

RECORD OF DECISION

For

**I-94 North-South Corridor
(I-94/USH 41 Interchange to Howard Avenue)
Kenosha, Racine and Milwaukee Counties, Wisconsin
Lake County, Illinois
WisDOT Project I.D. 1030-20-00
FHWA-WISC-EIS-07-01-F**

Decision

The 35-mile I-94 north-south corridor extends from the USH 41/I-94 interchange in Lake County, Illinois to Howard Avenue in Milwaukee County. See Final EIS Exhibit 1-1. Improvements are proposed to address safety and traffic operations, accommodate future traffic volumes at an acceptable level of service, maintain a key link in the state and regional transportation network and replace deteriorated pavement. The selected improvement alternative is described in detail in Section 2 (Alternatives/Preferred Alternative) of the Final EIS approved by the Federal Highway Administration (FHWA) on March 25, 2008.

The selected alternative is to widen I-94 to eight lanes in the study area (Safety and Design Improvements with Added Capacity Alternative). The selected alternative provides the best balance among sound engineering design, addressing long-term travel demand and safety, and minimizing overall social, economic, and natural resource impacts.

Selection 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 received 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.

New Information since Final EIS Approval

On March 12, 2008 the U.S. Environmental Protection Agency (EPA) announced it is lowering the primary National Ambient Air Quality Standard for ground-level ozone from 0.084 parts per million to 0.075 parts per million. The final rule appeared in the Federal Register on March 27, 2008 and took effect on May 27, 2008.

The Clean Air Act and implementing regulations establish a deliberate sequence of events, including milestones and timeframes, for the various components that must be in place to implement a new air quality standard and to establish a basis for regulating transportation conformity. Given the current likely schedule for Wisconsin, demonstration of transportation conformity with the a new State Implementation Plan (SIP) based upon the new 0.075 parts per million (ppm) national ambient air quality standard for ozone will not likely be required until 2015-2016. Until such time as new or revised motor vehicle emissions associated with a new or revised SIP become effective, States and Metropolitan Planning Organizations (MPO's) are required to continue demonstrating conformity against current SIP provisions.

On March 27, 2008 EPA issued Wisconsin a finding of failure to submit an ozone attainment demonstration and reasonable further progress plans for the Milwaukee and Sheboygan ozone nonattainment areas subject to the 8-hour national ambient air quality standard for ozone. This finding in no way invalidated the current Wisconsin ozone SIP. The Wisconsin Department of Natural Resources is engaged in the process of completing the required SIP and anticipates submittal to EPA by April 2009. Until such time as new or revised motor vehicle emissions associated with a new or revised SIP become effective, States and MPOs are required to continue demonstrating conformity against current SIP provisions.

Corrections

Page 4-47 of the Final EIS incorrectly references Wisconsin Statute 84.20 in regard to WisDOT operating assistance for urban mass transit systems. The correct reference is Wisconsin Statute 85.20.

Alternatives Considered

WisDOT and FHWA developed and evaluated a wide range of alternatives. The alternatives were presented to the public and assessed to determine their environmental impacts and the extent to which they meet the purpose of the project. The initial range of alternatives considered:

- **No-Build Alternative**—No safety or capacity improvements would be made. The study-area freeway system would eventually be replaced as needed in its current configuration with six lanes, left-hand entrance and exit ramps.
- **Transportation Demand Management**—Attempts to reduce the number of auto trips through increased transit ridership. The public transit system element of the 2035 regional transportation system plan recommends several ways to increase bus service in Kenosha, Racine, and Milwaukee Counties including a rapid transit bus system operating on freeways to provide commute and reverse commute service, and an express bus system operating on a grid of higher speed, limited-stop arterials.
- **Transportation System Management**—Involves ways to maximize the efficiency of the highway system to help alleviate or postpone the need to expand capacity. Transportation System Management measures are designed to improve traffic flow and safety such as improving intersection capacity, widening shoulders, removing street parking or restricting parking to non-peak traffic periods, adding traffic signals, ramp metering, and providing access management including relocating or consolidating driveways where practicable.
- **Build Alternatives**
 - **Spot Improvement**—Replace the existing roadway and bridges and address those safety issues that can be fixed without acquiring any new right-of-way.
 - **Safety and Design Improvements**—Replace the existing roadway and bridges and address the safety issues described in the Final EIS Section 1, Purpose and Need for the Proposed Action.

- Safety and Design Improvements with Added Capacity – This is the same as the Safety and Design Improvements Alternative, but also includes adding one new general purpose travel lane in each direction to address congestion.

WisDOT and FHWA evaluated a new interchange with I-94 at Drexel Avenue and a “full” interchange with I-94 at 27th Street, replacing the existing “half” interchange.

Several other alternatives have been considered and dismissed for various reasons.

- Level of Service C Alternative. WisDOT and FHWA developed an alternative that would provide level of service C on the urban portion of the study-area freeway system (I-94 north of Ryan Road). This alternative would have roughly the same configuration as the selected alternative but with even more added capacity. The right-of-way and relocation impacts of this alternative are much greater than the other Build Alternatives. Based on the residential and business relocation impacts, this alternative was eliminated from consideration.
- High-Occupancy Vehicle/High-Occupancy Toll Lanes. WisDOT and FHWA considered adding lanes for the exclusive use of vehicles carrying two or more passengers (HOV lanes). In some cities, single-occupant vehicles that pay a toll are allowed to use HOV lanes. These lanes are referred to as high-occupancy/toll (HOT) lanes. HOV/HOT lanes would make the freeway wider because the HOV/HOT lanes would need their own shoulder in addition to the shoulder on the general-purpose lanes. Final EIS Exhibit 2-13 illustrates the width of a freeway under different combinations of general purpose and HOV/HOT lanes. The increased width of I-94 with HOV/HOT lanes would dramatically increase the number of residential relocations in Milwaukee County compared to the other Build Alternatives. At least 60 residential relocations would be required in Milwaukee County under this alternative based on WisDOT’s cursory analysis, compared to 4 residential relocations under the selected alternative.
- Reversible Lanes. WisDOT and FHWA considered reversible lanes as a way to provide the functionality of HOV/HOT lanes with less right-of-way impact. Reversible lanes are freeway traffic lanes designated for use by the direction of traffic having the highest volume. Reversible lanes are effective where there is a large directional split in the morning and evening rush hour traffic. In the I-94 north-south corridor, there is not enough of a directional split to make reversible lanes effective.
- 27th Street direct access from northbound I-94. During the Draft EIS public comment period an alternative was suggested that provided direct access to the 27th Street interchange from northbound I-94. Under this scenario, a vehicle would exit northbound I-94 south of the Mitchell Interchange, and a ramp would allow the vehicle to travel through the Mitchell Interchange and merge with the westbound I-894/43 exit ramp to 27th Street. However, under this alternative, no direct access would be provided from the 27th Street interchange to southbound I-94. This is similar to the alternative illustrated in Final EIS Exhibit 2-2a. This alternative was eliminated from consideration because FHWA and WisDOT object to the practice of providing access to an interchange but not providing a return movement from the interchange. Additionally, several residential relocations would be required as a result of this alternative.

Selected Alternative

The selected alternative is the Safety and Design Improvements with Added Capacity Alternative. Under this alternative I-94 will be reconstructed to provide 8 travel lanes between the Wisconsin/Illinois state line and the Mitchell Interchange. I-894/43 between the Mitchell Interchange and 35th Street would also be reconstructed, as would I-94/43 between the Mitchell Interchange and Howard Avenue.

Other key features of the selected alternative:

- the Airport Spur would be reconstructed between I-94 and Howell Avenue and the Airport Spur interchange with I-94 would be reconstructed;
- the Ryan, Rawson, College and Layton Avenue interchanges would be reconstructed as tight diamond interchanges.
- the selected alternative does not provide direct access from the 27th Street interchange with I-894/43 to I-94 southbound; and no direct access from I-94 northbound to the 27th Street interchange with I-894/43.
- all left-hand entrances and exits in the Mitchell interchange would be converted to right-hand exits and entrances to eliminate unsafe weaving and improve safety. Collector-distributor roads would be provided between the Airport Spur interchange and the Mitchell Interchange. Auxiliary lanes would be provided on I-94/43 between the Mitchell interchange and Howard Avenue.
- the Drexel Avenue interchange with I-94 is part of the selected alternative. The Drexel Avenue interchange would improve the freeway ramp and local street intersection traffic operations at the adjacent Ryan Road and Rawson Avenue interchanges to acceptable levels of service. The southbound exit ramp at Rawson Avenue would operate at level of service E without the Drexel Avenue interchange and level of service C with the Drexel Avenue interchange. The southbound exit to Ryan Road would operate at level of service D without the Drexel Avenue interchange and level of service C with the interchange. In addition, the Drexel Avenue interchange would improve the operation of I-94 near the Rawson Avenue interchange. The Drexel Avenue interchange is included in the Southeast Wisconsin Regional Planning Commission's (SEWRPC) 2003 *A Regional Freeway Reconstruction Plan for Southeastern Wisconsin*, the 2035 regional transportation plan, and Oak Creek and Franklin land use plans. FHWA gave its tentative approval, subject to the completion of a NEPA document, for the Drexel Avenue interchange in December 2007 (see Final EIS Appendix D).
- the interchange at 27th Street and I-94, near the Racine-Milwaukee County line, would be moved about ½-mile north and converted to a full interchange.
- Frontage roads adjacent to I-94 in Kenosha and Racine Counties would be reconstructed and moved further away from mainline I-94.

The selected alternative is illustrated in Exhibit 2-3 at the back of the Final EIS.

The selected alternative is based on engineering and environmental factors and input from citizens, state and federal resource agencies, and local officials. The selected alternative meets all elements of the project's purpose and need and strikes a balance between providing a safe and

efficient study-area freeway system, and minimizing impacts to the natural and built environment in the I-94 north-south corridor to the extent possible and practicable.

Impacts of both Build Alternatives, Safety and Design Improvements and Safety and Design Improvements with Added Capacity, are shown in Final EIS Exhibit S-1, Impact Summary Table, and documented in Final EIS Section 4, Environmental Consequences. The difference in impacts between the two Build Alternatives is relatively small as shown in the Impact Summary Table. This was a key factor in the decision to designate the Safety and Design Improvements with Added Capacity as the selected alternative.

Identification of the selected alternative was performed in accordance with the Clean Water Act's Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230), administered by U.S. EPA and Corps. The guidelines 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.

Section 4(f) / 6(f)

The U.S. Department of Transportation's Section 4(f) law (49 USC 303) states that federal funds may not be approved for projects that use land from a significant publicly owned park, recreation area, wildlife or waterfowl refuge, or any significant historic site unless it is determined that there is no feasible and prudent alternative to the use of land from such properties, and the action includes all possible planning to minimize harm to the property resulting from such use.

Section 6(f) of the Land and Water Conservation Fund Act (LWCF) states that property purchased or developed with funds under the act may not be converted to any use other than outdoor public recreation uses. The Act also states that land required from such properties must be replaced with property of at least equal fair market value and of reasonably equivalent usefulness and location, or be compensated through other means in consultation with DNR, the agency responsible for administering the LWCF and other aspects of the Act.

The selected alternative will affect Milwaukee County's Falk Park, which is subject to Section 4(f) and Section 6(f) requirements. Detailed information on Section 4(f)/6(f) resources in the I-94 north-south corridor and their relationship to the selected alternative are provided in Final EIS Section 5. Following is a brief summary of the conclusions discussed in Section 5. Description of the Section 4(f)/6(f) Resource

Falk Park is a Section 4(f) and Section 6(f) resource in the area of potential effect of the selected alternative. Falk Park would be affected by the new interchange on I-94 at Drexel Avenue. Falk Park is located on the west side of I-94 between Rawson Avenue and Drexel Avenue. The park and the freeway right-of-way share a property line (FEIS Exhibit 5-1). Falk Park is owned by Milwaukee County.

The park is 216 acres. It is undeveloped except for a park office/pavilion and small parking area located off Rawson Avenue and unpaved trails in the north half of the park. The pavilion is available for rent. School groups and nature groups use the northern half of the park.

Most of Falk Park was acquired with LWCF (FEIS Exhibit 5-2). U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG) funds were used in

conjunction with LWCF in the northern half of the park. Falk Park had two LWCF grants according to DNR Southeast Region. Five parcels totaling 116 acres were approved in a 1975 grant and additional properties totaling 36 acres were acquired in a 1978 grant. A portion of the park along I-94 was not acquired with special funds.

Impacts to the Section 4(f)/6(f) Resource

Under the selected alternative (Safety and Design Improvement with Added Capacity), the 8-lane I-94 would be approximately 12 feet closer to Falk Park than the existing 6-lane I-94.

The I-94/Drexel Avenue interchange would be a diamond interchange (see Final EIS Exhibit 5-3). As part of the diamond interchange configuration, the entrance and exit ramps would intersect Drexel Avenue close to the freeway in order to minimize impacts to adjacent residences and Falk Park. However, as illustrated in Final EIS Exhibits 2-10 and 5-3, the interchange's southbound ramp from I-94 to Drexel Avenue would require acquisition of approximately 2 acres from the 216-acre Falk Park. The 2-acre acquisition is part of a larger area in the park that is enrolled in the Conservation Reserve Program. Milwaukee County has begun prairie restoration in this area.

Coordination

Milwaukee County supports a new interchange at Drexel Avenue (See Final EIS Appendix C, page C-29). WisDOT met with the Milwaukee County Parks System staff twice in 2006 to inform them of the project and the potential impact to Falk Park and Root River Parkway. In March 2007, November 2007 and April 2008 WisDOT met with Milwaukee County Parks System staff to discuss potential mitigation measures.

In November 2007, WisDOT received a letter from the Milwaukee County Parks System stating that it will continue to work with WisDOT, FHWA, and DNR during the design phase of the project to finalize appropriate mitigation for Falk Park. Although WisDOT offered excess right-of-way contiguous to Falk Park near Rawson Avenue to mitigate the Falk Park impact, Milwaukee County indicated "Milwaukee County Parks System will continue to work with WisDOT to identify suitable lands to exchange with WisDOT to accommodate the proposed interchange at Drexel Avenue." The mitigation may include other parcels than the potentially excess right-of-way near the reconstructed Rawson Avenue interchange (see Milwaukee County Parks System letter in Final EIS Appendix D).

DNR will recommend approval of the Falk Park conversion to the National Park Service (see Final EIS Appendix D, DNR comment number 79).

Final Section 4(f)/6(f) Finding

WisDOT and FHWA evaluated several alternatives for a new interchange with I-94 at Drexel Avenue.

The No-Build Alternative would not be consistent with SEWRPC's regional transportation plan, *A Regional Transportation System Plan for Southeastern Wisconsin: 2035*, which recommends construction of the I-94/Drexel Avenue interchange. The Cities of Oak Creek and Franklin oppose the No-Build Alternative.

An alternative that would avoid impacts to Falk Park would require the relocation of six residences from the west side of I-94 and 16 acres of right-of-way would be acquired. Under the selected diamond interchange, there would only be two residential relocations and 7 acres of right-of-way acquisition. The City of Oak Creek opposes the Falk Park Avoidance Alternative. Based on the

additional residential relocations, increased right-of-way impacts, and local government opposition, this alternative is not a prudent and feasible course of action.

WisDOT and FHWA have minimized impacts to Falk Park during the study phase by developing a tight diamond interchange and will continue to refine the alignment of this interchange in an attempt to further reduce impacts to the park. WisDOT and FHWA will continue to work with Milwaukee County, DNR, and National Park Service during the design phase to develop appropriate compensation or mitigation for the impact such as the replacement land of comparable value or enhancements to the remaining property .

Based on the above considerations, there is no feasible and prudent alternative to the use of land from Falk Park. The proposed action includes all possible planning to minimize harm to the park resulting from such use.

Measures to Minimize Harm

Detailed discussion of measures to minimize harm is provided in Final EIS Section 4.11. Following is a summary of key measures relative to traffic management during construction, air quality, noise, property acquisition, water quality, floodplain and hydraulics, wetlands, and threatened or endangered species.

Traffic Management

During the design phase WisDOT and FHWA will evaluate the diversion routes to determine if improvements to these routes are necessary. In addition to roadway improvements, signal timing modifications, temporary signals, parking restrictions, intersection improvements, incident management, and demand management options may be instituted during construction to ease potential congestion and delay.

Freeway and local street lane closures will be staged to ease disruptions to the extent possible. Other mitigation measures may include:

- Workshops to determine which methods could be employed to reduce the effects of construction on area businesses, residents, commuters, community services, and special events.
- A community involvement plan to inform the public including radio, internet, print, and television.
- Encouraging the use of transit and carpooling through advertising, temporarily reduced rates, additional routes, and expanded or new park-and-ride lots.
- Encouraging businesses to modify their work schedules and/or shipping schedules to avoid peak traffic hours.
- Improving detour routes and other routes due to increased traffic resulting from construction.

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 will be mitigated through implementing and maintaining a comprehensive traffic control plan, enforcing emission

standards for gasoline and diesel construction equipment requiring use of ultra-low sulfur fuel in construction equipment and requiring the construction contractor to develop and implement a dust control plan on the construction site. WisDOT and FHWA will evaluate several other air quality construction mitigation best practices to reduce diesel emission impacts from construction equipment including reducing idle times, properly maintaining equipment, stipulating that unnecessary idling and equipment operation is to be avoided, and retrofitting diesel engines with diesel emission control devices.

Dust control during construction would 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 and through those measures proposed in the contractors dust control plan. The location and operation of concrete batch plants would be in accordance with the Standard Specifications, and any special provisions developed during coordination with DNR regarding air quality standards and emissions. Open burning of waste material or brush would be done in accordance with, and where allowed by, local ordinances and in accordance with DNR Bureau of Air Management permit requirements as applicable. Any portable material plants would 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 NR447).

Construction air quality mitigation measures that are adopted by FHWA will ultimately be placed in the specifications that the construction contractors must follow. For this project, there will be multiple construction contracts. Before committing to additional construction air quality mitigation measures, WisDOT and FHWA need to carefully consider the type and extent of construction equipment that will be used in each contract before putting mitigation measures in place. This process will occur during final design as the overall project is divided into the individual construction contracts.

Noise

Based on the criteria of 23 CFR 772 and within the framework of WisDOT's criteria, various methods were reviewed to mitigate the noise impact of the proposed improvements.

TRANS 405, Siting Noise Barriers, has established criteria for determining feasibility and reasonableness and is summarized as follows:

- The barrier must provide a minimum 8-dB reduction.
- The total cost of the barrier may not exceed \$30,000 per abutting residence.
- There must be a formal resolution from the local government supporting the noise barrier.
- The local government must provide documentation of land use controls, which would reasonably eliminate the need for noise barriers adjacent to future developments that abut freeways or expressways.

Noise barriers were analyzed at 25 locations adjacent to the study-area freeway system. All of the noise barriers analyzed meet WisDOT's feasibility criteria. Under the selected alternative, 15 noise walls meet both TRANS 405's definitions for feasible and reasonable noise mitigation.

There are numerous areas adjacent to the study-area freeway system where individual receptors or small groupings of residences exceed the National Ambient Criteria, especially in Kenosha and Racine Counties. However, it is impossible to design a noise barrier for these receptors that would provide an 8-decibel reduction and still meet the TRANS 405, \$30,000 per residence criteria.

Based on the study, WisDOT intends to replace the existing noise barriers as required by the widening of I-94. WisDOT also commits to installing the additional feasible and reasonable noise barriers, pending future public and local government involvement. A final decision on the installation of new abatement measures will be made upon completion of the project design and a separate public/local unit of government involvement process.

If final design results in substantial changes in roadway design from modeled conditions, noise abatement measures will be reviewed.

Property Acquisition

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.

The most recent editions of all applicable standards, codes, or regulations shall be in effect. In addition, any person performing asbestos abatement must comply with all training certification requirements, rules, regulations, and laws of the State of Wisconsin regarding asbestos removal.

Before a contractor demolishes a building that may contain or is known to contain asbestos, the contractor must properly notify the DNR and 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

Storm water treatment measures will be evaluated during the project’s design phase.

Best management practices (BMPs) can be utilized when dealing with storm water management. BMP options include:

- **Retention Basins (Wet Detention Basins)**— Retention basins have a permanent pool of water year-round. The permanent pool allows pollutant particles in storm water runoff to settle out over an extended period of time and nutrient uptake also occurs through biological activity. This BMP will be unavailable for most of the Milwaukee County portion of the project because of proximity to General Mitchell International Airport. Federal Aviation Administration guidelines (FAA Advisory Circular N. 150/5200-33A, July 27, 2004) restrict construction of open water ponds near airports (the ponds attract birds, which pose a risk for aircraft). WisDOT has identified about 7 to 9 locations in Kenosha and Racine Counties where wet detention basins/ponds may be located outside of the existing right-of-way. Each would be 1 to 2 acres and would be located adjacent to the frontage roads. The exact size and locations have not been determined. Potential locations are illustrated on Exhibit 2-2 and 2-3 at the back of the Final EIS.
- **Dry Detention Basins**— A dry detention basin is typically designed to store runoff volume and discharge it slowly to reduce the peak discharge downstream. As normally designed, these basins typically have little effect on the volume of storm water released to the receiving water. The peak flow reduction is often accomplished through use of a multistage outlet structure that allows increased discharge as water levels in the basin increase.
- **Infiltration Devices**— Infiltration can be achieved through use of infiltration basins, trenches, grass swales or rain gardens. Infiltration devices are used to slow down the water flow so that more water is absorbed into the ground and more pollutants are removed from runoff.
- **Grass Ditches**— This BMP generally helps reduce suspended solids to meet the regulatory goal of TRANS 401. The majority of the storm water quality control in Racine and Kenosha Counties and the southern part of Milwaukee County will be achieved with this BMP.
- **Trapezoidal Swale through Infield**— This BMP may be used within airport zones where wet detention is not allowed. It combines grass ditch treatment with peak flow reduction and is considered the same level of suspended solid control as grass ditches.
- **Vegetated Rock Filters**— This BMP may be used at outfalls to waterways or anywhere concentrated runoff leaves the right-of-way. It is similar in concept to a level spreader which attempts to reintroduce sheet flow and also provides a small amount of peak flow and volume reduction.
- **Swale Blocks/Ditch Checks**— These are small earthen berms constructed in the bottom of a ditch at regular intervals to detain runoff from frequent storms. This BMP provides peak flow reduction and may provide infiltration benefits depending on soil conditions.

Floodplain and Hydraulics

All structures would have adequate capacity for 100-year flood flow without public or emergency vehicle interruption from damage to the roadway or structures. None of the floodplain crossings would cause a substantial potential for interruption or termination of a transportation facility needed for emergency vehicles or the community's only evacuation route. Crossings would be consistent with local floodplain management goals and objectives.

Many of the communities in the project corridor allow compensatory storage when a project causes an encroachment into the floodplain. The amount of compensation varies by community and can vary based on whether the impact is to the flood fringe or floodway.

The WisDOT/DNR Cooperative Agreement describes WisDOT's responsibilities related to projects that cause an encroachment into mapped flood hazard areas. WisDOT is required to compute the 100-year regional flood elevation for all new or replacement culverts and provide the results of the analysis to DNR. If an increase in backwater results, WisDOT is required to notify all affected landowners upstream of the project by certified letter, return receipt requested. The local zoning authority must also be notified of the project even in cases with no increase in elevation. When a floodplain ordinance is in effect, "appropriate legal arrangements" are required, which may include certified verification from the affected property owners that notification letters were received; acquisition of property rights or other compensation; or initiation of condemnation proceedings. DNR is responsible for providing assistance to the local unit of government or floodplain zoning authority during the ordinance amendment process. DNR notifies WisDOT if significant problems arise during the amendment process that could affect the project schedule. If a community fails to amend its ordinance within a timely manner and if appropriate legal arrangements have been made, WisDOT may proceed with construction of the project after consultation with DNR. The entire text of the Agreement can be found in the FDM, Procedure 20-30-1.

Wetland

In accordance with state and federal agency policies and regulations for wetland preservation, including the *Section 404(b)(1) Guidelines for Specifications of Disposal Sites for Dredged or Fill Material* (40 CFR part 320) the following discussion summarizes wetland mitigation strategies for the I-94 North-South Corridor Study.

Compensation for unavoidable wetland loss will be carried out in accordance with the interagency *Wisconsin Department of Transportation Wetland Mitigation Banking Technical Guideline* (Guideline) developed as part of the *WisDOT/DNR Cooperative Agreement on Compensatory Wetland Mitigation*. A wetland mitigation plan will be developed during the project's design phase, in consultation with state and federal agencies.

WisDOT is pursuing the acquisition of a new consolidated wetland mitigation parcel in the Fox River watershed; however, once the proposed acquisition is finalized, the restoration of this parcel will not be constructed for approximately 5 years. In addition, WisDOT has an established statewide wetland mitigation bank located in Walworth County that has remaining acreage available for credit. Debiting wetland acreage credits from this bank to mitigate for the wetland losses from the I-94 north-south corridor project is in accordance with the terms of the Guideline.

Threatened and Endangered Species

Plants. A conservation plan will be developed in cooperation with the DNR Bureau of Endangered Resources that will address conservation measures required in the proposed project area for the state threatened seaside crowfoot. All populations of the state threatened plant occurring in the construction footprint will be avoided, if possible, and if this is not possible impacts to this species will be minimized to the extent practicable. An incidental take authorization will be required for unavoidable impacts to the listed plant species. The authorization requires a determination that this loss would not jeopardize the continued existence and recovery of the species in the state. WisDOT will develop a plan to relocate those plants that cannot be avoided.

WisDOT will avoid impacts to all but about 15 plants in a key bluestem goldenrod patch in Milwaukee County. The state endangered plants that cannot be avoided will be addressed through the incidental take process. No other known protected plant species will be affected. DNR recommends relocating two special concern plant species, although DNR acknowledges that WisDOT is under no obligation to do so because the plants are not designated as threatened or endangered. WisDOT may voluntarily relocate some of the two special concern plants that would be affected.

If Illinois DOT reconstructs I-94 in the Lake County portion of the study area, it would coordinate with the Illinois Department of Natural Resources to develop appropriate mitigation measures for the state endangered alkali bulrush.

Herpetiles (Snakes and Turtles). In cooperation with DNR Bureau of Endangered Resources, WisDOT will prepare a plan to avoid or minimize impacts to the Blanding's turtle and eastern massasauga rattlesnake in southern Kenosha County. Installing fencing around construction areas and hand collecting Blanding's turtles and eastern massasauga rattlesnakes from inside the fencing will be a key element of the plan.

Pending the outcome of DNR's genetic testing of Butler's garter snakes in southern Milwaukee County, WisDOT may develop mitigation measures for the Butler's garter snake. WisDOT and DNR agreed at the January 31, 2007, meeting to wait for the results of this genetic testing before developing mitigation measures.

Fish. WisDOT will avoid in-water construction between March 15 and May 15. All in-water construction would be accomplished under "dead water" conditions, per DNR's request. During culvert installation, WisDOT will maintain stream flow such that fish passage is not interrupted. All demolition and construction will be designed to limit material falling into streams. WisDOT will attempt to remove bridge decks in sections rather than knocking it down into the waterway. If a structure must be knocked down, devices will be used to catch falling debris. Material that inadvertently enters the water will be removed. Existing bridge piers in streams would be removed down to approximate stream bed locations.

Wetlands Only Practicable Alternative Finding

The project has been developed pursuant to 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. A detailed discussion on how wetland impacts were avoided or minimized, measures to minimize harm to wetlands that cannot be avoided, and the conceptual compensation plan for unavoidable wetland loss is provided in the Final EIS Section 4.11.7, “Wetlands—Only Practicable Alternative Finding”.

Monitoring or Enforcement Program

Monitoring and enforcement programs will consist of ensuring that contractors carry out project construction in accordance with WisDOT contract special provisions or special coordination will continue throughout the engineering design phase to ensure maximum protection of environmental resources. Project development will be monitored by WisDOT and FHWA to ensure conformance with the mitigation commitments made in the EIS prior to authorization of Federal-aid highway funds. Specific monitoring/enforcement actions identified in the EIS include the following:

- When particular project segments proceed to the design engineering phase, WisDOT will re-evaluate the Final EIS in consultation with FHWA to determine whether there have been any substantial changes in the affected environment, selected alternative, impacts, mitigation measures, or environmental commitments as presented in the Final EIS.
- Prior to construction activities requiring discharge of fill material into waters of the United States, including wetlands, authorization will be obtained from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act. Such authorization is contingent on meeting Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material, and obtaining water quality certification from the 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.
- Further coordination with DNR would occur in a future engineering phase to confirm in-stream construction constraint dates to protect threatened or endangered fish species and to develop a construction avoidance plan for the Blanding’s turtle and Eastern massasauga rattlesnake, a relocation plan for the seaside crowfoot, and an incidental take permit for the bluestem goldenrod.

Comments on Final EIS

Notice of availability of the Final EIS was published in the Federal Register on April 4, 2008 with comments due by May 5, 2008. Comments on the Final EIS were received from the following agencies:

- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- City of Milwaukee (Mayor Barrett and Aldermen Hines, Murphy and Bauman)
- City of Milwaukee Department of Public Works
- Milwaukee Public Schools

These letters and FHWA's response to their comments are in Appendix A.

In addition, over 100 comments were received from the public. Many who support the selected alternative, Safety and Design Improvements with Added Capacity, cited the need to rebuild the roadway with an additional lane in order account for future transportation demand and keep traffic moving along this important economic corridor for years to come. Responses cited the potential for economic growth in the region and the vital economic link I-94 provides not only for Southeastern Wisconsin, but the entire state. It was also noted that freight shipments to and from businesses in the area need to know they can travel across Southeast Wisconsin without delays. Responses also mentioned that this reconstruction will need to account for many years of traffic growth and it should be expanded now so it does not need to undergo major work in the future.

Responses opposing the WisDOT and FHWA selected alternative were similar to those submitted during the Draft EIS comment period. Many who are opposed to the selected alternative suggested that I-94 does need to be improved, but WisDOT should select the Safety and Design Improvement Alternative and the cost difference between this alternative and the selected alternative should be used to help fund mass transit options. The Kenosha-Racine-Milwaukee (KRM) commuter rail system was often provided as an example of a mass transit option the additional funds should be spent on. Another reason cited for prioritizing mass transit is to give people a choice of transportation modes as gas prices increase. Other areas of concern for those who oppose the selected alternative include air quality, water quality, general pollution, global warming, greenhouse gases, compliance with NEPA requirements, funding sources for the project and environmental justice, among other concerns.

27th Street Freeway Access Comments

Comments received were related to freeway access at 27th Street and I-894. WisDOT and FHWA's selected alternative limits direct access to the 27th Street interchange from I-94 south of the Mitchell Interchange. Under this alternative, the 27th Street interchange with I-894/43 will remain in place providing access both eastbound (to downtown) via I-94/43 and westbound (to the Hale Interchange) via I-894. The selected alternative does eliminate direct access from northbound I-94 to the 27th Street interchange and direct access from the 27th Street interchange to southbound I-94. Motorists wanting to make these movements would use the Layton Avenue, Howard Avenue or Loomis Road ramps as an alternative. Comments focused on the change in access and the impact it would have on local businesses, quality of life and property values in the area. Concern was also expressed regarding increased travel times for emergency vehicles to St. Luke's Hospital.

A 3,068-person petition and 200 letters from businesses in the 27th Street area were submitted during the comment period. The petition and letters opposed the change in access to 27th Street from I-94 northbound. Comments submitted by and on behalf of the 27th Street Business Association claim the Final EIS is inadequate, violates NEPA and its implementing regulations, and should be reissued with an adequate consideration of the Association's comments and a new public comment period. Cited reasons for the FEIS's inadequacy include: not adequately responding to the Association's or other parties' comments; WisDOT's change in position and reasoning whether the full access at 27th Street is possible with reasonable impacts/cost; not adequately considering an alternative developed by the association that would provide full access at 27th Street; not adequately analyzing CO₂ impacts; ignores request to conduct a full MSAT analysis; should conduct a new project specific conformity analysis for ozone; and, the estimate of gas prices relied upon by WisDOT is grossly inadequate. See Frequently Asked Questions on pg. 15 and Other Comments received on pg. 18.

Noise Barrier Comments

Comments were also submitted requesting noise barriers at various locations along the study corridor. Noise barriers were requested in the vicinity of Ryan and Oakwood Roads, along 18th Street south of Layton Avenue for the condominiums at Bostonian Village South and extended south from Ramsey Avenue. Three comments were received requesting a noise barrier to protect the Deer Haven Subdivision in Racine County on the west side of I-94, north of the County C overpass.

Drexel Avenue Interchange Comments

Comments received also addressed the proposed Drexel Avenue interchange. Those who support the interchange state that access will be important for businesses in the area and the interchange will relieve congestion at the Ryan Road and Rawson Avenue interchanges. The opposing comment says that interchanges at Ryan Road, Rawson Avenue and College Avenue will be adequate.

Racine and Kenosha Counties Service Interchange Comments

A handful of comments were submitted in regards to service interchanges with I-94 in Racine and Kenosha Counties. While these comments have been noted, WisDOT and FHWA completed a study of these service interchanges in 1996 to determine the best way to improve the interchanges to current design standards. An Environmental Assessment documented the need for the proposed interchange upgrades, alternatives considered and the impacts of the recommended alternatives at each interchange. Following a public comment period, a Finding of No Significant Impact was approved by FHWA in December 1996.

Frequently Asked Questions and Responses

The following frequently asked questions address the most common concerns of those who submitted comments in opposition to the selected alternative.

- 1. Comment: Why can't an alternative for the 27th Street interchange with I-894 provide full access to/from I-94 from the south?**

Under the selected alternative, the 27th Street interchange with I-894/43 will remain in place providing access both eastbound (to downtown) and westbound (to the Hale Interchange). The selected alternative does eliminate direct access from northbound I-94 to the 27th Street interchange and direct access from the 27th Street interchange to southbound I-94.

The primary reason for eliminating the direct connection from northbound I-94 to the 27th Street interchange and the direct connection from the 27th Street interchange to I-94 southbound is the impacts that would be incurred to provide these connections safely. Providing these connections would result in 26 residential relocations (16 apartment units and 10 single-family houses). The additional cost to provide these connections would be \$40 to \$50 million and require that a less efficient single-point interchange be constructed. Additionally, to construct this direct access to I-94 from the south, 27th Street over I-894 would have to be closed for 1 year.

Early in the study, a preliminary alternative was presented at a public meeting that showed the direct I-94-to-27th Street connection with relatively few impacts. Further engineering analysis during the study revealed that this connection could not be provided without the impacts noted above and was eliminated from consideration.

Currently, approximately 1,500 vehicles per day use the 27th Street/I-894/43 ramp to access 27th Street from northbound I-94. This represents approximately 6 percent of trips made to the 27th Street corridor (between Layton Avenue and Oklahoma Avenue) on an average weekday.

Based on WisDOT's traffic analysis, Layton Avenue can adequately handle the additional traffic with minor improvements to the Layton Avenue/27th Street intersection and trailblazing signs from I-94 to the 27th Street commercial area. Travel times between I-94 and 27th Street would increase approximately 3 minutes via Layton Avenue compared to I-894.

2. Comment: The Kenosha-Racine-Milwaukee (KRM) commuter rail project should be funded before the freeway is expanded.

Several public comments suggested that WisDOT should reconstruct the study-area freeway system as a 6-lane freeway and contribute the \$200 million cost difference between the 6-lane (\$1.7 billion) and 8-lane (\$1.9 billion) alternatives toward implementing the KRM commuter rail project. Many also suggested that widening the study-area freeway system would not be necessary if KRM were implemented instead.

SEWRPC's 2035 regional transportation plan clearly shows that the recommended transit improvements in the corridor, including light rail and commuter rail, will not eliminate the need to add capacity to the study-area freeway system and that both modes, highway and transit, are needed to provide an efficient transportation network. Likewise, detailed commuter rail ridership forecasts developed during the current KRM study, of which WisDOT participates and partially funds, show no substantial effect on I-94 north-south corridor traffic forecasts, or on the need for additional lanes. The future traffic forecasts for the I-94 north-south corridor used for this study assume full implementation of the regional transportation plan, including doubling bus mass transit, four potential commuter rail lines, and six potential light rail lines. WisDOT concurs with the regional transportation plan's recommendations for the KRM and other transit improvements.

However, Wis. Stat. 59.58(6) places responsibility for "coordinating of transit and commuter rail programs in the region" on regional transit authorities rather than WisDOT. The state legislature, in the 2003–2004 biennial budget, also approved a measure that created a commuter rail grant program that caps WisDOT's funding of any commuter rail systems at 50 percent of the non-federal share or 25 percent of the total, whichever is less (Wis. Stat. 85.064). WisDOT provides over \$100 million annually to support mass transit operating costs around the state. In 2003, WisDOT's transit operating support ranked 11th nationally.

- 3. Comment: SEWRPC developed its 2035 regional transportation plan and traffic forecasts using the assumption that the cost of gas was \$2.30 per gallon in 2035. Gas is much more expensive today. If the recommendation to expand I-94 was based on that assumption, then the recommendation is flawed.**

Several public comments stated that the future traffic forecasts used for this study incorrectly assumed the price of gasoline would remain steady at \$2.30 per gallon. This statement is not accurate. The travel forecasting conducted for the regional transportation plan and this study makes assumptions about the price of gasoline and the average fuel efficiency of cars and trucks. Together these factors result in a fuel cost per mile of travel.

The forecast of motor fuel cost per gallon is based on forecasts prepared annually by the U.S. Department of Energy. The forecast in early 2005 was \$2.19 per gallon. At the time this gasoline forecast was made, gas prices were \$1.95 per gallon. Thus, the Department of Energy's forecast anticipated that the price of gas would increase at a rate higher than inflation. Over the previous 25 years, the price of gas did not increase as quickly as inflation (gas prices increased 92 percent between 1980 and 2005; inflation increased 137 percent over the same period). Based on the Department of Energy forecast, the gas price used by SEWRPC in their traffic forecast was \$2.30 per gallon in 2005 dollars. This was adjusted for inflation at 3 percent per year, which is typical of the last several years and slightly less than the last 25 years. This equates to a price of about \$5.60 per gallon in 2035.

The other side of the equation, SEWRPC assumed that average fuel efficiency would increase from 22 miles per gallon to 30 miles per gallon. However, federal legislation has recently raised the mandated average fuel efficiency standard to 35 miles per gallon for new vehicles by 2020. Therefore, the average vehicle fuel efficiency in 2035 may be expected to be 35 miles per gallon, higher than the forecast 30 miles per gallon.

Accounting for this higher fuel efficiency under the SEWRPC 2035 forecast of 18.7 cents for gasoline cost per mile (\$5.60 per gallon divided by 30 miles per gallon) would result in an increase in the SEWRPC forecast of motor fuel to \$6.50 per gallon in the year 2035.

WisDOT concurs that this is a reasonable methodology.

- 4. Comment: The cost of the selected alternative, \$1.9 billion, is not funded. How will this project be paid for?**

The project will be funded with a combination of state and federal funds. In the 2007–2009 biennial state budget the Governor and the Legislature showed a strong commitment to the project by including \$245 million of project costs in fiscal year 2008 and fiscal year 2009. Wisconsin law prevents the current Legislature from committing future Legislatures to a particular course of action; therefore, the specific source of funds for completing the project cannot be identified at this time. WisDOT will continue to work with the Governor and Legislature to develop funding alternatives for completing the project as scheduled. This is the same process that was used to fund the Marquette Interchange.

5. **Comment:** According to the FEIS, "The Safety and Design Improvements with Added Capacity Alternative would decrease travel times on SB I-94 during the evening rush hour by over 10 minutes between Howard Avenue and College Avenue in 2035, compared to the Safety and Design Improvements Alternative. Travel times would not vary by as much south of College Avenue. In Racine and Kenosha Counties, there would be little difference in travel times between the two alternatives." Why is WisDOT spending \$200 million for capacity expansion when it is doing little to improve travel times?

There are factors other than travel time to consider when evaluating these two alternatives in Racine and Kenosha Counties. While travel times may not significantly decrease in Racine and Kenosha Counties with the added capacity alternative, the level of service will improve from level of service D/F to level of service C/D. Level of service is a measure of the congestion on the freeway. The American Association of State Highway and Transportation Officials document A Policy on Design Standards for the Interstate System recommends a level of service in rural areas of level of service C. Also, while better level of service does not significantly affect travel times, it does indicate less congestion on the freeway. Safety is a factor to consider since as freeway congestion decreases, so does the crash rate.

6. **Comment:** On March 12, 2008 U.S. EPA lowered the ground level ozone standard. On March 24, 2008 U.S. EPA informed Wisconsin DNR that it had not submitted a state implementation plan that demonstrates how the state will attain and maintain the ozone standard. As a result the state faces sanctions if the state implementation plan is not updated. The Final EIS should be re-circulated with this information.

See *New Information Since Final EIS Approval* on page 1 of this Record of Decision.

Other Comments Received

1. **Comment -** The comment period for the I-94 North-South Final Environmental Impact statement should have been extended. "Until April 23, 19 days into the 30-day comment period, the Wisconsin Department of Transportation's web site for the North-South I-94 project failed even to mention the existence of the comment period." Information about it was posted only after it was brought to WisDOT's attention.

"The department is obligated to give full notice of a 30-day comment period on its major communications vehicle for the project. Information about the comment period for the Draft EIS was posted there, and a reasonable person certainly would expect to be able to find similar information comment period for the final document. Failure to give full notice on the web site obviously reduced public knowledge and awareness of the opportunity to comment on the FEIS and inevitably reduced the number of comments filed."

When the extension was requested "WisDOT argued that the official notice of the comment period was published in the Federal Register, and that information also was included in newspaper ads and on 13,000 postcards the agency sent out.

- The Federal Register is not a very good public outreach tool, to say the least. The Federal Register is a dense, difficult publication and is not widely read by the general public.
- The contention that adequate notice can be given through newspaper ads when newspaper readership is in rapid decline is fatally flawed.

- 13,000 postcards is not anywhere near enough to provide notice all of those who might wish to comment on the FEIS."

Response – Notice of the FEIS comment period was published in the Federal Register, included in newspaper ads in newspapers along the corridor, was provided on postcards sent out to over 13,000 citizens on the project mailing list and was located on the cover of the FEIS which was provided on WisDOT's project web site.

2. **Comment** – "The report's analysis of greenhouse gas impacts is inadequate. The analysis is not much of an improvement over the Draft Environmental Impact Statement, which did not mention greenhouse gases at all. The Final EIS talks about greenhouse gases, but doesn't say much useful and offers no mitigation plans." The FEIS violates NEPA requirements by not committing to mitigation of GHG emissions.

Response - FHWA's position is that greenhouse gas emissions/climate change is a global issue, the affected environment is the entire planet, and no individual project's emissions will be large enough to perceptibly impact global greenhouse gas emissions and/or climate. FHWA commits to mitigation measures when 1) the impacts for which the mitigation is proposed actually result from the proposed action, and 2) the proposed mitigation represents a reasonable public expenditure (23CFR 771.105(d)).

Because global climate change cannot be attributed to a specific project FHWA will not mitigate potential greenhouse gas emission impacts of the proposed action.

To date, no national standards have been established regarding greenhouse gases, nor has the U.S. EPA established criteria or thresholds for greenhouse gas emissions. On April 2, 2007, the U.S. Supreme Court issued a decision in *Massachusetts et al. v. Environmental Protection Agency et al.* that the U.S. EPA does have authority under the Clean Air Act to establish motor vehicle emissions standards for carbon dioxide emissions. The U.S. EPA is currently determining the implications to national policies and programs as a result of the Supreme Court decision. However, the Court's decision did not have any direct implications on requirements for developing transportation projects.

FHWA is actively engaged with the U.S. DOT Center for Climate Change to develop strategies to reduce transportation's contribution to greenhouse gases – particularly carbon dioxide emissions – and to assess the risks to transportation systems and services from climate change. FHWA will continue to pursue these efforts as productive steps to address this important issue.

3. **Comment** – "The study wrongly dismisses U.S. EPA concerns over air quality modeling. The U.S. EPA said that the air modeling WisDOT used was 'not consistent with current academic literature and other published guidance.' WisDOT rejected the suggestion of other methodologies."

Response – U.S. EPA's comments reflect a general difference between FHWA and U.S. EPA positions on the health impacts of MSATs. EPA's comments do not dispute FHWA's position that available models cannot accurately assess MSAT levels at specific locations. Nor does U.S. EPA note concern with the statement that MSAT emissions will decrease markedly under either Build Alternative.

4. **Comment** – “WisDOT’s plan does not consider the induced demand generated by an expanded freeway.”

Response – Section 4.2.1, Indirect Effects, of the FEIS considers the induced demand generated by an expanded freeway. Additionally, traffic forecasts for an 8-lane freeway are higher than those for a 6-lane freeway which shows that if the freeway is expanded, more people will use the freeway (FEIS Exhibit 4-3).

5. **Comment** – “The plan puts a disproportionate burden on the city of Milwaukee and its residents. WisDOT acknowledges that construction of an interchange in Oak Creek may have negative impacts on efforts to redevelop the 27th St. business corridor on the south side of Milwaukee and may negatively affect older business corridors in general.”

Response – Section 4.2.1 of the FEIS states that “The interchange (Drexel Avenue) may also redirect development from other areas within southern Milwaukee County to this area.” However, as a result of the proposed action the Mitchell Interchange and the adjacent portions of the study-area freeway system in the City of Milwaukee will be much safer and provide lower travel times. Several parcels of land, including an 11-acre parcel at Layton Avenue, may be made available for redevelopment within the City of Milwaukee. WisDOT has begun working with Milwaukee residents and business owners near I-94 to develop aesthetic enhancements for the freeway and interchanges.

6. **Comment** – “The FEIS does not include available documentation regarding work commuting patterns of residents living in predominantly low-income and minority neighborhoods in the project area, which would shed substantial light on the issues of who benefits from the expansion proposal and who does not.”

Response – Section 4.5.5 Environmental Justice (page 4-48) of the FEIS discusses the different aspects of who benefits from the project. This discussion is based in part on University of Wisconsin-Milwaukee research on this issue and WisDOT’s analysis of that research.

7. **Comment** – “The FEIS discusses the state’s contributions to transit systems, but does not directly address how this massive project would affect future transit funding. WisDOT’s decision to fund freeway construction instead of transit disproportionately affects low-income and minority populations that are more reliant on transit. SEWRPC, in the 2035 regional transportation plan, said significant additional funding would be needed to implement and maintain its transit recommendations including ‘an annual 4 to 5 percent increase’ in state funding. WisDOT notes that it is not its responsibility to coordinate transit systems in the region. It does not discuss whether it has any responsibility to provide a balanced transportation system.”

Response – Transit funding and WisDOT’s funding directives put in place by the legislature are discussed at the bottom of pg. 7-7 of the FEIS.

8. **Comment** - “Cumulative impacts analysis for air pollution is flawed because it is based on air quality conformity analysis for ozone that incorporates transit projects that are not fiscally constrained” and won’t be implemented. Most traffic growth will be in freight transport, which has “relatively less strict air pollution requirements than cars.”

Response: It is speculative to state that none of the transit recommendations will be implemented over the 30-year planning horizon of the regional transportation plan. WisDOT reliance on FHWA, FTA and EPA conformity finding of the SIP and TIP cannot be called arbitrary and capricious. The comment letter refers to a FHWA report on freight movement. This report’s statement about “relatively less strict air pollution requirements on the freight sector” refers to all modes of freight movement not just trucks. The report goes on to say that “Due to efficiency gains and emission regulations, freight pollutant emissions per mile and per ton-mile are generally declining. However, these emission rates are declining more for trucks than for the other freight modes.”

The 2035 regional transportation plan (page 140) states that approximately 142,200 trips are made by transit in the region on an average weekday. This represents about 2.1 percent of all trips in the region (page 139). The 2035 plan, which recommends doubling mass transit service in terms of revenue vehicle miles of service, still estimates 2 percent of trips will be made by transit in the region (page 449). So if the assumption that mass transit service will double does not come to fruition, it will not have a dramatic impact on trips.

9. **Comment** - “The FEIS, although it indicates that negative health impacts may be attributable to vehicle emissions, does not include adequate protections for students and staff at schools near the Interstate. Numerous studies show that traffic-generated particulates and pollution have adverse affects on health, particularly among children. A recent study shows that students attending schools within 500 meters of a freeway can suffer permanent lung damage. In Milwaukee, schools within 500 meters of the North-South freeway within the project area include Cooper, Garland, Lowell and Whittier elementary schools; Ronald Wilson Reagan College Preparatory High School, IDEAL Charter School and Professional Learning Institute at the Sholes Educational Complex; St. Roman Parish; and Salam School.”

Response - Page 4-48 of the FEIS discusses air quality effects on residents and students in the study area. Also, page 4-77 describes some of the specific air quality screening analysis at schools adjacent to the corridor. Particulate matter and MSATs are expected to drop under both Build Alternatives. See Appendix B of the FEIS.

10. **Comment** - “Without a financing plan, conclusion is inescapable that public transit funding will be cut.”

Response: A financial plan will be prepared by WisDOT and approved prior to the start of construction. A project-level EIS such as this one is not the appropriate place to speculate on future state legislature’s or future congress’s funding priorities or funding decisions.

11. **Comment** - “The FEIS fails to analyze the potential environmental and economic impacts of alternative fuels most likely to be adopted in the future.”

Response - It is outside the scope of this NEPA document to anticipate and evaluate future alternative fuel sources.

12. **Comment** – “The project would have potentially unacceptable negative impacts on many threatened and endangered plant and animal species, and the FEIS does not contain adequate mitigation plans.”

Response – Section 4.11.8, Measures to Minimize Adverse Effects – Threatened and Endangered Species, and Appendix C, page C-6, of the FEIS note that WisDOT and the DNR met in January 2007 to discuss appropriate mitigation measures for unavoidable impacts. DNR agrees that mitigation measures will be developed during the project’s design phase.

13. **Comment** – “The FEIS does not analyze or discuss potential light pollution from the project. This is a significant omission because homes and businesses – particularly those in Milwaukee -- would be nearer to the freeway.”

Response – The lighting is primarily in the median of the freeway today and will primarily remain in the median, roughly the same distance away from homes.

14. **Comment** – “The FEIS does not adequately analyze impacts of the project on traffic speeds and traffic volumes on adjacent streets. The report, for example, lists eight streets that may see a 5,000+ increase in traffic volume during project construction. There are other streets and neighborhoods however that will be significantly affected by detoured traffic. While they may not see 5,000-vehicle increases, they also may be built to handle a much smaller volume of traffic than the streets listed. Smaller traffic increases on those streets would still have extremely negative consequences. The overall traffic impact analysis is lacking in substance and does not adequately explain the completed project’s potential impacts on local-street volumes and safety, or on neighborhood environs.”

Response- The FEIS discusses the traffic impact to local roads on pg. 4-30. The traffic impacts on local roads during construction are discussed in section 4.9.3 on pg. 4-86 of the FEIS. The details of the traffic mitigation plan, including routes and speed limits will be determined when the construction traffic mitigation plan is developed.

15. **Comment** – “The FEIS does not adequately address the impacts of Milwaukee County’s likely designation as a non-attainment area for particulates.”

Response – The FEIS recognizes that in the future the region may be in non-attainment for PM 2.5 and that WisDOT and FHWA will comply with whatever PM2.5 conformity requirements apply at that time. (FEIS pg. 4-80.) The potential for PM 2.5 non-attainment status in the project area is also discussed on pg. 4-48 of the FEIS.

16. **Comment** – “The FEIS does not adequately analyze CO2 impacts, even though it acknowledges that GHG emissions are “a concern along the I-94 north-south corridor.” FEIS at 4-20. The DEIS completely ignored CO2 impacts related to the project and the 27th Street access closing. To remedy this problem, WisDOT added a few paragraphs to the FEIS discussing CO2 generally, but without any sort of quantitative analysis. As the WDNR noted in its comments on the DEIS, WisDOT should have conducted an analysis of greenhouse gas (“GHG”) emissions, including CO2 related to the project. Instead, in the FEIS WisDOT alleges that “no accepted quantitative tools to estimate greenhouse gases at the project level exist”, which is simply false. *Id.* U.S. DOT itself has performed numerous GHG emissions studies and various models are available. (See <http://climate.dot.gov/areas.html>. For example, the U.S. DOT has analyzed transportation related GHG emissions in New York state. The report is available at

http://climate.dot.gov/publications/estimating_greenhouse_ny/. EPA also has various estimating methodologies readily available (see, e.g., <http://www.epa.gov/oms/climate/420f05004.htm>) and a list of some of the estimating models is available at http://www.bts.gov/publications/journal_of_transportation_and_statistics/volume_08_number_02/html/paper_04/index.html.)”

Response: In December 2007 the project team consulted with FHWA air quality experts regarding the availability of project-level greenhouse gas emissions models. WisDOT and FHWA stand by the statement that accepted project-level greenhouse gas emissions models have not been developed. The three examples cited in the comment letter are not project level models.

- a. <http://climate.dot.gov/areas.html>: this study addresses state-wide efforts in New York state to quantify GHG emission. While the model does discuss “bottom up” efforts at the MPO-level to characterize regional transportation emissions by mode, it does not address project level GHG emission.
- b. <http://epa.gov/oms/climate/420f05004.htm>: this is not a project level model
- c. <http://www.bts.gov/publications>.....: these are not project level models; this site lists models that could be used to measure compliance with the 1997 Kyoto Accord.

17. **Comment** – “A rough estimate of GHG emission is fairly easy to perform. According to the Sightline Institute, which is a nonprofit, nonpartisan, wholly independent research institute, adding one mile of new highway lane will increase CO2 emissions by more than 100,000 tons over 50 years.”

Response: The Sightline Institute GHG emissions model is a rough estimate, in its own words. It is based only on the number of lanes and not on actual traffic projections. It also includes GHG emissions from vehicle manufacture, petroleum extraction and transport. It is too simplistic to be of use on this project.

18. **Comment** – “WisDOT failed to adequately consider rail transit as an alternative to expansion, which would actually reduce GHG emissions significantly.”

Response: See Section 2.2.2 of the FEIS.

19. **Comment** – “WisDOT ignored the Association’s (27th Street Business Association), EPA’s and DNR’s request to conduct a full mobile source air toxics (MSAT) analysis.”

Response: WisDOT and FHWA did conduct a mobile source air toxics analysis. See Section 4.7 and Appendix B of the Final EIS. U.S. EPA’s comments are related to the impact of MSATs; their comments do not ask for further analysis.

20. **Comment** – “Wisconsin recently decided to exempt cars built in 1995 or earlier from emission testing requirements in ozone nonattainment areas, which will apply in Milwaukee County. According to the Legislative Fiscal Bureau, this change will result in an 18-21% increase in air emissions related to this program in the year 2009. Because of this changed circumstance and other changes identified in prior comments, WisDOT should conduct a new project specific conformity analysis for ozone.”

Response: Legislative Reference Bureau goes on to say that there will be little difference in emissions, as a result of this change, by 2018. The impact of changing the testing program was conducted at the program level, which is appropriate. Re-analysis of the air quality impacts for every project is not required, nor is it productive. The change in emissions testing will affect both the 6-lane and 8-lane alternatives

21. **Comment** – “WisDOT dismissed the potential for the project to cause disproportionate harm to minority and low income communities by (incorrectly) asserting that neighborhoods through which the Project passes do not have the highest percentage of minority or low-income populations in the region, and ‘that there is not a large minority or low-income population in the study area, compared to the respective community or county population as a whole.’ As a result it claimed that the proposed action ‘will not have a disproportionately high and adverse impact on low income or minority communities.’ FEIS at 4-49.”

“However, this reasoning reflects a serious misunderstanding of environmental justice requirements and a complete disregard of racially segregated housing patterns in Wisconsin, and in Southeastern Wisconsin in particular.” “The Milwaukee neighborhoods affected by the construction of additional lanes within the City ... may not have the highest minority population percentage of all neighborhoods in the City, but compared to the outer suburbs within Milwaukee County, to other Counties in the region, and to the State’s population, they have a disproportionately high percentage of minority residents. WisDOT’s failure to analyze, and then to address, the environmental justice impacts of this Project violates the requirements of Title VI of the Civil Rights Act, of the implementing regulations, and of FHWA Order 6640.23 (12/2/98), in the multiple manners cited in our previous comments.”

Response: EPA final guidance on implementing environmental justice into its NEPA review (April 1998, Section 2.1.1) refers back to the federal interagency work group (IWG) guidance on the issue of determining the affected area. The geographic scope against which the affected population is compared is not explicitly identified in the IWG guidance, rather it is left to the environmental justice practitioner. The IWG cautions against deflating or inflating the minority percentage when selecting the appropriate geographic analysis. To take the minority percentage of only certain neighborhoods adjacent to I-94 only in Milwaukee and compare to the region or state or Milwaukee County suburbs, as the comment suggests, would be arbitrary.

Final EIS Figure 3-8 illustrates that 17 percent of the population within ¼-mile of the study-area freeway system in the City of Milwaukee is minority. This is well below the City of Milwaukee and Milwaukee County percentage of minority residents and just above Wisconsin’s 12 percent minority.

In the sub-neighborhoods where the minority percentage is closer to the Milwaukee County average of 38 percent the key issue is whether any minority or low-income populations will experience disproportionately high and adverse effects as a result of the project. In these areas there will be between zero and one residential relocation, narrow strip acquisitions of right-of-way comparable to or less than the rest of the study area, and removal of up to eight garages that can be rebuilt after the project is completed. Air quality and noise impacts will be the same as the other parts of the study area. Unlike the less densely populated areas

in Oak Creek, Racine and Kenosha Counties that will experience adverse noise impacts, the adverse noise impacts in these neighborhoods meet mitigation criteria at several locations so the Milwaukee neighborhoods may receive noise walls. Several areas of re-developable land may become available in the City of Milwaukee as well. Furthermore, Exhibits 2-2 and 2-3 at the back of the Final EIS illustrate how subtle the differences are between the two Build Alternatives in the City of Milwaukee.

22. **Comment** – “The FEIS now includes an additional, disparate impact: in the City of Milwaukee (the only majority-minority city in the region), currently existing, convenient access to I-94 Southbound at the South 27th Street interchange is to be eliminated while in Oak Creek (a predominately white community), a new interchange is to be constructed at Drexel Avenue. The FEIS does not indicate that any consideration whatsoever was given to the environmental justice impacts of these disparate decisions.”

Response: The change in access at 27th Street interchange with I-894 will occur in an area that has below average minority population compared to the City of Milwaukee and Milwaukee County and will affect 1,500 trips per day out of the 25,000 trips to that segment of the 27th Street corridor (about 6 percent of the trips). Other routes are available. Given the demographics of the area, removing the direct access from I-94 northbound to 27th Street cannot be defined as a disproportionately high and adverse impact to low income or minorities.

23. **Comment** – “However, what is also strikingly absent from the FEIS is any discussion or analysis whatsoever of the environmental justice effects of the “hybrid” alternative consisting of safety improvements together with additional lanes outside of Milwaukee and no additional lanes in Milwaukee which the Wisconsin DNR specifically requested be analyzed. In fact, DNR’s request is not discussed at all in the FEIS, and is not responded to in any way.” “Nor does the FEIS even acknowledge that SEWRPC staff’s recommendation for the 2003 Regional Freeway Reconstruction Plan was to adopt precisely such a hybrid approach; nor does the FEIS discuss the Milwaukee county Board’s resolution, and the resolution of the Board of School Directors of the Milwaukee Public Schools to similar effect, opposing additional highway lanes in the city of Milwaukee.”

Response: DNR stated that the hybrid alternative was addressed in the EIS. MPS board resolution was included in the Draft EIS, their comments on the Draft EIS are included in the Final EIS and have been responded to. MPS’ comments on the Final EIS are included in this Record of Decision. Neither WisDOT nor FHWA received a resolution from the Milwaukee County board regarding this project. It is the sponsoring agencies responsibility to determine which alternatives are deemed reasonable, not commenting agencies. Recently SAFETEA-LU Section 6002 reiterated that after the required opportunity for involvement the lead agency, in this case FHWA, shall determine the range of alternatives to be considered in “any document which the lead agency is responsible for preparing for the project.”

24. **Comment** – “The American Association of State Highway and Transportation Officials (“Highway Association”), of which WisDOT is a member, commissioned a report on MSATs that the EPA characterized as representing ‘current professional practices of air quality experts...’ This report recognizes the existence of ‘reasonable scientific evidence’ showing adverse impacts from MSAT emissions ‘particularly at locations in close proximity

to concentrated motor vehicle activity.’ The report concludes that ‘[m]odeling tools are widely available that are capable of predicting MSAT impacts from transportation projects.’

Response: The Final EIS addresses the ICF report and FHWA’s disagreement with the conclusions of that report. Appendix B also addresses this comment.

25. Comment – “The FEIS violates NEPA by failing to mitigate adverse air impacts.”

Response: This Record of Decision commits FHWA to certain construction air quality mitigation measures (page 7). Other measures remain under consideration.

26. Comment - FEIS did not adequately respond to 27th Street Business Association comments as required by 40CFR 1502.9(b) and 40CFR 1503.4(b).

Response: The Final EIS pages 4-34, 4-35 and 7-6 note the opposition by the 27th Street Business Association to the selected alternative at 27th Street/I-894. The Association’s suggested alternative is discussed on page 2-45 of the Final EIS. 40 CFR 1503.4(b) allows FHWA to summarize public comments when the comments are “exceptionally voluminous”. WisDOT and FHWA received 602 public comments on the DEIS.

27. Comment – “WisDOT changed its position and reasoning in the FEIS on why full access at 27th Street is not possible. FEIS at 2-12. In the DEIS, WisDOT stated that full access would increase the cost of the project by \$10 million, but then changed this number to \$40-50 million in the FEIS without specifying any rationale for this increase. At a minimum, the FEIS should explain this inconsistency to the public and the Association. Moreover, as stated in prior comments, a full socio-economic impact analysis of this alternative should have been conducted, as WisDOT’s new unexplained estimate surely does not consider impacts to local businesses.”

Response: The EIS does not say that full access at 27th Street is not possible; rather, the Final EIS says that the cost of providing full access is not considered prudent for the reasons noted in Section 2. WisDOT researched the socio-economic issues raised by the 27th Street Business Association, documented in an April 28, 2008 (updated May 14, 2008) memo.

28. Comment – “The FEIS does not adequately consider the third alternative the Association proposed: leaving open the I-94 NB exit without the on-ramp to I-94 SB. WisDOT eliminates this as an alternative by simply saying that the FHWA generally “object[s] to the practice of providing partial access at an interchange and not providing for all movements.” FEIS at 2-45. There are two problems with WisDOT’s position on this critical issue. First, WisDOT has provided no evidence that it even contacted the FHWA to attempt to obtain an exemption from this general practice for 27th Street. Second, and perhaps more importantly, WisDOT’s preferred alternative at 27th Street clearly violates the FHWA’s general practice of not allowing partial access to/from interstates. Adding one exit ramp from I-94 NB would provide more access to motorists than WisDOT’s preferred alternative, not less.”

Response: See Final EIS page 2-45. WisDOT and FHWA discussed the issue and confirmed that an exception to this policy is not prudent in this case. The preferred alternative for the 27th Street interchange provides full access to I-894/43, consistent with FHWA policy.

29. **Comment** - The FEIS does not include adequate plans for mitigating wetland loss in the affected watersheds, citing the U.S. EPA's Draft EIS comments.

Response - This comment was responded to in Section 4.11.7 of the FEIS. Additionally, a WisDOT letter sent to U.S. EPA on April 4, 2008 provides detailed information regarding the search for compensatory mitigation sites. U.S. EPA's comments on FEIS note that this issue can and will be addressed during the Section 404 permitting stage.

30. **Comment** - "The study's proposal for dealing with invasive plant species is inadequate in light of WisDOT's own history dealing with invasives."

Response - WisDOT will work with DNR during the design phase to develop and assess the feasibility of measures to minimize the spread of invasive species.

31. **Comment** - "The study fails to adequately address flooding and runoff issues." "WisDOT offers no specific mitigation plans to reduce flooding problems for homeowners and business operators."

Response - WisDOT will comply with TRANS 401 and statute 88.87. Storm water treatment measures will be evaluated during the project's design phase. Section 4.11.5 of the FEIS lists best management practices that may be utilized when dealing with storm water management and run-off.

32. **Comment** - "The study acknowledges that areas adversely affected by increased noise levels attributable to the expanded freeway would not qualify for soundwalls, according to the report. Conversely, the visual blight of sound walls would be constructed in about a dozen areas where they do not now exist."

Response - Section 4.11.3 of the FEIS explains in detail the criteria and framework used to mitigate the noise impact of the preferred alternative.

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.



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Federal Highway Administration
Wisconsin Division

5/30/08
Date