



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

New Mexico Division

August 22, 2012

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Suite 801
Santa Fe, NM 87507
505-820-2021
505-820-2040

In Reply Refer To:
ENVI 6

Mr. Alvin Dominguez
Cabinet Secretary
New Mexico Department of Transportation
PO Box 1149
Santa Fe, NM 87507

RE: New Mexico Division Office Policy on Art and
Aesthetic Treatments for Federal Aid Transportation Projects

Dear Secretary Dominguez:

The following policy is the framework to assist the New Mexico Division (Division) and the New Mexico Department of Transportation (NMDOT) in administering Federal aid funds associated with the art and aesthetic treatments incorporated into transportation projects and associated visual impacts. It is not intended to be all encompassing for every situation encountered. Logic should always be applied in the decision-making process, and as always, when questions arise, communication between agencies is paramount.

As part of the policy it is useful to provide a definition to the words "art" and "aesthetic treatment" in the context of Federal aid. In simplest terms the definitions developed by the Division are as follows:

Art: Decoration and/or enhancement of the facility developed in concert with a commissioned artist and incorporated into the transportation facility.

Aesthetic Treatment: Texture, color, concrete stamping, or similar decorative measures added to or incorporated into elements of the transportation facility.

The foundation for mitigating for environmental impacts is found in: 23 CFR 771.105

(d) Measures necessary to mitigate adverse impacts be incorporated into the action.
Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to

which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.

The Division Office has established minimum criteria in order for project expenditures to remain eligible for Federal-aid funding. The NMDOT has the final authority to set transportation priorities for funding, thus the Division decisions focus on eligibility and compliance commitments.

1. In either aspect, whether art or aesthetic treatment, identified impacts must be recorded in the environmental documentation. The visual treatments will be mitigation for the adverse impacts. These impacts may be, but are not limited to, line of sight impacts, introduced elements, view shed considerations, or community/neighborhood impacts.
2. An environmental commitment outlining the mitigation associated with the visual impacts presented by the project must be recorded in the environmental documentation and incorporated into the plans, specifications, and estimate (PS&E) package.
3. Safety must be considered when developing visual treatments, i.e. plaque locations noting descriptions, artists, etc. must be located in a reasonable fashion. Decoration should maintain a subtle design, and avoid being registered as a distraction to drivers.
4. No advertising or commercial logos are allowed in visual treatments.
5. The NMDOT has final review and concurrence in the decision of the final design of treatments, i.e. the design material is subject solely to the NMDOT decision-makers' judgment. Determination of controversial, offensive, or inappropriate design material is at the discretion of the NMDOT review.

The primary difference in discerning art versus aesthetic treatment is whether an artist is associated with the treatment. When an artist is involved in the development of treatments, the artist services must be acquired in a manner consistent with the appropriate procurement laws. The second facet of pursuing art solutions to mitigate impacts is that proposed treatments shall be vetted through public involvement. This may be accomplished through public meetings, hearings, or other communications. Public input must be sought and considered when contemplating artistic treatments as mitigation.

Aesthetic treatments should also consider public input. This category of treatment is the simplest form of visual impact mitigation. It is sometimes used as a decorative aspect outside the determination of visual impacts. These types of treatments are common and not necessarily unique to a project or region. Textured concrete forms to simulate rock or brick are often used to soften harsh edges of concrete structures. Another common tool is stamping concrete or asphalt to give a desired appearance of stone or brick. These same concepts apply to the use of color treatments to concrete and asphalt.

Funding & Maintenance

Per the previously mentioned 23 CFR 771.105, project funds may be expended for mitigation purposes. Transportation Enhancement funding is also available for consideration as applied to art or aesthetic treatments. These funds have specific eligibility criteria that provide flexibility that may be different than this policy.

Costs and maintenance should be considered in the application of this policy. As stewards of Federal-aid dollars, there is a responsibility associated with evaluating reasonable and prudent solutions. The initial investment analysis as well as the long term impact of maintaining facilities is integral in the decision-making process. The maintenance responsibility for all projects under the Federal-aid system is with the NMDOT per 23 CFR 1.27 and 23 USC 116 and as such, art and aesthetic treatment are treated accordingly. The NMDOT may enter into agreements with parties to provide maintenance, but such agreements do not relieve the NMDOT of the responsibility to maintain the investment.

The following is a list of several references that form a basis for this policy and may assist in the administration and implementation of art and aesthetic treatments in New Mexico:

Laws, Regulations, and Guidance

Federal Law:

Department of Transportation Act of 1966, Section 4(f)
National Historic Preservation Act of 1966
National Environmental Policy Act of 1969
Highway Beautification Act of 1965

Federal Regulations:

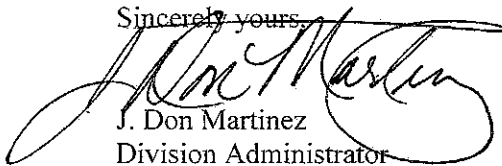
23 Code of Federal Regulations 771

Guidance:

FHWA Technical Advisory T 6640.8A
Visual Impact Assessment for Highway Projects, Publication Number FHWA-HI-88-054

There are many aspects involved in the implementation of publicly funded art and aesthetic treatments. As this policy is formally established and administered it is expected that there will be numerous inquiries regarding its implementation. The Division encourages the NMDOT to establish its own policy and guidance regarding art and aesthetic treatments. If you have question, please contact Greg Heitmann at (505) 820-2027 or greg.heitmann@dot.gov.

Sincerely yours,



J. Don Martinez
Division Administrator

cc:

Mr. Paul Gray, P.E., Deputy Secretary, NMDOT
Ms. Kathryn Bender, Deputy Secretary, NMDOT
Mr. Max E. Valerio, P.E., Chief Engineer, NMDOT
Mr. Blake Roxlau, Environmental Design Manager, NMDOT