

**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.
- (i) 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.
- (h) 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.
- (d) 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