



U.S. Department
of Transportation

Federal Highway
Administration

Action HPP / HRC
Mr. Rutledge
Memorandum

HRA-10

Subject: New FHWA Policy Regarding
Federal Land Transfers

Date: APR - 3 1995

From: Associate Administrator
for Program Development

Reply to
Attn. of HPD-1

To: Regional Administrators

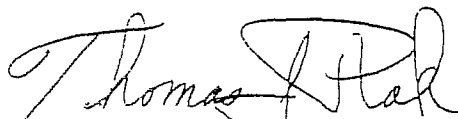
Attached is a proposed Federal Highway Administration (FHWA) policy which would change the way States' requests for Federal land transfers are handled. Specifically, the policy would limit the circumstances under which FHWA exercises its authority under Sections 107(d) and 317 of Title 23, United States Code. These laws provide for the appropriation and transfer of lands and interests in lands owned by the United States to a State highway department or its nominee when the transfer is reasonably necessary for highway purposes. FHWA's regulations governing Federal land transfers are found in 23 CFR Sections 712.501-503.

With the Interstate system now completed, few land transfers for highway purposes will be critical to the national interest. In addition, removing FHWA from the transfer process will reduce the layers of Federal involvement and is consonant with ISTEA in terms of taking FHWA out of the States' programs.

Currently, the States have a choice of acquiring Federally-owned land or materials directly from the landowning agency or through Section 317, wherein FHWA acts as an intermediary between the State and the Federal agency. We believe that all of the major Federal agencies that own or control land have their own statutory authority to transfer necessary right-of-way and materials to the States. For example, Section 1761 of Title 43, United States Code, authorizes the Secretaries of Agriculture and the Interior to grant rights-of-way over public and forest system lands for the purpose of highway and road construction. Under either authority--Title 43 or Title 23--the landowning agency both determines and monitors the conditions of the transfer. Therefore, under the current scheme, FHWA adds nothing but additional levels of bureaucracy. Under the proposed policy, the States would acquire right-of-way and materials in Federal ownership by dealing directly with the relevant landowning Federal agency.

The new policy would permit a transfer under Section 317 in unusual situations only after the State has first applied for an interest in the necessary land or materials directly with the landowning agency under the landowning agency's authority. If (1) the Division Administrator determines that acquisition of Federal land is delaying a project and a timely transfer cannot be accomplished under the landowning agency's authority, or (2) the Regional Counsel determines that the landowning agency lacks authority to transfer the land or materials, then FHWA would intervene using its authority in Section 317 to effectuate the transfer. In those circumstances, the existing Federal land transfer procedures would be followed, as described in 23 CFR Sections 712.501-503 and the Attorneys Manual for Public Land Transfer and Federal Condemnation.

The new policy is scheduled to take effect July 1, 1995, which allows time for your review and comment, notification of other Federal agencies, and publication in the Federal Register. Please share the proposed policy with counsel, right-of-way staff, and the State highway departments in your region and return any comments or concerns to this office by May 1st. The Office of Chief Counsel was consulted concerning this policy; once it has been implemented, appropriate statutory changes to Section 317 will be pursued.



Thomas J. Ptak

Attachment

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Policy Statement on Federal Land Transfers

AGENCY: Federal Highway Administration (FHWA)

ACTION: Notice

SUMMARY: This notice announces a new Federal Highway Administration (FHWA) policy on Federal Land Transfers. The policy sets forth the circumstances under which FHWA will exercise its authority under sections 107(d) and 317 of Title 23, United States Code, to appropriate and transfer land or materials in Federal ownership to the States for highway purposes. FHWA's regulations governing Federal Land Transfers are found in 23 CFR sections 712.501-503.

DATES: This policy will take effect on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Janis Gramatins (HRW-12), Office of Right-of-Way, (202) 366-2030, or Ms. Diane Mobley (HCC-31), Office of the Chief Counsel, (202) 366-1372; 400 7th Street, S.W., Washington, D.C. 20590.

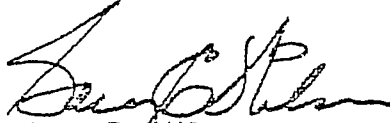
SUPPLEMENTARY INFORMATION: Title 23 U.S.C., sections 107(d) and 317 provide for the appropriation and transfer of lands or interests in lands owned by the United States to a State highway department or its nominee for highway purposes. FHWA has used this authority in the past to appropriate and transfer right-of-way and materials to the States. However, with the Interstate system now completed, few land transfers for highway purposes will be critical to the national interest. In addition, removing FHWA from the transfer process will reduce the layers of federal involvement and is consonant with the Intermodal Surface Transportation Efficiency Act in terms of taking FHWA out of the States' programs. The text of the policy follows.

FHWA POLICY ON FEDERAL LAND TRANSFERS

As of July 1, 1995, FHWA will exercise its authority under sections 317 and 107(d) of Title 23, United States Code, to appropriate and transfer land or materials in Federal ownership to the States for highway purposes only when (1) the FHWA Division Administrator for the applicant-State determines that acquisition of Federal land is delaying a highway project and a timely transfer cannot be accomplished under the authority of the Federal agency owning or controlling the land, or (2) the appropriate FHWA Regional Counsel determines that the agency owning or controlling the land lacks authority to transfer the land or materials needed. In this

situation the appropriation will follow the land transfer procedures described in 23 CFR 712.501-503. In all other all cases, States desiring to acquire right-of-way or materials for highway purposes should apply directly to the Federal agency owning or controlling the land for transfer under that agency's authority.

2. It will be the State's responsibility to insure the grant is entered on the BLM status sheets. Without this entry no reservation will be made in the conveyance to a selecting native corporation.



By: Gary E. Wilson
Division Right of Way Officer

Attachment

AA 851-IA2-40.
INTERAGENCY AGREEMENT

Bureau of Land Management
and
Federal Highway Administration

I. Purpose. This Interagency Agreement provides procedures by which the Secretary of Transportation acting through the Federal Highway Administration (FHWA) may appropriate public lands for highway rights-of-way and sources of materials for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.S.C. The lands appropriated are for use by the States for highways and/or highway material purposes. The appropriation is subject to conditions the Secretary of the Interior acting through the Bureau of Land Management (BLM) may deem necessary for adequate protection and utilization of the public land and protection of the public interest.

II. Authority.

- A. The Federal Land Policy and Management Act of 1976, 90 Stat. 2766, 43 U.S.C. 1737.
- B. The Act of August 27, 1958, as amended, 23 U.S.C., Sections 107(d) and 317.

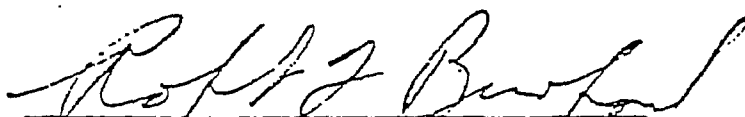
III. Procedures. BLM and FHWA recognize the need for streamlined procedures by which the FHWA may appropriate BLM-administered public lands for highway and highway materials for the Federal-aid System and those classes of highways provided for in Chapter 2, 23 U.S.C. To accelerate the appropriation process, FHWA and BLM agree to the following procedures:

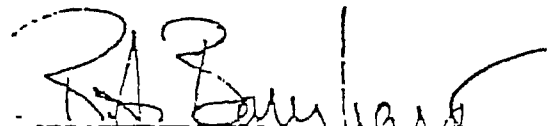
- A. FHWA will notify BLM, as far in advance as possible, of any highway project being contemplated and arrange a meeting with the BLM authorized officer and the participating State agency to discuss the proposed project to ascertain whether or not the appropriation of the lands for highway or highway materials is consistent with BLM resource management programs and develop a plan of action to complete the appropriation within a reasonable time.
- B. It will be the responsibility of FHWA to comply with the National Environmental Policy Act and other legal requirements in arriving at its determination that the lands are necessary for the project.

- C. FHWA shall submit to the authorized officer of BLM a written request for appropriation, accompanied by a map showing the location of lands it desires to appropriate, a statement of its determination that the lands are necessary for the project, a copy of the environmental assessment, and/or a copy of the environmental impact statement.
- D. The authorized officer of the BLM, after receipt of the request and attachments, shall review the material and, within a period of four months, notify FHWA, in writing, either (a) that the appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed or (b) that BLM is in agreement with the appropriation subject to conditions of adequate protection and utilization of the public lands. If within a period of four months, the Bureau of Land Management has not responded, in writing, to the request for appropriation, such lands may be considered appropriated by FHWA and transferred to the State for right-of-way purposes as requested.
- E. Disagreement to the appropriation will be in the form of a letter, from BLM to FHWA, clearly stating the reasons why such an appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed.
- F. Agreement to the appropriation will be in the form of a "Letter of Consent" which clearly states the conditions under which the agreement is given. These conditions involve the following:
1. Resolution of existing valid claims and use authorizations.
 2. Granting authority to FHWA within the appropriation is limited to rights-of-way for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.S.C.
 3. BLM retains the authority to grant additional right-of-way uses within and across the appropriated highway or material site right-of-way. Such additional uses include, but are not limited to, transportation and utility systems for water, power, communications, oil and gas, or any other facilities which are in the public interest, are not directly associated with highway use, operation and related highway purposes, and are not inconsistent with Title 23 of the U.S. Code. The FHWA shall be consulted prior to the issuance of such authorizations.

4. The appropriation will automatically terminate if construction is not started within ten (10) years or sooner if agreed upon.
 5. Conditions providing for development and use of the adjacent public lands, such as, reasonable access and signing.
 6. Conditions protecting the adjacent public lands from right-of-way construction and maintenance activities which may cause off right-of-way adverse effects, such as, wildfire, chemical control of vegetation and animals, runoff drainage and revegetation with non-native species.
- G. FHWA, when transferring the highway right-of-way or highway material appropriation to the State, will make it subject to BLM's conditions as contained in the "Letter of Consent". FHWA will administer these conditions. BLM will work with or through FHWA when they observe non-compliance to the appropriation "Letter of Consent" conditions.
- H. When the need for the appropriation no longer exists and the State has reasonably rehabilitated the area to protect the public and environment, FHWA will notify BLM in writing. Upon receipt of this notice and acceptance of the rehabilitation, the lands appropriated shall revert to the BLM.
- I. A copy of the right-of-way use document from FHWA to the respective State shall be furnished to the BLM authorized officer.
- J. Amendments to or modifications of this Interagency Agreement may be initiated by either party, but shall not become effective or binding until agreed upon by both parties.

IV. Tenure. This document shall become effective upon the revocation of 43 CFR 2820-Roads and Highways and shall remain in effect unless terminated by mutual agreement or one agency after giving the other agency thirty (30) days prior written notice.


Director, Bureau of Land Management


Administrator, Federal
Highway Administration

7/1/82

Date

JUL 27 1982

Date