

US 41
(Memorial Drive to County M)
Brown County
Project I.D. 1133-10-01



**CONNECTING
WISCONSIN**

RECORD OF DECISION

October 4, 2011



U.S. Department of Transportation
**Federal Highway
Administration**

RECORD OF DECISION

US 41

Memorial Drive to County M

Brown County

Project I.D. 1133-10-01

FHWA-WISC-EIS-11-01-F

Decision

Proposed improvements in the US 41 Memorial Drive to County M corridor will provide additional capacity on the US 41 mainline and reconstruct the existing interchanges. The project limits on US 41 extend from Memorial Drive to County M, a distance of approximately 3.5 miles and the project limits on I-43 extend from US 41 to Atkinson Drive, a distance of approximately 2 miles. See **Exhibit 1**, location map.

The purpose of the project is to provide a safe and efficient transportation system that accommodates present and future traffic demand while minimizing impacts to the natural and built environment to the extent practicable. The improvements will also be compatible with possible future conversion of US 41 to an interstate highway. The need for the project is based on a combination of factors including system linkage and route importance, traffic demand and operations, highway deficiencies, and safety concerns. US 41 is a major freeway connecting the Milwaukee and Chicago metropolitan areas with the Fox River Valley and other resources in northeastern Wisconsin. Future traffic volumes are expected to increase more than 50% by design year 2035. Without improvements, the existing freeway will be unable to safely and efficiently handle future traffic volumes at an acceptable level of service. Crash rates in the Memorial Drive to County M project section are among the highest in the US 41 Brown County corridor.

WisDOT and FHWA selected Alternative E (US 41 expansion with Full Reconfiguration of I-43/US 41 Interchange) as the preferred alternative for addressing project purpose and need. Alternative E is summarized on page 3. More detailed information is provided in Section 2 of the Final EIS.

Selection of Alternative E was based on evaluation and consideration of all comments received during the public involvement process, public hearing testimony and other public comments received during the EIS availability period, comments from state and federal review agencies, environmental and engineering factors, consistency with local and regional transportation/land use plans, and documentation on how the proposed improvements will address long-term traffic and safety needs.

Alternatives Considered

The No Build Alternative and range of Build Alternatives presented in the EIS are summarized below. More detailed information is provided in Section 2 of the Final EIS. All Build Alternatives except Alternatives D and E were eliminated from further consideration prior to the March 2, 2011 public hearing.

No Build Alternative

The No Build Alternative (Alternative A) would maintain the existing four-lane freeway and existing interchange configurations at Velp Avenue, I-43, and County M. Over time, minimal improvements would be made to maintain current service levels, repair/rehabilitate existing structures, keep the driving surface in good condition, and address safety concerns at spot locations. The No Build Alternative is not a viable course of action because it would not address mobility needs and safety concerns. This alternative serves as a baseline for comparison to the build alternatives.

Build Alternatives

Build Alternatives B, C, D, and E as presented in the Draft EIS would have the common design features summarized on page 2. The main difference between them is the type and level of improvements at the Velp Avenue and I-43 interchanges and on the US 41 mainline between these interchanges.

- Widen the US 41 freeway mainline from 4 to 6 lanes and add auxiliary lanes at certain locations along northbound and southbound US 41 from Memorial Drive to County M.
- Reconstruct the Velp Avenue, I-43, and County M interchanges.
- Construct roundabouts at the Velp Avenue interchange ramp terminals, the Velp Avenue/Memorial Drive intersection east of US 41, the County M interchange ramp terminals and at the frontage road intersections with County M.
- Construct new bridges over Velp Avenue, the CN Railroad, Wietor Drive, I-43, and Duck Creek, and replace the Lakeview Drive and County M bridges over US 41.
- Realign Beaver Dam Creek south of Velp Avenue and replace the box culvert under US 41.
- Construct stormwater ponds at the Velp Avenue interchange and at Lakeview Drive. *Update: The Lakeview Drive ponds are no longer being proposed. See page 10 for more information.*

Alternative B

(US 41 expansion with minor improvements to I-43 interchange)

This alternative was eliminated because it would not address operational and safety issues resulting from the short weaving section along the US 41 mainline. Further, Alternative B would not be compatible with the possible future conversion of US 41 to an Interstate Highway.

Alternative C

(US 41 expansion with C/D roads between Velp Avenue and I-43)

This alternative was eliminated because it would not provide any substantive benefits compared to Alternative D, and because it would have greater impacts to public use lands and higher quality wetlands.

Alternative D

(US 41 expansion with C/D roads between Velp Avenue and I-43, and freeway split configuration)

This alternative was presented as a viable alternative in the Draft EIS and at the March 2, 2011 public hearing. Key design features of Alternative D, in addition to the common features noted above, include the following:

- Expand US 41 on a revised alignment that would allow for a freeway split for southbound US 41 to southbound I-43 within the existing interchange footprint.
- Construct C/D roads on both sides of US 41 between Velp Avenue and I-43 to minimize traffic weaving movements on the US 41 mainline.
- Extend the on and off ramps at the Velp Avenue interchange and realign them slightly to meet current standards and to accommodate roundabouts at the ramp terminals.
- Retain the loop ramps at the I-43 interchange with minor improvements to accommodate the wider US 41 mainline.
- Maintain access from Velp Avenue to I-43 via US 41 as it is today.

Alternative E

(US 41 expansion with full reconfiguration of I-43 interchange)

This alternative was presented as a viable alternative in the Draft EIS and at the March 2, 2011 public hearing. Key design features of Alternative E, in addition to the common features noted above, include the following:

- Reconstruct I-43/US 41 System Interchange with directional ramps (all loop ramps eliminated).
- Realign US 41 mainline and raise northbound gradeline to accommodate the southbound US 41 to southbound I-43 ramp and the northbound I-43 to southbound US 41 flyover ramp piers and foundations within the existing interchange footprint.
- Eliminate existing access between Velp Avenue and I-43 via US 41 to accommodate the directional ramps at the I-43/US 41 interchange.

Selected Alternative

Key design features of Alternative E as presented in the Draft EIS and at the public hearing are summarized on page 2. Based on more detailed engineering design as well as public, local government, and agency comments on the Draft EIS, the refinements summarized below were made to Alternative E for purposes of the Final EIS. Alternative E as presented in the Final EIS is illustrated **Exhibit 2**.

Elimination of 5-Leg Roundabout with local access frontage road at Velp Avenue Interchange

In the northwest quadrant of the Velp Avenue interchange, a 4-leg roundabout and a 5-leg roundabout with a local access frontage road were initially considered in the Draft EIS and at the March 2, 2011 public hearing. The 5-leg roundabout was subsequently eliminated based on agency concerns about additional wetland impacts and input from the Village of Howard (concern about cost, impact to developable land, incompatibility with potential future development in the Memorial Drive area). The 4-leg roundabout is now proposed as part of selected Alternative E.

Revised Beaver Dam Creek Realignment

The Beaver Dam Creek realignment at the Velp Avenue interchange was revised in the Island Court area to allow for a larger proposed stormwater detention pond at this location. The currently proposed Beaver Dam Creek realignment is illustrated in **Exhibit 3**.

Bicycle/Pedestrian Accommodations

The following bicycle/pedestrian accommodations are proposed to mitigate impacts to the Gordon Nauman Conservation Area, Wietor Wharf Park, and Deerfield Docks Park:

- Construction of a bicycle/pedestrian path crossing at Duck Creek and path connections to the Wietor Wharf and Deerfield Docks areas.
- Construction of an access path under US 41 along the north side of Duck Creek, connecting the Deerfield Docks area west of US 41 to the East Deerfield Avenue cul-de-sac east of US 41.

Extended Construction limits at County M/Lineville Road Interchange

For the Draft EIS, the construction limits at the County M interchange were just north of the County M structure over US 41. Based on additional engineering evaluation, the project's construction limits have been extended about 3,000 feet north of County M to include reconstruction of the northern interchange ramps. This extension will minimize traffic impacts for potential future projects on US 41 to the north.

Construction Access/Maintenance Roads

Since the Draft EIS, WisDOT has identified possible locations for access roads that will be needed for construction, maintenance and protection of the new structures at the I-43 interchange. The access roads will initially be wide enough to accommodate construction equipment. After completion of the project, some of the temporary construction fill will be removed, leaving a narrower permanent road for future maintenance access.

Basis for Selection

Key reasons for selecting alternative E rather than Alternative D are summarized as follows:

- Elimination of the existing loop ramps at the I-43 interchange under Alternative E would provide safer and more efficient free flow movements for regional traffic and large trucks using this interchange.
- Alternative E would be more compatible than Alternative D with future conversion of US 41 to an interstate facility. With elimination of the loop ramps under Alternative E, all traffic movements at the I-43 interchange would have a high level of service (LOS A or B) in the design year. By comparison, traffic movements at the I-43 interchange under Alternative D would operate at about LOS C which is acceptable but not desirable for an interstate freeway-to-freeway systems interchange.

- Under both Alternatives D and E, the ramps connecting I-43 with US 41 to the north would meet a 70 mph design speed. The connections between I-43 and US 41 to the south would meet a 60 mph design speed under Alternative E. This is more desirable than the loop ramps under Alternative D that would accommodate those movements at a 30 mph design speed.

Selected Alternative E has been determined by WisDOT and FHWA to be the environmentally preferable alternative in accordance with the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR 1505.2(b)). The environmental impacts for Alternatives D and E are essentially the same except for wetland impacts (60 acres for Alternative D and 61 acres for Alternative E) and public use land impacts (9.3 acres for Alternative D and 13.8 acres for Alternative E). The key difference between the alternatives is that Alternative D would fail to address safety concerns and other deficiencies at the I-43 interchange and would not be compatible with future conversion of US 41 to an interstate facility. Alternative E fully addresses project purpose and need while also striking a balance between providing a safe and efficient transportation facility and minimizing impacts to the natural and built environment to the extent possible and practicable.

Agency Concurrence

In accordance with the SAFETEA-LU Section 6002 Coordination Plan, participating and cooperating agencies were provided an opportunity to concur in WisDOT and FHWA's selection of Alternative E as the preferred alternative for presentation in the Final EIS. A Preferred Alternative Technical Memorandum was sent to participating and cooperating agencies on April 22, 2011. It included updated information on Alternative E and reasons for selecting it as the preferred alternative. The U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (Fish & Wildlife Service), U.S. Environmental Protection Agency (EPA), and Wisconsin Department of Natural Resources (DNR) concurred in the selection of Alternative E for presentation in the Final EIS (see Final EIS Section 5 for more information).

Environmental Impacts

Environmental impacts for Alternative E as presented in the Final EIS are listed in **Figure 1**. Additional information is available in Section 3 of the Final EIS. Primary impacts include wetlands, residential and business displacements, and impacts to public use land.

Selected Alternative E is compatible with the Clean Water Act's Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material which state that dredged or fill material should not be discharged into aquatic ecosystems (including wetlands), unless it can be demonstrated that there are no practicable alternatives to such discharge, that such discharge will not have unacceptable adverse impacts, and that all practicable measures to minimize adverse effects are undertaken.

Figure 1
Alternative E—Impact Summary
(As presented in Final EIS)

Environmental Factors	Alternative E US 41 expansion with full reconfiguration of I-43 interchange
Construction Cost Estimate (2010 \$) ¹	\$230 M
New right-of-way (acres)	36
Residential Displacements	15
Business Displacements	2
Stream Crossings	2 Beaver Dam Creek (realignment required) Duck Creek
Wetland Impacts (acres) ²	61
Threatened or Endangered Species ³	Possible
Archaeological Sites and Historic Structures	0
Public Use Land (acres)	13.8 Wietor Wharf Park (0.75)—embankment fill and bike/pedestrian path Deerfield Docks (0.5)—embankment fill and bike/pedestrian path Gordon Nauman Conservation Area (1.1)—embankment fill DNR Peat's Lake units (11.5) parcel along I-43 (severance plus maintenance access road) parcel east of US 41 (frontage road cul-de-sac)
Section 4(f) Evaluation Required	Yes Gordon Nauman Conservation Area 2 DNR Peat's Lake units (parcel along I-43 and parcel east of US 41)
Section 6(f) or Similar Compensation Required ⁴	Yes 2 DNR Peat's Lake units (parcel along I-43 and parcel east of US 41)
Contaminated Sites (petroleum)	3
Environmental Justice Concerns	No

Notes:

1. Construction cost estimates do not include design, real estate or utility relocations.
2. Wetland impacts include areas under proposed bridges that will not be directly filled by the proposed improvements, and impacts due to permanent maintenance access roads for construction of bridges at Velp Avenue and I-43 interchanges.
3. Information from the U.S. Fish & Wildlife Service indicates there are no known federally-listed threatened or endangered species in the project's area of potential effect. Information from DNR indicates the project area could provide habitat for the following species:
 - Blanding's turtle and Wood turtle (endangered)
 - Common tern (endangered)
 - Black crowned night heron, Cattle egret (special concern)
4. Peat's Lake units along I-43 utilized LWCF and ORAP funds. Peat's Lake unit east of US 41 utilized Pittman-Robertson and ORAP funds. Wietor Wharf Park utilized Dingell-Johnson funds for boardwalk. Deerfield Docks Park utilized Dingell-Johnson funds for boardwalk and pier.

Public Use Lands—Section 4(f) and 6(f)

Affected Resources and Impacts

Selected Alternative E as updated and refined will have the following impacts to public use lands. See Final EIS Section 4 for more information.

Gordon Nauman Conservation Area

This property is a Section 4(f) property. Construction of the new US 41 southbound exit ramp requires approximately 1.1 acres of right-of-way from this resource.

Wietor Wharf Park

This property is not a Section 4(f) property because it is located on property owned by WisDOT and leased to the Village of Howard under a 5-year revocable lease agreement until needed for highway use or until the lease is otherwise terminated. Because Dingell-Johnson funds were used for the boardwalk, compensation requirements similar to those under Section 6(f) of the LWCF Act are applicable. Construction of the new US 41 southbound exit ramp will impact approximately 0.75 acres of this park. There will be no impacts to the existing boardwalk or other enhancements and access and use of the park will not change.

Deerfield Docks Park

This property is not a Section 4(f) property because it is located on property owned by WisDOT and leased to the Village of Howard under a 5-year revocable lease agreement until needed for highway use or until the lease is otherwise terminated. Because Dingell-Johnson funds were used for the boardwalk, compensation requirements similar to those under Section 6(f) of the LWCF Act are applicable. Construction of the new US 41 southbound exit ramp will impact approximately 0.48 acres of this park. There will be no impacts to the existing boardwalk or other enhancements, and access and use of the park will not change.

Peats Lake Unit Property #1

This property is a Section 4(f) property. Because LWCF and ORAP funds were used to purchase this property, compensation requirements under Section 6(f) of the LWCF Act and similar compensation under the ORAP program are also applicable. Construction of the new northbound I-43 to southbound US 41 flyover ramp requires approximately 9.2 acres of right-of-way from this property. Construction of permanent maintenance access roads for the new flyover ramps will require approximately 1.1 acres of additional right-of-way acquisition from this resource, for a total of 10.3 acres.

Peats Lake Unit Property #3

This property is a Section 4(f) property. Because Pittman-Robertson and ORAP funds were used to purchase this property, compensation requirements similar to Section 6(f) of the LWCF Act are also applicable. Construction of the new US 41 northbound lanes over Duck Creek will impact approximately 2.25 acres of this parcel. The cul-de-sac on East Deerfield Avenue will be moved approximately 800 feet to the north, thus reducing the length of frontage road currently occupying this parcel.

Mitigation and Coordination

Due the close proximity of Section 4(f) and Section 6(f) resources listed above to the existing US 41 mainline and its interchanges there are no feasible and prudent build alternatives that would completely avoid impacts to these resources. Through use of retaining walls and alignment modifications, it was possible to avoid impacts to Lehner Park at the Velp Avenue interchange, and to the existing boardwalks at Wietor Wharf Park and Deerfield Docks Park.

Selected Alternative E was designed to minimize unavoidable impacts to the Gordon Nauman Conservation Area, Wietor Wharf Park, Deerfield Docks Park, and the Peats Lake Unit properties to the maximum extent practicable. Specific measures to minimize impacts include the following:

- Lengthening structures instead of using embankment fill (minimizes impacts to Peats Lake Unit property #1 and Gordon Nauman Conservation Area).
- Use of retaining walls along southbound US 41 (minimizes impacts to Wietor Wharf Park and Deerfield Docks Park).
- Use of beamguard in high fill areas to allow for steeper slopes (minimizes impacts to Peats Lake Unit property #3).

In recognition of potentially unavoidable impacts to the DNR Peats Lake Unit properties under the Build Alternatives, WisDOT proactively purchased an approximate 18-acre replacement parcel in consultation with DNR to mitigate Section 6(f) and similar impacts. See Final EIS Section 4.5 for more information. The following mitigation measures were agreed upon in consultation with the Village of Howard for impacts to the Gordon Nauman Conservation Area, Wietor Wharf Park and Deerfield Docks Park:

- Construction of a bicycle/pedestrian path crossing at Duck Creek and path connections to the Wietor Wharf and Deerfield Docks areas.
- Construction of an access path under US 41 along the north side of Duck Creek, connecting the Deerfield Docks area west of US 41 to the East Deerfield Docks Avenue cul-de-sac east of US 41.

The Village of Howard concurred in these mitigation measures on May 18, 2011 (concurrence letter provided in Final EIS Section 4, Exhibit 4-5).

Final Section 4(f)/6(f) Approval and Basis for Approval

The Section 4(f) and Section 6(f) evaluation in Section 4 of the Final EIS includes a description of the public use land resources, applicability of Section 4(f), Section 6(f) and related requirements, discussion of impacts and alternatives to avoid and minimize impacts, measures to minimize harm for unavoidable impacts, and coordination with officials having jurisdiction over the affected resources. Based on the Section 4(f) and Section 6(f) evaluation provided in the Final EIS, FHWA has concluded that there are no feasible and prudent alternative to use of land from the Gordon Nauman Conservation Area, Wietor Wharf Park, Deerfield Docks Park, and the Peat's Lake Unit properties under Preferred Alternative E, and that the proposed action includes all possible planning to minimize harm to these properties resulting from such use.

Measures to Minimize Harm and Environmental Commitments

Traffic Management

A Transportation Management Plan (TMP) that identifies coordinated traffic management strategies and how they will be used to minimize construction impacts to the traveling public and surrounding communities is being prepared in the design phase. At this time, the TMP includes the following:

- During construction, two lanes of traffic will be maintained in each direction on US 41.
- No concurrent closures of adjacent interchanges will occur.
- The Memorial Drive to County M TMP will be coordinated with other contracts along the corridor between 9th Avenue and Memorial Drive.
- After a construction staging plan is developed, WisDOT will evaluate possible traffic detour routes to determine if improvements are needed.
- Incident management measures will be implemented during construction to ease potential congestion and delay.
- WisDOT will keep the public informed about the construction schedule, staging, road closures, and other aspects through the US 41 project website www.US41.wisconsin.gov.

Air Quality

Air quality impacts during construction would be generated by motor vehicle, machinery and particulate emissions resulting from earthwork and other construction activities. Construction vehicle activity and the disruption of normal traffic flows may result in increased motor vehicle emissions within certain areas. Construction vehicle emission impacts could 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. WisDOT and FHWA will evaluate several air quality construction mitigation best practices to reduce diesel emission impacts from construction equipment including reducing idle times, properly maintaining equipment, using cleaner fuel, and retrofitting diesel engines with diesel emission control devices.

Dust control during construction will be accomplished in accordance with WisDOT's Standard Specifications for Road and Bridge Construction, which require the application of water or other dust control measures during grading operations and on haul roads.

The location and operation of any concrete batch plants will be in accordance with the Standard Specifications, and any special provisions developed during coordination with DNR regarding air quality standards and emissions. Any open burning of waste material or brush will be done in accordance with local ordinances and DNR Bureau of Air Management permit requirements as applicable. Any portable material plants will be operated in accordance with DNR air quality requirements/guidelines. Demolition and disposal of residential or commercial buildings is regulated under DNR's asbestos renovation and demolition requirements (Wisconsin Administrative Code, Chapter NR 447).

Property Acquisition

Residential and business displacements will be fully compensated in accordance with state and federal relocation laws and regulations.

Federal property acquisition law provides for payment of just compensation for businesses and residences displaced for a federally funded transportation project (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [Uniform Act]). Acquisition price, replacement dwelling costs, moving expenses, increased rental or mortgage payments, closing costs, and other relocation costs are covered for residential displacements. Acquisition and relocation costs for business displacements are also covered under federal law. State law (Wisconsin's Eminent Domain Law under Section 32.05, Wisconsin Statutes) would cover increased rental or mortgage payments and closing costs for businesses. Under state law, no person or business would be displaced unless a comparable replacement dwelling, business location, or other compensation (when a suitable replacement business location is not available) would be provided. Compensation is available to all displaced persons without discrimination.

Property acquisition not involving residential, business, or other building relocations is also compensated in accordance with state and federal laws. In consultation with the owners, the value of affected land would be appraised, and the owner compensated at fair market value. Owners are given the opportunity to obtain an independent appraisal. In the event agreement on fair market value cannot be reached, the owner would be advised of the appropriate appeal procedure.

Any septic tanks, drain fields, or wells on acquired properties would be abandoned in accordance with state regulations and local zoning standards. WisDOT will survey all buildings that will be demolished to determine whether asbestos or lead paint is present. All appropriate and applicable engineering and regulatory controls will be followed during the handling and disposal of asbestos-containing material and lead-based paint. Contractors must comply with the requirements of the U.S. EPA regulations, National Emission Standards for Asbestos, the Occupational, Safety, and Health Administration regulations on asbestos removal, all applicable regulations, and local government regulations.

Before a contractor demolishes a building that may contain or is known to contain asbestos, the contractor must properly notify DNR and the Wisconsin Department of Health and Family Services at least 10 working days before starting the work, using DNR Form 4500-113, *Notification of Demolition and/or Renovation and Application for Permit Exemption*.

Water Quality/ Related Resources

DNR recommends that all construction equipment be properly cleaned and disinfected to address the spread of invasive species and viruses. Contractors will be required to implement the following before and after mobilizing in-water equipment to prevent the spread of viral hemorrhagic septicemia (VHS) and other invasive species:

- Inspect boats, trailers, tracked vehicles, silt or turbidity barrier, pumps, barges, boots, etc. and remove aquatic plants, animals and mud.
- Drain all water from boats, motors, pumps, equipment, and any other areas where water may be trapped.
- Dispose of debris in the trash prior to leaving the area.
- Follow disinfection protocols described at <http://dnr.wi.gov/fishdocuments/disinfectionprotocols.pdf>.

All equipment used in waterways and wetlands should be properly cleaned prior to and after used to remove plants, seeds, soil, etc. that may contain invasive plants such as reed canary grass, giant reed grass, and purple loosestrife. All seed mixes and vegetation plans should address ways to keep invasive species out of disturbed areas both under temporary and permanent conditions. *WisDOT and its contractor will coordinate with DNR during development of the Erosion Control Implementation Plan on cleaning equipment used in waterways and vegetation plans to minimize spread of invasive species.*

During bridge demolition, WisDOT should prevent large pieces and minimize the number of small pieces of the existing bridge from entering waterways or wetlands and remove all debris that falls into waterways or wetlands. Limited amounts of small pieces of concrete scattered over the waterway bottom or wetland may be left in place only if the WisDOT engineer allows this practice. All demolition material must be disposed according to state law and cannot be placed in wetlands. *WisDOT will implement this mitigation measure.*

Rip rap should only be used when necessary and the voids filled with smaller stones to eliminate traps for young turtles, frogs, etc. *WisDOT will continue to work with DNR during the project design phase regarding this possible mitigation measure.*

As requested by the Fish & Wildlife Service, the structures over Duck Creek will have sufficient length to accommodate wildlife passage and pedestrian access along the shoreline beneath the structures.

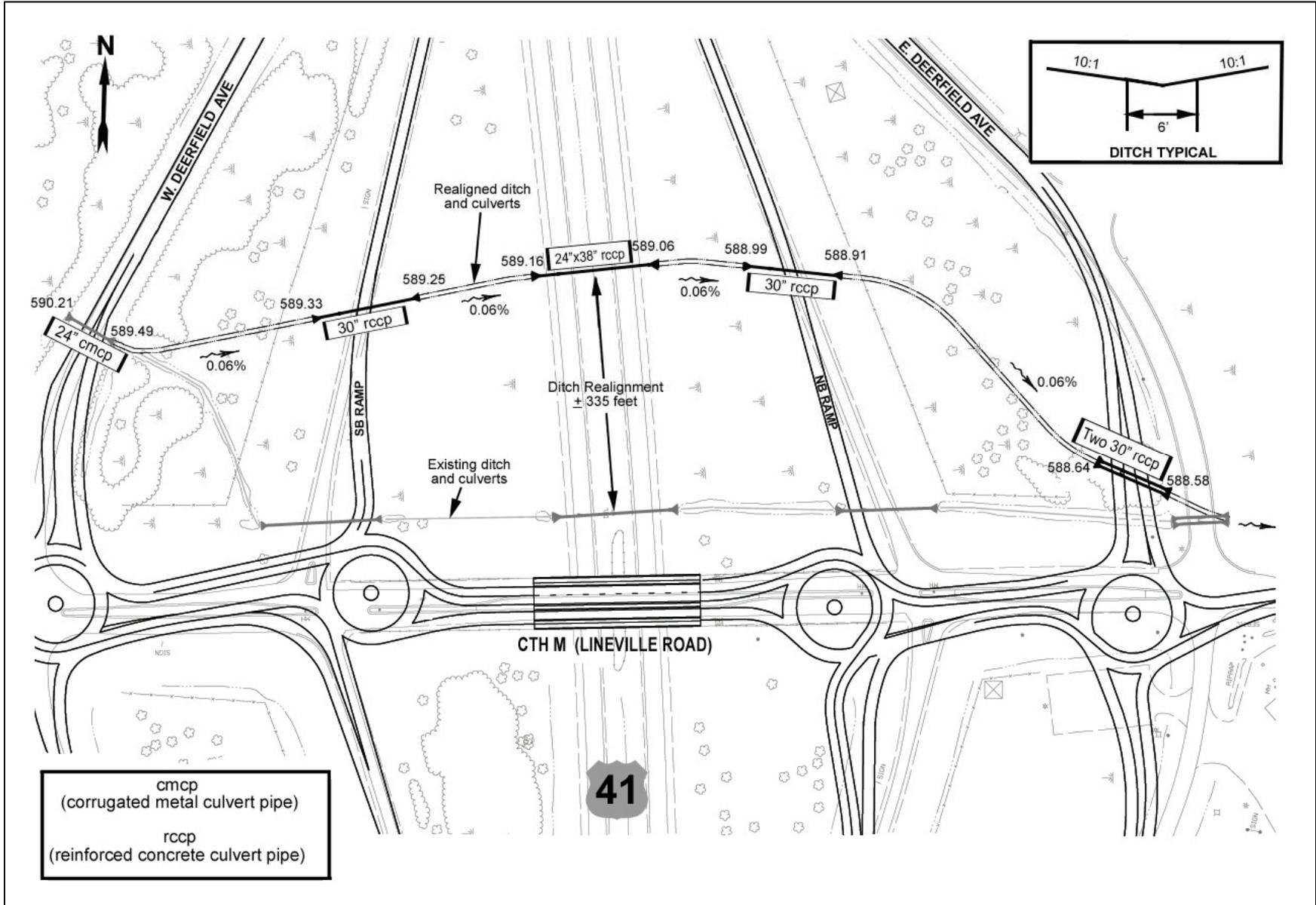
Duck Creek and Beaver Dam Creek have seasonal spawning runs of Northern pike and forage species. Therefore, DNR has requested that in-stream work be avoided between March 1 and June 15 of the construction year. WisDOT will continue to coordinate with DNR in the engineering design phase to evaluate the recommended constraint dates and whether it is feasible to completely avoid in-stream construction during this time frame.

In their July 27, 2011 comments on the Final EIS (see letter in Appendix A) DNR noted that the Final EIS did not specifically discuss proposed realignment of the waterway that crosses the north half of the US 41/County M interchange, or mitigation measures that had been previously developed in consultation with DNR.

The existing waterway is a ditch that crosses US 41, the existing interchange ramps, and the existing frontage roads (East and West Deerfield Roads) just north of County M (see **Figure 2**). This ditch ultimately discharges to the bay of Green Bay and passes through wetlands within the interchange area. It also provides spawning habitat for Northern Pike. Ditch flow is from west to east through a 24" corrugated metal culvert pipe (cmcp) under West Deerfield Road, a 30" reinforced concrete culvert pipe (rccp) under the southbound exit ramp, a 30" rccp under US 41, a 30" rccp under the northbound entrance ramp, and two 30" rccp's under East Deerfield Road.

Proposed improvements at the County M interchange include constructing roundabouts at the interchange ramp terminals and at the frontage road intersections on County M. The interchange ramps and frontage roads will be realigned slightly to accommodate the roundabouts. The ditch will be shifted approximately 335 feet north of its present location to accommodate reconstruction of the County M interchange and to allow adequate cover for the US 41 mainline culvert.

Figure 2
Proposed Ditch Realignment—County M Interchange



Based on past coordination with DNR, the following measures were identified to minimize impacts to Northern Pike spawning habitat provided by the ditch:

- The new culverts will be essentially the same size as the existing culverts.
- The West Deerfield Road culvert will be replaced in kind and at its existing location to avoid disturbance to upstream wetlands and habitat. *This culvert will be replaced in kind in 2011 by the Village of Suamico due to its poor condition.*
- Minor adjustments to the culvert inverts will be made as needed to allow for an even channel slope across the interchange.
- The new ditch channel will have a “V” shaped bottom rather than a flat bottom.

In their August 17, 2011 comments on the Final EIS (see letter in Appendix A) EPA recommended that the new Beaver Dam Creek box culvert on US 41 be a single cell structure with an open bottom. Or, if a multi-cell box culvert with a concrete bottom is used, EPA recommends that the bottom of the box culvert be placed at least one foot below the natural stream elevation.

As noted in the Final EIS, a four-cell box culvert similar to the existing structure is proposed, but with increased length to accommodate the wider US 41 roadway. Design details for the Beaver Dam Creek realignment are being developed in consultation with DNR and the USACE in conjunction with Clean Water Act permit activities. The overall objective is to enhance water quality and fishery resources. At this time, the design concepts and enhancement measures listed below are being considered. Additional habitat enhancement and sedimentation control measures will be explored further in the design phase in consultation with DNR and the USACE.

- Placing the bottom of the new box culvert below the streambed elevation to provide adequate water depth for fish passage and a more natural substratum through the box culvert.
- Planting trees/shrubs along the streambank to provide cover for the creek.
- Minimizing the amount of riprap used along the new channel to the extent practicable while still maintaining slope stability.

Erosion Control and Stormwater Management

WisDOT will follow TRANS 401 and the WisDOT/DNR Cooperative Agreement Amendment regarding erosion control and stormwater management. An erosion control implementation plan will be developed by the contractor and submitted to DNR for concurrence.

A preliminary stormwater management plan has been prepared in consultation with DNR and the USACE in conjunction with Clean Water Act permit activities. A stormwater pond is proposed in the southwest quadrant of the Velp Avenue interchange. The previously proposed stormwater ponds adjacent to the Lakeview Drive crossing of US 41 are no longer being considered based on concerns about additional wetland impacts that would occur with the Lakeview Drive area stormwater ponds.

With elimination of the Lakeview Drive ponds, WisDOT evaluated other stormwater management opportunities to achieve a 40% reduction in Total Suspended Solids (TSS) as specified in Wisconsin Administrative Code Chapter NR 151. Refined stormwater modeling included additional swales in the I-43 interchange area and at the frontage road cul-de-sacs in the Duck Creek area, additional treatment of sheet runoff through use of vegetated slopes, and use of higher infiltration rates based on more detailed soils information. These additional opportunities are anticipated to reduce TSS by at least 40% without the Lakeview Drive ponds.

Floodplains

The project involves crossing the 100-year floodplain of Duck Creek, realigning a portion of Beaver Dam Creek within its 100-year floodplain, and widening the US 41 embankment fill within the mapped 100-year floodplain of the Bay of Green Bay. All structures will have adequate capacity for 100-year flood flow. None of the floodplain crossings will have the potential for interruption or termination of a transportation facility needed for emergency vehicles or community evacuation. Floodplain crossings will be consistent with local floodplain management goals and objectives.

As discussed in Section 3.8.2 of the Final EIS, the expanded US 41 fill embankment is not anticipated to cause a change in the 100-year floodplain elevation compared to existing conditions. The proposed improvements include the following measures to provide replacement floodplain storage:

- Removal of portions of the existing I-43 interchange ramps.
- Lengthening of existing structures and use of new structures rather than embankment fill.
- Use of beamguard to allow steeper fill slopes.
- Construction of a stormwater pond in the southwest quadrant of the Velp Avenue interchange.
- Removal of portions of local roadways (Lone Grove Avenue, Hurlbut Street, and East Deerfield Avenue).
- Design of new roadways with elevations at or above existing elevations to minimize the potential for overtopping during heavy storm events.

Wetlands

Design features to minimize wetland impacts include the following:

- Utilizing 60 mph design speeds instead of the desirable 70 mph design speed for the ramps connecting I-43 to southbound US 41
- Lengthening the following structures to span over wetland areas instead of using embankment fill:
 - Northbound I-43 to southbound US 41
 - Northbound US 41 to southbound I-43
 - Northbound I-43 to northbound US 41
 - Southbound US 41 off-ramp to Velp Avenue
- Use of retaining walls along southbound US 41 adjacent to Duck Creek and northbound US 41 near Beaver Dam Creek
- Use of beamguard in high fill areas to allow for steeper slopes

Unavoidable wetland impacts will be fully compensated in accordance with WisDOT's Wetland Mitigation Banking Technical Guideline. Specifically, wetland impacts will be compensated at the Resort Road and Freedom wetland mitigation sites that have been developed in consultation with the DNR and USACE for the Brown County US 41 projects.

The project has been developed in accordance with Presidential Executive Order 11990—*Protection of Wetlands*. Based on evaluation of all alternatives, it has been determined that there is no practicable alternative to the proposed construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands and related resources that may result from such action. See Final EIS Section 3.7.3, Wetlands—Only Practicable Alternative Finding, for more information.

Threatened and Endangered Species

The latest correspondence from the Fish & Wildlife Service (February 13, 2007) indicates no federally listed threatened or endangered species are located in the project area. The Fish & Wildlife Service requests that WisDOT re-contact them to ensure there have been no changes in the status of threatened or endangered species if there is a lag time of more than 12 months between plan completion and construction.

As part of their initial comments on the Memorial Drive to County M project (March 7, 2008 letter), DNR provided the following guidance for minimizing potential adverse effects to endangered, threatened, and other protected species:

- Wood turtles and Blanding's turtles (threatened species) are known to inhabit areas near the US 41 corridor and may be present in the project's area of potential effect. If construction starts in spring, DNR recommends that the perimeter of the construction area be protected with "turtle fence" (trenched-in silt fence with turtle turnarounds at the ends) prior to March 15 of the construction year for areas within the Duck Creek riparian shoreline to prevent turtles from entering the work area. If the construction area cannot be fenced by March 15, the turtle fence must be installed prior to construction activities and the area behind the fence surveyed to determine if any turtles are present. If present, turtles would need to be removed prior to any site disturbance and throughout the construction period. *WisDOT will implement this mitigation measure.*

- A survey of the project area should be conducted for nesting birds, particularly the common tern, black-crowned night heron, and cattle egret during the nesting season the year prior to construction to determine if a nesting date restriction will be necessary. The survey technique for these birds should include a ground count of the project area once a week from May 15th to June 30th to determine presence or absence (counts of adults will suffice) or the number of nests per breeding species. *WisDOT will conduct the bird survey which is currently targeted for 2012.*
- To ensure that endangered resource impacts are adequately addressed as project design is better defined another review of endangered resources should be conducted before final design is completed. This will ensure any new information on the species (presence or absence) and their proximity to the proposed construction limits are considered in the final design. *WisDOT will coordinate further with DNR in the design phase to determine whether another review of endangered resources is needed.*
- Although a number of wetland plants have been found within the project area, much of those wetlands are now dominated by Phragmites. Some of these plant species may still occur within the project area if suitable habitat still occurs. A habitat assessment for the species should be conducted as part of the wetland assessment (cover type) for the project area. *WisDOT will coordinate further with DNR in the design phase to determine whether a habitat assessment for Phragmites is needed.*
- If swallow nests are present on the Duck Creek structures in the construction year, measures typically used by WisDOT to avoid impacts to swallow nesting would be implemented (avoid disturbance between May 1 and August 20 or obtain a degradation permit). *WisDOT will either ensure that these avoidance dates are met, or obtain a degradation permit if the avoidance dates cannot be met.*

Public Use Lands

Mitigation measures for impacts to public use lands are discussed under Public Use Lands—Section 4(f) and Section 6(f), pages 6 and 7.

Aesthetics

WisDOT is using a Community Sensitive Design (CSD) process to enhance visual aesthetics where practicable in the Brown County US 41 corridor. Specific recommendations for the Memorial Drive to County M section will be developed in the design phase and could include aesthetic treatments on bridges and retaining walls.

A landscaping plan will also be developed during final design. At this time, it is anticipated that landscaping will include vegetative buffers/screening in areas where existing trees and shrubs will be impacted, for example, along the Beaver Dam Creek realignment in the Island Court and Lone Grove Avenue/Rosewood Street areas.

Summary

Based on the foregoing discussion of measures to minimize harm and environmental commitments, all practicable means to avoid or minimize environmental harm for selected Alternative E have been adopted in accordance with the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR 1505.2(c)).

Monitoring or Enforcement Program

The following actions will occur as the project progresses through engineering design and construction:

- Project development will be monitored by WisDOT and FHWA to ensure compliance with the mitigation commitments made in the EIS prior to authorization of Federal-aid highway funds.
- During the design phase, WisDOT will coordinate with FHWA to determine whether there have been any substantive changes in the project, affected environment, selected alternative, impacts, mitigation measures, or environmental commitments as presented in the Final EIS that could warrant re-evaluation.

- Prior to construction activities requiring discharge of fill material into waters of the United States, including wetlands, authorization will be obtained from the USACE under Section 404 of the Clean Water Act. Such authorization is contingent on obtaining water quality certification from DNR under Section 401 of the Clean Water Act, and Wisconsin Administrative Code Chapter NR 299.
- Property acquisition and residential or business relocations will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended). A Relocation Assistance Plan under Section 33.25, Wisconsin Statutes, will be required for displaced residences and businesses, and will be subject to approval by the Wisconsin Department of Commerce.
- Coordination with DNR and the USACE will continue in the design phase concerning the storm water management plan, erosion control implementation plan, threatened and endangered species mitigation, Freedom wetland mitigation site plan, in-stream construction constraint dates, and design features for the Beaver Dam Creek realignment to enhance aquatic habitat and fishery resources.
- Ensure that contractors carry out project construction in accordance with WisDOT contract special provisions.

WisDOT is responsible for ensuring that environmental commitments made during the NEPA project phase are communicated and carried out in the subsequent design and construction phases. A Design Study Report (DSR) is prepared at the outset of the final design phase and serves as the bridging document between the preliminary design/NEPA phase and preparation of final construction plans. The purpose of the DSR is to document decisions and rationale with respect to design criteria, geometric and safety aspects, exceptions to standards, real estate acquisition needs, utility adjustments, and environmental commitments and approvals. The DSR for the US 41 Memorial Drive to County M project will include an attachment that summarizes the environmental commitments presented in the Final EIS and this ROD. The DSR serves as a reference document throughout the final design and construction phases. It is communicated to multidisciplinary WisDOT staff involved in design, maintenance, utilities, real estate acquisition, construction, and environmental monitoring activities. As applicable, environmental commitments in the DSR may also be the basis for developing contract special provisions. The DSR is also provided to FHWA under its Federal Oversight Agreement with WisDOT.

Following award of the construction contract, a preconstruction meeting is held at which topics such as the contractor's plan of operations, environmental commitments, permits, erosion control measures and other requirements are reviewed and discussed. Environmental permits are also compared to the contractor's plan of operations to ensure that the operations are covered.

WisDOT holds frequent meetings with multidisciplinary staff during final design to ensure that environmental commitments are carried forward and reflected in the final plans, specifications and estimates prior to finalizing the construction contract documents. Periodic meetings are also held with outside agencies such as the USACE and DNR during Clean Water Act permit activities to ensure that any additional environmental commitments that may be identified are included in the final plans.

Comments on Final EIS

Notice of availability of the Final EIS was published in the Federal Register on July 22, 2011, and the 30-day comment period ended on August 22, 2011.

Agency Comments

Agency comments on the Final EIS and responses as applicable are provided in Appendix A. Key comments are briefly summarized as follows:

July 27, 2011 (DNR)

- DNR will work with WisDOT to minimize additional wetland impacts and to address concern about possible transportation of invasive species due to the proposed maintenance access roads.
- Reiterated position that stormwater ponds should not be constructed in wetlands unless there are no practical alternatives.
- Noted that the Final EIS did not discuss the Northern Pike spawning channel that would be realigned at the County M interchange, or the previous mitigation measures that had been developed for this channel realignment.
- Ensure adequate mitigation for the additional 0.9 acre impact to DNR's Peats Lake unit parcels.
- DNR will continue to work with WisDOT on design of the Beaver Dam Creek realignment.

August 17, 2011 (EPA)

- EPA reiterated their position that wetland impacts caused by utility adjustments should be mitigated as part of the US 41 project because these adjustments are connected actions [to the US 41 project] under NEPA.
- Recommends a 50-foot forested buffer along Beaver Dam Creek in the Island Court and Lone Grove/Rosewood Street neighborhoods to enhance water quality and restore aesthetics.
- Recommends a single-cell, open-bottom structure for the new US 41 Beaver Dam Creek crossing, or if this is not feasible, place the bottom of the box culvert at least one foot below the natural streambed elevation.
- Recommends exploring onsite wetland mitigation opportunities, particularly in areas where existing loop ramps and other structures will be removed.
- Recommended several techniques to minimize wetland impacts during construction of the structure access/maintenance roads.

August 23, 2011 (USACE)

- The USACE noted that they will need to concur in the wetland boundaries established for purposes of the Clean Water Act permit evaluation, that updated wetland delineations may be required in the design phase, and that wetland impact calculations may need to be refined based on the updated delineations.
- Further efforts should be made in the design phase to avoid and minimize wetland and stream impacts, particularly during design of the structure access/maintenance roads.
- To alleviate future project delays, the USACE recommends that WisDOT work closely with contractors to identify significant environmental resources that could be impacted by borrow sites, and noted additional resource impacts may need to be evaluated under NEPA as connected actions to the federal project.
- Noted that compensatory wetland mitigation should be consistent with 33 CFR Part 332 [Compensatory Mitigation for Losses of Aquatic Resources] and that ongoing agency coordination on the Freedom mitigation site is expected to ensure that the functions and values of impacted wetland are adequately replaced.

Additional agency coordination has been ongoing since the Final EIS in conjunction with Clean Water Act permit activities. Periodic meetings have been held with DNR and the USACE to keep them informed about project design aspects, and to obtain input on the Beaver Dam Creek realignment, stormwater management, and design of the Freedom wetland mitigation site. DNR and the USACE also participated in updated wetland delineations in August, 2011.

Native American Tribes were contacted during the Final EIS availability period to provide an additional opportunity to comment on cultural resource aspects of the project. FHWA and WisDOT hosted a Section 106 coordination meeting on July 20, 2011 to provide an update on the selected alternative and to summarize/discuss the results of cultural resource investigations. No Tribal representatives participated in the meeting.

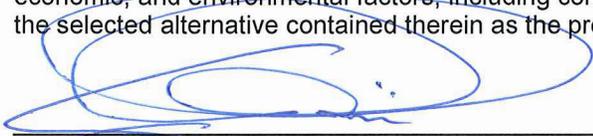
Other Comments

WisDOT received one comment on the Final EIS from a family in Abrams that is opposed to the roundabouts being proposed in the US 41 corridor. They also requested a map showing the locations of proposed roundabouts so they can find alternative routes that avoid them. WisDOT sent a response that included a map showing the proposed roundabouts along with a brochure explaining how to navigate roundabouts and their benefits. A link to WisDOT's website that has information on the US 41 project and more information on roundabouts was also provided.

No other public comments were received during the Final EIS availability period.

Conclusion

Based on the analysis and evaluation documented in the EIS, and after careful consideration of all social, economic, and environmental factors, including comments received on the EIS, it is FHWA's decision to adopt the selected alternative contained therein as the proposed action for this project.



George R. Poirier, P.E.
Division Administrator
Federal Highway Administration
Wisconsin Division

10-9-11
Date

EXHIBIT 1
Location Map

Study Area Location Map

US 41
(Memorial Drive to County M)
Brown County
Project I.D. 1133-10-01



EXHIBIT 2

Selected Alternative E as presented in Final EIS

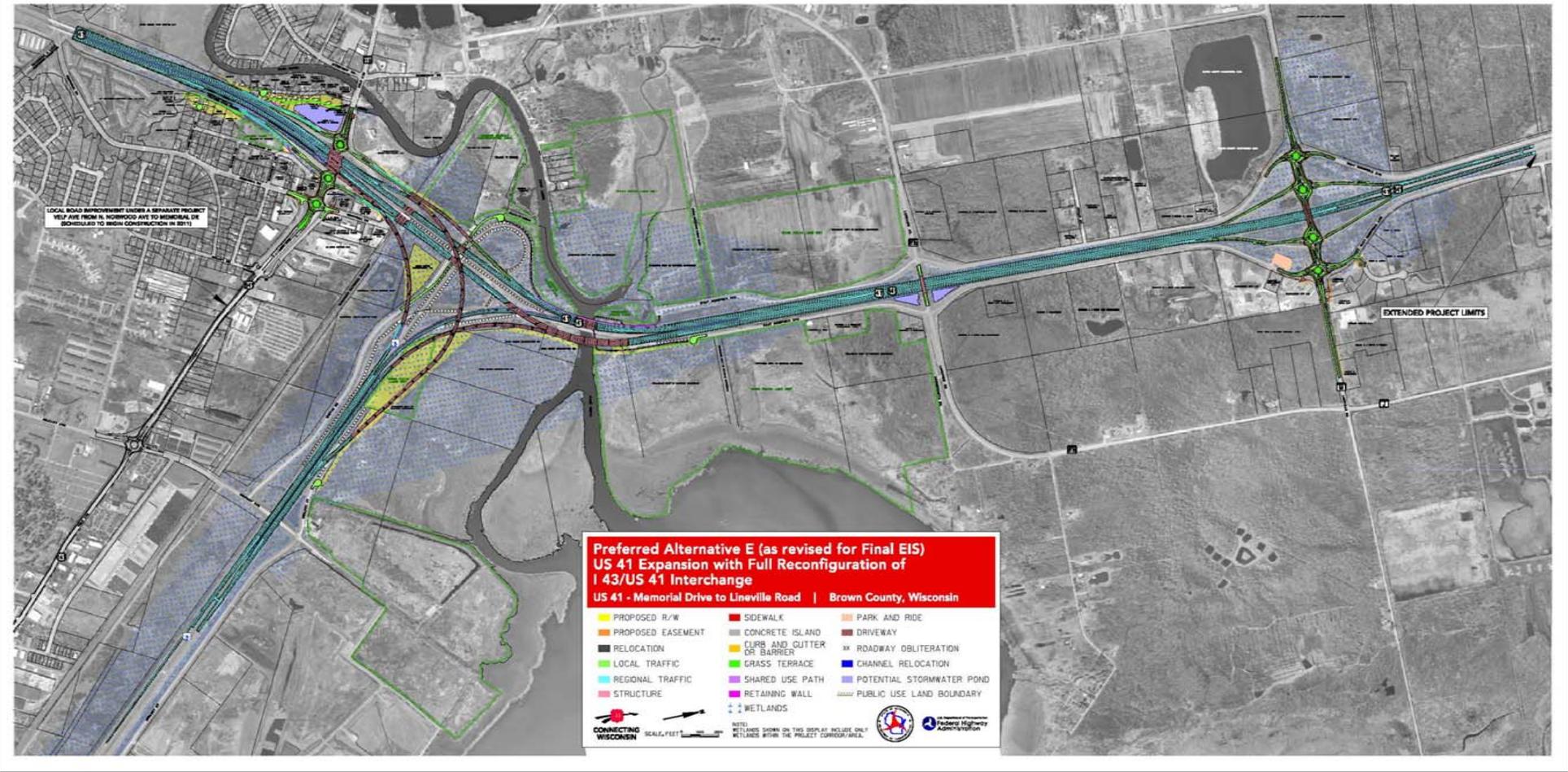
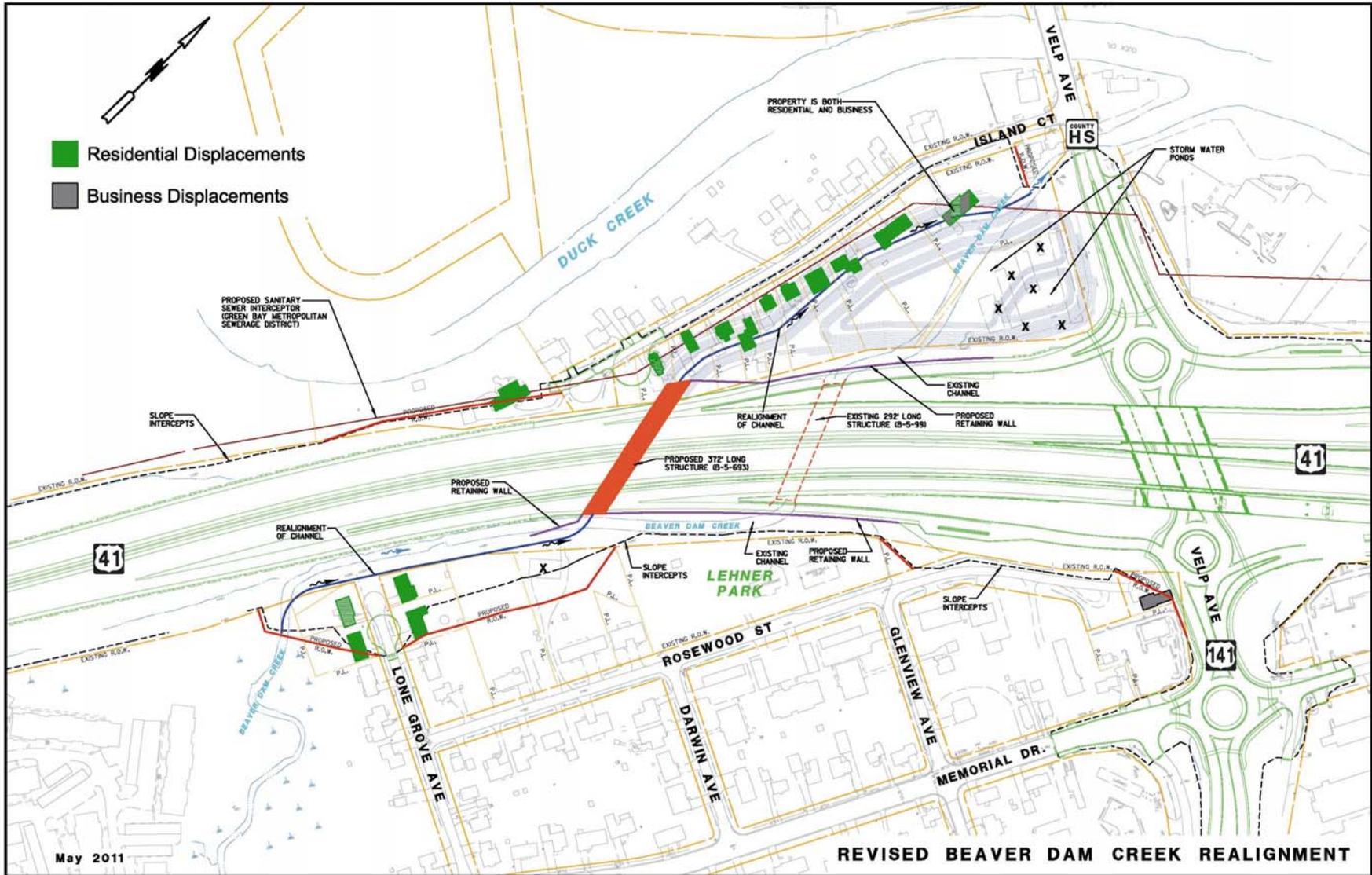


EXHIBIT 3

Revised Beaver Dam Creek Realignment as presented in Final EIS



May 2011

REVISED BEAVER DAM CREEK REALIGNMENT

APPENDIX A
Agency Comments on Final EIS



July 27, 2011

DOT: Brown, 8247

Danielle Block, P.E.
Wisconsin Department of Transportation
1940 West Mason Street
Green Bay, WI 54303

Subject: Project ID: 1133-10-01
Project Title: USH 41 Final EIS Comments
Location: Memorial Drive to CTH M
County: Brown

Dear Ms. Block,

The Department has completed its review of the Final EIS. As stated in our comments on the Draft EIS the Department supports DOT's preferred alternative. Below are the Department's comments on the Final EIS:

1. The wetland impact acreage of the preferred alternative has increased by approximately seven acres. According to the Final EIS the main reasons for this increase are the inclusion of the CTH M interchange and the maintenance road. The Department will work with DOT to minimize these additional wetland impacts.
2. The Final EIS states that stormwater detention ponds will be built at Velp Avenue and CTH EB/Lakeview Drive. These stormwater detention ponds are shown to be located in wetlands. If wetlands are confirmed in this area all other practical alternatives must be pursued before the Department would consider placing a stormwater detention pond in a wetland. Based on further conversations these stormwater detention ponds may not be necessary to comply with post construction stormwater standards.
3. According to the Final EIS the extension of the northern limits include no changes to a waterway that provides spawning habitat for northern pike and crosses USH 41 near Woodland Court however the Final EIS does not discuss the proposed realignment of the waterway that crosses the USH 41 and CTH M interchange immediately north of CTH M. The Department met with DOT and included conditions on the proposed waterway realignment as part of our approval of the proposed waterway realignment.
4. The Department is working with DOT on the proposed Beaver Dam Realignment near the Velp Avenue Interchange. As the Final EIS states the proposed channel realignment is still in the design phase.

See comment responses

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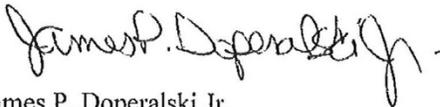
5. According to Exhibit S-3 the preferred alternative impacts to DNR Peat's Lake units will increase by 0.9 acres due to design refinements. A determination must be made as to where the mitigation efforts for the conversion of this property are still adequate.
6. The Department will work with DOT on the design of the proposed maintenance road to minimize wetland impacts and concerns associated with transportation of invasive species.

3

See comment
response

As the design of the preferred alternative moves forward the Department will continue work with DOT to further minimize environmental impacts. Should you have questions regarding this letter, please contact me at (920) 662-5119 or James.Doperalski@wisconsin.gov.

Sincerely,



James P. Doperalski Jr.
Environmental Analysis and Review Specialist

- c. Mike Helmrick – DOT Green Bay
Lisie Kitchel – DNR BER
Jay Schiefelbein – DNR Green Bay
File: 8247

**Comment Responses
(July 27, 2011 DNR Letter)**

1. The Lakeview Drive stormwater ponds are no longer being proposed based on concerns about additional wetland impacts that would be incurred with these ponds. With elimination of the Lakeview Drive ponds, WisDOT evaluated other stormwater management opportunities to achieve a 40% reduction in Total Suspended Solids (TSS) as specified in Wisconsin Administrative Code Chapter NR 151. Refined stormwater modeling included additional swales in the I-43 interchange area and at the frontage road cul-de-sacs in the Duck Creek area, additional treatment of sheet runoff through use of vegetated slopes, and use of higher infiltration rates based on more detailed soils information. These additional opportunities are anticipated to reduce TSS by at least 40% without the Lakeview Drive ponds.

2. The Final EIS did not specifically discuss design concepts or mitigation measures for realignment of the Northern Pike spawning ditch at the County M interchange. The ditch realignment is shown on Exhibit 3-5 in the context of wetland impacts and the entries for Wetlands W-221 through W-227 in Table 3-12 mention the ditch.

Discussion on proposed design concepts for the ditch and past mitigation measures recommended by DNR is provided on page 9 of the Record of Decision (ROD).

3. As noted in Final EIS Section 4.7, a total of 11.5 acres of land will be acquired from two Peats Lake units, an increase of approximately 0.9 acres due to design refinements since the Draft EIS. As noted in Final EIS Section 4.5, WisDOT purchased the Peters parcel in consultation with DNR to mitigate impacts to the Peats Lake units. The Peters parcel is approximately 18 acres in size and is therefore sufficient to mitigate the 11.5 acre impact.



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

AUG 17 2011

REPLY TO THE ATTENTION OF:

E-19J

Danielle Block
Wisconsin Department of Transportation
US 41 Brown County Project Office
1940 West Mason Street
Green Bay, Wisconsin 54303

**Re: Final Environmental Impact Statement, US 41, Memorial Drive to County M,
Brown County, Wisconsin - CEQ #20110234**

Dear Ms. Block:

The U.S. Environmental Protection Agency has reviewed the final environmental impact statement (EIS) for the above-mentioned project. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR 1500-1508) and Section 309 of the Clean Air Act.

The proposed action is to reconstruct US 41 from Memorial Drive to County M/Lineville Road in Brown County, Wisconsin. Improvements include providing additional traffic capacity on US 41 and reconstructing the interchanges at US 141/Velp Avenue, I-43, and County M. On November 17, 2010, EPA provided concurrences for the purpose and need (Concurrence Point 1) and the alternatives carried forward (Concurrence Point 2).

EPA provided comments on the Draft EIS on March 23, 2011. We had concerns regarding impacts to aquatic resources (wetlands, streams, failure to identify connected actions, and water quality), indirect traffic impacts, aesthetics, and impacts to threatened and endangered species. On April 22, 2011, Wisconsin Department of Transportation (WisDOT) and Federal Highway Administration (FHWA) identified Alternative E (US 41 expansion with full reconfiguration of I-43/US 41 interchange) as the preferred alternative. EPA concurred on May 24, 2011.

Since the Draft EIS, the following changes or additions have been made to the preferred alternative:

- The project limits at County Line M have been extended further north through the intersection, which will result in an additional 2.3 acres of wetland impacts.
- The proposed relocation of Beaver Dam Creek has been re-aligned to allow for a larger

stormwater detention pond.

- The utility corridors have been slightly revised to reduce wetland impacts.
- Construction and maintenance roads have been identified, which will result in additional wetlands impacts.
- The 5-legged roundabout and frontage road at US 141/Velp Avenue interchange ramp terminal west of US 41 were removed from consideration, which reduced wetland impacts by 1.1 acres.

Based on our review of the Final EIS, EPA commends WisDOT and FHWA for addressing our concerns on the adequacy of the wetland maps and qualitative information (particularly Table 3-12), indirect impacts analysis from the elimination of access to I-43 from US 141/Velp Avenue via US 41, potential indirect impacts to threatened and endangered species, and the adequacy of information pertaining to the mitigation banks, particularly given their likelihood of success.

Enclosed you will find the remainder of our concerns. We continue to recommend that the utility corridors be included in the total impacts assessment. It is unclear whether or not the utility companies will even need to comply with NEPA. We maintain that any direct wetlands impacts should be included in the total wetland mitigation calculations since the relocation of the utilities are clearly a connected action. Finally, we ask that certain mitigation measures be committed to in the Record of Decision (ROD). Please see the enclosed detailed comments for further discussion.

1

See Comment
responses

Please send a copy of the ROD once it is signed. Thank you for the opportunity to provide comments on this project. Should you have any questions, please do not hesitate to contact me or Elizabeth Poole of my staff at (312) 353-2087 or poole.elizabeth@epa.gov.

Sincerely,



Kenneth A. Westlake, Chief
NEPA Implementation Section
Office of Enforcement and Compliance Assurance

Cc: Tracey McKenney, Federal Highway Administration
Charlie Webb, CH2M Hill

Enclosures (1)

**U.S. Environmental Protection Agency Comments on US 41, Memorial Drive to County M,
Brown County, Wisconsin, Final Environmental Impact Statement, CEQ #20110234**

Utility Adjustments

We continue to have concerns regarding the inclusion of the utility adjustments into the NEPA document as a connected action. Pages 3-21 and 3-62 state that once the final utility adjustments have been determined “GBMSD [Green Bay Metropolitan Sewer District] and ATC [American Transmission Company] will be responsible for the NEPA compliance, including environmental documentation and obtaining any permits for wetlands impacts due to their utility adjustments.” EPA questions whether or not these entities are responsible for NEPA compliance, as this action would probably fall under U.S. Army Corps of Engineers’ (USACE) nationwide permit program. While we understand that the ultimate siting decision rests with the utility companies, WisDOT and FHWA are not relieved of their responsibility to analyze the associated wetlands impacts, as the utility adjustments are clearly connected actions to the highway project under NEPA. The resultant wetland impacts should contribute to the wetland mitigation calculations.

1

Aquatic Resources

While EPA understands that many project elements cannot be determined until the final design phase, we continue to recommend the following mitigation measures be committed to in the ROD. Because the project is within the Great Lakes coastal zone, we strongly urge FHWA and WisDOT commit to acting on the following:

- During the Draft EIS, EPA recommended the installation of a 50-foot forested buffer along Beaver Dam Creek, between US 41 and the Island Court and Long Grove/Rosewood Street neighborhoods. A buffer will not only enhance stream function and water quality, but will also restore neighborhood aesthetics.
- EPA recommends the use of single-cell, open bottom, three-sided or arched culverts that span the width of the channel and its floodplain. If this is not feasible and multi-cell culverts are pursued, they should be open bottomed, three-sided or arched culverts, and one culvert alone should span the width of the channel. If four-sided, box-culverts are pursued, they should be imbedded into the stream bed at least one foot below the natural stream invert. These strategies will provide for natural creek bottoms and continuous aquatic habitat. Further, page 3-39 of the Final EIS states, “final structure types for the Duck Creek and Beaver Dam Creek crossing will be determined during the project’s design phase...” and “a new four-cell box culvert will be constructed and will have approximately the same dimensions as the existing box culvert except for its length, which will be increased...to accommodate the wider roadway.” These two statements are contradictory and should be clarified.
- During the Draft EIS, EPA recommended exploration of onsite wetland mitigation, particularly in the areas where existing loop ramps and other structures will be removed. Since the project area is within the Great Lakes coastal zone and adjacent to publicly managed lands, EPA believes onsite restoration or enhancement projects are reasonable and viable options.

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See comment responses

Construction Impacts

In the Draft EIS, EPA recommended more details regarding construction impacts to wetlands be included in the Final EIS. We are pleased to see more details regarding impacts and mitigation measures outlined. The inclusion of this information fully outlines the project's impacts. We recommend the following measures to further minimize impacts to wetlands during construction be committed to in the ROD:

- Construct during winter, if feasible.
- Minimize width of temporary access roads for construction access.
- Use easily-removed materials for construction of temporary access roads (e.g., swamp/timber mats) in lieu of materials that sink (e.g., stone, rip-rap, wood chips).
- Use swamp/timber mats or other alternative matting to distribute the weight of the construction equipment. This will minimize soil rutting and compaction.
- Use vehicles and construction equipment with wider-tired or rubberized tracks or use of low ground pressure equipment to further minimize impacts during construction access and staging.
- Use long-reach excavators, where appropriate, to avoid driving, traversing, or staging in wetlands.
- Place mats under construction equipment to contain any spills or leaks.
- Construct the relocated portion of Beaver Dam Creek in the dry. The new length should be excavated, graded, stabilized with erosion control blankets, seeded, and vegetated before flow is diverted into the relocated channel.

See comment
responses

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Comment Responses
(August 17, 2011 EPA Letter)

1. WisDOT acknowledges EPA's continued concern/position that wetland impacts of utility adjustments should be part of a highway project's NEPA document as a connected action, and mitigated as part of the highway project. In response to this concern which was first raised during agency review of the SAFETEA-LU Section 6002 Impact Analysis Methodology, WisDOT committed to providing a conceptual discussion of known major utility adjustments in the EIS. Information on the GBMSD and ATC utility adjustments, including preliminary locations and an estimate of wetland impacts, was provided in the Final EIS. WisDOT's process concerning utility adjustments is discussed on page 3-61 of the Final EIS, and WisDOT's policy that utilities are ultimately responsible for determining new locations for their facilities and for any associated environmental clearances, remains the same as stated in the Final EIS.

2. As illustrated on Exhibit 3 of the ROD, the new stormwater pond in the southwest quadrant of the Velp Avenue interchange will occupy most of the area between US 41 and the realigned Beaver Dam Creek channel, and the relocated GBMSD sanitary sewer is proposed to run along the west side of the stormwater pond adjacent to Island Court. Therefore, the amount of land available for providing a vegetative buffer between the new creek channel and Island Court is limited and will likely be less than 50 feet wide. In the Lone Grove Avenue area, the existing creek channel will be shifted slightly to the east which would leave a strip of land for a vegetative buffer. As noted on page 12 of the ROD, a landscaping plan will be developed during final design. At this time, it is anticipated that landscaping will include vegetative buffers/screening in areas where existing vegetative buffers will be impacted, for example, along the Beaver Dam Creek realignment in the Island Court and Lone Grove Avenue/Rosewood Street areas.

3. A four-cell box culvert similar to the existing box culvert is being proposed at the realigned US 41 crossing, but with increased length to accommodate the wider US 41 roadway. Design details for the Beaver Dam Creek realignment are being developed in consultation with DNR and the USACE in conjunction with Clean Water Act permit activities. The overall objective is to enhance water quality and fishery resources. At this time, the design concepts and enhancement measures listed below are being considered. Further habitat enhancement and sedimentation control measures will be explored further in the design phase in consultation with DNR and the USACE.

- Placing the bottom of the new box culvert below the streambed elevation to provide adequate water depth for fish passage and a more natural substratum through the box culvert.
- Planting trees/shrubs along the streambank to provide cover for the creek.
- Minimizing the amount of riprap used along the new channel to the extent practicable while still maintaining slope stability.

4. The possibility of onsite wetland mitigation, such as creating wetlands in areas where existing loop ramps and other structures will be removed, was evaluated further. It has been determined that using these areas for wetland creation is not feasible because they will be needed for stormwater management such as swales, vegetated slopes, and infiltration areas to achieve a 40% TSS reduction. In addition, most of the land within and adjacent to the existing loop ramps is already classified as wetland.

5. The measures recommended by EPA to further minimize wetland impacts during construction of the structure access/maintenance roads are generally consistent with WisDOT's best management practices. Specific construction methods, sequencing, and timing will be determined in final design in consultation with DNR. Any special provisions that may be developed in the final design phase will be included in applicable contract documents and communicated to the construction contractors. The construction techniques noted for the realigned portion of Beaver Dam Creek are also consistent with WisDOT's standard practices for stream realignments.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MINNESOTA 55101-1678

AUG 23 2011

Operations
Regulatory (2006-06047-LMK)

Ms. Danielle Block
WisDOT-Northeast Region
944 Vanderperren Way
Green Bay, Wisconsin 54304

Dear Ms. Block:

This letter is in response to the Final Environmental Impact Statement (FEIS) we received on July 13, 2011 for the US 41, Memorial Drive to County M project (Project ID 1133-10-01). The project site is located along the existing US 41 corridor in Brown County, Wisconsin.

The U.S. Army Corps of Engineers is acting as a cooperating agency for the National Environmental Policy Act (NEPA) review for the proposed project due to the requirements for a Clean Water Act Section 404 and a Rivers and Harbors Act Section 10 permit. We have evaluated the document pursuant to NEPA guidelines and concur with the document regarding purpose and need, range of alternatives and the WisDOT preferred alternative.

Though we agree that the document is adequate for a corridor level study, we expect that additional agency coordination may be required during the design phase for the following subjects:

1. Wetland delineation/impacts: The Corps will need to agree that established wetland boundaries are adequate for the subsequent CWA Section 404 permit evaluation. Due to the age of data or mechanism of collection, additional delineation information may be required during the design phase. Wetland impact amounts may need to be refined based on updated delineation results. We expect that further efforts to avoid and minimize wetland and stream impacts will take place during the design phase, especially during the design of the additional construction access/maintenance roads.
2. Borrow Areas: To alleviate future project delays, we recommend that you work closely with contractors to identify any significant environmental resources within the corridor that may be impacted due to borrow areas. Additional impacts may need to be evaluated in accordance with NEPA, as connected actions to the Federal project.
3. Compensatory Mitigation: Though not directly referenced in the FEIS, compensatory mitigation should be consistent with regulations found in 33 CFR Part 332. Ongoing agency coordination on the proposed "Freedom" compensatory wetland mitigation site is expected to ensure that wetland functions and values lost due to the project are adequately replaced.

See comment
responses

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Operations
Regulatory (2006-06047-LMK)

We appreciate your request for comments and look forward to continued coordination on this project. If you have any questions, contact Joey Shoemaker in our Green Bay Field Office at (920) 448-2824. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,



Tamara E. Cameron
Chief, Regulatory Branch

Copy:
Tracey McKenney, FHWA
Ken Westlake, USEPA Region 5
Mike Helmrick, WisDOT
James Doperalski, WDNR
Jill Utrup, USFWS

Comment Responses
(August 23, 2011 USACE Letter)

1. Updated wetland boundary determinations were done in August 2011 with participation by the USACE and DNR. Wetland impact calculations for the Clean Water Act permit application will be refined based on the revised wetland boundaries. Coordination with the USACE and DNR has been ongoing during Clean Water Act permit activities to evaluate opportunities to further minimize stream and wetland impacts to the extent practicable.

2. As stated in the SAFETEA-LU Section 6002 Impact Analysis Methodology, WisDOT committed to providing a conceptual discussion concerning material source (borrow) sites in the EIS. WisDOT and FHWA policy concerning borrow sites is discussed in Section 3.18.6 of the Final EIS. The location of borrow sites is determined by the construction contractors after the project has been advertised for contract bidding based on the final plans, specifications and estimates prepared by WisDOT. Specifications and guidelines for minimizing potential adverse environmental impacts of borrow sites are provided in WisDOT's Standard Specifications for Road and Bridge Construction and WisDOT's Construction and Materials Manual (see Section 3.18.6 of the Final EIS for more information).

3. Ongoing coordination with the USACE and DNR during Clean Water Act permit activities is intended to ensure that wetland mitigation will be consistent with standards and criteria in 33 CFR Part 332, Compensatory Mitigation for Losses of Aquatic Resources.