OAC Technical Council Meeting
AASHTO Right of Way, Utilities, and Outdoor Advertising Subcommittee
2/18/2016
2:00 P.M., EST

1. Review redraft for Pilot proposal for moving nonconforming signs impacted by state transportation projects (Barbara Wessinger)
   Two changes were made to the Draft (attached):
   a. Striking reference to 23 USC 502 and replacing with the SEP 15 program. (Council asked to contact Barbara with concerns with running this through the SEP 15 program.)
   b. Re-defining the scope of the relocation - instead of relocating “project wide” only allowing relocation in three levels of priority:
      (i) lateral move on same property;
      (ii) if not lateral, then move in proximity of existing sign site but on same property;
      (iii) if not able to be on same property, then proximity move to adjacent property.

2. Review Status of NCHRP 20-7 Proposal (Barbara Wessinger)
   Deadline to file the proposal with NCHRP is April 29th. Barbara will file before that date. Council members requested to review latest draft to ensure they are ok with it.

   Kristin White is preparing talking points on the NCHRP 20-7 proposal. Once we review and agree on them, we need to call our State NCHRP representatives and sell this proposal.

   Barbara will send the talking points to Wendy Knox so she can send to NAHBA. NAHBA needs to call the NCHRP representatives as well.

   Barbara will ask Wendy and Rob to discuss importance of the NCHRP 20-7 at the NAHBA Conference the first week in May.

3. AASHTO/NAHBA Conference – Orlando, Florida – May 1-5, 2016 (Barbara Wessinger)
   There are 2 possible meetings on the Conference agenda regarding the Technical Council. (Sunday afternoon and Monday afternoon.) Jim and Juanice will send information on exact time of those meeting. Juanice will get with Rob to coordinate how NAHBA and the Tech Council will conduct the Sunday and Monday meeting. Barbara and Jim will draft the Tech Council agenda and presentations for both those meetings:

   (i) presentation will include updates on the Pilot and NCHRP 20-7 proposal;

   (ii) presentation will include description of the other 10 action items of the Council;

   (iii) Monday’s meeting will be to develop our action plan for the 2016-2017 Technical Council year;

   (iv) Sunday’s meeting may just be an update of Technical Council’s action in 2015-2016.

Meeting adjourned.
I. **General Overview** - A description of the potential change in federal law or regulations that the pilot is intended to test.

A. In accordance with the August 30, 2005 Federal Highway Administration (FHWA) Memorandum: *Guidance on the Approval Process for Outdoor Advertising control Pilots*, the Departments of Transportation for the States of Florida and South Carolina are proposing a Pilot Program (Pilot) in the Outdoor Advertising Control (OAC) Program to test the concept for the relocation of certain nonconforming signs impacted by state highway improvement projects to lateral, an alternate position within the project limits in an effort to limit or reduce acquisition costs and construction time thereby reducing construction time, hereinafter “Pilot” The signs impacted by the transportation project will remain substantially the same in accordance with federal regulations.

B. The Pilot corridors will be selected from each States five-year work program (State Transportation Improvement Plans or equivalent planning document) and the data to support the Pilot can be systematically acquired.

C. The Pilot accomplishes the Every Day Counts (EDC) FHWA initiative in that it is a multi-state-based model to identify and deploy an innovation to shorten the project delivery process. The EDC initiative was launched to speed up the delivery of highway projects and to address the challenges presented by limited budgets. The Pilot exemplifies those characteristics. If proven successful, the Pilot will allow greater efficiency at the state levels by saving time and money that can be used to deliver more projects.

D. For purposes of this Pilot, a “nonconforming sign” is defined as a sign which was lawfully erected, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State law and State regulations due to changed conditions.

II. **Proposed Federal Statutory Changes**: Specification of each provision of the Federal laws, regulations, and applicable Federal-State Agreement(s) that would require a waiver under 23 U.S.C. §502 SEP15 Special Experimental Project Program in order for the pilot to take place.

A. FHWA established the Special Experimental Project (SEP-15) to encourage tests and experimentation in the entire development process for transportation projects. SEP-15 is aimed specifically at increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams. Pursuant
to the authority granted the Secretary by Congress in 23 U.S.C. 502(b), SEP-15 is not limited to contracting initiatives. It encourages tests and experimentation in the entire project development process. A key element of SEP-15 is to identify impediments in current laws, regulations, and practices to the greater use of transportation improvements and to develop procedures and approaches that address these impediments. Such procedures and approaches must continue to protect the public interest and any public investment in the project. Moreover, SEP-15 projects cannot modify environmental and other requirements external to title 23 of the United States Code. The objective of SEP-15 is to identify for trial evaluation and documentation approaches that advance the efficient delivery of transportation projects while protecting the environment and the taxpayers. SEP-15 addresses four major components of project delivery, one of which is right-of-way acquisition.

This SEP 15 project ensures an appropriate level of public oversight and control, while also encouraging innovation and flexible, efficient procedures throughout the life of the project. The FHWA has considerable authority under SEP-15 to test new ideas and under this Pilot should be able to grant considerable flexibility since it is clear that its stewardship responsibilities can be met. This SEP 15 project will fully comply with all requirements of NEPA and other State and Federal environmental and planning laws and regulations. This includes local consultation, public involvement, and project selection.

B. The following federal regulations will require a waiver under SEP 15- Special Experimental Project Program:

1. 23 CFR 750.707(c) - Grandfather clause. At the option of the State, the agreement may contain a grandfather clause under which criteria relative to size, lighting, and spacing of signs in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way apply only to new signs to be erected after the date specified in the agreement. Any sign lawfully in existence in a commercial or industrial area on such date may remain even though it may not comply with the size, lighting, or spacing criteria. This clause only allows an individual sign at its particular location for the duration of its normal life subject to customary maintenance. Preexisting signs covered by a grandfathered clause, which do not comply with the agreement criteria have the status of nonconforming signs.

2. 23 CFR 750.707 (d)(3) - Maintenance and continuance. The sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use.

3. 23 CFR 750.707(d)(5) - Maintenance and continuance [of nonconforming signs]. The sign must remain substantially the same as it was on the effective date of the State law or regulations. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change that would terminate nonconforming rights. Each State shall develop its own criteria to determine when customary
maintenance ceases and a substantial change has occurred which would terminate nonconforming rights.

III. Likely to Result in a Proposal for Change at the National Level:

A. State highway improvement projects impact nonconforming signs nationally. State projects that impact such signs can only move them to a conforming location or pay just compensation. The Pilot gives the states an alternate process that saves acquisition dollars to the taxpayers. Since the Highway Beautification Act (HBA)(23 USC 131) affects all states, such change will have a potential impact on all state OAC programs. If the Pilot is successful, it may lead to a change in federal regulation which will better address the nonconforming sign issues of the states.

B. The Pilot falls within the category of 23 USC 502 SEP 15 – Special Experimental Project to identify impediments in current laws, regulations, and practices to the greater use of transportation improvements and to develop procedures and approaches that address these impediments, for purposes of research, development and technology transfer activities. A Pilot Program under Section 502 SEP 15 provides a testing opportunity for outcomes from possible statutory and/or regulatory changes. This experimental authority extends only to statutory, regulatory and policy provisions under Title 23 of the United States Code. The Pilot contemplates a different treatment of nonconforming signs, which has national implications since most states have nonconforming signs in their OAC inventory.

IV. Meets Statutory Purpose:

A. The Pilot presents an opportunity for FHWA and the States to partner on a Pilot which can test concepts for potentially modifying the regulations regarding movement of nonconforming signs within the project limits when impacted by a highway construction projects. The HBA was predicated on protecting the public investment in the interstate system and primary system, to promote the safety and recreational value of public travel, and to preserve natural beauty. The Pilot complements the HBA purpose in that it preserves the status of the sign as a nonconforming structure, yet allows the sign to be reestablished/relocated within the project limits laterally when impacted by the construction. The sign remains substantially the same using the same or similar materials. The Pilot does not change the status of the sign as nonconforming.

B. One of the difficulties encountered in the current OAC regulatory program is that nonconforming signs can only be moved to a location that places the sign in a “conforming” status. However, often there are no conforming sites to move them resulting in condemnation and/or payment of just compensation.

C. The reality is that the nonconforming sign existed and but for the highway project, would still exist. The concept of the Pilot attempts to apply the state’s customary maintenance analysis as a basis for relocating the nonconforming sign when impacted by a highway project.
project. Similar to a wind storm which impacts a sign and allows it to be re-erected at the same location with the same materials, nonconforming signs impacted by a highway project should be allowed to be relocated with the same materials. It is not the intent of the Pilot to change the intent of the HBA; rather, the intent of the Pilot is to revise 23 CFR 750.707(c) and (d) so that they better meet the real life practicalities of the OAC program.

1. **Location:** Federal regulation provide that a nonconforming sign are established at locations, to wit:
   a) Section 23 CFR 750.707(c), a grandfather clause relative to size, lighting and spacing of signs exists for signs that pre-existed the Federal State Agreement, which do not comply with the agreement criteria and have the status of nonconforming. This clause only allows an individual sign at its “particular location” for the duration of its normal life subject to customary maintenance.
   
   b) Section 23 CFR 750.707(d)(3), provides that a nonconforming sign removed as a result of a right of way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a “new location” as a nonconforming use.

The term “location” is not defined in the federal regulations. From a practical standpoint, the term “location” under the OAC Program is identified by the milemarker or perpendicular (lateral) position of a sign from the right of way. States indicate this location on the OAC permits. The permit identifies the location by county, highway system, GPS coordinates, mile marker, etc. It is the intent of the Pilot to allow nonconforming signs that are impacted by a state highway improvement project, to be relocated/reestablished in the following order of precedence: (1) to a lateral position adjacent to the existing sign site; (2) if a lateral position is not available, then to a position in proximity of the existing sign site, but located on the same parcel or tract (same landowner); or (3) if the same parcel or tract is not available, than to a position in proximity of the existing sign site, but located on an adjacent parcel or tract (different landowner) an alternate location within the highway project limits. The Pilot emphasizes that the “new location” would be within the confines of the three above described locations, project limits.

2. **Substantially the same:** Section 23 CFR 750.707(d)(5) provides that:
   a nonconforming sign must remain substantially the same as it was on the effective date of the State law or regulations. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change that would terminate nonconforming rights. Each State shall develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights.

Generally, a State’s customary maintenance regulation allows for the replacement of structural supports (poles/I-beams). At the inception of the HBA in the 1960’s, there was
a belief that the “normal life” of a nonconforming sign would eventually end. In actuality, nonconforming signs, through the reasonable customary maintenance provision of the CFRs, never achieve an end to “normal life”. “Normal life” is never attained because of customary maintenance; rather, “extended life” is achieved. Relocating/reestablishing a nonconforming sign under the Pilot is consistent with customary maintenance. The Pilot envisions using the same or similar materials in the relocation no different than the customary maintenance standard of replacing poles and I-beams.

Because the intent of the HBA to allow nonconforming signs to be customarily maintained (replacement of poles/I-beams), the Pilot meets the statutory purpose of the HBA. In meeting that statutory purpose, the States would realize a significant savings in time and potential construction costs by avoiding delays in the acquisition schedule.

V. In the Public Interest: A description of the expected effects of the pilot, including potential benefits, harm, and burdens to the public and/or to private persons or entities.

A. Regulated routes for the purpose of OAC transect local jurisdictions. These jurisdictions may have an interest in the reestablishment/relocation of nonconforming signs and are stakeholders in this Pilot.

B. Any adverse effect or harm from the implementation of the Pilot will be offset by the cost savings to the state and the taxpayers. The States and FHWA will see a reduction in condemnation case and associated litigation costs to the landowner or billboard permit holder as a result of the reestablishment/relocation of a nonconforming billboard. In addition, the industry will be able to retain its sign, the States will reduce project costs, local government and civic organizations will continue status quo in the project area as the nonconforming sign already existed, and the traveling public will continue status quo since the sign will remain substantially the same from the motorist’s viewpoint.

VI. Complies with National Environmental Policy Act (NEPA): The appropriate NEPA documentation, including documentation required under 23 CFR 771.111(h).

A. The proposed Pilot complies with NEPA requirements. The Pilot will be environmentally classified as a Categorical Exclusion (CE) Type B (no individual environmental document required) based on information contained in the Pilot documentation. A Categorical Exclusion Type B (CEB) will be issued for the Pilot and incorporated herein as an Exhibit. Under the Categorical Exclusion classification, pursuant to 40 CFR 1508.4, the Pilot does not individually or cumulatively have a significant effect on the human environment and will be found to have no such effect in procedures adopted by the FHWA for implementation of the NEPA regulations. Therefore, neither an environmental assessment nor an environmental impact statement is required. Moreover, under 23 C.F.R. 771.117(c), this type of project normally would not
require further NEPA approvals as the relocation would fall under 23 CFR 771.117(c)(8), which provides:

The following actions meet the criteria for CE in the Council on Environmental Quality (CEQ) regulation [40 CFR 1508.4 and 23 CFR 771.117(a)] and normally do not require any further NEPA approvals by the Administration: (8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

B. Social, economic, environmental and other impacts of the Pilot are not significant as will be determined by the CE Type B Environmental Classification which will be determined by the State’s Environmental Office and approved by FHWA Environmental Office.

C. Each of the two (2) States will be required to obtain the CE for their part of this Pilot. CE Type B documents are the required environmental documentation for OAC Pilot projects. See attached FHWA correspondence.

VII. Developed with public involvement: A summary of the public involvement process, including a report on the issues and interests expressed by those in support of and those opposing the pilot.

A. Stakeholder involvement will be incorporated in the development of the proposed Pilot. The States have identified five (5) categories of stakeholders and information including the Pilot’s purpose, need and consistency with the goals and objectives of the HBA which will be disseminated to each category. The public involvement process will provide an opportunity during the Pilot development for the stakeholders to be involved in the identification of social, economic, and environmental impacts and all identified items considered by the States.

B. A public hearing will be scheduled on a date approved by FHWA. A public notice will be listed in a newspaper statewide. Major stakeholders who have been known to have an interest in outdoor advertising will be sent invitations to attend the public hearing. The Pilot’s public involvement process will satisfy the FHWA requirements in 23 CFR 771.111(h) and 23 CFR Chapter 771.111(f).

C. Also, in accordance with 23 CFR 771.111(h), the States will carry out public involvement meetings pursuant to 23 USC 128. Specifically, in accordance with 23 USC Chapter 128, the States herewith will provide that:

1. The State’s OAC management will meet with stakeholder groups and will conduct a Public Hearing on a date approved by FHWA to afford the interested groups the opportunity to meet with States staffs and review the Pilot (Notice of Hearing will be attached as an exhibit). The purpose of this public meeting is to allow the stakeholders an opportunity to express support and objections to the Pilot. At the
public meeting, State’s staffs will review the economic, social, environmental and other possible effects of the Pilot with the stakeholders.

2. In compliance with 23 CFR 771.111(h), the States will contact the stakeholder groups and provided them with explanatory information regarding the Pilot’s purpose, impacts, if any, and an opportunity to express objections. Letters from the various stakeholder groups evidencing that an opportunity will be afforded to them to express objections to the Pilot and will be shown in exhibits to be attached hereto.

D. The States anticipate no burden to the public or private persons/entities based on information received from stakeholders. The following categories of stakeholders have been identified for this Project. Response to the Pilot is anticipated to be positive.

1. Permit holders who currently have permitted signs within the boundaries of the Pilot will be individually contacted by letter which explain the Pilot. Exhibits to be attached. The percentage of sign owners responded positively to questions regarding the Project will be calculated. Additionally, the States will contact the State Outdoor Advertising Associations in their States whose membership is statewide and consists of many of the sign companies in the States. The States will also work with the Outdoor Advertising Association of America (OAAA) and present to them details of the Pilot. On behalf of its membership it is anticipated that OAAA will provide written endorsement of the Pilot (Exhibit will be attached).

2. The second category of stakeholders were determined to be local governments in the area of the Pilot where either a project segment went through it or it bordered one of the subject projects. Each State will make presentations, including a PowerPoint presentation and handouts describing in detail the Pilot. Written comments from the local governments will be included as exhibit.

3. The third category of stakeholders were identified as civic organizations interested in the control of outdoor advertising. State representatives will meet with leaders of the organizations and make presentations, including a PowerPoint presentation and handouts describing in detail the Pilot. Written comments from the civic organizations will be included as exhibits.

4. The fourth category of stakeholders were identified to be citizens of the States of Florida and South Carolina. The interest of the citizens is determined to be the cost benefits produced by the implementation of the Pilot. The reduction in administrative costs associated with reestablishment/relocation fees will be a factor for consideration. Written comments from the citizens will be included as exhibits.

5. The fifth category of stakeholders were identified as the landowners who have leases with outdoor advertising sign companies that would be impacted by the Pilot. The landowners would have an interest in the signs being removed or reestablished. Actions taken on these signs could impact leasing arrangements. Letters explaining the Pilot, included in as exhibits, will be provided to the permit holders and requested
that they be delivered to the landowners as the States do not maintain contact
information for this category of stakeholder.

E. The Pilot will also have an impact on the traveling/motoring public and tourists as they
gain benefits of having the sign structures within the project areas because they provide
ongoing information about goods and services available.

VIII. Expected Risks from the Proposed Experiment are Proportionate
to the Potential Positive Results

A. DOT anticipates no expected risks from the Pilot. There are no environmental or safety
concerns. The expected result will be a cost benefit from possible reduction in just
compensation costs, reduced time in acquisition services, and reduced costs in relocation
expenditures.

B. Risks associated with sign companies not allowed to participate in the program have also
been weighed. Nonconforming signs located on other transportation projects are not
included in the Pilot. Such signs are owned by other sign companies who will not be
given the opportunity to participate in the Pilot. In such event, equal protection clause
arguments should not be held to prevent a state from conducting an experimental or pilot
program designed for the public good on less than statewide basis. (Aguayo v. Richardson
473 F.2d 1090, 1109, (2d Cir. 1973), cert. denied, 414 U.S. 1146, 94 S Ct.

C. During the Pilot, there is no anticipated increased in administrative burden on the States
to monitor compliance. The States have staff already experienced in the practice of the
relocation of nonconforming signs under the HBA and the Uniform Real Property and

D. Federal funding under 23 USC 502 SEP 15 is not required under this pilot. Relocation
funds will be used to reestablish the nonconforming sign under the provisions of the

IX. Intended Scope And Time Period For The Proposed Project. For
example, geographic limits may range from broad to restricted (statewide, one area,
one project, etc.). The proposed length of the pilot should be limited to that time
period needed to obtain measurable results. The legal authority for the pilot practice
ends at the termination of the pilot.

A. The scope of the Pilot is limited to projects on highway corridors that are regulated by the
HBA (HBA controlled routes) as set forth below. In the selection process for the project
for the Pilot, consideration will be given to the following factors: number of miles on the
HBA controlled route, amount of urban sections and local government jurisdictions; and
number of nonconforming signs.
SC  Project X- HBA controlled Rte #-miles of project- # of NC signs impacted
Project X- HBA controlled Rte #-miles of project- # of NC signs impacted

FL  Project X- HBA controlled Rte #-miles of project- # of NC signs impacted
Project X- HBA controlled Rte #-miles of project- # of NC signs impacted

B. Exclusions from Pilot participation:
   1. Illegally erected or maintained signs are excluded from this Pilot.
   2. Participation in this Pilot is not mandatory.
   3. Scenic highways and interchange areas are excluded from the Pilot.
   4. Nonconforming signs located in ramp or interchange areas excluded from Pilot.

C. The Pilot will be limited to a period of three (3) years commencing on the date that the Notice to Proceed for the Pilot is issued by the State’s Secretary of Transportation. The legal authority for the Pilot ends at expiration of the three (3) year period or by termination of the Pilot at the discretion of the appropriate State. It is anticipated that the three (3) year term will be sufficient time to obtain measurable results. State legislation may be necessary to implement the Pilot. In that case, the Notice to Proceed for the Pilot would not be issued until the legislation is adopted.

X. Detailed Description Of How The Pilot Would Work. Include any special safeguards and the SDT's proposed monitoring and measurement of impacts. An analysis of potential increase or decrease in administrative burden to the State should be one of the impacts measured by the State.

A. Pre-construction on-site project review: The States will conduct an on-site review of each location impacted by a highway improvement project in the Pilot prior to any construction activity. All sign structure sites participating in the Pilot will receive an on-site review by the States prior to acceptance into the Pilot.

B. Impacted Sign documentation:
   1. Pre and post pictures of the sign location and sign structure will be taken and retained by the States. The photographs shall be taken from the edge of the right of way, capturing all sign faces and sign supports. Photographs verifying removal of the nonconforming signs are to be maintained in the Pilot file.

   2. The States will establish a data base to store, at a minimum, the following information on each sign location participating in the Pilot:

      (a) Reestablishment/relocation costs (using the lowest of 3 bid quotes per the Uniform Policy);
      (b) Estimated time to negotiate settlement of acquisition of sign;
      (c) Estimated time if condemnation is required;
(d) Estimated time to relocate/reestablish the sign;
(e) Savings in reestablishing/relocating the sign is lieu of acquisition.

D. The reestablishment of the nonconforming sign would be subject to:
1. Status as a nonconforming sign is not altered or changed;
2. Size, height, lighting, and materials remain the same as in the pre-existing state. i.e. supports would remain the same - wood to wood, I-beam to I-beam;
3. Just compensation for any damages caused by the relocation of the nonconforming sign shall be waived by the sign owner and property owner. Sign owners exclusive remedy for the relocation of the nonconforming sign is relocation payment in accordance with the Uniform Relation and Assistance Policy Act of 1970;
4. Permission from the land owner is required prior to the relocation;
5. No lights for any direction of a nonconforming sign may be added. i.e., nonconforming advertising signs may not be lit unless the original direction was previously lit;
6. LED technology cannot be added to the nonconforming sign;

E. The Pilot may impact local jurisdictions if their sign ordinances or codes do not allow nonconforming signs to be reestablished/relocated. This may be an area where a State may need a change in their state’s legislation.

F. The results will be measured by: (1) the number of signs participating in the project; (2) an analysis of the cost-benefits of relocation/reestablishment of nonconforming signs; (3) an analysis of the cost-benefits to State staff, inventory control, and monitoring; and (4) an analysis of potential increase or decrease in administrative burden to the State.

G. The States will have consistency in their reporting formats (statistical evidence of the dollars and costs associated with resources and the overall cost savings). Specific reporting items will include: payments to landowners and sign owners, litigation costs, relocation costs, and estimated just compensation.

H. Upon approval of the Pilot by FHWA, all affected stakeholders will be provided a copy of the Pilot guidelines.

I. The States will submit annual progress reports to FHWA on the Pilot. Within sixty (60) days after the end of the Pilot term [(3) years from the date of Notice to Proceed], the States will submit to FHWA a written report analyzing the benefits, harms, burdens, costs, and effects of the Pilot. The Florida Department of Transportation, on behalf of both the State of Florida and South Carolina, will compile the progress reports, final reports and NEPA data from the individual states; compile the data into the required reports; and file the reports with FHWA.