

INTERAGENCY AGREEMENT
BETWEEN
THE U. S. FISH AND WILDLIFE SERVICE
AND
THE FEDERAL HIGHWAY ADMINISTRATION
RELATING TO PUBLIC ROADS ON THE NATIONAL WILDLIFE REFUGE SYSTEM

1. PURPOSE

This Interagency Agreement between the U. S. Fish and Wildlife Service (FWS) and the Federal Highway Administration (FHWA) documents the processes and responsibilities of each agency in meeting the requirements of Title 23, United States Code (23 U.S.C.) relating to public roads in the National Wildlife Refuge System. This agreement also includes provisions for assistance by the FHWA on roads under the jurisdiction of the FWS which are not funded under 23 U.S.C. 204.

2. AUTHORITY

The Department of the Interior, acting through the FWS, in fulfillment of its statutory responsibilities under the Act of October 15, 1966 (16 U.S.C. 668dd), as amended and supplemented, must engage in a continuing program of planning, programming, construction, reconstruction, and improvement of public roads on the National Wildlife Refuge System (refuge roads), including bridges, and appurtenances, in connection with the administration of the National Wildlife Refuge System.

The Transportation Equity Act for the 21st Century (TEA-21), amends 23 U.S.C. as noted below:

Sec.1115(e) expands the Federal Lands Highways Program to include National Wildlife Refuge System roads (refuge roads).

Sec. 1115(e)(2) provides that sums authorized to be appropriated shall be allocated by the Secretary of Transportation for each such fiscal year for refuge roads, according to the relative needs of the various elements of the National Wildlife Refuge System, and the need for access as identified through comprehensive management plans, land use planning, and the impact of such planning on existing transportation facilities.

Sec.1115(e)(2) provides for carrying out work involved with the administration, maintenance and improvements on existing refuge roads.

Sec.1115(d)(2) provides for carrying out work involved with the transportation planning, research, engineering, maintenance and construction.

- Sec.1115(d)(1) recognizes the need that all Federal roads that are public roads to be treated under uniform policies.
- Sec.1115(d) (1) provides that the Secretary of Transportation and the Secretary of Interior shall develop by rule, transportation planning procedures that are consistent with metropolitan and statewide planning processes.
- Sec.1115(d)(1) provides that the Secretary of Transportation and the Secretary of Interior shall, to the extent appropriate, develop by rule, management systems for safety, bridge, congestion and pavement for roads funded under the Federal lands highway program.
- Section 1201 provides that the term 'refuge road' means a public road that provides access to or within a unit of the National Wildlife Refuge System and for which title and maintenance responsibility is vested in the United States Government

Title 23 U.S.C. 204(f) provides that all appropriations for the construction and improvement of each class of Federal lands highways shall be administered in conformity with regulations and agreements jointly approved by the Secretary of Transportation and the Secretary of the Interior.

3. RESPONSIBILITIES

The FWS is responsible for:

- The protection and management of lands and resources under its jurisdiction, and is vitally interested in the maintenance of a public refuge road system that will provide access for the protection, use and enjoyment of National Wildlife System areas and will integrate with other transportation facilities;
- Carrying out a transportation planning process for refuge roads to the extent deemed adequate to support the construction and improvement program, similar to those of 23 U.S.C. 204, 23 U.S.C. 307, 23 U.S.C. 402, and 16 U.S.C. 17(k), and in accordance with applicable FWS guidelines;
- Developing a five-year program plan, and submitting annually to FHWA a priority program of proposed Federal Lands Highway Program projects for approval and allocation of the sums authorized;
- Ensuring that all proposed changes affecting the program shall have the approval of the FWS Director (or delegated representative) and the Federal Lands Highway Program Manager (or delegated representative);

- Ensuring that all construction activities shall be conducted and executed to minimize impact of the project on refuge operations, and that, wherever feasible, construction activities shall avoid peak visitation periods;
- Developing the planned construction schedule, and informing the FHWA of any changes in the schedule as they become apparent; and
- Maintaining and operating refuge roads following adopted FWS standards and pursuant to 23 U.S.C.

The FHWA is responsible for:

- Ensuring that the work performed under 23 U.S.C. 204 is in conformance with established policies of 23 U.S.C.; and
- Providing technical assistance as noted below.

To avoid duplication of services and costs, and in accordance with the provisions of §601 of the Act of June 30, 1932, (47 Stat. 417), Section I of the Act of August 27, 1958 (72 Stat. 914), and 23 U.S.C. 308, the FHWA shall be available to perform architectural services, transportation planning assistance, research, engineering studies, traffic engineering services, project development, and construction contract administration.

The FWS Regional Offices and the FHWA Division Engineers shall jointly determine respective responsibility for execution of the approved program. Based upon the approved program of projects, both agencies shall jointly agree on a division of program responsibility and will provide the necessary supervision for carrying out the project execution as herein defined.

All requests for FHWA technical assistance on projects being administered by the FWS will be in writing from the FWS Regional Engineer, with the concurrence of the Refuge Program, to the appropriate FHWA Division Engineer.

The design and construction of projects will be in accord with applicable provisions of 23 U.S.C.; applicable FHWA and FWS statutes, regulations and agency procedures; and applicable portions of the latest edition of the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects* or approved state or local highway agency specifications.

For those activities and projects administered by FWS, the FWS Regional Engineers, in coordination with Budget Office, Division of Contracting, and the Refuge Program will:

- Perform any required planning, prepare required environmental documentation, and the public notification process for each project;

- Ensure that projects are advertised and awarded in conformance with the approved plans and specifications and regulations;
- Ensure documentation of a finding that force account work is in the best interest of the Government;
- Furnish appropriate project status reports and technical documents to the FHWA;
- Ensure that proposed changes to contract plans or specifications shall have the concurrence of the Regional Contracting Office and Regional Refuge Program, before adoption;
- Ensure prompt payments to contractors, and to States or civil subdivisions thereof, for services that are undertaken in a timely fashion; and
- Be responsible for providing review of architectural and landscape architectural services to ensure that the highest standards of aesthetics and resource protection are followed.

For those activities and projects administered by the FHWA , the FHWA will:

- Perform planning and engineering studies, inventories, investigations, reconnaissance surveys, or other studies with the participation of the FWS for review and concurrence;
- Undertake the preparation of plans, specifications, and detailed cost estimates, which shall be submitted to the FWS Regional Engineer for preliminary and final design reviews and approval by both the Regional Engineer and the Regional Refuge Program;
- Collaborate and cooperate with the FWS Regional Engineer and Regional Refuge Program to assure that the plans and specifications conform to refuge management plans and accommodate aesthetic and environmental and resource protection considerations for the particular refuge or proposal;
- Participate as a cooperating agency;
- Advertise, award, and administer the contract for the construction of the project in conformity with the approved plans and specifications;
- Ensure that proposed changes to contract plans or specifications shall have the concurrence of the FWS Regional Engineer and Regional Refuge Programs, before adoption;

- Furnish project status reports to the FWS Regional Engineer and the Refuge Program as may be required, and give the FWS the opportunity to participate in project inspections, including final inspections;
- Ensure that the FWS has furnished written recommendations to the FHWA for project acceptance, and that the FHWA has the concurrence of the FWS Regional Engineer and Refuge Program before acceptance and final payment to the contractor;
- Upon completion and acceptance of each contract, furnish to the FWS Regional Engineer a final construction report, including final cost data and as-constructed plans; and
- Be responsible for all payments to contractors, and to States or civil subdivisions thereof, for services that are performed under the responsibility of the FHWA, as outlined in this section.

For those activities and projects which the FWS requests the FHWA to administer, the FWS will:

- Be the lead agency responsible for the preparation of environmental documents for the proposed project, including the public notifications and involvement process, unless otherwise agreed upon with respect to a particular project; and
- Be responsible for providing review of architectural and landscape architectural services to ensure that the highest standards of aesthetics and resource protection are followed.

4. FUNDING AND REPORTING

For funding the projects of the Federal Lands Highway Program being administered by the FWS:

- The FHWA shall transfer obligational (contract) authority to the FWS by means of an allocation letter;
- The FWS requests for liquidating cash shall be in writing and addressed to the Chief, Finance Division, FHWA, Room 4306, HFS-20, 400 7th Street, S.W., Washington, DC 20590;
- The FHWA will transfer liquidating cash to the FWS to meet current expenditure needs; and
- Direct or indirect overhead charges shall be jointly agreed upon.

The FWS shall furnish reports for the portion of the Federal Lands Highway Program administered by the FWS including:

- Monthly SF-133, Report on Budget Execution, reflecting specific financial and budget data for each different type of allocation and overall summary by Treasury Symbol;

- Annual FMS-2108, Year-End Closing Statement;
- Annual Adjusted Trial Balance (ATB transmitted) by Treasury Symbol;
- Monthly report of total obligation and expenditures for each project; and
- Annual obligation and expenditures for each project including planning and research, engineering and special studies, preparation of plans, specifications and estimates, construction contract administration and inspection costs, contract payments, and any direct or indirect overhead charges, and other reports as may be required.

For non-Federal Lands Highway Program road and bridge projects funded directly under FWS authorities through Department of the Interior appropriations:

- The FWS and the FHWA shall determine program responsibility on a project-by-project basis;
- Funds shall be transferred before beginning work by the FWS to the FHWA for projects for which the FHWA shall have program responsibility;
- For projects to be contracted for by the FWS and administered by FHWA, cash shall be transferred to the FHWA to provide for payment; and
- FHWA administration takedown will follow procedures jointly agreed upon between the FHWA and the FWS.

For refuge road projects administered by the FHWA, the FHWA will provide summary information on obligation and expenditure of refuge road funds.

For the portion of FWS-funded projects administered by the FHWA, the FHWA shall furnish reports including:

- Monthly SF-133, Report on Budget Execution, reflecting specific financial and budget data for each different type of allocation and overall summary by Treasury symbol;
- Annual FMS-2108, Year-End Closing Statement;
- Monthly report of total obligation and expenditures for each project;
- Annual Adjusted Trial Balance (ATB transmission) by Treasury Symbol; and

- Annual obligation and expenditures for each project including planning and research engineering and special studies, preparation of plans, specifications and estimates, construction administration and inspection costs, contract payments, and any direct or indirect overhead charges, and other reports as may be required.

5. PROGRAM MANAGEMENT

The FWS and the FHWA shall exchange information concerning any claims or litigation arising as the result of, or in connection with a project. When the FWS is the Contracting Officer, the Department of the Interior Board of Contract Appeals shall have jurisdiction. When the FHWA is the Contracting Officer, the Department of Transportation Contract Appeals Board shall have jurisdiction.

Right-of-way, railroad agreement, and utility adjustment matters will be the responsibility of the FWS, unless otherwise agreed upon with respect to a particular project.

Interagency program and policy review meetings shall be conducted as necessary. Information for such meetings will include the following:

The FWS will provide:

- A priority list of proposed Federal Lands Highway Program projects (with supporting data) that will best meet its transportation needs based on short-term and long-range objectives;
- Status reports on transportation planning activities related to management plans;
- Recommendations for long-range transportation needs and procedural changes; and
- Identification of special needs for planning, engineering studies, research, and design, necessary to undertake the program.

The FHWA will provide:

- The latest information on available financing and its effects on the proposed program; and
- The status of existing FHWA administered FWS projects, activities, and supporting information required in analyzing and reviewing future programs.

Following the program and policy review meetings, and upon written request from the FWS, the FHWA will approve the program of Federal Lands Highway Program projects, or changes thereto, and allocate the funds authorized. Necessary program changes and modifications in the Federal Lands Highway Program shall be submitted to the FHWA for reprogram approval.

The FHWA shall be responsible for presenting budget and program information regarding the Federal Lands Highway Program to the Congress as required. The FWS and the FHWA will cooperate in collecting information and preparing reports as may be required.

6. PARTNERING AGREEMENTS

In addition to the provisions of this agreement, the two agencies may enter into supplemental agreements, including program Partnering Agreements covering asset management systems, eligibility guidelines and policies relating to this program. Possible agreements include:

- Safety Management System
- National Bridge Inspection System
- Pavement Management Systems
- Congestion Management Systems

Respective FHWA Federal Lands Highway Divisions and FWS Regional Offices may enter into such supplementary or ancillary regional agreements as may be appropriate and mutually agreed regarding details of planning procedures and implementation of the approved program; provided, however, that any such regional agreements shall be in conformity with this agreement and applicable laws and regulations, and no such regional agreement shall be deemed to supersede this agreement.

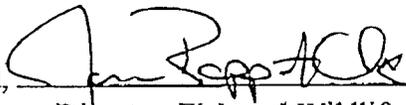
7. EXECUTION AND EFFECTIVE DATE

This agreement is not intended to fix procedures to be followed so rigidly as to prevent logical and practical actions by the agencies, but rather to formulate a general, uniform procedure, as required by 23 U.S.C. 204, applicable to the implementation of the refuge roads program.

The FHWA and the FWS personnel are encouraged to confer during the various phases of program development and implementation to agree on matters that fall within their respective jurisdictions and responsibilities. Matters that require consideration at higher levels should be referred to appropriate offices within each agency.

This agreement shall become effective on the date of the last approving signature. Renegotiation of this agreement or any part thereof shall be by mutual concurrence in writing.

APPROVED:

Signed, 
Director, Fish and Wildlife Service

4/2/99
Date

Signed, 
Federal Highway Administrator

4-12-89
Date