

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY
ADMINISTRATION, THE U.S. ARMY CORPS OF ENGINEERS, CHARLESTON
DISTRICT, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION,
THE SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**SECTION 106 IMPLEMENTATION FOR FEDERAL-AID TRANSPORTATION
PROJECTS IN THE STATE OF SOUTH CAROLINA**

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. 101 et seq., implements the Federal-aid Highway Program (Program) in the state of South Carolina by funding and approving state and locally sponsored transportation projects that are administered by the South Carolina Department of Transportation (SCDOT); and

WHEREAS, the South Carolina FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Program in the state of South Carolina complies with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108), as amended, and codified in its implementing regulations, "Protection of Historic properties" (36 CFR Part 800); and

WHEREAS, SCDOT administers Federal-aid projects throughout the State of South Carolina as authorized by Title 23 U.S.C. 302 and Section 57-1-30 of the South Carolina Code of Laws; and

WHEREAS, FHWA has delegated responsibility to the South Carolina Department of Transportation (SCDOT) through a Programmatic Agreement originally dated March 9, 1993 with updates December 13, 2011, and August 18, 2014, to coordinate with the South Carolina State Historic Preservation Officer (SHPO) on certain matters related to Section 106 of the National Historic Preservation Act; and

WHEREAS, the responsibilities of the South Carolina State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

WHEREAS, FHWA has determined that implementation of the Program in South Carolina may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the South Carolina State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b); and

WHEREAS, in accordance with 36 CFR § 800.2(a)(2) in processing a Department of the Army (DA) permit application, the U.S. Army Corps of Engineers, Charleston District (Corps) will generally accept for Federal or Federally assisted projects the lead Federal agency's compliance with the requirements of Section 106 of the NHPA; and

WHEREAS, for the purpose of Section 106 compliance for all FHWA undertakings in the State of South Carolina that require Corps authorization pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 and 403), the Corps has been consulted in the development of this Programmatic Agreement (Agreement), and designates FHWA as the lead Federal agency for such undertakings; and

WHEREAS, the Corps has been invited to be a signatory party to this Agreement pursuant to 36 CFR 800.2(a)(2), and FHWA will act on the Corps' behalf to fulfill both FHWA and the Corps' collective responsibilities

under Section 106 of the NHPA; and

WHEREAS, the Corps is individually responsible for compliance with Section 106 for undertakings where FHWA is not the lead Federal agency on a specific undertaking; and

WHEREAS, FHWA has notified Federally-recognized Indian tribes (Tribes) with ancestral lands in South Carolina about this Agreement, has requested their comments, and has taken any comments received into account. These Tribes include the Absentee-Shawnee Tribe, Catawba Indian Nation, Chickasaw Nation, Eastern Band of the Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Muscogee (Creek) Nation, Seminole Nation of Oklahoma, Seminole Tribe of Florida, Tuscarora Nation, United Keetoowah Band of Cherokee Indians in Oklahoma, Cherokee Nation, Shawnee Tribe; and

WHEREAS, FHWA has provided follow-up consultation with the one Tribe (Eastern Band of Cherokee Indians) that provided comments on the draft Agreement and addressed their comments; and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in South Carolina and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, FHWA has notified the public, Federal and State agencies, and Certified Local Governments (CLGs) about this Agreement, has requested their comments, and has taken any comments received into account,

WHEREAS, SCDOT has participated in the consultation and has been invited to be a signatory to this Agreement; and

WHEREAS, all borrow pits will be reviewed in accordance with SCDOT Engineering Directive Memorandum Number C-16 (Attachment 1); and

NOW, THEREFORE, FHWA, the Corps, the SHPO, the ACHP, and SCDOT agree that the Program in the State of South Carolina shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in South Carolina and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

To aid the signatories of this PA, the stipulations are organized in the following order:

- I. Applicability and Scope
- II. Definitions
- III. Professional Qualifications Standards
- IV. Responsibilities
- V. Consultation with Tribes
- VI. Participation of Other Consulting Parties and the Public
- VII. Short Form Report
- VIII. Project Review
- IX. Emergency Situations
- X. Post-Review Discoveries
- XI. Identification and Treatment of Remains
- XII. Administrative Stipulations
- XIII. Amendment
- XIV. Termination
- XV. Confidentiality
- XVI. Duration of Agreement

STIPULATIONS

The FHWA, with the assistance of SCDOT, shall ensure that the following measures are carried out.

I. APPLICABILITY AND SCOPE

- A. This Agreement sets forth the process by which the FHWA, with the assistance of SCDOT, will meet its responsibilities pursuant to Section 106 and 110 of the NHPA (54 U.S.C 306108 and 54 U.S.C. 306101).
- B. The objective of this Agreement is to consolidate existing Section 106-related agreements and make more efficient the methods by which FHWA and SCDOT review individual undertakings processed under Section 106 that may affect historic properties and to establish the process by which FHWA (who retains ultimate Section 106 responsibility, except where such responsibility has been delegated to SCDOT) carries out its Section 106 responsibilities.
- C. Through this Agreement, FHWA authorizes SCDOT to initiate and, in most cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.
- D. Through this Agreement, FHWA and SCDOT establish three categories of projects (Type I, II, and III Projects) that require different levels of review and consultation with the SHPO.
- E. The FHWA retains the responsibility to consult with Tribes as required under 36 CFR 800, as amended. SCDOT may assist FHWA if individual Tribes agree to alternate procedures.
- F. This Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in 36 CFR 800.16(x). For such undertakings, FHWA shall follow the procedures in 36 CFR Part 800.
- G. Cooperating Federal Agencies who recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and SCDOT follow the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and SCDOT.

II. DEFINITIONS

- A. Type I Projects: undertakings which typically involve minor amounts of ground disturbance. Examples include pavement resurfacing, installation of fencing, installation of rumble strips, and landscaping.
- B. Type II Projects: undertakings which typically involve a limited amount of ground disturbance adjacent to areas previously disturbed by road construction. Examples include bridge replacements on alignment, construction of bicycle/pedestrian paths, and intersection improvement projects that involve the construction of turn lanes and/or realignment of roads.
- C. Type III Projects: undertakings which typically involve a moderate to large amount of ground disturbance. Examples include road widening and new road alignments.
- D. Ground disturbance is defined as any work or activity that results in a disturbance of the earth, including excavating, digging, trenching, drilling, augering, backfilling, clearing, and grading.
- E. For purposes of this agreement, the definitions provided in 36 CFR Part 800.16 (a) through (y) shall apply whenever applicable.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards (published in 48 FR 44738-44739). However, nothing in this stipulation may be interpreted to preclude FHWA or SCDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the direct supervision of a person who does meet the standards.

IV. RESPONSIBILITIES

The following section identifies the responsibilities of FHWA and of SCDOT in complying with the terms of this Agreement.

A. FHWA (lead Federal agency) Responsibilities

1. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(a)(1-4), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by SCDOT under the authority of FHWA. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. FHWA retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). FHWA may ask SCDOT to assist in consultation if the individual Tribes agree to alternate procedures.
3. Pursuant to 36 CFR 800.6(a)(1), FHWA is responsible for notifying the ACHP of an adverse effect determination and offering the ACHP the opportunity to become a consulting party.
4. FHWA shall provide ACHP copies of any Memorandum of Agreement (MOA) developed for undertakings which adversely affect historic properties.
5. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XIII(B) of this Agreement.

B. SCDOT Responsibilities

Under the authority of FHWA, SCDOT may carry out the following steps with respect to undertakings covered by this Agreement. Assignment of these responsibilities is based on adequate and appropriate performance by SCDOT as evaluated in monitoring by FHWA pursuant to Stipulation XII(1) of this Agreement. This list is not inclusive of all responsibilities of SCDOT under this Agreement.

1. Determine under 36 CFR 800.3(a) whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
2. Determine under 36 CFR 800.3(c) and (d) whether the undertaking may occur on or has the potential to affect historic properties on tribal lands as they are defined in 36 CFR 800.16(x).
3. Solicit public comment and involvement, in accordance with 36 CFR 800.3(e) and SCDOT's public involvement procedures.
4. Except as identified in Stipulation V, identify additional consulting parties, including Tribes, as described in 36 CFR 800.3, and invite them to participate in the undertakings covered by this Agreement.
5. Except as identified in Stipulation VIII, determine and document, in consultation with the SHPO, the scope of identification efforts and level of effort, as described in 36 CFR 800.4 (a) and (b), including the undertaking's area of potential effects (APE).
6. In consultation with SHPO, determine the boundaries and eligibility of properties within the APE for listing in the NRHP.
7. Determine whether historic properties may be affected by the undertaking by applying the criteria

- of adverse effect as described in 36 CFR 800.5(a)(1)
8. In consultation with FHWA, the SHPO, and the ACHP (if it has chosen to participate), resolve adverse effects through the development, circulation, and execution of a MOA, if appropriate.
 9. Ensure conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the South Carolina Standards and Guidelines for Archaeological Investigations (updated 2013) and any successor to those guidelines.
 10. The SCDOT shall submit to the SHPO copies of all fieldwork reports and architectural survey cards, and shall ensure curation of archaeological materials produced under this PA at a facility meeting the standards of 36 CFR 79.
 11. Provide FHWA copies of all correspondence sent out on its behalf (e.g. letters to SHPO or Tribes)
 12. Notify FHWA of adverse effect findings and invite FHWA to participate in discussions with the SHPO to resolve adverse effects or any disputes.

V. CONSULTATION WITH TRIBES

- A. Where formal consultation agreements with Tribes exist, SCDOT may provide general coordination information to Tribes but FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement.
- B. In accordance with 36 CFR 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the area of potential effects shall be identified by SCDOT and invited by FHWA to be consulting parties.
- C. SCDOT shall ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
- D. SCDOT shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
- E. FHWA may ask SCDOT to assist in consultation if the individual Tribes agree to alternate procedures.

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Additional Consulting Parties

1. Consulting parties shall be identified in writing by SCDOT in consultation with the SHPO pursuant to 36 CFR 800.3(c-f) and their participation in undertakings covered under this Agreement shall be governed by 36 CFR 800.3(f)(3). Individuals and organizations with a demonstrated interest in an undertaking shall be invited by SCDOT in consultation with FHWA to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by SCDOT to participate in the Section 106 process. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by SCDOT and FHWA in consultation with the SHPO.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and SCDOT's environmental compliance procedures. SCDOT's Public Involvement Plan (Attachment 2) provides guidance for identifying, informing, and involving the public. FHWA's Technical Advisory (T6640.8A, October 30, 1987) and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d), 800.3(e), and 800.1 l(c)(1 and 3).

2. The SCDOT shall continue to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.
3. For those actions that do not routinely require public review and comment (e.g., Type I projects), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential impacts on them.
4. The SCDOT shall make FHWA and SHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

VII. PROJECT REPORTS

- A. The SCDOT shall use a short form report, internal memorandum, or the Cultural Resources Screening Form for surveys and testing projects conducted with in-house personnel.
- B. The use of short form reports (Example Attachment 3) by SCDOT consultants and subconsultants will be restricted to projects where ten (10) or fewer archaeological and/or architectural sites are identified and a finding of “no historic properties are affected” or “no adverse effect to historic properties” is made.
- C. Short form reports must, at a minimum, contain the following information:

Title, Archaeologist (or other cultural resource investigator), Date of Research, County, Project Name, Project Description, Location, USGS Quadrangle Map, Date, Scale, UTM, Zone, Easting, Northing, Environmental Setting, Nearest River/Stream and Distance, Soil Type, Reference for Soils Information, Ground Surface Visibility, Current Vegetation, Investigation Description, Table or List of Previously Identified Resources (Archaeological or Architectural) in Vicinity of Project Area, Description/Discussion of Any Resources Discovered as a Result of Current Survey, and Remarks and Recommendations.
- D. Short form reports cannot be used when historic properties are identified within the APE and the SCDOT determines that the project may have an adverse effect.
- E. Short form reports may be used on projects involving eligible bridges provided that no other historic architectural or archaeological resources may be adversely affected in the APE. These reports will include a section that describes the historic context of any eligible or listed bridges within the project's APE.
- F. The SHPO reserves the right to request a full length or expanded report when additional information (contextual or otherwise) is needed to make a National Register eligibility determination.

VIII. PROJECT REVIEW

A. Type I Projects

SCDOT's cultural resource staff will implement the following review and consultation process for Type I projects. Type I projects may include the following types of undertakings:

1. Pavement resurfacing (with shoulder and ditch work)
2. Installation of fencing, walls, signs, pavement markings, traffic signals, small passenger shelters, and railroad warning devices
3. Installation of rumble strips
4. Landscaping

Type I Project Review Procedure

- a. SCDOT's cultural resource staff will evaluate each undertaking for potential effects to historic properties. At a minimum, evaluations shall consist of a review of the state's cultural resource files in a Geographic Information System (GIS) and a review of modern-day aerial photography. Field investigations will be performed at the discretion of SCDOT's cultural resource staff.
- b. SCDOT's cultural resource staff will consult with the SHPO on all determinations of eligibility made for above ground resources.
 1. On projects with less than five (5) survey eligible above ground resources that are determined to be not eligible for the National Register in consultation with SHPO, SCDOT may use the Cultural Resources Screening Form to document eligibility and assessment of effect. SCDOT would request state site numbers for all documented above ground resources and would submit digital copies of survey cards and a copy of the Cultural Resources Screening Form to SHPO.
 2. On projects with greater than five (5) survey eligible above ground resources that are determined to be not eligible for the National Register in consultation with SHPO, SCDOT would consult with SHPO to determine what level of report documentation (i.e. Cultural Resources Screening Form, internal memorandum, or short form report) would be required. SCDOT would request state site numbers for all documented above ground resources and would submit digital copies of survey cards and a copy of the Cultural Resources Screening Form to SHPO.
 3. If no eligible above ground resources are identified within a project's Area of Potential Effect, SCDOT's cultural resource staff may proceed with processing the project under the terms of this Programmatic Agreement.
- c. For those undertakings in which there are a) no previously recorded historic properties within the APE or b) no newly identified historic properties within the APE, SCDOT's cultural resource staff may issue a finding of "no historic properties affected" and will consult with the SHPO as SCDOT determines appropriate.
- d. If there are potential historic properties identified within the APE, SCDOT's cultural resource staff will apply the National Register Evaluation Criteria to determine National Register eligibility. SCDOT will then apply the Criteria of Adverse Effect to any historic properties in accordance with 36 CFR 800.4(d) and 800.5 and consult with the SHPO and others regarding the need for additional investigations and/or measures to ensure historic properties are not adversely affected.
- e. If adverse effects to historic properties cannot be avoided, SCDOT's cultural resource staff and FHWA will consult with the SHPO in order to resolve adverse effects in accordance with 36 CFR 800.6.
- f. SCDOT shall include the following documentation in the project file:
 - i. A cultural resource screening form (Attachment 3)
 - ii. Any records on consultation
 - iii. Any records on efforts to identify historic properties
 - iv. Any findings of eligibility.
 - v. Any findings of effect.
 - vi. Any records on resolving adverse effects.

B. Type II Projects

SCDOT's cultural resource staff will implement the following review and consultation process for Type II projects. Type II projects may include of the following types of undertakings:

1. Bridge replacements on alignment
2. Construction of bicycle and pedestrian lanes, paths, and facilities
3. Intersection improvement projects that involve the construction of turn lanes and/or realignment of roads.

Type II Project Review Procedure

- a. SCDOT's cultural resource staff will evaluate each undertaking for potential effects to historic properties. At a minimum, evaluations will consist of a review of the state's cultural resource files in a Geographic Information System (GIS), a review of the SCDOT bridge database, and an on-site field visit. Field investigations, such as shovel testing and probing, will be performed at the discretion of SCDOT's cultural resource staff.
- b. SCDOT's cultural resource staff will consult with the SHPO on all determinations of eligibility made for above ground resources.
 1. On projects with less than five (5) survey eligible above ground resources that are determined to be not eligible for the National Register in consultation with SHPO, SCDOT may use the Cultural Resources Screening Form to document eligibility and assessment of effect. SCDOT would request state site numbers for all documented above ground resources and would submit digital copies of survey cards and a copy of the Cultural Resources Screening Form to SHPO.
 2. On projects with greater than five (5) survey eligible above ground resources that are determined to be not eligible for the National Register in consultation with SHPO, SCDOT would consult with SHPO to determine what level of report documentation (i.e. Cultural Resources Screening Form, internal memorandum, or short form report) would be required. SCDOT would request state site numbers for all documented above ground resources and would submit digital copies of survey cards and a copy of the Cultural Resources Screening Form to SHPO.
 3. If no eligible above ground resources are identified within a project's Area of Potential Effect, SCDOT's cultural resource staff may proceed with processing the project under the terms of this Programmatic Agreement.
- c. SCDOT's cultural resource staff (or consultant) will complete a short-form report, internal memorandum report, or Cultural Resources Screening Form for all projects that involve the identification or evaluation of an archaeological site or above-ground resource (excluding bridges) within the Area of Potential Effects. See Attachment 3 for examples of completed documents.
- d. For those undertakings in which there are a) no previously recorded historic properties within the APE and b) no newly identified historic properties within the APE, SCDOT's cultural resource staff shall issue a finding of no historic properties affected and will consult with the SHPO as SCDOT deems appropriate.
- e. If there are potential historic properties identified within the APE, SCDOT's cultural resource staff will apply the National Register Evaluation Criteria in consultation with the SHPO to determine National Register eligibility.
- f. SCDOT will then apply the Criteria of Adverse Effect in consultation with the SHPO to any historic properties in accordance with 36 CFR 800.4(d) and 800.5 and consult with the SHPO and others regarding the need for additional investigations and to consider measures to avoid, minimize, or mitigate adverse effects to historic properties.
- g. If adverse effects to historic properties cannot be avoided, SCDOT's cultural resource staff and FHWA will consult with the SHPO and other consulting parties in order to resolve adverse effects in accordance with 36 CFR 800.6.
- h. SCDOT shall include the following documentation in the project file:
 - i. A cultural resource screening form (Attachment 3).
 - ii. Any records on consultation
 - iii. Any records on efforts to identify historic properties.
 - iv. Any findings of eligibility.
 - v. Any findings of effect.
 - vi. Any records on resolving adverse effects

C. Type III Projects

Type III projects consist of all other federal-aid transportation projects that fall outside of the undertakings described as Type I or Type II projects. Except as identified in Stipulation V, SCDOT will be responsible for completing Section 106 compliance as described in 36 CFR 800 for all Type III projects. FHWA retains final authority, responsibility, and liability for all actions, findings, and determinations.

IX. EMERGENCY SITUATIONS

For the purposes of this Agreement, emergencies are defined as occurrences that require emergency highway system and facility repairs that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system and facilities; 3) protect remaining highway facilities; or 4) restore essential traffic. The following stipulations apply to emergency situations:

- A. Repairs to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
- B. If the emergency repair project could affect historic properties, SCDOT's cultural resource staff shall notify the SHPO, the FHWA, and Tribes prior to any work taking place. The SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have 72 hours to respond.
- C. For projects where the repair must be made within the first 30 days of the occurrence of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of environmental documentation will happen concurrently or after the fact. In these cases, SCDOT will comply with the procedures in Stipulation VIII of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
- D. For projects taking longer than 30 days for repair, SCDOT will comply with the procedures in Stipulation VIII.
- E. Written notification of an emergency action shall be provided to the SHPO. The notice shall be clearly and prominently marked as an emergency notification, and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notice shall also include a brief description of the eligibility and/or significance of the resource(s) involved, the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

X. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When SCDOT's identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, SCDOT shall include in any environmental document a plan for discovery of such properties. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6.

B. Late Discoveries

- 1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after SCDOT has completed its review under this Agreement, that portion of the project will stop immediately, in accordance with SCDOT Engineering Directive Memorandum Number C-16

(Attachment 1).

2. No further construction in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
3. SCDOT will consult with SHPO and Tribes, as appropriate, to record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
4. If neither the SHPO nor a Tribe files an objection within 72 hours of SCDOT's plan for addressing the discovery, SCDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the ACHP does not need to be notified.

XI. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

- A. In the event that human remains are identified prior to, during, or after project construction, SCDOT will develop a treatment plan in consultation with FHWA and the SHPO. If it is determined that the human remains are associated with a Native American occupation, SCDOT and FHWA will consult with the Tribes prior to the development or execution of a treatment plan.
- B. All work conducted on human remains and abandoned cemeteries will comply with the South Carolina Code of Laws Title 27 Chapter 43 Removal of Abandoned Cemeteries.

XII. ADMINISTRATIVE STIPULATIONS

A. Monitoring and Reporting

1. FHWA, the Corps, the SHPO, and ACHP may review activities carried out pursuant to this Agreement. SCDOT shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to FHWA, the Corps, the SHPO, and ACHP in the form of a written report. Categories of information can include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, estimated time and cost savings, public objections, and inadvertent effects or foreclosures. The range and type of information included by SCDOT in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which the Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.
2. FHWA shall monitor the provisions of this Agreement no more than every 24 months after the date of execution of this agreement. The monitoring effort shall consist of a review of project records and interviews of staff at SCDOT, SHPO, as well as interviews with other consulting parties. FHWA shall prepare a report that summarizes the conclusions of monitoring that will be posted and publically available on the SCDOT website. FHWA will also transmit the monitoring report to the ACHP for review.
3. SCDOT shall prepare a written report annually on a calendar year basis. The report will provide a description of the number of Type I, II, and III projects that were reviewed during the calendar year. The report will also describe accomplishments/successes achieved over the course of the year as well as suggestions for improvements. SCDOT shall submit the annual reports to FHWA, the Corps, the SHPO, and ACHP no later than March 31st each year.

B. Resolving Objections to Implementation of this Agreement

1. Should any signatory party object in writing to FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. The FHWA shall establish a reasonable time frame for such consultations.
2. Should any signatory party object to a SCDOT or FHWA determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.
3. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
4. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
 - i. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
 - ii. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - iii. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(-)(4).
5. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
6. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
7. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
8. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
9. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the

response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

XIII. AMENDMENT

- A. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.
- B. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.

XIV. TERMINATION

- A. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation XIII, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
- C. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
- D. Should this Agreement be terminated, FHWA would carry out the requirements of 36 CFR Part 800 for individual undertakings.
- E. Beginning with the date of termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.

XV. CONFIDENTIALITY

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA. Section 304 allows FHWA to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if SCDOT determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

XVI. DURATION OF AGREEMENT

This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect, unless it is terminated prior to that time. Ninety days prior to the conclusion of the ten year period, SCDOT will notify all parties in writing. If there are no objections from consulting parties, the term of the Agreement will

automatically be extended for an additional ten years. If any party objects to extending the Agreement, or proposes amendments, SCDOT will consult with the parties to consider amendments or other actions to avoid termination.


Execution and implementation of this agreement is evidence that FHWA has delegated certain Section 106 responsibilities to SCDOT, and has afforded the ACHP a reasonable opportunity to comment on the Program and its individual undertakings in South Carolina; that FHWA has taken into account the effects of the program and its individual undertakings on historic properties; that FHWA has complied with Section 106 of the NHPA and 36 CFR 800 for the Program and its individual undertakings; and that FHWA is acting on the Corps' behalf as the lead Federal agency to fulfill both FHWA and the Corps' collective responsibilities under Section 106 of the NHPA for all FHWA undertakings in the State of South Carolina that require Corps authorization pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 and 403).

Signatories:

Federal Highway Administration

By: 
Emily O. Lawton, Division Administrator

Date: 9/27/17

Recommended By: 
U.S. Army Corps of Engineers, Charleston District

Date: 9/27/17

FOR THE DISTRICT ENGINEER


By: 
Travis Hughes, Regulatory Division Chief

Date: 9/29/17

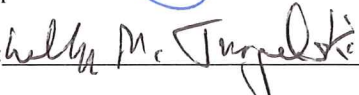
Recommended By: 
Elizabeth Walker

Date: 9/29/17

South Carolina Department of Transportation

By: 
Chad C. Long, Environmental Services
Office, Director

Date: 9-21-17

Recommended By: 
Kelly M. Turgel
South Carolina State Historic Preservation Officer

Date: 9-21-17


By: 
Dr. Eric Emerson, State Historic Preservation Officer

Date: 9-25-17

Recommended By: 
Elizabeth M. Johnson

Date: 9-25-17

Advisory Council on Historic Preservation

By: 
John M. Fowler, Executive Director

Date: 10/6/17

ATTACHMENT 1

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

ENGINEERING DIRECTIVE MEMORANDUM

Number: C-16
Number: PC-16

Subject: Archaeological and Historic Sites Responsibilities
- Planning Process, Late Discovery during
Construction, Avoidance of Archaeological and
Historic Sites

There are several Federal and State legislative acts which deal with guidelines formulated for consideration of archaeological resources. The following procedures are to apply on projects processed with Federal funds:

A. Archaeological and Architectural Studies in the Environmental Planning Process.

To comply with regulations, the Department's Archaeologists will review all proposed federal aid projects. This review may include field investigations.

The initial field investigations will normally consist of an intensive archaeological survey to identify and assess sites for eligibility for inclusion in the National Register of Historic Places. Reconnaissance surveys may sometimes be substituted for an intensive survey if an intensive survey will follow the selection of a preferred alternate or if it can be demonstrated that an intensive survey is not warranted. If additional information is needed for a definitive assessment of eligibility, test excavations may be required. If an eligible site is located which cannot be avoided, and it is not eligible for preservation in place, it may be mitigated through data recovery (large scale excavations).

All structures 50 or more years old will be subjected to architectural historical investigations. These structures will be evaluated for project impacts and eligibility for inclusion in the National Register. Recommendations will be made for mitigation of impacts on eligible structures.

B. Late Discovery of Archaeological/Historical Remains on Federal Aid Projects.

1. Responsibilities:

The contractor and subcontractors must notify their workers to watch for the presence of any prehistoric or historic remains, including but not limited to arrowheads,

pottery, ceramics, flakes, bones, graves, gravestones, or brick concentrations. If any such cultural remains are encountered, the Resident Construction Engineer shall be immediately notified and all work in the vicinity of the discovered materials or site shall cease until the Department's Archaeologist or the State Highway Engineer directs otherwise.

2. Applicability:

This provision covers all areas of ground disturbance resulting from this federal-aid contract, including but not limited to road construction, Department designated borrow pits, Contractor furnished borrow pits, and/or staging areas.

3. Cost Reimbursement and Time Delays:

Any extra work required by B(1) above within the project right of way or on Department designated borrow pits (see below) will be paid for in accordance with Subsection 104.04 of the Standard Specifications. Extra contract time may be provided under Subsection 108.06 of the Standard Specifications for archaeological work within the project right of way or on designated borrow pits.

NOTE: On Contractor furnished borrow pits the contractor is not entitled to any additional time or money for delay or impact resulting from B(1) above or for extra work required by B(1) above. Therefore, contractors may desire to retain professional archaeological services to better insure that borrow pit areas are cleared of archaeological/historical remains prior to use on Federal Aid Projects.

C. Approval of Designated Borrow Pits on Federal Aid Projects (Plant Sites which qualify as commercial are not included).

In instances where the Department specifically designates the location of borrow pits on project plans or in contract specifications for use on a Federal Aid Project, an archaeological survey will be performed by Department archaeologists prior to award of contract.

This provision also applies to designated disposal sites, staging areas, haul roads, and job site field offices.

D. Avoidance of Archaeological and Historic Sites in Borrow Pits, Staging Areas, Disposal Sites, Haul Roads, and Job Site Field Offices

Archaeological and historic sites which are eligible for, potentially eligible for, or already listed on the National Register of Historic Places are often identified on, or near project areas. Some of these sites have been intentionally avoided through project redesign. Avoidance of these sites may be part of agreements with the State Historic Preservation Officer and/or the Advisory Council for Historic Preservation.

Contractors, subcontractors, and consultants will avoid disturbances to these sites. Maps and/or plans will be available to assist in identifying the locations of these sites to insure avoidance.

Approved: W. M. Dubrow, III
Director of Pre-Construction

Effective Date: 5/19/93

Approved: W. A. Keller, III
Director of Construction

Effective Date: 6/4/93

ATTACHMENT 2



South Carolina Department of Transportation

ENVIRONMENTAL MANAGEMENT OFFICE

PUBLIC INVOLVEMENT POLICY FOR NEPA COMPLIANCE

Effective Date: October 1, 2011

Patrick L. Tyndall

Patrick L. Tyndall
Planning and Environmental Manager
Federal Highway Administration
1835 Assembly Street
Suite 1270
Columbia, South Carolina 29201
803-765-5460

Sept. 21, 2011

Date

Randall D. Williamson

Randall D. Williamson, P.E.
Environmental Engineer
South Carolina Department of Transportation
955 Park Street
Post Office Box 191
Columbia, South Carolina 29202
803-737-1700

August 30, 2011

Date

Transportation projects, by their very nature, greatly affect the citizens that use the facility as well as those that live or work in the communities in which the project is located. As a transportation agency, it is SCDOT's responsibility to:

- 1) communicate with those who may be affected directly or indirectly by a transportation project; and,
- 2) to develop a plan to effectively involve the public in the transportation decision-making process.

This policy outlines the South Carolina Department of Transportation's (SCDOT) plan to communicate and involve the public in the development of transportation projects. All projects where SCDOT and/or FHWA will be requested to sign the environmental document are required to follow this public involvement policy. **This Policy will be reviewed every 5 years, and will be updated as needed.** A Public Involvement Checklist has been developed to assist Program Managers and to document the implementation of this Public Involvement Policy on a project level basis (refer to Appendix). This policy complies with and satisfies the requirements of 23 CFR 771.111(h)(1).

I. DEFINITIONS

Public Information Meeting (PIM): A PIM is an informal public gathering hosted by SCDOT for the express purpose of informing and soliciting input from interested individuals regarding transportation issues. Any public meeting that SCDOT is requested to conduct will be completed in accordance with the procedures outlined in this policy. A PIM is most commonly conducted during the alternative development phase, prior to the recommendation of a preferred alternative. The PIM serves as a forum for the public to be engaged early in the project development process. Maps and drawings of the proposed improvements are available and citizens may ask questions and provide comments regarding the possible social, economic and environmental effects of the project. The public comments are reviewed and modifications to the project are considered.

Public Hearing (PH): A PH is required for an Environmental Assessment (EA) and an Environmental Impact Statement. Project details are provided such as potential impacts of the preferred alternative, proposed schedule, and estimated costs. A PH is different from a PIM, as a formal presentation is given and interested individuals have the opportunity to verbally express their views of the project. It is the intent of SCDOT to have the public comments recorded by a court reporter. The public comments are reviewed and modifications to the project are considered. SCDOT provides a written response to all written comments received at the PH and associated comment period.

Public Hearing Officer (PHO): The (PHO) is in charge of the formal portion of the hearing. The PHO will be someone that is impartial to the project, capable of public speaking and controlling a large gathering of people. The PHO will be designated by the Environmental Management Office (EMO).

Speaking Requests – On some projects SCDOT staff may be asked to go and speak to other organizations (Rotary Club, etc) and provide information about the project. The procedures outlined in this policy do not apply to meetings that are not conducted by SCDOT (or their consultant). These speaking requests are not considered SCDOT PIM's or PH's and therefore do not require sign in sheets or comment forms. However, the project manager will summarize the meeting and include this in the project files and in the "comments and coordination" section of the environmental document.

II. APPLICABLE PROJECTS

Four tiers of projects and the level of effort associated with each are described below:

Tier 1: Projects that qualify for a Categorical Exclusion (CE) Type A or B may include landscaping, minor intersection improvements, safety projects, pavement resurfacing or smaller bridge replacements.

Although there are no Public Involvement (PI) requirements for a Tier 1 project, discussions with the EMO and FHWA may result in any of the following potential requirements listed below based on the nature of the project scope.

Potential PI requirements for a Tier 1 project may include:

1. When a project will include a bridge closure, a sign shall be placed near the project. Program Manager's name and phone number shall be included on the sign, as well as an estimated time period for the closure. This sign will be posted after the completion of the environmental document for a period of 15 days, which coincides with SCDOT policy for advertising an opportunity for a public meeting.
2. Letters to public officials.
3. Press release.
4. Letters to affected property owners (A sample of this letter is found in the appendix)
5. Advertise for an opportunity for a PH when a bridge is closed.

Tier 2: Projects that qualify for a Categorical Exclusion Type C may include intersection improvements or larger bridge replacements.

Although there are no PI requirements for a Tier 2 project, discussions with the EMO and FHWA may result in any of the following potential requirements listed below based on the specific project.

Potential PI requirements for a Tier 2 project may include:

1. When a project will include a bridge closure, a sign shall be placed near the project. Program Manager's name and phone number shall be included on the sign, as well as an estimated time period for the closure. This sign will be posted after the completion of the environmental document for a period of 15 days,

which coincides with SCDOT policy for advertising an opportunity for a public meeting.

2. Letters to public officials.
3. Press release.
4. PIM or advertisement for an opportunity for a PIM.
5. Letters to affected property owners (A sample of this letter is found in the appendix).
6. Advertise for an opportunity for a PH when a roadway/bridge is closed.

Tier 3: Projects that qualify for an EA may include new location roadways, interstate interchange improvements, highway widenings or major bridge replacements.

PI requirements for a Tier 3 project include:

1. Letter of Intent (A sample of this letter is found in the appendix).
2. PIM, refer to Public Notification portion of this process.
3. PH, refer to Public Notification portion of this process.

Pending discussions with the EMO and FHWA the following potential PI requirements listed below may also be applicable for a Tier 3 project.

Potential PI requirements for a Tier 3 project may include:

1. Letters to public officials.
2. Newsletters, flyers, mailings, toll-free hotline, website, FM tuner recorded announcement, use of social networking sites, outreach to Environmental Justice or non-English reading/speaking communities, etc. (refer to appendix for list of minority media outlets).
3. When a project will include a bridge closure, a sign shall be placed near the project. Program Manager's name and phone number shall be included on the sign, as well as an estimated time period for the closure. This sign will be posted after the completion of the environmental document for a period of 15 days, which coincides with SCDOT policy for advertising an opportunity for a public meeting.
4. Letters to affected property owners (a sample of this letter is found in the appendix).

Tier 4: Projects for which an Environmental Impact Statement (EIS) will be prepared may include new location roadways, interstate interchange improvements, highway widenings or major bridge replacements.

Pursuant to Section 6002 of SAFETEA-LU a specific public involvement plan shall be developed for a Tier 4 project based on the specific project. Discussions with the EMO and FHWA will be completed when developing the plan.

III. PUBLIC INFORMATION MEETING PROCEDURES

Determination of need for a PIM: The EMO and the Program Manager will decide if a PIM is needed on a project by project basis. The Environmental Engineer or NEPA Manager, in coordination with FHWA's South Carolina Division Office will have the final determination as to the need for a PIM. If it is determined that a PIM is needed, the Program Manager, with the assistance of the EMO, will conduct a PIM in coordination with the public involvement policy. The Program Manager will offer potential dates to the EMO before scheduling the PIM. In addition, the Program Manager will provide draft copies of the necessary documents and the PIM displays to the EMO for review.

Please note: If a PIM was conducted for a project in the past and the project was put on hold, an additional PIM may be required depending on the length the project was on hold. The requirement of an additional PIM will be determined through coordination between the Program Manager, the EMO and FHWA.

Identification of affected groups: The Program Manager will coordinate with the EMO to identify any community groups, churches, neighborhood associations or other affected/interested groups and identify a point of contact for these groups. The EMO may also suggest methods for communicating with the affected groups that are identified. These groups may be used as a resource to assist SCDOT with the flow of project information throughout the life of the project. If the affected groups include a population that speaks a primary language other than English, a SCDOT translator will be identified and attend the meeting. (Refer to appendix for list of SCDOT translators).

Please note: On some projects it may be necessary to hold multiple PIMs in different geographic areas of the study area. The requirement of multiple PIMs will be determined through coordination between the Program Manager, the EMO and FHWA.

Public Notification: The following public notification process will be completed for a PIM:

1. A newspaper display ad will be completed by the Project Manager.
 - **It is the Program Manager's responsibility to write the ad and submit it to EMO for publication (an example ad is included in the appendix).**
 - The date, time and location of the PIM will be announced at least 15 calendar days prior to its occurrence.
 - The public comment will be allowed at least 15 calendar days after the conclusion of the PIM.
 - Five working days must be allowed for the EMO to review and publish the ad.
2. The SCDOT website will be updated to include the date, time, and place of the meeting. **It is EMO's responsibility to coordinate the website update.**
3. Physical signs will be placed near the project site at least 15 days prior to the PIM. **It is the Program Manager's responsibility to arrange for the physical signs to be placed.**

FHWA Coordination: An FHWA representative will be given an opportunity to review the proposed displays a minimum of 7 days prior to the PIM. Coordination with FHWA will also be provided to ensure attendance.

Facility Requirements: The Program Manager is responsible for locating a facility meeting the following requirements:

1. Americans with Disabilities Act accessible.
2. Ample parking in close proximity to facility.
3. Audio/Visual compatibility (microphones, projector, screen, etc), if required.
4. Adequate availability of tables and adult-sized chairs.
5. If required, a "Certificate of Insurance" that shows that SCDOT has liability insurance.
 - The Certificate can be directly obtained from the Insurance Reserve Fund by requesting it via e-mail from Patty Trevathan (trevathan@irf.sc.gov). You must provide the name and address of the representative that the Certificate needs to be sent to.

Staffing Guidelines: The Program Manager is responsible for coordinating the staffing with EMO will include:

1. Sign-in table staff.
2. Program Manager and RPG/Traffic personnel.
3. FHWA representative(s).
4. EMO representative(s).
5. Right-of-way Agent(s).
6. Consultant staff (if applicable).

PIM Specifics:

1. The PIM will be held from 5:00PM to 7:00PM, depending on the work hours of the affected population.
2. The PIM will be held on Tuesdays or Thursdays.
3. Directional signs for parking and identification of entrance must be used.
4. A police presence is required and the Program Manager is responsible for arranging.
5. Staff attending the PIM will be clearly identifiable with name badges.
6. Sign-in sheets and comment forms must be provided (please use the standard examples attached in appendix).
7. A recording device must be available to record verbal comments.
8. Handouts must be provided that include:
 - the project's purpose and need
 - a graphic showing the alternatives
 - text explaining that comments on any known cultural or historic properties are encouraged.
9. A minimum of two sets of displays will be available.
10. The number of minority citizens attending must be tallied by the person staffing the sign-in table and provided to the EMO. A minority citizen is defined by FHWA as being:

- Black (having origins in any of the black racial groups of Africa);
 - Hispanic (of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race)
 - Asian American (having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
 - American Indian and Alaskan Native (having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition).
11. The number of females attending must be tallied by the person staffing the sign-in table and provided to the EMO.
 12. Based on coordination with the EMO, a 5-10 minute formal presentation may be recommended.

Organizations not affiliated with SCDOT: If an outside organization requests a presence at the PIM, they must be separated from the SCDOT sponsored meeting **AND** they must clearly identify themselves as a group that is not affiliated with SCDOT or the project. The Program Manager will be responsible for designating the location at the PIM for these organizations and to provide a sign that indicates that they are not affiliated with SCDOT.

Comments received from PIM: Comments submitted at the PIM and during the comment period following the PIM will be included in the official project record. Comments will be taken into consideration when evaluating project alternatives. Responses to these comments are **NOT** required, but will be summarized and documented in the NEPA document.

Comments received through email: Comments provided via email during the comment period will be included in the official project record. Responses to these comments are not required, but will be taken into consideration when evaluating project alternatives.

Comments received from social-networking sites (if applicable): Comments provided on a social-networking site, or other site not directly hosted by SCDOT will not be included in the official project record. If a site is utilized for public involvement efforts, this will be clearly stated on the webpage. Furthermore, the webpage will also provide a link or directions on how to leave a formal comment.

IV. PUBLIC HEARING PROCEDURES

Determination of need for a PH: This PIP establishes the process for complying with the Public Hearing requirements of Act No. 114 from the 117th Session of the South Carolina General Assembly and signed into law on June 27, 2007 by the Honorable Governor Mark A. Sanford. As contained in Act No. 114, Section 57-1-370 (G) states that:

“The department shall conduct a public hearing in each county in which a public hearing is required by federal regulations to allow the department to share information regarding the project with the local community and to allow the local community to address its concerns with department officials. The hearing 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.”

The Program Manager will offer potential dates to the EMO before scheduling the PH. In addition, the Program Manager will provide draft copies of the necessary documents and the PH displays to the EMO for review.

Identification of affected groups: The Program Manager will coordinate with the EMO to identify any community groups, churches, neighborhood associations or other affected/interested groups and identify a point of contact for these groups. The EMO may also suggest methods for communicating with the affected groups that are identified. These groups may be used as a resource to assist SCDOT with the flow of project information throughout the life of the project. If the affected groups include a population that speaks a primary language other than English, a SCDOT translator will be identified and attend the meeting. (Refer to appendix for list of SCDOT translators).

Please note: On some projects it may be necessary to hold multiple PHs in different geographic areas of the study area. The requirement of multiple PHs will be determined through coordination between the Program Manager, the EMO and FHWA.

Circulation of Environmental Documents and Public Hearings

For EAs:

- EA must be available for public inspection for 15 days prior to the PH. The EA must be available at the SCDOT Headquarters and also at the appropriate District Office. 23 CFR 771.121(d) and (e)
- EA must also be sent by SCDOT EMO office to affected units of Federal, State, and Local Government. 23 CFR 771.121(d)
- SCDOT EMO must notify the State intergovernmental review contacts established under Executive Order 12372. 23 CFR 771.121(d)

For Finding of No Significant Impacts:

- SCDOT EMO will send notice of availability to affected units of Federal, State, and local government. SCDOT EMO will also notify the State intergovernmental review contacts established under Executive Order 12372.

For Draft EISs:

- A Notice of Intent must be published in the Federal Register at the beginning of the project. 23 CFR 771.123(a)
- In accordance with 23 CFR 771.123(g) once the Draft EIS is published, it must be circulated to:
 - Public officials, interest groups, and members of the public known to have an interest in the proposed action or the Draft EIS;
 - Federal, State, and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action.
 - The State intergovernmental review contacts established under Executive Order 12372.
 - State and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives.
- FHWA will file the Draft EIS with the EPA under section 309 of the Clean Air Act. U.S. Environmental Protection Agency (EPA) will then publish the Notice of Availability of the Draft EIS in the Federal Register (pursuant to 23 CFR 771.123(i)).

For Final EISs

- In accordance with 23 CFR 771.125(g), once signed the Final EIS, will be sent to:
 - Any persons, organizations, or agencies that made substantive comments on the Draft EIS or requested a copy.
 - Copies of the Final EIS must also be available for public inspection at SCDOT Headquarters and the appropriate District Office.
 - FHWA will file the Final EIS with EPA. Then EPA will publish the Notice of Availability of the Final EIS in the Federal Register.

For Projects that Have Section 4(f) Impacts:

- Coordination with the agencies or officials with jurisdiction over the Section 4(f) resource must be documented.
- FHWA will send all Individual Section 4(f) evaluations to Department of Interior for 45 day comment period. 23 CFR 774.5(a)
- After 15 days beyond the end of the comment period, FHWA and SCDOT will assume a lack of objection and proceed with the project. 23 CFR 774.5(a)
- For projects with impacts to historic properties, consulting parties must be coordinated with pursuant to 36 CFR 800.
- For projects with impacts to parks, recreation areas, wildlife and waterfowl refuges; public notice and an opportunity for public comment must be documented. 23 CFR 774.5(b)(2)

For Projects that Have Noise Impacts:

- Ensure that the public involvement requirements of SCDOT's Noise Policy have been met.

Please Note: For all environmental documents, SCDOT will normally provide copies for free. However, if necessary, SCDOT can charge a fee to reproduce the environmental document sufficient to cover the actual cost of reproduction. 23 CFR 771.125(f)

Public Notification: The following public notification process will be completed:

1. Newspaper display ad:
 - **It is the Program Manager's responsibility to write the ad and submit it to EMO for publication (an example ad is included in the appendix).**
 - The PH ad must include an explanation of the informal/formal portions of the meeting, as well as the procedures for signing-up to speak during the formal portion.
 - The date, time and location of the PH must be announced at least 15 calendar days prior to its occurrence and Public comment will be allowed at least 15 calendar days after the conclusion of the Public Hearing.
 - The environmental document must be available for public review during the entire public comment period. A hard copy will be maintained at Department Headquarters and the appropriate District office.
 - Five working days must be allowed for the EMO to review and publish the ad.
2. The SCDOT website will be updated to include the date, time, and place of the meeting. **It is EMO's responsibility to coordinate the website update.**
3. Physical signs will be placed near the project site at least 15 days prior to the PH. **It is the Program Manager's responsibility to arrange for the physical signs to be placed.**

FHWA Coordination: An FHWA representative will be given an opportunity to review the proposed displays a minimum of 7 days prior to the PH. Coordination with FHWA will also be provided to ensure attendance.

Facility Requirements: The Program Manager is responsible for locating a facility meeting the following requirements:

1. Americans with Disabilities Act accessible.
2. Ample parking in close proximity to facility.
3. Audio/Visual compatibility (2 microphones with one that can be turned on/off as needed, projector, screen, etc).
4. Adequate availability of tables and adult-sized chairs.
5. If required, a "Certificate of Insurance" that shows that SCDOT has liability insurance.
 - The Certificate can be directly obtained from the Insurance Reserve Fund by requesting it via e-mail from Patty Trevathan (trevathan@irf.sc.gov). You must provide the name and address of the representative that the Certificate needs to be sent to.

Staffing Guidelines: The Program Manager is responsible for coordinating the staffing of the PH with EMO, including the Public Hearing Officer to include:

1. Sign-in table staff.

2. Staff for the formal comment sign-up table.
3. Program Manager and RPG/Traffic personnel.
4. FHWA representative(s).
5. EMO representative(s).
6. Public Hearing Officer. The (PHO) is in charge of the formal portion of the hearing. The PHO will be someone that is impartial to the project, capable of public speaking and controlling a large gathering of people. The PHO will be designated by the Environmental Management Office (EMO).
7. Right-of-way Agents.
8. A court reporter (arranged by EMO).
9. Consultant staff (if applicable).

PH Specifics:

1. The PH will be held from 5:00PM to 7:00PM, depending on the work hours of the affected population.
2. The PH will be held on Tuesdays or Thursdays.
3. Each PH will include both a formal and informal portion. The typical time allotment for the entire Public Hearing shall be no less than two (2) hours, of which, at least one hour will be designated for the formal portion.
4. Directional signs for parking and identification of entrance must be used.
5. A police presence is required and the Program Manager is responsible for arranging.
6. Staff attending the PH will be clearly identifiable with name badges.
7. Sign-in sheets, sign-up sheets and comment forms must be provided (use the standard examples in appendix). The comment form can include a series of check boxes that allow the responses to be addressed in a specific manner (refer to example).
8. A recording device must be available to record verbal comments.
9. Handouts must be provided with a graphic showing the recommended preferred alternative.
10. The number of minority citizens attending must be tallied by the person staffing the sign-in table and provided to the EMO. A minority citizen is defined by FHWA as being:
 - Black (having origins in any of the black racial groups of Africa);
 - Hispanic (of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race)
 - Asian American (having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
 - American Indian and Alaskan Native (having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition).
11. The number of females attending must be tallied by the person staffing the sign-in table and provided to the EMO.
12. Two sign-in tables will be required at the entrance to the PH facility.
 - The first for capturing the participants name, address and phone number.

- The second for capturing the name of those wishing to make a formal verbal comment during the formal portion.
13. Sign-up for formal verbal comment will be open until five minutes prior to the beginning of the formal portion.
 14. A minimum of two sets of displays will be available. The recommended preferred alternative will be presented, if not another meeting may be required.
 15. Where possible, the informal portion will continue during the formal portion.
 16. A court reporter, obtained by EMO, will be required to record the formal portion.
 17. Following the formal presentation there will be an opportunity for citizens to make a formal verbal comment.
 18. A two-minute time limit for each formal verbal comment and the time is not transferrable.
 19. A timekeeper will be present to keep the speakers on schedule.
 20. The formal portion will continue until all citizens who signed-up to make a formal verbal comment have had an opportunity to do so.
 21. The formal presentation will still take place, even if no citizens signed-up to provide formal verbal comments.
 22. The PHO shall start the formal portion on time using the following format:
 - Introduce him/herself as the PHO. Inform audience that this is not a question and answer session and that this portion is being recorded for inclusion in the public comments record along with any other written or recorded comments.
 - Introduce and allow any government elected officials who desire to speak to make a brief statement about the project. If they do not wish to speak, ask if they would like to be recognized.
 - Introduce the Project Manager and have them give a brief overview of the project (no more than 10 minutes).
 - Inform the audience and remind the speakers of the following ground rules that they agreed to abide by:
 - i. The formal portion is being recorded.
 - ii. Understanding of two minute time limit.
 - iii. No profanity or personal attacks.
 - iv. State their name, address, and any group affiliation.
 - v. The time is not transferrable.
 - vi. If a citizen agrees with a previous formal verbal comment they may forfeit their time by simply recognizing their agreement with the previous citizen.
 - vii. Only those citizens whom previously signed up will be allowed to speak.
 - After the last speaker has finished thank the speakers and the audience for their participation.
 - Remind the audience of the other opportunities to provide comments. Explain that these verbal comments will not be responded to, but if they would like to receive a written response, they **MUST** submit a written comment either at the PH or during the comment period.

- If time allows, advise the public that they may return to the displays, etc. and ask questions about the project to SCDOT representatives.

Organizations not affiliated with SCDOT: If an outside organization requests a presence, they must be separated from the SCDOT sponsored meeting AND they must clearly identify themselves as a group that is not affiliated with SCDOT or the project. The Program Manager will be responsible for designating the location at the PH for these organizations and to provide a sign that indicates that they are not affiliated with SCDOT.

Comments received from PH: Comments submitted at the PH and during the comment period following the PH will be included in the official project record. A written response to each comment is required and will be taken into consideration when evaluating the preferred alternative.

Comments received through email: Comments provided via email during the comment period will be included in the official project record. A response to each comment is required and will be taken into consideration when evaluating the preferred alternative. A log of the email comments will be kept in the project files.

Comments received from social-networking sites, if applicable: Comments provided on a social-networking site, or other site not directly hosted by SCDOT will not be included in the official project record. If a site is utilized for public involvement efforts, this will be clearly stated on the webpage. Furthermore, the webpage will also provide a link or directions on how to leave a formal comment.

PH Certification Package:

1. Summary of the PH attendance and comments (refer to sample in appendix).
2. A transcript of the formal portion of the PH.
3. Sign-in sheets.
4. Comments received.
5. Handout.
6. Responses to Comments.

ATTACHMENT 3



Cultural Resources Project Screening Form

File Number: 26.041860 PIN: 41860RD Route: 1st Avenue South County: Horry

Project Name:

1st Avenue South Sidewalks and Crosswalks

Type 1: Resurfacing, installation of fencing, signs, pavement markings, traffic signals, passenger shelters, railroad warning devices, installation of rumble strips, and landscaping

Project Type

1

Type 2: Bridge replacements on alignment, construction of bicycle/pedestrian facilities, and intersection improvements

Type 3: Projects that do not fall into Type 1 and Type 2 categories (e.g. road widening)

Comments

This project proposes to introduce sidewalks, crosswalks, curbing, and public parking along 1st Avenue South between Highway 17 and Bay Street in the City of North Myrtle Beach. The project area was examined on aerial maps and through ArchSite GIS. No previously surveyed historic properties are located in the project area, which was surveyed for aboveground properties via the Horry County Historic Resources Survey (Richey, 2009). Examination of the project area via aerial maps revealed that the project area has been developed and is therefore disturbed with no real potential for archaeological resources to be present. The proposed project will not affect historic properties. No further investigations are recommended.

Effect Determination: No Historic Properties Affected

*SHPO consultation is required for all Type 3 projects and any project with a No Adverse or Adverse Effect Determination.

This screening form was developed to satisfy documentation requirements for Type I and Type II projects under a Programmatic Agreement between the Federal Highway Administration, the South Carolina State Historic Preservation Office, the US Army Corps of Engineers, and the South Carolina Department of Transportation. For Type I and Type II projects that have no effect on historic properties, the completion of this screening form with supporting documentation (e.g. ArchSite Map) provides evidence of FHWA and SCDOT's compliance with Section 106 of the National Historic Preservation Act.

Prepared by: David Kelly

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