



*Our mission is to make bicycling a safe, convenient  
and fun transportation option in Delaware*

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James Wilson,  
Executive Director

Marc Cote  
Assistant Director for Development Coordination  
Division of Planning  
Delaware Department of Transportation  
800 Bay Road  
Dover, DE 19903

June 27, 2014

Dear Mr. Cote,

I have attached some suggested changes to section 3.5.4 of DelDOT's proposed revisions to its development regulations.

By including a "fee in lieu of construction" alternative, the current proposed regulations introduce an important, and positive, mechanism that gives the department needed flexibility to avoid the construction of walking and cycling facilities where they are not appropriate. We applaud the department for this innovation.

Unfortunately, by applying the "fee in lieu of construction" requirement unevenly across the state, the department is potentially exposing itself to legal challenges from developers.

In the attached proposed change, we show how the "fee in lieu of construction" regulation can be applied uniformly, fairly and flexibly across the state.

Sincerely,

A handwritten signature in black ink that reads "James Wilson". The signature is fluid and cursive, with the first name "James" being larger and more prominent than the last name "Wilson".

James Wilson  
Executive Director  
Bike Delaware

## ***DelDOT Development Coordination Manual***

### **3.5.4 Connectivity - Bicycle and Pedestrian Spacing**

Existing and proposed bicycle and pedestrian connections shall also be shown on the Record Plan as provided in this section. Except for some exempted Delaware incorporated non-profit organizations, DelDOT shall require either a sidewalk or shared-use path or a fee in lieu of constructing such connections, to be deposited in a Bike and Pedestrian Improvements Fund, for all projects.

#### **3.5.4.1 Bicycle Compatibility**

Bicycles shall be accommodated on all Subdivision and higher order roads within the proposed development in accordance with standards provided in AASHTO's *Guide for the Development of Bicycle Facilities*.

#### **3.5.4.2 Sidewalks and Shared-Use Paths**

A. Sidewalks or shared-use paths may be required for the proposed development. If DelDOT requires such facilities, DelDOT will determine whether the facility should be a sidewalk or a shared-use path. Specific requirements related to the warrants for sidewalks and shared-use paths are as follows:

1. Regardless of the location of the project or whether a project is required to actually construct a SUP/Sidewalk or not, the Permanent Easement (PE) for the facility is required on every plan submission and approval.
2. SUP/Sidewalks shall be required for all projects requesting an EPA if the project generates 2,000 Average Daily Trips (ADT). This calculation shall be based on the full buildout of the project, even if the project is to be developed in phases.
3. SUP/Sidewalks shall be required for all projects requesting an EPA if the project connects to an existing low speed local street or abuts a significant local destination such as a park, school or

library or is within 500 feet of an existing bicycle or pedestrian facility or would connect to a bicycle or pedestrian facility that does not exist yet but which is included in DelDOT's most recently approved Capital Transportation Plan or would provide access to transit along an existing transit route. If an environmental, topographical or other physical impossibility exists, then the SUP/Sidewalk fee in lieu of construction shall be paid to the Bike and Pedestrian Improvements Fund. This requirement may be waived, however, for Delaware incorporated non-profit organizations (fire-company, church etc.) not including schools.

4. No SUP/Sidewalks shall be required for any projects requesting an EPA if the project is currently isolated from low speed local streets, significant local destinations such as parks, schools or libraries, existing or planned bicycle or pedestrian facilities or an existing transit route. Instead, DelDOT shall assess an SUP/Sidewalk fee in lieu of construction to be paid into the Bike and Pedestrian Improvements Fund. This requirement may be waived, however, for Delaware incorporated non-profit organizations (fire-company, church etc.) not including schools.
5. SUP/Sidewalk fee in lieu of construction shall be based on current accepted rates. The Shared-Use Path and Sidewalk Fee Calculation Form shall be used to calculate the amount.
6. If a school receives funding for the construction of the required SUP/Sidewalk from the Community Transportation Fund (CTF) then the SUP/Sidewalk will either be constructed at that location through the applicant's construction process under a third party agreement or at a future date through the Department's Capitol Transportation Program (CTP).
7. The fee in lieu of construction will be utilized in accordance with the Department's SUP/Sidewalk fund procedure.
8. If any of the criteria above is to be waived, it will require the Director of Planning's approval.