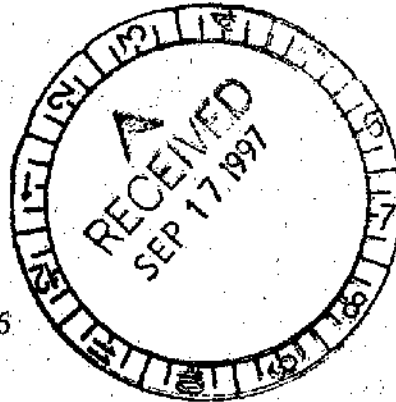




U.S. Department  
of Transportation  
**Federal Highway  
Administration**

400 Seventh St., S.W.  
Washington, D.C. 20590

Ms. Meg Maguire  
Scenic America  
21 Dupont Circle, NW  
Washington, D.C. 20036



**SEP 11 1997**

Refer to: HRE-20

*MJM*  
Dear Ms. Maguire:

I am responding to your letter of July 15, 1997 that indicated your concerns regarding the Florida Department of Transportation (FDOT) request for a waiver of Federal regulations to enable it to proceed with a vegetative logo demonstration project.

The proposal, initiated by the Florida legislature, in spring 1995, involved a pilot project to evaluate the revenue-producing potential of vegetative logos along the Florida Turnpike which is on the National Highway System. To date only a logo for the Turnpike itself has been completed. On March 26, 1997, FDOT requested a waiver under 23 CFR 1.23(b) and asked for a 2-year period beyond the date a waiver is granted to pursue the development of vegetative logos.

The waiver request has been subject to a good deal of discussion and coordination within FHWA. In general, maintenance of the right-of-way is normally left with the State, and FHWA has permitted a great deal of latitude in airspace leasing and innovative finance initiatives, provided that the safe and efficient flow of traffic is accommodated. However, using right-of-way for revenue-generation, especially for an activity closely aligned with commercial advertising, has a potential to create adverse precedent. Although use of logos constructed from plants may not be considered by some as advertising, opposition exists to the perceived intrusion of commercial interests within public lands. Maintenance of vegetative sites would also require repetitive access for cutting, mowing, etc., and raises other operational concerns.

For these reasons, we are not receptive to the Florida waiver request, and on August 22, 1997 wrote our Region Office denying this waiver request (copy attached).

Sincerely,

Barbara K. Orski  
Director, Office of Real Estate Services

Enclosure



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

HRE-20  
**Memorandum**

Subject: **INFORMATION:** Vegetative Corporate Logos on  
Florida Turnpike

Date: August 22, 1997

From: Associate Administrator for  
Program Development

Reply to  
Attn. of: HRE-20

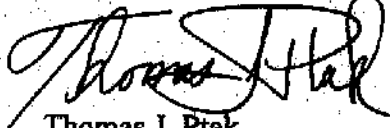
To: Mr. Leon N. Larson  
Regional Administrator (HRA-04)  
Atlanta Georgia

Our review and consideration of a pilot demonstration project to install vegetation logos along the Florida Turnpike, as authorized by the Florida Legislature in spring 1995, has concluded. Your April 28, 1997, memorandum requesting this review indicated that no provision to permit advertising on the right-of-way of the National Highway System (NHS) currently exists. Other than official signs, the only exceptions under the MUTCD include TODS and Logo programs for gas, food and lodging, and to a lesser extent, the "free coffee," Adopt-a-Highway, and Motorist call box sponsorship signs. Based on our review of the materials you provided, and other contacts, to us there does not appear to be sufficient interest, nor sufficient public benefit to relax our mandate to limit private uses of lands acquired for transportation purposes. Florida's request for a waiver is therefore denied.

The demonstration project along the Florida Turnpike originated prior to it being incorporated into and designated as an NHS route. The Florida Legislature permitted, in early 1995, a demonstration to test the revenue producing capability of using corporate vegetative logos, and provide enhancements to existing right-of-way through landscape design. Although the contract for the demonstration project was signed after NHS establishment in November 1995, the Turnpike Commission had concluded over half of the contract term before being notified that such use of the right-of-way was not consistent with regulations controlling an NHS route. Very little was accomplished during this period and no private logo sites were developed, although all were supposed to be in place by the end of 1996. Whether interest in the vegetation logo project was lacking due to problems in the basic contract or other factors, the result is that no private logos have been established within the highway right-of-way. Since no adverse development has occurred under the existing contract, no extension should be considered.

As part of the newly designated NHS, the Florida Turnpike must now provide effective control of outdoor advertising under 23 U.S.C. Section 131 with regard to advertising outside the right-of-way, and also preserve the right-of-way free of all public and private installations except for

those expressly provided by law or regulation as being in the public interest. Attached is a legal opinion from Chief Counsel, in reply to a request from another State, that provides a good overview of the serious implications of this type of proposal.



Thomas J. Ptak

Attachment

FHWA:HRE-20:RAJohnson:gs:62020:8/5/97  
cc: Reader Chron HRE-20 HNG-20 HCC-30  
//fhpd/shared/hre/docs/flaveg1.797 (g:/docs/flaveg1.797)