

# **APPENDIX REG**

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APPLICABLE FEDERAL, STATE, AND LOCAL LAWS AND  
REGULATIONS

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## APPLICABLE FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

### INTRODUCTION

Federal, state, and local laws and regulations relevant to Alternatives A, B, and C are included below. As discussed in the Environmental Assessment, state and local laws and regulations apply to the Property prior to acquisition into trust, but are generally not applicable to land in trust.

Under the current administration, CEQ's role has shifted from regulatory authority to advisory support. Following Executive Order 14154, CEQ rescinded its NEPA regulations effective April 11, 2025, citing two major court decisions—*Marin Audubon Society v. FAA* and *Iowa v. CEQ*—which found CEQ lacked statutory authority to issue binding NEPA rules.

The Department of Interior (DOI) released its DOI NEPA Interim Final Rulemaking 7-2025, 43 CFR Part 46, which partially rescinded its remaining regulations implementing the National Environmental Policy Act (NEPA) and made necessary targeted updates to its NEPA Handbook, which apply only to DOI's internal processes.<sup>1</sup> This Handbook is separate from the Code of Federal Regulations.

### LAND RESOURCES

#### FEDERAL

##### Clean Water Act

The State Water Resources Control Board (SWRCB) requires a Construction General Permit if a project will disturb one or more acres of soil. A site-specific Storm Water Pollution Prevention Plan is required under this permit. For more information on the Clean Water Act (CWA), refer to Water Resources section below.

#### STATE AND LOCAL

##### Wisconsin Administrative Code

The state of Wisconsin requires each of its agencies to provide regulatory standards that correspond with the agency's goals. The Natural Resources (NR) chapters of the Wisconsin Administrative Code directs the Wisconsin Department of Natural Resources (WDNR) to implement the Code. The Department's mission is to protect natural areas including wetlands, wildlife habitats, lakes, woodlands, open spaces, and groundwater resources.

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<sup>1</sup> The analysis in this EA was prepared consistent with the Department of the Interior's (DOI) NEPA procedures established in the July 3, 2025 interim final rule. The DOI NEPA Final Rulemaking 2-2026, 43 CFR Part 46 is the current governing regulation.

## **Kenosha County Land and Water Resource Management Plan (LWRMP)**

The Kenosha County LWRMP identifies natural resources at a local level, and the current condition and limitations of those resources, and sets forth a strategy that addresses natural resource concerns. The potential issues outlined in the LWRMP include: cropland erosion from excess sedimentation into waterbodies, flooding and stormwater management, urbanization, wetland losses, invasive species, waterfront development, and shoreline erosion. In regard to land resources, the plan provides a guideline on farmland conservation, mineral resource conservation, and natural resource area and critical species habitat conservation.

## **City of Kenosha Code of General Ordinances**

The City of Kenosha Code of General Ordinances promotes conservation, protection, and proper development of the City's soil, water, wetland, woodland, and wildlife resources.

## **WATER RESOURCES**

### **FEDERAL**

#### **Executive Order 11988**

Executive Order (EO) 11988 requires federal agencies to limit adverse impacts associated with the occupancy or modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. Specifically, EO 11988 states that agencies shall first determine whether the proposed action will occur in a floodplain. EO 11988 defines a floodplain as an area that has a one percent or greater chance of flooding in any given year. Second, if an agency proposes to allow an action to be located in a floodplain, “the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains.” If the only practicable alternative action requires siting in a floodplain, the agency is required to minimize potential harm to or within the floodplain.

#### **Federal Emergency Management Agency**

The Disaster Relief Act of 1974, as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, created the Federal Emergency Management Agency (FEMA), which is responsible for determining flood elevations and floodplain boundaries based on U.S. Army Corps of Engineers (USACE) studies. FEMA is also responsible for distributing Flood Insurance Rate Maps, which are used in the National Flood Insurance Program. These maps identify the locations of special flood hazard areas, including 100-year floodplains.

#### **Clean Water Act (CWA)**

The CWA, 33 U.S. Code (USC) Section 1251(a)(2), sets forth national goals that waters shall be “fishable, swimmable” waters (CWA Section 101 [a][2]). The CWA addresses both point and non-point sources of pollution (Sections 402 and 319, respectively), both of which are controlled through the National Pollution Discharge Elimination System (NPDES). An NPDES permit must be obtained in order to discharge policy pollutants into “Waters of the U.S.” In some states, the U.S. Environmental Protection Agency (USEPA) has delegated permitting authority to the regional water quality agency. On Tribal land,

the USEPA retains authority to regulate discharges. Section 303(d) of the CWA requires states to periodically prepare a list of all surface waters in their respective jurisdictions for which beneficial uses of the water—such as for drinking, recreation, aquatic habitat, and industrial use—are impaired by pollutants. These include water bodies that do not meet state surface water quality standards and are not expected to improve within the next two years.

The CWA delegates to the states to establish a priority ranking of these impaired waters for purposes of developing water quality control plans that include Total Maximum Daily Loads (TMDL). A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards and includes an allocation for each of the pollutant’s sources. These water quality control plans describe how an impaired water body will meet water quality standards through the use of TMDLs.

### **Anti-Degradation Policy**

Federal policy (Code of Federal Regulations [CFR], Title 40, Part 131.6) specifies that each state must develop, adopt, and retain an anti-degradation policy to protect the minimum level of surface water quality necessary to support existing uses. Each anti-degradation policy must include implementation methods consistent with provisions outlined in 40 CFR §131.12. On trust land, such issues are addressed by the USEPA.

### **Safe Drinking Water Act**

Under the mandate of the Safe Drinking Water Act (SDWA), the USEPA sets legally enforceable National Primary Drinking Water Regulations (primary standards) that apply to public water systems. These standards are established to protect human health by limiting the levels of contaminants in drinking water. The USEPA does not oversee the construction and permitting of groundwater wells, but requires that public health standards, such as an effectively installed sanitary seal, are in place. The most direct oversight of water systems is conducted by state drinking water programs if the State has been granted “primacy” from the USEPA, the authority to implement SDWA within their jurisdictions. The USEPA will also primarily establish monitoring and operational requirements, which will typically be specific to the project area.

The USEPA also defines National Secondary Drinking Water Regulations (secondary standards) for contaminants that cause cosmetic and aesthetic effects, but not for health effects. The USEPA recommends that these secondary standards be met but does not require systems to comply with them. Both primary and secondary drinking water standards are expressed as either Maximum Contaminant Levels (MCL), which define the highest level of a contaminant allowed in drinking water, or Maximum Contaminant Level Goals, which define the level of a contaminant below which there is no known or expected risk to health.

## STATE AND LOCAL

### **Wisconsin Administrative Code**

The Wisconsin Administrative Code, including the Natural Resources (NR) chapters, is the statewide

guiding document related to water supply, quality, and water/wastewater infrastructure needs. In general, the plan identifies the various concerns presented to the agency, regarding a plethora of subjects including, but not limited to, recreational areas, water quality standards, and erosion control.

### **City of Kenosha Code of General Ordinances**

The City's Code of General Ordinances provides various regulations pertaining to water use and connection to municipal water and wastewater services. Conservation of water is encouraged and, in the case of industrial development, water use records must be maintained. Additionally, the ordinances require that developers connect to City municipal water and wastewater systems. Minimum design standards for such connections, including proper installation of shut-offs, is also included within the municipal code.

### **Kenosha County Land and Water Resource Management Plan (LWRMP)**

The purpose of the Kenosha County LWRMP is to develop a plan to be used as a guide for Kenosha County in carrying out its natural resource-related programs. The plan development process is intended to encourage innovative programming and leadership and to build local support. The LWRMP goals include nonpoint source pollution performance standards, identify local land and water resource priorities and goals, develop resource management programs, and evaluate and monitor progress. The Plan also identified erosion, flood management, wetland loss, invasive species control, and lack of environmental education as key issues.

## **AIR QUALITY**

### **FEDERAL**

#### **Clean Air Act of 1970**

The Federal Clean Air Act (CAA) was enacted in 1970 and last amended in 1990 (42 USC §7401 et seq.) for the purposes of protecting and enhancing the quality of the nation's air resources to benefit public health, welfare, and productivity. The CAA establishes a framework for national, state, and local air pollution control efforts. Basic components of the CAA and its amendments include national ambient air quality standards (NAAQS) for criteria air pollutants, requirements for state implementation plans (SIPs) to meet the NAAQS, motor vehicle emissions standards, stationary source emissions standards and permits, and enforcement provisions. The EPA is the federal agency responsible for establishing the NAAQS, overseeing state air programs as they relate to the CAA, approving SIPs, and setting emissions standards for mobile sources under federal jurisdiction.

#### *National Ambient Air Quality Standards*

The USEPA, under authority of the CAA, developed primary and secondary NAAQS in 1971. The primary NAAQS protect the public health with an adequate margin of safety and the secondary standards protect the public welfare from known or anticipated adverse effects to aesthetics, crops, or architecture (42 USC §7409[b]). The USEPA designated six pollutants of primary concern as criteria air pollutants (CAPs): carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), ozone, lead (Pb), and particulate matter (PM). The NAAQS are time-averaged maximum ambient air concentrations. For various CAPs,

more than one time-averaged maximum concentration has been established by the USEPA in order to address the typical exposures to the population from natural and anthropogenic sources in the environment. Concentrations above these time-averaged maximum concentrations are anticipated to cause adverse health effects to sensitive receptors. The violation criteria established by the USEPA are based upon these time-averaged maximum concentrations specific to each CAP. For example, the NAAQS for ozone must be exceeded on more than three days in three consecutive years in order to constitute a violation. On the other hand, if the NAAQS for CO are exceeded on more than one day in any given year, a violation has occurred. **Table 1** presents the violation criteria for the various averaging times of the NAAQS for each CAP. The USEPA allows states the option to develop independent standards only if the standards are more stringent than the NAAQS.

### Attainment Status

To determine conformance with the NAAQS, states are responsible for providing ambient air monitoring data to the EPA. The EPA then determines, using the violation criteria, if the results of the monitoring data indicate compliance with the NAAQS. The EPA classifies areas in compliance with the NAAQS as being in "attainment". Areas that do not meet the NAAQS are classified as being in "nonattainment" by the EPA.

**TABLE 1: NAAQS AND ASSOCIATED VIOLATION CRITERIA**

Pollutants	Times	Primary		Violation Criteria
		ppm	µg/m <sup>3</sup>	
Ozone	8 hours	0.70	-	The 3-year average of the annual 4 <sup>th</sup> highest daily 8-hour maximum is not to be above 0.070 µg/m <sup>3</sup>
Carbon Monoxide	8 hours	9	10,000	If exceeded on more than 1 day per year
	1 hour	35	40,000	If exceeded on more than 1 day per year
Nitrogen Dioxide	Annual average	0.053	-	Not to be above 0.053 ppm in a calendar year.
	1 hour	0.100	-	The 3-year average of the 98 <sup>th</sup> percentile of the daily maximum 1-hour average at each monitor is not above 0.100 ppm.
Sulfur Dioxide	1-hour	0.075	-	99 <sup>th</sup> percentile of 1-hour daily maximum averaged over 3 years.
PM <sub>10</sub>	24 hours	-	150	Not to be above 150 µg/m <sup>3</sup> on more than three days over three years with daily sampling
PM <sub>2.5</sub>	Annual arithmetic mean	N-	12 (see note)	The 3-year average from a community-oriented monitor is not above 12 µg/m <sup>3</sup> .
	24 hours	-	35	The 3-year average of the 98 <sup>th</sup> percentile for each population-oriented monitor within an area is not above 35 µg/m <sup>3</sup> .
Lead	Rolling –3 Month	-	0.15	Not to be above 0.15 µg/m <sup>3</sup> .

	Average			
	Quarterly Average	-	1.5	-
<p>Note: On February 7, 2024 the USEPA strengthened the NAAQS for the annual PM2.5 to 9.0 micrograms per cubic meter. At this time, this change has not been published in the Federal Register. New designations for this standard will be available within two years of issuing the revised NAAQS. It is anticipated that Kenosha County would meet the new standard.</p> <p>Source: USEPA, 2024c.</p>				

### *Federal Conformity*

The federal General Conformity Rule implements Section 176(c) of the CAA, and establishes minimum thresholds for reactive organic compounds (ROGs) and nitrogen oxides (NOx) (ozone precursors), particulate matter (PM), and other regulated constituents for nonattainment and maintenance areas. Under the General Conformity Rule, the lead agency with respect to a federal action is required to demonstrate that the proposed federal action conforms to the applicable SIP before the action is taken. There are two phases to a demonstration of general conformity:

1. The Conformity Review process, which entails an initial review of the federal action to assess whether a full conformity determination is necessary, and
2. The Conformity Determination process, which requires that a proposed federal action be demonstrated to conform to the applicable SIP.

The Conformity Review requires the lead agency to compare estimated emissions to the applicable general conformity *de minimis* threshold(s). If the emission estimates from step one is below the applicable threshold(s), then a general conformity determination is not necessary, and the full Conformity Determination is not required. If emission estimates are greater than *de minimis* levels, the lead agency must conduct a formal Conformity Determination. A portion of Kenosha County is in nonattainment for Ozone and is unclassifiable for the remainder of national ambient air quality standards. Currently the project is adjacent to the nonattainment area, but is not within the nonattainment area, the western edge of which is I-41. Kenosha County was previously classified as a nonattainment area. Consequently, the Project Site is currently classified as a maintenance area for ozone.

### *Federal Class I Area*

Title 1, Part C of the CAA was established, in part, to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value. The CAA designates all international parks, national wilderness areas, and memorial parks larger than 5,000 acres and national parks larger than 6,000 acres as “Class I areas.” The CAA prevents significant deterioration of air quality in Class I areas under the Prevention of Significant Deterioration (PSD) program. Any major source of emissions within 100 kilometers (km; 62.1 miles) from a federal Class I area is required to conduct a pre-construction review of air quality impacts on the area(s). There are no Class I areas within 100 km (62.1 miles) of the Project Site (WDNR, 2024).

### *Tribal New Source Review*

The Tribal Minor New Source Review (NSR) permitting program was established by the USEPA under the CAA. The minor NSR program applies to both new minor sources and minor modifications to both major and minor projects in attainment and nonattainment areas. NSR programs must comply with the standards and control strategies of the Tribal Implementation Plan (TIP) or SIP. If there is not an applicable SIP or TIP, the USEPA issues permits and implements the program. A General Permit under the minor NSR program would be required on tribal trust land if stationary source allowable emissions of regulated pollutants would exceed the thresholds presented in 40 CFR 49.153, Table 1 (**Table 2**). This General Permit serves as a preconstruction permit containing limitations and other restrictions specifying the construction, modification, and operation of a minor source. The applicability of Tribal NSR is made on a source's potential to emit (PTE).

**TABLE 2: TRIBAL MINOR NEW SOURCE REVIEW THRESHOLDS**

<b>Pollutant</b>	<b>Emissions Thresholds for Nonattainment Areas (tpy)</b>	<b>Emissions Thresholds for Attainment Areas (tpy)</b>
NOx	5	10
ROG	2	5
PM	5	10
PM <sub>10</sub>	1	5
PM <sub>2.5</sub>	0.6	3
CO	5	10
SO <sub>2</sub>	5	10
Pb	0.1	0.1

Source: 40 CFR 49.153.

### *Executive Order 14154*

Unleashing American Energy, directs federal agencies to prioritize domestic energy production by streamlining permitting, expanding access to federal lands, and rolling back climate-focused initiatives. It revokes previous clean energy mandates and programs, including the American Climate Corps, aiming to reduce regulatory barriers and promote traditional energy sources.

## **BIOLOGICAL RESOURCES**

### FEDERAL

#### **Federal Endangered Species Act**

The U.S. Fish & Wildlife Service (USFWS) enforces the provisions of the federal Endangered Species Act (FESA) for all terrestrial species. Section 9 (§ 1538) prohibits the "take" of a listed species by anyone, including private individuals and state and local agencies. Threatened and endangered species on the federal list (50 CFR Sections 17.11 and 17.12) are protected from take, which is defined as direct or indirect harm. If "take" of a listed species is incidental to an otherwise lawful activity, this triggers the need for consultation under Section 7 of the FESA for federal agencies, including tribes.

Pursuant to the requirements of the FESA, a federal agency reviewing a project within its jurisdiction must determine whether any federally listed species may be present on a project site and whether the project will have a potentially significant impact upon such species. A discussion of regionally listed species is provided in consideration of potential impacts associated with project implementation. Under the FESA, habitat loss is considered to be an impact to the species. In addition, the agency is required to determine whether the project is likely to jeopardize the continued existence of any species that is proposed for listing under the FESA or to result in the destruction or adverse modification of critical habitat proposed to be designated for such species (16 USC Section 1536[3], [4]). Therefore, project-related impacts to these species, or their habitats, would be considered significant.

### **Migratory Bird Treaty Act**

Migratory birds are protected under the federal Migratory Bird Treaty Act (MBTA) of 1918 (16 USC 703-711). The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed under 50 CFR 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 CFR 21). The direct injury or death of a migratory bird due to construction activities or other construction-related disturbance that causes nest abandonment, nestling abandonment, or forced fledging would be considered take under the MBTA. As such, project-related disturbances must be reduced or eliminated during the nesting season. The general nesting season extends from February 15 to September 15.

### **Bald and Golden Eagle Protection Act**

The Bald and Golden Eagle Protection Act was originally enacted in 1940 to protect bald eagles and was later amended to include golden eagles (16 USC Subsection 668-668). This act prohibits take, possession, and commerce of bald and golden eagles and associated parts, feathers, nests, or eggs with limited exceptions. The definition of take is the same as the definition under the FESA. The USFWS established five recovery programs in the mid-1970s based on geographical distribution of the species. Critical Habitat was not designated by regulation under FESA. In 1995, the USFWS reclassified the bald eagle from endangered to threatened under FESA in the contiguous 48 states, excluding Michigan, Minnesota, Wisconsin, Oregon, and Washington where it had already been listed as threatened. In 2007, the bald eagle was federally delisted under FESA. However, the provisions of the act remain in place for protection of bald and golden eagles.

### **CWA – 404 and 401 Wetlands and Waters of the U.S.**

A project that involves discharge of dredged or fill material in navigable Waters of the U.S. must first obtain authorization from the USACE, under Section 404 of the CWA. USACE maintains the final authority for determining whether an aquatic habitat qualifies as a Water of the U.S. Projects requiring a 404 permit under the CWA also require a Section 401 certification from either USEPA for trust land, or the RWQCB for non-trust land. These two agencies also administer the NPDES general permits for construction activities disturbing one acre or more.

## STATE AND LOCAL

### **State of Wisconsin**

Wisconsin State Statute 29.604 and Administrative Rule Chapter NR 27 established and defined Wisconsin's endangered and threatened species laws. Chapter NR 29 of the Wisconsin Administrative Code defines the endangered resources information fees related to providing rare species data to the public.

The WDNR maintains the Wisconsin Endangered and Threatened Species List. Per the above state laws, it is illegal to take, transport, possess, process or sell any wild animal that is included on the Wisconsin Endangered and Threatened Species List without a valid permit.

### **County of Kenosha Comprehensive Plan**

The 2035 Multi-Jurisdictional Comprehensive Plan for Kenosha County presents long range goals, objectives, and policies for the County including goals related to biological resources. The following are relevant to the Proposed Project:

#### **Goals:**

- Preserve and enhance Kenosha County's natural resources, including Lake Michigan, and park and open space sites.
- Preserve primary environmental corridors, secondary environmental corridors, and isolated natural resource areas in Kenosha County.
- Preserve natural areas in Kenosha County.
- Preserve critical species habitat sites and critical aquatic sites located outside of natural areas in Kenosha County.
- Preserve habitat for native plants and wildlife by protecting environmental corridors, isolated natural resource areas, and wetlands and surface waters located outside such corridors and isolated natural areas.
- Preserve significant geological areas in the County.

#### **Objectives:**

- Support the development of a comprehensive system of parks and open spaces within the County to enhance the quality of the environment and life and to allow County residents adequate opportunities to participate in resource and nonresource-oriented outdoor recreation activities, including waterbased outdoor recreation activities.
- Encourage the preservation of natural features and open space as part of future development proposals in the County.
- Develop methods for the protection, sound use, and enhancement of the natural resource base, including wetlands, wildlife habitats, lakes, woodlands, open spaces, groundwater resources, and floodplains.
- Develop methods to preserve "natural" character and vistas in the County.
- Encourage integrated water resource management of surface water, groundwater, and water dependent natural resources.
- Encourage the protection of Lake Michigan's water quality and shoreline, including Lake

Michigan bluffs.

- Capitalize on natural and recreational tourism amenities.
- Provide for permanent protection of primary environmental corridors, secondary environmental corridors, isolated natural resource areas, natural areas, and critical species habitat and aquatic sites outside of natural areas<sup>12</sup> in Kenosha County identified in associated Chapter III inventory maps and Map 60.
- Preserve “natural” character and vistas in Kenosha County.
- Encourage the preservation of open spaces and natural resources as part of future development proposals in the County.

**Policies:**

- Do not allow incompatible land uses in environmental corridors, isolated natural resource areas, natural areas, floodplains, wetlands, and critical species habitat sites in Kenosha County. Uses considered compatible with environmental corridors and isolated natural resource areas, and guidelines for such uses, are provided in Table 82. Figures 16 and 17 illustrate and recommend use of open space and conservation designs concepts if urban development is allowed on lands containing environmentally sensitive features.
- Encourage the protection of environmental corridors, natural areas, and critical species habitat sites through public and NCO fee simple purchase and conservation easements.
- Work to implement strategies regarding the preservation and protection of woodlands, environmental corridors, natural areas, and critical species habitat sites recommended in the County Land and Water Resource Management Plan, and the Kenosha County Park and Open Space Plan, including updates to the plans.
- Encourage the preservation of natural resources outside the environmental corridor network.

**Comprehensive Plan for the City of Kenosha: 2035**

**Goals:**

- Preserve and enhance the City of Kenosha’s natural resources, including Lake Michigan, and park and open space sites.
- Preserve primary environmental corridors, secondary environmental corridors, natural areas, and isolated natural resource areas.
- Preserve critical species habitat sites and critical aquatic sites located outside of natural areas.
- Preserve habitat for native plants and wildlife by protecting environmental corridors, isolated natural resource areas, and wetlands and surface waters located outside such corridors and isolated natural areas.
- Preserve significant geological areas.

**Objectives:**

- Continue the development of a comprehensive system of parks and open spaces within the City of Kenosha to enhance the quality of the environment and life and to allow City of Kenosha residents adequate opportunities to participate in resource and non-resource-oriented outdoor recreation activities, including water-based outdoor recreation activities.
- Encourage the preservation of natural features and open space as part of future development

proposals.

- Protect and enhance natural resource areas, including wetlands, wildlife habitats, woodlands, open spaces, and floodplains.
- Encourage the protection of Lake Michigan's water quality and shoreline.
- Capitalize on natural and recreational tourism amenities.
- Provide for permanent protection of primary environmental corridors, secondary environmental corridors, isolated natural resource areas, natural areas, and critical species habitat and aquatic sites outside of natural areas<sup>9</sup> identified in associated Chapter 3 inventory maps and Map 8-1, page 20.
- Preserve "natural" character and vistas.
- Encourage the preservation of open spaces and natural resources as part of future development proposals.

## CULTURAL RESOURCES

### FEDERAL

#### Section 106 of the National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA), as amended, and its implementing regulations found in 36 CFR Part 800 require federal agencies to identify cultural resources that may be affected by actions involving federal lands, funds, or permitting. The Bureau of Indian Affairs must comply with Section 106 for the proposed trust acquisition. The significance of the resources must be evaluated using established criteria outlined in 36 CFR 60.4, as described below.

If a resource is determined to be a historic property, Section 106 of the NHPA requires that effects of the federal undertaking on the resource be determined. A historic property is defined as:

...any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and material remains related to such a property...(NHPA Sec. 301[5])

Section 106 of the NHPA prescribes specific criteria for determining whether a project would adversely affect a historic property, as defined in 36 CFR 800.5. An impact is considered adverse when prehistoric or historic archaeological sites, structures, or objects that are listed on or eligible for listing in the National Register of Historic Places (NRHP) are subjected to the following.

- physical destruction of or damage to all or part of the property
- alteration of a property
- removal of the property from its historic location
- change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance
- introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features
- neglect of a property that causes its deterioration

- transfer, lease, or sale of the property out of federal control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance

If the historic property will be adversely affected by the undertaking, then prudent and feasible measures to resolve adverse impacts must be taken. The State Historic Preservation Office must be provided an opportunity to review and comment on these measures prior to project implementation.

### *National Register of Historic Places*

The eligibility of a resource for listing in the NRHP is determined by evaluating the resource using criteria defined in 36 CFR § 60.4 as follows. The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, association, and

- A. that are associated with events that have made a significant contribution to the broad patterns of our history;
- B. that are associated with the lives of persons significant in our past;
- C. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. that have yielded, or may be likely to yield, information important to prehistory or history.

Sites younger than 50 years, unless of exceptional importance, are not eligible for listing in the NRHP. In addition to meeting at least one of the criteria listed above, the property must also retain enough integrity to enable it to convey its historic significance. The NRHP recognizes seven aspects or qualities that, in various combinations, define integrity. These seven elements of integrity are location, design, setting, materials, workmanship, feeling, and association. To retain integrity a property will always possess several, and usually most, of these aspects.

### **Archaeological Resources Protection Act of 1979**

The Archaeological Resources Protection Act of 1979 (ARPA; Public Law 96-95; 16 USC 470aa-mm) provides for the protection of archaeological resources and sites that are on public and Indian lands, and fosters increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data that were obtained before October 31, 1979. ARPA also provides for penalties for noncompliance and illegal trafficking.

### **Native American Graves Protection and Repatriation Act**

The Native American Graves Protection and Repatriation Act (NAGPRA), 25 USC 3001 et seq., provides a process for museums and federal agencies to return Native American cultural items – human remains, funerary objects, sacred objects, or objects of cultural patrimony – to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. NAGPRA includes provisions for unclaimed and culturally unidentifiable Native American cultural items, intentional and inadvertent discovery of

Native American cultural items on federal and Tribal lands, and penalties for noncompliance and illegal trafficking.

### **Paleontological Resources Preservation Act**

Paleontological resources are defined as the traces or remains of prehistoric plants and animals. Such remains often appear as fossilized or petrified skeletal matter, imprints, or endocasts, and reside in sedimentary rock layers. Paleontological resources are considered important for their scientific and educational value. Fossil remains of vertebrates are considered significant. Invertebrate fossils are considered significant if they function as index fossils. Index fossils are those that appear in the fossil record for a relatively short and known period of time. This allows geologists to interpret the age range of the geological formations in which they are found. The Paleontological Resources Preservation subtitle of the Omnibus Public Land Management Act, 16 USC 470aaa to aaa-11 requires the U.S. Department of Agriculture (USDA) and the U.S. Department of the Interior to issue implementation regulations to provide for the preservation, management, and protection of paleontological resources on federal lands and ensure that these resources are available for current and future generations to enjoy as part of America's national heritage.

## STATE AND LOCAL

### **The Wisconsin Historical Society**

The Wisconsin Historical Society is the home of the Wisconsin State Historic Preservation Office and the Wisconsin Archaeological Survey is a professional organization that provides guidance and support for archaeological research in Wisconsin, including publication of the Guide for Public Archaeology in Wisconsin which provides archaeologists with methodology information that complies with federal and state historic preservation laws and standards.

### **State of Wisconsin**

Wisconsin state law, Wis. Stat. § 44.42, requires consideration of archeological sites potentially affected by the actions of local governments. At this level, however, the only sites that require such consideration are those already listed on the National Register or State Register of Historic Places or those already placed on a list of locally designated historic places.

It is illegal to remove artifacts or otherwise disturb archaeological sites on state or political subdivision (village, city, county) lands without a permit under The Field Archaeology Act (Wis. Stat. § 44.47). The law applies to both archaeological sites on public lands and submerged sites such as shipwrecks on publicly-owned bottomlands under lakes and rivers. Archaeological sites can be protected during the course of state agency activities (grants, funding, permits, ground disturbing projects) if the sites have been recorded with the Office of the State Archaeologist.

All human burial sites, including cemeteries and Indian mounds, are protected under state law (Wis. Stat. § 157.70). The law applies to both public and private lands. Owners of burial sites may receive property tax exemptions. The law is administered by the Wisconsin Historical Society's Burial Sites Program.

## County of Kenosha Comprehensive Plan

The 2035 Multi-Jurisdictional Comprehensive Plan for Kenosha County presents long range goals, objectives, and policies for the County including goals related to cultural resources. The following are relevant to the Proposed Project:

### Goals:

- Preserve and enhance the historic and cultural resources and character of Kenosha County.
- Preserve archaeological resources that contribute to Kenosha County's heritage.

### Objectives:

- Encourage preservation of historic and cultural structures and districts and archaeological sites.
- Preserve known archaeological sites in the County.
- Identify and preserve additional archaeological sites in the County.
- Preserve historic structures and sites.

### Policies:

- Preserve archaeological sites inventoried or identified through various surveys, studies, and reports prepared for the County or areas within the County through the plan design year of 2035.
- Encourage land use and development patterns that conserve land where archaeological features are located.

## Comprehensive Plan for the City of Kenosha: 2035

### Goals:

- Preserve and enhance the historic and cultural resources and character of the City of Kenosha.
- Preserve archaeological resources that contribute to the City of Kenosha's character and heritage.

### Objectives:

- Encourage preservation of historic and cultural structures and districts and archaeological sites.
- Preserve known archaeological sites.
- Identify and preserve additional archaeological sites.

## SOCIOECONOMIC CONDITIONS

### FEDERAL

#### Executive Order 14173

Ending Illegal Discrimination and Restoring Merit-Based Opportunity: Issued on January 21, 2025, this executive order directs federal agencies to eliminate race- and sex-based preferences in hiring, contracting, and policymaking, particularly those associated with DEI (Diversity, Equity, and Inclusion) initiatives. It revokes prior executive orders supporting affirmative action and mandates a shift toward merit-based practices grounded in individual aptitude and civil rights law.

## **TRANSPORTATION AND CIRCULATION**

### FEDERAL

#### **Federal Transportation Improvement Program**

The Federal Transportation Improvement Program (FTIP) is a plan for the implementation of the long-range Regional Transportation Plan. The FTIP presents manageable components to federal funding agencies for the funding of long-term plans and establishes a systematic approach to programming capital improvement projects over a five-year term, and is subject to continual modifications.

### STATE

#### **Wisconsin Department of Transportation**

The Wisconsin Department of Transportation (WisDOT) is the state government organization in charge of maintaining public roadways of Wisconsin. WisDOT is responsible for planning, building and maintaining Wisconsin's network of state highways and the Interstate highway system. The department shares the costs of building and operating county and local transportation systems, from highways to public transit and other modes. WisDOT plans, promotes and financially supports statewide air, rail and water transportation. WisDOT oversees a comprehensive transportation system that includes approximately 12,000 miles of numbered state, federal and Interstate highways, approximately 14,000 state bridges, 76 public bus and shared-ride taxi systems, 132 public use airports, 20 commercial ports, and 3,600 miles of railway track (WisDOT, 2023).

#### **County of Kenosha Comprehensive Plan**

The 2035 Multi-Jurisdictional Comprehensive Plan for Kenosha County presents long range goals and objectives for the County including goals related to transportation. The following are relevant to the project alternatives:

##### **Goals:**

- Provide and support a range of transportation opportunities that will effectively serve existing and planned land uses.
- Provide for bicycle and pedestrian facilities in Kenosha County that safely and efficiently serve the anticipated land use development pattern; and provide options for bicycle and pedestrian travel as an alternative to personal vehicle travel.
- Maintain a street and highway system that efficiently serves the anticipated land use development patterns.

##### **Objectives:**

- Expand and enhance alternative modes of transportation, including public transit services, to meet the needs of transit-dependent elderly citizens and persons with disabilities.
- Maintain and enhance existing transportation infrastructure consistent with the Regional Transportation System Plan.
- Provide opportunities for walking and bicycling to provide an alternative to vehicle travel and

to promote a healthy lifestyle.

- Encourage land use development patterns that reduce the need for new roads and major improvements to existing roads.
- Encourage development patterns with transportation infrastructure that minimizes environmental impact, relieves congestion, and reduces fuel consumption and air pollution.
- Maintain and enhance existing transportation infrastructure in Kenosha County.

**Policies:**

- Ensure planned land uses are adequately served by street and highway networks.
- Work to ensure consistency between regional, County, and local land use and transportation plans so that the arterial street network, transit services, and bicycle and pedestrian facilities are appropriately sized and located to serve County residents.
- Discourage urban development in rural areas to minimize the need for new and widened streets and highways.
- Provide bicycle facilities recommended in the regional transportation system plan for 2035 or in local plans that refine the regional plan.
- Provide sidewalks or pedestrian pathways in urban areas and, where appropriate, to serve activity centers in rural areas (such as schools and parks).
- Consider the needs of farm equipment when designing the street and highway system, particularly when designing intersections and when determining the width and surfacing of shoulders.
- Roundabouts should not be used on streets and highways commonly used by farm equipment.
- Minimize the disruption of land uses adjacent to streets and highways by reserving adequate rights-of-way in advance of construction, ideally when preliminary plats and certified survey maps are reviewed by the County.
- Encourage and support high-occupancy vehicle lanes.

**Comprehensive Plan for the City of Kenosha: 2035**

The City of Kenosha Comprehensive Plan describes transportation goals, objectives, policies, and programs through the plan design year of 2035.

**Goal:**

- Improve transportation infrastructure and land use design to support a range of transportation choices for all citizens.

**Objectives:**

- Expand and enhance alternative modes of transportation, including public transit services, to meet the needs of transit-dependent elderly citizens and persons with disabilities.
- Maintain and enhance existing transportation infrastructure consistent with the Regional Transportation System Plan.
- Provide opportunities for walking and bicycling to provide an alternative to vehicle travel and to promote a healthy lifestyle.
- Encourage development patterns and designs.

## LAND USE

### FEDERAL

#### **Farmland Protection Policy Act**

The Farmland Protection Policy Act (FPPA) is intended to minimize the impact federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. It assures that federal programs are administered in a matter that is compatible with state and local units of government, and private programs and policies to protect farmland (7 USC § 4201).

The Natural Resource Conservation Service (NRCS) is responsible for the implementation of the FPPA and categorizes farmland in a number of ways. These categories include: prime farmland, farmland of statewide importance, and unique farmland. Prime farmland is considered to have the best possible features to sustain long-term productivity. Farmland of statewide importance includes farmland similar to prime farmland, but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Unique farmland is characterized by inferior soils and, depending on climate, generally needs irrigation.

The NRCS fulfills the directives of the Soil and Water Conservation Act (16 USC § 2001-2009) by identifying significant areas of concern for the protection of national resources. NRCS uses a land evaluation and site assessment (LESA) system to establish a Farmland Conversion Impact Rating (FCIR) score. The FCIR is completed on form AD-1006. The FCIR form has two components: land evaluation, which rates soil quality up to 100 points, and the site assessment, which measures other factors that affect the property's viability up to 160 points.

The total FCIR score is used as an indicator for the project's sponsor to consider alternative sites if the potential adverse impacts on the farmland exceed the allowable level; however, the FPPA does not require federal agencies to alter projects to avoid or minimize farmland conversion. Sites receiving a combined score of less than 160 (out of 260 possible points) do not require further evaluation. For sites with a combined score greater than 160 points, at least two other alternatives are required to be considered and the alternative with the lowest number of points selected unless there are other overriding considerations.

#### **Federal Aviation Regulations (FARs)**

Rules prescribed by the Federal Aviation Administration (FAA) governing all aviation activities in the United States. FARs comprise Title 14 of the Code of Federal Regulations (14 CFR)

### STATE AND LOCAL

#### **Wisconsin Statute Chapter 91 – Farmland Preservation**

The State of Wisconsin utilizes tools such as Farmland Preservation Planning (Farmland Planning), Farmland Preservation Zoning (Farmland Zoning), Farmland Preservation Agreements (Farmland Agreements), Soil and Water Conservation, and Agricultural Enterprise Areas (AEA) to preserve

farmland. The Farmland Preservation chapter of the Wisconsin State Code describes these elements.

### **County of Kenosha Comprehensive Plan**

The 2035 Multi-Jurisdictional Comprehensive Plan for Kenosha County presents long range goals, objectives, and policies for the County including goals related to land use.

#### **Goals:**

- Accommodate the projected growth in population, households, and employment in the County and each community through the comprehensive plan design year 2035.
- Encourage sustainable development of land for business and residential use.
- Guide the projected growth in a manner that protects Kenosha County's natural resource base and the character of local communities and neighborhoods, including those communities that wish to retain an agricultural economy and rural character.

#### **Objectives:**

- Encourage the allocation of land uses to avoid or minimize threats to health, safety, and welfare.
- Encourage land uses that promote efficient development patterns and relatively low costs to all levels of government.
- Encourage development and redevelopment of land with access to existing infrastructure and public services.
- Encourage infill development.
- Develop methods to analyze the long-term impacts of development, including financial impacts.
- Encourage a balance between various types of development.
- Encourage the location of major retail, service, institutional, and other urban uses within the urban service areas of the County.
- Encourage an attractive and healthful physical and social environment with ample opportunities for high-quality education, cultural activities, and outdoor recreation.
- Preserve distinct urban and rural character and vistas.

#### **Policies:**

- Provide a spatial distribution of various land uses on the land use plan map that will result in a convenient, sustainable, and compatible arrangement of land uses.
- Encourage land use development patterns that preserve and enhance the distinct character or "community design" of local communities, including neighborhoods, hamlets, and downtown areas.
- Continue to develop local government land use plan maps that accommodate the projected growth in population, households, and employment for the community through the comprehensive plan design year 2035.
- Rural and suburban residential development should be located and designed to minimize impacts on the natural resource base, minimize impacts on the scenic beauty and character of rural areas, and minimize the loss of farmland covered by agricultural soil suitability Class I and Class II soils, and soils that have high Land Evaluation (LE) scores. When accommodated, rural residential development should be located in such a way as to minimize conflicts associated

with dust, odors, and noise from farming activity that may arise when residences are located in the vicinity of agricultural operations.

- To the extent practicable, additional urban residential development should be located within neighborhoods or hamlets that contain necessary supporting local services, such as park, retail and service, and elementary school facilities.
- To the extent practicable, residential and employment-generating land uses should be located so as to provide opportunities for living close to work.
- Redevelopment of older, underutilized urban areas that are in need of revitalization and infilling of undeveloped land within existing urban service areas is preferred over new development on the outskirts of urban service areas.
- Encourage the use of conservation subdivision design concepts in rural- and suburban-density residential development to the extent practicable.
- Promote the use of mixed-use development, traditional neighborhood development (TND), transit-oriented development (TOD), planned unit development, and “green” development design concepts and other design guidelines, where applicable, to preserve or achieve the character desired by local communities for various areas, such as neighborhoods, hamlets, downtown areas, business parks, lakefronts, and other special planning areas.
- Consider requiring developers to provide noise mitigation measures for new residential and other noise-sensitive land uses along IH 94. Mitigation measures may include site layout, the use of buffers, building design and materials, and other measures effective in reducing noise levels.

### **Comprehensive Plan for the City of Kenosha: 2035**

The City of Kenosha Comprehensive Plan: 2035 is a long-range guide for future development and protection of natural resources within the boundaries of the City of Kenosha. The plan sets out an inventory of existing land uses in the City, land use trends, and the existing plans and ordinances in effect in the area. The Land Use Element outlines the future land use plan, and sets land use goals.

#### **Goals:**

- Encourage a balanced and sustainable spatial distribution among various types of land uses to meet the social, physical, and economic needs of residents.
- Accommodate the projected growth in population, households, and employment through the comprehensive plan design year 2035.
- Encourage sustainable development of land for business and residential use.
- Preserve and protect agricultural lands outside planned urban (sewer) service areas that are best suited for agricultural use.
- Encourage the preservation of open space as part of future development proposals.
- Guide urban land uses to land that can sustain urban development.
- Provide for diversified, balanced, environmentally compatible business development that will offer a variety of goods and services through conveniently located, well-designed business clusters while providing needed services for residents.
- Promote and identify adequate areas for business creation, retention, and expansion.

**Objectives:**

- Encourage land uses that promote efficient development patterns and relatively low costs to all levels of government.
- Encourage development and redevelopment of land with access to existing infrastructure and public services.
- Encourage infill development.
- Encourage an attractive and healthful physical and social environment with ample opportunities for high quality education, cultural activities, and outdoor recreation.
- Direct commercial development by locating business and industrial land uses in clusters or in areas served by State or County highways and arterial streets.

**Policies:**

- Provide a spatial distribution of various land uses on the land use plan map that will result in a convenient, sustainable, and compatible arrangement of land uses.
- Encourage land use development patterns that preserve and enhance the distinct character or “community design” of local communities, including neighborhoods, and downtown areas.
- Continue to develop local government land use plan maps that accommodate the projected growth in population, households, and employment for the community through the comprehensive plan design year 2035.
- Encourage the protection of farmland identified for agricultural use on Map 9-2, page 7, (Kenosha County Land Use Plan: 2035).
- Encourage niche farming operations in Kenosha County, such as organic farms, orchards, and landscape nurseries.
- Discourage urban land uses in areas identified as lands with natural limitations for building site development on Map 9-4, page 10
- Encourage concentrated urban development within sewer service areas to minimize the conversion of farmland to urban uses.

**City of Kenosha Zoning Ordinance**

The City of Kenosha Zoning Ordinance establishes zoning regulations for the development of land and uses within the City. Regulatory components include allowable uses, height regulations, and use limitations.

**Bristol Neighborhood Plan**

The plan outlines rules and regulations adopted with the intent of guiding development of the land as it gradually becomes annexed within the City of Kenosha.

**PUBLIC SERVICES AND UTILITIES**

FEDERAL

**Safe Drinking Water Act**

Minimum national drinking water standards and guidelines for groundwater protection are established through the 1974 Safe Drinking Water Act (amended in 1986 and 1996). Contaminants of concern relevant to domestic water supply are defined as those that pose a public health threat or that alter the aesthetic acceptability of the water. The USEPA regulates contaminants through the development of national primary and secondary Maximum Contaminant Levels for drinking water.

## STATE AND LOCAL

### **Wisconsin Comprehensive Groundwater Protection Act**

Established under Chapter 160 of Wisconsin State Statutes, the WDNR has established state groundwater quality standards. Establishes a multi-agency regulatory approach. Establishes an enforcement standard and preventative action limit that triggers remedial action. Created a groundwater monitoring program. Creates local authority and responsibility to protect groundwater consistent with state law.

### **Wisconsin Groundwater Protection Act, 2003 Wisconsin Act 310**

Expands state authority on addressing water quantity issues, establishes link between surface water and groundwater and the impact wells have on groundwater. Tracks well construction and water use, expands regulation of high capacity wells, designates groundwater management areas, and creates a groundwater advisory committee. The groundwater management area includes Southeastern Wisconsin.

### **City of Kenosha Code of Ordinances**

Chapter XXXII City of Kenosha General Ordinance authorizes the City of Kenosha to operate a fiscally independent public utility. Facilities include water and wastewater operations, and well permitting systems.

### **Wisconsin State Statute §66 Subchapter VIII- Public Utilities**

This Statute grants cities the right to provide municipal public utility and the right to collect payment for the operation of public utilities. It also gives a town, village or city the authority to acquire any plant or equipment to provide water, light, heat or power to the inhabitants of its municipality.

## **NOISE**

### FEDERAL

#### **FHWA Construction Noise Thresholds**

The Federal Highway Administration (FHWA) provides construction noise level thresholds in its Construction Noise Handbook, 2006 in order to evaluate the potential noise impacts for projects. These are provided in **Table 3**.

**TABLE 3: FEDERAL CONSTRUCTION NOISE THRESHOLDS**

Noise Receptor Locations and Land Uses	Daytime (7 am - 6 pm)	Evening (6 pm - 10 pm)	Nighttime (10 pm - 7 am)
	dBA, Leq <sup>1</sup>		
Noise-Sensitive Locations (residences, institutions, hotels, etc.)	75 or Baseline + 5 (whichever is louder)	Baseline + 5	Baseline + 5 (if Baseline < 70) or Baseline + 3 (if Baseline > 70)
Commercial Areas (businesses, offices, stores, etc.)	80 or Baseline + 5	None	None
Industrial Areas (factories, plants, etc.)	85 or Baseline + 5	None	None
Notes: <sup>1</sup> Leq is the equivalent continuous sound level; Leq thresholds were empirically determined FHWA, 2006). Source: FHWA, 2006.			

### Noise Abatement Criteria

The FHWA establishes Noise Abatement Criteria (NAC) for various land uses that have been categorized based on activity. The threshold for projects in developed areas (72 dBA), perceptible noise from the interior and exterior of hospitals (52 dBA and 67 dBA), and residential activities (67 dBA) were utilized for this analysis. These thresholds were utilized due to the existence of Category B, C, D, and E sensitive receptors within the vicinity of the Project Site. Land uses are categorized on the basis of their sensitivity to noise as indicated in **Table 4**. The FHWA NAC is based on peak traffic hour noise levels.

**TABLE 4: FEDERAL NOISE ABATEMENT CRITERIA HOURLY A-WEIGHTED SOUND LEVEL DECIBELS**

Activity Category	Activity Criteria Leq (h), dBA	Evaluation Location	Activity Category Description
A	57	Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	67	Exterior	Residential.
C	67	Exterior	Active sport areas, amphitheaters, auditoriums, campgrounds, cemeteries, daycare centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreation areas, Section 4(f) sites, schools, television studios, trails and trail crossings.
D	52	Interior	Auditoriums, daycare centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or non-profit institutional structures, radio studios, recording studios, schools, and television studios.
E <sup>1</sup>	72	Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties or activities not included in A-D or F.
F	--	--	Agriculture, airports, bus yards, emergency services, industrial,

Activity Category	Activity Criteria Leq (h), dBA	Evaluation Location	Activity Category Description
			logging, maintenance facilities, shipyards, utilities (water resources, water treatment, electricity), and warehousing.
G	--	--	Undeveloped lands that are not permitted.
1. Includes undeveloped lands permitted for this activity category. Source: 23 CFR 772; FWHA 2018.			

## Vibration Standards

The effects of ground-borne vibrations typically cause only a nuisance to people, but at extreme vibration levels, damage to buildings may occur. Although ground-borne vibration can be felt outdoors, it is typically an annoyance only indoors, where the associated effects of the building shaking can be notable. Ground-borne noise is an effect of ground-borne vibration and only exists indoors since it is produced from noise radiated from the motion of the walls and floors of a room and may consist of the rattling of windows or dishes on shelves.

The Federal Transit Administration (FTA) utilizes criteria for acceptable ground-borne vibration which is expressed in terms of root mean squared (RMS) velocity levels in decibels. Vibration categories are classified by land use for a general assessment of impact levels as seen in **Table 5**.

**TABLE 5: GROUND-BORNE VIBRATION (GBV) IMPACT CRITERIA FOR GENERAL ASSESSMENT**

Land Use Category	GBV Impact Levels (VdB re 1 micro-inch / sec)		
	Frequent Events <sup>1</sup>	Occasional Events <sup>2</sup>	Infrequent Events <sup>3</sup>
<b>Category 1:</b> Buildings where vibration would interfere with interior operations. <sup>4</sup>	65 VdB	65 VdB	65 VdB
<b>Category 2:</b> Residences and buildings where people normally sleep.	72 VdB	75 VdB	80 VdB
<b>Category 3:</b> Institutional land uses with primarily daytime use.	75 VdB	78 VdB	83 VdB
Note: 1. "Frequent Events" is defined as more than 70 vibration events of the same source per day. Most rapid transit projects fall into this category. 2. "Occasional Events" is defined as between 30 and 70 vibration events of the same source per day. Most commuter trunk lines have this many operations. 3. "Infrequent Events" is defined as fewer than 30 vibration events of the same kind per day. This category includes most commuter rail branch lines. 4. This criterion limit is based on levels that are acceptable for most moderately sensitive equipment such as optical microscopes. Vibration-sensitive manufacturing or research will require detailed evaluation to define acceptable vibration levels. Ensuring lower vibration levels in a building often requires special design of the HVAC systems and stiffened floors. Source: FTA, 2018, Section 6.			

Peak particle velocity (PPV) is often used to measure vibration. PPV is the maximum instantaneous peak (inches per second) of the vibration signal. The PPV levels are used to estimate  $L_v$  or VdB levels (vibration

decibels with a reference velocity of one micro-inch per second). Human responses to vibration vary by the source of vibration, which is either continuous or transient. Continuous sources of vibration include construction while transient sources include truck movements. Generally, the thresholds of perception and annoyance are higher for transient sources than for continuous sources.

**Table 6** summarizes the FTA’s guideline vibration damage criteria for various structural categories. As shown therein, buildings extremely susceptible to vibration damage could be damaged if vibration levels exceed 90 VdB. Additionally, although humans have a perceptibility threshold of 65 VdB, human response to vibration is not usually significant unless the vibration exceeds 70 VdB (FTA, 2006). Background vibration velocity in residential areas is usually 50 VdB or lower.

**TABLE 6: CONSTRUCTION VIBRATION DAMAGE CRITERIA**

Building Category	Approximate PPV (in/sec)	Approximate Lv (VdB)
Reinforced-concrete, steel, or timber (no plaster)	0.5	102
Engineered concrete and masonry (no plaster)	0.3	98
Non-engineered timber and masonry buildings	0.2	94
Buildings extremely susceptible to vibration damage	0.12	90

Source: FTA, 2018.

**Table 7** summarizes the FTA’s guidelines for vibration levels of construction equipment at a distance of 25 ft from potential equipment used on site.

**TABLE 7: VIBRATION LEVELS FOR CONSTRUCTION EQUIPMENT**

Vibration Source	Approximate Vibration Level (VdB) at 25 ft
Vibratory Roller	94
Large Bulldozers	87
Loaded Trucks	86
Jackhammer	79

Source: FTA, 2018.

## LOCAL

### City of Kenosha Municipal Code of General Ordinances Chapter XXIII

Intends to prohibit noises that are unnecessary, excessive, unnatural annoying, prolonged, or usually loud in relationship to their time and place. The code outlines noises at certain levels and frequencies that are detrimental to public health, safety, welfare, comfort, convenience, and prosperity, and outlines systematic prescriptions for such noises. Maximum permissible sound levels by land use outline the limit (not to be exceeded) for sound levels when measured at or within the property boundary of the receiving land use, these levels and respective times are displayed in **Table 8**.

**TABLE 8: SOUND LEVELS**

<b>Transmitting Land Use Zoning</b>	<b>Time</b>	<b>Sound Level Limit (dBA)</b>
A-1, A-2, C-1, IP, FW, RR-1, RR-2, Rs-4, Rs-2, Rs-3, Rd, Rg-1, Rg-2, Rm-1, Rm-2 7 All other zonings not specifically listed in this table (Residential, Public Space, Open Space, Agricultural or Institutional).	7:00 A.M. - 10:00 P.M.	60
	10:00 P.M. – 7:00 A.M.	50
B-1, B-2, B-3, B-4	At All Times	70
M-1, M-2	At All times	75

Source: City of Kenosha, 2015b.

Exemptions to certain activities are outlined within §23.9. Daytime criteria outlined in the table above shall not apply to construction sites, public utilities, and public works projects and operations during the daytime hours of Monday through Saturday, inclusive provided however that noise production shall be minimized through proper equipment operation and maintenance. Stationary equipment on construction projects lasting more than ten (10) days within residential districts shall be shielded or located so as not to cause unnecessary noise.

Prohibited noises are also specified in section §23.5 and include powered motor vehicles. More specifically, powered motor vehicle operation which creates a noise disturbance across a residential real property boundary, in a public space, or within a sensitive noise zone between the hours of 9:00 P.M and 7:00 A.M is prohibited.

## **HAZARDOUS MATERIALS**

### **FEDERAL**

#### **Resource Conservation and Recovery Act**

The Resource Conservation and Recovery Act (RCRA) regulates the land disposal of hazardous materials from cradle-to-grave. This means establishing a regulatory framework for the generation, transport, treatment, storage and disposal of hazardous waste. Specifically, Subtitle D of RCRA pertains to non-hazardous solid waste and Subtitle C focuses on hazardous solid waste. A solid waste can consist of solids, liquids and gases, but these must be discarded in order to be considered waste. Additionally, the USEPA has developed regulations to set minimum national technical standards for how disposal facilities should be designed and operated. States issue permits to ensure compliance with USEPA and state regulations. The regulated community is comprised of a diverse group that must comprehend and adhere to RCRA regulations. These groups can consist of hazardous waste generators, government agencies, small businesses, and gas stations with underground petroleum tanks.

#### **Hazard Communication Standard**

The hazard communications standard requires that chemical manufacturers evaluate the potential risks that may be posed by use of such chemicals. In turn, employers utilizing such chemicals must inform employees of the chemical analysis and associated risks of use. The Occupational Health and Safety Administration is the governing body in charge of defining the Hazard Communication Standards.

## **Federal Hazardous Substances Act**

The Consumer Product Safety Commission has a limited role in regulating hazardous substances; it primarily deals with the labeling of consumer products through the Federal Hazardous Substances Act (FHSA). FHSA only requires products that may at some point be in the presence of people's dwellings to be labeled, including during purchase, storage, or use. These labels must alert consumers of the potential hazards that the product may pose. However, in order for a product to be required for labeling, the product must be toxic, corrosive, flammable/combustible, an irritant, a strong sensitizer, or have the ability to generate pressure through decomposition, heat, or other means. Furthermore, the product must possess the ability to cause severe personal injury or substantial illness during or as a result of any customary or reasonably predictable handling or use, including reasonably foreseeable ingestion by children.

## **Federal Insecticide, Fungicide, and Rodenticide Act**

The federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) addresses the sale, distribution, and labeling of pesticides, as well as the certification and training of pesticide applicators. FIFRA establishes recordkeeping and reporting requirements on certified applicators of restricted use pesticides. Furthermore, FIFRA imposes storage, disposal, and transportation requirements on registrants and applicants for the registration of pesticides. Pesticide use is regulated through requirements to apply pesticides in a manner consistent with the label. The labeling requirement includes directions for use, warnings, and cautions along with the uses for which the pesticide is registered (e.g., pests and appropriate applications). This includes the specific conditions for the application, mixture, and storage of the pesticide.

Additionally, the label must specify a time period for re-entry into an area after the pesticide has been applied, and when crops may be harvested after the application of the pesticide. If a pesticide is used in a manner contrary to specifics on its label, then the use constitutes a violation of the FIFRA.

## **Toxic Substances Control Act**

The federal Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, permits the USEPA to evaluate the potential risk from novel and existing chemicals and address unacceptable risks chemicals may have on human health and the environment. The USEPA oversees the production, importation, use, and disposal of certain chemicals. This includes the USEPA having the authority to require record keeping, reporting, and test requirements and restrictions associated with certain chemical substances and/or mixtures. However, certain groups of chemicals are excluded from TSCA consideration, including—but not limited to—food, drugs, cosmetics and pesticides. Examples of chemicals included in TSCA consideration are lead paint, asbestos, mercury, formaldehyde, and polychlorinated biphenyls.

## **Emergency Planning and Community Right-to-Know Act**

The federal Emergency Planning and Community Right-to-Know Act (EPCRA) is designed to assist local communities to protect public health, safety, and the environment from chemical hazards. The

Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. The EPCRA also requires industry to report on the storage, usage, and releases of hazardous substances to federal, state, and local governments, and states and communities can use the information gained to improve chemical safety and protect public health and the environment.

## STATE AND LOCAL

### **Wisconsin State Legislature Declaration of Policy Chapter 291**

The State of Wisconsin provides guidance on hazardous waste management through a *Declaration of Policy: Chapter 291*. The statute includes subchapters on administration, general regulation, definitions and enforcement of hazardous waste management. Statute 291.001 is in place for the purpose of ensuring all hazardous wastes are properly managed within the state. The legislature created a state-administered regulatory program.

#### **291.001 Declaration of Policy**

The legislature finds that hazardous wastes, when mismanaged, pose a substantial danger to the environment and public health and safety. To ensure that hazardous wastes are properly managed within this state, the legislature declares that a state-administered regulatory program is needed which:

#### **Policies:**

- Relies upon private industry or local units of government to provide hazardous waste management services.
- Requires the transportation, storage, treatment and disposal of hazardous wastes to be performed only by licensed operators.
- Requires generators of hazardous waste to utilize operators licensed to transport, treat, store or dispose of hazardous wastes.
- Does not interfere with, control or regulate the manufacturing processes which generate hazardous wastes.
- Ensures the maintenance of adequate records on, and the reporting of, the disposition of all hazardous wastes either generated in or entering this state.
- Encourages to the extent feasible, the reuse, recycling or reduction of hazardous wastes.
- Provides adequate care and protection of disposal facilities after the facilities cease to accept hazardous wastes.
- Provides members of the public and units of local government an opportunity to review and comment upon the construction, operation and long-term care of hazardous waste management facilities.
- Meets the minimum requirements of the resource conservation and recovery act.

### **Kenosha County Comprehensive Plan**

The County of Kenosha provides hazardous waste collection and disposal for its residents through a countywide hazardous household waste collection program in cooperation with Waste Management/Pheasant Run Landfill. Various businesses accept the refuse of automotive-related items

such as tires, oil, batteries, cellphones, computers, and other electronics.

Kenosha County identifies potential limitations to building site development by partnering with the WDNR to identify transitional landfills, former landfills, solid hazardous waste disposal sites, industrial spills or dumping, buried containers of hazardous substances, closed and contaminated landfills, leaking underground storage tanks, and areas with petroleum contamination from above ground storage tanks.

## **VISUAL RESOURCES**

### FEDERAL

#### **National Scenic Byway Program**

The National Scenic Byway Program was established by Congress in 1991 as the Intermodal Surface Transportation Efficiency Act. The Program is administered by the Federal Highway Administration and was established to preserve scenic but less-traveled roadways. A national scenic byway is a road recognized by the U.S. Department of Transportation for one or more of six intrinsic qualities. Intrinsic qualities include archeological, cultural, historic, natural, recreational, and scenic. National scenic byways must already be designated as state scenic byways or must possess all six intrinsic qualities to be nominated.

### STATE AND LOCAL

#### **Wisconsin Scenic Byways Program**

The Wisconsin State Scenic Byways program is a collaborative effort between the Wisconsin DOT and local communities to identify notable local roadways that provide a significant visual, historical, educational or recreational experience for travelers.

#### **Rustic Roads Program**

The Rustic Roads program is intended to identify dirt, gravel or paved roads in scenic areas that may be enjoyed by hikers, cyclists or drivers at a more leisurely pace. To promote scenic views, the maximum speed limit on a rustic road is 45mph.

#### **City of Kenosha Code of General Ordinances**

Chapter IV 4.07 of the Code of Ordinances mandates that all outdoor lighting in excess of 5 watts is shielded, with particular restrictions for lighting exceeding 1,000 lumens

#### **City of Kenosha Zoning Ordinance**

The City of Kenosha Zoning Ordinance establishes basic regulations for the development of land and uses within the city. Section 14.08 outlines the site Landscaping standards for developments within the City.

#### **Bristol Neighborhood Plan 2015**

The plan outlines rules and regulations adopted with the intent of guiding development of the land as it

becomes annexed to the City of Kenosha in future years.

The plan includes design guidelines and proposed land-use locations for a variety of land use categories including residential, commercial, multi-use, institutional/utility, open space, environmentally sensitive, and streets/access points. General design guidelines address building height and density, architectural style and detailing to be compatible with desirable development and building materials should be consistent throughout the development.