

**BEAUFORT COUNTY TRANSPORTATION COMMITTEE  
MINUTES OF MEETING ON SEPTEMBER 21, 2016**

The regular meeting of the Beaufort County Transportation Committee (BCTC) was held on September 21, 2016 in the Executive Conference Room of the Beaufort County Administrative Complex located at 100 Ribaut Road, Beaufort, South Carolina.

**MEMBERS PRESENT:** Kraig Gordon, Christopher England, Joe DeVito, Mark McCain, Paul Runko

**MEMBERS ABSENT:** Bob Arundell, Craig Forrest, Steve Miller, James Morrall, Joseph Stroman, Stephen Wilson

**OTHERS PRESENT:** Council Member Alice Howard, Beaufort County Council District 4  
Mayor Sam Murray, Town of Port Royal  
Tom Kline, Mayor Pro Tem, Town of Port Royal  
Council Member, Jerry Ashmore, Town of Port Royal  
Van Willis, Town of Port Royal Manager  
Herb Cooper, SCDOT C Fund Manager  
Rob McFee, Beaufort County Division Director for Construction, Engineering & Facilities  
Wendell Mulligan, SCDOT Resident Maintenance Engineer

**Notification.** An audio recording of this meeting is available from the Beaufort County Engineering Department. Please contact the department at 843 255-2700 and request an audio copy. Power Point presentations given to the BCTC are available from the County Engineering Department.

1. **Call to Order & Members Roll Call.** Meeting was called to order at approximately 4:00 p.m. by Chairman Gordon and an attendance roll call was taken. A quorum was not achieved for this meeting. This meeting is held as an information only/workshop meeting. No agenda items that require a motion will be presented as discussion only items.

2. **Public Comment.** No public comment given.

3. **Approval of Minutes.** Approval of the July 20, 2106 minutes will be postponed until next CTC meeting. A quorum of committee members was not present.

4. **Transportation Plan.** Mr. McCain's latest draft of the BCTC's Transportation Plan was included in the member's distribution packets. Since there is not a quorum present the Transportation Plan was tabled. Discussion and adoption of the new BCTC Transportation Plan will be held at the next BCTC meeting.

5. **Old Business**

A. **RFP for County Roadway Pavement Condition Survey.** The County Engineering Department has advertised for bid a request for proposals on the County Roadway Pavement Condition Survey. The proposals are due by October 13<sup>th</sup>. Per Mr. McFee, there are 4 fundamental components included in the request. They are the electronic gathering of data, the manual gathering of data, the data workup and the recommendation of preservation plan. The purpose of the inventory is to gather information on the County maintained paved road inventory of 200+ miles and evaluate that system. That will give the BCTC a "yardstick" to measure future needs. Chairman Gordon will sit on the evaluation committee. County has public works maintenance management system. This system does not evaluate the maintenance management. The County's system measures cost and records maintenance completed/reported.

B. **Town of Port Royal Sidewalk Funding Request.** The Town of Port Royal at the July 2016 BCTC meeting presented a request to fund a match of \$39,451 for a grant application with SCDOT to construct two sections of sidewalk. The motion to approve the funding was defeated. Chairman Gordon contacted Tina Feaster with the SCDOT C Fund Program Manager's office. Chairman Gordon asked Ms. Feaster if it is correct to use state appropriated funds to match other appropriated funded projects. Ms. Feaster indicated that it is correct. Chairman Gordon then asked if it was typical to use for sidewalks. She stated that it varies from CTC to CTC and it is not uncommon for funding to be disapproved.

Mayor Murray submitted a letter to Chairman Gordon and the Chairman responded back addressing the 3 items missed by the Town on the request for funding presented at the July 2016 BCTC meeting. These items were:

1) It was shown in the application submitted by the Town to SCDOT that matching funds would be provided by the Town. It was 6 to 8 months after the application submittal that the BCTC was asked to provide matching funds; 2) Whether the USNH contacted and asked to provide any funding; 3) Was a cost benefit study completed and how much traffic will utilize new sidewalk.

Mr. DeVito reviewed the attached remarks from Mayor Murray submitted for this meeting. The Town will still be providing their \$40,000 commitment. The \$39,000 cost for engineering and administration was added by SCDOT after the grant application was submitted. This \$39,000 cost is what the Town has asked the BCTC to fund. The cost benefit review would have been done by SCDOT since the grant has been awarded already by the State to the Town. The Town was awarded a \$200,000 federal grant that is beneficial to the community. This request can be revisited at the next BCTC meeting for reconsideration.

County Council Member Howard spoke to the BCTC. She supports the construction of the sidewalks. Many school students use the dirt walking path to go to the middle school. Also elderly citizens in the area walk to and from retail shopping. The sidewalks in the Waddell/Tailbird Street area will also benefit the City of Beaufort. The city manager has provided a letter of support to the BCTC.

Mr. McCain indicated that the new proposed Transportation Plan specifies a scheduling period of time when the municipalities can submit funding projects to the BCTC. This should help eliminate the confusion and set up a process for review and submission.

Mayor Murray, Mayor Pro Tem Kline, and Town Council Member Ashmere addressed the safety need for the recommended sidewalks. The sidewalk near the USNH will link the Heritage Park to the Lady's Island Bridge walking connector. The dirt path next to Ribaut Road could cause pedestrians to trip and fall into traffic. The grant is a federal funded program that is administered thru SCDOT. SCDOT C Fund Manager recommended that the Town approach the County's Transportation Committee for match funding. The USNH was not approached for support funding due to the small scale of the project, the time allotted for submission of funding requests to SCDOT and the delay that would occur if the USNH was asked for funding. Per Mayor Murray, the USNH will be included in the construction planning. Mayor Murray thanked the BCTC for the reconsideration of the match funding.

Sammy Smalls a resident of the Casablanca area stated that the community supports the construction of the sidewalks. Port Royal is a walking community. Because of the lack of sidewalks, residents have used alternate paths which cause safety concerns. Many students walk thru the woods to get to the Mossy Oaks Elementary and Beaufort Middle Schools.

Chairman Gordon thanked the Town of Port Royal mayor and council members for their statements of recommendation. The request for match funds totaling \$39,451 will be included on the next BCTC agenda.

C. **Marlboro County Misappropriation of C Funds – Public Parking Lot Improvements.** Chairman Gordon reviewed the 7/25/16 correspondence from C Fund Local Program Administrator for SCDOT, Mr. Herb Cooper pertaining to the use of C Funds to improve the parking lot and fencing at a Marlboro County state-owned park. This letter with an opinion review from the SC Office of Attorney General is attached.

D. **Status of Beaufort County and SCDOT Roadway Projects.** Rob McFee and Wendell Mulligan provided an update on current County and SCDOT construction projects. It was requested that Toby Wickenhoefer, SCDOT resident construction engineer be asked to attend future BCTC meetings.

E. **LCOG Travel Demand Model.** Chairman Gordon is attending LATS Committee meetings. The engineering firm, CDM Smith completed a regional travel demand model. CDM Smith did future build outs for traffic loads in order to study travel distance and time for increased demand.

F. **CTC Compliance with State Set Aside/Status of Additional Funds for US-SC Routes.** Mr. McFee reviewed the 25% mandated set aside figures for FY 2016 and FY 2017. Total C fund recurring revenue for FY 2016 was \$2,327,102.

The 25% set aside is \$581,775. Most of the FY 2016 set aside is used for funding the 2016 SCDOT Resurfacing contract that is currently under construction. Total contract award plus contingency is \$6,159,843. The estimated 25% set aside for FY 2017 is \$597,472 which will be used for the FY 2017 SCDOT resurfacing project. The total estimated C funds available for the FY 2017 SCDOT resurfacing project is \$1.9 million. The \$1.9 million includes \$1.2 million from the nonrecurring C fund deposit for FY 2017.

G. **FY 2016 Annual Financial Report.** The FY 2016 Annual C Fund Financial Report is completed and will be submitted to the C Fund Manager. The C Fund manager will then schedule and audit inspection date with the County Engineering Department.

H. **Senator Davis Update.** A copy of the Senator Davis' letter dated 8/19/16 to Governor Haley concerning the Jasper County Port Facility and the funding for the Back River Bridge/US 17 Widening/Exit 3 construction was reviewed by Chairman Gordon. A copy of referenced letter is included with these minutes. The next MPO meeting is on September 30, 2016.

## 6. New Business

A. **CTC Annual Meeting.** The SCDOT statewide C Fund meeting will be held on December 6, 2016 in Columbia, SC. All CTC members can attend. Chairman Gordon will be going to the meeting. If any other members which to participate, please contact Chairman Gordon.

B. **JOT Report.** Chairman Gordon was not able to attend the Jasper Ocean Terminal Summit but he has learned from other participants that there was not a lot of discussion about the Jasper Port other than the effort made to get the spoil out of the river. There was a lengthy discussion on crane relocation for the Savannah Port.

C. **FY 2017 Nonrecurring/Recurring Revenue.** The BCTC will be receiving per the SCDOT C Program Manager's July Report \$1,296,700 in a one-time nonrecurring C fund deposit. The 2017 nonrecurring revenue is programmed for focusing on resurfacing improvements for US routes. County Engineering and the local SCDOT maintenance are looking at sections of US 21 and US 278. Mr. McFee and Mr. Mulligan will investigate what FY 2017 program funding the local SCDOT maintenance office will receive and then will bring recommendations for the 2017 SCDOT resurfacing to the BCTC for approval. The recurring C fund revenue for FY 2017 is estimated at \$2.3 million.

D. **Resurfacing Requests.** County Engineering has received resurfacing petitions for Pulaski Drive and Fredrick Drive in Burton. Both are SCDOT roads. A petition was also received for Longstaple Drive which is a County road on Lady's Island. Mr. McFee indicated that the paved surfaces on these three roads are deteriorating and will need repaired/resurfaced. Per Chairman Gordon the petitioned roads will be put in line for approval in accordance with the BCTC's transportation plan.

E. **Other Items.** Due to the lack of a quorum and items that needed approval, Chairman Gordon has scheduled an October 19, 2016 meeting starting a 4:00 pm.

F. **SCDOT C Program Administrator.** Mr. Herb Cooper, the SCDOT C Program Administrator attended today's meeting. He invited all members to attend the statewide meeting on December 8, 2016. County Council members will also be invited to the statewide meeting. At the statewide meeting, Charleston County will be presenting their pavement preservation and pavement management programs. Mr. Cooper said it was exciting to see a new CTC in action especially a committee that was interested in the transportation needs of the County. Mr. Cooper is available to attend CTC meetings if there are specific questions on the C fund revenue and C fund state law.

7. **Public Comment.** No public comment given.

8. **Meeting Adjourned.** The committee will be notified about the newly scheduled October 19, 2016 meeting. The November 16, 2016 meeting will be held at 4:00 p.m., in the Executive Conference Room, County Administration Building, Robert Smalls Complex, Beaufort, SC.



## **CTC REMARKS FOR MEETING ON SEPTEMBER 21, 4PM**

### **Executive Conference Room**

I want to thank the members of the County Transportation Committee for reconsidering the Town's request for matching funds for the sidewalk projects on Waddell Road and adjacent to the Naval Hospital along Ribaut Road. These projects provide much needed safe pathways for pedestrians. Waddell Road has sidewalks on either end, but a significant gap in the middle that impacts both Port Royal and Beaufort residents. The sidewalk requested on Ribaut Road also fills a gap along the Naval Hospital fence line and would provide sidewalks that would connect the Town's Naval Heritage Park and the sidewalk that ties into the pedestrian way on the Lady's Island Bridge.

We understand that some of the reluctance to fund the match for the program was concern that the CTC would be using state funds to provide the match for a state grant program. However, the Transportation Alternative Program is actually a federal program that is administered by the SCDOT. We have provided some backup information from the program to you that explains the intent of the program and its funding source.

Additionally, the chairman raised three questions regarding the project in a letter I received yesterday afternoon, and I will attempt to address them.

1. The estimate provided by the SCDOT identified additional costs due to their required management of the project and other factors. Due to this, it was suggested by the SCDOT that we approach the CTC to assist with the local match. The Town is still committing the same funds it estimated in its original submittal and will be responsible for any overruns.
2. This is an SCDOT road adjacent to the Naval Hospital. Considering the timing of the project and the original scope of pricing, involving the Department of the Navy in a project of such a small scope would have created significant delays. We will be partnering with them during the planning and construction process.
3. The focus of the project, which was reviewed and approved by the SCDOT for funding, was safety. This is a pedestrian sidewalk, so bicycles are not supposed to be using sidewalks.



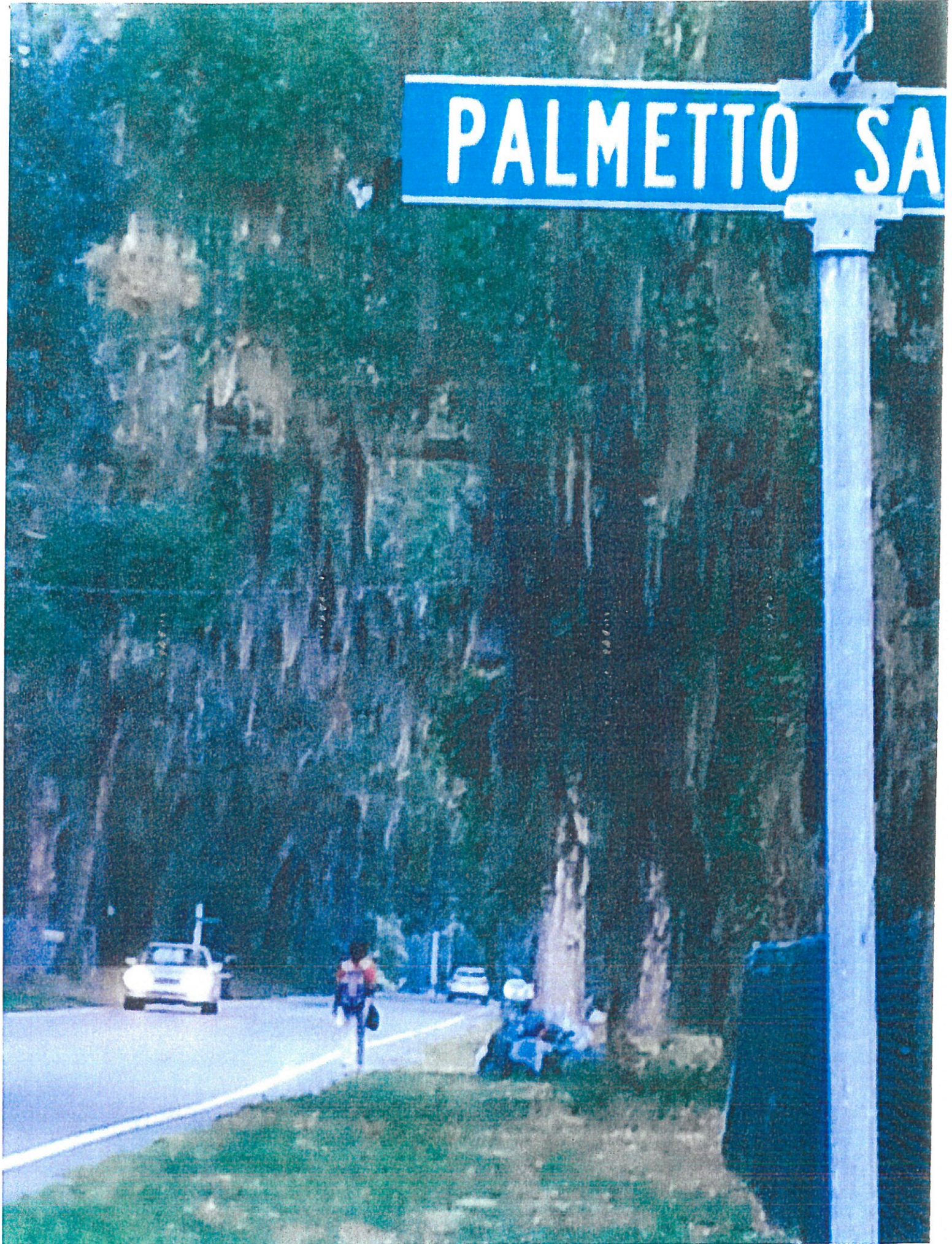
I would like to introduce Sammy Smalls, a resident of Port Royal and specifically the Casablanca area. He was a passionate advocate for the project, and he is here to provide some additional insight to the CTC on the importance of the project.

I am aware that you received an overview of the scope of the project at a previous meeting, so we don't want to take too much of your time going over the entire scope of the project.

Thanks again for reconsideration. The Town believes this to be a worthy project of funding, and is still committed financially to participating in the project due to administrative costs that are required by the grant and any potential overruns. That commitment is estimated at approximately \$40,000 above and beyond the local match. Our request of the CTC is still for the \$39,451 for the local required match.



PALMETTO SA





William A. Prokop  
CITY MANAGER  
843-525-7070  
FAX 843-525-7013



**CITY OF BEAUFORT**  
1911 Boundary Street  
BEAUFORT, SOUTH CAROLINA 29902

COUNCIL MEMBERS  
Billy Keyserling, Mayor  
Mike McFee, Mayor Pro Tem  
George O'Kelley  
Philip Cromer  
Stephen Murray

September 21, 2016

Beaufort County Transportation Committee  
Beaufort County  
Beaufort, South Carolina 29902

RE: Support for Port Royal sidewalk project

To whom it may concern:

The City of Beaufort is in complete support of the sidewalk project submitted by the Town of Port Royal. This project has a benefit to Beaufort residents as well as Port Royal residents particularly in the Talbird Street area.

We see this as an improvement in safety for those who walk and/or bike in the area and feel that it follows many of the guidelines that are stated in our Civic Master plan.

We urge your committee support of this project.

Regards,

  
William A. Prokop  
City Manager



## BEAUFORT COUNTY TRANSPORTATION COMMITTEE

104 Industrial Village Road, Building #3, 29906  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
Telephone: 843-255-2700 Facsimile: 843-255-9420

Committee Members:  
Kraig Gordon, Chairman  
Bob Arundell, Joe DeVito  
J. Craig Forrest, Mark McCain  
Steve Miller, Joseph Stroman  
Stephen Wilson

Beaufort County Staff Support:  
Robert McFee, PE, Division Director  
Construction, Engineering & Facilities

September 19, 2016

Mayor Samuel Murray  
Town of Port Royal  
PO Box 9  
Port Royal, SC 29935

**Re: Resubmittal of Town of Port Royal Sidewalk Funding Request to the BCTC**

Dear Mayor Murray:

On behalf on the Beaufort CTC board, we appreciate your resubmittal for the Ribaut Road sidewalk construction project. While what might have been deemed the reason for the project refusal, it was one of numerous items that need addressing.

The next day after the meeting, I personally, called your Mr. Van Willis to offer assistance in addressing the issues that were brought up. He never returned my call. I also contacted Ms Tina Feaster, SCDOT C Program Manager, concerning leveraging our dollars with other state program dollars. She explained that is was perfectly legal to expend our dollars in this fashion. However, she also said it was not unusual for projects such as yours to be disapproved.

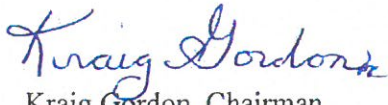
There were three additional items that should be addressed before resubmittal to our board for consideration. The items are as follows.

1. This project was submitted to the State for consideration with the Town of Port Royal stating that "matching funds would be provided by the Town." It was some 6 to 8 months after this action that it was brought out of "no where" for our consideration. Why wasn't the board contacted in the beginning? It would of given the CTC a chance to budget our limited funds rather than after the fact.
2. A portion of the sidewalk work turns in front of the US Naval Hospital. Was the federal government even approached to provide funding? Why weren't they considered a "partner" in the project?

3. Lastly, and probably the most important item, what is the foot and bicycle traffic on these potential sidewalks? Your staff had to develop a cost/benefit study and ratio to support the expenditure in the beginning. Without documentation to support and justify the expenditure of funds, the board has defeated the project. This committee has a fiduciary responsibility to all the citizens of Beaufort County! With limited funds, we must allocate dollars in a fashion that will serve the common good for all citizens.

We appreciate your understanding and your service to your community.

Respectively,

A handwritten signature in blue ink that reads "Kraig Gordon". The signature is fluid and cursive, with a small mark at the end.

Kraig Gordon, Chairman  
Beaufort County Transportation Committee

KG/mjh

CC: Cathy Rice, SCDOT TAP Manager  
Maryann Matheny, SCDOT Accounting Office  
Sherry Barton, SCDOT Chief Procurement Officer  
Herb Cooper, SCDOT C Fund Program Manager  
Brent Rewis, SCDOT Lowcountry Region Production Group Engineer  
Robert Clark, SCDOT District 6 Administrator  
Jacqueline Williams, SCDOT Professional Services  
Miranda Caldwell, SCDOT Accounting Manager  
Diane Stubbs, SCDOT Director of Obligation Management  
Annette Rish, SCDOT Senior Budget Analyst



South Carolina  
Department of Transportation

July 25, 2016

Mr. Kraig Gordon, Chairman  
Beaufort County Transportation Committee  
201 Summerten Drive  
Bluffton, South Carolina 29910

RE: Funding of Improvements to Public Parking Lots

Dear Chairman Gordon:

Recently an issue regarding the use of C funds for improving public parking lots has come to our attention. The C Program Administration Office would like to share this information with you for your consideration when identifying and selecting future projects. On May 24, 2016, South Carolina's Office of the Attorney General issued an opinion of the use of C funds to pay for parking lot resurfacing and fencing at a local state-owned lake in Marlboro County. Attached is a copy of this Attorney General's opinion for your information.

The opinion concludes that the Attorney General's office does not believe the use of C funds to pay for parking lot resurfacing and fencing at a local state-owned lake would be appropriate. While they believe these expenditures would likely constitute a public purpose, it is not apparent that the public purpose of these improvements comports with the statutory intent of Section 12-28-2740 (The C Fund Law). The opinion further states that should a court determine C funds were expended for a purpose not authorized by the C Fund Law, the members of the CTC could be personally liable as public officers paying money for purposes unauthorized by law.

We wanted to share this information with you in order to be sure that your local CTC is made aware of this opinion from the Attorney General's office as you select projects to fund. As always, the CTC's dedication to the community is greatly appreciated. SCDOT looks forward to working with the Committee to improve the quality of transportation elements in the county.

Sincerely,

Herbert J. Cooper, P.E.  
Local Program Administrator

HJC:bmf  
Enclosure

cc: Rob McFee, Division Director of Construction Engineering  
ec: Christy A. Hall, P.E., Secretary of Transportation  
Leland Colvin, Deputy Secretary for Engineering  
Randy Young, Acting Chief Engineer for Project Delivery  
Robert T. Clark, District Six Engineering Administrator  
Brent Rewis, Lowcountry Region Production Group Engineer  
J. Allen Hutto, Governmental Relations Officer

File: L/C-Program/Correspondence







ALAN WILSON  
ATTORNEY GENERAL

May 24, 2016

Mr. Harry R. Easterling, Jr.  
Attorney for Marlboro County  
Post Office Box 419  
Bennettsville, South Carolina 29512

Dear Mr. Easterling,

We have received your letter expressing concern over a grant awarded by the Marlboro County Transportation Commission ("the CTC") to the Lake Paul A. Wallace Authority. According to your letter, a recent newspaper article reported that the CTC has given the Authority a \$340,000 grant to pay for parking lot resurfacing and fencing at a local state-owned lake. You have calculated that the grant represents approximately one-third of the funds that are available for road work on county roads in Marlboro County.

In your review of the powers given to the CTC, you state that "we can find no authority for the CTC to award grants generally or authority to provide a grant of "C" funds for projects other than state highways, county roads, for street and traffic signs, and for other road and bridge projects." As such, you ask: "[d]oes the CTC have the statutory authority to expend funds in this manner" and also "[a]re there any consequences for Marlboro County should the County Transportation Committee spend these funds in a way which is not authorized by statute?" Our analysis follows.

#### Law / Analysis

The governing authority for the expenditure of the gasoline tax, commonly known as the "C" funds, is S.C. Code Ann. § 12-28-2740 (2014 & Supp. 2015). Analyzing Section 12-28-2740 in a prior opinion of this Office, we have explained that:

[t]he statute provides a means by which roads of the various counties may be constructed, improved, and maintained. The "C" funds are appropriated to the counties by the formula specified in subsection (A). The "C" funds must be deposited with the State Treasurer and expended for the purposes set forth in the statute. *Id.* The South Carolina Department of Revenue must submit the percentage of the total represented by each county to the South Carolina Department of Transportation (DOT) and annually to each county transportation committee. *See* § 12-28-2740(A)(3). Upon request of a county transportation committee, the DOT may continue to administer the funds allocated to the county. *Id.* Importantly, the "C" funds expended must be approved by and used in

Mr. Harry R. Easterling, Jr.  
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May 24, 2016

furtherance of a countywide transportation plan adopted by a county transportation committee. See § 12-28-2740(B). Before the expenditure of "C" funds by a county transportation committee, the committee must adopt specifications for local road projects. See § 12-28-2740(F). The countywide and regional transportation plans must be reviewed and approved by the DOT. Id. In counties electing to expend their allocation directly pursuant to subsection (A), specifications of roads built with "C" funds are to be established by the countywide or regional transportation committee. In counties in which the county transportation committee elects to have "C" funds administered by the DOT, primary and secondary roads built using such funds must meet the DOT specifications. Id. All unexpended "C" funds allocated to the county remain in the account allocated to the county for the succeeding fiscal year and must be expended as provided in the statute. See § 12-28-2740(E).

Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012).

Furthermore, and important to answering your questions, subsection (C) addresses the uses for which "C" funds can be spent. Such subsection provides as follows:

[a]t least twenty-five percent of a county's apportionment of "C" funds, based on a biennial averaging of expenditures, must be expended on the state highway system for construction, improvements, and maintenance. The Department of Transportation shall administer all funds expended on the state highway system unless the department has given explicit authority to a county or municipal government or other agent acting on behalf of the county transportation committee to design, engineer, construct, and inspect projects using their own personnel. *The county transportation committee, at its discretion, may expend up to seventy-five percent of "C" construction funds for activities including other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects.*

S.C. Code Ann. § 12-28-2740(C) (emphasis added).

Again, your question concerns \$340,000 granted by the CTC to the Lake Paul A. Wallace Authority for resurfacing of parking lots and fencing. As Section 12-28-2740 states that up to seventy-five percent of "C" funds can be spent on the county's local transportation system "for activities including other local paving or improving county roads, for street and traffic signs, and other road and bridge projects," the uses for "C" funds stated in your letter are not specifically included in Section 12-28-2740. As such, we must look to the rules of statutory interpretation to determine whether such funds can be expended as described.

In construing any statute, the primary objective is to ascertain and effectuate the intent of the legislature. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 37, 267 S.E.2d 424, 425 (1980). Words used in statutes should be given their plain and ordinary meanings and applied literally in the absence of ambiguity. McCollum v. Snipes, 213 S.C. 254, 265-66, 49 S.E.2d 12, 16 (1948). "What a legislature says in the text of a statute is considered the best evidence of the

legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

It is also well understood that statutory provisions do not stand alone but must be read in the context of the statutory scheme as a whole. Hinton v. South Carolina Dep't of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004). Also, the statutory language in question "must be read in a sense which harmonizes with its subject matter and accords with its general purpose." Multi-Cinema, Ltd. v. S.C. Tax Comm'n, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987).

When the Legislature uses words of particular and specific meaning followed by general words, the general words are construed to embrace only persons or things of the same general kind or class as those enumerated. Sheppard v. City of Orangeburg, 314 S.C. 240, 243, 442 S.E.2d 601, 603 (1994). Put differently, it is a basic rule of statutory construction that "general words—and it makes no difference how general—will be confined to the subject treated thereof." Gov't Employees Ins. Co. v. Draine, 389 S.C. 586, 595, 698 S.E.2d 866, 871 (Ct. App. 2010) (citing Henderson v. McMaster, 104 S.C. 268, 272, 88 S.E. 645, 646 (1916); Beattie v. Aiken County Dep't of Soc. Servs., 319 S.C. 449, 452, 462 S.E.2d 276, 278 (1995)).

In many prior opinions of this Office, we have addressed whether certain expenditures would likely be an appropriate use of "C" funds. See Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012); Op. S.C. Att'y Gen., 1998 WL 746209 (Aug. 13, 1998); Op. S.C. Att'y Gen., 1989 WL 508559 (June 12, 1989); Op. S.C. Att'y Gen., 1986 WL 192043 (Aug. 1, 1986); Op. S.C. Att'y Gen., 1978 WL 35013 (Aug. 4, 1978). In the majority of these opinions, the question concerned whether the paving of roads in a particular area would be an appropriate use of "C" funds. Thus, the crux of the analysis was whether the expenditure of public funds was being used for a public purpose, as required by both the Federal and State Constitutions. In regards to the use of public funds, our June 19, 2012 opinion explained as follows:

the expenditure of public funds must be for a public, not a private purpose. Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); Haesloop v. Charleston, 123 S.C. 272, 115 S.E. 596 (1923). As the Court suggested in Elliott, the Due Process Clause of the Constitution (federal and state) requires that public funds must be expended for a public purpose. An opinion of this office dated December 18, 2000, commented that the constitutional requirement of "public purpose" "...was intended to prevent governmental bodies from depleting the public treasury by giving advantages to special interests or by engaging in non-public enterprises." Moreover, Article X, § 5 of the South Carolina Constitution requires that taxes (public funds) be spent for public purposes. Such provision proscribes the expenditure of public funds "for the primary benefit of private parties." Op. S.C. Att'y Gen., October 8, 2003.

While each case must be decided on its own merits, the notion of what constitutes a public purpose has been described by the South Carolina Supreme Court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) as follows:



[a]s a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment for all the inhabitants or residents, or at least a substantial part thereof. Legislation [i.e., relative to the expenditure of funds] does not have to benefit all of the people in order to serve a public purpose.

Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012).

Applying the same "public purpose" principles recited above, in our August 1, 1986 opinion we opined that Florence County's use of "C" funds to build roads on private property which it anticipated developing as an industrial park was likely proper as such would most probably be an expenditure of public funds for a public purpose. Op. S.C. Att'y Gen., 1986 WL 192043 (Aug. 1, 1986). Similarly, in our June 12, 1989 opinion, we concluded that "C" funds could be used to lay roads on Laurens County property to be used as an office and light industrial park as such would likely constitute a public purpose. Op. S.C. Att'y Gen., 1989 WL 508559 (June 12, 1989). In an August 13, 1998 opinion, we also opined that the Anderson County Transportation Committee's expenditure of "C" funds to construct and maintain the internal roads within an industrial park would likely be an appropriate expenditure benefiting a public purpose. Op. S.C. Att'y Gen., 1998 WL 746209 (Aug. 13, 1998).

We have also addressed the use of "C" funds for purposes other than the paving of roads. See Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012); Op. S.C. Att'y Gen., 1978 WL 35013 (Aug. 4, 1978). Under the prior version of S.C. Code Ann. § 12-28-2740 – Section 12-27-400 – our August 4, 1978 opinion concluded that the use of "C" funds for the purpose of resurfacing airport runways owned by airport authorities or counties had "no statutory sanction." Op. S.C. Att'y Gen., 1978 WL 35013 (Aug. 4, 1978).

In a more recent opinion, dated June 19, 2012, we addressed the use of "C" funds for the maintenance of highway/railroad crossings and bridges. Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012). In construing Section 12-28-2740(C)'s language that up to seventy-five percent of "C" funds can be used by a county transportation committee for activities including "local paving or improving county roads, for street and traffic signs, and for other road and bridge projects" we provided that "[c]learly, by this language the Legislature merely designated examples of purposes acceptable for the expenditure of "C" funds by a county transportation committee. A county transportation committee is thus not expressly limited by the above provision to specific projects for the use of "C" funds." Id. We therefore concluded that such expenditure would likely be an appropriate use of "C" funds, "provided that such are acceptable in the county or regional transportation plan adopted by the transportation committee and are designated for a public purpose." Id.

In review of Section 12-28-2740, the rules of statutory construction, and prior opinions of this Office addressing whether certain expenditures would likely be an appropriate use of "C" funds pursuant to Section 12-28-2740's requirements, we are hesitant to opine that the use of "C" funds to pay for parking lot resurfacing and fencing at a local state-owned lake would be appropriate. While we believe the expenditure would likely constitute a public purpose, it is not

apparent that the public purpose of the improvement projects specified – resurfacing parking lots and fencing benefiting a public lake – comports with the statutory intent for the use of “C” funds for local projects, as set forth by S.C. Code Ann. § 12-28-2740 (2014 & Supp. 2015).

We reach this conclusion in looking to the plain language of the statute. As stated in S.C. Code Ann. § 12-28-2740(B) (2014 & Supp. 2015), “[t]he funds expended must be approved by and used in furtherance of a countywide *transportation plan* adopted by a county transportation committee.” (Emphasis added). And, of the seventy-five percent of “C” funds that can be used for local projects, examples of such local projects include “other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects.” S.C. Code Ann. § 12-28-2740(C) (2014 & Supp. 2015). We believe that each of these purposes directly benefit *transportation* and, pursuant to the rules of statutory construction, other purposes not listed would have to do the same. Therefore, as to whether the resurfacing of parking lots and fencing at Lake Paul A. Wallace would appropriately be a part of the countywide transportation plan and comport with the uses allocated for “C” funds for local projects, it is our opinion that such use is highly questionable. We believe a court would likely conclude that the use of “C” funds for such uses are outside of the legislative intent specified by the plain language of Section 12-28-2740. Thus, in reaching this conclusion, we find it unnecessary to address whether such expenditure could be done in the form of a grant.

Finally, you ask whether there are any consequences for the county should the CTC spend these funds in a way which is not authorized by statute. We have previously explained the liability of public officers acting beyond the scope of their statutory powers. As we recognized in a May 13, 1997 opinion:

[t]he law in South Carolina is supportive of liability for public officers who perform ultra vires acts. Our Supreme Court has held, for example that

[t]he principle is firmly settled in this State that a taxpayer may maintain an action in equity on behalf of himself and all other taxpayers, to restrain public officers from paying out public money for purposes unauthorized by law. Sligh v. Bowers, 62 S.C. 409, 40 S.E. 885; Mauldin v. City Council of Greenville, 33 S.C. 1, 11 S.E. 434, 8 L.R.A.; 291; McCullough v. Brown, 41 S.E. 220, 19 S.E. 458, 23 L.R.A. 410, Pom. Eq. Jur. 277, Sec. 260; 2 Dill. Mun. Corp., Sec 736.

Kirk v. Clark, 191 S.C. 205, 210, 4 S.E.2d 13 (1939). In Chandler v. Britton, 197 S.C. 303, 310, 15 S.E.2d 344 (1941), the Court stated that “in the absence of any statutory law to the contrary a public official is not liable for the loss of funds deposited with him if he has exercised that degree of care and prudence in the management of funds which a person of ordinance care and prudence would exercise in his own business.” The Court, in Long v. Seabrook, 260 S.C. 562, 568, 197 S.E.2d 659 (1973) concluded that “[t]he failure of a public official to comply with the laws governing and regulating his powers and duties may give rise to liability.” And in Sumter Co. v. Hurst, 189 S.C. 316, 1 S.E.2d 242 (1939),

the Court said that “[w]e think that there can be no dispute of the proposition that when a public officer received money for the public use, he is a trustee to receive such monies and to pay them to the public official or function for whom or which they were intended.” Id. at 319.

Op. S.C. Att’y Gen., 1997 WL 323769 (May 13, 1997).

Accordingly, should a court determine that “C” funds were expended for a purpose not authorized by S.C. Code Ann. § 12-28-2740 (2014 & Supp. 2015), it is our belief that the members of the CTC could be personally liable as public officers paying money for purposes unauthorized by law. We also believe any liability on the part of the county would result vicariously; however, pursuant to Section 12-28-2740, it does not appear that county council has direct oversight of the CTC. See S.C. Code Ann. § 12-28-2740(B) (“The county transportation committee must be appointed by the county legislative delegation and must be made up of fair representation from municipalities and unincorporated areas of the county”); S.C. Code Ann. § 12-28-2740(F) (“The countywide and regional transportation plans provided for in this section must be reviewed and approved by the Department of Transportation”). Both the authority of the CTC to provide “C” funds to the Lake Paul A. Wallace Authority and any resulting liability on behalf of the CTC members is a factual determination that must be resolved by a court. See Op. S.C. Att’y Gen., 2006 WL 1207271 (April 4, 2006) (“Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions”). The above is merely this Office’s opinion of how a court would likely rule on such issues given the information we have been provided.

### Conclusion

At the discretion of the CTC, S.C. Code Ann. § 12-28-2740(C) authorizes seventy-five percent of “C” funds to be used for local projects, and examples of such local projects include expenditures for “other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects.” In review of this provision with Section 12-28-2740 as a whole, the applicable rules of statutory interpretation, and prior opinions of this Office addressing whether certain expenditures would likely be an appropriate use of “C” funds pursuant to Section 12-28-2740’s requirements, we do not believe that the use of “C” funds to pay for parking lot resurfacing and fencing at a local state-owned lake would be appropriate. While we believe these expenditures would likely constitute a public purpose, it is not apparent that the public purpose of resurfacing parking lots and fencing benefiting a public lake comports with the statutory intent of Section 12-28-2740. Based on the plain language of such statute, we believe such intent is that “C” funds for local projects must be used in furtherance of the county wide transportation plan and in direct benefit of the county transportation projects.

Should a court determine that “C” funds were expended for a purpose not authorized by S.C. Code Ann. § 12-28-2740, in line with prior opinions of this Office, it is our belief that the members of the CTC could be personally liable as public officers making expenditures for purposes unauthorized by law.



Mr. Harry R. Easterling, Jr.  
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May 24, 2016

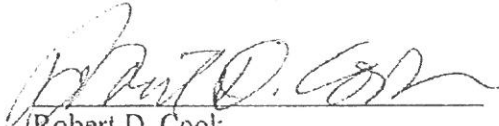
We reiterate that both the authority of the CTC to provide "C" funds to the Lake Paul A. Wallace Authority and any resulting liability on behalf of the CTC members are factual determinations that must ultimately be resolved by a court. The opinions expressed herein are merely this Office's interpretation of how a court would rule when addressing the questions you have presented.

Very truly yours,



Anne Marie Crosswell  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

SENATOR TOM DAVIS  
SENATE DISTRICT 46  
BEAUFORT AND JASPER COUNTIES

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August 19, 2016

The Honorable Nikki R. Haley  
Office of the Governor  
1205 Pendleton Street  
Columbia, South Carolina 29201

Re: Jasper County Port Facility Infrastructure Fund, Act. No. 56 -- Session 117 (2007-2008)

Dear Gov. Haley:

As you noted when you visited Jasper County last May, the Jasper Ocean Terminal Joint Project Office (the "JPO") filed a permit application in November 2015 with the U.S. Army Corps of Engineers for the Jasper port. The permitting process is expected to take about five years, and construction of the port's first phase once the permit is issued will take another four years.

You correctly noted during your visit that, while the permit is being processed, "state and local leaders must work to get their ducks in a row so that we are waiting on everyone else and no one is waiting on us," and that this preparation "includes putting money in savings and budgeting how much we are going to need for the Jasper port – so that the Corps never has to question whether the state can really do this." Setting aside funds for the Jasper port is, as you said, akin to the setting aside of \$300 million in the 2012 budget to pay for the cost of deepening of the Charleston port.

The South Carolina General Assembly has also recognized this need, having passed a bill in 2007 that provided in part as follows: "SECTION 7. There is created the Jasper County Port Infrastructure Fund. The fund shall be used for expenses and administrative fees incurred by the county relative to the county's infrastructure and service provision requirements related to the Jasper County Port Facility." (See: Act. No. 56 -- Session 117; 2007-2008.)

Letter to Gov. Haley

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August 19, 2016

The Jasper port's primary highway infrastructure needs are: 1) constructing a frontage road along the Savannah River connecting the port site with SC Highway 17; 2) widening portions of SC Highways 17 and 315 so that a four-lane road connects the port frontage road with I-95; and 3) building a two-lane bridge that spans Back River so that four lanes of roadway connect Jasper County and Hutchinson Island (and, by extension, Savannah).

Last June I asked Moffatt & Nichol, the project manager for the Jasper port, to provide an estimate of the cost for these projects; its response to the JPO's executive director, Doug Marchand, is enclosed, and is summarized as follows: \$190 million to build the frontage road, \$110 million to widen SC Highway 17, and \$20 million for the new two-lane bridge across the Back River. It is reasonable to expect the State of Georgia to pay one-half the cost of the frontage road (since the Georgia Ports Authority is a co-owner of the Jasper port site, along with the South Carolina State Ports Authority), so the total aggregate cost to South Carolina for these three major infrastructure projects is \$225 million.

Again, the permitting process will take about five years and the construction of the port's first phase another four years, which means the infrastructure must be completed in or around 2024. Approximately \$28 million, therefore, needs to be set aside each year for the next eight years to cover the estimated \$225 million cost. In addition, the State of Georgia will need to set aside \$95 million to pay for its share of the frontage road along the Savannah River.

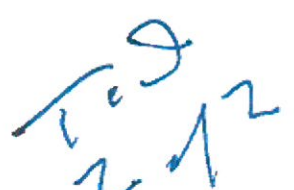
I respectfully ask that the executive budget for FY 2017-18, which I understand you are now in the process of preparing, take into consideration these stated road infrastructure needs for the Jasper port. By copy of this letter, I am advising other interested parties of this correspondence and soliciting their input. Thanks for your consideration in this matter.

Sincerely,



Tom Davis

cc: Sen. Hugh Leatherman, Chairman of SC Senate Finance  
Rep. Brian White, Chairman of SC House Ways & Means  
Doug Marchand, Executive Director of the JPO  
Swati Patel, Chief of Staff for Gov. Nikki Haley  
Christy Hall, Executive Director of the SCDOT





moffatt & nichol

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August 18, 2016

Mr. Doug Marchand  
Executive Advisor  
Jasper Ocean Terminal  
Joint Project Office  
c/o Georgia Ports Authority  
P.O. Box 2406  
Savannah, Georgia 31408

**re: Jasper Ocean Terminal Program Management Services  
Jasper County Port Infrastructure Fund, Act. No. 56 – Session 117 (2007-2008)**

Dear Mr. Marchand:

In response to Senator Tom Davis', SC, District 46 request to provide an estimate of the cost of transportation infrastructure projects that could support development of the Jasper Ocean Terminal (JOT), the following is provided.

In January, 2010, Moffatt & Nichol developed a transportation conceptual design report which provided conceptual plans for the existing and future road transportation infrastructure needed to support JOT traffic volumes. This included roadway, structural, and hydraulic designs with a corresponding opinion of probable cost for three primary alternative transportation corridors.

Using the information from this report, the following opinion of probable cost for three primary elements are provided:

1. Road connector from US 17 to the JOT - \$190 million
2. Widening US 17 (~8 miles) - \$110 million
3. Two lane bridge on US 17 over Back River - \$20 million

The following notes pertain to these estimates:

1. The transportation report used 2009 unit prices. The estimates above have been inflated to a 2016 equivalent cost.
2. Environmental mitigation is not included in the above estimates. This cost will be significant, especially for the road connector from US 17 to the JOT.
3. The 2009 study assumed that the first phase of JOT would come on line in 2017. With the first phase now projected to come on line in the 2026 to 2028 timeframe, certain assumptions (e.g., traffic counts), other projects, etc. could have some effect on these numbers.
4. Between the time this study was completed in 2009 and now, certain projects have been completed or being planned to be completed prior to the first phase of the terminal being completed. For example:
  - a. The 2009 study assumed that the existing bridge on US 17 over the CSX rail line would be demolished and replaced with a new bridge (prior to, and separate from, the JOT





project work). However, SCDOT currently plans to remove and replace the bridge with an at-grade rail crossing. When the CSX line is reactivated to support the JOT, a new overpass will need to be constructed.

- b. Per SCDOT's six year (2017 – 2022) program currently undergoing public comment:
  - i. Four miles of widening US 17 (up to Route 315) is planned for FY-2018.
  - ii. The two lane bridge on US 17 over the Back River is planned for FY-2021.
- 5. As noted above, there were three primary alternatives for the location of the road connector between US 17 and the JOT. The estimates above are based on the alternative that locates the road just north of the USACE dredge disposal areas. Current discussion with the USACE is focusing on the feasibility of locating the road within the dredge disposal (northern) dikes. The analysis of this alternative is being done as part of the Section 408 review. If this alternative is approved, it will have an effect on the roadway cost (i.e., the roadway cost will likely be higher, but the environmental mitigation cost will likely decrease).
- 6. The project is currently going through the Section 10/404 permitting process. This process involves alternative analysis, the results of which could affect the above estimates.

If you have any questions, please feel free to contact me at (912) 231-0044.

Respectfully Submitted,

**MOFFATT & NICHOL**

Michael N. Rieger, P.E., LEED AP  
Program Manager