

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

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Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, was signed into law. Section 1046 of the ISTEA amended 23 U.S.C. 131 which deals with outdoor advertising control. This notice describes the impact of section 1046 on how States can provide for effective control of outdoor advertising in accord with regulations previously issued by the Federal Highway Administration (FHWA) in 23 CFR 750.705. This document is being issued to advise States that the ISTEA may require them to consider changes in their laws and administrative practices in order to remain eligible for full Federal-aid funding. The ISTEA itself provides no lead time for the States to come into compliance with these new provisions. A discussion of initiatives that will be considered in evaluating how "effective control" is maintained under the new requirements is a part of this notice.

Under section 1046, 23 U.S.C. 131 will continue to apply to the Interstate System and the Federal-aid primary system as they existed on June 1, 1991, and, when designated, all portions of the approved National Highway System. The three major amendments made to 23 U.S.C. 131 by section 1046 of ISTEA are: (1) An amendment prohibiting the erection of most new signs adjacent to

an Interstate or Federal-aid primary designated a Scenic Byway under a State Program; (2) a specific requirement that illegal signs be removed; and (3) a provision authorizing for the first time the use of Federal-aid highway funding to purchase signs that do not conform to outdoor advertising controls.

DATES: The ISTEA was signed into law on December 18, 1991, with the provision of new sections 131(s) and 131(r)(1) of title 23, U.S.C., effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Marlin E. Meese, Chief, Special Programs and Evaluation Branch, Office of Right-of-Way, HRW-12, (202) 366-2017; or Mr. Robert Black, Attorney, Office of Chief Counsel, HCC-31, (202) 366-1359, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 131 is the implementing authority within title 23, U.S.C., for the Highway Beautification Act of 1965, as amended. The basic principles of outdoor advertising control are in section 131. The original Act provided specific controls on the erection and maintenance of outdoor advertising signs and devices along the Interstate and Federal-aid primary highway systems. The Interstate and primary highway systems comprise only 306,000 miles of the 3.9 million miles of public roads and streets in the United States. Therefore, the outdoor advertising controls apply to less than 8 percent of the total national public road mileage. Statutory controls in section 131(c) limit signs which a State can permit to directional and official signs, sale or lease signs, on-premise signs, landmark signs, and free coffee signs. In addition, under section 131(d), States can permit signs in zoned or unzoned commercial or industrial areas adjacent to the controlled systems. Section 131(d) provides for an agreement between each State and the Secretary of Transportation regarding size, lighting, and spacing standards of signs in commercial and industrial areas.

Scenic Byway Prohibition

The ISTEA in section 1046(c) amended title 23, U.S.C., by adding section 131(s). The new section limits the erection of new advertising displays to those permitted under section 131(c) along road segments that are designated Scenic Byways which are on the Interstate System, the Federal-aid primary system (as it existed on June 1,

1991), or on the National Highway System, when designated. These routes, collectively, are referred to as the controlled systems for Highway Beautification Act purposes. Thus new signs which would have been permitted in commercial and industrial areas under section 131(d) are no longer permitted on scenic byway portions of the controlled system.

Based on the 1990 Scenic Byways Study (U.S. DOT/FHWA Publication No. PD-91-010, January 1991), all but 15 States have some form of scenic byways program. About 35,000 miles of roads had been designated as scenic as of December 1990, when the study was conducted. The study projected that only about 50,000 total miles would be designated. Of the total projected mileage, about 50 percent is located on the Interstate and Federal-aid primary systems. Almost all of the mileage already designated as scenic along a controlled highway system is on two lane roadways. Most scenic byways are two lane roadways in rural areas where commercial and industrial areas are fewer in number. Thus, while the scope of this new control is limited to only about 25,000 miles, it complements the actions already taken by the States in determining that these routes have particular scenic importance.

Removal of Illegal Signs

The ISTEA in section 1046(b) also added section 131(r) to title 23, U.S.C. This new section requires all owners of illegal signs to remove their illegal signs within 90 days. The section further states that in the event owners do not remove their illegal signs, the State, to exercise effective control, shall remove the signs. The section provides that States recover removal costs of unremoved illegal signs from the sign owner. This cost recovery provision is not part of "effective control" for purposes of the sanction provisions of the Highway Beautification Act (23 U.S.C. 131(b)).

The FHWA recognizes that most States have already caused the removal of a substantial number of the illegal signs within their boundaries. Some States, however, have significant numbers of illegal signs remaining. Based on State reports, a total of about 22,000 remaining illegal signs have been identified. The law gave sign owners only 90 days from the effective date of ISTEA on December 18, 1991, to remove their illegal signs. The short period given to the owners is an indication of the emphasis to be applied to remove illegal signs. In consideration of the period granted to the owners, and the specific

mandate to the States to conclude removals when the sign owner has not performed, the FHWA has set a goal of an additional 90 days through June 18, 1992, for the States to act on the removal of illegal signs as required by 23 U.S.C. 131(r)(2). The FHWA recognizes that State law or procedural impediments may have to be overcome before a State can fully comply with this objective. However, considering the short time frame stated in the legislation for the removal of illegal signs by the sign owners, and the specific tie of this action to effective control requirements, States must take immediate steps after March 18, 1992, to demonstrate reasonable progress in meeting the effective control responsibilities required by this amendment. Good faith efforts by a State, including efforts to seek legislative authority, to comply with the provisions quickly will be considered by the FHWA in deciding how to deal with a failure to achieve effective control. Cumbersome administrative or procedural requirements that do not provide for prompt removal of illegal signs are not consistent with the intent of this section.

Funding for Removal of Nonconforming Signs

A new funding source for outdoor advertising control was provided in section 1048(a) of the ISTEA. By amending 23 U.S.C. 131(m), highway trust funds apportioned under 23 U.S.C. 104 are now available for the removal of nonconforming signs (i.e., lawfully erected signs which do not conform to the control requirements of section 131 or stricter State laws). In addition, in section 1007 of the ISTEA, control and removal of outdoor advertising is identified as one of several eligible "transportation enhancement activities" under the new Surface Transportation Program (STP). This major new program requires that at least 10 percent of apportioned funds for the program must be directed toward "transportation enhancement activities."

Initially, Federal funds for the control of outdoor advertising came from the General Fund. Now, funds made available from the Highway Trust Fund for highway projects may be used for outdoor advertising control. This will have a profound impact on the ability and responsibility of States to remove outdoor advertising signs. Under section 131(n), the States are not required to remove nonconforming signs unless Federal funds are available to participate in the acquisition costs associated with their removal. In the years immediately following the passage of the Highway Beautification Act,

considerable sums were made available to inventory and remove nonconforming signs. However, funding was never sufficient to complete the acquisition process and no General Funds have been appropriated since 1983.

With this amendment made by the ISTEA, the States should have sufficient funds to remove nonconforming signs much more expeditiously. The change in the funding provided by the ISTEA, making available significant funds for the Federal share of just compensation payments and other control costs, will enable States to complete the removal of nonconforming signs in order to maintain effective control under Section 131(b). The timely removal of nonconforming outdoor advertising signs has always been part of "effective control." Failure to exercise effective control subjects a State to a 10 percent reduction of its Federal-aid highway apportionment, pursuant to 23 U.S.C. 131(b).

The FHWA estimates that about 92,000 nonconforming signs remain to be acquired. Most of these signs have been in place for over 20 years. Removal has been delayed, but now with increased Federal funding available to complete acquisition activities and ensure effective control, the law requires expedient removal.

The ISTEA authorizes \$121 billion over the next six years for highway programs, including the STP which is a block grant program designed to fund a wide range of transportation related projects. For Fiscal Year (FY) 1992 alone, over \$11 billion in Federal-aid under 23 U.S.C. 104 is being distributed to the States for highway construction and maintenance, and other transportation activities, including removal of outdoor advertising signs. The estimated total Federal share of the cost to acquire the remaining nonconforming signs is \$429 million. This amount represents just 4 percent of the total eligible Federal-aid funds available to the States in FY 1992. Thus, the FHWA considered requiring States to remove all nonconforming signs along controlled highways in the first year ISTEA funding is available.

However, the FHWA recognizes that while the ISTEA represents a dramatic increase in Federal-aid funding, the non-Federal share must come from State or local sources. Moreover, the impact on individual States in providing for immediate removal would vary. For example, a State with an inventory of just a few hundred nonconforming signs would have a more manageable acquisition task than a State with over 2,000 such signs.

In addition, the FHWA recognizes that other problems might hamper the immediate removal of all remaining nonconforming signs. First, many States have been inactive regarding a sign acquisition program, and might need to update their administrative tools and sign acquisition procedures. Second, we do not believe that the Congress intended that the removal of signs take precedence over all other title 23 projects and programs.

For these reasons, we believe the ISTEA requires States to begin immediate removal of nonconforming signs, and to make reasonable progress in completing their removal program expeditiously. The FHWA, however, has set a two year goal for complete removal of remaining nonconforming signs. The FHWA believes that 2 years provides States with adequate time to remove all nonconforming signs without unduly constricting Federally-funded highway construction and other projects. States should be prepared to justify any reason for concluding that this period would impose an undue hardship on their priorities and programs.

During the next two years period, more than \$24 billion Federal-aid dollars can be expected to be made available to the States for 23 U.S.C. 104 programs and projects. Considering the number of nonconforming signs remaining in the various States, most States could conclude their removal program using less than 2 percent of their 23 U.S.C. 104 funds within the two year period. Therefore, full acquisition and removal of the remaining nonconforming signs over the next two years would seem to be an achievable goal. By meeting this goal States will have removed all nonconforming signs on controlled Federal-aid highways by December 18, 1993.

The elements of removal programs will necessarily vary from State to State, and States should confer with the FHWA as to how best structure a removal program. In implementing removal programs, the States will have to review their existing priorities and formulate programs and processes that will maintain effective control. The States may wish to involve interested parties and affected entities such as other state and local agencies, sign owners, environmental groups and the business community, and establish priorities for sign removal.

This notice provides States and other interested parties a discussion of FHWA's goals and objectives to assure effective control is maintained to achieve the full implementation of the objectives expressed in the 1965

Highway Beautification Act, as amended, and to prevent interruption of Federal-aid funding. Each State should advise the FHWA by June 18, 1992, of its process, program, and timetable to ensure effective control is achieved and maintained. The FHWA intends to monitor and evaluate each State's progress in providing for the prompt removal of illegal and nonconforming signs on controlled systems.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 2, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-5287 Filed 3-5-92; 8:45 am]

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**DEPARTMENT OF VETERANS
AFFAIRS**

**Cooperative Studies Evaluation
Committee; Meeting**

The Department of Veterans Affairs gives notice under Public Law 92-463 (Federal Advisory Committee Act) as

amended by section 5(c) of Public Law 94-409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Ramada Renaissance Hotel, 999 9th Street NW., Washington, DC, on April 28, 1992. The session is scheduled to begin at 7:30 a.m. and end at 8 p.m. The meeting will be for the purpose of reviewing the progress of one on-going cooperative study in immunization in the prevention of infection, and three new clinical trials, one in the treatment of alcoholic cirrhosis, one in diabetes mellitus, and one in unstable angina.

The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on the relevance and feasibility of studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room, from 7:30 a.m. to 8 a.m., to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping

Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC, (202-535-7154), prior to April 14, 1992.

The meeting will be closed from 8 a.m. to 8 p.m., for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92-463, as amended by section 5(c) of Public Law 94-409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: February 26, 1992.

By Direction of the Secretary.

Dirce H. Landis,

Committee Management Officer.

[FR Doc. 92-5217 Filed 3-5-92; 8:45 am]

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(e) No sign may be permitted which moves or has any animated or moving parts.

No sign may be permitted to be placed or maintained upon trees or drawn upon rocks or other natural features.

No sign may be permitted to exceed 20 feet in length, width or height or 150 square feet in area, including border and trim but excluding lettering, except Class 2 signs not more than 50 feet from, and advertising activities being conducted upon, or property where the sign is located.

FEDERAL REGS

Exclusions.

Standards in this part shall not apply to markers, signs and plaques in the vicinity of sites of historical significance for the erection of which no agreement has been made in an agreement between a State and the Secretary of Transportation, as provided in the Act, or such agreement expressly excludes or any part of the standards apply.

State regulations.

A State may elect to prohibit signs not permissible under the standards in this part without forfeiting its rights to any benefits provided for in the act.

Subpart B—National Standards for Directional and Official Signs

AUTHORITY: 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

§ 750.151 Purpose.

(a) In section 131 of title 23, United States Code, Congress has declared that:

(1) The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote safety and recreational value of public travel, and to preserve natural beauty.

(2) Directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions,

which are required or authorized by law, shall conform to national standards authorized to be promulgated by the Secretary, which standards shall contain provisions concerning the lighting, size, number and spacing of signs, and such other requirements as may be appropriate to implement the section.

(b) The standards in this part are issued as provided in Section 131 of title 23, United States Code.

[38 FR 18044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

§ 750.152 Application.

The following standards apply to directional and official signs and notices located within six hundred and sixty (660) feet of the right-of-way of the Interstate and Federal-aid primary systems and to those located beyond six hundred and sixty (660) feet of the right-of-way of such systems, outside of urban areas, visible from the main traveled way of such systems and erected with the purpose of their message being read from such main traveled way. These standards do not apply to directional and official signs erected on the highway right-of-way.

[40 FR 21934, May 20, 1975]

§ 750.153 Definitions.

For the purpose of this part:

(a) Sign means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

(b) Main traveled way means the through traffic lanes of the highway, exclusive of frontage roads, auxiliary lanes, and ramps.

(c) Interstate System means the National System of Interstate and Defense Highways described in Section 103(d) of title 23, United States Code.

(d) Primary system means the Federal-aid highway system described in Section 103(b) of title 23, United States Code.

(e) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) Maintain means to allow to exist.

(g) Scenic area means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

(h) Parkland means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

(i) Federal or State law means a Federal or State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State or Federal agency or a political subdivision of a State pursuant to a Federal or State constitution or statute.

(j) Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(k) Freeway means a divided arterial highway for through traffic with full control of access.

(l) Rest area means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

(m) Directional and official signs and notices includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

(n) Official signs and notices means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

(o) Public utility signs means warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

(p) Service club and religious notices means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed 8 square feet in area.

(q) Public service signs means signs located on school bus stop shelters, which signs:

(1) Identify the donor, sponsor, or contributor of said shelters;

(2) Contain public service messages, which shall occupy not less than 50 percent of the area of the sign;

(3) Contain no other message;

(4) Are located on schoolbus shelters which are authorized or approved by city, county, or State law, regulation, or ordinance, and at places approved by the city, county, or State agency controlling the highway involved; and

(5) May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

(r) Directional signs means signs containing directional information about public places owned or operated by Federal, State, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

(s) State means any one of the 50 States, the District of Columbia, or Puerto Rico.

(t) Urban area means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized areas in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand or more and not within any urbanized area within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urban

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place designated by the Bureau of the Census.

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

§ 750.154 Standards for directional signs.

The following apply only to directional signs:

(a) General. The following signs are prohibited:

(1) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.

(2) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

(3) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(4) Obsolete signs.

(5) Signs which are structurally unsafe or in disrepair.

(6) Signs which move or have any animated or moving parts.

(7) Signs located in rest areas, parklands, or scenic areas.

(b) Size. (1) No sign shall exceed the following limits:

- (i) Maximum area—150 square feet.
- (ii) Maximum height—20 feet.
- (iii) Maximum length—20 feet.

(2) All dimensions include border and trim, but exclude supports.

(c) Lighting. Signs may be illuminated, subject to the following:

(1) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(2) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(3) No sign may be so illuminated as to interfere with the effectiveness of

or obscure an official traffic sign, device, or signal.

(d) Spacing. (1) Each location of a directional sign must be approved by the State highway department.

(2) No directional sign may be located within 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

(3) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.

(4)(i) No two directional signs facing the same direction of travel shall be spaced less than 1 mile apart;

(ii) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;

(iii) Signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(iv) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

(e) Message content. The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

(f) Selection method and criteria. (1) Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.

(2) To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.

(3) Each State shall develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing. A statement as to selection meth-

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ods and criteria shall be furnished to the Secretary of Transportation before the State permits the erection of any such signs under section 131(c) of title 23, United States Code, and this part.

§ 750.155 State standards.

This part does not prohibit a State from establishing and maintaining standards which are more restrictive with respect to directional and official signs and not along the Federal-aid highway systems than these national standards.

[38 FR 16044, June 20, 1973, as amended at 40 FR 21934, May 20, 1975]

Subpart C—[Reserved]

Subpart D—Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)

Authority: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

Source: 39 FR 27436, July 29, 1974, unless otherwise noted.

§ 750.301 Purpose.

To prescribe the Federal Highway Administration (FHWA) policies relating to Federal participation in the costs of acquiring the property interests necessary for removal of nonconforming advertising signs, displays and devices on the Federal-aid Primary and Interstate Systems, including toll sections on such systems, regardless of whether Federal funds participated in the construction thereof. This regulation should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g).

§ 750.302 Policy.

(a) Just compensation shall be paid for the rights and interests of the sign and site owner in those outdoor advertising signs, displays, or devices which are lawfully existing under State law, in conformance with the terms of 23 U.S.C. 131.

(b)(1) Federal reimbursement will be made on the basis of 75 percent of the acquisition, removal and incidental

costs legally incurred or obligated by the State.

(2) Federal funds will participate in 100 percent of the costs of removal of those signs which were removed prior to January 4, 1976, by relocation, pursuant to the provisions of 23 CFR § 750.305(a)(2), and which are required to be removed as a result of the amendments made to 23 U.S.C. 131 by the Federal-Aid Highway Amendments of 1974, P.L. 93-643, section 109, January 4, 1975. Such signs must have been relocated to a legal site, must have been legally maintained since the relocation, and must not have been substantially changed, as defined by the State maintenance standards, issued pursuant to 23 CFR § 750.707(b).

(c) Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.) applies except where complete conformity would defeat the purposes set forth in 42 U.S.C. 4651, would impede the expeditious implementation of the sign removal program or would increase administrative costs out of proportion to the cost of the interests being acquired or extinguished.

(d) Projects for the removal of outdoor advertising signs including hardship acquisitions should be programed and authorized in accordance with normal program procedures for right-of-way projects.

[39 FR 27436, July 29, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 41 FR 31198, July 27, 1976]

§ 750.303 Definitions.

(a) Sign. An outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended or used for advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(b) Lease (license, permit, agreement, contract or easement). An agreement, oral or in writing, by which possession or use of land or interests therein is given by the owner or other person to

another person for a specified purpose.

(c) *Leasehold value.* The leasehold value is the present worth of the difference between the contractual rent and the current market rent at the time of the appraisal.

(d) *Illegal sign.* One which was erected and/or maintained in violation of State law.

(e) *Nonconforming sign.* One which was lawfully erected, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(f) *1966 inventory.* The record of the survey of advertising signs and junkyards compiled by the State highway department.

(g) *Abandoned sign.* One in which no one has an interest, or as defined by State law.

§ 750.301 State policies and procedures.

The State's written policies and operating procedures for implementing its sign removal program under State law and complying with 23 U.S.C. 131 and its proposed time schedule for sign removal and procedure for reporting its accomplishments shall be submitted to the FHWA for approval within 90 days of the date of this regulation. This statement should be supported by the State's regulations implementing its program. Revisions to the State's policies and procedures shall be submitted to the FHWA for approval. The statement should contain provisions for the review of its policies and procedure to meet changing conditions, adoption of improved procedures, and for internal review to assure compliance. The statement shall include as a minimum the following:

(a) *Project priorities.* The following order of priorities is recommended.

- (1) Illegal and abandoned signs.
- (2) Hardship situations.
- (3) Nominal value signs.
- (4) Signs in areas which have been designated as scenic under authority of State law.
- (5) Product advertising on:

(i) Rural interstate highway.

(ii) Rural primary highway.

(iii) Urban areas.

(6) Nontourist-oriented directional advertising.

(7) Tourist-oriented directional advertising.

(b) *Programming.* (1) A sign removal project may consist of any group of proposed sign removals. The signs may be those belonging to one company or those located along a single route. All of the signs in a single county or other locality, hardship situations, individually or grouped, such as those involving vandalized signs, or all of a sign owner's signs in a given State or area, or any similar grouping.

(2) A project for sign removal on other than a Federal-aid primary route basis e.g., a countywide project or a project involving only signs owned by one company, should be identified as CAF-000B(), continuing the numbering sequence which began with the sign inventory project in 1986.

(3) Where it would not interfere with the State's operations, the State should program sign removal projects to minimize disruption of business.

(c) *Valuation and review methods—*

(1) *Schedules—formulas.* Schedules, formulas or other methods to simplify valuation of signs and sites are recommended for the purpose of minimizing administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation. They do not purport to be a basis for the determination of just compensation under eminent domain.

(2) *Appraisals.* Where appropriate, the State may use its approved appraisal report forms including those for abbreviated or short form appraisals. Where a sign or site owner does not accept the amount computed under an approved schedule, formula, or other simplified method, an appraisal shall be utilized.

(3) *Leaseholds.* When outdoor advertising signs and sign sites involve a leasehold value, the State's procedures should provide for determining value in the same manner as any other real estate leasehold that has value to the lessee.

(4) *Severance damages.* The State has the responsibility of justifying the recognition of severance damages pursuant to 23 CFR 710.304(h), and the law of the State before Federal participation will be allowed. Generally, Federal participation will not be allowed in the payment of severance damages to remaining signs, or other property of a sign company alleged to be due to the taking of certain of the company's signs. Unity of use of the separate properties, as required by applicable principles of eminent domain law, must be shown to exist before participation in severance damages will be allowed. Moreover, the value of the remaining signs or other real property must be diminished by virtue of the taking of such signs. Payments for severance damages to economic plants or loss of business profits are not compensable. Severance damage cases must be submitted to the FHWA for prior concurrence, together with complete legal and appraisal justification for payment of these damages. To assist the FHWA in its evaluation, the following data will accompany any submission regarding severance:

(i) One copy of each appraisal in which this was analyzed. One copy of the State's review appraiser analysis and determination of market value.

(ii) A plan or map showing the location of each sign.

(iii) An opinion by the State highway department's chief legal officer that severance is appropriate in accordance with State law together with a legal opinion that, in the instant case, the damages constitute severance as opposed to consequential damage as a matter of law. The opinion shall include a determination, and the basis therefor, that the specific taking of some of an outdoor advertiser's signs constitutes a distinct economic unit, and that unity of use of the separate properties in conformity with applicable principles of eminent domain law had been satisfactorily established. A legal memorandum must be furnished citing and discussing cases and other authorities supporting the State's position.

(5) *Review of value estimates.* All estimates of value shall be reviewed by a person other than the one who made

the estimate. Appraisal reports shall be reviewed and approved prior to initiation of negotiations. All other estimates shall be reviewed before the agreement becomes final.

(d) *Nominal value plan.* (1) This plan may provide for the removal costs of eligible nominal value signs and for payments up to \$250 for each nonconforming sign, and up to \$100 for each nonconforming sign site.

(2) The State's procedures may provide for negotiations for sign sites and sign removals to be accomplished simultaneously without prior review.

(3) Releases or agreements executed by the sign and/or site owner should include the identification of the sign, statement of ownership, price to be paid, interest accrued, and removal rights.

(4) It is not expected that salvage value will be a consideration in most acquisitions; however, the State's procedures may provide that the sign may be turned over to the sign owner, site owner, contractor, or individual as all or a part of the consideration for its removal, without any project credits.

(5) Programming and authorizations will be in accord with § 750.308 of this regulation. A detailed estimate of value of each individual sign is not necessary. The project may be programmed and authorized as one project.

(e) *Sign removal.* The State's procedural statement should include provision for:

(1) Owner retention.

(2) Salvage value.

(3) State removal.

[39 FR 27438, July 29, 1974; 42 FR 30835, June 17, 1977, as amended at 60 FR 34093, Aug. 23, 1995]

§ 750.305 Federal participation.

(a) Federal funds may participate in:

(1) Payments made to a sign owner for his right, title and interest in a sign, and where applicable, his leasehold value in a sign site, and to a site owner for his right and interest in a site, which is his right to erect and maintain the existing nonconforming sign on such site.

(2) The cost of relocating a sign to the extent of the cost to acquire the sign, less salvage value if any.

(3) A duplicate payment for the site owner's interest of \$2,500 or less because of a bona fide error in ownership, provided the State has followed its title search procedure as set forth in its policy and procedure submission.

(4) The cost of removal of signs, partially completed sign structures, supporting poles, abandoned signs and those which are illegal under State law within the controlled areas, provided such costs are incurred in accordance with State law. Removal may be by State personnel on a force account basis or by contract. Documentation for Federal participation in such removal projects should be in accord with the State's normal force account and contractual reimbursement procedures. The State should maintain a record of the number of signs removed. These data should be retained in project records and reported on the periodic report required under § 750.308 of this regulation.

(5) Signs materially damaged by vandals. Federal funds shall be limited to the Federal pro-rata share of the fair market value of the sign immediately before the vandalism occurred minus the estimated cost of repairing and reerecting the sign. If the State chooses, it may use its FHWA approved nominal value plan procedure to acquire these signs.

(6) The cost of acquiring and removing completed sign structures which have been blank or painted out beyond the period of time established by the State for normal maintenance and change of message, provided the sign owner can establish that his non-conforming use was not abandoned or discontinued, and provided such costs are incurred in accordance with State law, or regulation. The evidence considered by the State as acceptable for establishing or showing that the non-conforming use has not been abandoned or voluntarily discontinued shall be set forth in the State's policy and procedures.

(7) In the event a sign was omitted in the 1988 inventory, and the State supports a determination that the sign was in existence prior to October 22, 1985, the costs are eligible for Federal participation.

(b) Federal funds may not participate in:

(1) Cost of title certificates, title insurance, title opinion or similar evidence or proof of title in connection with the acquisition of a landowner's right to erect and maintain a sign or signs when the amount of payment to the landowner for his interest is \$2,500 or less, unless required by State law. However, Federal funds may participate in the costs of securing some lesser evidence or proof of title such as searches and investigations by State highway department personnel to the extent necessary to determine ownership, affidavit of ownership by the owner, bill of sale, etc. The State's procedure for determining evidence of title should be set forth in the State's policy and procedure submission.

(2) Payments to a sign owner where the sign was erected without permission of the property owner unless the sign owner can establish his legal right to erect and maintain the sign. However, such signs may be removed by State personnel on a force account basis or by contract with Federal participation except where the sign owner reimburses the State for removal.

(3) Acquisition costs paid for abandoned or illegal signs, potential sign sites, or signs which were built during a period of time which makes them ineligible for compensation under 23 U.S.C. 131, or for rights in sites on which signs have been abandoned or illegally erected by a sign owner.

(4) The acquisition cost of supporting poles or partially completed sign structures in nonconforming areas which do not have advertising or informative content thereon unless the owner can show to the State's satisfaction he has not abandoned the structure. When the State has determined the sign structure has not been abandoned, Federal funds will participate in the acquisition of the structure, provided the cost are incurred in accordance with State law.

§ 750.306 Documentation for Federal participation.

The following information concerning each sign must be available in the

State's files to be eligible for Federal participation.

(a) *Payment to sign owner.* (1) A photograph of the sign in place. Exceptions may be made in cases where in one transaction the State has acquired a number of a company's nominal value signs similar in size, condition and shape. In such cases, only a sample of representative photographs need be provided to document the type and condition of the signs.

(2) Evidence showing the sign was nonconforming as of the date of taking.

(3) Value documentation and proof of obligation of funds.

(4) Satisfactory indication of ownership of the sign and compensable interest therein (e.g., lease or other agreement with the property owner, or an affidavit, certification, or other such evidence of ownership).

(5) Evidence that the sign falls within one of the three categories shown in § 750.302 of this regulation. The specific category should be identified.

(6) Evidence that the right, title, or interest pertaining to the sign has passed to the State, or that the sign has been removed.

(b) *Payment to the site owner.* (1) Evidence that an agreement has been reached between the State and owner.

(2) Value documentation and proof of obligation of funds.

(3) Satisfactory indication of ownership or compensable interest.

(c) In those cases where Federal funds participate in 100 percent of the cost of removal, the State file shall contain the records of the relocation made prior to January 4, 1975.

[39 FR 27436, July 29, 1974, as amended at 41 FR 31198, July 27, 1976]

§ 750.307 FHWA project approval.

Authorization to proceed with acquisitions on a sign removal project shall not be issued until such time as the State has submitted to FHWA the following:

(a) A general description of the project.

(b) The total number of signs to be acquired.

(c) The total estimated cost of the sign removal project, including a

breakdown of incidental, acquisition and removal costs.

§ 750.308 Reports.

Periodic reports on site acquisitions and actual sign removals shall be submitted on FHWA Form 1424 and as prescribed.¹

[39 FR 27436, July 29, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

Subpart E—Signs Exempt From Removal in Defined Areas

AUTHORITY: 23 U.S.C. 131 and 315, 49 CFR 1.48, 23 CFR 1.32.

SOURCE: 41 FR 45827, Oct. 18, 1976, unless otherwise noted.

§ 750.501 Purpose.

This subpart sets forth the procedures pursuant to which a State may, if it desires, seek an exemption from the acquisition requirements of 23 U.S.C. 131 for signs giving directional information about goods and services in the interest of the traveling public in defined areas which would suffer substantial economic hardship if such signs were removed. This exemption may be granted pursuant to the provisions of 23 U.S.C. 131(o).

§ 750.502 Applicability.

The provisions of this subpart apply to signs adjacent to the Interstate and primary systems which are required to be controlled under 23 U.S.C. 131.

§ 750.503 Exemptions.

(a) The Federal Highway Administration (FHWA) may approve a State's request to exempt certain nonconforming signs, displays, and devices (hereinafter called signs) within a defined area from being acquired under the provisions of 23 U.S.C. 131 upon a showing that removal would work a substantial economic hardship throughout that area. A defined area is an area with clearly established geographical boundaries defined by the State which the State can evaluate as an economic entity. Neither the States

¹ Forms are available at FHWA Division Offices located in each State.

nor FHWA shall rely on individual claims of economic hardship. Exempted signs must:

(1) Have been lawfully erected prior to May 5, 1976, and must continue to be lawfully maintained.

(2) Continue to provide the directional information to goods and services offered at the same enterprise in the defined area in the interest of the traveling public that was provided on May 5, 1976. Repair and maintenance of these signs shall conform with the State's approved maintenance standards as required by Subpart G of this part.

(b) To obtain the exemption permitted by 23 U.S.C. 131(o), the State shall establish:

(1) Its requirements for the directional content of signs to qualify the signs as directional signs to goods and services in the defined area.

(2) A method of economic analysis clearly showing that the removal of signs would work a substantial economic hardship throughout the defined area.

(c) In support of its request for exemption, the State shall submit to the FHWA:

(1) Its requirements and method (see § 750.503(b)).

(2) The limits of the defined area(s) requested for exemption, a listing of signs to be exempted, their location, and the name of the enterprise advertised on May 5, 1976.

(3) The application of the requirements and method to the defined areas, demonstrating that the signs provide directional information to goods and services of interest to the traveling public in the defined area, and that removal would work a substantial economic hardship in the defined area(s).

(4) A statement that signs in the defined area(s) not meeting the exemption requirements will be removed in accordance with State law.

(5) A statement that the defined area will be reviewed and evaluated at least every three (3) years to determine if an exemption is still warranted.

(d) The FHWA, upon receipt of a State's request for exemption, shall prior to approval:

(1) Review the State's requirements and methods for compliance with the provisions of 23 U.S.C. 131 and this subpart.

(2) Review the State's request and the proposed exempted area for compliance with State requirements and methods.

(e) Nothing herein shall prohibit the State from acquiring signs in the defined area at the request of the sign owner.

(f) Nothing herein shall prohibit the State from imposing or maintaining stricter requirements.

Subpart F—[Reserved]

Subpart G—Outdoor Advertising Control

Authority: 23 U.S.C. 131 and 315; 49 CFR 1.48.

Source: 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

§ 750.701 Purpose.

This subpart prescribes the Federal Highway Administration (FHWA) policies and requirements relating to the effective control of outdoor advertising under 23 U.S.C. 131. The purpose of these policies and requirements is to assure that there is effective State control of outdoor advertising in areas adjacent to Interstate and Federal-aid primary highways. Nothing in this subpart shall be construed to prevent a State from establishing more stringent outdoor advertising control requirements along Interstate and Primary Systems than provided herein.

§ 750.702 Applicability.

The provisions of this subpart are applicable to all areas adjacent to the Federal-aid Interstate and Primary Systems, including toll sections thereof, except that within urban areas, these provisions apply only within 600 feet of the nearest edge of the right-of-way. These provisions apply regardless of whether Federal funds participated in the costs of such highways. The provisions of this subpart do not apply to the Federal-aid Secondary or Urban Highway System.

§ 750.703 Definitions.

The terms as used in this subpart are defined as follows:

(a) Commercial and industrial zones are those districts established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

(b) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(c) Federal-aid Primary Highway means any highway on the system designated pursuant to 23 U.S.C. 103(b).

(d) Interstate Highway means any highway on the system defined in and designated, pursuant to 23 U.S.C. 103(e).

(e) Illegal sign means one which was erected or maintained in violation of State law or local law or ordinance.

(f) Lease means an agreement, license, permit, or easement, oral or in writing, by which possession or use of land or interests therein is given for a specified purpose, and which is a valid contract under the laws of a State.

(g) Maintain means to allow to exist.

(h) Main-traveled way means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(i) Sign, display or device, hereinafter referred to as "sign," means an outdoor advertising sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(j) State law means a State constitutional provision or statute, or an ordinance, rule or regulation, enacted or adopted by a State.

(k) Unzoned area means an area where there is no zoning in effect. It does not include areas which have a rural zoning classification or land uses established by zoning variances or special exceptions.

(l) Unzoned commercial or industrial areas are unzoned areas actually used for commercial or industrial purposes as defined in the agreements made between the Secretary, U.S. Department of Transportation (Secretary), and each State pursuant to 23 U.S.C. 131(d).

(m) Urban area is as defined in 23 U.S.C. 101(a).

(n) Visible means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

§ 750.704 Statutory requirements.

(a) 23 U.S.C. 131 provides that signs adjacent to the Interstate and Federal-aid Primary Systems which are visible from the main-traveled way and within 660 feet of the nearest edge of the right-of-way, and those additional signs beyond 660 feet outside of urban areas which are visible from the main-traveled way and erected with the purpose of their message being read from such main-traveled way, shall be limited to the following:

(1) Directional and official signs and notice which shall conform to national standards promulgated by the Secretary in Subpart B, Part 750, Chapter I, 23 CFR, National Standards for Directional and Official Signs;

(2) Signs advertising the sale or lease of property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under the authority of State law;

(5) Signs within 660 feet of the nearest edge of the right-of-way within

areas adjacent to the Interstate and Federal-aid Primary Systems which are unzoned commercial or industrial areas, which areas are determined by agreement between the State and the Secretary; and

(6) Signs lawfully in existence on October 22, 1965, which are determined to be landmark signs.

(b) 23 U.S.C. 131(d) provides that signs in § 750.704(a) (4) and (6) must comply with size, lighting, and spacing requirements, to be determined by agreement between the State and the Secretary.

(c) 23 U.S.C. 131 does not permit signs to be located within zoned or unzoned commercial or industrial areas beyond 660 feet of the right-of-way adjacent to the Interstate or Federal-aid Primary System, outside of urban areas.

(d) 23 U.S.C. 131 provides that signs not permitted under § 750.704 of this regulation must be removed by the State.

§ 750.705 Effective control.

In order to provide effective control of outdoor advertising, the State must:

(a) Prohibit the erection of new signs other than those which fall under § 750.704(a)(1) through (6);

(b) Assure that signs erected under § 750.704(a)(4) and (5) comply, at a minimum, with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State;

(c) Assure that signs erected under § 750.704(a)(1) comply with the national standards contained in Subpart B, Part 750, Chapter I, 23 CFR;

(d) Remove illegal signs expeditiously;

(e) Remove nonconforming signs with just compensation within the time period set by 23 U.S.C. 131 (Subpart D, Part 750, Chapter I, 23 CFR, sets forth policies for the acquisition and compensation for such signs);

(f) Assure that signs erected under § 750.704(a)(6) comply with § 750.710, Landmark Signs, if landmark signs are allowed;

(g) Establish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of an

Interstate or primary highway, except where State law makes such criteria unnecessary. Where a sign is erected with the purpose of its message being read from two or more highways, one or more of which is a controlled highway, the more stringent of applicable control requirements will apply;

(h) Develop laws, regulations, and procedures to accomplish the requirements of this subpart;

(i) Establish enforcement procedures sufficient to discover illegally erected or maintained signs shortly after such occurrence and cause their prompt removal; and

(j) Submit regulations and enforcement procedures to FHWA for approval.

[40 FR 42844, Sept. 16, 1975; 40 FR 49777, Oct. 24, 1975]

§ 750.706 Sign control in zoned and unzoned commercial and industrial areas.

The following requirements apply to signs located in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way adjacent to the Interstate and Federal-aid primary highways.

(a) The State by law or regulation shall, in conformity with its agreement with the Secretary, set criteria for size, lighting, and spacing of outdoor advertising signs located in commercial or industrial zoned or unzoned areas, as defined in the agreement, adjacent to Interstate and Federal-aid primary highways. If the agreement between the Secretary and the State includes a grandfather clause, the criteria for size, lighting, and spacing will govern only those signs erected subsequent to the date specified in the agreement. The States may adopt more restrictive criteria than are presently contained in agreements with the Secretary.

(b) Agreement criteria which permit multiple sign structures to be considered as one sign for spacing purposes must limit multiple sign structures to signs which are physically contiguous, or connected by the same structure or cross-bracing, or located not more than 15 feet apart at their nearest

point in the case of back-to-back or "V" type signs.

(c) Where the agreement and State law permits control by local zoning authorities, these controls may govern in lieu of the size, lighting, and spacing controls set forth in the agreement, subject to the following:

(1) The local zoning authority's controls must include the regulation of size, of lighting and of spacing of outdoor advertising signs, in all commercial and industrial zones.

(2) The regulations established by local zoning authority may be either more restrictive or less restrictive than the criteria contained in the agreement, unless State law or regulations require equivalent or more restrictive local controls.

(3) If the zoning authority has been delegated, extraterritorial, jurisdiction under State law, and exercises control of outdoor advertising in commercial and industrial zones within this extraterritorial jurisdiction, control by the zoning authority may be accepted in lieu of agreement controls in such areas.

(4) The State shall notify the FHWA in writing of those zoning jurisdictions wherein local control applies. It will not be necessary to furnish a copy of the zoning ordinance. The State shall periodically assure itself that the size, lighting, and spacing control provisions of zoning ordinances accepted under this section are actually being enforced by the local authorities.

(5) Nothing contained herein shall relieve the State of the responsibility of limiting signs within controlled areas to commercial and industrial zones.

§ 750.707 Nonconforming signs.

(a) *General.* The provisions of § 750.707 apply to nonconforming signs which must be removed under State laws and regulations implementing 23 U.S.C. 131. These provisions also apply to nonconforming signs located in commercial and industrial areas within 660 feet of the nearest edge of the right-of-way which come under the so-called grandfather clause contained in State-Federal agreements. These provisions do not apply

to conforming signs regardless of when or where they are erected.

(b) *Nonconforming signs.* A nonconforming sign is a sign which was lawfully erected but does not comply with the provisions of State law or State regulations passed at a later date or later falls to comply with State law or State regulations due to changed conditions. Changed conditions include, for example, signs lawfully in existence in commercial areas which at a later date become noncommercial, or signs lawfully erected on a secondary highway later classified as a primary highway.

(c) *Grandfather clause.* At the option of the State, the agreement may contain a grandfather clause under which criteria relative to size, lighting, and spacing of signs in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way apply only to new signs to be erected after the date specified in the agreement. Any sign lawfully in existence in a commercial or industrial area on such date may remain even though it may not comply with the size, lighting, or spacing criteria. This clause only allows an individual sign at its particular location for the duration of its normal life subject to customary maintenance. Preexisting signs covered by a grandfather clause, which do not comply with the agreement criteria have the status of nonconforming signs.

(d) *Maintenance and continuance.* In order to maintain and continue a nonconforming sign, the following conditions apply:

(1) The sign must have been actually in existence at the time the applicable State law or regulations became effective as distinguished from a contemplated use such as a lease or agreement with the property owner. There are two exceptions to actual existence as follows:

(i) Where a permit or similar specific State governmental action was granted for the construction of a sign prior to the effective date of the State law or regulations and the sign owner acted in good faith and expended sums in reliance thereon. This exception shall not apply in instances where large numbers of permits were applied

for and issued to a single sign owner, obviously in anticipation of the passage of a State control law.

(ii) Where the State outdoor advertising control law or the Federal-State agreement provides that signs in commercial and industrial areas may be erected within six (6) months after the effective date of the law or agreement provided a lease dated prior to such effective date was filed with the State and recorded within thirty (30) days following such effective date.

(2) There must be existing property rights in the sign affected by the State law or regulations. For example, paper signs nailed to trees, abandoned signs and the like are not protected.

(3) The sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use.

(4) The sign must have been lawful on the effective date of the State law or regulations, and must continue to be lawfully maintained.

(5) The sign must remain substantially the same as it was on the effective date of the State law or regulations. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change which would terminate nonconforming rights. Each State shall develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights.

(6) The sign may continue as long as it is not destroyed, abandoned, or discontinued. If permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.

(i) Each state shall develop criteria to define destruction, abandonment and discontinuance. These criteria may provide that a sign which for a designated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandon-

ment or discontinuance. Similarly, a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.

(ii) Where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State. Where new content is not put on a structure within the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated and shall constitute an abandonment or discontinuance. Where a State establishes a period of more than one (1) year as a reasonable period for change of message, it shall justify that period as a customary enforcement practice within the State. This established period may be waived for an involuntary discontinuance such as the closing of a highway for repair in front of the sign.

(e) *Just compensation.* The States are required to pay just compensation for the removal of nonconforming lawfully existing signs in accordance with the terms of 23 U.S.C. 131 and the provisions of Subpart D, Part 750, Chapter I, 23 CFR. The conditions which establish a right to maintain a nonconforming sign and therefore the right to compensation must pertain at the time it is acquired or removed.

§ 750.708 Acceptance of state zoning.

(a) 23 U.S.C. 131(d) provide that signs "may be erected and maintained within 880 feet of the nearest edge of the right-of-way within areas . . . which are zoned industrial or commercial under authority of State law." Section 131(d) further provides, "The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act."

(b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized

as zoning for outdoor advertising control purposes.

(c) Where a unit of government has not zoned in accordance with statutory authority or is not authorized to zone, the definition of an unzoned commercial or industrial area in the State-Federal agreement will apply within that political subdivision or area.

(d) A zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.

§ 750.709 On-property or on-premise advertising.

(a) A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property is an on-property sign.

(b) When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign.

(c) A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or selling or leasing the land on which the sign is located is not an on-property sign.

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise the sale or lease of property on which they are located or advertise activities conducted on the property on which they are located. These signs are subject to regulation (Subpart A, Part 750, Chapter I, 23 CFR) in those States which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

(1) A property test for determining whether a sign is located on the same property as the activity or property advertised, and

(2) A purpose test for determining whether a sign has as its sole purpose the identification of the activity locat-

ed on the property or its products or services, or the sale or lease of the property on which the sign is located.

(3) The criteria must be sufficiently specific to curb attempts to improperly qualify outdoor advertising as "on-property" signs, such as signs on narrow strips of land contiguous to the advertised activity when the purpose is clearly to circumvent 23 U.S.C. 131.

§ 750.710 Landmark signs.

(a) 23 U.S.C. 131(c) permits the existence of signs lawfully in existence on October 22, 1966, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the purpose of 23 U.S.C. 131.

(b) States electing to permit landmark signs under 23 U.S.C. 131(c) shall submit a one-time list to the Federal Highway Administration for approval. The list should identify each sign as being in the original 1966 inventory. In the event a sign was omitted in the 1966 inventory, the State may submit other evidence to support a determination that the sign was in existence on October 22, 1965.

(c) Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in size, lighting, or message content will terminate its exempt status.

§ 750.711 Structures which have never displayed advertising material.

Structures, including poles, which have never displayed advertising or informative content are subject to control or removal when advertising content visible from the main-traveled way is added or affixed. When this is done, an "outdoor advertising sign" has then been erected which must comply with the State law in effect on that date.

§ 750.712 Reclassification of signs.

Any sign lawfully erected after the effective date of a State outdoor advertising control law which is reclassified from legal-conforming to noncon-

forming and subject to removal under revised State statutes or regulations and policy pursuant to this regulation is eligible for Federal participation in just compensation payments and other eligible costs.

§ 750.713 Bonus provisions.

23 U.S.C. 131(j) specifically provides that any State which had entered into a bonus agreement before June 30, 1965, will be entitled to remain eligible to receive bonus payments provided it continues to carry out its bonus agreement. Bonus States are not exempt from the other provisions of 23 U.S.C. 131. If a State elects to comply with both programs, it must extend controls to the Primary System, and continue to carry out its bonus agreement along the Interstate System except where 23 U.S.C. 131, as amended, imposes more stringent requirements.

PART 751—JUNKYARD CONTROL AND ACQUISITION

Sec.

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- 751.3 Applicability.
- 751.6 Policy.
- 751.7 Definitions.
- 751.9 Effective control.
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- 751.13 Control measures.
- 751.16 Just compensation.
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- 751.19 Documentation for Federal participation.
- 751.21 Relocation assistance.
- 751.23 Concurrent junkyard control and right-of-way projects.
- 751.25 Programming and authorization.

Authority: 23 U.S.C. 136 and 316, 42 U.S.C. 4321-4347 and 4601-4055, 23 CFR 1.32, 40 CFR 1.48, unless otherwise noted.

Source: 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

§ 751.1 Purpose.

Pursuant to 23 U.S.C. 136, this part prescribes Federal Highway Administration (FHWA) policies and procedures relating to the exercise of effective control by the States of junkyards in areas adjacent to the Interstate and Federal-aid primary systems. Nothing in this part shall be construed to prevent a State from establishing more

stringent junkyard control requirements than provided herein.

(40 FR 12260, Mar. 18, 1975)

§ 751.3 Applicability.

The provisions of this part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Interstate Systems regardless of whether Federal funds participated in the construction thereof, including toll sections of such highways. This part does not apply to the Urban System.

§ 751.6 Policy.

In carrying out the purposes of this part:

(a) Emphasis should be placed on encouraging recycling of scrap and junk where practicable, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.);

(b) Every effort should be made to screen nonconforming junkyards which are to continue as ongoing businesses; and

(c) Nonconforming junkyards should be relocated only as a last resort.

§ 751.7 Definitions.

For purposes of this part, the following definitions shall apply:

(a) **Junkyard.** (1) A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.

(2) An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.

(3) An Illegal Junkyard is one which was established or is maintained in violation of State law.

(4) A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.

(b) **Junk.** Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

(c) **Main traveled way.** The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(d) **Industrial zones.** Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of Part 750, Subpart Q of this chapter relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.

(e) **Unzoned industrial areas.** An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

140 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976)

§ 751.9 Effective control.

(a) In order to provide effective control of junkyards located within 1,000 feet of Interstate and Federal-aid primary highways, the State must:

(1) Require such junkyards located outside of zoned and unzoned industrial areas to be screened or located so as not to be visible from the main traveled way, or be removed from sight.

(2) Require the screening or removal of nonconforming junkyards within a reasonable time, but no later than 5 years after the date the junkyard becomes nonconforming unless Federal funds are not available in adequate amounts to participate in the cost of such screening or removal as provided in 23 U.S.C. 136(j).

(3) Prohibit the establishment of new junkyards unless they comply with the requirements of paragraph (a)(1) of this section.

(4) Expeditiously require junkyards which are illegally established or maintained to conform to the requirements of paragraph (a)(1) of this section.

(b) Sanitary landfills as described herein need not be screened to satisfy requirements of Title 23, U.S.C., but landscaping should be required when the fill has been completed and operations have ceased, unless the landfill area is to be used for immediate development purposes. A sanitary landfill, for the purposes of this part, is a method of disposing of refuse on land without creating a nuisance or hazards to public health or safety by utilizing the principles of engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

(c) The State shall have laws, rules, and procedures sufficient to provide effective control, to discover illegally established or maintained junkyards shortly after such occurrence, and to cause the compliance or removal of same promptly in accordance with State legal procedures.

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms.

Chapter 25. Protection and Use of State Highways and Roads.

Article

1. Utilities in Highways (§§ 19.25.010 — 19.25.020)
2. Outdoor Advertising (§§ 19.25.080 — 19.25.180)
3. Encroachments In Highways (§§ 19.25.200 — 19.25.250)

Article 1. Utilities in Highways.

Section

10. Use of rights-of-way for utilities

Section

20. Relocation of utilities incident to highway projects

Sec. 19.25.010. Use of rights-of-way for utilities. A utility facility may be constructed, placed, or maintained across, along, over, under, or within a state right-of-way only in accordance with regulations adopted by the department and if authorized by a written permit issued by the department. (§ 8 art VII title II ch 152 SLA 1957; am § 3 ch 106 SLA 1977)

NOTES TO DECISIONS

A utility may construct a powerline on an unused section line easement reserved for highway purposes under AS 19.10.010. *Fisher v. Golden Valley Elec. Ass'n*, Sup. Ct. Op. No. 2606 (File No. 5902), 658 P.2d 127 (1983).

This section places Alaska among those states which permit powerline construction by a utility as an incidental and subordinate use of a highway easement.

Fisher v. Golden Valley Elec. Ass'n, Sup. Ct. Op. No. 2606 (File No. 5902), 658 P.2d 127 (1983).

Maintenance. — Maintenance as defined in paragraph (9) of AS 19.45.001 refers to some type of active work undertaken to preserve the utility facility. *Johnson v. State*, Sup. Ct. Op. No. 2434 (File Nos. 4866, 4871, 4894), 636 P.2d 47 (1981).

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 218-234.

40 C.J.S., Highways, §§ 232, 233.

Placement, maintenance, or design of

standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway, 51 ALR4th 602.

Sec. 19.25.020. Relocation of utilities incident to highway projects. (a) If, incident to the construction of a highway project, the department determines and orders that a utility facility located across, along, over, under, or within a state right-of-way must be changed, relocated, or removed, the utility owning or maintaining the facility shall change, relocate, or remove it in accordance with the order. The order must provide a reasonable time period for compliance.

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highway project, the utility located by must be maintaining the same with the for compli-

(b) If the utility facility is not changed, relocated, or removed in accordance with the order, the facility becomes an unauthorized encroachment and may be disposed of in accordance with AS 19.25.240 — 19.25.250. In addition, the owner of the facility shall indemnify the state for any amount for which the state may be liable to a contractor by reason of the encroachment.

(c) The cost of change, relocation, or removal necessitated by highway construction is a cost of highway construction to be paid in accordance with AS 19.45.001(4) as follows:

(1) by the department as a cost of highway construction, if the utility facility is installed or authorized under a utility permit or a regulation after June 11, 1986, and is installed in the location specified in the permit;

(2) by the department as a cost of highway construction, if the facility was installed before June 11, 1986, under a utility permit issued on or after July 1, 1960, and is in the location specified in the permit;

(3) by the department as a cost of highway construction, if the utility facility was installed before July 1, 1960, or before the road became part of the state highway system;

(4) by the department as a cost of highway construction, if the utility permit that requires the utility to pay the relocation cost was issued more than five years before the contract for the highway construction project was first advertised;

(5) by the utility in all other cases, unless the commissioner finds it is in the public interest for the cost to be paid by the department.

(d) If requested by a municipality, the department shall implement this chapter by requiring to the maximum extent possible location underground of electric power transmission lines within the municipality. (§§ 2, 3 ch 57 SLA 1961; am § 4 ch 106 SLA 1977; am § 3 ch 142 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (c) deleted "by the state" following "construction to be paid" and substituted the language beginning "as follows:" for "notwithstanding the terms or provisions of any existing

permit, agreement, regulation or statute to the contrary."

Opinions of attorney general. — This section is constitutional. 1961 Op. Att'y Gen. No. 12.

Secs. 19.25.030 — 19.25.040. Damages and obstructions. [Repealed, § 5 ch 52 SLA 1988.]

Article 2. Outdoor Advertising.

Section

- 80. Purpose
- 90. Outdoor advertising prohibited
- 105. Limitations of outdoor advertising signs, displays and devices

Section

- 130. Penalty for violation
- 140. Compensation for removal of advertising
- 150. Unlawful advertising

Section

160. Definitions
 170. Agreements with the United States;
 regulations

Section

180. Interpretation

Opinions of attorney general. — The safety of persons using the road is of overriding importance when weighed against the interest of a sign owner who has illegally placed a sign where it threatens public safety. January 3, 1984 Op. Att'y Gen.

The Department of Transportation and Public Facilities may summarily remove a sign or other object it determines to be a visual obstruction or a safety hazard; so long as it protects the sign or other object upon removal, the department is protect-

ing the owner's only recognizable interest. January 3, 1984 Op. Att'y Gen.

The Department of Transportation and Public Facilities may not collect the cost of removal of a sign or other object unless the owner has had an opportunity to remove the object and save that cost. The department may use a fee payment schedule instead of figuring the actual removal cost in every case, as long as the schedule is based upon and reflects actual removal costs incurred by the department; and it may charge a reasonable fee for storing the sign. January 3, 1984 Op. Att'y Gen.

Sec. 19.25.080. Purpose. The purposes of AS 19.25.080 — 19.25.180 are

(1) to protect the public safety and the welfare of persons using the highways of the state by having outdoor advertising signs, displays, and devices along the highways controlled;

(2) to prevent unreasonable distraction of operators of motor vehicles; to prevent confusion with regard to traffic lights, signs, or signals or other interference with the effectiveness of traffic regulations, and to promote the safety, convenience, and enjoyment of travel on, and protection of the public investment in, highways in this state; to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas; and to attract tourists;

(3) to regulate outdoor advertising signs, displays, and devices in areas adjacent to the rights-of-way of the interstate, primary, and secondary systems within this state in accordance with this chapter and the regulations adopted under this chapter;

(4) to provide that outdoor advertising signs, displays, and devices that are not in conformity with the requirements of this chapter are a public nuisance;

(5) to provide a statutory basis for regulation of outdoor advertising signs, displays, and devices consistent with the public policy declared by the Congress relating to areas within and adjacent to the right-of-way of a highway of the interstate, primary, or secondary systems. (§ 1 ch 59 SLA 1949; am § 1 ch 86 SLA 1953; am § 2 ch 233 SLA 1968; am § 1 ch 155 SLA 1970; am § 1 ch 158 SLA 1988)

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Effect of amendments. — The 1988 amendment rewrote paragraph (5) to the extent that a detailed comparison is impracticable.

Legislative history reports. — For report on ch. 233, SLA 1968 (HCSCSSB 144 am FCC), see 1968 House Journal, p. 815.

Collateral references. — 40 Am. Jur. 2d, Highways, Streets and Bridges, §§ 273-336.

40 C.J.S., Highways, §§ 217, 232.

Billboards and other outdoor advertising signs as civil nuisance. 38 ALR3d 647.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk. 80 ALR3d 687.

Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 ALR3d 486.

Governmental liability for compensation or damages to advertiser arising from obstruction of public view of sign or billboard on account of growth of vegetation in public way. 21 ALR4th 1309.

Sec. 19.25.090. Outdoor advertising prohibited. Except as provided in AS 19.25.105, all outdoor advertising is prohibited. (§ 3 ch 59 SLA 1949; am § 1 ch 86 SLA 1953; am § 2 ch 155 SLA 1970)

Sec. 19.25.100. Rural signs. [Repealed, § 14 ch 155 SLA 1970.]

Sec. 19.25.105. Limitations of outdoor advertising signs, displays and devices. (a) Outdoor advertising may not be erected or maintained within 660 feet of the nearest edge of the right-of-way and visible from the main-traveled way of the interstate, primary, or secondary highways in this state except the following:

(1) directional and other official signs and notices which include, but are not limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, which are required or authorized by law, and which shall conform to federal standards for interstate and primary systems;

(2) signs, displays, and devices advertising the sale or lease of property upon which they are located or advertising activities conducted on the property;

(3) signs determined by the state, subject to concurrence of the United States Department of Transportation, to be landmark signs, including signs on farm structures, or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the provisions of this chapter;

(4) directional signs and notices pertaining to schools;

(5) advertising on bus benches or bus shelters if the state determines that the advertising conforms to local, state, and federal standards for interstate and primary highway systems.

(b) *[Repealed, § 21 ch 94 SLA 1980.]*

(c) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the main traveled way of the interstate primary or secondary highways in this state with the purpose of their message being read from that travel way except those outdoor advertising signs, displays, or devices allowed under (a) of this section.

(d) Outdoor advertising may not be erected or maintained within the right-of-way of an interstate, primary, or secondary highway except that outdoor advertising is allowed on bus benches and bus shelters located within the right-of-way under the authority of a permit issued under AS 19.25.200, if the bus benches or bus shelters are located within a borough or unified municipality and the buses that stop at that location operate during the entire year. (§ 3 ch 155 SLA 1970; am §§ 1, 2 ch 195 SLA 1975; am § 1 ch 30 SLA 1980; am § 21 ch 94 SLA 1980; am § 1 ch 6 SLA 1987; am § 2 ch 158 SLA 1988)

Effect of amendments. — The 1987 amendment in subsection (a) substituted "Outdoor advertising may not" for "No outdoor advertising may" at the beginning of the subsection and added paragraph (5).

The 1988 amendment added subsection (d).

Collateral references. — Classifica-

tion and maintenance of advertising structure as nonconforming use. 80 ALR3d 630.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 ALR3d 564.

Secs. 19.25.110 — 19.25.120. Removal of nonconforming advertising; neglect or refusal to obey removal order. [Repealed, § 43 ch 85 SLA 1988.]

Sec. 19.25.130. Penalty for violation. A person who violates AS 19.25.080 — 19.25.180, or a regulation adopted under them, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$1,000. (§ 7 ch 59 SLA 1949; added by § 1 ch 86 SLA 1953; am § 4 ch 233 SLA 1968)

Sec. 19.25.140. Compensation for removal of advertising. (a) The department is authorized to acquire by purchase, gift, or condemnation, all advertising devices and any property rights pertaining to them, when the advertising devices are required to be removed under AS 19.25.150.

(b) Damages resulting from a taking in eminent domain shall be ascertained in the manner provided by law. (§ 5 ch 233 SLA 1968; am § 45 ch 69 SLA 1970)

Sec. 19.25.150. Unlawful advertising. An advertising sign, display, or device which violates the provisions of this chapter is a public nuisance. The department shall give 30 days' notice, by certified mail, to the owner of the land on which the advertising sign, display or device is located, ordering its removal if it is prohibited by this chapter or ordering the owner to cause it to conform to regulations if it is authorized by this chapter. If the owner of the property fails to comply within 30 days as required in the notice, the department shall remove

the outdoor advertising sign, display, or device at the expense of the owner of the land or the person who erected it. (§ 5 ch 233 SLA 1968)

Sec. 19.25.160. Definitions. In AS 19.25.080 — 19.25.180

(1) "department" means the Department of Transportation and Public Facilities;

(2) "interstate system" means that portion of the National System of Interstate and Defense Highways located in this state, as officially designated, or as may hereafter be so designated, by the commissioner, and approved by the secretary of transportation (or by the secretary of commerce before the effective date of the transfer of functions under Public Law 89-670 [80 Stat. 931]), under the provisions of Title 23, United States Code, "Highways";

(3) "outdoor advertising" includes any outdoor sign, display, or device used to advertise, attract attention or inform and which is visible to a person on the main-traveled way of a highway of the interstate, primary, or secondary systems in this state, whether by printing, writing, painting, picture, light, drawing, or whether by the use of figures or objects, or a combination of these, or any other thing designed, intended, or used to advertise, inform, or attract attention;

(4) "primary system" or "secondary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the commissioner, and approved by the secretary of transportation (or by the secretary of commerce before the effective date of the transfer of functions under Public Law 89-670 [80 Stat. 931]), under the provisions of Title 23, United States Code, "Highways". (§ 5 ch 233 SLA 1968; am §§ 46, 47 ch 69 SLA 1970; am §§ 5, 6 ch 155 SLA 1970)

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms.

Sec. 19.25.170. Agreements with the United States; regulations. The department may enter into agreements in conformity with the provisions of this title with the United States Secretary of Transportation as provided by Title 23, United States Code, relating to the control of outdoor advertising signs, displays, and devices in areas adjacent to interstate and primary systems and to take action in the name of the state to comply with the terms of the agreements, and to adopt required regulations. (§ 5 ch 233 SLA 1968)

Sec. 19.25.180. Interpretation. AS 19.25.080 — 19.25.180 may not be construed to abrogate or affect any law, ordinance, regulation or resolution that is more restrictive than the provisions of AS 19.25.080 — 19.25.180. (§ 5 ch 233 SLA 1968)

Article 3. Encroachments In Highways.

<p>Section 200. Encroachment permits 210. Relocation or removal of encroachment 220. Unauthorized encroachments</p>	<p>Section 230. Notice of removal 240. Summary removal 250. Removal after noncompliance; removal expense</p>
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Opinions of attorney general. — Encroachment under this article covers any intrusion into the highway right of way, including signs, or infringement of the limitations on use of the right of way. January 3, 1984 Op. Att'y Gen.

The Department of Transportation and Public Facilities may not collect the cost of removal of a sign or other object unless

the owner has had an opportunity to remove the object and save the cost. The department may use a fee payment schedule instead of figuring the actual removal cost in every case, as long as the schedule is based upon and reflects actual removal costs incurred by the department; and it may charge a reasonable fee for storing the sign. January 3, 1984 Op. Att'y Gen.

Sec. 19.25.200. Encroachment permits. (a) An encroachment may be constructed, placed, changed, or maintained across or along a highway, but only in accordance with regulations adopted by the department. An encroachment may not be constructed, placed, maintained, or changed until it is authorized by a written permit issued by the department, unless the department provides otherwise by regulation. The department may charge a fee for a permit issued under this section. The commissioner of administration shall separately account for encroachment permit fees that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section.

(b) The provisions under (a) of this section do not apply to a mailbox or a newspaper box attached to a mailbox. (§ 2 ch 64 SLA 1971; am § 41 ch 138 SLA 1986; am § 4 ch 142 SLA 1986)

Effect of amendments. — The first 1986 amendment added the third, fourth and fifth sentences and made grammatical changes in the second sentence.

The second 1986 amendment designated the existing language as subsection (a), in the second sentence of subsection (a) deleted "duly" preceding "authorized"

and added the language "unless the department provides otherwise by regulation" and added subsection (b).

Collateral references. — 3 Am. Jur. 2d, Advertising, §§ 2, 7, 11, 24-26. 39 Am. Jur. 2d, Highways, Streets and Bridges, § 288.
 40 C.J.S., Highways, §§ 217-231.

Sec. 19.25.210. Relocation or removal of encroachment. If, incidental to the construction or maintenance of a state highway, the department determines and orders that an encroachment previously authorized by written permit must be changed, relocated, or removed, the owner of the encroachment shall change, relocate, or remove it at no expense to the state (except as provided in AS 19.25.020), within a

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reasonable time set by the department. If the owner does not change, relocate, or remove an encroachment within the time set by the department, the encroachment shall be considered an unauthorized encroachment and subject to the provisions of AS 19.25.220 — 19.25.250. (§ 2 ch 64 SLA 1971)

Sec. 19.25.220. Unauthorized encroachments. If an unauthorized encroachment exists in, on, under, or over a state highway, the department may require the removal of the encroachment in the manner provided in AS 19.25.230 — 19.25.250. (§ 2 ch 64 SLA 1971)

Sec. 19.25.230. Notice of removal. Except as otherwise provided in AS 19.25.200, 19.25.210 and 19.25.240, notice shall be given the owner, occupant, or person in possession of the encroachment, or to any other person causing or permitting the encroachment to exist, by serving upon any of them a notice demanding the removal of the encroachment. The notice must describe the encroachment complained of with reasonable certainty as to its character and location. Service of the notice may be made by certified mail. (§ 2 ch 64 SLA 1971)

Sec. 19.25.240. Summary removal. The department may at any time remove from a state highway or road an encroachment that obstructs or prevents the use of the highway or road by the public. (§ 2 ch 64 SLA 1971)

Opinions of attorney general. — The safety of persons using the road is of overriding importance when weighed against the interest of a sign owner who has illegally placed a sign where it threatens public safety. January 3, 1984 Op. Att'y Gen.

An encroachment which obstructs anyone's view of the road is one which "obstructs ... the highway or road" and also

presents a serious danger to the public. January 3, 1984 Op. Att'y Gen.

The Department of Transportation and Public Facilities may summarily remove a sign or other object it determines to be a visual obstruction or a safety hazard; so long as it protects the sign or other object upon removal, the department is protecting the owner's only recognizable interest. January 3, 1984 Op. Att'y Gen.

Sec. 19.25.250. Removal after noncompliance; removal expense. After a failure of the owner of an encroachment to comply with a notice or demand of the department under the provisions of AS 19.25.200, 19.25.210 and 19.25.230, the department may remove, or cause to be removed, the encroachment, and the owner of the encroachment shall pay to the department

(1) the expenses of the removal of the encroachment;

(2) all costs and expenses paid by the state as a result of a claim or claims filed against the state by third parties for damages due to delays because the encroachment was not changed, removed, or relocated according to the order of the department; and

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Article 2. Outdoor Advertising.

Section

105. Limitations of outdoor advertising signs, displays and devices

Section

150. Unlawful advertising

Sec. 19.25.105. Limitations of outdoor advertising signs, displays and devices. (a) Outdoor advertising may not be erected or maintained within 660 feet of the nearest edge of the right-of-way and visible from the main-traveled way of the interstate, primary, or secondary highways in this state except the following:

(1) directional and other official signs and notices which include, but are not limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, which are required or authorized by law, and which shall conform to federal standards for interstate and primary systems;

(2) signs, displays, and devices advertising the sale or lease of property upon which they are located or advertising activities conducted on the property;

(3) signs determined by the state, subject to concurrence of the United States Department of Transportation, to be landmark signs, including signs on farm structures, or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the provisions of this chapter;

(4) directional signs and notices pertaining to schools;

(5) advertising on bus benches or bus shelters if the state determines that the advertising conforms to local, state, and federal standards for interstate and primary highway systems.

(b) *[Repealed, § 21 ch 94 SLA 1980.]*

(c) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the main traveled way of the interstate, primary, or secondary highways in this state with the purpose of their message being read from that travel way except those outdoor advertising signs, displays, or devices allowed under (a) of this section.

(d) Outdoor advertising may not be erected or maintained within the right-of-way of an interstate, primary, or secondary highway except that outdoor advertising is allowed on bus benches and bus shelters located within the right-of-way under the authority of a permit issued under AS 19.25.200, if the bus benches or bus shelters are located within a borough or unified municipality and the buses that stop at that location operate during the entire year. (§ 3 ch 155 SLA 1970; am §§ 1, 2 ch 195 SLA 1975; am § 1 ch 30 SLA 1980; am § 21 ch 94 SLA 1980; am § 1 ch 6 SLA 1987; am § 2 ch 158 SLA 1988)

Editor's notes. — This section is set out above to correct minor errors in the main pamphlet.

Sec. 19.25.150. Unlawful advertising. An advertising sign, display, or device that violates the provisions of AS 19.25.080 — 19.25.180 is a public nuisance. The department shall give 30 days' notice, by certified mail, to the owner of the land on which the advertising sign, display, or device is located, ordering its removal if it is prohibited by AS 19.25.080 — 19.25.180 or ordering the owner to cause it to conform to regulations if it is authorized by AS 19.25.080 — 19.25.180. If the owner of the property fails to comply within 30 days as required in the notice, the department shall remove the outdoor advertising sign, display, or device at the expense of the owner of the land or the person who erected it. (§ 5 ch 233 SLA 1968; am § 19 ch 21 SLA 1991.)

Effect of amendments. — The 1991 amendment, effective June 11, 1991, substituted Code section references for "this chapter" in three places.

Article 3. Encroachments in Highways.

Section

200. Encroachment permits

Sec. 19.25.200. Encroachment permits. (a) An encroachment may be constructed, placed, changed, or maintained across or along a highway, but only in accordance with regulations adopted by the department. An encroachment may not be constructed, placed, maintained, or changed until it is authorized by a written permit issued by the department, unless the department provides otherwise by regulation. The department may charge a fee for a permit issued under this section.

(b) The provisions under (a) of this section do not apply to a mailbox or a newspaper box attached to a mailbox. (§ 2 ch 64 SLA 1971; am § 41 ch 138 SLA 1986; am § 4 ch 142 SLA 1986; am § 10 ch 90 SLA 1991)

Effect of amendments. — The 1991 amendment, effective July 3, 1991, in subsection (a), deleted the former last two sentences.

(53) "utilidor" means a structure containing one or more channels, usually prefabricated in units, including units that are fitted with a removable cover that may also be used as a sidewalk or roadway surface;

(54) "utility" includes any corporation, company, individual, or association of individuals, or any lessee, trustee, or court-appointed receiver, that owns, operates, manages, or controls any line, plant, pipeline, or system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, steam, heat, light, chemicals, air, sewage, drainage not connected with highway drainage, irrigation, or similar products including publicly owned fire and police signal systems and street lighting systems which directly or indirectly serve the public or a segment of the public; "utility" also includes any corporation, company, individual, or association of individuals, or any lessee, trustee, or court-appointed receiver that owns, operates, manages, or controls any system for furnishing transportation of goods or persons by means of a railway, trolley, cableway, conveyor, flume, canal, tunnel, pipeline, or any other similar means;

(55) "utility locate service" means a service provided by a utility to locate its buried utility facilities;

(56) "utility service connection" means the cable, wire, or pipe that connects the utility distribution line to the premises served;

(57) "wet-boring" means the method or process of boring with the use of jets of water or liquid slurry;

(58) "airport" has the same meaning as in AS 02.15.260(5);

(59) "public facility" has the same meaning as in AS 35.25.020(7). (Eff. 5/23/82, Register 82; am 10/2/87, Register 103)

Authority:	AS 02.15.020	AS 19.30.051
	AS 02.15.102	AS 19.30.121
	AS 02.15.106	AS 19.40.065
	AS 19.05.020	AS 35.05.020
	AS 19.05.040	AS 35.10.230

CHAPTER 20. MAINTENANCE

Section	Section
10. Outdoor advertising	30. Transfer of excess equipment
20. Closure and restriction	40. General

17 AAC 20.010. OUTDOOR ADVERTISING. It shall be unlawful to place, erect, or maintain any outdoor advertising sign within the right-of-way of any highway or highway lands, nor shall any permit be issued for the placement or erection of the sign. (Eff. 6/25/69, Register 30)

Authority: AS 19.05.020

Editor's notes. — The source of this section is former 14 AAC 2.391.2.

17 AAC 20.020. CLOSURE AND RESTRICTION. (a) The department may restrict the use of, or close, any highway whenever the department considers such closing or restriction of use necessary

(1) for the protection of the public; or

(2) for the protection of such highway from damage during storms, floods, thawing conditions or during construction or maintenance operations.

(b) The department will provide traffic guidance in case of restriction or provide suitable detour as soon as possible to minimize traffic delay.

(c) To notify the public that a highway is closed, or its use has been restricted, the department may

(1) erect suitable barriers or obstructions at such locations upon the highway as will best serve the purpose;

(2) post warnings or notices of the condition of any such highway;

(3) post signs for the direction of traffic upon it, or to or upon other highway or detour open to public travel;

(4) place warning devices upon such highways;

(5) assign a flagman to warn, detour or direct traffic on such highway.

(d) Nothing within the above shall be construed to create any liability upon the state or any officer, employee, agent, or contractor of the state for failure to provide any or all of the above notices; however, willful failure or neglect to provide the notice shall be the subject of disciplinary action.

(e) Except in sudden emergencies, the department shall notify the nearest state police unit before closing or restricting the use of any highway, or before diverting traffic to any other highway or detour, in the manner provided in the preceding sections; whenever possible, such notice shall be in writing.

(f) Whenever required by sudden emergency, to protect the traveling public or to prevent or mitigate damage to public property, or to prevent or mitigate damage to private property for which the department might be held responsible, the department may, acting by or through its senior officer, or employee actually at the vicinity of the emergency, enter into contracts for the leasing or renting of tools or equipment needed for such highway emergency purposes. Such contracts shall be in writing, but shall be preceded by a memorandum of intent with a brief explanation of the nature of the sudden emergency, labor and equipment required, estimate of time required and the purpose for which labor, tools and equipment are needed. (Eff. 6/25/69, Register 30; am 11/16/83, Register 88)

POLICY FOR
EXPERIMENTAL TOURIST ORIENTED DIRECTIONAL SIGNING
ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

APRIL 1991

INTRODUCTION

Many businesses which may be of interest or service to tourists are not visible from the main through routes, and federal/state laws severely restrict off-premise outdoor advertising. To better inform motorists, the Federal Highway Administration (FHWA) has added a section to the Manual of Uniform Traffic Control Devices (MUTCD) to permit states to develop a well planned and regulated system of directional signing for traveller oriented attractions and services. This section, called Tourist Oriented Directional Signs, is referred to as TODS.

The development of an acceptable statewide program is taking time, personnel and financial resources to plan, develop and implement. This experimental program is assisting in the establishment of the final standards and regulations. It is being somewhat modified at this time to cover items previously not addressed and to promote a more uniform version of what the final program will entail.

To maintain equity in this approach, the department is willing to offer the opportunity to participate in this TODS experiment to all eligible groups or businesses. *The program, however, is limited to organized groups or businesses who are willing to undertake all administrative and organizational details and provide the funds to purchase the experimental signs, posts and labor for installation at approved locations.*

Upon establishment of a uniform state program for TODS, the experimental signs will be removed or converted to the statewide standards at the earliest feasible opportunity, but not less than 90 days following approval of a statewide TODS standard.

It must be noted, however, that businesses participating in this experimental program shall have no special prerogatives or "grandfather" rights by virtue of the participation in the experimental program.

DEFINITIONS

Activity or site of significant interest to the traveling public means a motorist service, a tourist attraction, or a commercial activity specifically catering to motorists not residing in the area.

Expressway is a divided arterial highway for through traffic with full or partial control of access and with at-grade intersections.

Freeway is a divided arterial with full access control and no at-grade intersections.

Handicap accessible means wheelchairs are accommodated for all services.

Primary or secondary highway is a conventional through road or major feeder road maintained by the Department of Transportation and Public Facilities.

Rural environment is a sparsely populated area where the majority of land is not subdivided and

- . is located outside corporate city limits or
- . located inside the corporate limits of a city with a population of 5,000 or less.

Tourist oriented directional signing (TODS) is official signing that is located within the right of way of a primary or secondary highway and gives specific directional information to activities or sites of significant interest to the traveling public.

GENERAL ELIGIBILITY FOR PARTICIPATION

An individual activity or site must meet the following general requirements to qualify for tourist oriented directional signing. A sign shall not be erected until the activity and site have been approved in accordance with this Policy.

Significant interest to the traveling public. An activity or site must be of significant interest to the traveling public. A substantial portion of the activity's or site's products or services must be tourist- or motorist-oriented. A business must provide documentation that at least 25% of their gross business receipts are from motorists residing more than twenty miles from the activity.

Location of activity or site. The activity or site shall be located in a rural environment as defined above.

Neither the activity or site nor any on-premise sign advertising the activity or site shall be adjacent to or visible from the highway on which the TODS sign is to be located except for special cases where:

- . signing may be permitted because through traffic is not the normal pattern.
- . signing may be permitted because terrain, curvature or vegetation obscure visibility of the business establishment completely or until a motorist is within 800 feet or less of the driveway or entrance road. Such obscured visibility may not be under the control of the business establishment.

Hours. The activity or site shall be open to the general public during regular and reasonable hours and not by appointment or reservation only.

Building or area. The activity shall be conducted in an appropriate building or area. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance. *Bed and breakfast lodgings are excepted from the separate entrance requirement.* The building or area must be maintained in a manner consistent with standards generally accepted for that type of business or activity. A photograph of the business establishment must accompany the application.

Compliance with Applicable Laws. Businesses shall comply with federal, state and local laws, including Title III of the Americans with Disabilities Act when applicable.

Restriction on Signing Locations. TODS will not be allowed:

- on freeways, expressways or off-ramps of freeways or expressways.
- at intersections where two major highways cross.
- where sufficient space is not available or where demand would exceed the limit of six signs per intersection. A community services announcement sign (see Page 10) has precedence over signing for individual businesses at intersections likely to have more demand than space allows.

Illegal Signs. A permit shall not be issued for any business or activity using illegal signs to promote their business (see Alaska Statutes 19.25.105).

Nondiscrimination. The activity or site shall comply with all applicable laws concerning public accommodations without regard to race, religion, color, age, sex, handicap or national origin.

Highway Junctions Excluded from Participation. Tourist oriented directional signing will not be allowed at the following junctions:

Sterling Highway	with	Kenai Spur
Sterling Highway	with	Seward Highway
Parks Highway	with	Glenn Highway
Parks Highway	with	Palmer-Wasilla Highway
Glenn Highway	with	Palmer-Wasilla Highway
Glenn Highway	with	Richardson Highway
Richardson Highway	with	Tok Cutoff Highway
Richardson Highway	with	Alaska Highway
Alaska Highway	with	Tok Cutoff Highway

SPECIFIC ELIGIBILITY REQUIREMENTS

This rule describes the types of activities or sites that may qualify for tourist-oriented directional signing. Within each type, this rule also describes the specific requirements that an individual activity or site should meet to qualify for TODS. These requirements are in addition to the general eligibility requirements on page 2.

Gas:

- Vehicles services, which shall include regular and unleaded fuel, oil, free air and water;
- Clean rest rooms, one for men and one for women;
- Drinking water;
- Continuous operation at least 16 hours per day, 7 days a week, and 12 months a year;
- Telephone; and,
- Be located within three miles of the primary or secondary highway.

Food:

- All licenses and approvals as required by the State of Alaska and local governmental bodies;
- Continuous operation to serve three meals a day, 7 days a week, and 12 months a year;
- Opening not later than 6:00 AM for breakfast and closing no earlier than 10:00 PM;
- Telephone;
- Indoor seating for at least 20 persons;
- Clean rest rooms, one for men and one for women; and
- Be located within three miles of the primary or secondary highway.

Lodging

- All appropriate State and local licenses or approvals;
- Off street parking;
- Telephone;
- Private bathroom;
- Continuous operation of ten hours per day, seven days per week, four months per year; and,
- Be located within twenty-five miles of the primary or secondary highway.

Campgrounds

- All appropriate State/local licenses or approvals, including health permits;
- A minimum of 10 individual campsites;
- Parking spaces for each campsite;
- Each campsite shall have a minimum of 300 square feet;
- A sanitary disposal system for travel trailers and campers;
- Separate shower facilities for men and women with hot and cold running water and two or more rest rooms, one for men and one for women;
- A full-time attendant on duty or on call 24 hours a day to maintain and manage campground services;
- Continuous operation for a minimum of four months per year;
- Telephone; and,
- Be located within twenty-five miles of the primary or secondary highway.

Tourist Attraction.— An attraction that is of significant interest to tourists as a historic, cultural, scientific, educational or religious site, or as a site of natural scenic beauty or naturally suited for outdoor recreation, may qualify. A tourist attraction must:

- Provide documentation that at least 25% of their gross business receipts are from motorists residing more than twenty miles from the activity.
- Be open a minimum of eight hours a day, six days a week, four months a year.
- Be located within twenty-five miles of the primary or secondary highway. Major tourist oriented motorist destinations may request consideration for a waiver of this requirement.

Other Commercial Activity. A commercial activity of significant interest to the traveling public may qualify. The commercial activity must:

- Provide documentation that at least 25% of their gross business receipts are from motorists residing more than twenty miles from the activity.
- Be open a minimum of eight hours a day, six days a week, four months a year.
- Be located within twenty-five miles of the primary or secondary highway.

APPLICATION REQUIREMENTS

Application shall be made on the form attached. The application must be completed, signed and submitted to the Engineering & Operations Standards Division, Box Z, Juneau, AK 99811.

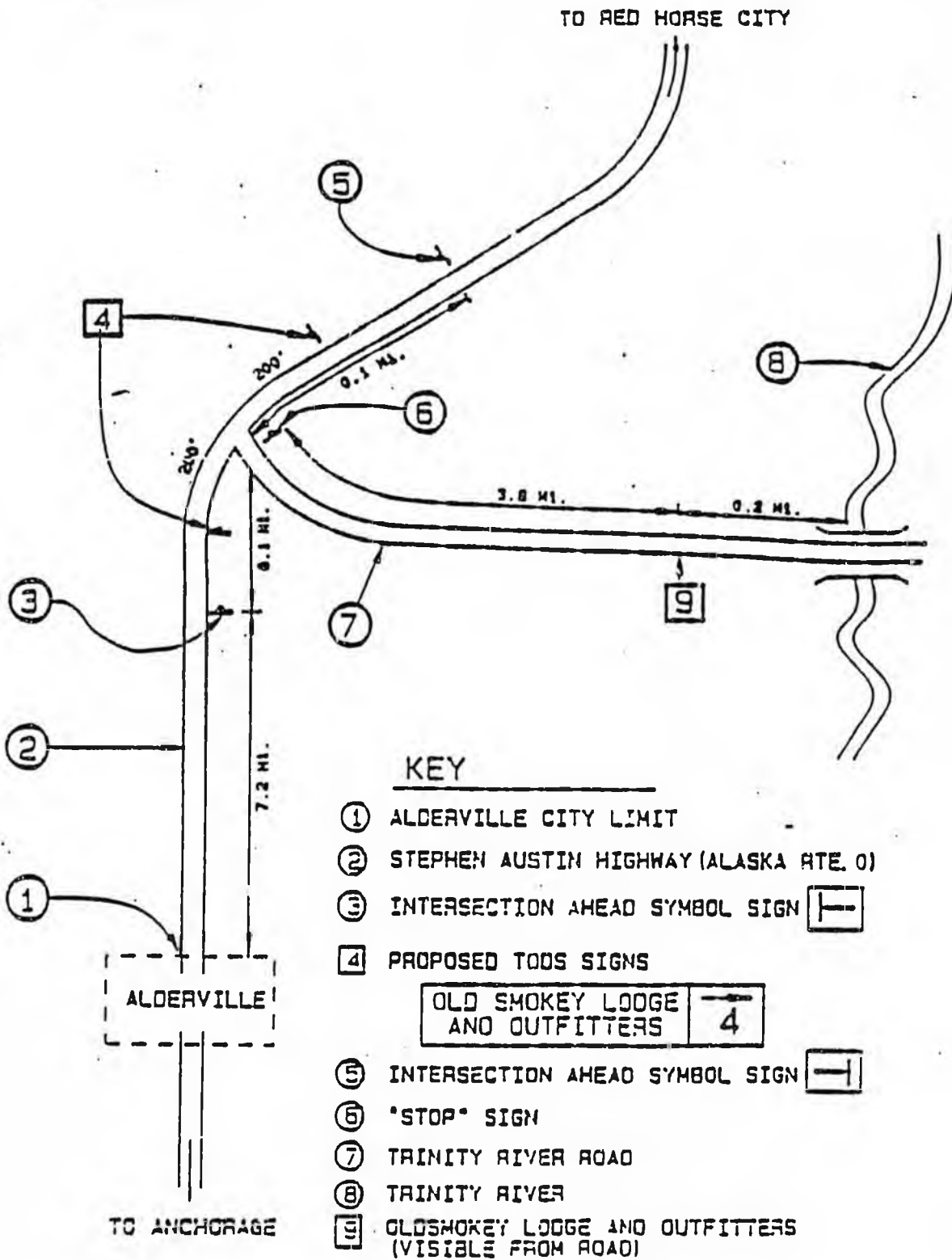
Permit Fee. There is a \$100 permit fee that is payable upon approval of your application. You will be notified when your application is approved, and the fee will be requested at that time.

Sign Legend. Each sign will have no more than two lines of legend and will have a directional arrow with the distance to the facility shown below the arrow. It is preferred that the content of the legend be: the name of the business as listed on the current business license; the directional information; and appropriate icon. If the name of the business does not portray the service being offered, the applicant may choose wording which portrays the service or activity; but it must be appropriate and approved by the Department. Legends shall not include promotional advertising; reference to alcoholic beverages or bars; or sexual reference. Reference to "information" or "visitor's center" may only be made by groups whose main objective is providing free tourist information.

Photographs. Photographs to accompany the applications are:

- View of the main highway turnoff from a distance of 500 feet (each direction);
- A photograph depicting the structure containing the business and clearly showing the main entrance into the business.

Scale Drawing. The application must include a scale drawing showing the relationship of the signs to the directed attraction, roads and highways and existing traffic control devices. An example of an application drawing is included below for your assistance.



APPLICATION REVIEW PROCESS

The E&OS Director will coordinate the application review with the Design & Construction Director and the Maintenance & Operations Director for conformance with appropriate traffic and safety design standards. Upon the submittal of a complete, fully executed application, the department should advise the applicant within fifteen working days of the approval or disapproval of the application.

Approved Applications. The department will notify the applicant of the name, address and phone number of the right of way agent responsible for issuing a "Permit to Install Tourist Oriented Directional Signing." The applicant must sign the Permit and return it to the right of way agent. The right of way agent will obtain the necessary departmental signatures on the Permit and return the fully-executed permit to the Permittee. The applicant may then contract for sign manufacturing and installation. Signs must be installed only as indicated in the Permit. The signs must be installed by a contractor authorized to perform installation inside the highway right of way. (See Page 7)

If the business or activity changes owners, the new owner must request a new permit be issued. There will be no charge for this permit if all circumstances of the previous permit remain unchanged.

Disapproved Applications. If an application is disapproved for a specific reason which is considered correctable with modification to the application, the department shall advise the applicant of the necessary modifications.

Appeal. Because of the experimental nature of this program, all decisions by the department are not subject to formal appeal or protest. An applicant may, however, provide additional support or documentation for consideration. The applicant should present the additional support in writing to the Director of Engineering and Operations Standards, Box Z, Juneau, AK 99811. The applicant will be notified in writing of the Director's decision which will be final.

INSTALLATION, MAINTENANCE, REPLACEMENT, REMOVAL.

Installation and maintenance of tourist-oriented signs. The applicant shall secure services for sign installation and maintenance. Such installation and maintenance of the signs shall be performed by a firm or group with experience in working in public rights of way with active traffic and knowledge of the traffic control requirements necessary for safe operations on an active highway. The installation contractor shall obtain a permit for work in the right of way from the appropriate regional DOT&PF office prior to installation of signs. An acceptable traffic control plan will be necessary, and the department may impose other conditions as required to fulfill traffic flow and safety considerations.

Signs may not be installed on existing State signposts. Nonconforming signs must be immediately removed or modified at the owners expense.

Sharing Sign Posts. Not more than three signs shall be installed on any sign panel and not more than two sign panels shall be installed on an approach to an intersection. Sign installation for the second, third, fifth and sixth permits issued at an intersection must be located on existing posts installed by the first and fourth permittees. Permittees using existing sign posts should reimburse the original permittee a fair share of the post and post installation costs.

Installation and maintenance of trailblazing signs. If needed, adequate trailblazing signs shall be provided on local roads and streets to guide motorists from the primary route to the activity or site. Trailblazing shall conform to requirements in the "Manual on Uniform Traffic Control Devices for Streets and Highways,".

The Permittee shall secure trailblazing signs and have installed those to be located on roads maintained by the State. The applicant must obtain the proper authority to install trailblazing signs on roads not maintained by the State. Tourist-oriented directional signs shall not be installed until necessary trailblazing signs are in place.

Seasonal activity or site. The applicant shall be responsible for the removal or masking of a tourist-oriented directional sign for a seasonal activity or site when the activity or site is closed permanently or during the off-season period.

Removal. The applicant shall have a tourist-oriented directional sign removed if the activity or site no longer qualifies for tourist-oriented directional signing. The sign(s) shall also be removed if the conditions of the Permit are violated.

SIGN SPECIFICATIONS

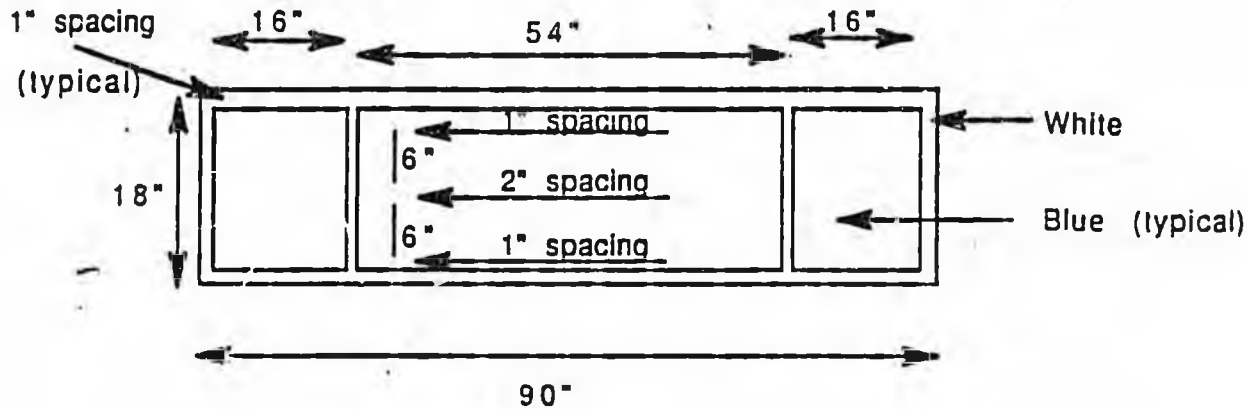
Design. Tourist Oriented Directional Signs shall be rectangular in shape and shall have a white legend and border on a blue background. Each sign shall incorporate the appropriate icon to indicate a general class of business, service, or activity. Available icons are depicted on the last page of this policy. Applicants will be furnished with the 6" by 6" enlargement. In the case that no icon available is appropriate for the business, the business may submit a design for consideration.

Each sign should have not more than two lines of legend, one icon, a separate directional arrow, and the distance to the facility shown beneath the arrow. The content of the legend shall be limited to the official name of the business or activity as shown on the business license or other official document.

Legends, arrows, borders, and icons shall be retroreflective. Arrows should be as provided in Section 2D-8 of the Manual on Uniform Traffic Control Devices. Arrows pointing to the right should be at the extreme right of the sign; arrows

pointing to the left or up should be at the extreme left of the sign. The icon shall be on the opposite end from the directional arrow and distance.

Size of Sign. The overall sign shall measure 90 inches wide and 18 inches tall. The directional arrow with mileage underneath shall be 16" x 16". The icon shall be 16" x 16". There shall be a one inch white border surrounding the sign and separating the directional arrow, legend and icon. There is one inch spacing between the border and legend and two inch spacing between lines of legend.



Style and Size of Lettering. The standard lettering for tourist oriented directional signs shall be in lower case lettering with initial capitals, specifically, Standard Upper Case Alphabet for Highway Signs Series E(M) with Lower Case. Capital letters shall be six inches in height. Spacing between characters should conform to the tables in the Metric Edition of *Standard Alphabets for Highway Signs and Pavement Markings*.

Arrangement of Signs. Signs for right turns and left turns should be arranged vertically on separate sign panels, when appropriate, located so that the right turn signs are closer to the intersection. When not more than three signs are to be installed on an approach to an intersection, the signs may be combined on the same panel with the left turn signs above the right turn signs. Not more than three signs should be installed on any sign panel and not more than two sign panels should be installed on an approach to an intersection.

Signs may be erected for facilities in the ahead direction using the ahead directional arrow. Signing for businesses, services or activities in the ahead direction should be permitted only when there is signing for a similar facility in either the right or left direction or when permitted under "Location of activity or site" on page 2.

Advance Signing. Advance signing may be installed in special circumstances. It shall be limited to those situations where sight distance, intersection vehicle

maneuvers or other vehicle operating characteristics require advance notification of the service to reduce vehicle conflicts and improve highway safety.

The arrangement of the tourist oriented directional signs on the advance sign panel should be identical to the arrangement on the intersection sign panel; however, the directional arrows and distances should be omitted. The appropriate legend NEXT RIGHT, NEXT LEFT, or AHEAD in letters of the same height as the sign legends should be placed on the panels above the signs. The legend RIGHT 1/4 MILE or LEFT 1/4 MILE may be used when there are intervening minor roads.

Sign Locations. The intersection approach sign panels should be located at least 200 feet from the intersection except that the ahead sign, if used should be located to the far right corner of the intersection and shall not obstruct the driver's critical viewing of other traffic control devices. The sign panels may be located laterally outside the normal longitudinal alignment of other traffic control signs, but within the right of way. The location of other traffic control devices shall at all times take precedence over the location of tourist oriented directional signs. Sign panels should be spaced at least 200 feet apart and at least 200 feet from other traffic control devices.

When used, Advanced Sign panels should be located approximately 1/2 mile from the intersection with 800 feet between the panels. In the direction of traffic, the order of advance signing should be for facilities to the left, the right and ahead.

Position, height, and lateral clearance of panels should be governed by Sections 2A and 2D of the Manual of Uniform Traffic Control Devices (MUTCD) except as permitted above.

COMMUNITY SERVICES ANNOUNCEMENT SIGNING

Generic service assemblies are permitted for intersections leading to communities or areas with multiple attractions/services where the demand for signs will likely exceed available space. The community services announcement may include up to six icons identifying the categories of travelers services available. When appropriate, the phrase "All Motorist Services" can be placed on these signs thereby allowing the icons to serve the more unique attractions.

Location. Community Services Announcement Signing may be installed where there is sufficient space available in the following locations:

- where the demand for signs will likely exceed available space;
- at intersections where two major highways cross including highway junctions listed on Page 3;
- at controlled access intersections in urban areas;
- for advance signs at communities on the main highway.

Selection of Icons. Icons to be displayed shall be selected from the Department's approved list by the local authority governing the community and approved by resolution. The Department of Transportation and Public Facilities, however, reserves the right to modify the selection if in the best interest of the State.

Application Process. Application for community services announcement signing shall proceed in the same manner as tourist oriented directional signing with the exception that only the local authority governing the community may make application.

ICONS AVAILABLE FOR SELECTION

Limit one per sign



Food/
Coffee Shop



Gifts



Groceries



Hotel/
Motel/Lodge



Information



Food/
Restaurant



Staffed
Information



RV Park/
Camping



Boat Launch



Helicopter/
Heliport



Air Service-
Fix Wing



Boat Tours



Cruise Ship



Ferry Terminal



Marina



Rafting



Railroad/Depot



Troopers/Police



Winter
Recreation



Beach Access



Dog Mushing



Fish Hatchery



Fish Viewing



Fishing



Interpretive



Recreational
Gold Panning/Mine



Green House



Historic Church



Historic Site



Museum



Park/ State, National



Produce Stand



Scenic View Point



Golf

Alaska Department of Transportation and Public Facilities
Division of Engineering and Operations Standards

APPLICATION
for Participation in
EXPERIMENTAL TOURIST ORIENTED DIRECTIONAL SIGNING

Note: Please read the policy carefully to determine eligibility and the obligations and responsibilities associated with the program.

Name of Business: _____ Business Phone: _____

Name of Applicant: _____ Title: _____

Business Address: _____ City: _____ Zip _____

Physical Address: _____ Milepost _____

MAIN SERVICE OFFERED: Please check ONLY one:

GAS FOOD LODGING CAMPING ATTRACTION COMMERCIAL

Requested sign Legend (Business Name): _____ Icon requested: _____ or None Sulted

(Note: if more than 18 letters are required per line, use abbreviations.)

BUSINESS LOCATION DATA:

TODS Requested at
Intersection of: _____ Highway and _____ Highway/Road

Mileage from Highway to Business: _____ Is Business Within City Limits? Yes No

Is the advertised activity or the on-premise signing visible from the main traveled way? Yes No

No. of Motorists Served Last Year _____ Number of Parking Spaces: _____

Use the space below to attach photograph of building or activity main entrance.

Services: (Check the Services You Offer in Category Selected as your Main Service)

GAS (Regular and	FOOD	LODGING	CAMPING
<input type="checkbox"/> Fuel (Unleaded) <input type="checkbox"/> Oil <input type="checkbox"/> Free Air & Water <input type="checkbox"/> Public Restrooms <input type="checkbox"/> Drinking Water <input type="checkbox"/> Public Telephone <input type="checkbox"/> Continuous operation 16 Hours/Day, 7 Days/Week <input type="checkbox"/> Open Year Around <input type="checkbox"/> Located within 3 mi.	<input type="checkbox"/> State License <input type="checkbox"/> Breakfast Daily <input type="checkbox"/> Lunch Daily <input type="checkbox"/> Dinner Daily <input type="checkbox"/> Seat 20 or More <input type="checkbox"/> Public Restrooms <input type="checkbox"/> Continuous operation 16 Hours/Day, 7 Days/Week <input type="checkbox"/> Open Year Around <input type="checkbox"/> Located within 3 mi.	<input type="checkbox"/> State License <input type="checkbox"/> Off-street parking <input type="checkbox"/> Public Telephone <input type="checkbox"/> 10 Units or More <input type="checkbox"/> Private Bath <input type="checkbox"/> Lodging is only service <input type="checkbox"/> Continuous operation 10 Hours/Day, 7 Days/Week <input type="checkbox"/> Open Year Around <input type="checkbox"/> Located within 3 mi.	<input type="checkbox"/> State License <input type="checkbox"/> 10 Units or More <input type="checkbox"/> Campsite Parking <input type="checkbox"/> Showers/Toilets <input type="checkbox"/> RV Dump Station <input type="checkbox"/> Public Telephone <input type="checkbox"/> Continuous operation 24 Hours/Day, 7 Days/Week <input type="checkbox"/> Open 4 Months/Year <input type="checkbox"/> Located within 25 mi
TOURIST ATTRACTION - Describe		OTHER COMMERCIAL ACTIVITY - Describe	
<input type="checkbox"/> Major portion of income from non-local motorists. <input type="checkbox"/> Continuous operation 8 Hours/Day and 6 Days/Week <input type="checkbox"/> Open at least 4 Months/Year <input type="checkbox"/> Located within 25 miles of Highway		<input type="checkbox"/> Major portion of income from non-local motorists. <input type="checkbox"/> Continuous operation 8 Hours/Day and 6 Days/Week <input type="checkbox"/> Open at least 4 Months/Year <input type="checkbox"/> Located within 25 miles of Highway	

Please comment below on boxes within your category which you have NOT checked.

IMPORTANT! Please provide a detailed site layout drawing in the manner demonstrated on Page 6.

Depict: all official traffic signs and devices within 800 feet of intersection

Depict: proposed TODS location(s) measured in feet from intersection -200' minimum from intersection

Depict: business location and access into business

Depict: all roads by name and other pertinent landmarks

Applicant's Certification:

I certify that the above and foregoing statements are true and correct and that I will inform the Alaska Department of Transportation and Public Facilities of any changes to the above indicated information that may affect the availability of the service provided. I further certify that I will not discriminate or deny such services of public accommodations based upon race, religion, color, age, sex, national origin or disability which is prohibited by law and that I have read and understood the Tourist Oriented Directional Signing (TODS) policy and application.

I understand that the use of illegal signs to promote the business is cause for denial of this application. I certify that there are no illegal signs advertising this business.

Date

Applicant's Signature

Please mail your application to:

Alaska Department of Transportation & Public Facilities
Director, Engineering & Operations Standards Division
Box Z
Juneau, AK 99811

Phone: 465-2951

Please provide photographs showing the view of the main highway turn-off from distance of 500 feet in each direction. Mark an arrow on the pavement depicting your turn-off.

like that have the effect of rules, orders, regulations or standards of general application". AS 44.62.640(a)(3); emphasis added. The Alaska Supreme Court has identified two indicia of a regulation. First, a regulation implements, interprets, or makes specific the law enforced or administered by the agency. Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State, 628 P.2d 897, 905 (Alaska 1981). The standards utilized by DOTPF for the issuance of an airspace lease do implement and make specific the law enforced by the department under AS 19 and AS 44.42. Second, a regulation affects the public or is used by the agency in dealing with the public. Id. The standards for airspace leases clearly affect the public and are used by the DOTPF in its dealings with the public regarding airspace leases.

It is my conclusion that the policy for issuing airspace leases have the effect of regulations and standards of general application for the issuance of airspace leases. Thus, the policy is a regulation and must be adopted as a regulation in accordance with AS 44.62.

Because the policy has not been adopted as regulations, the policy is invalid and unenforceable. Id. at 906; Gilbert v. State Department of Fish and Game, 803 P.2d 391, 397 (Alaska 1990). DOTPF cannot rely upon the policy as a basis for issuing airspace leases until the department has complied with the regulation adoption procedures of AS 44.62. Kenai Peninsula, 628 P.2d at 906.

The procedures and standards set out in the policy for issuance of airspace leases for business signs seem to be consistent with DOTPF's authority to regulate use of highway rights-of-way under AS 19.05.010, 19.05.030, 19.05.040, AS 19.25.200, and AS 44.42.020. DOTPF could adopt the policy as a regulation by complying with AS 44.62 and thus overcome the current invalidity of the policy. However until regulations implementing the policy take effect, the policy is unenforceable.

In addition to violating provisions of the Administrative Procedure Act, DOTPF's airspace leasing policy probably violates AS 19.25.200(a).^{3/} Under AS 19.25.200(a) an encroachment is permitted on a highway or highway right-of-way, if, and only if, the encroachment is in accord with regulations adopted by the department and the department has issued a written permit authorizing the encroachment. The department may adopt regulations waiving the requirement for a written encroachment permit. The current regulations regarding encroachment permits, for uses other than public utilities and railroads, are found at 17 AAC 10.010 - 050. The provisions of 17 AAC 10.010 apply to encroachments in general, while 17 AAC 10.020 - 050 are applicable to driveways and road approaches. Encroachment permits for business signs are subject to the general provisions of 17 AAC 10.010 which provides, in essence, that encroachments may be permitted within highway rights-of-way under

^{3/} See, footnote 2.

Senator Curt Menard
October 23, 1992
Page 4

certain conditions if the department has authorized the encroachment in writing and if the encroachment satisfies applicable federal regulations.^{4/}

Because the airspace leasing policy has the effect of allowing an encroachment to be placed in a highway right-of-way, the policy is subject to the provisions of AS 19.25.-200(a) and thus must be adopted by regulation. DOTPF has not adopted the airspace leasing policy as regulations, so the policy is not in compliance with AS 19.25.020(a). Until DOTPF adopts regulations implementing the airspace leasing policy, DOTPF may issue authorizations for business signs within highway rights-of-way only in accordance with the provisions of 17 AAC 10.010.^{5/}

If I may be of further assistance, please advise.

GU:lmb:gc
92-178.lmb

^{4/} 17 AAC 10.010 states:

ENCROACHMENTS. Encroachments may be installed or permitted within highway lands, or rights-of-way, under certain conditions, when they have been the subject of a previously secured written authorization issued by the [D]epartment [of Transportation and Public Facilities] and, in respect to all highways acquired or constructed in whole, or in part, with federal-aid funds, in accordance with the federal regulations governing the future use and occupation of such highways. (Effective 6/25/69)

^{5/} Under 17 AAC 10.010, DOTPF may authorize encroachments within highway rights-of-way "under certain conditions". Though it may be argued that the phrase "under certain conditions" allows the department to administratively establish conditions and procedures as policies under which it may authorize encroachments, the requirements of the Administrative Procedure Act as discussed earlier in this memorandum preclude the possibility that DOTPF can supersede or amplify upon the provisions of 17 AAC 10.010 by administratively establishing a policy for issuing airspace leases.

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES POLICY AND PROCEDURES		P & P No. 10-0020	Page 1 OF 2
		Effective Date April 1, 1984	
SUBJECT Encroachment Control		Supersedes P & P No. None	Dated MAY 18 1984
		APPROVED BY <i>[Signature]</i>	
DIVISION Departmental	SECTION Commissioner's Office	RIGHT OF WAY CHAPTER TITLE STORAGE Policies	

Purpose:

In the interest of safety, convenience and pleasure for highway users, all encroachments on rights of way must be effectively controlled. These procedures are established to provide guidelines for discovery and either removal or placing under agreement all of the encroachments on the right of way of the Alaska highway system.

Policy:

It is the policy of this Department to maintain highway rights of way free and clear of encroachments. Two major purposes of this policy are (1) to protect the best interest of the public when considering non-highway use of right of way, and (2) to maintain a safe driving environment for the highway user.

Distribution:

Policy and Procedure manual holders and Division and Section Supervisors.

Procedure:

For purposes of this procedure Utility Facilities are excluded.

The following procedures will be used to implement this policy:

1. **Discovery.** It is the responsibility of the Regional Director of Maintenance and Operation to maintain encroachment surveillance. During routine maintenance patrol, road and weather condition inspection, or at regular intervals deemed necessary, maintenance personnel shall inspect the right of way for encroachments. When an encroachment is found, a determination will be made as to whether the encroachment is a safety hazard due to physical or visual obstruction of the highway. If the encroachment is considered a safety hazard, it will be summarily removed. Those encroachments judged not to present an immediate safety hazard will be reported to the Regional Chief Right of Way Agent by copy of Encroachment Report Form No. 24 (Revised 6/82) with recommendations as to whether the encroachment should be permitted or removed.
2. **Removal or Permitted.** When an encroachment report is received, the Regional Chief R/W Agent will make a recommendation to the Regional Director, Design and Construction, as to whether the encroachment should be permitted or removed.
 - A. **Removal.** When it is determined by the Regional Director of Design and Construction that the encroachment should be removed, the Regional Chief R/W Agent or representative should personally contact the owner, if possible, to explain the written notice which is concurrently sent demanding the removal of the encroachment within a reasonable time. The notice shall describe the encroachment complained of with reasonable certainty as to its character and location. Service of the notice may be made by certified mail, return receipt requested, and will state that the removal will be at the owner's expense which includes (1) the expenses of removal of the encroachment plus storage, and (2) all costs and expenses paid by the State as a result of a claim or claims filed against the State by third parties for damages due to delays because the encroachment was not changed, removed or relocated, and (3) costs and expenses of suit. A schedule may be adopted to cover these expenses. Such a schedule should reflect hours of labor, storage and transportation costs incurred and should approximate them as closely as possible.

The removed encroachment may be stored in the nearest maintenance yard for thirty days and then destroyed. At any time during the thirty-day period an owner may reclaim his property by paying the amount stated in the notice.

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

P & P No. 10-0020 Page 2 OF 2

Effective Date April 1, 1984

SUBJECT Encroachment Control

Supersedes P & P No. None Dated

APPROVED BY *[Signature]*

DIVISION Departmental SECTION Commissioner's Office CHAPTER TITLE Policies

When the encroachment is summarily removed, the owner should be notified, if possible, where the Department has the property stored and that a redemption fee will be charged if not reclaimed within ten days. The redemption fee should reflect storage and protection costs which are separate from those of removal.

On encroachments such as major structures, where it is impractical to haul and store, other means of removal shall be worked out, taking care not to trespass on private property.

A follow up system is to be established which provides for automatic contact with the resident maintenance foreman to determine whether or not removal has been accomplished within the specified time.

- B. Permitted. When it is determined by the Regional Director of Design and Construction and the Regional Director of Maintenance and Operations that an encroachment will not interfere with the construction, maintenance, free flow of traffic or aesthetics of the highway and will not decrease the safety, convenience or pleasure of the highway user, the encroachment may be permitted with the Federal Highway Administration's concurrence, when required.

The encroachment permit will be processed according to the Right of Way Manual.

In the event the encroachment owner refuses to sign the permit, removal procedures as outlined above will be commenced.

**SUMMARY OF POLICY
FOR
LEASING ADJACENT RIGHT OF WAY
FOR EXTENDING BUSINESS PREMISES**

INTRODUCTION

Many businesses located adjacent to a highway may not be visible from the highway. It has become evident that a program should be developed that will better serve businesses located adjacent to state highway right of way.

It must be noted, however, that businesses participating in this program will be applying for an airspace lease, and many procedural requirements must be followed in accordance with state and federal law.

DEFINITIONS

Airspace. For purposes of this program, airspace means that space located above, at, or below the highway's established gradeline, lying within the approved right of way limits.

Clear Zone is the total roadside border area, starting at the edge of the traveled way, which should be maintained free and clear of any obstructions to the traveling public. The desired width of the clear zone is dependent upon the traffic volumes, speeds and the roadside geometry.

Legal signs are those visible signs adjacent to the traveled way which are erected and maintained as official state signs or signs meeting the definition of "on-premise."

On-premise sign is a sign:

- . advertising the sale or lease of the property upon which it is located.
- . advertising activities conducted on the property upon which it is located.

To qualify as an on-premise sign, the sign must conform to the exact property requirement and purposes above. Signs will not meet the property requirement if they are on land not integral with and contiguous to the premises on which the activity is conducted.

A sign which by itself brings rental income to the landowner or tenant or which prominently advertises brand name products not sold, or services not performed at the location will not be considered to be an on-premise sign. Signs advertising land for sale or lease cannot be considered on-premise signs if they advertise other products or services.

Traveled Way is defined as the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes such as those used for parking, turning, climbing or other purposes supplementary to through traffic movement.

ELIGIBILITY FOR PARTICIPATION

A business sign may be allowed as an on-premise sign inside the highway right of way when the business owner enters into an airspace lease for a minimum lease of one thousand (1,000) square feet of right of way adjoining the business. A sign shall not be erected until an airspace lease has been executed by the department. A business must meet the following requirements:

Sign Location

The right of way on which the sign is located must be integral with and adjacent to the premises on which the activity is conducted.

Sign placement must be compatible with all safety and maintenance needs. Accordingly, sign placement shall not be allowed in any of the following locations:

1. Within 30 feet of the edge of the traveled way and within the required clear zone as determined by a registered civil engineer. The use of breakaway sign supports shall not justify placing an on-premises sign within the required clear zone.
2. In any location needed for operational activities such as ditches and drainage structures, cut or fill embankments, snow storage areas, and utility lines.
3. In any location that a utility permit would preclude leasing, including any required safety setback distances.

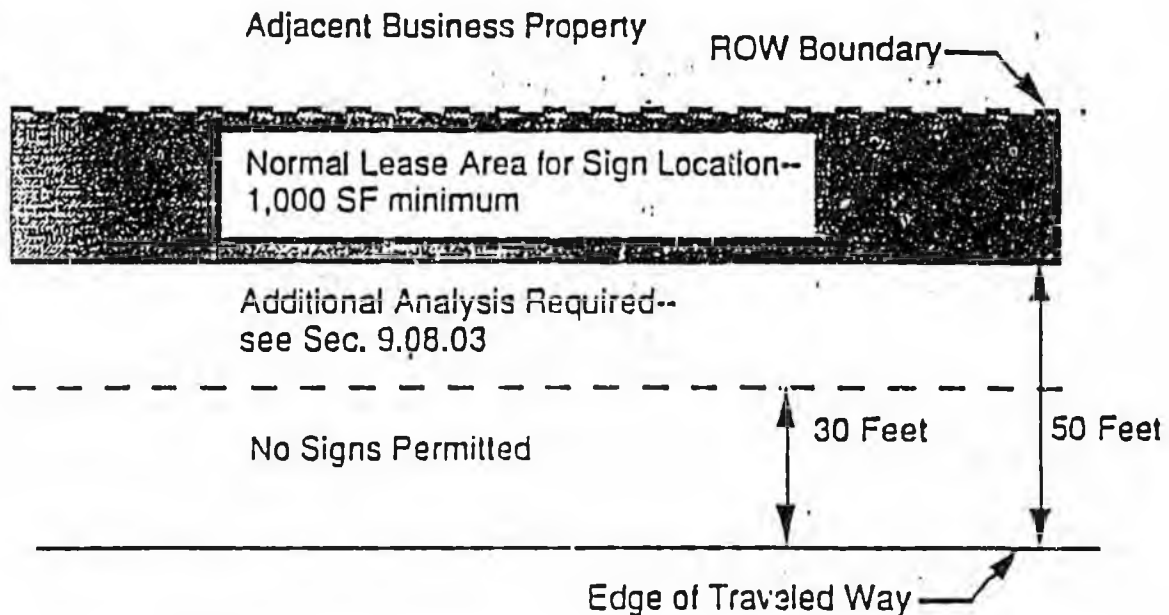
In most cases a structure, improvement or sign may be placed a distance of fifty feet or more from the traveled way. In the few cases of properties located on curved areas of the road or with steep slopes, it is necessary to determine the clear zone.

Signs Located Between Thirty and Fifty Feet from Traveled Way

If a business wishes to place a sign less than fifty feet from the traveled way, they must meet one or more of the below-listed eligibility factors. The applicant must provide a clear zone analysis by a registered engineer and a plat of proposed lease area prepared by a surveyor.

1. Terrain, curvature of the road or vegetation obscure visibility of the business completely or until a motorist is within 800 feet or less of the driveway.
2. Where the right of way is irregular in width as measured from the centerline of the road, it may be desirable to permit businesses adjacent to wider right of way sections to locate their business sign at a distance similar to other businesses in the same area.

Signs may be placed within the airspace leased right of way when the airspace use includes parking or other business-related purposes.



Sign Design Criteria

Only one on-premise sign location per frontage shall be allowed.

Signs shall not be taller than thirty (30) feet.

Signs shall not be larger than 150 square feet in surface area, measured on one face. Local government sign criteria/ordinance, if more restrictive, shall take precedence.

Signs shall contain no flashing, rotating or blinking lights, nor symbols, logos, type, or shapes that resemble official traffic control devices.

All sign lighting shall be of an indirect nature such that no portion of the light source shall be visible to a vehicle occupant while using the roadway facility. Further, the lighting fixtures shall be located on the sides of the sign but not on the top or bottom. The sign facing material shall be made from non-glare, non-high intensity reflective sheeting.

APPLICATIONS TO LEASE HIGHWAY RIGHT OF WAY

Note: Requests for an airspace lease must include a \$100 non-refundable application fee and the following information:

1. A sketch of the site showing the location of the business or residential property and the location/proposed location of any structure, improvement or sign. Major attributes of the area should be noted such as vegetation, existing visible utilities, and bikepaths.
2. A photograph of the existing, or location of the proposed sign.
3. Photographs of the edge of the roadway showing the slope, typically taken from a distance of one hundred feet in each direction toward the proposed sign location. The photos will be used to determine if additional slope limit information is required to define the clear zone.

Approval by Federal Highway Administration

Lease proposals must be approved by the Federal Highway Administration.

Economic Rent

The lease amount will be determined by the region using fair market value.

Public Notice of Proposed Lease

When approved for lease public notice shall be given in a local newspaper for three consecutive weeks. The cost of notification shall be the responsibility of the applicant.

Lease Issuance Fee

A \$200 issuance fee shall be paid, along with the fair market value when the Airspace Lease is signed. The lease shall be for a five year renewable term unless other terms are noted in the Lease.

Timely Term Payments

Payments must be received by the issuing office within sixty (60) days of the due date. If not received within sixty days, the lease is automatically terminated. The sign and any other structures must be removed within fifteen days of the termination of the lease. If not removed within fifteen days, removal will be accomplished by State personnel and the owner will be billed for all removal costs.

A \$200 lease issuance fee will be charged to re-issue a lease after termination of any previous lease of the same right of way.

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

**APPLICATION
for
AIRSPACE LEASE**

Note: Please read the policy carefully to determine eligibility and the obligations and responsibilities associated with the leasing program.

A non-refundable application fee of \$100 must accompany this application. If approved, applicant is responsible for public notice costs, a \$200 lease issuance fee and the annual fair market rental amount.

Name of Business: _____ Business Phone: _____
Name of Applicant: _____ Title: _____
Business Address: _____ City: _____ Zip _____
Physical Address: _____ Milepost _____

BUSINESS LOCATION DATA:

Yes No Is Business Within City or Borough Limits?

Yes No Do local sign ordinances apply in your case?

Proposed Use of Highway Right of Way: _____
Highway _____

Requested on-premise sign to be located approximately _____ feet from edge of pavement.

IMPORTANT: Please attach photographs in accordance with directions on Page 2 of this application AND the Detailed Site Layout Drawing in accordance with directions on Page 3 of this application.

Applicant's Certification:

I certify that the above and foregoing statements are true and correct. I further certify that I will not discriminate or deny such services of public accommodations based upon race, religion, color, age, sex, national origin or disability which is prohibited by law and that I have read and understood the Airspace Leasing policy and application.

Date Applicant's Signature

Please mail or take your application to:
Alaska Department of Transportation & Public Facilities
Right of Way Section
4111 Aviation Avenue
P. O. Box 196900
Anchorage, AK 99519-6900
Phone: 266-1631

sign or the proposed location of such.

Photographs shall show the view of the main highway turn-off to the business. They should show the slope, typically taken from a distance of one hundred feet in each direction and one taken from the centerline of the highway toward the sign location. (There should be a minimum of three photographs.) These photos will be used in determining if additional slope limit information is required to determine the clear zone. Mark an arrow on the pavement depicting your turn-off and indicate the proposed location of a sign.

IMPORTANT!! Please provide a accurate site layout or subdivision plat drawing below or attach .

Depict: business sign location, parking, access into business and location of building where business is conducted.

Depict: how far the sign will be from edge of traveled way

Depict: major attributes of the area such as vegetation, existing visible utilities and bikepaths

Depict: all roads by name and other pertinent landmarks

STATE OF ALASKA

WALTER HICKEL GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CENTRAL REGION - DIVISION OF DESIGN AND CONSTRUCTION
RIGHT OF WAY BRANCH

4111 AVIATION AVENUE
P.O. BOX 196900
ANCHORAGE, ALASKA 99519-6900
(FAX 248-9456) (907) 266-1621

October 5, 1992

Re: NOTICE OF UNAUTHORIZED
ENCROACHMENT
Parks Highway
R/W ID #216.146

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Patricia and Walter Newman
Newman's Hilltop Service
P.O. Box 98
Willow, AK 99688

Dear Business Owner:

Our recent inventory of the above referenced highway noted your sign(s) encroaching in the State's right of way. See enclosed picture(s) showing the right of way in your area and the location of the sign(s).

To amiably resolve this situation, you are invited to make application to lease this portion of the right of way.

The Department is very aware of the need to inform the motoring public of a business's or service's location. To be responsive to this need, the Department may lease a portion of the right of way for placement of an on-premise advertising sign. To qualify for this program, the business site must be next to the proposed lease area. Enclosed is further information about this program and an application.

Unless other arrangements are made, the unauthorized encroachment must be out of the right of way before November 7, 1992. After that date, the Department will have it removed with the cost billed to you. Notification of this pending action follows the provisions of Section 19.25.200 - 19.25.250 of the Alaska Statutes (effective 05/13/71).

Removal of any additional unauthorized encroachments placed upon the highway right of way at this location, will occur without further announcement.

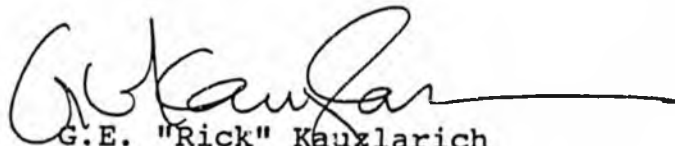
Patricia and Walter Newman

-2-

October 5, 1992

If you have any questions, please call me or Right of Way Agents
Kathy Trawver or Mary Thurman at 1-800-770-LAND (1-800-770-5263).

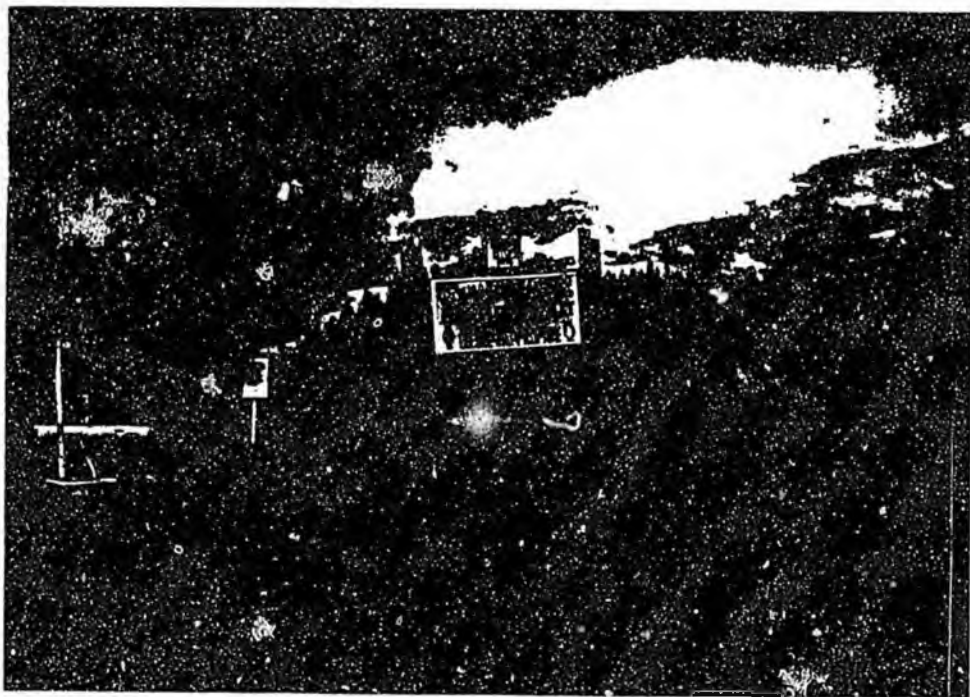
Sincerely,



G.E. "Rick" Kauzlarich
Right of Way Agent

Enclosures

GEK/rlm
NUE.LTR



132 feet right of way
sign is located 72 feet from centerline

**SUMMARY OF POLICY
FOR
LEASING ADJACENT RIGHT OF WAY
FOR EXTENDING BUSINESS PREMISES**

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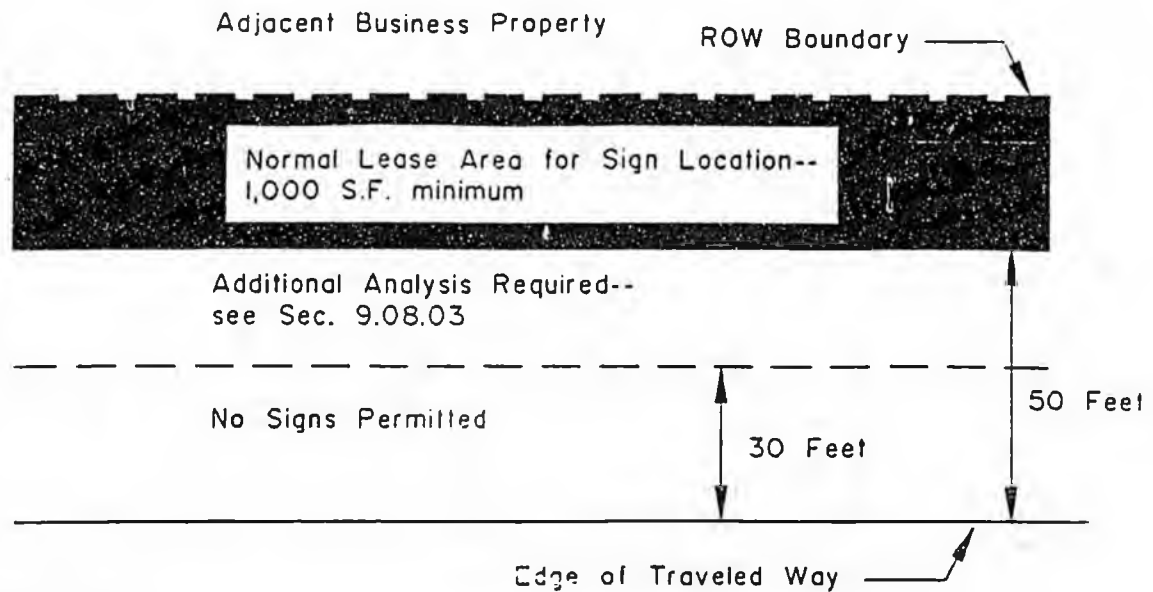
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Requests for an airspace lease must include a \$100 non-refundable application fee and the following information:

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3. Photographs of the edge of the roadway showing the slope, typically taken from a distance of one hundred feet in each direction toward the proposed sign location. The photos will be used to determine if additional slope limit information is required to define the clear zone.

Approval by Federal Highway Administration

These proposals must be approved by the Federal Highway Administration.

Economic Rent

The lease amount will be determined by the region using fair market value.

Public Notice of Proposed Lease

When approved for lease, public notice shall be given in a local newspaper for three consecutive weeks. The cost of notification shall be the responsibility of the applicant.

Lease Issuance Fee

A \$200 issuance fee shall be paid, along with the fair market value when the Airspace Lease is signed. The lease shall be for a five year renewable term unless other terms are noted in the Lease.

Timely Term Payments

Payments must be received by the issuing office within sixty (60) days of the due date. If not received within sixty days, the lease is automatically terminated. The sign and any other structures must be removed within fifteen days of the termination of the lease. If not removed within fifteen days, removal will be accomplished by State personnel and the owner will be billed for all removal costs.

A \$200 lease issuance fee will be charged to re-issue a lease after termination of any previous lease of the same right of way.

APPLICATION FOR AIRSPACE LEASE

Note: Please read the policy carefully to determine eligibility and the obligations and responsibilities associated with the leasing program. A non-refundable application fee of \$100 must accompany this application. If approved, applicant is responsible for public notice costs, a \$200 lease issuance fee and the annual fair market rental amount. The Airspace Lease is subject to local government sign criteria/ordinance. If more restrictive, local government ordinance shall take precedence.

****ALL INFORMATION MUST BE PROVIDED IN ORDER FOR APPLICATION TO BE PROCESSED!**

Name of Highway: _____ Milepost: _____
 Name of Business: _____ Business Phone: _____
 Name of Applicant: _____ Title: _____
 Business Address: _____ City: _____ Zip: _____
 Physical Address: _____ City: _____ Zip: _____
 Legal Description of Business' Physical Location (Attach Separate Sheet if Necessary): _____

Assessment Tax # of Business' Physical Location: _____

(1) Yes No Is Business Within City/Borough Limits?
 (2) Yes No Do you own the land where the business is physically located?

If answer to (2) is no, please provide Name and Address of the Land Owner _____

Proposed Use of Highway Right of Way: Parking Sign

Size of Proposed Lease Area (Minimum 1,000 s.f.): _____

Requested on-premise sign to be located approximately _____ feet from edge of pavement.

IMPORTANT: Please attach photographs in accordance with directions on Page 2 of this application and the Detailed Site Layout Drawing in accordance with directions on Page 3 of this application.

Applicant's Certification:

I certify that the above and foregoing statements are true and correct. I further certify that I will not discriminate or deny services of public accommodations based upon race, religion, color, age, sex, national origin or disability which is prohibited and that I have read and understood the Airspace Leasing policy and application.

Date

Applicant's Signature

Please mail or take your application to: Alaska Department of Transportation & Public Facilities Right of Way Section 4111 Aviation Avenue P.O. Box 196900 Anchorage, AK 99519-6900 Phone: 266-1621 or 800-770-5263	FOR RIGHT OF WAY OFFICE USE ONLY APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO ID NUMBER: _____
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U.S. Department
of Transportation
Federal Highway
Administration

Alaska Division

P.O. Box 21648
Juneau, Alaska 99802-1648

RECEIVED

OCT 15 1992

October 13, 1992

HRW-AK
510.1

Chief	
Chief, Alaska	
Chief, ROW	
Chief, Regional Central	
Chief, Contracts	
Chief, Public Facilities	
Mgr. Procurement Svcs.	
Mgr. Const. Mgt. Svcs.	
Regional Director	
Pl. Central	
Pl. Regional	

Boyd Brownfield, P.E.
Director, Design and Construction
Alaska DOT&PF, Central Region
Anchorage, Alaska

Dear Mr. Brownfield:

Right-of-Way Encroachment Control Effort
Current Status

We read with considerable interest, Mr. Beardsley's October 5, 1992 report on the progress being made on removing illegal outdoor advertising signs and encroaching signs within the highway right of way. Based upon the numbers presented, this problem is of a much greater magnitude than anyone anticipated. According to the report, 546 signs were identified during the initial inventory and another 270 political and real estate signs were discovered during the clean-up sweep in September.

The above categories indicate there were a total of 816 signs that needed to be removed in the Central Region. The sign owners were informed that these illegal signs must be removed. As a result of this notification 232 signs were voluntarily removed by their owners. Following this action right-of-way forces removed another 294 signs. This is a significant reduction in this long standing problem, Mr. Kauzlarich and his predecessor Ms. Cooley and their staff should be commended.

Despite the above actions nearly 300 illegal signs remain in the Central Region. In order to comply with federal statutes and regulations which require that the state effectively control outdoor advertising, these remaining signs will need to be removed and a continuing effort to preclude new signs from being erected should be instituted.

11/06/92
Post-It brand fax transmittal memo 7671 # of pages 1

To	Johanna	From	Rick
Co.	Sen. Menard	Co.	
Dept.		Phone #	2661538
Fax #		Fax #	

Sincerely yours,

Robert E. Ruby
Division Administrator

Gary E. Wilson
Right-of-Way Officer

RE 50

RIGHT	Central	Apprais	Engines	Airport	Pre-Aid	Regolia	Relecat	Other	File	By:
-------	---------	---------	---------	---------	---------	---------	---------	-------	------	-----

February 8, 1993

Margaret,

This is my best estimate of the costs involved with processing an Airspace Lease Application for placing a sign in the right of way.

The application must be reviewed by at least five sections in the Department. Approximately 50 to 100 applications are processed annually. Not all are granted.

The fee charged includes Fair Market Rental value (annual fee), plus \$100 application fee, plus \$200 issuance fee, plus newspaper advertising fee.

Estimate of Department Costs
Associated with Issuing an Airspace Lease:

Traffic	\$160
M&O	18
Utilities	10
Design	25
R/W	<u>525</u>
Total	\$738

Rick
x538

cc: Dan Beardsley, SR/WA, Chief R/W Agent, Central Region

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 310

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

October 23, 1992

SUBJECT: DOTPF - Airspace Leasing Program
(Work Order No. 8-LS0132)

TO: Senator Curt Menard
ATTN Johanna Munson

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your inquiry as to whether the Department of Transportation and Public Facilities (DOTPF) must implement its airspace leasing program for business signs by regulation.

DOTPF has recently implemented an airspace leasing program in order to comply with the requirements of the federal aid highway program. Airspace leases grant permission to a person to use airspace within the right-of-way of a highway. Use of federal aid highway rights-of-way for nonhighway purposes by a person, other than a railroad or public utility, are subject to the airspace management provisions of 23 C.F.R. 713.101 - 205. For purposes of the federal aid highway program, "airspace" is "that space located above, at, or below the highway's established gradeline lying within the approved right-of-way limits." 23 C.F.R. 713.203; emphasis added.

The authority of the DOTPF to implement an airspace leasing program arises implicitly under AS 19.05.010, 19.05.030(1), 19.05.040, and AS 44.42.020(a)^U and

^U Alaska Statutes 19.05.010 states:

The department is responsible for the planning, construction, maintenance, protection, and control of the state highway system.

Alaska Statutes 19.05.030(1) states:

The department has the following duties:

(1) direct approved highway planning and construction and maintenance, protection and control of highways;

(continued...)

explicitly under AS 19.25.200(a)^{2/}.

The procedures and standards for issuance of an airspace lease for a business sign are set out in a document entitled "Summary of Policy for Leasing Adjacent Right of Way for Extending Business Premises." DOTPF has not adopted regulations implementing the airspace leasing program.

Under AS 44.62 (Administrative Procedure Act), DOTPF must adopt regulations in accordance with the procedures set out in that chapter. A regulation is a "rule, regulation, order, or standard of general application" including "'manuals,' 'policies,' 'instructions,' 'guides to enforcement,' 'interpretive bulletins,' 'interpretations,' and the

^{1/}(...continued)

Alaska Statutes 19.05.040 states:

Sec. 19.05.040. POWERS OF DEPARTMENT. The department may

- (4) acquire rights-of-way for present or future use;
- (5) control access to highways;
- (6) regulate roadside development;
- (7) preserve and maintain the scenic beauty along state highways;
- . . . ; and
- (12) exercise any other power necessary to carry out the purpose of AS 19.05 - AS 19.25.

Alaska Statutes 44.42.020(a) states:

(a) The department shall

- (1) plan, design, construct and maintain all state modes of transportation and transportation facilities and all docks, floats, breakwaters, buildings and similar facilities;
- (6) cooperate and coordinate with and enter into agreements with federal, state and local government agencies and private organizations and persons in exercising its powers and duties;
- (7) manage, operate, and maintain state transportation facilities and all docks, floats, breakwaters and buildings, including all state highways, vessels, railroads, pipelines, airports, and aviation facilities;

^{2/} Alaska Statutes 19.25.200(a) states:

An encroachment may be constructed, placed, changed, or maintained across or along a highway, but only in accordance with regulations adopted by the department. An encroachment may not be constructed, placed, maintained, or changed until it is authorized by a written permit issued by the department, unless the department provides otherwise by regulation. The department may charge a fee for a permit issued under this section.

**DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

OFFICE OF THE COMMISSIONER

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November 25, 1992

The Honorable Curt Menard
Alaska State Legislature
165 E. Parks Hwy, Suite 106
Wasilla, Alaska 99654

Dear Senator Menard:

Thank you for your October 26 letter concerning the department's airspace leasing program.

Should your request be considered, it would foreclose any further consideration for leasing and require mandatory removal of all signs within state right-of-way. This would put the state into the awkward position of having to remove all illegal signs without alternatives. We do not believe it serves the interests of your constituents.

There are two issues at work regarding our airspace leasing program.

1. First and foremost, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and our state statutes require that the state remove illegal signs or face possible loss of federal funding. This is presently a mandate.
2. Second, in an effort to provide an alternative to arbitrary removal, the state has approached the Federal Highway Administration (FHWA) regarding the acceptance of a leasing program for those wishing to retain signs within our right-of-way. This is a new option and is not presently a state regulation.

As a matter of background, for the past year and a half our Central Region has been inventorying all state maintained roads in the southcentral area for unauthorized encroachments and off-premise signs. We have most recently gone to FHWA to convince them of the merits of a leasing option rather than automatic removal. This arrangement was obtained only after hard negotiation.

LETTERS OF SUPPORT

November 25, 1992

Since this time, and whenever possible, the new leasing program allows the business owner with a sign in our right-of-way to apply to lease right-of-way for the sign rather than immediate removal. The department fought hard for this alternative. It is our way of responding to the needs of business owners owning property next to the state's roads while still obeying state and federal statutes.

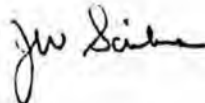
Meanwhile, as dictated by our Administrative Procedures Act, I have directed my staff to begin the process of adopting an airspace leasing program as state regulation.

The Alaska Constitution decrees that we receive fair market value for our leases. Once regulations have been adopted, the current fee structure will be adjusted to reflect true costs. Any credit from the difference will go towards future lease payments.

If you have any questions, Mr. Boyd Brownfield, Director of Design and Construction, (266-1500) or Mr. Dan Beardsley, Chief of Right-of-Way, (266-1621) can best assist you.

I appreciate the interest of your staff in our recent meetings with the Matanuska-Susitna Borough regarding the core highway system. In the weeks ahead, we will be working with the Mat-Su Borough to further define the core system. During those discussions, we will give your concerns careful consideration.

Sincerely,



for

Frank G. Turpin
Commissioner

cc: Katy McHugh, Legislative Liaison, Commissioner's Office
Lowell A. Humphrey, Regional Director, Central Region

	Date	Page	Current Status: (S) RLS	Action
1	03/13/91	527	(S)	READ THE FIRST TIME - REFERRAL(S)
2	03/13/91	527	(S)	TRANSPORTATION
3	04/23/91		(S)	TRA AT 1:30 PM BELTZ ROOM 211
4	04/23/91		(S)	MINUTE(TRA)
5	04/24/91	979	(S)	TRA RPT 3DP
6	04/24/91	979	(S)	ZERO FISCAL NOTE PUBLISHED (S.TRA/DOT)
7	04/24/91	979	(S)	REFERRED TO RULES
8	04/26/91		(S)	RLS AT 12:15 PM BUTROVICH ROOM 205
9	04/26/91		(S)	MINUTE(RLS)

BASIS

Committee Minutes

The next order of business was SB 197, relating to outdoor advertising along highways. SENATOR SHULTZ, sponsor of the measure, explained that there is a problem along some highways which relate to signs. He said the reason that there are problems is because state law is more stringent

than federal law. The bill asks that it be mandated that the state adopt less stringent federal standards on class II roads.

KEITH GERKIN, Deputy Commissioner, DOT/PF, said the department is in favor of the legislation. Regarding the fiscal impact, there would be no additional costs. He noted there would be a one time cost for adopting regulations. Mr. Gerkin referred to a federal law, called the Ladybird bill, which banned outdoor advertising within certain distances of right-of-ways and said that law applies to interstate and federal primary systems. The state law makes the same prohibitions on the intrastate, primary, and the

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT
BASIS					Committee Minutes						

secondary systems of roads which adds more miles of road. He explained that the bill would make the areas of enforcement the same as what the federal government requires. It would lessen the burden of policing the roads for advertising outside of the right-of-way. Mr. Gerkin explained that the federal law already has the ability, within urban areas, to have zoning to designate commercial areas in which those laws don't apply. On site advertising for business would be allowed.

SENATOR SHULTZ said it would never impact anything that is on right-of-way, the signage would be excluded. Mr. Gerkin said signage within the legal limits of a right-of-way is an encroachment and has to be permitted or done away with.

CHAIRMAN MENARD asked if the right-of-ways vary from the center line. Mr. Gerkin explained that is one of the problems with enforcement as people who live along the right-of-ways don't always know where it is. He said the legislation removes some routes from some of the systems

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HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT
BASIS					Committee Minutes						

that had to be enforced. It makes fewer inconsistencies to explain and will still exist on the rest of the system to which the federal law applies.

SENATOR JONES referred to private lands being controlled and questioned if state land would be controlled. SENATOR SHULTZ said advertising isn't allowed on state land, but correctional or historical signs can be put up. He said current law says if you advertise along secondary roads, it has to be on the site where the business is. The committee members continued to discuss the current law and the proposed legislation.

There being no further testimony on the bill, SENATOR SHULTZ moved and asked unanimous consent to pass SB 197, out of the Senate Transportation Committee with individual recommendations and a zero fiscal note. Hearing no objection, the motion carried.

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

SB 197

1 "An Act relating to outdoor advertising."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 19.25 is amended by adding a new section to read:

4 Sec. 19.25.091. OUTDOOR ADVERTISING. (a) Except as may be required for
5 participation in federal aid highway programs, outdoor advertising is
6 permitted outside of the

7 right-of-way of highways in the state.

8 (b) The department shall seek to obtain all exemptions from federal laws
9 relating to

10 outdoor advertising adjacent to federal aid highways that are available
11 under federal law.

12 (c) The department shall adopt regulations to implement AS 19.25.091 -
13 19.25.180.

14 * Sec. 2. AS 19.25.130 is amended to read:

15 Sec. 19.25.130. PENALTY FOR VIOLATION. A person who violates _AS
16 19.25.091 -

17 19.25.180_ [AS 19.25.080 - 19.25.180], or a regulation adopted under _AS
18 19.25.091 - 19.25.180_

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD	FISCAL	FIRST	LAST	QUIT
BASIS	Text for SB 197								Page	1 of	2

SB 197

12 19.25.180_ [AS 19.25.080 - 19.25.180], or a regulation adopted under _AS
13 19.25.091 - 19.25.180_

14 [THEM], is guilty of a misdemeanor and upon conviction is punishable by a
15 fine of not less than

16 \$50 nor more than \$1,000.

17 * Sec. 3. AS 19.25.160 is amended to read:

18 Sec. 19.25.160. DEFINITIONS. In _AS 19.25.091 - 19.25.180_ [AS 19.25.080
19 - 19.25.180]

20 (1) ["DEPARTMENT" MEANS THE DEPARTMENT OF TRANSPORTATION
21 AND PUBLIC FACILITIES;

22 (2)] "interstate system" means that portion of the National System of
23 Interstate

24 and Defense Highways located in this state, as officially designated, or
25 that_ [AS] may hereafter

26 be [SO] designated, by the commissioner [,] and approved by the secretary of
27 transportation [(]

28 or by the secretary of commerce before the effective date of the transfer of
29 functions under

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
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BASIS	Text for SB 197								Page	2 of	2

SB 197

8 or by the secretary of commerce before the effective date of the transfer of
9 functions under

10 Public Law 89-670 [80 STAT. 931]], under the provisions of Title 23, United
11 States Code,

12 "Highways";

13 (2) [(3)] "outdoor advertising" includes _an_ [ANY] outdoor sign,
14 display, or device

15 used to advertise, attract attention_,_ or inform and _that_ [WHICH] is
16 visible to a person on the

17 main-traveled way of a highway [OF THE INTERSTATE, PRIMARY, OR SECONDARY

14 SYSTEMS] in this state, whether by printing, writing, painting, picture,
light, drawing, or
15 whether by the use of figures or objects, or a combination of these, or any
other thing designed,
16 intended, or used to advertise, inform, or attract attention;
17 (3) [(4)] "primary system" or "secondary system" means that portion of
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18 main highways, as officially designated, or that [AS] may hereafter be
[SO] designated, by the

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HELP		EXIT	MENU		PRINT	BWD	FWD	FISCAL	FIRST	LAST	QUIT
BASIS	Text for SB 197								Page	2 of	2

SB 197

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22 * Sec. 4. AS 19.25.180 is amended to read:

23 Sec. 19.25.180. INTERPRETATION. AS 19.25.091 - 19.25.180 [AS 19.25.080

24 19.25.180] may not be construed to abrogate or affect a [ANY] law,
ordinance, regulation, or
25 resolution that is more restrictive than the provisions of AS 19.25.091 -
19.25.180

26 [AS 19.25.080 - 19.25.180].

27 * Sec. 5. AS 19.25.080, 19.25.090, 19.25.105(a), and 19.25.105(c) are
repealed.

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HELP		EXIT	MENU		PRINT	BWD	FWD	FISCAL	FIRST	LAST	QUIT

SENATE BILL NO. 197

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR SHULTZ

Introduced: 3/13/91
 Referred: Transportation

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to outdoor advertising."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 19.25 is amended by adding a new section to read:

4 Sec. 19.25.091. OUTDOOR ADVERTISING. (a) Except as may be required for
 5 participation in federal aid highway programs, outdoor advertising is permitted outside of the
 6 right-of-way of highways in the state.

7 (b) The department shall seek to obtain all exemptions from federal laws relating to
 8 outdoor advertising adjacent to federal aid highways that are available under federal law.

9 (c) The department shall adopt regulations to implement AS 19.25.091 - 19.25.180.

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11 Sec. 19.25.130. PENALTY FOR VIOLATION. A person who violates AS 19.25.091 -
 12 19.25.180 [AS 19.25.080 - 19.25.180], or a regulation adopted under AS 19.25.091 - 19.25.180
 13 [THEM], is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than
 14 \$50 nor more than \$1,000.

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3 (1) ["DEPARTMENT" MEANS THE DEPARTMENT OF TRANSPORTATION
4 AND PUBLIC FACILITIES;

5 (2) "interstate system" means that portion of the National System of Interstate
6 and Defense Highways located in this state, as officially designated, or that [AS] may hereafter
7 be [SO] designated, by the commissioner [,] and approved by the secretary of transportation [(
8 or by the secretary of commerce before the effective date of the transfer of functions under
9 Public Law 89-670 [80 STAT. 931]), under the provisions of Title 23, United States Code,
10 "Highways";

11 (2) [(3)] "outdoor advertising" includes an [ANY] outdoor sign, display, or device
12 used to advertise, attract attention, or inform and that [WHICH] is visible to a person on the
13 main-traveled way of a highway [OF THE INTERSTATE, PRIMARY, OR SECONDARY
14 SYSTEMS] in this state, whether by printing, writing, painting, picture, light, drawing, or
15 whether by the use of figures or objects, or a combination of these, or any other thing designed,
16 intended, or used to advertise, inform, or attract attention;

17 (3) [(4)] "primary system" or "secondary system" means that portion of connected
18 main highways, as officially designated, or that [AS] may hereafter be [SO] designated, by the
19 commissioner [,] and approved by the secretary of transportation, [(
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26 [AS 19.25.080 - 19.25.180].

27 * Sec. 5. AS 19.25.080, 19.25.090, 19.25.105(a), and 19.25.105(c) are repealed.



March 8, 1993

Representative Harley Olberg
Representative Curt Menard
State Capitol
Juneau, Alaska 99801-1182

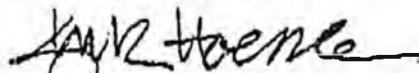
Dear Representatives Olberg and Menard,

Alaska Wildland Adventures provides small-group natural history tours from the Kenai Peninsula to Denali National Park. We are part of a growing trend in travel, sometimes more recently referred to as "ecotourism". Last summer we had over 70 individual trip departures and we serviced over 900 participants in our seven to twelve day trips. During our "soft adventure" trips, we often travel between parks, forests, and refuges using the highway system. We have several serious concerns with House Bill No. 26, an act relating to the control of outdoor advertising.

It appears that this bill would allow large scale billboard advertising throughout the state's highways. We are against this because 1) billboards would provide incongruent obtrusions to the state's beautiful roadside scenery; 2) large businesses would dominate the highways with their messages; and 3) large companies and their catchy slogans are not what we want our visitors to remember from their trip to Alaska.

We believe it is not necessary to clutter Alaska's highways with the same type of billboards that can be observed throughout the rest of the country, therefore, we urge you to oppose this bill.

Respectfully,



Kirk Hoesale
President



ALASKA CAMPGROUND OWNERS' ASSOCIATION

P.O. Box 84884 Fairbanks, Alaska 99708 • (907) 474-0286

Board Officers

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Linda Colrud
McKinley Campground
Healy

Vice President
Doug Euers
Rita's Campground
Tok

Secretary-Treasurer
Linda Jernigan
Tok RV Village
Tok

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Mat-Su Region
Red Starr
Mountain View RV
Palmer

Copper River Region
Jeff Saxe
Eagle's Rest
Valdez

Southeast Region
Arnie Olsson
Port Chilkoot
Haines

Kenai Peninsula Region
Kathy Davidhizar
Edgewater RV Park
Soldotna

March 4, 1993

Representative Harley Olberg
c/o P.O. Box V
Juneau, AK 99801

Dear Representative Olberg:

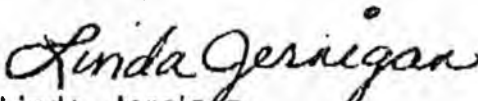
The Alaska Campground Owners Assoc. (ACOA) wants to extend our gratitude and support for SSHB 26 introduced by Rep. Curt Menard.

ACOA was established three years ago in an effort to create a more healthy environment for our growing private campground industry in the State of Alaska. Over the past three years, we have seen a number of new parks become established and join our organization. We originally were an organization of 13 campground members. Today, the ACOA has grown to include 56 campground owners state-wide, in addition to 43 associate members (supporting small businesses and organizations).

Our Association is one that is seriously impacted economically as a result of the State's restrictive statutes for outdoor advertising along our road system.

ACOA supports the relief that HB26 will give to our members in regards to outdoor advertising. As tourism facilities, we must be able to post signs for directional purposes in the same manner as the State Division of Parks. As you know, all State campgrounds are allowed highway roadsigns.

Sincerely,


Linda Jernigan
Secretary/Treasurer

THE NEXT ORDER OF BUSINESS WAS SB 197, RELATING TO OUTDOOR ADVERTISING ALONG HIGHWAYS. SENATOR SHULTZ, SPONSOR OF THE MEASURE, EXPLAINED THAT THERE IS A PROBLEM ALONG SOME HIGHWAYS WHICH RELATE TO SIGNS. HE SAID THE REASON THAT THERE ARE PROBLEMS IS BECAUSE STATE LAW IS MORE STRINGENT

THAN FEDERAL LAW. THE BILL ASKS THAT IT BE MANDATED THAT THE STATE ADOPT LESS STRINGENT FEDERAL STANDARDS ON CLASS II ROADS.

KEITH GERKIN, DEPUTY COMMISSIONER, DOT/PF, SAID THE DEPARTMENT IS IN FAVOR OF THE LEGISLATION. REGARDING THE FISCAL IMPACT, THERE WOULD BE NO ADDITIONAL COSTS. HE NOTED THERE WOULD BE A ONE TIME COST FOR ADOPTING REGULATIONS. MR. GERKIN REFERRED TO A FEDERAL LAW, CALLED THE LADYBIRD BILL, WHICH BANNED OUTDOOR ADVERTISING WITHIN CERTAIN DISTANCES OF RIGHT-OF-WAYS AND SAID THAT LAW APPLIES TO INTERSTATE AND FEDERAL PRIMARY SYSTEMS. THE STATE LAW MAKES THE SAME PROHIBITIONS ON THE INTRASTATE, PRIMARY, AND THE SECONDARY SYSTEMS OF ROADS WHICH ADDS MORE MILES OF ROAD. HE EXPLAINED THAT THE BILL WOULD MAKE THE AREAS OF ENFORCEMENT THE SAME AS WHAT THE FEDERAL GOVERNMENT REQUIRES. IT WOULD LESSEN THE BURDEN OF POLICING THE ROADS FOR ADVERTISING OUTSIDE OF THE RIGHT-OF-WAY. MR. GERKIN EXPLAINED THAT THE FEDERAL LAW ALREADY HAS THE ABILITY, WITHIN URBAN AREAS, TO HAVE ZONING TO DESIGNATE COMMERCIAL AREAS IN WHICH THOSE LAWS DON'T APPLY. ON SITE ADVERTISING FOR BUSINESS WOULD BE ALLOWED.

SENATOR SHULTZ SAID IT WOULD NEVER IMPACT ANYTHING THAT IS ON RIGHT-OF-WAY, THE SIGNAGE WOULD BE EXCLUDED. MR. GERKIN SAID SIGNAGE WITHIN THE LEGAL LIMITS OF A RIGHT-OF-WAY IS AN ENCROACHMENT AND HAS TO BE PERMITTED OR DONE AWAY WITH.

CHAIRMAN MENARD ASKED IF THE RIGHT-OF-WAYS VARY FROM THE CENTER LINE. MR. GERKIN EXPLAINED THAT IS ONE OF THE PROBLEMS WITH ENFORCEMENT AS PEOPLE WHO LIVE ALONG THE RIGHT-OF-WAYS DON'T ALWAYS KNOW WHERE IT IS. HE SAID THE LEGISLATION REMOVES SOME ROUTES FROM SOME OF THE SYSTEMS THAT HAD TO BE ENFORCED. IT MAKES FEWER INCONSISTENCIES TO EXPLAIN AND WILL STILL EXIST ON THE REST OF THE SYSTEM TO WHICH THE FEDERAL LAW APPLIES.

SENATOR JONES REFERRED TO PRIVATE LANDS BEING CONTROLLED AND QUESTIONED IF STATE LAND WOULD BE CONTROLLED. SENATOR SHULTZ SAID ADVERTISING ISN'T ALLOWED ON STATE LAND, BUT CORRECTIONAL OR HISTORICAL SIGNS CAN BE PUT UP. HE SAID CURRENT LAW SAYS IF YOU ADVERTISE ALONG SECONDARY ROADS, IT HAS TO BE ON THE SITE WHERE THE BUSINESS IS. THE COMMITTEE MEMBERS CONTINUED TO DISCUSS THE CURRENT LAW AND THE PROPOSED LEGISLATION.

THERE BEING NO FURTHER TESTIMONY ON THE BILL, SENATOR SHULTZ MOVED AND ASKED UNANIMOUS CONSENT TO PASS SB 197, OUT OF THE SENATE TRANSPORTATION COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS AND A ZERO FISCAL NOTE. HEARING NO OBJECTION, THE MOTION CARRIED.

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you to see this

TESTIMONY on
SB 197

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OSHA dodges jail complaint

By KERRY DOWNING

Frontiersman reporter

A corrections officer at the Mat-Su Pre-Trial Facility in Palmer has filed a complaint with the Occupational Safety and Health Administration because two officer positions have been cut from the facility. He says the facility can't stand to lose any officers because of its dangerously large inmate population.

But OSHA inspectors say office staffing just isn't under their jurisdiction.

The Departments of Corrections this summer was forced to absorb a \$7.5 million cut in its proposed budget. As a result, said John Gallant, the officer who filed the OSHA complaint, overcrowding has become a problem at most of the correction-

See OSHA, Back Page

Speedway owners protect their sign

By JONATHAN McNEILLY

Frontiersman reporter

Nancy and Wes Wallace, owners of Willow's Capital Speedway for the last 15 years, twice fought off workers from the state Department of Transportation and Public Facilities Monday to save their road sign from the clutches of right-of-way agents clearing "illegal" signs from the Parks Highway.

The standoffs came at 9 a.m. and again at noon when state DOT officials and Acme Fence Co. workers came to remove the Wallaces' electric sign, which sits in the state's right of way 100 feet from the highway's center line.

"They came up by themselves the first time at about a quarter to nine in the morning," said Nancy Wallace. "They finally left after my husband verbally told me to go get the gun. Now the gun was never picked up, but he said it loud enough for them to hear, and they left and

nothing was done.

"The second time (at about noon) they came back; they had (Trooper Dan Sides) with them and we went out again to stop them. They didn't take it, because we wouldn't allow it," she said. "The trooper was there and he backed them off for one day." After the confrontation, the Wallaces decided to move the sign back off the right of way until the issue could be straightened out, Wes Wallace said.

The Wallaces are among hundreds of small business owners caught in the DOT's attempt to clear signs along the highways — or to get business owners to pay for the signs under a state leasing program.

But the leasing idea has been challenged by Curt Menard, who will be going to Juneau as the representative for District 28, which includes the Wallaces.

"Our interpretation and what

See SIGNS, Page 11



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MTA should have told members of

By SANDRA MEDEARIS

Frontiersman reporter

Matanuska Telephone Association should have told its members that the interactive video system being installing in four Valley high schools will amount to nearly half a buck on each customer's monthly bill, the state's utility regulatory agency says.

"I'm concerned that the mem-

bership may not be fully informed on the donation they're making," said Mark Foster, a member of the Alaska Public Utilities Commission, at a hearing Friday. "If we fully allocate the substantial investment here and the potential for considerable maintenance costs, it's a material amount when I compare it to a (monthly) rate of \$8.95.

"This investment can be in the range of 40-50 cents, five percent of the monthly bill," he said.

"I will admit, perhaps the commission is correct," said Tom Minnich, MTA president, on Tuesday. "Hindsight tells me that visiting the borough and Rotary Clubs and other groups like that was not enough. I should have informed the gen-

eral membership be this....

"This won't show up monthly phone bills at Minnich. "What the sion meant was, if we c this, we could reduce 44 cents."

"The investment is made," said Commissan Knowles. "The fune issue here is if ratepays

Developer gets Hatcher lease off

By JONATHAN McNEILLY

Frontiersman reporter

The Department of Natural Resources has handed Hatcher Pass Development Co. a proposed lease with terms and conditions for developer Fred Rogers and his team to review in their bid to build a ski resort on the slopes of Government Peak.

According to Creek Taylor, manager of the Hatcher Pass



slopes of Hatcher Pass, met with aides to leg, Pat Carney and Curt f and with Frontiersma lisher Duncan Frazier.

When asked how lea tations were progr Rogers said, after comp dish of fondue at the Pass Lodge; that "every moving along fine, and taking everything one s

Questions **Signs:** State backs off, for now

Continued from Front Page

Nothing was wrong, I didn't see what was hap-

Friday, counselors Quest were at Finger Hanson and Sherrod Life Quest counselors, under contract with the or such emergencies, ed with drivers at the nd Wasilla bus barns.

Monday morning rds was back on her fa- is route with a substi- er. The children were o see Lords again, said Conley, manager at er's Palmer bus barn.

Conley said Lords was hold- own after Friday's . "She wanted to be the kids," Conley said. v bus drivers and em- at Mayflower were d at the news of Gra- death. A handful of peo- o of whom said they us drivers but didn't give their names, called ontiersman Friday to n the circumstances sur- ing Graham's death.

Questions were raised regard- unsanded road, the pro- r making decisions on precautions drivers take weather, and who is re- sible for drivers' actions.

Conley said the atmosphere bus barns was sad, and were speaking of Gra- Conley said there were speculations about what have been done to pre- nent accident. "Hindsight is lear," she said.

we got back ... from the (Legis- lature's Division of Legal Ser- vices) is that they don't have the regulations to enforce the leas- ing program," said Menard. "The response that I got back was that it is in the gray area and that they are checking it out, so it is kind of out in the ozone area and it just seems to me that they are trying to en- force something and they don't have the regulations to back it up."

According to Rick Kauzlarich, a DOT right-of-way agent for the Central Region, the state is going to begin the regulatory process, which includes public hearings, and then bring the lease proposal before the Legis- lature. In the meantime, he's called back, at least for the sea- son, the workers who were clearing the signs.

"We are kind of caught in a dilemma here," said Kauzlarich Monday. "On one side we are charged with enforcing the state statutes that say that there should be no unauthorized en- croachment in the right-of-way, and then on the other side we know there is a need for adjoin- ing business owners ... to use the right-of-way to advertise and put their signs up.

"So that was the whole pur- pose of setting up the leasing program — to allow the adja- cent property owner or business owner an area where he could extend his business out and still conform to the state statutes."

Under the proposal, business-

es wishing to put signs on the state's right-of-way would have to pay a minimum of \$300 plus the fair market value of the land to be leased.

Legislative Counsel George Utermohle, who researched the subject for Menard, concluded that DOT was getting ahead of itself.

"Because the policy has not been adopted as regulations, the policy is invalid and unen- forceable," wrote Utermohle in his legal opinion. "DOTPF can- not rely upon the policy as a ba- sis for issuing airspace leases until the department has com- plied with the regulation adop- tion procedures."

Under the state encroachment statutes, the state's right of way varies from 300 feet to 33 feet from the center line and only permitted encroachments are al- lowed within the right of way.

"The statutes say that there will be no illegal outdoor adver- tising or encroachments in the right of way," said Kauzlarich "Part of that is conforming with the state law and then there is a federal law that requires all ille- gal outdoor advertising be re- moved."

Valley businesses have been the most visible right-of-way transgressors along Alaskan roadways, said Kauzlarich, who noted that 340 of 546 encroach- ments in the Central Region are in the Mat-Su.

Under the state's encroach- ment statutes, Kauzlarich said, the signs still need to be re- moved in order for the business

to be in compliance with state and federal laws.

"We are trying to work with the property or business owners and also work within the con- fines of the law," he said. "We have really tried to do as much as we can and still make every- body happy, and of course it re- ally doesn't work that way."

"My concern is what is hap- pening to the people they are trying to enforce this upon- now," said Menard. "It has been a constant battle, and I hope to work in the Legislature to put in legislation to go ahead and make it legal."

The Wallace were told by Daniel Beardsley, chief right-of- way agent, that it would cost them \$2,000 for their sign to stay up, and Nancy says they will not pay the price.

"I am a small business person and I don't have the funds to hire a lawyer. They are using state lawyers and our state funds to work against us," she said.

Wallace said they removed two of their signs this summer, but left the last sign after Menard had said the state's leasing policy was unenforce- able.

"They told me that I had agreed to remove them, which we had verbally agreed to until we had talked to Curt Menard here a week ago," said Wallace, who was first notified in July of the state's intentions.

"Move it or we will move it, and bill you — that is basically what (the notification) said."

Oxygenated Fuels



Matanuska-Susitna Borough

BOROUGH MANAGER

November 12, 1992

Frank G. Turpin, Commissioner
State Department of Transportation
and Public Facilities
3132 Channel Drive
Juneau, Alaska 99801-7898

Dear Commissioner Turpin:

I would like to briefly address with you the issue of highway signs/Airspace Leasing Program on behalf of several residents, businesses, and organizations of the Matanuska-Susitna Borough. I have attached two items of correspondence that relate to this issue. First, is an opinion from the State Division of Legal Services concerning airspace leasing regulations. The second is a letter from the Willow Area Community Organization, Inc. This organization is not a part of the borough government, however, they do have an agreement with the borough and represent the residents of the Willow area on many official matters.

As you can see from this correspondence, we have a continuing and growing concern with the way in which the roadside sign issue is to be resolved. The regulations work a special hardship on our small businesses, which are in reality our only businesses in this borough. Is whatever the public gains from these regulations really going to be proportionate to the effort it is going to take and the loss suffered by the people and businesses in these rural areas?

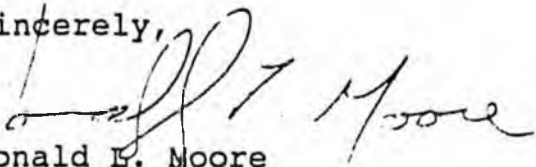
You have a reputation for your ability to combine common sense with the technical requirements of your department's programs. Could you please look into this issue on behalf of the residents of the Mat-Su Borough and assure us whether or not the present course of action is the correct one? Thank you for your attention to this,

Ltr\111292-2

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we would be happy to schedule a meeting with yourself or the appropriate DOT officials to constructively work out an understanding on this problem.

Sincerely,


Donald E. Moore
Borough Manager

er

Enclosures (2)

cc: Dorothy Jones, Assemblymember
Bill Lorentzen, WACO



FRELON F. STANBERRY
MAYOR

October 28, 1992

Frank G. Turpin, Commissioner
State of Alaska
Department of Transportation and Public Facilities
3132 Channel Dr.
P.O. Box Z
Juneau, Alaska 99811

RE: Sign leasing program

Dear Mr. Turpin,

It has come to the attention of the Houston City Council that the Department of Transportation is ordering all business signs to be removed along the Parks Highway, in the Houston Area in the name of better services to business locations. While the Council understands the problems with all types of signs along the highway and agree that some need to be removed, we also must request that consideration be given to the following items.

1. The cost to a small business for a lease is outrageous and to comply with your leasing program it would cost each business, church, etc., in excess of Five Hundred Dollars. This is not counting the lease that is described in your Summary of Policy, it is very obvious that you would prefer not to lease. This program leans toward big business and will certainly close some small businesses.

ESTIMATED COST

- a) \$ 100.00 filing fee
- b) \$ 200.00 for lease agreement
- c) \$ 200.00 to \$ 500.00 for survey on location site.
- d) \$ 500.00 to \$ 1,000.00 Fair Market value for minimum lease of 1000 square feet for five years.

2. It is impossible without some type of road sign to see the exact location of most businesses in the Houston area, until a person in a vehicle is directly in front of the business. Most businesses in the Houston area are located back from the highway and in our business district we have an access road between the State Right-of-Way and the business. The removal of these signs, in the Houston area, will lead to less business in our already devastated economy.

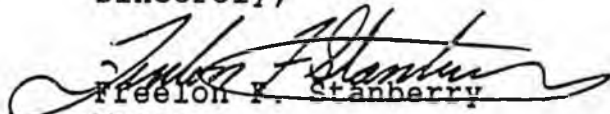
October 28, 1992
Mr. Frank Turpin, DOT
Page 2

3. The state has never kept the grass cut, trees or brush removed and has never cleared the area of garbage, this has always been the responsibility of the Businesses along the Parks Highway. In fact, most businesses in Houston that use these areas, keep them in a more eye appealing and acceptable condition than those maintained by the State. Once all the signs are removed will the State then take the responsibility of keeping these areas mowed, brushed, trees cut back and garbage picked up, or will they as they have been in the past continue to depend on the business to take care of it for them?

While we appreciate the States concern in removing untidy signs along State Highways, we feel the cost and requirements of an air space lease is not reasonable. We feel if the State is going to force business to remove these signs that it would be only fair that the State install regular highway signs identifying the businesses in both directions along the Parks Highway and take the responsibility of keeping all State Right-of-Ways clear and clean.

I would like to thank you in advance for your consideration of small business owners and the impact that the removal of their signs will have on the economy of Houston.

Sincerely,


Freelon F. Stanberry
Mayor

cc: G. E. "Rick" Kauzlarich, Right of Way Agent
Honorable Ted Stevens
Honorable Frank Murkowski
Senator Curt Menard
Senator Jalmar Kerttula
Representative Ron Larson
Representative Pat Carney
all Houston Business

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

Newmans Hilltop Service
Box 98
Willow, AL 36688
(205) 373-6479

November 1, 1992

Dear Governor Hickett:

First, let me take a moment to thank you for listening, and, hopefully, take action on an issue I feel very strongly about.

My husband and I are small business owners and the proprietors of Newman's Hilltop Service in Willow. We have owned the business since 1979, struggling through the hard years and, enjoying and appreciating the good. One thing that has remained constant throughout those 13 years has been our desire to make the business more appealing to not only our regular customers, but to potential customers traveling the Parks Highway as well. This being the case, our first priority was to get a sign made and put it up. This couldn't be just a plain old sign made out of plywood. The sign had to be attractive, visible to drivers, not an interference with highway visibility and still advertise our products. In 1980, a sign fitting all that criteria was erected.

Through the following years, we continued to improve the land scaping that was in front of our business adding lawn, flowers, a wishing well, and picnic tables for families to stop and take a break for lunch and rest. Many of these people do not even purchase anything from us, and this is more or less a public/tourist service. If the sign is not where it is, most people would be on top of the business or pass it before realizing they had just passed the first rest stop outside of Houston.

The sign has served our business well for 13 years with no problems at all. That is, we had no problem until approximately three weeks ago. It was at that time that we were told the sign had to go. Of course, we were not only very surprised but immediately concerned as well. We knew the value of the sign and its ability to draw customers. A few days later we received word from the state that since the sign was unobstructive to plows, sight lines and visibility, the sign could stay. Stay, that is, if we were willing to sign a "Right of Way Air Leasing program". Yes, sir, Air Leasing. We were told it would cost us