



NAHBA E-Blast: FHWA Email- Clarification on April 9 Information Memo on Wind Turbines and Solar Panels for Divisions

Jennifer J Hall to: NAHBA Affiliate Membership, NAHBA All State Membership, NAHBA FHWA

07/15/2011 01:41 PM

Bcc: Jennifer J Hall

The following email was sent from Nelson Castellanos to FHWA division offices earlier today . Thanks.

From: Castellanos, Nelson (FHWA)
Sent: Friday, July 15, 2011 7:00 AM
To: FHWA-#ALLDA-OfficialMailbox; FHWA-#ALLDFS-PersonalMailbox
Cc: HEPR; Shepherd, Gloria (FHWA); Bini, Robert (FHWA); HEPODs; Realty; Weingroff, Richard (FHWA)
Subject: RE: Clarification on April 9 Information Memo on Wind Turbines and Solar Panels for Divisions

Subject: Clarification on April 9 Information Memo on Wind Turbines and Solar Panels on Billboards for Divisions
Importance: High

Division Realty personnel:

The purpose of this message is to provide clarification on the April 9, 2011 memorandum regarding affixing either wind turbines or solar panels to billboards . The intent was to take a permissive approach to the use of alternative energy sources in the context of the requirements in the Highway Beautification Act (HBA). However, the memorandum has led to a number of questions specifically about its applicability to non-conforming billboards. This message will serve to clarify our agency position by addressing a number of specific situations and/or scenarios described below -

1. Can solar panels or wind turbines be affixed to signs that are either conforming or non-conforming?

Answer: In principle, an alternative energy device (AED) can be affixed to both non-conforming as well as conforming signs as long as it is allowed under state laws and policies, and is not in conflict with their State/Federal agreement. For some DOTs these alterations will need to be submitted to the State agency in accordance with applicable permitting requirements.

If you are affixing these AEDs to a non-conforming unlighted billboard, then the energy generated by the solar panels or wind turbines cannot be used to now light that non-conforming sign. The AED can be used to provide electricity to the grid, but structural modifications to a non-conforming sign in order to affix an alternative energy source will be subject to the State's application of 23 CFR750.707 which provides that a non-conforming sign " must remain substantially the same". Please note the response below to this question for more detail.

2. Can solar panels or wind turbines display logos or advertising ?

Answer: The alternative energy devices cannot display logos or advertising, nor can the AED be incorporated into the sign's message. If they do, then the installation of the AED will be viewed as a separate advertising sign that must comply with the Highway Beautification Act, the State/Federal Agreement, and sign control requirements.

3. Are solar panels or wind turbine installations prohibited near billboards when supported by their own structures or towers ?

Answer: The installation of alternative energy sources are not prohibited near billboards when supported by their own structure. Such installations are at the discretion of the property owner and not subject to control by the HBA, unless they contain advertising. These devices cannot be used to light a previously unlighted non-conforming sign.

4. Does the installation of an alternative power source have anything to do with FHWA's determination as to whether the State has effective control ?

Answer: It is the State DOT's decision as to whether they will allow the installation of alternative power sources. However, the State DOT decision does not in and of itself provide a threshold for FHWA to make a determination of whether the state has effective control under the HBA requirements.

5. In order to affix the alternative energy source to the sign, additional bracing, guy wires or changes in the type or size of the supports are needed. Is that work permitted under our current regulations ?

Answer: It will depend as to whether the sign is conforming or non-conforming. For instance, making structural modifications such as adding bracing, guy wires, or other reinforcing devices in order to attach the alternative energy source to a conforming sign may be allowed, as long as that work is permitted under state laws and regulations and is not in conflict with the State/Federal agreement. For some DOT's, these alterations must be submitted to the State agency in accordance with their permitting requirements.

For non-conforming signs, 23CFR 750.707 provides that a non-conforming sign "must" remain substantially the same as it was on the effective date of the regulations or the date it became non-conforming. Each State has criteria to establish when customary maintenance ceases and a substantial change has occurred. In order to implement this section of 23 CFR, some State DOTs have adopted a strict approach to the "remain substantially the same" rule while others adhere to a less stringent application of that rule. Therefore, adding bracing or guy wires, *or* increasing the diameter/dimension of the structural components may or may not be substantial change depending upon the individual State's regulations and criteria, *and* the extent of the actual modification

being made.

The examples above are not an all inclusive list of all possible situations encountered in the field. The Office of Real Estate Services remains available to discuss any unique situation that may occur. If you need further assistance or have any further questions, please contact Mr. Janis Gramatins of my staff. Mr. Gramatins can be reach at 202-366-2030.

Thanks,

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http://www.modot.mo.gov/business/Outdoor_Advertising/index.htm