

**ENVIRONMENTAL ANALYSIS AND DECISION ON THE  
NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT (EIS)  
Form 1600-1 Rev. 3-87**

**Department of Natural Resources**

<b>District or bureau: NER</b>
<b>Type List Designation:</b> Type II - Connected Enlargement

Contact Person: Scott Koehnke
Title: Water Management Specialist
Address: 647 Lakeland Road, Shawano, WI 54166
Telephone Number: 715/526-4232

**NOTE TO REVIEWERS:** Comments should address completeness, accuracy or the EIS decision. For your comments to be considered, they must be received by the contact person before

\_\_\_\_\_ , \_\_\_\_\_  
(time) (date)

**Applicant:** City of Appleton

**Address:** 100 N. Appleton Street

**Title of Proposal:** Kensington Pond

**Location:** City of Appleton, Outagamie County, Wisconsin  
SE¼, NE¼, of Section 31, T 21N, R18E  
Section(s): 31

**PROJECT SUMMARY**

**1. General Description (brief overview)**

The proposed Kensington Pond Project, an urban wet pond retrofit, is being proposed to assist the City of Appleton with their municipal stormwater discharge and reduce peak flows downstream as well as reduce overall sediment loading to Garners Creek. The pond is located on the southeastern side of the City of Appleton. The pond is surrounded by STH 441 on the east, Kensington Drive to the west, Lourdes Drive to the north and undeveloped land to the south. The pond is approximately 4.5 miles upstream of the Fox River on Garners Creek and consists of 1,040 acres (1.6 sq. miles) of mixed land use watershed. The existing stormwater pond is 1.74 acres in size and an enlargement of the existing waterway. The new enlargement, as proposed, will be 7.0 acres in size and require approximately 122,000 cubic yards of material to be removed. Within the area of disturbance, approximately 0.2 acres of wetlands will be

impacted; however, 2.65 acres of shallow wetland marsh habitat will be created as a result of the pond design. Additionally, 170 cubic yards of riprap will be installed to prevent soil erosion within the stormwater pond area. A 7-foot high earth embankment will be constructed to contain water. The City owns, or will own by time of construction, all property within the proposed project area.

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

The proposed Kensington Pond is considered a critical component for the City to control peak flow discharges and sediment loading to the downstream area. This project was identified in the 2004 City-Wide Stormwater Management Plan, which outlines a strategy for the City to meet the WDNR, NR151, non-agricultural urban performance standard of 40% removal of TSS within the City by 2013. It should be noted that the Garners Creek Stormwater Utility (Town of Harrison, Town of Buchanan, Village of Kimberly and Village of Combined Locks) is downstream and has its own problems dealing with stream bank erosion, peak flows and sediment loading.

The existing pond was designed by Foth & Van Dyke and constructed in 1995. In 2004, Earth Tech completed a study looking at the impacts of expanding this pond to meet stormwater needs. The modifications are meant to help the City achieve 80% total suspended solids removal and reduce peak flows to below pre-development levels. Any flows leaving the City of Appleton are expected to be pre-development levels; therefore, not contribute to stream bank erosion and flooding downstream.

Historically, little is known about the wildlife and fishery resources associated with this urban waterway. Much of the waterway has been greatly manipulated, concrete lined and developed. The waterway upstream of the current dam is not known to have any resident or seasonal game fish; although, forage minnows and other soft rayed species are found in the pond.

Design objectives included as part of the proposed plan are as follows:

1. Re-grading and expansion of the pond's perimeter to create a 7 acre permanent pool. This will improve the TSS removal efficiency of the pond to approximately 80% for the entire drainage area.
2. Removal of the southern bypass channel; all water from the 60-inch pipe will enter the pond. This will allow for the expansion of the pond and help to reduce peak discharges and water quality.
3. Modifications to the water quality outlet to improve the TSS removal efficiency of the pond. The primary water quality outlet will consist of 15-inch outlet pipe with a trapezoidal weir to handle water quality pond outflow from the wet pond to the northern bypass channel, up to the 2-year event.
4. Modifications to the existing dam spillway to appropriately convey the 100-year and 250-year storm flows and reduce the peak flows for the design storms to pre-development conditions for the drainage area. Modification of primary spillway to create a primary spillway capable of handling flows up to the 100-year event with a width of 40 feet and height of 2 feet. Creation of an auxiliary spillway above the primary spillway to handle larger flows, up to the discharge that would inundate the dam. The auxiliary spillway will have a width of 142.5 feet and height of 2 feet.
5. The project will provide additional wetlands within the City limits. The wetlands planted within the ponds safety shelf, and boundary adjacent to the ponds water surface, would discourage geese from nesting within the pond and surrounding area.

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

Permits are required as part of the proposed Kensington Pond project. An Individual Chapter 30 permit including Federal Wetland WQC is required from WDNR, and a US Army Corp permit is required.

Ch. 30 Individual Permits – Riprap/Structure installation - s. 30.12, Connected Enlargement - s. 30.19(1g)(a)

Ch. 31 Permit and Plan Approval – Permit - s. 31.06, Plan Approval - s. 31.12

Federal Wetland Water Quality Certification – s. 281.15 401 CWA

4. **Estimated Cost and Funding Source**

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A cost estimate was completed for the Kensington Pond project. Estimated construction costs associated with the Pond are approximately \$1.64 million in 2005 dollars.

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**PROPOSED PHYSICAL CHANGES (More fully describe the proposal)**

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

The proposed project will minimize the impacts to wetlands and other natural resources while still meeting the project objective. Two small wetland pockets, approximately 8,700 square feet, will be removed. However, the proposal involves the re-establishment of submergent, emergent, and wet meadow native species. Approximately 2.65 acres of wetlands will be created.

Approximately 122,000 cubic yards of material will be removed to create the 7.0 acre Kensington Pond. Roughly 25,000 cubic yards of clay will be utilized to line the pond and used in the construction of primary and auxiliary spillways. The current land use for the area is vacant undeveloped residential and commercial land. About 170 cubic yards of medium riprap will be utilized to protect the sharp corner on the bank and eliminate erosion as storm events enter the pond and at the overflow outlet of the pond set at elevation 750.0' MSL.

The pond side slopes above the permanent pool elevation (747.0' MSL) will be a maximum of 4:1 and have a minimum of 6" of topsoil on the surface for revegetation plan. A minimum 10-foot safety shelf will be set at EL = 746.0' MSL and it will also have a minimum of 6" of topsoil for the revegetation plan. Pond side slopes below the permanent pool elevation will have a maximum side slope of 3:1 down to a final pond bed elevation of 742.0' MSL. The pond will be lined with a minimum of 24" of compacted clay.

Water flow out of the pond will be controlled by 24' of 15" pipe with inlet invert set at 743.5' MSL and outlet invert set at 743.0' MSL. Under low flow conditions, water will flow out this pipe back into Garners Creek. During storm events, the 12-foot wide water quality outlet weir is set at an elevation of 750.0' MSL. Water will then flow downstream through existing 4' X 6' concrete box culvert with invert set at 746.25' MSL. The primary spillway over the structure is 40 feet wide and set at an elevation of 756.0' MSL – 100-year water surface elevation is 757.69' MSL. The auxiliary spillway over the structure is 142.5' wide and set at an elevation of 758.0' MSL – 250-year water surface elevation is 759.93' MSL. The top of the dam is set at an elevation of 760.0' MSL.

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

The Pond has an incoming watershed of approximately 1.6 square miles or 1040 acres containing 44 subbasins ranging in size from 1.6 – 92 acres. The proposed project will create a normal permanent water surface of 7.0 acres with a maximum of 11.8 acres. The normal storage that is created is 65 ac-ft with a maximum of 75.8 ac-ft. Maximum total dam discharge (cfs) for the 2-, 5-, 10- and 100-year events is 170, 250, 290 and 630 respectively. Overtopping of entire structure will take place at 2,220 cfs.

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

Other than the City streets, Kensington Drive and East Lourdes Drive, there are no other proposed buildings roads or other structures.

**8. Emissions and Discharges (include relevant characteristics and quantities)**

The proposed Pond will provide water quality enhancement prior to discharge in Garners Creek, a tributary to the Fox River, a 303(d) listed water body. The Total Suspended Solids (TSS) reduction provided by the proposed Pond is approximately 166,500 lbs (83 tons) of TSS per year. This is an additional 30,000 lbs (15 tons) of TSS removed over the current pond removal rates. This represents 13% of the City's TSS annual reduction goal. The water quality analysis for the study area was prepared using the Source Loading and Management Model (SLAMM) (v9.1.2).

**9. Other Changes**

No other changes are planned for the site beyond those outlined in items 5-8.

**10. Identify the maps, plans and other descriptive material attached**

- Attachment  County map showing the general area of the project
- Attachment  USGS topographic map
- Attachment  Site development plan
- Attachment  Plat map
- Attachment  DNR county wetlands map
- Attachment  Zoning map
- Attachment  Other SCS Soils Map

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

Information Based On (check all that apply):

Literature/correspondence (specify major sources)

- Wetland Delineation Report: Dated 8/28/2007
- Natural Heritage Inventory: Reviewed 9/13/2007
- Historical and Archeological Review: Cleared 9/13/2007

Personal Contacts (list in item 28)

Field Analysis By:  Author  Other (list in item 28)

Past Experience With Site By:  Other (list in item 28)

**11. Physical (topography - soils - water – air)**

The project area is generally flat and has high concentration of residential and commercial development surrounding the site. The upstream portion of Garners Creek is lined with concrete.

Soil information was obtained from the SCS Soil Survey for Outagamie County. The soils report indicates the following: BtB – Briggsville silt loam series consisting of moderately well drained to well drained, nearly level and gently sloping soils on lacustrine plains; HeB – Hebron loam series consisting of well drained and moderately well drained, gently sloping soils on lacustrine plans and stream valley benches; Po – Poygan silty clay loam series consisting of poorly drained, nearly level soils in depressions and drainageways on lacustrine and glacial till plains; and WnB – Winneconne silty clay loam series consisting of well drained and moderately well drained, nearly level to sloping soils on lacustrine plains.

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

The Kensington Pond area is located in a highly developed, residential and commercial area. Due to its proximity, fish and wildlife use are limited. However, the area does provide some open space for nesting, loafing, feeding and habitat for small mammals, neotropical songbirds, birds of prey, waterfowl (ducks, geese), shorebirds, raccoon, opossum, skunk, other furbearers, reptiles such as turtles, amphibians and invertebrates. The stream is significantly degraded and likely has a limited fishery comprised of forage minnows, soft-rayed fishes (suckers) and aquatic invertebrates. The water quality improvement will have a direct positive impact on the fishery downstream of the pond.

The proposed Kensington Pond will be planted in the upland areas with a prairie seed mixture and various wetland plants located within the ponds safety shelf. The total wetland plantings located within the ponds safety shelf is approximately 2.65 acres. The only wetlands on the site are associated with Garners Creek shoreland area.

There are no known threatened or endangered species located within the area.

**13. Cultural**

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

The land use within the project area is primarily residential and commercial.

b. **Social/Economic (include ethnic and cultural groups)**

The proposed Pond will be a social and economical gain for the City of Appleton and its residents. The current property is owned by the City, and receives little use by the general public. Since the project is designed to meet long term stormwater management, the goals of the City can be met without the purchase of additional land, upgrades to current infrastructure or condemnation. No expected tax revenue would be lost as part of this project.

c. **Archaeological/Historical**

There are no known archeological or historical facts within the project boundary.

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

There are no SNA or prime agricultural lands in this area. It is primarily residential and commercial land use.

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

**15. Physical (include visual if applicable)**

The property will experience the remove of vegetation to allow for the expansion of the proposed stormwater pond. The area does not provide high quality wildlife habitat although what little habitat is there is utilized. The existing 1.74 acre pool will be expanded to 7.0 acres providing more open water habitat for waterfowl, shorebirds and other open water inhabitants. Wetland plant species will be planted on the safety shelf of the pond and adjacent shoreland zone adding biodiversity to the site as well. This added biodiversity will encourage use by a wide range of fauna.

During construction a sizable area will be disturbed and subject to erosion. Erosion problems should be minimized if proper erosion control methods (BMP's -Best Management practices) are utilized during all phases of construction.

Nuisance level waterfowl populations may become a problem if the pond area is manicured and maintained as a lawn. It is recommended that a native grass, sedge and forbs mix be planted around the pond area to deter the use by nuisance level waterfowl populations.

The dam has been rated as a High Hazard rating due to the presence of structures within the dam failure floodplain (hydraulic shadow). In the event of dam failure there is the possibility that these structures could be damaged or destroyed as a result.

As a result of the dam structure, water will be backed up on adjacent property not currently owned by the City of Appleton. NR 116 does not allow a property owner to back up water greater than 0.01' without permission from the upstream landowner or the purchase of flooding easement. The City and the property owner have not achieved an amicable decision, therefore, the City will begin condemnation procedures. Pursuant to s. 31.05(3), Wis. Stats., in the case where the application is for a permit to construct, operate and maintain a dam for a private purpose, proof satisfactory to the Department that the applicant owns or has an enforceable option to purchase the described dam site, and at least 65% of the land to be flowed, or the flowage rights on at least 65% of such land, the Department may proceed with notice, and once all lands are purchased, proceed with the issuance of a permit. In this case City owns all but a small parcel of land which is currently in the process of condemnation.

**16. Biological (include impacts to threatened/endangered species)**

No threatened/endangered species are known to exist at the project area. Aquatic habitat is very limited due to the location within the watershed and the frequency/intensity of storm events. These storm events typically carry water amounts that further scour and erode materials from the bed and bank area of the waterway.

The increased sediment and peak flow reduction will have a positive impact on the downstream receiving water. TSS reduction will improve water quality and peak flow reduction will limit scour and sediment transport downstream. This should have a positive impact on the fishery.

**17. Cultural**

**a. Land Use (include indirect and secondary impacts)**

There are no known land use impacts. The land is currently owned by the City and is already an existing pond. The Pond is simply going to be expanded.

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

There should be no significant change to social/economic ethnic or cultural groups. There is no identified group, other than white European, that has utilized resources at or near this location during recent time.

**c. Archaeological/Historical**

No archeological/historical concerns identified based on Department staff review.

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

Area currently is not identified as any type of special resource. Some light recreational use and wildlife habitat is present. To the downstream the waterway drains to the Fox River

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

Adverse impacts that cannot be avoided are losing marginal wildlife habitat and undeveloped property. The loss of adjacent shoreland wetlands for the purpose of berm construction is also unavoidable. These wetland losses will be mitigated by the creation of shallow emergent wetland areas within the expanded pond. Erosion control and sediment removal from the waterway is the major benefit to this proposed project.

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**ALTERNATIVES (no action - enlarge - reduce - modify - other locations and/or methods)**

**20. Identify, describe and discuss feasible alternatives to the proposed action and their impacts. Give particular attention to alternatives that might avoid some or all adverse environmental effects.**

KENSINGTON POND ALTERNATIVES:

In order to achieve 40% TSS reduction within the City of Appleton, the City must construct the Pond as proposed. Several alternatives were considered and are noted below.

No Action:

The no action alternative would not further improve water quality or reduce peak flows within the southeast portion of the City of Appleton. The TSS removal from the preferred alternative represents roughly 13% of the City's annual reduction goal. If no action is taken the additional TSS removal will have to happen somewhere else within the City. This alternative was not supported by the City.

Alternative 1 (Preferred):

As the preferred alternative, the proposed expansion of the existing 1.74 acre pond to 7.0 acres will deepen and enlarge the wet pool. No additional land is needed for the expansion. The 0.2 acres of impacted wetlands will be mitigated with the creation of 2.56 acres of shallow and emergent wetland habitat types in the restoration and revegetation plan. This plan addresses the goals of peak flow reduction and TSS removal.

Alternative 2A:

This alternative expands the current pond size to the west and deepens the wet pool. The increase in size is up to 9.3 acres. An additional 2 acres of property would need to be acquired for this alternative. Approximately 0.42 acres of wetlands adjacent to Garners Creek would be lost.

*Areas of concern with Alternative 2A:*

1. The cost of the additional 2 acres of developable land.
2. The additional cost of the overall project would increase about \$1 million.
3. Additional wetlands impacted.

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Alternative 2B:

This alternative is identical to Alternative 2A; the only difference would be the lowering of the floodplain to the north of the existing pond and stream for additional flood storage and additional 4 acres of developable land needed. Approximately 1.2 acres of wetlands adjacent to Garners Creek would be lost.

*Areas of concern with Alternative 2B:*

1. The cost of the additional 4 acres of developable land.
2. The additional cost of the overall project would increase about \$1.9 million.
3. Additional wetlands impacted.

Alternative 3:

This alternative combines all of the above alternatives together, except for the no action alternative. It involves expanding and deepening the existing pond, lowering the floodplain to the north and expansion to the south as well. The pond size would be increased to 14 acres and impact 1.2 acres of wetlands adjacent to Garners Creek. Two acres to the west of existing pond, two acres to the north of existing pond and six acres to the south of the existing pond would have to be purchased.

*Areas of concern with Alternative 3:*

1. The cost of the additional 10 acres of developable land.
2. The additional cost of the overall project would increase about \$5.7 million.
3. Additional wetlands impacted.

**EVALUATION OF PROJECT SIGNIFICANCE (Complete each item)**

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**21. Significance of Environmental Effects**

- a. Would the proposed project or related activities substantially change the quality of the environment (physical, biological, socio-economic)? Explain.**

The proposed project will change the physical features of a portion of the upland adjacent to the pond. The property's physical features would be changed to accommodate the development of a stormwater pond which is a connected enlargement of a navigable waterway. The wetland impacts will be mitigated by the creation of additional wetlands on the safety shelves within the pond and the shoreline area around the pond.

The proposed project will change the downstream condition significantly. Peak flows will be eliminated thereby protecting from erosion and scour downstream. TSS removal will increase water quality downstream as well.

In any event, the City of Appleton must deal with reality of long term stormwater management. The most economical way of doing this is to work on currently owned City properties. This project is an expansion of an existing condition already owned by the City. The cost of purchasing new land or condemnation of existing land would be extreme not to mention the social cost to City residents and tax payers.

- b. Discuss the significance of short-term and long-term environmental effects of the proposed project including secondary effects; particularly to geographically scarce resources such as historic or cultural resources, scenic and recreational resources, prime agricultural lands, threatened or endangered species or ecologically sensitive areas. (The reversibility of an action affects the extent or degree of impact)**

There are no known scarce resources, scenic and recreational resources, threatened or endangered species or ecologically sensitive areas. The property is owned by the City and no future development of the property other than the proposed stormwater pond is planned.

The long-term effects of the project will include a reduction in TSS and peak flows which will protect the downstream receiving waters from sediment loading due to stormwater runoff (point and non-point toxicants) and erosion/scour. Reduction of sediment loading will improve water quality and promote the reintroduction of native species common to this type of aquatic habitat.

## **22. Significance of Cumulative Effects.**

**Discuss the significance of reasonably anticipated cumulative effects on the environment. Consider cumulative effects from repeated projects of the same type. What is the likelihood that similar projects would be repeated? 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 Department is not aware of other activities that are planned or proposed in the area that would compound the cumulative impacts on the environment. Some expected cumulative impacts on the environment associated with similar projects would include, but are not limited to, potential fish entrapment concerns, thermal concerns and the spread of disease/exotics. Taking into consideration that this pond is already connected to Garners Creek, and the City is only planning on increasing the size, the direct adverse impacts on fisheries, wildlife and water quality are very minimal in this specific case. Unconnected stormwater ponds reduce the environmental concerns in nearly every situation.

However, connected enlargements of streams used for stormwater management are discouraged due to the impacts that they can have on waterways. During high water events, fish can become trapped in the pond. If this occurs during the spawning season, an entire year-class of fish could be lost or significantly reduced. If the entrapment occurs in summer, the fish may be lost due to low oxygen levels. In addition to the fish entrapment, the thermal implications of the pond on the downstream receiving water must be considered. If Garners Creek was a cold water stream, the impacts of a connected stormwater pond would be detrimental considering the thermal impacts. A 7.0 acre pond has a large surface area and is only 5 feet deep which allows sunlight penetration to the bottom. The heating of the pond and subsequent discharge to the receiving water could eliminate entire reaches of streams due to high water temps. Larger ponds would have an even more dramatic impact.

As a large stormwater pond, the potential to accumulate nuisance levels of invasive species is high. Species such as phragmites, purple loosestrife, reed canary grass, non-native fish species have the potential to infest manmade ponds. Having the ponds directly connected to the receiving water only creates a larger potential for spread of these species throughout the downstream watershed. Having a large seed source makes controlling the invasives more problematic.

In addition to the accumulation of invasive species, there is the risk of elevated toxicants that are carried in the stormwater. These toxicants can accumulate in the ponds and have the potential to create downstream problems if they toxicants are washed back into the receiving water.

## **23. 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 analyses would eliminate or reduce these unknowns? Explain why these studies were not done.**

There are no identified unknowns that create substantial uncertainty in predicting effects on the quality of the environment. Stormwater from residential and commercial development in the City has contributed to erosion of sediment in area of the proposed project and downstream. Without constructing the proposed project the degradation of the waterway would continue.

- 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.**

The proposed activities will involve the use of heavy equipment such as backhoe, scraper, dump truck and bulldozer. Some hazards exist with spills and malfunction of such equipment. Procedures should be in place to deal with these types of problems.

Erosion control is a significant concern given the type and location of the proposed project. Control devices, as noted in the plans, will need to be in place and monitored for effectiveness during the entire project and afterward until area has stabilized. Sediment movement off site must be controlled and not allowed to occur.

#### **24. Significance of Precedent**

- a. **Would a decision on this proposal influence future decisions or foreclose options that may additionally affect the quality of the environment? Explain the significance.**

The proposed project should not have any influence or significance on the future decisions related to the quality of the environment in the area. Stormwater detention ponds are required to control erosion and improve water quality. For this location, the pond is already connected to Garners Creek and was permitted by the Department in 1995. Fisheries and wildlife staff have reviewed the proposal and are in agreement that project will not have a significant adverse impact on the existing resource and will likely be an improvement.

- b. **Describe any conflicts the proposal has with plans or policy of local, state or federal agencies that provide for the protection of the environment. Explain the significance.**

No conflicts are known or anticipated.

#### **25. 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 have a positive effect on the quality of the environment. The watershed is highly developed with residential and commercial buildings, roads and other urban infrastructure. The fisheries and wildlife habitat use have been impacted already with the development. The expansion of the pond will create a system that improves the TSS removal and reduces the downstream peak flows which in turn will improve water quality and potential fish/wildlife habitat. The TSS removal and reduction in peak flows will also aid other downstream municipalities with their own battle against TSS, peak flows, erosion, sediment transport and floodplain issues.

#### **26. Explain other factors that should be considered in determining the significance of the proposal**

No other factors have been identified that should be considered in determining significance of the proposal.

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#### **SUMMARY OF ISSUE IDENTIFICATION ACTIVITIES**

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#### **27. Summarize citizen and agency involvement activities (completed and proposed).**

To provide the best Storm Water Management Plan for the Community, the City of Appleton and its consultants developed options the City had to meet the NR151, non-agricultural requirements. This process involved the review of available property within the City limits that could have ponds constructed or be retro-fitted to meet the goals and control costs to the tax payer.

Other ponds are have been proposed, constructed or will be in the future. Some problems have arisen throughout the City in other areas regarding the construction of ponds in City parks and the recreational conflicts that would be a result. Memorial Park pond(s) is one example where the citizens made it very clear that the use of the park for a stormwater pond was not supported. The area of the Kensington Pond is unique in that the pond already exists. It is not operating as effectively as originally hoped and the new design will be an improvement for the City and its goal of stormwater management. It is not a park setting, it is vacant land that the City owns. There is no anticipated citizen displeasure with this proposal.

This Pond was identified in 2004 City-Wide Stormwater Management Plan as an integral part of the overall reduction in TSS and peak flows within the City of Appleton. The original plan identified the project for the 2008 construction season and was budgeted. Through several Utilities meetings involving many public informational hearings, the proposed pond expansion was approved. This planning also involved downstream property owners, the Garners Creek Stormwater Utility, which has been monitoring the progress through updates with legal staff and public meetings. The Utility is a strong proponent of this project.

The City of Appleton and Chris J. Hartwig are currently in the process of addressing the flooding of a piece of property currently owned by Hartwig. By letter dated February 29, 2008 to Water Management Specialist Scott Koehnke, Mr. Hartwig notes that he is aware of the floodplain issues and is actively working with the City of Appleton so they can successfully complete the project as scheduled in 2008.

**28. List agencies, groups and individuals contacted regarding the project (include DNR personnel and title).**

<u>Date</u>	<u>Contact</u>	<u>Comment Summary</u>
09/10/07 - Present	Scott Koehnke, WDNR Water Management Specialist	
11/30/07 - Present	Miles Winkler, WDNR Floodplain and Dam Engineer	
10/10/07	Richard Nikolai, WDNR Wildlife Coordinator	
10/08/07	David Rowe, WDNR Fisheries Biologist	
01/07/08	Bill Sturtevant, WDNR Dam Safety Engineer	
01/04/08	Gus Glaser, WDNR Water Resource Engineer	
03/07/08 – Present	Jim Doperalski Jr., WDNR Environmental Analyst	

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

In accordance with s. 1.11, Stats., and Ch. NR 150, Wis. 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.

**29. Complete either A or B below.**

A. EIS Process Not Required . . . . . [X]

Analysis of the expected impacts of this proposal is of sufficient scope and detail to conclude that this is not a major action that would significantly affect the quality of the human environment. In my



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.