

NAHBA SURVEY

CONFLICTS ASSOCIATED WITH TRIBAL LANDS AND THE FEDERAL HIGHWAY BEAUTIFICATION ACT

The National Alliance of Highway Beautification Agencies (NAHBA) has conducted the following survey of its members relating to the concerns arising between Indian tribal lands and the Federal Highway Beautification Act (HBA).* Responses to the following questions are listed in the table below.

- 1) Does your state have Indian reservations/tribal lands?
- 2) In what ways, if any, has your ODA program interacted/conflicted with Indian reservations/tribal lands?
- 3) Has your state had any discussions with the BIA (Bureau of Indian Affairs) regarding the control of ODA under the HBA?
- 4) Do you foresee any problems with ODA and tribal lands in your state given the recent Utah case?
- 5) Please specify in detail any problems you have encountered regarding the HBA and Indian/tribal lands.

RESULTS OF SURVEY

STATE	SURVEY ANSWERS
1. Alabama	1) Yes 2) We have never had a conflict 3) No 4) Not at this time 5) We have had none
2. Arkansas	N/A – no Indian lands
3. Colorado	#1 - Yes #2 - We do not have authority to enforce the state's ODA program on reservation land. #3 - I am unaware of any such discussions. #4 - Not yet. But Colorado is confronting a related issue - The proposed transfer of private land to tribes, who had a historical presence in Colorado but who currently have no reservation or tribal lands, in order to allow Indian casino's to be built in areas where casinos currently are illegal. #5 - There are signs on reservation property that under the HBA and the state's ODA are illegal but the tribes allow them.

4. Delaware	N/A – no Indian reservations or tribal lands
5. Florida	<p>(1) Florida does have Indian/tribal land.</p> <p>(2) Florida has taken the position that Indian/tribal land is a sovereign nation and not under the control of HBA for outdoor advertising regulatory action.</p> <p>(3) Yes, we have had discussions with the Bureau of Indian Affairs, and they very strongly held that FDOT has no outdoor advertising regulatory control of Indian/tribal land.</p> <p>(4) We may very well experience the same issue that Utah has faced. Utah has provided copies of filings and orders, and these are currently under review by our legal office.</p> <p>(5) The only issue we have faced is the placement of unpermitted billboards on tribal lands, and following our discussions with FHWA and the Bureau of Indian Affairs, we elected not to pursue action against the tribe.</p>
6. Kansas	<p>A1) Yes</p> <p>A2) Kansas does not control Indian reservation with regard to Indian reservation/tribal lands.</p> <p>A3) No.</p> <p>A4) No.</p> <p>A5) Adjacent to a controlled highway which was land that was part of an Indian reservation, we were able to limit signage to Indian activity, i.e., casino and bingo. This was agreed to by the state and the Indian tribe. There may have been some highway funding involved in the negotiation.</p>
7. Kentucky	N.A – no Indian reservations or tribal lands
8. Illinois	<p>Question 1. No</p> <p>Questions (1-5) N/A</p>
9. Minnesota	In Minnesota we have 13 Indian Reservations. Our outdoor advertising policy for any tribal land, whether contiguous to a reservation or not, that is held in trust by the Bureau of Indian Affairs, is that it is part of a sovereign nation and therefore we do not control outdoor advertising on those lands. We typically ask tribal landowners who erect billboards to produce BIA documentation of the process of putting their land in trust. If they cannot produce this documentation then they are subject laws controlling outdoor advertising under Minnesota State Statute 173. Flashing lights advertising Indian Casinos have occasionally been a problem along state highways, but Minnesota Tribes have been willing to modify them in compliance with community standards.
10. Mississippi	<p>1) yes</p> <p>2) We have had no problems as of now.</p> <p>3) No, we have had no need to.</p>

	4) I hope not. 5) None.
11. Missouri	N/A – no tribal lands
12. Montana	1.Montana has seven Indian Reservations 2.N/A 3.It is a long standing policy of the Montana Department of Transportation, that the Department does not have the authority to enforce the state's outdoor advertising laws or regulations within the boundaries of the Indian Reservations within the state of Montana. 4.No 5. At the time of this response, Montana has encountered no problems in this area.
13. New Hampshire	New Hampshire doesn't have any Indian reservations
14. New Jersey	N/A – no tribal lands
15. North Carolina	1)Yes - Eastern Band of Cherokee Indians in Western NC; lands primarily in Swain and Jackson Counties, but small parcels in Cherokee and Graham counties. 2)None thus far; the EBCI has its own sign regulations and in some areas is more restrictive than ours. 3)No 4)Possibly since they are renting multiple signs from private sign companies on interstates to advertise the Cherokee Casino
16. Ohio	N/A – no tribal lands
17. South Carolina	Yes – Indian land – no issues presented to date.
18. Utah	Utah has Indian land and is experiences problems between FHWA DOT and BIA
19. Virginia	N/A - no tribal lands
20. Washington	1. Yes, there are numerous Indian reservations/tribal lands throughout Washington 2. The most obvious conflict is fact that we cannot enforce state/fed statutes and rules in these areas. The Morongo Band decision is the basis for this policy of non-enforcement. There are areas throughout the state where billboard companies (the big ones) take advantage of this situation. The most glaring example is a large full motion video board on Interstate 5 between Seattle/Tacoma. It is extremely distracting (on purpose of course) to motorists traveling on this high volume (200k/day)/high speed freeway. WSDOT has been doing accident studies in this vicinity to determine if the sign is a contributing factor. No definite results on that as to date.

	<p>3) I don't find any documentation of direct contact with the BIA. I did find some background information that defines how the WSDOT policy on this issue evolved. This issue became a controversy here in Washington back in 1994 when 15 signs were erected on land held in trust by the Puyallup Tribe adjacent to Interstate 5 in the Tacoma/Milton/Fife area. Efforts by the City of Tacoma, Pierce County and the Washington State Legislature to begin dialogue with the tribe about the signs were unsuccessful over the next several years. In 1996, the Washington Attorney General's office researched the issue and, finding no solution, requested through the Transportation Research Board that a TRB paper be funded about the issue. This report was published in June 1998 as NCHRP Legal Research Digest # 41. The Washington Attorney General advised WSDOT that congressional action was ultimately the necessary course of action to resolve the situation. During the 1996 session of the Washington Legislature, Senate Joint Memorial 8027 requested Congress to extend the HBA to Indian Lands in the interest of scenic beauty and safety. This memorial did not pass the Washington legislature. As an aside, the Digest # 41 cites the Utah case.</p> <p>4) I believe we already have some cases where this tactic has been successfully applied.</p> <p>5) I'm in the process of working through the department's tribal liaison to do outreach to the tribes in the state regarding billboard control. The overall problem is not limited to Interstate 5, it exist in several areas throughout the state. I'd like to work towards developing a partnership with them on outdoor ad control. Several tribes have been actively involved with the department and other local agencies in efforts to designate state highways that pass over their reservations as Scenic Highways. This creates a catch22 for WSDOT because while statutes prohibit signs are on Scenic routes, we cannot enforce our statutes or rules on Indian lands. This partnership may be an effective way to inform the tribes about the Fed/State/local agency statutes and rules, and possibly work with them to develop sign ordinances for interstate, primary and scenic highways that traverse their lands.</p>
21. West Virginia	N/A – no tribal lands

* Only 66% of the NAHBA Membership responded to the survey.