

Memorandum of Understanding
Technical Agreement

It is agreed that:

1. The annual fund transfer will be credited to offset the full cost of all fees authorized under the following parts of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA):

- * The Floodplain Regulatory Authority found in Part 31, Sections 3101-3105, 3107, 3108, Water Resources Protection;
- * Part 301, Inland Lakes and Streams;
- * Part 303, Wetland Protection;
- * Part 315, Dam Safety;
- * Part 325, Great Lakes Submerged Lands;
- * Part 353, Sand Dunes Protection and Management;

for the Public Transportation Agencies or their authorized agents(s) eligible to receive Act 51 funding, if the project is for the construction, maintenance, or improvement of a public transportation facility.

2. For qualifying public airport projects an account will be set up annually by the Michigan Department of Transportation (MDOT), Bureau of Aeronautics (hereinafter referred to as MDOT/AERO), utilizing State Aeronautics Funds, from which the Michigan Department of Environmental Quality, Land and Water Management Division (hereinafter referred to as MDEQ/LWMD), will draw to offset the full cost of individual permit fees and MDEQ/LWMD staff time needed to comply with the conditions of the Memorandum of Understanding (MOU) for MDOT/AERO projects (with the exception of projects occurring at the Detroit Metropolitan Airport) as authorized under the applicable parts of NREPA listed in item 1.
3. For the purposes of this MOU a Public Transportation Agency (PTA) is defined as a public transportation agency that is eligible to receive Act 51 funds or a public airport that is regulated by the MDOT/AERO.
4. This MOU supersedes any and all previous contractual obligations between the MDOT and, specifically, the MDEQ/LWMD, with respect to providing expediting and coordinating services related to the permitting process and the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act environmental clearance process (commonly known as the "NEPA/404 Merger Process").

5. This Memorandum of Understanding will be reviewed annually by the Joint Agency Transportation Committee (JATC). The MOU may be terminated by either MDOT or MDEQ/LWMD upon consultation with the JATC and with thirty (30) days notice to the other Department.
6. MDEQ/LWMD agrees to provide the following services, and the PTA's agree to the following conditions:

A. SINGLE POINT OF CONTACT

- i. MDEQ/LWMD will serve as a single point of contact for PTA's for the following MDEQ Divisions to coordinate environmental reviews, resolve informally where possible, enforcement issues; and obtain appropriate information as needed for all qualifying transportation projects which may impact regulated waters of the state:
 - a. Water Bureau
 - b. Remediation and Redevelopment Division
 - c. Air Quality Division
 - d. Waste and Hazardous Materials Division

B. JATC/GENERAL

- i. Participate on a quarterly basis, at a minimum, in a JATC meeting consisting of representatives from the MDOT, the Michigan Municipal League (MML), the County Road Association of Michigan (CRAM) and the MDOT/AERO to address environmental issues as they relate to PTA's. Work with the JATC to update, interpret and implement this agreement.
- ii. In cooperation with the JATC, and State, county and municipal transportation agencies, prepare and provide written guidelines on permit application procedures and the environmental review process. The MDEQ/LWMD agency coordinator will seek input from the MDOT agency coordinator and members of the JATC when proposing to update or issue new guidelines or procedures that will substantially impact PTA's. The MDEQ/LWMD will provide for PTA representation on stakeholders groups assembled for review of proposed administrative rule changes that impact PTA's. In cooperation with PTA's, MDEQ/LWMD will provide training on the above at least once every two years to all appropriate personnel to promote consistency in the understanding of environmental regulations.
- iii. The JATC will review State and federal permitting requirements and develop recommendations to reduce the currently required regulatory documentation while ensuring environmental protection. As part of this

process, the committee will review the MDEQ/LWMD permit regulations with the intent of identifying ways to streamline the permit process without diminishing environmental protection. The MDEQ/LWMD and the PTA's will work jointly to obtain any required concurrence from federal agencies to allow use of modified procedures as necessary.

- iv. Procedures developed by the JATC and agreed to by all parties included in the Memorandum of Understanding will be deemed as being operational guidelines under this Memorandum of Understanding.
- v. Guidelines for removal of an agency from this MOU will be developed by the MDEQ/LWMD with assistance from the JATC. The guidelines must be approved by the JATC.

C. PERMITS

- i. Conduct and/or coordinate from the Lansing office, field review and processing service for LWMD environmental permitting and hydrologic/hydraulic analysis on a state-wide basis for qualifying State, county and municipal transportation and aeronautics construction and maintenance projects.
- ii. Review the project's impact on the state's natural resources and assist to resolve conflicts between the applicant and objecting citizens or agencies and/or other MDEQ and/or MDNR Divisions when possible.
- iii. Consider applications, where appropriate, for special processing, such as emergency conditions and expedited permit applications. Conduct expeditious reviews as necessary to meet reasonable funding and construction deadlines.
- iv. Meet with PTA's and review its final designs for compatibility with applicable state statutes, as necessary to minimizing costly delays.
- v. Meet on site, as needed, with PTA's as necessary, to resolve site specific problems as they relate to the potential impact of the design/construction on natural resources and MDEQ/LWMD permitting programs.
- vi. Resolve informally, where possible, complaints against PTA's and assist the applicant and complainant in seeking a cooperative resolution consistent with State statutes and sound environmental and economical practices.
- vii. Provide flood frequency discharges estimates for locations regulated by Part 31 to design staff, including state transportation engineers, county road

commission engineers, municipal engineers and consulting engineers working for road agencies or public airports within 30 days of receipt of request

- viii. Upon request, provide available flood hazard information, i.e., flood elevations, floodway delineation, and other appropriate flood data.
- ix. Upon request, conduct preliminary review of PTA's hydraulic analysis and provide technical assistance, where necessary, to ensure a structure's hydraulic acceptance prior to actual permit application.
- x. Conduct a final hydraulic review to ensure a structure's compatibility to the river/stream system prior to actual permit issuance.
- xi. Maintain a computerized hydrologic database for preliminary design purposes and make available on the MDEQ/LWMD website. The database will not be used for final design or permit application purposes without written approval of the data from MDEQ/LWMD. The database will contain the following information:
 - a. Drainage Area;
 - b. The 10%, 2%, 1%, 0.2%, flood frequency discharge estimates;
 - c. Method of Analysis-Regression, SCS, DAR, etc.;
 - d. Rainfall Data Used (rainfall amount and distribution);
 - e. Latitude and Longitude
 - f. Location Information – Waterbody, Road Crossing, Quarter Section, Section, Town, Range, County, Township, Watershed (MDEQ Convention);
 - g. Optional Data – Time of Concentration, Time to Peak, Runoff Curve Number (SCS), Volume of Runoff, i.e., V10, V50, V100, FIS Data.
- xii. The PTA's agree to apply for the required permits for activities regulated under parts 31, 301, 303, 315, 325, and 353. Repeated violations of any of these statutes will lead to the Individual County or municipality PTA being removed from this MOU, following concurrence from the JATC. After a one year period with no further violations, of Part 31, 301, 303, 315, 325, and 353, a PTA may apply for reinstatement to this MOU with concurrence of the JATC.
- xiii. Any PTA found in violation of Part 31, 301, 303, 325, and 353, must pay for the appropriate after-the-fact fee as required in the statute unless a conditional permit is issued when emergency conditions warrant to protect the project or public health, safety or welfare. The PTA will notify DEQ upon project completion.

D. EARLY COORDINATION/PROJECT PLANNING

- i. Coordinate the preliminary project review with Federal agencies in Section 10 and Section 404 waters, coordinate project proposals with the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and U.S. Environmental Protection Agency, and provide Section 401 water quality certification and certification of consistency with the Coastal Zone Management Plan, as required.
- ii. Upon request conduct a preliminary environmental review of PTA projects and provide documentation of the findings.
- iii. MDEQ/LWMD will participate in the “NEPA/404 process” for transportation projects as defined by the most recent version of the federal agency agreement entitled “Interagency Consensus on Concurrent NEPA/404 Processes for Transportation Projects”. The PTA will provide all of the appropriate and relevant information. MDEQ/LWMD will inform the PTA of the extent and content of any known issues that may jeopardize the issuance of the permit or delay the project. Concurrence points may be revised if there is new or compelling information during the permit process.
- iv. Meet with PTA’s and review its preliminary designs for compatibility with applicable state statutes, as necessary to minimizing costly delays.

E. WETLANDS

- i. The MDEQ/LWMD with the JATC will develop the education, experience and training criteria for the PTA to be recognized as ‘Competent’ by the MDEQ/LWMD in the wetland delineation and wetland mitigation and monitoring requirements as they relate to transportation projects. It is expected that the appropriate MDEQ/LWMD personnel will possess the same education, experience and training qualifications.
- ii. PTA’s will be given **credit** for advance mitigation only when projects are specifically identified in advance and when the future wetland impacts and mitigation are known or could be easily estimated. Moment of opportunity wetlands that are created in excess of specifically identified future impacts can be used to meet Federal requirements of no net loss wetlands for:
 - a. Federally funded public road maintenance and safety improvement projects that meet the general permit category as identified in Part 303.
 - b. Loss of wetlands not regulated under Part 303.
 - c. Projects that impact less than one third of an acre that do not meet the General Permit categories and where there is no reasonable opportunity for mitigation as stated in R 281.925, Rule (5)(3)(i) of Part 303.

Where mitigation is provided for these types of projects, the mitigation ratio will be one-to-one and may be located anywhere and may be of any type. Guidelines for the creation and use of moment of opportunity wetlands will be developed by the MDEQ/LWMD with the assistance from the JATC.

- iii. PTA's may create specific mitigation sites to offset impacts from projects identified in section ii (a-c) above. The creation of these mitigation sites must be in non-wetland areas or may be wetland preservation sites and must be approved by MDEQ/LWMD in order to receive mitigation credit.
- iv. PTA's will provide mitigation at a one to one ratio to offset wetland losses from federally funded projects that meet the general permit category as identified in Part 303. This mitigation may be located anywhere and be of any type, and may include a preservation credit with a ratio of ten to one. PTA's are not required to mitigate for projects that meet the general permit category as identified in Part 303 if federal funds are not used.
- v. MDEQ/LWMD agrees to work with MDOT to develop site specific banking agreements that meets the requirement of Part 303 banking rules.
- vi. The PTA's will be responsible for the monitoring of created wetlands, as determined during the permit process. Monitoring reports shall be submitted to the MDEQ/LWMD by March 31 of each year. This date may be extended when mutually agreed to. MDEQ/LWMD will provide guidance to the PTA on wetland related issues as needed or requested. Wetlands will be monitored with the primary purpose of assuring the success of the wetland creation.
- vii. MDEQ/LWMD will support the PTA's efforts to utilize public lands for the purposes of wetland mitigation whenever appropriate.
- viii. MDOT will provide access to its wetland mitigation database to MDEQ/LWMD by October 1, 2007.

F. PERFORMANCE MEASURES

The following expedited permit processing goals established by the PTA's:

- i. Determine if applications are administratively complete and forward to field staff within 5 work days. If MDEQ/LWMD office staff determines that an application is administratively incomplete, they will provide a written statement to the PTA within 10 work days from receipt of the application outlining all of the substantive information necessary for the application to be administratively complete.

- ii. If MDEQ/LWMD field staff determines that an application is substantively incomplete after their site visit, they will provide a written statement to the PTA within 10 work days of the site visit outlining all of the substantive information necessary for the application to be complete.
- iii. If the MDEQ/LWMD field staff determines that minor modifications of the application would result in granting of the permit, the proposed substantive modifications will be stated in writing to the PTA so the PTA can modify the application.
- iv. Issue, deny, or suggest modifications to administratively-complete permit applications.
 - a. For minor projects eligible for expedited review within 14 calendar days.
 - b. For minor project permit applications within 30 calendar days.
 - c. For major projects, including those requiring a public notice, within 60 calendar days and suggest modifications within 30 days.
 - d. For projects requiring Federal review within 90 calendar days.

If these goals cannot be met, the MDOT and MDEQ/LWMD agency coordinators, or their designees, in consultation with the JATC, will evaluate staffing levels, consider process improvements, and develop a plan to meet these goals. If current funding or staffing levels are not adequate to meet the above goals the MDEQ/LWMD will provide justification and expected performance, in writing, to the MDOT agency coordinator as soon as possible. The MDOT will notify the MDEQ/LWMD of receipt of such justification and will determine if the expected performance relative to funding or staffing levels is sufficient. If the MDOT determines that the justification is sufficient and increased funding and staffing levels are necessary to meet the stated goals, the MDOT will support an increase in the funding and staffing levels to meet the desired goals. If the MDOT determines that the justification and expected performance by the MDEQ/LWMD are not sufficient for two consecutive fiscal years, the MDOT and the MDEQ/LWMD agree to participate in a process improvement review to evaluate the services and programs financed under this MOU.

- v. PTA's will strive to submit complete applications the first time to avoid delays. Additionally PTA's will strive to submit their applications at least 90 days before their anticipated due date (e.g., letting date).

G. CONFLICT RESOLUTION

The following procedure shall be followed to resolve conflicts between the agencies.

- i. Questions regarding statute/rule interpretation by the MDEQ /LWMD shall be sent via email to the Transportation and Flood Hazard Unit Chief. A response shall be given within 30 days. All MDOT environmental permit coordinators, MDEQ/LWMD transportation staff, MDOT's Hydraulic Design Engineer and County JATC representatives shall be copied.
- ii. All staff level conflicts should attempt to be resolved at the staff level whenever possible.
- iii. For conflicts that can not be resolved at that staff level within 30 days, a written request (email is acceptable) asking for a joint meeting shall be sent to either the LWMD's Transportation and Flood Hazard Unit Chief or the MDOT's (county) project manager. The written request shall outline the perceived conflict and what the current Department positions are.
- iv. If the conflict is not resolved at the Unit/Manager level, it shall be elevated via a written request to the LWMD's Water Management Section Chief or the MDOT's TSC manager (County Engineer, City Representative). The LWMD Section Chief and the MDOT TSC Manager (County Engineer, City Representative) shall discuss the conflict with their appropriate management before and after the meeting.
- v. If the conflict is still unresolved after step 4, it shall be elevated to the MDOT Regional Engineer (or designated County or City Official) and LWMD Division Chief.