

**SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION'S
REPORT TO
GOVERNOR'S REGULATORY REVIEW TASK FORCE**

May 15, 2013

This Report is made by South Carolina Department of Transportation (SCDOT) in response to Governor Haley's Executive Order No. 2013-02, dated February 12, 2013, regarding a review of statutes, rules, regulations, and policies applicable to SCDOT's functions and duties which may unduly burden business and the State's economy.

SCDOT held five public hearings between March 28 and April 2, 2013 for the purpose of receiving comments from the public about statutes, rules, regulations and policies of SCDOT that are perceived to be burdensome to businesses or the economy. The hearings were conducted in Rock Hill, Columbia, Greenville, Florence and Charleston. The number of attendees ranged from three (3) in Rock Hill to twenty-one (21) in Charleston. In addition to hosting public meetings, SCDOT solicited and accepted public comments at its newly created email address: ContactUs@scdot.org and via self-addressed comment cards. The agency received a total of eighteen (18) emails and three (3) comments cards. SCDOT also solicited input from the Associated General Contractors of America (AGC), the American Council of Engineering Companies (ACEC), Metropolitan Planning Organizations (MPOs) and Councils of Government (COGs).

From the public hearings, website solicitations, and other sources, SCDOT received a total of forty-two (42) written or spoken comments from the public. The concerns raised fell into the following categories:

- 1) Biking- Walking -"Complete Streets"
- 2) Encroachment permit process
- 3) Horizontal drilling permits process
- 4) Trees/landscaping limitations with the highway right of way
- 5) Traffic engineering standards in urban areas
- 6) Requiring developers to pay for road improvements
- 7) SCDOT exemptions from State Dig Law
- 8) Business license fee for highway contractors
- 9) Negative influence of special interest groups on project development

SCDOT provides its response and suggestions regarding each of these issues below.

1) Biking- Walking -“Complete Streets”

a. Public Comments

SCDOT received fourteen (14) public comments about the need to allocate more resources to multimodal forms of transportation, or “Complete Streets,” a concept that encourages safe and accessible facilities for all modes of transportation. These concerns were voiced primarily by bicycling coalition members, but they were joined by other community leaders interested in improving the health of South Carolinians and promoting more physical activity. Many perceived the issue of walkable and rideable streets as an economic issue. Commentors believe that if streets and highways are made more accessible and safe for pedestrians and bicyclists, more tourists, more residents and more businesses will be encouraged to visit or locate in the State.

b. Applicable statutes, rules, regulations, and policies

Federal law and regulations and SCDOT policies promote development of multimodal transportation facilities with transportation dollars. Pursuant to Part 652 of Title 23 Code of Federal Regulations, all state transportation departments must give full consideration to safe accommodation of pedestrians and bicyclists during the development and construction of federally funded projects.

c. SCDOT Response

In updating SCDOT’s Statewide Multimodal Transportation Plan, the following tasks have been included specifically to address biker/pedestrian needs:

- 1) Review of existing SCDOT practices for the provision of bike and pedestrian accommodations. To date, the consultant team has conducted interviews with stakeholder groups, including the Palmetto Cycling Coalition, to identify issues and opportunities to improve current accommodations. An “Existing Conditions Report” has been finalized and posted to the project website.
- 2) The consultant will prepare a technical report that outlines their recommendations to modify and/or improve SCDOT’s current processes. The report will also include recommendations for ways to improve coordination with external stakeholders.
- 3) Consolidate bike and pedestrian plans into a GIS database. Consultant team has coordinated with local governments to provide a consolidated GIS map on all known bike routes statewide. The GIS information will be incorporated into SCDOT’s systems to assist with project planning and programming, so

that SCDOT may consider project design elements for roads with a propensity for bike usage.

- 4) Consider “Livability Principles” and “Complete Street Concepts.” Consultant team will provide recommendations for standardized methodology for incorporating bike and pedestrian considerations into project prioritization.

SCDOT’s allocation of federal funding (Guideshares) to Metropolitan Planning Organizations (MPO’s) and Councils of Government (COG’s) for transportation improvement plans includes eligibility considerations for stand-alone sidewalk, bikeway, and multi-use path projects. These projects are identified through the MPO and COG planning processes. In addition, SCDOT provides criteria to MPO’s and COG’s for the use of State match for federally funded standalone sidewalk, bikeway, and multi-use path projects.

Accommodations for multimodal facilities have pros and cons. As noted in the comments from the Regulatory Review meetings, advocates of alternative modes of transportation (bicycling and walking) emphasize the health and economic benefits of “Complete Streets.” But providing dedicated accommodations for bicyclists and pedestrians will be costly, due to the additional paving, earthwork, utility relocations, drainage, signage, and rights-of-way required. SCDOT’s long-term responsibility for maintaining the new facilities will increase the cost of highway maintenance. The additional revenue needed to construct and maintain these facilities has the potential to effect businesses and employers. Also, additional property acquisition can negatively affect adjacent businesses by taking away existing parking.

The anticipated completion of the Statewide Multimodal Transportation Plan is spring/summer 2014. The findings and recommendations of the Plan will be considered for implementation. SCDOT’s Planning Office anticipates working with the bike/pedestrian stakeholders to assist with implementation of any potential changes to SCDOT policy and processes as it relates to bike and pedestrian accommodations. See December 6, 2012 letter of Secretary of Transportation Robert St. Onge, Jr., to Amy Johnson, Executive Director, Palmetto Cycling Coalition attached as “Exhibit A.”

- d. Recommendations for amendment/repeal

SCDOT does not recommend the repeal or amendment of any of statutes, rules, regulations, or policies, but encourages more funding for transportation improvements in general so that the needs for complete streets can be addressed more fully.

2) Encroachment permit process

a. Public Comments

SCDOT received thirteen (13) comments about perceived problems with SCDOT's encroachment permit process. The encroachment permitting process provides for a detailed engineering review and analysis of a request to perform work within SCDOT highway rights of way. The review and analysis is necessary to ensure the safe operation of the State's transportation facilities and to protect the public's infrastructure investment. The comments received from the public in regard to the process included the following: burdensome application required; length of time for response; length of permit time until expiration; lack of appeals process; requirement for support letters; inconsistency between county SCDOT offices around the State in handling encroachment permits; formal versus informal processes; inconsistency of approvals for encroachment permits based on employee interpretation of Access and Roadside Management Standard (ARMS); requirement of performance bonds for encroachment permits; restrictive maintenance policy within encroachment permit; unnecessary levels of review; lack of administrative or regulatory review of SCDOT ARMS manual.

b. Applicable statutes, rules, regulations, and policies

The applicable statutes, rules, regulations and policies that govern the encroachment permit process include the following:

- 1) Section 57-5-10 of S. C. Code of Laws of 1976, as amended, gives SCDOT the duty to construct and maintain the State Highway System in safe and serviceable condition.
- 2) Section 57-3-110(1) of S. C. Code of Laws of 1976, as amended, gives SCDOT the exclusive authority to establish design criteria, construction specifications and standards required to construct and maintain state highways.
- 3) Section 57-5-1090 of S. C. Code of Laws of 1976, as amended, gives SCDOT authority to issue driveway permits and side road entrances and include in such permits such requirements and restrictions for design and location of the driveways and side road entrances and exits as may be deemed necessary by the Department to avoid creating a hazard to the travelling public. This statute also allows the Department to deny any request for a permit which in the judgment of the Department may create a hazard to the travelling public.

- 4) SCDOT has published on its internet website its general guidelines, processes and standards for processing and granting encroachment permits in the Access and Roadside Management Standard (“ARMS”). This manual can be found at <http://info.scdot.org/EncPermits/Pages/Welcome.aspx>.
- 5) Section 710.403 of Title 23 Code of Federal Regulations requires SCDOT to assure that all real property within the boundaries of a federally aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses unless such uses are permitted by federal regulations or the Federal Highway Administration (FHWA). An alternative use must be consistent with the continued operation, maintenance, and safety of the facility and such use shall not result in the exposure of the facility’s users or others to hazards.
- 6) SCDOT Engineering Directive Memorandum 17 (EDM 17) provides guidance to SCDOT Engineering staff for the processing of encroachment permits.
- 7) SCDOT Highway Design Manual – 2009 Revised, provides uniform design practices for Department and consultant personnel preparing contract plans for SCDOT projects.
- 8) AASHTO Guide for the Planning, Design and Operation of Pedestrian Facilities – July 2004, provides guidance on the planning, design, and operation of pedestrian facilities along streets and highways.
- 9) Americans with Disabilities Act of 1990 (ADA)

c. SCDOT Response

In 2012 Current SCDOT Commission Chairman John Edwards spearheaded a committee (“ARMS Committee”) to review SCDOT’s general guidelines, processes and standards for processing and granting encroachment permits. These guidelines, processes and standards are published in the Access and Roadside Management Standard (“ARMS”). The ARMS Committee consisted of SCDOT commissioners, SCDOT staff, developers, private engineering firms and local government staff throughout the State. The ARMS Committee addressed how SCDOT’s application of ARMS affected businesses and identified common goals including safety, efficiency and consistency. Multiple recommendations from the ARMS Committee have been incorporated into ARMS. Many of the concerns expressed by the commenters have been addressed during this process.

Two specific improvements to the process which were encouraged by the ARMS Committee were formalizing a conceptual plan concurrence and a formal appeals/escalation process for denials of applications. The conceptual plan review was performed at the request of private sector to better align the permitting process with their development process. This allows the applicant to receive conceptual approval by way of a commitment letter, prior to investing funds in property and/or the detail engineering design needed for the actual permitting of the work activity. The conceptual plan review assists businesses with other regulatory permits as well as acquiring financing. SCDOT established an official two-step appeals process. The first step is a written appeal to the Secretary of Transportation. If a resolution is not reached, the applicant can appeal to the SCDOT Commission for a final disposition of the matter in accordance with ACT 114.

Several commentors thought the encroachment permit time period was too short. During the ARMS Committee review, the private sector requested that SCDOT expand the initial time period of an approved Encroachment Permit to two (2) years, with the possibility of a one (1) year extension to better align with other State agencies' permitting periods. Currently an approved Encroachment Permit is for a period of one (1) year. SCDOT is considering allowing the initial timeframe to be extended to up to two (2) years, with the possibility to extend an additional two (2) years, after which any further extension requests would be discretionary.

With regard to the issue of conflict in the encroachment permitting with a local government's policies, SCDOT's practice is to require the more restrictive policy to govern. However, SCDOT cannot enforce a local government's policy if it is more restrictive. SCDOT must comply with certain standards associated with Federal-aid eligibility. SCDOT's concern is its ultimate liability for the approval of certain designs or encroachments. If the encroachment is to be located on state highway right of way, SCDOT must ensure that the encroachment meets SCDOT required standards.

One commentator did not think it appropriate for SCDOT to require a letter from an adjacent property owner to grant a driveway permit. The ARMS driveway standards require SCDOT to determine the applicant's road frontage and consider the spacing of driveways on that frontage as well as on adjacent properties. The standards recommend that the driveway be wholly contained within the applicant's road frontage; however, SCDOT will permit driveways to extend outside these limits with the permission of the adjacent land owner. By allowing a driveway that encroaches into the frontage of the adjacent property, the access to the adjacent property may be affected. SCDOT's right of way associated with the adjacent property may be only an easement for the maintenance and operation of the roadway and not owned in fee simple; therefore, SCDOT cannot grant permission for the adjacent property owner. Particularly in residential areas, property owners often maintain the area with the highway right of way along their frontage. Due to these issues, SCDOT requires concurrence letters from the adjacent

property owner when any part of a requested driveway encroaches on the adjacent property road frontage, ensuring communication to the adjacent property owner when encroachments onto the roadway frontage may impact their property. SCDOT believes this is a prudent practice.

SCDOT reviewed the concerns raised concerning restrictive maintenance of permitted encroachments and separation of pedestrian access route from the roadway. Often a pedestrian access route may meander off the right of way, winding between trees. In instances such as this, SCDOT does not have equipment or means to maintain the facility. When curb and gutter is not present, SCDOT practice is to place the sidewalk as far away from the traveled way as practical to enhance safety and operations for motorists and pedestrians. SCDOT utilizes the AASHTO publication, "Guide for the Planning, Design, and Operation of Pedestrian Facilities", to provide guidance for separations, referred to as buffer widths by AASHTO. Five (5) feet is considered the minimum distance that is applicable to a wide range of site locations. However, it is not intended to be an absolute number that is applicable to the context of all projects.

Several commenters complained about the time it takes to obtain an encroachment permit. The processing time varies greatly based on the scope of the work being requested. In 2012, SCDOT piloted project to develop an electronic submittal process for encroachment permit applications. This resulted in an electronic process to be known as the "Encroachment Permit Processing System" (EPPS). EPPS is currently being tested in two Engineering Districts in South Carolina and is planned for release throughout the State in the coming months. EPPS not only allow paperless submittal of encroachment permits through the Web, it will also provide automatic notification for review requests/approvals and date/time stamping for tracking purposes. The various permit types will be categorized with appropriate processing times established for each category. Reports will be available to help verify that these target times are met in each step of the review process. EPPS will also add the flexibility to modify the expiration date of the permit based on the complexity of the project. This will ensure that the full construction schedule is accounted for in the original permit period. EPPS will also allow requests for extension to be executed through the EPPS system in a timely fashion.

As soon as EPPS is vetted and released for public use, it will greatly improve and standardize the encroachment permitting process which will reduce the overall time to process an Encroachment Permit application. In the case of a customer that does not have access to the Web, SCDOT will be able to take the application in the current paper format and enter it in the EPPS system for the customer with minimal delay in the process.

In conjunction with developing EPPS, SCDOT commissioned an internal committee to review the Encroachment Permit process, develop internal business rules, and update the statewide permit training program to provide consistency in how encroachment permit applications are controlled. ARMS and EDM 17 provide guidance on the amount of review

necessary for certain categories of permits where specialized review is necessary. To improve the consistency of the application of these guidelines, SCDOT is preparing detailed business rules and training for the local permit managers. The Encroachment Permit Training Program will also incorporate updates that have been made to ARMS. Policies and guidelines are being developed that will provide additional direction for items that have been subjective in the past such as bonding requirements and maintenance responsibilities. Guidance on performance bond requirements has been modified to eliminate the potential of double bonding when a County may also require bond on work within SCDOT right of way.

Engineering Directive Memorandum 17 (EDM 17) sets forth policy with regards to direction and approval requirements for various types of encroachment permits. SCDOT is currently revising and updating EDM 17 in an effort to streamline and improve the efficiency of the encroachment permit process.

SCDOT's annual Engineering Conference, held in March, was expanded to include County and District staff throughout the state in an effort to unify knowledge and training. This year's theme "Consistency Counts" applied to all topics, including the Encroachment Permit process and the new EPPS system.

One commentor was concerned about the lack administrative or regulatory review of the ARMS. Because ARMS sets forth internal guidelines and standards for the exercise of engineering judgment and does not have the force of law, SCDOT has not promulgated ARMS through the formal regulatory process.

SCDOT's mission as stated in State statutes is to provide a safe and efficient transportation system for all users. While some policies established by SCDOT may seem burdensome, their sole purpose is to guide in managing the State's transportation facilities to ensure a safe and efficient system. The primary objective of SCDOT has to and should always be the safety of the travelling public.

d. Recommendations for amendment/repeal

Pursuant to existing State statutes, SCDOT is charged with the duty of maintaining the State Highway System in a reasonable safe condition. Because of the composition of the current State Highway System, SCDOT is responsible for maintaining all types of roadways, including dirt roads and interstates, located in rural and urban environments. Due to this wide variation, the SCDOT will always be subject to the comments received concerning consistency and burdensome processes. It is difficult to provide a quick, concise, decision matrix to cover the full spectrum of the roadway environments for which SCDOT is responsible, and each decision requires exercise of engineering judgment on a case by case basis.

One option for improvement would be to review the statutes that determine what roads should be included in the State Highway System subject to SCDOT's control and maintenance. In general, SCDOT believes the State Highway System should consist of the system of roadways that provide for intrastate travel and connects population centers and sites of state significance, and local and rural roads should be in many instances turned back to the local jurisdictions. Focusing SCDOT's resources on the major transportation corridors could improve the efficiency and effectiveness of the SCDOT's management of the State highway systems.

One option to improve the permit process is to authorize SCDOT to charge a permit processing fee. Under current legislation SCDOT is not authorized to charge such a fee. Many hours are necessary to properly review, process, and inspect encroachment permits. Especially in the urban areas where development is common, SCDOT's available staff is limited in their ability to keep up with demand. It is recommended that the law specifically authorize SCDOT to charge a reasonable permit fee. This fee would generate revenue that could be used to outsource various phases of encroachment permit review and inspection. This could enable SCDOT to process permits more efficiently and help to address peaks in demand with greater effectiveness.

3) Horizontal drilling permits process

a. Public Comments

SCDOT received several comments from representatives of utility companies who thought SCDOT's requirements for horizontal directional drilling under State highway rights of way were too burdensome and the permits took too long to approve.

b. Statutes, rules, regulations and policies

The statutes, rules, regulations and policies governing the issuance of horizontal drilling permits are the same as those that govern other encroachment permits. See response in (2)(b) above.

SCDOT's "Utility Accommodations Manual," which sets forth SCDOT's policy on approving drilling permits under state highway rights of way is found on SCDOT's website at http://www.scdot.org/doing/technicalPDFs/publicationsManuals/utilityAccommodations/ua_policy.pdf. The Manual was revised as recently as September 2011.

c. SCDOT Response

SCDOT has the duty to take all reasonable steps to protect the public safety on state highways and to protect the public's investment in highway facilities. For this reason, SCDOT has required considerable detail on applications for permits to drill or bore under a highway facility. Because this detail is no more than the utility company would need to provide a contractor who going to perform the work, SCDOT does not view it as being overly burdensome.

The length of time required for SCDOT to approve these permit applications is not unreasonable. Permits for borings under 10" in diameter on secondary and primary roads can be approved at the local level. Larger borings must be approved by SCDOT State Utilities Engineer. Borings under interstate highways must be approved by the Federal Highway Administration as well. If the permit application is complete and addresses all issues then it is normally processed and approved within a week. If additional information is needed, then there may be delays waiting on the applicant to submit the additional information. It can take up to two (2) weeks to get FHWA approval after submittal of a complete permit. These approvals are necessary and take time to process, but they are essential to public safety.

d. Recommendations for Repeal/Amendment

SCDOT does not recommend the repeal or amendment of any of statutes, rules, regulations, or policies concerning horizontal directional drilling under State highway right of way.

4) Trees/landscaping limits within highway rights of way

a. Public Comment

SCDOT received several comments concerning its tree policies, especially as it relates to street trees in historic districts. The concern was that SCDOT was denying permits to plant large trees to match the existing trees. The problem with such trees is the safety or maintenance problems they create within the right of way. A second concern expressed by commenters was that SCDOT was unnecessarily limiting the type of trees that can be used within the highway right of way for landscaping/beautification purposes.

b. Applicable statutes, rules, regulations, and policies

The statutes, rules, regulations and policies governing the issuance of permits to plant trees within SCDOT highway rights of way are the same as those that govern other encroachment permits. See response in (2)(b) above.

c. SCDOT Response

SCDOT is currently reexamining its tree policies to address the issues raised. SCDOT will consider all options, but must be mindful of their impact on public safety and the long term maintenance costs to the taxpayer. One option may be to turn over local or historic roads to the municipalities that desire to provide a roadway typical section that is in character with local developmental and community initiatives.

d. Recommendations for Repeal/Amendment

SCDOT does not recommend the repeal or amendment of any of statutes, rules, regulations, or policies regarding trees at this time.

5) Traffic engineering standards in urban areas

a. Public Comment

SCDOT received a comment from a city planner who asked that SCDOT be more flexible in applying traffic engineering standards in urban areas. He perceived that SCDOT was trying to use a one-size-fits-all standard to both urban and rural areas. This comment relates primarily to trees and sidewalks in urban areas. The tree issue has been addressed in 3) above.

b. Applicable statutes, regulations, rules or policies

This comment relates to the approval of encroachment permits for sidewalks and tree planting in urban areas. The process is governed by the same statutes, rules and policies as set forth in 2(b) above.

c. SCDOT Response

SCDOT's Highway Design Manual (HDM) is currently being reviewed and revised. In the review committee, special attention is being given to the urban design standards in central business district areas. SCDOT's Access and Roadside Management Standard (ARMS) does not specifically define urban or rural for the majority of its requirements. In the development of the standards, in most cases the urban condition from national and AASHTO guidance is used for all conditions in South Carolina. To create a more flexible policy, ARMS contains a waiver process to allow variances from the standards when the standards cannot be met, but safety is not compromised by the variance or waiver.

When upgrading pedestrian accommodations from shoulder to sidewalk, a “pedestrian walkway” is established. Such “pedestrian walkways” have certain requirements regarding function, connectivity, maintenance. In addition, the requirements of the American’s With Disabilities Act (ADA) must be met.

Introducing a short segment of walkway on a roadway without the appropriate function can create a safety hazard to the pedestrian. SCDOT supports the addition and use of pedestrian walkways within the right of way if there are logical termini and the sidewalks connect to other pedestrian facilities or designations. Some local governments are requiring developers to provide sidewalks along their frontage even where the sidewalk does not connect to existing sidewalk or have a logical end point other than the property line of the development. These short segments of sidewalk can cause liability and maintenance problems for SCDOT if allowed to be located within the State highway right of way. For this reason, SCDOT denies permits with these short, unconnected segments. However, this does not prevent sidewalks from being located outside of the right of way.

SCDOT policies or standards do not unduly burden business with regard to placing appropriate and sustainable public facilities within the right of way. Facilities that provide a useful accommodation to pedestrian activity are being allowed on the right of way. If sidewalks do not provide a public benefit at the time constructed, they should not be allowed. Otherwise, they will create a long term public maintenance expense for the taxpayers without any benefit to business or community.

d. Recommendations for Repeal/Amendment

At this time, SCDOT does not recommend any changes to its Access and Roadside Management Standard (ARMS). SCDOT’s Highway Design Manual (HDM) is currently being reviewed and updated with particular attention given to the urban environment.

6) Requiring developers to pay for cost of road improvements

a. Public comment

A real estate developer was concerned about what he perceived as a “growing trend” to require developers to pick up significant costs for road improvements in connection with the issuance of encroachment permits.

b. Applicable statutes, rules, regulations and policies

The applicable laws and standards are the same as apply to encroachment permit process set forth 2(b) above.

c. SCDOT Response

SCDOT has a duty to maintain the State Highway System in a safe and serviceable condition. When the size of the development indicates significant traffic impacts to the roadway, studies are performed to evaluate the existing conditions and impacts of the traffic associated with the development. If the study indicates a detrimental impact to the roadway, SCDOT will recommend mitigation of these impacts. The permittee is responsible for the mitigation of the traffic impacts associated with the development. This provides the methods to protect the taxpayer's investment in the roadway infrastructure and to ensure the necessary improvements are performed to allow the roadway to remain in a safe and serviceable condition.

d. Recommendations for amendment/repeal

SCDOT does not recommend that this policy be changed due to fiscal and safety concerns.

7) State Dig Law

a. Public Comment

A representative of a gas pipeline company was concerned that SCDOT is exempt in some circumstances from the South Carolina Underground Facility Damage Prevention Act ("State Dig Law").

b. Applicable statutes, rules, regulations, and policies

The State Dig Law, found in S. C. Code Section 58-36-10, et seq., requires all persons responsible for excavating to call SC 811 prior to commencing excavation so that utility lines can be located. SCDOT, along with local governments, special purpose districts, and public service districts, is exempt from these requirements when the excavation is performed for maintenance activities within its designated right of way. Maintenance activities include, according to the statute "resurfacing, milling, emergency replacement of signs critical to maintaining safety, or the reshaping of shoulder and ditches to the original road profile." See S. C. Code Section 58-36-110(4).

SCDOT's "Utility Accommodations Manual," which sets forth SCDOT's policy for accommodating utilities on state highway rights of way is found on SCDOT's website at http://www.scdot.org/doing/technicalPDFs/publicationsManuals/utilityAccommodations/ua_policy.pdf. It was revised as recently as September 2011.

c. SCDOT Response

SCDOT has directed its maintenance forces to call SC 811 prior to any scheduled maintenance. SCDOT's policy is to use its exemption from the State Dig Law only in two situations. First, when replacing traffic signs that have been stolen or knocked down. In this case, for public safety reasons, SCDOT forces cannot delay in replacing these signs while waiting for a utility locator, and such action is unnecessary since SCDOT forces are simply replacing a sign that was previously installed at a site without any interference with a utility line. The second circumstance is when SCDOT forces are reshaping shoulders and ditches to the original road profile. In this case, there should be no interference with previously installed utility lines if those lines were installed in compliance with SCDOT's Utility Accommodations Manual, which requires utility lines under ditches to be located at least 36" below the surface. To assist the utility companies and reduce damage to their facilities, SCDOT has posted its ditch cleaning and shoulder maintenance schedule on its website. This information is updated monthly. The website address is http://www.dot.state.sc.us/doing/doingdocs/shoulders_ditches_plan.xlsx.

SCDOT's exemption from the State Dig Law only applies to its internal maintenance forces. SCDOT has required in the past and still requires its contractors to call SC 811 before commencing work within the highway right of way.

d. Recommendations for Repeal/Amendment

SCDOT does not recommend the repeal or amendment of the State Dig Law. The new law was enacted in 2011 (2011 Act No. 48) and only became effective in June, 2012. The issue of exemptions and the extent they should apply to SCDOT was thoroughly discussed at that time.

8) Business license fee for highway contractors

a. Public Comment

A major road contractor in the State questioned the burden on highway contractors of the law that grants municipalities authority to charge a business license fee on contractors working within State highway right of way. He argued that contractors working on State projects should be exempt from business license fees since the cost of these fees are simply passed on to the taxpayers in the form of higher construction costs.

b. Applicable statutes, rules, regulations and policies

Pursuant to Section 5-7-30 of the S. C. Code of Laws of 1976, as amended, municipalities have specific authority to levy a business license tax on businesses doing business within their city limits. Contractors with state agencies are not exempt from these taxes. The tax is a fee imposed for the privilege of doing business within the municipality.

c. SCDOT Response

SCDOT supports any measure to reduce the cost of highway projects.

d. Recommendations to amend/repeal

If the State Legislature deems it appropriate, it could enact an exemption from business license taxes for contractors who are working on public highway projects.

9) Negative influence of special interest groups on infrastructure projects

a. Public Comment

Two speakers were concerned about what they perceived to be “anti-progress groups” who seek to delay or stop important infrastructure projects. They questioned whether processes could be streamlined to limit special interest groups from delaying or halting progress on projects, since these delays raise the costs of highway projects.

b. Applicable statutes, rules, regulations, and policies.

Pursuant to federal environmental laws SCDOT must evaluate the impact of federally funded highway projects on the environment and obtain permits from the U. S. Corps of Army Engineers (ACOE) before impacting wetlands or waters of the United States. These laws require public hearings and solicitation of input from the public throughout the project development process. In addition, state environmental laws require SCDOT to obtain permits from S. C. Department of Health and Environmental Control (DHEC) to ensure that highway projects do not impact water quality. The public is also given the opportunity to make comments during this process, as well as the right to challenge issuance of the permits.

Pursuant to S. C. Code Section 57-1-370(G), SCDOT must conduct a public hearing in each county in which a public hearing is required by Federal regulations to share information regarding how projects will impact the local community and to allow the community to address its concerns with SCDOT officials. These hearings must include the opportunity for members of the public to address a hearing officer in a format in which comments can be heard by the general public.

c. SCDOT Response

SCDOT wholeheartedly supports streamlining of the environmental decision making and permitting processes, but SCDOT has no authority to limit the right of special interest groups to comment or seek public information about transportation projects, or their rights of appeal.

SCDOT efforts to streamline the environmental process include agreements with DHEC and ACOE which fund liaison positions to assist with water quality and wetland permitting issues. SCDOT also holds Monthly Agency Coordination Effort (ACE) meetings with state and federal resource and regulatory agencies to present upcoming projects, work on mitigation activities, and discuss the NEPA process so that environmental actions can be taken once instead of twice (at the NEPA stage, and then again at the permit stage).

SCDOT has also developed a new Public Involvement Policy that addresses non-governmental organizations and their presence at public meetings. This policy is posted on SCDOT's website at http://www.scdot.org/inside/pdfs/Public_Participation_Plan.pdf.

d. Recommendations for Repeal/Amendment

The appeals process for DHEC's water quality certification (401) may be too accessible. 2006 Act No. 387 could be strengthened to more closely follow the federal appeals process. Currently, any affected/interested person can appeal the issuance of a water quality certification to the DHEC Board and then again to the S. C. Administrative Law Court. These appeals create time delays on projects, since the ACOE wetlands permit cannot be issued prior to DHEC's water quality certification.

Another possibility to streamline the process would be to have DHEC approve the USACE Nationwide Permits and SCDOT General Permits for Critical Areas.

Summary

The forty-two (42) comments SCDOT received during the regulatory review process primarily fell into two areas: requests from bicyclists and urban planners for more facilities for bikers and walkers and concerns from developers, utility companies, and urban planners about SCDOT's encroachment permit process.

SCDOT will be considering biker/pedestrian needs in its 2014 update of the Statewide Multimodal Transportation Plan. SCDOT will also continue to encourage local planning groups to consider stand-alone sidewalk, bikeway and multi-use path projects when selecting transportation projects. SCDOT is aware of these needs and will continue to work with this group in the transportation planning process.

In 2012 SCDOT Commissioners, SCDOT staff, developers, private engineering firms and local government staff throughout the State performed a comprehensive review of the encroachment permit process through a review committee spearheaded by Commissioner John Edwards. Much was accomplished during this review and many new initiatives have been put in place to address the concerns of the business community. SCDOT believes that these initiatives, including a new web-based encroachment permit processing system, statewide training to promote consistency in implementation and a two-step appeals process, will address many of the concerns raised by the public during this review.



South Carolina
Department of Transportation

Secretary of Transportation
Robert J. St. Onge, Jr.
(803) 737-1312 Fax (803) 737-2038

December 6, 2012

Ms. Amy Johnson
Executive Director, Palmetto Cycling Coalition
141-F Pelham Drive, Suite 116
Columbia, South Carolina 29209

Re: Transportation Alternatives Program

Dear Ms. Johnson:

Thank you for your recent letter detailing the value bicycling can bring to all of South Carolina. I am pleased to share with you and the Palmetto Cycling Coalition that the South Carolina Department of Transportation (SCDOT) is committed to utilizing and advancing all Commission approved projects from the former Transportation Enhancement Program as well as Safe Routes to School Program. Additionally, as a part of the December 2012 Commission meeting, SCDOT will outline its plan for implementing the new Transportation Alternatives program as part of the new Statewide Transportation Improvement Program.

The Department acknowledges your "call to action" in improving South Carolina's position of providing alternative transportation choices. However, we need to take into consideration that SCDOT maintains and manages 41,444 miles of roadway which is the 4th largest state system in the nation. This network of roads and bridges is supported by the 4th lowest motor fuel user fee. While the road system mileage is capped by state law, the actual responsibility for maintenance of lane miles and appurtenances has increased greatly by widening, addition of bike-lanes, sidewalks, drainage and safety features. Additionally, one-third of the 8,388 state bridge facilities are considered in fair to poor condition. Presently, SCDOT has determined needs requiring an additional \$1.4 billion per year for the next 20 years just to bring the present transportation network to an acceptable level of service for all of South Carolina. It is for these reasons that SCDOT is forced to set priorities and has given its highest priority to system maintenance and preservation. Without an improved, reoccurring and specifically identified resource of increased revenue, SCDOT is unable to expand its present funding levels dedicated to pedestrian and bicycle facilities.


Earlier this year, in a review by staff, it was presented that nearly 75 miles of bicycle accommodations and over 250 miles of sidewalk improvements totaling nearly \$100 million are under development or already in construction along state roads. This investment shows the state's commitment to provide these multimodal options, as well as the associated project cost due to utility relocations, drainage, signage, and additional rights of way. Of course, with each lane mile of roadway and supporting features is the responsibility of the routine maintenance and safety of these facilities. Our challenge each year is trying to stretch our precious state dollars for maintenance activities, while still matching all of the federal dollars available to the state.



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I understand that over the past months you have been meeting with staff to share your comments and concerns. I look forward to working with the Palmetto Cycling Coalition in an effort to communicate these and other priorities in maintaining a balanced quality of life through transportation for all in South Carolina. I trust this has been helpful and please do not hesitate to contact me again should you have further questions.

Sincerely



Robert J. St. Orge, Jr.
Secretary of Transportation

RJS:mbw

cc: John V. Walsh, Deputy Secretary for Engineering
J. C. Watson, Chief Engineer for Operations
Ron Patton, Chief Engineer for Planning, Location, and Design
Tony S. Sheppard, Director of Traffic Engineering
Mark Lester, Director of Planning

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