

October 24, 2001

INSTRUCTIONAL BULLETIN NO. 2001-20

SUBJECT: Highway Design versus Local Tree Ordinances

EFFECTIVE DATE: October 11, 2001

SUPERCEDES: None

RE: Engr. Policy Memorandum No. 19 "Vegetation Preservation on State Highways" (copy attached)

Engr. Directive Memorandum No. C-6 "Vegetation Preservation on State Highways – Construction" (copy attached)

Occasionally, conflicts between safe highway design and the location on state highway of tree or line of trees arise. Efforts will be made to retain a tree of significant value, whether significant by age or by its history. However, if all efforts to avoid a conflict with a tree cannot be accomplished using Department standard designs and practices, then the tree or line of trees may have to be sacrificed in order to complete the highway project for the safe movement of the traveling public.

Some political subdivisions have tree ordinances that protect trees in their areas. Attached is a memorandum dated October 11, 2001, from the State Highway Engineer explaining the Department's position in relation to these tree ordinances. Also, attached is a memorandum dated October 10, 2001, from the Department's Chief Counsel the "Applicability of Local Tree Ordinances to SCDOT Projects".

Please use these memorandums as you develop plans for future highway projects.

Approved: Original Signed by E. S. Eargle
E.S. Eargle
Road Design Engineer

ESE:afg

Attachments

Director of CRM Operations Walsh
Proj. Dev. Engr. – Western Region
Proj. Dev. Engr. Kneece
CRM East
CRM West
CRM Manager Barwick
Contract Documents Facilitator Frick

Bc:
Road Design

File: PC/ESE

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
ENGINEERING POLICY MEMORANDUM NO. 19

Subject: Vegetation Preservation on State Highways

For Procedure: See Engineering Directive Memorandum C-6 / M-10 / M-11 / M-12

The South Carolina Department of Highways and Public Transportation is vitally concerned with the preservation of the natural beauty of this State and will strive to preserve this natural beauty in all phases of its operations.

When planning for new construction, the Department will consider impacts on significant trees and vegetation and will seek to avoid impacts to this resource if at all possible and mitigate unavoidable impacts to the extent practicable. The public and the local officials will be afforded an opportunity to note the impacts of new construction during our public hearings and notification process. All comments received shall be given careful consideration and steps to avoid substantial impact shall be taken where possible without jeopardizing public safety.

During construction, areas of significant vegetation will be carefully protected to ensure that no damage occurs in areas to be preserved. Mitigation areas will be constructed in accordance with prescribed requirements in order to conserve and promote the natural balance of nature.

Maintenance of the State Highway System shall be accomplished in substantial compliance with the plans by which a road was constructed. The Maintenance Division shall review the plans for each new road constructed and make an on-site inspection of the general vegetation characteristics and landscape features within the Department's right-of-way as soon as the section is accepted for maintenance. Future maintenance for each section in the State Highway System shall be done in such a manner as to preserve the roadway features that were in place at the time of the acceptance into the system and to enhance the natural features by proper mowing patterns and cultivation practices. The preservation of existing trees and vegetation shall be ensured by removal of damaged or diseased trees and replacement with similar vegetation when possible.

It shall be the policy of the Maintenance Division to cooperate with the South Carolina Garden Club, the South Carolina Forestry Commission, and other groups in beautifying roadways to the extent possible within personnel and budget constraints and within existing guidelines for highway clearzone policies.

The Department recognizes the extreme sensitivity of the environmental impact of vegetation removal adjacent to outdoor advertising. Tree and vegetation removal at these sites shall be allowed by permit only and shall be accomplished in such a manner as to minimize tree removal. Sites where vegetation control is permitted shall be replanted with vegetation which will not interfere with advertising visibility and shall be done at the expense of the permittee.

(Approved by Action of State Highway Commission 5/16/91)

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

ENGINEERING DIRECTIVE MEMORANDUM

Number: C-6

Subject: Vegetation Preservation on State Highways – Construction

For Policy: See Engineering Policy Memorandum No. 19

PURPOSE

It is the purpose of this memorandum to establish guidelines for clearing and grubbing on all construction projects, with special emphasis on preserving trees and vegetation.

CRITERIA

1. Safety and good design practices are the primary concern and should be adhered to during survey work, design, and construction.
2. Preservation of trees and vegetation must be considered on every project.
3. The use of guardrail or other barriers should be considered to balance safety and natural preservation of trees and vegetation.
4. Projects must be designed to minimize the elimination of trees and vegetation without jeopardizing the safety of the motoring public.
5. The Department's intention is to use AASHTO's Roadside Design Guide as a guide in determining limits of clear zones except on secondary road projects.

GUIDELINES

Trees and vegetation should not be cut when:

1. They are located behind guardrail where the slope cannot be improved and the guardrail Eliminated.
2. They are located at or near the right-of-way line where an excavated slope can be adjusted to save the trees without jeopardizing the safety of the motoring public.
3. They are located outside the clear zone and do not restrict sight distance as required by design standards. Selective clearing shall be performed to preserve trees and vegetation.

Overhanging limbs creating obstructions should be trimmed to provide an 18' vertical clearance measured from the elevation of the edge of the travelway (or edge of a paved shoulder).

PROCEDURE

Survey parties should exercise care in the cutting of trees and vegetation when performing their work. The survey party should accurately locate all significant trees and vegetation within the project limits. This information should then be included in the plans for use during field reviews, public hearings, planning, and construction. The public hearing will serve as the mechanism to afford the public and governmental officials the opportunity to comment on matters concerning trees and vegetation. The Project Engineer will determine the necessity to send the plans to County or City officials for review on those projects for which no public hearing is held.

The location of trees and vegetation to be preserved or possible mitigation sites should be designated on the plans during the field review. Prior to construction, the Resident Construction Engineer and his inspector together with the Contractor and his superintendent should review the project. The areas to be protected should be reviewed and marked to ensure they are not cut by mistake.

During construction, the Contractor should protect these designated areas. If damage occurs to these areas as a result of the Contractor's work, he shall be responsible for replanting trees and/or shrubs as required by the Engineer to restore these areas as near as practical to their original condition.

MITIGATION

In areas where protective natural trees or vegetation provide a barrier to adjacent developed properties and they have to be removed for construction purposes, a restoration plan should be provided in the project plans. This plan is to be prepared by a landscape architect and should include such items as ornamental shrubs and/or trees.

In areas where trees are to be removed for safety reasons and trees or large shrubs cannot be replanted, these areas should be considered for low growing ornamentals or wild flowers. While it may be impossible to replant all areas, specific locations for replanting may be specified on major projects to provide mitigation where it will be most prominent. These areas should be designated during the field review by the Project Engineer.

Approved: W.A. Keller, III

Director of Construction

Effective Date: 11-25-91



South Carolina
Department of Transportation

October 11, 2001

MEMORANDUM TO: Tony Chapman, Deputy State Highway Engineer
Danny Shealy, Director of Construction
Robert Pratt, Director of Preconstruction
Rick Werts, Director of Traffic Engineering
Director of Maintenance

Subject: Applicability of Local Tree Ordinances to SCDOT projects

Recently questions have been raised regarding the applicability of local tree ordinances to SCDOT projects. I am attaching a memorandum dated October 10, 2001, which outlines the Department's position on such matters.

The Department is taking the position that it is not subject to the requirements of local tree ordinances. However, the Department is very sensitive to these types of issues and we want to continue to make every effort to preserve significant trees, which are impacted by our projects. These efforts extend to the project development process as well as during construction of the projects. It includes major projects, intersection improvements and projects performed by maintenance forces.

Please provide employees this information and assure that significant trees are not removed unnecessarily. Thanks for your cooperation in this matter.

Yours very truly,

D. H. Freeman

State Highway Engineer

DHF:mbw

Attachment

File: SHE/DHF



South Carolina
Department of Transportation
Office of Legal Services

Linda C. McDonald
Chief Counsel

Assistant Chief Counsel
Natalie J. Moore
Glennith C. Johnson
Barbara M. Wessinger
Deborah Brooks Durden
and Legislative Liaison
Beacham O. Brooker, Jr.

October 10, 2001

MEMORANDUM

To: Don Freeman, State Highway Engineer
Fm: Linda C. McDonald, Chief Counsel *JM*
Re: Applicability of Local Tree Ordinances to SCDOT projects

A question has arisen as to whether SCDOT is subject to local governmental ordinances that attempt to regulate the cutting of trees within SCDOT right of way. According to State law, the SCDOT has exclusive authority to determine whether trees within its right of way should be cut for road construction or maintenance purposes. To the extent that local ordinances conflict with this authority, they are invalid.

Pursuant to S. C. Code Ann. Section 57-3-110(1) (Supp. 2000), the SCDOT has "exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges." Also, pursuant to S. C. Code Section 57-5-10 (Supp. 2000), the SCDOT is charged with the responsibility to maintain the highways in the State highway system in a "safe and serviceable condition."

The Supreme Court has determined that zoning ordinances passed by local governments which conflict with a state agency's authority are void. Low vs. City of Spartanburg, 148 S.C. 299, 146 S. E. 12 (1928); Colyer vs. Thomas, 268 S. C. 455, 234 S. E. 2d 862 (1977). See also South Carolina Attorney General's Opinion dated June 16, 1981 [1981 WL 96582 (S.C.A.G.)] wherein the Attorney General concluded that "any local ordinance which prohibits removal of trees by the South Carolina Department of Highways and Public Transportation pursuant to its authority to construct or maintain state highways would be in violation of the Constitution and law of this State." Therefore, to the extent a local tree ordinance conflicts with the provisions of Sections 57-3-110(1) and 57-5-10, which give SCDOT exclusive authority to determine the design of highways and how to maintain them in a safe and serviceable condition, the tree ordinance is invalid.

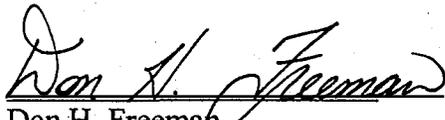
South Carolina Constitution, Article 8, Section 14 gives additional support for this position. Article 8, Section 14 provides that when local governments are enacting ordinances, provisions applicable to the administration of a governmental service or function, responsibility for which rests with State government or which requires statewide uniformity, shall not be set aside. The Supreme Court has held that "[t]he

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planning, construction, and financing of state roads is a governmental service which requires statewide uniformity." Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 456, 415 S.E.2d 801, 805 (1992). In the Hilton Head case, local citizens sought to pass a local ordinance to prevent SCDOT from financing the construction of the Cross Island Parkway with tolls. The Court decided that since state law gave the SCDOT the authority to use tolls to finance state highways and the financing and construction of highways was a subject that required statewide uniformity, Article 8, Section 14 would prevent the Town from passing an ordinance that prevented SCDOT from financing the Parkway through collection of tolls.

The same argument applies to the tree ordinance situation. The SCDOT has been given exclusive authority by the Legislature to determine design criteria and standards for the construction and maintenance of the State highway system. Whether or not to remove a tree from the right of way is typically a matter that is governed by design standards in constructing the highway or safety considerations in the maintenance of the highway. The Legislature has given the SCDOT the authority to establish design criteria and maintenance standards on State highways. This is a matter that requires statewide uniformity. Therefore, pursuant to Article 8, Section 14 any local tree ordinance that conflicts with SCDOT's authority to design and maintain State highways would be invalid.

I concur:


Don H. Freeman
State Highway Engineer