This Memorandum Of Understanding (MOU) sets forth mutually agreeable understandings reached between the New York State Department of Transportation (NYSDOT) and the New York State Department of Environmental Conservation (NYSDEC) regarding freshwater wetland boundary delineations conducted outside the Adirondack Park by trained NYSDOT environmental staff, and consultants, for construction and maintenance projects pursuant to Article 24 of the Environmental Conservation Law and Part 663 of the Official Compilation of Codes, Rules and Regulations of New York State.

Whereas, NYSDOT and NYSDEC have a common interest and obligation in protecting wetland resources while recognizing the importance of providing the public with adequate, safe, balanced and efficient transportation at a reasonable cost to the people of the state;

Whereas, the United States Army Corps of Engineers (USCOE) currently requires the use of the USCOE Wetlands Delineation Manual, Technical Report Y-87-1, January 1987 (USCOE 1987 Manual) for all required federal-jurisdictional boundary delineations pursuant to Section 404 of the Clean Water Act of 1970 as amended;

Whereas, NYSDEC has a Freshwater Wetlands Delineation Manual (Revised July 1995) that is reflective of the USCOE 1987 Manual and requires use of the manual by NYSDEC staff; and

Whereas, trained NYSDOT environmental staff and consultants are already conducting all Section 404 federal-jurisdictional wetland delineations for NYSDOT projects and the USCOE verifies the boundaries at their discretion;

Therefore, be it resolved that NYSDEC encourages trained NYSDOT environmental staff or consultants to conduct formal freshwater wetland boundary delineations that are consistent with the NYSDEC’s 1995 Freshwater Wetlands Delineation Manual, and that NYSDEC will accept such delineations consistent with the following understandings.

UNDERSTANDINGS

1. To determine whether a field delineation is required, NYSDOT staff will conduct initial office reviews for existing wetlands related data, including reviewing, where available, NYSDEC Freshwater Wetlands Maps, NRCS County Soil Surveys, National Wetlands Inventory Maps, air photos and other site-specific resource information. Based on the office review and as appropriate, preliminary site screening visits shall be conducted to determine
whether or not state-regulated wetlands exist at or near (within 100 feet) project sites and, if so, to determine the approximate wetland boundaries and impact areas. This determination will include wetland areas in addition to those mapped by NYSDEC if site conditions differ significantly from the official NYSDEC Wetland Map (see item 6).

2. Based on the nature of the project, NYSDEC staff may accept wetland boundary delineations performed by NYSDOT environmental staff or consultants as follows.

In the following two situations, wetland delineations are required:

   a) When NYSDEC determines that project activities require an Individual Article 24 permit wetland boundary delineations are required and wetland boundaries and adjacent areas will be shown and labeled on the project plans;

   b) When it is unclear whether potential project impacts are at or below the thresholds established in NYSDEC Programmatic Wetlands Permits 95-01 (Bank and Channel Stabilization) or 95-02 (Minor Earth Fills), wetland boundary delineations will be required and wetland boundaries and adjacent areas will be shown and labeled on the project plans.

In the following situation, or where the project is clearly not within the jurisdiction of Article 24, no delineation is required:

   c) When site screening visits determine that potential project impacts clearly fall below the thresholds of and qualify for authorization under NYSDEC Programmatic Freshwater Wetlands Permits 95-01 or 95-02; qualify for authorization under NYSDEC Programmatic Freshwater Wetlands Permits 95-03, 95-04, and 95-05, or are exempt from Article 24 regulation, no wetland boundary delineations are required. However, approximate wetland boundaries, including regulated adjacent areas, should be determined and shown and labeled on the project plans.

3. Wetland boundary delineations will involve using methodologies consistent with the NYSDEC's 1995 Freshwater Wetlands Delineation Manual to field locate and demarcate freshwater wetland jurisdictional boundaries. Routine Wetland Determination data forms (1987 USCOE Wetlands Delineation Manual or as modified) shall be completed for all delineations conducted pursuant to items 2.a) and 2.b). In those situations where no delineation is required (item 2.c), information in support of this determination should be provided in the project design approval document. All required data forms will be provided to appropriate NYSDEC Division of Fish and Wildlife staff, for field review purposes, prior to submittal of any permit application (see item 5.).

4. All NYSDOT environmental staff that conduct wetland delineations pursuant to this MOU must be trained in use of the USCOE 1987 or 1989 Delineation Manual and be familiar with the content of the NYSDEC 1995 Delineation Manual prior to conducting delineations pursuant to this MOU. A roster of existing trained NYSDOT delineators will be provided by the NYSDOT Environmental Analysis Bureau to the NYSDEC Bureau of Environmental
Protection and will be updated by August 1 of each year. All consultants that perform wetland delineations for NYSDOT projects pursuant to this MOU are required to be trained in the use of the USCOE 1987 or 1989 Delineation Manual, and have at least two years experience with use of the 1987 USCOE Delineation Manual, as required by the NYSDOT Consultant Scopes Of Services, and be familiar with the content of the NYSDEC 1995 Delineation Manual. NYSDOT environmental staff will provide oversight of all NYSDOT consultants performing delineations.

5. NYSDEC staff, at any time, may field review NYSDOT freshwater wetland boundary delineations conducted pursuant to this MOU as follows: NYSDOT will notify NYSDEC within 15 work days of the completion of any wetland delineations conducted pursuant to this MOU. If necessary and at their discretion, NYSDEC will then have 15 work days from the date of receipt of NYSDOT's notification to field verify NYSDOT's delineation.

6. NYSDOT staff will immediately notify appropriate NYSDEC Division of Fish and Wildlife Regional staff of any recommended changes to the NYSDEC Wetlands Maps based on site conditions observed while conducting field delineations. Upon discovery, NYSDOT will treat these areas as NYSDEC regulated wetlands.

7. NYSDOT will mark wetland boundaries using "flagging" that has the words "Wetland Boundary" clearly printed on at least one side.

8. NYSDOT will survey by transit, Global Positioning System, or station and offset, as appropriate, any delineated wetland boundaries pursuant to items 2.a) and 2.b) for which there are impacts to freshwater wetlands. Surveys will not be required in those situations where the impacts occur in regulated adjacent areas or are covered under Programmatic Permits 95-03, 95-04 or 95-05. However, approximate wetland boundaries, including regulated adjacent areas, shall be shown and labeled on project plans.

This MOU may be rescinded at any time upon 30 days notice from either party or may be modified upon mutual agreement.

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John B. Daly, Commissioner                     Michael D. Zagata, Commissioner
New York State                                  New York State
Department of Transportation                    Department of Environmental Conservation