

Off-System

Enhancement

Projects

by David H. Young, SR/WA

The ^{Intermodal} ^{Surface} Transportation Efficiency Act (ISTEA) was passed by Congress in 1991. The Act allows states increased flexibility in making transportation choices. The Act included certain provisions for transportation funds to be used for transportation enhancements.

The enhancement funds were allocated to projects that were "on system" or within a given state highway system right of way and projects that were "off system" or not directly tied to the highway system.

Transportation Enhancement Activities as Defined by the ISTEA Act

- *pedestrian and bicycle facilities*
- *acquisition of scenic easements and scenic or historic sites*
- *scenic or historic highway programs*
- *landscaping and other scenic beautification*
- *historic preservation*
- *rehabilitation and operation of historic transportation buildings, structures or facilities (including railroad facilities)*
- *preservation of abandoned railway corridors (including conversion and use for pedestrian or bicycle trails)*
- *control and removal of outdoor advertising*
- *archaeological planning and research*
- *mitigation of water pollution due to highway runoff*

Transportation enhancement activities or projects are intended to go beyond the traditional use of transportation funds and should be transportation related to qualify for enhancement funding. The relationship to transportation may be linked to one or more of the following:

Function: the project serves as a functional component of the transportation system, such as a bicycle or pedestrian path.

Proximity: the project is in immediate proximity to the transportation system, such as removing outdoor advertising along a highway.

Impact: the project directly and positively impacts the transportation system such as mitigating impact of highway runoff by creating an adjacent wetland.

(see sidebar)

Rights of way are directly involved with the program. All of the above project types involve the use of public funds in direct conjunction with public facilities. These facilities could include existing road right of way, wetlands, parks, recreation areas, and may require the acquisition of new or additional rights of way.

The acquisition of rights of way for the above projects may involve viewing rights of way in a different light. Some of the rights of way to be

acquired may include scenic or conservation easements. In this regard, future planning issues could become directly involved in the planned acquisition of rights of way. Will the right of way block the expansion of a community or the future modification of a zoning regulation? Consideration will have to be given to these parameters.

The acquisition of "non-traditional" rights of way may also involve modifying existing though on how to acquire right of way. Fee simple title to property has been the norm, but under the enhancement program, scenic easements or other set aside programs may be the preferred means to acquire right of way.

Public agencies also have the power of eminent domain to secure rights of way where necessary for the public good. Acquisition of rights of way through the courts has usually involved the public agency proving necessity in order to secure the needed rights of way. A project involved with the enhancement program may not be a "necessity" and therefore any rights of way may not be able to be secured through the court system. New approaches to right-of-way acquisition may have to be explored in order to secure needed rights of way.

Public agencies may also elect to have co-sponsors included on an

enhancement project. The co-sponsors can be other public agencies including joint power board, private non-profit organizations such as the Nature Conservancy or individual groups organized for a single purpose. The public agencies may also want to get involved with federal programs, such as the Rails-to-Trails program. Whichever the case, it is most important that a public agency hold the right of way in its name and also be the guarantor of the maintenance and public access.

The funding for off-system enhancement projects expires in 1997. Many communities have had the opportunity to use the funds and, as a result, have added needed transportation access and user facilities to their public programs. It is hoped the Congress will continue to fund the program after the expiration year. □

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