



Wisconsin Department of Transportation

February 11, 1988

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

FROM: [REDACTED] Secretary
Department of Transportation [REDACTED] Secretary
Department of Natural Resources

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

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

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

1. The agreement applies to ALL DOT development projects which cause an encroachment into mapped flood hazard areas. Included are ALL culverts, bridges, and fills within any area mapped as floodplain.
2. If the staff of either agency believes a DOT project within a mapped floodplain area, for reasons of size or significance, should not be reviewed under the agreement, OR if either agency believes a project in an unmapped area should be reviewed under the agreement, they should discuss their concern with the other agency. Upon agreement of both district or both agency liaisons, any DOT project can be excluded from, or included in the requirements of this agreement. All such agreements shall be documented at some point before completion of the liaison process.

3. In mapped areas, DOT will, unless agreed above, compute the 100-year regional flood discharge and elevation on all new or replacement waterway crossing structures and for all other floodplain encroachments, including culverts, in accordance with NR 116 and NR 320. DOT will provide the results of the computations to the identified DNR district liaison. In all cases (no flood level increase, reduced flood levels, or increased flood levels), DOT will ensure the appropriate zoning administrator is notified.

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

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

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

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

5. Where a floodplain ordinance is in effect, "appropriate legal arrangements" will be required. In addition to the notification letter, one of the following must be done prior to project construction to comply with this requirement:
 - a. Acquisition of property rights (fee title or easement), or provision of other compensation agreed to in writing by the property owner.

- b. Initiation of condemnation proceedings as provided in Chapter 32, Wis. Stats.
- c. Receipt of a document signed by the property owner (response sheet to Letter 2), or a certified letter return receipt, which verifies the property owner has received the applicable notification letter (Letter 2). To keep the DNR Environmental Impact Coordinator informed of comments received from these specific property owners, a copy of all completed or partially completed returned response sheets must be sent to the DNR coordinator.

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

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

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

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

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

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

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

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

RRF:CDB:scs
Enclosure

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

LETTER 1
LETTER FOR UNZONED FLOODPLAINS

[Property Owner]
[Inside Address]

[Highway Project ID Information]

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

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

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

Sincerely,

(DOT or Authorized Agent Signature)

Enclosure

cc: DNR District Office
Local Government

LETTER 2
LETTER FOR ZONED FLOODPLAINS

[Property Owner]
[Inside Address]

[Highway Project ID Information]

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

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

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

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

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

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

Sincerely,

(DOT or Authorized Agent Signature)

Enclosure

cc: DNR District Office
Local Government

FORM FOR ENCLOSURE WITH LETTER 2

Response

[] I wish the following additional information:

[] I have the following questions, comments, or concerns:

[] I have no further comments, questions, or concerns.

(Date)

(Signature)

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

LETTER 3
DRAFT LETTER FOR
CIRCUMSTANCES WHERE COMPENSATION IS REQUIRED

[Property Owner]
[Inside Address]

[Highway Project ID Information]

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

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

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

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

Sincerely,

(DOT or Authorized Agent Signature)

Enclosure

cc: DNR District Office
Local Government