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OWNERSHIP AND JURISDICTION  
OF  
GRADE SEPARATION STRUCTURES

J. A. SAPLIS  
MUNICIPAL CONTACT SECTION  
ENGINEERING SERVICES DIVISION

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BUREAU OF HIGHWAYS  
MICHIGAN DEPARTMENT OF TRANSPORTATION

JULY 1981

## PREFACE

This report is the result of the attached memorandum of G. J. McCarthy to Max Clyde dated March 11, 1981. It was intended originally to address Department practices with respect to the issues of ownership, jurisdiction, and maintenance of grade separation structures which carry local roads over state trunkline highways. It became necessary to consider also structures involving non-highway authorities, the permit process, reports by this Department as a result of Federal and State law, as well as matters related to the establishment of trunklines.

The Maintenance Division, Traffic and Safety Division, Local Government Division, and Design Division were consulted throughout this study with respect to their operations and concerns. Their cooperation was received and is appreciated.

Recommendations have been made where felt appropriate.

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# OFFICE MEMORANDUM

DATE: March 11, 1981

TO: Max N. Clyde  
Asst. Deputy Director - Highways

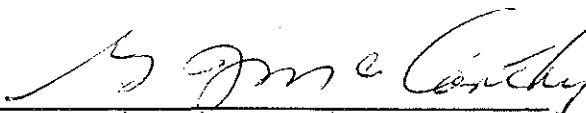
FROM: G. J. McCarthy  
Deputy Director - Highways

SUBJECT: Local Roads Over State Trunkline Highways

Periodically the question of maintenance jurisdiction arises concerning local road bridges over trunklines. The matter appears to have been resolved for practical operating purposes; however, there are letters on file which seem contradictory and even raise questions as to legitimacy of expenditures. Two such letters are attached.

Also, it seems that in our interpretations on maintenance jurisdiction, the question of ownership seldom arises. A recent case in point is the draft agreement concerning future maintenance of newly-constructed bicycle paths.

Please have Joe Saplis research this matter in some depth to include a review of all available correspondence, contracts and crossroad treatment agreements and make appropriate recommendations for any action which might be needed.

  
Deputy Director - Highways

MD-DEO:ff

att

cc: D. E. Orne

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MAR 11 1981

G. J. MCCARTHY  
 J. PETERSON

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I  
STATUTORY REVIEW

A. STATE LAW

The question of ownership and jurisdiction of grade separation structures was raised in context of making appropriate recommendations for Department actions. Review of the State Constitution and statutes has been limited to those which specify the consent or approval by other governmental bodies which must be secured by this Department prior to the performance of work affecting that governmental body and to those specifically involving jurisdiction of those structures which are pertinent to this study.

1. Article V, Section 28,,Michigan Constitution 1963 provided:

"There is hereby established a state highway commission, which shall administer the state highway department and have jurisdiction and control over all state trunkline highways and appurtenant facilities, and such other public works of the state, as provided by law."

Proposal M amended Article V, Section 28 and deleted the reference to jurisdiction and control. The jurisdictional authority over state trunkline highways is now provided statutorily. Act 51, Public Acts of 1951, as amended, Section 1a, MCL 247.651a (as quoted in Item IA 16 of this study) provides that all state trunkline highways shall be under the direction, supervision, and control of the state highway commissioner. Section 1b and 1c of said Act 51, P.A. 1951, as amended, expand upon the Department's role with respect to state trunkline highways. As a result of several acts which realigned the authority within the Department suffice it to say that the Department is the jurisdictional authority of the state trunkline highways.

2. Article VII, Section 16, Michigan Constitution 1963 provides:

"The legislature may provide for the laying out, construction, improvement and maintenance of highways, bridges, culverts and airports by the state and by the counties and townships thereof; and may authorize counties to take charge and control of any highway within their limits for such purposes. The legislature may provide the powers and duties of counties in relation to highways, bridges, culverts and airports; may provide for county road commissioners to be appointed or elected, with powers and duties provided by law."

3. Article VII, Section 29, Michigan Constitution 1963 provides:

"No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city

or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

4. Act 352, Public Acts of 1925, as amended, Section 1(i), MCL 213.171 provides:

"The state highway commissioner and boards of county road commissioners are authorized and empowered to take property and property rights under the provisions of this act within the limits of any incorporated city or village in this state: Provided, however, That before any proceedings are taken under this act involving the taking of any property or property rights in any city or village for the changing, altering, opening or widening of any street or highway, said street or highway shall be taken over as county road or designated as a state trunk line or federal aid highway, as the case may be, and the consent of the village or city council by resolution so to take over or designate said street or highway as a county road or state trunk line or federal aid highway shall be first obtained."

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5. Act 295, Public Acts of 1966, Section 2, MCL 213.362 provides:

"Before any proceedings are taken under this act involving the taking of property or property rights in a city or village for the changing, altering, opening or widening of a street or highway, the street or highway shall be taken over as a county road or designated as a state trunk line or federal aid highway, and the consent of the village or city council by resolution so to take over or designate the street or highway as a county road or state trunk line or federal aid highway shall be first obtained. P.A. 1966, No. 293, §2, Imd. Eff. July 14."

6. Act 205, Public Acts of 1941, as amended, Section 2, MCL 252.52 provides:

"The state highway commissioner, boards of county road commissioners, and cities and villages, either acting alone or in cooperation with each other or with any federal, state or local agency having authority to participate in the construction and maintenance of highways, are hereby authorized to establish, open, discontinue, vacate, close, alter, improve, maintain and provide for the public use of limited access highways: Provided, within cities and villages, such authority shall continue to be subject to municipal consent, as now provided by section 1(i) of Act No. 352 of the Public Acts of 1925, as amended, being section 213.171 of the Compiled Laws of 1948."

7. Act 205, Public Acts of 1941, as amended, Section 5, MCL 252.55 provides:

"Any such agency shall have authority to provide for the elimination of intersections of limited access highways with existing state and county roads, city and village streets and private driveways, by grade separation, access or service road, or by closing off such roads, streets and driveways at the boundary line of such limited access highway, but only with the consent of the county, city or village; and after the establishment of any limited access highway, no road which is not part of said limited access highway system shall run into or intersect the same at grade. As amended P.A. 1952, No. 147 § 1, Eff. Sept. 18."

8. Act 205, Public Acts of 1941, as amended, Section 6, MCL 252.56 provides:

"Whenever the state highway commissioner and any county, city or village shall agree to acquire, construct, or improve any limited access highway or highways as defined by this act, the state highway commissioner shall procure plans and specifications for such project and an estimate of the cost thereof. The board of county road commissioners and the board of supervisors of the county and the legislative body of such city or village shall, by resolution, approve such plans, specifications and estimate of cost. P.A. 1941, No. 205, § 6, added by P.A. 1950, Ex.Sess., No.22, § 1, Imd. Eff. June 7, 1950."

9. Act 296, Public Acts of 1969, provides for the transfer of jurisdiction over highways. Section 2 thereof, MCL 247.852 provides:

"The provisions of any law to the contrary notwithstanding, a highway may not be transferred from the jurisdiction of the state to a county, city or village or from a county to a city or village without the consent of both parties, except as provided by this act. The consent shall be evidenced by a written agreement entered into after approval by resolution of each highway authority that is party to the agreement. The agreement shall identify the effective date of the transfer of jurisdiction, the limits and general description of the highway involved, the extent of improvements and other terms and conditions mutually agreed to. The agreement may be amended, superseded or voided by consent of both parties.

10. Act 354, Public Acts of 1925, as amended, Section 1, MCL 254.1 provides:

"Bridges and culverts shall be considered in all respects as a part of the road upon which they are, or are proposed to be located. The construction, improvement, repair and maintenance thereof, including adequate approaches and the doing of any act or the performance of any work necessary for the protection thereof, and also including the maintenance and operation of movable span bridges, shall be considered in all respects except as hereinafter otherwise provided, the same as the construction, improving and maintaining of the road upon which any such bridge or culvert is situated, and, except as hereinafter otherwise provided, shall be paid for accordingly."

11. Act 170, Public Acts of 1964, Section 2, MCL 691.1402 provides:

"Each governmental agency having jurisdiction over any highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. Any person sustaining bodily injury or damage to his property by reason of failure of any governmental agency to keep any highway under its jurisdiction in reasonable repair, and in condition reasonably safe and fit for travel, may recover the damages suffered by him from such governmental agency. The liability, procedure and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21, chapter 4 of Act No. 283 of the Public Acts of 1909, as amended, being section 224.21 of the Compiled Laws of 1948.\* The duty of the state and the county road commissioners to repair and maintain highways, and the liability therefor, shall extend only to the improved portion of the highway designed for vehicular travel and shall not include sidewalks, crosswalks or any other installation outside of the improved portion of the highway designed for vehicular travel. No action shall be brought against the state under this section except for injury or loss suffered on or after July 1, 1965. Any judgment against the state based on a claim arising under this section from acts or omissions of the state highway department shall be payable only from restricted funds appropriated to the state highway department or funds provided by its insurer."

12. \*MCL 224.21 provides:

"It is hereby the duty of the counties to keep in reasonable repair, so that they shall be reasonably safe and convenient for public travel, all county roads, bridges and culverts that are within their jurisdiction and under their care and control and which are open to public travel. The provisions of law respecting the liability of townships, cities, villages and corporations for damages for injuries resulting from a failure in the performance of the same duty respecting roads under their control, shall apply to counties adopting such county road system."

13. Act 51, Public Acts of 1951, as amended, Sections 2, 3, 4, 5, MCL 247.652 - 5 provides for the selection and certification of county roads, streets, and highways, under the jurisdiction of the board of county road commissioners and for approval of such by the state highway commission.

Act 51, Public Acts of 1951, as amended, in Sections 6, 7, 8, 9, MCL 247.656 - 9 provides for, as in the above, the selection and certification of streets in municipalities in similar manner.

Act 51, Public Acts of 1951, as amended, in Section 13 (3), MCL 247.663 refers to "state trunkline mileage certified by the Department of Transportation as of March 31 of each year."

The Transportation Commission pursuant to Act 51, Public Acts of 1951, as amended, Section 17 (1) and (2), MCL 247.667 makes certification to the Department of Management and Budget and annually furnishes the legislature and the governor a detailed report of revenues predicated on the mileages certified above.

The mileages certified are point to point mileage of roadways under the respective jurisdictions of the governmental bodies involved. Department Form 2011, entitled "Mileage and Condition Report" tabulates condition of bridges by types as over streams, over and under railroads, and over other roads. The Department includes as trunkline mileage only those roadways designated as trunklines. Mileage for structures over the particular trunkline are not included as trunkline mileage unless such are a part of another trunkline. As to local governmental bodies, there appears no fixed policy regarding the roadway structures which they certify as their own i.e. they may or may not certify and list on the above report a structure as being their jurisdiction. Nor is there consistent correlation of jurisdictions of structures between the report discussed in Item IA 14 below, the Federal biennial report discussed in Item I B1, which follows, and the jurisdictions reflected in the Act 51 certifications.

While the Department prepares a mileage tabulation of city and village major and local streets, and county primary and local roads, it does not specify structures by jurisdiction within those systems.

14. Act 354, Public Acts of 1925, as amended, Section 19a, MCL 254.19a provides:

"The department of state highways shall institute a systematic plan of annual inspection of all bridges under its jurisdiction and report to the legislature on or before February 1 of each year the safety status of such bridges. P.A. 1925, No. 254, § 19a, added by P.A. 1968, No. 222, § 1, Eff. Feb. 2, 1969."

This Department annually makes this report to the legislature and includes all structures which pass over or under a state trunkline highway as a structure under the jurisdiction of this Department.

15. Act 51, Public Acts of 1951, Section 1c(a), MCL 247.651c provides:

"Incorporated cities and villages shall participate with the department in the cost of opening, widening and improving, including construction and reconstruction of state trunk line highways within cities and villages to which may be added, subject to the approval of the state highway commission, streets that are connecting links of trunk line highways or streets as are hereafter made connecting links of trunk line highways, according to the following schedule subject to the definition of population as provided in section 13."

16. Act 51, Public Acts of 1951, in Sections 1a, and 1b, MCL 247.651a, b, provides:

Sec. 1a. "All state trunk line highways now or hereafter established as provided by law, shall be constructed, maintained and improved in accordance with the provisions of this act under the direction, supervision and control of the state highway commission."

Sec. 1b. "The department of state highways shall bear the entire cost of maintaining, in accordance with standards and specifications of the department, all state trunk line highways including such highways within incorporated cities and villages except that the cost of maintaining additional width for local purposes as provided in section 1c shall be borne by the city or village. For the purposes of this act, maintaining of state trunk line highways shall include, by way of enumeration but not limitation, snow removal, street cleaning and drainage, seal coating, patching and ordinary repairs, erection and maintenance of traffic signs and markings, freeway lighting for traffic safety in cities and villages having a population of less than 30,000 and the trunk line share of the erection and maintenance of traffic signals, but shall not include street lighting, resurfacing, new curb and gutter structures for widening. On and after January 1, 1970, maintaining of state trunk line highways shall include all freeway lighting for traffic safety.

17. Other State Acts

No review was made of the basis for the planning reports or environmental assessments for although such could reflect by reference the jurisdiction of the roadways involved, no specific adoption of a resolution of consent is apparently required from a governmental body.

In addition, the following acts were not felt pertinent to this study which is limited to ownership and jurisdiction of grade separation structures.

Act 347, Public Acts of 1966, MCL 252.131:  
Plans for relocation of families and individuals.

Act 12, Public Acts of 1967, Ex Session, MCL 252.151:  
Arbitration of disputes involving determination of routes for interstate highways through municipalities, and to authorize the acquisition of property therefor.

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B. FEDERAL LAW

Review of Federal law has been limited to grade separation structures and issues of ownership applicable to structures and highways.

1. Section 144, Title 23 USC, Highway Bridge Replacement and Rehabilitation Program, provides that the states shall inventory and classify all highway bridges on public roads on and off the Federal Aid System.

A biennial report is made to the FHWA whereby the Department inspects the structures under its jurisdiction and the local agency inspects those under the local jurisdiction. The inspection form has input as follows:

Item 8 Legal - This denotes jurisdiction  
Item 21 Custodian - The party responsible for maintenance  
Item 22 Ownership - The owner

In this report, with respect to highway structures carrying local roads or railroads over state trunkline highways the Department is generally specified as the legal (jurisdictional body), the custodian, and the owner. It is also specified in similar fashion on structures carrying state trunkline highways over other state trunkline highways, local roads, or railroads. In rare circumstances a railroad company may be specified as other custodian or owner of a structure involving a state trunkline highway.

2. FHPM Volume 6, Chapter 1, Section 1, Subsection 8, entitled Relinquishment of Highway Facilities

This FHPM defines relinquishment as "the conveyance of a portion of a highway right-of-way or facility by a state highway agency to another government agency for highway use."

It specifies "jurisdiction" and appears to make no reference to ownership being relinquished. While a reference to ownership is not made directly there seems to be an implication that the degree of control by the state highway agency is that of an owner.

3. FHPM Volume 7, Chapter 4, Section 2, entitled Disposal of Right-of-Way

This FHPM prescribes FHWA policies and procedures for disposal of portions of highway right-of-way no longer needed for highway purposes where Federal Aid Highway funds have participated in either right-of-way or physical construction costs.

4. FHPM Volume 7, Chapter 4, Section 3, entitled Management of Airspace

This FHPM prescribes policies relating to the management of airspace on Federal Aid Highway systems for non-highway purposes. It's reference here is felt applicable due to the construction of grade separation structures involving state trunkline highways and private industry and the very specific restrictions on such use.

5. 23 CFR, 712.801, .803, .805, provides Federal policy guidelines within the right-of-way acquisition process for Federal participation in the costs of land service facilities to provide or restore access to properties, both public or private. An example of private facility would be a pedestrian or other crossing between the various segments of an industrial plant.

6. SUMMATION

There does not appear to be a specific Federal reference which necessitates that ownership be established, and Federal requirements appear to be jurisdictionally oriented to operation and maintenance of the completed facility. The Federal perspective however is such that this Department is the party responsible to the Federal government for any repayment or other measures which may be imposed as a result of Federal requirements. Therefore, when issues of conveyance, use, and disposal involve parties other than a governmental highway authority, the establishment of the ownership of the facility should be recognized and the Departments and Federal interests provided for and protected by appropriate instruments.

II  
ATTORNEY GENERAL'S OPINIONS AND CERTAIN CASE LAW

A. ATTORNEY GENERAL'S OPINIONS

A review was made of existing Attorney General's memorandums within the files of this office to further clarify the statutory requirements noted above. None appear to specifically address ownership.

1. Caruso to Woodford - May 1, 1976  
File 76-23-3

"The decision in Moyer supra . . . (Moyer vs Wayne County Road Commission 52 Mich App 285, 1974) would indicate that only the governmental agency with jurisdiction over the highway could be exposed to liability."

2. Caruso to Barnes - January 18, 1968  
File 67-69-9

Jurisdiction retained by the County or City over their roads or streets beneath the State trunkline highway structure may not be exercised in any manner to interfere with the construction, maintenance or control over the State trunkline highway, when they have given consent to the construction by the cross-road treatment resolution.

3. Carlsen to Woodford - January 10, 1980

Regarding the advisory or warning signs placed by this Department on local roads approaching state trunkline highways, abandonment of these signs with notification to the local authorities does not transfer ownership of these signs.

4. Caruso to Woodford - August 10, 1978  
File 78-21-14

- a. "Nowhere in the Act (Act 170 PA 1964) is the Highway Commission authorized to assume the liability of some other unit of government."

- b. Hargis v City of Dearborn Heights 34 Mich App 594 (1971) held the Wayne County Road Commissioners liable for defective design of a bridge which existed while it was under county jurisdiction notwithstanding that the injury occurred after transfer of jurisdiction from the county.

5. Caruso to Woodford - March 6, 1979  
File 78-32-3

"To implement the Department's obligation to preserve the integrity of the interstate system for the safety of the traveling public, the installation of traffic control devices should not be limited to areas within the state trunkline right-of-way. Once installed the Department should maintain such or make arrangements with the local road authority."



6. Caruso to Woodford - April 18, 1973  
File 73-32-3

"The responsibility for the installation and maintenance of traffic control devices on roads under the jurisdiction of local units of government rests with them by virtue of the mandates imposed upon them by MCLA 224.21 and MCLA 691.1402. However, in those situations described in your memorandum of April 9, 1973, which involve state trunkline intersections the Department of State Highways may place traffic control devices on the local roads under the jurisdiction of local units of government such as, for example, county road commissions, if it is deemed necessary in the interest of state trunkline safety. However, because local units of government have jurisdiction in the area in which the traffic control device would be placed, agreement should be sought with that jurisdictional authority. Authority is found for such agreement in 11g of 1951 PA 51."

"Once installed the duty to maintain rests with the Department of State Highways. Liability under 1964 PA 170, if any should arise, however, would be that of the jurisdictional road authority on whose highway the traffic sign is placed."

7. Caruso to Woodford - March 9, 1972  
File 72-32-1

Freeway ramps are an integral part of the trunkline.

B. CASE LAW

1. Hiner, Hiner, Dugga, and Duggan vs State of Michigan - Court of Claims File 5327

"MSA 9.1171 (MCL 254.1) provides that bridges and culverts in all respects are a part of the road upon which they are located. A bridge is likewise an integral part of a road. 128 Mich 32." This roadway was certified for receipt of Act 51 funds by the Macomb County Road Commission as under the jurisdiction of the County.

III  
EXISTING DEPARTMENT POLICIES, DEPARTMENT REGULATIONS AND CORRESPONDENCE

A. OWNERSHIP, JURISDICTION, AND MAINTENANCE OF GRADE SEPARATION STRUCTURES

1. J. Williams' memo to Orne, MacCreery, and Mastin - October 23, 1978, regarding local roads over State trunkline highways.

Ownership: Structures are property of local agency.

Jurisdiction: Roadway over structure is under local agencies jurisdiction.

Maintenance: Department maintains structural integrity of the structure.

Local agency is responsible for horizontal alignment, speed limits, signing, snow and ice control, removal of dirt and debris on riding surface.

2. J. P. Woodford to Division Heads, Senior District Engineers, District Maintenance Engineers - December 4, 1979, regarding responsibility for maintenance of grade separations on State trunklines including railroads, and State trunkline highways crossing county or local roads or streets.

Ownership: It refers to a road or street owned by a local government unit. It does not address ownership of the structure.

Jurisdiction: It does not specifically address jurisdiction but speaks in terms of control and maintenance.

Maintenance: a. If STL over local road.  
Department maintains:  
(1) Structure  
(2) Ramps if any including accel and decel lanes  
(3) Interchange area  
  
Department will not maintain:  
(1) Road or street under structure including drainage structures

Maintenance:

b. If STL under local road.

Department maintains:

- (1) Structure including deck, wearing surface, sidewalks, curbs, railing
- (2) Ramps if any including accel and decel lanes
- (3) Interchange area

Department will not maintain:

- (1) Locally owned road
- (2) Approach surfaces
- (3) Embankments
- (4) Drainage facilities, curbs, sidewalks, railing, or guard rail to the structure
- (5) Lighting on structures
- (6) Snow and ice removal
- (7) Patching of pot holes and depressions on deck not affecting structural integrity
- (8) Sweeping and cleaning of roadway surface

3. Howard Hill Policy-September 1, 1965, regarding responsibility for maintenance.

This policy is similar to the Woodford Policy of December 4, 1979 (Item 2 above) in that it refers to road or street owned by a local governmental unit. It does not address ownership of the structure nor does it address jurisdiction, speaking again in terms of control.

The significant differences between this policy and the Woodford policy are the following:

- a. The Woodford Policy states what the Department will not be responsible for rather than what the local agency will be responsible for. It does not identify who is responsible for cost as the Hill Policy does.
- b. The Woodford Policy has added that the Department will not be responsible for temporary patching of pot holes and other depressions on the deck surface not affecting the structural integrity of the bridge and defined the beginning and ending of ramps including accel and decel lanes.
- c. The Woodford Policy does not address alterations to structures - the Hill Policy does.

- d. There is a difference with respect to the railroad structure portion of the policy in that the Woodford Policy has deleted Section 1(a) (2) of the Hill Policy which states that "where the railroad passes over the highway the railroad will maintain the entire structure". This is not an issue in this study.

#### 4. In Summation

There is not a real continuity between the Williams memo and the Woodford Policy in that Williams memo addresses ownership and jurisdiction of the structure and while referring to some responsibilities of both control and maintenance does not specifically state what the Department is responsible for other than the integrity of the structure.

It is interesting to note that the Hill Policy of May 2, 1958 which was superseded by the September 1, 1965 Hill Policy provided that the local owners of the road or street carried by the structure over the trunkline shall maintain the pavement or wearing surface, sidewalks, curbs, railing embankments, guard rail, lighting, and all other facilities including snow and ice removal within their right-of-way at their expense. With respect to State trunklines over a local road or street the 1958 Hill Policy established that the "owners of the roadway passing through the structure will maintain its highway under the structure to the limits of its right-of-way including drainage structures". The reference to right-of-way has been removed from the 1965 Hill Policy. There is also a difference in Alteration Responsibility, Item 3 between both policies.

In brief, present Department practice is that outlined under Item 2, the Woodford Policy.

B. PEDESTRIAN BRIDGES

1. Commission Policy CP 1100.58 - November 28, 1979

This Policy outlines when pedestrian bridges may be constructed and states that:

"Pedestrian bridges constructed by the Department will be maintained by the Department except for snow and ice removal.

Pedestrian bridges constructed over State trunklines by local governmental units must be maintained by the local authority."

NOTE: It is presumed that the Department may perform the actual construction of a pedestrian bridge on behalf of a local authority and under these circumstances maintenance would be the responsibility of the local authority.

2. Department Regulation DR 5130.01 - January 27, 1976

This Regulation details the responsibilities and basically reiterates the above Commission Policy with respect to pedestrian bridges. It places the burden of snow and ice control as the responsibility and expense of the local governmental authority. Neither the Policy nor the Regulation address ownership or jurisdiction.

C. MODIFICATIONS OF GRADE SEPARATION STRUCTURES

1. Department Operating Instruction OI 4110.03 - January 27, 1975

This Directive establishes the procedures and financial responsibility for improving or replacing grade separation structures separating local and State routes in connection with limited access highways.

- a. The Department is responsible for grade separation replacement and improvements only when:
  - 1) Replacement is necessary due to age, deterioration, or trunkline needs.
  - 2) Traffic volumes on the local road or street warrant widening of the structure and the local roadway authority indicates its intention to widen the roadway and approaches up to the structure abutments at its own expense.
- b. The local agency is responsible for structure adjustments made only for the purpose of local enhancement or development and where there is no proven need based on current traffic.
- c. In both circumstances it is then the responsibility of the local agency to maintain the road or street approaches to the structure, including drainage, guard rail, snow and ice removal, and sweeping and cleaning of structure roadway surface.

IV  
DISCUSSION OF DEPARTMENT PRACTICE

The discussion of this Department's practices resulting from the aforementioned State and Federal statutory and procedural requirements is best considered by segregating these practices into the distinct stages of the evolution of a structure ranging from the initial consent of the city, village, or county for the acquisition of right-of-way or alignment, to the establishment of the roadway as a state trunkline highway, and finally to its abandonment or disposal.

A. CONSENT AND APPROVAL OF LOCAL GOVERNMENTS

The Department has jurisdiction and control of State trunkline highways, as noted in the Statutory Review Item IA 1 of this study.

The Michigan Constitution, states in Article VII, Section 16, (Item IA 2) the legislatures authority to enact laws with respect to highways, and in Article VII, Section 29, Item IA 3, the right of local governmental bodies to the reasonable control of their highways, etc. The legislature has also specifically provided that the Department must receive consent or approval from local governmental bodies under the following circumstances.

To acquire property and property rights for changing, altering, opening or widening of any street, the prior consent of the village or city is required to take over that street as a state trunkline. See MCL 213.171 (Item IA 4) and MCL 213.362 (Item IA 5). This is effected by the alignment and crossroad treatment resolutions, or a combination of these, and the establishment resolution.

With respect to limited access highways, prior consent of cities and villages is required to establish, open, discontinue, vacate, close, alter, improve, maintain and provide for public use. See MCL 252.52 (Item IA 6). This is effected by the alignment and crossroad treatment resolutions and as appropriate the establishment and abandonment resolutions.

With respect to elimination of intersections of limited access highways with county roads, city or village streets and private driveways, prior consent of cities and villages and counties (road authority) is required. See MCL 252.55 (Item IA 7). This is effected by the crossroad treatment resolution.

With respect to limited access highways or highways as defined by Act 205 P.A. 1941, as amended, plans, specifications, and estimates of cost require approval, by resolution, of county road commissioners, board of supervisors, and cities and villages. See MCL 252.56( Item IA 8). It does not appear that the Department is presently obtaining these approvals.



The manner and instruments by which the Department secures the above consents and approvals are as follows:

1. Alignment and Crossroad Treatment Resolutions

Alignment and crossroad treatment resolutions are prepared by the Design Division and adopted by the local governmental body involved. They are generally obtained in the planning stage and are the concurrence and consent of the local governmental body to the alignment and treatment of the local roadways proposed by the Department. They serve as the approval necessary to acquire right-of-way. These resolutions may be obtained individually or in a combined resolution. The establishment resolution which is described in Item IVA 2, is normally obtained at a later point in time than the alignment and crossroad treatment resolutions and is the actual consent to the establishment of the particular roadway as a trunkline.

The specific details provided for by the alignment and crossroad treatment resolutions are as follows:

a. Alignment Resolutions

The alignment resolution is adopted by the city or village involved. They are obtained only from municipalities not from county road commissions. It approves trunkline alignment within a municipality and grants the Department permission to take over and designate a local roadway as a part of the state trunkline system. These resolutions describe the trunkline from point to point and do not normally specify structures or ownership or jurisdiction of such structures. Generally, the provisions of the alignment resolution are covered within the crossroad treatment resolution and use of this as a separate document is diminishing.

b. Crossroad Treatment Resolutions

The crossroad treatment resolution is adopted by cities or villages to meet statutory requirements for the acquisition of right-of-way, and by cities, villages, and counties (i.e. roadway authorities) for the elimination of intersections with limited access highways. It provides for closure of roads, construction of grade separations, and access to and exit from limited access facilities. It does specify the locations of all the above and that the local governmental body will take over and maintain specified frontage or service roads and relocated or reconstructed city streets and county roads. It normally includes a location plan as an attached exhibit which reflects both the proposed alignment of the trunkline and the local road treatment. Approval of the alignment may be either specifically stated or by implication as a result of the attached plan. It makes no reference to ownership nor does it address jurisdiction.

While the alignment and the crossroad treatment resolutions contain certain of the statutorily required consents of local governmental bodies for trunkline improvements, their titles are somewhat misleading in that they in reality do cover substantially more. They in actuality establish much of the understanding between the Department and the governmental body involved for the proposed project. Because of their content and purpose it may be well to consider developing a single document which would contain all significant items relative to a proposed project, perhaps in agreement form rather than by resolution only.

From this study certain other items do appear significant and should perhaps be made a part of the resolution or the single document if such is developed. These are listed below. There may be others, a matter which would be better addressed by a committee made up of those directly involved in the securing of these resolutions as well as those other areas of the Department which are involved in the early stages of trunkline projects.

- (1) A statement that the jurisdiction of the structures is a part of the road upon which they are located. It may be well to qualify this statement of jurisdiction as a reaffirmation MCL 254.1 (See Item IA 10).
- (2) The enumeration of the individual structures or roadways, the jurisdiction of these, with a statement of the specific Department or local jurisdictional responsibility for maintenance and operation of these, both during the period of construction and thereafter. If the Department in protecting the state trunkline interest undertakes any maintenance responsibility of the structures under local jurisdiction, the resolution should state such in the perspective of the Department's intentions.
- (3) If the identification of the structures is not yet established, the document should state the Department's policy regarding jurisdiction.
- (4) A statement of concurrence by the local highway authority to future establishments or abandonments with an irrevocable commitment to so do as well as the date or the procedure which would actually effect the transfer of jurisdiction.

- (5) A procedure for amending the document as necessary when the alignment or other features requiring statutory approval are changed.
- (6) If cost participation will be required pursuant to Act 51 P.A. 1951 it should be noted.
- (7) Providing for special commitments, for example, parking prohibition, or others which may be essential to the project.

## 2. Establishment and Abandonment Resolutions

Establishment and abandonment resolutions are administered by the Local Government Division of this Department. Establishment resolutions are the consent of the counties, cities, and villages for establishment of the state trunkline highway. Abandonment resolutions are the consent of the local authority to the transfer of a state trunkline highway from the jurisdiction of the state to the local jurisdiction. Establishment and abandonment resolutions can be either separate instruments or combined within the same resolution. The description of the roadway is generally point to point, makes no reference to the structures within the resolution and makes no reference to ownership. They are obtained in the following circumstances:

### a. Establishment Resolutions

#### (1) County Road Commission

If the Department takes over a county road for use as a state trunkline highway, an establishment resolution is obtained from the board of county road commissioners. If the Department relocates a state trunkline highway, other than on a county road, a resolution is not obtained from the county road commission.

#### (2) Cities and Villages

Within the corporate limits of cities or villages, if the Department takes over a roadway under the jurisdiction of a city or village for a state trunkline highway, or, if the Department relocates a state trunkline within a city or village, an establishment resolution is secured. Generally it is considered to be relocation of a trunkline when the proposed state trunkline right-of-way is separated from the right-of-way of the existing state trunkline.

(3) Effective Date of Establishment

The date at which a roadway or route is established as a state trunkline highway is essential to the identification of jurisdictional liabilities and possibly even to the expenditure of state transportation funds on the proposed improvement. The issue of the expenditure of state transportation funds with relation to the establishment of a roadway as a state trunkline highway was not addressed by this study.

The effective date is specified in the cover letter from the Department to the local governmental body involved which transmits the establishment document.

b. Abandonment Resolutions

- (1) Abandonment resolutions are secured by this Department whenever the jurisdiction of a trunkline will be transferred to a local highway authority or abandoned. Statutory authority for this is MCL 247.852 (Item IA 9 above). Generally transfers of jurisdiction are only the transfer of the jurisdiction of the roadway. The underlying right-of-way remains in its existing form without transfer to the receiving highway authority. The date of transfer is either established or affirmed by the letter from the Department to the local highway authority when all appropriate consents and approvals have been received. It should be noted that under those rare circumstances where the Department does convey right-of-way which it owns in fee it also quit claims any mineral rights it may have acquired. This should perhaps be considered further.

c. Service Roads

- (1) With respect to service roads, work performed in the existing local road alignment involves no transfer of jurisdiction upon completion of construction, as such roads continue both during the period of construction and after to be under local jurisdiction unless they serve also as ramp extensions. Such work is and should continue to be addressed in the crossroad treatment resolutions. The question of ramp extensions was not addressed by this study.
- (2) Work on service roads on a relocated or new alignment does involve the acceptance of jurisdiction upon completion of construction by the Department. Under existing practice the crossroad treatment resolution constitutes consent of the local governmental body for the work on the relocated or new service road alignment and for the subsequent transfer of such service road to local jurisdiction.

The transfer to the local highway authority takes place upon completion and acceptance by the local jurisdiction of the work performed. This acceptance is not formalized by a document. The transfer is effected by a letter from the Department to the local highway authority notifying of the transfer of jurisdiction. This letter establishes a date certain.

It appears possible that where the Department is constructing service roads on a relocated or new alignment either the jurisdiction must be established in the name of the local authority or the Department may be liable until it effects formal transfer. If acceptance by the local authority is not possible until completion of construction, the liability of the Department can perhaps be lessened by contract provisions requiring the contractor to provide insurance on behalf of the Department.

This area of jurisdictional liability may require further study by the Department to determine if by the crossroad treatment resolutions or by the establishment and abandonment resolutions it can be recognized and accepted by the local jurisdiction that the work on the local road system including service roads is by the Department on behalf of the local highway authority on a roadway under local jurisdiction.

With respect to both establishment and abandonment resolutions it appears highly desirable that all parties by both instruments, be made aware of either the date certain or the procedure under which they will either assume or be relieved of their respective jurisdictional obligations.

As to the existing local roads which will be modified or affected by the Department's project, they should by reference within the establishment resolutions be clearly identified as being under local jurisdiction. It appears advisable to include a statement of those items of maintenance which the Department will undertake in the protection of the trunkline interest.

### 3. Participation Agreements

Pursuant to Act 51, Public Acts of 1951, as amended, Section 1c(a), MCL 247.651c(a), (Item IA 15 above), incorporated cities and villages having a population of 30,000 or more are required to participate with the Department in the cost of constructing state trunkline highways. This is secured by formal agreement between the Department and the city or village. These agreements describe the improvement to the trunkline involved but do not normally enumerate either the individual structures or the ownership, jurisdiction, or maintenance obligations of these structures.

Circumstances may also arise whereby a governmental body other than a highway authority or a corporation or private party requests that the Department construct at that party's cost a structure over a trunkline, or possibly a structure on the trunkline which would permit that party to pass under the trunkline. In these situations, if determined appropriate, ownership is established and in addition the maintenance and operational responsibilities are stated. The establishment of ownership is generally restricted to structures involving other than highway authorities.

With respect to railroad grade separations the issue of ownership is not generally addressed within the agreement but maintenance and operational responsibilities are established.

B. CERTIFICATION FOR PURPOSES OF DISTRIBUTION OF ACT 51 MONIES AND THE REPORT TO LEGISLATURE AND GOVERNOR

This is discussed in detail in Item IA 13 of this study. Briefly ownership of structures is not specified. Certification of jurisdiction by the local authorities of structures is somewhat inconsistent.

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C. REPORTS OF INSPECTION OF BRIDGES

1. The Department must, by MCL 254.19a make an annual inspection and report to the Legislature. (See Item IA 14). Generally all structures over or carrying a state trunkline highway are listed as under the jurisdiction of this Department.
2. The Department must by Section 144 Title 23 USC, inventory, classify and report to the FHWA biennially structures by jurisdiction (See Item IB 1). Generally all structures over or carrying a state trunkline highway are specified as the jurisdiction, custodianship, and ownership of this Department.

D. MAINTENANCE AND SIGNING OPERATIONS

1. Maintenance of structures

- a. Maintenance of state trunkline highways is the responsibility of this Department pursuant to State law (Item IA 16). This maintenance is performed in conformance with J. P. Woodford's memorandum of December 4, 1979 which is detailed in Item III A2 of this study. Presently with respect to all roadway structures over or under the state trunkline highways, the Department maintains the entire structure including deck, wearing surface, sidewalks, curbs and railing. On structures carrying local roads over state trunkline highways the Department does not maintain the approaches or lighting, patches, etc. on the structure. The details of the Woodford memo and the differences between the Hill Policies of 1965 and 1958 are described in Item IIIA of this study. The maintenance of pedestrian bridges is described in Item III B1 and B2. With respect to pedestrian bridges ownership and maintenance responsibilities have been established by agreement in certain circumstances.
- b. The actual maintenance work by the Department may be performed by a local governmental body under a state highway maintenance contract between that body and this Department. This local governmental body may or may not be the jurisdictional authority of the roadway carried by the structure. This contract specifies:

"WHEREAS, the COMMISSION (TRANSPORTATION COMMISSION) is desirous that the BOARD maintain certain state trunkline highways and bridges which are under the jurisdiction of the COMMISSION as hereinafter more particularly set forth".

There appears to be no identification made of jurisdictional divisions between the state trunkline highway roadways and structures, and the local roadways, and structures within the maintenance contract.

Transportation Work Authorizations (Form 1515) are utilized to approve specific work expenditures for transportation facilities when work is performed by governmental bodies under the above contract. The above comments regarding jurisdiction are applicable.

## 2. Signing Operations

A review was made with the Traffic and Safety Division of present practices of this Department with respect to signing of non-trunkline roadways. Traffic and Safety Division note 1.1.1.3 provides:

"On freeways, the Department is responsible for the erection and maintenance of all signing along the main line and along freeway ramps. On non-trunkline crossroads in the immediate vicinity of freeway interchanges, the Department is responsible for the erection and maintenance of signs which provide route and destination information pertaining directly to the freeway. Such signs, although technically located off the state trunkline highway system, are the responsibility of the Department."

"All other signs on these non-trunkline crossroads are the responsibility of the local jurisdiction."

It further provides that the local authority is responsible for the maintenance of all signs along limited access highway frontage roads. 1.1.3.7 provides that all bridge structures whether over state trunklines or structures carrying state trunklines over local roads shall be marked with under clearance signs. This is performed by the Department.

1.3.4 specifies that maintenance of signs on ramps as well as on the freeway proper is the Department's responsibility as is junction approach signing which provides route and destination information on non-trunkline roads in the immediate vicinity of freeway interchanges. All other signs on non-trunkline crossroads are the responsibility of the local jurisdiction.

From discussion with the Traffic & Safety Division, apparently an effort has been made to relieve the Department of signing responsibilities with respect to intersecting local roads without success.

\*Attention is called to the Attorney General's Opinions Items IIA3, IIA5, and IIA7 above.

## E. MODIFICATION OF STRUCTURES

The Department by Operating Instruction OI 4110.03 has established a procedure and criteria for the improving or replacing of grade separation structures separating local and state routes over limited access highways. This is discussed in some detail in Item III C. Briefly, the Department has undertaken a responsibility for this work subject to certain conditions. This was a Department decision which was not further considered by this study.



F. PERMITS

This Department issues permits to governmental bodies and private parties for the construction of facilities including pedestrian or other grade separation structures involving state trunkline highways and trunkline right-of-way. All permits issued on Federal-aid routes are subject to certain requirements of the FHWA for occupancy of such right-of-way. See Items IB2, 3, 4, 5 and 6 of this study. Presently there is some inconsistency in the identification of ownership and/or jurisdiction of the structures as well as in the establishment of the future obligations and rights of the parties in connection with occupancy of the trunkline right-of-way and the disposition or removal of the particular structure involved.

The Right of Way Division does have a procedure involving air rights and right-of-way disposition which follows the Federal requirements discussed in Item IB of this study. There does not appear to be a specific correlation between permit issuance and the right-of-way procedures prescribed by the FHWA. This should be reviewed.

G. TRANSFER OF JURISDICTION AND ABANDONMENT OF STATE TRUNKLINES AND STRUCTURES

The discussion in Item IV A pages 20 - 22 above regarding abandonment resolutions is applicable here.

H. DISPOSAL OR SALE OF GRADE SEPARATION STRUCTURES AND AIR OR UNDERGROUND RIGHTS RELATED TO THESE

In any transfer of jurisdiction of a roadway involving a grade separation structure to another governmental highway authority, the ownership of the structure and air or underground rights related to the structure are considered a part of the normal transfer of jurisdiction to that governmental body and are not specifically addressed. The underlying right-of-way however may or may not be transferred to the receiving authority. See Item IVA 2b(1) page 21.

Upon occasion an industry or other party may wish to acquire a particular structure for its own use. In these circumstances the conveyance or sale of a structure or of air or underground rights involving either roadways on a Federal-aid system or in which Federal-aid Highway funds have participated are subject to specific FHWA requirements. These are discussed in Item IB2, 3, 4, 5, and 6, page 7 and 8. While these appear to be jurisdictionally oriented they do address conveyance and the repayment of Federal monies. These situations normally are handled in close correlation with the FHWA and the Excess Property Section of the Right of Way Division.

Questions of ownership of railroad grade separation structures have surfaced when removal of certain structures was warranted and neither party claimed ownership. In these circumstances the Department has undertaken removal in the interest of the trunkline.

It appears highly desirable to establish the ownership or disposition within agreements or permits involving all parties other than governmental highway authorities.

V  
DISCUSSION OF ALTERNATIVES

The question has been raised as to the ownership and jurisdiction of grade separation structures which carry local roads over state trunkline highways. Concerns as to legitimacy of expenditures have also been expressed. These issues have been explored in some detail as reflected in the preceding portions of this study. Addressing each of the concerns in turn is necessary to the development of recommendations.

A. OWNERSHIP vs JURISDICTION

Statutory references are such that the establishment of jurisdiction seems of more importance than the establishment of ownership. Ownership does not present itself as a problem until one arrives at the final disposition of a grade separation structure to other than a governmental highway authority. At the point of final disposition by any governmental highway authority of a particular structure or at the time at which a particular structure must be removed, demolished and/or salvaged there suddenly appears the Federal interest discussed previously and emanating from the references in IB2, 3, 4,5.

With the exception of the comments regarding ownership deriving from Federal requirements, all statutory references previously noted refer to jurisdiction and control. Of particular importance are MCL 691.1402 (Item IA 11) which fixes liability to jurisdiction, and MCL 254.1 (Item IA 10) which states that bridges and culverts are a part of the road upon which they are or are proposed to be located. This later is also cited within Hiner et al vs State of Michigan (Item IIB 1). Despite the above, concerns continue in both litigation and operational matters as to the jurisdiction of the particular structure and approaches and the duties and liability resulting from these.

The alternatives available to the Department are to continue with present procedures whereby ownership is in certain rare circumstances specified by the agreement process and jurisdiction somewhat inconsistently identified, or to establish a policy to be uniformly applied throughout the Department. This later seems the better route.

It is therefor suggested that the following be considered with respect to the ownership or jurisdiction of grade separation structures.

1. With respect to structures involving private parties and governmental bodies other than highway authorities, ownership of the grade separation structures and the approaches should be specifically established and thereafter identified as such in all appropriate documents.
2. With respect to structures on state trunkline highways involving local highway authorities, it does not appear necessary to establish ownership, recognizing however that there is a possible Federal interest and constraints imposed by the FHWA upon further disposition of a structure to other than a public highway authority (Item IB 2 through 6). Jurisdiction however should be clearly established in all appropriate documents

The issue of jurisdiction presents several alternatives with respect to structures carrying public roadways which are under the jurisdiction of a governmental highway authority over a state trunkline highway. Keeping in mind that MCL 254.1 states that bridges and culverts shall be considered in all respects as a part of the road on which they are located, these alternatives are:

ALT 1. The structure and roadway surface to be considered a part of the state trunkline highway over which it passes. This is least desirable and while conforming somewhat to maintenance and modification practices set up by the Department for these structures, appears contra to MCL 254.1 previously cited. It is not a desirable alternative from this Department's position and it is not recommended.

ALT 2. The structure surface to be established under the same jurisdictional authority as the roadway approaches, the structure beneath the roadway to be considered under the jurisdiction of this Department.

This again is not a particularly desirable alternative but because of years of past practice it may be difficult to formally dispel the concept that all parts of the structure except the roadway surface are the jurisdiction of the Department. This alternative too would appear to be contra to MCL 254.1. It is not recommended.

ALT 3. The structure and roadway surface to both be established as under the same jurisdictional authority as the approaches, subject to such Department control as may be necessary to protect the state trunkline interest. The maintenance, and modification obligations to be those which the Department has previously established by practice. This would conform to MCL 254.1. As to expenditures by the Department on a roadway under local jurisdiction these are discussed in the following section on Legitimacy of Expenditures. This is the recommended alternative.

The mechanics of effecting this establishment of ownership and jurisdiction are recognizably difficult due to the number of existing structures and the possibility of reluctance on the part of local highway authorities. A consistency in the Department's position and procedures should do much to lessen these difficulties.

Among the possible means of accomplishing this, the least controversial would appear to be by the establishment from the initial contacts and documents that the structure and the roadway surface on that structure are under the jurisdiction (or ownership in the case of private parties and non-highway authorities) of the same party as the roadway which is carried by the structure. While this alternative would probably be least disturbing politically, the mere adoption and implementation of a Department policy and procedure may not bring adequate relief with respect to the jurisdictional liabilities to which this Department is exposed dependent on the effectiveness of MCL 254.1. This is an issue which should be addressed by the Attorney General. The ultimate alternative may well be the introduction of appropriate legislation which in turn raises concerns whether such would result in a change in the formula for the distribution of Act 51 funds. In actuality, these funds are being presently distributed to local authorities on the basis of point to point mileage which includes those structures between the points on the particular system involved.

B. LEGITIMACY OF EXPENDITURES

The authority of this Department to maintain and to expend monies for such maintenance of state trunkline highways has been previously noted (Item IA 16). While certain Attorney General's Opinions previously discussed and others limit the Department's liability as well as its authority to assume the liability of another unit of government (See Item IIA 1 and 4), its authority to expend monies in the interest of state trunkline safety is also noted (See Item IIA 5 and 6). This authority and responsibility of the Department for the construction, maintenance and control of the state trunkline system appears to negate questions on illegitimacy of expenditures on structures and roadways not on the trunkline system. A further factor also requiring consideration is the duty which the Department may have assumed as a result of its past signing or maintenance practices.

It is therefore concluded that the expenditures of monies by this Department for maintenance, operation, inspection, etc. of grade separation structures in accordance with Department Policy appears to be a proper expenditure on the basis of protecting the trunkline highway interest. This conclusion should be addressed formally by the Attorney General. It is suggested that the Department review the basis for the change from the 1958 Hill Policy under which the Department maintained the structural integrity of the grade separation, and the local authority maintained the structure surface, sidewalks, etc. If politically possible the Department should consider reverting to the Hill Policy of May 2, 1958 either by notice to appropriate parties or through proposed legislation.

During this study several issues surfaced related to signing of underclearance and protection of piers which should perhaps merit further study by the concerned areas. The continuance by the Department of underclearance signing of structures involving state trunklines as well as protection, painting and signing of piers to protect the trunkline interest appears to be a legitimate expenditure should the Department elect to so do. There is a local jurisdictional interest which may require local approvals however. This was addressed by Caruso to Woodford (File 76-23-3) regarding accident attenuators. Because of the jurisdictional obligations, signing on the local roadway should be the responsibility of the jurisdictional authority of that roadway and any signing on the local roadway by the Department should be identified as being for the protection of the trunkline interest not the local roadways. This too is an issue which should be addressed by the Attorney General.

## VI RECOMMENDATIONS

This study was initially directed to the question of ownership, jurisdiction, and legitimacy of expenditure of monies for maintenance related to local road bridges over state trunkline highways. It became necessary to consider, in addition, procedural matters which influenced this Department's position, which in turn, led into issues related to state trunkline highways in general.

The recommendations are just that. They do not presume to present a complete solution but rather to suggest that further consideration of certain of the Department's procedures may be appropriate. If one single recommendation would evolve from this study it is that this Department establish its position with respect to the jurisdiction and/or ownership of grade separation structures and once established that this position be asserted uniformly and completely in all pertinent documents, correspondence, and matters involving such structures.

Within that framework the following recommendations are proposed for consideration:

### A. POLICY RECOMMENDATIONS

1. It is recommended that the Department's policy establish per MCL 254.1 that "Bridges and culverts shall be considered in all respects a part of the road upon which they are or are proposed to be located", i.e. a part of the roadway they carry. (Item IA 10 page 3). This position should be affirmed by the Attorney General.
2. With respect to structures involving highway authorities it is recommended that the Department's policy address jurisdiction rather than ownership and specify that the approaches, the structure, and the roadway surface of the structure, railing and all appurtenances on the structure, are under the jurisdictional authority of the roadway which is carried by the structure pursuant to MCL 254.1.
3. Consideration should be given to limiting the Department's trunkline interest in local grade separations over the trunkline to the structural integrity from abutment to abutment, with the local jurisdictional authority identified as the party responsible for maintaining the remainder as a part of the local highway pursuant to Act 170, P.A. 1964 MCL 691.1402 (Item IA 11 page 3). This is similar to the 1958 Hill Maintenance Policy whereby the Department maintained the structure of the grade separation and the local authority maintained the pavement sidewalks, curb, etc. This may require legislation to effect due to prior actions by the Department. See Attorney Generals Memorandums Items IIA 3, 4, 5, 6, pages 9 and 10.
4. The Department's current policy relative to the maintaining of grade separations on state trunklines as set forth in the Woodford Memorandum of December 4, 1979 should be expanded to reflect the Department's position with respect to ownership, and jurisdiction. Upon adoption of such policy, all prior policies, and correspondence related to such, including the Williams' memorandum of October 23, 1978, the Woodford memorandum of December 4, 1979, and the prior Hill policies should be rescinded.

5. With respect to structures involving private parties and governmental bodies other than highway authorities, it is recommended that the Department's policy address ownership rather than jurisdiction and establish that all costs necessary to protect the Department's trunkline interest will be the burden of the owner unless otherwise provided by law. The issue of ownership, jurisdiction, and maintenance of railroad grade separations should be further studied by the involved areas.

The particular document with the private parties or a non-highway authority, whether it be agreement, permit, or right-of-way instrument, should establish the ownership of the grade separation structure and the approaches and all responsibilities related to such ownership. This document should affirm the Department's authority for control of its right-of-way.

## B. RESOLUTIONS AND PARTICIPATION AGREEMENTS

1. Alignment and Crossroad Treatment Resolutions; and Establishment and Abandonment Resolutions
  - a. The substantive content of the alignment and crossroad treatment resolutions and their form should be a matter of further study by a Department committee in the context of the discussion in Item IV A 1 pages 18, 19, 20.
  - b. The Department's procedures for the transfer of service roads to local jurisdiction should be a matter of further study by the involved areas. (See Item IV A 2b, pages 21 and 22). This is of considerable importance due to the jurisdictional liabilities imposed by Act 170 P.A. 1964 MCL 694.1402.
  - c. The structures and roadways should be listed in all resolutions if known and their jurisdictional authorities identified.
  - d. The Department's position regarding jurisdiction of structures and roadways should be stated within all resolutions.
  - e. Either the specific date or the procedure whereby the various highway authorities would assume their jurisdictional responsibilities should be specified in all resolutions with an irrevocable commitment from the local authority to so do.
  - f. If the Department in protecting the trunkline interest undertakes any maintenance responsibility for a structure or roadway not under its jurisdiction, the related resolution should state such in the perspective of the Department's intentions.
2. Participation Agreements
  - a. Where structures are involved, the Department's position with respect to ownership, jurisdiction and maintenance should be specifically included in the agreement.

- b. Where specifics are inappropriate, a general statement of the Department's position regarding jurisdiction and maintenance should be made a part of the agreement. This should be developed in the form of an exhibit which would be made a part of the alignment and crossroad treatment resolutions, the establishment and abandonment resolutions, and the participation agreements.

C. CERTIFICATIONS FOR DISTRIBUTION OF ACT 51 MONIES AND REPORTS TO LEGISLATURE, GOVERNOR, AND FHWA

1. The Department should take such action as necessary to assure that all data received from local agencies regarding Act 51 certification consistently reflect the Department's position with respect to the jurisdiction of the structures and roadways covered by such data.
2. The Department should continue such safety inspections and reports required by Federal and State law to protect the Department's trunkline interest but should identify the jurisdiction of the structures in such reports pursuant to MCL 254.1 (See Item IVC page 24). It is further recommended that the jurisdictional authority of the structure be advised of the Department's policy and that the Department's interest is directed to the protection of the trunkline. The local jurisdiction should receive a copy of any reports which affect their jurisdictional interest.
3. All safety reports and the certifications received or issued by the Department should be reviewed to assure consistency with the Department's position regarding jurisdiction. Of special concern should be the forms utilized for the Act 51 certifications discussed in Item IA 13 (page 4), the annual inspection report discussed in Item IA 14 (page 5) and the Federal biennial report discussed in Item IB 1 (page 7). Because the reporting system is based on jurisdiction, the Department should make patently clear in reporting local structures that it is doing so only in the interest of protecting the state trunkline highways system and not as the jurisdictional authority of any portion of that structure.
4. All reports or records which the Department publishes or maintains should be reviewed to assure that jurisdiction is not identified by generalities as being under jurisdiction of this Department but actually specify which party does have jurisdiction.

D. MAINTENANCE AND SIGNING OPERATIONS

1. The Department's maintenance contracts with other governmental bodies should reflect that structures carrying local roads over state trunklines which will be serviced by the maintenance agency in protection of the trunkline interest are under the jurisdiction of a local roadway authority. (See Item IVD 1b, page 24.)
2. Any authorizations issued for work involving structures or roadways not under the Department's jurisdiction should reflect the Department's position with respect to jurisdiction.



3. It appears appropriate to continue underclearance signing and other protective signing of all structures involving state trunklines to the extent necessary to protect the structural integrity of the structure.

With respect to privately owned structures other than railroad structures, such costs necessary to protect the Department's trunkline interest should be the burden of the owner unless otherwise provided by law. See Policy Recommendation A5.

#### E. PERMITS

1. Present permit procedures should be reviewed to assure correlation with the practices of the Right of Way Division and FHWA requirements, particularly with respect to permit applications by private parties and governmental bodies other than highway authorities.
2. The permit process should be reviewed to determine whether a permit, an agreement, or the right of way process may be more appropriate for structures constructed by others over state trunkline highways.
3. Whichever process is used, permit, agreement, or right-of-way, the document should establish ownership and/or jurisdiction in accordance with the Department's position and should also establish all rights and duties including disposition obligations related to that structure.

#### F. DISPOSAL OR SALE OF RIGHT OF WAY

1. The Department should review its existing procedures relative to conveyance of right-of-way to determine whether it may be appropriate, desirable or even statutorily mandated that it retain mineral or oil rights to which it has obtained title. See Item IVA 2b(1) page 21.

#### G. GENERAL RECOMMENDATIONS

1. The Department should be consistent in all resolutions, permits, agreements, reports, and other documents of which this Department is an originator or a party and which enumerate either the ownership or jurisdiction of the structure.
2. The Department in its own interest should enumerate the responsibilities of all the parties involved for the maintenance of grade separation structures and should make this known to the concerned parties.
3. A permanent record of structures should be maintained which reflects jurisdiction and/or ownership, and the maintenance responsibilities of the parties in accordance with Department policy.
4. The status of the Department's compliance with the requirements for local approval of plans, specifications, and estimates pursuant to MCL 252.56 (Item IA 8 page 2) should be reviewed. The need for such compliance should be addressed to the Attorney General.