

ENVIRONMENTAL ANALYSIS AND DECISION ON THE NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT (EIS)

Form 1600-1

Rev. 6-2001

Department of Natural Resources (DNR)

Region or Bureau Northeast
Type List Designation Connected Enlargement - Type II Grading Miscellaneous Structures – Type III Large Dam Abandonment and Transfer - Type II & III

NOTE TO REVIEWERS: This document is a DNR environmental analysis that evaluates probable environmental effects and decides on the need for an EIS. The attached analysis includes a description of the proposal and the affected environment. The DNR has reviewed the attachments and, upon certification, accepts responsibility for their scope and content to fulfill requirements in s. NR 150.22, Wis. Adm. Code. Your comments should address completeness, accuracy or the EIS decision. For your comments to be considered, they must be received by the contact person before 4:30 p.m., Insert Date.

Contact Person: Jon Brand
Title: Water Management Specialist
Address: 2984 Shawano Ave., P.O. Box 10448 Green Bay, WI 54307-0448
Telephone Number 920-662-5466

Applicant: Tanesay Development LLC (applicant) & City of Kaukauna Utilities (landowner/co-applicant)

Address: 1335 North Dearborn Parkway, Chicago, IL 60610 & 777 Island Street, Kaukauna, WI 54130

Title of Proposal: RiverHeath

Location: County: Outagamie City/Town/Village: City of Appleton

Township Range Section(s): SW ¼, Section 25, T21N R17E

PROJECT SUMMARY

1. Brief overview of the proposal including the DNR action (include cost and funding source if public funds involved)

Tanesay Development, LLC is seeking a Chapter(s) 30/31 permit to redevelop a 12-acre parcel, on a peninsula between Telulah Canal and the Fox River, from industrial use to mixed use including condominiums, offices, and retail space as shown in Attachment A. The existing hydropower facility will remain. The Chapter 30 permit is to conduct the following activities:

- Filling a 1.7-acre portion of Telulah Canal, north of the hydropower intake.
- Constructing a 0.72-acre pond with inlet and outlet channels to the Fox River (connected enlargement/habitat enhancement pond).
- Grade on the bank in excess of 10,000 square feet
- Abandonment of that portion of the Lower Appleton Dam north of the hydropower facility is also proposed in conjunction with filling a portion of the canal. The partial dam abandonment would include the power canal north of the hydropower headrace, and the secondary spillway.

The redevelopment project is estimated to cost \$80 million. Partial public funding of \$5.75 million would be provided through a tax incremental financing district (TIFD).

2. Purpose and Need (include history and background as appropriate)

The project site (peninsula) is part of the dam and was the site of industrial operations utilizing the water power since the mid-1800's. Redevelopment of the site would require filling a portion of the canal, resulting in the abandonment of the portion of the dam north of the hydropower facility on Banta Court. Without filling the canal, most of the site is considered to be part of the dam and dam regulations would prohibit construction of buildings on the dam. Filling the canal would be necessary to construct a second access to the site (Newberry extension) to supplement the access at East John Street. The canal would be filled as part of the site remediation work using soils excavated from the site and imported fill.

In addition to the canal fill and habitat enhancement pond, the redevelopment would include removal of existing buildings, construction of multi-use commercial and residential buildings, and provide a new public access to the Fox River via expansion of the existing trail system at adjacent Telulah Park. The development plans also include utilization of an onsite hydro-electric power facility for energy production, green roofs, innovative stormwater management systems, community gardens, natural landscaping to benefit wildlife, and a pond. The U.S. Green Building Council accepted the project into a nationwide pilot program for Neighborhood Development.

3. Authorities and Approvals (list local, state and federal permits or approvals required)

- U.S. Army Corps 404 permit
- U.S. Army Corps Section 10 permit
- Wisconsin Chapter 30 permit
 - Fill or Structure Below Ordinary High Watermark [Chapter 30.12 (1)]
 - Grading on the Bank (in excess of 10,000 square feet [Chapter 30.19 (1g)(c)]
 - Connected Waterway Enlargement [Chapter 30.19(1g)(a)]
 - Section 401 Water Quality Certification
- Wisconsin Chapter 31 - Partial Dam Abandonment and Transfer [Chapter 31.185 (1)]
- City approval as a Planned Development

PROPOSED PHYSICAL CHANGES (more fully describe the proposal)

4. Manipulation of Terrestrial Resources (include relevant quantities - sq. ft., cu. yard, etc.)

Terrestrial manipulations would involve filling the canal, excavating the habitat enhancement pond, and construction of buildings roadways. Canal filling would be done in conjunction with site remediation work. A total of 20,000 cu. yards of soil would be needed to fill the canal. Site soils used as canal fill would consist of 1) soils excavated from the proposed habitat enhancement pond located on the north end of the property, and 2) lead and PAH affected soils, if approved as part of the final soil remedy. Imported fill would also be used as needed. Fill would be placed in thin lifts and compacted to specified densities to allow for development. If affected soils are placed in the former canal, an impermeable / low permeability geomembrane would be placed over all or parts of the fill area. The filled area would be capped by impervious road surface.

Habitat enhancement pond construction would consist of excavating 30,000 cubic yards to the proposed grades as shown on Attachment B. If possible, excavated material would be used on site. Excavation of the connections to the river would be done after the pond is graded and the upper pond banks have been stabilized with topsoil, seed and a biodegradable erosion control mat. Sized riprap would be placed at locations receiving high velocity water flow. Trees on the existing river bank in the vicinity of the pond would be removed and used as anchored woody debris in the pond. Existing seawalls along the riverbank would be removed in the vicinity of the pond and channels that connect the pond to the river. The inlet channel would be constructed as a stone riprap weir to control the inflow to the pond.

Appropriate storm water management practices would be implemented during site excavation and canal filling operations. A sedimentation and erosion control plan has been prepared and would be kept on site during construction operations.

5. Manipulation of Aquatic Resources (include relevant quantities - cfs, acre feet, MGD, etc.)

The proposed project includes the manipulation of aquatic resources composed of two components. The first is filling approximately 1.7 acres of the Telulah Canal. The second is creating a habitat enhancement pond to off-set the loss of that portion of Telulah Canal. This habitat enhancement pond will be referred to as Telulah Pond throughout the remainder of this document.

Filling of the Telulah Canal, which is a former mill race, would be required to facilitate adequate emergency vehicle access (road construction) to the RiverHeath site. The habitat in Telulah Canal is characterized by low gradient, silty substrates, hard armoring along banks, and aquatic vegetation dominated by Eurasian water-milfoil. Because of the relative scarcity of backwater areas adjacent to the Fox River, there is value to the Telulah Canal as a refuge during high flows and habitat (aquatic plants) not common in the main channel of the river. Fish species such as largemouth bass, black crappie and bluegill not normally found in the main channel of the Fox River have been documented in the canal. The construction of Telulah Pond on-site would serve as a habitat enhancement/off-set to the canal filling activity. A water quality certification application including alternatives analysis and functional assessment for the Telulah Canal has been prepared.

The proposed Telulah Pond is a 0.72-acre pond with a direct connection to the Fox River located on the northern portion of the RiverHeath development. The primary purpose of the pond is to create high quality habitat as a backwater area for the benefit of fish, wildlife, aquatic and semi-aquatic life, and waterfowl. The pond concept is to optimize habitat features for multiple life stages of desirable resident fish species (largemouth bass, black crappie, and bluegill). Also, the diverse habitat would likely have benefits for aquatic macroinvertebrates and herpetiles in the area. It includes native aquatic emergent, submergent, and floating-leaf plants, sand and gravel substrates, deep and shallow areas, and large woody debris. Most of these habitat features are non-existent in the portion of the Telulah Canal proposed for fill. The secondary purpose of the pond is to provide recreational opportunities for the surrounding community and a canoe access point to the Fox River, which are also lacking with current site configuration.

6. Buildings, Treatment Units, Roads and Other Structures (include size of facilities, road miles, etc.)

The proposed project would demolish one building and construct eight new buildings, as well as 112,550 sq. ft. of parking lot, 75,200 sq. ft. of ornamental plantings, 111,900 sq. ft. of natural planting areas (2.57 acres), and 1200 ft. of new street. New building areas would consist of 92,800 sq. ft. of conventional roof, and 45,600 sq. ft. of “green roof”.

7. Emissions and Discharges (include relevant characteristics and quantities)

Emissions and discharges would include exhaust from the construction equipment and stormwater runoff. Best management practices for erosion and sediment control would be used to minimize discharge of sediment during the project construction. Stormwater management measures would be constructed in accordance with NR 216 and NR 151 regulations.

8. Other Changes

None.

9. Identify the maps, plans and other descriptive material attached

Attachment A – Site development plan

Attachment B – Habitat Enhancement pond (Telulah Pond)

Attachment C.1 – USGS Location Map

Attachment C.2 - County Aerial Map (Project Site)

Attachment C.3 - Aerial Photo – Project

AFFECTED ENVIRONMENT (describe existing features that may be affected by proposal)

10. Information Based On (check all that apply):

Literature/correspondence (specify major sources)

Personal Contacts (list in item 26)

Field Analysis By: Author Other (list in item 26)

Past Experience With Site By: Other (list in item 26)

11. Physical Environment (topography, soils, water, air)

The RiverHeath development site is a peninsula located adjacent to a lock structure on the Fox River. The peninsula consists of former industrial land use and vacant land. The site is bordered on the northwest by the Fox River and by a railway right of way on the southeast. The site topography is gently sloped toward the river with steep slopes along the east and southeast boundaries. The site is approximately 15 feet above the Fox River normal water level and 4 feet above the Telulah Canal normal water level. The banks along the river and the canal have steep slopes and retaining walls. Soils on the site are largely altered by historic uses and remediation of contamination. Because of the difference in water levels in the canal and the river, the portion of the site between these water features is defined as part of the Lower Appleton Dam.

12. Biological Environment (dominant aquatic and terrestrial plant and animal species and habitats including threatened/endangered resources; wetland amounts, types and hydraulic value)

The site is open grassy land disturbed by remediation of soil contamination activities and demolition of buildings. There is no documented use of the site by threatened/endangered species, although Lake Sturgeon and a number of rare plant species are known to the watershed currently or historically. Also, bald eagles are known to frequent the Fox River corridor in this area.

The aquatic habitat is composed of a former mill race known as Telulah Canal and is appropriately categorized as a low gradient, hyper-eutrophic glide typical of manmade canals. The site is lacking in classic riffle/run/pool development common to natural rivers/streams. The canal is located adjacent to Fox River lock #4. At the north end of the canal there is an additional connection via a weir, drop structure, and pipe outlet to the Fox River downstream of the dam. A number of fish species common to the region were identified during a WDNR fish survey in the fall of 2007, but no Lake Sturgeon were collected.

Vegetation on the development site is dominated by planted, non-native bluegrass with scattered weedy forbs and volunteer shrubs and trees. Scattered wetland plant species occur along the bank of the Fox River and along riprap canal banks, but no wetlands were identified on-site. The low floristic quality is due to the site having been altered in prior years by former industrial type land uses and the fact that site soils have limited fertility. None of the rare plant species found in the region were found on-site presumably due to habitat deficiencies.

13. Cultural Environment

a. Land use (dominant features and uses including zoning if applicable)

The site is mostly vacant with one former pulp mill building. Current zoning is industrial.

b. Social/Economic (including ethnic and cultural groups)

At present there is none.

c. Archaeological/Historical

According to the Wisconsin Historical Society (WHS), the project site is proximal to reported archeological site(s). Given the intensive industrial use of the site for the past 150 years and the extensive site disturbance by building, demolition, and remediation, it appears unlikely that a significant archeological site exists in the project area. Historic site documentation has been submitted to WHS for review. An archeological investigation is being required by the Department.

14. Other Special Resources (e.g., State Natural Areas, prime agricultural lands)

None known.

ENVIRONMENTAL CONSEQUENCES (probable adverse and beneficial impacts including indirect and secondary impacts)

15. Physical (include visual if applicable)

The proposed project would result in negative impacts related to the temporary physical disturbance as part of construction and excavation activities. All areas disturbed during the construction phase of the project would be planted and reestablished with vegetation as appropriate to local site conditions, including native wetland and prairie species. Additional negative impacts would result from the filling of 1.7-acres of the Telulah Canal. These impacts would be in-part, off-set by the creation of the higher quality 0.72-acre Telulah Pond (habitat enhancement).

The negative impacts associated with the filling of a portion of the Telulah Canal are a loss of habitat. A site investigation indicated that the habitat quality was generally moderate to low in terms of its benefit to fish communities. However, because of the relative scarcity of backwater habitat in the Fox River corridor there is a general benefit provided by the Telulah Canal to local fish communities.

The positive impacts of the project would be to create a high quality backwater habitat adjacent to the Fox River via construction of Telulah Pond. The Telulah Pond would be relatively isolated from the main channel of the Fox River by design and would not likely impact the hydrology of river. The upstream connection to the Fox River would be a weir structure and would generally buffer the pond from the river currents. The downstream connection to the Fox River would be an open channel allowing for water to enter and leave the pond as water levels fluctuate and allow for canoe access to the main river channel. One goal of the pond design is to incorporate physical habitat features to provide the optimal benefit possible. In addition its physical location, Telulah Pond would also benefit fauna utilizing Telulah Park located just off-site.

Filling the portion of Telulah Canal north of the hydropower intake and abandoning a portion of the Lower Appleton Dam would eliminate the risk of dam failure in this location.

Because of the existing poor condition of the site, the proposed RiverHeath development plan including the Telulah Pond would result in visual improvements.

16. Biological (including impacts to threatened/endangered resources)

The negative impacts on local biota include a loss of 1.7-acres of backwater habitat in Telulah Canal. This area currently supports a variety of fish species. The portion of Telulah Canal south of the Banta Court bridge site would not be impacted and continue to provide habitat value.

The positive impacts of creating Telulah Pond include establishing a high quality backwater area for the benefit of dependent fish, wildlife, waterfowl, and other aquatic and semi-aquatic life in the area. The benefits of creating the pond would extend beyond the RiverHeath site due to its connection to the main channel of the Fox River and proximity to the nearby Telulah Park. The pond design includes numerous fish habitat features such as large woody debris, emergent-submergent-floating leaf aquatic vegetation plantings, and diverse substrate largely absent from the Telulah Canal. Disturbed upland areas would be planted with a mixture of native wetland and/or prairie species as appropriate to site conditions.

No threatened or endangered species would be impacted by this project since none are associated with the site.

17. Cultural

a. Land Use (including indirect and secondary impacts)

Redevelopment of this site as multi-family residential land use is consistent with the City of Appleton's long range plan. This site has been identified by the City and the East Central Wisconsin Regional Planning Commission as a targeted development site for over 20 years. RiverHeath would add 204 multi-family residential units and provide over 100,000 sq. ft. of retail/restaurant/commercial space.

b. Social/Economic (including ethnic and cultural groups, and zoning if applicable)

Construction of RiverHeath would temporarily provide jobs for the building trades. The residential units would provide homes for 204 families. The commercial space would provide opportunities for 10-20 business and create additional jobs.

c. Archaeological/Historical

Not known at this time. Further archeological investigation is required.

18. Other Special Resources (e.g., State Natural Areas, prime agricultural lands)

None known.

19. Summary of Adverse Impacts That Cannot Be Avoided (more fully discussed in 15 through 18)

Adverse impacts that cannot be avoided include those associated with construction and filling the 1.7 acres of Telulah Canal.

20. Environmental Effects and Their Significance

- a. Discuss which of the primary and secondary environmental effects listed in the environmental consequences section are long-term or short-term.

The impacts associated with construction activities are short-term and would last the duration of the project. The impacts associated with the filling of the Telulah Canal and the benefits of creating Telulah Pond are permanent. Land use and social benefits of the project are long-term.

- b. Discuss which of the primary and secondary environmental effects listed in the environmental consequences section are effects on geographically scarce resources (e.g. historic or cultural resources, scenic and recreational resources, prime agricultural lands, threatened or endangered resources or ecologically sensitive areas).

Backwater habitat is limited in the Fox River corridor due to historic urbanization. The proposed project would dually cause the loss of backwater habitat and create new backwater habitat along the Fox River.

- c. Discuss the extent to which the primary and secondary environmental effects listed in the environmental consequences section are reversible.

Filling Telulah Canal and abandoning a portion of the dam would be irreversible. The benefits associated with creating Telulah Pond and the RiverHeath Development would also be irreversible.

21. Significance of Cumulative Effects

Discuss the significance of reasonably anticipated cumulative effects on the environment (and energy usage, if applicable). Consider cumulative effects from repeated projects of the same type. Would the cumulative effects be more severe or substantially change the quality of the environment? Include other activities planned or proposed in the area that would compound effects on the environment.

The anticipated cumulative effects are intended to have a positive for the environment. The proposed Telulah Pond would provide better quality backwater habitat than presently exists in the Telulah Canal. The proposed mixed-use development near the downtown should result in reduced vehicle miles. The project has been accepted into the US Green Building Council's LEED ND or Neighborhood Development pilot program. The use of renewable energy onsite, including hydro-electric and geo-thermal exchange systems, would be an example for carbon neutral projects across Wisconsin and the Midwest.

22. Significance of Risk

- a. Explain the significance of any unknowns that create substantial uncertainty in predicting effects on the quality of the environment. What additional studies or analysis would eliminate or reduce these unknowns?

There are no unknowns that create substantial uncertainty in predicting effects on the quality of the environment. No additional studies or analysis should be needed.

- b. Explain the environmental significance of reasonably anticipated operating problems such as malfunctions, spills, fires or other hazards (particularly those relating to health or safety). Consider reasonable detection and emergency response, and discuss the potential for these hazards.

Potential operating problems would be limited to the construction phase of the project. Operating problems could potentially include spill of fuel or oil from construction equipment or erosion of sediment during soil disturbing activities. The contractor would be required to have spill cleanup materials on site to minimize the impacts of any accidental spills. An erosion control plan to minimize the potential for soil erosion would be in place prior to construction. Control devices would need to be in place and monitored for effectiveness during the entire project and afterward until the area has been stabilized

23. Significance of Precedent

Would a decision on this proposal influence future decisions or foreclose options that may additionally affect the quality of the environment? Describe any conflicts the proposal has with plans or policy of local, state or federal agencies. Explain the significance of each.

The proposed project should not create any precedent for future activities. However, connected enlargements to navigable waterway are generally considered controversial/precedent setting, and typically not allowed by the Department for various reasons. From a state and federal level the filling of a waterway for any reason is difficult to justify based on existing regulations. Conflicts do not appear to exist between the proposed project and plans or policies of local agencies.

24. Significance of Controversy over Environmental Effects

Discuss the effects on the quality of the environment, including socio-economic effects, that are (or are likely to be) highly controversial, and summarize the controversy.

The proposed project should not have any measurable effects on the quality of the environment. The project has received considerable public interest and no adverse comments have been received. The location is surrounded by developed lands.

ALTERNATIVES

25. Briefly describe the impacts of no action and of alternatives that would decrease or eliminate adverse environmental effects. (Refer to any appropriate alternatives from the applicant or anyone else.)

Under a no-action plan the Applicant would not proceed with the proposed project. The site would remain a vacant unutilized former industrial site. Without the Telulah Canal being filled and the portion of the dam abandoned, the site would likely not be developed (commercial and residential) because of a sizeable reduction in available property. Other land-use, such as green space or park land have not been considered.

SUMMARY OF ISSUE IDENTIFICATION ACTIVITIES

26. List agencies, citizen groups and individuals contacted regarding the project (include DNR personnel and title) and summarize public contacts, completed or proposed).

<u>Date</u>	<u>Contact</u>	<u>Comment Summary</u>
		See Water Management Chapter 30 permit application file and Water Management Specialist – Green Bay Basin email file for
IP-NE-2008-45-67266		
IP-NE-2008-45-67268		
IP-NE-2008-45-67836		
IP-NE-2008-45-67840		
IP-NE-2008-45-67841		

DECISION (This decision is not final until certified by the appropriate authority)

In accordance with s. 1.11, Stats., and Ch. NR 150, Adm. Code, the Department is authorized and required to determine whether it has complied with s.1.11, Stats., and Ch. NR 150, Wis. Adm. Code.

Complete either A or B below:

A. EIS Process Not Required

The attached analysis of the expected impacts of this proposal is of sufficient scope and detail to conclude that this is not a major action which would significantly affect the quality of the human environment. In my opinion, therefore, an environmental impact statement is not required prior to final action by the Department.

B. Major Action Requiring the Full EIS Process

The proposal is of such magnitude and complexity with such considerable and important impacts on the quality of the human environment that it constitutes a major action significantly affecting the quality of the human environment.

Signature of Evaluator	Date Signed

Number of responses to news release or other notice:

Certified to be in compliance with WEPA	
Environmental Analysis and Liaison Program Staff	Date Signed

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, 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, Stats., 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, Stats., 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.

Note: Not all Department decisions respecting environmental impact, such as those involving solid waste or hazardous waste facilities under sections 144.43 to 144.47 and 144.60 to 144.74, Stats., are subject to the contested case hearing provisions of section 227.42, Stats.

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