

# North Carolina Public Art on the Right of Way Policy

## **Purpose:**

The North Carolina Department of Transportation (NCDOT) recognizes and values the importance of integrating Context Sensitive components into the design and operation of its transportation facilities. While NCDOT's first priority is to provide safe and efficient transportation facilities, the department understands that this can be accomplished by ensuring environmental sensitivity while providing transportation infrastructure that are integrated into the natural and human environment in a manner to reflect the local community's aesthetic values and intrinsic qualities. Transportation facilities enhanced by public art elements provide aesthetic and cultural benefits to a community. These benefits can potentially result in positive economic development and increase tourism both locally and throughout North Carolina. In order to ensure successful integration of art within NCDOT project designs and along rights of way, it is critical to maintain collaborative and cooperative partnerships with local governments, state agencies, non profit organizations and private entities.

This policy was developed within legal, practical and resource parameters and adopted by the North Carolina Board of Transportation to establish procedures for the department to evaluate and permit the placement of Public Art within its right of way. Furthermore, the department has coordinated this policy development with the Federal Highway Administration (FHWA) as the Code of Federal Regulations, 23 CFR 1.23, which requires all real property, including air space, within the right of way of federally-aided highway projects to be devoted exclusively to public highway purposes. However, the FHWA Administrator may approve a non-highway use based on a determination that it is in the public interest and will not impair or interfere with the free and safe flow of traffic on the highway.

The Board of Transportation recognizes that a more comprehensive policy is needed in order to provide adequate guidance for department activities pertaining to landscape and aesthetic policies, guidelines, practices, procedures, and standards. The department shall develop a Landscape and Aesthetics manual for future Board approval.

## **Definitions:**

**Public Art** on the right of way proposed by local government agencies may be artwork, paintings, sculptures, columns, castings, obelisks, architectural and design features or other visual interests that may be freestanding or placed on roadway structural features such as noise walls, retaining walls, sidewalks, bridges, bike paths or other approved engineered structures. An element is considered "Public Art" if it is beyond NCDOT standard engineering practices or architectural treatments. Hereafter, "Public Art on the right of way" will be referred to as "Art" in this document.

**Local Government and Municipal Signs** that comply with and are approved under NCDOT's Welcome Sign Policy do not fall within this Art policy and are not governed by the policies herein.

**Highway Memorials** for roadside fatalities do not fall within this Art policy but are governed through existing memorial policies for highway roadside plantings and "Adopt a-Highway".

A **Right of Way Art Committee** consisting of representatives designated by the Secretary of Transportation shall be established to review and approve Art proposals. The Committee will consist of NCDOT staff and will also include one representative from local government and one representative from the N.C. Department of Cultural Resources. NCDOT staff representing the following business units will serve on the committee:

Roadside Environmental  
Highway Division (two representatives)  
Roadway Design Unit  
Transportation and Mobility Safety  
Right of Way  
Structure Design

## **General Requirements**

### Local Agency Requirements

Art placed on NCDOT transportation right of way shall be provided and maintained by a sponsoring local government agency (city, county, etc), state or federal agency, or tribal government and is permitted through the encroachment permit process or may be integrated as a design element of a transportation construction project. The permit applicant must be the responsible local public agency representing the communities where the art will be placed. Private party art encroachments will not be permitted by the department.

Local government agencies may request Art on existing NCDOT facilities or as enhancements to proposed NCDOT transportation construction projects. These two types of project requests shall be addressed separately within this policy.

The Department of Transportation will require the sponsoring local government agency to assume financial responsibility for the construction and maintenance costs of the proposed Art above NCDOT's standard engineering practices and architectural treatments.

The NCDOT reserves the right to require the permittee to provide a bond as a guarantee to indemnify the department for any damages to the roadway or highway facility resulting from the permittee's activities.

### Safety

Art must not create safety hazards for motorists and pedestrians. Clear recovery zone and sight distance requirements must be maintained. The installation of Art with highly reflective surfaces, colors, and, moving parts, or flashing or bright lights or moving parts is strongly discouraged. However, each Art installation will be analyzed on a case by case basis to determine if it could potentially create adverse distractions or vehicular or pedestrian movements that could interfere with traffic flow or compromise safety. Art that may distract or confuse motorists or expose observers to undue risk will not be approved. Art should not have moving parts nor simulate movement.

Sculptures and freestanding Art must be installed outside the clear recovery zone along the perimeter of the roadway and outside of sight distance areas. To avoid potential safety hazards and to streamline the encroachment permitting process, the local government agency will be required to place the proposed artwork as far from the travel lane as possible to avoid potential safety hazards. The local government agency shall provide a traffic safety analysis that is sealed by a licensed Professional Engineer to certify that clear recovery zone and sight distance requirements are maintained and that the selected location and Art object(s) will not introduce and expose road users to undue risks. On a case by case basis, Art may be approved for placement in roadway medians when other applicable safety standards are met. Clear zone and lateral object setbacks shall be determined using appropriate American Association of State Highway and Transportation Officials (AASHTO) standards from the most current edition of the AASHTO Roadside Design Guide.

Locations which invite/cause viewers to stop their vehicle to observe or photograph, or stop and access the artwork on foot will not be approved unless proper facilities are provided and unless the local government agency has proven and documented (through sealed engineering study) that the Art is not a safety hazard for those accessing the site. Public access is prohibited on high volume and high speed facilities. If public access to the Art element is allowed on low volume and low speed roads, the Americans with Disabilities Act (ADA) requirements must be met.

### Design and Maintenance

Art design, construction, and maintenance activities shall comply with all applicable Federal, State, and local laws, ordinances and regulations governing safety, health, environmental and sanitation. The department reserves the right to stop work if the local government agency fails to follow applicable requirements.

As part of its application for a permit to install an Art element, the sponsoring local government agency shall submit a maintenance plan including necessary traffic control measures appropriate for the Art element. The maintenance plan should provide that the Art will not be allowed to deteriorate, become visually unsightly or lose its essential artistic element and that it will be removed by the sponsoring agency if not properly

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maintained or if it has reached the end of its lifespan. The plan will outline the Art inspection schedules along with details on how the permittee will conduct repair and restoration activities including graffiti removal. Furthermore, the maintenance plan shall provide for the inspection of free-standing structures by qualified engineers at least every two years to assess the Art for structural soundness and stability.

To avoid possible structural or aesthetic damage to artwork by department personnel or contractors, NCDOT may require the permittee to mow and perform other maintenance activities in areas adjacent to Public Art installations. This issue will be addressed within the encroachment permit or municipal agreement.

Art shall be placed in a location where the Art may be easily and properly maintained by the sponsoring local agency as stated in the encroachment permit. Its placement shall allow for safe access for maintenance personnel and equipment. Maintenance activities shall not encroach upon the clear recovery area.

#### Permit Evaluation

After receipt of an adopted local resolution requesting the placement of a particular element or installation of Art, the proposed art project will be reviewed by the Right of Way Art Committee, as designated by the Secretary of Transportation. The Committee will review the proposed project under the criteria established by this policy and may approve the project, approve the project conditioned on specified revisions or changes to the project or disallow the project. If the local agency sponsoring the project disagrees with the decision of the Committee, it may appeal to the Secretary of Transportation or his designee.

#### Approval

Upon approval by the Committee or the Secretary, the Division Engineer or Transit Director shall issue the sponsoring agency an encroachment agreement for the project, including any revisions, changes or modifications required by the Committee. This encroachment agreement may contain an Art Addendum, as established by the Committee and which may be revised from time to time. Each encroachment agreement shall be deemed to include the current Addendum, and by accepted in the encroachment agreement, local agencies agree to be bound by changes to the Addendum.

Further, the encroachment agreement and/or Addendum shall contain an indemnification

clause requiring the sponsoring local agency to hold harmless and indemnify the Department of Transportation from liability for any personal injury or property damage proximately caused by the art project, including damages to highway structures. This indemnification clause shall further require the sponsoring local government agency to defend the Department of Transportation in any claim for personal injuries or property damage filed in any forum, including the Industrial Commission, if called upon to do so by the Secretary of Transportation or the Attorney General.

### Other Requirements

The permit applicant, local government agency, or municipal sponsor must provide NCDOT with an adopted local resolution which documents the process for the local community to consider and comment on the proposed art project.

Art must conform to the Outdoor Advertising Act and will not display text, images, flags, religious and political symbols, logos, commercial images nor other elements deemed by the department as advertising or sponsorship. Art must not be offensive to motorists, pedestrians and local communities nor create negative public reaction. The local government's resolution process should include sustained public outreach and education to ensure the public concurs with the artistic content of the local government's Art proposal.

Removal of existing vegetation for placement of the Art is prohibited unless specifically permitted by the department.

In the case of Art on transportation structures, painting or other enhancements shall not impair the structural integrity nor impede the department's ability to inspect and repair a structure. All paints, finishes, coatings, etc. must be approved by the department prior to their use.

NCDOT reserves the right to remove permitted Art from right of way due to safety concerns, failure of the local government agency to maintain properly, deterioration, or future highway construction and maintenance activities. Unless critical safety concerns warrant its immediate removal, the department will provide the local agency with written notification along with a reasonable timeframe to remove the Art. If the Art is not removed within established timelines, the department reserves the right to remove the Art and bill the permittee for costs associated with removal and disposal.

Once the Art project is installed on the right of way, NCDOT reserves the right to reproduce Art for promotional purposes without paying compensation, regardless of copyright status. Furthermore, the department reserves the right to alter infrastructure, landscape, and other transportation related elements near and adjacent to the Art when required for the maintenance and operation of the transportation facility.

## **Art Requests on Existing Transportation Facilities**

### **Description**

A local government agency as defined above may request the installation of Art on an existing transportation facility. Sites for which these requests may include existing roadways, ferry sites, and rest areas. Such Art will be permitted by encroachment permit issued under the criteria established above, but in no case will a permit be issued for installations that may result in possible safety hazards.

### **Pre-Screening of Proposal**

The Department acknowledges the importance of communication, cooperation, and coordination with communities and art proponents. Delineation of the general concepts and details of the proposed art work at an early stage is critically important in order to minimize early community investment while initiating a partnership of communication to understand program elements and define planning procedures. To facilitate these needs, NCDOT requires a preliminary review of the proposed art project concept to determine if the project falls within the program boundaries, has merit as a form of art relative to the community and state, and is suitable for installation on the right of way. A NCDOT prescreening process should be followed that provides a means for the department to determine if possible safety, construction, maintenance issues or other restrictions may prohibit the art project from proceeding. A department pre-screening approval does not guarantee that the final product will be approved. The final encroachment permit will be contingent upon the local government's compliance with applicable safety, construction, and maintenance standards established within this policy.

### **Permit Evaluation:**

Art encroachment requests will be evaluated on a case-by-case basis as each is unique. Written encroachment permit requests must be submitted to the appropriate NCDOT Division Engineer for roadway Art requests or the appropriate Transit Director for Ferry and Rail requests. A complete listing of Division Engineers and Transit Directors can be

found at the following link: <http://www.ncdot.org>.

The following minimum guidelines must be met before the request can be considered for approval:

#### Sponsoring Local Government Agency Commitment

The permittee must assume full financial responsibility for all aspects of the Art placement on existing transportation facilities including all costs associated with the planning, design, construction, maintenance and removal of the Art if required.

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#### Design Concepts

The permittee shall provide design plans, drawings or artist renderings of the proposed project. Site plans should include specifics concerning construction materials to be used, project dimensions, site placement and layout, site alterations such as impacts to structures, existing topography or vegetation, colors and finishes to be used and other pertinent information that will provide sufficient details for the department to analyze the Art's impact on traffic safety, aesthetics, maintenance requirements, and lifespan. Only qualified materials that are long lasting and compatible with transportation facilities may be used. Free standing Art and sculptures or modifications to existing NCDOT structures may require structural engineering plans sealed by a licensed Professional Engineer.

#### Construction Details

The permittee shall provide details concerning construction techniques, equipment and manpower requirements, staging areas, construction schedules (beginning and completion dates), traffic control plans, utility conflicts and resolutions, identification of artist or contractor to be used and name of permittee contact who will maintain operational control of site activities.

During construction and any subsequent maintenance, the permittee shall use proper traffic control procedures and provide proper traffic control devices that are in conformance with the latest Manual on Uniform Traffic Control Devices (MUTCD) and standard engineering practices. The Division Engineer or designated representative reserves the right to stop any work for noncompliance with safety standards.

#### Utilities

The sponsoring local government agency shall also be responsible for locating utilities within the project area and shall be responsible for damages to any such utilities and/or making satisfactory arrangements with the utility owner to adjust the utilities to avoid conflict. This provision may require the sponsoring agency to negotiate a Special

Provision to the utility owner's encroachment agreement. Sponsoring agencies are encouraged to consult NCDOT if in regard to these requirements.

## **Art Requests on Proposed NCDOT Construction Projects**

### Description

A local government agency may request the installation of Art on a proposed NCDOT transportation construction project during the highway planning and design stages. Sites for which these requests may be made include new transportation facilities or upgrades to existing roadways, bridges, ferry sites, rail sites, and rest areas. Art may include design elements integrated into the project or independent art installations or elements. Art may be incorporated into proposed projects that meet certain criteria. However, Art can not result in potential safety hazardous to motorist and pedestrians.

### Art as a Design Feature or As an Independent Element

In some circumstances, local agencies may request modifications to the surface treatment or structural elements of highway structures such as bridges and viaducts that exceed NCDOT's standard engineering practices and architectural treatments. These requested modifications shall be evaluated under this Policy and if approved, shall be incorporated into the final, approved design of the structure rather than permitted by encroachment agreement. In accordance with this Policy, the Department of Transportation may request the sponsoring local government agency to assume partial or complete financial responsibility for the construction and maintenance costs of the proposed structure above the projected cost of a similar structure built according to NCDOT's standard engineering practices and architectural treatments.

As provided by this Policy, NCDOT generally supports the beautification of noise walls and encourages local government agencies to propose surface treatments and design elements for noise walls within their jurisdiction.

The local government agency may also request Art as an independent element to be

placed during or after project construction rather than as a surface treatment or structural enhancement to a highway structure. These independent elements will be evaluated through the established procedures for existing facilities and processed through the encroachment permitting process.

### Project Planning

Standard construction project planning procedures include coordination with impacted communities, local Division of Highway and RPO/MPO offices. Any artwork request to be included with a construction project shall be proposed as early as possible within the planning and public communication processes in order to not delay the planning and construction schedule. These proposals, as proposed by local entities, shall be formatted to include all vital information as defined in the pre-screening application stage. Review of the proposal shall determine its status and validity.

### Project Evaluation

NCDOT must balance this request(s) for Art with its commitment to provide safe and efficient transportation facilities. The following minimum guidelines must be met before the request for Art can be considered for approval:

#### Local Agency Commitment

Written requests for Art on a proposed construction projects will be evaluated on a case by-case basis as each is unique. Requests must be submitted to the appropriate NCDOT Division Engineer or Transit Director. A complete listing of NCDOT contacts can be found at the following link: <http://www.ncdot.org>.

The local agency must assume partial or complete financial responsibility for certain aspects of the Art's integration into the proposed project. These responsibilities will be identified within the written agreement between NCDOT and the local agency.

#### Design Concepts

For projects in which the local government agency has a specific Art proposal, the agency shall provide design plans, drawings or artist renderings of the proposed project. Site plans should include specifics concerning construction materials to be used, project dimensions, site placement and layout, site alterations such as impacts to structures, existing topography or vegetation, colors and finishes to be used and other pertinent information that will provide sufficient details for the department to analyze the Art's impact on traffic safety, aesthetics, costs, maintenance requirements, and lifespan. Free standing Art and sculptures or modifications to existing NCDOT structures may require structural engineering plans sealed by a licensed Professional Engineer.

The Local Agency may request enhancements to NCDOT transportation structural components such as the addition of architectural elements on noise walls, sidewalks, signal posts, bridge rails, etc. NCDOT will accommodate those requests as design expertise and funding allows. However, the local agency may be required to provide or fund design and engineering services for those elements.

#### Project Integration

Once the written request is approved, NCDOT planning, design, and construction staff will integrate Art request into the project planning, design and construction processes in accordance with this policy and other State, Federal, and standard design and safety guidelines.