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**REPORT TO
THE MINNESOTA LEGISLATURE ON
ENVIRONMENTAL STREAMLINING FOR
TRANSPORTATION RELATED PROJECTS**

**FEBRUARY 24, 2003
PREPARED BY
THE MINNESOTA DEPARTMENT OF
TRANSPORTATION**

**IN CONJUNCTION WITH
THE BOARD OF WATER AND SOIL RESOURCES
THE MINNESOTA DEPARTMENT OF NATURAL
RESOURCES**

**THE MINNESOTA POLLUTION CONTROL
AGENCY**

**PURSUANT TO LAWS 2002, CHAPTER 364,
SECTION 39**

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The cost of preparing this report is \$40,000 which includes contributions of Mn/DOT, BWSR, DNR and MPCA staff time and overhead costs.

EXECUTIVE SUMMARY

This report was prepared in accordance with Minnesota Laws 2002, Chapter 364, Section 39. The law required the creation of a Technical Advisory Group (TAG), chaired by the Commissioner of Transportation, or the Commissioner's appointee, to conduct research, evaluate alternatives and make findings and recommendations on streamlining the process of environmental review for transportation related projects. The law required the TAG to submit a comprehensive report to the house and senate committees with jurisdiction over environmental policy and transportation policy and finance and to make "... findings and recommendations, including actions that should be taken, recommendations on reporting mitigating costs for the previous five years and for the future, and the statutory changes necessary to effect a more streamlined process for environmental review, assessment, and approval without weakening the substance of existing environmental protections."

The TAG acknowledged that in many cases federal law and regulations impose environmental requirements on Minnesota and limit the state's ability to reduce or remove those requirements. In addition, the limited time allowed for the study limited the group's ability to adequately explore complex and controversial issues.

There are two key processes and times when environmental considerations are reviewed by agencies external to Mn/DOT: Environmental Review, which occurs during preliminary engineering; and Permitting, which occurs at the end of final design. Both of these steps, which involve compliance with a complex array of state and federal laws governing environmental process, impacts, and mitigation, must be completed before project construction can begin. The complexity of the multiple requirements along with protracted environmental document and permit review and approval times can result in project delays and/or increased costs.

The TAG chose to limit the scope of the report to evaluating the permit process, as the EQB was concurrently evaluating the environmental review process. Since the TAG was composed of agencies who regulate water and wetlands, it was logical for the TAG to focus the report on water and wetland permitting processes.

The TAG made the following findings and recommendations.

FINDINGS

- Substantial measures have already been implemented to streamline various state and federal environmental program requirements (e.g., 404, 401, WCA, DNR, NPDES). Mn/DOT has also investigated and recommended streamlining measures for its own internal project development process. The TAG supports the continued use and improvement of these measures.
- There are tools already being used to facilitate early project coordination between Mn/DOT and environmental and resource regulators (e.g., Mn/DOT-DNR MOU, Mn/DOT-Watershed District MOU, and the Mn/DOT funded DNR and MPCA Transportation Teams). The TAG supports the use and improvement of such tools.
- There are additional opportunities for streamlining and better coordination and cooperation.
- There was insufficient time to work out many of the details.

RECOMMENDATIONS

Recommendation 1: Continue participating in efforts to streamline multiple state and federal wetlands regulatory processes and work directly with state and federal regulators to speed up existing permitting processes.

Recommendation 2: MPCA and Mn/DOT should evaluate combining various NPDES stormwater permits, including development of a transportation specific general permit.

Recommendation 3: Implement and evaluate DNR statewide general permit for Mn/DOT bridge and culvert reconstruction projects for the 2003 construction season.

Recommendation 4: Additional discussion among the various agencies must be continued to further develop a permit process that differs from that process used to obtain approvals based on detail design level information. This is especially relevant for design-build projects. Legislative changes may be needed to allow some agencies to incorporate this approach.

Recommendation 5: At this time, Mn/DOT recommends that it not develop a specific methodology or cost accounting system to identify and report costs attributable to environmental mitigation. Instead, Mn/DOT will select several representative highway construction projects and review all costs associated with those projects to determine the cost of environmental mitigation on each of those projects in relation to the total cost of each project. Mn/DOT will do this work over the next six weeks and report those costs to the Legislature for its consideration.

INTRODUCTION

This report was prepared in accordance with Minnesota Laws 2002, Chapter 364, Section 39 (**Appendix A**). The law required the creation of a Technical Advisory Group (TAG-see **Appendix B for a list of acronyms and terms**), chaired by the Commissioner of Transportation, or the Commissioner's appointee, to conduct research, evaluate alternatives and make findings and recommendations on streamlining the process of environmental review for transportation related projects. The law required the TAG to submit a comprehensive report to the house and senate committees with jurisdiction over environmental policy and transportation policy and finance and to make "... findings and recommendations, including actions that should be taken, recommendations on reporting mitigating costs for the previous five years and for the future, and the statutory changes necessary to effect a more streamlined process for environmental review, assessment, and approval without weakening the substance of existing environmental protections."

TECHNICAL ADVISORY GROUP

The law required that the members of the technical advisory group (TAG) consist of one senior manager and two administrative staff from each of the following agencies: Department of Transportation (Mn/DOT); Department of Natural Resources (DNR); Minnesota Pollution Control Agency (MPCA); and Board of Water and Soil Resources (BWSR). Mn/DOT requested the participation of a representative of the Minnesota Environmental Quality Board (EQB), and in addition, representatives of several other groups and individuals attended the meetings and sometimes participated in the discussions (**Appendix C**).

The TAG met eight times between July 2002 and January 2003. Meetings were open to the public. At the meetings, the TAG representatives discussed items on the agenda. At the end of each meeting, a period of time was provided to allow the non-TAG members the opportunity to express their views and present their ideas.

WHAT IS ENVIRONMENTAL STREAMLINING?

Environmental streamlining is the term the Federal Highway Administration (FHWA) uses to describe a new way of doing business that brings together the timely delivery of transportation projects with the protection and enhancement of the

environment. First enacted into legislation for highway and transit projects with the Transportation Efficiency Act for the 21st Century (TEA-21), environmental streamlining is also being pursued by many states. In its simplest terms, environmental streamlining consists of cooperatively establishing realistic project development time frames among the transportation and environmental agencies, and then working together cooperatively to adhere to those time frames. Because major transportation projects are affected by dozens of federal, state and local environmental requirements administered by a multitude of agencies, improved interagency cooperation is critical to the success of environmental streamlining. Efforts currently underway within the U.S. Department of Transportation (USDOT) focus on solidifying the interagency partnerships through a series of actions that include pilot efforts, process reinvention, alternative dispute resolution and a focus on performance evaluation. In addition, Mn/DOT has recently completed an internal streamlining study which provides specific recommendations for streamlining Mn/DOT's internal environmental process. Many of these streamlining measures have been implemented. Streamlining is about reducing time and resources, even when the process is working.

LIMITATIONS

The members of the TAG acknowledged that in many cases federal law and regulations (see **Appendix D**) impose environmental requirements on Minnesota and limit the state's ability to reduce or remove those requirements. In addition, the limited time allowed for the study limited the group's ability to adequately explore complex and controversial issues.

ISSUE DEVELOPMENT

UNDERSTANDING KEY PROCESSES

There are two key processes and times when environmental considerations are reviewed by agencies external to Mn/DOT: **Environmental Review**, which occurs during preliminary engineering; and **Permitting**, which occurs at the end of final design (**Appendix E**). Both of these steps, which involve compliance with a complex array of state and federal laws governing environmental process, impacts and mitigation, must be completed before project construction can begin. The complexity of the multiple requirements, along with protracted environmental

document and permit review and approval times, can result in project delays and/or increased costs.

- **Environmental Review**

At this phase of review, environmental considerations are made based on preliminary project information. The evaluation of various alternative proposals and alignments, and a decision on which to select, are usually made at this phase of the project development process. Environmental Impact Statements (EIS's), and Environmental Assessment Worksheets (EAW's) are the most widely recognized documents prepared for the environmental review process. The National Environmental Policy Act (NEPA) and Minnesota Environmental Policy Act (MEPA) statutes govern the environmental review process. Under NEPA, the Council on Environmental Quality (CEQ) oversees the federal environmental review process. Under MEPA, EQB oversees the state environmental review process. Mn/DOT did not propose to examine or change the state environmental review process. This decision was supported in part because an EQB formed committee was already undertaking a study of the state environmental review requirements, the results of which are found in EQB's Environmental Review Reform Report completed in 2002. It was agreed by the TAG members to focus on the permitting process.

- **Permitting**

Once the environmental review phase is completed, the specific project elements are developed in detail. When the final project plans are essentially complete, the relevant portions are submitted to various regulating agencies for evaluations and approvals. Environmental permits and approvals are required for many aspects of transportation projects that can affect the air, water or land. Due to the commonality of water regulation among the three regulatory agencies participating in the TAG, water and wetland permitting issues were chosen as the focus of the discussion. (An abridged list of State water and wetland regulatory programs is summarized in **Appendix F**)

PROBLEM IDENTIFICATION

Mn/DOT and other transportation authorities usually get through the permitting and approval process without encountering substantial delays or problems. However, for a number of reasons, problems can be encountered during the permitting/approval process. Unanticipated problems in the permit/approval process can result in consequences such as:

- project delays (e.g., redesigning a project late in the process, delayed letting)
- increased costs (e.g., special features, additional right of way, claims by and payments to contractors)

Contributing factors leading to these problems can include among other things:

- Complex nature of the regulatory structure (e.g., designer may be unfamiliar with the numerous requirements of multiple agencies and programs)
- Length of permit review period (e.g., varies from days for some agencies to six months or more for others)
- Timing of permit application submittal, review and approval (e.g., occurs late in the project development process when there is less opportunity to change design without substantial increase in cost, or project delays - **Appendix G**)
- Frequently changing environmental laws and regulations (WCA, NPDES)
- Numerous Interrelated Permit conditions. (Many permits are contingent on a separate program permit or approval e.g., GP-1, 404/401, TMDL and ORVW conditions in NPDES permit.)
- Unanticipated special requirements (e.g., critter crossings, buffer areas)
- Conflicting requirements among different agencies (e.g., different culvert size requirements of different agencies)
- Varied agency missions, goals and priorities (e.g., transportation, environmental protection)

PROPOSED DISCUSSION TOPICS

At the first meeting, the agencies were invited to contribute ideas for streamlining. Mn/DOT initially proposed the following four discussion topics relating to streamlining permit processing time and reducing multiple (federal-state-local) permit reviews for permits related to water resources and wetland issues:

- *Evaluate the expansion of the geographic and programmatic extent of DNR General Permits for work in Public Waters to include the whole state.* Currently DNR has established several General Permits for various activities-including bridge repair and replacement for specific geographic areas of the state.
- *Evaluate the potential to eliminate duplicative multiple wetland reviews by having DNR/BWSR initiate state assumption of the Federal 404 wetlands program.* Currently similar and often overlapping reviews (conducted by the same agencies) occur for wetland impacts. State assumption of the 404 process would allow for single review process.
- *Evaluate the opportunities to reduce or combine stormwater permit reviews (without delegating federal program authority to local governments).* In urbanized areas transportation authorities and others may have to obtain both an NPDES Construction Stormwater Permit from MPCA and a construction

stormwater permit from the local Municipal Separate Storm Sewer System (MS4) permit holder. Additionally they may need to obtain a separate stormwater control permit from a watershed district.

- *Evaluate the effectiveness of existing agreements between watershed districts and Mn/DOT districts.* Based on this evaluation, determine the appropriateness of use of the model MOU template endorsed by the Minnesota Association of Watershed Districts (MAWD), Mn/DOT and BWSR (**Appendix H**).

The items were selected because they seemed to offer an opportunity to build on past and ongoing interagency streamlining successes and might further address problems by:

- Reducing the number of multiple permit reviews of the same impact (e.g., wetland fill, stormwater discharge, etc.) by different agencies
- Reducing the need for several permits for similar stormwater discharges from the same agency
- Reducing various permit processing times
- Reducing the likelihood of unexpected permit conditions late in the process

The TAG agreed to discuss the four topics that Mn/DOT identified, and other relevant issues brought up by the group, recognizing that there may not be a recommendation agreed to for all of the issues discussed. The TAG agreed that only those recommendations that received unanimous approval would be presented as recommendations to the legislature. It was also agreed that other identified issues that did not receive unanimous approval for recommendation, would be listed in the report. The discussion of these topics and issues led to the development of five **Issue Statements** and their associated **Recommendations** that are presented later in this report.

GENERAL REVIEW AND DISCUSSION

The recent history of development of environmental regulations and environmental streamlining efforts was reviewed. This was done primarily through presentations by representatives from state agencies (BWSR, DNR, MPCA, Mn/DOT), the United States Army Corps of Engineers (COE), and comments by other organizations, such as the MAWD, the Minnesota Center for Environmental Advocacy (MCEA), and individuals.

During the course of the study, Mn/DOT gathered more specific information about:

- actual permitting problems and project delays
- the use of MOU's between Mn/DOT and watershed districts

- environmental mitigation costs
- streamlining efforts undertaken in other states which might be applicable in Minnesota

The following information sources were also reviewed in researching these issues:

- State of Minnesota Federal Section 404 Assumption Feasibility Study, Minnesota Department of Natural Resources- Division of Waters (August 31, 1989)
- State of Minnesota Wetland Law Consolidation Report, Minnesota Department of Natural Resources-Division of Waters in Conjunction with the Board of Water and Soil Resources (March 1, 1999)
- Wetland Regulations Legislative Report, DNR-DOW, BWSR (January 12, 2001)
- Report of the Special Advisory Committee on Environmental Review Reform to the EQB (July 31, 2002)
- Presidential Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews (September 18, 2002)
- USDOT-FHWA streamlining website (www.fhwa.dot.gov/strmlng/index.htm)
- Final Report and Recommendations, Project Delivery Streamlining: Design, Right-of-Way and Environmental Focus Areas, Mn/DOT and Center for Transportation Studies (February 1, 2002)

FINDINGS

Based on review and discussion of the issues presented and materials researched, the TAG made the following general findings:

- Substantial measures have already been implemented to streamline various state and federal environmental program requirements (e.g., 404, 401, WCA, DNR, NPDES). Mn/DOT has also investigated and recommended streamlining measures for its own internal project development process. The TAG supports the continued use and improvement of these measures.
- There are tools already being used to facilitate early project coordination between Mn/DOT and environmental and resource regulators (e.g., Mn/DOT-DNR MOU, Mn/DOT-Watershed District MOU, and the Mn/DOT funded DNR and MPCA Transportation Teams). The TAG supports the use and improvement of such tools.
- There are additional opportunities for streamlining and better coordination and cooperation.
- There was insufficient time to work out many of the details.

LIST OF FINAL RECOMMENDATIONS

The TAG makes the following recommendations.

Recommendation 1: Continue participating in efforts to streamline multiple state and federal wetlands regulatory processes and work directly with state and federal regulators to speed up existing permitting processes.

Recommendation 2: MPCA and Mn/DOT should evaluate combining various NPDES stormwater permits, including development of a transportation specific general permit.

Recommendation 3: Implement and evaluate DNR statewide general permit for Mn/DOT bridge and culvert reconstruction projects for the 2003 construction season.

Recommendation 4: Additional discussion among the various agencies must be continued to further develop a permit process that differs from that process used to obtain approvals based on detail design level information. This is especially relevant for design-build projects. Legislative changes may be needed to allow some agencies to incorporate this approach.

Recommendation 5: At this time, Mn/DOT recommends that it not develop a specific methodology or cost accounting system to identify and report costs attributable to environmental mitigation. Instead, Mn/DOT will select several representative highway construction projects and review all costs associated with those projects to determine the cost of environmental mitigation on each of those projects in relation to the total cost of each project. Mn/DOT will do this work over the next six weeks and report those costs to the Legislature for its consideration.

ISSUE STATEMENTS AND DISCUSSIONS LEADING TO RECOMMENDATIONS

Issue statement 1: *There are multiple complex programs and requirements regulating work in waters and wetlands.*

Potential Solution: Seek additional wetland regulatory streamlining through better coordination and integration of existing local, state and federal regulatory programs.

Discussion: Fact-finding efforts by the TAG have found that, in lieu of full state assumption of federal wetlands regulation, substantial streamlining efforts have already been undertaken, including a series of General Permits (GPs) and Letters of Permission (LOPs). These GPs and LOPs substantially reduce the Corps of Engineers (COE) permitting process time from 6 months for the Standard Individual Permit (SIP) to 3-4 months for an LOP and to days for a GP. Currently, the COE is working on developing GP-2, which authorizes a project impacting up to one acre of wetland to receive authorization under 404 if the project also receives WCA replacement plan approval. COE indicated that the GP-2 would be applicable to some road projects, but that the permit threshold of 1 acre was pushing the limit of what COE could allow under a programmatic general permit. COE did indicate that the threshold for LOP-D (COE streamlined permit for work on existing roads) might someday be raised from the current 5-acre limit in order to further facilitate streamlining efforts. COE also presented some additional ideas on how streamlining of the existing process could work. These ideas centered on Mn/DOT assisting in the preparation of documentation that otherwise is the responsibility of the COE, such as the COE public notice, and the COE environmental documentation.

The following is a summary of existing federal, state and WCA streamlining efforts:

- Clean Water Act (CWA) Section 404 (Federal Wetland Permits). The COE has developed several alternative types of permits (**Appendices I,J**), which can reduce a project's permit approval time.
 - GP/LOP (General Permit and Letters of Permission-see attached)
 - GP-1 (General Permit for actions approved by DNR)
 - GP-2 (proposed General Permit for WCA approved projects)

- Minnesota Wetlands Conservation Act (WCA) BWSR has incorporated into the WCA Rules, wetland impact reporting, wetland replacement, and decision making streamlining provisions for all road authorities including:
 - Streamlined reporting for work on existing roads
 - Streamlined reporting for emergency and small maintenance projects
 - Wetland replacement flexibility
 - Ability to use statewide wetland bank
 - BWSR wetland replacement for local road safety projects on existing roads
 - State agencies as decision making authorities (LGUs) on state lands
- Department of Natural Resources Public Waters Program DNR has developed various activity specific streamlining measures which reduce project review times and reduce multiple review and approval processes including:
 - Deregulated activities - for small projects
 - Permit authorizations by telephone or e-mail in emergency situations
 - General permits for flood damage - repairs, bridge and culvert repair and replacement, erosion control and construction dewatering
 - DNR waivers to local government units for projects in public waters wetlands that follow WCA requirements

In addition a single combined permit application has been developed which can be used to satisfy the requirements for Section 404 permit, Section 401 Certification, DNR public waters permit, and WCA replacement plan applications. This eliminates the need to file multiple applications for various permits and approvals.

Pros:

- Cost-effective process will result in incremental improvement in wetlands regulatory streamlining.
- This approach allows regulators to assess environmental impacts of streamlining actions and avoid unintended consequences.
- Cooperation between Mn/DOT and wetland regulatory agencies is fostered.

Cons:

- Multiple permits are still required for some projects.

Recommendation 1: Continue participating in efforts to streamline multiple state and federal wetlands regulatory processes and work directly with state and federal regulators to speed up existing permitting processes.

Issue Statement 2: *Multiple Stormwater Permits are needed from MPCA.*

Potential solution: Reduce complexity of stormwater permit system (e.g., reduce the number of stormwater permits needed)

Discussion: Phase I of the US Environmental Protection Agency's (EPA's) stormwater program was promulgated in 1990 pursuant to the federal Clean Water Act. The Phase I program applied to construction projects that disturbed five or more acres, including numerous Mn/DOT projects. In 2003, the federal Stormwater Phase II Final Rule takes effect. It is the next step in EPA's effort to preserve, protect and improve water resources harmed by polluted stormwater runoff. The Phase II Program expands the Phase I Program and will result in a number of new requirements for Mn/DOT projects and facilities (**Appendix K**). For example, beginning in 2003, Mn/DOT will, for the first time, be required to obtain a NPDES Industrial Permit for all Maintenance Facilities, and NPDES MS4 permit for its storm water drainage facilities. Public transportation facilities had been exempted from this federal requirement by the Intermodal Surface Transportation Act (ISTEA) and then by the federal Phase II rule until March of 2003.

The TAG discussed and evaluated alternatives and various opportunities to reduce or combine stormwater permit reviews. Under the new Phase II program, federal law will require Mn/DOT to obtain several different types of National Pollutant Discharge Elimination System (NPDES) stormwater permits from the Minnesota Pollution Control Agency (MPCA). Opportunities may exist to combine some or all aspects of these permits to enable a more streamlined, efficient approach to stormwater management at Mn/DOT projects and facilities. For the Industrial Permit, MPCA will work with Mn/DOT to obtain a single NPDES Industrial Permit and a system for annual reporting. This would replace the need for numerous individual permits and would simplify Mn/DOT's compliance management responsibilities. Regardless, each facility still would have to customize a stormwater pollution prevention plan to address specific aspects of each facility and report on compliance annually.

The TAG also discussed exploring the feasibility of a general permit tailored to linear projects such as highways and utilities. This approach has been researched by contacting other states and obtaining examples of different approaches to transportation permits. To pursue this approach, it would be important to reach agreement that these efforts would be effective in streamlining the permitting process without weakening the substance of environmental protections.

MPCA and others have published a variety of traditional Best Management Practices (BMPs) that can be used in the construction industry. A transportation-specific permit could provide the opportunity to identify and test more industry specific BMPs that may be found to be both more environmentally effective and cost effective. In these situations, it would be desirable to allow for testing and effectiveness monitoring of innovative BMPs so that there can be assurance that the environment is being adequately protected.

Pros:

- Fewer stormwater permits will result in less complexity and confusion.

Cons:

- Any transportation specific NPDES permit will not be developed prior to the federal application deadline (March 10, 2003). Therefore few, if any, existing facilities would benefit from this new transportation specific permit, as they would already be regulated under the permits in place on March 10.
- Fewer permits may make the permits themselves more complex because they cover more issues and may need to provide greater environmental protection assurances in exchange for greater flexibility.

Recommendation 2: MPCA and Mn/DOT should evaluate combining various NPDES stormwater permits, including development of a transportation specific general permit.

Issue statement 3: *DNR Permit processing times can be too long for Mn/DOT projects that are ready to let for construction contracts.*

Potential Solution: Issue a statewide DNR general permit for Mn/DOT projects that affect public waters.

Discussion: In the three years from FY 00 through FY 02, Mn/DOT had submitted almost two hundred (189) Public Waters Work Permit actions for authorization. During this time period, the median amount of time from the initial receipt of all applications until a final decision was 29 calendar days. Of the 189 permits, 122 received decisions in less than 60 days, 25 received them in 60 to 90 days, and 42 in more than 90 days. Of the 189 applications, 125 were for work on Bridges and Culverts. The median time period for the bridge and culvert applications was 24 days. The DNR does not keep centralized records of incomplete applications received or whether a permit application was modified due to concerns raised during the permit review process. Both of these types of actions require additional correspondence and lengthen the permit processing time. Also, it is unknown how many of these applications were submitted while a formal environmental review (EAW, EIS) was being conducted. The DNR is prohibited from issuing permits while such review is underway. Given these unknowns the calculated processing times can be questioned. However, intuitively, the time to process relatively minor Mn/DOT permit applications can be assumed to be much less than these calculated numbers.

Currently the DNR is drafting and preparing to solicit comments on a statewide general permit for Mn/DOT projects for bridge and culvert reconstruction. The DNR has issued General Permits for bridge and culvert work to the Mn/DOT Duluth District office. The provisions and conditions have been well received by both DNR and Mn/DOT field staff. Other activities may also be pursued for inclusion into a General Permit as experience by field staff is evaluated. The DNR feels there will always be a role for individual permits on projects with potentially large impacts to the hydrology and/or ecology of an area. Such projects justify the current timelines for project review, possible modification, and permit decision.

Pros:

- Existing General Permits have fostered early coordination and reduced permit processing time while continuing to maintain DNR's standards for natural resource protection.
- Annual meetings also provide for early input on Mn/DOT projects. This early input ultimately results in less time and money than a project would otherwise require during normal permit processing. The result is less cost for the project while at the same time reducing the environmental cost of the project's impact.
- Permit processing time is eliminated when a General Permit is in place. The General Permit allows activities within its scope to be conducted without filing a permit application or completing a pre-construction review process.

Cons:

- None identified.

Recommendation 3: Implement and evaluate DNR statewide general permit for Mn/DOT bridge and culvert reconstruction projects for the 2003 construction season.

Issue statement 4: *Permit approvals occur late in the project development process. Extended permit review or unexpected conditions can result in project delays and increased costs.*

Potential solution: Develop a process that allows permit review and approval earlier in project development process.

Discussion: Because permitting agencies generally need detailed project information to process their permits, Mn/DOT and other transportation authorities do not submit the permit application to the regulating agencies (e.g., DNR, WSD etc.) until very late in the project development process (i.e. after final design and plans are prepared.). Even though Mn/DOT and the local road authorities generally work to engage the regulating agency staff(s) in early coordination efforts, often the permitting agency identifies issues during the permit application and review process.. However, flexibility to change the design at this point very late in the process is extremely limited and costly (**Appendix E**). It was suggested more coordination be provided earlier in the process, such as is done with the Mn/DOT /DNR questionnaire process.

Additionally, Mn/DOT is currently funding DNR and MPCA Transportation Teams on an experimental basis. These teams are composed of DNR and MPCA staff positions paid for by Mn/DOT. The duties of these teams are to provide environmental information, consultation and review of Mn/DOT plans, alternatives and mitigation. These teams are to provide expedited environmental document and permit reviews and decisions. These duties would normally be accomplished through ongoing consultations and meetings, research and analysis, review and comments. Focused attention by the DNR and MPCA Transportation Teams is also expected to improve inter-agency communications at all levels of Mn/DOT, DNR and MPCA. Funding for these teams is from a one time funding for Interregional Corridor (IRC)/Bottleneck projects and will expire in June of 2003.

There was discussion of a possible provisional permit that would be based on preliminary information provided earlier in the process. However, the permitting agencies currently require the final design level of information to process their permits. It was also noted that even when Mn/DOT does provide early and ongoing coordination the permitting agencies can still require substantial additional detailed information during the permit evaluation process. It was noted that where Mn/DOT had specific environmental program staff, there were fewer problems obtaining

timely decisions with permits and approvals, and Mn/DOT was more likely to carry through on environmental commitments.

Mn/DOT is currently implementing a design-build approach to project development. This generates additional questions and complications with regards to permit timing. In design-build, partial design and construction activities will overlap. No final set of plans will be available until most construction is underway. A permit based on a final set of plans does not appear to be possible under the existing permit review processes.

Pros:

- Agencies would have a better understanding of projects earlier in the process.
- There are more opportunities to modify projects based on environmental factors at a lesser cost and less environmental impact.
- This review process is essential to facilitate design build type projects.

Cons:

- Permitting agencies, and others who review permit applications, may be uncomfortable providing approvals based on preliminary information.

Recommendation 4: Additional discussion among the various agencies must be continued to further develop a permit process that differs from that process used to obtain approvals based on detail design level information. This is especially relevant for design-build projects. Legislative changes may be needed to allow some agencies to incorporate this approach.

Issue Statement 5: *Reporting of Past and Future Mitigation Costs*

Discussion: The law required the TAG to provide, "recommendations on reporting mitigating costs for the previous five years and for the future." The TAG struggled to determine the meaning and extent of mitigating costs. Federal Regulations for Implementing the National Environmental Policy Act are found in rules promulgated by the Council on Environmental Quality. At 40 CFR 1508.20, these rules define mitigation as follows:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

The relevant State definition is found in the rules of the Minnesota Environmental Quality Board. At Minnesota Rules Chapter 4410.0200 Subp.51, mitigation is defined as:

- (a) avoiding impacts altogether by not undertaking a certain project or parts of a project;
- (b) minimizing impacts by limiting the degree of magnitude of a project;
- (c) rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
- (d) reducing or eliminating impacts over time by preservation and maintenance operation during the life of the project;
- (e) compensating for impacts by replacing or providing substitute resources or environments; or
- (f) reducing or avoiding impacts by implementation of pollution prevention measures.

These rules provide a more encompassing definition of mitigation than what many would normally assume. Given these broad definitions, mitigating costs could

conceivably include some Mn/DOT operation and maintenance costs that are not normally thought of as environmental mitigation:

- It could be argued that a rigorous examination of new location alternatives in an effort to avoid impacts to a sensitive water body could be mitigation, i.e. seeking ways to avoid the impact. Some substantial part of environmental documentation costs may be thought of as mitigation costs.
- Measures to maximize the throughput of a particular transportation facility may preclude having to construct additional facilities, e.g., the freeway management system. If this results in not having to construct additional capacity, it can be thought of as mitigation.
- Maintenance activities on a bridge may defer having to construct a new bridge on new location, thereby avoiding impacts in some other location. Under CEQ and EQB definitions, these maintenance costs could be thought of as mitigation.
- During the environmental analysis phase of a project, a great deal of attention is devoted to finding location or design alternatives which avoid or minimize impacts to particular resources, e.g., wetlands, parks, etc. When an alternative is selected which avoids the resource, the costs of the avoidance alternative are not attributed to environmental mitigation, but should be. That is, if the construction cost to go through a park or wetland is X, but the cost to construct the avoidance alternative is 1.7 X, then that .7 cost should be considered a mitigation cost. Likewise with design. If a retaining wall is constructed to keep a backslope from encroaching into a park, or to minimize the encroachment, then the cost of the wall itself is properly a mitigation cost.

Some in the group have argued that mitigation costs should be more focused on project features which provide replacement of, or compensation for, the resource impacted (e.g., the cost of wetland replacement). Narrowly defining mitigation as only those costs associated with replacement and/or compensation improperly restricts the concept of mitigation. It also produces estimates of mitigation expenditures which are much lower than is actually the case.

The TAG could not reach consensus as to the legislature's intended scope of mitigating costs.

Mn/DOT did attempt to determine some of the replacement/compensation type of mitigation costs. The Mn/DOT project development and contracting system is

currently not set up to track costs as mitigation costs. Design and construction costs of noise walls, wetland replacement and stormwater ponds were identified for several projects. Some costs of an Anoka County Highway project were also reviewed. The results were highly varied among the several different projects, and possibly reflect the varied nature and location of the projects.

Additionally, there was no consensus on how to track costs in the future. It was agreed that prior to changing the accounting methodology, we should know how the legislature wants to use the information, so that any changes will produce valid data relevant to their intended use. Some ideas discussed by the TAG include:

- Report mitigating costs as a cost per unit instead of per project (e.g., wetland replacement cost per acre – however these costs could be highly variable depending on location).
- Develop a methodology to track specific water resource and wetland mitigation costs (BWSR currently tracks wetland replacement costs, as they are obligated to plan for local road mitigation).
- Substantial additional time and study would be needed to understand the intended scope and definition of mitigating costs and to understand the need to track those costs in order to develop effective reporting methods. Mn/DOT could examine how projects are bid out and get bid costs on mitigation, however it would take a major modification of the accounting system to comprehensively track mitigating costs.

Recommendation 5: At this time, Mn/DOT recommends that it not develop a specific methodology or cost accounting system to identify and report costs attributable to environmental mitigation. Instead, Mn/DOT will select several representative highway construction projects and review all costs associated with those projects to determine the cost of environmental mitigation on each of those projects in relation to the total cost of each project. Mn/DOT will do this work over the next four weeks and report those costs to the Legislature for its consideration.

LIST OF OTHER ISSUES DISCUSSED

The following issues were discussed but no recommendations were agreed to. For some it was suggested they be pursued independently. These issues likely will generate further interagency discussion:

- State assumption of the 404 program
- COE permit processing requirements
- COE LOP-D increased threshold
- Mn/DOT / WSD relations and use of the MOUs
- Rules adoption process for WSD
- Single agency assumption of WSD permitting of state road projects
- Mn/DOT role in local water planning
- Subwatershed mitigation requirement
- Municipal role in applying WSD requirements and permits
- Use of DNR GP's for additional components of road projects
- Environmental coordination during construction and contractor responsibilities
- Funding of BWSR road wetland replacement program
- Funding of MPCA and DNR Transportation Teams
- MPCA stormwater rules and special waters (ORVW) requirements
- Centralized wetland replacement responsibility
- Flood insurance training
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Minnesota Laws 2002, Chapter 364 Section 39

Subdivision 1. [CREATION.] The commissioner of transportation shall create a technical advisory group consisting of one senior manager and two administration staff from each of the following state agencies:

- (1) department of transportation;
- (2) department of natural resources;
- (3) pollution control agency; and
- (4) the board of soil and water resources.

The group shall conduct research, evaluate alternatives, and make findings and recommendations on streamlining the process of environmental review for transportation-related projects. The commissioner of each agency shall appoint the respective members from that agency by July 1, 2002. The commissioner of transportation or a senior manager appointed by the commissioner of transportation shall chair the group.

Subd. 2. [REPORT.] The technical advisory group shall submit a comprehensive report to the senate and house of representatives committees having jurisdiction over environmental policy and transportation policy and finance by January 15, 2003. The report must make findings and recommendations, including actions that should be taken, recommendations on reporting mitigating costs for the previous five years and for the future, and the statutory changes necessary to effect a more streamlined process for environmental review, assessment, and approval without weakening the substance of existing environmental protections.

APPENDIX B

LIST AND DESCRIPTION OF ACRONYMS AND TECHNICAL TERMS

BMP-Best Management Practice

BMP's are practices, techniques and measures that prevent or reduce pollution from sources by using effective and practicable means. BMP's include official controls, structural and nonstructural controls, and operation and maintenance procedures.

BWSR- Minnesota Board of Soil and Water Resources

As state agency, BWSR assists local governments to manage and conserve water and soil resources under their stewardship with an emphasis on private lands. The Board is appointed by the Governor and consists of agency Commissioners, elected local officials, and appointed local officials. The Board believes that water and soil conservation is best accomplished locally, voluntarily, comprehensively, and collaboratively. BWSR administers WCA, has the authority to establish WSDs, and oversees local water planning. BWSR also facilitates communication among state agencies in cooperation with the EQB, and local units of government.

CEQ-Council on Environmental Quality

Federal Council (in the Office of the President) that oversees the administration of the NEPA.

COE- United States Army Corps of Engineers

Federal agency which regulates the discharge of dredge and fill material into waters of the United States under section 404 of the Clean Water Act, and impediments to navigation under Section 10 of the Rivers and Harbors Act.

DNR-Minnesota Department of Natural Resources

The Mission of the Minnesota Department of Natural Resources is to work with citizens to protect and manage the state's natural resources, to provide outdoor recreation opportunities, and to provide for commercial uses of natural resources in a way that creates a sustainable quality of life. DNR regulates work such as filling, draining, excavating, placement of structures and controlling the level of public waters, and takings of state-listed plant and animal species.

District- Mn/DOT District

Any of 8 geographically defined Mn/DOT administrative areas.

EAW-Environmental Assessment Worksheet

A state environmental review document which must be prepared when certain project characteristic or environmental impact thresholds are expected to be exceeded. EAW's are prepared for projects which generally have the potential for less impact than projects for which an EIS is prepared.

APPENDIX B

LIST AND DESCRIPTION OF ACRONYMS AND TECHNICAL TERMS

EIS-Environmental Impact Statement

An extensive federal or state environmental review document which must be prepared when certain project characteristic or environmental impact thresholds are expected to be exceeded. EIS's are prepared for projects with the potential for more impacts than projects for which an EAW typically would be prepared.

EPA-United States Environmental Protection Agency

A federal agency that directly administers, and oversees others (e.g. MPCA) in the implementation of federal pollution control laws. EPA sets standards and guides MPCA in administration of Clean Water Act requirements in MN. EPA also oversees COE in administration of the section 404 program.

EQB-Environmental Quality Board

A state agency, EQB oversees administration of the state environmental review program.

FHWA-Federal Highways Administration

A Federal Agency, FHWA is an arm of the USDOT. FHWA oversees the development of federally funded highway projects.

GP-General Permit

A form of permit which reduces processing times for projects which typically have minor impacts or address a common category of projects, and which meet pre-established conditions. DNR, MPCA, and COE currently use general permits.

GP-1-General Permit 1

A COE general permit which provides for streamlined review of projects which obtain DNR permit or authorization.

GP-2 –General Permit 2

A general permit currently under development by the COE. This permit would streamline COE review of projects reviewed and authorized by an LGU under WCA which impact less than 1 acre of wetland.

GP/LOP-General Permit/Letter of Permission Package

A packaged set of 1 general permit and 4 LOPs designed to replace COE Nationwide permits in Minnesota. The package contains a progressive set of pre-established conditions which determine the extent and timeframe of review. For example, projects with very small impacts would have minimal review and a very quick processing time. More complex projects with larger impacts (to a limit) would have a more thorough and widespread review, and an associated longer processing time. Projects authorized under the GP/LOP package almost always have a shorter processing time than would occur with a Standard Individual Permit.

APPENDIX B

LIST AND DESCRIPTION OF ACRONYMS AND TECHNICAL TERMS

IRC/Bottleneck- Interegional Corridor/Bottleneck Projects

Studies and projects funded as part of the 2000 transportation funding bill.

ISTEA-Intermodal Surface Transportation Act

Enacted in 1991 ISTEA authorized the federal surface transportation programs for highways, highway safety and transit. For the purpose of this report ISTEA is referenced with respect to one of its provisions which deferred certain municipal type facilities (storm sewer systems and maintenance facilities) from NPDES stormwater permit requirements until 2003. ISTEA has been replaced by TEA-21.

LGU-Local Government Unit

The decision making entity under the WCA. Typically the LGU is a city, county or other local government entity. State agencies are considered WCA LGUs for projects on lands they administer.

LOP-Letter of Permission

A streamlined form of individual permit issued by the COE. COE has established four categories of LOPs for which review and process times range from several days to several months. Projects authorized under an LOP almost always have a permit processing time which is substantially less than the time required to review a Standard Individual Permit (SIP).

LOP-D-Letter of Permission D

A letter of permission established by the COE to streamline permit processing times for typical road repair projects which impact less than 5 acres of water and wetland area.

MAWD-Minnesota Association of Watershed Districts

The MAWD represents 45 WSDs in the state. The WSDs are partners in water protection and management. The MAWDs mission is to provide educational opportunities, information and training for watershed district managers and staff through yearly tours, meetings and quarterly newsletters.

MCEA-Minnesota Center for Environmental Advocacy

MCEA is a private, nonprofit organization working to protect and restore Minnesota's natural resources through sound science, public policy, and legal expertise. MCEA focuses on Public health, transportation and land use, water quality and wildlife and natural resources. MCEA uses legal action and legislative advocacy, as well as research, communications, and collaborations to improve Minnesota's environment. (MCEA is also the acronym for Minnesota County Engineers Association)

MEPA-Minnesota Environmental Policy Act

State Law which sets forth standards and procedures for environmental review of projects conducted in Minnesota. The program is administered by the EQB

APPENDIX B

LIST AND DESCRIPTION OF ACRONYMS AND TECHNICAL TERMS

MS4-Municipal Small Separate Storm Sewer System

Municipal type storm sewer systems newly regulated under Phase II of the federal stormwater program. State highway departments, such as Mn/DOT are considered MS4s under the federal definition.

Mn/DOT-Minnesota Department of Transportation

Mn/DOT develops and implements policies, plans and programs for aeronautics, highways, motor carriers, ports, public transit and railroads. Mn/DOT is the principal agency to develop, implement, administer, consolidate and coordinate state transportation policies, plans and programs. Mn/DOT makes special efforts to consider the social, economic and environmental effects of its decisions and aggressively promotes the efficient use of energy resources for transportation purposes. It also maintains close working relationships with the many public and private individuals, groups and associations involved in transportation.

MOU- Memorandum of Understanding

Informal written agreement between parties which outline specific operating procedures. There are two MOUs referenced in this report:

1. Mn/DOT-DNR MOU – this MOU outlines early coordination procedures with DNR for Mn/DOT projects
2. Mn/DOT-WSD MOU – A model MOU was developed between Mn/DOT, MAWD, and BWSR which outlined general coordination and permit procedures. The model MOU has served as the basis for specific MOU's between Mn/DOT Districts and Individual WSDs.

MPCA- Minnesota Pollution Control Agency

State Agency responsible for protecting the Minnesota's environment through monitoring environmental quality and enforcing environmental regulations. MPCA administers the NPDES program, is responsible for setting water quality standards, and acts as the state 401 water quality certification agency.

NEPA-National Environmental Policy Act

Federal Law that sets forth standards and procedures for environmental review of federally sponsored or funded projects.

NPDES-National Pollutant Discharge Elimination System

A federal permitting system authorized under Section 402 of the Clean Water Act which regulates the discharge of pollutants into Waters of the U.S. In Minnesota, the MPCA administers this permit program. NPDES permits which regulate stormwater discharges are a topic of this report.

ORVW-Outstanding Resource Value Waters –

List of waters identified by MPCA as needed special protection to retain their outstanding characteristics. Recently introduction of stringent restrictions in NPDES general permits for stormwater discharges near these waters has

APPENDIX B

LIST AND DESCRIPTION OF ACRONYMS AND TECHNICAL TERMS

generated some controversy. MPCA has discussed possible statutory or rule changes to clarify how ORVW restrictions should fit into stormwater permits.

Phase II-Second generation of NPDES stormwater permits. The new permits will now regulate smaller construction sites, small municipal storm sewer systems (MS4s), and municipal, county and state maintenance facilities.

Public Waters-DNR Public Waters

Also formerly known as Protected Waters, these are water bodies specifically inventoried by DNR for the purpose of management and regulation. Public Waters include most lakes, ponds, rivers and streams. Public Waters also include the larger more recognizable wetlands which are known as Public Waters Wetlands. The jurisdictional areas of Public Waters Wetlands and WCA wetlands are never the same.

SIP-Standard Individual Permit

The standard permit issued by COE for impacts to waters of the United States. Processing time for an SIP is typically about 6 months.

TAG-Technical Advisory Group

The state agency advisory group directed by law to make findings and recommendations on environmental streamlining for transportation projects.

TEA-21 Transportation Equity Act for the 21st Century

Enacted in 1998, TEA-21 authorizes federal surface transportation programs for highways, highway safety, and transit from 1998-2003. TEA-21 replaced ISTEA. One of the key provisions of TEA-21 is that streamlining environmental review is needed to speed up program delivery.

TMDL-Total Maximum Daily Load

Federally required study which establishes strict limitations on discharges to waters officially listed as impaired (i.e. which do not meet water quality standards). Currently MPCA has identified and listed 1779 river reaches and lakes in the state for which TMDLs must be established.

USDOT-United States Department of Transportation

A federal agency whose mission is to serve the United States by ensuring a fast, safe, efficient, accessible and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future.

WCA-Minnesota Wetland Conservation Act

State Law which regulates draining, filling and excavating of non-public waters wetlands. Administered by BWSR, the day to day implementation of WCA is carried out by Local Government Units (LGUs)

APPENDIX B

LIST AND DESCRIPTION OF ACRONYMS AND TECHNICAL TERMS

WSD- Watershed District

Any of 45 special districts established for the purpose of conserving the natural resources of the state by land use planning, flood control, and other conservation projects, by using sound scientific principles for the protection of public health and welfare and the provident use of natural resources.

401-Clean Water Act Section 401

Section of the Clean Water Act which requires that state water quality agencies (MPCA in MN) certify that the issuance of a federal permit (e.g. 404 permit) will not result in a violation of water quality standards.

404-Clean Water Act Section 404

Section of the Clean Water Act that gives authority to the U.S. Army Corps of Engineers to regulate discharge of dredge and fill into waters of the United States.

APPENDIX C

ENVIRONMENTAL STREAMLING - MEETINGS ROSTER

TAG MEMBERS

Richard Stehr, Mn/DOT
Richard Elasky, Mn/DOT
John Sampson Mn/DOT
Steve Woods, BWSR
Dan Ecklund, BWSR
Tom Mings, BWSR
John Stine, DNR
Tom Balcom, DNR
Steve Colvin, DNR
Leo Raudys, MPCA
Dale Thompson, MPCA

AGENCY REPRESENTATIVES

Federal Agency:

Mick Weburg, Army Corps of Engineers

State Agency:

Greg Downing, EQB
Elwyn Tinklenberg, Mn/DOT
Tim Worke, Mn/DOT
Betsy Parker, Mn/DOT
Harold Lasley, Mn/DOT
Gerry Larson, Mn/DOT
Nick Tiedeken, Mn/DOT
Sue Stein, Mn/DOT
Karen Harder, BWSR/Sierra Club
Bruce Sandstrom, BWSR
Steve Morse, DNR
Peggy Adelmann, DNR
Susan Heffron, MPCA

OTHER STAKEHOLDERS

Susu Jeffrey, Coldwater Springs
Ann Follett, Citizen
Melva Radtke, Senate
Jim Erkel, MCEA
Ray Bohn, MAWD
Patrick Hynes, Senate Env. Committee
Ryan Winkler, Smith Parker, PLLP
Cecil Underwood, House of Representatives
Jim Anderson, MMDC
Leigh Combs, Citizen
Tom Murphy, AGC/Leonard Street & Deinard
Julie Sabo, Senate
Carol Lovro, Assoc. of Minnesota Counties
Wayne Murphy, AGC of MN
Erik Rudeen, House Trans Finance Com
Marilyn Brick, Mn House of Representatives
Joel Carlson, MCWD
Susan Scribner, MAWD
Eric Evenson, MCWD
Ann Finn, League of Minnesota Cities
Sharon Stevens, Sierra Club
Craig Johnson, League of Minnesota Cities
Mary Cummins, House



Summary of Environmental Legislation Affecting Transportation

December 1998

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VII. Acronyms

General Environmental Statutes

Legislative Reference	Regulations Reference	Purpose	Applicability	General Procedures	Agency for Coordination and Consultation
National Environmental Policy Act: 42 U.S.C. 4321-4335 (P.L. 91-190) (P.L. 94-83)	23 CFR 771-772 40 CFR 1500-1508 Executive Order 11514 as amended by Executive Order 11991 on NEPA responsibilities	Consider environmental factors through systemic interdisciplinary approach before committing to a course of action.	All FHWA actions	Procedures set forth in CEQ Regulations and 23 CFR 771	Appropriate Federal, State, and local agencies
Section 4(f) of The Department of Transportation Act: 23 U.S.C. 138 49 U.S.C. 303 (P.L. 100-17) (P.L. 97-449) (P.L. 86-670)	23 CFR 771.135	Preserve publicly owned public parklands, waterfowl and wildlife refuges, and significant historic sites.	Significant publicly owned public parklands, recreation areas, wildlife and waterfowl refuges, and all significant historic sites "used" for a highway project.	Specific finding required: 1. Selected alternative must avoid protected areas, unless not feasible or prudent; and 2. Includes all possible planning to minimize harm.	DOI, DOA, HUD, State, or local agencies having jurisdiction and State historic preservation officer (for historic sites)
Economic, social, and environmental effects: 23 U.S.C. 109(h) (P.L. 91-605) 23 U.S.C. 128	23 CFR 771-772	To assure that possible adverse, economic, social, and environmental effects of proposed highway projects and project locations are fully considered and that final decisions on highway projects are made in the best overall public interest.	Applicable to the planning and development of proposed projects on any Federal-Aid system for which the FHWA approves the plans, specifications, and estimates, or has the responsibility for approving a program.	Identification of economic, social, and environmental effects; consideration of alternative courses of action; involvement of other agencies and the public; systematic interdisciplinary approach. The report required by Section 128 on the consideration given to SEE impacts, may be the NEPA compliance document.	Appropriate Federal, State and local agencies.
Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601 et seq., P.L. 91-646) as amended by the Uniform Relocation Act Amendments of 1987 (P.L. 100-17)	49 CFR 24	To implement the Uniform Act as amended in an efficient manner; to ensure property owners of real property acquired for and persons displaced by Federal-Aid projects are treated fairly, consistently, and equitably; and so they will not suffer disproportionate injuries.	All projects involving Federal-aid funds.	Procedures set forth in 49 CFR 24	DOT/FHWA has lead responsibility. Appropriate Federal, State, and local agencies.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) 23 U.S.C. 324; Americans with Disabilities Act (42 U.S.C. 12101) and related statutes.	49 CFR 21 AND 23 CFR 200	To ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability be subjected to discrimination under any program or activity receiving federal financial assistance.	All Federal programs and projects.	Procedures set forth in 49 CFR 21 and 23 CFR 200.	FHWA headquarters and field offices.
Executive Order 12898: Environmental Justice	59 CFR 7629, 62 CFR 18377, 60 CFR 33896	Avoid Federal actions which cause disproportionately high and adverse impacts on minority and low income populations with respect to human health and the environment.	All Federal programs and projects.	Procedures set forth in DOT Final Environmental Justice Strategy and DOT order dated April 15, 1997.	FHWA headquarters and field offices.
Public hearings: 23 U.S.C. 128	23 CFR 771.111(h)	To ensure adequate opportunity for public hearings on the effects of alternative project locations and major design features; as well as the consistency of the project with local planning goals and objectives.	Public hearings or hearing opportunities are required for projects described in each State's FHWA-approved public involvement procedures.	Public hearings or opportunity for hearings during the consideration of highway location and design proposals are conducted as described in the State's FHWA-approved, public involvement procedures. States must certify to FHWA that such hearings or the opportunity for them have been held and must submit a hearing transcript to FHWA.	Appropriate Federal, State, and local agencies.
Surface Transportation and Uniform Relocation Assistance Act of 1987: Section 123(F) Historic Bridges 23 U.S.C. 144(o) (P.L. 100-17)		Complete an inventory of on and off system bridges to determine their historic significance. Encourage the rehabilitation, reuse, and preservation of historic bridges.	Any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.	1. Identify historic bridges on and off system. 2. Attempt to donate bridge to public or responsible private entity prior to demolition. Preservation costs up to demolition cost available to donee.	State Historic Preservation Officer, Advisory Council on Historic Preservation.
Wildflowers 23 U.S.C. 319(B) (P.L. 100-17)	23 CFR 752	To encourage the use of native wildflowers in highway landscaping.	Native wildflowers are to be planted on any landscaping project undertaken on the Federal-aid highway system.	At least 1/4 of 1% of funds expended on a landscaping project must be used to plant native wildflowers on that project.	FHWA State, Division, Regional contacts.
Highway Beautification Act of 1965 23 U.S.C. 131 23 U.S.C. 136 23 U.S.C. 319 (P.L. 89-285)	23 CFR 750 23 CFR 751 23 CFR 752	To provide effective control of outdoor advertising and junkyards, to protect the public investment, to promote the safety and recreational value of public travel and preserve natural beauty, and to provide landscapes and roadside development reasonably necessary to accommodate the traveling public.	Interstate and primary systems (as primary system existed on June 1, 1991) and NHS.	Procedures set forth in 23 CFR 750, 751, and 752	DOT/FHWA, State, and local agencies.

Health

Legislative Reference	Regulations Reference	Purpose	Applicability	General Procedures	Agency for Coordination and Consultation
Safe Drinking Water Act: 42 U.S.C. 300F-300J-6 (P.L. 93-523) (P.L. 99-339)	FAPG Subpart E	Ensure public health and welfare through safe drinking water.	1. All public drinking water systems and reservoirs (including rest area facilities). 2. Actions which may have a significant impact on an aquifer or wellhead protection area which is the sole or principal drinking water.	1. Compliance with national primary drinking water regulations. 2. Compliance with wellhead protection plans. 3. Compliance with MOAs between EPA and FHWA covering specific sole source aquifers.	EPA Appropriate State agency
Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976: 42 U.S.C. 6901, et seq., especially 42 U.S.C. 6961-6964 (P.L. 89-272) (P.L. 91-512) (P.L. 94-580)	40 CFR 256-300	Provide for the recovery, recycling, and environmentally safe disposal of solid wastes.	All projects which involve the recycling or disposal of solid wastes.	Solid wastes will be disposed of according to the rules for specific waste involved.	EPA
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA): 7 U.S.C. 136-136Y (P.L. 92-516)	40 CFR 152-171	Control the application of pesticides to provide greater protection to man and the environment.	All activities which necessitate use of restricted pesticides.	Using or supervising "restricted use" pesticides will require certification.	EPA

Historical and Archeological Preservation

Legislative Reference	Regulations Reference	Purpose	Applicability	General Procedures	Agency for Coordination and Consultation
Section 106 of the National Historic Preservation Act, as amended: 16 U.S.C. 470f (P.L. 89-665) (P.L. 91-243) (P.L. 93-54) (P.L. 94-422) (P.L. 94-458) (P.L. 96-199) (P.L. 96-244) (P.L. 96-515) (P.L. 102-575)	Executive Order 11593 23 CFR 771 36 CFR 60 36 CFR 63 36 CFR 800	Protect, rehabilitate, restore, and reuse districts, sites, buildings, structures, and objects significant in American architecture, archeology, and culture.	All properties on or eligible for inclusion on the National Register of Historic Places.	1. Identify and determine the effects of project on subject properties. 2. Afford Advisory Council an early opportunity to comment, in accordance with 36 CFR 800. 3. Avoid or mitigate damages to greatest extent possible.	State Historic Preservation Officer Advisory Council on Historic Preservation DOI (NPS)
Section 110 of the National Historic Preservation Act, as amended: 16 U.S.C. 470H-2 (P.L. 96-515)	36 CFR 65 36 CFR 78	Protect National historic landmarks. Record historic properties prior to demolition.	All properties designated as National historic landmarks. All properties on or eligible for inclusion on the National Register of Historic Places.	1. Identify and determine the effects of project on subject properties. 2. Afford Advisory Council an early opportunity to comment, in accordance with 36 CFR 800.	State Historic Preservation Officer Advisory Council on Historic Preservation DOI (NPS)
Archeological and Historic Preservation Act: 16 U.S.C. 469-469C (P.L. 93-291) (Moss-Bennett Act)	36 CFR 66 (Draft)	Preserving significant historical and archeological data from loss or destruction.	Any unexpected archeological resources discovered as a result of a Federal construction project or Federally licensed activity or program.	1. Notify DOI (NPS) when a Federal project may result in the loss or destruction of a historic or archeological property. 2. DOI and/or the Federal agency may undertake survey or data recovery.	DOI (NPS) Departmental consulting archeologist State Historic Preservation Officer
Archeological Resources Protection Act: 16 U.S.C. 470aa-11 (P.L. 96-95)	18 CFR 1312 32 CFR 229 36 CFR 79 36 CFR 296 43 CFR 7	Preserve and protect paleontological resources, historic monuments, memorials, and antiquities from loss or destruction.	Archeological resources on Federally or Native American-owned property.	1. Ensure contractor obtains permit, and identifies and evaluates resource. 2. Mitigate or avoid resource in consultation with appropriate officials in the State. 3. If necessary, apply for permission to examine, remove, or excavate such objects.	Department or agency having jurisdiction over land on which resources may be situated (BIA, BLM, DOA, DOD, NPS, TVA, USFS, State Historic Preservation Officer, Recognized Indian Tribe, if appropriate)

Act for the Preservation of American Antiquities 16 U.S.C. 431-433 (P.L. 59-209)	36 CFR 251.50-.64 43 CFR 3			1. Notify DOI (NPS) when a Federal project may result in the loss or destruction of a historic or archeological property. 2. DOI and/or the Federal agency may undertake survey or data recovery.	DOI (NPS) Departmental consulting archeologist State Historic Preservation Officer
American Indian Religious Freedom Act: 42 U.S.C. 1996 (P.L. 95-341)	Executive Order No. 13007	Protect places of religious importance to American Indians, Eskimos, and Native Hawaiians.	All projects which affect places of religious importance to Native Americans.	Consult with knowledgeable sources to identify and determine any effects on places of religious importance. Comply with Section 106 procedures if the property is historic.	BIA State Historic Preservation Officer State Indian Liaison Advisory Council on Historic Preservation if appropriate.
Native American Grave Protection and Repatriation Act: (P.L. 101-601) 25 U.S.C. 3001 et seq.	43 CFR 10	Protect human remains and cultural material of Native American and Hawaiian groups.	Federal lands and Tribal lands.	Consult with Native American group.	DOI (NPS) BIA State Historic Preservation Officer.

Land and Water Usage

Legislative Reference	Regulations Reference	Purpose	Applicability	General Procedures	Agency for Coordination and Consultation
Wilderness Act: 16 U.S.C. 1131-1136	36 CFR 293 43 CFR 19, 8560 50 CFR 35	Preserve and protect wilderness areas in their natural condition for use and enjoyment by present and future generations.	All lands designated as part of the wilderness system by congress.	Apply for modification or adjustment of wilderness boundary by either Secretary of the Interior or Agriculture, as appropriate.	AGRICULTURE (USFS), DOI (FWS, NPS, BLM), AND State agencies
Wild and Scenic Rivers Act: 16 U.S.C. 1271-1287	36 CFR 297	Preserve and protect wild and scenic rivers and immediate environments for benefit of present and future generations.	All projects which affect designated and potential wild, scenic, and recreational rivers, and/or immediate environments.	Coordinate project proposals and reports with appropriate Federal Agency.	DOI (NPS) and/or AGRICULTURE (USFS) State agencies.
Land and Water Conservation Fund Act (Section 6(f)): 16 U.S.C. 460-4 TO -11 (P.L. 88-578)		Preserve, develop, and assure the quality and quantity of outdoor recreation resources for present and future generations.	All projects which impact recreational lands purchased or improved with land and water conservation funds.	The Secretary of the Interior must approve any conversion of property acquired or developed with assistance under this act to other than public, outdoor recreation use.	DOI State agencies
Executive Order 11990: Protection of Wetlands	DOT Order 5660.1A 23 CFR 777	To avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.	Federally undertaken, financed, or assisted construction, and improvements in or with significant impacts on wetlands.	Evaluate and mitigate impacts on wetlands. Specific finding required in final environmental document.	DOI (FWS), EPA, USCE, NMFS, NRCS, State agencies
Intermodal Surface Transportation Efficiency Act of 1991. Wetlands Mitigation Banks: Sec. 1006-1007 (P.L. 102-240, 105 STAT 1914) 23 U.S.C. 103(l)(13) 23 U.S.C. 133(b)(11)	23 CFR 771; 777	To mitigate wetlands impacts directly associated with projects funded through NHS and STP, by participating in wetland mitigation banks, restoration, enhancement and creation of wetlands authorized under the Water Resources Dev. Act, and through contributions to statewide and regional efforts.	Federally undertaken, financed, or assisted construction, and improvements, or with impacts on wetlands.	Evaluate and mitigate impacts on wetlands. Specific finding required in final environmental document.	DOI (FWS), EPA, USCE, NMFS, NRCS, State agencies
Emergency Wetlands Resources Act of 1986: 16 U.S.C. 3921; 3931. (P.L. 99-645)		To promote the conservation of wetlands in the U.S. in order to maintain the public benefits they provide.	All projects which may impact wetlands.	1. Preparation of a national wetlands priority conservation plan which provides priority with respect to Federal and State acquisition. 2. Provide direction for the national wetlands inventory.	FWS

National Trails System Act: 16 U.S.C. 1241-1249	36 CFR 251 43 CFR 8350	Provide for outdoor recreation needs and encourage outdoor recreation.	Projects affecting National scenic or historic trails designated by Congress and lands through which such trails pass. National recreation trails and side and connecting trails are proposed by local sponsors and approved by DOI and DOA	1. Apply for right-of-way easement from the Secretary of Interior or Agriculture, as appropriate. 2. Ensure that potential trail properties are made available for use as recreational and scenic trails.	DOI (NPS) Agriculture (USFS) Other Federal land management agencies may apply for designation
National Recreational Trails Fund Act of the Intermodal Surface Transportation Efficiency Act of 1991: 16 U.S.C. 1261 (P.L. 102-240)		To establish a program to allocate funds to the States to provide and maintain recreational trail and trail-related projects.	Trails and trail-related projects which are identified in, or which further a specific goal of, a trail plan included or referenced in a Statewide comprehensive outdoor recreation plan, as required by the Land and Water Conservation Fund Act	Project-sponsor applies to the State, and FHWA approves spending for project. The State may be a project sponsor. Assured access to funds is given for motorized, non-motorized, and discretionary recreation uses. States shall give preference to projects with diversified uses.	FHWA
Rivers and Harbors Act of 1899: 33 U.S.C. 401, et seq., as amended and supplemented.	23 CFR 650, Subparts D & H 33 CFR 114-115	Protection of navigable waters in the U.S.	Any construction affecting navigable waters and any obstruction, excavation, or filling.	Must obtain approval of plans for construction, dumping, and dredging permits (Sec. 10) And bridge permits (Sec. 9)	USCE USCG EPA State agencies.
Federal Water Pollution Control Act (1972), as amended by the Clean Water Act (1977 & 1987): 33 U.S.C. 1251-1376 (P.L. 92-500) (P.L. 95-217) (P.L. 100-4)	DOT Order 5660.1A 23 CFR 650 Subpart B, 771 33 CFR 209, 320-323, 325, 328, 329 40 CFR 121-125, 129-131, 133, 135-136, 230-231	Restore and maintain chemical, physical, and biological integrity of the Nation's waters through prevention, reduction, and elimination of pollution.	Any discharge of a pollutant into waters of the U.S.	1. Obtain permit for dredge or fill material from USCE or State agency, as appropriate. (Section 404) 2. Permits for all other discharges are to be acquired from EPA or appropriate State agency (Section 402) Phase 1-NPDES-Issued for municipal separate storm sewers serving large (over 250,000)populations or medium(over 100,000). Storm water discharges assoc. with industrial waste. Activities including construction sites > 5 acres. 3. Water quality certification is required from State Water Resource Agency. (Section 401) 4. All projects shall be consistent with the State Non-Point Source Pollution Management Program. (Section 319)	USCE, EPA, designated State Water Quality Control Agency, designated State Non-Point Source Pollution Agency

Executive Order 11988: Floodplain Management, as amended by Executive Order 12148	DOT Order 5650.2 23 CFR 650, Subpart A, 23 CFR 771	To avoid the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, and to restore and preserve the natural and beneficial values served by floodplains.	All construction of Federal or Federally-aided buildings, structures, roads, or facilities which encroach upon or affect the base floodplain.	1. Assessment of floodplain hazards. 2. Specific finding required in final environmental document for significant encroachments.	FEMA State and local agencies
National Flood Insurance Act: (P.L. 90-448) Flood Disaster Protection Act: (P.L. 93-234) 42 U.S.C. 4001-4128	DOT Order 5650.2 23 CFR 650, Subpart A, 7 23 CFR 771, 44 CFR 59-62, 64-68, 70-71, 75-77	A. Identify flood-prone areas and provide insurance. B. Requires purchase of insurance for buildings in special flood-hazard areas.	Any Federally assisted acquisition or construction project in an area identified as having special flood hazards.	Avoid construction in, or design to be consistent with, FEMA-identified flood-hazard areas.	FEMA State and local agencies
Marine Protection Research and Sanctuaries Act of 1972, as amended: 33 U.S.C. 1401-1445 (P.L. 92-532) (P.L. 93-254) (P.L. 96-572)	33 CFR 320, 330 40 CFR 220-225, 227-228, 230-231	Regulate dumping of material into U.S. ocean waters	Any transportation to and dumping into the open sea.	Apply for permit in accordance with procedures.	EPA USCE, if dredge material
Water Bank Act: 16 U.S.C. 1301-1311 (P.L. 91-559) (P.L. 96-182)	7 CFR 752	Preserve, restore, and improve wetlands of the nation.	Any agreements with landowners and operators in important migratory waterfowl nesting and breeding areas.	Apply procedures established for implementing Executive Order 11990.	Secretary of Agriculture Secretary of Interior
Coastal Zone Management Act of 1972: 16 U.S.C. 145 et seq. (P.L. 92-583) (P.L. 94-310) (P.L. 96-464)	15 CFR 923, 926, 930 23 CFR 771	Preserve, protect, develop, and (where possible) restore and enhance resources of the coastal zone.	All projects significantly affecting areas under the control of the State Coastal Zone Management Agency for which a plan is approved by the Dept. Of Commerce.	Ensure that projects comply with Federal consistency regulations, management measures, and the appropriate approved State plan for Coastal Zone Management Programs.	State Coastal Zone Management Agency and the Dept. of Commerce (OCZM) (NOAA), and EPA
Coastal Zone Management Act Reauthorization Amendments of 1990: 6217(g)	23 CFR 650.211	Manage non-point source pollution of activities located in coastal zones.	All developmental activities located in coastal zone areas will be subject to non-point source control measures developed by the State Coastal Zone Agency.	Ensure projects comply with State CZM Plans for controlling non-point sources.	State CZM Agency, OCZM (NOAA), EPA

Coastal Barrier Resources Act, as amended: 16 U.S.C. 3501-3510 42 U.S.C. 4028 (P.L. 97-348) Great Lakes Coastal Barrier Act of 1988: (P.L. 100-707)	13 CFR 116 Subparts D, E 44 CFR 71, 205 Subpart N	Minimize the loss of human life, wasteful expenditures of Federal revenues, and the damage to fish, wildlife, and other natural resources.	Any project that may occur within the boundaries of a designated coastal barrier unit. Exemptions for certain actions are possible.	Coordinate early with the FWS regional director. Consult maps that depict the boundaries of each coastal barrier resources system unit.	FEMA DOI (FWS)
Farmland Protection Policy Act of 1981: 7 U.S.C. 4201-4209 (P.L. 97-98) (P.L. 99-198)	7 CFR 658	Minimize impacts on farmland and maximize compatibility with state and local farmland programs and policies.	All projects that take right-of-way in farmland, as defined by the regulation.	1. Early coordination with the NRCS. 2. Land evaluation and site assessment. 3. Determination of whether or not to proceed with farmland conversion, based on severity of impacts and other environmental considerations.	NRCS
Resource Conservation and Recovery Act of 1976 (RCRA), as amended: 42 U.S.C. 6901, et seq. (P.L. 94-580) (P.L. 98-616)	40 CFR 260-271	Protect human health and the environment. Prohibit open dumping. Manage solid wastes. Regulate treatment, storage, transportation, and disposal of hazardous waste.	Any project that takes right-of-way containing a hazardous waste.	Coordinate with EPA or State agency on remedial action.	EPA or State agency approved by EPA, if any.
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended: 42 U.S.C. 9601-9657 (P.L. 96-510) Superfund Amendments and Reauthorization Act of 1986: (SARA) (P.L. 99-499)	40 CFR 300 43 CFR 11	Provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.	Any project that might take right-of-way containing a hazardous substance.	1. Avoid hazardous waste sites, if possible. 2. Check EPA lists of hazardous waste sites. 3. Field surveys and reviews of past and present land use. 4. Contact appropriate officials if uncertainty exists. 5. If hazardous waste is present or suspected, coordinate with appropriate officials. 6. If hazardous waste encountered during construction, stop project and develop remedial action.	EPA or State agency approved by EPA, if any.
Endangered Species Act of 1973, as amended: 16 U.S.C. 1531-1543 (P.L. 93-205) (P.L. 94-359) (P.L. 95-632) (P.L. 96-159) (P.L. 97-304)	7 CFR 355 50 CFR 17, 23, 81, 222, 225-227, 402, 424, 450-453	Conserve species of fish, wildlife and plants facing extinction.	Any action that is likely to jeopardize continued existence of such endangered/threatened species or result in destruction or modification of critical habitat.	Consult with the Secretary of the Interior or Commerce, as appropriate.	DOI (FWS) COMMERCE (NMFS)

Fish and Wildlife Coordination Act: 16 U.S.C. 661-666(C) (P.L. 85-624) (P.L. 89-72) (P.L. 95-616)	Conservation, maintenance, and management of wildlife resources.	1. Any project which involves impoundment (surface area of 10 acres or more), diversion, channel deepening, or other modification of a stream or other body of water. 2. Transfer of property by Federal agencies to State agencies for wildlife conservation purposes.	Coordinate early in project development with FWS and State Fish and Wildlife Agency	DOI (FWS) State Fish and Wildlife Agencies
Migratory Bird Treaty Act 16 U.S.C. 760c-760g	To protect most common wild birds found in the United States.	Makes it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird. Indirect killing of birds by destroying their nests and eggs, is covered by the act, so construction in nesting areas can constitute a taking.	The FWS is to review and comment on the effects of a proposal that could kill birds, even indirectly.	DOI (FWS), State Fish and Wildlife Agencies
Intermodal Surface Transportation Efficiency Act of 1991. Transportation Enhancement Activities: Sec. 1007 (P.L. 102-240) 23 U.S.C. 101(g); 133(b)(e)	To provide funds for Transportation Enhancement activities, such as landscaping and beautification, rehabilitation and operation of historic transportation facilities.	Funds are to be used in all areas except roads classified as local or rural minor collectors, unless such roads are on a Federal-Aid highway system	10% of STP funds annually apportioned to each State are for Transportation Enhancement activities.	FHWA
Intermodal Surface Transportation Efficiency Act of 1991 Sec. 1038 Recycled Paving Material: (P.L. 102-240)	To reduce the use of virgin materials used for paving our nations highways.	Each State shall certify that it has satisfied the minimum utilization requirement for asphalt pavement containing recycled rubber.	20% of asphalt funded with Federal-Aid in each State is required to include recycled rubber by 1997.	FHWA
Intermodal Surface Transportation Efficiency Act of 1991. Sec. 1047 Scenic Byways Program: (P.L. 102-240)	To identify and develop those special scenic byways that offer outstanding scenic, historic, natural, cultural, recreational, or archaeological values.	Any public road or highway which meets the criteria for inclusion as a Scenic Byway or an All-American Road.	Nominations may originate from any local government, private group or individual, but must come through the States. Final designations are made by the Secretary of Transportation.	FHWA

Noise

Legislative Reference	Regulations Reference	Purpose	Applicability	General Procedures	Agency for Coordination and Consultation
Standards: 23 U.S.C. 109(i) (P.L. 91-605) (P.L. 93-87)	23 CFR 772	Promulgate noise standards for highway traffic.	All Federally funded projects for the construction of a highway on new location, or the physical alteration of an existing highway which significantly changes either the vertical or horizontal alignment or increases the number of through-traffic lanes.	1. Noise impact analysis. 2. Analysis of mitigation measures. 3. Incorporate reasonable and feasible noise abatement measures to reduce or eliminate noise impact.	

Air Quality

Legislative Reference	Regulations Reference	Purpose	Applicability	General Procedures	Agency for Coordination and Consultation
Clean Air Act (as amended), Transportation Conformity Rule: 23 U.S.C. 109(j) 42 U.S.C. 7521 (a) (P.L. 101-549)	23 CFR 771 40 CFR 51 and 93	To insure that transportation plans, programs and projects conform to the State's air quality implementation plans.	Non-attainment and maintenance areas.	1. Transportation plans, programs, and projects must conform with State Implementation Plan (SIPs) that provide for attainment of the national ambient air quality standards.	FTA, EPA, MPOs, State Departments of Transportation and State and local Air Quality Control Agencies.
Clean Air Act (as amended), Sanctions: 42 U.S.C. 7509, sec.179 (b) sec. 110 (m) (P.L. 101-549)	40 CFR 52	To restrict federal funding and approvals for highway projects in States that fail to submit or implement an adequate State Implementation Plan (SIP).	In non-attainment areas 24 months after EPA has identified a SIP deficiency. May be applied Statewide under separate rulemaking.	1. After EPA finds that a State failed to submit or implement a SIP, that the SIP is incomplete, or disapproves a SIP, an 18 month time clock begins. 2. Unless deficiencies are corrected within 18 months, 2:1 offset sanctions are applied. Six months later highway sanctions are applied.	EPA
Intermodal Surface Transportation Efficiency Act of 1991. Congestion Mitigation and Air Quality Improvement Program (CMAQ): Sec 1008 23 U.S.C. 149		To assist non-attainment and maintenance areas reduce transportation related emissions.	Transportation programs or projects in non-attainment areas and areas redesignated to maintenance that are likely to contribute to the attainment or maintenance of the NAAQS.	1. Project sponsor (transit operator, municipal office, etc.) develops formal proposal to improve air quality. 2. Submit to the MPO, State for evaluation, and approval. 3. Included in the TIP and approved as eligible by FTA and FHWA in consultation with EPA.	

Acronyms

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
DOA	Department of the Army
DOD	Department of Defense
DOI	Department of the Interior
DOT	Department of Transportation
EPA	Environmental Protection Agency
FAPG	Federal Aid Program Guide
FEMA	Federal Emergency Management Agency
FHPM	Federal-Aid Highway Program Manual
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FTA	Federal Transit Authority
FWPCA	Federal Water Pollution Control Act
FWS	Fish and Wildlife Service
HUD	Housing and Urban Development
ISTEA	Intermodal Surface Transportation Act of 1991
MPO	Metropolitan Planning Organizations
NMFS	National Marine Fisheries Service
NPDES	National Pollution Discharge Elimination System
NPS	National Park Service
NRCS	National Resources Conservation Service
OCZM	Office of Coastal Zone Management
P.L.	Public Law

RCRA
Resource Conservation and Recovery Act
SARA
Superfund Amendments and Reauthorization Act
SEE
Social, economic, and environmental
SIP
State Implementation Plan
STAT.
Statute
STP
Surface Transportation Program
TVA
Tennessee Valley Authority
U.S.C.
United States Code
USCE
U.S. Corps of Engineers
USCG
U.S. Coast Guard
USFS
U.S. Forest Service

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United States Department of Transportation - **Federal Highway Administration**

APPENDIX E

Project Development Process

What Happens Before the "Road Construction Ahead" Sign Goes Up

Project development – steps that must occur before construction – takes five to eight years for major projects that encounter relatively few obstacles. Projects that require extensive environmental reviews or that involve a variety of challenges and conflicting interests can take many more years.

PHASES/TIME	CONSTRAINTS
Planning/Programming (Varies)	Regulations limit purchase of right-of-way property until late in the process.
Project Scoping (About 12 months)	Coordination with local plans and programs is required. Public and agency involvement begins. Consultant contracting process is highly regulated by law and by the Department of Administration.
Preliminary Design and Environmental Studies (24-26 months)*	Environmental review and approval process is extensive, potentially involving: <ul style="list-style-type: none"> ▪ 49 federal & 25 state environmental laws ▪ 19 federal & state agencies ▪ Regional and local agencies ▪ 26 subject/impact areas ▪ The law establishes a 314 day municipal consent process. Cities may act faster, or the process may be extended if Mn/DOT decides to redesign the project. State noise standards are more restrictive than federal standards.
Detail Design Right-of-Way and Property Purchase (About 24 months)	Right-of-way property acquisition process is highly regulated and sequential. Numerous permits must be obtained. Agreements must be negotiated with cities, counties and utilities.
Preparation for Letting, Contract Letting and Award (15 weeks)	All construction bids must be to Mn/DOT's St. Paul office.
Construction (12-48 months)*	Length of construction phase varies depending on complexity of traffic and availability of funding.
* Highly variable depending on project specifics - complexity, impacts, funding, approvals/permits, controversy, etc.	

Mn/DOT Summary of State and Regional/Local Environmental Permit and Approval Requirements

I. State Environmental Permit and Approval Requirements

(Arranged by State Agency and Subject Area)

Please Note: The information contained in this document was prepared as a summary only and is subject to change. It is not meant to be an exhaustive list of statutory authority of state, regional, or local agencies. Additional reviews, approvals, and permits can be and often are required. Applicability of subject areas varies with project specifics. Not all of the issues contained herein are a factor in all projects, however they must be considered for each project. Mn/DOT made efforts to ensure that the information is complete however, errors and omissions may have occurred.

State Agency	HPDP Subject Area	Applicability	Agency Role	Authority MS = Minnesota Statute MR = Minnesota Rule EO = Executive Order
Board of Water and Soil Resources (BWSR)	Wetlands	Any fill into, or excavation, or drainage of a wetland, wholly or partially, whether on or outside Mn/DOT right of way, as well as grading operations adjacent to or directly upstream of wetlands.	Reviews Wetland Replacement Plans; Administers State Wetland Bank	MS 103G.222 MS 103G.315 MR 8420 EO 00-02
Department of Natural Resources (DNR)	Critical Areas	Projects in the Twin Cities lying within the designated Mississippi River Corridor critical area.	Review	MS 116 G.01-.14 EO 79-19
	Endangered Species (State)	In general, projects that have direct or indirect impacts on endangered species.	Comment, Review, and Permit	MS 84.0895 MR 6134 MR 6212.1800

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State Agency	HPDP Subject Area	Applicability	Agency Role	Authority MS = Minnesota Statute MR = Minnesota Rule EO = Executive Order
	Fish and Wildlife	Impoundment of surface area of 10 acres or more of water, channel diversion or deepening, control or modification of streams	Public Waters Permit	MS 103G.245
DNR (Continued)	Floodplains	Project crosses or lies adjacent to a floodplain. Crossing Floodplains may result in either (or both) transverse and longitudinal encroachment.	Public Waters Permit or review and assist local gov't	MS 103F.121, subd. 5(d) MR 6120.5800
	Groundwater, Surface Water	Projects that require dewatering, diversion or heavy water use. Projects that are near wells or water table.	Water Appropriation Permit	MS 103G.271 MR 6115.06
	Stream or Water Body Modification	Channel relocation, culvert installation or extension, bridge pier work	Review, approval, and Public Waters Permit	MS 103G.245
	Vegetation	Projects that impact native plant communities, landscape, functional, specimen, or protected vegetation	Review	DNR/Mn/DOT Memorandum of Understanding
	Public Waters Wetlands	Any fill into, or excavation, or drainage of a wetland, wholly or partially, whether on or outside Mn/DOT right of way, as well as grading operations adjacent to or directly upstream of wetlands.	Public Waters Permit or review & assist local gov't	MS 115.03 EO 00-02
	Wild & Scenic Rivers	Project near Federal Wild and Scenic Rivers, State Wild and Scenic Rivers, Canoe and Boating Routes or part of the Mississippi National River and Recreation Area	Public Waters Permit or review & assist local gov't	MS 103F.351 MS 85.32 MR 6105

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State Agency	HPDP Subject Area	Applicability	Agency Role	Authority MS = Minnesota Statute MR = Minnesota Rule EO = Executive Order
Environmental Quality Board (EQB)	Certain Farmlands	Applies when 10 acres or more of land in an agricultural preserve are to be acquired.	Review & possible action	MS 473H.15 MS 40A
Department of Health (MDH)	Contaminated Properties	Mn/DOT liable for clean up of contaminated materials in ROW.	Well Installation or Well Sealing Permit(s)	MS 103H.201 MS 103I MR 4725
	Groundwater, Wells	Projects that require wells or well sealing	Well Installation or Well Sealing Permit(s)	MR 4725 MS 103I.301
Department of Agriculture (DOA)	Contaminated Properties	Mn/DOT liable for clean up of contaminated materials in ROW.	Pesticide contaminated soil/groundwater cleanup plan approvals	MS 115B, 18B, 18C, 18D, 18E
	Farmlands	Applies when 10 acres or more of farmland are to be acquired or adversely affected	Review	MS 17.80-.84
Pollution Control Agency (MPCA)	Air Quality	Projects meeting ADT requirements (Twin Cities, Duluth, St. Cloud, Moorhead, Rochester)	Review	MS 116D.03 MS 116D.04
	Contaminated Properties	Mn/DOT liable for clean up of contaminated materials in ROW. Discharge of contaminated ground water.	Contaminated soil/groundwater cleanup plan approvals	MS 115, MS 115B, MS 115C
	Erosion / Sediment	Disturbance of 1 or more acres of land.	NPDES Permit	MS 115.03 MS 116D.03

APPENDIX F

State Agency	HPDP Subject Area	Applicability	Agency Role	Authority MS = Minnesota Statute MR = Minnesota Rule EO = Executive Order
	Floodplains	Project crosses or lies adjacent to a floodplain. Crossing Floodplains may result in either (or both) transverse and longitudinal encroachment.	Water Quality (401) Certification	MS 115.03
MPCA (Continued)	Groundwater	Projects that require dewatering or discharge of contaminated groundwater.	NPDES Permit Other Permits	MS 115.03
	Noise	Projects with traffic noise levels over state day or nighttime standards require a noise exemption	MPCA & Mn/DOT Commissioners approve exemption after review by AG's	MS 116.07
	Vegetation	Projects that impact native plant communities, landscape, functional, or specimen vegetation	NPDES Permit (functional vegetation)	MEPA
	Water Quality	Project adding new or additional water to water resources due to increased impervious area. Bridge construction and drainage modifications near sensitive waters	Review, Comment, NPDES Permit, State Disposal System Permit, 401 Certification	MS 115.03 MS 115.44
	Wetlands	Any fill into, or excavation, or drainage of a wetland, wholly or partially, whether on or outside Mn/DOT right of way, as well as grading operations adjacent to or directly upstream of wetlands.	Water Quality (401) Certification	MS 115.03 MS 115.44 EO 00-02

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State Agency	HPDP Subject Area	Applicability	Agency Role	Authority MS = Minnesota Statute MR = Minnesota Rule EO = Executive Order
State Historic Preservation Office (SHPO)	Historical, Archaeological, Architectural & Cultural	Any project not covered by FHWA Programmatic Agreement with SHPO requires concurrence by SHPO. Note that the Programmatic Agreement does not apply if the project is adjacent to an historic property or within the defined limits of a historic district.	Process steps and SHPO concurrence through Programmatic Agreement, a project clearance letter, or agreed upon mitigation	NHPA (Section 106) MS 138.35 MS 138.40 MS 138.665 MS 307.08
State Archaeologist	Historical, Archaeological, Architectural & Cultural	All state projects are forwarded to the Office of the State Archeologist for comment. (*State Archaeologist consults with Indian Affairs Council on projects that will encounter areas related to Indian history or religion or if burials are known or suspected to exist)	Review and licensing (for projects with impacts)	MS 138.35 MS 138.40 MS 138.665 MS 307.08*
Technical Evaluation Panel (Members: Mn/DOT, BSWR and Soil & Water Conservation District)	Wetlands	Any fill into, or excavation, or drainage of a wetland, wholly or partially, whether on or outside Mn/DOT right of way, as well as grading operations adjacent to or directly upstream of wetlands.	Review wetland bank sites prior to and after construction	MS 103G
Varies	Aesthetics / Visual Quality	Possible delays due to objections from general public and/or resource agencies	Review	MS 116D.02 MS 116D.03

II. Regional / Local Environmental Permit and Approval Requirements

(Alphabetical by Agency)

Please Note: The information contained in this document was prepared as a summary only and is subject to change. It is not meant to be an exhaustive list of statutory authority of Mn/DOT and/or other agencies. Additional reviews, approvals, and permits can and often are required. Applicability of subject areas varies with project specifics. Not all of the issues contained herein are a factor in all projects, however they must be considered for each project. Mn/DOT made efforts to ensure that the information is complete however, errors and omissions may have occurred.

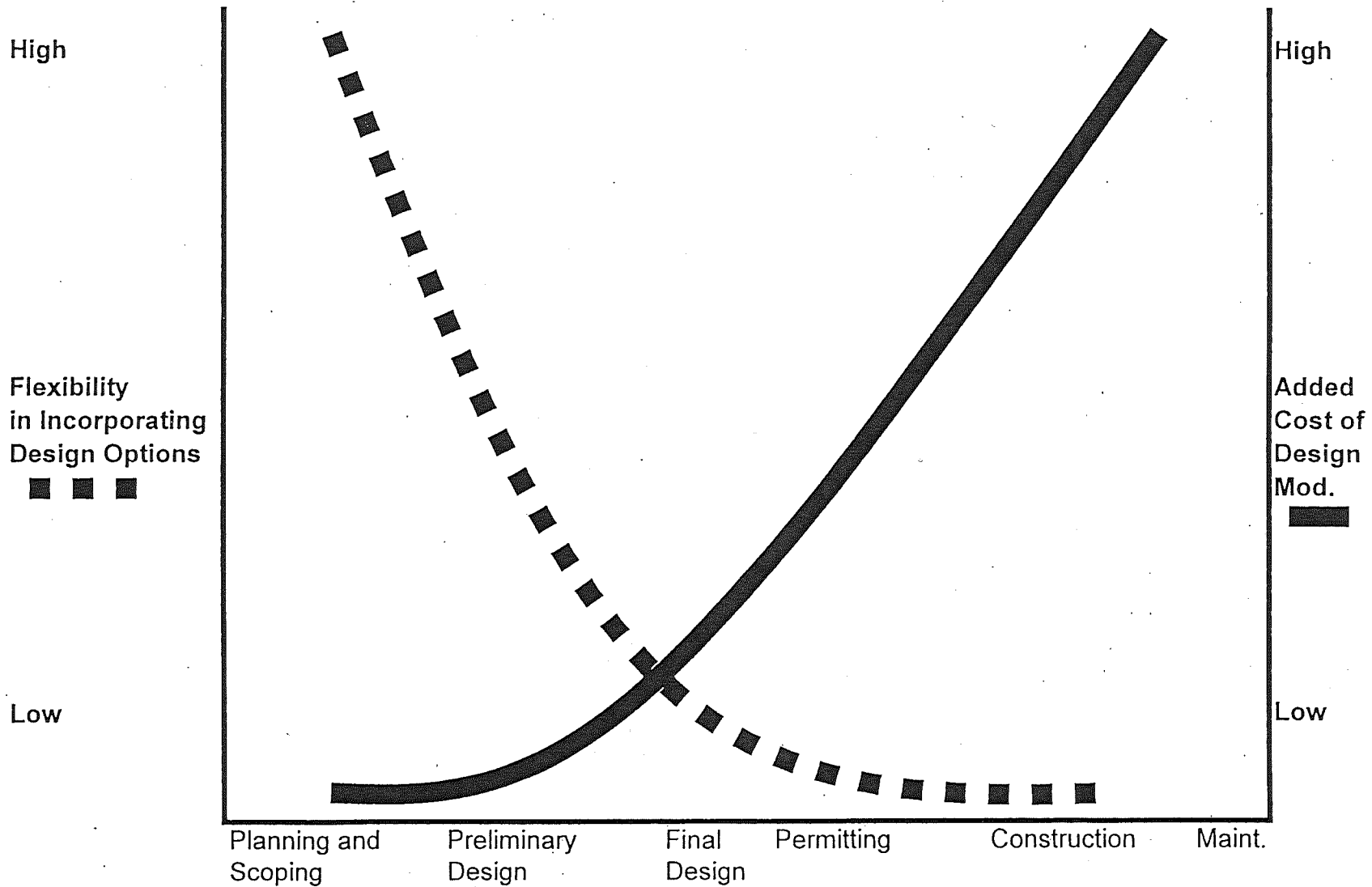
Local Agency	Subject Area	Applicability	Agency Role	Authority MS = Minnesota Statute MR = Minnesota Rule EO = Executive Order
Local government, civic and professional organizations	Social & Economic		Input and Review	MEPA MR 4410.2300 MR 4410.1200
Local Governments	Critical Areas	Projects lying within the Mississippi River Corridor critical area.	Scoping, review, approvals, and permits	MS 116 G.01-.14
Local Municipal Governments	Geometric Layouts	Projects that change access control and/or reduce capacity, or require the acquisition of permanent additional ROW.	Input, Review, and Approval	MS 161.171-177
Local Transit Authorities	Transit	Urban projects with design changes (turning radii, etc.) or construction impacts (detours, etc.)	Review	MS 116D
Local Watershed District(s)	Erosion/Sediment Floodplains Groundwater Surface Water Wetlands	Any project that effects or could effect ground water, surface water quality and/or quantity and/or rate of flow.	Permit(s)	103D

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Local Agency	Subject Area	Applicability	Agency Role	Authority MS = Minnesota Statute MR = Minnesota Rule EO = Executive Order
Metropolitan Council	Critical Areas	Projects lying within the Mississippi River Corridor critical area.	Scoping and review	MS 116G
Metropolitan Council (continued)	Contaminated Properties	Mn/DOT liable for proper discharge of dewatering water.	Industrial Discharge Permit required for discharge into Twin Cities sewers	MS 473

Appendix G

Mn/DOT experience demonstrates that as projects are advanced through the highway development process the flexibility to make major project modifications decreases while the cost of the modifications increases.



Appendix H

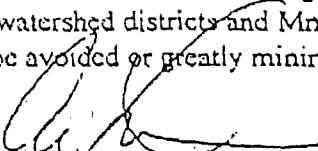
TO: Minnesota Watershed Districts &
Minnesota Department of Transportation District Offices and Metro Division

The 1996 Minnesota Legislature explicitly gave watershed districts permit authority over the Minnesota Department of Transportation (MnDOT) for their transportation projects. A strong partnership between watershed districts and MnDOT offices is necessary to insure an efficient and effective permitting and information exchange process for both parties. With this understanding the Minnesota Association of Watershed Districts (MAWD), MnDOT, and the Board of Water and Soil Resources (BWSR) agreed that the goal of preservation, protection and enhancement of water and related land resources, while insuring that the transportation needs of the people of the State of Minnesota are met, would be best accomplished through early coordination and cooperation between watershed districts and MnDOT District/ Division Offices.


To assist in achieving the goal of early coordination and cooperation MAWD, MnDOT, and BWSR have jointly developed a model memorandum of understanding for watershed districts and MnDOT District/Division Offices to use. The content of the model memorandum of understanding has been agreed upon by each of the partners at the state level. Its purpose is to provide a framework that commits each partner to a coordination strategy that defines how project information will be exchanged between the partners, how notification for projects will occur, and how disputes will be resolved. Watershed District's that are exercising permit authority over MnDOT transportation projects and the MnDOT District/ Division Offices are strongly recommended to enter into a memorandum of understanding using the attached model. Modifications to the memorandum are encouraged to tailor it to fit the needs of individual districts.

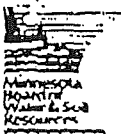
Adoption of memorandums of understanding by the partners will insure that the goals and objectives of both watershed districts and MnDOT will be achieved in a efficient manner, and that conflicts will be avoided or greatly minimized.

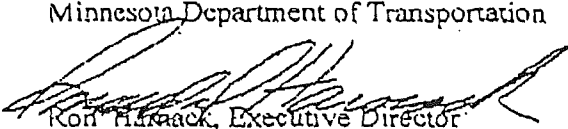



C. Woodrow Love, President
Minnesota Association of Watershed Districts




For James Denn, Commissioner
Minnesota Department of Transportation




Ron Harnack, Executive Director
Minnesota Board of Water and Soil Resources

MEMORANDUM OF UNDERSTANDING
BETWEEN THE

_____ WATERSHED DISTRICT
and the
MINNESOTA DEPARTMENT OF TRANSPORTATION
DISTRICT _____
FOR THE

THE PRESERVATION, PROTECTION AND ENHANCEMENT OF WATER AND
RELATED LAND RESOURCES THROUGH EARLY COORDINATION AND
COOPERATION ON PERMITTED ACTIVITIES.

INTRODUCTION AND PURPOSE

This memorandum of Understanding (MOU) establishes procedures, and processes for guiding the activities and decisions of the _____ Watershed District (___ WD) and the Minnesota Department of Transportation, District _____ (MnDOT) in matters relating to the acquisition of ___ WD permits, and compliance with ___ WD rules required under Laws of Minnesota 1996, Chapter 407, Section 42. Through these procedures and processes both parties wish that due consideration be given to water and related land resources under the jurisdiction of the ___ WD in the development and construction of transportation projects by the MnDOT while insuring that the transportation needs of the people of the state of Minnesota, represented by the programs and projects of MnDOT, are given due consideration in the plans, policies, rules, and programs, and projects of the ___ WD.

The ___ WD and MnDOT play vital roles in the preservation and enhancement of the quality of life of Minnesota residents. A primary purpose of the ___ WD is to conserve water resources of the state by supplementing existing land use regulations, with an exclusive focus on water quality and water quantity. MnDOT is charged with the provision and management of an efficient and safe transportation system to insure that goods and resources can be transported to and from markets efficiently and at low cost. MnDOT has a role in enabling Minnesota residents and others to travel to home, work, and to the public and private recreational facilities in Minnesota. Although their primary responsibilities are different, ___ WD and MnDOT have many areas of mutual interest, and the citizens of Minnesota will be best served by early coordination and cooperation, with each assisting the other to obtain its objectives.

It is therefore appropriate for the ___ WD and MnDOT to consider the potential effects on the state's water resources resulting from transportation construction; to assure that opportunities for joint development and joint use of rights-of-way are identified; and to insure that the economic and social functions provided by MnDOT are given due consideration in the policies, rules, and permit requirements of the ___ WD.

Both parties recognize that the objectives of this MOU can best be realized through close coordination and cooperation between their respective staffs during the planning and development stages of projects, and through cooperative problem solving approach in the environmental review and permitting stages.

COORDINATION COMMITMENTS

Each party commits to a comprehensive coordination process. This process shall begin early in project conceptualization and shall continue throughout project development. Post construction coordination may also be appropriate. MnDOT District staff shall involve the __WD in the pre-design and final design stages of construction projects and maintenance projects requiring permits. The __WD shall provide to MnDOT copies of plans, policies, rules and permit requirements. The __WD shall also provide MnDOT the opportunity to review and comment on revisions to their rules and regulations in the same manner as prescribed for the Board of Water and Soil Resources under M.S. 103D.341, Subd. 2(b). Through early coordination the review of proposed rules or rule amendments by MnDOT should be able to be expedited.

For purposes of this agreement coordinators shall be designated by MnDOT and the __WD. The designated coordinator shall be responsible for coordinating all activities between the MnDOT District and the __WD, including but not limited to receipt and dissemination of information and materials involving the implementation of this MOU.

The coordinators shall meet at least once each year, or as needed in order to facilitate coordination and cooperation in the review of projects, programs and procedures of mutual interest. The emphasis of the meetings shall be the consideration of water and related land resources and their integration into the MnDOT's project development process; and issues or questions of cost, administration or scheduling experienced by MnDOT as a result of __WD rules, regulations and permits. These meetings shall focus on the near term activities and long term plans.

CAPITAL IMPROVEMENT COORDINATION AND PLANNING INFORMATION EXCHANGE

The coordinators shall receive and disseminate information involving the implementation of policies, rules and guidelines for the development of construction and maintenance projects requiring permits by MnDOT. Information shall include, but is not limited to the following:

1. Copies of current MnDOT State Transportation Improvement Program (STIP) and Transportation Improvement Work Program shall be transmitted to the designated __WD coordinator by MnDOT's District Office when published.

2. Copies of all current capital improvement plans within the __ WD as well as a copy of the __ WD comprehensive watershed management plan and rules and regulations shall be submitted to MnDOT Coordinator.
3. Copies of a detailed boundary map of the __ WD as well as a copy of maps identifying legal drainage or water conveyance systems under the jurisdiction of the __ WD, shall be submitted to the MnDOT Coordinator.
4. Upon review of Transportation Improvement Programs, and when practicable, the __ WD shall provide comments to the MnDOT, identifying those projects with potential impacts on water and related land resources and potential permit considerations. The __ WD shall also identify opportunities for joint development or enhancement of water and related land resources and provide detailed information on the scope of the development or enhancement project and what MnDOT's contribution or work effort might entail. The items indicated in this section shall be an agenda item for the annual joint meeting.
5. MnDOT shall review the plans and other documents provided by the __ WD, and when appropriate, provide comments to the __ WD, identifying those policies, plans, programs, rules or rule revisions that may have potential impacts on the administration, plans, projects or facilities of MnDOT.

PROJECT DEVELOPMENT FOR CONSTRUCTION AND MAINTENANCE PROJECTS

1. All MnDOT Project Path Reports, Project Memorandum, and Study Reports on MnDOT trunk highway projects, which add paved areas or affect drainage, will be distributed by the MnDOT District Office to the __ WD for review and comment.
2. All Environmental Assessments, Environmental Assessment Worksheets, and Environmental Impact Statements developed by MnDOT or the __ WD, for projects affecting MnDOT trunk highways, will be distributed to the other agency through existing federal and state environmental review processes for review and comment as provided for under state law and rule.
3. The MnDOT District staff will notify the __ WD of the date, time, and place of any public hearing or other significant public meeting held in association with the proposed MnDOT project.
4. The __ WD will notify the MnDOT District of the date, time and place of any public hearing or publicly noticed meeting held in association with a proposed __ WD project, which may affect a trunk highway, comprehensive watershed management plan revision, or revision to its rules and regulations.

5. Environmental review documents prepared on proposed MnDOT projects shall identify any permits required by the __WD; describe potential impacts on water and related land resources; describe those measures planned to avoid potential impacts to water and related land resources; and describe reasonable measures to avoid or minimize environmental impacts. Planning and project documents prepared by the __WD shall identify potential short and long term impacts to transportation facilities, and shall identify those measures, if any, by which the project will accommodate present and future transportation needs.
6. Upon receipt of documents prepared by MnDOT for proposed transportation projects the __WD will provide a determination of the need for __WD permits, and may include information regarding opportunities for joint development and enhancement. Comments will be directed to MnDOT District Coordinator within 45 days of receipt of information. MnDOT District Coordinator will respond within 45 days of receipt of information related to __WD projects..

PROJECT FINANCE

Funds available to MnDOT by law can only be expended for transportation purposes, including mitigation of actual impacts. "Moments of Opportunity" will sometimes present themselves, when a significant advantage to a water or related land resource can be obtained by minimal MnDOT expenditure. Consistent with the FHWA Environmental Policy Statement, MnDOT will take a positive role when such moments arise. However, it is not the responsibility of MnDOT to mitigate above and beyond the actual impact caused by a proposed project. Financial responsibility for __WD suggested enhancement projects which are above and beyond the actual transportation impact shall rest with the __WD. Mitigation of adverse effects of transportation projects required by the __WD shall be based on sound scientific principals and be accompanied by the __WD's recommendation of need and specific end results. Specific plan recommendations shall be included whenever possible.

UNRESOLVED CONCERNS

Proposed transportation projects, proposed enhancement projects, and proposed maintenance projects which require __WD permits may result in unresolved issues between the MnDOT and the __WD. It shall be the policy of each party that such issues shall be resolved at the lowest possible level in each organization, where staff are most familiar with the issue. Figure 1, below, lays out the hierarchy of the issue resolution process.

Every effort shall be made to resolve issues of a permit at a level no higher than step 2.

Figure 1
Issue Resolution Process

- Step 1. Resolution of issue by MnDOT District staff and a subcommittee of the __WD Board of Managers including staff, and/or consultants.
- Step 2. Resolution of issue by MnDOT District Engineer or Office Director and __WD Board of Managers.
- Step 3. Request for resolution of the dispute by MnDOT to the Board of Water and Soil Resources pursuant to M.S. 103D.539. For purposes of this agreement the MnDOT will be represented on the dispute resolution committee.
- Step 4. Appeal, by MnDOT of the __WD rules to BWSR, pursuant to M.S. 103D.537.
- Step 5. Appeal of permit, rule or order of the __WD by a declaratory judgement action brought under chapter 555.

The procedures outlined herein shall be effective immediately upon signature of the of the MnDOT Transportation District Engineer and the __WD, and shall remain in effect until decided otherwise by either party.

MnDOT Transportation District Engineer

Date: _____

__WD, Chairman

Date: _____

Appendix I

St. Paul District - Corps of Engineers

GP/LOP-98-MN - Section 404 Activities in Minnesota. This is a summary. Refer to the permit for complete details and conditions.

Activities not covered →	GP/LOP-98-MN DOES NOT COVER discharges of dredged/fill material into calcareous fens and wetlands within 300 feet of calcareous fens, or into Federal Wild and Scenic Rivers, or for any activity that is part of a project that would divert more than 10,000 gallons of surface or ground water per day into or out of the Great Lakes Basin. Such discharges require evaluation under Corps standard individual permit procedures.
GP (Non-reporting)	<p>Covers discharges of dredged/fill material for maintenance of existing structures or fills (1/3-acre impact limit), bank protection, utility line installation, 404 activities for USCG-approved bridges, return water, oil/hazardous substance spill cleanup, structural discharges, completed enforcement actions, wetland/stream restoration/creation activities, moist soil management by Federal/state agencies and minor discharge activities that directly and indirectly impact less than 400 square feet of water/wetland area (refer to detailed permit descriptions and conditions for all activities).</p> <ul style="list-style-type: none"> No pre-project application or notification to COE is required if all GP conditions are met and, if in Special Waters * (see below), project impacts less than 400 sq. ft. of water/wetland area. Some activities in Special Waters may be eligible for authorization under a GP or LOP below. Discharges for oil/hazardous substance spill cleanup activities in ALL areas, and bank protection and public road and utilities maintenance if not in or within 300 feet of a calcareous fen, are not subject to Special Waters restrictions. MDNR must be notified in advance of road and utility maintenance projects in wetlands near trout streams in some SE MN counties as indicated in the permit.
LOP A	<p>Covers bank protection and utility line projects that fail to meet GP limits or criteria, the above-listed GP activities in special waters, and temporary construction/access/dewatering, and toxic waste management (refer to detailed permit descriptions and conditions for all activities).</p> <ul style="list-style-type: none"> Application to COE and written authorization from COE required. COE internal review only unless Special Waters* are involved. COE conducts a 15-day public/interagency review if Special Waters are involved AND total project impact exceeds 400 sq. ft. of water/wetland area.
LOP B	<p>Covers activities that impact more than 400 square feet (sq. ft.) but less than 2 acres of wetland/water area.</p> <ul style="list-style-type: none"> Application to COE and written authorization from COE required. COE internal review only except COE conducts a 30-day public/interagency review (via Internet) if Special waters* are involved and/or total project impact exceeds 10,000 sq. ft.: Appropriate compensatory mitigation required if mitigation threshold exceeded (see **below).
LOP C	<p>Covers activities regulated and approved pursuant to the Minnesota Wetland Conservation Act (MWCA). May include additional impacts not regulated by MWCA within the 2-acre total water/wetland impact limit.</p> <ul style="list-style-type: none"> Application to COE and LGU required. Written authorization from COE required. Applicant or LGU must provide COE complete WCA evaluation and action information, including any approved/required compensatory mitigation. COE internal review only unless impacts exceed 10,000 sq. ft. 15-day public/interagency review if impacts exceed 10,000 sq. ft. Appropriate compensatory mitigation required if mitigation threshold exceeded (see ** below).
LOP D	<p>Covers public road projects to improve/upgrade EXISTING roads (5-acre total project water/wetland impact limit).</p> <ul style="list-style-type: none"> Application to COE required. Written authorization from COE required. 30-day public/interagency review if impacts exceed 10,000 sq. ft. Appropriate compensatory mitigation required if mitigation threshold exceeded (see ** below).
*Special Waters	Special Waters are state-designated trout waters, state-designated Outstanding Resource Value Waters, state-protected lakes/wetland greater than 10 acres in size as designated by the MDNR "Public Waters/wetlands Inventory" maps, and all water/wetland areas that are adjacent to and within 300 feet of these waterbodies.
**Mitigation thresholds	**Thresholds for compensatory mitigation requirement are based on MWCA de minimis thresholds: 400 sq. ft. in shoreland area, 2,000 sq. ft. in less than 50% county, 5,000 sq. ft. in 50-80% county, 10,000 sq. ft. in 80%+ county. If the threshold is exceeded, compensatory mitigation is required for ALL wetland impacts.

APPENDIX J

SUMMARY OF COE STREAMLINED PERMITS as they relate to Mn/DOT and other public road projects (Mn/DOT OES 9-18-2002)

PERMIT	ELIGIBILITY	LIMIT	REVIEW NOTES
GP-1	DNR Approval	3 acres	Need letter From COE
GP/LOP98* GP	Maintenance	1/3 acre	No Notice
GP/LOP98* LOPA	Temporary, Dewatering		15 day ** 30 proposed
GP/LOP98* LOPB	Anything (New Roads)	2 acres	30 day
GP/LOP98* LOPC***	WCA RP	2 acres	30 day post WCA
GP/LOPD*	Existing Roads	5 acres	30 day
GP-2 proposed	WCA RP	1 acre	TEP/BWSR Certification
GPLOP98R ****	Indian Reservations	1/3 maintenance 2 acre all else	No notice 30 day

The GP/LOP98 replaced the Clean Water Act Section 404 Nationwide Permits (NWP) in Minnesota. Section 10 NWPs are still in effect.

* Proposed GP-02 and modified GP/LOP would prohibit in-water work (e.g. culverts and bridges) from ice out until August 15 in SW MN.

** LOP A is proposed to have 30 day review

*** GP-02 is proposed to replace LOPC

**** LOPs issued under LOP98-R require certification from USEPA

Water Quality Protection – Stormwater Erosion Prevention and Control

The Task Force has discussed and evaluated alternatives and various opportunities to reduce or combine stormwater permit reviews. The concern is that in urbanized areas transportation authorities must obtain multiple permits from different governmental units for the same project. The permits are not coordinated to avoid conflict or assure consistency. For example, MnDOT may be required to obtain a National Pollutant Discharge Elimination System (NPDES) construction stormwater permit from the Minnesota Pollution Control Agency (MPCA) and in some cases an additional permit from the local municipality. The municipal stormwater permits are likely driven by the need to plan for infrastructure capacity and in the future, and the need to be in compliance with a federal mandated Municipal Separate Storm Sewer Systems (MS4) Permit. The MS4 permit is also a requirement under the Clean Water Act. In addition, MnDOT may be required to obtain another stormwater permit from each watershed district impacted by the project.

Background

Phase I of the US Environmental Protection Agency's (EPA's) stormwater program was promulgated in 1990 pursuant to the federal Clean Water Act. The Phase I program applied to construction projects that disturbed five or more acres, certain industrial sites and to the cities of Minneapolis and St. Paul. In 2003, the federal Stormwater Phase II Final Rule takes effect. It is the next step in EPA's effort to preserve, protect and improve water resources from polluted stormwater runoff. The Phase II Program expands the Phase I Program by requiring an estimated 150 to 250 additional Minnesota cities, counties and other owners of stormwater infrastructure to implement programs and practices to control polluted stormwater runoff. In addition, approximately 4,000 additional construction stormwater sites will fall under EPA's new regulations every year, because of the expansion of the program to sites that disturb between one and five acres of land.

In the future, MnDOT will also be required to obtain a NPDES Industrial Permit for all Maintenance Facilities. DOT facilities had been exempted from this federal requirement by ISTEA and then by the federal phase 2 rule until March of 2003. Since that exemption is expiring, MPCA will work with MnDOT to obtain an NPDES Industrial Permit and a system for annual reporting. Early indications are that a single permit could be issued for all facilities. However, each facility would have to customize a stormwater pollution prevention plan to address specific aspects of each facility and report on compliance annually.

The NPDES permit is a requirement under federal rule that is delegated to the MPCA. Under federal law/rule the NPDES Permit program can not be further delegated to another entity. However, local entities will continue to play an important role in water quality protection. Municipal officials must integrate land use, development and changes in the infrastructure into the stormwater system they maintain. Watershed officials have

APPENDIX K

stated that they need to address unique features and issues within each watershed not addressed by the state or municipal permits.

Other activities at the state level may be an MPCA effort to conduct limited stormwater monitoring and to evaluate the effectiveness of some traditional Best Management Practices (BMPs). This is in lieu of asking each permittee to conduct monitoring and test BMP effectiveness. MPCA would develop and implement, primarily through contracts, the water monitoring necessary to document BMP effectiveness for stormwater pollutant reduction.

Streamlining Improvements in the process.

Other agencies and LUGs will be affected by requirements to track the large number of construction sites that will be regulated under the Phase II program. In an effort to assist and reduce the amount of time necessary for permit applicants to apply for and receive permit coverage, the MPCA is developing a web site that will accept electronic permit applications. The web site will also be available to other state departments, LUGs and the general public to view and download data on the construction stormwater permit activity. This should assist MnDOT and its contractors in meeting their stormwater Phase II program obligations in a more efficient manner than is possible through the traditional application process. For example, MnDOT could begin the permit process by completing a paper application and then having the contractor complete the permit application process on-line after the project has been awarded.

Stormwater and Outstanding Resource Value Waters (ORVW's)

The MPCA is in the process of addressing the stormwater related requirements of Minn. R. 7050.0180, .0185 and .0186 (nondegradation rules for stormwater general permits only). The Agency's efforts will focus on statutory changes that would allow an alternative approach until rule 7050 can be improved. This part of Rule 7050 was written prior to stormwater general permit authorization and would be extremely difficult to implement for the varied and numerous sources of stormwater pollution that the agency is now required to permit, including MnDOT projects. Legislative action is required to clarify how the MPCA will permit these sites given the large number of additional regulated sources of pollutants and provide direction to the MPCA for rulemaking.

Transportation Specific Permit

MPCA will continue to explore the feasibility of a general permit tailored to linear projects such as highways and utilities. This approach has been researched by contacting other states and obtaining examples of different approaches to transportation permits. An alternative to a highway-specific permit would be a guidance document developed by MPCA in cooperation with MnDOT. Highway-specific permit guidance would provide clearer instruction on what the permit requirements mean for highway projects. MPCA could also provide additional assistance in the form of staff time for training MnDOT staff in stormwater regulatory requirements and technical assistance. If desired, MPCA staff assigned to work with MnDOT under the Interagency Agreement would be the most appropriate people to accomplish most of these tasks. To pursue this approach, it would be important to reach agreement that these efforts would be effective in streamlining the permitting process without weakening the substance of environmental protections.

MPCA and others have published a variety of traditional Best Management Practices (BMPs) that can be used in the construction industry. A transportation-specific permit could provide the opportunity to identify and test more industry specific BMPs that may be found to be both more environmentally effective and cost effective. In these situations, it would be desirable to allow for testing and effectiveness monitoring of innovative BMPs so that there can be assurance that the environment is being adequately protected.