

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8195 HOUSE TRANSPORTATION

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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]

BILLING CODE 4910-22-M

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 6 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 6 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.

Diane H. Landis,

Committee Management Officer.

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

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

(f) No sign may be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(g) 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 supports, except Class 2 signs not more than 50 feet from, and advertising activities being conducted upon, the real property where the sign is located.

§ 750.109 Exclusions.

The standards in this part shall not apply to markers, signs and plaques in appreciation of sites of historical significance for the erection of which provisions are made in an agreement between a State and the Secretary of Transportation, as provided in the Act, unless such agreement expressly makes all or any part of the standards applicable.

§ 750.110 State regulations.

A State may elect to prohibit signs 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 16044, 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 area in each such State, or an urban place as designated by the Bureau of the Census having a population of fifty thousand or more and not within an 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 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 approach, 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

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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 ending 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 100 feet 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 notices 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 316; 23 CFR 1.33 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 programmed and authorized in accordance with normal program procedures for right-of-way projects.

[39 FR 27436, July 29, 1974; 39 FR 30340, 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 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.

(b) Lease (license, permit, agreement contract or easement). An agreement oral or in writing, by which possessor 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 1966.

(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 estimate 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 acquired, 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 provisions for:

- (1) Owner retention.
- (2) Salvage value.
- (3) State removal.

139 FR 27438, July 29, 1974; 42 FR 30835, June 17, 1977, as amended at 50 FR 34003, Aug. 23, 1985

§ 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 procedures 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 nonconforming 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 nonconforming 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 1986 inventory, and the State supports a determination that the sign was in existence prior to October 22, 1965, 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, 1976.

[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 46827, 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(c), 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 6, 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, herein-after 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 1 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 600 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 600 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, 1985, which are determined to be landmark signs.

(b) 23 U.S.C. 131(d) provides that signs in § 750.704(a) (4) and (5) 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.

140 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 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 owned or acted in good faith and expended substantial 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.

(1) 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.

(1) 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.

(2) 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 660 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, 1966.

(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.
 751.1 Purpose.
 751.3 Applicability.
 751.5 Policy.
 751.7 Definitions.
 751.9 Effective control.
 751.11 Nonconforming junkyards.
 751.13 Control measures.
 751.15 Just compensation.
 751.17 Federal participation.
 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 4601-4655, 23 CFR 1.32, 40 CFR 1.46, unless otherwise noted.

Source: 40 FR 8551, Feb. 28, 1976, 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 12280, 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.

§ 751.5 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.

[40 FR 8551, Feb. 28, 1976, 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(f).

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

(4) Expediently 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 hazard 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, rule and procedures sufficient to provide effective control, to discover illegal established or maintained junkyards shortly after such occurrence, and to cause the compliance or removal of same promptly in accordance with State legal procedures.

Article 2. Outdoor Advertising.

Section	Section
105. Limitations of outdoor advertising signs, displays and devices	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.

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.

highways

(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

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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)

Effect of amendments. — The 1986 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)

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Article 3. Encroachments In Highways.

Section
 200. Encroachment permits
 210. Relocation or removal of encroachment
 220. Unauthorized encroachments

Section
 230. Notice of removal
 240. Summary removal
 250. Removal after noncompliance; removal expense

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

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

(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, tramway, cableway, conveyer, 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.

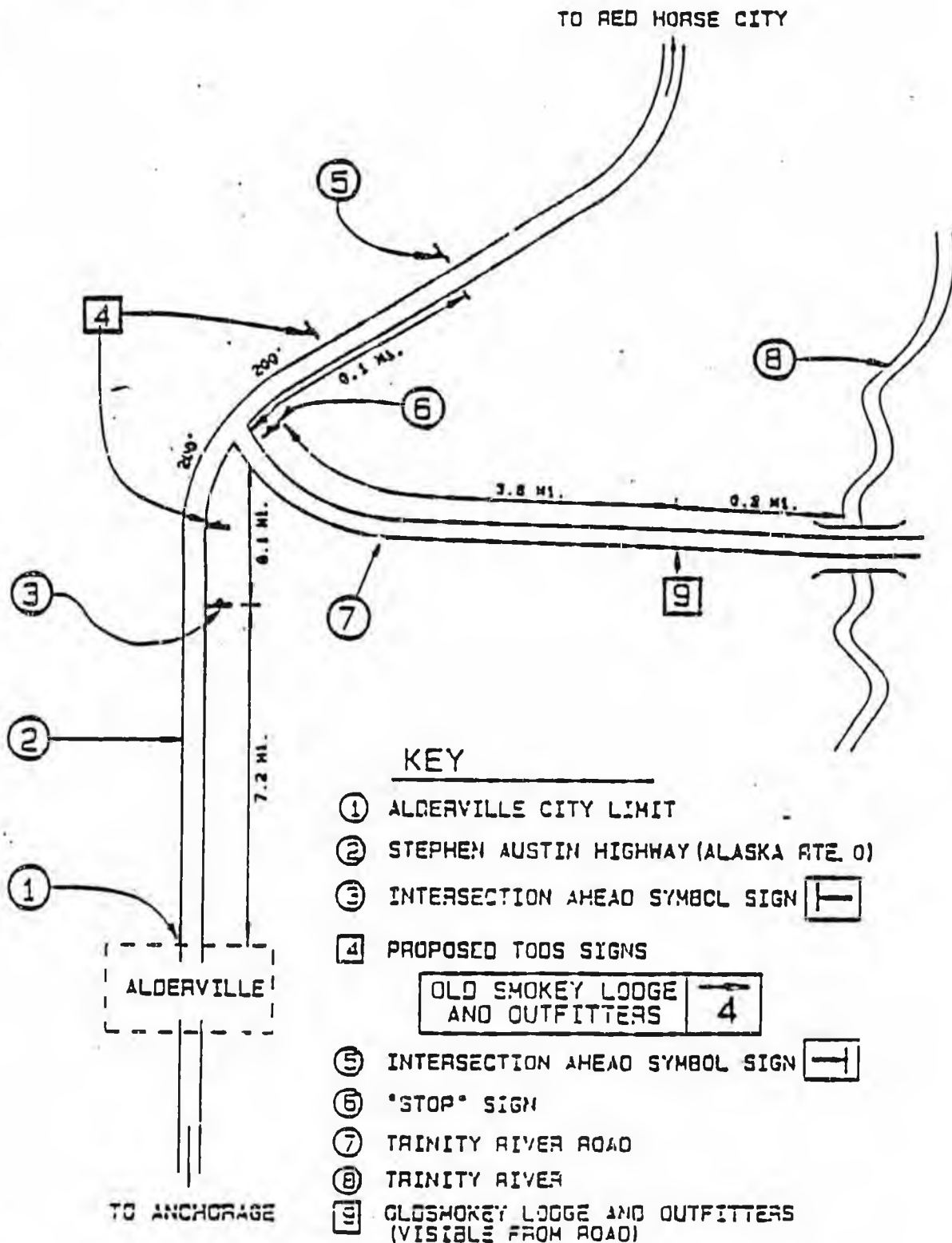
Permit Fee. There is a \$100 permit fee that is payable upon approval of your application. You will be notified when your application is approved, and the fee will be requested at that time.

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 documentation for consideration. The applicant should present the additional documentation in writing to the Director of Engineering and Operations Standards, Box Z, Anchorage, 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

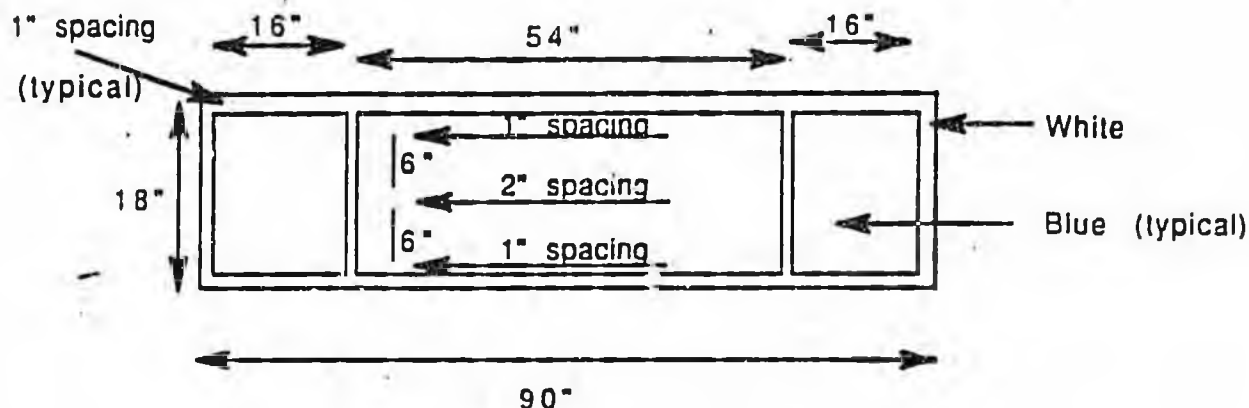
Design. Tourist Oriented Directional Signs shall be rectangular in shape and shall have a white legend and border on a blue background. Each sign shall incorporate the appropriate icon to indicate a general class of business, service, or activity. Available icons are depicted on the last page of this 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 of 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



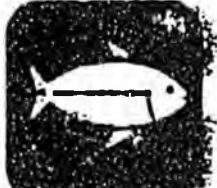
Beach Access



Dog Mushing



Fish Hatchery



Fish Viewing



Fishing



Interpretive



Recreational
Gold Panning/Mine



Green House



Historic Church



Historic Site



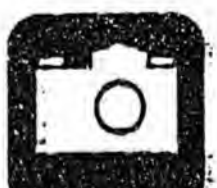
Museum



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.

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
		DATE	MAY 18 1984
		APPROVED BY	<i>[Signature]</i>
DIVISION Departmental	SECTION Commissioner's Office	RIGHT OF WAY	CHAPTER TITLE Policies

Purpose:

In the interest of safety, convenience and pleasure for highway users, all encroachments or 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

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.

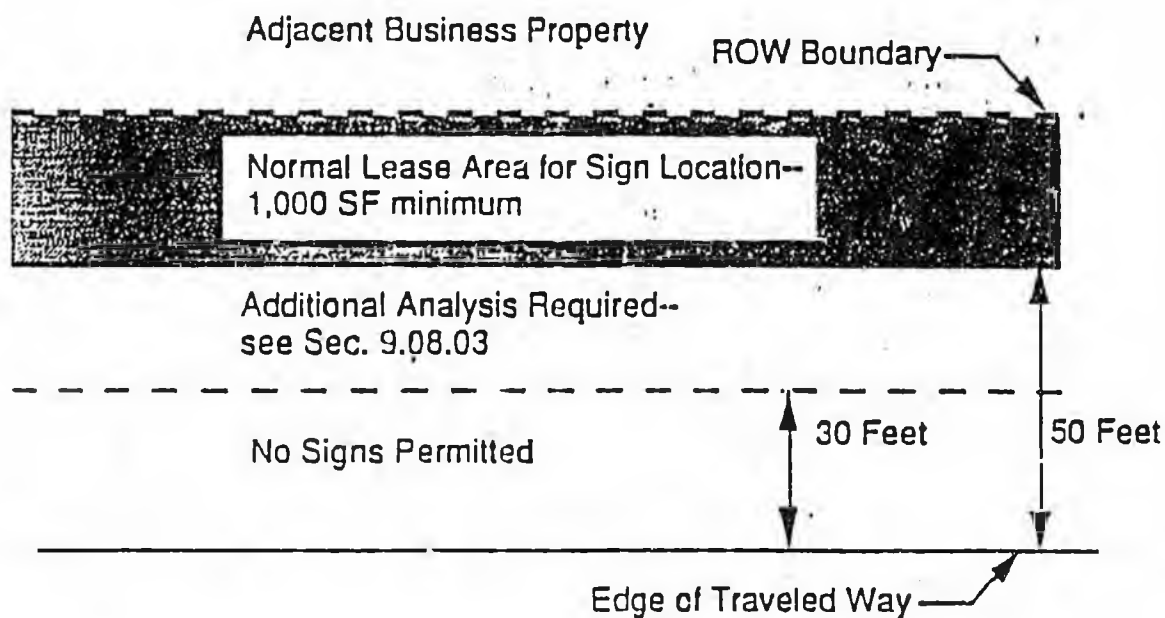
In most cases a structure, improvement or sign may be placed a distance of fifty feet or more from the traveled way. In the few cases of properties located on curved areas of the road or with steep slopes, it is necessary to determine the clear zone.

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.

- 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 J. 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.

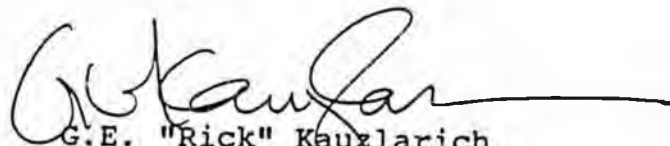
Patricia and Walter Newman

-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).

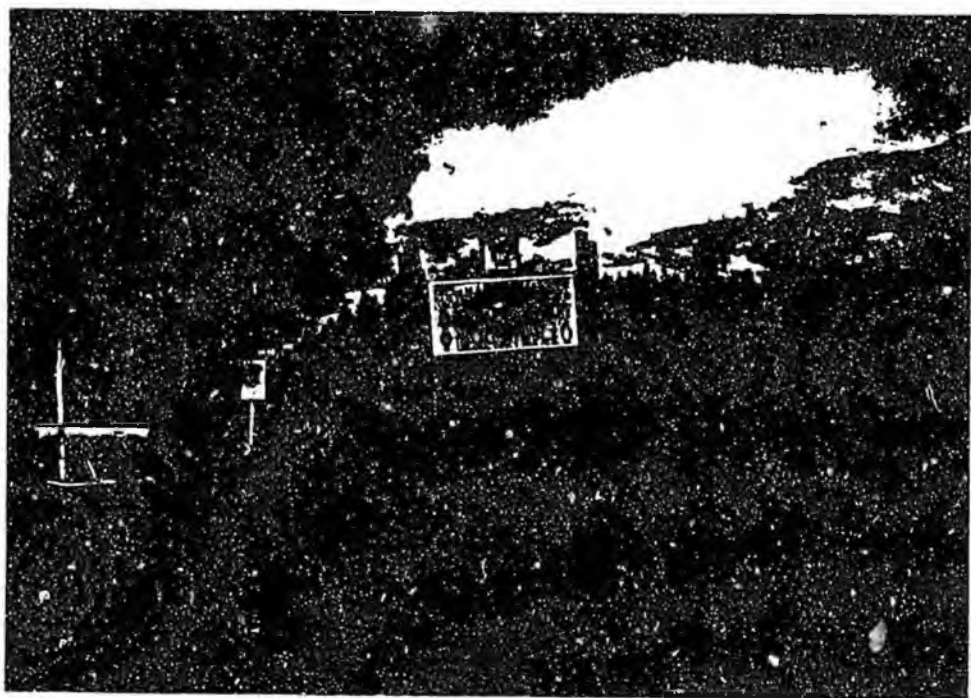
Sincerely,



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

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.

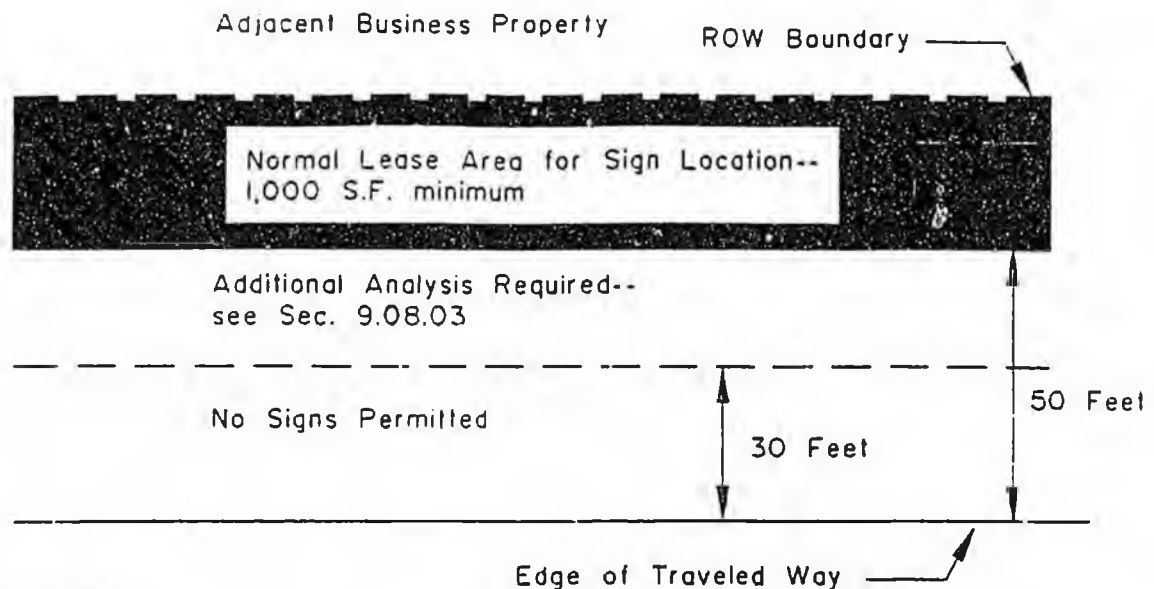
In most cases a structure, improvement or sign may be placed a distance of fifty feet or more from the traveled way. In the few cases of properties located on curved areas of the road or with steep slopes, it is necessary to determine the clear zone.

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

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

All 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. Attach 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: _____
---	--

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 3101

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)^{1/} and

^{1/} 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.

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.

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.

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898
PHONE: (907) 465-3900
TEXT TELEPHONE: (907) 465-3652
FAX NUMBER: (907) 5

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.

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.

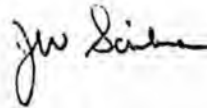
Meanwhile, as dictated by our Administrative Procedures Act, I have directed my staff to begin the process of adopting an airspace leasing program as state regulation.

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

PART 713—RIGHT-OF-WAY—THE PROPERTY MANAGEMENT FUNCTION

Subpart A—Property Management

Sec.

- 713.101 Purpose.
713.102 Applicability.
713.103 Policies and procedures.

Subpart B—Management of Airspace

- 713.201 Purpose.
713.202 Applicability.
713.203 Definition.
713.204 Policies.
713.205 Inventory.

Subpart C—Disposal of Rights-of-Way

- 713.301 Purpose.
713.302 Applicability.
713.303 Definitions.
713.304 General requirements.
713.305 Application for approval.
713.306 Excess right-of-way resulting from plan changes.
713.307 Credit to Federal funds.
713.308 Unrecovered remnants.

Authority: 23 U.S.C. 101(a), 142(g), 156, and 315; 42 U.S.C. 4833 and 4851; 23 CFR 1.32, 49 CFR 1.48(b) and parts 21 and 24.

Source: 39 FR 34651, Sept. 27, 1974, unless otherwise noted.

Subpart A—Property Management

§ 713.101 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for the management of real property acquired in connection with Federal-aid highway projects.

§ 713.102 Applicability.

The policies in § 713.103 are applicable to all State and political subdivisions thereof that manage real property acquired for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. States are encouraged to adopt these procedures for all projects in which Federal funds will participate in any part of the project.

(50 FR 34093, Aug. 23, 1985)

§ 713.103 Policies and procedures.

(a) The State highway department (SHD) shall establish property management policies and procedures that will assure control and administration of lands and improvements acquired for right-of-way purposes. These procedures shall establish:

(1) Property records showing:

- (i) An inventory of all improvements acquired as a part of the right-of-way;
- (ii) An accounting of the property management expenses and the rental payments received; and
- (iii) An accounting of the disposition of improvements and the recovery payments received.

(2) Methods for accomplishing the clearing of right-of-way when such clearance is performed separately from the contract for the physical construction of the project.

(3) The methods for managing the rodent control program.

(4) The methods for employing private firms or public agencies for the management of real property.

(5) The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

(b) [Reserved]

(c) Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

(d) The acquiring agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

(e) Clearing acquired improvements under a clearing contract is considered:

(1) A right-of-way item when the clearing is performed separately from the contract for physical construction. The applicability of the provisions of volume 6, chapter 4, of the Federal-Aid Highway Program Manual¹ shall

¹The Federal Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

Federal Highway Administration, DOT

be determined in accordance with the criteria set forth for the requirement of wage determinations in the FHWA Labor Compliance Manual.²

(2) A construction item within the provisions of volume 6, chapter 4, of the Federal-Aid Highway Program Manual¹ when the clearing is performed as a part of the physical construction contract.

(f) Rodent control procedure shall assure that the acquiring agency:

(1) Determines and covers the need for extermination services through periodic field inspections.

(2) Coordinates with other interested agencies, such as State, county, and city health departments, and

(3) Completes required extermination measures prior to demolition or removal of improvements.

(g) Acquired rights-of-way shall be maintained in a manner which will prevent or correct problems such as illegal dumping or disposal of rubble, debris, and garbage on cleared Federal-aid highway right-of-way until needed for construction.

(h) Where the acquired right-of-way includes areas for future construction, in addition to that required for immediate construction, the SHD may permit or lease the temporary use of this area until it is needed for highway purposes. The SHD may allow this temporary use when:

(1) The FHWA has approved temporary right-of-way limits within the overall right-of-way;

(2) The integrity and safety of the highway facility constructed elsewhere on the right-of-way are assured; and

(3) There is no decrease in the extent of access control to the highway facility constructed elsewhere on the right-of-way.

[29 FR 34661, Sept. 27, 1974, as amended at 50 FR 34093, Aug. 23, 1985]

²The FHWA Labor Compliance Manual may be examined at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

Subpart B—Management of Airspace

§ 713.201 Purpose.

To prescribe Federal Highway Administration (FHWA) policies relating to the management of airspace on Federal-aid highway systems for non-highway purposes.

§ 713.202 Applicability.

(a) The provisions of this subpart apply to the use of airspace on the Federal-aid highway systems, except as provided in paragraph (b) of this section.

(b) This subpart does not apply to railroads and public utilities which cross or otherwise occupy Federal-aid highway rights-of-way, nor to relocations of railroads or utilities for which reimbursement is claimed under subparts D and E of part 140 of this chapter; joint development and multiple use of highway rights-of-way as covered in volume 7, chapter 7, section 8 of the Federal-Aid Highway Program Manual;² and bikeways and pedestrian walkways as covered by part 652 of this

§ 713.203 Definition.

Air space, as used in this subpart, is that space located above, at, or below the highway's established grade line, lying within the approved right-of-way limits.

(a) Where a State highway department (SHD) has acquired sufficient legal right, title, and interest in the right-of-way of a highway on a Federal-aid system to permit the use of certain airspace for nonhighway purposes, and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, the right to temporary or permanent occupancy or use of such airspace may be granted by the SHD subject to prior FHWA approval.

²The Federal Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

(b) The airspace required to accommodate foreseeable future expansion of the highway facility may not be used for nonhighway purposes except under the provisions of subpart A of this part, relating to property management.

(c) In any case where sufficient lands exist within the publicly acquired rights-of-way of any Federal aid highway system to accommodate needed rail or nonhighway public mass transit facilities and where this can be accomplished without impeding automotive safety or future highway improvements, the FHWA may authorize a SHD to make such lands and rights-of-way available without charge to a publicly owned mass transit authority for such purposes whenever it may deem that the public interest will be served thereby.

(d) If found to be consistent with highway designs, any portion of right-of-way may be used for green strips, ball parks, play areas, parking, or other highway related public use, or for any other public or quasi public use which would assist in integrating the highway into the local environment and enhancing other publicly supported programs. Normally, the SHD should retain supervision and jurisdiction over such lands but could enter into agreements with local political subdivisions relative thereto.

(e) An individual, company, organization, or public agency desiring to use airspace as defined herein shall submit an application therefor to the SHD in a manner and form deemed appropriate by the SHD. Applications, including a proposed airspace agreement, shall be forwarded to the FHWA together with SHD recommendations or approval and any necessary supplemental information. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart where such are appropriate to the intended use.

(f) All nonhighway use of airspace shall be covered by a properly executed airspace agreement. The agreement shall contain the following:

(1) The party responsible for developing and operating the airspace.

(2) A general statement of the proposed use.

(3) The general design for the use of the space, including any facilities to be constructed, and such maps, plans, or sketches as are necessary to set out pertinent features in relation to the highway facility.

(4) A detailed three-dimensional description of the space to be used, except when the surface area beneath an elevated highway structure or adjacent to a highway roadway is to be used for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, and other similar uses. In such cases, a metas and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits may be furnished in lieu of a three-dimensional description.

(5) Provision that any significant revision in the design or construction of a facility described in subsection 5f(3) above shall receive prior approval by the SHD subject to concurrence by the FHWA.

(6) Provision that any change in the authorized use of airspace shall receive prior approval by the SHD subject to concurrence by the FHWA.

(7) Provision that such airspace shall not be transferred, assigned, or conveyed to another party without prior SHD approval subject to concurrence by the FHWA.

(8) Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

(9) Provision for the agreement to be revoked if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of noncompliance has been given. Further, that in the event the agreement is revoked and the SHD deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the SHD at no cost to the FHWA. An exception to this provision is permitted when the improvements revert to the State upon termination of the agreement.

(10) When deemed necessary by the SHD or the FHWA, provision for adequate insurance by the responsible

party for the payment of any damages which may occur during or after construction of the airspace facilities to hold the State harmless. Exception to this requirement may be made where the proposal is for the use by a public or quasi-public agency, when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.

(11) Provision for the SHD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary.

(12) Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event the responsible party fails in its maintenance obligations, there will be provision for the SHD to enter the premises to perform such work.

(13) Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances* with respect to title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(g) Use of air space beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.

(h) The proposed use of airspace above the established gradeline of the highway shall not, at any point between two points established 15 feet beyond the two outer edges of the geometric section (highway prism) of the highway, extend below a horizontal plane which is at least 16 feet 4 inches

above the gradeline of the highway, or the minimum vertical clearance plus 4 inches as approved by the State, except as necessary for columns, foundations or other support structures. Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, when justified by the SHD, may be considered on an individual basis by the FHWA.

(i) Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

(j) The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the SHD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when the SHD determines and the FHWA concurs that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the SHD and the FHWA. No supports shall be located in the ramp gores, or in a position so as to interfere with the signs necessary for the proper use of the ramp.

(k) The use of airspace shall not result in either highway or nonhighway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.

(l) Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from nonhighway uses shall be provided. Airspace facilities shall not be approved for construction over or under the highways, unless the plans there

*Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the State Highway Department or at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

for contain adequate provisions, acceptable to the SHD and the FHWA, for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.

(m) Any airspace facility shall be fire resistant in accordance with the provisions of the local applicable building codes found to be acceptable by the SHD and the FHWA. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the SHD or the FHWA to be a hazard to highway or nonhighway users. Proposals involving the construction of improvements in airspace should be approved by the State authority responsible for fire protection standards. In cases where the SHD or the FHWA questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.

(n) No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely affect natural ventilation. The SHD shall determine such lengths for each particular case, subject to FHWA concurrence. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end, the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the SHD.

(o) The design, occupancy, and use of any structure over or under a highway facility shall be such that neither the use, safety, appearance, nor the enjoyment of the highway will be ad-

versely affected by fumes, vapors,

(p) On-premise signs, displays, or devices may be erected on structures occupying highway airspace, but shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by the SHD and the FHWA with respect to number, size, location, and design.

not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by the SHD and the FHWA.

(r) Where either the SHD or the FHWA is of the opinion that the proposed use of airspace requires changes in or additions to existing highway facilities for the proper operation and maintenance of highways, such facilities shall be provided without cost to Federal funds. There may be exception to this policy when the proposed use is for highway related or other public or quasi-public use which would assist in integrating the highway into the local environment and enhance other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund, nor is it intended to conflict with the provisions of volume 7, chapter 7, section 8, of the Federal-Aid Highway Program Manual,⁴ relating to joint development of highway corridors and multiple use of roadway properties.

(s) Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary.

(t) Permission shall not be granted for any use of airspace which does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.

⁴The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

(u) Approval for the use and occupancy of highway right-of-way for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:

(1) Parking design or arrangement to assure orderly and functional parking.

(2) Plantings or other screening measures to improve the esthetics and appearance of the area.

(3) Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.

(4) Access for fire protection and fire fighting equipment.

(v) Disposition of income received from the authorized use of airspace shall be the SHD's responsibility and credit to Federal funds is not required.

§ 713.205 Inventory.

The SHD shall maintain an inventory of all authorized uses of airspace. This inventory which shall be available for review by appropriate Federal and State agencies shall include but not be limited to the following items for each authorized use of airspace:

(a) Location by project, survey station, or other appropriate method.

(b) Identification of the authorized user of the airspace.

(c) A three-dimensional description or a meter and bounds description.

(d) As-built construction plans of the highway facility at the location where the use of airspace was authorized.

(e) Pertinent construction plans of the facility authorized to occupy the airspace.

(f) A copy of the executed airspace agreement.

Subpart C—Disposal of Rights-of-Way

§ 713.301 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for disposal of portions of highway rights-of-way no longer needed for highway purposes.

§ 713.302 Applicability.

(a) The provisions of this subpart apply to disposals of rights-of-way where Federal-aid highway funds have

participated in the design or physical construction costs of a project.

(b) The provisions of this subpart do not apply to the matters covered in part 620, subpart B of this chapter.

(1) Where a section of highway including the right of way is abandoned,

(2) Where only changes in access control are involved; and

(3) To relinquishments of highway facilities for continued use for highway purposes.

(c) The provisions of this section do not apply:

(1) Where whole sections of the Interstate System are withdrawn under the provisions of 23 U.S.C. 103(e)(2) and (4), or

(2) Where real property has been acquired for planned highway purposes, but because of environmental concerns, widespread public objections, or other similar considerations, the State highway department (SHD) or other appropriate State authority determines not to construct the planned highway facility.

138 FR 24661, Sept. 27, 1974, as amended at 40 FR 3767, Jan. 24, 1975; 41 FR 9321, Mar. 4, 1976

§ 713.303 Definitions.

For purposes of this subpart the following definitions apply:

(a) **Disposal.** The conveyance for uses other than for highways of unneeded portions of highway rights-of-way (in contrast to relinquishment, which is the conveyance of a portion of a highway right-of-way or facility by a State highway department (SHD) to another government agency for highway use).

(b) **Final acceptance.** (1) On Federal aid construction projects, the date of acceptance of the physical construction by FHWA; and

(2) On Federal-aid right-of-way projects, where there is no Federal-aid construction, the date the FHWA determines to be the date of completion of the acquisition of the right-of-way authorized by FHWA to be acquired for the project.

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 Department 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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the Mat-Su Visitors

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 decision meant was, if we did this, we could reduce 44 cents."

"The investment is made," said Commissioner Knowles. "The fun issue here is if ratepay-

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 Greek Taylor, manager of the Hatcher Pass



slopes of Hatcher Pass, met with aides to leg Pat Carney and Curt I and with Frontiersman publisher Duncan Frazier.

When asked how negotiations were progressing, Rogers said, after a dish of fondue at the Hatcher Pass Lodge, that "everything along fine, and taking everything one step at a time."

Questions

Signs: State backs off, for now

Continued from Front Page

Nothing was wrong, I don't see what was happening. On Friday, counselors Quest were at Finger Hanson and Sherrod Life Quest counselors, under contract with the state for such emergencies, and with drivers at the end Wasilia bus barns. Monday morning Quest was back on her family route with a substitute driver. The children were with the Lords again, said Conley, manager at her Palmer bus barn. Conley said Lords was held back on Friday's route. "She wanted to be with the kids," Conley said. Conley said bus drivers and employees at Mayflower were told at the news of Gra- leath. A handful of people of whom said they were bus drivers but didn't give their names, called Frontiersman Friday to discuss the circumstances surrounding Graham's death. Questions were raised regarding the unsanded road, the problem of making decisions on road conditions, precautions drivers take in bad weather, and who is responsible for drivers' actions. Conley said the atmosphere at the bus barns was sad, and she was speaking of Gra- Conley said there were speculations about what might have been done to prevent the accident. "Hindsight is 20/20," 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 leasing 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 enforce 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 season, 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 adjoining 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 ad- jacent 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 basis 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 allowed 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?

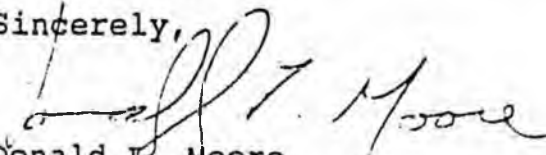
You have a reputation for your ability to combine common sense with the technical requirements of your department's programs. Could you please look into this issue on behalf of the residents of the Mat-Su Borough and assure us whether or not the present course of action is the correct one? Thank you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

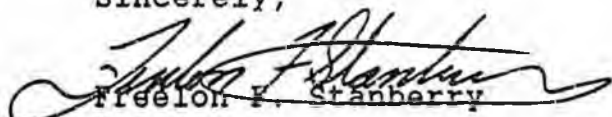
October 23, 1992
Mr. Frank Turpin, DOT
Page 2

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 Hi-Top Service
Box 98
Willow, Ar. 72688
(501) 475-0479

November 9, 1991

Dear Governor Hickenlooper:

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 Hi-Top 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 not stop at the business or pass it before realizing they had just passed the first rest stop outside of Houston.

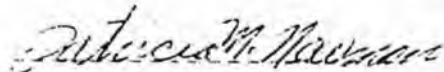
The sign has served our business well for 13 years with no problems at all. In fact, we had no problem until approximately two weeks ago. It was at that time that we were told the sign had to go. Of course, we were not only very surprised but immediately concerned as well. We saw the value of the sign and its ability to draw in traffic. A few days later we received word from the state that since the sign was unobstructive to plow, sight lines and visibility, the sign could stay. However, 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

\$100 to sign up and \$300 per year to lease the air
our sign takes up. Now, I don't know about yourself,
but that just seems to be incredibly ridiculous to
us.

A hundred questions come to mind when hearing the
offer. How did the state get the authority to lease
"air space" in the first place? How did they arrive
at the cost of this rental? Did they just pick an
arbitrary cost and apply it? These obviously are not
the best of times but even the \$300 is not what is at
issue. At issue is the legality of what is being done
and what the reason might be for putting the extra
burden on some small businesses, and for putting
others out of business all together (removing signs
from beside the road will surely have a negative and
most likely fatal result to those not visible from the
main highway.) Most of these targeted signs have
been there they now are for ten years or more and
have never been a problem as to safety or anything
else and should be considered using the "grandfather
rights" rule. I believe signs such as ours bothers no
one and assist everyone involved. The owner wins
because the sign draws business. The customer wins
because they can see the sign and make a decisive
decision to stop or not without having to jam on the
brakes to make the turn. Nobody would have any
problem removing signs that are some kind of hazard
but this simply is not the case here. The amount of
money the state can expect to make on this scam is so
low in the bureaucratic scope of things one has to
wonder what the reasoning was behind their fees for
renting "air space".

In closing, I wish to thank you, in advance, for your
time and, hopefully action, on a very unfair
situation being forced upon small business owners. I
eagerly await your reply.

Very sincerely,



Patricia M. Newman

Trsp

cc. Representative Curt Mauro
Senator Jay LeVitt

Willow Area Community Organization, Inc.

Box 1027
Willow, Alaska 99688
Sponsors of
State Winter Carnival

Nov. 3, 1992

G. E. "Rick" Kauzlarich, ROW Agent
Central Division, DOT/PF
P. O. Box 196900
Anchorage, AK. 99519-6900

Dear Mr. Kauzlarich:

This is to acknowledge receipt of your letter R/W ID #216.153 dated October 5, 1992 and directed to the City of Willow. We would like to discuss three points.

1. There is no City of Willow. The property occupied by the Community Center and the Community Center itself is owned by the Matanuska-Susitna Borough. A notice to "Owner" should properly be directed to the Borough.
2. "Community Center" is not a business. We believe that our sign is a directional sign within the meaning of AS 19.25.105(a)(1) and CFR Title 23, Subpart B.

Because of these two facts, we believe that notice was not properly given pursuant to AS 19.25.230 and DOT/PF Policy and Procedures #10-0020 effective April 1, 1984 and that removal of the signs is not authorized by law.

3. Your attachments to the letter noted that the right-of-way is 200' wide and that our signs are 60 & 64 feet from the center of the highway. Do you have any information as to the location of the highway within the ROW? If the highway is as little as 40 feet east of the center line of the ROW, our signs are not on the ROW.

Willow Area Community Organization, manager of the Community Center under agreement with the Borough is a non-profit organization. We have been unable to find anything in the information enclosed with your letter that deals with non-business, non-profit leases. On the assumption that the definition of "State Lands" found in AS 38.05.965(19) is valid, we would like to apply for a lease under the provisions of AS 38.05.810 if we are in fact occupying any part of the ROW. Please forward the necessary paperwork if a more formal application is needed.

We regret the lateness of this response, but our Board of Directors meets only monthly - on the first Monday of every month - and Nov. 2 was the first meeting following receipt of your letter. Our next meeting is December 7, 1992 and we would be pleased to have you join us. We meet in the Community Center at 7:00 PM.

Yours truly,

Bill Lorentzen, Chair



Willow Trading Post Lodge

Box 49

Willow, Alaska 99688

Phone: 1-907-495-6457

Dear Representative Menard,

You and your fellow legislators hold in your hands the fate of my business and many others similarly situated.

Enforcement by the DOT of Alaska sign law has removed all distinctive directional signs to the Willow Trading Post Lodge which is situated about 1/2 mile from the Parks Highway on a road which also has the Post Office and other businesses. Since the loss of my sign, my business has declined and I relate it directly to potential customer's inability to locate my business. I have installed a TODS sign according to DOT requirements but it is nearly totally ineffective because it is lost in the number of signs at the intersection. Also, the TODS sign can only carry one symbol and we offer six additional services.

The cure for this situation is not very difficult. All we need to do is amend Alaska law to conform with Federal law and regulations, then adopt reasonable State regulations that will preserve our scenic beauty without imposing a penalty on businesses without requiring frontage.

House Bill 26 pre-filed by Rep. Menard will accomplish that. I urge your support for the bill and encourage you to do anything you can to accomplish its early passage. Please write or call if I can give you any additional information.

I have sent this letter to each senator + Representative - This lack of a visible sign is killing us - where is help for business off the highway - This does not cost any money.

Sincerely Yours Helen Tucker



Matanuska-Susitna Borough

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BOROUGH MAYOR

August 27, 1991

Frank Turpin, Commissioner
Department of Transportation
P.O. Box Z
Juneau, AK. 99811

Dear Commissioner Turpin:

I very much appreciate your action in extending the deadline for sign removal on the Parks Highway between Willow and the Susitna River.

I also appreciate your willingness to look at some alternate solutions for the problem of complying with federal interstate highway signing regulations as applied to a rural highway in Alaska. I would like to offer some comments.

First, there are some exceptions to federal regulation of highway signage. Right of way acquired prior to July 1, 1956 appears to be exempt and I am sure that large portions of our system were acquired by withdrawal from the federal public domain prior to that date. Subpart G or Part 750 of the Code of Federal Regulations exempts Federal Aid Secondary and Urban Highways from regulation. It also provides for state or local regulation of areas within commercial or industrial parts of the system, provided that the cognizant governments enter into an agreement with the Federal Highway Administrator.

I would suggest that you seek to revise that agreement to accomplish some much needed improvement in our regulatory scheme.

It appears that there are three categories of sign that your department deals with that provide the most problems: 1. Signs from owners of businesses fronting on the highway, but where the right of way growth obscures the business; 2. Signs directing traffic to off-highway businesses; and 3. Temporary signs, primarily for political campaigns. I have some suggestions as to how these might be handled.

First, the owners of businesses obscured by right of way growth are told by your department to just clear out the brush in order to become visible. This is impractical because in many cases the right of way is 300 feet or more wide. I suggest that you could

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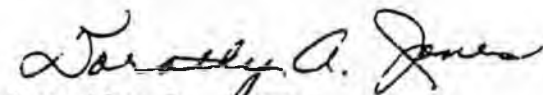
adopt regulations which would grant a blanket permit for such abutting owners to place signs at the edge of the maintained area but not closer than say 50' to the center line. Such signs would have to be removed by the owner in the event the highway were widened.

The off-highway businesses were addressed by the Motorist Information Signing Task Force in the final report dated May, 1989. Among their recommendations were adoption of the "LOGOS" program, need for an urban area sign program, development of information kiosks at appropriate waysides, and a need for "well-regulated advertising to the extent allowed by federal statutes and regulations" visible from the roadway but not located at the place of business. A re-negotiated agreement with the FHA could address many of these by redefining urban areas to include all developed areas along the highway system. Since the current agreement pre-dates extensive borough formation, it might be appropriate to delegate to those boroughs who wish the authority, the ability to regulate highway signs within their boundaries.

Temporary signs such as political advertising could be dealt with by a permit requirement. Permittees could be required to post a bond guaranteeing removal of the signs after the election. Unpermitted signs could be removed when seen and permitted signs could be removed after a specific number of days following the election with the costs of such removal deducted from the bond.

I am aware that this involves a substantial change in your departments approach to regulation of highway signage, including changes in regulations and law but I feel the benefits to be gained are well worth the effort. The Matanuska-Susitna Borough and I personally look forward to working with you on this continuing problem.

Sincerely,


Dorothy A. Jones
Borough Mayor

DAJ:gp

MAYOR/g.l.p./Turpin.letter

TED SMITH
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WILLOW, AK 99687
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October 25, 1992

Frank Turpin, Commissioner
Department of Transportation
P. O. Box Z
Juneau, AK. 99811

Dear Commissioner Turpin:

I find it difficult to tell you how disappointed I was in your Sept. 15 response to my letter of August 22 concerning roadside signage. Your response was essentially that you don't have a problem and that new legislation would make no difference because "federal law is equally strict with Alaska law". It is bad enough to get a brush-off, but it is outrageous when the brush-off letter is totally inaccurate.

I first became interested in your signage problem - which you say you don't have - as a member of your TODS Task Force in 1987. In response to one letter on the problem, Riley Snell, then Director of the Central Region, DOTP/F, wrote me on Oct. 15, 1987 saying that the Right-of-Way Branch was then preparing changes in the Alaska Statutes which would "reflect a number of your concerns" and would bring "State law into line with less restrictive federal requirements". I have no idea what happened to those proposed revisions, but they were not adopted. In the meantime, your "non-problem" has continued to grow. You are currently spending thousands of dollars to remove political signs each election. You have notified 167 individuals and businesses of your intent to confiscate their signs and have identified another 100 signs, all on the Parks Highway. I believe the owners of those signs might see a problem, even if you don't.

As to your claim that federal and state law are equally stringent, that is just ludicrous. State law - A.S. 19.25.105(a) - permits signs within 560 feet of the right-of-way of primary and interstate highways which advertise property for sale or lease or activities on the property on which they are located, and advertising on bus benches and shelters. All other advertising is prohibited, including that along secondary highways, urban highways, local service roads, borough roads, and any other road or area. Federal regulations have the same provision regarding signs advertising property for sale or lease and activities conducted on the premises, but they also permit advertising within areas zoned commercial or industrial, or unzoned areas deemed commercial or industrial, subject to size, spacing and lighting restrictions. Under federal law, these apply only to interstate and primary highways. No other roadside areas are regulated by federal law. It certainly appears to me that these laws are far from "equally strict" as you claim.

I had hoped that in light of your correspondence with Borough Mayor Dorothy Jones last fall that you might be predisposed to listen to some recommendations and to avoid confrontation. Since receiving your Sept. 15 letter I have contacted the Mat-Su legislative delegation regarding this "non-problem" and Sen Menard has agreed to have a bill drafted for early introduction next session. If necessary, I will seek an injunction against your department prohibiting your air-space lease scheme on the grounds that you ignored the Administrative Procedures Act. I would include an