



U.S. Department
of Transportation

Federal Highway
Administration

Washington Division

Suite 501 Evergreen Plaza
711 South Capitol Way
Olympia, Washington 98501

RECEIVED

NOV 29

November 27, 1989

LAND MGMT.

HRW-WA/410.3

JMS
11/29

Mr. Duane Berentson
Secretary of Transportation
Department of Transportation
Olympia, Washington

Attention: Mr. Robert Barnard

RECEIVED
DEC 04 1989
LAND MGMT.

Occupancy or Use of Rights-of-Way
Including Air Space for Non-Highway
Purposes, Section 1.23 and Section 713.201
of 23 CFR and Section 111 of Title 23 USC

Dear Mr. Berentson:

Questions have been asked from time to time concerning permission to use rights-of-way for other than highway purposes. The following comments are intended to provide thoughts which from our perspective are germane to these questions.

1. The use of highway rights-of-way for other than highway purposes is a permissive use and not an inherent right of use for other purposes.
2. The use must be in the public interest.
3. The use must not impair the full use and safety of the highway or interfere with the free and safe flow of traffic thereon.
4. No new points of access to or exit from the project will be added unless approved in advance by FHWA.
5. No automotive service stations or other commercial establishments for serving motor vehicle users will be constructed or located on the rights-of-way of the Interstate system.
- ✓ 6. At the option of FHWA, original cost or current value of all improvements located within the area subject to use for non-highway purposes in which Federal funds participated can be required to be repaid to FHWA. This also includes any removal of landscaping, improvements, etc., within the right-of-way that is undertaken for other than a highway benefit.
- ✓ 7. Rent credits given to developers in consideration of removing, replacing, restoring, remodeling, or rehabilitating existing improvements or preparing the site for use should clearly demonstrate a highway facility benefit or a highway user benefit in the public interest. This item is not related to Item 5.

*See Landscape
Comments*

In terms of specific locations, landscaped areas and interchange areas outside the "downtown" areas of cities are today more critical. With the emphasis of municipalities and many organizations on the aesthetic qualities of our landscape and particularly within our highways, we would expect destruction of landscaping for any purpose to be of concern to these entities. We are reluctant to destroy landscaped areas that creates an aesthetic impression upon the highway user or screens what could be a visual distraction to drivers.

In terms of interchange areas, there are but few interchanges that have not been modified, planned to be modified, or one can reasonably anticipate will be modified sometime in the not too distant future. We are not against, but are less than enthusiastic about, non-highway uses in these interchanges, particularly on the Interstate system. If the interchange is on structure, possibilities exist for use beneath the structures for compatible highway uses. However, much depends upon what exists beneath the structure at the present time.

Areas at grade with the surrounding highway facility are usually landscaped and contain other improvements related to the highway facility. We are very reluctant to denude an area for a private purpose of no specific benefit to the highway program and in fact may be detrimental to the aesthetic objectives of the landscape engineer and the original designers of the facility.

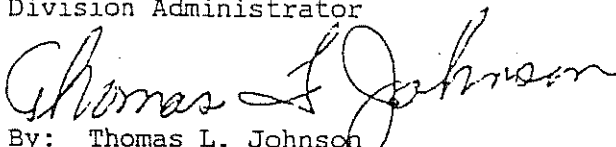
Scattered uses of small areas of Interstate and other rights-of-way contribute minimal income to the highway program and often become destructive to the overall scheme for the highway improvement. Again, while we are not adverse to such piecemeal usage, we look at them critically from a public interest point of view.

It is not possible to set forth a specific set of criteria for each and every situation that one might encounter in an air space use situation. We encourage the leasing of air space in appropriate situations when a clear and distinguishable public interest can be demonstrated. We compliment your staff on the excellent job that they are presently doing in the air space lease area.

We recognize this is not a specific answer to questions that arise but we hope that it will be of some help to understanding some current thoughts on the subject and a place to commence, if needed, some thoughtful exchange of ideas.

Sincerely yours,

BARRY F. MOREHEAD
Division Administrator


By: Thomas L. Johnson
Division Right-of-Way Officer



U.S. Department
of Transportation
**Federal Highway
Administration**

Washington Division

Suite 501 Evergreen Plaza
711 South Capitol Way
Olympia, Washington 98501

*See landscape
Comments*

June 1, 1990

HRW-WA/510
Policy

Mr. Duane Berentson
Secretary of Transportation
Department of Transportation
Olympia, Washington

Attention: Mr. Jim Buss

Scenic Enhancement Initiatives
Selective Cutting of Vegetation

Dear Mr. Berentson:

Enclosed is a new policy of FEWA as concerns the clearing of rights-of-way in order to expose advertising signs. The new policy rescinds a March 15, 1977, policy which permitted selective clearing of right-of-way vegetation to improve the visibility of outdoor advertising structures. (A copy of the 1977 policy memorandum is enclosed.)

While the gist of the memorandums is directed toward outdoor advertising signs, the policy has equal significance as concerns clearing vegetation from the right-of-way for the purpose of exposing another improvement or development. In a sense, such clearance also represents the clearing of vegetation for outdoor advertising purposes.

Should you have any questions, we will attempt to answer them to your satisfaction. Please contact Tom Johnson, SCAN 234-2119, should you have questions.

Sincerely yours,

BARRY F. MOREHEAD
Division Administrator


By: Thomas L. Johnson
Division Right-of-Way Officer

Enclosure



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Room 312 Mohawk Building
708 S. W. Third Avenue
Portland, Oregon 97204

Subject: Scenic Enhancement Initiatives Date: May 24, 1990

From: Regional Administrator Reply to
Attn. of: HPP-010.1
HPP-010.2
414.413, 413.1

To:

DIVISION ADMINISTRATORS

Mr. R. E. Ruby, Juneau, Alaska (HDA-AK)
Mr. J. T. Coe, Boise, Idaho (HDA-ID)
Mr. R. G. Fairbrother, Salem, Oregon (HDA-OR)
Mr. B. F. Morehead, Olympia, Washington (HDA-WA)

The FHWA Environmental Policy Statement issued on April 20, 1990 indicated that it was not enough to avoid doing harm but that we must seek ways to protect and enhance the environment through which our projects pass. Innovative and traditional approaches to accomplish this were encouraged.

The Office of Right-of-Way in consonance with the Environmental Policy Statement has issued the attached memorandum dated May 18, 1990 containing two initiatives that will further the goals of the policy statement. These two initiatives are the beginning of greater emphasis in meeting the goals of the policy statement.

The first initiative rescinds the March 15, 1977 memorandum permitting selective clearing of right-of-way vegetation to improve visibility of outdoor advertising structures. (A copy of the 1977 memorandum is attached).

In the second initiative, States are encouraged to retain excess lands that could be used to restore, preserve or enhance the scenic beauty and quality of the highway environment.

In the penultimate paragraph the States are asked to thoroughly evaluate their excess property inventories and to classify them as to their potential for enhancing or improving the Scenic Quality of the Highway Environment.

With passage of paragraph 156 of the STURAA of 1987, there has been an increased interest in developing air rights usage of highway right-of-way. In some instances it has been observed that the proposed air rights usage would cause the removal of existing landscaping and natural vegetation. In view of the Environmental Policy Statement and the purpose envisioned in the second initiative as it pertains to excess right-of-way it would be well to insure that the proposed usage would not be contrary to the policy in this initiative.

As required by the initiatives you should assist the States to 1) rescind any and all vegetation agreements with outdoor advertising firms where the purpose is to improve visibility to advertising structures, at the earliest possible time consistent with the initiative and terms of the agreement 2) establish procedures which will preclude such agreements in the future and 3) encourage a thorough evaluation of their excess property inventories.

If you have any questions please contact Joe Schutz or Irv Lloyd at FTS 423-2061.

John J. Witman
for J. P. Clark

Attachments



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject: Scenic Enhancement Initiatives

Date: MAY 18 1990

From: Associate Administrator for Engineering
and Program Development
Washington, D.C. 20590

Reply to HRW-12
Attn of


To: Regional Federal Highway Administrators

The preservation of the environmental and scenic quality of our Nation's highways concerns us all. The President's policy goal of improving the environment requires that we reevaluate our role in protecting and enhancing the highway environment. We are exploring several options to meet the President's policy goal, including a study of the feasibility of a scenic byways system. However, we believe certain actions should be taken now.

First, we are rescinding our March 15, 1977, memorandum permitting vegetation clearance to improve the visibility of outdoor advertising signs. We recognize that maintenance of highway rights-of-way for safety and other highway operations is a State responsibility. However, to clear vegetation solely to improve the visibility of signs subject to removal under the Highway Beautification Program is not environmentally responsive. It is Federal Highway Administration policy to be sensitive to environmental concerns, therefore such vegetation clearance can no longer be endorsed. Direction should be provided the Division offices to assist the States in rescinding their existing vegetation clearance agreement and/or permit program.

Our second initiative is to encourage States to retain, rather than dispose of, excess property that could be used to restore, preserve, or enhance the scenic beauty and quality of the highway environment in accordance with 23 CFR 713.304(d). In this context, retention has a project related benefit. Such benefits could include scenic vistas, wetlands (both present and potential) and preservation of wildlife habitat. States should thoroughly evaluate their excess property inventories and classify such property accordingly.

Please ensure that all States are promptly advised of the foregoing.


Anthony R. Kane

UNITED STATES GOVERNMENT

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION*Memorandum*

DATE: MAR 15 1977

In reply
refer to: HRE-1

SUBJECT: Vegetation Clearance From Within
Federal-Aid Highway Rights-of-Way -
Outdoor Advertising Control
(Re: December 30, 1976, memo)

FROM: Associate Administrator for
Right-of-Way and Environment
Associate Administrator for
Engineering and Traffic Operations
Washington, D.C.

TO: Regional Federal Highway Administrators
Regions 1-10

The December 30, 1976, memorandum to Regional Administrators captioned above was issued because it had come to the attention of the Federal Highway Administration (FHWA) that efforts were being made to encourage States to adopt rules and regulations which would permit clearance of native and/or planted vegetation from within Federal-aid rights-of-way in order that such vegetation would not screen outdoor advertising signs from the view of the traveling public.

Since the December 30, 1976, memorandum was issued, a question has arisen whether a State highway department at the request of an outdoor advertiser could enter an agreement with the outdoor advertiser to maintain specified areas within Federal-aid highway rights-of-way for the purpose of permitting the outdoor advertising sign to be viewed by the traveling public with the cost of maintenance to be paid by the outdoor advertiser. It is anticipated that this or similar requests for selective maintenance in areas adjacent to nonconforming signs until they are acquired or in areas adjacent to signs in commercial or industrial areas on a more permanent basis will be made of many State highway departments. The decision whether to enter into such an agreement must be made by the State highway department as part of its overall maintenance responsibility under 23 U.S.C., Sections 101 and 116 to preserve the entire highway including roadsides for its safe and efficient use, within its own laws and maintenance policies, good landscaping practices, and the guidance provided by the AASHTO Maintenance Manual. Neither the FHWA nor State highway departments would countenance any illegal or unauthorized cutting of trees or vegetation on Federal-aid