

FEDERAL HIGHWAY ADMINISTRATION  
FINDING OF NO SIGNIFICANT IMPACT  
for the  
Iowa Highway 86 (IA 86) from IA 9 to 700 Feet South of 110<sup>th</sup> Street  
Dickinson County  
STP-086-1(10)-2C-30

The Federal Highway Administration (FHWA) has determined that this project would not have any significant impact on the human and natural environment. The finding of no significant impact is based on the attached Environmental Assessment, which the FHWA has evaluated independently and determined to discuss adequately and accurately the environmental issues and impacts of the proposed project. The Environmental Assessment provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required.

FHWA takes full responsibility for the accuracy, scope, and content of the Environmental Assessment.

9/8/11  
Date

Michael J. Schuelke  
For FHWA

## Description of the Proposed Action

The Iowa Department of Transportation (Iowa DOT) and the Federal Highway Administration (FHWA) propose to improve a 3.9-mile segment of Iowa Highway 86 (IA 86) from Iowa Highway 9 (IA 9) to near the Minnesota border within Dickinson County, Iowa (the Project). The existing IA 86 has narrow travel lanes and shoulders, steep foreslopes, and poor vertical alignment.

## Environmental Assessment Availability

The Environmental Assessment (EA) for the Project was signed on June 30, 2011, and distributed to selected federal, state, and local resource agencies on July 5, 2011, for review and comment. A Notice of Public Hearing and Environmental Assessment Availability was published in the legal section of the Estherville Daily News on July 5, 2011, and the Ocheyedan Press-Melvin News and Dickinson County News on July 6, 2011.

## Review and Comment Period

A review and comment period was established for receipt of comments on the EA, with an expiration date of August 8, 2011. A public hearing for the Project was held at the Dickinson County Courthouse on July 21, 2011. The public hearing used a combined open forum and formal format. A transcript of this meeting has been prepared and is available upon request.

## Agency Comments

One agency comment letter on the EA was received and is included in Appendix A. A summary of the comments and responses to those comments (shown in italics) follows:

- U.S. Department of the Interior (DOI), Office of Environmental Policy and Compliance – DOI concurred that avoidance of Section 4(f) properties was infeasible for the Project because Section 4(f) lands are on both sides of IA 86 in some locations. DOI concurred with the *de minimis* determination for historic properties. DOI concurrence on the *de minimis* finding for impacts on WMA and WPA land is contingent upon complying with DOI's Wildlife and Sport Fish Restoration (WSFR) program and pending receipt of the signed Memorandum of Agreement (MOA) for mitigation of Section 4(f) impacts. DOI requested modification of the MOA signature block for the U.S. Fish and Wildlife Service (USFWS) to indicate the Union Slough National Wildlife Refuge. *Iowa DOT revised the MOA to a Memorandum of Understanding (MOU), changed the signature block for USFWS, confirmed compliance with the WSFR program, and provided DOI with a copy of the signed MOU.*

## Public Hearing

A public hearing was held on July 21, 2011, at the Dickinson County Courthouse, 1802 Hill Avenue in Spirit Lake from 5 to 7 PM. The purpose of the hearing was to update the public on the progress of the project, present the completed EA, and gather feedback from the public about the Project and EA. The hearing was conducted using a combined open forum and formal format. The public was invited to attend an informal session any time between 5 and 6 PM. A formal presentation, which was also open to the public, began at 6 PM.

followed by a question-and-answer session. The public hearing was advertised in the legal section of the Estherville Daily News on July 12, 2011, and the Ocheyedan Press-Melvin News and Dickinson County News on July 13, 2011, and notice was also included on the Iowa DOT website at [www.iowadot.gov/pim](http://www.iowadot.gov/pim).

Fifty people registered their attendance at the public hearing. The public had the opportunity to comment verbally or in writing during the hearing, or by sending comments to Iowa DOT after the meeting. Four attendees provided comments during the formal hearing. A transcript of the hearing is available upon request. A summary of comments made at the hearing and responses to those comments (shown in italics) follows:

- A local citizen spoke in favor of the Project and other roadway projects that would improve access to the Spirit Lake area and through Dickinson County. The commenter asked if the Project was scheduled for a 2012 letting and 2013 construction. *Iowa DOT indicated that the Project is planned for letting in 2012 and construction in 2013.*
- A local landowner that would be directly affected by the Project stated disappointment with the decision to minimize impacts on public lands across IA 86 from his property, requiring acquisition of a strip of land from his property. *Iowa DOT acknowledges that private property is needed for this Project because regulations require avoiding or minimizing impacts on public lands protected by Section 4(f) of the Department of Transportation Act of 1966. As the design process proceeds, Iowa DOT will continue to attempt to reduce the amount of right-of-way (ROW) needed for the Project, including private lands.*
- A local citizen expressed appreciation for the Project and its proposed construction in 1 year versus the originally planned 2 years because this should minimize financial impacts on businesses and be less troublesome. *No response is necessary.*
- A State Senator confirmed the long-time need for the Project and expressed support for the Project. *No response is necessary.*

Three comment forms were submitted to Iowa DOT requesting a response, and a comment was also submitted via e-mail; Iowa DOT has provided a response to all commenters. A summary of these comments and responses to those comments (shown in italics) follows:

- A local landowner who would be directly affected by the Project is concerned about the impact on his property from acquisition of land and noted that the land should be taken instead from public land across IA 86 from his property. *Iowa DOT acknowledges that private property is needed for this Project because regulations require avoiding or minimizing impacts on public lands protected by Section 4(f) of the Department of Transportation Act of 1966. As the design process proceeds, Iowa DOT will continue to attempt to reduce the amount of right-of-way (ROW) needed for the Project, including private lands.*
- A local citizen who lives along IA 86 between IA 9 and U.S. Highway 71 (US 71) indicated problems with roadway deterioration and high usage by bicyclists, walkers, and runners, and requests inclusion of that segment of IA 86 within the overall IA 86 Project. *The area proposed for improvement is outside the scope of the IA 86 Vertical Alignment Improvement Project, with its southern terminus at the intersection of IA*

*86 and IA 9 and its northern terminus just south of a horizontal curve. The northern and southern termini were selected to address a need to correct poor vertical alignment and a high rate of crashes. The segment of IA 86 you have proposed for improvement is not currently in the state's 5-year plan (a multi-year plan that is updated annually). Consequently, the current Vertical Alignment Improvement Project will continue as planned.*

- A local landowner indicated that loss of trees on privately owned land should be considered for natural resource impacts in comparison to the natural resource impact that would occur on public lands on the other side of the highway. The public lands on the east side of the highway include very few trees, and some of these are dead or dying. The balance of these impacts should be considered before the location of the roadway is finalized. *Impacts on removal of trees and wildlife habitat, regardless of whether they were located on private or public lands, were considered in Sections 5.3.3 and 5.3.4 of the EA. Iowa DOT was required to avoid and minimize impacts on public lands because of their protection by Section 4(f) of the Department of Transportation Act of 1966. As the design process proceeds, Iowa DOT will continue to attempt to reduce the amount of ROW needed for the Project, including private lands.*
- A local landowner who would be directly affected by the Project (impacts on orchard, crops, driveway, shade and windrow trees) noted that the land should be acquired instead from public land across IA 86 from her property. *Iowa DOT acknowledges that private property is needed for this Project because regulations require avoiding or minimizing impacts on public lands protected by Section 4(f) of the Department of Transportation Act of 1966. Iowa DOT will work with landowners during acquisition negotiations to provide compensation for impacts.*

## New Information

Since publication of the EA and the public hearing, Iowa DOT received a letter from the Iowa Department of Natural Resources (Iowa DNR) on July 27, 2011, concurring with the *de minimis* impact finding for Section 4(f) use of Diamond Lake Wildlife Management Area (WMA), Welch Lake WMA, and Welch Lake Waterfowl Production Area (WPA) (Appendix A includes a copy of the letter). Iowa DNR is the official having jurisdiction over the aforementioned Section 4(f) resources and agreed that the Project would not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection. Iowa DNR currently manages the WPAs owned by USFWS. USFWS has concurred with the *de minimis* finding through signature of the MOU to address mitigation for impacts on Section 4(f) properties. The EA included a draft, unsigned version of the MOA in Appendix D. Subsequent to issuance of the EA, the memorandum was revised to a MOU, was signed, and is included in Appendix B of this FONSI.

On March 14, 2011, Iowa DOT submitted a Determination of Effect form to Iowa DNR to address potential impacts on state-listed species and their habitat. Iowa DNR submitted a letter (dated June 13, 2011) to Iowa DOT providing a record of review for protected species, rare natural communities, and state lands and waters in the Project area (Appendix A includes a copy of the letter). No site-specific records of rare species or habitat were identified.

On August 11, 2011, Iowa DOT submitted reports of two archaeological investigations to the Iowa State Historic Preservation Office (SHPO) of the State Historical Society of Iowa. The reports summarized the results of investigations at Borrow Area 8, Borrow Area 18 (which would be used for the IA 86 curve realignment project, a separate project extending northward from the northern terminus of the Vertical Alignment Improvement Project to just north of the Iowa-Minnesota border), and the proposed wetland mitigation site for the Project. The investigations yielded no evidence of sites eligible for the National Register of Historic Places and concluded that no additional archaeological work is necessary for the parcels investigated. On August 16, 2011, Iowa SHPO concurred with the conclusion of no further work and the finding of no adverse effect for these additional undertakings for the Project (Appendix A includes a copy of the letter).

The EA indicated that one relocation could occur at owner request. Iowa DOT recognizes that regulated materials such as asbestos, lead-based paint, and mercury (in thermostats) could potentially occur within the buildings that could be acquired for the Project. Should regulated material issues be encountered during Project development or construction, appropriate action will be taken to comply with all applicable federal and state rules and regulations for proper handling and disposal of these materials.

### **Basis for Finding of No Significant Impact**

Several human and natural environmental resources were not present in the Study Area, and others required only a summary review to confirm that there would be no significant impacts. The following resources were evaluated in detail in the EA for effects they may incur as a result of the Project:

- Parklands and Recreational Areas
- Right-of-Way
- Relocation Potential
- Construction and Emergency Routes
- Transportation
- Historical Sites or Districts
- Archaeological Sites
- Wetlands
- Surface Waters and Water Quality
- Wildlife and Habitat
- Threatened and Endangered Species
- Woodlands
- Farmlands
- Noise
- Contaminated and Regulated Material Sites
- Utilities

This Finding of No Significant Impact (FONSI) documents compliance with the National Environmental Policy Act of 1969 (NEPA) and all other applicable environmental laws, Executive Orders, and related requirements.

## Special Conditions for Location Approval

Several conditions, noted below, were identified for approval and will be implemented during the design process prior to construction:

- Relocations would be conducted in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Iowa Code 316, the “Relocation Assistance Law.”
- Iowa DOT will purchase an approximately 28-acre tract of land for USFWS ownership, and Iowa DNR will accept natural resource management responsibilities. Stipulations within the MOU will be adhered to by the signers of the MOU: FHWA, Iowa DOT, Iowa DNR, and USFWS.
- A Section 404 permit from the United States Army Corps of Engineers (USACE) is required for placement of dredged or fill material in wetlands or other waters of the U.S. Iowa DOT would perform wetland delineations to confirm wetland boundaries. During final design, potential minimization of wetland impacts would be evaluated subsequent to wetland delineation, and the design would be altered to minimize wetland impacts where practicable. Iowa DOT will coordinate with USACE concerning wetland and waters of the U.S. impacts, with mitigation to occur at ratios determined by USACE. A Section 404 permit application will be submitted to USACE for approval.
- Issuance of a Section 404 permit is contingent on receipt of water quality certification from Iowa DNR under Section 401 of the Clean Water Act. The certification will be sought in conjunction with the Section 404 permit.
- Iowa DOT will minimize impacts on habitat favorable to state-listed species to the extent practicable during final design. Clearing of potential habitat (at the edge of wetlands, in shallow wetlands, or in moist prairies) will be kept to a minimum, and provisions of laws regarding state-protected species would be adhered to as applicable.
- A National Pollutant Discharge Elimination System (NPDES) General Storm Water Discharge Permit for Construction will be obtained from Iowa DNR. Impacts on surface waters from stormwater runoff will be minimized in accordance with the NPDES permit and the Stormwater Pollution Prevention Plan prepared in compliance with the permit.
- Equipment operating at the Project site will conform to contractual specifications requiring the contractor to comply with all local noise control rules, regulations, and ordinances. Although construction noise impacts would be temporary, the following best management practices will be implemented to minimize such impacts:
  - Whenever possible, limit operation of heavy equipment and other noisy procedures to non-sleeping hours (typically 7 AM to 10 PM).
  - Install and maintain effective mufflers on equipment.
  - Limit unnecessary idling of equipment.

- Construction would occur near and potentially within contaminated soils and groundwater associated with Vick's Corner. The potential impact area includes six monitoring wells: 2, 10, 11, 12, 13, and 15. Iowa DOT will coordinate with Iowa DNR before construction to develop a plan for relocating all needed monitoring wells that would be impacted by construction. Approval by Iowa DNR will be required for eliminating groundwater monitoring wells from the active monitoring program at Vick's Corner. Iowa DOT requires proper capping and sealing of any wells that would be impacted by construction. A certified well contractor will be required to cap and seal all wells. Proper capping would eliminate the potential for introduction of contamination down the well into the groundwater.
- Iowa DOT will inform the contractor of the potential for encountering contamination and requiring adequate worker protection, notify the proper agencies of any contamination encountered, and properly handle and dispose of any contaminated soil and groundwater.
- As design advances, construction activities will be coordinated with public utilities to avoid potential conflicts and to minimize planned interruptions of service.

#### **Environmental Assessment Errata**

No Errata have been identified.

APPENDIX A  
AGENCY COMMENT CORRESPONDENCE



TERRY E. BRANSTAD, GOVERNOR  
KIM REYNOLDS, LT. GOVERNOR

# STATE OF IOWA

DEPARTMENT OF NATURAL RESOURCES  
ROGER L. LANDÉ, DIRECTOR

June 13, 2011

Iowa Department of Transportation  
Attn: Scott Marler  
800 Lincoln Way  
Ames, IA 50010

**RECEIVED**

JUN 16 2011

**Office of Location & Environment**

RE: Environmental Review for Natural Resources  
Iowa Highway 86 (Iowa 86) Redesign  
STP-86-1(8)-2C-30  
Dickinson County  
S11, 14, 23, 26, 35/T100N/R37W

Dear Mr. Marler,

Thank you for inviting Department comment on the impact of this project. The Department has searched for records of rare species and significant natural communities in the project area and found no site-specific records that would be impacted by this project provided no natural areas are being disturbed as a result of the proposed improvements. However, these records and data are not the result of thorough field surveys. If listed species or rare communities are found during the planning or construction phases, additional studies and/or mitigation may be required. If the construction plans change, the Department should be contacted for another review.

This letter is a record of review for protected species, rare natural communities, state lands and waters in the project area, including review by personnel representing state parks, preserves, recreation areas, fisheries and wildlife but does not include comment from the Environmental Services Division of this Department. This letter does not constitute a permit. Other permits may be required from the Department or other state or federal agencies before work begins on this project.

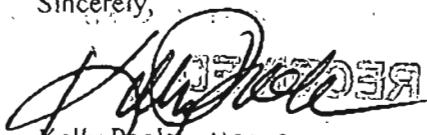
The review materials lack adequate details to determine whether the project will impact lands or waters under the jurisdiction of the Department. If land or water under the jurisdiction of the State of Iowa is involved in the project area, a sovereign lands construction permit pursuant to Chapter 461A of the Iowa Code will be required for this project.

Any construction activity that bares the soil of an area greater than or equal to one acre including clearing, grading or excavation may require a storm water discharge permit from the Department. Construction activities may include the temporary or permanent storage of dredge material. For more information regarding this matter, please contact Ruth Rosdail at (515) 281-6782.

The Department administers regulations that pertain to fugitive dust IAW Iowa Administrative Code 567-23.3(2)"c." All persons shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of property during construction, alteration, repairing or demolishing of buildings, bridges or other vertical structures or haul roads. All questions regarding fugitive dust regulations should be directed to Jim McGraw at (515) 242-5167.

If you have questions about this letter or require further information, please contact me at (515) 281-8967.

Sincerely,



Kelly Poole  
Environmental Specialist  
Conservation and Recreation Division  
[www.iowadnr.gov](http://www.iowadnr.gov)

FILE COPY: Kelly Poole  
Tracking Number: 5921

CC: Daryl Howell, Iowa DNR (email)  
Chris Schwake, Iowa DNR (email)  
Jill Rudloff, Iowa DOT (email)  
Mike Carlson, Iowa DOT (email)



# Iowa Department of Transportation

800 Lincoln Way, Ames, Iowa 50010 / Phone: 515-239-1795 / Fax: 515-239-1726

August 11, 2011

Ref.  
 HSIPX-086-1(8)--3L-30  
 STP-086-1(8)--2C-30  
 STP-086-1(10)--2C-30  
 Dickinson County  
 Iowa 86 - Primary System  
 WVA #581  
 CRR No.11-30-004

R&C: 011230076 & 071230077

Mr. Douglas Jones  
 Review and Compliance Program Manager  
 State Historical Society of Iowa  
 600 East Locust  
 Des Moines, IA 50319

Dear Doug:

**RE: Phase I Archeological Survey for Projects HSIPX-086-1(8)--3L-30, STP-086-1(8)--2C-30, STP-086-1(10)--2C-30 Proposed Borrows, Expanded Borrow, and Wetland Mitigation Site, Dickinson County, Iowa; Various Sections**

Enclosed for your review and comment are two phase I archaeological investigations for the above referenced federally funded projects. As final plans for the Iowa 86 project have been completed, additional areas have needed archaeological investigation. Two additional borrows are reviewed herein, along with a wetland mitigation site (WVA #581). Additionally, after receiving the June 2011 investigation the northern most borrow (Borrow 18) was expanded. Therefore the second archaeological investigation (CRR No.11-30-004) was completed. The first report reviewed a total of 113 acres (45.73 ha) and the second report reviewed 11.8 acres (4.7 ha).

The first investigation review Borrows 8, 18 and Parcel M (wetland mitigation area). A single site was recorded in Borrow 8. Site 13DK142 yielded a single chert or chalcedony flake. Additional intensive testing near this find failed to produce additional cultural materials. No additional archaeological work was recommended for this borrow or for Site 13DK142. A single site was also recorded from Borrow 18. Site 13DK141 yielded a single heat treated flake, possibly made from Swan River chert. Subsequent testing near this find also failed to locate additional cultural materials. No additional work was recommended for this site or for this borrow. Survey of Parcel M, the wetland mitigation area did not yield any archaeological materials. No additional work was recommended for either of these areas by the consulting principle investigator, and our office agrees with these recommendations.

Investigation for the expansion of Borrow 18 consisted of intensive pedestrian survey and subsurface testing of select landforms. No cultural materials were located during this survey and no further archaeological work has been recommended for this expanded borrow area.

Mr. Doug Jones  
August 11, 2011

As you will recall the overall agency determination for these undertakings has been **No Adverse Effect**, as a result of avoiding any effects to various standing structures. Therefore, at this time we are requesting your concurrence with these recommendations that no further archaeological work is necessary for the parcels investigated in the enclosed reports. As with any Iowa Department of Transportation project, should any new important archaeological, historical, or architectural materials be encountered during construction, project activities should cease and the Office of Location and Environment should be contacted immediately. If you concur with these recommendations, please sign below, add your comments and return this letter. If you have any questions, please feel free to contact me.

Sincerely,



Brennan J. Dolan  
Office of Location and Environment  
[brennan.dolan@dot.iowa.gov](mailto:brennan.dolan@dot.iowa.gov)

BD: Enclosures

cc:       Shane Tymkowicz – Assistant District 3 Engineer  
          DeeAnn Newell – Office of Location and Environment  
          Scott Marler – Office of Location and Environment  
          Michael Carlson – Office of Location and Environment  
          Nurit Finn – Wapsi Valley Archaeology

Concur:



Douglas W. Jones      Date: 8/16/2011

SHPO Archaeologist

Comments:



# United States Department of the Interior



OFFICE OF THE SECRETARY  
Office of Environmental Policy and Compliance  
Denver Federal Center, Building 67, Room 118  
Post Office Box 25007 (D-108)  
Denver, Colorado 80225-0007

August 18, 2011

9043.1  
ER 11/648

Mr. Lubin Quinones  
Division Administrator  
Federal Highway Administration  
105 Sixth Street  
Ames, Iowa 50010-6337

Dear Mr. Quinones:

As requested, the Department of the Interior (Department) has reviewed the draft Environmental Assessment (EA) and Section 4(f) Evaluation for the Iowa Highway 86 Vertical Alignment Improvement Study (between Highway 9 to near the Minnesota border), Dickinson County, Iowa. The Department offers the following comments for your consideration:

## Section 4(f) Comments

The Federal Highway Administration (FHWA) and the Iowa Department of Transportation (IDOT) propose to improve Iowa Highway 86 by widening the road surface and shoulders. The highway had been originally built as a county road in 1954 but was transferred to the State of Iowa and never widened. The proposal is to widen the 3.9 mile section of highway to two 14-foot wide driving lanes and 8-foot wide shoulders on each side. Work will also include graded portions of the roadway cross section beyond the road shoulders. The evaluation identified properties in the project study area eligible to be considered under Section 4(f) of the Department of Transportation Act of 1966 (48 U.S.C. 1653(f)). The properties include two Waterfowl Production Areas (WPAs) and Wildlife Management Areas (WMAs) (Welch Lake and Diamond Lake) and three historic properties eligible for the National Register of Historic Places. The FHWA and IDOT did not identify an alternative which would avoid the 4(f) properties because the WPA/WMAs lie on either side of the existing road. It would be infeasible to rebuild the road elsewhere to avoid impacting these resources. Therefore, the Department would concur with the FHWA and the IDOT that there are no feasible or prudent alternatives to the proposed alternative that result in impacts to the section 4(f) properties.

With respect to the potential impacts to the WPAs and WMAs and based on the ongoing coordination with the agencies with official jurisdiction on these parcels and the proposed

compensatory mitigation, FHWA has determined there will be a *de minimis* impact to these parcels. Because a *de minimis* finding by its very nature has already included all measures to minimize harm, the Department would concur with the *de minimis* finding after being provided evidence that the MOU was signed by the parties with official jurisdiction. This concurrence is also contingent upon complying with DOI Wildlife and Sport Fish Restoration (WSFR) program requirements associated with the WMAs.

The historic properties consist of Vick's General Store, a convenience store and gas station built in 1932 at the intersection of Highway 86 and Highway 9; the Swenson House (no description of this property is provided); and a segment of the former Iowa Northwestern Railroad, constructed in 1882, that crosses a stone arched bridge. The FHWA and the IDOT consulted with the State Historic Preservation Officer on the potential impacts to these properties. FHWA determined that there will be no adverse impacts to either the Swenson House or the segment of railroad and bridge, and determined that there will be a *de minimis* impact to the Vick's General Store property. The project will require a portion of the land in front of the property, but the property is eligible for its architectural values, which will not be affected by that taking. The Department would concur with the *de minimis* determination for historic properties.

### **Specific Comments**

The Memorandum of Agreement contains a signature page for the U.S. Fish and Wildlife Service and it identifies the Ecological Services Bureau as the signatory. Please replace Ecological Services Bureau with Union Slough National Wildlife Refuge.

The Department has a continuing interest in working with the FHWA and the IDOT to ensure impacts to resources of concern to the Department are adequately addressed. For matters related to issues concerning the historic properties, please contact the Regional Environmental Coordinator Nick Chevance, National Park Service, Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, telephone 402-661-1844. For matters related to the WSFR program, contact Lucinda Corcoran, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1173, telephone 612-713-5135. For National Wildlife Refuge related matters contact Erich Gilbert, Union Slough National Wildlife Refuge, 1710 - 360th Street, Titonka, IA 50480, telephone 515-928-2523.

We appreciate the opportunity to provide these comments.

Sincerely,



Robert F. Stewart  
Regional Environmental Officer



## STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR  
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
ROGER L. LANDE, DIRECTOR

July 27, 2011

**RECEIVED**

AUG 01 2011

DeeAnn Newell  
Iowa Department of Transportation  
800 Lincoln Way  
Ames, Iowa 50010

Office of Location & Environment

RE: Official with Jurisdiction of Section 4(f) Property Agreement with Decision  
Iowa 86 Reconstruction STP-086-1(10)--2C-30

Dear Ms. Newell,

FHWA informed the Iowa Department of Natural Resources (IDNR) on August 30, 2010 of its intent to make a de minimis impact finding pending the opportunity for public review and comment.

The NEPA Environmental Assessment was signed on June 30, 2011 and made available through a notice of availability. A Public Hearing was held on July 21, 2011 to give the public the opportunity to review and comment on the effects of the IA 86 Reconstruction project on the protected activities, features, and attributes of the state-owned Welch Lake and Diamond Lake Wildlife Areas.

The IDNR understand that efforts were made during the NEPA planning process to avoid and minimize impacts to the state-owned wildlife areas; these efforts will continue during final design to reduce the proposed impacts; the project is not anticipated to restrict access during construction; and a Memorandum of Understanding will be signed by IDOT, IDNR, USFWS and FHWA outlining the mitigation efforts.

As the official having jurisdiction over the Section 4(f) resource, it is agreed that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Joens".

Jeff Joens  
Wildlife Bureau  
Iowa Department of Natural Resources

APPENDIX B

MEMORANDUM OF UNDERSTANDING

# MEMORANDUM OF UNDERSTANDING

## AN UNDERSTANDING REGARDING PUBLIC LANDS EXCHANGE FOR IOWA HIGHWAY 86 PROJECT (STP-086-1(10)--2C-30) IN DICKINSON COUNTY, IOWA

### PURPOSE

This Memorandum of Understanding (MOU) is entered into between Federal Highway Administration, Iowa Division Office (FHWA), Iowa Department of Transportation (IDOT), U.S. Fish and Wildlife Service (USFWS), and Iowa Department of Natural Resources, (IDNR) to address exchange requirements for FHWA and IDOT's project to reconstruct and provide safety improvements to Iowa Highway 86 from its intersection with Iowa Highway 9 north to the relocated curves just south of the Minnesota State Line (PROJECT).

### BACKGROUND

Construction of the PROJECT will require approximately 7 acres of permanent right-of-way (ROW) as well as approximately 1 acre of temporary ROW from lands owned by USFWS as part of the Welch Lake Waterfowl Production Area (WPA). In addition, construction of the PROJECT will require approximately 2 acres of permanent ROW as well as approximately 2 acres of temporary ROW from lands owned by IDNR as part of the Welch Lake Wildlife Management Area (WMA) and the Diamond Lake WMA.

The WPA land will be replaced via a land exchange with the USFWS Region 3 Division of Realty in accordance with legislation governing the National Wildlife Refuge System<sup>1</sup>. The required exchange for the WMA ROW areas will be in accordance with Iowa laws and regulations.

FHWA determined that the WPA and WMA are protected under 23 CFR Part 774<sup>2</sup> as wildlife and waterfowl refuges and anticipates making a *de minimus* Section 4(f) impact finding for both the WPA and WMA areas based on the ongoing efforts to avoid, minimize and mitigate impacts through access modifications. Coordination with agencies will continue during final design.

IDOT staff actively worked with staff of the USFWS Union Slough National Wildlife Refuge, the USFWS Region 3 Division of Realty, the IDNR Wildlife Bureau, and the IDNR Big Sioux Wildlife Unit to provide adequate and acceptable exchange lands for both IDNR and USFWS. In regard to WPA ROW areas, IDOT will purchase approximately 12 acres of land previously determined to be acceptable to USFWS in the NE ¼ of the NE ¼ of Section 34 of Diamond Lake Township (Township 100 North, Range 37 West), Dickinson County, Iowa (see **Attachment 1**). To satisfy exchange requirements with regard to WMA ROW areas, IDOT will purchase approximately 15 acres of land acceptable to IDNR staff located in the NW ¼ of the NW ¼ of Section 35 of Diamond Lake Township (Township 100 North, Range 37 West), Dickinson County, Iowa (see **Attachment 1**):

---

<sup>1</sup> 16 U.S.C. 669d(a)(3); 16 U.S.C. 718d(c)

<sup>2</sup> 23 CFR Part 774: 23 U.S.C. 138 and 49 U.S.C. 303; originally enacted as Section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as "Section 4(f)".

## IMPLEMENTATION

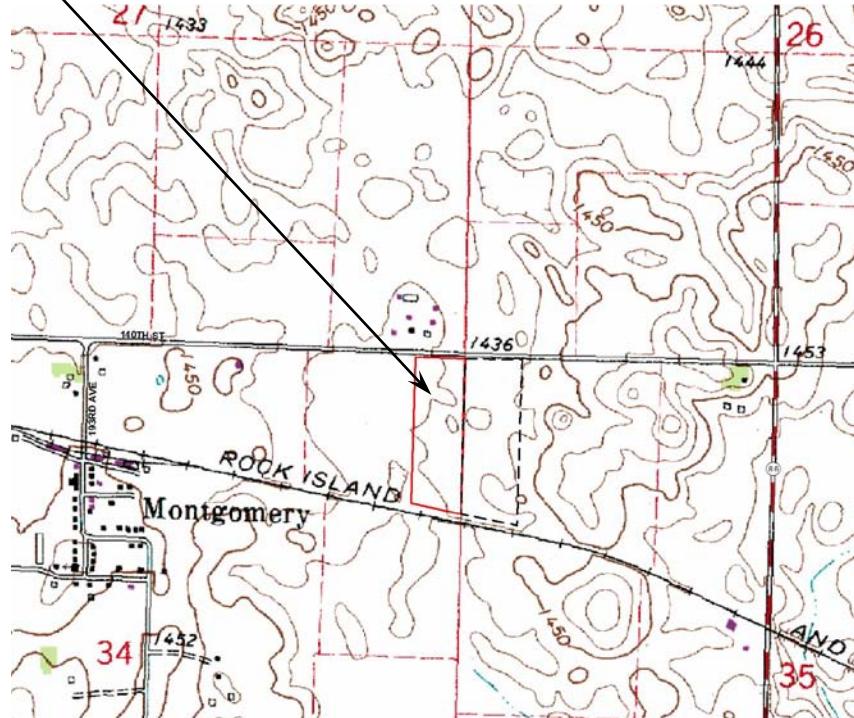
The undersigned acknowledge that this MOU represents a framework for proceeding forward and it is fully understood by all agencies that further agreements and actions will be necessary.

1. The FHWA and IDOT will construct the proposed PROJECT improving Iowa Highway 86 in accordance with plans provided to USFWS and IDNR, minor alterations notwithstanding.
2. The USFWS will issue a notice approving transfer of jurisdiction of the approximately 7 acres of the Welch Lake Waterfowl Production Area that is needed for construction of the PROJECT, pending execution of an **Agreement for the Exchange of Lands** and thereafter, completion of a land exchange.
3. The IDNR will provide through **Intergovernmental Agreement and Transfer of Jurisdiction and Control** approximately 2 acres of the Welch Lake Wildlife Management Area as ROW needed for construction of the PROJECT.
4. IDOT will purchase, transfer, exchange or otherwise convey the lands shown on **Attachment 1** to IDNR and USFWS respectively.
5. Once these actions are taken, the exchange requirements of the National Wildlife Refuge System will be satisfied.

**Attachment1.** Proposed areas of acquisition by Iowa DOT as described above. The combined area of both areas is approximately 28 acres.

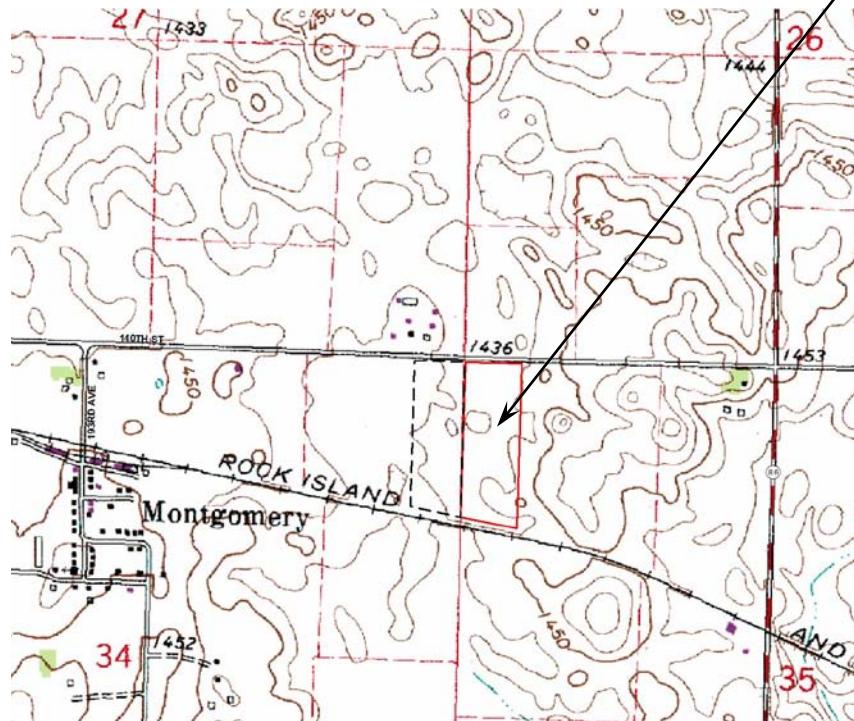
## **Proposed Acquisition Area for exchange to USFWS**

(A portion of the NE ¼ of the NE ¼ of Section 34 of Diamond Lake Township  
  (Township 100 North, Range 37 West), Dickinson County, Iowa)



**Proposed Acquisition Area for exchange to IDNR** (A portion of the NW ¼ of the NW ¼ of Section 35 of Diamond Lake Township

(Township 100 North, Range 37 West), Dickinson County, Iowa)



**MEMORANDUM OF UNDERSTANDING**  
**IOWA HIGHWAY 86 RECONSTRUCTION PROJECT**

*Signature Page*

IOWA DEPARTMENT OF TRANSPORTATION

By: James Rost  
Director, Office of Location & Environment

9-8-11  
Date

IOWA DEPARTMENT OF NATURAL RESOURCES

By: \_\_\_\_\_  
Name and Title of Signer:

\_\_\_\_\_  
Date

UNITED STATES FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_  
Name and Title of Signer:

\_\_\_\_\_  
Date

FEDERAL HIGHWAY ADMINISTRATION

By: Michael J. Pielin  
Iowa Division Administrator

7/8/11  
Date

**MEMORANDUM OF UNDERSTANDING**  
**IOWA HIGHWAY 86 RECONSTRUCTION PROJECT**

*Signature Page*

IOWA DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Director, Office of Location & Environment \_\_\_\_\_ Date \_\_\_\_\_

IOWA DEPARTMENT OF NATURAL RESOURCES

By:  Wildlife Bureau  
Name and Title of Signer: Chief \_\_\_\_\_ Date August 29, 2011

UNITED STATES FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_  
Name and Title of Signer: \_\_\_\_\_ Date \_\_\_\_\_

FEDERAL HIGHWAY ADMINISTRATION

By: \_\_\_\_\_  
Iowa Division Administrator \_\_\_\_\_ Date \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING**  
**IOWA HIGHWAY 86 RECONSTRUCTION PROJECT**

*Signature Page*

IOWA DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Director, Office of Location & Environment

\_\_\_\_\_  
Date

IOWA DEPARTMENT OF NATURAL RESOURCES

By: \_\_\_\_\_  
Name and Title of Signer:

\_\_\_\_\_  
Date

UNITED STATES FISH AND WILDLIFE SERVICE

By:   
\_\_\_\_\_  
Name and Title of Signer:

Richard D. Schultz  
Regional Chief

SEP - 1 2011

\_\_\_\_\_  
Date

FEDERAL HIGHWAY ADMINISTRATION

By: \_\_\_\_\_  
Iowa Division Administrator

\_\_\_\_\_  
Date