepts of eminent domain.

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This is not startling in light of the vast increase in the amount of real property being acquired for the many and various kinds of public improvements and the increasing complexities in measuring the value of property taken.

The Constitution of the United States and that of each of the several States assure that property will not be taken without due process of law and without payment of just compensation. Neither the Constitution of the United States nor the Federal statutes define "just compensation," and the same is generally true as to State laws.

Interpretation of the requirements and limits of just compensation has been a judicial function of the courts. They have generally held that just compensation is measured by the market value of real property taken, plus the diminution in market value of the owner's remaining real property resulting from the taking and the use to be made of the property taken. This measure of just compensation presupposes a willing seller and a willing buyer; however, in the acquisition of property for public improvements, the seller is often unwilling to sell, but is forced to do so.

When the "willing seller" rule for determination of compensation is applied to an unwilling seller, it is obvious that there may be dissatisfaction, controversy, and litigation. In some instances the property owners are greedy and try to obtain more than they are entitled to under any test of fairness and equity; in other instances the property owners suffer real and substantial losses for which they cannot be paid under existing laws.

In these latter cases, courts have been known to engage in judicial legislation, juries often effect compromises, appraisers some times exercise flexibility in arriving at opinions of value which strain if not completely distort the appraisal process, and negotiators and those authorized to approve settlements on occasion depart from sound concepts of market value, all in the name of serving "basic justice."

However, this is not justice; it is giving preferential treatment to some, without equal protection to all. If our present laws and procedures are inadequate or unfair they should be changed. On the other hand, if they provide for the proper measure and payment of compensation, they should be applied uniformly.

During the past decade, the Congress and many State legislatures have been urged to correct alleged inequities in existing law. The proposed changes have taken many forms. For example, bills have been introduced in the Congress to require payment for business property taken for public use. The purpose of

personal property located on real property taken, and expenses of litigation, including attorney fees.

There have been bills before the Congress to require that buildings and other improvements be appraised on the basis of their current replacement cost irrespective of their actual market value; to require, in addition to all other compensation, payment of an amount equal to the average annual net income earned from agricultural properties during the preceding five years; and to provide for payment, in addition to the market value of the property taken, of the difference between such value and the cost of locating and purchasing suitable replacement property.

You are familiar with similar legislation considered by your own State legislatures. It is true that most of these bills have not been enacted into law; but there is a growing sentiment among Members of Congress, Federal, State, and local officials, and the public generally, that the laws and practices for the acquisition of property for public use have not kept pace with the advances of society and that some inequities may exist.

Through the market value definition runs through the whole history of just compensation, there have been expressions in some of the cases indicating that an owner should actually be indemnified for all losses in the value of his property resulting from a public improvement, rather than to be paid the fair market value of the property taken for the improvement.

This has been demonstrated by laws which have been enacted in some States to provide for payment for damages not generally regarded as compensable in eminent domain, such as may result from changes of highway grade, interference with air, light, and view, and interference with access by creating a cul-de-sac.

Other State statutes have been enacted to require payment of costs of moving personal property and for litigation expenses, including attorney and expert witness fees. On the Federal level, Congress has authorized the Defense Department agencies and the Department of Interior to reimburse owners and tenants for moving costs, in amounts not to exceed 25 per cent of the value of property taken; and the Housing and Home Finance Agency may pay fixed sums up to \$200 for moving of individuals and families, and \$3,000 for businesses, without relation to actual expenses. The Tennessee Valley Authority also has authority to pay moving costs.

In practically every instance the proposed or enacted legislation has been piecemeal, designed to meet a specific problem, the correction of which sometimes produces even greater problems through lack of uniformity.

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This same pattern of legislation is evident in the present Congress. As you know, the Federal-Aid Highway Act of 1961 was amended in the Senate to include in the definition of "construction" advisory and administrative expenses in connection with the relocation of building tenants. This provision was eliminated in conference because of objection by the House conferees.

The House Committee on Public Works also now has before it legislation recommended by the General Services Administration which would authorize reimbursing owners and tenants for moving expenses, losses, and damages, in amounts not to exceed 25 percent of the value of the real property acquired in connection with the acquisition of real property by the United States for any Federal Use.

Such a piecemeal approach is inefficient and wasteful of time, money, and effort; it ignores the desirability of consistency in governmental activity and of reasonable uniformity in treatment of all the people; and it results in varying amounts being paid to property owners, depending upon which Federal Agency happened to take their property, or for which Federal or Federal-aid program it is being acquired.

Furthermore, the isolated consideration of only one of the many elements of value, damages, expenses, and benefits which make up the total picture of losses suffered and compensation received, is neither fair to property owners nor to the taxpayers, for it cannot be viewed in proper perspective alone.

The Committee on Public Works believes there is real need for a comprehensive and impartial study of the acquisition of property for Federal and federally-assisted programs. We do not believe it should be assumed that property owners generally are not adequately compensated.

It is true that property owners are not paid for some kinds of damages, losses, and expenses which may be related to the taking of their property and the construction and use of public improvements.

It is also known that the amounts awarded by courts are often substantially more than the amounts of negotiated settlements for comparable properties. It is also recognized that under the laws and practices of many States, the public does not receive credit for all benefits accruing to property owners' remaining properties from public improvements.

We are undertaking this study with open minds and without any preconceived opinions as to what our findings and recommendations will be. The valuation and acquisition of real property is highly technical and complex, and we are well aware of the contraversial nature of the subject matter, particularly so since fundamental differences of opinion give rise to thousands of litigated condemnation cases each year.

This is the first comprehensive study ever undertaken of real property acquisition by Federal, State, and local governments for all Federal and Federal-aid programs. The subcommittee is determined to make a thorough and impartial study, and to produce an objective report with sound recommendations, together with legislative proposals if appropriate.

We realize the seriousness of this undertaking, for what we do can have a lasting impact upon Federal and State legislation and upon the expenditure of public funds by all levels of government. It may also materially influence negotiation and condemnation practices and appraisal techniques.

We are most fortunate in securing Mr. Henry H. Krevor as our chief counsel. Many of you know Mr. Krevor.

He is a member of the AASHO Right-of-Way Committee and has served as Assistant General Counsel, Chief of the Lands Division, of the Bureau of Public Roads since 1957. Prior to joining Public Roads he was employed in the Acquisition Division of the Army Corps of Engineers for a period of five years, where he was Chief of the Civil Works Section of the Condemnation Branch.

It is particularly appropriate that the man who will direct our staff activities has had firsthand experience in both the largest Federal land acquisition program and the largest Federal-aid program with which we will be concerned. I am indebted to Mr. Rex Whitton for releasing Mr. Krevor from the Bureau for the period that the subcommittee is in existence.

The magnitude of legal and factual material to be considered in a comprehensive and exhaustive study of this kind can become overwhelming, and it is essential that the work proceed in orderly progressive steps.

The staff will first compile and analyze existing laws, practices, and procedures. Then the subcommittee will examine the effectiveness and acceptability of these laws, practices, and procedures in the light of experience in their implementation and

the attitude of modern society, to identify specific problem areas.

Once this has been accomplished, the most difficult work begins, which is to weigh in the balances of equity and fairness the interest and welfare of affected property owners with that of the public, so as to draw informed and sound conclusions upon which recommendations may be passed. We plan to make use of all pertinent material which has already been developed, such as the excellent compilation and analysis of highway laws prepared by the Highway Laws Committee of the Highway Research Board, which work was done under the sponsorship of your organization.

It is also planned to contact all appropriate Federal and State agencies to secure information and data on all aspects of real property valuation and acquisition. Again, some of this material is already assembled in useable form, such as the State highway departments' right-of-way procedure manuals and the periodic reports of Interstate right-of-way condemnations filed with the Bureau of Public Roads.

Also, the land economic and severance damage studies which have been pioneered by the California State Highway Department, promoted by Public Roads, and undertaken by many States, will be of immeasurable value, particularly as to the adequacy of current appraisal processes and techniques in measuring damages to remaining property in partial takings.

After completion of preliminary work by the staff, the subcommittee will hold hearings and invite testimony from Federal, State, and local officials, bar associations, judicial organizations, right-of-way and land-acquisition associations, appraisal societies, property owners, educators, and others.

We are going to need a lot of help, and we are looking to the State Highway Departments and the Bureau of Public Roads, among others, to serve as reservoirs of wise counsel and advise. In the near future you will be asked to supply information and material relative to your laws, practices, and procedures for the appraisal and acquisition of real property, and the results obtained in their application, as well as to identify problems which you believe the subcommittee should consider.

At an appropriate time, you will be afforded an opportunity to testify at hearings of the subcommittee. However, any suggestions or thoughts which you may have at any time relative to the study are welcomed, and solicited.