

Appendix J
Agency Coordination Following Supplemental
Draft EIS Availability



WisDOT Bureau of Aeronautics

From: [Paluszek, Carly](#)
To: [Paluszek, Carly](#)
Subject: FW: I-94 East West Freeway, 70th Street to 16th Street, Milwaukee County – Notice of Public Hearing
Date: Monday, April 3, 2023 1:54:12 PM

From: DOT BOA-Highway Coordination <boahighwaycoordination@dot.wi.gov>
Sent: Friday, February 17, 2023 11:48 AM
To: LeVeque, Joshua - DOT <Joshua.LeVeque@dot.wi.gov>
Subject: RE: I-94 East West Freeway, 70th Street to 16th Street, Milwaukee County – Notice of Public Hearing

Thank you for providing information for the above referenced project.

STATE COORDINATION

Please ensure all storm water retention and/or detention facilities within a five mile radius of a public use airport are constructed and maintained as outlined in the FAA guidance on hazardous wildlife attractants found in FAA Advisory Circular 150/5200-33B. For information or further guidance on wildlife hazards related to storm water systems or other hazardous wildlife attractants, please contact Michael Menon, Airport Wildlife Hazards Program Manager at michael.menon@dot.wi.gov.

If any permanent or temporary easements or land acquisition will be needed from an airport, please notify the Bureau of Aeronautics as soon as possible. Land acquisition and easements require further review and involve a lengthy FAA approval process separate from the FAA notice procedures outlined below. Timely notification will assist in preventing unnecessary delays to the project. Property notifications should be directed to Teresa Klein, Airport Land Program Manager at teresa.klein@dot.wi.gov.

A notice about the project should be provided to all airports within 5 miles of the project in advance of the beginning any construction activities. This notice should include the project schedule, any identified aeronautical impacts, identify project components whether temporary or permanent which will exceed the previously listed heights, and anticipated effects to surface access to the airport during construction (i.e. detours and/or closures). This is critically important to ensure first responder access procedures in the event of an aircraft emergency can be developed and coordinated locally. This also allows the airport operator to provide notification regarding delays or changed traffic patterns to aviators and passengers.

FEDERAL AVIATION ADMINISTRATION COORDINATION

Notice to the Federal Aviation Administration (FAA) could be required even if project involves an existing roadway or structure and/or even if the project is more than five miles from an airport, and irrespective of whether or not the project includes roadway vertical or horizontal

realignment.

It is important to note that FAA coordination may be required by the FAA for projects located **any** distance from an aeronautical facility, including those which are more than 5 miles from the nearest airport. The requirements for filing with the Federal Aviation Administration for existing and proposed structures vary based on a number of factors: height, proximity to an airport, location, and frequencies emitted from the structure, etc. For more details, please reference [CFR Title 14 Part 77.9](#). Temporary equipment such as temporary signs, poles, or construction equipment exceeding the notice requirements of 14 CFR Part 77 must also be coordinated with the FAA.

There is a Notice Criteria Tool which may be found at <http://oeaaa.faa.gov> to assist in determining the need for filing. Multiple project points may need to be run through the Notice Criteria Tool to assess the filing requirements for project. *BOA guidance recommends checking the Notice Criteria Tool for the entire length of the project in 1/3-mile increments, in addition to all structures (i.e. signs, lights, poles, utilities, etc) which exceed 15 feet (17 ft in the case of interstate highway projects) above the surface elevation.* Any points resulting in a request to file should be submitted to the FAA for review. The FAA is the ultimate authority who will determine what information or points are needed for their review. Notice must be filed at the FAA website <http://www.oeaaa.faa.gov>.

FAA's OEAAA Wisconsin contacts can be found at this website for questions regarding FAA coordination. If you require additional information regarding the FAA filing requirements for your structure, please either the Wisconsin Specialist or Technician using the [Air Traffic Areas of Responsibility map](#) for displayed when you open the Off Airport contacts link.

It is recommended that coordination with the FAA occur at the earliest feasible time in the project cycle for which there is a reasonable confidence in the veracity and stability of the location and elevation data to be provided to the FAA. We recommend filing at the project design phase and filing an extension request prior to construction phases if the FAA determination letter expires (typically 18 months). There is a risk that the FAA may impose requirements which may necessitate the stoppage of work or modification to the design if proper and timely coordination is not achieved.

If notice is required to be filed to the FAA for temporary or permanent objects, no work should proceed until the FAA issues a final Determination Letter. If the contractor cannot limit their equipment to the heights and/or locations to FAA studied parameters, a new aeronautical study must be conducted. The recommendations of the FAA should be implemented. **It is critical to ensure appropriate follow up notification of the actual construction or completion of the project to the FAA is timely filed (FAA Form 7460-2), as may be required in any FAA determination letter. Please read any and all determination letters carefully and adhere to all conditions and requirements contained therein.**

*****Please note the new contact point for questions and coordination for the Bureau of Aeronautics regarding highway projects is now BOAHighwayCoordination@dot.wi.gov*****

Airspace Safety Program

From: LeVeque, Joshua - DOT <Joshua.LeVeque@dot.wi.gov>

Sent: Friday, November 11, 2022 9:36 AM

Subject: I-94 East West Freeway, 70th Street to 16th Street, Milwaukee County – Notice of Public Hearing

The Wisconsin Department of Transportation along with the Federal Highway Administration have completed a Supplemental Draft Environmental Impact Statement (SDEIS) for the reconstruction of I-94 between 70th Street and 16th Street in Milwaukee County.

The SDEIS identifies a preferred alternative for the project. The preferred alternative includes reconstructing I-94 as a modernized 8-lane facility and reconstructing the Stadium Interchange as a Diverging Diamond Interchange. The SDEIS along with details about the preferred alternative can be found on the project website at <https://wisconsindot.gov/94eastwest>.

Public hearings to consider the environmental and design aspects of the proposed improvement are planned for:

- Monday, December 12, 2022, at Wisconsin State Fair Park, Tommy Thompson Youth Center, Gate #5, 640 S. 84th Street, Milwaukee from 3:00 p.m. to 7:00 p.m.
- Wednesday, December 14, 2022, at Marquette University High School, 3401 W. Wisconsin Avenue, Milwaukee from 4:00 p.m. to 7:00 p.m.

Interested persons may attend anytime during the times listed above to review displays and other hearing materials, ask questions, and provide testimony.

Provisions have been made for the submission of written statements or other exhibits in place of or in addition to the verbal testimony presented at the public hearings. This additional testimony will be included in the hearing record if postmarked no later than January 17, 2023. Additional written testimony can be sent directly to me at:

Joshua LeVeque, P.E.

Joshua.LeVeque@dot.wi.gov

Project Manager

Wisconsin Department of Transportation

Southeast Region Office

141 NW Barstow Street

PO Box 798

Waukesha, WI 53187-0798

<< File: noticeofpubhearing-final.pdf >>

Thank you for your interest in this important project for Southeast Wisconsin.

Joshua LeVeque, P.E.

Wisconsin Department of Transportation, SE Freeways Unit

Cell: (414) 750-1468

Joshua.LeVeque@dot.wi.gov

U.S. Army Corps of Engineers
Correspondence



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

December 8, 2022

Regulatory File No. 2012-02924-AJK

Josh LeVeque
Wisconsin Dept. of Transportation, SE Freeways Unit
141 NW Barstow Street
Waukesha, Wisconsin 53187-0798

Dear Josh LeVeque:

We have completed our review of the Preferred Alternative prepared for the Interstate 94 East-West Corridor Supplemental Draft Environmental Impact Statement (DEIS) (WisDOT Project I.D. 1060-27-00, 1060-27-03). We received the Supplemental DEIS on November 11, 2022. The study area is between 16th and 70th Streets in Milwaukee County, Wisconsin.

The Corps concurs with the lead agency's selection of the 8-lane alternative with a diverging diamond interchange at the Stadium Interchange as the preferred alternative. These alternatives appear to satisfy CWA Section 404 requirements. We recommend the information presented in the DEIS be included in the Final EIS.

Please note that our determinations are based on a corridor-level analysis. We expect that further efforts to avoid, minimize, and mitigate for impacts to waters of the United States will take place during the design phase of the project. If there are any substantial changes or if new information is brought forward, we may reconsider our determinations.

We look forward to continued coordination on this project. If you have any questions, contact me in our Brookfield office at (651) 290-5729. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely

A handwritten signature in black ink, appearing to be "A.J. Kitchen".

for A.J. Kitchen
Lead Project Manager

cc:
Dobra Payant, WisDOT
Bethaney Bacher-Gresock, FHWA Environmental Program
Kristina Betzold, WDNR

U.S. Environmental Protection Agency
Correspondence



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

1/26/2023

REPLY TO THE ATTENTION OF:
Mail Code R-19J

Glenn Fulkerson
Federal Highway Administration – Wisconsin Division Office
525 Junction Road, Suite 8000
Madison, Wisconsin 53717

Re: Supplemental Draft Environmental Impact Statement for the I-94 East-West Corridor (16th Street-70th Street) Project, Milwaukee, Milwaukee County, Wisconsin, CEQ # 20220170

Dear Mr. Fulkerson:

The U.S. Environmental Protection Agency (EPA) has reviewed the referenced Supplemental Draft Environmental Impact Statement (SDEIS), dated November 8, 2022, which was prepared by the Wisconsin Department of Transportation (WisDOT) in coordination with the Federal Highway Administration (FHWA). We are providing comments pursuant to our authorities under the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations (40 CFR Parts 1500-1508), Section 309 of the Clean Air Act, and as a Cooperating Agency under 40 CFR Part 1508.5.

FHWA and WisDOT propose to reconstruct I-94 between 16th and 70th Streets in Milwaukee. Three Alternatives are presented in the SDEIS:

- Eight-Lane Alternative (Preferred Alternative).
 - Reconstruct I-94 to add a fourth through lane in each direction, mostly on the existing alignment;
 - Reconstruct the interchanges at 68th Street/70th Street, 35th Street, and near 27th Street;
 - Construct a half interchange at Hawley Road;
 - Reconstruct the Stadium Interchange as either a hybrid interchange or diverging diamond Interchange; and
 - Revise access to and from General Mitchell Boulevard from 44th Street.
- Six-Lane Alternative.
 - Reconstruct I-94, maintaining 3 through lanes in each direction, mostly on the existing alignment;
 - Reconstruct the interchanges at 68th Street/70th Street, 35th Street, and near 27th Street.
 - Options to construct a full or half interchange at Hawley Road;

- Reconstruct the Stadium Interchange as either a hybrid interchange or a diverging diamond Interchange; and
- Revise access to and from General Mitchell Boulevard from 44th Street.
- No-Build Alternative.

EPA previously commented on this proposed project in letters dated January 6, 2015 (Draft Environmental Impact Statement (DEIS)), and March 10, 2016 (Final Environmental Impact Statement (FEIS)). WisDOT and FHWA issued the SDEIS to incorporate the most up-to-date data, updated environmental regulations, changes to the alternatives, and public and agency input since the 2016 FEIS. EPA appreciates elements of the SDEIS that directly respond to public input; for example, WisDOT received comments from the public, as well as advocacy groups representing minority populations and low-income populations, asking WisDOT to analyze a 6-lane alternative as part of the project. WisDOT also included bicycle and pedestrian facilities in response to public comments. EPA also appreciates that the SDEIS discusses EPA's past recommendations related to construction diesel emissions; we continue to recommend that WisDOT and FHWA include commitments within the subsequent NEPA document, Record of Decision (ROD), and any contract specifications to require best practices to minimize such emissions. In line with EPA's expertise and authorities, we offer the enclosed detailed comments with the goal of informing decision-making and minimizing adverse project impacts.

Please send EPA electronic copies of the forthcoming FEIS and ROD when those documents become available. We welcome the opportunity to discuss the contents of this letter further. You may contact Mike Sedlacek, Region 5's lead reviewer for this project, at 312-886-1765 or sedlacek.michael@epa.gov, or you may contact me at 312-353-4293.

Sincerely,

Kathy Triantafillou
Acting NEPA Section Supervisor
Tribal and Multi-media Programs Office
Office of the Regional Administrator

Enclosures: (1) EPA's Detailed Comments
(2) Updated Construction Emission Control Checklist

cc: Josh LeVegue, Wisconsin Department of Transportation

Assessment of Environmental Justice Impacts

EPA appreciates the extensive outreach conducted by WisDOT to engage residents, including special efforts to (1) reach low-income, minority, and non-English speaking residents and (2) document how their input was used to inform the project. In addition, EPA acknowledges that the SDEIS contains updated data and regulations throughout the document. The EJ analysis may benefit from discussing and incorporating the latest EJ resources.¹ For example, following release of the 2014 DEIS and 2016 FEIS, and prior to the 2022 SDEIS, additional resources on conducting EJ analyses were released, including the Federal Interagency Working Group on Environmental Justice’s *Promising Practices for EJ Methodologies in NEPA Reviews*.² In addition, the President has issued Executive Orders requiring agencies to take a heightened focus on justice and equity issues.³ With this lens, EPA took a fresh look at the EJ analysis presented in the SDEIS.

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The SDEIS reports, “Within the study area, 1-mile corridor, 0.5-mile corridor, and 1,000-foot corridor of I-94, minorities comprised between 49 and 63 percent of the population in each corridor.” In addition, “There are more people living in poverty... in the study area (26 percent), 1-mile corridor (28 percent), and 0.5-half-mile corridor (38 percent) than in the City of Milwaukee (25 percent) and West Allis (12 percent)” (page 3-62). In considering who would benefit from the proposed project, in addition to pass-through regional and truck traffic, the SDEIS explains, “Traffic analysis shows an almost even split in traffic by direction for both the morning and afternoon peak periods. This means the I-94 East-West corridor equally serves those who live in Milwaukee County and travel to Waukesha County for work and those who live in Waukesha County and travel to Milwaukee County for work” (page 3-65). Construction noise and air pollution, as well as operational noise and air pollution, would be predominately experienced by those living adjacent to I-94. Project benefits would be experienced by a larger population. When deciding whether impacts to low-income or minority populations would be disproportionate, the SDEIS appears to use the City of Milwaukee as a reference. For example:

As noted in Section 3.9.2, those living within 1,000 feet of the corridor have a minority population and low-income population percentage lower than that of the City of Milwaukee as a whole. The adverse impacts associated with increased traffic noise would not be more severe or greater in magnitude on environmental justice populations than the noise impacts on non-environmental justice populations, and all populations would be affected to the same degree by increases in traffic noise levels. The noise impacts of the project would not be disproportionately high and adverse to environmental justice populations (3-89).

¹ EJ and NEPA resources are available at <https://www.epa.gov/environmentaljustice/environmental-justice-and-national-environmental-policy-act>

² The Promising Practices Report is a compilation of methodologies gleaned from current agency practices identified by the NEPA Committee concerning the interface of environmental justice considerations through NEPA processes. See <https://www.epa.gov/environmentaljustice/ej-iwg-promising-practices-ej-methodologies-nepa-reviews>

³ See E.O. 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, and E.O. 12898 on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

EPA suggests that using a reference community that represents a fuller picture of people who would benefit from the proposed project would be more informative.

Recommendations for the FEIS:

- Compare the demographics of residents in the project area with the demographics of the residents who would benefit from the proposed project to assist in considering the potential for disproportionate impacts. Include demographic data for Milwaukee County, Waukesha County, the Southeast Wisconsin Region, and the State of Wisconsin. EPA is not asking for any data collection, rather we recommend use of available data.
- Using data to generate a fuller picture of communities who would benefit from the project, consider whether low-income and minority communities would disproportionately experience adverse impacts. Use conclusions on the potential for disproportionate impacts to inform project decisions, including mitigation.

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Operational Mitigation Opportunities

The SDEIS highlights low-income populations in the project area living adjacent to the proposed project. For example, “according to 2020 Census data, the four census tracts closest to Marquette University High School have between 30 and 67 percent of residents living in poverty, and the minority population percentage of those four tracts combined is over 80 percent” (page 3-70). Traffic increases under the preferred alternative would add to the cumulative air pollution burden. WisDOT and FHWA have an opportunity to explore mitigation measures to reduce such exposures. EPA recognizes, as the SDEIS states, “Air emissions from I-94 East-West Corridor could have a cumulative effect on air quality, which could, along with other contributing environmental factors, trigger asthma episodes in adjacent neighborhoods” (page 3-94).

Recommendations for the FEIS:

- We encourage WisDOT and FHWA to continue to engage residents to identify and collaborate on measures to avoid, minimize, and mitigate exposures to I-94 air pollution in adjacent neighborhoods.
- For both the 6-lane and 8-lane alternatives, assess the use of vegetative barriers to reduce the movement of roadway air pollution into adjacent neighborhoods. Vegetative barriers are strategically sited trees and shrubs, with rows preferably 3 meters tall and 4 meters thick, without any gaps in foliage between trees, running parallel to the roadway. Use of coniferous tree species is critical because they keep their needles year-round. EPA research had demonstrated that well-planned vegetative barriers can reduce exposure to roadway air pollution by up to 50%, and the combination of a solid fence with vegetation can result in the greatest protection.⁴ Expressways generally influence air quality within 500-600 feet;⁵ it is therefore most

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⁴ EPA would appreciate the opportunity to collaborate with WisDOT on siting considerations and identifying which studies would be most useful references. See Baldauf, R. *Recommendations for Constructing Roadside Vegetation Barriers to Improve Near-Road Air Quality*. U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-16/072, 2016. https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NRMRL&dirEntryId=321772&simpleSearch=1&searchAll=Recommendations+for+constructing+roadside+vegetation+barriers+to+improve+near+road+air+quality as well as the *Vegetation Barrier Toolkit* <https://chicagorti.org/resources/vegetation-barrier-toolkit-for-schools-and-communities/>
⁵ EPA’s *Near Roadway Air Pollution and Health: Frequently Asked Questions* https://www.epa.gov/sites/default/files/2015-11/documents/420f14044_0.pdf

important to assess sites for barriers where there are residences, schools, playgrounds, and other places people gather within 500-600 feet of I-94. From work on other projects, EPA understands the need for consistency with WisDOT requirements, including safety and line-of-sight-measures, which could be addressed during barrier design. EPA would appreciate the opportunity to discuss use of vegetation to reduce pollution exposures. Please contact Jen Tyler at R5NEPA@epa.gov to connect with EPA scientists specializing in vegetative barriers for air quality benefits.

3

Construction Air Quality Disclosure and Mitigation

The SDEIS generally discusses sources of construction air pollution and does appear to quantify such emissions. EPA typically sees construction air emissions quantified within EISs. Using generalized emission factors to quantify estimates of construction emissions results in a fuller disclosure of impacts, and it may serve as critical information for informing decisions on mitigation measures.

Recommendations for the FEIS:

- To disclose construction air quality impacts, we recommend quantifying estimates of construction emissions and identifying sensitive receptors (residences, schools, etc.) that would be impacted.
- Use estimates of construction emissions to inform mitigation decisions. When deciding whether to require contractors to use best practices to protect air quality, consider the substantial populations of minority residents in the project area, and, as the SDEIS explains, “the Wisconsin Department of Health Services reports a high prevalence of asthma occurring among minorities” (page 3-94).
- Commit to applicable measures from the enclosed Construction Emission Control Checklist. This updates information EPA provided with our 2016 comment letter.
- Per Executive Order 13045 on Children’s Health⁶, EPA recommends WisDOT and FHWA pay particular attention to worksite proximity to places where children live, learn, and play, such as homes, schools, and playgrounds. Construction emission reduction measures should be strictly implemented near these locations to be protective of children’s health.
- Require that the construction traffic management plan ensure that trucks hauling materials and heavy machinery avoid areas where children congregate within adjacent neighborhoods, when possible. Route construction truck traffic away schools, daycare facilities, and parks when possible, and use crossing guards when such areas cannot be avoided. In addition to air quality benefits, careful routing may protect children from vehicle-pedestrian accidents.

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⁶ Children may be more highly exposed to contaminants because they generally eat more food, drink more water, and have higher inhalation rates relative to their size. Also, children’s normal activities, such as putting their hands in their mouths or playing on the ground, can result in higher exposures to contaminants as compared with adults. Children may be more vulnerable to the toxic effects of contaminants because their bodies and systems are not fully developed and their growing organs are more easily harmed.

Construction Noise and Vibration Impacts

Noise and vibration impacts from construction are discussed briefly in Section 3.27.4. The SDEIS provides noise levels based on distance from construction activities, with noise levels at 25 feet typically reaching 102 dBA, at 50 feet reaching 95 dBA, and at 100 feet reaching 89 dBA (page 3-185). Vibrations are also generalized, with the SDEIS stating, “groundborne vibration has the potential to affect nearby buildings. Impact pile driving are associated with high levels of vibration. Excavation and backfilling can generate vibration that is perceptible or noticeable in nearby buildings.”

Recommendations for the FEIS:

- Identify residences and other sensitive receptors that would be impacted by construction noise and vibration.] 7
- Assess impacts to children, elderly people, and others who may be particularly sensitive to noise and vibration.]
- Consider whether low-income and minority residences could experience disproportionate noise and vibration impacts during construction, and if so, whether mitigation is justified. For mitigation, if any residences are particularly close to pile driving or other highlight impactful activities, consider whether the option for temporary housing may be warranted.] 8
- Provide residents with sufficient warning of noise and vibration-intensive activities.] 7

U.S. Environmental Protection Agency
Construction Emission Control Checklist

Diesel emissions and fugitive dust from project construction may pose environmental and human health risks and should be minimized. In 2002, EPA classified diesel emissions as a likely human carcinogen, and in 2012 the International Agency for Research on Cancer concluded that diesel exhaust is carcinogenic to humans. Acute exposures can lead to other health problems, such as eye and nose irritation, headaches, nausea, asthma, and other respiratory system issues. Longer term exposure may worsen heart and lung disease.⁷ We recommend WisDOT and FHWA consider the following protective measures and commit to applicable measures in the FEIS and Record of Decision.

Mobile and Stationary Source Diesel Controls

Purchase or solicit bids that require the use of vehicles that are equipped with zero-emission technologies or the most advanced emission control systems available. Commit to the best available emissions control technologies for project equipment in order to meet the following standards.

- On-Highway Vehicles: On-highway vehicles should meet, or exceed, the EPA exhaust emissions standards for model year 2010 and newer heavy-duty, on-highway compression-ignition engines (e.g., long-haul trucks, refuse haulers, shuttle buses, etc.).⁸
- Non-road Vehicles and Equipment: Non-road vehicles and equipment should meet, or exceed, the EPA Tier 4 exhaust emissions standards for heavy-duty, non-road compression-ignition engines (e.g., construction equipment, non-road trucks, etc.).⁹
- Locomotives: Locomotives servicing infrastructure sites should meet, or exceed, the EPA Tier 4 exhaust emissions standards for line-haul and switch locomotive engines where possible.
- Marine Vessels: Marine vessels hauling materials for infrastructure projects should meet, or exceed, the latest EPA exhaust emissions standards for marine compression-ignition engines (e.g., Tier 4 for Category 1 & 2 vessels, and Tier 3 for Category 3 vessels).¹⁰
- Low Emission Equipment Exemptions: The equipment specifications outlined above should be met unless: 1) a piece of specialized equipment is not available for purchase or lease within the United States; or 2) the relevant project contractor has been awarded funds to retrofit existing equipment, or purchase/lease new equipment, but the funds are not yet available.

Consider requiring the following best practices through the construction contracting or oversight process:

- Establish and enforce a clear anti-idling policy for the construction site.

⁷ Carcinogenicity of diesel-engine and gasoline-engine exhausts and some nitroarenes. *The Lancet*. June 15, 2012

⁸ <http://www.epa.gov/otag/standards/heavy-duty/hdci-exhaust.htm>

⁹ <https://www.epa.gov/emission-standards-reference-guide/epa-emission-standards-nonroad-engines-and-vehicles>

¹⁰ <https://www.epa.gov/emission-standards-reference-guide/all-epa-emission-standards>

- Use onsite renewable electricity generation and/or grid-based electricity rather than diesel-powered generators or other equipment.
- Use electric starting aids such as block heaters with older vehicles to warm the engine.
- Regularly maintain diesel engines to keep exhaust emissions low. Follow the manufacturer's recommended maintenance schedule and procedures. Smoke color can signal the need for maintenance (e.g., blue/black smoke indicates that an engine requires servicing or tuning).
- Where possible, retrofit older-tier or Tier 0 nonroad engines with an exhaust filtration device before it enters the construction site to capture diesel particulate matter.
- Replace the engines of older vehicles and/or equipment with diesel- or alternatively-fueled engines certified to meet newer, more stringent emissions standards (e.g., plug-in hybrid-electric vehicles, battery-electric vehicles, fuel cell electric vehicles, advanced technology locomotives, etc.), or with zero emissions electric systems. Retire older vehicles, given the significant contribution of vehicle emissions to the poor air quality conditions. Implement programs to encourage the voluntary removal from use and the marketplace of pre-2010 model year on-highway vehicles (e.g., scrappage rebates) and replace them with newer vehicles that meet or exceed the latest EPA exhaust emissions standards, or with zero emissions electric vehicles and/or equipment.

Fugitive Dust Source Controls

- Stabilize open storage piles and disturbed areas by covering and/or applying water or chemical/organic dust palliative, where appropriate. This applies to both inactive and active sites, during workdays, weekends, holidays, and windy conditions.
- Install wind fencing and phase grading operations where appropriate, and operate water trucks for stabilization of surfaces under windy conditions.
- When hauling material and operating non-earthmoving equipment, prevent spillage and limit speeds to 15 miles per hour (mph). Limit speed of earth-moving equipment to 10 mph.

Occupational Health

- Reduce exposure through work practices and training, such as maintaining filtration devices and training diesel-equipment operators to perform routine inspections.
- Position the exhaust pipe so that diesel fumes are directed away from the operator and nearby workers, reducing the fume concentration to which personnel are exposed.
- Use enclosed, climate-controlled cabs pressurized and equipped with high-efficiency particulate air (HEPA) filters to reduce the operators' exposure to diesel fumes. Pressurization ensures that air moves from inside to outside. HEPA filters ensure that any incoming air is filtered first.
- Use respirators, which are only an interim measure to control exposure to diesel emissions. In most cases, an N95 respirator is adequate. Workers must be trained and fit-tested before they wear respirators. Depending on the type of work being conducted, and if oil is present, concentrations of particulates present will determine the efficiency and type of mask and respirator. Personnel familiar with the selection, care, and use of respirators must perform the fit testing. Respirators must bear a NIOSH approval number.

Response to U.S. Environmental Protection Agency

1. The environmental justice analysis in the Supplemental EIS was revised per FHWA guidance. The project team previously reviewed the Federal Interagency Working Group on Environmental Justice's *Promising Practices for EJ Methodologies in NEPA Reviews* (2016) document. Many of the suggestions in this document were previously undertaken as part of the I-94 East-West Corridor project. Section 3.9 of the Supplemental EIS includes an assessment of impacts on the environmental justice population, discusses how environmental justice populations were identified, and how they were provided meaningful engagement opportunities.
2. Waukesha County data was added to Section 3.9 of the Supplemental Final EIS. WisDOT included racial and ethnic data at the following scales to understand the impacts that potentially could be felt by the communities adjacent to the freeway system:
 - A study area (route tendency corridor) that reflects the area within which a motorist would choose to take I-94 as their preferred route if traveling in to or out of the area (at a certain distance from I-94 on each crossroad, a driver will choose another freeway or major arterial for their trip rather than I-94). The area is generally within 2 miles on either side of I-94 (**Exhibit 3-9**).
 - Within a 1-mile corridor of the freeway centerline. This area reflects the neighborhoods most influenced by traffic along I-94.
 - Within a 0.5-mile corridor from the freeway centerline (0.5 mile both north and south of the centerline). This area reflects populations that are most likely to experience direct and/or indirect effects given the proximity to the construction and operation of the freeway.
 - Within a 1,000-foot corridor from the freeway centerline (1,000 feet both north and south of the centerline). This area reflects persons and businesses that would experience the highest degree of direct impacts from the project, including potential property acquisition, relocation, noise, and nuisances associated with construction.
 - Milwaukee County, Waukesha County, City of Milwaukee, and City of West Allis. These areas are used for comparative measures.

After considering the potential for disproportionate impacts in light of the broader data, the conclusion in the Supplemental Final EIS remains the same as the Supplemental Draft EIS: the preferred alternative would not have disproportionately high and adverse impacts on low-income and/or minority populations.

Further, the secondary study area for the indirect effects analysis includes all of Milwaukee and Waukesha counties. Sections 3.28 and 3.29 and Appendix G of the Supplemental Final EIS describe the indirect and cumulative effects analysis. Section 3.28.2 of the Supplemental Final EIS presents population and employment data for Waukesha County and describes land use, transportation, and development patterns in the county to help thoroughly evaluate indirect effects. Similarly, the analysis of cumulative effects to regional land use patterns of transit, land use, and jobs (Section 3.29.1.7 of the Supplemental Final EIS) considers effects to Waukesha County.

As discussed in Section 3.9.6, Appendix N of the 2020 update of VISION 2050 evaluates accessibility for minority and low-income populations by transit and automobile to jobs and other activity centers, minority and low-income populations served by transit, transit service quality for minority and low-income populations, benefits and impacts of new and widened arterial streets and

highways on minority and low-income populations, and transportation related air quality impacts on minority and low-income populations under the FCTS.

Based on the results of the access in Appendix N, it was concluded that no area of southeastern Wisconsin, including areas with higher-than-average proportions of minority populations and low-income populations, would disproportionately bear the impact of the planned freeway and surface arterial capacity improvements. As the segments of freeway to be widened under either VISION 2050 or the FCTS would directly serve areas of minority populations and low-income populations, these populations would benefit from the expected improvement in highway accessibility to employment associated with the freeway widenings.

Appendix I of SEWRPC's *A Transportation Improvement Program for Southeastern Wisconsin: 2023-2026* assesses the benefits and impacts of the projects in the TIP on minority populations and low-income populations in Southeastern Wisconsin. SEWRPC reviewed the percentage of automobile trips within each TAZ that would utilize the segments of the freeway improvements programmed in the 2023-2026 TIP and compared this information to locations of current concentrations of minority populations and low-income populations. SEWRPC noted that the segments of freeway proposed to be improved in 2023 through 2026 (which includes the I-94 East-West Corridor), are expected to be utilized by automobile trips from areas with high concentrations of minority populations and low-income populations. As a result, it is expected that minority and low-income populations would be utilizing and experiencing benefit from the proposed improvements.

Traffic data shows that the I-94 East-West Corridor equally serves those who live in Milwaukee County and travel to Waukesha County for work and those who live in Waukesha County and travel to Milwaukee County for work. More workers travel from Milwaukee County to Waukesha County than from Waukesha County to Milwaukee County, according to a 2019 Wisconsin Department of Workforce Development technical report, *Journey to Work: Commuting and "Reverse Commuting" between Milwaukee and Waukesha Counties* (Walsh 2019). More than 25 percent of the Waukesha County workforce lives in Milwaukee County while only 12 percent of the Milwaukee County workforce lives in Waukesha County. Many of these Milwaukee County residents working in Waukesha County are people who live in the I-94 East-West Corridor study area and drive on I-94 to travel to and from work. The data from this study shows that the assumption that people drive into the big city in the morning and drive back to the suburbs in the afternoon is not accurate. The project would benefit those living in the corridor, including minority and low-income populations.

3. Text was added to Section 3.20.3 of the Supplemental Final EIS identifying mitigation measures for greenhouse gas (GHG) emissions.

At a project level, although GHG mitigation measures are not specifically required under NEPA or other state and federal regulations, WisDOT will follow its Standard Specifications that exist to address pollution reduction/containment measures for the contractor, and also implement the following mitigation measures to help reduce GHG emissions:

- Implement detours and strategic construction timing where feasible to reduce construction delays, including vehicle idling from backups.
- Set up active construction zones, staging areas, and material transfer sites in a way that reduces standing wait times for equipment. Reducing idling times reduces GHG emissions from passenger cars and construction vehicles.
- Work with contractors and subcontractors to reduce idling times. An example would be for contractors and subcontractors to complete and submit idling logs of construction

vehicles/equipment every 6 months and monitor by comparing a baseline log at inception of the project.

- Work with local municipalities and neighborhood groups, including groups focused on serving environmental justice populations, to minimize the impacts of staging areas and material transfer sites.
- Engage construction contractors in ridesharing and other commute trip reduction efforts to reduce GHG emissions from commute vehicles of employees working on the project.
 - WisDOT will determine an area in proximity to the jobsite where construction staff and equipment parking could occur, and that results in distribution of GHG emissions.
 - WisDOT will post signs to encourage construction staff to use public transport or rideshare.
- Recycle construction and demolition materials to the extent possible. Asphalt, concrete, and rubble are often recycled into aggregate or new asphalt and concrete products. Metals—including steel—are also valuable commodities to recycle.
- Use LED bulbs in new lighting installed along the project corridor. LEDs use less electricity than traditional light bulbs, which in turn reduces the amount of fuel being burned to generate electricity.
- Plant stormwater trees in the project corridor. Stormwater trees not only absorb stormwater and reduce erosion during a rainfall event, but they also absorb CO₂ and serve as an urban canopy to reduce urban heat zones. WisDOT has committed to spending \$300,000 as part of MMSD's Reforestation and Wetland Restoration Initiative, as well additional landscaping within the project limits.
- As a recommendation from the 30% Traffic Management Plan (TMP) for the project, WisDOT would commit \$25 million on transit for operational (additional bus runs, maintaining headways) and infrastructure (signals, bus stops, lane modifications) costs for construction traffic mitigation. This will help minimize congestion on I-94 (and GHG emissions) during construction by promoting transit usage, which in turn reduces idling. This mitigation was developed based on coordination with the Milwaukee County Transit Service, traffic and construction analyses, and impact assessments. This plan allows for flexibility during I-94 East-West construction to adjust the plan based on what measures are working well and any new measures or technology that may not currently be available. The plan also takes into consideration the potential for permanent transit facility structure measures that could serve as long-term transit system upgrades. The Draft 30% TMP plan was shared with Community Advisory Committee and Transit Technical Advisory Committee, both with include local residents and community groups, and they were provided an opportunity to comment on the document. The plan also calls for continued community input during construction.
 - WisDOT will create and post signs to encourage the motoring public to use on public transit or rideshare during construction.
- Project will include WisDOT project site air quality specifications. This includes voluntarily establishing staging zones for trucks waiting to load and unload; locating staging zones where idling of diesel powered equipment will have minimal impact on abutting properties and the general public; having trucks queue up in these zones when practicable; and, encouraging drivers to shut down diesel trucks as soon as it appears likely they will be queued up for more than ten minutes.

Mitigation measures have been identified to minimize construction impacts (including GHG impacts) on environmental justice populations. Prior to construction, a plan would be developed to establish construction phases, estimated durations, appropriate sequencing, and community outreach and communication commitments. WisDOT would continue its targeted stakeholder outreach inclusive of minority and low-income populations. Access to and from I-94 during construction would be maintained to the extent possible, or alternative access would be provided. If alternative access is not available, the specific construction activity would be reviewed to determine if it could occur during non-peak hours. Section 3.9.4 of the Supplemental EIS identifies mitigation for environmental justice communities.

The mitigation measures described are part of the effort by FHWA to adopt practical means to avoid and minimize environmental impacts in accordance with 40 CFR 1505.2, and will be further developed during final design. These collective measures would reduce or offset GHG emissions from project construction and benefit all populations, including environmental justice populations, living along the project corridor.

FHWA and WisDOT met with EPA on April 13, 2023, to discuss vegetative barriers, and will continue to discuss vegetative barriers with EPA and their practicality on the I-94 East-West Corridor Project.

4. Project construction impacts to air quality (construction equipment-related emissions and dust) were evaluated qualitatively (see Section 3.27.4.3 of the Supplemental Draft EIS). Impacts will be short-term and occur only during construction, which is expected to last approximately 6 years.

Construction vehicle emission reduction strategies and potential mitigation measures including implementation of best practices are discussed in Section 3.27.4.3 of the Supplemental Draft EIS. As indicated in Section 3.27.4.3, WisDOT will coordinate with WDNR to consider the EPA suggested emission measures for inclusion in contract specifications. Construction vehicle emission impacts would be mitigated through implementing and maintaining a comprehensive traffic control plan, enforcing emission standards for gasoline and diesel construction equipment, and stipulating that unnecessary idling and equipment operation is to be avoided. In addition, WisDOT will work with the applicable local units of government when identifying haul routes in the final construction plans and specifications to minimize construction traffic from using roadways near schools, daycare facilities and parks when possible.

Several air quality construction mitigation best practices are available to assist in reducing diesel emission impacts from construction equipment. Off-road diesel engines can contribute significantly to the levels of particulate matter and nitrogen oxides in the air. In recent years, USEPA has set emissions standards for engines used in most new construction equipment. However, construction equipment can last for a long time, and it may take several years before all equipment is furnished with engines that meet USEPA standards. To address this, WisDOT and FHWA can implement several strategies to reduce emissions from the older engines that are in operation today, which are discussed as follows.

Reducing pollutant emissions from older off-road diesel engines can occur through a variety of strategies, including the following: reducing idling, properly maintaining equipment, using cleaner fuel, and retrofitting diesel engines with diesel-emission control devices. By reducing unnecessary idling at the construction site, emissions will be reduced, and fuel will be saved. Proper maintenance of the diesel engine will also allow the engine to perform better and emit less pollution through burning fuel more efficiently. Switching to fuels that contain lower levels of sulfur reduces particulate matter. Using ultra-low sulfur diesel does not require equipment changes or modification. Using fuels that contain a lower level of sulfur also tends to increase the effectiveness

of retrofit technologies. Retrofitting off-road construction equipment with diesel-emission control devices can reduce particulate matter, nitrogen oxides, carbon monoxide, or hydrocarbons, in addition to other air pollutants. Diesel particulate filters can be used to physically trap and oxidize particulate matter in the exhaust stream, and diesel oxidation catalysts can be used to oxidize pollutants in the exhaust stream (USEPA 2008b). In the final design phase, WisDOT will consider including the measures on a voluntary or mandatory basis. USEPA's comments on the 2016 Draft EIS suggested several measures to reduce diesel emissions from construction equipment during construction. WisDOT will coordinate with WDNR to consider these additional measures for inclusion in contract specifications (2016 Final EIS; Appendix E, letter E-10).

Fugitive dust impacts generated by construction would be mitigated by standard dust control measures. The measures may include the frequent watering of construction sites that have large expanses of exposed soil, watering debris generated during the demolition of existing structures, washing construction vehicle tires before they leave construction sites, and securing and covering equipment and loose materials prior to travel.

Dust control during construction would be accomplished in accordance with *WisDOT's Standard Specifications for Highway and Structure Construction* (WisDOT 2022b), which requires applying water or other dust control measures during grading and on haul roads. The location and operation of concrete batch plants would be in accordance with the Standard Specifications, and any special provisions developed during coordination with WDNR regarding air-quality standards and emissions. Any portable-material plants would be operated in accordance with WDNR air-quality requirements/guidelines. Demolition and disposal of residential or commercial buildings is regulated under WDNR's asbestos renovation and demolition requirements (Wisc. Admin. Code, Ch. NR 447).

Following the Supplemental Draft EIS, WisDOT conducted a GHG analysis for the 8- and 6-lane alternatives, which included an analysis of GHG emissions from construction (see Section 3.20.2.4 and Appendix F-4 of the Supplemental Final EIS). GHG emissions from construction contribute 81 to 97 percent of the total GHG increases from the 8- and 6-lane alternatives, partially due to the assumption that one lane in each direction would be closed on I-94 during construction. WisDOT will follow its Standard Specifications that exist to address pollution reduction/containment measures for the contractor, and also implement additional mitigation measures to help reduce GHG emissions during construction, which are identified in #3 above. The mitigation measures described are part of the effort by FHWA to adopt practical means to avoid and minimize environmental impacts in accordance with 40 CFR 1505.2, and will be further developed during final design. These collective measures would reduce or offset GHG emissions from project construction and benefit all populations, including environmental justice populations, living along the project corridor.

5. Special WisDOT provisions of construction contracts include many of the applicable measures in the Construction Emission Control Checklist provided by EPA. A contract's special provisions includes special directions or project-specific requirements that are not otherwise stated explicitly in WisDOT's current edition of the Standard Specifications for Highway and Structure Construction. Some specific emission control measures are identified in Response #4 to EPA comments. These emissions control measures will be implemented near places where children live, learn, and play, where applicable.
6. Construction vehicle emission impacts are mitigated through implementation and maintenance of a comprehensive traffic control plan, enforcing emission standards for gasoline and diesel construction equipment, and stipulating that unnecessary idling and equipment operation is to be avoided. WisDOT will also work with applicable local units of government when identifying haul

routes in the final construction plans and specifications to minimize construction traffic from using roadways near schools, daycare facilities and parks when possible.

7. Construction noise impacts are discussed in Section 3.27.4.1 and construction vibration impacts are discussed in Section 3.27.4.2. The discussions apply to all populations, including children, elderly people, and others who may be sensitive to noise and/or vibration.

WisDOT will continue coordination and communication with local jurisdictions and the public as the design advances to identify residences and other sensitive receptors that would be impacted by construction noise and vibration. Once construction details are known, WisDOT will reevaluate potential construction impacts if there are public concerns or if noise and vibration levels are likely to exceed any local ordinance thresholds.

WisDOT will minimize construction noise and vibration impacts to the extent practicable. Construction noise would be controlled in accordance with WisDOT Facilities Development Manual Procedure 23-40-1 To reduce the potential impact of construction noise, special WisDOT provisions would require operation of motorized equipment in compliance with all applicable local, state, and federal laws and regulations relating to noise levels permissible within and adjacent to the project construction site. All motorized construction equipment would be required to have mufflers constructed in accordance with the equipment manufacturer's specifications or a system of equivalent noise-reducing capacity. WisDOT would also require that mufflers and exhaust systems be maintained in good operating condition, free of leaks and holes. In addition, WisDOT would notify potentially affected residents prior to noise-intensive activities. Further, where possible, noise walls will be constructed prior to most mainline construction.

WisDOT will coordinate with adjacent property owners prior to construction to determine if any buildings near construction areas are in poor structural condition. WisDOT will meet City of Milwaukee vibration ordinances. In addition, in Sections 3.27.4.1 and 3.27.4.2 of the Supplemental Final EIS, text was added noting that WisDOT will notify potentially affected residents prior to noise and vibration-intensive activities.

8. Construction impacts to low income and/or minority populations and appropriate mitigation are discussed in Section 3.9.4.4 of the Supplemental Draft and Supplemental Final EIS. WisDOT and FHWA determined that construction impacts would not disproportionately impact minority and/or low-income populations.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

2/28/2023

VIA ELECTRONIC MAIL ONLY

Bethaney Bacher-Gresock
Federal Highway Administration – Wisconsin Division Office
525 Junction Road, Suite 8000
Madison, Wisconsin 53717

Re: Concurrence on the Preferred Alternative for the I-94 East-West Corridor (16th Street-70th Street) Project, Milwaukee, Milwaukee County, Wisconsin

Dear Ms. Bacher-Gresock:

This letter responds to Federal Highway Administration's (FHWA) request that the U.S. Environmental Protection Agency (EPA) provide concurrence for the preferred alternative for the I-94 East-West Corridor (16th Street to 70th Street) Project, pursuant to the Concurrent NEPA 404 Processes Interagency Task Group Agreement of 1994 and the Coordination Plan for Agency and Public Involvement, revised May 2022. EPA previously provided concurrence for this proposed project on purpose and need (March 10, 2016), and range of alternatives (June 24, 2022). The preferred alternative, as designated by FHWA and the Wisconsin Department of Transportation (WisDOT) in the November 2022 Supplemental Draft Environmental Impact Statement, consists of the following:

- Reconstruct I-94 to add a fourth through lane in each direction, mostly on the existing alignment;
- Reconstruct the interchanges at 68th Street/70th Street, 35th Street, and near 27th Street;
- Construct a half interchange at Hawley Road;
- Reconstruct the Stadium Interchange as a diverging diamond Interchange; and
- Revise access to and from General Mitchell Boulevard from 44th Street.

EPA concurs with FHWA's selection of the 8-lane alternative as the preferred alternative, and we also note that either the 6-lane or the 8-lane alternative would be acceptable to EPA. EPA looks forward to continuing to work with FHWA and WisDOT to avoid, minimize, and mitigate environmental impacts.

If you have any questions about this letter, please contact Mike Sedlacek, EPA's lead reviewer for this project, at 312-886-1765 or sedlacek.michael@epa.gov, or you may contact me at 312-353-4293.

Sincerely,

Kathy Kowal acting for:
Kathy Triantafillou
Acting NEPA Section Supervisor
Tribal and Multi-media Programs Office
Office of the Regional Administrator

cc: Josh LeVegue, Wisconsin Department of Transportation

National Cemetery Administration
Correspondence

From: Beth Foy <bethfoyassoc@gmail.com>
Sent: Sunday, January 29, 2023 11:35 AM
To: Goldsworthy, Benjamin <Benjamin.Goldsworthy@jacobs.com>; Josh LeVeque <joshua.leveque@dot.wi.gov>
Cc: Mykytiuk, Carla <Carla.Mykytiuk@jacobs.com>; Bauer, Jeff <Jeff.Bauer@jacobs.com>; Bill Mohr <bill.mohr@dot.wi.gov>; Jeff Bohlen <Jeff.Bohlen@dot.wi.gov>
Subject: [EXTERNAL] Natl Cemetery Admin (VA)

Ben and Josh,

I just noticed this email amongst the online comment form emails. Thought I'd flag it for you. Looks like it needs a response.

1/18/2023

Michael Carcanague

National Cemetery Administration, 810 Vermont Avenue, N.W., Washington DC 20420

Michael.Carcanague@VA.Gov

"The National Cemetery Administration (NCA) had provided previous comments related to Access; sound walls; and fencing along cemetery property. The Supplemental document mostly addresses NCA concerns. Here are the minor comments from NCA:

1. Pages 3-159 & 3-170 address noise, walls, & fencing along north and south sides of I 94 along the cemetery property. The mapping at the end of Section 3 does not identify the locations of the wall/barriers and the renderings do not depict them. Any additional information or renderings that could be provided and or included on the NEPA document are recommended (ex. Identifying the locations of these barriers/walls on the mapping in section 3).

1

2. The documents are clear about the Zablocki Drive bridge being replaced. While the bridge is out, the cemetery has concerns about safe, temporary access on General Mitchell Blvd. How will safe access and passage be established for cemetery vehicles between north & south side of cemetery during bridge replacement?

2

3. Glenn Madderom was the POC for NCA. Mr. Madderom retired in 2022. His replacement is Michael Carcanague. Michael.Carcanague@VA.GOV"

3

Beth Foy
Beth Foy and Associates, LLC
N87W15685 Kenwood Blvd.
Menomonee Falls, WI 53051

Office: 262-253-6834
Mobile: 414-507-9260

Response to U.S. Department of Veterans Affairs – National Cemetery Administration

1. Detail on the walls/fencing along the cemeteries, including renderings, will be developed as part of the project's final design. On the south side of I-94, WisDOT intends to resurface the existing wall. As part of the amended Programmatic Agreement for the Supplemental Final EIS, WisDOT will prepare a wall design plan for the walls on the north and south side of I-94 for the portion of the project adjacent to Wood National Cemetery. The plan will include specifications for the design, height, size, materials, and appearance of the walls. The draft Wall Design Plan for the Wood National Cemetery walls will be submitted to the Section 106 Signatories and Consulting Parties for review and comment prior to implementation.
2. The new Zablocki Drive bridge will be on the same alignment as the existing bridge; therefore, it is not possible to have a new bridge in place while the existing bridge is being removed. WisDOT will explore the possibility of a temporary connection from General Mitchell Boulevard to Zablocki Drive near Story Parkway. This would be a temporary connection while the Zablocki Drive bridge is closed and could shorten the travel distance for cemetery vehicles. WisDOT will ensure that safe, temporary access will be provided along adjacent roads during the Zablocki bridge replacement to provide passage for cemetery vehicles between the north and south sides of the cemeteries. WisDOT will continue to coordinate with the cemeteries to ensure convenient access to the cemeteries is maintained during construction.
3. Comment acknowledged.

U.S. Department of the Interior
Correspondence



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Custom House, Room 244
200 Chestnut Street
Philadelphia, Pennsylvania 19106-2904



IN REPLY REFER TO:

January 20, 2023

4112.1
ER 22/0505

Glenn Fulkerson
Division Administrator
Federal Highway Administration
525 Junction Road, Suite 8000 S
Madison, WI 53717

Dear Glenn Fulkerson:

The Department of the Interior (Department) has reviewed the draft Section 4(f) evaluation for the Proposed WisDOT and FHWA I-94 East-West (16th Street - 70th Street) Project, Supplemental Environmental Impact Statement (EIS).

The Supplemental EIS considers effects under Section 4(f) of the Department of Transportation Act of 1966 (codified at 49 U.S.C. 303) associated with the project. The purpose of the project is to address the deteriorated condition of I-94, obsolete roadway and bridge design, existing and future traffic demand, and high crash rates. The updated Section 4(f) Evaluation identified two new Section 4(f) properties since the 2016 Final EIS (West St. Paul Avenue Historic District and 16th Street Viaduct), re-evaluated the changes to the 8-lane alternative and evaluated the 6-lane alternatives and Stadium Interchange options.

Background Information

The 2016 Final Section 4(f) Evaluation (Section 4 of the 2016 Final EIS) reported there would be no Section 4(f) use of 9 properties in the study area, and 2 properties for which the following Section 4(f) findings were made:

- De minimis impact determination for the Soldiers' Home NHL
- De minimis impact determination for the Soldiers' Home Historic District

Since the 2016 FEIS, 2 additional Section 4(f) properties were identified for which no Section 4(f) impacts would be incurred:

- West St. Paul Avenue Industrial Historic District
- 16th Street Viaduct

Section 4(f) Comments

The Department concurs with the determinations made in the Supplemental DEIS, namely the 2 properties named above for which a de minimis impact would be incurred and that the 11 additional properties would not be subject to Section 4(f) impacts.

FHWA and WisDOT reinitiated Section 106 consultation to update the area of potential effect in 2021 and agreed that updates to the 2016 Programmatic Agreement would be updated as part of the on-going consultation process.

For issues concerning Section 4(f) resources, please contact Christine Gabriel, Regional Environmental Coordinator, Regions 3/4/ 5, National Park Service, Christine_gabriel@nps.gov.

We appreciate the opportunity to provide these comments.

Sincerely,

John V. Nelson
Regional Environmental Officer

Electronic distribution: joshua.leveque@dot.wi.gov; Glenn.Fulkerson@dot.gov

City of Milwaukee Correspondence



Department of Public Works

Jerrel Kruschke, PE
Commissioner of Public Works

Kevin J. Muhs, PE, AICP
City Engineer

January 31, 2023

Mr. Joshua LeVeque, P.E., Project Manager
Wisconsin Department of Transportation (WisDOT)
Southeast Region
141 NW Barstow Street
P.O. Box 798
Waukesha, WI 53187-0798

Dear Mr. LeVeque:

The City of Milwaukee has reviewed the Supplemental Draft Environmental Impact Statement (SDEIS) for the I-94 East-West Freeway Reconstruction Project (70th Street to 16th Street). The Department's preferred alternative included in the SDEIS remains in conflict with the City of Milwaukee's long-standing opposition to additional freeway capacity within the City's borders. However, we appreciate the project team's continued emphasis and progress on keeping private property acquisition to a minimum, and believe the project's environmental review process provides an opportunity to further strengthen our partnership around investing in a transportation system that provides reliable, robust, and safe service for all users.

This letter contains our comments specifically related to the environmental review process and the SDEIS. As mentioned below, we also will be separately submitting comments on the preliminary engineering plans for the project. In addition to the technical comments related to conflicts with City utilities, those comments will place a strong emphasis on providing a safer and more pleasant environment for people walking and biking over and under the Interstate, and slowing travel by automobile through the intersections that are impacted by the I-94 reconstruction project.

The I-94 reconstruction project represents a significant financial investment by the Department in Southeastern Wisconsin's automobile users, who are more likely to be white and less likely to be low-income than the population of many of the nearby neighborhoods that this Interstate segment travels through. In addition, this is an investment wherein the adjacent neighborhoods and the City bear all of the negative impacts of this segment of the freeway system and its expansion, while only partially benefiting from the flow of people and goods through this area. Therefore, we strongly believe that the Department's investment needs to include or be coordinated with transportation investments that benefit those immediate areas more fully and mitigates the cumulative effects of long-standing disparities in transportation investment in the metropolitan area more directly. The Department's commitment to studying a different future for State Highway 175 is a great example of one potential way to mitigate the cumulative effect of such disparities.

1

Either as part of completing the National Environmental Policy Act process for this project or through separate agreement among the City and the Department, we are asking the Department to commit to the following:

- **Conditionally permitting enhanced bicycle, pedestrian, and transit infrastructure improvements consistent with the City's Complete Streets Policy and the NACTO Design Guides through the Facilities Development Manual (FDM) by May 1, 2023.** This timeline, or something even more aggressive, is needed so that the State design process can result in a National Avenue (STH 59) project that is safe for people walking, biking, and

2



taking transit. Current FDM design guidance does not permit or makes significantly burdensome the construction of a street cross section and intersections that best protect and prioritize those walking, biking, and taking transit in the corridor, who as a whole are more likely to be people of color and lower-income than those in cars. In addition, specific to the National Avenue project, the decision to switch from a full reconstruction to a pavement replacement project shifts the State and Federal investment in the street towards automobile users and away from investments in the most socioeconomically disadvantaged users of the street, placing the burden of ensuring an equitable design on the City and City taxpayers.

2

- **Providing appropriate mitigation dollars for transit operating and/or transit capital infrastructure in the corridor, in amounts that recognize the full cumulative effects of decades of State investment in expanded freeway capacity in Milwaukee County while the Department’s budget continues to contain shrinking operating assistance for transit.**

The neighborhoods surrounding this project, particularly those east of STH 175, utilize and depend on transit to a higher degree than nearly any other portion of the Milwaukee area (and therefore the State). The City appreciates the approximately \$25 million in construction traffic mitigation funding for transit included in the SDEIS (approximately \$5 million per year over the expected project construction time period) and the Governor’s allocation of approximately \$20 million in American Rescue Plan Act funding for transit in the County. However, it is important to note that these investments are time-limited, and also come within the context of a significant decline (a reduction of approximately \$33 million per year) in the Department’s commitment to transit during the current biennium.

3

In 2025, the Department is planning to initiate a significant investment serving automobile users in this corridor at the same time that Federal COVID-relief funds are expected to be fully exhausted by the County, leading to a State-imposed transit funding crisis caused substantially by the reduction in the Department’s historical level of support for transit in the County. We recognize that this project does not have a legal mechanism to fully solve the inequities in funding between transit and automobiles in the Milwaukee area. Again, people of color and low-income individuals are significantly less likely to have access to a car, and the collective actions by the State lead to significant indirect impacts and cumulative effects that need to be mitigated. The benefits of the investment in automobile infrastructure included in the SDEIS will last decades. We are asking that the final SEIS recognize these impacts and effects, and that it commits the Department to increased transit operating support and a long-lasting investment in transit infrastructure, such as BRT-style stations, as part of the National Avenue project.


- **Investing in significant stormwater infrastructure as part of the project, particularly with a focus on improving water quality in the Menomonee River.** Over the past couple decades, several entities, especially the Milwaukee Metropolitan Sewerage District, have invested significant funds in enhancing and restoring the Menomonee River, including flood mitigation and habitat restoration. The increase in impervious surface included in the preferred alternative has the potential to negatively impact water quality and create water quantity management issues in nearby watersheds. We would encourage consideration of creative and substantial solutions to mitigate this environmental impact, up-to-and-including stormwater facilities under the numerous parking lots near the River.

4

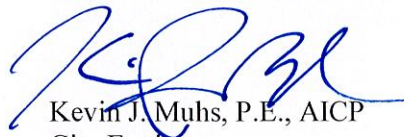
- **Taking advantage of the increased freeway capacity to reduce automobile travel lanes on surface streets that are designated State Connecting Highways within 1 mile of the project, whenever City or County design and public involvement processes conclude that the travel lane is not needed.** This would slow travel speeds during the 95% or more of the day where these streets do not experience congestion, thereby increasing safety for all users and prioritizing the movement of people walking, biking, and taking transit. 5
- **Constructing enhanced pedestrian, bicycle, and transit facilities on streets that cross I-94 as part of the project (again consistent with City preferences and NACTO Design Guides, including separated and protected bike facilities), particularly around the North Hawley Road, North 35th Street, and North 27th Street interchanges, and through the diverging diamond Stadium Interchange.** We will coordinate with the Department through the design plans review process to provide specific suggestions in each of these areas, but want to reemphasize the City's desire to slow travel by automobile on these streets and through nearby intersections. 6

Thank you for the opportunity to provide input on this project and throughout the study process, and we appreciate the responsiveness of your entire project team to the City's requests for information and details throughout the project development process. While we continue to disagree regarding the need for additional traffic capacity in this corridor in light of our commitment to a less car-focused future for the City, we look forward to continuing this conversation and wish to reiterate that it is our goal that the City and Department have a robust partnership on this project.

Sincerely,



Jerrel Kruschke, P.E.
Commissioner of Public Works



Kevin J. Muhs, P.E., AICP
City Engineer

JK/KJM:clm

Response to City of Milwaukee

1. The Supplemental Draft EIS comprehensively reviews the direct, indirect, and cumulative effects of the 8- and 6-lane alternatives on resources in the study area. For the 8- and 6-lane alternatives, the beneficial and adverse impacts on the overall population, including the minority and/or low-income populations, have been analyzed in Sections 3.1 through 3.29 of this Supplemental Draft EIS. Section 3.9.4 of the Supplemental Draft EIS analyzes how the potential impacts of the alternatives may affect specifically minority populations and low income populations.

Analysis conducted by WisDOT using StreetLight origin-destination information showed the percentage of low-income and/or minority users of I-94 in the study area is similar to the percentage of low-income and minority populations in the Milwaukee metropolitan area. This StreetLight data has been added to the project website for the public to reference. Additionally, the StreetLight origin-destination data show that I-94 west of the Stadium Interchange has a higher percentage of westbound trips originating in census block groups with higher minority populations and a higher percentage of eastbound trips ending in block groups with higher minority populations. This shows that people living along the I-94 East-West Corridor in the City of Milwaukee use I-94 to access jobs west of the study area.

I-94 serves as an important local, regional, and statewide transportation corridor that will also benefit public stakeholders, including low-income and minority populations, with improved safety, access, mobility, and travel reliability. The preferred alternative minimizes impacts on and maintains connectivity between the surrounding communities. Appendix N of SEWRPC's 2020 review and update of VISION 2050 evaluated the impacts and benefits of the FCTS on minority and low-income populations in southeastern Wisconsin. The analysis found that the freeway segments proposed for widening under the FCTS, including I-94 between 70th Street and 16th Street, would directly serve areas of minority and low-income populations; these populations would benefit from the expected improvement in arterial street and highway accessibility to employment associated with the proposed freeway widening.

Public transit recommendations are considered as part of the I-94 East-West Corridor Study to ensure that the preferred alternative will not preclude planned transit improvements and will allow implementation of regional transportation plan recommendations that benefit public transit that are within the scope of this project.

WisDOT is studying WIS 175 for future improvements. In May 2022 WisDOT announced a partnership with the City of Milwaukee and Milwaukee County to collaboratively take a comprehensive, holistic approach to evaluate potential, viable alternatives for the future WIS 175 corridor north of I-94 in a way that accommodates vehicles, transit, bicycle and pedestrian connections; connects neighborhoods, and promotes socio-economic vitality.

2. Conditionally permitting enhanced bicycle, pedestrian, and transit infrastructure improvements consistent with the City's Complete Streets Policy and the NACTO Design Guides through the Facilities Development Manual (FDM) by May 1, 2023, is outside the scope of the I-94 East-West Corridor Project.

Additionally, the STH 59/National Avenue project is outside of the scope of the I-94 East-West Project. However, the I-94 East West Corridor Project would improve the National Avenue/Greenfield Avenue and Brewers Boulevard/National Avenue intersections. Existing pedestrian and bicycle access at these intersections would remain and access would be added or improved in certain locations.

Similarly, existing pedestrian and bicycle access along local roads reconstructed as part of the project would remain and access would be added or improved in certain locations. The specific type of pedestrian and bicycle accommodations will be determined during final design. WisDOT has added several bicycle and pedestrian improvements as part of the preferred alternative in response to comments received from project stakeholders (Sections 2.2.1 and 3.3.2.5 of the Supplemental Draft EIS).

As part of the preferred alternative, WisDOT would construct bicycle and pedestrian accommodations at cross streets, interchanges, overpasses, and underpasses in accordance with the USDOT Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations (USDOT 2010) and Federal Highway Administration Bicycle and Pedestrian Planning, Program, and Project Development (FHWA 2019). WisDOT met with City of Milwaukee Department of Public Works staff several times in the summer of 2023 to discuss project design aspects, including bicycle and pedestrian accommodations.

The preferred alternative would not eliminate any existing bicycle or pedestrian facilities. Local roads reconstructed as part of the project will include or add pedestrian accommodations to meet or exceed what was existing and include bike lanes or shared-use lanes. WisDOT is coordinating with the City of Milwaukee as the design is refined to determine specific pedestrian and bicycle accommodations for reconstructed local roads. Table 3-6 of the Supplemental Draft EIS identifies the location of bicycle and pedestrian accommodations and if they would be provided as part of 8- and 6-lane alternatives. Table 3-6 also notes any constraints to providing full bicycle and pedestrian access.

In the City of Milwaukee, WisDOT developed additional bicycle and pedestrian improvements as part of this project, detailed in Section 2.2.1 of the Supplemental Draft EIS and shown on **Exhibit 2-6**:

- Connect the Hank Aaron State Trail and the Oak Leaf Trail along 44th Street and Wells Street, traveling under I-94 east of the Stadium Interchange. Between Selig Drive and Bluemound Road. The existing sidewalk on the west side of 44th Street would remain, and WisDOT would construct a 10-foot shared-use path on the east side of 44th Street. North of Bluemound Road, the existing 6-foot sidewalk on the west side of 44th Street would remain, and WisDOT would add shared-lane pavement markings for bikes along 44th Street and Wells Street to where it crosses WIS 175.
- A new access point to the Hank Aaron State Trail at 64th Street. This paved connection would be about 50 feet long and provide access to the trail directly from Dickinson Street, near 64th Street. Currently, there is no Hank Aaron State Trail access between 68th and 60th Streets. Approximately three blocks to the north, 64th Street crosses under I-94 (the only street to do so between 68th and 60th Streets), making it good location to provide access to the trail for those north of I-94.

- Depending on future electrical facilities relocation plans in the immediate area, a connection between 32nd Street and Greves Street (north of Canal Street) may be constructed to provide better pedestrian and bicycle access to the Menomonee Valley. WisDOT would construct a 10-foot shared-use path connecting 32nd Street with Greves Street. On Greves Street, the existing 6-foot sidewalk on the north side of the road west of 25th Street would remain and WisDOT may add a new sidewalk from 25th Street to St. Paul Avenue on the north side of Greves Street. WisDOT would also add shared-lane pavement markings for bikes.
 - A shared-use path along 25th Street for bicycles and pedestrians to connect the area north of I-94 to the Menomonee Valley. WisDOT would construct a 10-foot shared-use path on the west side of 25th Street north of St. Paul Avenue, and a 10-foot shared-use path on the east side of 25th Street south of St. Paul Avenue. Having the shared-use path on the west side of 25th Street north of St. Paul Avenue avoids conflict with I-94 ramp movements and the path on the east side of 25th Street, south of St. Paul Avenue allows the path to connect to the existing path south of the project limits. WisDOT would also add 6-foot sidewalks along 26th Street and signalized intersections at 25th/26th Streets and St. Paul Avenue, allowing pedestrians and bicyclists to safely cross these streets to access the path via crosswalks at the signalized intersections.
3. The text box titled “How Is Transit in Wisconsin Funded, and What is WisDOT’s Role?” in Section 2.4.1.1 of the Supplemental Draft EIS describes how public transit in Wisconsin is funded. WisDOT transit operation funding is directed by the state budget.

WisDOT is currently assisting other entities to implement transit in the Milwaukee area. WisDOT subsidizes the Amtrak Hiawatha train between Milwaukee and Chicago. WisDOT upgraded the train shed at the Milwaukee Intermodal Station in 2015. Additionally, WisDOT contributed \$300,000 to Milwaukee County’s BRT study connecting downtown Milwaukee with the Milwaukee Regional Medical Center.

A 30% Traffic Management Plan (TMP), created in early 2022, reviewed potential impacts of I-94 East-West construction on Milwaukee County Transit System (MCTS) services and developed a conceptual mitigation program based on coordination with MCTS, traffic and construction analyses, and impact assessments. The conceptual mitigation program includes measures for additional buses to maintain headways, infrastructure improvements, additional frequencies to mitigate traffic impacts and other funding to support MCTS staffing and outreach during construction. In addition, the preferred alternative is expected to reduce the amount of traffic that diverts to local arterial streets. Fewer vehicles on local streets improves the pedestrian environment and can help provide opportunities to implement dedicated transit infrastructure such as transit-only lanes along arterials.

4. Section 3.11.3 of the Draft Supplemental EIS presents a list of potential BMP options that WisDOT and FHWA will investigate for inclusion into the project during future design phases. WisDOT and FHWA are committed to complying with state statutes and regulatory requirements regarding water quality and water quantity, and to coordinating with MMSD and other stakeholders to achieve those goals and with regard to the implementation of various BMP elements. Unique strategies that will be investigated include separating the freeway runoff from the combined sewer system east of 38th Street, Marquette Interchange’s

first flush element, and permeable pavements in selected locations (for example, American Family Field parking lots). These strategies will be finalized during the project's final design phase in coordination with DNR and MMSD.

In addition, WisDOT will plant stormwater trees in the project corridor. Stormwater trees not only absorb stormwater and reduce erosion during a rainfall event, but they also absorb CO₂ and serve as an urban canopy to reduce urban heat zones. WisDOT has committed to spending \$300,000 as part of MMSD's Reforestation and Wetland Restoration Initiative, as well additional landscaping within the project limits.

5. The preferred alternative is expected to reduce the amount of traffic that diverts to local arterial streets. Fewer vehicles on local streets improves the pedestrian environment and can help provide opportunities to implement dedicated transit infrastructure such as transit-only lanes along arterials. Reduction of automobile travel lanes on surface streets that are designated State Connection Highways is something that would be evaluated as a stand-alone project.
6. As part of the preferred alternative, WisDOT would build bike and pedestrian accommodations at cross streets, interchanges, overpasses, and underpasses in accordance with the *USDOT Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations* (USDOT 2010) and *Federal Highway Administration Bicycle and Pedestrian Planning, Program, and Project Development* (FHWA 2019). WisDOT met with City of Milwaukee Department of Public Works staff several times in the summer of 2023 to discuss project design aspects, including bicycle and pedestrian accommodations.

Table 3-6 of the Supplemental Draft EIS identifies the location of bicycle and pedestrian accommodations and if they would be provided as part of 8- and 6-lane alternatives. The preferred alternative would provide bicycle and pedestrian accommodations along cross streets in the I-94 East-West Corridor, including along Hawley Road, 35th Street, 27th Street. Bicycle and pedestrian accommodations will also be built along roads through the Stadium Interchange, including Yount Drive (underpass), Brewers Boulevard, and 44th Street (underpass). Existing pedestrian and bicycle access along local roads reconstructed as part of the project would remain and access would be added or improved in certain locations. The specific type of pedestrian and bicycle accommodations (e.g., bike lane, shared-use path) will be determined during final design.

Response to the City of Milwaukee's comment #2 provides additional information regarding bicycle and pedestrian accommodations in the City of Milwaukee as part of the I-94 East-West Project. Additionally, Sections 2.2.1 and 3.3.2.5 of the Supplemental EIS provide information about bicycle and pedestrian accommodations as part of this project.

MMSD Correspondence



Kevin L. Shafer, P.E.
Executive Director

December 21, 2022

Mr. Joshua LeVeque, P.E.
Department of Transportation
141 NW Barstow Street
Waukesha, Wisconsin 53187-0798

Sent Via Email to Joshua.Leveque@dot.wi.gov

Subject: I-94 between 70th Street and 16th Street
Supplemental Draft Environmental Impact Statement

Dear Mr. LeVeque:

The Milwaukee Metropolitan Sewerage District (District) has the following comments regarding the Supplemental Draft Environmental Impact Statement (SDEIS) for the reconstruction of I-94 between 70th Street to 16th Street (I-94 Project). I appreciate the consideration by the Department of Transportation (DOT) of the District's earlier comments regarding this project and the commitment in the SDEIS to collaborate with the District and other local stakeholders to mitigate the adverse consequences of the I-94 Project as DOT develops the final design.

The preferred alternative will increase impervious surface by 31% (SDEIS, Table 3-22). However, the SDEIS did not estimate the total net increase of impervious surface and its location. This information is critical for the District to evaluate how this project will exacerbate flood risks, sewer flows and overflows, and water quality problems. As the design proceeds, please keep the District informed of the amount and location of the new impervious surface.

1

The following issues are a high priority for the District.

- From 38th Street east, the project corridor is within the combined sewer area. The combined sewers in this area already have problems with high peak flow rates. The I-94 Project has the potential to increase total volume and peak flow rates in these sewers and to increase the magnitude, frequency, and duration of overflows.

2



Mr. Joshua LeVeque, P.E.

December 21, 2022

Page 2 of 2

- For the subbasins of the Menomonee River in the project area, existing loads of bacteria, solids, and phosphorus already far exceed the recently established total maximum daily loads. The I-94 Project has a potential to increase these loads.
- The Menomonee River in the project area is already suffering from chronic elevated concentrations of chloride. The I-94 Project has a potential to increase chloride loads.
- The District has made substantial investments to reduce the risk of flood losses in the project area. For example, the District has constructed a levee to protect the Valley Park neighborhood. This levee relies on the existing highway embankment to tie into high ground. The project has a potential to reduce the effectiveness or structural integrity of these investments. Also, the I-94 Project will require moving utility infrastructure, such as electrical substations. When this movement occurs, the best new location would be beyond the flood fringe, a location that minimizes flood risk.

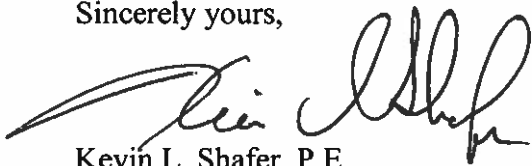
3

4

Avoiding or minimizing these problems must be a priority for the I-94 Project. The District's green infrastructure and flood risk reduction experts are eager to work with you to address these problems. DOT's funding for green infrastructure to mitigate the adverse effects of the Zoo Interchange, the design of the storm water management system for the Marquette Interchange to divert some runoff directly to surface water, and the current work to build green infrastructure below interchanges near downtown Milwaukee are examples of how DOT and the District can collaborate to achieve our goals. We need to build upon these examples as DOT rebuilds I-94.

As planning and final design proceed, Micki Klappa-Sullivan, Manager of Engineering Planning, at 414-225-2178 or mklappasullivan@mmsd.com, should continue to be your first point of contact with the District. Thank you for considering these comments.

Sincerely yours,



Kevin L. Shafer, P.E.

Executive Director

Milwaukee Metropolitan Sewerage District

c: S. Coyle
M. Klappa Sullivan
M. Mittag
T. Nowicki
B. Plier

Response to Milwaukee Metropolitan Sewerage District

1. As noted in Section 3.11.2.4 of the Supplemental EIS, the preferred alternative would increase the impervious area in the corridor by 31 percent. This would be less than a 0.1 percent increase in the total amount of impervious surface in the Menomonee River watershed.

This increase will be spread out along the 3.5 mile corridor, and the increase will not be concentrated in any one place. The footprint of the Stadium Interchange will actually be smaller than the existing Interchange. As more detailed project design refines the exact areas of increased impervious surface in the corridor, WisDOT will continue to work with MMSD to inform them of the amount and location of new impervious surface.

Currently there is no stormwater management for quality or quantity for freeway runoff along I-94 from 70th Street to 38th Street. However, the segment I-94 from 70th Street to 64th Street that discharges to Honey Creek was included as part of the approved Zoo Interchange project stormwater management plan.

To manage runoff quality and quantity, two wet detention ponds are planned between Hawley Road and the Stadium Interchange. The combination of wet detention ponds, separation of combined sewer, and elimination of significant freeway discharges to local storm sewers provides a feasible and practical solution to greatly improve the freeway runoff discharge to receiving waterbodies.

The project will follow WisDOT Facilities Development Manual guidelines to manage stormwater runoff by conforming to DNR requirements from a water quantity and quality perspective.

2. East of 38th Street to 20th Street, WisDOT supports using the Marquette Interchange model for stormwater management. The drainage design team intends to separate the freeway stormwater runoff from the combined sewer with the “first flush” or low flows of storm events going into the MMSD system for treatment and high and cleaner flows discharging to the Menomonee River. This was seen as a win-win approach because MMSD would still treat the first flush (small portion) of stormwater runoff with the highest pollutant levels, but not be overtaxed with the higher flows.
3. The 8- and 6-lane alternatives would increase impervious area and therefore could increase pollutant loads. However, the 8- and 6-lane alternatives also provide the opportunity for BMPs to treat the runoff and bring I-94 in compliance with Wisconsin’s stormwater management regulations that limit the amount of pollution in runoff. The Supplemental EIS identifies a list of BMP options that could be implemented in the I-94 East-West Corridor (see Section 3.11.3 of the Supplemental Draft and Supplemental Final EISs). BMPs will be further refined in during final design for permitting agency acceptance/approval.

In addition, WisDOT will plant stormwater trees in the project corridor. Stormwater trees absorb stormwater and reduce erosion during a rainfall event. WisDOT has committed to spending \$300,000 as part MMSD’s Reforestation and Wetland Restoration Initiative, as well additional landscaping within the project limits.

WisDOT also would obtain a WDNR Transportation Construction General Permit to comply with TMDLs established in 2018 for fecal coliform bacteria, phosphorus, and sediment.

WisDOT has a Sensible Salting Program that includes a number of components intended to encourage counties to lower their use of all materials used to de-ice roads while maintaining the high level of safety that Wisconsin drivers have come to expect. Example components include salt application rate guidelines; pre-wetting the salt, which can reduce the application rate and help the salt mixture stick to the road; and ground speed controllers, which coordinate the spinner rate with

the speed of the truck. Reducing salt use consequently reduces chloride loads. All components of the Sensible Salting Program are described in Appendix A of WisDOT's 2021 TS4 Permit Report, available online at: <https://wisconsin.gov/Documents/doing-business/eng-consultants/cnslt-rsrcs/environment/2021TS4permitreport.pdf>. Preliminary results of new salt application techniques are showing significant reduction in overall salt use while maintaining clear roads and level of service for the traveling public.

4. WisDOT will continue to coordinate with MMSD on their proposed plans in the area of the levee. The I-94 East-West Corridor project will not reduce the effectiveness or structural integrity of MMSD's investments to reduce the risk of flood losses.

New freeway bridges across the Menomonee River would cross the 100-year floodplain but, except for new bridge piers, would not place fill into the floodplain. All bridges would be sized to pass a 100-year flood without interruption to traffic due to flood damage to the roadway or structures, and would not increase headwater elevations by more than the permissible 0.01 foot. All floodplain crossings would be constructed in accordance with the WisDOT/WDNR Cooperative Agreement . Crossings would be consistent with local floodplain management goals and objectives, which include maintaining the natural and beneficial floodplain values and avoiding support of incompatible floodplain development. Additionally, floodplain crossings would be designed to avoid impacts to existing flood profiles on adjacent landowners' properties.

If the LOMR is approved, the potential relocation sites for the relocated electrical substation would be within flood fringe area, which is permissible under applicable law. WisDOT will reassess floodplain impacts if the floodplain boundary is modified. WisDOT will conform to FEMA regulatory requirements regarding floodplain impacts with the proposed relocation of electrical substations in the flood fringe area.

Southeast Wisconsin Professional Baseball
Park District Correspondence



SOUTHEAST WISCONSIN PROFESSIONAL BASEBALL PARK DISTRICT

ADDRESS: 1 BREWERS WAY MILWAUKEE, WI 53214 E-MAIL: CONTACT@WIBASEBALLDISTRICT.COM PHONE: (414)902-4040



December 13, 2022

Joshua LeVeque, WisDOT Project Manager
WisDOT Southeast Region
141 NW Barstow Street
Waukesha, Wisconsin 53187-0798

Dear Joshua:

The Southeast Wisconsin Professional Baseball Park District (the District) is a special district that is a local unit of government, a body corporate and politic that is separate, distinct and independent from the state. The District is comprised of Milwaukee, Ozaukee, Racine, Washington and Waukesha Counties. The District has been charged with the oversight and monitoring of planning, financing, designing, constructing, commissioning, operating and maintaining American Family Field. The District is managed by an appointed Board of Directors comprised of thirteen individuals representing the five-county area.

The District is submitting these comments in support of the preferred alternative, proposed by the Wisconsin Department of Transportation (WisDOT) and approved by the Federal Highway Administration (FHWA), for reconstructing the I-94 East-West freeway from 70th Street to 16th Street in the City of Milwaukee.

WisDOT has done a thorough job in seeking public and stakeholder input for this project. The District has had multiple meetings with WisDOT on this project and they have done an excellent job listening to our input and proposing modifications based on that input. The result is a preferred alternative that will benefit visitors to the baseball park and Milwaukee with a more efficient and safer Interstate system. Data clearly shows that freeway modernization in southeast Wisconsin has greatly reduced crash rates on the system. The preferred alternative will also deliver that benefit to the travelling public and baseball fans using the East-West Freeway.

The proposed eight-lane freeway will improve the operation of the freeway while largely being built on the existing footprint, minimizing relocations and enhancing air quality. In addition, WisDOT's changes to previous design for the Stadium Interchange will save the taxpayers \$80 million.

The preferred 8-lane alternative meets the purpose and need for the project. The District looks forward to continuing to work with WisDOT and other stakeholders as this essential project moves forward.

Sincerely


Patrick Goss
Executive Director

Response to Southeast Wisconsin Professional Baseball Park District

1. Comment acknowledged.



SOUTHEAST WISCONSIN PROFESSIONAL BASEBALL PARK DISTRICT

ADDRESS: 1 BREWERS WAY MILWAUKEE, WI 53214 E-MAIL: CONTACT@WIBASEBALLDISTRICT.COM PHONE: (414)902-4040



November 30, 2023

Chris Zacharias
WisDOT Southeast Region
141 NW Barstow Street, Suite 218
Waukesha, WI 53187-0798

Dear Mr. Zacharias:

On behalf of the Southeast Wisconsin Professional Baseball Park District (District), I commend the Wisconsin Department of Transportation (WisDOT) and the Federal Highway Administration (FHWA) for conducting the recently unveiled greenhouse gas (GHG) for I-94 East-West (E-W). The study analyzed the GHG impact of each of the alternatives in the current Supplemental Draft Environmental Impact Statement (EIS).

Of the alternatives studied, it is clear the greatest benefit in reductions in GHG from 20230-2050 come from both the 6-lane diverging diamond and WisDOT's preferred alternative, the 8-lane diverging diamond. The analysis shows a reduction in GHG by both alternatives of approximately 22-24% by 2050. There is no significant difference in the reduction of GHG between the two alternatives.

Again, on behalf of the District, I commend WisDOT and FHWA for doing this important analysis and demonstrating that under either alternative, there is a significant reduction in GHG from 2030-2050. We look forward to working with WisDOT and other interested parties on this vital corridor and hope to see a Record of Decision soon endorsing the preferred alternative so this vital project can move forward.

Thank you for your time and consideration.

Sincerely,

Pat Goss
Executive Director

Wisconsin Department of Natural
Resources Correspondence

From: [Pappas, Ryan J - DNR](#)
To: [Ruenger, Brenda H - DOT](#)
Cc: [Zacharias, Christopher - DOT](#); [Paluszek, Carly](#); [Goldsworthy, Benjamin](#)
Subject: [EXTERNAL] RE: I-94 E-W, WisDOT ID: 1060-27-03
Date: Tuesday, November 21, 2023 9:22:12 AM
Attachments: [image001.png](#)

Hi Brenda,

Please see the attached updated NHI review. [REDACTED]
[REDACTED]. Please let me know if you have any questions. Best regards,

Ryan Pappas

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Ryan Pappas

Phone: (414) 750-7495

Ryan.Pappas@wisconsin.gov

From: Ruenger, Brenda H - DOT <Brenda.Ruenger@dot.wi.gov>
Sent: Monday, November 20, 2023 3:13 PM
To: Pappas, Ryan J - DNR <Ryan.Pappas@wisconsin.gov>
Cc: Zacharias, Christopher - DOT <Christopher.Zacharias@dot.wi.gov>; Paluszek, Carly <Carly.Paluszek@jacobs.com>; Goldsworthy, Benjamin/MKE <Benjamin.Goldsworthy@jacobs.com>
Subject: RE: I-94 E-W, WisDOT ID: 1060-27-03

Ryan,

The Box folder link below should contain everything you need.

<https://wisdot.box.com/s/4soodcnw3zknoxbcssiv295xbho3hbvl>

Brenda Ruenger, Pfg

Environmental Analysis and Review Specialist-Adv./Environmental Coordinator

Wisconsin Department of Transportation - DTSD Southeast Region

262-548-6709



From: Pappas, Ryan J - DNR <Ryan.Pappas@wisconsin.gov>
Sent: Monday, November 20, 2023 2:58 PM
To: Ruenger, Brenda H - DOT <Brenda.Ruenger@dot.wi.gov>
Cc: Zacharias, Christopher - DOT <Christopher.Zacharias@dot.wi.gov>; Paluszek, Carly <Carly.Paluszek@jacobs.com>; Goldsworthy, Benjamin/MKE <Benjamin.Goldsworthy@jacobs.com>
Subject: RE: I-94 E-W, WisDOT ID: 1060-27-03

My apologies on the delay Brenda,

Can you please provide the referenced Section 7 consultation correspondence, which contains our project scope and other tree clearing details and the bridge inspection showing evidence of bat roosting (one pellet of guano) under one of the bridges? Thanks!

Ryan

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Ryan Pappas

Phone: (414) 750-7495

Ryan.Pappas@wisconsin.gov

From: Ruenger, Brenda H - DOT <Brenda.Ruenger@dot.wi.gov>
Sent: Monday, November 20, 2023 9:00 AM
To: Pappas, Ryan J - DNR <Ryan.Pappas@wisconsin.gov>
Cc: Zacharias, Christopher - DOT <Christopher.Zacharias@dot.wi.gov>; Paluszek, Carly <Carly.Paluszek@jacobs.com>; Goldsworthy, Benjamin/MKE <Benjamin.Goldsworthy@jacobs.com>
Subject: RE: I-94 E-W, WisDOT ID: 1060-27-03

Hi Ryan,

I just want to close the loop on this discussion below. Are you able to complete the NHI update with what I provided, or do you need additional information?

Thanks,

Brenda Ruenger, Plg

Environmental Analysis and Review Specialist-Adv./Environmental Coordinator
Wisconsin Department of Transportation - DTSD Southeast Region
262-548-6709



From: Ruenger, Brenda H - DOT
Sent: Tuesday, October 24, 2023 3:31 PM
To: Pappas, Ryan J - DNR <Ryan.Pappas@wisconsin.gov>
Cc: Zacharias, Christopher - DOT <Christopher.Zacharias@dot.wi.gov>; Paluszek, Carly <Carly.Paluszek@jacobs.com>; Goldsworthy, Benjamin/MKE <Benjamin.Goldsworthy@jacobs.com>
Subject: RE: I-94 E-W, WisDOT ID: 1060-27-03

Hi Ryan,

Thanks for the update. Yes, we conducted bridge and structure inspections for bats in May of this year. No bats were observed; however, we did find evidence of bat roosting (one pellet of guano) under one of the bridges. We made a may affect likely to adversely affect (LAA) determination for the NLEB and tricolored bat (TCB) due to needing to clear more than 20 acres of trees per 5 miles of project length. I can send you our Section 7 consultation correspondence, which contains our project scope and other tree clearing details. We also submitted a Biological Assessment for the TCB since it is listed as "Proposed Endangered" currently. We expect to receive a response from USFWS in early November on that. We have also consulted with USFWS on the RPBB for this project. Let me know if you need to see any of this.

We are deferring the state-listed plant species survey until after the SFEIS/ROD approval. Most likely next season this survey work will occur.

Thanks,

Brenda Ruenger, Plg

Environmental Analysis and Review Specialist-Adv./Environmental Coordinator
Wisconsin Department of Transportation - DTSD Southeast Region
262-548-6709



From: Pappas, Ryan J - DNR <Ryan.Pappas@wisconsin.gov>
Sent: Tuesday, October 24, 2023 3:02 PM
To: Ruenger, Brenda H - DOT <Brenda.Ruenger@dot.wi.gov>
Cc: Zacharias, Christopher - DOT <Christopher.Zacharias@dot.wi.gov>; Paluszek, Carly <Carly.Paluszek@jacobs.com>; Goldsworthy, Benjamin/MKE <Benjamin.Goldsworthy@jacobs.com>
Subject: RE: I-94 E-W, WisDOT ID: 1060-27-03

Hi Brenda,

Thanks for reaching out for an update on this. I just renewed the review [REDACTED]

Will WisDOT be doing bridge inspections for Bats/migratory birds for the federal side of this? Has this already been done? Can you give me a description of any tree clearing/grubbing activities for the project? Can you briefly describe the propose bridge work? Once I better understand the scope of work, I can finish the NHI renewal.

Has WisDOT completed surveys for the 5 END/THR plants? [REDACTED]. Let me know if you have any questions or want to set up some time to discuss. Best regards,

Ryan Pappas

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Ryan Pappas

Phone: (414) 750-7495

Ryan.Pappas@wisconsin.gov

From: Ruenger, Brenda H - DOT <Brenda.Ruenger@dot.wi.gov>
Sent: Wednesday, October 18, 2023 12:20 PM
To: Pappas, Ryan J - DNR <Ryan.Pappas@wisconsin.gov>
Cc: Zacharias, Christopher - DOT <Christopher.Zacharias@dot.wi.gov>; Paluszek, Carly <Carly.Paluszek@jacobs.com>; Goldsworthy, Benjamin/MKE <Benjamin.Goldsworthy@jacobs.com>
Subject: I-94 E-W, WisDOT ID: 1060-27-03

Hi Ryan,

For the I-94 E-W freeway project, we are preparing to submit our environmental document to FHWA for approval soon and realized that our NHI data is well over a year old. Date on summary report is 9/30/2021. Could you please update this for us to confirm that information has not changed? Attached are the IRL and NHI for your reference.

Thanks,

Brenda Ruenger, Pq

Environmental Analysis and Review Specialist-Adv./Environmental Coordinator

Wisconsin Department of Transportation - DTSD Southeast Region

262-548-6709



U.S. Fish and Wildlife Service
Correspondence



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Minnesota-Wisconsin Ecological Services Field Office
3815 American Blvd East
Bloomington, MN 55425-1659
Phone: (952) 858-0793

In Reply Refer To:
Project Code: 2023-0058024
Project Name: I-94 East-West Corridor Study

March 04, 2024

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through IPaC by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at: <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts, see [Migratory Bird Permit | What We Do | U.S. Fish & Wildlife Service \(fws.gov\)](#).

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures, see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Minnesota-Wisconsin Ecological Services Field Office

3815 American Blvd East

Bloomington, MN 55425-1659

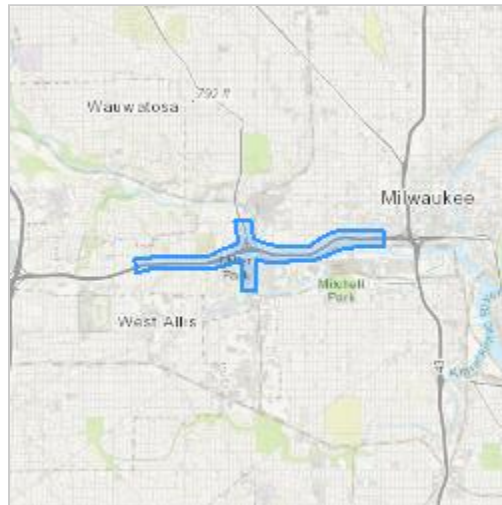
(952) 858-0793

PROJECT SUMMARY

Project Code: 2023-0058024
Project Name: I-94 East-West Corridor Study
Project Type: Road/Hwy - Maintenance/Modification
Project Description: WisDOT is developing alternatives and preparing a Supplemental Environmental Impact Statement to modernize the stretch of I-94 between 70th and 16th streets in Milwaukee, WI. The goal of the project is to improve safety, replace aging infrastructure (originally constructed in the 1960s) and reduce congestion.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@43.031787800000004,-87.96629057711074,14z>



Counties: Milwaukee County, Wisconsin

ENDANGERED SPECIES ACT SPECIES

There is a total of 4 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Endangered
Tricolored Bat <i>Perimyotis subflavus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10515	Proposed Endangered

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate
Rusty Patched Bumble Bee <i>Bombus affinis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9383 General project design guidelines: https://ipac.ecosphere.fws.gov/project/6VMJCX4YXJA77POC46JGVK3ECA/documents/generated/5967.pdf	Endangered

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

Agency: Wisconsin Department of Transportation
Name: Carly Paluszek
Address: 525 W Monroe St
Address Line 2: Suite 1600
City: Chicago
State: IL
Zip: 60661
Email: carly.paluszek@jacobs.com
Phone: 6309130603

LEAD AGENCY CONTACT INFORMATION

Lead Agency: Federal Highway Administration

From: [Ruenger, Brenda H - DOT](#)
To: [Paluszek, Carly](#); [Goldsworthy, Benjamin](#)
Cc: [Gibson, Jennifer J - DOT](#); [Zacharias, Christopher - DOT](#); [Mohr, Bill - DOT](#); [Bauer, Jeff](#)
Subject: FW: [EXTERNAL] RE: Request for Approval & Verification of FHWA PBO NLEB LAA Determination for WisDOT project ID: 1060-27-03, I-94 East-West, 16th Street to 70th Street, Milwaukee co.
Date: Wednesday, July 26, 2023 10:27:57 AM
Attachments: [image002.png](#)
[image003.png](#)

Approval of project to be covered under FHWA Programmatic Biological Opinion (PBO) and Incidental Take Statement (ITS) is below from USFWS.

Brenda Ruenger, PG

Environmental Analysis and Review Specialist-Adv./Environmental Coordinator
Wisconsin Department of Transportation - DTSD Southeast Region
262-548-6709



From: Simpkins, Darin <Darin_Simpkins@fws.gov>
Sent: Wednesday, July 26, 2023 9:14 AM
To: Ruenger, Brenda H - DOT <Brenda.Ruenger@dot.wi.gov>
Subject: Re: [EXTERNAL] RE: Request for Approval & Verification of FHWA PBO NLEB LAA Determination for WisDOT project ID: 1060-27-03, I-94 East-West, 16th Street to 70th Street, Milwaukee co.

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USFWS Project Code #: 2023-0058024

RE: WisDOT ID: 1060-27-03 I-94 East-West Corridor Study

Dear Brenda Ruenger:

The U.S. Fish and Wildlife Service (Service) is responding to your request dated July 25, 2023 to verify that the proposed I-94 East-West Corridor Study Project in Milwaukee County,

WI (WisDOT ID: 1060-27-03) (the Project) can rely on the amended February 5, 2018, Programmatic Biological Opinion (BO) (dated March 23, 2023) for federally funded or approved transportation projects that may affect the federally listed endangered northern long-eared bat (NLEB) (*Myotis septentrionalis*).

This letter provides the Service's response as to whether the Wisconsin Department of Transportation, on behalf of the Federal Highway Administration, may rely on the BO to comply with Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) for the Project's effects to the NLEB.

The Wisconsin Department of Transportation, on behalf of the Federal Highway Administration, has determined that the Project is *Likely to Adversely Affect* the NLEB.

Conclusion

The Service has reviewed the effects of the proposed Project, which includes the Wisconsin Department of Transportation, on behalf of the Federal Highway Administration, commitment to implement any applicable mitigation measures as indicated on the LAA Consistency Letter. We confirm that the proposed Project's effects are consistent with those analyzed in the BO. The Service has determined that projects consistent with the conservation measures and scope of the program analyzed in the BO are not likely to jeopardize the continued existence of the NLEB. In coordination with your agency and the other sponsoring Federal Transportation Agencies, the Service will reevaluate this conclusion annually in light of any new pertinent information under the adaptive management provisions of the BO.

Incidental Take

Northern Long-eared Bat

Tree Removal

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of NLEBs. As described in the Incidental Take Statement (ITS) of the BO, quantifying the specific number of individuals affected is not practicable. Therefore, the Services uses a surrogate (acreage of tree removal) to prove a means of expressing and monitoring take of the NLEB.

The Proposed Project will remove approximately 36.5 acres of trees from habitat that is suitable for the NLEB that are anticipated to result in adverse effects. This project requires 27 acres of tree removal within 100 feet of the roadway surface and an additional 9.5 acres of tree removal from 100 to 300 feet from the roadway surface.

The project includes reconstructing about 3.5 miles of I-94 in the City of Milwaukee, rebuilding the freeway and bridges, modifying interchanges to improve safety and traffic flow, including the Stadium Interchange, and reconstructing local streets affected by the freeway reconstruction. Construction for this project is anticipated to begin in 2025 and extend into 2031.

While the east-west (I-94) portion of the project is approximately 3.5 miles in length, there is also a north-west portion of the project at the Stadium Interchange (WIS 175) that adds approximately one mile of roadway reconstruction in each direction. Furthermore, the project is in an urban, developed area of Milwaukee and most of the corridor does not contain connected suitable habitat.

Bridge, Culvert, and/or Structure Activities

Incidental take of NLEBs is reasonably certain to occur at up to 10 bridges/culverts or structures range-wide in a 12-month period when signs of bat use or occupancy was observed (five or fewer bats observed), as covered under the ITS in the BO. If your initial bridge/culvert or structure bat assessment failed to detect NLEB use or occupancy, yet bats are later detected prior to, or during construction, please submit the Post Assessment Discovery of Bats at Bridge/Culvert or Structure Form (User Guide Appendix E) to this Service Office within 2 working days of the incident. In these instances, potential incidental take of NLEBs may be exempted provided that the take is reported to the Service.

Reasonable and Prudent Measures

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the BO as a surrogate measure of NLEB incidental take and exempted from the prohibitions of Section 9 of the ESA. Such exemption is effective as long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the BO's ITS.

The sole RPM of the BO's ITS requires the Federal Transportation Agencies to ensure that State/Local transportation agencies, who choose to include eligible projects under the programmatic action, incorporate all applicable conservation measures in the project proposals submitted to the Service for ESA Section 7 compliance using the BO. The implementing terms and conditions for this RPM require the Federal Transportation Agencies to offer training to appropriate personnel about using the BO, and promptly report sick, injured, or dead bats (regardless of species) or any other federally listed species located at the project site.

Reporting Dead or Injured Bats

The Wisconsin Department of Transportation, on behalf of the Federal Highway Administration, and any contractors must take care when handling dead or injured NLEB, or any other federally listed species that are found at the project site to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO has been exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Reinitiation Notice

This letter concludes consultation for the Project, which qualifies for inclusion in the BO issued to the Federal Transportation Agencies. To maintain this inclusion, a reinitiation of this Project-level consultation is required where the Federal Highway Administration discretionary involvement or control over the Project has been retained (or is authorized by law) and if:

1. the amount or extent of incidental take of NLEBs is exceeded;
2. new information reveals that the Project may affect listed species or critical habitat in a manner or to an extent not considered in the BO;
3. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the BO; or
4. a new species is listed or critical habitat designated that may be affected by the Project.

Per condition #1 above, the anticipated incidental take is exceeded when:

- the Project removes more than 36.5 acres of habitat suitable for the NLEB; and/or
- the Project takes more than 5 NLEBs resulting from a bridge, culvert, or structure activity

at no more than 10 bridges, culverts, or structures range-wide in a 12 month period^[1].

In instances where the amount or extent of incidental take is exceeded, the Wisconsin Department of Transportation, on behalf of the Federal Highway Administration, is required to immediately request a reinitiation of this Project-level consultation.

Tri-colored Bat (TCB; *Perimyotis subflavus*) is petitioned but not currently listed as threatened or endangered. Consultation with the Service is not required for determinations on non-listed species.

We appreciate your continued efforts to ensure that this Project is fully consistent with all applicable provisions of the BO. If you have any questions regarding our response or if you need additional information, please contact Darin Simpkins at darin_simpkins@fws.gov or 920-866-1739.

Sincerely,

Darin Simpkins

From: Ruenger, Brenda H - DOT <Brenda.Ruenger@dot.wi.gov>

Sent: Tuesday, July 25, 2023 2:40 PM

To: Simpkins, Darin <Darin_Simpkins@fws.gov>

Subject: RE: [EXTERNAL] RE: Request for Approval & Verification of FHWA PBO NLEB LAA Determination for WisDOT project ID: 1060-27-03, I-94 East-West, 16th Street to 70th Street, Milwaukee co.

Sending attachments in two separate emails in case file size is too large. 1 of 2.

Brenda Ruenger, Plg

Environmental Analysis and Review Specialist-Adv./Environmental Coordinator

Wisconsin Department of Transportation - DTSD Southeast Region

262-548-6709



From: Simpkins, Darin <Darin_Simpkins@fws.gov>
Sent: Tuesday, July 25, 2023 11:59 AM
To: Ruenger, Brenda H - DOT <Brenda.Ruenger@dot.wi.gov>
Cc: Gibson, Jennifer J - DOT <Jennifer.Gibson@dot.wi.gov>; Zacharias, Christopher - DOT <Christopher.Zacharias@dot.wi.gov>; Goldsworthy, Benjamin/MKE <Benjamin.Goldsworthy@jacobs.com>; Paluszek, Carly <Carly.Paluszek@jacobs.com>; Bauer, Jeff <Jeff.Bauer@jacobs.com>
Subject: Re: [EXTERNAL] RE: Request for Approval & Verification of FHWA PBO NLEB LAA Determination for WisDOT project ID: 1060-27-03, I-94 East-West, 16th Street to 70th Street, Milwaukee co.

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Hi Brenda -

I'm not sure that I received this previously. Could you resend the OSL and other consultation documents. I'll turn this around ASAP.

Darin

From: Ruenger, Brenda H - DOT <Brenda.Ruenger@dot.wi.gov>
Sent: Monday, July 24, 2023 11:26 AM
To: Simpkins, Darin <Darin_Simpkins@fws.gov>
Cc: Gibson, Jennifer J - DOT <jennifer.gibson@dot.wi.gov>; Zacharias, Christopher - DOT <Christopher.Zacharias@dot.wi.gov>; Goldsworthy, Benjamin/MKE <Benjamin.Goldsworthy@jacobs.com>; Paluszek, Carly <Carly.Paluszek@jacobs.com>; Bauer, Jeff <Jeff.Bauer@jacobs.com>
Subject: [EXTERNAL] RE: Request for Approval & Verification of FHWA PBO NLEB LAA Determination for WisDOT project ID: 1060-27-03, I-94 East-West, 16th Street to 70th Street, Milwaukee co.

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello Darin,

I am following up on my email below from two weeks ago regarding this project to see if you have any questions or need further information. Could you confirm you received the email below and let us know when you will be able to respond? We should have the Biological Assessment finalized for the Tricolored Bat soon.

Thank you,

Brenda Ruenger, Plg

Environmental Analysis and Review Specialist-Adv./Environmental Coordinator
Wisconsin Department of Transportation - DTSD Southeast Region
262-548-6709



From: Ruenger, Brenda H - DOT
Sent: Friday, July 07, 2023 8:24 AM
To: Simpkins, Darin <Darin_Simpkins@fws.gov>
Cc: Gibson, Jennifer J - DOT <Jennifer.Gibson@dot.wi.gov>; Zacharias, Christopher - DOT <Christopher.Zacharias@dot.wi.gov>; Goldsworthy, Benjamin/MKE <Benjamin.Goldsworthy@jacobs.com>; Paluszek, Carly <Carly.Paluszek@jacobs.com>; Pappas, Ryan J - DNR <Ryan.Pappas@wisconsin.gov>
Subject: Request for Approval & Verification of FHWA PBO NLEB LAA Determination for WisDOT project ID: 1060-27-03, I-94 East-West, 16th Street to 70th Street, Milwaukee co.

Good morning, Darin -

WisDOT is submitting the following information to fulfil Section 7(a)(2) responsibilities under the Endangered Species Act (ESA) pertaining to potential impacts to the Northern Long-Eared Bat (NLEB) based on the species' recent change in status from Threatened to Endangered. WisDOT is requesting USFWS approval to be covered under the FHWA Programmatic PBO and verification that the above-referenced project is consistent with the *May Affect, Likely to Adversely Affect* (LAA) determination.

This project exceeds the 20 acres of tree removal per 5-mile section of roadway threshold in the NLEB FHWA Programmatic PBO key in IPaC. The PBO indicates that acreage exceedances can be approved by local USFWS offices on a case-by-case basis provided the effects of the action continue to fit under the PBO. WisDOT is requesting that FWS provide this approval to allow use of the NLEB FHWA Programmatic consultation process. A screen shot of this section

of the Programmatic key is below.

10. Will the project clear more than 20 acres of suitable habitat per 5-mile section of road/rail?

Yes

Your project is outside of the scope of the programmatic consultation for this key because the maximum acreage cleared for any given project addressed in this programmatic range-wide consultation is approximately 20 acres of suitable habitat (generally per 5-mile section of road/rail), unless approved by a local USFWS Field Office on case-by-case basis that the effects of the action fit in the programmatic. Please contact the appropriate U.S. Fish and Wildlife Service office for additional assistance with your project.

This request is an update to our previous informal Section 7 consultation for the Rusty Patched Bumble Bee (RPBB) on July 28, 2022, which also included NLEB and the Monarch butterfly. The Service concurred with WisDOT's *May Affect, Not Likely to Adversely Affect* (NLAA) determination for the RPBB on September 26, 2022.

The subject project includes reconstructing about 3.5 miles of I-94 in the City of Milwaukee, rebuilding the freeway and bridges, modifying interchanges to improve safety and traffic flow, including the Stadium Interchange, and reconstructing local streets affected by the freeway reconstruction. Construction for this project is anticipated to begin in 2025 and extend into 2031.

While the east-west (I-94) portion of the project is approximately 3.5 miles in length, there is also a north-west portion of the project at the Stadium Interchange (WIS 175) that adds approximately one mile of roadway reconstruction in each direction. Furthermore, the project is in an urban, developed area of Milwaukee and most of the corridor does not contain connected suitable habitat.

The subject project will require tree clearing beyond the 100-foot threshold during the NLEB inactive season. This project requires 27 acres of tree removal within 100 feet of the roadway surface and an additional 9.5 acres of tree removal from 100 to 300 feet from the roadway surface. Exhibits showing the areas of tree removal are attached.

Seven building structures will be demolished within the project limits. An inspection was conducted at each building for evidence of bat roosting and no evidence was found; however, there are suitable habitat trees within 1000 feet of these structures that will be cut and cleared. The tree removal is unavoidable as it is necessary to accommodate the modernized project design.

In addition, all the bridge structures within the project were inspected for evidence of bat roosting on June 15, 2023. An isolated dropping of bat guano was identified under one of the bridge structures.

The updated official species list and structure inspection forms are attached.

A Biological Assessment (BA) is being prepared for the Tricolored Bat (TCB) in anticipation of it being listed later this year. WisDOT anticipates submitting the BA to USFWS sometime later this month.

Please let me know if you need any further information to complete your review.

Thank you,

Brenda Ruenger, Pq

Environmental Analysis and Review Specialist-Adv./Environmental Coordinator

Wisconsin Department of Transportation - DTSD Southeast Region

262-548-6709





United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Minnesota-Wisconsin Field Office
4101 American Boulevard East
Bloomington, Minnesota 55425-1665
Phone: (952) 252-0092 Fax: (952) 646-2873



November 9, 2023

In Reply refer to:

ESFO-IPaC Number: 2023-0058024

Lisa Hemesath
Environmental Protection Specialist
FHWA – Wisconsin Division Office
City Center West
525 Junction Road, Suite 8000
Madison WI 53717

Subject: Conference Opinion on the Interstate 94 East-West Corridor Project

Dear Lisa Hemesath,

This document transmits our final conference opinion under section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) for the proposed Federal Highway Administration (FHWA) and Wisconsin Department of Transportation (WisDOT) Interstate 94 (I-94) East-West Corridor Project (Federal Project Number: FHWA-WI-EIS-2022-01-F; WisDOT Project ID: 1060-27-00, 1060-27-03) in Milwaukee County, Wisconsin. Your request for formal conference was received on July 26, 2023. This conference opinion is based on information provided in the July 25, 2023 Biological Assessment, other available literature, survey data, and other sources of information. A complete administrative record of this consultation is on file at the Minnesota-Wisconsin Ecological Field Office (MNWIFO).

The enclosed conference opinion addresses effects of the project on the tri-colored bat (TCB; *Perimyotis subflavus*), which has been proposed for listing as endangered. After reviewing the status and environmental baseline of the TCB and the analysis of the potential effects of the proposed action to the species, we have concluded that the proposed action is not likely to jeopardize the continued existence of the species.

This conference opinion provides a statement of anticipated incidental take resulting from project activities. The Incidental Take Statement (ITS) issued exempts the FHWA from prohibitions of

taking under Section 9 of the Act provided that such taking is in compliance with the terms and conditions of the ITS. However, the ITS does not become effective until the TCB is listed and the conference opinion is adopted as the biological opinion through formal consultation. No take of the TCB may occur between the listing and adoption of the conference opinion as a biological opinion. Our office will coordinate with your staff regarding this process when a final listing rule is published for the TCB.

Please contact the Service if the project changes or new information reveals effects of the proposed action to proposed or listed species or critical habitat to an extent not covered in your biological assessment. If you have any questions or comments on this biological opinion, please contact Darin Simpkins, Fish and Wildlife Biologist, at (920)866-1739, or via email at *darin_simpkins@fws.gov*.

Sincerely,

Shauna Marquardt
Field Supervisor
Signed by Betsy M. Galbraith
Acting Field Supervisor

Attachment

CONFERENCE OPINION

on

Effects to the Tri-Colored Bat from the
Interstate 94 East-West Corridor Project

IPaC Code: 2023-0058024

Prepared by:
U.S. Fish and Wildlife Service
Minnesota-Wisconsin Ecological Services Field Office

November 9, 2023

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INTRODUCTION

This document is the U.S. Fish and Wildlife Service's (Service) Conference Opinion (CO) based on our review of the Federal Highway Administration (FHWA) and Wisconsin Department of Transportation (WisDOT) Interstate 94 (I-94) East-West Corridor Project (Federal Project Number: FHWA-WI-EIS-2022-01-F; WisDOT Project ID: 1060-27-00, 1060-27-03) in Milwaukee County, Wisconsin. As stated in the Biological Assessment (BA) submitted by the FHWA on July 26, 2023, the purpose of the project is to reconstruct Interstate 94 (I-94) between 70th Street and 16th Street. The scope of the proposed action is to rebuild the freeway and bridges, modify interchange access to improve safety and traffic flow, and reconstruct local streets affected by the freeway reconstruction. Utility relocations would be needed to accommodate roadway modifications.

Formal conference was initiated on July 26, 2023 via an email from the FHWA to the Service's Minnesota-Wisconsin Ecological Services Field Office (MNWIFO). In accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), this CO provides: 1) an estimation of the amount of take of the tricolored bat (TCB; *Perimyotis subflavus*) that may occur from project activities, 2) documentation of the Service's recommendations to minimize effects, and 3) a determination of the ultimate effect of the take of the species. The incidental take statement for the TCB does not become effective until the species is listed and the conference opinion is adopted as the biological opinion issued through formal consultation.

This CO is based on information provided in the July 25, 2023 BA, field investigations, available literature, personal communications with species experts, and other sources of information regarding the status of the species. The Service has determined that the proposed action will not jeopardize the continued existence of the TCB but will result in incidental take of the species. No other federally listed, proposed, or candidate species or designated or proposed critical habitat are expected to be affected by project activities.

CONSULTATION HISTORY

December 17, 2021 – WisDOT obtained an official species list (OSL) from the Service’s Information for Planning and Consultation (IPaC) decision support system (Consultation Code: 03E19000-2022-SLI-0989).

December 17, 2021 – WisDOT completed the Northern Long-Eared Bat (NLEB; *Myotis septentrionalis*) Consultation and 4(d) Rule Consistency determination key and submitted a request to the Service to verify the Proposed Action is within the scope and adheres to the January 5, 2016, Programmatic Biological Opinion (PBO). Based on no response from the Service within 30 days, the Service verified that the PBO satisfies and concludes WisDOT’s responsibilities for this Action under ESA Section 7(a)(2) with respect to the NLEB.

March 16, 2022 – WisDOT obtained an updated OSL from the IPaC decision support system (Consultation Code: 2022-0020497).

August 16, 2022 – WisDOT obtained an updated OSL from the IPaC decision support system (Consultation Code: 2022-0020497).

July 28, 2022 – WisDOT initiated informal consultation with the Service on a *May Affect, Not Likely to Adversely Affect* (NLAA) determination for the rusty patched bumble bee (RPBB; *Bombus affinis*).

September 26, 2022 – WisDOT received concurrence from the Service on a NLAA determination for RPBB.

January 30, 2023 – The November 30, 2022, Service rule to reclassify the NLEB from threatened to endangered became effective, making the 4(d) rule no longer applicable.

March 21, 2023 – WisDOT obtained an updated OSL from the IPaC decision support system (Consultation Code: 2023-0058024).

June 19, 2023 – WisDOT obtained an updated OSL list from the IPaC decision support system (Consultation Code: 2023-0058024).

June 2023 – WisDOT completed the FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indian Bat (*Myotis sodalis*) online determination key. Because the project will remove more than 20 acres of suitable habitat, the project is outside the scope of the programmatic consultation.

July 7, 2023 – WisDOT emailed the Service requesting approval that the NLEB be covered under the FHWA PBO and verification that the project is consistent with the *May Affect, Likely to Adversely Affect* (LAA) affect determination.

July 24, 2023 – Email from the WisDOT to the Service inquiring about status of the verification request.

July 26, 2023 – Email from the Service to WisDOT verifying the use of the amended February 5, 2018 FHWA PBO and concluded that the project was not likely to jeopardize the continued existence of the NLEB.

July 26, 2023 – Email from FHWA to the Service requesting formal conferencing for TCB.

August 1, 2023 – Email from FHWA inquiring about status of request for conferencing.

August 2, 2023 – Email from Service to FHWA indicating that consultation was not required for unlisted species, but it was understandable FHWA would be interested in conferencing for TCB, so conferencing was initiated. The Service requested that future consultation requests be submitted under single cover.

August 3, 2023 – Email from Service to FHWA updating conferencing timeline.

August 3, 2023 – Email from FHWA to the Service justifying request for conferencing based on potential challenges between TCB listing and project timelines. FHWA acknowledged workload concerns with multiple consultation requests for same project and conferencing timeline.

November 9, 2023 – Email from the Service to FHWA transmitting the final CO.

CONFERENCE OPINION

DESCRIPTION OF THE PROPOSED ACTION

The FHWA and WisDOT proposes to reconstruct 3.5 mile stretch of Interstate 94 (I-94) between 70th Street and 16th Street in Milwaukee, Wisconsin (Figure 1). The scope of the proposed action is to rebuild the freeway and bridges, modify interchange access to improve safety and traffic flow, and reconstruct local streets affected by the freeway reconstruction. The proposed action would accomplish the following:

- Maintain a key link in the local, state, and national transportation network,
- Address the obsolete design of the I-94 East-West Corridor to improve safety and decrease crashes,
- Replace deteriorating pavement, and
- Accommodate existing and future traffic volumes at an acceptable level of service.

The study area termini are 70th Street on the west and 16th Street on the east. The service interchanges along I-94 at 68th Street/70th Street, Hawley Road, General Mitchell Boulevard, 35th Street, and 25th /26th/28th Street are included in the study, as is the Stadium Interchange. The Bluemound Road/Wisconsin Avenue/Wells Street service interchange with US 41 is also included as part of this study. At each interchange, the project limit extends north/south until each crossroad ties into existing alignment. The termini for the study generally matches the termini for two previously completed studies of the southeastern Wisconsin freeway system: the Zoo Interchange study, located west of the I-94 East-West Corridor, and the Marquette Interchange study, located to the east.

The project is in a highly urban setting within an existing freeway corridor and along several adjacent surface streets. Vegetation within the footprint is mostly limited to nonnative trees and shrubs or small pockets of remnant, dense native vegetation located between I-94 and adjacent roadways. These isolated pockets vary in size from less than 0.05 acre up to approximately 5 acres, and combined total approximately 36.5 acres of trees and shrubs. The Menomonee River flows to the south through the project area, crossing under I-94 just east of WIS 175 and supporting a row of trees along portions of each bank; however, a well-developed riparian area is not present due to the highly disturbed and urbanized nature of the project area. Within the project area outside the project footprint, more trees are present at the cemeteries, located between General Mitchell Boulevard and Hawley Road. These trees are landscaped in a park-like setting, generally widely spaced apart. Other small patches of trees are present along roadsides throughout the project footprint.



Figure 1. Project location map.

Conservation Measures

Conservation measures represent actions outlined in the project description that the action agency will implement to further the recovery of the species under review. Conservation measures implemented to minimize harm to listed species and which are proposed by the action agency are considered part of the project and their implementation is required under the terms of this consultation.

The FHWA and WisDOT has proposed to implement the following conservation measures to minimize potential impacts to the TCB:

- 1) WisDOT will modify all aspects of the project to avoid tree removal in excess of what is required to implement the project safely.
- 2) WisDOT will limit tree removal to that specified in project plans and ensure contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).
- 3) WisDOT will ensure tree removal in potential habitat occurs November 1 – March 31, outside of the active season, and areas will be clearly marked to stay within limits.
- 4) To minimize potential indirect effects on bats or aquatic insects which may provide forage, WisDOT will implement erosion, sediment, and stormwater controls to protect water quality, wetlands, and streams.
- 5) Where feasible, WisDOT will use vegetated swales to assist with filtering sediment and other pollutants from roadside drainage.
- 6) WisDOT will revegetate temporarily disturbed areas created from construction activities.
- 7) To minimize potential effects on air quality, construction contractors will use proactive measures to prevent discharges of dust into the atmosphere.
- 8) WisDOT will use the Backlight, Uplight, and Glare (BUG) system developed by the Illuminating Engineering Society to rate the amount of light emitted in unwanted directions.
 - a) WisDOT will design permanent lighting used during removal of suitable habitat and/or the removal/trimming of trees within suitable habitat to be as close to 0 for all three BUG ratings as possible, with a priority of "uplight" of 0 and "backlight" as low as practicable.
 - b) WisDOT will direct all temporary lighting used during bridge removal, replacement, and/or maintenance activities away from suitable habitat during the active season.
 - c) WisDOT will design the permanent lighting (other than any lighting already indicated for tree clearing or bridge/structure removal, replacement or maintenance activities) to be as

close to 0 for all three BUG ratings as possible, with a priority of "uplight" of 0 and "backlight" as low as practicable.

Other Activities Caused by the Action

A biological opinion (BO) or CO evaluates all consequences to species or critical habitat caused by the proposed Federal action, including the consequences of other activities caused by the proposed action, that are reasonably certain to occur (see definition of “effects of the action” at 50 CFR §402.02). Additional regulations at 50 CFR §402.17(a) identify factors to consider when determining whether activities caused by the proposed action (but not part of the proposed action) are reasonably certain to occur. These factors include, but are not limited to:

- 1) past experiences with activities that have resulted from actions that are similar in scope, nature, and magnitude to the proposed action;
- 2) existing plans for the activity; and
- 3) any remaining economic, administrative, and legal requirements necessary for the activity to go forward.

In the request for consultation, the FHWA did not describe, and the Service is not aware of, any additional activities caused by the Action that are not included in the previous description of the proposed Action. Therefore, this CO does not address further the topic of “other activities” caused by the Action.

Action Area

The action area is defined as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action” (50 Code of Federal Regulations [CFR] 402.02). The action area is not limited to the “footprint” of the project but rather encompasses the aerial extent of the biotic, chemical, and physical impacts to the environment resulting from the action.

In delineating the action area, the farthest reaching physical, chemical, and biotic effects of the action on the environment were evaluated. Ground-disturbing activities include replacing pavement, removing existing bridge structures, installing shoulders, and vegetation removal. There could be effects to the area surrounding the disturbed footprint as a result of noise from construction equipment. The impacts associated with these activities are expected to be encompassed within the proposed footprint and a 500-foot buffer, as depicted in Appendix C of the BA.

STATUS OF THE SPECIES

This section presents the biological or ecological information relevant to formulating this CO. Appropriate information on the TCB’s life history, its habitat and distribution, and other data on factors necessary to its survival are either included or referenced to provide background for analysis in later sections. This analysis documents the effects of past human and natural activities or events that have led to the current range-wide status of the species. Additional information can

be found in the species status assessment (USFWS 2021) and proposed rule to list the TCB as endangered under the ESA (USFWS 2022).

Species Description and Life History

The TCB is one of the smallest bats in eastern North America and is distinguished by its unique tricolored fur that appears dark at the base, lighter in the middle, and dark at the tip, with color typically varying between grey, yellow, and brown (USFWS 2021). This bat weighs 4–8 grams and has a forearm length of 32–36 millimeters, a total length of 7–8 centimeters, and a total wingspread of 21–26 centimeters (Kurta 1995). This species has only 34 teeth, a non-keeled calcar, and a furred uropatagium (USFWS 2021).

The TCB is found in the central and eastern U.S., Canada, and portions of Central America. This includes 39 U.S. states, the District of Columbia, 4 Canadian provinces, and 5 Central American countries (USFWS 2021). In Wisconsin, the TCB is not common, and can primarily be found in the western half of the state, but also hibernates in the northeastern part of Wisconsin (WDNR 2022).

During the winter months, TCB typically hibernate deep in caves and mines (WDNR 2022) but have also been documented using trees and bridges (Newman et al. 2021). This species arouses from hibernation and is primarily active from late April to October (WDNR 2022).

Summer roosting habitat for the TCB is not completely understood, but existing information indicates that this species prefers to roost during the day in foliage of deciduous trees (i.e., oak and maple trees) in mature forested habitat. Reproductive females occasionally form maternity colonies in man-made structures, such as barns (WDNR 2022). Other artificial roosts this species has been known to use during the summer includes bridges, concrete bunkers, and beneath porch roofs (USFWS 2021). Caves, mines, and rock crevices are used as night roosts. While TCB typically return to the same general area every summer, roost fidelity is low, with individual bats switching roost trees about every 2 days during the summer (WDNR 2022).

The TCB may roost and forage in forested areas near anthropogenic structures and buildings (e.g., suburban neighborhoods, parks, etc.) (Helms 2010, Shute et al. 2021). However, highly developed urbanized areas generally devoid of native vegetation (including isolated trees surrounded by expansive anthropogenic development (e.g., parking lots, industrial buildings, shopping centers)) are considered unsuitable habitat.

Foraging habitat for TCB includes forest edges, water sources, and forest canopies (WDNR 2022). This species preys on insects such as beetles (Coleoptera spp.), moths (Lepidoptera spp.), flies (Diptera spp.), and wasps (Hymenoptera spp.) (WDNR 2022). The TCB seem to prefer foraging along forested edges of larger forest openings, along edges of riparian areas, and over water and avoid foraging in dense, unbroken forests, and narrow road cuts through forests (Davis and Mumford 1962, Kurta 1995, Lacki and Hutchinson 1999, Ford et al. 2005, Menzel et al. 2005, Thames 2020).

The TCB mate in the fall and females retain sperm until spring. After emerging from

hibernation, fertilization takes place in April or May. Females typically roost alone but sometimes form small maternity colonies with other females (WDNR 2022). On average, these maternity roosts do not exceed 30 individuals (USFWS 2021). After a 45- to 50-day gestation period, females typically bear two pups in June or July. The pups stay with the mother or in the roost for about 3 weeks until they can fly. Once the pups are able to fly, they disperse from the maternity roost. TCBs become sexually mature during the fall of their second year (WDNR 2022).

Distribution and Population Status

The TCB are known from 39 States (Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Wisconsin, West Virginia, Wyoming), Washington D.C., 4 Canadian Provinces (Ontario, Quebec, New Brunswick, Nova Scotia), and Guatemala, Honduras, Belize, Nicaragua and Mexico (Figure 2). The species current distribution in New Mexico, Colorado, Wyoming, South Dakota, Texas and Great Lakes basin is the result of range expansion in recent decades. This expansion is largely attributed to increases in trees along rivers and increases in suitable winter roosting sites, such as abandoned mines and other human-made structures (USFWS 2021).

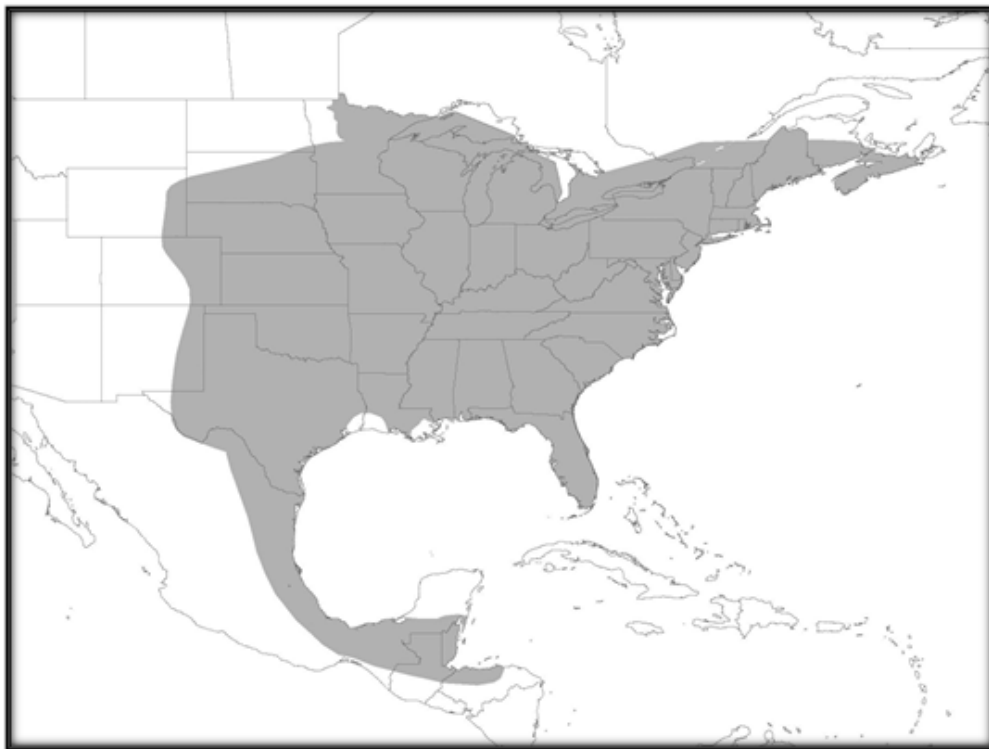


Figure 2. Range of the tri-colored bat.

Threats to the Species

The primary threats to the TCB are disease, wind development, habitat loss and climate change. Presented below is a brief description of the threats, that are factors under consideration for listing TCB under the Endangered Species Act. Additional information, including a description of all potential threats, may be found in the in the species status assessment (USFWS 2021) and proposed listing rule (USFWS 2022).

Disease

White-nose syndrome, a disease that impacts bats, is caused by a fungal pathogen. It has led to 90 to 100% declines in TCB winter colony abundance at sites impacted by the disease. Since white-nose syndrome was first observed in New York in 2006, it has spread rapidly across the majority of the TCB range.

Development

Wind turbines can kill bats by direct collision with turbine blades. Mortality has been documented for TCB, although a small number have been found to date. However, there are many wind farms operating within a large portion of the species' range, and many more projects are planned in the future.

Habitat Loss

Highway construction, commercial development, surface mining and wind facility construction permanently remove trees and migration corridors used as summer habitat and are activities prevalent in many areas of TCB range. Summer habitat loss may result in longer flights between suitable roosting and foraging habitat, fragmentation of maternity colonies and direct injury or mortality.

Gates or other structures intended to exclude people from caves and mines, but do not consider bat habitat needs during the winter. Gates not only restrict bat flight and movement, but also change airflow and internal cave and mine microclimates. A change of even a few degrees can make a cave unsuitable for hibernating bats. Also, cave-dwelling bats are vulnerable to human disturbance while hibernating. Arousal during hibernation causes bats to use up their already reduced energy stores, which may lead to individuals not surviving the winter.

Climate change:

Changes in temperature and precipitation may influence the species' available suitable roosting and foraging habitat and prey availability.

ENVIRONMENTAL BASELINE

The environmental baseline is predicated upon an analysis of the accumulated effects of past and recent or ongoing human-induced and natural factors that have led to the current status of the affected listed species and their habitat. The environmental baseline incorporates: (1) past and present effects of all Federal, State, or private actions or other human activities affecting the species; (2) anticipated effects to the affected species from all proposed Federal projects that have already undergone formal or early section 7 consultations; and (3) effects of non-Federal actions contemporaneous with the consultation process.

Status of the Species within the Action Area

No project-specific presence/probable absence surveys for the TCB have been conducted. The Wisconsin Department of Natural Resources (WDNR) Natural Heritage Inventory Portal indicate that no TCBs have been documented anywhere within Milwaukee County. In addition, WisDOT conducts structure inspections on bridges and culverts that have a diameter of 48 inches or larger. Inspections of structures within the project area were conducted on May 12 and 15, 2023, and June 27, 2023. No bats were observed during these surveys; however, one guano pellet was found below a bridge over the Menomonee River for the ramp from westbound I-94 to northbound WIS 175. The bat species that deposited the guano at this structure is not known so these results do not necessarily indicate TCB presence in the action area. Because TCBs are not typically found in the southeastern part of Wisconsin, it is more likely that the guano came from a bat of a different species.

No known mines or caves are present within or immediately surrounding the project limits; therefore, typical winter habitat is not present. During the winter, TCB sometimes use bridges as roosts; however, this is only known to occur in southern states. Therefore, winter habitat is not expected to be present in the action area. Small groups of trees are located along roadways within the action area, though distribution is patchy. Most patches of vegetation within the project footprint are less than 1 acre in size; however, some are as big as 5 acres. These larger patches would be considered marginally suitable. Most notably, approximately 1.5 acres of woodland habitat along the Menomonee River would be impacted by the project. In total, approximately 36.5 acres of trees and shrubs are present within the project footprint, of which 18.75 acres consists of medium to large trees that could be potential roosting habitat for TCB.

Factors Affecting the Species within the Action Area

As noted under **STATUS OF THE SPECIES - Threats to the Species**, the primary threats to the TCB are disease, wind development, habitat loss, and climate change. The TCB within the action area are likely exposed to all of these threats.

EFFECTS OF THE ACTION

In a BO or CO for a listed species, the effects of the proposed action are all reasonably certain consequences to the species caused by the action, including the consequences of other activities caused by the action. Activities caused by the action would not occur but for the action.

Consequences to species may occur later in time and may occur outside the action area. Outlined below are potential consequences from the proposed I-94 East-West Corridor Project. Although the FHWA has proposed to implement various conservation measures to reduce impacts to the TCB (see **DESCRIPTION OF THE PROPOSED ACTION – Conservation Measures**), it may not be possible to avoid impacts if TCBs are present. It is possible that some individuals may not be detected during surveys.

There are aspects of the proposed project that could result in direct effects to the TCB. Trees that could be used for summer day roosts or maternity roosts are potentially present, though none have been documented in the action area. However, no surveys of potential roost trees have been conducted in the action area. Approximately 18.75 acres of medium and large trees that could be potential roosting habitat for TCBs would be removed. Vegetation patches to be removed are less than 0.05 acre to approximately 5 acres and occur along existing roadways and the Menomonee River. Death or injury to TCBs is not expected because trees would be removed during the inactive season when bats are in hibernacula. While this species exhibits site fidelity, it does not exhibit roost tree fidelity, as they continually switch roost trees. However, the loss of potential roost trees could create confusion for any bats returning to the area for the summer, resulting in harm to the bats as they need to expend extra energy to search for new roost trees at a time when fat reserves are at their lowest. Tree removal can result in additional habitat loss and fragmentation for TCBs. While the majority of trees would be removed within 100 feet of existing roadways, a few would be 100–300 feet from existing roadways where the potential for habitat fragmentation is greater.

While it does not appear that TCBs roost in bridges in the action area, there is potential for the bridges to be used as roosts. Bridge removal could result in bats being harassed, injured, and/or killed if present in the structure at the time of removal. If the bridge is used as a maternity roost, pups not yet able to fly are at the highest risk. Additionally, bats that lose their roost as a result of bridge removal would expend additional energy searching for a new suitable roost site. This potential impact would be short-term because bridges removed would ultimately be replaced with new structures exhibiting similar habitat characteristics.

Bats are also known to roost in and on other structures, such as buildings. Seven buildings (i.e., one home, six businesses (two businesses share one building), and the WisDOT Southeast Region Service Facility) would be demolished as part of this project. The buildings are currently being used and/or lived in (i.e., not abandoned), though that does not necessarily discourage bats from roosting in them. Therefore, removal of these structures could harass or harm any TCBs that may be roosting in them at the time they are demolished. A survey of these buildings was conducted and no evidence of roosting bats was detected.

Lighting associated with construction may affect behavior of TCBs traveling between roosting and foraging areas. Additional lighting increases the risk of predation because the bats are more easily detected by predators. The lighting could also deter bats from flying through those areas, resulting in longer paths to foraging areas and higher energy expenditures, which is known to reduce reproductive rates when foraging patterns are significantly altered. Additional artificial lighting could also have a beneficial effect of creating high densities of insects available in the area on which TCBs can forage. However, I-94 and WIS 175 have existing lighting and adjacent

buildings and facilities (e.g., local streets, parking lots, video billboards) provide additional lighting in the area.

Construction lighting would likely create a brighter corridor than current conditions, but it would be adding light to an already well-lit area. Construction activities will generate loud noise due to the operation of heavy equipment. Any bats utilizing habitat in the action area are likely to be habituated to noise levels associated with heavy traffic; however, construction activities and equipment would generate louder/different noises than those to which the bats are accustomed. Any bats that may use habitat in the action area during winter could be roused out of hibernation by the noise and disturbance caused by construction activities. However, this species is not known to hibernate in the project vicinity; therefore, potential effects to hibernating TCBs are discountable.

A stormwater permit will be acquired and a storm water pollution prevention plan will be implemented during construction. In addition, standard best management practices will be followed. Combined, these measures will minimize the potential for the proposed project to impact water quality in the action area. Any sedimentation or impurities that may enter water bodies in the action area are expected to be in very low quantities and would not be expected to affect the quality of drinking water available or habitat for prey species, and consequently foraging habitat for the bats. Therefore, the proposed project could result in potential direct effects to the TCB associated with habitat loss and fragmentation, lighting, and construction noise.

Indirect effects are caused by the proposed action but occur later in time after the action is completed. The TCB is known to avoid large open areas, and therefore, would not be expected to fly out in the open habitat associated with the cleared project footprint. Even if a bat does occasionally fly through the project footprint, bats typically fly higher than the top of most vehicles. Therefore, it is unlikely any bats would be struck by traffic within the project footprint. Traffic on the roadway will generate noise in the action area. However, the project involves reconstruction of an existing roadway and the amount of noise that would be generated by traffic after construction is complete would not be appreciably different from the environmental baseline, which already includes noise from traffic. Because TCBs exhibit site fidelity, any bats utilizing habitat in the action area would be habituated to the current noise levels. Therefore, noise from vehicular traffic on the roadway is not expected to cause any bats to alter their breeding, foraging, or roosting behaviors. Therefore, effects to bats as a result of noise from vehicular traffic utilizing the constructed roadway are unlikely to occur.

Cumulative Effects

A BO or CO must predict the consequences to species caused by future non-Federal activities within the action area, i.e., cumulative effects. Cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation (50 CFR §402.02). Additional regulations at 50 CFR §402.17(a) identify factors to consider when determining whether activities are reasonably certain to occur. These factors include, but are not limited to: existing plans for the activity; and any remaining economic, administrative, and legal requirements necessary for the activity to go forward. The FHWA has a continuing duty to regulate the activity covered by this ITS. If the FHWA fails to assume and implement the terms and conditions, the protective coverage of Section 7 (a)(2) may lapse. In order to monitor the impact of incidental take, the FHWA must report the progress of the action and its impact on the species to the Service as specified in the ITS, pursuant to 50 CFR §402.14(i)(3).

Lands in the action area are privately owned. Some actions on private lands may require federal permits, such as a Clean Water Act Section 404 permit, and thus would be subject to Section 7 consultation. The Section 10(a)(1)(B) permit process can be used to ensure compliance with the ESA where there are no federal lands, funds, authorizations, or permits involved. The action area is highly urbanized. Individual landowners may complete projects on their own land, such as home or business renovations. However, no specific plans for future nonfederal actions in the action area are currently known.

CONCLUSION

After reviewing the current status of the TCB, environmental baseline for the action area, the effects of the proposed I-94 East-West Corridor Project, and cumulative effects, it is the Service's conference opinion that the completion of the project, as proposed, is not likely to jeopardize the continued existence of the TCB. This determination is based on the following considerations: 1) The project would not affect a known roost tree or hibernaculum and the TCB has not been documented within the action area or anywhere in Milwaukee County; 2) In the event that the TCB becomes listed prior to completion of the project, a provisional effect determination is provided - the proposed project may affect, and is likely to adversely affect the TCB due to habitat removal and fragmentation, artificial lighting, and construction noise. 3) Avoidance and minimization measures will be implemented to reduce the potential for take of TCB. These include limiting tree removal to the inactive season and avoiding excessive tree removal, applying measures to protect water and air quality, and employing appropriate techniques for the direction of construction lighting and the design of permanent lighting.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species without special exemption. Take is defined as to harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(a)(2), taking that is incidental to and not intended as part of the agency action is not considered prohibited taking under the Act, provided that such taking is in compliance with the terms and conditions of an Incidental Take Statement (ITS).

The measures described below are non-discretionary, and must be undertaken by the FHWA for the exemption in section 7(a)(2) to apply. If the FHWA fails to assume and implement the terms and conditions in this ITS, the protective coverage of section 7(a)(2) may lapse. In order to monitor the impact of incidental take, the FHWA must report the impact on the species to the Service as specified in the ITS [50 CFR 402.14(I)(3)].

Because the TCB is not officially listed, the ITS for the species does not become effective until a final listing rule is published. Should the TCB become federally listed, the FHWA must reinstate consultation with the Service for take to be exempted from prohibition under the Act.

Amount or Extent of Take Anticipated

Despite conservation measures implemented by the FHWA and as described under **EFFECTS OF THE ACTION**, incidental take of the TCB is expected to occur. The maximum amount and type of incidental take anticipated to result from each activity is summarized below.

Tree Removal

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of TCBs. As described in the Incidental Take Statement (ITS) of the BO, quantifying the specific number of individuals affected is not practicable. Therefore, the Services uses a surrogate (acreage of tree removal) to prove a means of expressing and monitoring take of the TCB.

The Proposed Project will remove approximately 18.75 acres of trees from habitat that is suitable for the TCB that are anticipated to result in adverse effects (Table 1).

Bridge, Culvert, and/or Structure Activities

Incidental take of TCBs is reasonably certain to occur at up to 10 bridges/culverts or structures range-wide in a 12-month period when signs of bat use or occupancy was observed (five or fewer bats observed), as covered under the ITS in the BO. If your initial bridge/culvert or structure bat assessment failed to detect TCB use or occupancy, yet bats are later detected prior to, or during construction, please submit the Post Assessment Discovery of Bats at Bridge/Culvert or Structure Form to this Service Office within 2 working days of the incident so that incidental take can be updated (Table 1). In these instances, potential incidental take of TCBs may be exempted provided that the take is reported to the Service.

Table 1. Amount and type of anticipated incidental take.

Common Name	Estimated Total Acres of Trees Removed from Habitat that is Suitable	Estimated Total Number of Individuals from Bridge, Culvert, and/or Structure Activities
Tri-colored Bat	18.75	5

Reporting Dead or Injured Bats

The Wisconsin Department of Transportation, on behalf of the Federal Highway Administration, and any contractors must take care when handling dead or injured TCB, or any other federally listed species that are found at the project site to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO has been exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Effect of Take

In the accompanying CO, the Service determined that the level of anticipated take is not likely to result in jeopardy to the TCB. No critical habitat has been designated for the species; therefore, none will be affected.

Reasonable and Prudent Measures

The Service believes the following RPMs are necessary and appropriate to minimize impacts of incidental take of TCB:

- 1) The FHWA will ensure that all of the conservation measures identified in the BA and outlined under **DESCRIPTION OF THE PROPOSED ACTION** are implemented.
- 2) The FHWA will ensure that the Service is notified of construction initiation and completion dates, as well as any unforeseen circumstances.
- 3) Should a dead or injured TCB be found during project activities, the FHWA will ensure that all construction activities cease immediately and that the Service is notified.

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the CO as a surrogate measure of TCB incidental take and exempted from the prohibitions of Section 9 of the ESA. Such exemption is effective as long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the CO's ITS.

The sole RPM of the CO's ITS requires the Federal Transportation Agencies to ensure that State/Local transportation agencies incorporate all applicable conservation measures in the project proposals submitted to the Service for ESA Section 7 compliance using the CO. The implementing terms and conditions for this RPM require the Federal Transportation Agencies to offer training to appropriate personnel about using the CO, and promptly report sick, injured, or dead bats (regardless of species) or any other federally listed species located at the project site.

Terms and Conditions

In order to be exempt from the prohibitions of Section 9 of the Act, the FHWA must ensure compliance with the following terms and conditions, which implement the RPMs described above. These terms and conditions are non-discretionary.

Terms and Conditions to fulfill RMP #1

- 1.1. Notify contractors and construction staff of conservation measures and ensure compliance with these measures.

- 1.2. Surveys for TCB will be conducted before construction activities begin. Construction activities should not begin until after the Service has been notified of survey results (if not already on-site during the survey).
- 1.3. If the TCB is federally listed at the time of activities, only individuals with authorization to capture TCB will capture and handle TCB. Authorized individuals include Service employees, MDC employees, and individuals with a 10(A)(1)(a) permit from the Service to capture eastern hellbenders.
- 1.4. If any conservation measures cannot be implemented or require modification, contact the Service for further discussion.

Terms and Conditions to fulfill RMP #2

- 2.1. Notify Service biologist Darin Simpkins via email (darin_simpkins@fws.gov) or telephone (920-866-1739) when construction is expected to begin.
- 2.2. Provide contact information for Service biologist Darin Simpkins (see above) to appropriate on-site staff so that they can immediately notify the Service of any unforeseen/emergency circumstances or request clarification regarding conservation measures or terms and conditions.
- 2.3. Notify Service biologist Darin Simpkins (see above) when construction is completed.
- 2.4. The FHWA will coordinate with the Service and WDNR to discuss and implement feasible conservation measures to avoid or impact TCB located within or near the action area.

Terms and Conditions to fulfill RMP #3

- 4.1. Cease all construction activities if a dead or injured TCB is found during project activities and immediately notify Service biologist Darin Simpkins via email (darin_simpkins@fws.gov) or telephone (920-866-1739).
- 4.2. If a dead or injured TCB is found, consult with the Service to review and reevaluate the conservation measures to prevent additional injury or mortality throughout the remaining project activities.

CONSERVATION RECOMMENDATIONS

Section 7 (a)(1) of the Act, directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation Recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery programs, or to develop information.

The following recommendations are provided for your consideration, to provide additional conservation benefits for the TCB.

1. The FHWA should continue to coordinate with the Service on proposed activities, including issuance of permits under 404 of the Clean Water Act, that occur within the range of the TCB. Early planning will allow timely initiation of project construction and maximize the potential for benefits TCB and their habitat. This process would also allow early identification of projects that may affect the species.
2. Where TCB habitat is permanently impacted, including from the issuance of a permit under 404 of the Clean Water Act, consider augmenting habitat to compensate for the loss or degradation of habitat.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

REINITIATION NOTICE

This concludes formal conference on the actions outlined in the BA submitted by the FHWA for the proposed I-94 East-West C. As provided in 50 Corridor Project. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: 1) the amount or extent of incidental take is exceeded; 2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this BO; 3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat designated not considered in this BO; or 4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

Per condition #1 above, the anticipated incidental take is exceeded when:

- the Project removes more than 18.75 acres of habitat suitable for the TCB; and/or
- the Project takes more than 5 TCBs during activities at no more than 10 bridges, culverts, or structures range-wide in a 12 month period.

In instances where the amount or extent of incidental take is exceeded, the Wisconsin Department of Transportation, on behalf of the Federal Highway Administration, is required to immediately request a reinitiation of this Project-level consultation.

As previously noted, the Incidental Take Statement for the TCB does not become effective until the species is listed. Should the TCB become federally listed, the FHWA must reinitiate consultation with the Service for take to be exempted from prohibition under the Act.

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Section 106 Correspondence and Meeting Minutes

From: [Paluszek, Carly](mailto:Paluszek_Carly)
To: [Paluszek, Carly](mailto:Paluszek_Carly)
Subject: FW: Fourth Section 106 Consultation Meeting; I-94 East-West Study in Milwaukee County, Wisconsin
Date: Monday, April 3, 2023 1:46:25 PM

From: Benjamin Rhodd <Benjamin.Rhodd@fcp-nsn.gov>
Sent: Wednesday, February 22, 2023 1:54 PM
To: LeVeque, Joshua - DOT <Joshua.LeVeque@dot.wi.gov>
Subject: RE: Fourth Section 106 Consultation Meeting; I-94 East-West Study in Milwaukee County, Wisconsin

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Mr. LeVeque,

Pursuant to consultation under Section 106 of the National Historic Preservation Act (1966 as amended) the Forest County Potawatomi Community (FCPC), a Federally Recognized Native American Tribe, reserves the right to comment on Federal undertakings, as defined under the act.

The Tribal Historic Preservation Office (THPO) staff has reviewed the information you provided for this project. Upon review of site data and supplemental cultural history within our Office, the FCPC THPO is pleased to offer a finding of No Historic Properties affected of significance to the FCPC, however, we request to remain as a consulting party for this project.

As a standard caveat sent with each proposed project reviewed by the FCPC THPO, the following applies. In the event an Inadvertent Discovery (ID) occurs at any phase of a project or undertaking as defined, and human remains or archaeologically significant materials are exposed as a result of project activities, work should cease immediately. The Tribe(s) must be included with the SHPO in any consultation regarding treatment and disposition of an ID find.

Thank you for protecting cultural and historic properties and if you have any questions or concerns, please contact me at the email or number listed below.

Respectfully,

Ben Rhodd, MS, RPA, Tribal Historic Preservation Officer
Forest County Potawatomi
Historic Preservation Office
8130 Mish ko Swen Drive, P.O. Box 340, Crandon, Wisconsin 54520
P: 715-478-7354 C: 715-889-0202 Main: 715-478-7474
Email: Benjamin.Rhodd@fcp-nsn.gov
www.fcspotawatomi.com

From: LeVeque, Joshua - DOT <Joshua.LeVeque@dot.wi.gov>

Sent: Wednesday, February 22, 2023 1:05 PM

To: dmccarthy@milwaukeepreservation.org; Abreu, Hector M. <Hector.Abreu@va.gov>; Alvarez-Cabrera, Maribel <Maribel.Alvarez-Cabrera@va.gov>; Bacher-Gresock, Bethaney <Bethaney.Bacher-Gresock@dot.gov>; Bauer, Jeff/MKE <Jeff.Bauer@jacobs.com>; bhhcem@gmail.com; Blackwood, Allison - DOT <Allison.Blackwood@dot.wi.gov>; Bohlen, Jeff - DOT <Jeff.Bohlen@dot.wi.gov>; bob@dryhootch.org; Charlie.Webb@jacobs.com; Clarke, David (FHWA <david.clarke@dot.gov>; Cook, Kimberly A - WHS <Kimberly.Cook@WisconsinHistory.org>; courtney.gianturco@dot.gov; Dawn McCarthy <mpa@milwaukeepreservation.org>; Dole, Keegan J - DOT <Keegan.Dole@dot.wi.gov>; Elliott, Glenn (CFM <Glenn.Elliott@va.gov>; 'emerritt@savingplaces.org' <emerritt@savingplaces.org>; Fernandez, Fernando L. (CFM <Fernando.Fernandez@va.gov>; Frank Shepard JR <Frank.Shepard@fcp-nsn.gov>; Goldsworthy, Benjamin <Benjamin.goldsworthy@jacobs.com>; Hanvey, Vanessa <vhanvey@achp.gov>; Henderson, Antonio <Antonio.Henderson@va.gov>; hkarsh@gmail.com; hoffmans@archmil.org; Hooker III, William E. <William.Hooker@va.gov>; hpc@milwaukee.gov; jebersole@milwaukeepreservation.org; jensustar@yahoo.com; Kaliszewski, Katherine N - DOT <katherinen.kaliszewski@dot.wi.gov>; Kitchen, Anthony J CIV (USA <Anthony.J.Kitchen@usace.army.mil>; Michael Carcanague <michael.carcanague@va.gov>; mark_buechel@nps.gov; McCall, Quincy <Quincy.Whitehead@va.gov>; mjarosz@uwm.edu; 'mmccully@milwaukeehistory.net' <mmccully@milwaukeehistory.net>; Mohr, Bill - DOT <Bill.Mohr@dot.wi.gov>; mranslow@achp.gov; Mullen, Michael S. <Michael.Mullen4@va.gov>; Mykytiuk, Carla/CHI <Carla.Mykytiuk@jacobs.com>; Penkiunas, Daina J - WHS <Daina.Penkiunas@WisconsinHistory.org>; Pulak, Douglas D. (CFM <Douglas.Pulak@va.gov>; Roeker, Rebecca J - DOT <rebecca.roeker@dot.wi.gov>; 'Sara.Orton@jacobs.com' <Sara.Orton@jacobs.com>; Schwarz, Linda Sue <Linda.Schwarz@va.gov>; ThielM@archmil.org; Waldschmidt, Jay - DOT <Jay.Waldschmidt@dot.wi.gov>; Benjamin Rhodd <Benjamin.Rhodd@fcp-nsn.gov>; Miller Carter, Eileen - DOT <eileen.millercarter@dot.wi.gov>; Cox, Carrie L - DOT <Carrie.Cox@dot.wi.gov>; Nuetzel, Rachel A - DOT <rachela.nuetzel@dot.wi.gov>
Cc: Owens, Donald <Donald.Owens3@va.gov>; dawnhmcc@gmail.com; Harding, Megan <Megan.Harding@jacobs.com>; Frank Shepard JR <Frank.Shepard@fcp-nsn.gov>; Dishaw, Aaron J. <Aaron.Dishaw@va.gov>

Subject: RE: Fourth Section 106 Consultation Meeting; I-94 East-West Study in Milwaukee County, Wisconsin

Good Afternoon,

Attached is a copy of the presentation that was shared at this morning's meeting.

Also attaching a copy of the Programmatic Agreement. Please provide any comments on our suggested changes that were outlined at today's presentation by March 24th, 2023.

Thanks,

Joshua LeVeque, P.E.

Project Development Supervisor – SE Region

Wisconsin Department of Transportation

Cell: (414) 750-1468

Joshua.LeVeque@dot.wi.gov

-----Original Appointment-----

From: LeVeque, Joshua - DOT

Sent: Thursday, January 19, 2023 2:06 PM

To: LeVeque, Joshua - DOT; dmccarthy@milwaukeepreservation.org; Abreu, Hector M.; Alvarez-Cabrera, Maribel; Bacher-Gresock, Bethaney; Bauer, Jeff/MKE; bhhcem@gmail.com; Blackwood, Allison - DOT; Bohen, Jeff - DOT; bob@dryhootch.org; Charlie.Webb@jacobs.com; Clarke, David (FHWA); Cook, Kimberly A - WHS; courtney.gianturco@dot.gov; Dawn McCarthy; Dole, Keegan J - DOT; Elliott, Glenn (CFM; 'emerritt@savingplaces.org'; Fernandez, Fernando L. (CFM; 'frank.shepard@fcpotawatomi-nsn.gov'; Goldsworthy, Benjamin; Hanvey, Vanessa; Henderson, Antonio; hkarsh@gmail.com; hoffmans@archmil.org; Hooker III, William E.; hpc@milwaukee.gov; jebersole@milwaukeepreservation.org; jensustar@yahoo.com; Kaliszewski, Katherine N - DOT; Kitchen, Anthony J CIV (USA; Michael Carcanague; mark_buechel@nps.gov; McCall, Quincy; mjarsz@uwm.edu; 'mmccully@milwaukeehistory.net'; Mohr, Bill - DOT; mranslow@achp.gov; Mullen, Michael S.; Mykytiuk, Carla/CHI; Penkiunas, Daina J - WHS; Pulak, Douglas D. (CFM; Roeker, Rebecca J - DOT; 'Sara.Orton@jacobs.com'; Schwarz, Linda Sue; ThielM@archmil.org; Waldschmidt, Jay - DOT; Benjamin.rhodd@fcpotawatomi-nsn.gov; Miller Carter, Eileen - DOT; Cox, Carrie L - DOT; Nuetzel, Rachel A - DOT

Cc: Owens, Donald; dawnhmcc@gmail.com; Harding, Megan; Frank Shepard JR; Dishaw, Aaron J.

Subject: Fourth Section 106 Consultation Meeting; I-94 East-West Study in Milwaukee County, Wisconsin

When: Wednesday, February 22, 2023 10:00 AM-11:00 AM (UTC-06:00) Central Time (US & Canada).

Where: Microsoft Teams Meeting

You are invited to participate in our fourth Section 106 Consultation Meeting for the I-94 East-West Corridor Study in Milwaukee County, Wisconsin.

WHEN: Wednesday, February 22, 2023, 10 a.m. to 11 a.m. (central time).

WHERE: The meeting will be held virtually via Microsoft Teams (see link below). If you are unable to join the meeting via your computer or mobile device; call-in information can be found below as well.

AGENDA:

- Introductions/Opening Remarks
- I-94 East-West Corridor Project Alternatives

- Preferred Alternative
- Public Comments Received
- Proposed updates to the 2016 Programmatic Agreement
- Schedule
- Next Steps

As shared in an email to Consulting Parties on November 22, 2022, WisDOT recently hosted two public hearings to discuss the project's proposed improvements and share the Preferred Alternative documented in the Supplemental Draft Environmental Impact Statement (Supplemental Draft EIS) for the reconstruction of I-94 between 70th Street and 16th Street in Milwaukee County. Materials and exhibits that were shared at the hearings are available here: [Public Meeting Materials](#). The Supplemental Draft EIS along with details about the preferred alternative can be found on the project website at <https://wisconsindot.gov/94eastwest>.

The Federal public comment period began on November 18, 2022, and was extended to January 31, 2023. We will discuss any public comments received related to historic properties during the meeting.

Thank you for your continued involvement in the I-94 East West Corridor Study, we look forward to meeting with you on February 22nd.

Joshua LeVeque, P.E.
Wisconsin Department of Transportation, SE Freeways Unit
Cell: (414) 750-1468
Joshua.LeVeque@dot.wi.gov

Microsoft Teams meeting

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From: [Paluszek, Carly](#)
To: [Paluszek, Carly](#)
Subject: FW: I-94 East-West Corridor Study, Milwaukee County, Wisconsin – Section 106 Consulting Parties Update
Date: Monday, April 3, 2023 1:39:25 PM

From: Benjamin Rhodd <Benjamin.Rhodd@fcp-nsn.gov>
Sent: Tuesday, November 22, 2022 1:15 PM
To: LeVeque, Joshua - DOT <Joshua.LeVeque@dot.wi.gov>
Subject: RE: I-94 East-West Corridor Study, Milwaukee County, Wisconsin – Section 106 Consulting Parties Update

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Mr. LeVeque,

Pursuant to consultation under Section 106 of the National Historic Preservation Act (1966 as amended) the Forest County Potawatomi Community (FCPC), a Federally Recognized Native American Tribe, reserves the right to comment on Federal undertakings, as defined under the act.

The Tribal Historic Preservation Office (THPO) staff has reviewed the information you provided for this project. Upon review of site data and supplemental cultural history within our Office, the FCPC THPO has concerns regarding this project. The Milwaukee area was utilized heavily including villages, temporary encampments, and gardens by the Potawatomi people, particularly near the west end of your project area. We request to remain as a consulting party for this project and look forward to furthering consultation with your Office.

As a standard caveat sent with each proposed project reviewed by the FCPC THPO, the following applies. In the event an Inadvertent Discovery (ID) occurs at any phase of a project or undertaking as defined, and human remains or archaeologically significant materials are exposed as a result of project activities, work should cease immediately. The Tribe(s) must be included with the SHPO in any consultation regarding treatment and disposition of an ID find.

Thank you for protecting cultural and historic properties and if you have any questions or concerns, please contact me at the email or number listed below.

Respectfully,

Ben Rhodd, MS, RPA, Tribal Historic Preservation Officer
Forest County Potawatomi
Historic Preservation Office
8130 Mish ko Swen Drive, P.O. Box 340, Crandon, Wisconsin 54520
P: 715-478-7354 C: 715-889-0202 Main: 715-478-7474
Email: Benjamin.Rhodd@fcp-nsn.gov

www.fcpotawatomi.com

From: LeVeque, Joshua - DOT <Joshua.LeVeque@dot.wi.gov>

Sent: Tuesday, November 22, 2022 11:47 AM

To: Dawn McCarthy <dmccarthy@milwaukeepreservation.org>; Abreu, Hector M. <Hector.Abreu@va.gov>; Alvarez-Cabrera, Maribel <Maribel.Alvarez-Cabrera@va.gov>; Bacher-Gresock, Bethaney <Bethaney.Bacher-Gresock@dot.gov>; Bauer, Jeff/MKE <Jeff.Bauer@jacobs.com>; bhhcem@gmail.com; Blackwood, Allison - DOT <Allison.Blackwood@dot.wi.gov>; Bliesner, Brian - DOT <Brian.Bliesner@dot.wi.gov>; Bohlen, Jeff - DOT <Jeff.Bohlen@dot.wi.gov>; bob@dryhootch.org; Charlie.Webb@jacobs.com; Clarke, David (FHWA <david.clarke@dot.gov>; Cook, Kimberly A - WHS <Kimberly.Cook@WisconsinHistory.org>; courtney.gianturco@dot.gov; Dawn McCarthy <mpa@milwaukeepreservation.org>; Dole, Keegan J - DOT <Keegan.Dole@dot.wi.gov>; Elliott, Glenn (CFM <Glenn.Elliott@va.gov>; 'emerritt@savingplaces.org' <emerritt@savingplaces.org>; Fernandez, Fernando L. (CFM <Fernando.Fernandez@va.gov>; Frank Shepard JR <Frank.Shepard@fcp-nsn.gov>; Goldsworthy, Benjamin <Benjamin.goldsworthy@jacobs.com>; Hanvey, Vanessa <vhanvey@achp.gov>; Henderson, Antonio <Antonio.Henderson@va.gov>; hkarsh@gmail.com; hoffmans@archmil.org; Hooker III, William E. <William.Hooker@va.gov>; hpc@milwaukee.gov; jebersole@milwaukeepreservation.org; jensustar@yahoo.com; Kaliszewski, Katherine N - DOT <katherinen.kaliszewski@dot.wi.gov>; Kitchen, Anthony J CIV (USA <Anthony.J.Kitchen@usace.army.mil>; Laronge, Michael - DNR <michael.laronge@fcpotawatomi-nsn.gov>; Michael Carcanague <michael.carcanague@va.gov>; mark_buechel@nps.gov; McCall, Quincy <Quincy.Whitehead@va.gov>; mjarosz@uwm.edu; 'mmccully@milwaukeehistory.net' <mmccully@milwaukeehistory.net>; Mohr, Bill - DOT <Bill.Mohr@dot.wi.gov>; mranslow@achp.gov; Mullen, Michael S. <Michael.Mullen4@va.gov>; Mykytiuk, Carla/CHI <Carla.Mykytiuk@jacobs.com>; Payant, Dobra - DOT <Dobra.Payant@dot.wi.gov>; Penkiunas, Daina J - WHS <Daina.Penkiunas@WisconsinHistory.org>; Pulak, Douglas D. (CFM <Douglas.Pulak@va.gov>; Roeker, Rebecca J - DOT <rebecca.roeker@dot.wi.gov>; 'Sara.Orton@jacobs.com' <Sara.Orton@jacobs.com>; Schwarz, Linda Sue <Linda.Schwarz@va.gov>; ThielM@archmil.org; Waldschmidt, Jay - DOT <Jay.Waldschmidt@dot.wi.gov>; Benjamin Rhodd <Benjamin.Rhodd@fcp-nsn.gov>; Bohlen, Jeff - DOT <Jeff.Bohlen@dot.wi.gov>; Paluszek, Carly <Carly.Paluszek@jacobs.com>

Subject: I-94 East-West Corridor Study, Milwaukee County, Wisconsin – Section 106 Consulting Parties Update

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear I-94 East-West Project Section 106 Consulting Parties,

This is a follow-up to the I-94 East-West Notice of Public Hearing e-mail sent on November 11, 2022.

The Wisconsin Department of Transportation (WisDOT) along with the Federal Highway Administration (FHWA) have completed a Supplemental Draft Environmental Impact Statement (Supplemental Draft EIS) for the reconstruction of I-94 between 70th Street and 16th Street in

Milwaukee County. The Federal public comment period began on November 18, 2022.

WisDOT and FHWA identified a preferred alternative as part of the Supplemental Draft EIS. The preferred alternative includes reconstructing I-94 as a modernized 8-lane roadway (one additional through travel lane in each direction) and reconstructing the Stadium Interchange as a diverging diamond interchange. The Supplemental Draft EIS along with details about the preferred alternative can be found on the project website at <https://wisconsindot.gov/94eastwest>.

Section 3.24 of the Supplemental Draft EIS discusses the historic properties within the Area of Potential Effect. FHWA and WisDOT believe that the preferred alternative identified in the Supplemental Draft EIS, similar to the 2016 preferred alternative, can be designed to have no adverse effects to historic properties.

Following the close of the public comment period on January 17, 2023, we would like to meet with the Section 106 consulting parties to discuss any public comments received related to historic properties, answer any questions about the preferred alternative, and begin discussions on proposed updates to the 2016 Programmatic Agreement. We will send out a meeting invite in the coming weeks.

WisDOT is conducting a public hearing on two dates for this project. Public hearings to consider the environmental and design aspects of the proposed improvement are planned for:

- Monday, December 12, 2022, at Wisconsin State Fair Park, Tommy Thompson Youth Center, Gate #5, 640 S. 84th Street, Milwaukee from 3:00 p.m. to 7:00 p.m.
- Wednesday, December 14, 2022, at Marquette University High School, 3401 W. Wisconsin Avenue, Milwaukee from 4:00 p.m. to 7:00 p.m.

In the meantime, if you have any questions or if you would like to meet to review the preferred alternative, please reach out and we can set up a meeting. I can be reached at (414) 750-1468 or Joshua.LeVeque@dot.wi.gov.

Thank you for your continued involvement in the I-94 East West Corridor Study.

Joshua LeVeque, P.E.
Wisconsin Department of Transportation, SE Freeways Unit
(414) 750-1468
Joshua.LeVeque@dot.wi.gov

Bethaney Bacher-Gresock
FHWA – Wisconsin Division
(608) 662-2119
Bethaney.Bacher-Gresock@dot.gov

Section 4(f) Letters



Bethaney Bacher-Gresock
Wisconsin Division
Federal Highway Administration
525 Junction Rd, Ste 8000 S
Madison, WI 53717
(608) 662-2119
Bethaney.Bacher-Gresock@dot.gov

Milwaukee County Parks
9480 Watertown Plank Rd.
Wauwatosa, WI 53226
(414) 257-PARK

October 13, 2023

RE: WisDOT I-94 E-W, Project ID: 1060-27-03, Mitchell Blvd. Park

Dear Ms. Bacher-Gresock,

In 2015, as part of the I-94 East-West Corridor project, former Milwaukee County Parks Department Director, John Dargle, concurred with the Wisconsin Department of Transportation's (WisDOT) assessment that a Section 4(f) use would not occur at Mitchell Boulevard Park based on the I-94 East-West Corridor Project satisfying all temporary occupation exception conditions contained in Section 23 Code of Federal Regulations (CFR) 774.13(d). Milwaukee County Parks understands that WisDOT and the Federal Highway Administration (FHWA) are currently completing a combined Supplemental Final Environmental Impact Statement (EIS) and Record of Decision (ROD) for the I-94 East-West Corridor and, due to the passage of time, has asked the Milwaukee County Parks Department to reaffirm this concurrence with the temporary occupancy exception that no Section 4(f) use would occur at Mitchell Boulevard Park.

Project impacts to Mitchell Boulevard Park have not changed since the 2016 Final EIS. For the project's preferred alternative, north of I-94, at the southern end of Mitchell Boulevard Park, General Mitchell Boulevard would be reconstructed for approximately 350 feet (Attachment). No right-of-way acquisition would occur, and reconstruction of General Mitchell Boulevard would take place within its current footprint. Reconstructing General Mitchell Boulevard and its adjacent sidewalk would result in a temporary occupancy of park property. I-94 East-West Corridor construction would result in temporary occupation of Mitchell Boulevard Park property, which, based on project analysis, would not result in a "use" of the park per the Section 4(f) statute. This is the same conclusion that was arrived at as part of the 2016 I-94 East-West Corridor Final EIS (Section 4.4.1.4):

- i. Occupation of the park property would be temporary, only a short period of the total amount of construction time for the entire I-94 East-West Corridor.
- ii. The scope of work would be minor.



MilwaukeeCountyParks

countyparks.com



iii. There would be no permanent physical impacts of any kind to Mitchell Boulevard Park associated with project actions and no permanent interference to the activities of the park.

iv. The land would be fully restored. WisDOT would restore the grass landscaping in the construction area and the sidewalk would be reconstructed to an improved condition.

v. There is a documented agreement from the Milwaukee County Parks Department in 2015 that the above commitments (i-iv) are satisfactory and do not result in a Section 4(f) use of Mitchell Boulevard Park.

Access to these areas during construction will require a right-of-entry permit from Milwaukee County. No change of ownership of land will occur and the right-of-entry permit will allow WisDOT's contractor to access County land to complete the required work. A permit application may be accessed at <https://county.milwaukee.gov/EN/Parks/Plan/Get-a-Permit>.

Should any of the above planned project conditions change, please contact Sarah Toomsen, Assistant Director of Planning, at sarah.toomsen@milwaukeecountywi.gov.

Sincerely,



Guy Smith
Executive Director, Milwaukee County Parks

Att: Preferred Alternative Exhibit

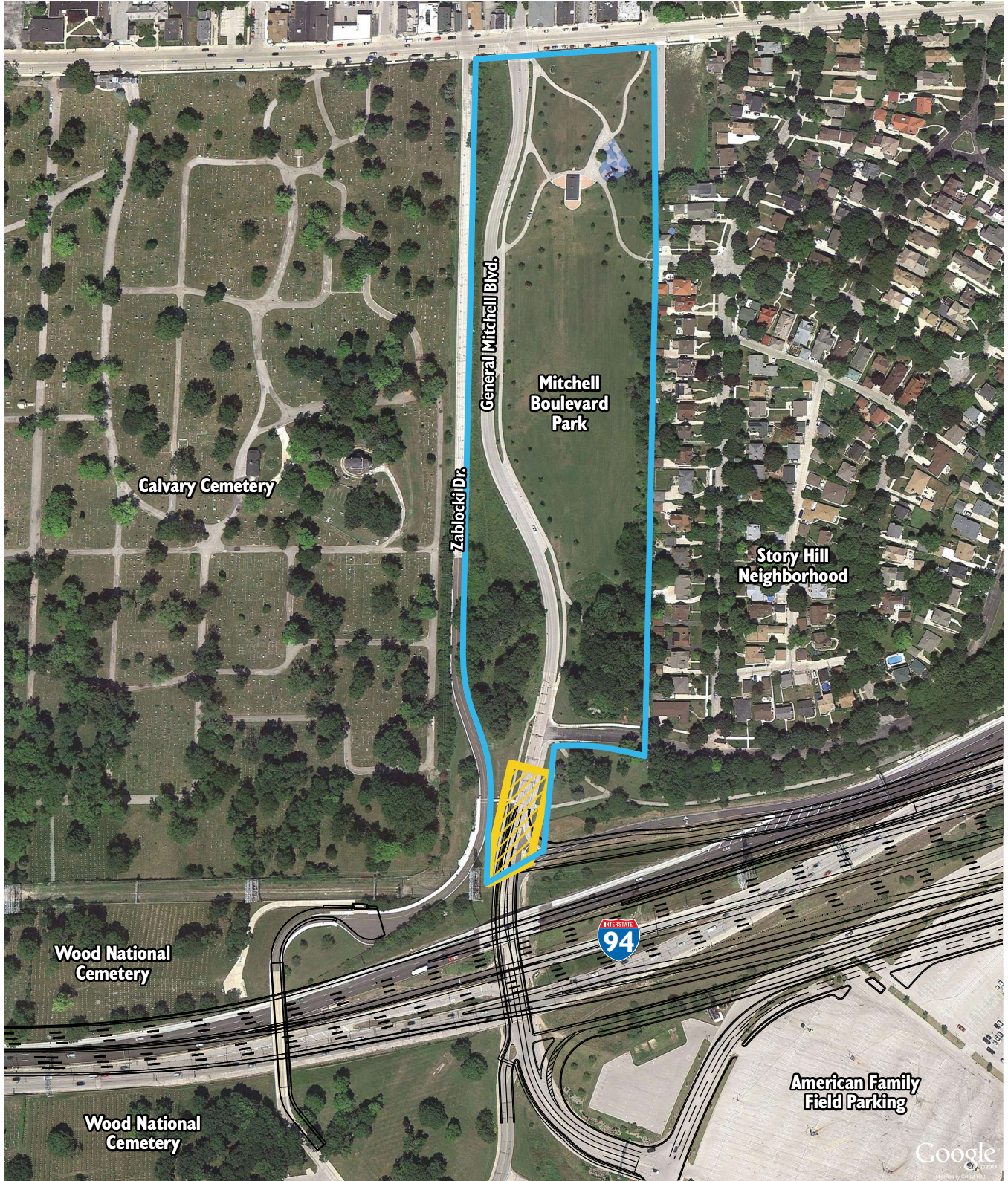
CC: Sarah Toomsen, Milwaukee County Parks
Brenda Reunger, WisDOT




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LEGEND

-  Mitchell Boulevard Park Boundary
-  Temporary Impact Area



**Attachment B. Preferred Alternative
Temporary Impact to Mitchell Boulevard Park**

December 4, 2023

Mr. David Misky
Assistant Executive Director
Redevelopment Authority of the City of Milwaukee
8002 N. Broadway #2
Milwaukee, Wisconsin 53202

Dear Mr. Misky:

WisDOT is writing on behalf of the Federal Highway Administration (FHWA) regarding the I-94 East-West Corridor project's temporary impacts to the Redevelopment Authority of the City of Milwaukee's (RACM) Menomonee Valley Community Park. The public will be afforded an opportunity to review and comment on potential impacts of the project on the park as part of a project newsletter to be sent out in late October 2023. After the opportunity for public review, we will seek your written concurrence that the temporary impacts will not adversely affect the activities, features, or attributes that make the park eligible for Section 4(f) protection and this will be a *de minimis* impact. **We ask that you provide your concurrence by Friday December 8.**

Section 4(f) and *de minimis* Impact Overview

As the I-94 East-West Corridor project is a federally funded, federally approved project, Menomonee Valley Community Park is eligible for protection under 23 United States Code (USC) 138, commonly referred to as "Section 4(f)". Section 4(f) is the federal act that protects publicly owned parks, recreation areas, and wildlife and waterfowl refuges from transportation projects.

A *de minimis* impact involves an impact to Section 4(f) property that is generally minor in nature. To arrive at a *de minimis* impact determination for a Section 4(f) impact, the following three criteria must be satisfied:

- A *de minimis* impact is one that, after taking into account avoidance, minimization, mitigation and enhancement measures, results in no adverse effect to the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f).
- The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource.
- The official(s) with jurisdiction over the property (RACM) in the case of the Menomonee Valley Community Park) must be informed of FHWA's intent to make a finding of *de minimis* impact, and they (RACM) must concur in writing in the assessment of project effects.

Description of Menomonee Valley Community Park

The fifteen acre Menomonee Valley Community Park is part of the Menomonee Valley Industrial Center. The park is approximately 500 feet south of the I-94/35th Street interchange and the 35th Street viaduct bisects the park with the viaduct situated approximately 60 feet over the park.

In partnership with City of Milwaukee and Menomonee Valley Partners, the Menomonee Valley Community Park was constructed in 2007 in an effort to control rainwater runoff from 60-acres of industrial land, rather than the stormwater flowing right into the Menomonee River. Stormwater is directed towards the park where native grasses, shrubs, and trees absorb the filtered stormwater runoff. Finally, water soaks into the ground and is filtered even more before a portion of the original rainwater flows into the Menomonee River.

The park also houses up to eight soccer fields, depending on the size and orientation of the soccer fields. While the park was opened in 2007, soccer was not played in the park until 2018. The use of the soccer fields is granted by RACM through a one-year license for a youth soccer program. This is not considered a neighborhood park as this is a destination location in that people travel from outside the immediate area to access these soccer fields. In the spring and fall the soccer fields are generally used 2 days per week with occasional weekend usage. There are up to eight different sized soccer fields and generally, not all of the fields are in use at the same time. Currently the fields east of the viaduct receive more use than the fields west of the viaduct.

I-94 East-West Corridor Project Impact on Menomonee Valley Community Park

The preferred alternative would not result in a permanent incorporation of property from the Menomonee Valley Community Park. WisDOT's I-94 East-West Corridor project proposes to reconstruct the 35th Street viaduct to a location that is approximately 200 feet south of the Menomonee Valley Community Park's northern boundary (Exhibit 1). This would temporarily require approximately 4.8 acres of park property, including the soccer fields west of the viaduct, the area under the viaduct, and an area about 50 feet east of the viaduct, during construction to access the construction site, stage construction equipment (such as cranes), and provide a buffer between the construction area and the soccer fields east of the viaduct to ensure the safety of those using the soccer fields. This area would be needed for no more than two construction seasons (about 18 months). The soccer fields east of the viaduct would continue to be available for use during construction. The project would not necessitate the permanent acquisition of any land at the park.

One existing bridge support, or pier, currently within the park will be removed and replaced by two new piers located both south and north of the existing pier being removed. The width of the new piers in the east-west direction, will match the width of the existing pier at ground level (Exhibit 2). The exact location of the new piers will not be finalized until the bridge plans are completed. The width of the bridge at the deck level will be approximately 20 feet wider than the existing bridge at the northern limits of the park and progressively narrows until it matches with the existing bridge cross section 200 feet south of the Menomonee Valley Community Park's northern boundary.

Mitigation

After the reconstruction of the 35th Street viaduct is completed, the Menomonee Valley Community Park property WisDOT temporarily occupied during construction would be returned

to its pre-construction condition. WisDOT will ensure that the stormwater filtration systems built into the park remain intact and function as intended once reconstruction of the 35th Street viaduct is completed.

During the two construction seasons the one large soccer field and three smaller fields west of the viaduct would be temporarily out of use. The larger area east of the viaduct that currently houses four large soccer fields would remain accessible and open for use during construction. Currently these fields east of the viaduct receive more use than the fields west of the viaduct. These fields can also be configured differently to accommodate different size fields for different age groups. WisDOT will work with the Redevelopment Authority of the City of Milwaukee to ensure that youth groups will continue to be able to use the soccer fields to the fullest extent possible during construction. Based on current usage of the soccer fields, the group using the fields would be able to continue running their soccer program at this site while construction is on-going. Once construction is complete, WisDOT will repair the ground west of the viaduct so that it is once again suitable for soccer use. Thus, following construction, the amount of space and number of soccer fields available will be the same as today.

During construction, WisDOT will install fencing around the construction and staging areas to ensure the safety of park users. Additionally, the construction/staging area would extend 50-75 feet east of the viaduct to provide a buffer area between construction and those using the soccer fields east of the viaduct. WisDOT would install netting between the construction/staging area and the soccer fields to prevent soccer balls from entering the construction/staging area and eliminate the potential for people to attempt to access that area to retrieve soccer balls.

WisDOT will also provide a temporary walkway to the soccer fields from the west side of the park. Many users of the soccer fields park west of the park along Wheelhouse Drive and 36th Street. A walkway from the west side of the park to the soccer fields will allow for people to safely access the soccer fields during construction. Based on continuing discussions with the Redevelopment Authority of the City of Milwaukee, following the reconstruction of the 35th Street viaduct, WisDOT could provide chain link fencing on the viaduct to prevent debris from falling down to the park and soccer fields.

WisDOT will obtain a Temporary Limited Easement (TLE) to utilize a portion of the park for a temporary amount of time for highway construction purposes. A TLE is limited in purpose and time and the right for WisDOT to utilize the property will terminate upon completion of construction. As part of the TLE, the Redevelopment Authority of the City of Milwaukee will be monetarily compensated for the temporary use of their land.

***De minimis* Determination**

Under Section 4(f), impacts that do not adversely affect the activities, features, or attributes qualifying the property for protection under Section 4(f) qualify as *de minimis* impacts. In order to make a *de minimis* impact determination, the owner with jurisdiction over the Section 4(f) property (in this case, RACM) must provide written concurrence that the impact to the Section

4(f) property (in this case, Menomonee Valley Community Park) does not adversely affect the activities, features, or attributes qualifying the property for protection under Section 4(f).

As such, because the occupancy of approximately 4.8 acres of the park is temporary and other soccer fields in the park would remain available during construction, thereby allowing programmed soccer activities to be accommodated in the Menomonee Valley Community Park during construction, WisDOT requests that RACM sign, date, and return the form enclosed with this letter indicating concurrence that WisDOT's temporary occupancy of the park property does not adversely affect the activities, features, or attributes which qualify the property for protection under Section 4(f). If RACM concurs, FHWA may make a *de minimis* impact determination. FHWA will include the determination in the Final Section 4(f) Evaluation that will be part of the forthcoming Supplemental Final Environmental Impact Statement being prepared to complete the National Environmental Policy Act (NEPA) process.

Your response is respectfully requested by Friday December 8, 2023. If you have any questions regarding this letter, please reach out to me at christopher.zacharias@dot.wi.gov or (262) 548-6716.

Thank you.

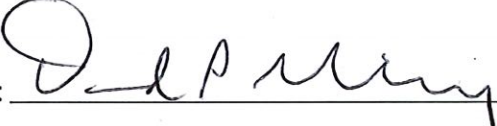
Chris Zacharias, P.E., Project Manager
(262) 548-6716
Christopher.Zacharias@dot.wi.gov
WisDOT, PO Box 798, Waukesha, WI 53187-0798

Enclosures

Concurrence

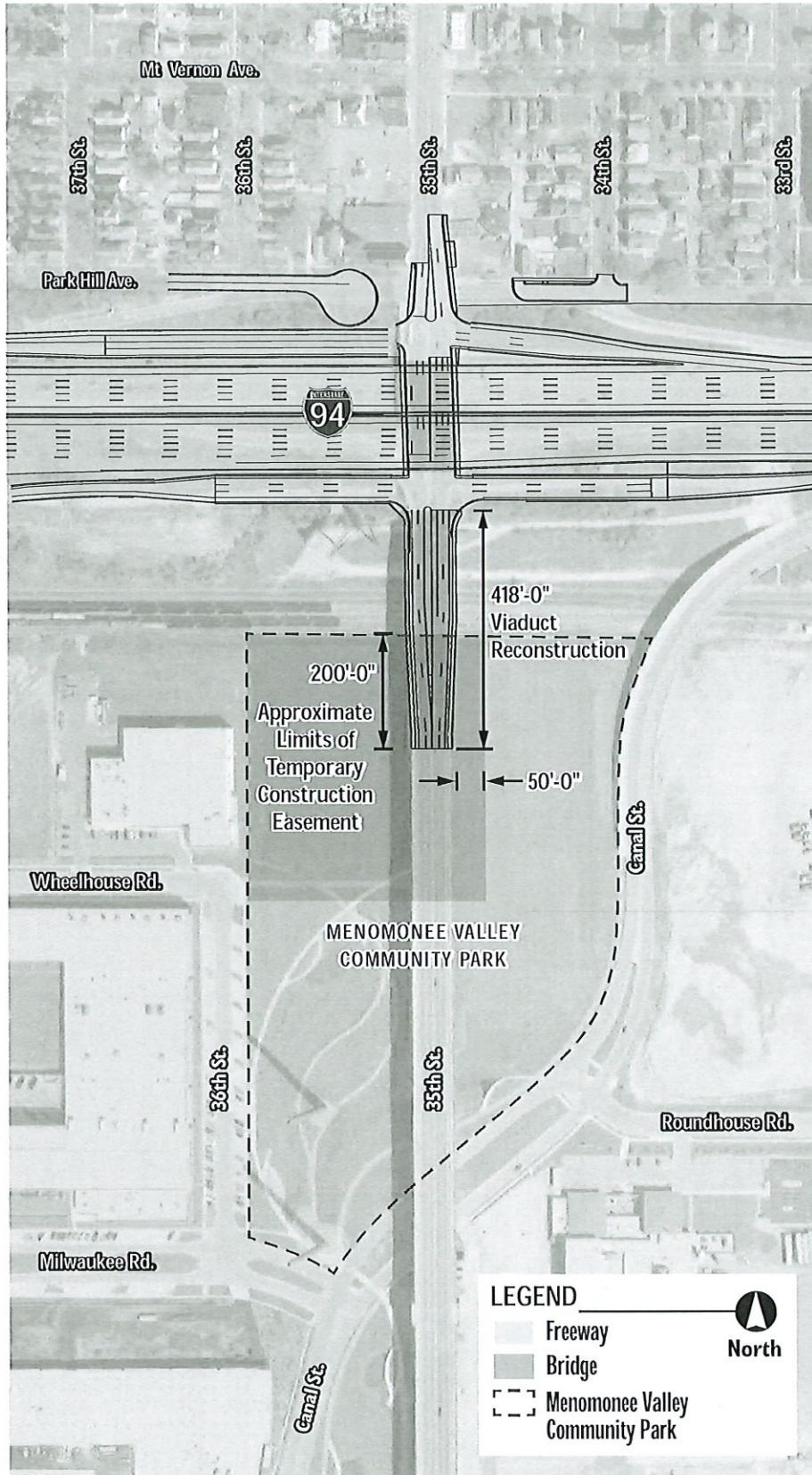
I concur with the determination that the temporary use of Menomonee Valley Community Park described in this letter and shown on the accompanying attachments would not adversely affect the activities, features, and attributes that qualify the park for protection under Section 4(f). I have also been informed that, based on my concurrence, the FHWA may make a *de minimis* finding regarding temporary use of the park, thus satisfying the requirements of Section 4(f).

Name (print): David P. Nisky

Signature:  Date: 12/4/23

Please keep a copy for your records and return a signed and dated original to my attention at the following address:

Chris Zacharias, P.E., Project Manager
Christopher.Zacharias@dot.wi.gov
WisDOT
PO Box 798
Waukesha, WI 53187-0798



U.S. Department of Transportation
Federal Highway Administration

Exhibit 1
 Menomonee Valley Community Park Impacts

