



South Carolina Environmental Mileposts Newsletter

VOLUME 1, ISSUE 5

NOVEMBER 2018



U.S. Department of Transportation
Federal Highway Administration

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Director's Corner *By Chad Long*

Change is definitely in the air within the Environmental Services Office (ESO). In early November, Mr. Lyle Lee accepted a position within the Lowcountry Regional Production Group as an Assistant Program Manager. Lyle worked for ESO for 4 ½ years in the Compliance Division most recently serving as the Design Build and Hazardous Materials Coordinator for the office. We wish Lyle the best as he continues the development of his professional career at SCDOT.

In response to this vacancy, Mr. Will McGoldrick will be assuming design build coordination duties over the next two months while our office is in the process of filling a permitting coordinator position for the Lowcountry region. Will has worked on a number of design build projects in the past and looks forward to expanding his development within the NEPA discipline.

Speaking of NEPA, we are also in the process of filling the Upstate Regional Production Group NEPA Coordinator

position. We hope to have someone in place by the end of the year. That's all for now, folks!

Updates to 23 CFR Parts 771 and 774

By Shane Belcher and Michelle Herrell

On October 29, 2018, a final rule was published in the Federal Register (Volume 83, No. 99, page 55480), that updated 23 CFR Parts 771 and 774 to be in conformance with the provisions in Moving Ahead for Progress in the 21st Century (MAP-21) and Fixing America's Surface Transportation Act (FAST) Act. Below are highlights to the changes in these regulations:

- 23 CFR §771.105(a) – encourages the use of one single process and environmental review document for all Federal permits and approvals to the maximum extent possible and consistent with Federal Law.
- 23 CFR §771.105(b) – adds the development and use of programmatic approaches to streamline compliance with environmental requirements, including coordination with agencies, public, and others to enhance and accelerate project development.
- 23 CFR §771.116(d), §771.117(h), and §771.118(e) – new provisions in the regulations that allow FHWA, FTA, and FRA to use each other's categorical exclusions to increase efficiencies.

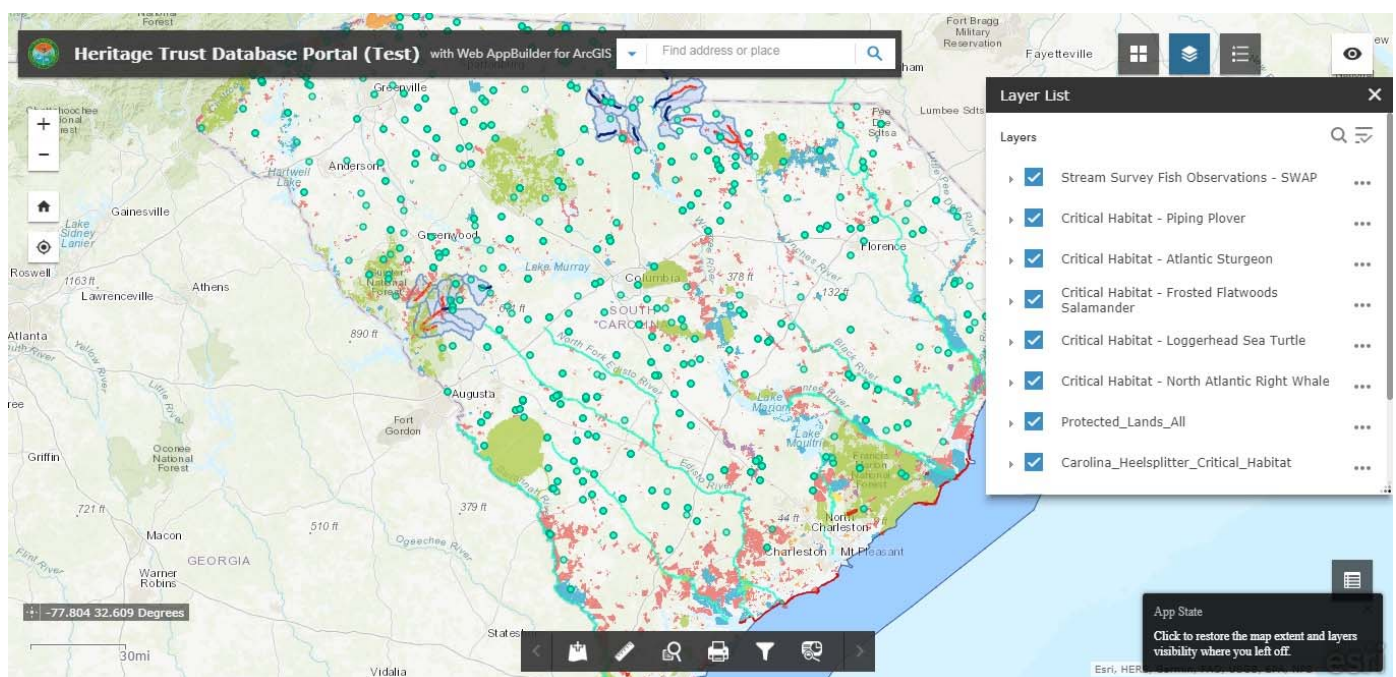
- 23 CFR §771.117(c)(22) and §771.118(c)(12) – modifies the operational right-of-way definition to match what was in MAP-21 to allow greater flexibility on projects that take place entirely within the operational right-of-way.
- 23 CFR §771.124 – added to address combining the Final Environmental Impact Statement (FEIS) with the Record of Decision (ROD) and eliminating the 30-day public review period between the FEIS and ROD, consistent with the statutory language in MAP-21.
- 23 CFR §774.13(a) – added exceptions to the application of Section 4(f). Specifically, (a)(1) exempts common post-1945 concrete steel bridges or culverts that have already been exempted from Section 106 review by the Advisory Council on Historic Preservation. In addition, (a)(2) adds new language exempting the improvement of railroad or transit lines that are used or were historically used for the transportation of goods or passengers, with some exceptions, which are listed in the regulation. Note: This applies to bridges lacking distinction, not previously listed on the National Register of Historic Places, and not located in or adjacent to a historic district. SCDOT has previously submitted only one bridge for exemption to the revised rule, the Blossom Street Bridge in Columbia.

The FHWA SC Division and SCDOT will be reviewing the Programmatic Agreement for Categorical Exclusions to determine if any changes need to be made, and if so, will be doing updates in the near future.

SC Natural Heritage Program Update

By Chad Long

SCDOT is working in partnership with SCDNR and USFWS to update and enhance the South Carolina Natural Heritage Program (SCNHP) database and mapping system. The SCNHP database contains information on the state’s rare, threatened and endangered species. The purpose of the project is to get the backlog of “element occurrence” data into the new system, add new data as it becomes available thus keeping all records current, update the mapping and field technology to support the database, and to promote data sharing among agency partners. The project, which kicked off in the fall of 2018, will be developed using a web based GIS application (ArcGIS Server) administered by SCDNR. Once implemented, the database should provide SCDOT, consultants, and planners with a more reliable tool for considering threatened and endangered species during project development.



Environmental Commitments: Why are they Required and How Should they be Written?

By Shane Belcher

Why Are Commitments Required?

Environmental commitments are developed as part of the NEPA decision-making process to generally account for mitigation of an impact. A commitment may be developed to avoid, minimize, rectify, or reduce or eliminate an impact caused by a project. Once a commitment is made part of an environmental document it becomes codified and must be implemented. This implementation requirement is included within FHWA's regulations (23 CFR § 771.109(b)) which states, "It shall be the responsibility of the applicant, in cooperation with the Administration to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation." The Council on Environmental Quality (CEQ) regulations (40 CFR 1500 Series) also includes multiple references to mitigation (environmental commitments) within them. The overarching theme is that we include appropriate mitigation measures not already included in the proposed action or alternatives. CEQ Guidance on Mitigation issued on January 14, 2011, also states that agencies should clearly identify commitments to mitigation measures designed to achieve environmentally preferable outcomes in their decision documents. The commitment should be carefully specified in terms of measurable performance standards or expected results, which leads into the next topic regarding writing environmental commitments.

How Should Commitments Be Written?

Environmental Commitments can originate and require implementation at any point in the Project Development Process and during operations and maintenance. A commitment can be as simple as a requirement for seasonal work restrictions or as complex as a treatment plan for cultural resources. The Environmental Commitments process generally contains four steps: decide, write, communicate, and follow-through. After deciding, the next step is to take the action and write it into a commitment. For commitments to be actionable and trackable, they need to be clear, concise, and include all relevant information. Most of the commitments will be implemented by people outside of the environmental and decision-making process, and if they are unclear, those responsible will have a difficult time in determining how the commitment should be implemented. Before writing the commitment, make sure the intent and goal is understood so the correct information is communicated. Environmental commitments should be simple, clear, and should address:

1. **WHO:** Name the entity responsible for implementing the environmental commitment. If using acronyms, be sure to define them. A commitment may have multiple responsible entities.
2. **WHAT:** Describe the intent of the commitment or what it requires, and include **WHERE** and **WHEN**.
3. **WHERE:** Provide clear demarcation of the area or location(s) that this commitment addresses or applies to.
4. **WHEN:** Provide a specific timeframe or duration for the elements of the commitment, and a deadline if necessary. Avoid subjective terms such as "reasonable amount of time" and "minimal" as these are not enforceable.
5. **HOW:** If applicable, provide explicit methods for how to complete the commitment. This can include the Compliance Measure which is a description of how to judge successful implementation. Compliance Measures are simple, yet comprehensive, descriptions of what measures and/or actions need to be completed to sufficiently document how the environmental commitment was implemented successfully. These can be built into commitments to provide a way to receive documentation for compliance. For example, requiring submittal of a copy of an invoice, e-mail, phone log, report, letter, or photos to document the action was completed.

SCDOT receives the following comment from a resource agency:

“Suitable habitat for the timber rattlesnake is present within or immediately adjacent to the project area. Due to the potential for timber rattlesnakes to occur in the project area, workers will be instructed to not harm or kill the snakes and to use caution, as the timber rattlesnake is a venomous species. If this species is encountered within the construction limits during construction operations, all construction operations will cease, and the USFWS Charleston Office will be notified immediately (843-727-4707). Activity will not continue until this additional coordination/consultation with USFWS is concluded.”

The following commitment was developed from the comment using **who**, **what**, **where**, **when**, and **how**:

“The **Project Designer** shall include the following note **in the plans**: Due to the potential for timber rattlesnakes to occur in the project area, **The Contractor** shall not harm or kill the snakes and shall use caution, as the timber rattlesnake is a venomous species. If this species is encountered **within the construction limits** during construction operations, all construction operations **within vicinity of the snake** will cease **immediately**, and the **Project Engineer** shall **immediately** contact the District Environmental Coordinator at **(XXX-XXX-XXX)**. **The District Environmental Coordinator** will **immediately** contact the USFWS Charleston Field Office. Construction activities shall not continue until this additional coordination/consultation with USFWS has concluded.”

Here is an example of a poorly written commitment:

“A bridge inspection should occur for evidence of bats. Written confirmation of the inspection, including a statement whether evidence of bats was found, must be provided to the DOT Construction Engineer. If bats are present, construction may not be initiated between April 1 and September 30.”

Why is the commitment poorly written?

- Missing the time frame for **when the bridge inspection must occur** and **when the written statement must be provided to the construction engineer**.
- Missing the **person who is responsible** for either inspecting the bridge or ensuring the inspection occurs.
- Missing a statement requiring the **Project Designer to add the plan note to the plans**.
- Uses “should” which is a suggestion instead of “shall” or “must” indicating requirement.

Same commitment written with actionable language:

“The **Project Designer** shall incorporate the following note **into the plans**: **Prior to the start of construction**, the **Contractor** must inspect **the bridge** for evidence of bats. **The Contractor** must provide written confirmation of the inspection, including a statement regarding whether evidence of bats was found, to the DOT Construction Engineer **within 30 days of the inspection**. If bats are present, construction shall not be initiated **between April 1 and September 30**.”

Evaluation of Farmlands for SCDOT Projects *By Henry Phillips*

The Farmland Protection Policy Act of 1981 (FPPA) was enacted to minimize the extent to which federal programs and activities contribute to the unnecessary and irreversible conversion of important farmlands to non-agricultural uses. In general, important farmlands, including those lands identified with soils that are prime, unique, or statewide or locally important farmland, are subject to the provisions of the FPPA. However, some lands and activities are not subject to the

provisions of the FPPA; these can be found in the FPPA Manual, in Subpart B, which can be accessed at the following link: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1049284.pdf

The United States Department of Agriculture’s Natural Resources Conservation Service (NRCS) Soil Survey Maps can be used to determine the types of soils present in the proposed project corridor and their relative values. The Web Soil Survey tool can be found at <https://websoilsurvey.nrcs.usda.gov/app/>

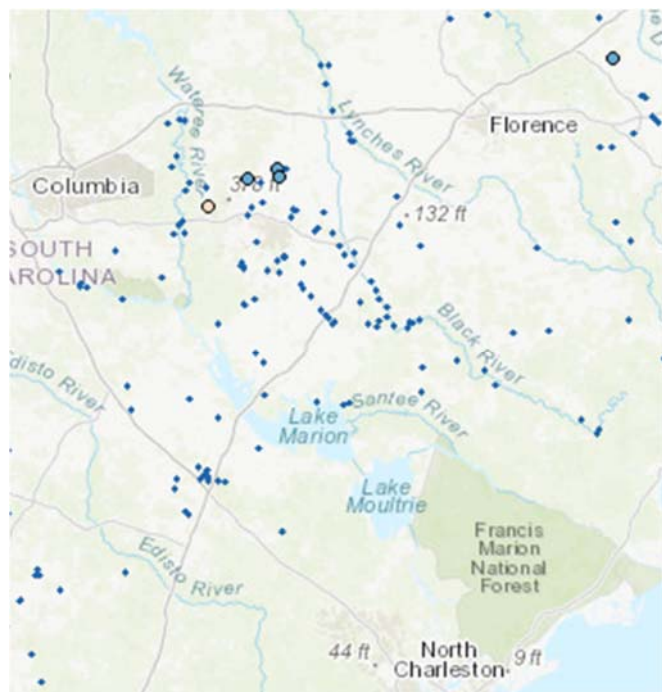
[HomePage.htm](#) and is a valuable resource in determining the soils characteristics. A summary of the study including identification of land uses at and surrounding the project site or corridor, the point total for the site assessment criteria, and the steps taken to comply with FPPA should be included in the document. Additional resources can be found under Farmland Protection in the Environmental Tool Shed: <https://www.scdot.org/business/environmental-toolshed.aspx>

In general, any project utilizing federal funding that acquires or impacts land that is used for agricultural purposes should be evaluated through the above process, unless it is exempt from the provision of the FPPA. Subsequently, the NRCS-CPA-106 “Farmland Conversion Impact Rating for Corridor Type Projects” form should be completed. Items I through 6 in Part I, Items A through C in Part III, Items I through 10 in Part VI and Part VII should be completed. If it is determined that the site assessment criteria (Part VI of NRCS-CPA-106) score is less than 60 points, an additional assessment by the NRCS district office is not necessary (assuming the maximum possible soil value assigned by the NRCS is 100, the total score would always be less than 160 and therefore, the site ineligible for protection under the FPPA). Documentation of the completed survey (Parts I, III, V (assign 100 points), and VI) should be included in the appendix of the environmental document. If the site assessment point total is equal to or greater than 60 for Part VI, further coordination with the NRCS will be required and SCDOT should be notified.

In addition to evaluating potential conversion of important farmlands, some farmers/property owners have agreed to place conservation easements for their lands that are managed by the

NRCS. While some are easements for a specific duration, others are permanent easements that prevent the use of that property for anything other than what is in the easement agreement. To determine if there are any of these properties, you can use the following interactive mapper to see if it lies within the project area: <http://nrcs.maps.arcgis.com/apps/webappviewer/index.html?id=60cb4564f7b4461ca9a61fa224c066ba>
If you find an easement is within your project area, please notify the SCDOT immediately.

For further information about the FPPA, please visit NRCS’s website at: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/> where they have detailed information and a webinar posted.



NRCS Easement Viewer

Reminders

Again, please be sure that you are using your QC tracking forms showing that NEPA documents and technical studies have been reviewed prior to being submitted to SCDOT.

In addition, when addressing comments, please be sure to use the comment/response tracking form. Both of these forms are available on SCDOT’s Environmental Services Office webpage. If you would like to join our mailing list, contact Ms. Betty Gray at grayB@scdot.org.

UPCOMING HOLIDAYS:

November 12 - State and Federal Holiday
November 22 - State and Federal Holiday
November 23 - State Holiday
December 24 - State Holiday
December 25 - State and Federal Holiday
December 26 - State Holiday
January 1 - State and Federal Holiday

Relocation Impact Studies and Why They're Needed

By FHWA

Transportation projects that are intended to benefit the general public sometimes require new right-of-way, which may result in the acquisition of land, homes, or businesses resulting in the displacement and relocation of residents, businesses, farms, or nonprofit organizations.

Relocation impacts are often among the most sensitive community-related effects associated with transportation improvements because they involve modifying relationships between people and their homes and neighbors. Moving families from their neighborhoods or businesses from their existing locations affects not only those being relocated, but also those who remain in the affected neighborhood. While these impacts are mitigated to maximum extent possible, they are usually not completely avoidable.

When there are relocations on a project, how do we know the potential issues of acquiring the property and relocating the business, residence, or other facility? Will it delay the project? Are there any special circumstances that will require additional time, specialized staff, phasing, or contracting? That is the purpose of doing a relocation impact study, to answer these and other questions for the NEPA decisionmaker, as well as to inform the SCDOT Right-of-Way Office of the challenges that may occur during the right-of-way acquisition process.

1. What are the benefits of doing a relocation impact study?

The purpose of the relocation impact study is to determine the potential impacts of the proposed project to those living in the project area, as well as impacts to the community. Relocations are always a sensitive issue and having reliable, detailed information to present to the public is crucial to developing trust and giving the public a sense of transparency. It informs the NEPA decisionmaker about the potential impacts from a proposed project and to help choose an alternative that strikes a balance between meeting the purpose and need of a project while minimizing impacts to those living in the project area.

In addition, the relocation impact study helps the SCDOT understand the complexities associated with the acquisitions and relocations on projects. Some

relocations are not complex, while others can require additional, planning, time and effort. SCDOT proactively plans for these situations through use of the relocation impact study.

2. When is a relocation impact study required?

A relocation impact study is required when there is at least one relocation (residential or non-residential) would occur on a project that requires an Environmental Assessment or Environmental Impact Statement. However, in the rare instance there are a few or unique relocations on a proposed project that falls within a categorical exclusion, it may be of benefit to do a relocation impact study for that project also. This should be discussed with SCDOT during negotiations on the scope and fee for the NEPA study.

3. What should be included in a relocation impact study?

Following the guidance in FHWA's Technical Advisory 6640.8A (10/30/1987), Section V. Subsection G, Sub-subsection 4 entitled "Relocation Impacts", will provide you an outline of what information should be included in the relocation impact study. This can be found on FHWA's website in the environment section. To summarize the Technical Advisory, the following information should be discussed for each reasonable alternative (for EIS) and the preferred alternative (for EIS and EA):

- *An estimate of the number of homes to be displaced, including the family characteristics (e.g., minority, ethnicity, handicapped, elderly, large family, income levels, and owner/tenant status). However, where there are very few displacees, information on race, ethnicity, and income levels should not be included to protect the privacy of those affected.*
- *A discussion of comparing available (decent, safe, and sanitary) housing in the area with the housing needs of the displacees. Note: the word "area" means within the same community and/or school district, not the entire county. The comparison should include: (1) price ranges; (2) sizes (number of bedrooms); and, (3) occupancy status (owner/tenant).*
- *A discussion of any affected neighborhoods, public facilities, non-profit organizations, and families having special composition (e.g., ethnic, minority, elderly, handicapped, or other factors) which may*

require special relocation considerations and the measures proposed to resolve these relocations concerns.

- A discussion of the measures to be taken where the existing housing inventory is insufficient, does not meet relocation standards, or is not within the financial capability of the displacees. A commitment to last resort housing should be included when sufficient comparable housing may not be available.
- An estimate of the numbers, descriptions, types of occupancy (owner/tenant), and sizes (number of employees) of businesses and farms to be displaced. Additionally, the discussion should identify (1) sites available in the area to which the affected businesses may relocate; (2) the likelihood of such relocation; and, (3) the potential impacts on individual businesses and farms caused by displacement or proximity of the proposed highway if not displaced.
- A discussion of the results of contacts, if any, with local governments, organizations, groups, and individuals regarding residential and business relocation impacts, including any measures or coordination needed to reduce general and/or specific impacts. These contacts are encouraged for projects with large numbers of relocations or complex relocation requirements. Specific financial and incentive programs or opportunities (beyond the those provided by the Uniform Relocation Act) to residential and business relocates to minimize impacts may be identified, if available through other agencies or organizations.
- Statements that:
 - (1) the acquisition and relocations program will be conducted in accordance with the Uniform Relocation Assistance and Real Properties Act of 1970, as amended, and that relocation resources will be available to all residential and business relocates without discrimination; and,
 - (2) Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 set forth in the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. These Acts and Executive Order 11063 make discriminatory practices in the purchase and rental of residential units illegal if based on race, color, religion, sex, or national origin.

Additionally, the discussion should also offer conclusions on what should be provided for community outreach, relocation advisory services, project staffing, proposed actions to remedy insufficient relocation housing,

including commitments to last resort housing. The analyst should also offer summaries of discussions with businesses, groups, and social agencies related to impacts.

4. How do I go about finding the information I need for a relocation impact study?

Various data sources, field surveys, and contact with local community leaders are relevant sources in gathering the information needed to do a relocation impact study. Information that can be used includes the following:

- U.S. Census data;
- County Assessor information on residences and businesses to be relocated;
- Community assessments and school district information;
- Local Planning and economic development agencies with established relationships in the impacted community
- Information from real estate websites such as Realtor.com, Zillow, CMLS, Trulia, Apartmentfinder, and Loopnet for available housing and commercial properties in a community (not in entire county);
- Housing and Urban Development and local government housing authorities;
- Location of replacement housing to transit routes, community centers, places of worship, medical facilities, and commercial/retail centers (grocery stores, etc.);
- Detailed field surveys to appropriately estimate and to evaluate the displacee's homes/businesses/other facilities to understand if there are any unique features on the outside of the property that can be identifiable from observing each property that would pose a challenge to relocation;
- Determination if mobile homes are personal property or are being rented out and if they can be moved to another location;
- If an apartment complex, a determination of the number of units in a building and the number of units occupied by talking to the apartment management;
- Determination if any relocations are senior living communities;
- Discussion with local community leaders to determine who lives in the neighborhood, and other public outreach activities.

5. Are there any situations or special circumstances I should be looking for when evaluating an area with potential relocations due to a project?

Analysis techniques should differ depending on the population affected. For example, residential relocation typically affects older senior citizens, disabled residents,

and low-income more seriously than other groups since these populations are typically dependent upon accessible basic convenience services (food, medical facilities, pharmacy), community fellowship (church, neighbors, family), affordable housing stock, and public transit. Families with school aged children will likely want to stay within the same school district. Mobile homes are treated as personal property in SC, but there are many ways in which this might be handled depending on who owns the land, who owns the mobile home, and the condition of the mobile home. The analyst should work to understand the neighborhoods and communities the project is affecting through community interaction, conduct field surveys of the impacted area to estimate and analyze the households affected, and interview local housing authorities, community leaders, and stay in close contact with SCDOT.

When a business is displaced, the impacts are generally financial, but in certain circumstances the effects may be more complicated. Depending on the nature of the business, the ability to find a suitable site for relocation may be difficult. Businesses that require specialized equipment, require specialized licensing/permitting, that use hazardous substances, or have unpopular business models may be difficult to relocate due to their particular needs and the inability to find a location.

Impacts related to the relocation of community facilities such as schools, community centers, churches, and recreational facilities should be accounted for in a similar manner as business relocations.

The analyst should also take care to consider reestablished control of access, parking impacts, potential changes to the highest and best use, etc., as these items could trigger additional relocation in all property types.

6. What is the format of a relocation impact study?

The relocation impact study should have the following sections:

- Cover page with the Date of the Study
- Introduction and Purpose of the Study
- Project Description
- Displacements:
 - ◇ Estimated Number of Displaced Residential Households/Affected Neighborhoods - include information on homes to be relocated such as size, type, lot sizes, school districts, etc.; population characteristics of communities where homes are being relocated; Section 8/HUD homes; mobile homes; owner/tenant occupied information, etc.

- ◇ Estimated Number of Displaced Businesses, Non-profits, and Farms - include types of businesses/farms/non-profits, number of employees, whether it is unique i.e., does it have equipment or something that makes it more difficult to relocated, etc.
- ◇ Community Centers, Institutions, and Places of Worship – include type, how relocation would affect those currently using facility, institution, or attending place of worship, etc.
- ◇ Discussion of any unique or special relocations that would require more time or assistance should be included within each category of relocation listed above.
- ◇ Assessment of comparable replacement properties (residential, business, institutional, etc.)
- ◇ Conclusions

See the SCDOT Relocation Impact Study Outline accompanying this newsletter.

7. Where should I incorporate the results of the relocation impact study?

The results of the relocation impact study should be incorporated into the socioeconomic section of the EA or EIS. If the relocations are occurring in an area identified as an environmental justice community, then the results of the relocation impact study should also be incorporated into this section to show what impact the relocations have on that community to determine if it is highly adverse and disproportionate. The relocation impact study itself should be an appendix to the NEPA document.

8. Who at SCDOT should review the relocation impact study?

The NEPA coordinator should review the relocation impact study as part of the draft EA/EIS being prepared for the project. In addition, the NEPA coordinator will send the relocation impact study to SCDOT's Right-of-Way Office to review the document.

9. Should I update the relocation impact study between the DEIS and FEIS/ROD? Or between the EA and the FONSI?

If the project design changes after the public hearing for a DEIS or an EA and there is a change in relocations, the relocation impact study should be updated to reflect the changes in relocations. This is important for when the project goes to the right-of-way acquisition phase so that SCDOT can adequately quantify the amount of work and time it will take to acquire residences and businesses for the project to be constructed.

The SCDOT Right-of-way Office should be your first point of contact for any questions prior to starting a relocation impact study.