


# CORRESPONDENCE / MEMORANDUM

STATE OF WISCONSIN

DATE: February 3, 1984

FILE REF: 1600

TO: ~~—~~ District Directors

FROM: C. D. Besadny 

SUBJECT: Department of Transportation Projects and Revised DOT/DNR Cooperative Agreement

As you know, DOT Secretary Lowell Jackson and I signed a revised cooperative agreement between our two agencies on December 21, 1983. A copy of this agreement has already been transmitted to you by a previous memorandum.

The question has arisen which Department of Transportation projects are subject to the requirements of the revised cooperative agreement. After considering several alternatives, I have determined that it is most proper that the requirements of the revised cooperative agreement be applied to those Department of Transportation projects which had not begun the interagency liaison process before December 21, 1983. Projects which were in that process before the revised agreement was signed will continue to be handled under the conditions of the previous agreement.

For projects following the revised procedures, we must recognize that neither DOT's nor DNR's internal procedural guidelines have been modified to reflect the new agreement. Until this has been accomplished, DNR staff will deal with each DOT project on a case-by-case basis. My understanding is that DOT staff are receiving similar instructions both with regard to the projects that are subject to the revised agreement and the need for a case-by-case approach to project review until agency guidelines are revised.

Questions on these requirements should be directed to either Stan Druckenmiller or Bob Roden.

RWR:sm

cc: Kathy Curtner - ADM/5

Jim Kurtz - LEG/5

Stan Druckenmiller - EI/3

Bob Roden - WRZ/5

Cindy Morehouse - DOT

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FEB 8 1984


Northwest District  
Headquarters

# CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Date: January 9, 1984  
To: District Directors

File Ref:

From: C. D. Besadny 

Subject: Revised DOT/DNR Cooperative Agreement

Attached for your information is a copy of a newly revised cooperative agreement with the Department of Transportation. The only part of the agreement that is modified is Section V, Waterway Crossings and Other Floodplain Encroachments. Under the revised agreement, DOT will notify landowners affected by increased backwater expected from proposed highway construction, and will make "appropriate legal arrangements". DOT has also agreed that construction will not begin until the floodplain zoning ordinance amendment process, where applicable, is completed (assuming the community acts on the amendment in a timely manner).

This agreement was concluded after lengthy negotiations with DOT and represents a reasonable approach to be undertaken in the spirit of cooperation that has been longstanding between our two agencies. Should you have any questions on the agreement, please contact Bob Roden.

cc: Bob Roden - WRZ/5  
Stan Druckenmiller - EI/3  
George Meyer - ADM/5  
Jim Kurtz - LEG/5

Attachment

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JAN 10 1984

Northwest District  
Headquarters



State of Wisconsin \

DEPARTMENT OF TRANSPORTATION



OFFICE OF THE SECRETARY

P.O. Box 7910

Madison, WI 53707-7910

December 19, 1983

Mr. C. D. Besadny, Secretary  
Department of Natural Resources  
Post Office Box 7921  
Madison, Wisconsin 53707

Dear Buzz:

Attached is the revised Cooperative Agreement between the Wisconsin Department of Transportation and the Department of Natural Resources.

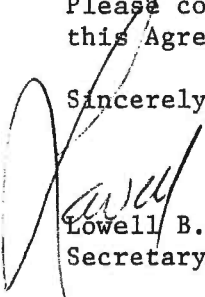
I have signed both original copies. Please do the same and return one of the originals to me.

Our staffs have worked on this revision in the area of NR 116 and its interpretation and have produced a document that will meet the needs of both agencies. When the Agreement is signed we will place the revised edition in our Facilities Development Manual and thus, transmit its conditions to our own staff and the consultants that do work for the local units of government.

This Agreement was promulgated based on the existing version of NR 116 (effective August 1, 1977). I understand that NR 116 is undergoing analysis and revision at this time. If there are changes in NR 116 as a result of that effort that would modify the terms of this Agreement, it will be necessary to modify the Agreement accordingly. In the interim, this Agreement will serve to clarify procedures to be followed in applying the current NR 116.

Please contact me if there is anything we need to discuss regarding this Agreement.

Sincerely,

  
Lowell B. Jackson, P.E.  
Secretary

LBJ:sjt  
Attachments

COOPERATIVE AGREEMENT  
BETWEEN  
WISCONSIN DEPARTMENT OF TRANSPORTATION  
AND  
DEPARTMENT OF NATURAL RESOURCES

(amended December, 1983)

I. Statement of Purposes

The Wisconsin Department of Transportation (DOT) and the Department of Natural Resources (DNR) recognize that the Wisconsin Legislature has charged DNR with the responsibility for protecting the State's land, water, fish and wildlife resources; and has charged DOT with furnishing the citizens of Wisconsin with an adequate, safe and economical transportation system. The DOT and DNR further recognize that the construction, reconstruction, maintenance and repair of transportation facilities, including highways and bridges, may have potentially adverse effects on the environment.

Therefore, the DOT and DNR agree that in the interest of fulfilling their respective duties, and to provide a reasonable and economical procedure for carrying them out in a manner that is in the total public interest, the DOT and DNR will consult and cooperate with each other such that each can accomplish its assigned statutory responsibilities while assuring at the same time adverse effects on Wisconsin's land, water, fish, and wildlife resources are minimized to the fullest extent practicable under the legislative mandates.

II. General Liaison, DOT Project Development Activities

Liaison between the departments on projects under consideration for development by DOT will be guided by the following:

- A. DOT will provide DNR with copies of notices of intention to make changes in the State Trunk Highway System, notices of hearings scheduled for proposed changes, copies of annual proposed highway improvement programs, and copies of Federal and State Environmental Impact Statements. Other notices and documentation will be provided upon request.
  
- B. DOT will inform DNR of proposed new construction by providing copies of pertinent inter-departmental memoranda and preliminary plans indicating location and nature of work, immediately following authorization to incur engineering expenditures, to insure that DNR has this data at the earliest possible date.
  
- C. DNR will review proposed improvements and make the recommendations necessary to comply with applicable environmental and regulatory requirements. DNR, in making its review and recommendations, will recognize that it is the policy of the state to provide a safe and economic transportation system with a minimal environmental impact.

- D. DOT will give consideration to such DNR recommendations incident to the location, design, construction and maintenance of facilities. If DOT feels that it is not practicable to comply with the DNR recommendations, appropriate department staffs will meet and resolve any differences. In such considerations, both departments will keep in mind the total needs of the public as well as the specific needs that each is mandated to administer.
- E. DNR and DOT district offices and central offices will maintain close liaison to achieve the objectives of this agreement.
- F. DOT will monitor the activities of the contractor to assure that the environmental and regulatory requirements for the project are being met.

### III. DNR Projects

On those projects contemplated by DNR which will result in special land-use restrictions such as presently found in the Federal Land and Water Conservation Act (LAWCON) and the 1966 Federal DOT Act (Section 4(f)), DNR will 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.

IV. Mutual Concurrence on Actions

- A. It is the intent of this agreement that joint review of projects will result in concurrence on the proper course of action to comply with the statutory obligations of each agency.
- B. Actions by contractors - DOT usually implements its actions by letting contracts to the lowest qualified bidder. In these contracts the final product is usually specified in great detail, but the method of operations is left to the contractors discretion. The climate of competitive bidding and relatively free choice of methods stimulates creativity and results in lower costs of the public. The contractors methods, however, are not specifically a part of the liaison and coordination described under II because the contractor is not known until the very last stages of action.

To insure that environmental regulations are complied with in all applicable areas, such as stream crossings and wetland encroachments, DOT will require contractors to submit a plan of operation for review and approval by DOT. Further liaison with DNR will be necessary if the construction methods proposed in the operation plan have not been reviewed and concurred in by DNR during previous liaison on the project. Evidence of approval will be kept

in the DOT engineers field office with a copy sent to the appropriate DNR district office. A contractor's operation which has been approved under this procedure shall be treated by DNR as an action by DOT.

- C. Projects administered by Division of Highways for other governmental units - DOT frequently administers transportation projects for counties, municipalities, and other local governing units as part of its statutory responsibilities. Those projects on which DOT exercises administrative control of plan preparation and contract supervision will be considered by DNR to be actions by DOT itself.

V. Waterway Crossings and Other Floodplain Encroachments

A. General Policy:

Consistent with the above concepts, DOT recognizes that DNR has developed criteria specified in Administrative Codes N.R. 116 and N.R. 320 concerning floodplain encroachments, stream profiles, and navigational clearances. DOT concurs in the spirit and intent of these Codes and will provide DNR and affected local units of government with information indicating the criteria used in the design and placement of structures in relation to the regional flood. DOT will cooperate fully with local units of government in their efforts to minimize flooding effects and to meet their responsibilities in floodplain zoning.



DOT considers discharge capacities, backwater elevations, potential upstream and downstream water damages, and protection of the roadway in the design of any water-related structure. DOT also considers land use and the property rights of present and future riparian and other affected property owners, upstream and downstream, consistent with the principle of just compensation.

B. Source, Distribution, and Use of Regional Flood Data:

For stream crossings involving new or replacement structures and for other floodplain encroachments, DOT shall compute the 100-year regional flood discharge and elevations in accordance with N.R. 116 and N.R. 320. In determining structure size and placement, DOT shall consider floodplain management standards pursuant to N.R. 116 and shall consider the hydraulic characteristics of the stream reach relative to existing impedances to flow. Upon completion of the design, predicted water surface elevations will be made available to the DNR, local unit of government, and the appropriate floodplain zoning authority. DOT or its authorized agent shall also notify affected property owners of the increase in the height of the regional flood as specified in N.R. 116 for the purpose of making appropriate legal arrangements with these property owners.

C. Appropriate Legal Arrangements:

DOT or its authorized agent shall ensure that appropriate legal arrangements have been made with affected property owners consistent with the Constitutional principle of just compensation. Such arrangements shall be commensurate with land use and with the amount of the increase in the height of the regional flood.

1. For streams that do not have floodplain zoning ordinances in effect:

Appropriate legal arrangements shall consist only of written notification to affected property owners which informs them of the predicted increase in the height of the regional flood and of their rights under Section 88.87, Wisconsin Statutes. Evidence of this notification shall be provided to DNR by DOT or its authorized agent.

2. For streams that do have floodplain zoning ordinances in effect:

Appropriate legal arrangements shall consist of written notification to affected property owners advising them of the change in the regional flood elevation on their property and, where consistent with the Constitutional principle of just compensation, of the acquisition of property rights or compensation prior to project

construction for future damages through the purchase of flowage easements or other means of conveyance, through condemnation as provided in Chapter 32, Wisconsin Statutes, or through any other legally enforceable document signed by an affected property owner which acknowledges the extent of increased flood elevations and the property owners' legal right to compensation. Written notification to affected property owners shall inform them further of their rights under Section 88.87, Wisconsin Statutes, to file a claim after damage occurs from unreasonable or unnecessary water accumulation resulting from bridge construction and its impedance of water flow and shall solicit their comments concerning the change in flood elevation.

Evidence of written notification; or where appropriate, evidence of the intent to acquire property rights, shall be provided to DNR by DOT or its authorized agent.

D. Relationship to Project Development:

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 N.R. 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 situations arise, 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.

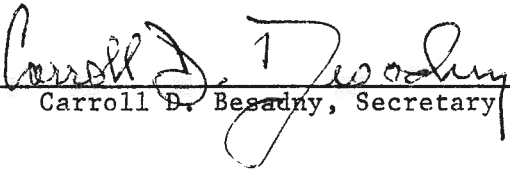
VI. Maintenance and Removal of Existing Structures

It is mutually recognized that DOT has the authority and responsibility to preserve the integrity of public-funded highways by means of a sound maintenance program. Also, the creation of a new highway often includes the removal of existing structures or roadbeds which are unuseable or obsolete.

On normal planned highway maintenance and structure removal, DOT will maintain liaison with the DNR district office in the same manner as is set forth earlier in this agreement for construction projects. It is recognized that emergency maintenance activities necessitate expedited liaison procedures. In emergency maintenance situations, DOT will contact the DNR district office and furnish details on the project. However, the degree of notice furnished to DNR in emergency situations will be in direct correlation to the severity of the emergency. All efforts will be made by DOT to give as lengthy a notice as is possible. In emergency maintenance situations DNR will submit its recommendations on the project to DOT on an expedited basis.

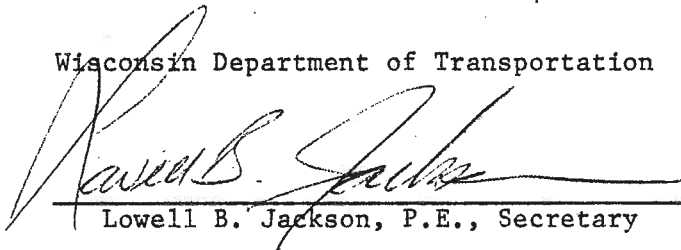
DOT will maintain close liaison with DNR, as discussed throughout this agreement, to insure that the use of explosives does not result in damage to waterways, wetlands, and other environmentally sensitive areas nor result in the destruction of fish or game.

Wisconsin Department of Natural Resources

  
Carroll D. Besadny, Secretary

12-21-83  
Date

Wisconsin Department of Transportation

  
Lowell B. Jackson, P.E., Secretary

12/21/83  
Date