

Record of Decision for Interstate 73 Final Environmental Impact Statement & Section 4(f) Evaluation

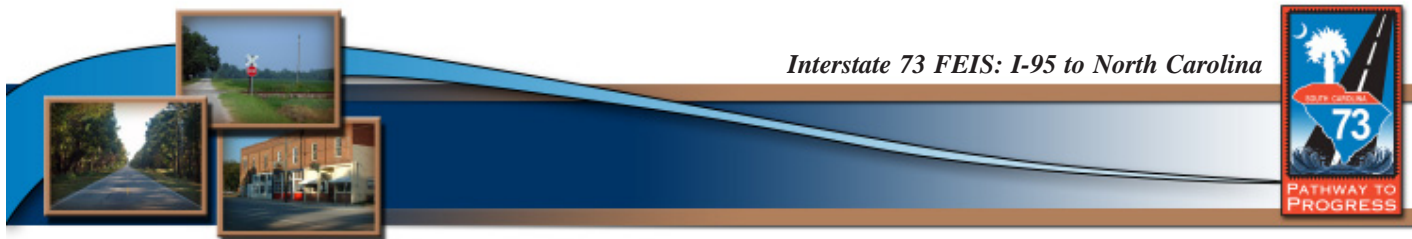


From I-95 to Future Interstate 74
in North Carolina



U.S. Department of Transportation
**Federal Highway
Administration**





I-73 NORTH FINAL ENVIRONMENTAL IMPACT STATEMENT RECORD OF DECISION

What Decision Was Reached?

The South Carolina Department of Transportation (SCDOT), in association with the Federal Highway Administration (FHWA), proposes to construct Interstate 73 (I-73) on new alignment in northeastern South Carolina. An Environmental Impact Statement (EIS) was prepared, along with a Final Section 4(f) Evaluation (refer to Attachment A). The project study area extends northwest from I-95, is bounded to the east by the North Carolina/South Carolina state line up to southern Richmond County (North Carolina) and eastern Scotland County (North Carolina) where it extends to I-74. The western boundary of the study area is the eastern edge of the Great Pee Dee River floodplain. There would be interchanges at I-95, S.C. Route 34, S.C. Route 381, U.S. Route 15/401, S.C. Route 79, N.C. Route 1803, and I-73/74 in North Carolina. Since approximately four miles of the proposed project would be located in North Carolina, the North Carolina Department of Transportation (NCDOT) agreed to collaborate, by a resolution between SCDOT and NCDOT. An estimated 400-foot wide right-of-way would be acquired where frontage roads would be needed. Where frontage roads are not required, an estimated 300-foot wide right-of-way would be adequate.

The Selected Alternative is “Alternative 2.” Alternative 2 was selected because, when compared with the other alternatives in the Draft EIS, it best satisfied the Purpose and Need and would have the least amount of wetland impacts (114.3 acres), the least impact to total farmland (1,505 acres), the least impact to prime farmland (805 acres), the lowest cost, low relocations, would not directly affect any known historic resources, be in close proximity to existing infrastructure, would be centrally located to serve the communities of the project study area more equally, and is supported by agencies, local governments, and the public. The three Reasonable Build Alternatives all have some features that are favorable and advantageous, but when compared with Alternative 2, the other Reasonable Build Alternatives were less suitable. Since the Draft EIS was prepared the State Historic Preservation Officer (SHPO) designated one structure, the former Beauty Spot Motor Court Office Building, eligible for listing on the National Register of Historic Places (NRHP) and identified seven archaeological sites as potentially eligible for listing. After refinements to the alignments that resulted from comments received on the Draft EIS, the impacts for the Selected Alternative changed (refer to the first full paragraph on Page 2).

Which Alternatives Were Considered?

The Final EIS studied in detail the following alternatives: the No-build Alternative, and three Reasonable Build Alternatives (Alternative 1, 2, and 3). Federal and state regulatory agencies provided information pertinent to their particular areas of expertise throughout the EIS process and participated in the selection



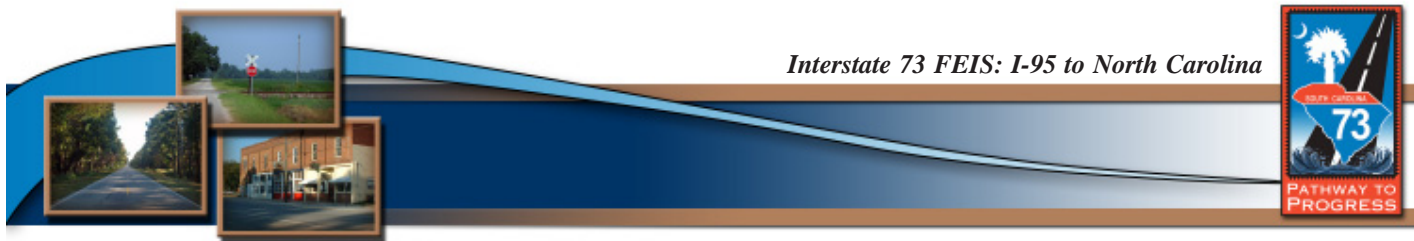
of the data layers used by the Corridor Analysis Tool (CAT). There were 14 meetings with the Agency Coordination Team and 6 meetings with the North Carolina Interagency group to develop and evaluate the alternatives. Initially, there were over 1,800 potential alternatives developed for this project. Many of the preliminary alternatives were eliminated because they did not meet the Purpose and Need or had extensive environmental impacts (refer to Chapter 2 of the Final EIS). Further evaluation reduced the alternatives to three primary corridors with segments that allowed some interchangeability between them that made it possible to combine the corridors in different ways. This process led to the three Reasonable Build Alternatives that, along with the No-build Alternative, received an additional level of analysis and coordination efforts.

The Final EIS contains an adequate description of the project's Purpose and Need, the alternatives, and the impacts. The impacts for the Selected Alternative have changed as a result of modifications to the alignment made based upon comments received, as well as detailed surveys of the alignment corridor. The detailed analyses of the major environmental impacts have been summarized in the Executive Summary of the Final EIS. The environmental consequences that would result from implementation of the proposed action are impacts to wetlands of approximately 57.2 acres (plus approximately 5,188 linear feet of perennial stream impacts), loss of 849 acres of prime farmland, the potential relocation of 24 residences and four commercial establishments, and potential noise impacts to eight residences and one business.

The Purpose of the proposed project is to provide an interstate link between proposed I-73, between I-95 and the Myrtle Beach Region, and the North Carolina I-73/I-74 Corridor. The primary Needs for the project are to provide system linkage and to enhance economic opportunities in the project study area, while the secondary Needs are to improve access for tourism, improve safety of existing roadways, and provide multimodal planning. The No-build Alternative would fail to satisfy the stated Purpose and fulfill the primary and secondary Needs for the project.

The No-build Alternative would not provide:

- **A direct link between I-95 and the North Carolina I-73/I-74 Corridor to improve system linkage.** I-73 has been named as a High Priority Corridor (number five) by the U.S. Congress. This section of I-73 is needed to provide the connection between North Carolina and I-95. Without this link, the planned High Priority Corridor between Michigan and South Carolina would not be completed;
- **Opportunities for economic growth.** The interstate would provide economic opportunities to the project study area that would result from the connectivity to the interstate system. Dillon and Marlboro Counties in South Carolina are two of the most economically depressed counties in the state. They have high unemployment and low income levels. The trend in Marlboro County has been for negative population growth over the past 20 years. I-73 is seen locally as a key to improving the economic prospects within the project study area;



- **Improved access for tourism.** The construction of the interstate would result in savings to the traveling public resulting from increased travel efficiency. This travel efficiency is reflected in reduced travel times. A key to maintaining and improving tourism is the ability of tourists to easily access destinations. The connection provided by I-73 would increase the travel efficiency for tourists traveling through North and South Carolina;
- **Improved safety on local roads.** The diversion of traffic to the interstate from the local road network that would result from the construction of the proposed interstate would improve safety on the local network by removing the vehicles making through trips. This would take persons unfamiliar with the local roads off of that network and put them on the interstate, a more familiar situation for those traveling long distances. It would also remove truck traffic from the local network; or,
- **A future provision for a multimodal facility.** The I-73 Corridor includes within the proposed right-of-way the potential for two rail corridors that would allow for future passenger and/or freight rail. This has the potential for providing additional rail connectivity to northeastern South Carolina.

The No-build Alternative would not provide the interstate link between I-73 at I-95 and the North Carolina I-73/I-74 Corridor. Failure to provide this link would lead to the loss of economic opportunities, the potential loss of tourism, longer travel times, and the loss of the multimodal opportunities provided by the corridor.

Would the Project Impact any Section 4(f) Resources?

The Final Section 4(f) Evaluation is included with this Record of Decision (refer to Attachment A). Based on the Final Section 4(f) Evaluation, one site, the Beauty Spot Motor Court Office Building (Resource 031 0011) near Bennettsville, South Carolina, was identified within or adjacent to the Selected Alternative. This determination of eligibility was made after the publication of the Draft EIS. No other historic structures, parks, recreational facilities, or wildlife refuges were found within or adjacent to the Selected Alternative.

A plan for mitigation of the impacts to the Beauty Spot Motor Court Office Building has been developed in coordination with the SHPO and a Memorandum of Agreement was signed July 2008 (refer to Attachment B).

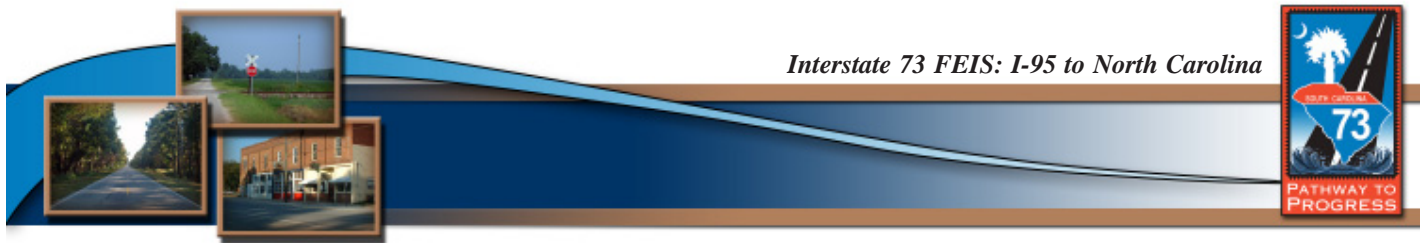
As noted earlier, since the publication of the Draft EIS there have been seven archaeological sites identified by the SHPO in South Carolina as potentially eligible for listing on the NRHP. These sites will be further evaluated and, if necessary, measures to avoid the sites or data recovery will be performed at the eligible sites. A Memorandum of Agreement was executed in September 2008 between SCDOT, SHPO, and FHWA (Attachment C) that formalized this agreement.



Were any Measures Adopted to Minimize Environmental Harm?

All practicable measures to minimize environmental harm have been incorporated and are detailed in the Executive Summary as Environmental Commitments. These include:

- In the event I-73 is tolled, additional *National Environmental Policy Act* analysis would be performed.
- A minimum design speed of 45 miles per hour, where appropriate, is necessary to be maintained in construction areas in order to minimize undue traffic backups and delays.
- Relocation will be conducted in accordance with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended. Relocation resources will be available to all relocates without discrimination.
- Bridges constructed to elevate roadways over the interstate would have 10-foot shoulders, which would accommodate pedestrians and bicyclists safely.
- In the event that previously unknown cultural resources are discovered during construction, the resources will be handled according to *36 CFR §800.11* in coordination with the State Historic Preservation Office and appropriate Tribal Historic Preservation Offices.
- Detailed archaeological investigations will be completed on the Selected Alternative in North Carolina prior to purchase of right-of-way.
- Mitigation for the impacts to the former Beauty Spot Motor Court office will be performed in accordance with the terms in the signed Memorandum of Agreement between the SHPO and SCDOT (refer to Attachment B).
- Phase II archaeological testing will be performed on seven sites in South Carolina determined to be potentially eligible for listing on the NRHP. If any of these sites are found to be eligible for listing, then avoidance will be evaluated and/or mitigation will be performed (refer to Attachment C).
- Should previously unknown hazardous material contamination be discovered as the project moves forward, the contamination would be removed and properly disposed of prior to the initiation of construction activities at that site.
- The contractor will comply with applicable federal, state, county, and other local air pollution regulations during the construction of the project.



- The Selected Alternative will cross the five major riparian wetland systems (Little Reedy Creek, unnamed tributary to Little Reedy Creek, Hagins Prong, Cottingham Creek, and Beverly Creek) primarily on structure. Hydraulic studies during final design will determine whether the minor crossings of ten unnamed tributaries of Crooked Creek will be piped or culverted.
- A more detailed screening was performed within a one-mile wide corridor along the Selected Alternative and it was determined that sufficient upland areas that could be utilized for borrow activities appear to be present in close proximity to the Selected Alternative alignment. Wetland areas should not be used for borrow areas. Borrow activities will be done in accordance with the SCDOT Engineering Directive (EDM- Borrow Pit Location and Monitoring).
- Where appropriate, pipe and culvert bottoms would be recessed below the bottom of perennial stream channels to allow movement of aquatic species through the structure.
- If temporary roads in wetlands are used for bridge construction, the fill material would be removed and the areas reseeded with native riparian species seed mixes.
- Best Management Practices in accordance with local, state, and federal guidelines will be incorporated during the design and construction of the project to minimize impacts to water quality and wetlands.
- Preventive measures will be taken to minimize the spread of invasive plant species.
- A Spill Prevention, Control, and Countermeasures Plan will be developed to address potential impacts from construction activities.
- In the event that a geodetic control monument would be impacted, notification would be provided to the National Oceanic and Atmospheric Administration no less than 90 days in advance of such activities in order to plan for their relocation.
- The results of the noise analyses will be given to local governments to aid in future planning in their respective areas.
- Where practicable, 2:1 side slopes were used that reduced the roadway footprint through wetlands and other sensitive areas and thus reduced the impacts.
- A Section 404 permit from the U.S. Army Corps of Engineers and a Section 401 Water Quality Certification from S.C. Department of Health and Environmental Control will be obtained for unavoidable impacts to wetlands and waters of the United States and mitigation will be completed for these impacts.



- Modifications, such as the installation of coffer dams in stream channels in order to construct footings for bridge pilings, may be required. However, if these modifications were needed they would be temporary and removed upon completion of construction and the natural grade of the wetland restored and reseeded.
- Construction activities will be confined within the permitted limits to prevent the unnecessary disturbance of adjacent wetland areas.
- During construction, potential temporary impacts to wetlands will be minimized by implementing sediment and erosion control measures to include seeding of side slopes, silt fences, and sediment basins, as appropriate. Other best management practices would be required of the contractor to ensure compliance with the policies of 23 *CFR* 650B.

Has a Monitoring of Enforcement Program Been Adopted?

The SCDOT and FHWA will ensure that the Environmental Commitments made in the Final EIS or developed subsequent to the Final EIS in the final design, related to human or natural environmental issues, are carried out.

What Comments Were Received on the Final EIS?

Four comment letters were received on the FEIS. A letter was dated September 2, 2008 from SCDHEC, Bureau of Land and Waste Management, another was dated September 22, 2008 from SCDHEC, Bureau of Air Quality, one was dated September 22, 2008 from the National Marine Fisheries Service (NMFS), and one was dated September 22, 2008 from the USEPA. In addition, the Catawba Indian Nation provided comments on the FEIS. Specific comments were raised in the letters.

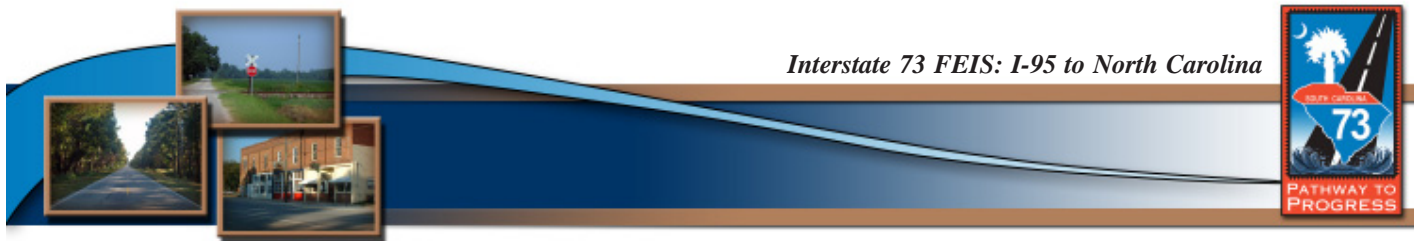
SCDHEC Bureau of Land and Waste Management

Comment: They advised that “the Division of Waste Management does not anticipate potential concerns from the proposed project to any RCRA facilities in the project area regulated under the South Carolina Hazardous Waste Management Regulations.”

Response: Comment noted.

SCDHEC Bureau of Air Quality

Comment: They stated: “...the proposed project is located in Marlboro and Dillon Counties which are both in attainment for the six criteria pollutants outlined in the National Ambient Air Quality Standards (NAAQS) and therefore not subject to transportation conformity. Please bear in mind though, the EPA tightened the standard for ground-level ozone in March 2008 and the boundaries for the nonattainment areas have not yet been established. Therefore, areas of the State currently in attainment could be affected.”



Response: Comment noted.

Comment: They requested: "...that work practices minimizing the generation of particulate matter and ozone-forming emissions be considered."

Response: A commitment made for the project on page 3-135 of the FEIS is that "The contractor will comply with applicable federal, state, county, and other local air pollution regulations during the construction of the project."

National Marine Fisheries Service

Comment: The NMFS stated that: "the comments provided by NMFS have been adequately addressed in the FEIS with the exception of our recommended (sic) to include the Atlantic sturgeon (*Acipenser oxyrinchus*) in the sections of the Final EIS and Biological Assessment that discuss potential impacts to endangered or threatened species." They also recommended that: "both the shortnose and Atlantic sturgeon be included in the Biological Assessment for consideration during the completion of the ESA consultation."

Response: Concurrence with the findings of the Biological Assessment (BA) that the proposed project would not affect federally protected species was received from the U.S. Fish and Wildlife Service on August 6, 2008 (refer to Attachment D). According to NMFS, the Atlantic sturgeon has "similar riverine distributions, habitat use patterns, and limiting factors" as the shortnose sturgeon. It was determined that riverine habitat suitable for use by the shortnose sturgeon would not be impacted by the project, therefore it is anticipated that no impacts would occur to the Atlantic sturgeon. However, the Atlantic sturgeon was not addressed in the EIS and BA, even though the National Marine Fisheries Service (NMFS) had requested it, because it has not yet been listed as an endangered, threatened, or candidate species under the Endangered Species Act.

U.S. Environmental Protection Agency

Comment: USEPA is concerned about the compensatory mitigation plan. They referred to the *Compensatory Mitigation for Losses of Aquatic Resources; Final Rule* that establishes detailed requirements of project-specific compensatory mitigation plans. They referred to a "provisional" Section 404 permit and that "The Rule states that the preferred approach for compensatory mitigation is to use mitigation banks, with a less desirable substitute being established in-lieu fee mitigation programs." They stated that: "The validity of a Section 404 permit issuance (provisional or otherwise) that does not comply with the Rule is questionable."

Response: We have not found language in the *Final Rule* that precludes the use of the proposed mitigation process on the I-73 project. In fact, the *Final Rule* endorses the use of an in-lieu fee program over permittee-responsible mitigation in service areas where no mitigation banks exist [§ 332.3(b)(3)]. The proposed *Draft I-73 Wetland and Stream Mitigation Process* (Process) document, which was drafted by the Project Team and modified by the I-73 interagency review group (Agency Coordination Team, ACT) after several meetings, describes the framework for a mitigation methodology that is essentially an in-lieu fee program. However, the Process describes

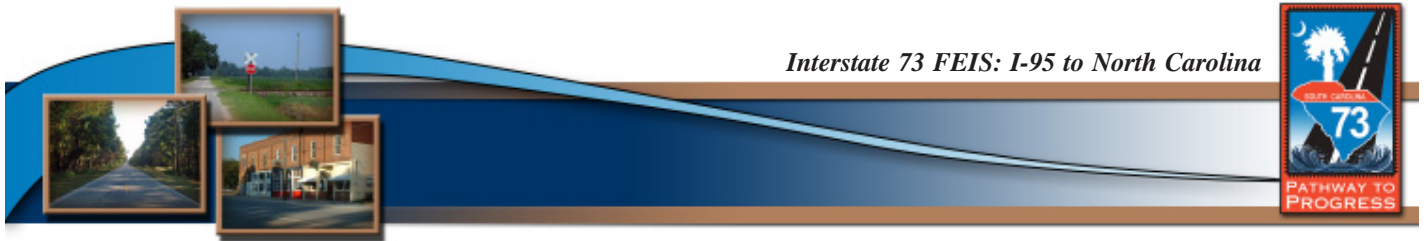


a project specific in-lieu fee program with detailed requirements as to how the fund would be established, how it would be administered, how mitigation credits are to be calculated, etc.

The proposed Process is a framework for the in-lieu fee program. It has several details that can not be finalized until a suitable mitigation site(s) have been identified. However, the *Final Rule* indicates that “the level of detail necessary for the compensation planning framework is at the discretion of the district engineer, and will take into account the characteristics of the service area(s) and the scope of the program. As part of the in-lieu fee program instrument, the compensation planning framework will be reviewed by the Interagency Review Team [IRT], and will be a major factor in the district engineer’s decision on whether to approve the instrument.” [§ 332.8(c)(3)] The initial review of the Process by the ACT, which includes the affected resource and regulatory agencies has generally been favorable.

Most of the key issues and/or requirements relating to in-lieu fee programs found in the *Final Rule* are currently addressed in the proposed Process, including the following:

- The *Final Rule* defines suitable mitigation plans as using the watershed approach and by improving overall ecological function (landscape scale) [§ 332.2(b)(1), § 332.3(c)(1), § 332.3(c)(2)(i), § 332.8]. As indicated in Section 7 of the Process, this approach has been identified as the approach to be taken and was endorsed by the I-73 ACT.
- The *Final Rule* calls for the establishment of an Interagency Review Team, which would be equivalent to the Mitigation Advisory Board [§ 332.2 Definitions, § 332.8(b)(1)-(5)] that is proposed in the Process.
- The *Final Rule* requires the preparation and preliminary review of a prospectus, which outlines the framework of the in-lieu fee program [§ 332.8(d)(1)-(3)]. Based on the description of the prospectus in the *Final Rule*, the proposed Process document would serve as the prospectus and the preliminary review and approval has been performed by the ACT.
- The *Final Rule* calls for the prospectus to be placed on public notice for review and comment [§ 332.8(d)(4)&(5)]. This would be done with the Process as part of the Section 404 permit public notice process.
- A banking instrument is required for in-lieu fee programs [§ 332.8(d)(6)-(8)], however, since the Process describes a project specific mitigation approach for a single project and where mitigation credits required for impacts and generated by the mitigation site would be based on the USACE Standard Operating Procedure (SOP), a banking instrument should not be required.
- A dispute resolution process is outlined in the *Final Rule* [§ 332.8(e)] and one has been prepared for use by the Mitigation Advisory Board in the Process as well.
- According to the *Final Rule*, a detailed mitigation plan must be prepared once a suitable site(s) has been identified [§ 332.8(j)(1)]. This also is required in the Process.



- For in-lieu fee programs the *Final Rule* specifies that land acquisitions and initial improvements must be completed by the third full growing season [§ 332.8(n)(4)]. The Process contains a mitigation schedule in which all of the fund must be spent on wetland and stream mitigation within two years of commencement of construction of I-73. It is anticipated that the southern portion of I-73 (I-95 to SC Route 22) would be constructed first. Therefore, impacts to wetlands and streams associated with the northern portion of the project could actually be mitigated in advance of construction.
- § 332.8(o)(1)-(7) of the *Final Rule* discusses how mitigation credits are to be determined and what costs should be included in the cost per mitigation credit. The *Final Rule* [§ 332.8(q)(2)] explains the monitoring report requirements and long-term management funding. The Process describes how mitigation credits would be calculated and how the cost per credit would be determined. Because the credit costs would be based on the mitigation bank credit cost at the time the mitigation fund is established, cost for acquisition, mitigation planning, mitigation implementation, monitoring, and long-term management would be included in those per credit costs.
- The *Final Rule* [§ 332.8(t)(2)] describes requirements for site protection to be in place prior to the release of credits from an in-lieu fee program. Again, because the proposed Process is a project specific program where the mitigation site(s) would be acquired up front, then this requirement should not apply. As described in the Process, long-term site control would be turned over to a conservation group or state agency for protection.

Comment: It was stated that: “commercial mitigation banks should not be eliminated for consideration for providing at least some of the mitigation for I-73”.

Response: The use of commercial mitigation banks was incorporated into the proposed Process in the December 2007 ACT meeting.

Comment: It was stated that construction methodology has not yet been identified and that this could affect wetlands.

Response: The limits of proposed fill and bridging were identified and, if made part of the permit, could not be exceeded without modifying the permit. Techniques for construction have not been established, but would be defined in a Section 404 permit application.

Comment: It was noted that the project may impact eight residences and one business and that noise impacts should be minimized and “reasonably mitigated”.

Response: That there are only eight residences and one business that would have noise impacts for a road that is over 36 miles long is reflective of the efforts to minimize noise impacts. The potential impacts were evaluated under the *Noise Abatement Policy* for both NCDOT and SCDOT, both of which have been approved by the FHWA. These policies required that the mitigation of potential noise impacts were evaluated for feasibility and reasonableness.



Catawba Indian Nation

Comment: If any of the archaeological sites mentioned on page 3 of the ROD are found to be significant, the Catawba Indian Nation wants to be notified along with SHPO for the data recovery and mitigation plan.

Response: The Catawba Indian Nation would be notified if any archaeological sites are found to be significant, per Stipulation 4 of the Memorandum of Agreement (refer to Attachment C).

Robert L. Lee, S.C. Division Administrator
Federal Highway Administration
October 22, 2008

H.B. Limehouse, Jr., Secretary of Transportation
South Carolina Department of Transportation
October 22, 2008

Attachment A
FINAL SECTION 4(f) EVALUATION
INTERSTATE 73 FEIS: I-95 to I-73/I-74 in North Carolina

1.0 INTRODUCTION

Section 4(f) of the *Department of Transportation Act of 1966*, 49 U.S.C. §303, requires that prior to the use of any land from a publicly owned park, recreational area, wildlife or waterfowl refuge, or historic property or archeological site on or eligible for the National Register of Historic Places (NRHP), it must be determined that there is no prudent or feasible alternative which avoids such use and that the project includes all possible planning to minimize harm to these resources.

Section 4(f) specifies that the Secretary of Transportation may approve a transportation program or project...requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of a historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if:

- (1) there is no prudent and feasible alternative to using that land; and
- (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

Section 4(f) further requires consultation with the Department of Interior and, as appropriate, the involved offices of the Department of Agriculture and Housing and Urban Development in developing transportation projects and programs which use lands protected by Section 4(f).

According to the Federal Highway Administration's (FHWA) *Section 4(f) Policy Paper*,¹ a Section 4(f) resource is "used" any of the following ways:

- (1) a direct use occurs when "land from a Section 4(f) site is permanently incorporated into a transportation project;"
- (2) a temporary use occurs "when there is a temporary occupancy of Section 4(f) property that is adverse in terms of the statute's preservationist purposes;" or,
- (3) a constructive use occurs "when the proximity impacts of the transportation project on the Section 4(f) site are so severe that the protected activities, features, or attributes that qualify the resources for protection under Section 4(f) are substantially impaired."

In order for a park, recreational area, or wildlife or waterfowl refuge to qualify for protection under Section 4(f), it must be publicly owned and officially designated as a

¹ FHWA, *Section 4(f) Policy Paper*, March 1, 2005,
<http://www.environment.fhwa.dot.gov/projdev/4fpolicy.asp> (June 3, 2008).

park, recreational area, or wildlife or waterfowl refuge. When these areas are owned by private institutions and individuals, even if such areas are open to the public, Section 4(f) does not apply. However, the FHWA does strongly encourage the preservation of such privately owned lands.²

Historic resources that are listed on or eligible for listing on, the National Register of Historic Places (NRHP) are not required to be publicly owned in order to be protected under Section 4(f). An archeological site must also be on or eligible for the NRHP and important for preservation in place in order to be considered a Section 4(f) site. Determinations of eligibility for the NRHP have been coordinated with the South Carolina State Historic Preservation Office (SCSHPO) and the North Carolina State Historic Preservation Office (NCSHPO).

This Final Section 4(f) Evaluation describes resources affected by the construction of Interstate 73 (I-73), and provides an estimate of impacts. Avoidance alternatives and measures to minimize and mitigate harm are discussed.

The South Carolina Department of Transportation (SCDOT) proposes to construct a new interstate highway, I-73, in Dillon and Marlboro Counties, South Carolina and Richmond and Scotland Counties, North Carolina. The project was developed in close coordination with federal resource and regulatory agencies, as well as their state counterparts from North Carolina and South Carolina. The facility would extend from I-95 in Dillon County to future I-73/I-74 in Richmond County. The road would accommodate a six-lane facility with corridors for future multimodal facilities and allowances for frontage roads, where needed. The interim design, which is proposed to be constructed initially, would provide two lanes of traffic in each direction. In the future, when traffic volumes increase to a point that additional lanes are necessary in order to maintain an acceptable level of service, an additional lane in each direction could be added within the right-of-way corridor. An estimated 400-foot wide right-of-way would be acquired where frontage roads would be needed. Where frontage roads are not required, an estimated 300-foot wide right-of-way would be adequate.

1.1.1 Purpose and Need

The purpose of the proposed project is to provide an interstate link between I-95 and the North Carolina I-73/I-74 Corridor to serve residents, businesses, and travelers while fulfilling congressional intent in an environmentally responsible and community sensitive manner.

The following primary needs have been identified in connection with the proposed federal action:

- **System Linkage** – Improve national and regional connectivity by providing a direct link between the future I-73 segment from I-95 to the Myrtle Beach region and the I-73/I-74 Corridor in North Carolina.

² *Ibid.*

- **Economic Development** – Enhance economic opportunities and development in northeastern South Carolina and southeastern North Carolina.

These secondary needs have also been identified:

- **Improved Access for Tourism-** Improve access to and from tourist destinations in eastern South Carolina as well as the Hamlet area of North Carolina.
- **Increase Safety on Existing Roads** – Move significant volume of traffic from local roads to an interstate designed for a higher volume of traffic.
- **Multimodal Planning** – Allow for future provision of a multimodal facility within the Interstate Corridor.

1.1.2 Description of the Preferred Alternative

The Preferred Alternative starts at the northern end of the interchange with I-95, which is the terminus of the Southern Project of I-73, and extends to the northwest on the western side of Bingham, South Carolina where it has an interchange with S.C. Route 34. It continues approximately 3.5 miles northwest before turning north with an interchange at S.C. Route 381. The Preferred Alternative continues northwest with an interchange located at U.S. Route 15/401 east of Bennettsville, South Carolina, then turns north, with an interchange at S.C. Route 79 north of Bennettsville, South Carolina. The Preferred Alternative continues north, crossing the border into North Carolina, and has an interchange with N.C. Route 1803 prior to ending at an interchange at I-74 near Hamlet, North Carolina.

2.0 SECTION 4(f) RESOURCES

2.1 Historic Resources

One site, the Beauty Spot Motor Court Office Building (Resource 031 0011) near Bennettsville, South Carolina, was identified within or adjacent to the Preferred Alternative. This determination of eligibility was made after the publication of the Draft EIS. No other historic structures, parks, recreational facilities, or wildlife refuges were found within or adjacent to the Preferred Alternative.



Beauty Spot Motor Court Office Building

2.1.1 Description

Beauty Spot Motor Court Office Building (Resource 031 0011) was determined eligible for the NRHP by the SCSHPO under Criterion A for its role in and contribution to automobile or highway-related tourism in the United States and under Criterion C as an early and good example of what is often referred to as "roadside architecture." This historic resource is located at 690 U.S. Route 15/401, east of Bennettsville, South Carolina, and is a Tudor-style motor court office constructed circa 1920 (refer to Figure 1). The five-part building is covered with weatherboard and has a cross-gable roof. The building has undergone alterations and an addition was added to the rear recently. The cabins associated with the motor court no longer exist.



Figure 1: Location of Beauty Spot Motor Court Office Building

2.1.2 Impact

The Preferred Alternative would directly impact the Beauty Spot Motor Court Office Building with a proposed interchange of I-73 and U.S. Route 15/401 at this location, requiring the total acquisition of this property and the demolition of the structure (refer to Figure 1).

3.0 ALTERNATIVES AND FINDINGS

3.1 Development of Alternatives at U.S. Route 15/401

U.S. Route 15/401 is a primary roadway route that runs east-west through Marlboro County, South Carolina. All alternatives developed for I-73 must cross U.S. Route 15/401 and an interchange with this route would be beneficial to surrounding areas.

In coordination with federal and state regulatory and resource agencies, the Corridor Analysis Tool (CAT) was used to develop corridors that took into consideration various factors including environmental (natural and man-made) (refer to Chapter 2, Section 2.4, page 2-4). The corridors were composed of 122 segments that could be combined in various combinations to form 1,896 preliminary alternatives.

The segments developed by the CAT were further reduced according to those that had high impacts among several categories, including impacts to wetland acreage and value. The elimination of several endpoints with I-74 in North Carolina further reduced the number of possible segments, and resulted in six Preliminary Build Alternatives that fell within three corridors through the project study area (refer to Chapter 2, Section 2.5, page 2-14).

Additional categories were used to further evaluate the six alternatives, including infrastructure and cost per alternative. After extensive consultation with the federal and state regulatory and resource agencies, three Reasonable Build Alternatives were carried forward to the Draft Environmental Impact Statement (DEIS), based upon potential impacts.

3.2 Measures to Avoid and Minimize Impacts of the Preferred Alternative at the U.S. Route 15/401 Interchange

In an effort to avoid impacting the Beauty Spot Motor Court Office Building, two additional alignment segments of the Preferred Alternative at the U.S. Route 15/401 interchange area were developed and analyzed for impacts (refer to Figure 2, page E-6). For a comparable analysis, alignment segments were evaluated for impacts between S.C. Route 9 and Academy Road (Road S-35-17).

An eastern alignment segment was developed for possible avoidance of impacts to the Beauty Spot Motor Court Office Building. Beginning at S.C. Route 9, the eastern alignment segment would arc east, nearly paralleling Covington Road (Road S-35-349), crossing Spears Church Road and skirting Covington Millpond to the east. It would cross Cottingham Creek and then traverse slightly westward towards U.S. Route 15/401. At U.S. Route 15/401, the distance from the centerline of the original alignment segment to the eastern alignment segment centerline would be 3,450 feet. After the interchange at U.S. Route 15/401, the eastern alignment segment would continue arcing westward until it rejoined the original alignment at East Main Street (Road S-35-48) and following the original alignment until it reached Academy Road (Road S-35-17).

A western alignment segment was developed beginning at S.C. Route 9 and following the original alignment segment until its crossing at Cottingham Creek. It then turns slightly west towards the Bennettsville city limits, paralleling a tributary to Cottingham Creek until it reaches U.S. Route 15/401. The distance from the centerline of the interchange with U.S. Route 15/401 of the original alignment to the interchange centerline of this segment is 1,650 feet. Once past U.S. Route 15/401, the western alignment segment begins turning towards the east, crossing Beauty Spot Road (S-35-47) and East Main Street (S-35-48), before rejoining the Preferred Alternative at Academy Road (Road S-35-17). This alignment segment has the same interchange configuration as the original alignment, and would avoid the Beauty Spot Motor Court Office Building.



3.3 Mitigation

A mitigation plan was developed in coordination with the SCSHPO to include preparing a publication for public distribution, such as a brochure or poster that focuses on the history of the Beauty Spot Motor Court Office and provides a brief history of motor court and early automobile-related tourism in Marlboro County, South Carolina (refer to Attachment B of the ROD).

3.4 Comparison of the Alignment Segments at US Route 15/401

Figure 2 (refer to page E-6) and Table 1 present the differences in impacts of the three alignments, specifically concerning relocations and acres of wetlands impacts. The original alignment segment from Covington Millpond Road (Road S-35-356) to East Main Street (Road S-35-48) has five residential relocations and three business relocations and impacts 17.4 acres of wetlands. The eastern alignment segment increases to seven residential relocations, no business relocations, impacts the Beauty Spot Cemetery and Resource 1095, which is eligible for the NRHP, and doubles the amount of wetlands impacted to 34.8 acres. The western alignment segment doubles the residential relocations to ten with two business relocations, and also doubles the amount of wetlands impacted to 34.4 acres.

This comparison of the original alignment segment with the alternative segments shows that the original alignment segment is more prudent and feasible than the western or eastern alternative segments.

Table 1
Comparison of Preferred Alternative Alignment Segments

	Original Segment	Eastern Alignment	Western Alignment
Residential relocations	5	7	10
Business relocations	3	0	2
Wetland impacts (in acres)	17.4 acres	34.8 acres	34.4 acres
Other impacts	Impacts Beauty Spot Motor Court Office Building	Impacts Beauty Spot Cemetery and Eligible Archaeological Resource 1095	No impacts

3.4 Comparison of the Preferred Alternative to Other Reasonable Build Alternatives Considered

A discussion of the No-build Alternative and Reasonable Build Alternatives is found in the *Record of Decision for the Interstate 73 Final Environmental Impact Statement: from I-95 to Future Interstate 74 in North Carolina*. The impacts used for comparison between the Reasonable Build Alternatives is based upon the findings for each Build Alternative contained in the DEIS.

3.4.1 No-build Alternative

The No-build Alternative would avoid some of the impacts such as changes to land use, impacts to wetlands, and noise impacts anticipated from the Reasonable Build Alternatives. However, the No-build Alternative would not provide the interstate link between I-95 and the North Carolina I-73/I-74 Corridor. Failure to provide this link would lead to the loss of projected economic opportunities, the potential loss of tourism, longer travel times, and the loss of the multimodal opportunities provided by the corridor. This alternative does not meet the purpose and need of the project.

3.4.2 Alternative 1

Alternative 1 would have the highest cost, \$1.21 billion, which is over \$130 million more than the Preferred Alternative. It would also have the most relocations (71), 30 more than the Preferred Alternative and the greatest amount of total farmland, 1,705 acres, impacted which is 200 acres more than the Preferred Alternative. Additionally, at 167.7 acres, it would have 50 acres more wetlands impacted than the Preferred Alternative.

The U.S. Fish and Wildlife Service and the South Carolina Department of Natural Resources (SCDNR) expressed concern that Alternative 1 would have the potential for more habitat fragmentation than the other Reasonable Build Alternatives as it crosses several major stream/wetland systems such as Little Reedy Creek, Three Creeks, Muddy Creek, Crooked Creek, and Herndon Branch.

The SCSHPO stated that this alternative would have the potential for negative visual impacts to a historic resource located on S-35-18.

Alternative 1 would not be a prudent alternative to the Preferred Alternative since it would cost substantially more, have more relocations, and impact 12 percent more farmlands and 30 percent more wetlands.

3.4.3 Alternative 3

Alternative 3 would directly impact a Section 4(f) resource, the McLaurin House, which is listed on the NRHP. It also has a high cost of \$1.19 billion, over \$100

million more than the Preferred Alternative. Alternative 3 impacts 156 acres more farmland at 1,582 acres and impacts 10,062 linear feet of streams, 1,919 linear feet more than the Preferred Alternative. Additionally, a church, poultry farm, and community store would be relocated by Alternative 3.

The South Carolina Department of Commerce expressed concern that Alternative 3 was too far removed from existing infrastructure, limiting potential future economic development. SCDNR expressed concern over the impact to Reedy Creek, a perennial stream in the project study area. The United States Department of Agriculture – Natural Resources Conservation Service expressed concern over an impact to a poultry operation, while the SCSHPO was concerned over the direct impact to a historic resource.

Alternative 3 would not be a prudent alternative to the Preferred Alternative since it would directly impact a Section 4(f) resource, have higher farmland (10 percent) and stream impacts (19 percent), and cost substantially more. Additionally, several federal and state agencies expressed concern over this alternative's potential economic and environmental impacts.

4.0 COORDINATION

The I-73 project has been developed in ongoing coordination with resource and regulatory agencies and officials having jurisdiction over Section 4(f) resources that may be affected. Archaeological and historical reports were coordinated with the SHPOs for both states for determinations of eligibility and effects. As the alternatives were developed, the South Carolina Agency Coordination Team, including representatives from SCSHPO (as part of the South Carolina Department of Archives and History), met regularly from October 2005 to the present. In addition, there were six meetings held with the North Carolina Interagency group to solicit comments on the alternatives and potential impacts from the project. Changes to the project were frequently made as a result of the agency interaction.

SCDOT conducted a cultural resource survey for the proposed widening of U.S. Route 15/401 in 1996. The Beauty Spot Motor Court Office Building was identified as potentially eligible during this 1996 survey. The site was reassessed during the cultural resource survey of the project study area for the proposed I-73 Corridor, and was recommended not eligible for the NRHP based on a lack of integrity. On August 30, 2007, the SCSHPO Eligibility Committee reviewed this resource and decided it was eligible for the NRHP since it still conveyed the feeling of a motor court and was an early example of this resource type in Marlboro County, South Carolina.

Representatives of the SCSHPO and the I-73 Project Team reviewed the resource in the field on November 2, 2007. Information gathered was presented to the SCSHPO Eligibility Committee on November 8, 2007, and they reconfirmed their eligibility determination. On February 21, 2008, representatives from FHWA, SCDOT, SCSHPO, and the I-73 Project Team met to discuss mitigation for this resource. FHWA presented

its concerns regarding the SCSHPO's decision on the eligibility of the resource. SCSHPO and FHWA met informally March 4, 2008 concerning SCSHPO's eligibility decision and SCSHPO reaffirmed their decision at that time.

The FHWA and SCODT accepted the SCSHPO's decision of eligibility and proceeded with the Section 4(f) Evaluation and the Section 106 mitigation. A meeting to discuss mitigation for the Beauty Spot Motor Court Office Building was held with SCSHPO, SCODT, and the I-73 Project Team on May 2, 2008. A Memorandum of Agreement was signed in July, 2008 (refer to Attachment B of the ROD).

The Draft Section 4(f) Evaluation was included as Appendix E of the *Interstate 73 Final Environmental Impact Statement: from I-95 to Future Interstate 74 in North Carolina*. This document was distributed to the U.S. Department of Interior on August 11, 2008 and the SCSHPO Office on August 8, 2008 for review and comment. In addition, other state and federal agencies, state and local officials, non-governmental organizations received copies of document for review and comment. Copies of the document were also placed at the local libraries in the project study area and county administrators' offices for the public to view and comment. A copy of the document is also available electronically at the project website, <http://www.I73inSC.com> for everyone to access.

Thus far, no comments have been received on the Draft Section 4(f) Evaluation; however, the comment period ends on September 29, 2008. No changes of have been made to the alignment of the Selected Alternative since the release of the Draft Section 4(f) Evaluation.

5.0 CONCLUSION

The Preferred Alternative (Alternative 2) was selected in the DEIS based upon less severe impacts to the environment including the least amount of wetland impacts (114.3 acres) and impacts to farmland (1,505 acres), the lowest cost (\$1.08 billion), fewest relocations, is centrally located to serve more communities equally in regards to economic development with greater access to existing infrastructure, and is supported by agencies, local governments, and the public. Because of modifications made in response to public comments and the results of detailed field surveys, the impacts have changed since the publication of the DEIS. The wetland impacts are now 57.2 acres, farmland impacts are now 1,578 acres, the cost is now \$1.125 billion (which includes a new additional interchange in North Carolina and other new design features such as more overpasses), and the relocations have been decreased to a total of 28 .

Based upon the above considerations, there is no feasible and prudent alternative to the use of the Beauty Spot Motor Court Office Building, and the proposed action includes all possible planning to minimize harm to the Beauty Spot Motor Court Office Building resulting from such use.

**MEMORANDUM OF AGREEMENT BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION,
THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION,
AND THE SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE**

Whereas, the Federal Highway Administration (FHWA) has determined that the Interstate 73 Project in Marlboro County, South Carolina, will have an adverse effect upon the Beauty Spot Motor Court Office (Survey Site # 0011), a property determined eligible for inclusion in the National Register of Historic Places, and

WHEREAS, the FHWA has notified the Advisory Council on Historic Preservation of the adverse effect determination in accordance with Section 106 of the National Historic Preservation Act (36 CFR Part 800.6 (a)) and the Council has elected not to participate, and

WHEREAS, the FHWA has delegated responsibility to the South Carolina Department of Transportation (SCDOT) to coordinate with the South Carolina State Historic Preservation Officer (SHPO) on matters related to Section 106 of the National Historic Preservation Act (16 U.S.C. Sec. 470f), and

WHEREAS, the SCDOT has consulted with the South Carolina SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. Sec. 470f) and its implementing regulations (36 CFR Part 800) to resolve adverse effects, and

NOW, THEREFORE, the FHWA, the SCDOT, and the South Carolina SHPO agree that the undertaking will be implemented according to the following stipulations in order to take into account the effects of the undertaking on the Beauty Spot Motor Court Office:

STIPULATIONS

The FHWA and the SCDOT will ensure that the following stipulation is implemented:

- 1.) A "popular" publication, such as a brochure or poster, focusing on the history of the Beauty Spot Motor Court Office and providing a brief context of motor court and early automobile-related tourism history in Marlboro County will be produced. The term "popular" is used because the publication should include images, graphics, and language designed to appeal to the general public. The publication may cover areas and resources beyond Marlboro County if those are pertinent to the history and context. Two Thousand (2,000) copies of this publication will be produced and copies will be distributed to the Marlboro County Historical Society, the Marlboro County Historic Preservation Commission, the Marlboro County Public Library, and the Pee Dee Council of Governments. The remaining copies will be submitted to the SHPO. Additionally, an electronic copy in PDF format will be submitted to the South Carolina SHPO for posting on the South Carolina SHPO's website.

Late Discoveries

If unanticipated cultural materials (e.g., large, intact artifacts or animal bones; large soils stains or patterns of soil stains; buried brick or stone structures; clusters of brick or stone) or human skeletal remains are discovered during construction activities, then the Resident Construction Engineer shall be immediately notified and all work in the vicinity of the discovered materials shall cease until an evaluation can be made by the SCDOT archaeologist in consultation with the South Carolina SHPO.

Dispute Resolution

The FHWA, the SCDOT, and the South Carolina SHPO will attempt to resolve any disagreement arising from the implementation of the MOA. This will include any disputes that arise concerning the contents of the report(s), including but not limited to its merit as a cultural resource management document.

In the event that the terms of this agreement cannot be carried out, the FHWA and SCDOT will submit a new (or amended) MOA to the South Carolina SHPO and the Council for review. If consultation to prepare a new MOA or amendments proves unproductive, the FHWA will seek Council comment in accordance with 36CFR Part 800.6(b)(1).

Amendment and Modification

Any party to this MOA may request that it be amended or modified at any time, whereupon the parties will consult with each other to consider such amendment or modification.

Execution of this Memorandum of Agreement by the Federal Highway Administration, the South Carolina Department of Transportation, and the South Carolina State Historic Preservation Office and implementation of its terms, is evidence that the FHWA has taken into account the effects of the undertaking on the Beauty Spot Motor Court Office in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. Sec. 470f) and its implementing regulations (36 CFR Part 800).

Federal Highway Administration

By: Patrick L. Zydall Date: 7-17-08

South Carolina Department of Transportation

By: Wayne D. Roberts Date: 7/14/08

South Carolina State Historic Preservation Office

By: Richard E. Sherris Date: 5/15/08

MEMORANDUM OF AGREEMENT

**BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION,
THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AND THE
SOUTH CAROLINA HISTORIC PRESERVATION OFFICER
REGARDING THE INTERSTATE 73 PROJECT IN
MARLBORO AND DILLON COUNTIES, SOUTH CAROLINA**

WHEREAS the Federal Highway Administration (FHWA) and the South Carolina Department of Transportation (SCDOT) plan to approve the I 73 project (undertaking) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. Sec. 470f); and

WHEREAS the undertaking consists of construction of an interstate highway along new alignment beginning at the North Carolina border in Marlboro County and ending near Centerville Road just north of I-95 in Dillon County; and

WHEREAS, FHWA and SCDOT have defined the undertaking's area of potential effect (APE) as a corridor with a maximum width of 400 feet that is within a 600 foot wide archaeological survey universe and extending the length of the undertaking; and

WHEREAS the FHWA has delegated responsibility to the SCDOT to coordinate with the South Carolina State Historic Preservation Officer (SHPO) on matters related to Section 106 of the National Historic Preservation Act (16 U.S.C. Sec. 470f), and

WHEREAS the FHWA and SCDOT agree that the undertaking may have an adverse effect on archaeological sites 38ML291, 38ML296, 38ML309, and 38ML340, which are potentially eligible for listing in the National Register of Historic Places (NRHP), and have consulted with the South Carolina Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f). Three additional sites (38DN165, 38ML297, and 38ML342) require additional work before their NRHP eligibility can be assessed; and

WHEREAS in accordance with 36 C.F.R. § 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its potential adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, FHWA, SCDOT, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The FHWA and SCDOT shall ensure that the following measures are carried out:

1. SHPO's August 15, 2008 Comments on the draft archaeological survey report will be addressed and a final report produced according to the SHPO's established guidelines.
2. The final design of the project will attempt to avoid and/or minimize adverse effects to historic properties, where possible.
3. Upon right-of-way acquisition or signed right-of-entry permission, the SCDOT's archaeological consultant, or staff, will perform test excavations at sites that are within the APE to make a final determination of National Register eligibility. The results of test excavations and the SCDOT's recommendation of National Register eligibility will be summarized in a technical report and submitted to the South Carolina SHPO for review. Sites determined not eligible in consultation with the SHPO will no longer be historic properties.
4. If there are adverse effects to historic properties that cannot be avoided (i. e. "preserved in place"), the affected historic properties will undergo data recovery in consultation with the SHPO and Catawba Indian Nation Tribal Historic Preservation Officer (THPO).
5. SCDOT's archaeological consultant, or staff, will develop a treatment plan for data recovery investigations. The treatment plan will include a description of the project's research design and sampling strategy. The treatment plan will be submitted to the South Carolina SHPO and THPO for review and approval prior to any fieldwork. The South Carolina SHPO and THPO will be afforded thirty (30) days to review the treatment plan(s) and provide comments.
6. All plans and reports developed for the treatment of sites subjected to data recovery shall incorporate guidance from the Secretary of the Interior's "Standards and Guidelines for Archaeological Documentation" (48 FR 44734-37) and the President's Advisory Council on Historic Preservation publication, Treatment of Archaeological Properties (ACHP 1980). In addition, these materials will be consistent with South Carolina Standards and Guidelines for Archaeological Investigations (2005).
7. At least one on-site meeting between the SCDOT, the South Carolina SHPO, and the THPO will take place during field investigations in order to discuss any necessary revisions to the original scope of work. Any revisions made to the original scope of work will be attached to the approved treatment plan and this agreement.
8. A minimum of two copies of the draft technical report of data recovery investigations will be submitted to the South Carolina SHPO and THPO for review and approval within twelve (12) months from the last day of fieldwork. The draft technical report will be consistent with the standards outlined in South Carolina Standards and Guidelines for

Archaeological Investigations (2005). The South Carolina SHPO and THPO reserve the right to submit the draft technical report to qualified professional archaeologists for the purpose of peer review.

9. Within three (3) months of draft report approval, SCDOT shall provide one bound copy and one compact disk containing a Portable Document Format (PDF) of the final technical report for the SHPO and THPO, and two bound copies, one unbound copy, and one PDF copy of the final technical report for the South Carolina Institute of Archaeology and Anthropology, all submitted to SHPO. The PDF file will be developed according the specifications and requirements of the SHPO. A separate digital abstract from the report (in Word or html format) will also be provided to the SHPO and THPO. The abstract file can be provided on the same CD as the PDF file.
10. The SCDOT will ensure that all artifacts recovered during archaeological investigations are stabilized and processed for curation at the South Carolina Institute of Archaeology and Anthropology. Copies of all records, including but not limited to field notes, maps, catalogue sheets, and representative photographs and negatives will be submitted for curation with the artifacts.
11. The SCDOT, the South Carolina SHPO, and THPO will consult to determine the appropriate format for a public education component. A public education plan will be submitted with the draft technical report and all public education materials will be developed within two (2) years from the last day of fieldwork.

IV. DURATION

This MOA will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, FHWA and SCDOT may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

V. POST-REVIEW DISCOVERIES

If potential late discoveries or unanticipated effects on historic properties are found, the FHWA and the SCDOT shall implement standard late discovery procedures with appropriate consultation with the SHPO and ACHP.

VI. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, FHWA and the SCDOT shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in FHWA's and the SCDOT's efforts to carry out the terms of this MOA.

VII. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA and SCDOT shall consult with such party to resolve the objection. If FHWA and SCDOT determine that such objection cannot be resolved, the FHWA and SCDOT will:

A. Forward all documentation relevant to the dispute, including the FHWA and SCDOT's proposed resolution, to the ACHP. The ACHP shall provide FHWA and SCDOT with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. FHWA and SCDOT will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA and SCDOT may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA and SCDOT shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. FHWA and SCDOT's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VIII. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

IX. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, FHWA and SCDOT must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA and SCDOT shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the FHWA, SCDOT, and SHPO and implementation of its terms

evidence that FHWA and SCDOT have taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

Federal Highway Administration

Patrick Tyndall Date 9-23-08
Patrick Tyndall

South Carolina Department of Transportation

Wayne D. Roberts Date 9/17/08
Wayne D. Roberts

South Carolina Historic Preservation Office

Elizabeth M. Johnson Date 9/19/08
Elizabeth Johnson



United States Department of the Interior

FISH AND WILDLIFE SERVICE

176 Croghan Spur Road, Suite 200
Charleston, South Carolina 29407



August 6, 2008

Ms. Amanda Brooks Queen
Environmental Projects Manager
South Carolina Department of Transportation
Post Office Box 191
Columbia, SC 29202-0191

Re: I-73 Northern Phase, Biological Assessment

Dear Ms. Queen:

The U.S. Fish and Wildlife Service (Service) has received the results of the Biological Assessment (BA) for the proposed construction of the northern phase of I-73 between I-95 in Dillon County and I-74 near Hamlet, North Carolina. The BA, completed by the South Carolina Department of Transportation (SCDOT), provides a brief description of the project and its proposed corridor, a review of habitats within the corridor and a list of the nine protected species known to occur within Dillon and Marlboro Counties, SC as well as Richmond and Scotland Counties, NC.

The Service recommends SCDOT contact the National Marine Fisheries Service (NMFS) for consultation requirements regarding the shortnose sturgeon, *Acipenser brevirostrum*. The bald eagle, *Haliaeetus leucocephalus*, was delisted in August 2007 and no longer protected under the Endangered Species Act, 1973; therefore no section 7 consultation is required.

The BA concluded that the proposed activity will have no effect on any of the species reviewed. Upon view of the information provided, the Service concurs with conclusions in the BA regarding listed species. However, obligations under section 7 of the Endangered Species Act must be considered if (1) new information reveals impacts of this identified action that may affect any listed species or critical habitat in a manner not previously considered, (2) this action is subsequently modified in a manner which was not considered in this assessment, or (3) a new species is listed or critical habitat is determined that may be affected by the identified action.

TAKE PRIDE
IN AMERICA 

If you have any questions regarding the Service's comments, please do not hesitate to contact Mark Caldwell at

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy N. Hall", written in a cursive style.

Timothy N. Hall
Field Supervisor

TNH/MAC

cc: Mr. Patrick Tyndall, FHWA, Columbia, SC