

**COOPERATIVE AGREEMENT  
BETWEEN  
WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
AND  
WISCONSIN DEPARTMENT OF TRANSPORTATION  
November 2002**

**PART ONE: Purpose and General Principles**

**1.1 Statement of Purpose**

The Wisconsin Department of Natural Resources (DNR) and the Wisconsin Department of Transportation (DOT) recognize that the Wisconsin Legislature has charged DNR with the responsibility for protecting and enhancing the State's natural resources and has charged DOT with furnishing the public with a safe, economical, and efficient transportation system. Our dedicated, professional employees have a shared responsibility to serve the public interest. Therefore, DOT and DNR agree to consult and cooperate in a timely manner to assure that our mutual goals and responsibilities are met.

**1.2 General principles of the cooperative agreement**

- (a) This cooperative agreement serves both as the basic guidance and policy direction for the liaison procedures for coordination of transportation projects, established pursuant to s. 30.12(4), Wis. Stats. (PART TWO), and as the basis for interagency coordination in larger scale policy and planning efforts of either agency (PART THREE).
- (b) DNR Regions, DOT Districts, and the central offices of both agencies will maintain close communications to achieve the objectives of this agreement.
- (c) It is the intent of this agreement that any conflicts be resolved by the primary agency contacts and in a timely manner, consistent with planning, design and construction deadlines and the need for effective environmental protection.

**PART TWO: Liaison Procedures for DOT Projects**

**2.1 Specific transportation projects**

- (a) Section 30.12(4)(a), Wis. Stats., exempts projects that are carried out under the direction and supervision of DOT from the administrative and procedural requirements of certain DNR regulatory authorities if the transportation project activities are accomplished in accordance with the liaison procedures established by this agreement. The goal of this agreement and the liaison procedures is to ensure that DOT directed and supervised transportation projects are planned, designed, constructed, and maintained in a manner that provides environmental protection at a level equivalent to the protection offered by the pertinent DNR regulatory authorities.
- (b) It is the intent of this agreement that joint review of transportation projects will result in mutual concurrence on the proper course of action to comply with the statutory obligations of each agency.
- (c) This agreement pertains to all DOT directed and supervised transportation projects. Transportation projects include construction, re-construction and maintenance of highways, bridges, harbors, airports, and railroads for which the DOT exercises administrative control of plan preparation and contract supervision.
- (d) DOT frequently administers transportation projects for counties, municipalities, and other local government units as part of its statutory responsibilities. These projects are covered by this agreement. It is DOT's responsibility to communicate environmental commitments for these projects to the local government units.
- (e) DOT may hire consultants for project planning, design, and construction management. These consultants act as agents for DOT, but the ultimate responsibility for interaction with DNR on these projects rests with DOT.
  - (f) Projects planned and designed by DOT or consultants under a three party contract, but constructed by a county or other governmental unit, are covered by this agreement. DNR's initial contact shall be with the municipality's project manager, who acts as an agent for DOT, but the

ultimate responsibility for interaction with DNR on these projects rests with DOT.

- (g) DNR and DOT may review certain utility projects under the liaison procedures set forth in this agreement. Only those areas and activities that are described in a DOT-issued permit are directed and supervised by DOT. For any utility work that is not authorized by a DOT-issued permit, a utility company must contact DNR for the necessary permits and approvals. Utility projects shall be handled in one of the following three manners:
1. Utility projects that DOT determines are directly related to, and that will be completed in conjunction with or in advance of, a transportation project directed and supervised by DOT shall be reviewed by DOT and DNR using the liaison procedures set forth in this agreement.
  2. When utility projects require a DOT permit, but are not directly related to a transportation project directed and supervised by DOT, DOT shall determine whether or not the project is reviewed under the liaison procedures set forth in this agreement. DOT may direct a utility to the DNR to obtain DNR permits and approvals.
  3. Utility companies whose projects do not require a permit issued by DOT and are not directly related to a DOT directed and supervised transportation project must contact DNR to obtain the necessary permits and approvals.
- (h) Both agencies encourage efforts to resolve interagency conflicts before the formal conflict resolution process begins, or to prevent such conflicts from occurring in the first place. If a conflict cannot be resolved by field-level agency personnel, either agency may initiate the conflict resolution process described in section 2.4. It is the expressed intent of both agencies that every reasonable effort be made to resolve any conflict within 8 weeks (56 calendar days) after the date either agency determines that the conflict exists. Steps in the conflict resolution process may be consolidated or eliminated on a case-by case basis by agreement of both agencies.

Pursuant to s. 30.12(4)(c), Wis. Stats., contractor actions that both agencies agree are substantially inconsistent with the environmental commitments established for the project through interagency coordination, are considered beyond the scope of this agreement. In such cases, the exemptions under s. 30.12(4)(a), Wis. Stats., do not apply, and appropriate permits, approvals or enforcement actions may be required. See also section 2.5 below for agreement elements relative to handling construction events that cause or threaten to cause harm to the environment.

## **2.2 Project planning and preliminary design**

- (a) The primary points of contact between the agencies at the project planning and preliminary design phase of a project are the DNR's Regional DOT Liaison and the DOT District Environmental Coordinator. Generally the project planning and preliminary design phase begins with the NEPA process and ends with the Design Study Report.
- (b) DOT shall provide DNR with copies of notices of intention to make changes in the State Trunk Highway, airport, rail and harbor systems, notices of hearings scheduled for proposed changes, copies of annual proposed improvement programs for all modes, if available, and copies of Federal and State Environmental Impact Statements. DOT shall provide DNR with other notices and documentation upon request.
- (c) DOT shall inform DNR of the proposed new construction by providing copies of pertinent inter-departmental memoranda and preliminary plans indicating location and nature of work at the Concept Definition Report phase, immediately following authorization to incur engineering expenditures, to ensure that DNR has this data at the earliest possible date.
- (d) DNR and DOT (led by the DNR's Regional DOT Liaison and the DOT District Environmental Coordinator) shall meet at least semi-annually (spring and fall) to evaluate work scheduling needs for transportation projects in each District's 6-year program. At the meeting, DOT shall prioritize projects for DNR review, and a DNR review timetable shall be developed with target end-dates for completion of DNR reviews. The priority list shall include those projects managed by both the DOT and its consultants. DNR and DOT shall evaluate and update the project prioritization and review timetables at each semi-annual meeting.
- (e) DNR shall review proposed transportation facility improvements and make the recommendations necessary to comply with applicable environmental and regulatory requirements. DNR, in making its review and recommendations, shall recognize that it is the policy of the state to provide a safe and economic transportation system that minimizes negative environmental impacts and reflects the total public interest.

- (f) DOT shall consider DNR recommendations incident to the location, design, construction and maintenance of facilities. If DOT determines that it is not practicable to comply with the DNR recommendations, appropriate department staffs shall meet and resolve any differences. In such considerations, both departments shall keep in mind the total needs of the public as well as the specific needs that each agency is mandated to administer.
- (g) DOT shall not advance to the construction phase until DNR provides final concurrence with the project. DNR shall provide concurrence in accordance with schedules discussed at the semi-annual meeting described in subsection (d) above. Any project that proceeds to construction before final concurrence is not accomplished in accordance with this agreement and the exemption under s. 30.12 (4) (a), Wis. Stats., does not apply.

If either the DNR's Regional DOT Liaison or the DOT District Environmental Coordinator determines there is a conflict that cannot be resolved within a reasonable time after the conflict is first identified, the DNR's Regional DOT Liaison and the DOT District Environmental Coordinator shall work through their respective supervisors to jointly prepare a written summary of the issue and remaining points of conflict and to identify which agency desires to initiate the conflict resolution process. The summary shall be hand delivered to the respective DNR Regional and DOT District Directors. The conflict resolution process, which includes Step 1 in section 2.4 below, between the DNR Region and the DOT District shall be completed within 21 days from the time a decision is made to initiate the conflict resolution process.

### **2.3 Project final design and construction**

- (a) The primary points of contact at the final design through completion of construction phase of a project shall be the DNR's Regional DOT Liaison and the DOT District Environmental Coordinator. The Final Design through Construction Phase begins with the completed Design Study Report and ends with DOT acceptance of the construction project.
- (b) DOT shall monitor the activities of the contractor to assure that the environmental commitments and regulatory requirements for the project are being met.
- (c) To ensure that environmental regulations are complied with in all applicable areas, such as stream crossings, endangered species, and wetland encroachments, commitments made in the planning and design phase shall be included in the construction contract language. Construction contract language may include critical dates of operation as well as methods of operation. DOT shall review and approve the contractors initial and subsequent work schedules and Erosion Control Implementation Plan to ensure that they reflect these commitments. Evidence of approval shall be kept in the DOT engineer's field office or other appropriate DOT office with a copy sent to the appropriate DNR regional office. DNR shall consider action taken by a contractor as an action taken by DOT, if the contractor's action is consistent with the approved initial and subsequent work schedules and Erosion Control Implementation Plan.
- (d) Consistent with concepts and procedures outlined above and with TRANS 401, Wis. Adm. Code, it is the intent of each agency to cooperate to the fullest to minimize or eliminate construction site erosion from construction projects administered by DOT. Both agencies shall implement the policy and procedures outlined in the erosion control attachments to this agreement.
- (e) If conflict occurs between the DNR's Regional DOT Liaison and the DOT District Environmental Coordinator, these people must work through their respective supervisors to prepare a written summary of the issue and remaining points of conflict, which will be hand delivered to their respective Regional and District Directors to start a formal conflict resolution process, as outlined in section 2.4.

### **2.4 Conflict resolution process for planning through construction**

- (a) The formal conflict resolution process consists of the following steps:
  1. The DNR Regional Director and the DOT District Director will meet in a timely manner and make every reasonable effort to resolve the conflict. If they are unable to reach agreement, they will jointly prepare a written description of the issue and the remaining points of conflict, which will be hand delivered or faxed to the appropriate Division Administrator(s) in their respective agencies. Step 1 and the associated efforts of region and district staff, as described in sections 2.2 and 2.3, shall be completed within a total of 21 calendar days.
  2. The Division Administrators, and no more than two additional representatives from each agency, will meet in a timely manner and make every reasonable effort to resolve the conflict. If the Administrators are unable to reach agreement within 14 calendar days, they will each notify their respective Secretary in writing.

3. The Secretaries will meet to resolve the conflict and may appoint, at any time, a mutually acceptable mediator to assist in resolving the conflict. If the Secretaries decide to use a mediator, the mediator will have no authority to impose a settlement on either agency. The cost, if any, of a mediator will be borne by the agency initiating the conflict resolution process. This step, whether a mediator is involved or not, is expected to be completed within 21 calendar days, unless extended by mutual agreement of the Secretaries. The Secretaries will either agree on a specific solution to the conflict or will agree that the issues will be resolved through alternative means (or processes).

## **2.5 Construction events that cause or threaten to cause environmental harm**

- (a) During construction, urgent situations may arise that require coordination different from that in section 2.3. Events covered by this section include those situations causing or threatening to cause environmental harm that originate from a transportation facility construction site or are caused by the construction of a transportation facility. Environmental harm is likely to occur or worsen and a delay in the construction schedule may occur, unless immediate preventative or corrective action is taken.
- (b) Each of these situations shall be evaluated for: the extent of, or potential for, adverse impacts to public health or the environment; the significance of the natural resource in question; the extent to which the contractor complied with project plans and the directives of the DOT Project Engineer; and the steps taken by the contractor to prevent or minimize environmental harm. A key concern is the level of effort of the contractor to carry out what was called for in the contract, schedule of operation, or Erosion Control Implementation Plan, to address problems as they arise, and to implement remedies or corrective actions.
- (c) DNR and DOT agree to pursue the processes prescribed in this section to resolve any disagreement on a timeline commensurate with the severity and urgency of the situation.
- (d) The process for addressing construction events that cause or threaten to cause environmental harm includes:
  1. When one agency becomes aware of a problem, DNR and DOT shall, in a timely manner, jointly investigate and determine the severity of the problem and whether coordination shall proceed under this section or under section 2.3. If one agency cannot respond in a timely manner, the other agency may initiate action to evaluate the situation and pursue measures to prevent or minimize environmental harm.
  2. The DNR Regional DOT Liaison shall act as the DNR lead in coordinating with DOT staff and in assessing the extent of, or potential for, adverse impacts to public health or the environment and the significance of the natural resource in question.
  3. DNR and DOT shall assess the extent to which the contractor complied with project plans, and the steps taken to prevent or minimize environmental damage. Specific to erosion control issues, DNR and DOT shall consider the following factors when developing remedies:
    - a. Whether the contractor implemented erosion control best management practices (BMPs) that were required by the erosion control implementation plan (ECIP), and were emphasized during pre-construction meeting or during site inspections conducted by DNR or DOT.
    - b. Whether the contractor placed erosion control BMPs according to the ECIP.
    - c. Whether the contractor failed to maintain the BMPs adequately to prevent sedimentation.
    - d. Whether a storm event larger than the design storm, or other unforeseen conditions, occurred allowing sedimentation to enter a waterway and cause damage, despite properly installed and maintained erosion control BMPs.
  4. The DNR Regional DOT Liaison and the DOT District Environmental Coordinator shall consider all legal and contractual remedies as they attempt to agree on an appropriate remedy that prescribes the methods and time schedules to be used to correct any alleged noncompliance and to prevent, minimize or mitigate the environmental harm. If the DNR Regional DOT Liaison and the DOT District Environmental Coordinator fail to reach a remedy agreement, they shall jointly submit a summary of the issues agreed to and any issues in dispute to the DNR Regional Director and the DOT District Director for resolution. DNR may not take enforcement action regarding any activity covered by this agreement, except as provided in subsections (d)5. and (d)6.

5. If the remedy agreement reached under subsection (d)4. includes taking enforcement action, the DNR Regional DOT Liaison and the DOT District Environmental Coordinator shall jointly make that recommendation to the DNR Regional Director and the DOT District Director. Pursuant to s. 15.02 (4), Wis. Stats., the Secretary of DNR and the Secretary of DOT expressly delegate to the DNR Regional Director and to the DOT District Director, respectively, the authority to proceed with taking an enforcement action as provided in this section. If the DNR Regional Director and the DOT District Director concur in taking enforcement action, DNR may proceed with taking enforcement action. If the DNR Regional Director and the DOT District Director fail to reach a remedy agreement, they shall jointly submit a summary of the issues agreed to and any issues in dispute to the Secretary of DNR and the Secretary of DOT for resolution.
  6. If the Secretaries are unable to agree on an appropriate remedy that prescribes the methods and time schedules to be used to correct any alleged noncompliance and to prevent, minimize or mitigate the environmental harm, the Secretary of DNR may proceed with taking enforcement action that the Secretary of DNR considers appropriate.
  7. In this section, “taking an enforcement action” includes initiating a civil or criminal action, issuing a citation, referring a matter to the department of justice, and referring a matter to a district attorney.
- (e) DNR and DOT shall follow the process prescribed in this section if either agency believes that the other is not fulfilling its obligations under any remedy agreement reached under this section.
- (f) On an annual basis, the DNR Regional DOT Liaison and the DOT District Environmental Coordinator shall prepare a report documenting events that required coordination under this section of the agreement during the previous calendar year, including examples of exemplary efforts and cooperation by contractors involved in problem events. The report shall reflect the situation and the names of contractors and key personnel involved. The report shall be provided to the agency Secretaries and appropriate constituent groups, including the Wisconsin County Highway Association and the Wisconsin Transportation Builders Association, on an annual basis.

## **2.6 Transportation facility maintenance**

- (a) DOT has the authority and responsibility to preserve the integrity of public-funded transportation facilities by means of a sound maintenance program. On planned transportation facility maintenance and structure removal, the DOT District shall maintain liaison with the DNR Regional office in the manner set forth in this agreement for construction projects.
- (b) Management of storm water discharges and other storm water facilities shall follow the agreement found in pertinent attachments as listed in section 4.1.
- (c) Emergency maintenance activities necessitate expedited liaison procedures. Contemporaneous with emergency maintenance situations, or as soon thereafter as practicable, DOT shall contact the appropriate DNR regional office and furnish details on the emergency maintenance activity. However, the degree of notice furnished to DNR in emergency situations shall be in direct correlation to the severity of the emergency. DOT will make all efforts to give as much advance notice as possible. In emergency maintenance situations DNR shall submit its recommendations concerning the project to DOT on an expedited basis.

## **PART THREE: Statewide Policy and Planning**

### **3.1 Development of statewide policy related to transportation projects and activities**

- (a) The central office of each agency is responsible for the development and distribution of statewide policy relative to interpretation of this agreement, s. 30.12(4) Wis. Stats., and administrative codes or guidance of either agency. The intent of this section is to cooperatively involve both agencies in the development of policy that affects the planning, development, construction, maintenance and operation of transportation facilities. However, funding and programming decisions are under the sole purview of the individual agency and are not subject to this agreement.
- (b) While staff in several areas of each department may be involved in any given issue, each agency shall assign one staff person to be that agency’s primary point of contact. The DOT point of contact is the Bureau of Environment’s Environmental Process Specialist and the DNR point of contact is the Bureau of Integrated Science Services DOT Liaison.
- (c) The central office liaisons of DNR and DOT shall coordinate efforts to address policy issues raised by

staff in either agency.

### **3.2 DOT Planning**

- (a) The DOT Central Office Division of Transportation Investment Management develops and coordinates statewide transportation plans such as the State Highway Plan, State Bike Plan, and State Pedestrian Plan. The Division shall provide a schedule of anticipated statewide plan development to the DNR. DNR shall promptly reply if DNR wishes to participate in any plan development process and shall arrange for the appropriate staff commitments.
- (b) While staff in several areas of each department may be involved in any given issue, each agency shall assign one staff person to be that agency's primary point of contact for planning issues. For DOT, the contact is the Chief of the Strategic Issues Section. For DNR, the contact is the Chief of the Environmental Analysis and Liaison Section. Either agency will notify the other in writing if the primary point of contact person changes.
- (c) For those plans involving active DNR participation, DNR and DOT shall meet at the beginning of the plan development process to discuss the anticipated scope and schedule. Both agencies will strive to establish mutual expectations regarding communications and working relationships throughout the process. The agencies shall identify opportunities for data sharing and other forms of cooperation.
- (d) DOT shall provide preliminary drafts of the plans developed with DNR involvement to DNR for review and comment before releasing the plan for public review. DNR shall provide timely written comments reflecting its statutory responsibilities for natural resource protection and enhancement.

### **3.3 DNR Policies, Plans and Projects**

- (a) DNR shall notify DOT before taking any action that may impact transportation planning or a transportation facility. For most actions, the DNR's Regional DOT Liaison shall act as the main point of contact for other DNR staff and for DOT staff.
- (b) Examples of DNR actions that should involve notice to DOT include:
  - 1. Development of new or revised administrative rules.
  - 2. Contemplated projects that will result in special land-use restrictions such as those subject to the Federal Land and Water Conservation Act (LAWCON), the 1966 Federal DOT Act (Section 4(f)), 50 CFR 80.5 (Dingell-Johnson and Pittman-Robertson funded), or other programs. DNR shall inform DOT of such restrictions, if known, prior to committing action so that measures to provide for needed transportation corridors can be taken as much as is practical.
  - 3. Any potential property acquisition or property development that may result in construction near a transportation facility or that could have environmental features that could cause DNR opposition to a future modification of a transportation facility.
  - 4. DNR-sponsored actions, such as major contaminated materials clean-up projects or major habitat restoration projects that may affect transportation facilities or conflict with proposed transportation improvement projects.
  - 5. DNR review of indirect source air permits where a DNR decision may affect future transportation facilities or planning.
  - 6. Major policies that affect transportation such as air quality implementation plans.
  - 7. Changes to rules or policies that could impact the availability or cost of materials or services used on transportation projects.
- (c) For DNR Region and DOT District issues, DOT District Environmental Coordinators should provide any comments or concerns on proposed DNR actions to the DNR's Regional DOT Liaison who shall coordinate with appropriate DNR regional or central office staff. For statewide issues, the DOT central office liaison is the Environmental Process Specialist in the Bureau of Environment, who shall coordinate with the DNR central office DOT Liaison in the Bureau of Integrated Science Services. It is expected that the liaisons shall make initial contact and then rely on specialists in both agencies to discuss and resolve issues.

**PART FOUR: Amendments and Signatures**

**4.1 Amendments to this agreement**

- (a) This agreement may be amended by any document that expressly states that it amends this agreement and that is executed by the secretaries of DNR and DOT. DOT shall publish all amendments to this agreement in the Facilities Development Manual. The DNR Bureau of Science Services shall also maintain file copies of all amendments.
- (b) There are several attachments to this agreement that prescribe special procedures for addressing certain aspects of interdepartmental coordination. The following attachments are incorporated herein by reference, as if set forth in full:
- Compensatory Mitigation for Unavoidable Wetland Losses Resulting From State Transportation Activities - 9/11/01
  - Endangered and Threatened Species Consultation - 11/4/98
  - Erosion Control and Storm Water Management: A1 – 10/14/94
  - Erosion Control and Storm Water Management: WPDES Agreement for DOT Construction Activities: A2 - 10/14/94
  - Authorization of Storm Water Discharges to Waters of the State – 1/16/99
  - Visual Impact on Lower Wisconsin State Riverway – 3/5/90

**4.2 Signatures**

This agreement supersedes the November 1998 Cooperative Agreement and shall remain in effect until amended or rescinded by the mutual concurrence of the secretaries of DNR and DOT.

*//original signed 11/26/2002 //*

Darrell Bazzell, Secretary

Date

Wisconsin Department of Natural Resources

*//original signed 11/26/2002 //*

Thomas E. Carlsen, Secretary

Date

Wisconsin Department of Transportation

**Attachment to the DOT/DNR Cooperative Agreement**

**Memorandum of Understanding  
by and between the  
WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
and the  
WISCONSIN DEPARTMENT OF TRANSPORTATION  
on  
COMPENSATORY MITIGATION FOR UNAVOIDABLE WETLAND  
LOSSES RESULTING FROM STATE TRANSPORTATION ACTIVITIES**

**A. Purpose**

The purpose of this document is to provide mutual departmental procedures for compensatory mitigation for unavoidable wetland losses resulting from State transportation activities.

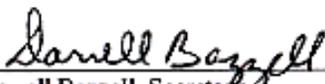
**B. Applicability**

This memorandum of understanding applies to any transportation activity subject to the DOT/DNR Cooperative Agreement (COA) which establishes interagency liaison procedures in accordance with Chapter 30.12(4), Wis. Stats.

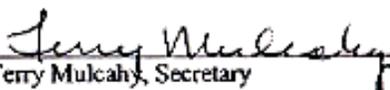
**C. Liaison Procedures for Wetland Compensatory Mitigation**

1. After wetland impacts related to the proposed transportation project have been avoided and minimized to the maximum extent practicable, compensation for all unavoidable wetland losses shall occur.
2. Compensation for wetland acres lost shall be based on an evaluation of primary (or direct) impacts, but may also include secondary (or indirect) impacts. Secondary impacts are those effects which are caused by the project, but occur later in time and are reasonably foreseeable (for example, drainage changes resulting from the project). Adjacent private land use developments are not secondary impacts under this policy.
3. Compensatory mitigation should be accomplished in concert with, or prior to, the construction of the transportation project.
4. First consideration will be given to on-site compensatory mitigation opportunities, generally within the highway right-of-way or near the location of wetland loss.
5. Second consideration will be given to near-site opportunities for wetland compensation, generally those within 2.5 miles of either side of the alignment
6. For localized wetland loss, generally involving smaller projects where the wetland loss is one acre or less, a near-site search under #5 above for compensation may not be necessary (see Appendix E of the *Wetland Mitigation Banking Technical Guideline*).
7. If on-site or near-site compensation is not feasible or practical, compensation shall occur off-site or at a mitigation bank site. The process and requirements for banking shall follow the *Wetland Mitigation Banking Technical Guideline* (as amended).
8. Certain wetland types, such as aquatic bed, deep marsh, shallow marsh and mudflats, are considered hazardous wildlife attractants when positioned near airports. Consideration should be given to the vicinity of airports when wetland compensation sites are being selected within 5,000 feet of an airport serving piston-powered aircraft or 10,000 feet of an airport serving turbine-powered aircraft. According to guidance from the Federal Aviation Administration (FAA), these distances are measured from aircraft movement areas which include all runways and taxiways. Coordination on such potential sites will be initiated by the DOT Bureaus of Environment and Aeronautics. Further coordination with wildlife damage management biologists (U.S. Department of Agriculture/ Wildlife Services) may be necessary. Palustrine wetland types with no open water, such as wet meadow and shrub swamp may be acceptable within the siting criteria recommended by FAA.

9. As a general rule, compensatory mitigation should be planned based on replacement of the acreage of the impacted wetlands at the following ratios (replacement acreage: acreage lost):
  - **1.0 : 1.0** where wetland acreage losses are applied to an existing mitigation bank site for which DNR and DOT agree that credits are available at the time of wetland loss. This ratio may be increased based on factors considered using Appendix C of the *Wetland Mitigation Banking Technical Guideline*.
  - **1.5 : 1.0** where wetland acreage losses are compensated as part of a concurrent transportation project design. This ratio applies to project specific compensation located either on-site, near-site or off-site.
10. Preference shall be given to compensatory mitigation that restores former or degraded wetlands.
11. DOT will develop a mitigation plan for each planned wetland compensatory mitigation site. The mitigation plan should be developed in accordance with the outline in Appendix B Section 2 of the *Wetland Mitigation Banking Technical Guideline*. DOT and DNR will work together to come to mutual agreement on a mitigation plan. At a minimum, the agencies should agree to a preliminary mitigation plan prior to DNR final concurrence on the transportation project.
12. In formulating a mitigation plan, preference should be given for techniques that result in low operation and maintenance costs.
13. Provisions for long-term protection must be made for all compensation sites, including who will own the mitigation site, and who will be responsible for long-term management.
14. The mitigation plan shall include a monitoring plan that will allow an evaluation of the mitigation effort. The extent of monitoring necessary should be based on the criteria set forth in Appendix B Section 4 of the *Wetland Mitigation Banking Technical Guideline*.
15. Any compensatory mitigation proposal shall include coordination with US Fish and Wildlife Service, US Environmental Protection Agency, US Army Corps of Engineers, and Federal Highway Administration to facilitate interagency coordination and participation (refer to the *Wetland Mitigation Banking Technical Guideline*).
16. This memorandum of understanding shall supersede the 1990 version entitled: "Compensatory Mitigation Policy for Unavoidable Wetland **Error! Bookmark not defined.** Losses Resulting from State Transportation Activities: an amendment to the Interagency Cooperative Agreement."

  
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Darrell Bazzell, Secretary  
Wisconsin Department of Natural Resources

9/11/01  
Date

  
\_\_\_\_\_  
Terry Mulcahy, Secretary  
Wisconsin Department of Transportation

9/27/01  
Date

**Attachment A1**  
**to the DOT/DNR Cooperative Agreement**  
**Memorandum of Understanding**  
**On Erosion Control and Storm Water Management**

**I. General**

DOT and DNR Administrations strongly endorse the following erosion control and storm water management practices and direct that they be included in design plans and carried out through field compliance. This Memorandum of Understanding (MOU) details the erosion control and storm water management practices approved by DOT and DNR.

**II. Procedures**

ESTABLISH AND IMPLEMENT A CLEAR POLICY ON GOOD EROSION CONTROL AND STORM WATER MANAGEMENT PRACTICES:

1. DOT erosion control and storm water management policy and directives shall (1) stress the importance of and provide for effective and timely erosion control practices, and (2) inform staff of their responsibility for proper implementation and enforcement of erosion control policy and practices. Erosion control requirements and practices will be given added emphasis and enforcement during the construction season. The importance of erosion control and storm water management will be explained at appropriate meetings and conferences, including those with contractors. DOT will provide a presentation of updated erosion control and storm water management policies and practices as an item of discussion at appropriate annual district conferences. DOT will also include erosion control and storm water management on the agenda for the annual Contractor/Engineers Conference and for similar conferences with consultants and county highway managers.
2. DESIGNATE DISTRICT EROSION CONTROL SPECIALIST(S):  
Assign the additional duties of advising and training other district staff about erosion control and storm water management matters to the district staff person(s) designated by the DOT District Director.
3. PROVIDE TRAINING FOR DOT STAFF TO INCREASE A WARENESS AND KNOWLEDGE OF EROSION CONTROL AND STORM WATER MANAGEMENT MEASURES:  
Training will continue to be provided to DOT staff to increase staff awareness and knowledge of erosion control and storm water management applications and environmental concerns. DOT will consult with DNR when developing erosion control and storm water management training. DNR will assist DOT staff in the development, preparation and presentation of this training upon request.

Periodic updating and sharing of technical information on erosion control and storm water management practices by the DOT District Erosion Control Specialists and DNR Specialists is encouraged.

4. PROVIDE EROSION CONTROL AND STORM WATER MANAGEMENT GUIDELINES IN DOT MANUALS:

DOT will continue to upgrade, monitor, and edit its manuals. Staff suggestions for modifications or new innovations in erosion control and storm water management techniques should be transmitted through the DNR/DOT liaisons (DNR Bureau of Environmental Analysis and Review (BEAR) and DOT Office of Environmental Analysis (OEA)).

5. DEVELOP DETAIL DRAWINGS FOR EROSION CONTROL AND STORM WATER MANAGEMENT APPLICATIONS:

Detail drawings that relate to erosion control and storm water management will be updated by DOT as information and new technology on improving erosion control and storm water management practices become known.

6. INCLUDE A BRIEF DISCUSSION OF EROSION CONTROL AND STORM WATER MANAGEMENT PROVISIONS IN EACH DESIGN STUDY REPORT (DSR):

Each Design Study Report shall include a written discussion of the locations of environmentally sensitive areas, and any unusual erosion control and storm water management measures. This information may be available from early coordination with appropriate DNR staff and environmental documentation.

7. INCLUDE EROSION CONTROL AND STORM WATER MANAGEMENT MEASURES ON PROJECT PLANS:

DOT will include erosion control and storm water management measures on the project plan. Complex erosion control and storm water management measures will be shown on a separate plan sheet.

In sensitive areas such as wetlands, streams, diversion channels, and channel changes, the design erosion control plan should provide the necessary protection from erosion in both the interim work stages and after final construction work activities.

The erosion control plan and/or special provisions shall identify erosion control and storm water management measures to be in place prior to, during and after construction. Refer to Attachment A2 for additional guidance on the contents of the erosion control plan and/or special provisions.

DOT guidelines on erosion control plans may be found in its Facilities Development Manual (FDM), Construction and Materials Manual, Maintenance Manual, and Standard Specifications.

**8. PROVIDE LIBERAL USE OF EROSION CONTROL MEASURES:**

The plan will provide for liberal quantities of erosion control items, including undistributed quantities, for use of the project site.

**9. PROVIDE FOR EMERGENCY EROSION CONTROL SITUATIONS:**

DOT will provide for expedient mobilization of the project site when emergency situations develop.

**10. DEVELOP CONTRACT PROVISIONS FOR EROSION CONTROL AND STORM WATER MANAGEMENT:**

Contract provisions, including specifications, will be developed by DOT as new erosion control and storm water management technologies and practices evolve.

**11. ENSURE COMPLIANCE WITH THE REQUIREMENTS FOR THE CONTRACTOR'S EROSION CONTROL IMPLEMENTATION PLAN (ECIP)**

The contractor's Erosion control implementation plan (ECIP) will be sent, by the contractor, to the DNR district liaison at least 14 days prior to the pre-construction conference. The DNR district liaison will send comments on the ECIP prior to the pre-construction conference and/or make every reasonable effort to attend the pre-construction conference. Comments should be sent to the District DOT Construction Office.

DOT will ensure that the ECIP for the project site and for borrow and waste sites, if any, will be developed and implemented in accordance with the requirements of ch. Trans. 401, Wis. Adm. Code.

DOT requirements for reclamation for borrow pits and waste areas are found in its Standard Specifications for Road and Bridge Construction.

**12. DISCUSSION OF EROSION CONTROL PLAN AND ECIP AT PRE-CONSTRUCTION CONFERENCE**

The DNR district liaison will be invited to all preconstruction conferences. The final construction plan and contract proposal, as let, shall be sent to the DNR district liaison at least 14 days prior to the conference. The DNR district liaison will send comments on the plan for all projects prior to the pre-construction conference and/or make every reasonable effort to attend the pre-construction conference. Comments should be sent to the District DOT Construction Office.

Discussion of erosion control and storm water management at preconstruction conferences will include grading, bridge construction, stream crossings, channel changes, equipment crossings and other activities likely to result in sediment reaching the waters of the state.

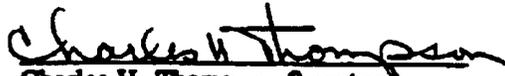
The project engineer will provide the DNR district liaison with the field office's number as soon as it is available and inform DNR of any work or schedule changes that could affect environmentally sensitive areas. The minutes of all DOT preconstruction conferences for a project will be sent to the DNR district liaison for the project, unless DOT/DNR district liaisons agree otherwise.

**13. EXPAND THE GRADING PORTION OF THE CONSTRUCTION INSPECTOR'S GUIDE TO INCLUDE EXPANDED COVERAGE OF EROSION CONTROL AND RELATED DEVICES:**

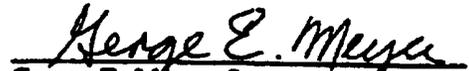
DOT will periodically update the inspector's guide to include new erosion control and storm water management policies and practices.

**III. Conflict Resolution.**

The conflict resolution process, as identified in the main agreement, will be used whenever there are problems. This process exists to ensure timely and effective communication between DNR and DOT on erosion control and storm water management and to encourage resolution of any conflicts at the lowest appropriate level.

  
Charles H. Thompson, Secretary  
Wisconsin Department of Transportation

Date: 10-5-94

  
George E. Meyer, Secretary  
Wisconsin Department of Natural Resources

Date: 10/14/94

**ATTACHMENT A2**  
**to the DOT/DNR Cooperative Agreement**  
**Memorandum of Understanding**  
**on Erosion Control and Storm Water Management**

**WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM (WPDES)**  
**AGREEMENT FOR DOT CONSTRUCTION ACTIVITIES**

Any Department of Transportation (DOT) operation engaged in construction activities, including clearing, grading, grubbing and excavating activities which will result in the disturbance of land, meeting the applicability criteria of this Agreement, will be in compliance with ch. 147, Wis. Stats., and the provisions of NR 216 and is permitted to discharge storm water directly to waters of the state, including surface waters, groundwater and wetlands:

1. The WPDES Notice of Intent (NOI) requirements will be met by DOT following the DNR/DOT liaison process and the procedures in Section IIA of the DNR/DOT Cooperative Agreement and in Attachment A1.
2. Authorization to discharge shall extend until land disturbing activities on a site are completed and the site has undergone final stabilization. DOT will send a project Completion Certificate to the DNR district liaison for notification purposes.
3.
  - A. All discharges authorized by this Agreement shall be composed entirely of storm water, or storm water and/or groundwater from DOT transportation development projects.
  - B. The following storm water discharges are prohibited:
    - (1) Discharges associated with industrial activity that would cause and exceedance of standards established for waters of the state, including: groundwater standards under NR 140, Wis. Adm. Code; surface water quality standards under NR 102, 104, and 105, Wis. Adm. Code; and wetland water quality standards under NR 103, Wis. Adm. Code.
    - (2) The discharge of any substance into a well or drill hole.
4. DOT shall develop an erosion control plan for each site covered by this Agreement and shall ensure performance of all activities required by the plan. The erosion control plan shall address erosion control and storm water management in accordance with good engineering practices and the design criteria, standards and specifications outlined in the DOT manuals referenced in Attachment A1.
  - A. The erosion control plan shall address (1) pollution caused by soil erosion and sedimentation during construction and through final stabilization of the site, and (2) pollution caused by storm water discharges from the site after construction is completed, including, but not limited to, rooftops, parking lots, roadways, and the maintenance of grassed areas.

For purposes of this document:

“Pollution” as defined in Chapter 147, Wis. Stats., means human-made or human- induced alteration of the chemical, physical, biological or radiological integrity of water.

“Pollutant” as defined in Chapter 147, Wis. Stats., means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.
  - B. The erosion control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent or reduce pollutants caused by storm water discharges from the site from reaching waters of the state. The plan shall clearly describe the appropriate control measures for each major activity identified and the timing during the construction process that the measures will be implemented.

- C. The erosion control plan shall include a description of the management practices that will be installed during the construction process to control peak flow, pollutants and runoff volume that will occur after construction operations have been completed. Storm water management practices shall be in accordance with ch. Trans 401, Wis. Adm. Code. To the extent feasible, the plan shall consider efforts to increase on-site infiltration through conveyance, depression storage and reduction of impervious area, consistent with ch. Trans 401, Wis. Adm. Code.
- D. When permanent infiltration systems, as defined in s. Trans 401.04(14), Wis. Adm. Code, are used, appropriate on-site testing shall be conducted to determine if seasonal high ground water is within 5 feet of the bottom of the proposed practice. If permanent infiltration structures are to be used and there is a municipal well within 400 feet or a non-public well within 100 feet, the groundwater flow must be identified in accordance with the provisions specified in either NR 110 or 214, Wis. Adm. Code.
- E. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- F. The DNR through the DNR/DOT liaison process may notify the DOT at any time that the erosion control plan does not meet one or more of the minimum requirements of this Agreement for reducing erosion to protect waters of the state. Such notification shall identify those provisions of the Agreement which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this Agreement. Within the time frame agreed to by DNR and DOT, the DOT shall make the required changes to the plan and implement all actions required by such revised plan.
- G. Upon failure or impairment of best management practices identified in the erosion control plan, the DOT shall, to the extent deemed necessary by the DNR to maintain compliance with this Agreement, modify or curtail operations until the best management practices are restored or an alternative method of erosion and storm water control is provided.

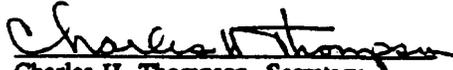
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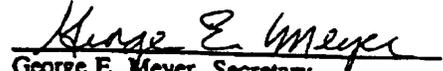
- A. The DOT shall retain records of all monitoring information, copies of all reports and construction site erosion control plans required by the Cooperative Agreement, and records of all data used to obtain coverage under this Agreement.
- B. Minimum periods of retention are as follows:
  - (1) The erosion control plan, erosion control implementation plan (ECIP) and any amendments to the erosion control plan, shall be retained at the site until construction is completed, the site has undergone final stabilization and the coverage under this Agreement is terminated.
  - (2) In addition to the erosion control plan and ECIP, all other reports required by this Agreement or information submitted to obtain coverage under this Agreement, including background information used in plan preparation, shall be kept for a period of at least 3 years from the date of site stabilization at the DOT district headquarters nearest to the project.

6. The DOT shall take all reasonable steps to minimize or prevent any adverse impacts on the waters of the state resulting from non-compliance with the Agreement.

7. The DOT shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed and used by the DOT to achieve compliance with this Agreement and the erosion control plan. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training and adequate laboratory and process controls, including appropriate quality assurance procedures.

8. The DOT and the DNR shall exchange information and cooperate in the planning and carrying out of such activities in order to alleviate, to the extent practical under the circumstances, any potential detrimental encroachment on the waters of the state.
9. Nothing in this Agreement shall be construed as obligating the DOT to the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.

  
Charles H. Thompson, Secretary  
Wisconsin Department of Transportation

  
George E. Meyer, Secretary  
Wisconsin Department of Natural Resources

Date: 10-5-94

Date: 10/14/94

## Wisconsin Department of Transportation

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February 11, 1988

**TO:** Department of Transportation Division Administrators  
Department of Natural Resources District Directors

**FROM:**  Ronald R. Fiedler, P. E.  
Secretary  
Department of Transportation

 Carroll D. Besaony  
Secretary  
Department of Natural Resources

**SUBJECT:** Implementation of DOT/DNR Cooperative Agreement, Section VII  
Waterway Crossings and Other Floodplain Encroachments

In 1983, DOT and DNR Secretaries signed a revision to the DOT/DNR Cooperative Agreement covering DOT projects that involve waterway crossings and other floodplain encroachments. The agreement was never fully implemented because the procedures for landowner notification were not spelled out in the agreement. The purpose of this memo is to specify the procedures agreed to implement all elements of the agreement relating to waterway crossings and other kinds of floodplain encroachments.

Effective immediately, the provisions of the Cooperative Agreement relating to waterway crossings and other floodplains encroachments will be implemented by both agencies with the following clarification:

1. The agreement applies to ALL DOT development projects which cause an encroachment into mapped flood hazard areas. Included are ALL culverts, bridges, and fills within any area mapped as floodplain.
2. If the staff of either agency believes a DOT project within a mapped floodplain area, for reasons of size or significance, should not be reviewed under the agreement, OR if either agency believes a project in an unmapped area should be reviewed under the agreement, they should discuss their concern with the other agency. Upon agreement of both district or both agency liaisons, any DOT project can be excluded from, or included in the requirements of this agreement. All such agreements shall be documented at some point before completion of the liaison process.
3. In mapped areas, DOT will, unless agreed above, compute the 100-year regional flood discharge and elevation on all new or replacement waterway crossing structures and for all other floodplain encroachments, including culverts, in accordance with NR 116 and NR 320. DOT will provide the results of the computations to the identified DNR district liaison. In all cases (no flood level increase, reduced flood levels, or increased flood levels), DOT will ensure the appropriate zoning administrator is notified.

In unmapped areas, the results of any flow or backwater calculations that are computed by DOT for design or other purposes will be provided to the DNR District Environmental Impact Coordinator as a cooperative courtesy. Other than agreed upon under (2) above, the unmapped area projects will not be reviewed under this specific agreement.

February 11, 1988

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4. If an increase in backwater will result (mapped areas only or where otherwise agreed), the DOT district will notify ALL affected landowners upstream from the project by certified letter, return receipt requested. The notification will be made using one of the three attached form letters. Letter 1 will be sent to affected property owners where no floodplain ordinance is in effect. Letter 2 will be sent to affected property owners where a floodplain zoning ordinance is in effect. Letter 3 will be sent to affected property owners whose property DOT has determined will be diminished in value by the increased flood water elevation resulting from the DOT project.

The determination whether a floodplain zoning ordinance is in effect will be made by DNR early in the liaison process and will be transmitted to DOT following notification to DNR of the project. In most cases, the "Floodplain Management Community Status Report," issued twice annually by DNR will be used to make this determination.

DOT will send the DNR Environmental Impact Coordinator reviewing the project a copy of ALL landowner notification letters. Copies of the certified mail receipt and its return receipt should be retained with the district's project files. The form letters are not to be amended except to include appropriate identification information. A copy of Section 88.87, Wis. Stats. will also be sent to affected landowners as part of the notification. Any other information DOT may wish to convey to a landowner will be handled separately.

5. Where a floodplain ordinance is in effect, "appropriate legal arrangements" will be required. In addition to the notification letter, one of the following must be done prior to project construction to comply with this requirement:
  - a. Acquisition of property rights (fee title or easement), or provision of other compensation agreed to in writing by the property owner.
  - b. Initiation of condemnation proceedings as provided in Chapter 32, Wis. Stats.
  - c. Receipt of a document signed by the property owner (response sheet to Letter 2), or a certified letter return receipt, which verifies the property owner has received the applicable notification letter (Letter 2). To keep the DNR Environmental Impact Coordinator informed of comments received from these specific property owners, a copy of all completed or partially completed returned response sheets must be sent to the DNR coordinator.

It is agreed that DOT is the agency responsible for determining which of the requirements (a, b, or c) is appropriate for a project.

6. As indicated in Section VII of the DOT/DNR Cooperative Agreement:

DOT project development scheduling normally provides sufficient lead time for the zoning ordinance amendment process to be completed prior to construction.

Upon notifying DNR, the local unit of government, and the appropriate floodplain zoning authority of the predicted increase in the height of the regional flood, and making appropriate legal arrangements with affected property owners, and providing evidence of this to DNR, DOT or its authorized agent may proceed with project development.

DNR shall provide timely assistance to local units of government in the development, adoption, and administration of their official floodway lines, water surface profiles, floodplain zoning maps, and zoning ordinances consistent with their authority and responsibility under NR 116.

DNR shall notify DOT in a timely manner about any significant problems which might arise during the ordinance amendment process that might indicate reconsideration of the project development schedule. If such a situation arises, DOT and DNR shall resolve these jointly on an individual basis pursuant to the spirit and intent of this Agreement.

If a community fails to amend its ordinance in a timely manner (six months after the new regional flood elevation is made available to local officials and affected landowners) or denies the amendment, even though the new floodplain information has been provided and appropriate legal arrangements have been made with affected property owners, DOT may proceed with project construction after consultation with DNR.

February 11, 1988

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We have asked John Roslak and Stan Druckenmiller to review the procedures outlined above in about a year and recommend any changes that may be needed to make implementation more effective. Any comments, concerns, or problems you may have should be forwarded to them.

RRF: CDB: scs

Enclosure

cc: DOT and DNR Liaison Committee Members  
DNR District Environmental Impact Coordinators  
Mayer, FHWA  
DOT DHTS District Directors  
DOT DHTS Bureau Directors  
DIT DHTS State Engineers for Highways  
DOT State Real Estate Manager for Highways  
DOT Director or Bureau of Aeronautics

LETTER 1

LETTER FOR UNZONED FLOODPLAINS

*[Property Owner]*

*[Inside Address]*

*[Highway Project ID Information]*

The *(WisDOT or local government)* is planning a highway *(highway number, letter or other designation)* bridge *(if planned structure is not a bridge appropriately identify the structure)* over *(identify waterway)*. The new bridge *(or other planned structure)* may at some time increase the flood water elevation on your property.

Flood water elevations are estimated using the predicted 100-year flood elevation. The predicted 100-year flood elevation is the best estimate of the highest flood water elevation that will likely occur during a 100-year period; it is a flood elevation that has a 1 in 100 chance of being reached in any given year. The predicted 100-year flood elevation for your property following construction of the planned bridge (or other structure) will be (inches or feet) higher than the current predicted 100-year flood elevation for your property.

Our review shows that this increase in the predicted 100-year flood water elevation for your property does not diminish your property's value or usefulness and will not result in any damage to you for which the law entitles you to be paid. You are, however, advised of section 88.87 (1) and (2), Wisconsin Statutes, a copy of which is included for your information. In relevant part, that statute permits a property owner to file a claim for damage resulting from unreasonable or unnecessary water accumulation from highway construction that unreasonably impedes water flow. The damaged property owner must file a claim within 90 days after the alleged damage occurs.

Sincerely,

*(DOT or Authorized Agent Signature)*

Enclosure

cc: DNR District Office  
Local Government

LETTER 2

LETTER FOR ZONED FLOODPLAINS

*[Property Owner]*

*[Inside Address]*

*[Highway Project ID Information]*

The *(WisDOT or local government)* is planning a highway *(highway number, letter or other designation)* bridge *(if planned structure is not a bridge appropriately identify the structure)* over *(identify waterway)*. The new bridge *(or other planned structure)* may at some time increase the flood water elevation on your property.

Flood water elevations are estimated using the predicted 100-year flood elevation. The predicted 100-year flood elevation is the best estimate of the highest flood water elevation that will likely occur during a 100-year period; it is a flood elevation that has a 1 in 100 chance of being reached in any given year. The predicted 100-year flood elevation for your property following construction of the planned bridge *(or other structure)* will be *(inches or feet)* higher than the current predicted 100-year flood elevation for your property.

Our review shows that this increase in the predicted 100-year flood water elevation for your property does not diminish your property's value or usefulness and will not result in any damage to you for which the law entitles you to be paid.

A prepaid, self-addressed envelope is enclosed for your convenience should you choose to respond on the enclosed form concerning this matter. Any response should be made within 15 days from the date of this letter. Your failure to respond will indicate you have no comment but will not prevent you from pursuing any lawful claim you may have in the future.

You are advised of section 88.87(1) and (2), Wisconsin Statutes, a copy of which is included for your information. In relevant part, the statute permits a property owner to file a claim for damage resulting from unreasonable or unnecessary water accumulation from highway construction that unreasonably impedes water flow. The damaged property owner must file a claim within 90 days after the alleged damage occurs.

Wisconsin Administrative Code, Chapter NR 116, requires that any time an action occurs that causes an increase of more than one-hundredth of a foot in the 100-year flood elevation, a zoning change is required. This change is necessary to assure that local zoning administrators place on record the latest available information on the 100-year flood elevation. Appropriate action will soon be taken to record the new 100-year flood elevation for the floodplain in which your property is located.

Sincerely,

*(DOT or Authorized Agent Signature)*

Enclosure

cc: DNR District Office  
Local Government

FORM FOR ENCLOSURE WITH LETTER 2

Response

I wish the following additional information:

I have the following questions, comments, or concerns:

I have no further comments, questions, or concerns.

---

(Date)

---

(Signature)

NOTE: It is recognized that the property owner may or may not choose to sign.

LETTER 3  
DRAFT LETTER FOR  
CIRCUMSTANCES WHERE COMPENSATION IS REQUIRED

*[Property Owner]*

*[Inside Address]*

*[Highway Project ID Information]*

The *(WisDOT or local government)* is planning a highway *(highway number, letter or other designation)* bridge *(if planned structure is not a bridge appropriately identify the structure)* over *(identify waterway)*. The new bridge *(or other planned structure)* may at some time increase the flood water elevation on your property.

Flood water elevations are estimated using the predicted 100-year flood elevation. The predicted 100-year flood elevation is the best estimate of the highest flood water elevation that will likely occur during a 100-year period; it is a flood elevation that has a 1 in 100 chance of being reached in any given year. The predicted 100-year flood elevation for your property following construction of the planned bridge *(or other structure)* will be *(inches or feet)* higher than the current predicted 100-year flood elevation for your property.

Our review shows that this increase in the predicted 100-year flood water elevation for your property diminishes your property's value. The predicted increase in flood water elevation for your property will result in damage to your property when the bridge *(or other structure)* is constructed. You are, therefore, entitled to appropriate compensation. Hence, you have been or will be contacted about the property interest that should be acquired from you and about the compensation that should be paid to you as a consequence of the predicted 100-year flood water elevation increase for your property.

Finally, you are advised of section 88.87(1) and (2), Wisconsin Statutes, a copy of which is included for your information. In relevant part, the statute permits a property owner to file a claim for damage resulting from unreasonable or unnecessary water accumulation from highway construction that unreasonably impedes water flow if compensation for the damage has not already been paid. The damaged property owner must file a claim within 90 days after the alleged damage occurs.

Sincerely,

*(DOT or Authorized Agent Signature)*

Enclosure

cc: DNR District Office  
Local Government

**AGREEMENT BETWEEN  
WISCONSIN DEPARTMENT OF TRANSPORTATION  
AND  
WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
FOR  
VISUAL IMPACT ON LOWER WISCONSIN STATE RIVERWAY**

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Statement of Purpose

The purpose of this document is to set forth the terms of agreement between Department of Transportation (DOT) and Department of Natural Resources (DNR) to minimize the visual impact of the DOT activities within the Lower Wisconsin State Riverway pursuant Section 3053 (1g) of 1989 Wisconsin Act 31. The aesthetic value of the proposed scenic corridor is important to those using the river. The DOT and the DNR, however, also recognize the importance of providing periodic scenic views of the river for the traveling public as they drive along the river. Many of these traveling public are unable to actively participate in the activities along the river because of their age and/or physical condition but are still interested in enjoying the visual aesthetics of the river.

Section 30.455 (2) (b) of Wisconsin Act 31 provides that: "To the extent it is economically and technically feasible, the DOT shall minimize the visual impact of the activity and any resulting highway or structure." In the context set by this Act, "the activity" means "construction, reconstruction, design, maintenance, modification or repair activities, or mining or quarrying activities in the riverway, that are carried out under the direction and supervision of the DOT"; and, in addition exempts DOT from s.30.44 (which requires permits for construction, clearing, grading, and bridge repair in the riverway); and s.30.45 (which prohibits cutting vegetation, except that necessary for, among other things, maintenance of a right-of-way, or erection of signs, except those erected by the state or municipality in charge of a highway).

Basis of Agreement

Basis of agreement is the Departments' Cooperative Agreement as amended, dated March 1987.

Since the early 1970's, the DOT and DNR have operated under a cooperative agreement which provides for DOT coordination on transportation projects that could have potential impacts on the environment, and DNR coordination on natural resources issues that could have potential effects on transportation. Under the DOT/DNR Cooperative Agreement, the DOT and DNR agree to consult and cooperate with each other such that each can effectively and in a timely manner accomplish its assigned statutory responsibilities while assuring at the same time that adverse effects on Wisconsin's land, water, fish and wildlife resources are minimized to the fullest extent practicable under law, and that the DOT's charge to furnish the citizens of Wisconsin with an adequate, safe, and economical transportation system is accomplished.

Items of Agreement

1. Disturbance due to highway construction activity of natural areas visible from the Wisconsin River shall be restored in harmony with the natural surrounding area through planting and landscaping.
2. Safety of the public in their use of roadway facilities shall be given equal consideration to maintaining the visual aesthetic attributes of the area.
3. Quarry or borrow pits other than roadway excavation required for the transportation facility shall be located so they are not visible from the river.
4. Minimum clear zone requirements can be used in roadway design where desirable clear zones would adversely affect the view from the river.
5. Landscaping shall utilize natural vegetation that blends with the existing or suitable vegetation that prevents erosion.
6. Permanent erosion control shall be such that it blends visually with the natural landscape as viewed from the river.
7. Structures and their approaches should be sited and designed to blend into the natural setting to the extent practicable consistent with highway safety and economy.



**Attachment A3**  
**to the DOT/DNR Cooperative Agreement**  
**Memorandum of Understanding**  
**On Endangered and Threatened Species Consultation**

Under section 29-604 (6r) (formerly 29.415 (6r)), Stats., a state agency shall notify the DNR at the earliest opportunity of the location, nature and extent of a proposed activity that the state agency may conduct, approve or fund and that may affect an endangered species or threatened species. The DNR may allow the taking of an endangered species or threatened species if all of the following apply:

1. The activity is accomplished in accordance with interagency consultation procedures established by the DNR and the state agency for the purpose of minimizing any adverse effect on the endangered species or threatened species.
2. The activity is not likely to jeopardize the continued existence and recovery of the endangered species or threatened species, or the whole plant-animal community of which it is a part, within this state and the activity is not likely to result in the destruction or adverse modification of a habitat that is critical to the continued existence of the endangered species or the threatened species within the state.
3. The benefit to public health, safety or welfare justifies the activity.

Following are the procedures identified in number 1 above for DOT projects.

The DOT project review typically addresses all environmental issues involved in a project and not just endangered resources concerns. DOT shall notify DNR of projects through the normal liaison process (General Liaison Section II A & B). The following process shall be used for conducting endangered resource reviews.

- I. A. DOT shall notify DNR of projects at the earliest opportunity possible, preferably at the onset of project identification. Notification shall include information on the location, nature, extent of the proposed activity, and a request for Endangered and Threatened (E/T) Species information.
- B. DNR shall notify DOT of all known E/T species likely to be affected by the project. (Potential impacts on federally listed E/T species will be handled through the established consultation procedures between transportation agencies and the U.S. Fish and Wildlife Service.) If no known or likely E/T species are affected by the project, DNR shall notify DOT that no further action under this section is necessary. DNR initial response is usually provided within 2-6 weeks. A new project specific time frame may be established due to extenuating circumstances.
- C. DOT and DNR shall notify the other agency if they obtain new information which identifies an E/T species that is likely to be affected by the project.
- II. A. If DNR determines a state E/T species is likely to be impacted by a proposed project, DOT and DNR shall coordinate to determine if the project can be altered to avoid impacts.
- B. If DOT demonstrates and DNR concurs that impacts on E/T species will be avoided or eliminated, DNR shall notify DOT that no further action under this section is necessary.
- C. If additional information is needed to determine if impacts can be avoided or eliminated, DNR will assess what information is needed and will coordinate in a timely manner with DOT on how that information will be obtained. DNR will issue a sufficient information statement when it has all the information needed to assess whether taking is likely.
- III. If DNR determines a take of a state E/T species cannot be avoided (and DOT proposes to continue with the project as planned) DOT and DNR shall initiate incidental take consultation and DOT will provide DNR two copies of the following information. DOT will rely on information from DNR for completing items (B) and (C).
- A. Project alternatives not affecting E/T species and the reasons why such alternatives were not chosen.

- B. The impact to the continued existence and recovery of E/T species which will likely occur as a result of the taking at that site, whether the habitat is critical to the species continued existence considering its state and global rank, and the benefit to public health, safety, or welfare of the activity.
  - C. Minimization, mitigation or other compensation that is proposed to prevent jeopardy to the continued existence and recovery of the E/T species.
- IV. A. Upon the receipt of information agreed to in consultation, DNR shall determine within 30 days of receiving the information if the proposed take may be authorized in accordance with s. 29.604 (6r), Stats. and will discuss the determination with DOT prior to submitting any public notice.
- B. If a take is allowable, DNR shall give notice of the proposed activity. At least 30 days is required for public comment before allowing the taking.
  - C. DNR shall notify DOT of any reconsiderations warranted by public comments or hearings and any final decision prior to the release or distribution to others of the decision.
  - D. If DNR determines that no significant modifications of the project or associated mitigation measures are warranted by public comment then the DNR shall prepare and issue a decision on the proposed taking within 30 days following the conclusion of the public notice period, which will include a findings of fact, conclusion of law, order, and notification of appeal rights.

Charles H. Thompson, Secretary  
Wisconsin Department of Transportation

11/4/98

George E. Meyer, Secretary  
Wisconsin Department of Natural Resources

11/2/98

**ATTACHMENT A4**  
**TO THE DOT/DNR COOPERATIVE AGREEMENT**  
  
**MEMORANDUM OF UNDERSTANDING**  
**BY AND BETWEEN THE**  
**WISCONSIN DEPARTMENT OF NATURAL RESOURCES**  
**AND THE**  
**WISCONSIN DEPARTMENT OF TRANSPORTATION**  
**RELATING TO THE AUTHORIZATION OF STORM WATER DISCHARGES**  
**TO WATERS OF THE STATE OF WISCONSIN**

**General Background and Purpose of MOU**

The Wisconsin Department of Transportation (DOT) has storm sewers with outfalls which discharge into waters of the State. Discharges from these outfalls may contain pollutants which are carried by the runoff from rain and snow melt. Pollutants of concern which may be found in storm water include organic materials which have a biochemical oxygen demand, suspended solids, metals, nutrients, microorganisms, and traces of toxic materials. The DOT is providing and will continue to provide to the Wisconsin Department of Natural Resources (DNR) information on the DOT Storm sewer system covered by this Memorandum of Understanding (MOU), including characterization of storm water runoff from the major outfalls identified in this MOU.

This MOU is intended to document policy and procedure of DOT to reduce the amount of pollutants in storm water runoff that may be entering waters of the State. Pollution prevention efforts are emphasized and preferred over treatment of runoff which may not be cost effective. Major components of this MOU include a storm water management program to identify and address storm water point source discharges of pollutants, and an annual report to summarize and assess compliance with the criteria of this MOU.

The criteria of this MOU are consistent with Section 402(p) of the Clean Water Act and the regulations promulgated thereunder, and with Chapter 283, Wis. Stats., and the provisions of Chapter NR 216, Wis. Adm. Code.

Each Agency party to this agreement shall make copies of this MOA available to appropriate staff. This agreement shall be reviewed by the WDOT and WDNR biennially to determine whether modification is necessary. The first review shall be completed by December 31, 2000.

**AUTHORIZATION TO DISCHARGE UNDER THE  
WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM**

This MOU establishes the Wisconsin Pollutant Discharge Elimination System (WPDES) authorization for discharges of storm water from Wisconsin Department of Transportation facilities located in the area covered by this MOU into waters of the State.

Until this MOU is modified or terminated, all storm water discharges, as designated herein, are authorized to discharge, in accordance with the criteria set forth herein, into waters of the State. All such discharges meeting the applicability criteria of this MOU shall be deemed to be in compliance with Chapter 283, Wis. Stats., and the provisions of Chapter NR 216, Wis. Adm. Code.

The DNR expressly acknowledges that the DOT is a sister agency of the DNR and shall at all times cooperate with the DOT in meeting the applicability criteria of this MOU. Furthermore, the DNR shall assist the DOT, and shall take prompt and direct enforcement action against third parties, in accordance with legal authority, in preventing, detecting, monitoring, controlling, containing, stopping, responding to, remediating or removing illicit discharges to, from, in, on, though, across or beneath the authorized area or DOT storm sewer system covered by this MOU, as provided herein.

This MOU and each and every provision hereof is applicable to the DOT only to the extent provided under Wisconsin law and the Wisconsin Constitution. Nothing in this MOU shall be taken as creating or increasing any rights in any third party against the DOT.

Nothing in this MOU shall be construed as obligating the DOT to the expenditure of funds in excess of appropriations authorized by law.

This MOU shall commence upon its execution by the Secretaries of the Departments of Transportation and Natural Resources, and shall continue to be in effect until termination. It shall be reviewed at the request of either party and may be terminated by either party following written request notice to the other party at least 30 days in advance of the date of termination.

\_\_\_\_\_  
Charles H. Thompson, Secretary  
Wisconsin Department of Transportation

\_\_\_\_\_  
George E. Meyer, Secretary  
Wisconsin Department of Natural Resources

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PART I: DEFINITIONS**

In this MOU:

- (1) "Best management practices" means structural or non-structural measures which are temporary or permanent measures, methods, procedures or devices employed to avoid or minimize soil, sediment and pollutant movement, or to manage storm water runoff, onto or off a DOT transportation facility, and developed in consultation with the DNR.
- (2) "Illicit discharge" means any discharge, including the discharge of spills, dumping or disposal of materials, that is not composed entirely of storm water except discharges authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued by the United States Environmental Protection Agency (U.S. EPA) or by a WPDES permit issued by the DNR, or discharges authorized by this MOU.
- (3) "Major Outfall" means a DOT storm sewer outfall which meets one of the following criteria:
  - (a) A single pipe with an inside diameter of 36 inches or more, or an equivalent conveyance (cross sectional area of 1,018 inch<sup>2</sup>), which is associated with a drainage area of more than 50 acres; or
  - (b) A DOT storm sewer that receives storm water runoff from land zoned for industrial activity and discharges from a single pipe with an inside diameter of 12 inches or more, or from an equivalent conveyance (cross sectional area of 113 inch<sup>2</sup>), which is associated with a drainage area of more than 2 acres.
- (4) "Municipality" means any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes, storm water or other wastes.
- (5) "Outfall" means the point at which storm water is discharged to waters of the state or to a storm sewer.
- (6) "Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.
- (7) "Pollution" means man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.
- (8) "Storm sewer system" means a conveyance or system of conveyances including storm sewers, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, outfalls, constructed channels or storm drains.
- (9) "Waters of the state" means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person or the DOT.

**PART II: APPLICABILITY**

- A. MAXIMUM EXTENT REASONABLE AND PRACTICABLE: The DOT, in cooperation with the DNR, shall develop and implement a storm water management program designed to limit to the maximum extent reasonable and practicable, the discharge of pollutants from the DOT storm sewer system covered by this MOU. The DNR shall consider the other environmental problems facing the DOT and emphasize cost effective pollution prevention solutions acceptable to both agencies when determining what is reasonable and practicable.
- B. AUTHORIZED AREA: This MOU covers all areas within the jurisdiction and control of the DOT, contributing to discharges from the storm sewer system meeting all of the following criteria:
  - (1) is owned, operated and maintained by the DOT;
  - (2) is designed or used for collecting or conveying storm water; and
  - (3) is located within the boundaries of a designated municipality, urbanized area or watershed that is authorized to discharge storm water into waters of the State pursuant to a WPDES

storm water discharge permit issued by the DNR under the authority of Chapter 283, Wis. Stats., and is subject to the provisions of Chapter NR 216, Wis. Admin. Code.

- C. **AUTHORIZED DISCHARGES:** This MOU authorizes existing and new storm water point source discharges into waters of the State from the DOT storm sewer system covered by this MOU. This MOU also authorizes the discharge of storm water commingled with flows contributed by process wastewater, non-process wastewater, and storm water associated with industrial activity, provided the discharges are authorized by NPDES permits issued by the U.S. EPA or by WPDES permits issued by the DNR, or are discharges of the kind described under Part V A.(4).
- D. **GEOGRAPHIC PRIORITIES:** A geographic priority system for implementation of storm water best management practices for the DOT storm sewer system covered by this MOU, as set forth in NR 216.02 Wis. Admin. Code, shall be used as determined in supplemental agreements identified in Part IV E. When developing a priority system for the DOT storm sewer system covered by this MOU, preference shall be given to the following in the order specified:
1. Each DOT storm sewer system located within Phase One Municipalities regulated by a WPDES storm water discharge permit issued by the DNR.
  2. Each DOT storm sewer system located within the five (5) Great Lakes Area of Concern regulated by a WPDES storm water discharge permit issued by the DNR.
  3. Each DOT storm sewer system located within Municipalities having populations of 50,000 or more where nonpoint source priority watershed projects are being implemented by a municipality regulated by a WPDES storm water discharge permit issued by the DNR.
  4. Each DOT storm sewer system located within a WPDES municipal storm water discharge authorized area designated pursuant to NR 216.02 (4) Wis. Admin. Code.

### **PART III: LEGAL AUTHORITY**

- A. **REQUIRED AUTHORITY:** Except as otherwise provided in this MOU, the DOT shall, to the extent provided by state law, regulate discharges to and from the outfalls of the portions of the DOT storm sewer system covered by this MOU, unless such discharges are authorized by this MOU. DOT's authority may be created by a statute, permit or intergovernmental agreement to:
1. Control where possible through intergovernmental agreements the contribution of pollutants from municipal separate storm sewer systems to the DOT storm sewer system covered by this MOU.
  2. Require compliance with the provisions of Chapter NR 216, Wis. Adm. Code, in DOT approvals, permits, and contracts except for projects regulated by Chapter Trans. 401, Wis. Adm. code.
  3. DOT reserves the right to prohibit discharges to its storm sewer system.
- B. **DNR ENFORCEMENT:** Where the DOT has no regulatory authority under state law to take regulatory action against any third party for any such action or inaction that constitutes a violation of any provision, standard or requirement of this MOU or any federal or state law, regulation, rule or permit, the DNR may, pursuant to its authority under federal or state law, promptly take any and all necessary action against any such third party to correct such violation. If the DNR is unable to recover any costs from the violator for correcting such violation, the DNR shall not seek payment or contribution from the DOT. In the case of a municipal WPDES permittee, the DNR agrees to:
- Enforce storm water permit conditions if the municipality is not implementing its proposed storm water management practices.
  - Take enforcement action or require additional measures if the municipality contributes pollutants to the DOT storm sewer system in violation of federal or state laws, regulations, rules or permits.
- C. **INDIVIDUAL RESPONSIBILITIES:** Both agencies agree, to the extent provided by state law, to fulfill the responsibilities set forth in this MOU. These duties include but are not limited to the following:
1. DOT:
    - a. Compliance with the applicability criteria of this MOU relating to storm water discharges from the outfalls of the portions of the DOT storm sewer system covered by this MOU.

- b. Storm water management program implementation as described in Part IV on the portions of the DOT controlled storm water sewer system covered by this MOU.
- c. Collection of monitoring data as required by Part VI. Inter-governmental agreements may be established between DOT and WPDES permitted municipalities to consolidate any monitoring responsibilities.
- d. Compliance with annual reporting requirements as specified in Part VII. Implementing the conflict resolution process with DNR when a disagreement occurs on an issue covered by this MOU.

2. DNR:

- a. Communication of storm water responsibilities to appropriate persons.
- b. Enforcement actions against third parties pursuant to its authority under state or federal law in preventing, detecting, monitoring, controlling, containing, stopping, responding to, remediating or removing any illicit discharge to, from, in, through, across or beneath DOT storm sewers.
- c. Working with DOT to develop supplemental agreements for collection of monitoring data.
- d. Providing assistance in assessing the quality of receiving waters and documentation of any changes.
- e. Reviewing and commenting on the annual reports required under Part VII.
- f. Implementing the conflict resolution process with DOT when a disagreement occurs on an issue covered by this MOA.

D. DUTY TO COMPLY: The DOT shall, to the extent provided by state law, comply with this MOU. Any noncompliance of any applicable provisions herein is a violation of this MOU and is grounds for enforcement, unless such noncompliance is caused by any action or inaction of a party other than DOT.

#### **PART IV: IMPLEMENTATION PROCESS**

A. PROCESS DESCRIPTION: DNR agrees that DOT can phase in the implementation of the storm water management program, including storm water management measures, on future DOT highway projects. DOT highway projects that do not have environmental documentation completed should incorporate environmentally effective structural storm water management measures into the highway design where the measures are economically achievable in accordance with the provisions of this MOU.

- 1.) Under Chapter NR 216, Wis. Adm. Code municipalities are notified by the DNR of their responsibility to begin their WPDES pre-application municipal storm water discharge permit process. Concurrently the DNR will also send DOT a letter informing them that it must begin identifying its storm sewer system that will be subject to the applicability criteria under this MOU. The DOT shall submit its storm sewer system map for that proposed WPDES municipal storm water discharge permit area, as identified in section C of this part, within six months of the municipal submittal required under NR 216.06 (2) Wis. Admin. Code. Once a map meeting the requirements under Part IV C of this MOU has been transmitted to DNR, the DOT and DNR shall begin working on the supplemental agreements required under Part IV E. The storm sewer system map for the municipalities of Madison and Milwaukee will be submitted to DNR within one year after this MOU has been signed by both agencies.
- 2.) DOT may develop intergovernmental agreements in each municipality when the municipality is notified by the DNR that they need to begin the WPDES storm water discharge permit application process. DNR, upon request, will assist in facilitating discussions to develop intergovernmental agreements between municipalities and DOT to be utilized for, but not limited to, the following:
  - Establishing communication protocols between DOT and the municipality
  - Controlling target pollutants in storm water management plans for urban areas
  - Participating in cooperative storm water management practices
  - Identifying, reducing and enforcing against illicit discharge

- B. PROGRAM COOPERATION: The DOT may satisfy the requirements of this MOU, through either separate or joint participation, for all portions of the DOT storm sewer system covered by this MOU. DOT's storm water management program shall clearly identify the roles and responsibilities of all participants and areas of applicability.
- C. DOT STORM SEWER SYSTEM MAP: By geographic area, the DOT or a Municipality on behalf of the DOT shall define each DOT storm sewer system located within the authorized area. This information shall be submitted on a map with a border defining the relevant authorized area and all borders of municipalities abutting or lying within the authorized area. The map will also include the following information:
- (1) DOT storm sewer system:
    - (a) Identity and outline of storm sewer system.
    - (b) Listing and location of all outfalls which drain one acre or more and discharge into waters of the state. A uniform numbering system shall be developed and used to provide identification of outfalls.
    - (c) Identity of major outfalls.
    - (d) Location of major structural controls (i.e., retention/detention basins).
  - (2) Storm water drainage basins as delineated by the municipality.
  - (3) Affected receiving waters.
  - (4) If maps are submitted in a format compatible with municipal maps, DOT is not required to include the information under 2 and 3 above.
- D. DESIGNATION OF MUNICIPALITIES: Municipalities abutting or lying within the authorized area may be designated for WPDES municipal storm water permitting by the DNR, pursuant to s. NR 216.02(4), Wis. Adm. Code. The DOT may also submit a written request to the DNR pursuant to this MOU, requesting the DNR to designate municipalities abutting or lying within the authorized area for WPDES municipal storm water discharge permitting, pursuant to s. NR 216.02(4), Wis. Adm. Code.
- E. SUPPLEMENTAL DOT/DNR AGREEMENTS: DNR and the DOT shall develop as necessary supplemental agreements to this MOU for specific municipalities or areas, which shall become a part of this MOU when signed by both parties, to address the following practices relating to individual localities of the DOT storm sewer system covered by this MOU:
- (1) Specific storm water management program implementation requirements as specified in Part IV of this MOU.
  - (2) Collection of monitoring data, including location of outfall(s) to be monitored and quantity of samples required as specified in Part V of this MOU.
  - (3) Compliance with annual reporting requirements as specified in Part VII.

#### **PART V: STORM WATER MANAGEMENT PROGRAM**

- A. ILLICIT DISCHARGES: Unless otherwise covered by an intergovernmental agreement, the DNR shall assist the DOT, and shall take prompt and direct enforcement action against third parties in accordance with legal authority, pursuant to its authority under state or federal law, in preventing, detecting, monitoring, controlling, containing, stopping, responding to, remediating or removing any illicit discharges to, from, in, on, through, across or beneath the authorized area or DOT storm sewer system covered by this MOU. DNR may first look to applicable municipalities for enforcement through local ordinance before taking direct action. If the DNR incurs costs for remediation or removal of any illicit discharges under this MOU, the DNR shall not seek payment or contribution from the DOT. Illicit discharges to, from, in, on, through, across or beneath the authorized area or DOT storm sewer system covered by this MOU shall not constitute a violation of this MOU.
- (1) DOT will attempt to negotiate intergovernmental agreements with WPDES permitted municipalities to control and/or remedy illicit discharges by third parties to, from, in, on, through, across or beneath the authorized area or DOT storm sewer system covered by this MOU.
  - (2) DOT will perform one time dry weather screening of major outfalls of the DOT storm sewer system covered by this MOU to detect illicit discharges. The purpose of the dry weather

screening activities will be to assist the DNR, to the extent reasonable and practicable, in identifying illicit discharges to, from, in, on, through, across or beneath the authorized area or DOT storm sewer system. Dry weather screening will consist of visual observation of an outfall of the DOT storm water sewer system covered by this MOU made during a dry weather period. Screening shall be completed within one year from the date of the signing of this MOU or within one year from the date of issuance of a WPDES municipal storm water discharge permit to a municipality, whichever is later; however, a phase-in period may be implemented based on the priorities established in Part II D. Screening methodology may be developed based on experience gained during previous field screening activities, and need not conform to the protocol in s. NR 216.07(3), Wis. Adm. Code

- (3) Whenever any illicit discharge is identified by DOT field screening activities, the DOT shall promptly notify the DNR, or where a intergovernmental agreement exists, the WPDES permitted municipality. Within one year of the date of signing this MOU, DOT will establish a notification procedure. The DNR or municipality shall promptly take the appropriate action as required in Part V A.
- (4) The innocuous non-storm water discharges listed below are not considered illicit discharges unless identified by either the DOT or the DNR as a significant source of pollutants into waters of the State, and may enter the DOT storm sewer system covered by this MOU.
  - water line flushing
  - landscape irrigation
  - diverted stream flows
  - uncontaminated ground water infiltration
  - uncontaminated pumped ground water
  - discharges from potable water sources
  - foundation drains
  - air conditioning condensate
  - irrigation water
  - lawn watering
  - individual residential car washing
  - flows from riparian habitats and wetlands
  - dechlorinated swimming pool water
  - street wash water
  - fire fighting.

B. OTHER POLLUTION PREVENTION MEASURES: The DOT shall continue to operate or implement as needed, storm water best management practices for the DOT storm sewer system covered by this MOU. The best management practices include:

- (1) Highway runoff management including the activities described below associated with DOT highway maintenance, shall be operated as may be agreed upon in DOT/DNR supplemental agreements identified in Part IV E.
  - (a) Street sweeping after snow melt with a "heavy sweep" of materials that accumulated during the winter.
  - (b) A salt minimization program for highways, roads, and bridges with due consideration given for loss of life or property.
  - (c) Cleaning of catch basins as required for efficient performance.
- (2) Construction site erosion controls contained in Chapter Trans. 401 Wis. Adm. Code.
- (3) Storm water management measures for new construction and reconstruction, as may be required by the DOT/DNR liaison Cooperative Agreement process or by the requirements in Chapter Trans. 401, Wis. Adm. Code. Design Procedures are described in Chapter 10 of the DOT's Facilities Development Manual.
- (4) Pesticide application guidelines contained in Chapter 74 of the DOT's Facilities Maintenance Manual.
- (5) Other best management practices that may be identified and implemented through the

process outlined in Part V D.

C. **INDUSTRIAL HIGH RISK RUNOFF:** DNR shall identify for the DOT, known storm water discharges from industrial facilities which can be high risk significant contributors of pollutant loadings to the DOT storm sewer system covered by this MOU from information available to it. High risk industrial facilities include: landfills; hazardous waste treatment, storage, disposal and recovery facilities; facilities subject to 42 USC s. 11023 (b) which may release toxic chemicals above threshold amounts; and other significant industrial or commercial discharges. In addition, DNR shall supply to the DOT a listing of all industrial runoff sites that are subject to Wis. Adm. code Chapter

NR 216 Industrial Site Storm Water Discharge permitting or enforcement in which the industrial site directly or indirectly discharges into the DOT storm sewer system covered by this MOU.

D. **PROGRAM REVISIONS:** DOT shall revise its storm water management program during the term of this MOU in accordance with the following procedures:

- (1) The storm water management program may be revised by the DOT after the DNR concurs with the revision. If the revision is in accordance with subsection (2) or (3) below, the program may be revised without prior DNR approval.
- (2) Revisions adding but not subtracting or replacing components of the approved storm water management program may be made by DOT at any time. DOT shall provide a description of the revision in the annual report required under Part VII.
- (3) Revisions replacing an ineffective or unfeasible best management practice specifically identified in the storm water management program with an alternate best management practice may be requested at any time. Unless the DNR issues a written objection, it shall be considered to have concurred with the requested alternative which may be implemented 60 days from submittal of the request. Such written requests to the DNR shall include the following analysis:
  - (a) Why the initial best management practice is ineffective or unfeasible.
  - (b) Expectations on the effectiveness of the replacement best management practice expected to achieve the program goals.
- (4) The DNR and the DOT will cooperate to revise the storm water management program as necessary so that the criteria of this MOU continues to be consistent with the provision of Chapter 283, Wis. State., and Chapter NR 216, Wis. Adm. Code.
- (5) The DNR may request the DOT to revise the storm water management program to address adverse impacts on receiving water quality caused or contributed to by discharges consisting solely of highway storm water runoff from the DOT storm sewer system covered by this MOU. DOT shall have an opportunity to propose alternative program revisions to meet the objective of the request and the agencies agree to cooperatively work toward an effective solution in terms of environmental quality and cost.
- (6) DOT and DNR concurrence of revisions or requests for revisions to the DOT storm water management plan is the authority for incorporation of the revision into this MOU, until this MOU can be formally amended by the DOT and the DNR.

## **PART VI: MONITORING REQUIREMENTS**

A. **CHARACTERIZATION DATA:** DOT shall monitor representative outfalls of the DOT storm sewer system covered by this MOU to characterize the quality of highway storm water discharges from the DOT storm sewer system. Outfalls to be monitored shall be agreed upon in supplemental agreements between the DNR and the DOT as identified in Part IV E, and will be specific to the DOT storm sewer system covered by this MOU. Characteristics to be monitored are listed in Table A of this part. The sampling frequency is quarterly for the first year of monitoring. After that time, the sampling frequency will be agreed upon by the agencies. Additional characteristics and additional sampling are at the discretion of the DOT. Alternate representative monitoring locations may be proposed by the DOT if they provide similar representative data. Requests for approval of alternate monitoring locations shall be made to the DNR in writing and include the rationale for the requested monitoring station relocation, either temporary or permanent. For each and every DOT storm sewer system covered by this MOU where sufficient data has been gathered, pollutant loadings from those DOT storm sewer systems may be computed by the use of pollutant loading models.

- B. SAMPLING PROCEDURES: The following requirements apply to samples collected to obtain the representative characterization data described in Section A of this Part:
- (1) If possible, samples shall be collected from storms which are preferably at least 50% of the monthly average precipitation event amount, but no less than 0.1 inch. The runoff event sampled shall be at least 72 hours from the previously measurable precipitation event greater than 0.1 inch. The entire runoff event should be sampled whenever possible, or at least the first 3 hours of a lengthy runoff. There is no minimum time criteria for the duration of the runoff. A snow melt runoff event should be collected annually as one of the quarterly samples.
  - (2) Samples collected shall be flow weighted composite samples using a continuous automatic sampler, or using a combination of a minimum of 3 sample portions taken manually each hour of the runoff with each sample portion separated by a minimum period of 15 minutes. A grab sample shall be collected within the first 30 minutes of the runoff for those parameters being analyzed that require a grab sample, as indicated in the sample type column in Table A of this Part.
  - (3) A narrative description shall be provided of each storm event which is sampled, including the date and duration of the storm, rainfall amount, the duration between the storm event sampled and the end of the previous measurable storm of greater than 0.1 inch rainfall, the sample appearance and any discernible odor.
  - (4) Approved analytical methods shall be used in accordance with Chapter NR 219, Wis. Adm. Code "analytical test methods and procedures", or guidance on storm water sampling procedures developed by the DNR. When no analytical method is approved, a suitable method may be used provided a description of the method is submitted to the DNR for concurrence prior to sampling.
  - (5) For each effluent measurement or sample taken as required under this MOU, the DOT shall record the following information: date exact place, method and time of sampling or measurements; name of the individual performing the sampling or measurement; and the date of and individual performing the analysis.
  - (6) If DOT monitors any pollutant more frequently than required by this MOU, using test procedures specified in Chapter NR 219, Wis. Adm. Code, the results of that monitoring shall be recorded and reported in accordance with this MOU. Results of this additional monitoring shall be included in the calculation and reporting of the data submitted in the annual report required under Part VII.
- C. ALTERNATIVE DATA SOURCES: Monitoring done by others including, but not limited to, the DNR, Designated Municipalities Sewerage Districts, and priority watershed projects, may be used as a source of data to meet some of the DOT's monitoring needs.
- D. SAMPLING EXEMPTION: If the DOT is unable to collect samples due to adverse climatic conditions, the DOT shall describe why samples could not be collected in the annual report required under Part VII.
- E. DOT'S MONITORING PROGRAM: To address the requirements of this part, the DOT shall analyze monitoring samples for the parameters outlined in Table A.

**Table A - Monitoring Parameters for Storm Water Characterization**

<b>EFFLUENT CHARACTERISTIC</b>	<b>First Year SAMPLE FREQUENCY</b>	<b>SAMPLE TYPE</b>	<b>LOADING LBS/YEAR</b>
Total Suspended Solids	Quarterly	Composite	Yes
Total Dissolved Solids	Quarterly	Composite	Yes
COD	Quarterly	Composite	Yes
BOD <sub>5</sub>	Quarterly	Composite	Yes
Oil & Grease	Quarterly	Grab	
Fecal Coliform	Quarterly	Grab	
Fecal Streptococcus	Quarterly	Grab	
pH	Quarterly	Grab	
Hardness as CaCO <sub>3</sub>	Quarterly	Composite	
Total Kjeldahl Nitrogen	Quarterly	Composite	Yes
Nitrate + Nitrite Nitrogen	Quarterly	Composite	Yes
Ammonia Nitrogen	Quarterly	Composite	Yes
Dissolved Phosphorus	Quarterly	Composite	Yes
Total Phosphorus	Quarterly	Composite	Yes
Alkalinity	Quarterly	Composite	
Chloride	Quarterly	Composite	Yes
Total Cadmium	Quarterly	Composite	Yes
Total Chromium	Quarterly	Composite	
Total Copper	Quarterly	Composite	Yes
Total Lead	Quarterly	Composite	Yes
Total Selenium	Quarterly	Composite	
Total Zinc	Quarterly	Composite	Yes
Cyanide	Quarterly	Grab	
PAHs	Quarterly	Composite	

F. STORM WATER DISCHARGE DATA: The DOT shall develop and phase into operation over the next 5 years a program to calculate the event mean concentration, and the annual and seasonal pollutant loadings from each existing major outfall of the DOT storm sewer system covered by this MOU and the cumulative discharge of all such outfalls. This phasing in period will take into account the priority system in Part II D. As other portions of the DOT storm sewer system become subject to the applicability criteria under this MOU, The DOT shall have five years to develop and phase into operation a program to calculate the event mean concentration, and the annual and seasonal pollutant loadings from each existing major outfall of that portion of the DOT storm sewer system added to the coverage of this MOU and the cumulative discharge of all such outfalls.

- (1) The DOT shall provide pollutant loading data for the parameters indicated in Table A of this part. The characterization monitoring described in Section A of this part, may be used as the source of the quantitative data for calculating pollutant loadings.
- (2) DOT will perform a calculation of the event mean concentration, and the annual and seasonal pollutant loadings from each major outfall and the cumulative discharges from all known DOT outfalls into waters of the state. Calculations shall be provided for the following pollutants: BOD<sub>5</sub>, COD, total suspended solids, total dissolved solids, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, ammonia nitrogen, chloride, total phosphorus, dissolved phosphorus, cadmium, copper, lead zinc, and any other pollutant of significance detected in the storm water characterization.
- (3) DOT will describe the procedures for calculating pollutant concentrations and loadings. Loading calculations shall be made when at least 12 runoff events have been sampled. When there are adequate sample results, computer modeling may also be used to analyze the data

to calculate pollutant loadings. Pollutant loading data shall be provided in the annual report required under Part VII.

**PART VII: ANNUAL REPORT**

- A. **PURPOSE:** The information provided in the annual report shall be used to determine progress on implementation of the storm water management program and compliance with the applicability criteria of this MOU.
- B. **INDIVIDUAL RESPONSIBILITIES:** DOT is individually responsible for the content of the report relating to the DOT storm sewer system covered by this MOU.
- C. **ASSESSMENT OF CONTROLS:** DOT shall conduct any assessment required by this MOU of the DOT storm water management program in conjunction with preparation of any annual report. The assessment of the effectiveness of the storm water management program shall include both structural and non-structural practices.
- D. **CONTENTS:** An annual report required by this MOU shall be submitted by March 31 of the next year. The first annual report, covering the period from the effective date of this MOU until December 31, 2000, is due March 31, 2001. The report shall include the following:
- (1) The status of implementing the storm water management program, and compliance with any schedules contained in this MOU.
  - (2) A review of the monitoring program data for a direct measurement of the affect of a management practice on storm water quality which may include an evaluation of trends in reductions of pollutant loadings and event mean concentrations.
  - (3) An updated map of each authorized area of the DOT storm sewer system covered by this MOU if necessary to identify any new outfalls, structural controls, or other noteworthy changes.
  - (4) A summary of revisions made or proposed to the storm water management.
  - (5) A summary of the monitoring data required for the reporting year.
  - (6) A summary of the pollutant loading calculations required in Part VI G.
  - (7) A fiscal analysis which includes the annual expenditures for the major elements of the storm water program for the previous year.
  - (9) An estimate of expected reductions in loadings of pollutants discharged from the DOT storm sewer system covered by this MOU, including an estimate of the pollutant loading reduction attributed to each major component of the storm water management program. This may be accomplished by either indirect or programmatic measurements.
  - (10) Identification of known impacts of storm water controls on both surface water and groundwater quality. The DNR shall assist in assessing the quality of the receiving waters and document changes. This requirement is not applicable if storm water control impacts have been previously reported and have not changed.
  - (11) Any proposed storm water management program revisions designed to further reduce the discharge of pollutants and comply with applicable water quality standards and MOU criteria.
  - (12) If data is available, an assessment of best management practices including pollutant removal and storm water volume reduction efficiency, and impacts on pollutant event mean concentration and seasonal pollutant loadings.
- E. **PUBLIC REVIEW:** The general public may review and comment on the annual report. The DOT shall consider those comments during any review of the department's storm water management program.
- F. **REPORTING:** The annual report shall be signed by the duly authorized representative having overall responsibility for the storm water management program and shall be submitted to :

Wisconsin Department of Natural Resources  
Bureau of Watershed Management, WT/2  
P.O. Box 7921  
Madison, WI 53707

**PART VIII: OTHER REQUIREMENTS**

**A. NONCOMPLIANCE NOTIFICATION:**

- (1) Upon becoming aware of any noncompliance of the applicability criteria of this MOU which may endanger public health or the environment, the DOT shall report this information by a telephone call to the DNR within 24 hours. A written report describing the noncompliance may be requested by the DNR. In the event a written report is requested, it shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and if the noncompliance has not been corrected, the length of time it is expected to continue.
- (2) Reports of any other noncompliance of the applicability criteria of this MOU not covered under above shall be submitted with the annual report required under Part VII. The reports shall contain all the information listed in Subsection (1) of this section.

**B. DUTY TO MITIGATE:** Except where DNR is responsible for taking enforcement action against third parties under this MOU, the DOT and DNR shall jointly take all reasonable steps to minimize or prevent any adverse impact on the waters of the State resulting from noncompliance with this MOU.

**C. PROPER OPERATION AND MAINTENANCE:** The DOT shall properly operate and maintain all facilities and systems of treatment and control which are installed or used by the DOT to achieve compliance with the applicability criteria of this MOU and the DOT storm water management plan.

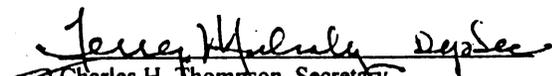
**D. BYPASS:** The DOT may temporarily bypass storm water structural or nonstructural practices if necessary for maintenance, or due to runoff from a storm event which exceeds the design capacity of the practice, or during an emergency.

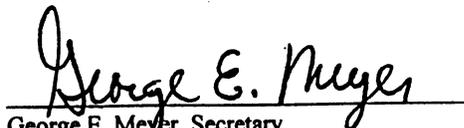
**E. DUTY TO RESTORE FAILED PRACTICES:** Upon failure or impairment of best management practices identified in the storm water management program, the DOT shall, to the extent reasonably practicable and necessary, restore or provide an equivalent alternative method of storm water pollution control.

**F. INSPECTION AND ENTRY:** DNR and the DOT shall cooperate with each other whenever entry or inspection is required.

**G. EXCHANGE OF INFORMATION:** The DOT and DNR, to the extent reasonably possible, shall freely exchange any information which may determine whether cause exists for modifying this MOU or to determine compliance with its applicability criteria.

**H. CONFLICT RESOLUTION:** Any disagreements or disputes arising from activities required or agreed to in this MOU shall be resolved through utilizing the conflict resolution process found in the DOT/DNR Cooperative Agreement to which this MOU is attached.

  
Charles H. Thompson, Secretary  
Wisconsin Department of Transportation

  
George E. Meyer, Secretary  
Wisconsin Department of Natural Resources

Date: 1/26/99

Date: 12/22/98

COOPERATIVE AGREEMENT  
BETWEEN  
WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
AND  
WISCONSIN DEPARTMENT OF TRANSPORTATION  
ON THE PROCEDURES TO BE USED TO IMPLEMENT SECTION 32.035, WIS. STATS.,  
TITLED  
"AGRICULTURAL IMPACT STATEMENTS"

I. STATEMENT OF PURPOSES

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) and the Wisconsin Department of Transportation (WisDOT) recognize that the Wisconsin legislature has charged DATCP with the duty and responsibility of preparing an Agricultural Impact Statement (AIS) which assesses the impacts on the State's farm operations resulting from the acquisition by condemnors of agricultural lands or any interests therein for projects involving the actual or potential exercise of the power of eminent domain. DATCP and WisDOT recognize that the Wisconsin legislature has charged WisDOT with the duty and responsibility of furnishing the citizens of Wisconsin with an adequate, safe and economical transportation system. DATCP and WisDOT further recognize that the construction, reconstruction, maintenance and repair of transportation facilities, such as highways, bridges, harbors, railroads and airports may have adverse effects on the State's farm operations.

DATCP and WisDOT agree that in order to carry out their respective duties and responsibilities in a timely, reasonable and economical manner which is in the total public interest, they will consult and cooperate with each other as set forth in this agreement. DATCP and WisDOT concur in this agreement with the intent that each agency may continue to perform its statutory duties and responsibilities and assure that adverse effects on Wisconsin's farm operations that may result from the improvement and maintenance of transportation facilities are minimized to the most reasonably possible extent within the need to provide Wisconsin citizens, businesses, and industries with adequate, safe, and economical transportation systems.

II. WISDOT OBLIGATIONS

- A. WisDOT shall complete coordination with DATCP as indicated below and consistent with Part III H for all projects which propose to acquire interests in farm operations. WisDOT will include, as appropriate, DATCP's analysis of agricultural impact as a part of the environmental documentation for each project, except for projects exempted by s. 32.035(4)(a).

1. Projects requiring only non-significant acquisitions as defined in Part IV, A of this Agreement (generally strips of one acre or less) may be reported to DATCP using a summary format, which shall include the following information:
  - a. WisDOT Project ID number
  - b. Highway number or name
  - c. County
  - d. Number of farms affected
  - e. Total acres to be acquired
  - f. Project location map
  
2. Projects which would acquire more than one acre but less than five acres from a farm operation shall be reported individually to DATCP and shall include the following information:
  - a. A description of the existing facility.
  - b. A description of the proposed action.
  - c. A summary of the alternatives to the proposed action.
  - d. Project location maps and other exhibits including aerial photographs, if available, which clearly illustrate the project limits and the farm operations affected.
  - e. A summary of farm acreage by use and nature of acquisition, fee simple or easement, that would be acquired for each alternative still under consideration.
    - 1) Cropland and pasture
    - 2) Woodland
    - 3) Land of undetermined or other use
  - f. Direct effects to farm operations caused by:
    - 1) Changes in alignment
    - 2) Changes in access to farm operations
    - 3) Severances
    - 4) Acquisition of farm buildings, structures, irrigation resources or other improvements
    - 5) Changes to equipment or livestock passes and crossings
    - 6) The obliteration of the old roadway
  - g. Any known changes to farmland use which would cause indirect or secondary effects.
  - h. Any perceived adverse, beneficial, or controversial effects, which have been publically stated by farm owners or operators.
  - i. A summary of all non-significant interests from farm operations.
  
3. Projects having at least one acquisition over five acres from a farm operation shall be reported individually and shall include all the information indicated in 2) above. In addition, information specific to the acquisition(s) over five acres shall include a mailing list of the names,

addresses, and if available, the telephone numbers of affected farmland owners or operators, if available and different from the owner. Any other individual, group, club or committee which has demonstrated an interest in and requested receipt of the AIS for the project shall be included on the mailing list. When available, WisDOT shall provide DATCP with a list of local or county officials contacted and farm owners or operators attending informational meetings. If available, the telephone numbers of the attendees shall also be provided to DATCP.

- B. WisDOT shall provide in writing, additional information requested by DATCP within 14 days\* of receipt of the request.
- C. WisDOT shall notify DATCP of any change in a project's acquisition of interests in any farm operation and supply information at the appropriate level of detail as shown above in II.A.1, 2, or 3.
  - 1. WisDOT agrees to provide in writing additional information requested by DATCP concerning the changed interests within 14 days of receipt of the request.
  - 2. A notification of a change to DATCP is not required if a landowner requests a change and is the only landowner from which the varied interest would be acquired.
- D. WisDOT shall review and comment on a pre-published AIS in a timely manner.
- E. WisDOT shall compensate DATCP, on a monthly basis, for all actual costs incurred in their review and evaluation of all WisDOT projects that require an AIS or a supplement to an AIS.\*\*

### III. DATCP OBLIGATIONS

- A. Within 10 days of their receipt of an individual notification, DATCP will inform WisDOT in writing of their decision whether to prepare an AIS.
- B. For projects requiring an AIS DATCP shall inform WisDOT in writing within 14 days, of any additional information needed for the preparation of that AIS.
- C. DATCP shall prepare a pre-published AIS within 60 days of receiving the above requested additional information from WisDOT and will inform WisDOT in writing of the commencement of the 60 day period.
- D. DATCP with agreement from WisDOT may extend the time limits in B or C above by up to 21 days.

\* All days referred to in this agreement are "calendar days"

\*\* See footnote on page 4.

- E. DATCP shall review, evaluate and determine the need for an AIS or a supplement to an AIS in the manner of A, B, C and D above whenever WisDOT supplies a notification of a change to a project's proposed acquisition of interests in any farm operation.
- F. DATCP shall provide WisDOT with three copies of the pre-published AIS or the pre-published supplement to an AIS. DATCP shall provide WisDOT with three copies of the published AIS or the published supplement to an AIS.
- G. DATCP shall provide WisDOT a monthly billing, with actual\* detailed costs for each individual project notification which resulted in the preparation of an AIS or a supplement to an AIS.
- H. If DATCP exceeds any of the time limits in A, B, or C above or those mutually extended as in D above, WisDOT may proceed with project development activities but may not negotiate with an owner or make a jurisdictional offer until 30 days after the AIS is published.

#### IV. AREAS OF MUTUAL AGREEMENT

- A. Acquisitions of interests which do not require detailed information:
  - 1. DATCP and WisDOT agree that notification of certain WisDOT acquisitions of interests in farm operations do not require detailed information in the project notification.
    - a. These acquisitions shall be termed non-significant acquisitions.
    - b. These acquisitions are typified as minor amounts of land, the loss of which would not have a significant adverse effect on a farm operation.
      - 1) Non-significant acquisitions for projects which involve linear corridors, such as highways or railroads, are typified by strip acquisitions of narrow width along and generally parallel to existing right of way lines for the purpose of maintaining or improving an existing transportation facility or service.
      - 2) Non-significant acquisitions for projects which are non-linear such as airport, wayside, weigh station or building construction, are typified by having small acquisitions contiguous to existing right of way or other publicly owned land for the purpose of maintaining or improving an existing transportation facility, structure, building or service.

\* Monthly billing system will not be implemented immediately. The effective date for implementation will be by mutual agreement of staff representatives.

2. DATCP and WisDOT agree that for an acquisition of interest in a farm operation to be non-significant all the criteria listed below shall be met:
  - a. The criteria for non-significant acquisitions of interests in farm operations for linear corridors projects, e.g., highway, railroads, etc., are those that:
    - 1) Are one acre or less in size
    - 2) Result in no severance(s)
    - 3) Do not significantly alter or restrict access presently enjoyed by the owner
    - 4) Do not involve moving or demolishing any improvements necessary to the operation of the farm
    - 5) Do not involve a high value crop
  - b. The criteria for non-significant acquisitions of interests in farm operations for non-linear projects, e.g., airports, waysides, weigh stations, or buildings, are those that:
    - 1) Are 5 acres or less in size and the only acquisition from a farm operation
    - 2) Result in no severance(s)
    - 3) Do not deny or restrict the use of the remaining land for farming purposes presently enjoyed or anticipated by the owner
    - 4) Do not require the removal of improvements necessary to the operation of the farm.

B. Advance right of way acquisition:

1. DATCP and WisDOT agree that where owners of farmland would otherwise suffer extreme and unnecessary hardship as a result of delaying an acquisition, WisDOT may acquire right of way parcels in advance of satisfying the requirements of s.32.035 Wis. Stats. Such acquisitions are termed "hardship" acquisitions and must comply with the requirements of s.84.09 Wis. Stats. and 32.25(1) Wis. Stats.
2. WisDOT shall notify DATCP of each proposed hardship acquisition that involves an interest in any farm operation and include the reason(s) for the acquisition whenever:
  - a. The hardship acquisition would be necessary in advance of satisfying the requirements of s.32.035 Wis Stats.
  - b. The hardship acquisition involves a change in acquisition from a farm operation either before or after the satisfaction of the requirements of s.32.035 Wis. Stats.

3. A notification of a hardship acquisition is not required when:
  - a. The hardship status of the acquisition occurs after the acquisition has been addressed in an AIS and the other requirements of s.32.035 Wis. Stats have been satisfied.
  - b. The hardship acquisition results from a landowner's request for a variance and is the only landowner from which the interest would be acquired.
- C. WisDOT recognizes that DATCP may need to contact affected landowners to discuss a proposed acquisition and its effects on the farm operation in order to fully evaluate potential agricultural impacts.
- D. DATCP recognizes that agents acting under the direction of WisDOT may fulfill the obligations of the Cooperative Agreement.
- E. DATCP and WisDOT agree that an audit of this Cooperative Agreement will be conducted biennially from the date the agreement is signed by DATCP and WisDOT.

V. REVIEW OF AGREEMENT

This agreement shall, at a minimum, be reviewed biennially from the date the agreement is signed by DATCP and WisDOT for the purpose of determining if there is a need to revise any or all provisions of the agreement.

  
WISCONSIN DEPARTMENT OF TRANSPORTATION

11-6-87  
DATE

  
WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

12-9-87  
DATE

**WISCONSIN DEPARTMENT OF TRANSPORTATION  
AND  
STATE HISTORICAL SOCIETY OF WISCONSIN  
COOPERATIVE AGREEMENT FOR ARCHAEOLOGICAL/HISTORICAL SERVICES**

**I. STATEMENT OF PURPOSE**

The Wisconsin Department of Transportation [DOT] and the State Historical Society of Wisconsin [SHSW] recognize that the DOT is responsible for providing the citizens of Wisconsin with an adequate, safe, and economical transportation system. Further, the DOT recognizes that the SHSW, through its Museum Archaeology Program [MAP] is responsible for preserving Wisconsin's history. The MAP conducts research, which involves collecting, analyzing, interpreting, and disseminating information on the history and prehistory of the state.

Therefore, the DOT and SHSW agree that in order to accomplish their respective missions, and to provide a professional, efficient, and economical procedure in a manner that is in the best overall public interest, the DOT and SHSW will consult and cooperate with each other to the fullest extent practicable and in accordance with applicable state and federal laws and regulations and the terms of this AGREEMENT.

**II. APPLICABILITY AND GENERAL LIAISON**

The provisions of this AGREEMENT apply to DOT transportation projects that are designed in-house and not contracted to consultant engineering firms. It is DOT's intention to utilize the MAP to provide archaeological and historical services for in-house designed projects, but reserves the right to use other Master Contractors. These projects include corridor studies, transportation projects in new or existing DOT right-of-way, wetland mitigation and banking sites, monitoring and fencing in construction contract special provisions, and other transportation related undertakings. The MAP will also conduct records research for projects that qualify for screening, the sale of excess land, the off-site construction areas, and other activities associated with DOT projects.

General liaison shall consist of the following:

- A. Initial coordination for in-house DOT projects will be submitted to the MAP. DOT will provide The MAP with project information and appropriate exhibits. The MAP will assign a compliance number to each project, assess the need for survey, and inform the Bureau of Environment Archaeology Program Manager [BOE] of their recommendation. When it is the opinion of the MAP that an archaeological and/or architectural/historical survey is not required, pertinent information will be submitted to BOE.
- B. DOT will ask the MAP to conduct archaeological and architectural/historical investigations in the project's area of potential effect for state and federally funded transportation projects. If the MAP is unable to conduct these studies within the specified timeframe, BOE will be notified. All services will meet, at minimum, the standards set forth herein.
- C. Investigations requested will consist of all or portions of the following: literature and archival research, historical reconnaissance survey, Phase 1 (identification), Phase 2 (evaluation), preparation of Determination of Eligibility, preparation of documentation for effect, preparation of HABS/HAER documentation, preparation of data recovery plans and the Documentation of Consultation report, Phase 3 (data recovery), monitoring, curation of the artifacts, and report preparation.
- D. All aspects of the archaeological and architectural/historical research and report preparation shall meet the requirements of Section 106 of the National Historic Preservation Act of 1966, 36 CFR Part 800: Protection of Historic Properties; the Archeological and Historic Preservation Act of 1974; the National Environmental Policy Act; the Wisconsin Environmental Policy Act; and Wisconsin Historic Preservation Statutes, Chapter 44 and Chapter 157; the Wisconsin Archeological Survey Guidelines for Public Archeology in Wisconsin, As Revised; the Secretary of the Interior's Standards and Guidelines; and the Wisconsin Cultural Resource Management Plan
- E. The BOE will notify the MAP of concerns related to the quality, timeliness, costs, or any other matters associated with the professional services provided on a project. The BOE and the MAP will consult to determine methods to resolve the issue.
- F. The MAP shall notify BOE of any area encountered during archaeological and architectural/historical studies that may have the potential to harbor endangered species or contain contaminated material. If an area has contaminated material or has the potential to contain contaminated material, the MAP

shall not investigate the area. The MAP shall provide BOE with the location of the endangered species and/or contaminated sites encountered on maps and/or by station number.

- G. Professional services may be required on short notice, necessitating close contact between the MAP and BOE. Informal reports of findings on certain work increments may be required and usually will be made by telephone to BOE.

### III. PROCEDURES FOR CULTURAL RESOURCES INVESTIGATION

- A. Pursuant to an agreement between FHWA, SHPO, and DOT, the MAP will conduct a records search for those transportation projects that may qualify for screening. A records search will also be conducted for the sale of excess land, for off-site construction areas, and other activities associated with DOT projects. The MAP will conduct a records search for both archaeology and architecture/history and shall inform BOE of the finding(s) within seven (7) working days of the receipt of notice.
- B. The MAP will conduct archaeological studies within the proposed project's Area of Potential Effect [APE]. The APE for archaeological investigations is the project's existing and proposed right of way, including easements and temporary easements. In some situations, archaeological investigations may be necessary outside the APE when there is a need to establish the context of materials located in the right of way and extending outside the APE. The APE for architecture/history is determined in consultation with the SHPO.
- C. Studies will consist of a records/archival and literature search, field investigation, analysis, and report preparation. The MAP will provide BOE with an estimate of the amount of days required to complete the investigation. When unusual or unanticipated circumstances are encountered which may increase the survey timeframe, BOE will be notified.

Project information and exhibits submitted by DOT, and coordination with BOE regarding timeframe and schedule will serve as authorization for the initial archaeological and architecture/history investigations.

- D. Documentation containing the results of the studies will be provided to DOT following DOT's specified timeframe and the procedures set forth in the *Facilities Development Manual*, Chapter 26.
1. If no archaeological sites or significant archaeological materials are discovered within the project area, the identification investigation shall be considered complete. The DOT form titled, *Archaeological Survey Field Report* [ASFR], with appropriate supportive material, shall document completion of the investigation. If no historic properties are located within the project area after the initial reconnaissance and records search, a statement on the APE is prepared with documentation on why a survey is not needed., the investigation shall be considered complete. The DOT form titled, *Architecture/History Survey Form*, with appropriate supportive material, shall document completion of the investigation. If there are no buildings or structures over 50 years old, this documentation will be included on the Section 106 form and architecture/history coordination will be considered complete.
  2. When an archaeological site and/or archaeological material is located in the project area and is considered not to be significant, the MAP shall provide a report detailing the results of the field investigations and containing the documentation to support the recommendation for no further work.
  3. When an archaeological site is located and it is the MAP's opinion that further studies are necessary to determine the site's eligibility for listing on the NRHP, the MAP shall notify BOE that evaluation [Phase 2] is recommended.
    - a. The MAP will provide exhibits delineating the approximate site boundaries relative to the proposed project area. The DOT will review to determine whether redesign can be accomplished to avoid the site.
    - b. If previously unsurveyed land is required to avoid a site, the MAP will survey this area before the archaeological investigation will be considered complete.
    - c. To show that a site will not be affected by the proposed project, the DOT will provide sufficient information and appropriate exhibits for inclusion in the MAP report.
    - d. When a potentially eligible site cannot be avoided, BOE shall authorize the MAP to

conduct an evaluation [Phase 2] to determine whether the site is eligible for the NRHP. All costs associated with the evaluation must be specified in a SUPPLEMENTAL AGREEMENT.

4. When an historic property is located and it is the MAP's opinion that further studies are necessary to determine the property's eligibility for listing on the NRHP, the MAP shall notify BOE that evaluation is recommended. The MAP historian shall prepare the appropriate survey report.
  5. Upon completion of the evaluation studies [Phase 2], appropriate documentation shall be provided to substantiate the recommendation that the site be considered eligible, or not eligible, for the NRHP. The UTM boundaries shall be submitted to BOE in a format compatible with GIS.
- E. When potentially eligible site will be affected by the project, the MAP will prepare the Determination of Eligibility (DOE). If DOT can redesign to avoid the archaeological site, the MAP will provide the data generated on a Draft DOE form 10-900. For potentially eligible properties, the MAP will provide DOE on buildings, structures, or sites that may be affected.
- F. Data recovery for federal aid projects are subject to Section 106 of the National Historic Preservation Act and may be required if an eligible site will be affected.
1. BOE will coordinate the consultation process to determine the effect, and to develop appropriate mitigation measures. Should a data recovery plan be developed, the MAP will submit copies to BOE for review by the WisDOT Archaeology Committee. All costs associated with the data recovery plan must be specified in a SUPPLEMENTAL AGREEMENT.
  2. When the FHWA, DOT and SHPO concur on the terms set forth in the data recovery plan, the MAP and/or BOE will prepare the documentation required.
- G. When a project is state funded and an NRHP eligible site will be affected, consultation will be undertaken by BOE, SHPO, and the MAP in accordance with s.44.40, Wis.Stats. The DOT will request additional archaeological services from the MAP through a SUPPLEMENTAL AGREEMENT should additional archaeological investigations be necessary.

#### IV. MISCELLANEOUS PROVISIONS

- A. When the MAP encounters unmarked burials during archaeological studies, the MAP will immediately notify BOE and the Burial Sites Preservation Office. BOE will initiate consultation with the Burial Sites Preservation Office and interested Native American tribes, if appropriate, to determine the procedures to be followed regarding the burials.
- When burials are encountered during construction, provisions set forth for unexpected discovery of burials in the data recovery plan will be followed. DOT will be responsible for ceasing all construction activity until the burial issue is resolved. BOE will request permission to remove burials, and when permission is granted will arrange with the MAP for the excavation of burials.
- B. When scientific or historical materials are encountered during project construction, work shall be suspended at the location by DOT. BOE will contact the MAP to immediately examine the material and project area, and provide a recommendation for further action.
- C. The curation and storage of the records, artifacts, scientific data, and other project documentation generated as a result of this AGREEMENT shall be provided as a service to the DOT at no additional cost. Curation will be in compliance with the Wisconsin Archaeological Survey Guidelines for Public Archaeology in Wisconsin, As Revised.
- D. The MAP will prepare a summary archaeological report by field season which will be submitted to the DOT. This report will contain summary information on the number and findings of Phase 1, Phase 2, Phase 3 investigations, and the record searches for the sale of excess land and construction-related investigations.

V. BILLING PROCEDURES/FINANCIAL PROVISIONS

A. This section will be amended each fiscal year to reflect the rate adjustment as indicated in an Addendum. Allowable Costs under this Cooperative Agreement are:

1. Direct costs involved in the archaeological and architectural/historical investigations assigned by the DOT. These costs are eligible for federal reimbursement because they are not the result of SHSW administration. In addition to costs charged directly to projects, direct costs may be charged to projects either through application of the fringe benefit rate(s) or the rate for Equipment and Supplies/Services.

Actual costs incurred by the MAP for archaeological and architectural/historical investigation, analysis, preparation of material for curation, and required report writing associated with such investigations shall be reimbursed by the DOT. Costs shall be actual, reasonable, supported by documentation, and directly related to the project charged.

2. Incremental administrative costs of the SHS, incurred only because the MAP performs archaeological and architectural/historical investigations for DOT. The MAP administrative costs submitted for DOT reimbursement shall be actual, reasonable, and supported by documentation. The current state billing ID number for the MAP administrative costs will be stipulated in the fiscal year Addendum.

These costs will consist of:

- a. Salary and fringe benefit expenses (based on current fringe benefit rate) of the MAP Financial Manager and any LTEs or Work Study students performing administrative duties that benefit the DOT program;
  - b. Supplies/services used for the MAP Business Office administration;
  - c. Training expenses other than safety and risk management training for the MAP Administrative staff up to \$350. Training expenses in excess of \$350 must be pre-approved by DOT for reimbursement.
3. The administrative costs of the SHSW's Divisions of Administrative Services and of Management Support Services will be allocated to DOT based on the Wisconsin Legislative Audit Bureau letter of August 15, 1996. The SHSW Division of Administrative Services will invoice DOT no earlier than the second quarter for DOT's share of SHSW administrative support provided to the Museum Archaeology Program in the prior fiscal year.

B. Rates for Distribution of Certain Allowable Costs

1. Fringe Benefit Rates

Two FRINGE BENEFIT RATES will be calculated each fiscal year by the SHSW using the current state fiscal year fringe benefit expenses and labor costs of employees of the MAP, plus or minus any expenses under or over applied due to a rate being used. One rate will be calculated for permanent employees; the second rate will be calculated for limited term employees. Each rate will be applied to the permanent or LTE labor costs, as appropriate, which are charged to projects during the following fiscal year. The cost of labor will be the product of the number of hours worked by an individual multiplied by that employee's wage rate for those hours worked.

Components of the Fringe Benefit rates are the actual costs to the SHSW of providing the following benefits coverage to the MAP employees who work on DOT projects and on administration related to DOT projects:

- a. Health Insurance
- b. Retirement
- c. Social Security and Medicare
- d. Life Insurance
- e. Income Continuation Insurance
- f. Unemployment Compensation Payments
- g. Worker Compensation for On-the-Job Injury

h. Time Off With Pay (paid holidays and vacations)

## 2. Rate for Program Operating Supplies/Services

DOT recognizes that certain goods and services purchased or provided by the MAP will have a direct benefit on more than one project, and the resources necessary to account for and charge these costs directly to projects may be greater than the associated benefit. Therefore, the direct costs incurred by the MAP for certain goods and services that cannot be efficiently charged directly to individual projects will be allocated to all projects worked on by the MAP for DOT through use of a rate. These costs are not a distribution of administrative overhead.

A SUPPLIES/SERVICES RATE for projects and a SUPPLIES/SERVICES RATE for administration will be calculated for each fiscal year by the SHSW using the actual costs resulting from work performed on projects during the current state fiscal year, plus or minus any expenses under or over applied due to a rate being used. These rates will be applied to the direct labor costs charged to projects during the following fiscal year. The cost of labor will be the product of the number of hours worked by an individual multiplied by that employee's wage rate for those hours worked.

### Supplies/Services Costs

Examples of direct costs that may not be efficiently charged directly to projects are:

- a. A share of the building lease expense paid by SHSW for Coyier Laboratory (based on square footage used for DOT work) and the same percentage of related costs for laboratory maintenance and utilities;
- b. Small laboratory and field supplies such as bags for archaeological samples;
- c. Expenses of archaeological and safety training (labor, travel costs to attend and registration or trainer fees) and staff meetings, provided these benefit DOT's projects. All costs of risk and safety training will be reimbursed by DOT. SHSW training or conference costs estimated at \$350 per employee is not to exceed \$3,500 annually. SHSW participation in other training or conferences in excess of \$350 for each permanent employee working directly on DOT projects must be pre-approved by DOT for reimbursement.
- d. Equipment that meets criteria for capitalization;
- e. Incremental municipal service costs paid to the Department of Administration, allocated based on SHSW revenue from DOT;
- f. Costs of maintenance or service for laboratory equipment.

DOT will be notified of equipment that meets the criteria for capitalization purchases prior to purchase. Costs of supplies/services not used exclusively for DOT projects will be prorated before these costs are placed in the DOT cost pool for supplies/services rate development.

## C. GENERAL REQUIREMENTS

1. DOT shall be billed on a monthly basis. A DOT financial obligation exists only after each SHSW invoice for services not covered under a SUPPLEMENTAL AGREEMENT is submitted to BOE and approved for payment.

Invoices with sufficient detail to identify costs for each DOT project worked on during the billing period by the SHSW will be submitted monthly to:

Wisconsin Department of Transportation  
The Bureau of Environment, Room 451  
4802 Sheboygan Avenue; PO Box 7965  
Madison, Wisconsin 53705-7965

2. A SUPPLEMENTAL AGREEMENT will be prepared for Phase 2 [evaluation] and Phase 3 [data recovery]. The agreement will provide a budget detailing crew size, number of days, cost of specialists required, laboratory analysis, and report writing.
  - a. The budget shall be provided to BOE by the MAP and shall be mutually agreed upon by joint agency signatures.
  - b. Compensation for all work performed and services provided shall be actual costs to the MAP. The DOT and the MAP concur that if 1) fiscal year rate adjustments have a substantial impact to ongoing SUPPLEMENTAL AGREEMENTS those budgets will be adjusted; and 2) any

balance of funds authorized but not expended under SUPPLEMENTAL AGREEMENTS will not be carried forward to other projects.

3. Documents supporting all costs charged shall be available for inspection by the DOT, the U.S. Government, or the Legislative Audit Bureau.
4. BOE shall notify the MAP of projects that have been closed to further charges. The MAP shall notify BOE of the MAP's final billing for a project.
5. A table summarizing the cost of each project during the year will be provided to BOE.

This cooperative agreement will be reviewed each fiscal year as part of the annual evaluation. The MAP will recalculate the percentages used to distribute certain direct costs to reflect actual experience of the current state fiscal year just ended. Details of the calculations for proposed direct cost percentages will be provided to DOT as part of the financial evaluation by September 1 of the following fiscal year each year as an Addendum to this Agreement.

This AGREEMENT supersedes the COOPERATIVE AGREEMENT dated September 3, 1998. This AGREEMENT may be terminated by either the DOT or the SHSW upon 90 days written notice.

COOPERATIVE AGREEMENT CONTACTS:

Shirley Stathas (archaeology), Robert Newbery (history), DOT, and Jennifer Kolb, SHSW

.. Carol R. Cutshall .. \_\_\_\_\_ 3-29-00 ..

Carol Cutshall, Director, Bureau of Environment  
Wisconsin Department of Transportation

DATE

Robert Thomsgard

\_\_\_\_\_ 3/6/00

Robert Thomsgard, Associate Director

DATE

MEMORANDUM OF UNDERSTANDING  
CONCERNING COASTAL MANAGEMENT

This memorandum of understanding is made and entered into as of the 3rd day of February, 1978, and is between (1) the Wisconsin Coastal Management Council (hereinafter referred to as the Council), and the lead agency for implementation of the state coastal management program, the Wisconsin Department of Administration, and (2) the Wisconsin Department of Transportation (hereinafter referred to as the Department).

The parties recognize and acknowledge the need to preserve, protect, develop, and, where possible, restore or enhance the resources of Wisconsin's coastal area for this and succeeding generations; the parties further recognize the need for full governmental coordination and public involvement in the state's coastal management program and the need to give due consideration to the significance of coastal resources to inland areas.

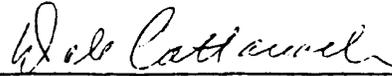
The Department recognizes that its programs and activities relative to the planning, acquisition, construction or regulation of highways, bridges, airports; the acquisition and regulation of outdoor advertising and scenic easements; and the planning of railways and waterports may have impacts on the state's coastal environment.

Therefore, in accordance with these considerations and to promote and carry out Executive Order No. 49, issued on October 7, 1977, the parties express their mutual understanding that:

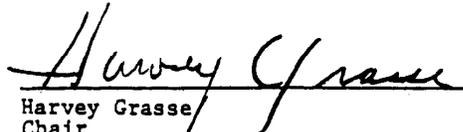
- A. The Department, as its statutory responsibilities permit, will:
  1. Act consistently with the state coastal policies set forth in Executive Order No. 49.
  2. In its regulatory, management, acquisition, construction and planning activities in coastal areas: (a) fully consider the Council's adopted positions and policy statements; and, (b) as consistent with current policy, fully consider the national interest in the siting of facilities that are other than local in nature, through intergovernmental coordination; and (c) considering its legislatively and judicially defined responsibilities and the public interest, act appropriately upon these considerations.
  3. Fully consider the compatibility of its plans and programs with the policies of the Council and notify the Council of any incompatibility.

4. Keep the Council advised of the initiation of projects or programs likely to have an impact on the coastal environment and provide periodic summaries of pertinent Department activities of the Council for review and comment. "Pertinent Department activities" include, but are not limited to, the Department's planning, acquisition, construction, and regulatory programs under Chapters 84, 85, and 86 and sections 114.01, 114.134, 114.135, 114.31, 114.33, and 236.13 of the Wisconsin Statutes. The Department will fully consider comments and recommendations of the Council in accordance with the policy outlined in the above paragraphs.
  5. Provide clear and easy access to Department staff and information gathered by the Department to allow the Council to have the best information available for its decision making process.
  6. When so requested by the Council, consider Council requests for the adoption of administrative rules as petitions for rules under Chapter 227, Wisconsin Statutes.
  7. Review and comment on all policies, plans, and other actions of the Council that apply to the Department.
- B. The Secretary of the Department, or the Secretary's designee, shall serve as a member of the Council.
- C. The Council shall:
1. Solicit comments of the Department for due consideration in the formulation, adoption, and implementation of policies and programs affecting the policies, programs, and statutory responsibilities of the Department.
  2. As it deems appropriate, or when so requested by the Department, review and comment, in a timely manner, on proposed projects and programs (including reports, summaries, and like information submitted by the Department to the Council) likely to have an impact on the coastal environment, including proposed facilities in which there may be a national interest.
  3. Encourage and facilitate the coordination of activities of federal, state, and local agencies whose activities affect the coastal environment.
  4. Provide a forum to initiate the resolution of conflicts between the Department and federal, state, or local agencies whose activities affect the coastal environment.

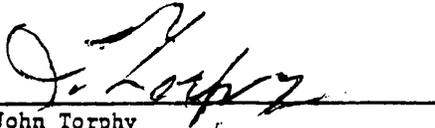
5. Provide such financial assistance as is at its disposal and is appropriate to the Department to assist in the implementation of Department programs and policies.



Dale Cattanaach  
Secretary  
Department of Transportation



Harvey Grasse  
Chair  
Wisconsin Coastal Management Council



John Torphy  
Secretary  
Department of Administration

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