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# LEATH, BOUCH & SEEKINGS, LLP

COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

March 7, 2013

The Honorable Nikki Haley  
Office of the Governor  
1205 Pendleton Street  
Columbia, SC 29201

Re: **SCDOT's Premature Decision to Clear I-26 Median Trees**

Dear Governor Haley:

We represent the South Carolina Coastal Conservation League, and in that capacity are writing your office in opposition to certain proposed activities by the SCDOT. Specifically, we are writing to request that you intervene and prevent SCDOT from moving forward with their proposal to remove all trees from the median of I-26 between Summerville and I-95. Please require SCDOT to consider all feasible and reasonable alternatives in their project planning process before they implement this costly and unjustified plan.

## **Background**

In an effort to reduce fixed object crashes and improve safety along I-26 in Berkeley and Dorchester Counties, the SCDOT Commission has approved a plan to remove all trees from the median of I-26 between Summerville and I-95. According to a presentation at the February 21, 2013 SCDOT Commission meeting, this project will be added to the *Special Safety Projects List* previously approved by the SCDOT Commission in October of 2009.

As the clearing and grading activities involved in this project are likely to impact wetlands, and SCDOT may receive federal funding to offset costs (this project is part of SCDOT's federally supported Highway Safety Improvement Program), SCDOT will need to prepare an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA). By law, the EA must include analysis of various alternatives considered during the planning stage of the project, as well as the basis for rejecting each alternative in favor of the chosen alternative.

Conducting a thorough and wide-ranging analysis that includes numerous alternative approaches to the project and reflects a variety of strategies to address this safety problem, is particularly important for such a controversial project; it is in the best interest of SCDOT and the State to demonstrate that in order to provide safer conditions along this stretch of I-26, the impacts and costs associated with the chosen alternative are absolutely unavoidable. SCDOT has so far failed to do this, which will open the door for appeals of any issued permits.

### **SCDOT's Failure to Consider Alternatives to the Wholesale Clearing of the Forested Median**

SCDOT has presented two alternatives to the public, and summarily dismissed one of the two due to cost concerns. The chosen alternative, which entails clearing every tree from the median and installing a cable down the center of the median, will result in the greatest possible environmental and aesthetic impacts to the project area. SCDOT has failed to show that any other reasonable alternatives that may be less costly and/or less impactful have been seriously considered.

For example, SCDOT presented data at the aforementioned Commission meeting in February, indicating that the vast majority of crashes along this stretch of I-26 are due to irresponsible driver behavior (asleep at the wheel, distracted driver, DUI, speeding). While it is clear that drivers are the problem and not the trees, cheaper and more focused alternatives to solving the safety problem have not been publicly considered by SCDOT.

Alternatives to clearing the entire median include:

- Add rumble strips to the paved shoulder
- Selectively clear trees within 30 feet of the paved roadway
- Reduce the speed limit to 60 or 65 mph
- Increase law enforcement

Such simple, highly effective and low-cost options must be thoroughly analyzed, or else SCDOT risks exposing any issued permit to appeal.

### **Responsibility of the Governor's Office to Correct SCDOT's Course**

The median trees in this portion of the I-26 corridor are considered by many to be a gateway to the Lowcountry, and are a treasured asset to most motorists who travel this roadway. Former Senator Arthur Ravenel, Jr. fought diligently to save these trees while he was in office, and the rest of us have benefited from his efforts. In fact, Sen. Ravenel spearheaded legislation specifically to limit SCDOT's authority to remove vegetation from highway medians, and to protect assets such as the forested I-26 median from overzealous traffic engineers (SC Code of Laws 57-23-800). SCDOT's current proposal is a clear violation of the intent of this law.

As Governor of South Carolina, your office is charged with the responsibility for the administration of the State's highway safety programs (SC Code of Laws 57-1-60). SCDOT has embarked on a path for this highway safety project that does not reflect stewardship of taxpayer dollars, or the interests and desires of most South Carolinians (as evidenced by the backlash this plan has generated from both sides of the political spectrum). Additionally, SCDOT's decision to move forward with only one alternative in mind ignores the pleas and desires of your constituents, and is a clear violation of NEPA that will undoubtedly subject the State to a costly appeal. It is your office's duty to intervene and correct SCDOT's course. Please act now and require that SCDOT considers all feasible and reasonable alternatives in their project planning process.

Best Regards,

Jefferson Leath

W. Jefferson Leath, Jr.

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cc: John Edwards, Chairman, SCDOT Commission