

MEMORANDUM OF AGREEMENT

BETWEEN

TEXAS DEPARTMENT OF TRANSPORTATION

AND

TEXAS PARKS AND WILDLIFE DEPARTMENT

FOR

FINALIZATION OF 1998 MOU,
CONCERNING HABITAT DESCRIPTIONS
AND
MITIGATION

Introduction

As a result of the required revisions to the Memorandum of Understanding (MOU) signed in 1998 between the Texas Department of Transportation (TxDOT) and the Texas Parks and Wildlife Department (TPWD), the two agencies were charged with establishing an interagency team to:

1. develop procedures and methodologies for providing habitat characterizations and impact descriptions, and developing supporting information for the environmental documentation; and
2. establish criteria for the appropriateness, planning and implementation of compensatory mitigation when TxDOT has identified a need, or when TxDOT and TPWD mutually have identified the need for compensation.

Team Members

Current TPWD team members include:

Kathy Boydston, Wildlife Division, Region 5 (Headquarters)
Tom Heger, Resource Protection Division

Current TxDOT team members include:

Jeff Casbeer, Environmental Affairs Division
Tom Bruechert, Environmental Affairs Division
Ken Holmes, Environmental Affairs Division
Bill Hood, Environmental Affairs Division
Karen Clary, Environmental Affairs Division
Nancy Fisher, San Angelo District
Velma Garcia, Pharr District
Mary Perez, Corpus Christi District
Mike Rhodes, Waco District
Craig Rollins, Lufkin District
Mary Telles-Goins, El Paso District

Team members may be replaced at any time.

HABITAT CHARACTERIZATIONS AND IMPACT DESCRIPTIONS

It has been determined by the interagency team that future habitat characterizations and impact descriptions contained within environmental documentation would be based on: (1) whether the project required no new right-of-way (ROW), (2) whether the proposed project was on new location, or (3) whether the proposed project was on existing location but required additional ROW.

In accordance with Provision (4) (A) (i) of the TxDOT - TPWD MOU, the following information or descriptions will be included in environmental documents:

1. For projects involving **no new ROW**, the habitat description will include a general description of vegetation type as described in "The Vegetation Types of Texas" (TPWD, 1984). Maps, aerial photos with dates, photographs, etc. (when available) may be provided to supplement the general description of the area and the description of what vegetation occurs within the ROW.

If the vegetation within the ROW does not match the description contained in "The Vegetation Types of Texas" or, if there is an unusual difference between the vegetation identified in the ROW and outside the ROW, additional details will be required in the description. Unusual vegetation features may include:

- (a) unmaintained vegetation,
- (b) trees or shrubs along a fenceline (ROW) adjacent to a field (fencerow vegetation),
- (c) riparian vegetation (particularly where fields/cropland extends up to or abuts the vegetation associated with the riparian corridor),
- (d) trees that are unusually larger than other trees in the area, and
- (e) unusual stands or islands (isolated) of vegetation.

If special habitat features are present, additional details will be required in the description.

Special habitat features include:

- (a) bottomland hardwoods,
- (b) caves,
- (c) cliffs and bluffs

- (d) native prairies (particularly those with climax species of native grasses and forbs)
- (e) ponds (temporary and permanent, natural and man-made)
- (f) seeps or springs
- (g) snags (dead trees) or groups of snags
- (h) water bodies (creeks, streams, rivers, lakes, etc.)
- (i) existing bridges with known or easily observed bird or bat colonies.

Any habitat that occurs for State or Federally listed threatened or endangered species within or abutting the ROW will be described. The description will include the habitat requirements of these species.

Temporary and permanent impacts to unusual vegetation features or special habitat features will be described and quantified in the habitat description. The discussion of these impacts should also include steps taken to avoid or minimize the impacts, as well as balancing decisions made with respect to other natural and environmental issues, community, social and historic issues and safety and operational design elements.

(2) For proposed projects **on new location**, the vegetation description shall address the project corridor(s) and contain the information included in Section (1) of this MOA.

As appropriate, the vegetation description shall also include the following:

- (a) dominant species for each vegetation strata including tree, shrub, vine, and herbaceous (grass and forb) layers present,
- (b) height of trees (range)
- (c) diameter at breast height (DBH) of trees (range and average)
- (d) percent canopy cover of trees
- (e) acres of vegetation types

Land use within and outside the proposed ROW shall be described. For projects with multiple alternatives, all alternatives will be evaluated to the same level of detail. It is understood that a lack of access to the new location ROW may limit the amount of information available for the habitat description. Existing resources shall be used to provide a best estimate in these circumstances.

(3) For projects on **existing location that require additional ROW**, the habitat description will be determined by the level of impacts and the nature of the resource to be impacted. The information required in Section (1) shall be included for existing and new ROW. The information requested in Section 2 shall be included for any unusual vegetation or special habitat features (see Section 1).

Land use within and outside the proposed ROW shall be described. For projects with multiple alternatives, all alternatives will be evaluated to the same level of detail. It is understood that the lack of access to new location ROW may limit the amount of information available for the habitat description. Existing resources shall be used to provide a best estimate in these circumstances.

COMPENSATORY MITIGATION

In accordance with Provision (4)(A) (ii) of the TxDOT - TPWD MOU and at the TxDOT District's discretion, habitats given consideration for non-regulatory mitigation during project planning will include:

- (1) habitat for Federal candidate species (impacted by the project) if mitigation would assist in the prevention of the listing of the species,
- (2) rare vegetation series (S1, S2, or S3) that also locally provide habitat for a state-listed species. Refer to "Plant Communities of Texas (Series Level)" by TPWD for series designations,
- (3) all vegetation communities listed as S1 or S2, regardless of whether or not the series in question provide habitat for state-listed species,
- (4) bottomland hardwoods, native prairies, and riparian sites, and
- (5) any other habitat feature considered to be locally important that the TxDOT District chooses to consider.

When mitigation is considered feasible, TxDOT and TPWD will consult on the planning and implementation of the mitigation on a project by project basis. Because mitigation planning or implementation may be completed after the contract for the project is awarded, no project shall be delayed pending mitigation.

CONCLUSION

This MOA is a working agreement and consideration for modifications may be initiated by either agency. Proposed revisions must be presented to the Interagency Team existing at that time. Modifications agreed upon must be presented to both of the authorized agency signatories to this agreement. If the proposed modifications are accepted, the modifications will be disseminated by the Interagency Team to their respective agencies.

SIGNATURES

Director, Environmental Affairs Division,
Texas Department of Transportation

Date

Director, Wildlife Division,
Texas Parks and Wildlife Department

Date