

**COOPERATIVE AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION
AND
THE NATURE CONSERVANCY**

I. PREFACE

This cooperative agreement (Agreement) is made between the Federal Highway Administration (FHWA) and The Nature Conservancy (TNC).

WHEREAS, the FHWA carries out the highway transportation programs of the Department of Transportation and desires to encourage the protection and sound management of ecosystems, wildlife, and habitat, while at the same time accomplishing its primary mission of providing safe, efficient highway facilities to the traveling public. The FHWA is bound by Federal environmental laws [such as the Endangered Species Act (16 U.S.C. 1551 et. seq., as amended), the Clean Water Act, Section 404 (33 U.S.C. 1344), and the National Environmental Policy Act (42 U.S.C. 4321 et. seq.)], to evaluate, consider, and mitigate significant environmental impacts of their projects. Under Title I of the Intermodal Surface Transportation Efficiency Act of 1991, the FHWA is committed to supporting States in promoting innovative transportation solutions, new partnerships, transportation enhancement options, regional planning, ecosystem management, and effectively fulfilling statutory mandates.

WHEREAS, the primary mission of TNC is to identify, protect and maintain imperiled species and the best examples of communities and ecosystems, TNC is uniquely positioned to cooperate with the FHWA in developing and sharing environmental data on species, native ecological communities, and biodiversity. TNC, State Natural Heritage Programs, and Association for Biodiversity Information (ABI) cooperate in the use of biodiversity information and related data that can be of use to the FHWA to make informed planning decisions concerning impacts of transportation projects to ecological resources. The FHWA and TNC have a successful history of cooperation, and wish to work cooperatively over a broad range of activities concerning environmental compliance (such as NEPA reviews), mitigation of ecological impacts, ecosystem management, ecoregional planning, and other environmental issues.

TNC, a nonprofit organization that operates in the 50 States and U.S. territories, manages its own nature preserve system, and cooperates with other governmental and nongovernmental agencies and organizations having an interest in environmental and natural resource management. TNC developed, holds the copyright in, and supports the Biological and Conservation Data System (BCD) Advanced Revelation-based application software, the conservation information system most widely used in the U.S. and Canada. TNC continues to provide ongoing research and development of conservation information systems (including the BCD), technical assistance, scientific data development, and administrative support for Natural Heritage Programs in the U.S. as well as Heritage Programs in Canada. The Natural Heritage Programs were originally established as a result of joint efforts by the States and TNC. The States and TNC have regularly exchanged information, including information about the global status, natural history, and management needs of natural communities and rare and endangered species, and wish to continue to share and exchange information.

THEREFORE, the FHWA and TNC agree to work cooperatively over a broad range of activities of mutual interest and benefit, such as ecological impacts and mitigation, ecosystem management, protection of biodiversity, ecoregional planning, and other related environmental issues as identified herein.

II. PURPOSE

The purposes of this Agreement are to: 1) provide effective, practicable protection and management of ecosystems, wildlife, habitat, and biological diversity within the context of the FHWA highway planning and construction program; 2) facilitate the development and sharing of natural resource information, expertise, and technology between the FHWA, State highway agencies, and TNC; 3) assist the FHWA and State highway agencies in meeting requirements of current, applicable transportation and environmental laws and regulations.

III. AUTHORITY

The statutory authority for this Agreement is 23 U.S.C. Section 307(a)(2).

IV. ACTIVITIES AND RESPONSIBILITIES

A. The Nature Conservancy may, with or without participation of State Natural Heritage Programs or ABI, enter into separate assistance agreements with the FHWA, where appropriate, to engage in the following research, development, and technology transfer activities:

1. Develop and share technology for and information on approaches to conservation of biodiversity and ecosystem-based management of biological resources useful in the planning and development of transportation projects and systems;
2. Cooperate with transportation agencies and appropriate State Natural Heritage Programs to develop and share technology and technology transfer capabilities relating to biodiversity inventory information including locations and evaluations of elements of biological diversity. This may include, but is not limited to, the development of automated data bases related to biological diversity, mapping, ecosystem modeling, mitigation technology, and geographical information systems (GIS);
3. Cooperate in other research activities on biodiversity, ecoregional analysis and planning, and related technology needed to support these aspects of FHWA programs. This includes interpretation, evaluation, and monitoring of biological diversity on lands potentially affected by FHWA-supported projects, ecosystem modeling, control of non-native, undesirable plants and animals, rare and endangered species, and natural communities; and
4. To the extent practicable, cooperatively share information with the FHWA on biodiversity and ecological resources on lands potentially affected by projects funded under Title 23, where such information sharing is necessary to accomplish other purposes and objectives of this agreement.

B. The FHWA may enter into separate assistance agreements with TNC where appropriate to engage in the research, development, and technology transfer activities identified in paragraph IV(A). The FHWA will:

1. Identify an FHWA point of contact for each activity;
2. Seek opportunities for cooperative activities which involve the unique capabilities of TNC and will meet the mutual needs of the FHWA, State highway agencies, and TNC in planning and mitigating the ecological impacts of Federal-aid highway projects, and consider unsolicited proposals for such activities from TNC;
3. To the extent practicable, cooperatively share information with TNC on biodiversity and ecological resources on lands potentially affected by projects funded under Title 23, where such information sharing is necessary to accomplish other purposes and objectives of this agreement;
4. Cooperate with TNC on the development of automated data bases, including GIS, related to the conservation of biological diversity, where such projects and information will facilitate transportation planning and the development of sustainable transportation systems and technology; and
5. Consider TNC evaluation, management, and monitoring methodologies and recommendations for use in developing FHWA approaches, integrated plans, and guidance.

FURTHERMORE, the parties agree that accomplishment of the goals and objectives of the Agreement is of mutual concern and benefit. The signatory parties agree and understand that this Agreement does not constitute a commitment of funds, and that performance under this Agreement by either party is dependent upon lawful appropriation, availability, and authorization of funds by proper authorities and upon the execution of separate subagreements. Nothing herein shall impede the parties from using other mechanisms for cooperating to accomplish the purposes set out above. Nothing herein shall be construed as limiting or affecting in any way the vested or delegated authority and mission of the FHWA.

V. DELEGATION AND ADMINISTRATION

A. The following TNC employees may negotiate and enter into subagreements within the scope of this Agreement on behalf of TNC: (1) Director of Conservation Science; (2) Regional Office Directors; (3) State and Chapter Directors; (4) Director of Heritage Operations; and (5) Regional Directors of Conservation Science.

B. Consistent with applicable Federal and State laws and regulations, official contracting officers at the FHWA Headquarters, Region, and Division Offices may negotiate and enter into subagreements within the scope of this Agreement on behalf of the FHWA, or otherwise authorize the appropriate use of Federal-aid highway funds by State highway agencies in pursuit of the

objectives of this agreement.

C. Expenditures under this Agreement shall be determined by said specific subagreements.

D. Each said subagreement shall include a statement of work from TNC (and any partner) that identifies goals and objectives, study design, methods, and products for work to be accomplished, and an estimated budget. When the scope of work, budget, and a payment schedule are mutually agreed upon, a subagreement may be executed by the appropriate contracting officer to duly obligate funds to implement the purposes of this cooperative agreement.

E. Any subagreement negotiated under authority of this Agreement will remain in full force and effect, unless and until modified or terminated by local signatory parties, per the terms of said subagreement.

F. Any subagreement to this agreement should define the product(s) and product-specific documentation that are to become jointly owned by the parties thereto. TNC and/or its partners shall have full rights to use any data and other materials related to the product(s) and product-specific documentation. No subagreement may further restrict TNC's and partners' use of data and other materials. The subagreements may also contain provisions for protection from public disclosure of data relating to specific locations of rare and endangered species where appropriate and consistent with Federal information disclosure law.

VI. MODIFICATION AND TERMINATION

This Agreement may be modified or amended by mutual agreement of the parties in writing as signed by each of the parties thereto. Unless reauthorized, this agreement shall expire 5 years from the date of signing. This Agreement may be terminated by either the FHWA or TNC upon written notice from the appropriate authorizing official. Authorizing signatures must be obtained from appropriate officers of both TNC and the FHWA to execute the renewal.

VII. IMPLEMENTATION

This Agreement becomes effective when signed by appropriate officers of the FHWA and TNC.

Jane Garvey

Acting Administrator
Federal Highway Administration

6/6/97

Date

John Sawhill

President and Chief Executive Officer
The Nature Conservancy

6/6/97

Date