US Army Corps of Engineers
St Paul District

APPLICANT: **Wisconsin Department of Transportation**

Public Notice

ISSUED: September 16, 2010
EXPIRES: October 15, 2010

REFER TO: 1999-06281-SEK

SECTION:404 - Clean Water Act

1. APPLICATION FOR PERMIT TO discharge dredged and fill materials into Stony Brook, a tributary to the Crawfish River, and abutting wetlands at 10 locations in Jefferson County. The purpose of the work is to construct the first phase of an 85-mile long project to reinstate and upgrade passenger rail service between Madison and Milwaukee. Construction for this phase (the first of seven) would take place along an approximately 4.3-mile-long segment located between County Trunk Highway G (CTH G) and State Trunk Highway 89 (STH 89). This phase would primarily consist of the construction of a track on rail bridges parallel and slightly north (offset) of the existing alignment.

2. SPECIFIC INFORMATION.

APPLICANT'S ADDRESS: 433 W. St. Paul Avenue, Suite 300
Milwaukee, WI 53203

CONTACT: Karla Leithoff
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PROJECT LOCATION: The project site is located in Sec. 6, T. 8N. R14E. and Sec. 1, 2, 3, 4, and 9, T. 8N. R13E., Jefferson County, Wisconsin. The project begins where the existing rail intersects CTH G at Latitude 43.19354, Longitude -88.82230 and ends where the existing rail intersects STH 89 at Latitude 43.18324, Longitude -88.96641.

PROJECT BACKGROUND: The proposed work described in this public notice is the first phase of a larger project to reinstate and upgrade passenger rail service between Milwaukee and Madison, Wisconsin, by 2013 (overall project). The overall project would also allow for possible future expanded service extending west to Minneapolis/St. Paul. The overall project primarily consists of upgrading the existing rail line to accommodate high speed passenger rail service. Generally this would include replacing defective ties, reconstructing or resurfacing the rail bed, upgrading signal systems, and replacing bridges and culvert crossings where necessary. The overall project would also include the construction of a second main track from Watertown to Milwaukee where a second track previously existed. Minor changes in the rail profile as well as road closures and/or grade changes are proposed. A second diamond crossing would be installed at the Union Pacific rail crossing in Watertown to accommodate proposed double tracking east of Watertown. The Federal Railway Administration (FRA) acted as lead federal agency to complete an Environmental Assessment (EA) for the overall project. In 2004, a Finding of No Significant Impact (FONSI) for the Milwaukee to Madison High Speed Rail project was completed. The Corps of Engineers provided comments on the EA during its development.

The overall project would also include the replacement of the existing main track rail, ties, and ballast from Watertown west to the Madison station site. Additional sidings are proposed within the existing right of way between Watertown and Madison to increase freight and passenger capacity in the corridor. The overall project would also feature several long rail bridges offset from the existing alignment, hereafter referred to as "land bridges," near Hubbleton and Sun Prairie. Acquisition of additional right of way is not anticipated; however, access and grading easements would likely be required at some locations during construction. Additional information on the overall High Speed Rail project may be obtained from the Wisconsin Department of Transportation website at: http://www.dot.state.wi.us/projects/d1/hsrail/index.htm.

As previously indicated, seven phases are proposed to complete necessary improvements in the high speed rail corridor. Design of these phases is ongoing and largely incomplete at this time. WisDOT has provided refined and updated information on estimated aquatic resource impacts for the entire corridor and anticipates that the overall project would impact 18.14 acres of wetland between Watertown and Madison (5.71 acres of which is estimated due to shading under the land bridges) and 5.43 acres of wetland between Watertown and Milwaukee for a total wetland impact of 23.85 acres. It is possible that this number could increase after final design due to temporary construction impacts. The rail also crosses eighty-eight waterways, including the Rock River, a federally navigable water subject to Department of the Army (DA) regulation under Section 10 of the Rivers and Harbor Act of 1899. The vast majority of these crossings would require structure replacement or rehabilitation.

WisDOT has finalized documentation of aquatic resource impacts for the first phase (CTH G to STH 89) and has recently submitted an application to obtain DA authorization. This phase is the subject of this public notice. A detailed description of this work is provided below.

DESCRIPTION OF PROJECT: The proposed work for the first phase consists of constructing a new track approximately 18 feet offset and to the north of the existing alignment from CTH G to STH 89 (see attached drawings). In general, the new track would be several feet higher than the existing track. The majority of the track for this phase would be constructed on three separate land bridges. Areas between the land bridges and areas between the project termini and land bridges would first be filled to construct 11-foot temporary haul roads to facilitate land bridge construction. Where it occurs north of the existing track, this fill would be incorporated into the construction of a final track bed in these areas. Land bridge construction would involve the placement of precast concrete spans on top of precast pier caps spaced 34 feet apart and welded to pilings that are driven into the ground. In most locations, the welding would require the placement of temporary construction mats around the piers. However, in some areas where the ground surface is close to the bottom of the land bridge, excavation and temporary sheet piling would be required. The ballast (which largely consists of coarse gravel) and the track would be installed on top of the concrete spans. The land bridges would terminate at U-shaped precast abutments. Some grading, excavation, and backfill is required at the abutments to transition to the existing grade and remove unstable soils and replace them with stable materials. The easternmost bridge will hereafter be referred to as land bridge A, the middle bridge will be referred to as land bridge B, and the westernmost bridge will be referred to as land bridge C. They are 9,180 feet long, 3,094 feet long, and 5,236 feet long, respectively.

Peschel Road (located between land bridges B and C) would be elevated to provide a crossing that is 18 feet to the north of the existing track in alignment with the land bridges. The crossing would be placed at grade and upgraded crossing protection would be installed. The profile of Peschel Road would be reconstructed to meet current design standards and a retaining wall would be installed to keep the embankment fill within the existing right of way.

West of the Peschel Road intersection, an industry track would be installed going north and west of the new main track for Michels Materials Waterloo. This would require a permanent grading easement north of the existing track, but would not involve any additional impacts to aquatic resources.

From just west of land bridge A to just west of Peschel Rd, the existing track would be reconstructed as a siding. Following construction of the land bridges, the remainder of the existing track between CTH G and STH 89 would be removed and re-graded as an access road to be used in the future for site access, inspections, and maintenance. While no new wetland would be permanently filled for this access road or siding, the reconstruction and re-grading would necessitate the installation of silt fence along the existing rail resulting in an additional temporary construction impact.

Project location, typical cross sections, and representative depictions of wetland impact areas are included in the enclosure. More detailed information and construction plans can be supplied upon request by contacting the Waukesha office as indicated in Section 3 (REPLIES/COMMENTS) of this notice.

AQUATIC RESOURCE IMPACTS: Waterway crossings within the CTH G to STH 89 segment include two crossings of Stony Brook and one other unnamed tributary to the Crawfish River. Stony Brook and the unnamed tributary to the Crawfish River would be undisturbed by the project. All three crossings are located in areas where land bridges are proposed and no piers or structures would be placed in these waterways.

A total of 10 wetlands were identified within the project corridor from CTH G to STH 89. These areas consist of wet meadow, shrub-scrub wetland, shallow marsh, riparian forested wetland, and wooded swamp. Within the project area, three areas were identified as wetland areas of special natural resource interest due to their association with Stony Brook or Waterloo Wildlife Area. These areas were also designated by the U.S. Army Corps of Engineers and Wisconsin Department of Natural Resources as high quality during 2010 field reviews. They are wetland complexes consisting of an interspersion of the wetland types listed above. The micro-topography of the sedge meadow in these areas is highly developed due to tussock formation. For the most part, soils along the land bridge areas consist of deep organic peat and muck. These soils are highly compressible. Soil compression combined with tussock destruction would be likely to permanently alter the hydrologic regime and vegetative community in these wetlands.

Impacts to wetlands for this first phase include direct impacts due to fill and excavation at the bridge abutments and excavation at some of the piers, indirect impacts due to bridge shading, and temporary impacts due to temporary construction access and silt-fence installation. Temporary impacts to forested riparian wetland, wooded swamp, and scrub-shrub wetland would result in a permanent conversion of these wetlands to wet meadow or shallow marsh. A summary of these impacts is provided in Table 1 below.

Table 1: Wetlands Impact Summary by Wetland Type

Wetland Type	Temporary wetland impacts (acres)	Total permanent impacts (acres)	
		Direct	Indirect
Wet Meadow (M)	2.33	0.852	2.403
Shrub Scrub (SS)	1.52	0.372	1.343
Shallow Marsh (SM)	0	0	0
Wooded Swamp (WS)	0.3	0.217	0.153
TOTALS	**4.15**	**1.44**	**3.9**

VEGETATION IN AFFECTED AREA: Land bridge C lies within an area that is sedge meadow interspersed with scrub-shrub wetland. The western portion of land bridge B lies within a sedge meadow while the eastern portion lies within an area that is mostly wooded swamp interspersed with areas of scrub-shrub wetland. Sedge meadow wetlands along land bridges B and C are largely dominated by lake sedge (*Carex lacustris*) and tussock sedge (*Carex stricta*). Scrub-shrub areas are largely dominated by dogwoods (*Cornus sp.*) and willows (*Salix sp.*) and wooded swamp areas are largely dominated by box elder (*Acer negundo*), silver maple (*Acer saccharinum*), red maple (*Acer rubrum*), and American elm (*Ulmus americana*). Scattered populations of reed canary grass (*Phalaris arundinacea*) are also present in some areas.

Approximately the eastern two-thirds of land bridge A lies within currently or recently farmed areas. Some of this area is effectively drained by agricultural tile and ditches. The wetlands that remain are largely dominated by reed canary grass. The western third of land bridge A consists of a transition area that abuts the farmland to the east and a sedge meadow area that is separated from this transition area by a small upland drumlin. The transition area is mostly dominated by reed canary grass and some common reed (*Phragmites australis*); however, lake sedge and tussock sedge are still interspersed through this area along with some other native species such as marsh fern (*Thelypteris palustris*) and Joe-Pye weed (*Eupatorium maculatum*). The sedge meadow west of the drumlin is dominated by lake sedge and tussock sedge with fairly strong development of micro-topography and is moderately invaded by reed canary grass.

SOURCE OF FILL MATERIAL: Fill material would originate from commercial sources. No fill material would be obtained on site. Excavated materials will be hauled off site. Temporary construction mats would be utilized at pier locations to facilitate welding activities.

SURROUNDING LAND USE: The land use surrounding the project area is predominantly rural, undeveloped land with some agriculture, particularly toward the east end of the project. The project crosses the Waterloo and Stony Brook Wildlife areas.

THE FOLLOWING PRECAUTIONS TO PROTECT WATER QUALITY HAVE BEEN DESCRIBED BY THE APPLICANT: The applicant is required to submit an erosion control and storm water management plan to the Wisconsin Department of Natural Resources (WDNR) for review

and approval. The plan would need to include temporary erosion control measures such as silt fence, erosion mat, ditch checks, and mulching and seeding where necessary to control erosion during construction of the proposed project.

ALTERNATIVES CONSIDERED: In addition to the preferred alternative described above and the no-build alternative, two other alternatives were considered for this phase.

1. UTILIZING THE EXISTING TRACK BED

This alternative would involve upgrading the existing track bed and track. The track bed and ballast would need to be expanded laterally on both sides to support additional weight and to accommodate high speed rail standards. This would result in filling to expand the existing side slopes, thereby moving the toe of slope outwards. Removal of unsuitable soils from depths up to approximately 50 feet would be required to allow for backfilling with granular material that would provide a stable base. This alternative was dismissed by the applicant because of the environmental impacts that would result and because it would require completely closing the track to current service.

Utilizing the existing track bed would result in considerable wetland impacts and other land disturbance throughout the project corridor. Excavating to the required depth necessary to remove unsuitable soils would be completed with a maximum of 2:1 excavation side slopes. At 50 foot depths, this would result in a minimum of 100 feet of disturbance laterally from the excavation area. Given that most wetlands contain unsuitable soils for construction, it is reasonable to assume that wetland impacts would be extensive and would occur throughout the corridor wherever wetlands occur adjacent to the track. Because of the lateral disturbance associated with deeper excavation this alternative would also require installation of a barrier to eliminate the need to excavate beyond the existing WisDOT right-of-way. This barrier would likely consist of sheet piling inserted into the ground to and past the required excavation depth for the entire length of each wetland and other areas containing unsuitable soils. Installation of sheet piling would cause considerable, albeit temporary impacts to these areas. Ultimately, this alternative would result in higher aquatic resource impacts than the applicant's preferred alternative.

Closing the existing track for extended periods of time needed for construction is not feasible because interrupting continuous service on this track would adversely affect a local business, Michels Materials Waterloo, which is dependent on daily use of the existing rail service.

2. LAND BRIDGE AND FILL

This alternative would incorporate the use of land bridges and excavation and fill throughout the corridor. Where unsuitable soils up to 15 feet in depth are present, these soils would be excavated and backfilled with material to form a more stable substrate that meets the requirements for operation of high speed rail. In areas where the depth of unsuitable soils is greater than 15 feet, land bridges would be constructed. A depth of 15 feet was assumed to be a feasible cut off point, beyond which excavation and backfill was no longer feasible when considering other factors including cost, impacts to the environment and constructability issues. Based on soils information collected within the project area, the construction of land bridges would decrease by approximately 30 percent under this alternative as compared to the applicant's preferred alternative.

In areas where hydric soil depths are 15 feet or less, permanent impacts to wetlands would occur. To

fully determine the extent of wetland impacts associated with this alternative, more soils investigations would need to be undertaken to locate and determine the depth of unsuitable soils. When compared to the applicant's preferred alternative, this alternative would increase the quantity of permanent and temporary wetland impacts throughout the corridor due to operations associated with excavation and fill. In addition to these impacts, additional impacts would occur throughout the corridor due to the need to transport excavated material out of the site and granular material into the site. These operations would need to make extensive use of the existing track in service for transport of materials and would likely result in additional temporary wetland impacts within the WisDOT right-of-way to accommodate movement of construction equipment and stabilization of excavated areas. Therefore this alternative was eliminated by the applicant from further consideration because of the potential increase in impacts to wetlands and associated upland habitats.

MITIGATION: Wetland mitigation will be provided to compensate for unavoidable impacts to wetlands resulting from construction of the proposed railway improvements. Compensatory mitigation is proposed to be provided at a WisDOT wetland mitigation bank site, following the debit guidance provided in the Wisconsin Department of Transportation Wetland Mitigation Banking Technical Guideline. The bank site under consideration is the London wetland mitigation bank, located in Jefferson County, WI (Lake Mills Township; T7N, R13E, E ½ Section 30). The London mitigation bank contains three wetland types including wet meadow (M), shallow marsh (SM) and aquatic bed (AB) available for debit. Requirements for compensatory mitigation will be determined by the USACE in accordance with 33 CFR part 332. Although compensatory mitigation ratios have not yet been finalized, higher ratios than what is typical are anticipated for impacts to areas considered to be high quality sedge meadows by USACE and the Wisconsin DNR. Compensatory mitigation is also anticipated at a fractional ratio for permanent shading of vegetation under the land bridges and any wetland conversions occurring as a result of temporary construction impacts.

3. REPLIES/COMMENTS.

Interested parties are invited to submit to this office written facts, arguments, or objections within 30 days of the date of this notice. These statements should bear upon the suitability of the location and the adequacy of the project and should, if appropriate, suggest any changes believed to be desirable. Comments received may be forwarded to the applicant.

Replies may be addressed to Regulatory Branch, St. Paul District, Corps of Engineers, 1617 E. Racine Ave., Room 101, Waukesha, WI, 53186. Or, IF YOU HAVE QUESTIONS ABOUT THE PROJECT, call Simone Kolb at the Waukesha office of the Corps, telephone number (262) 547-6986.

To receive Public Notices by e-mail, go to the St. Paul District web page at http://www.mvp.usace.army.mil/regulatory/ and sign up by clicking on

Email Notification of Public Notices

on the left side of the web site under Notices.

4. FEDERALLY-LISTED THREATENED OR ENDANGERED WILDLIFE OR PLANTS OR THEIR CRITICAL HABITAT.

None were identified by the applicant or are known to exist in the permit area. However, Jefferson County is within the known or historic range of the following Federally-listed threatened (T) species:

Species	Habitat
Eastern prairie fringed orchid (*Platanthera leucophaea*) (T)	Wet grasslands

In addition, a "non-essential experimental population" of the Whooping Crane (*Grus americanus*) is known to inhabit open wetland and lakeshore areas.

This application is being coordinated with the U.S. Fish and Wildlife Service. Any comments it may have concerning Federally-listed threatened or endangered wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

5. JURISDICTION.

This application is being reviewed in accordance with the practices for documenting Corps jurisdiction under Sections 9 & 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act identified in Regulatory Guidance Letter 07-01. At the request of the applicant, we have made a ***preliminary determination*** that the aquatic resources that would be impacted by the proposed project are regulated by the Corps of Engineers under Section 404 of the Clean Water Act.

6. STATE SECTION 401 WATER QUALITY CERTIFICATION.

This Public Notice has been sent to the Wisconsin Department of Natural Resources and is considered by the District Engineer to constitute valid notification to that agency for water quality certification. A permit will not be granted until the Wisconsin Department of Natural Resources has issued Section 401 certification.

Any person whose substantial interest may be affected by this determination may request a hearing within 30 days after publication pursuant to NR 299.06(5), Wisconsin Administrative Code.

This determination shall become final in accordance with the provisions of NR 299.06(7), Wisconsin Administrative Code.

When this determination becomes final the Notice of Appeal Rights contained below becomes effective.

NOTICE OF APPEAL RIGHTS: If you believe that you have a right to challenge the decision stated in the paragraph above, you should know that Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

For judicial review of a decision pursuant to sections 227.52 and 227.53, Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review.

This notice is provided pursuant to section 227.48(2), Statutes.

7. HISTORICAL/ARCHAEOLOGICAL.

This public notice is being sent to the National Park Service, the State Archaeologist, and the State Historic Preservation Officer to determine if there are known cultural resources which may be affected by the described work. Any unknown archaeological, scientific, or historical data could be lost or destroyed by the work described in the permit application. However, the latest version of the National Register of Historic Places has been consulted and no listed properties (known to be eligible for inclusion, or included in the Register) are located in the project area. Further, the EA generated for the overall project was coordinated with the State Archaeologist prior to the 2004 FONSI.

8. PUBLIC HEARING REQUESTS.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

9. PUBLIC INTEREST REVIEW.

The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use,

navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. Environmental and other documents will be available for review in the Waukesha Office.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Tamara E. Cameron
Chief, Regulatory Branch

Enclosures

NOTICE TO EDITORS: This public notice is provided as background information and is not a request or contract for publication.