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Via Electronic Mail and Regular Mail

Marlo Clowers, P.E.
Project Manager
Georgia Department of Transportation
One Georgia Center
600 West Peachtree Street, NW
Atlanta, Georgia 30308
mclowers@dot.ga.gov

**Re: Bike/Ped Accommodation in the I-285/SR 400 Interchange Reconstruction
and SR 400 Collector-Distributor Lanes Projects**

Dear Ms. Clowers:

The Southern Environmental Law Center (SELC) submits this letter on behalf of Georgia Bikes to request bicycle and pedestrian accommodation in the proposed I-285/SR 400 Interchange Reconstruction and SR 400 Collector-Distributor Lanes Projects. Georgia Bikes is a state-wide nonprofit organization that works to improve bicycling conditions and promote bicycling throughout the state of Georgia. SELC is a regional public interest organization that advocates for clean and efficient transportation options across the Southeast.

We are writing out of concern that the projects named above do not adequately accommodate bicycle and pedestrian (“bike/ped”) users of the adjacent roadways and will cause major difficulties for non-motorized users navigating the area. Therefore, GDOT should (1) incorporate bike/ped facilities that allow non-motorized travel to the east/west and north/south along the secondary streets that will be impacted by the projects, and (2) reserve right of way for the future development of a standalone, multi-use trail through the interchange area. We appreciate GDOT’s consideration of these issues to date and look forward to further discussion regarding the details of specific bike/ped accommodations within the project design. In the meantime, this letter provides background and legal justification for the need to accommodate bike/ped users in this project.

THE PROPOSED PROJECTS

The Georgia Department of Transportation proposes reconstructing the interchange of I-285 and SR 400 and building collector-distributor lanes through the Interchange Reconstruction Project (PI# 0000784) and the SR 400 Collector-Distributor Lanes Project (PI# 721850) (together, the “Proposed Projects”). The Proposed Projects include construction of barrier-separated collector-distributor lanes along the two highways, reconstruction of existing ramps, construction of new flyover bridges, and reconstruction and widening of existing bridges in the interchange area. Along I-285, the project area extends 4.3 miles (from Roswell Road to Ashford

Dunwoody Road) and along SR 400, the project area extends 1.2 miles (from the Glenridge Connector to the Hammond Drive interchange).

The local governments adjacent to the site of the Proposed Projects, including Sandy Springs, Dunwoody, and Brookhaven, and the Perimeter Community Improvement District (CID), have extensive existing plans for bike/ped infrastructure to accommodate non-motorized travel. These local plans include bicycle networks, multi-use trails, cycle tracks, and sidepaths. In addition, the plans for PATH-400 call for an extension of the trail from its current terminus in Buckhead northbound along SR 400.

Local residents and organizations have submitted comments at GDOT's various public open houses requesting bike/ped accommodation in the Proposed Projects. GDOT's response letters to the comments indicate that the agency does not consider bike/ped accommodation to be within the scope of the proposed I-285/SR 400 interchange reconstruction project.¹ Instead, these letters suggest that providing bike/ped facilities is exclusively the purview of local governments. However, as explained below, both federal and state law clearly require both the Federal Highway Administration and GDOT to accommodate bike/ped and other non-motorized users in projects such as the ones proposed here.

LEGAL SUPPORT FOR ACCOMMODATION

Federal and State Law Require the Proposed Projects to Include Bike/Ped Accommodation

Federal law and policy and GDOT's own Complete Streets Design Policy require GDOT to provide bike/ped facilities within the boundaries of highway reconstruction projects. This directive applies to the interchange reconstruction and collector-distributor projects. Specifically, the Proposed Projects' new bridges and intersections should incorporate bike/ped facilities so that non-motorized users can cross the reconstructed corridors safely and without obstacle. To achieve these results, GDOT should consult the NACTO Urban Bikeway Design Guide and other urban-setting best practices. GDOT should also reserve right of way for multi-use bike/ped paths planned for the project area. GDOT's legal obligations to incorporate bike/ped accommodations are summarized below.

Federal Law and Policy

Federal statutes, regulations, and agency guidance provide clear and explicit support for accommodating bike/ped users in federal-aid highway reconstruction projects, such as the Proposed Projects. Specifically, federal law requires states to consider the needs of bicyclists and pedestrians in both plans and projects. Under 23 U.S.C. section 217(g)(1), states and metropolitan planning organizations are to give "due consideration" to bicyclists and pedestrians in transportation planning. In addition, "bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities."² Federal regulation 23 C.F.R. section 652.5 similarly

¹ Letter from Ga. Dep't of Transp., Responses to Aug. 2014 Open House Comments for PI# 0000784, 8 (Sep. 30, 2014); Letter from Ga. Dep't of Transp., Responses to Feb. 2015 Open House Comments for PI# 0000784, 4-5 (Mar. 11, 2015).

² 23 U.S.C. § 217(g)(1).

requires that “the safe accommodation of pedestrians and bicyclists [be] given full consideration during the development of Federal-aid highway projects.” The need to accommodate these non-driving users arises in several different ways.

Bridge Replacement

First, bike/ped users must be accommodated when a highway bridge deck is replaced or rehabilitated using federal monies, as is the case in GDOT’s Proposed Projects. Title 23 U.S.C. section 217(e) states that where bicycles or pedestrians “are permitted to operate at each end of such bridge,” then “such bridge shall be so replaced or rehabilitated as to provide such safe accommodations,” provided the accommodation can be made at a reasonable cost.³ FHWA regulation 23 C.F.R. section 652.5 reiterates this requirement for accommodation along bridges undergoing reconstruction and encourages “consultation with local groups of organized bicyclists” in the development of bicycle projects. Here, GDOT’s statement that the proposed new bridges will be wide enough to accommodate potential future bicycle and/or pedestrian facilities falls short of the requirement.⁴ Instead, the law obligates GDOT to affirmatively accommodate bike/ped users in the Proposed Projects.

Contiguous Routes

Second, federal law reflects the need to preserve contiguous routes and safe passage for non-motorist users.⁵ Under 23 U.S.C. section 109, the Transportation Secretary “shall not approve any project . . . that will result in the severance of an existing major route or have significant adverse impact on the safety for nonmotorized transportation traffic.” In line with these laws, U.S. Department of Transportation (USDOT) guidance highlights the need for bicyclists and pedestrians to cross corridors as well as travel along them:

Even where bicyclists and pedestrians may not commonly use a particular travel corridor that is being improved or constructed, they will likely need to be able to cross that corridor safely and conveniently. Therefore, the design of intersections and interchanges shall accommodate bicyclists and pedestrians in a manner that is safe, accessible and convenient.⁶

To meet these directives, USDOT encourages state agencies to proactively provide safe and convenient bike/ped accommodation and to involve bicyclists and pedestrians in planning.⁷ Here, GDOT declares that the projects are designed to “not preclude” the future construction of

³ See also Fed. Highway Admin., U.S. Dep’t of Transp. Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations, http://www.fhwa.dot.gov/environment/bicycle_pedestrian/overview/policy_accom.cfm (Mar. 11, 2010) (describing USDOT’s policy to apply the statute to pedestrians in addition to bicycles).

⁴ See Letter from Ga. Dep’t of Transp., Responses to Feb. 2015 Open House Comments for PI# 0000784, 4 (Mar. 11, 2015).

⁵ 23 U.S.C. § 217(g)(2) (“transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians”).

⁶ Fed. Highway Admin., Accommodating Bicycle and Pedestrian Travel: A Recommended Approach, http://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_guidance/design.cfm (last accessed Mar. 20, 2015).

⁷ USDOT Policy Statement, *supra* note 3.

bike/ped facilities along cross streets.⁸ However, federal law requires more – GDOT must not only avoid precluding bike/ped accommodation but must affirmatively provide it. In light of the statute, GDOT must design and build intersections and interchanges that bicyclists and pedestrians may safely cross.

Agency Guidance

Third, USDOT guidance repeatedly promotes bike/ped accommodation in transportation projects. USDOT’s proclaimed policy is for both USDOT and every transportation agency to incorporate safe and convenient walking and bicycling facilities into transportation projects.⁹ As an example, “transportation agencies should find ways to make facility improvements for pedestrians and bicyclists during resurfacing and other maintenance projects.”¹⁰ Indeed, USDOT’s position is that every transportation improvement is an opportunity to enhance bike/ped safety and convenience and that any decision to not accommodate bike/ped needs should be the exception and not the rule.¹¹

USDOT guidance also supports accommodation of future plans for shared-use paths, such as the extension of PATH-400, through project design. One guidance document emphasizes the success of shared-use paths along or near freeways and discusses bike/ped accommodations on major highway bridges.¹² Another policy statement declares that “planning projects for the long-term should anticipate likely future demand for bicycling and walking facilities and not preclude the provision of future improvements.”¹³ In whole, this guidance suggests that, at the very least, the Proposed Projects should not interfere with plans and design for PATH-400 extensions in the area. The more accommodating approach, and the approach more in line with the USDOT directive to “go beyond the minimum requirements,”¹⁴ would be to reserve right of way for a future northbound extension of PATH-400 through the interchange area.

Public commenters, the City of Sandy Springs, and the Perimeter CID have raised concerns that the Proposed Projects conflict with plans for multi-use trails crossing I-285 and the extension of PATH-400.¹⁵ In response, GDOT stated that it aims to “not preclude the construction of future planned projects, where such a project is part of an adopted area Master Plan or Trail Plan. Georgia DOT is willing to work with local governments to help bring their greenspace and multi-use trail projects to fruition, as part of a separate project or action.”¹⁶ This willingness to work with local partners to support multi-use trail development is commendable. However, GDOT’s position that trails and paths fall outside of the scope of the interchange

⁸ See Letter from Ga. Dep’t of Transp., Responses to Feb. 2015 Open House Comments for PI# 0000784, 5 (Mar. 11, 2015).

⁹ USDOT Policy Statement, *supra* note 3.

¹⁰ *Id.*

¹¹ Accommodating Bicycle and Pedestrian Travel, *supra* note 6.

¹² Fed. Highway Admin., Shared Use Paths Along or Near Freeways and Bicycles on Freeways, http://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_guidance/freeways.cfm (revised Feb. 24, 2011).

¹³ USDOT Policy Statement, *supra* note 3.

¹⁴ *Id.*

¹⁵ See Draft Environmental Assessment, I-285/SR 400 Interchange Reconstruction 186-87 (Dec. 2014).

¹⁶ Letter from Ga. Dep’t of Transp., Responses to Aug. 2014 Open House Comments for PI# 0000784, 8 (Sep. 30, 2014).

reconstruction project¹⁷ is not consistent with federal statements on the issue. USDOT’s policies on incorporating shared-use paths into highway construction projects direct that GDOT should reserve right of way in the Proposed Projects for the planned PATH-400 extension.

Federal statutes, regulations, and guidance all specifically recognize bike/ped accommodation and contiguous routes for non-motorized users as features of highway reconstruction. In the two projects at hand, the responsibility for accommodating such users belongs to GDOT. In light of these legal requirements, GDOT should incorporate bike/ped facilities on any bridges to be reconstructed and the agency should reserve right of way for the multi-use trails planned in the project area.

GDOT Complete Streets Policy

In addition to federal requirements, Georgia’s state-level policies instruct GDOT to take such actions. According to GDOT’s “Complete Streets” policy, the agency must coordinate with local governments and regional planning agencies to ensure that bike/ped and transit needs are addressed during the planning, design, construction, maintenance, and operations of transportation infrastructure projects.¹⁸ By design, this approach aligns with USDOT’s policies, discussed above. The Complete Streets policy, as applied here, imposes a requirement for bike/ped accommodation in the Proposed Projects.

Several principles of GDOT’s Complete Streets policy are particularly relevant to the Proposed Projects and should be applied here:

- “Accommodations for bicycles and pedestrians should be integrated into roadway new construction and reconstruction projects through design features appropriate to the context and function of the transportation facility.
- The design and construction of new facilities should anticipate likely demand for bicycling and pedestrian facilities within the design life of the facility.
- The design of intersections and interchanges should accommodate bicyclists and pedestrians in a manner that addresses the need for bicyclists and pedestrians to safely cross roadways, as well as travel along them.
- The design of new and reconstructed roadways should not preclude the future accommodation of bicycle and pedestrian access along and across corridors.”¹⁹

The Complete Streets policy operates based on a warrant system, whereby specified conditions or “warrants” trigger application of the policy, which in turn requires accommodation in transportation infrastructure projects where pedestrians and bicycles are permitted to travel.²⁰ The presence of a “standard warrant” requires that “[bike/ped] accommodations *shall be considered* in all planning studies, and *be included* in all reconstruction.”²¹ The standard warrants present here include the fact that the Proposed Projects are located “along corridors

¹⁷ *Id.*

¹⁸ Ga. Dep’t of Transp., Design Policy Manual 9-1 (Sep. 19, 2014).

¹⁹ *Id.* at 9-2.

²⁰ *Id.* at 9-16.

²¹ *Id.* at 9-16 – 9-17 (emphasis added). In contrast, the presence of a “guideline warrant” requires that “[bike/ped] accommodations *should be considered* on projects.” *Id.* (emphasis added).

with [bicycle and pedestrian] travel generators and destinations,” and the fact that local governments have identified such needs in their planning processes.²² Therefore, GDOT must include bike/ped accommodation in the Proposed Projects because bicycles and pedestrians are currently permitted to travel across bridges and cross streets in the project area. In keeping with its policy, GDOT should seek input from local bike/ped advocacy groups, consult local plans, and consider local and projected conditions near the corridor in order to accommodate bike/ped travel in the reconstruction of bridges and elsewhere as appropriate.²³

Consistency with Local Plans

Finally, the Proposed Projects should be consistent with local plans, which include the extensive bike/ped planning in the area. The local governments and CIDs in the area have generated planning studies and adopted such plans for bicycle and pedestrian networks and access around the site of the Proposed Projects. However, the Proposed Projects will disrupt or even preclude implementation of the local plans. In such circumstances, both the National Environmental Policy Act (“NEPA”) and the GDOT Complete Streets policy require GDOT to avoid inconsistencies with local plans.

When a proposed action has the potential to conflict with local plans, NEPA requires an agency to describe the extent to which it will reconcile inconsistencies between the action and local plans. Specifically, CEQ regulations direct that an Environmental Assessment “shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned),” in order to better integrate the environmental review process into State or local planning.²⁴ Where an inconsistency exists between the proposed action and local plans, the Environmental Assessment must describe the extent to which the agency will reconcile the inconsistency.²⁵ The Draft Environmental Assessment for the I-285/SR 400 Interchange Reconstruction Project (PI# 0000784) does not include such analysis.²⁶ Should the Proposed Projects proceed under Environmental Assessments that fail to include such analysis, that analysis will fall short of the requirements of NEPA.

The Complete Streets policy similarly encourages consistency with bicycle and pedestrian networks developed by regional planning commissions, metropolitan planning organizations, and local governments. During project planning, the policy directs GDOT to consult the plans and maps for such networks in order to evaluate bicycle and pedestrian accommodation.²⁷ Moreover, “the need for [such] accommodations should always consider local and projected conditions along and near the corridor being improved.”²⁸ Through these

²² See *id.* “Guideline warrants” are also present in the project area, and even without the presence of any standard warrants, would require GDOT to *consider* bicycle and pedestrian accommodations. *Id.*

²³ See *id.* at 9-8 and 9-12.

²⁴ 40 C.F.R. § 1506.2(d); see also *Glisson v. U.S. Forest Serv.*, 138 F.3d 1181, 1183 (7th Cir. 1998) (applying this regulatory provision to an Environmental Assessment).

²⁵ *Id.*

²⁶ See Draft Environmental Assessment, I-285/SR 400 Interchange Reconstruction (Dec. 2014). The 1998 Draft Environmental Assessment for the SR 400 Collector-Distributor Lanes Project (PI# 721850) is undergoing an environmental re-evaluation and is currently unavailable for review.

²⁷ GDOT Design Policy Manual, *supra* note 18, at 9-8 and 9-12.

²⁸ *Id.* at 9-8.

directives, the Complete Streets policy instructs GDOT to give careful consideration to local plans.

CONCLUSION

Accommodating bike/ped travelers, and bike/ped plans, are necessary components of highway reconstruction projects such as those proposed here. GDOT has the opportunity to execute its Complete Streets policy to make a significant difference to bicyclists and pedestrians traveling in the area and comport with federal directives on the subject. Therefore, we strongly encourage GDOT to provide bike/ped facilities on the bridges and intersections that will be reconstructed as part of the Proposed Projects, and to reserve right of way for the extension of PATH-400 in the project area. Georgia Bikes welcomes the opportunity to discuss the design of bike/ped facilities and provide technical expertise to meet these needs.

Thank you for your consideration of these comments. Should you have any questions or concerns, please contact me at (404) 521-9900 or bgist@selcga.org.

Sincerely,

A handwritten signature in black ink that reads "Brian Gist". The signature is written in a cursive, flowing style.

Brian Gist

Senior Attorney
Southern Environmental Law Center

cc:

Russell McMurray (GDOT Commissioner)

Meg Pirkle (GDOT Chief Engineer)

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