

To: Mike LaPietra, Iowa Division
From: Catherine O'Hara, Outdoor Advertising Control Specialist
Office of Real Estate Services
Date: August 6, 2007

This is to provide feedback to your July 2007 request to review the proposed changes to Iowa Code to adopt new definitions for "development directory signs."

In 2005, we responded to a similar issue in Arizona regarding the definition of on premise signs. Similar to Iowa, the intent in Arizona was to permit the display of individual business unit signs on any part of a large property that is jointly owned and marketed, whereby all of the owners have the right to use common areas, such as parking. Such developments would include situations where there are multiple businesses and multiple ownerships. With the new Iowa definition signs advertising the activities conducted within that comprehensive "development" would be on-premise signs and exempt from controls under the HBA.

The FHWA agrees, in concept, that it is possible for multiple commercial or industrial businesses or activities developed as a "unified commercial development" (hereinafter referred to as "UCD") to be viewed as a single premises for HBA purposes under certain conditions. The UCD criteria include:

1. There is a common development and ownership plan that includes common and/or limited common areas such as sidewalks, roadways, gardens, parking, storage, and service areas, to which all constituent businesses have irrevocable shared ownership and use rights, and for which they have irrevocable shared obligations.
2. The UCD operates through an underlying common association or other entity, actively managed and maintained, through which all owners have irrevocable rights and obligations with respect to the UCD and its common/limited common areas.
3. The contiguity requirement is met because no part of the development is separated from the other part(s) by a controlled route, as defined in 23 USC §131. All parts of the UCD are on the same side of a controlled route and are contiguous except for roadways or driveways that provide access to the development and are not themselves controlled routes.
4. The UCD and its constituent businesses hold themselves out to the public as a common development through their signage and other marketing efforts.

5. The "common areas" or "limited common areas" of the UCD have necessary and true value to the constituent businesses' regular operations. That is, common areas are not created purely for the purpose of establishing eligibility for on-premise signing or other non-operational purposes.

A development that involves merely reciprocal easements or use agreements among individual properties would not meet the UCD test. The significant difference we are recognizing with UCDs is that, based on the characteristics discussed above, a UCD satisfies the primary intent underlying the concept of on-premise signs. Similarly, if the owners in a UCD were to subdivide the UCD into individual lots that do not meet the above criteria, that action would destroy the basis for defining activities as a single "premises" for sign control purposes.

Thank you for the opportunity to comment. If the new definition is implemented as outlined above, the FHWA feels the language of the proposed code revision would not conflict with the HBA. As indicated above, it will be important for the application of any such code to meet the intent of the HBA as well. The Office of Real Estate Services suggests that Iowa Division continue to monitor the implementing regulation to assure it is implemented in conformance with the criteria above.

Questions on this guidance may be directed to Catherine O'Hara at (202) 366-9901.