



U.S. Department
of Transportation

**Federal Highway
Administration**

**Massachusetts Division
55 Broadway, 10th Floor
Cambridge, MA 02142**

RECEIVED

DEC 21 2006

EOT - Office of
Transportation Planning

December 14, 2006

In Reply Refer To:
HDA-MA

Mr. Kenneth S. Miller, P.E.
Deputy Secretary for Planning
Executive Office of Transportation
Ten Park Plaza'
Boston, MA 02116-3969

Dear Mr. Miller:

In response to your request for changes to the FHWA Division Policy on the Transportation Enhancements (TE) Program dated November 20, 2006, and after coordination with EOT/MassHighway staff, we hereby set the following policies:

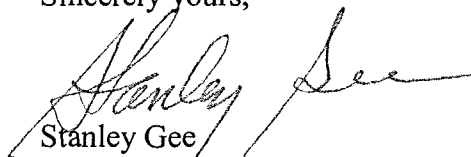
- 1. It is understood that the general rule of thumb for significant federal-aid investments is that the public interest in and access to the activity should be in perpetuity. Therefore, federal-aid funds would only participate in a TE project where the Executive Office of Transportation (EOT) has determined the reasonable lifetime and value of the improvement and can demonstrate that proposed ROW acquisitions (fee simple, permanent easement, or lease) are adequate to protect the use of the facility for its projected lifetime.*
- 2. For those TE improvements involving leases, reversionary clauses (language that allows the lessor to terminate the lease prior to the end of the facility's useful life) would only be allowed in those cases where a greater public good than the TE-intended use can be demonstrated, e.g. rail-banked corridors reactivated for rail transportation purposes. The federal-aid project agreement must contain a provision requiring EOT/MassHighway to pay back the federal-aid investment (on a pro-rated basis) should the use of the facility be terminated prior to the end of its useful life. Also, leases may contain an "option to renew" clause to facilitate the extension of successful projects.*
- 3. The acquisition of right-of-way (ROW) for transportation enhancement projects would in error the process followed for highway improvements. This would allow the use of*



eminent domain by the state and municipalities for the acquisition of property rights (fee simple takings and permanent easements) required for TE projects.

Please disseminate the new operating practices, as appropriate, to those involved in the planning, design, and construction of TE projects. This office is available to provide further clarification on any issues that may arise when the new practices are implemented. We would ask that such issues be submitted to this office in writing. This will facilitate the wide distribution of subsequent clarifications and promote consistent application of the new operating practices.

Sincerely yours,



Stanley Gee
Division Administrator

cc: Luisa Paiewonsky (Commissioner - MassHighway)
Tom Cahir (EOT)
Tom Gray (MHD-Right of Way Bureau)