

AGRICULTURAL IMPACT STATEMENT



**DATCP
#4199**

**USH 12: CTH C to Waterbury Road
Sauk County
WisDOT ID # 1670-02-07**



**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
*PUBLISHED APRIL 12, 2017***

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Wisconsin Department of Transportation
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WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

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TABLE OF CONTENTS

DATCP SUMMARY OF ANALYSIS AND RECOMMENDATIONS..... 1
 Recommendations to the Wisconsin Department of Transportation 1
 Recommendations to Agricultural Property Owners 1
 I. INTRODUCTION 2
 II. PROJECT DESCRIPTION 2
 Existing Highways 4
 Need 4
 Alternatives 4
 III. AGRICULTURAL SETTING 5
 Agricultural Productivity 5
 Land in Agriculture 5
 Number and Size of Farms 6
 Property Taxes and Values 6
 IV. AGRICULTURAL LANDOWNER IMPACTS 7
 Soils 7
 Drainage Districts..... 8
 Acquisitions from Farmland Owners 8
 Access 10
 Severances..... 10
 Drainage 11
 Obliterated Roadway 11
 V. APPRAISAL PROCESS..... 12
 VI. MAILING LIST 13
 APPENDIX A: US DAIRY FORAGE RESEARCH CENTER COMMENTS and WisDOT UPDATE 14
 APPENDIX B: APPLICABLE STATUTES..... 18
 APPENDIX C: INFORMATION SOURCES 27

TABLES

Table 1: Acres of Selected Crops Harvested..... 5
 Table 2: Acres of Land in Farms 6
 Table 3: Number of Farms and the Average Size of Farms, 2007 and 2012 6
 Table 4: Farmland Taxes and Values..... 6
 Table 5: Soil Properties 7
 Table 6: Proposed Property Acquisitions 8

FIGURES

Figure 1: Project Location Map 3
 Figure 2: Example of Wasteland in Field Corners 11
 Figure 3: WisDOT Proposed USDA Access to Gate 16 17

DATCP SUMMARY OF ANALYSIS AND RECOMMENDATIONS

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has prepared this Agricultural Impact Statement (AIS) for the proposed Wisconsin Department of Transportation (WisDOT) US Highway (USH) 12 construction project between County Trunk Highway (CTH) C and Waterbury Road in accordance with [Wis. Stat. §32.035](#). WisDOT submitted project information to DATCP on January 20, 2017. The proposed project will require the fee-simple acquisition of 42.4 acres of land from seven farmland owners.

As part of its review of the project, DATCP surveyed two agricultural property owners who would have more than five acres of land acquired by WisDOT. Of the property owners affected by the project, seven were agricultural properties.

Having reviewed all of the materials provided by WisDOT and comments from property owners, DATCP recommends the following actions to mitigate impacts to farmland and farmland operations.

Recommendations to the Wisconsin Department of Transportation

- Where access is relocated or new access points are provided, WisDOT should consult with the affected landowners to ensure that these access points are placed where they can provide safe and efficient access to the property.
- DATCP supports the negotiations between the USDA Dairy Forage Research Center and WisDOT to find acceptable solutions to the Center's concerns about the project that will allow the Center to continue its mission of research to enhance the dairy industry in Wisconsin and beyond.
- WisDOT should consult with the Sauk County land conservationist prior to the start of construction to ensure that construction proceeds in a manner that minimizes drainage problems, crop damage, soil compaction, and soil erosion on adjacent farmland.
- WisDOT should give to landowners and operators advance notice of acquisition and construction schedules so that farm activities can be adjusted accordingly.

Recommendations to Agricultural Property Owners

- Landowners considering trading existing cropland for abandoned highway right-of-way or other land should keep in mind that highway right-of-way will be severely compacted and other land may have characteristics that require extensive work to convert them to cropland.

I. INTRODUCTION

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has prepared this agricultural impact statement (AIS) in accordance with [Wis. Stat. §32.035](#). The AIS is an informational and advisory document that describes and analyzes the potential effects of the project on farm operations and agricultural resources, but it cannot stop a project.

The DATCP is required to prepare an AIS when the actual or potential exercise of eminent domain powers involves an acquisition of interest in more than 5 acres of land from any farm operation. The term farm operation includes all owned and rented parcels of land, buildings, equipment, livestock, and personnel used by an individual, partnership, or corporation under single management to produce agricultural commodities. The DATCP may choose to prepare an AIS if an acquisition of 5 or fewer acres will have a significant impact on a farm operation. Significant impacts could include the acquisition of buildings, the acquisition of land used to grow high-value crops, or the severance of land. WisDOT may not negotiate with or make a jurisdictional offer to a landowner until 30 days after the AIS is published.

The AIS reflects the general objectives of the DATCP in its recognition of the importance of conserving important agricultural resources and maintaining a healthy rural economy. DATCP is not involved in determining whether or not eminent domain powers will be used or the amount of compensation to be paid for the acquisition of any property. Refer to Appendix B for the text of Wis. Stat. §32.035 and additional references to statutes that govern eminent domain and condemnation processes. Links to other sources of information can be found in Appendix C.

II. PROJECT DESCRIPTION

WisDOT proposes to relocate 1.44 miles of USH 12 between CTH C and Waterbury Road. This project is located in sections 10 and 15 of the town of Sumpter, T10N-R6E in Sauk County. Figure 1 is a location map for the project. The project will require the acquisition of 42.4 acres of land from seven farmland owners. Acquisitions of the needed land are expected to begin in May of 2017 and construction is expected to start in 2019.

The realignment will shift the corridor north and east of its current location onto the former Badger Ammunition Plant (USDA property) intersecting the existing median. Approximately 0.7 miles of CTH C will be reconstructed and realigned south and east of its current alignment to intersect USH 12 and provide improved sight distance. Old Bluff Trail will be extended to the north to intersect CTH C. Approximately 0.23 of a mile of Old Bluff Trail will be reconstructed. The southern curve on CTH C and the curve on Old Bluff Trail will be reconstructed to meet a design speed of 30 mph. The existing accesses for Old Bluff Trail and Maple Park Road onto USH 12 will be removed. An additional entrance into the USDA property will be removed. A field entrance to the USDA property will be added at the USH 12/CTH C intersection.

Figure 1: Project Location Map



Existing Highways

USH 12 is a four-lane divided highway consisting of 12-foot wide driving lanes, 6-foot wide inner shoulders (3 feet paved), 8-foot wide outside shoulders (6 feet paved), and a 46-foot wide median.

Need

WisDOT has indicated that the crash rate for this portion of USH 12 is 83 per 100 million vehicle miles (mvm), which is 1.5 times greater than the statewide average crash rate of 55 per 100 mvm for rural and small urban expressways. The statewide average crash rate is commonly used to screen roadway segments that might warrant further analysis. This section of USH 12 experiences a high rate of run-off-the-road crashes. Over a 5-year period, there were a total of 33 crashes, which resulted in one fatality, 19 with injuries (4 incapacitating, 11 not incapacitating, and 4 possible incapacitating), and 13 causing property damage.

The existing operational or design speed of the roadway is 45 mph and does not meet WisDOT's current standards. This is due to multiple substandard horizontal curves located within this section of the roadway. A total of 18 out of the 33 crashes (including 1-fatality) occurred within these substandard horizontal curves. A series of safety mitigation measures were implemented as part of a 2009 safety improvement project including rumble strips, chevrons, and enhanced signing. The safety measures, however, did not reduce the crash rate. WisDOT asserts that the horizontal curves need to be realigned to meet current design standards.

Along this 1.44-mile section of USH 12 are eight access points (side roads, field entrances, and private entrances) resulting in inadequate spacing between the access points and are a safety issue. Three side roads Old Bluff Trail, Maple Park Road, and CTH C all serve as local traffic generators and intersect separately within a 0.44-mile stretch of USH 12. Old Bluff Trail is frequently utilized by local traffic to bypass the Prairie du Sac/Sauk City area for traffic traveling from Spring Green to Baraboo. Maple Park Road services the Maple Park Subdivision, which consists of 34 residential dwellings. CTH C is a county highway functionally classified as a major collector servicing rural south-central Sauk County. Five of the access points (including the Old Bluff Trail and Maple Park Road) are located within the substandard horizontal curves that have contributed to the high crash rate of the USH 12 corridor.

Alternatives

WisDOT considered and rejected the no-build alternative because it would not improve safety on USH 12 within the project limits.

WisDOT also considered a realignment of USH 12 south of its current location. WisDOT rejected this alternative because most of the comments received from the public and local government preferred a northern relocation over a southern one.

WisDOT evaluated several variations of a northern relocation of USH 12. With input from the public and local governments, WisDOT chose the preferred alignment described in this report.

III. AGRICULTURAL SETTING

The following information is intended to describe the existing agricultural sector in Sauk County in general terms. Section IV, "Agricultural Landowner Impacts" discusses the specific potential impacts and the concerns of the agricultural property owners and renters.

Agricultural Productivity

Sauk County ranked sixth out of Wisconsin’s 72 counties in the production of alfalfa hay, thirteenth in corn for grain, and nineteenth in milk (USDA NASS Annual Wisconsin Agricultural Statistics Bulletin).

Table 1 shows the number of acres harvested annually of selected crops in Sauk County for 2011 through 2015. During this five-year period, the largest percentage change in the number of acres harvested for a specific crop was a 27.4 percent increase in the number of acres of alfalfa hay harvested. The smallest percentage change was a 6.2 percent decline in the number of acres of corn for grain harvested over the same five year period.

Table 1: Acres of Selected Crops Harvested

Crop	2011	2012	2013	2014	2015
Corn for Grain	75,400	75,300	70,700	72,400	70,700
Corn for Silage	13,300	13,700	NA	NA	15,600
Soybeans	27,600	28,900	29,200	31,800	33,400
Winter Wheat	6,400	3,900	5,260	6,720	5,150
Alfalfa Hay	28,500	25,200	27,000	31,700	36,300

NA = data not published

Land in Agriculture

Sauk County is classified as a rural county, which has an average of less than 100 residents per square mile. The current population of the county is 61,976 residents. According to the 2012 Census of Agriculture, Sauk County had 332,649 acres of land in farms or approximately 62.1 percent of the total land area. Agricultural land use in rural counties averages 38.7 percent, while for Wisconsin as a whole, farmland represents 42.2 percent of the land use. Land in farms consists primarily of agricultural land used for crops, pasture, or grazing. It also includes woodland and wasteland not cropped or grazed, providing it is part of the overall farm operation.

From 1997 to 2012, the acres of Sauk County land in farms declined by 7.0 percent. In Wisconsin as a whole, the amount of land in farms declined by 10.2 percent. This indicates that the development pressure is lower in Sauk County than in the state as a whole.

Table 2: Acres of Land in Farms

Location	1997	2012
Sauk County	357,633	332,649
Wisconsin	16,232,734	14,568,926

Number and Size of Farms

Between 1997 and 2012, the number of Sauk County farms decreased by 4.3 percent and the total number of farms in Wisconsin decreased by 12.3 percent (2012 Census of Agriculture). The average size of farms fell by 6 acres in Sauk County and increased by 5 acres in Wisconsin from 1997 to 2012. Changes in the size of farms can indicate a change in the types of crops grown on those farms. Small farms tend to grow specialty crops and organic produce while larger farms tend to grow cash crops and raise livestock.

Table 3: Number of Farms and the Average Size of Farms, 2007 and 2012

Location	1997		2012	
	Number of Farms	Average Size of Farms (acres)	Number of Farms	Average Size of Farms (acres)
Sauk County	1,736	206	1,665	200
Wisconsin	79,541	204	69,754	209

Property Taxes and Values

Table 4 details the 2015 average property tax, assessed value, and sale price per acre of agricultural land in Sauk County, rural counties, and in Wisconsin. The assessed values and property taxes are based on the use value of “agricultural land”. Agricultural land is defined by statute as, “... land, exclusive of buildings and improvements, and the land necessary for their location and convenience, that is devoted primarily to agricultural use.” (Wis. Stat. §70.32(2)(c)1g)

Table 4: Farmland Taxes and Values

Location	2015 Dollars per Acre of Farmland		
	Average Tax	Assessed Value	Sale Value
Sauk County	\$3.76	\$201	\$4,988
Rural Counties	\$3.02	\$160	\$4,109
Wisconsin	\$3.15	\$170	\$5,131

In 2015, average property taxes on Sauk County farmland were 24.5 percent higher than the average for rural counties and 19.4 percent higher than the average for Wisconsin (Wisconsin Department of Revenue). This relatively high tax rate may be one factor causing farmland owners to convert their property to non-farm uses in Sauk County.

The average assessed value of farmland in Sauk County was 25.6 percent higher than the average for rural counties and 18.2 percent higher than the average for Wisconsin as a whole (Wisconsin Department of Revenue).

In Sauk County, the average sale price of agricultural land was 21.4 percent higher than the average for rural counties and 2.8 percent lower than the average for Wisconsin (NASS Wisconsin 2016 Agricultural Statistics). These values do not include farmland sold and converted to nonfarm use and do not include farmland with buildings or improvements. Also, these figures are from 2015 and may not accurately reflect the current market for farmland.

IV. AGRICULTURAL LANDOWNER IMPACTS

Soils

Approximately 80 percent of the soils that will be affected by the proposed changes to USH 12 are Richwood silt loam with 0 to 2 percent slopes. The remaining 20 percent are Pillot silt loam with 2 to 6 percent slopes. The following table includes information about both of these soils.

Table 5: Soil Properties

Map Unit	Soil Name	Classification	Natural Drainage	Depth to Water Table	Available Water Storage	Capability Class
RbA	Richwood wilt loam, 0 to 2% slopes	Prime	Well Drained	More than 80 Inches	High	1
PcB	Pillot silt loam, 2 to 6% slopes	Prime	Well Drained	More than 80 Inches	High	2e

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmland has an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmland is not excessively erodible or

saturated with water for a long period of time, and it either does not flood frequently or is protected from flooding.

Drainage Districts

No part of the proposed project is located within any drainage districts.

Acquisitions from Farmland Owners

The proposed reconstruction of the USH 12 from CTH C to Waterbury Road requires the acquisition of 42.37 acres of land from seven farmland owners. They are listed in Table 6. Most of these acquisitions would be made in fee-simple, but WisDOT has offered to acquire the USDA property as a permanent easement.

Table 6: Proposed Property Acquisitions

Farmland Owners	Acquisitions in Acres
USDA Dairy Forage Research Center (Mark Boggess, Director)	23.78
Russel and Virginia Moely	16.69
Valley of Our Lady, Inc.	1.59
4 parcels each less than one acre	0.31
TOTAL	42.37

DATCP staff contacted the owners of the two largest affected farm properties by mail. Their comments are summarized below.

Farmland Owners: USDA Dairy Forage Research Center (Center)

Mark Boggess, Director

Proposed Acquisition: Currently under negation the acquisition of 23.8 acres as either permanent easement or fee-simple

The Center owns about 2,200 acres of land consisting of 1,400 acres of cropland, 200 acres of pasture, 550 acres of woodland, 5 acres of wetland, and 45 acres for buildings and roads. In an average year, the Center grows 800 acres of corn, 400 acres of hay, 100 acres of wheat, and 100 acres of soybeans. The Center also runs a 400-cow dairy operation with 300 head of replacement dairy cattle.

When contacted, the Center stated that the USDA fully supports the USH 12 construction project and are happy to best address State of Wisconsin and local community preferences for the recommended route, USH 12 access options, and infrastructure contingencies. The Center stated that they would consider a land exchange instead of an acquisition. They have identified a 16.74-acre parcel that currently lies between USH 12 north and southbound lanes that could be transferred from the State of Wisconsin to the USDA to offset the loss of cropland acreage

required for the realignment of USH 12. The Center identified in a letter dated March 3, 2017 (see Appendix A), several concerns.

These concerns included:

- **Quality of the soils that will be lost to highway construction versus the quality of those offered in exchange:** The Center indicated that the soils that would be directly affected by highway construction are some of the most productive in the region. The affected field produced 69 bushels of soybeans/acre in 2015 and 230 bushels of corn grain/acre in 2016. The state averages were 50 bushels of soybeans/acre and 162 bushels of corn/acre in the same years. The quality of the soils on the replacement parcel is unknown.
- **Trees, roadbed, etc. on the replacement land:** Currently the replacement land has trees, brush, roadbed, and other debris that prohibit the land from being cropped until these items are removed. In addition, some fencing and other structures on the Center's property may need to be modified after land is exchange and the highway rerouted.
- **Potential flooding hazard:** At least one area of the parcel to become the Center's property may be below grade, which might create periodic standing water concerns, limiting the farming potential in this area.
- **Electric power line within the replacement land:** If the poles of the powerline are not relocated, they may interfere with planting, harvesting, and other operations for cropping this land.
- **Access:** After the USH 12 project is completed, the Center would be left with two parcels on the west side of USH 12. The Center has indicated that access to these parcels from CTH C would be needed for all farming operations. Also, that improvements to access would also be needed at Gate 16 on USH 12. The USDA and WisDOT are continuing to negotiate on this and other issues.

The Center is requesting that after the replacement land is cleared of trees, brush, roadbed, and other debris, that the land be covered with at least 12 inches of high-quality screened topsoil. In addition, the Center would like to maintain ownership of the high-quality topsoil (12 to 15 inches) on the Center's property that would be acquired for the highway project. This soil could then be used for the remediation/restoration of the State of Wisconsin land that would be exchanged for the Center's land.

Farmland Owners: Russel and Virginia Moely

Operator: Ed Ziegler and Yanke Prairie Farms

Proposed Acquisition: Fee-simple acquisition of 16.7 acres

Russel and Virginia Moely own approximately 450 acres of land consisting of 241.18 acres of cropland; 169.85 acres of pasture, woodland, and wetland; 19.08 acres for grass and hay, and 18.3 acres for the buildings. Previously, the Moelys farmed this land themselves. In 2017 they will be renting their land to other operators for the first time. Ed Ziegler will rent 129.52 acres of the cropland and Yanke Prairie Farms will rent the remaining 111.66 acres of cropland.

The owners are concerned that the project will interfere with access to some of their cropland, grassland, and woodland. They indicated that the affected land is some of the most productive land that they own and some of the most productive in the area. They are not aware of any replacement land available in the area to rent or purchase.

Mr. and Mrs. Moely are very concerned that the relocation of USH 12 does not follow field edges, but will sever three parcels of their land from the rest of their property. They estimate that the remnant parcels would be 1.49 acres, 0.88 of an acre, and 4.42 acres. They are concerned that these parcels would be too small to farm economically, that access to these parcels might be difficult or might not be provided, that the loss of these parcels would damage the productivity of their remaining fields, and that these combined negative impacts would reduce the amount of rent that they are able to derive from their property.

Access

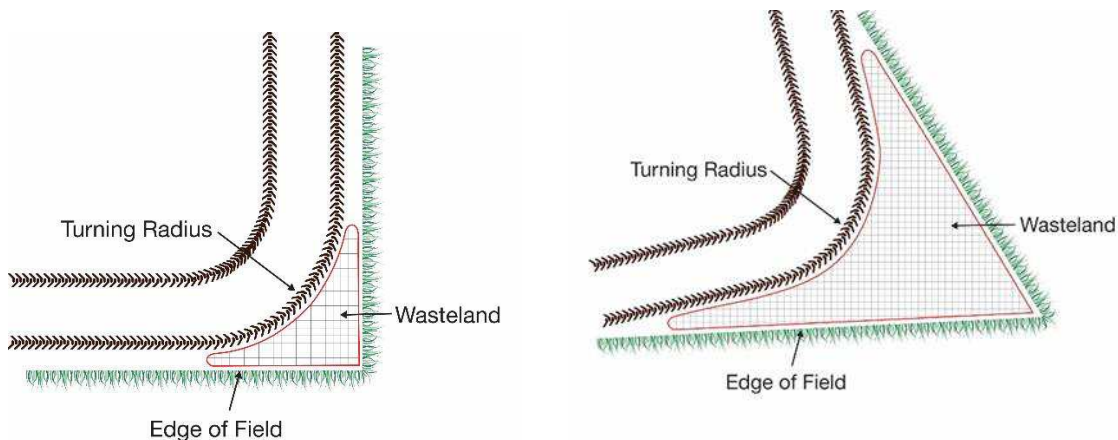
WisDOT is required to provide access to severed parcels or offer to purchase those parcels as uneconomic remnants where access cannot be provided. The landowner is not required to sell these parcels, but would have to obtain access to them via adjacent property.

Severances

The proposed project will sever parcels on both the Moely and Dairy Forage Research Center properties.

Acquisitions that sever farmland frequently create irregularly shaped fields, making equipment usage awkward and production more costly. This increased cost is due in part to the additional time, fuel, and equipment wear associated with maneuvering equipment in corners of fields that are not square or along sides of fields that are not straight. Nonproductive time and labor costs associated with the frequent working of these fields may reduce the possibility of generating profits on these parcels. In addition, when fields are made smaller, an increased proportion of wasteland is created along the edges and in narrow corners of the fields reducing their productive capacity. Figure 2 shows the increased amount of wasteland in fields that have narrow corners.

Figure 2: Example of Wasteland in Field Corners



Compensation for the reduction in the value of parcels that are small and/or irregularly shaped should be addressed in the appraisal of each affected parcel.

Drainage

Proper field drainage is vital to a successful farm operation. Highway construction can disrupt property improvements such as drainage tiles, grassed waterways, drainage ditches, and culvert pipes, which regulate the drainage of farm fields. If drainage is impaired, water can settle in fields and cause substantial damage, such as harming or killing crops and other vegetation, concentrating mineral salts, flooding farm buildings, or causing hoof rot and other diseases that affect livestock. In addition, where salt is used on road surfaces, runoff water can increase the content of salt in nearby soils.

[Section 88.87](#) of the *Wisconsin Statutes* requires highways to be built with adequate ditches, culverts, and other facilities to prevent obstruction of drainage, protect property owners from damage to lands caused by unreasonable diversion or retention of surface water, and maintain, as nearly as possible, the original drainage flow patterns. Appendix A provides the statutes pertaining to drainage rights. Landowners whose property is damaged by improper construction or maintenance of highways and highway drainage structures may file a claim with WisDOT within three years after the damage occurs.

Obliterated Roadway

Portions of the existing USH 12 will be removed during construction of the proposed project. A total of 24.73 acres of existing WisDOT right-of-way is anticipated to be transferred to the USDA Dairy Forage Research Center. The remaining obliterated areas will remain in WisDOT right-of-way.

According to WisDOT's *Standard Specifications for Highway and Structure Construction*, [Sections 214](#) and [625](#), when an old roadbed is obliterated, surfacing material shall be removed

and disposed of, and ditches shall be filled in. The area will then be graded to a contour that will merge with the adjoining contour. After rough grading is completed, these areas shall be covered with topsoil, harrowed, smoothed, fertilized, and seeded in accordance with WisDOT guidelines. Topsoil is usually spread to a depth of four inches.

The agricultural value of any obliterated roadway depends on the use and quality of adjoining land and on the depth and quality of the restored area's subsoils and topsoil. Soils beneath the obliterated roadway have been compacted by roadway traffic. This may adversely affect plant growth for several years until plowing and the natural freezing and thawing process have loosened the compacted soil.

V. APPRAISAL PROCESS

Before negotiations begin, WisDOT will provide an appraisal of the affected property to the landowners. An appraisal is an estimate of fair market value.

Landowners have the right to obtain their own appraisal of their property and will be compensated for the cost of this appraisal if the following conditions are met:

- The appraisal must be submitted to WisDOT within 60 days after the landowner receives the WisDOT appraisal.
- The appraisal fee must be reasonable.
- The appraisal must be a full, narrative appraisal
- The appraisal must be completed by a qualified appraiser.

The amount of compensation is based on the appraisal(s) and is established during the negotiation process between WisDOT and the individual landowners. WisDOT is required by law to provide landowners with information about their rights in this process before negotiations begin.

VI. MAILING LIST

GOVERNOR SCOTT WALKER 115 E CAPITOL	SEN TERRY MOULTON AGRICULTURE COMMITTEE 310 S CAPITOL
SEN JERRY PETROWSKI TRANSPORTATION COMMITTEE 123 S CAPITOL	REP LEE NERISON AGRICULTURE COMMITTEE 310 N CAPITOL
REP KEITH RIPP TRANSPORTATION COMMITTEE 223 N CAPITOL	RESOURCES FOR LIBRARIES (15) DOCUMENT DEPOSITORY PROGRAM 2109 SOUTH STOUGHTON ROAD
WisDOT CENTRAL OFFICE FILES HILL FARMS	WisDOT LIBRARY ROOM 100A 4802 SHEBOYGAN AVE
STATE DOCUMENTS SECTION THE LIBRARY OF CONGRESS 10 FIRST ST S E WASHINGTON DC 20540-0001	ELLERY SCHAFFER JEWELL ASSOCIATES ENGINEERS INC 560 SUNRISE DR SPRING GREEN, WI 53588
RUSSELL & VIRGINIA MOELY S8118 OLD BLUFF TRAIL PRAIRIE DU SAC WI 53578	MARK BOGGESS PhD USDA DAIRY FORAGE RESEARCH CENTER 1925 LINDEN DR MADISON WI 53706
SISTER MARIE GRACE VALLEY OF OUR LADY E11096 YANKE DR PRAIRIE DU SAC WI 53578	BRIAN KINDSCHI KINDSCHI'S INC S8933 US HWY 12 PRAIRIE DU SAC WI 53578
MARY PEETZ E10805 COUNTY ROAD C NORTH FREEDOM WI 53951	REBECCA C EVERT SAUK COUNTY CLERK 505 BROADWAY RM 144 BARABOO WI 53913-2183
TIMOTHY H COLBY SUMPTER TOWN CHAIR E110836 KINGS CORNER ROAD NORTH FREEDOM WI 53951	LEE NOLDEN SUMPTER TOWN CLERK E10496 COUNTY ROAD C NORTH FREEDOM WI 53951
LISA WILSON DIRECTOR SAUK CO CONSERVATION PLANNING & ZONING DEPT 505 BROADWAY STE 248 BARABOO WI 53913	MORGAN McARTHUR SAUK CO UWEX 505 BROADWAY RM 334 BARABOO WI 53913-2183
BARABOO PUBLIC LIBRARY 230 FOURTH AVE BARABOO WI 53913-2194	PRAIRIE DU SAC PUBLIC LIBRARY 560 PARK AVE PRAIRIE DU SAC WI 53578
NORTH FREEDOM PUBLIC LIBRARY 103 N MAPLE ST PO BOX 803 NORTH FREEDOM WI 539510308	BARABOO NEWS REPUBLIC PO BOX 9 BARABOO WI 53913
SAU PRAIRIE STAR PO BOX 606 SAUK CITY WI 53583	

Copies of the final AIS will be emailed to the following to Newspapers: Country Today, Agri-View

APPENDIX A: US DAIRY FORAGE RESEARCH CENTER COMMENTS AND WISDOT UPDATE

March 3, 2017

Response to WI DATCP Agricultural Impact Questionnaire

Mark Boggess, Ph.D., Director, US Dairy Forage Research Center

The USDA/ARS/USDFRC fully support the Hwy 12 construction project and are happy to best address State of Wisconsin and local community preferences for the recommended route, Hwy 12 access options, and infrastructure contingencies. However, if the WI DOT prefers a land exchange rather than an acquisition of impacted USDA acreage for the project at fair market value, then there are several concerns that must be addressed to ensure that adequate value is provided to the government.

1. Land Swap with the State of Wisconsin (SW)

Parcel size 16.74 acres.

Summary: It is proposed that the 16.74 acre plot that currently lies between the Hwy 12 north and southbound lanes be transferred from the State of WI to the USDA to offset the loss of crop land acreage required for the new Hwy 12. The USDA acreage that will be lost to the Hwy 12 project is among the best farmland in the region and is one of the most productive fields farmed by the USDFRC. Average yields on this 47-acre parcel were 69 bushels of soybeans/acre in 2015, and 230 bushels of corn grain/acre in 2016, yields that were well above the state averages of 50 and 162 bushels/acre. Comparable land sales in the area are indicating that the fair market value of this parcel is at a minimum \$7500 to \$8500 per acre. For a land exchange to be acceptable, similar land value and capacity will need to be provided to the USDA.

Concerns: While the DFRC acreage which will be dedicated to the Hwy 12 project is some of the highest quality farm land farmed by the USDFRC, the SW parcel is unimproved with a significant number of residual and plantation trees, brush and overgrowth. Consequently, the soil quality of the SW is unknown and the soil depth and quality across the entire parcel has not been determined. At least one area of the parcel is well below grade which creates periodic standing water concerns, limiting the farming potential in this area. Lastly, there is a paved road that divides the parcel as well as a row of power line poles transecting one edge of the parcel.

Requirements: To accommodate the land exchange, this SW parcel will need to be converted to farmable acres, including:

- a. The dividing road will need to be removed, the area returned to grade, and at least 12 inches of high quality screened topsoil provided to make this area of able to support future farming operations.
- b. All trees, brush and overgrowth will need to be removed from the parcel and disposed of, including all stumps. Any other trash, equipment, aggregate fill, or other structures that would inhibit farming will need to be removed.
- c. All sections of the parcel will need to be brought to proper farming grade with a minimum of 12 inches of high quality topsoil.
- d. The power line will need to be moved to accommodate the farming operation or the affected acreage should not be included as part of the total farmable acreage provided.

2. Field access to 16.74 acre and 12.9 acre parcels.

Concerns: After the Hwy 12 project is completed, the USDFRC will be left with 2 parcels on the west side of Hwy 12. Access to these parcels from County Road C will be needed for all farming operations.

Requirements: Access points will be needed for both residual parcels. The access points will need to be a minimum of 40' in width and at an appropriate grade to allow for heavy equipment to safely enter and exit both affected parcels from County Road C.

3. Access to Hwy 12 and USDA parcels on the west side of Hwy 12 through Gate 16, post construction.

Concerns: The current construction plan for the Hwy 12 project proposes a "T-Line" field entrance onto USDA property from Hwy 12, opposite of County Road C intersection. This access point may be adequately suited for USDFRC equipment to cross Hwy 12 for farming operations in the 2 parcels on the west side of Hwy 12 (see 1 and 2 above). However, the current plans do not provide road access to the T-Line access point via USDFRC Gate 16, for equipment or commercial traffic. Additionally, direct Hwy 12 access is needed for USDFRC staff and working crews through Gate 16. Lastly, the USDA-ARS proposed research dairy, to be constructed by the USDA directly inside Gate 16, will require Hwy 12 access through Gate 16, including diverse farm and commercial trucks and equipment.

Requirements:

- a. The proposed T-Line field access point will need to be improved to allow diverse traffic flows from the USDFRC to and from Hwy 12.
- b. A paved road will be needed to connect the Hwy 12 access point to USDFRC Gate 16. This road should incorporate the old Hwy 12 grade as appropriate and must be adequate for heavy commercial and farm equipment traffic.

4. Existing sections of Hwy 12 to be transferred to the USDA.

Concerns: After the Hwy 12 project is completed, the USDA will be left with two or more sections of the old Hwy 12 grade. These sections are of no value to the USDFRC as part of a land exchange unless they are converted to farmable acreage.

Requirements: All sections of old Hwy 12 transferred to the USDA as farmable acreage will need to be cleared of asphalt, concrete, contaminated soil, and heavy aggregate fill, and returned to appropriate grade for farming, including a minimum of 12 inches of high quality screened topsoil.

5. Disposition of soil displaced by new Hwy 12 construction.

Concerns: Completion of the new Hwy 12 section across existing USDA property will displace a significant amount of high quality topsoil, at a depth of 12-15 inches.

Requirements: In the event of a land exchange, the USDA will maintain ownership of all topsoil pertaining to all USDA acreage being designated for construction of the new Hwy 12 right of way. This soil is to be stockpiled on USDA property at the direction of the USDFRC farm manager. This soil will be made available to the WI DOT for remediation or restoration of USDA acreage received from the State of WI, as approved by the farm manager.

6. Orphaned fences and other infrastructure.

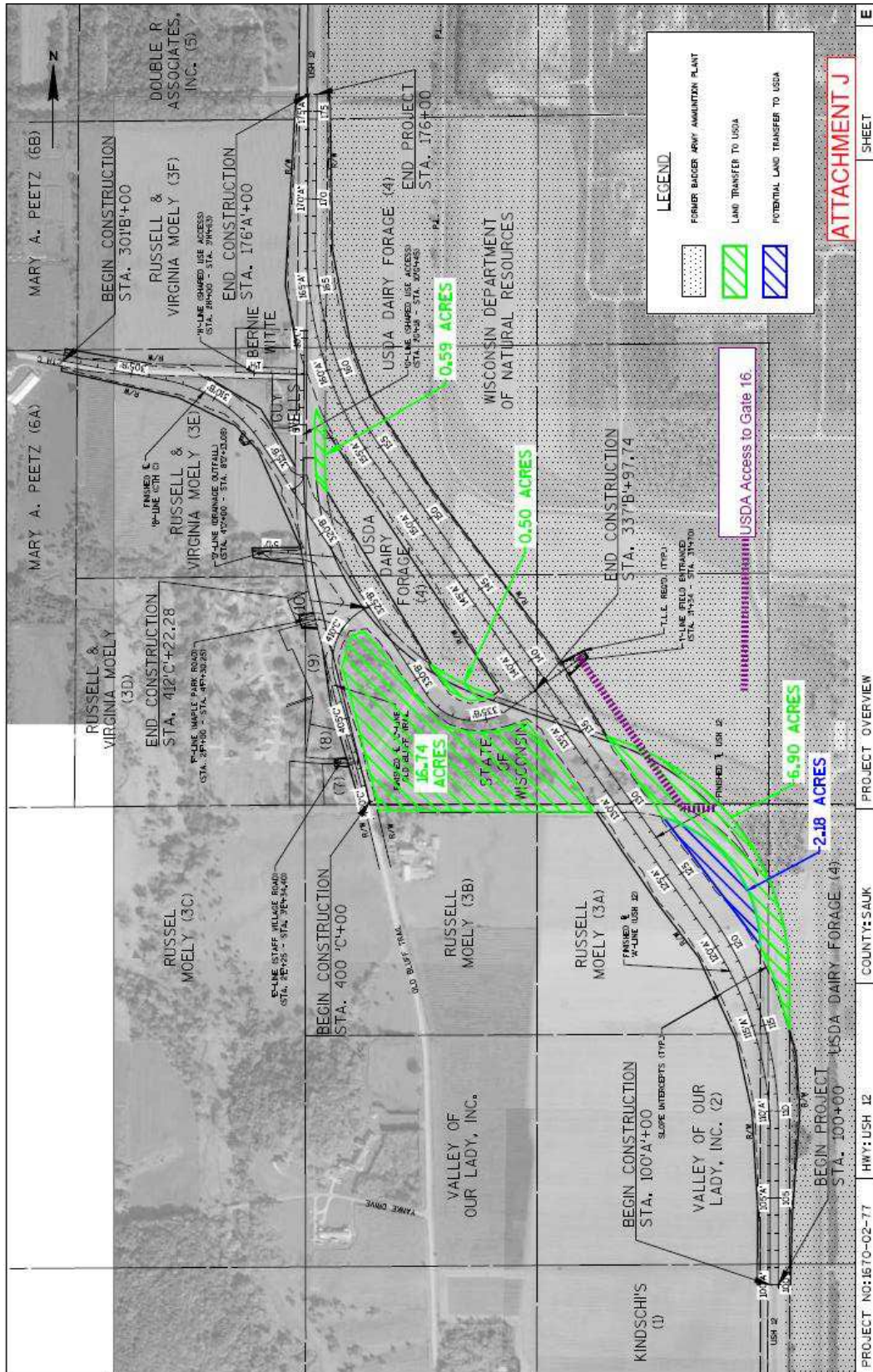
Concerns: Completion of the new Hwy 12 section may potentially create isolated lengths of fencing or other abandoned concrete or infrastructure in cropping areas or field margins.

Requirements: The USDA will require that any terminal or non-functional infrastructure, such as fencing, concrete rubble, asphalt rubble, wood piles or other material resulting from the new Hwy 12 construction be removed and the area fully remediated for USDA cropping programs, including a minimum of 12 inches of high quality topsoil.

Excerpts From WisDOT Communication, Ellery Schaffer April 4, 2017

One of the concerns in the AIS discusses USDA's concern over access to Gate 16. Please see the attached markup (in purple) that proposes extending the field entrance previously proposed (aligned directly across from CTH C) to Gate 16 [Figure 3 in this document]. The previously proposed acquisition type was FEE title (permanent R/W acquisition). In discussions between WisDOT and USDA, it is our understanding the USDA is recommending Highway Easement in lieu of FEE title as the preferred R/W acquisition type giving the land transfer being proposed. WisDOT is in agreement with proceeding with Highway Easement for the USH 12 realignment."

Figure 3: WisDOT Proposed USDA Access to Gate 16



APPENDIX B: APPLICABLE STATUTES

DATCP is required to prepare an AIS whenever more than five acres of land from at least one farm operation will be acquired for a public project if the agency/company acquiring the land has the authority to use eminent domain for property acquisitions. DATCP has the option to prepare an AIS for projects affecting five or fewer acres from each farm if the proposed project would have significant effects on a farm operation. The entity proposing a construction project is required to provide DATCP with the necessary details of the project so that the potential impacts and effects of the project on farm operations can be analyzed. DATCP has 60 days to make recommendations, and publish the AIS. DATCP provides the AIS to affected farmland owners, various state and local officials, local media and libraries, and any other individual or group who requests a copy. Thirty days after the date of publication, the project initiator may begin negotiating with the landowner(s) for the property.

[Wisconsin Statute § 32.035](#) is provided below and describes the Wisconsin Agricultural Impact Statement procedure and content.

(1) DEFINITIONS. In this section:

- (a) "Department" means department of agriculture, trade, and consumer protection.
- (b) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural commodities resulting from an agricultural use, as defined in s. 91.01 (2), for sale and home use, and customarily producing the commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(2) EXCEPTION. This section shall not apply if an environmental impact statement under s. 1.11 is prepared for the proposed project and if the department submits the information required under this section as part of such statement or if the condemnation is for an easement for the purpose of constructing or operating an electric transmission line, except a high voltage transmission line as defined in s. 196.491(1) (f).

(3) PROCEDURE. The condemnor shall notify the department of any project involving the actual or potential exercise of the powers of eminent domain affecting a farm operation. If the condemnor is the department of natural resources, the notice required by this subsection shall be given at the time that permission of the senate and assembly committees on natural resources is sought under s. 23.09(2)(d) or 27.01(2)(a). To prepare an agricultural impact statement under this section, the department may require the condemnor to

compile and submit information about an affected farm operation. The department shall charge the condemnor a fee approximating the actual costs of preparing the statement. The department may not publish the statement if the fee is not paid.

(4) IMPACT STATEMENT.

(a) *When an impact statement is required; permitted.* The department shall prepare an agricultural impact statement for each project, except a project under Ch. 82 or a project located entirely within the boundaries of a city or village, if the project involves the actual or potential exercise of the powers of eminent domain and if any interest in more than 5 acres from any farm operation may be taken. The department may prepare an agricultural impact statement on a project located entirely within the boundaries of a city or village or involving any interest in 5 or fewer acres of any farm operation if the condemnation would have a significant effect on any farm operation as a whole.

(b) *Contents.* The agricultural impact statement shall include:

1. A list of the acreage and description of all land lost to agricultural production and all other land with reduced productive capacity, whether or not the land is taken.
2. The department's analyses, conclusions, and recommendations concerning the agricultural impact of the project.

(c) *Preparation time; publication.* The department shall prepare the impact statement within 60 days of receiving the information requested from the condemnor under sub. (3). The department shall publish the statement upon receipt of the fee required under sub. (3).

(d) *Waiting period.* The condemnor may not negotiate with an owner or make a jurisdictional offer under this subchapter until 30 days after the impact statement is published.

(5) PUBLICATION. Upon completing the impact statement, the department shall distribute the impact statement to the following:

- (a) The governor's office.
- (b) The senate and assembly committees on agriculture and transportation.
- (c) All local and regional units of government that have jurisdiction over the

area affected by the project. The department shall request that each unit post the statement at the place normally used for public notice.

- (d) Local and regional news media in the area affected.
- (e) Public libraries in the area affected.
- (f) Any individual, group, club, or committee that has demonstrated an interest and has requested receipt of such information.
- (g) The condemnor.

STATUTES GOVERNING EMINENT DOMAIN

The details governing eminent domain as it relates to utility projects are included in Wis. Stat. ch. 32 (<http://docs.legis.wisconsin.gov/statutes/statutes/32.pdf>).

DATCP recommends that farmland owners concerned about eminent domain powers and the acquisition of land should review this statute in its entirety. Additionally, landowners may wish to consult with an attorney who should have expertise in eminent domain proceedings. Any Wisconsin licensed appraiser should be knowledgeable in partial takings.

Section 32.09 of the Wisconsin Statutes describes the compensation provided for property acquisition and certain damages:

(6) In the case of a partial taking of property other than an easement, the compensation to be paid by the condemnor shall be the greater of either the fair market value of the property taken as of the date of evaluation or the sum determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the following items of loss or damage to the property where shown to exist:

- (a)** Loss of land including improvements and fixtures actually taken.
- (b)** Deprivation or restriction of existing right of access to highway from abutting land, provided that nothing herein shall operate to restrict the power of the state or any of its subdivisions or any municipality to deprive or restrict such access without compensation under any duly authorized exercise of the police power.
- (c)** Loss of air rights.

- (d) Loss of a legal nonconforming use.
- (e) Damages resulting from actual severance of land including damages resulting from severance of improvements or fixtures and proximity damage to improvements remaining on condemnee's land. In determining severance damages under this paragraph, the condemnor may consider damages which may arise during construction of the public improvement, including damages from noise, dirt, temporary interference with vehicular or pedestrian access to the property and limitations on use of the property. The condemnor may also consider costs of extra travel made necessary by the public improvement based on the increased distance after construction of the public improvement necessary to reach any point on the property from any other point on the property.
- (f) Damages to property abutting on a highway right of way due to change of grade where accompanied by a taking of land.
- (g) Cost of fencing reasonably necessary to separate land taken from remainder of condemnee's land, less the amount allowed for fencing taken under par. (a), but no such damage shall be allowed where the public improvement includes fencing of right of way without cost to abutting lands.

Section 32.19 of the Wisconsin Statutes outlines payments to be made to displaced tenant occupied businesses and farm operations.

(4m) BUSINESS OR FARM REPLACEMENT PAYMENT. (a) Owner-occupied business or farm operation. In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment, not to exceed \$50,000, to any owner displaced person who has owned and occupied the business operation, or owned the farm operation, for not less than one year prior to the initiation of negotiations for the acquisition of the real property on which the business or farm operation lies, and who actually purchases a comparable replacement business or farm operation for the acquired property within two years after the date the person vacates the acquired property or receives payment from the condemnor, whichever is later. An owner displaced person who has owned and occupied the business operation, or owned the farm operation, for not less than one year prior to the initiation of negotiations for the acquisition of the real property on which the business or farm operation lies may elect to receive the payment under par. (b) 1. in lieu of the payment under this paragraph, but the amount of payment under par. (b) 1. to such an owner displaced person may not exceed the amount the owner displaced person is eligible to receive under this paragraph. The additional payment under this paragraph shall include the following amounts:

1. The amount, if any, which when added to the acquisition cost of the property, other than any dwelling on the property, equals the reasonable cost of a comparable

replacement business or farm operation for the acquired property, as determined by the condemnor.

2. The amount, if any, which will compensate such owner displaced person for any increased interest and other debt service costs which such person is required to pay for financing the acquisitions of any replacement property, if the property acquired was encumbered by a bona fide mortgage or land contract which was a valid lien on the property for at least one year prior to the initiation of negotiations for its acquisition. The amount under this subdivision shall be determined according to rules promulgated by the department of commerce.

3. Reasonable expenses incurred by the displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement property, but not including prepaid expenses.

(b) Tenant-occupied business or farm operation. In addition to amounts otherwise authorized by this subchapter, the condemnor shall make a payment to any tenant displaced person who has owned and occupied the business operation, or owned the farm operation, for not less than one year prior to initiation of negotiations for the acquisition of the real property on which the business or operation lies or, if displacement is not a direct result of acquisition, such other event as determined by the department of commerce, and who actually rents or purchases a comparable replacement business or farm operation within 2 years after the date the person vacates the property. At the option of the tenant displaced person, such payment shall be either:

1. The amount, not to exceed \$30,000, which is necessary to lease or rent a comparable replacement business or farm operation for a period of 4 years. The payment shall be computed by determining the average monthly rent paid for the property from which the person was displaced for the 12 months prior to the initiation of negotiations or, if displacement is not a direct result of acquisition, such other event as determined by the department of commerce and the monthly rent of a comparable replacement business or farm operation and multiply the difference by 48; or

2. If the tenant displaced person elects to purchase a comparable replacement business or farm operation, the amount determined under subd. 1 plus expenses under par. (a) 3.

(5) EMINENT DOMAIN. Nothing in this section or ss. 32.25 to 32.27 shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages.

Section 32.25 of the Wisconsin Statutes delineates steps to be followed when displacing persons, businesses, and farm operations.

- (1)** Except as provided under sub.(3) and s. 85.09 (4m), no condemnor may proceed with any activity that may involve the displacement of persons, business concerns or farm operations until the condemnor has filed in writing a relocation payment plan and relocation assistance service plan and has had both plans approved in writing by the department of commerce.
- (2)** The relocation assistance service plan shall contain evidence that the condemnor has taken reasonable and appropriate steps to:
 - (a) Determine the cost of any relocation payments and services or the methods that are going to be used to determine such costs.
 - (b) Assist owners of displaced business concerns and farm operations in obtaining and becoming established in suitable business locations or replacement farms.
 - (c) Assist displaced owners or renters in the location of comparable dwellings.
 - (d) Supply information concerning programs of federal, state and local governments which offer assistance to displaced persons and business concerns.
 - (e) Assist in minimizing hardships to displaced persons in adjusting to relocation.
 - (f) Secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the implementation of the relocation program.
 - (g) Determine the approximate number of persons, farms or businesses that will be displaced and the availability of decent, safe and sanitary replacement housing.
 - (h) Assure that, within a reasonable time prior to displacement, there will be available, to the extent that may reasonably be accomplished, housing meeting the standards established by the department of commerce for decent, safe and sanitary dwellings. The housing, so far as practicable, shall be in areas not generally less desirable in regard to public utilities, public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced and equal in number to the number of such displaced families or individuals and reasonably accessible to their places of employment.
 - (i) Assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable dwelling.

(3) (a) Subsection (1) does not apply to any of the following activities engaged in by a condemnor:

1. Obtaining an appraisal of property.
2. Obtaining an option to purchase property, regardless of whether the option specifies the purchase price, if the property is not part of a program or project receiving federal financial assistance.

STATUTES GOVERNING ACCESS

Section 86.05 of the Wisconsin Statutes states that access shall be provided to land which abuts a highway:

Entrances to highway restored. Whenever it is necessary, in making any highway improvement to cut or fill or otherwise grade the highway in front of any entrance to abutting premises, a suitable entrance to the premises shall be constructed as a part of the improvements, and if the premises are divided by the highway, then one such entrance shall be constructed on each side of the highway. Thereafter, each entrance shall be maintained by the owner of the premises. During the time the highway is under construction, the state, county, city, village or town shall not be responsible for any damage that may be sustained through the absence of an entrance to any such premises.

Section 84.25 of the Wisconsin Statutes describes access restrictions concerning a controlled-access highway.

(3) CONSTRUCTION; OTHER POWERS OF DEPARTMENT. In order to provide for the public safety, convenience and the general welfare, the department may use an existing highway or provide new and additional facilities for a controlled-access highway and so design the same and its appurtenances, and so regulate, restrict or prohibit access to or departure from it as the department deems necessary or desirable. The department may eliminate intersections at grade of controlled-access highways with existing highways or streets, by grade separation or service road, or by closing off such roads and streets at the right-of-way boundary line of such controlled-access highway and may divide and separate any controlled-access highway into separate roadways or lanes by raised curbs, dividing sections or other physical separations or by signs, markers, stripes or other suitable devices, and may execute any construction necessary in the development of a controlled-access highway including service roads or separation of grade structures.

(4) CONNECTIONS BY OTHER HIGHWAYS. After the establishment of any controlled-access highway, no street or highway or private driveway, shall be opened into or connected with any

controlled-access highway without the previous consent and approval of the department in writing, which shall be given only if the public interest shall be served thereby and shall specify the terms and conditions on which such consent and approval is given.

(5) USE OF HIGHWAY. No person shall have any right of entrance upon or departure from or travel across any controlled-access highway, or to or from abutting lands except at places designated and provided for such purposes, and on such terms and conditions as may be specified from time to time by the department.

(6) ABUTTING OWNERS. After the designation of a controlled-access highway, the owners or occupants of abutting lands shall have no right or easement of access, by reason of the fact that their property abuts on the controlled-access highway or for other reason, except only the controlled right of access and of light, air or view.

(7) SPECIAL CROSSING PERMITS. Whenever property held under one ownership is severed by a controlled-access highway, the department may permit a crossing at a designated location, to be used solely for travel between the severed parcels, and such use shall cease if such parcels pass into separate ownership.

STATUTES GOVERNING DRAINAGE

[Section 88.87\(2\) of the Wisconsin Statutes](#) describes regulations concerning rights of drainage:

(a) Whenever any county, town, city, village, railroad company or the department of transportation has heretofore constructed and now maintains or hereafter constructs and maintains any highway or railroad grade in or across any marsh, lowland, natural depression, natural watercourse, natural or man-made channel or drainage course, it shall not impede the general flow of surface water or stream water in any unreasonable manner so as to cause either an unnecessary accumulation of waters flooding or water-soaking uplands or an unreasonable accumulation and discharge of surface water flooding or water-soaking lowlands. All such highways and railroad grades shall be constructed with adequate ditches, culverts, and other facilities as may be feasible, consonant with sound engineering practices, to the end of maintaining as far as practicable the original flow lines of drainage. This paragraph does not apply to highways or railroad grades used to hold and retain water for cranberry or conservation management purposes.

(b) Drainage rights and easements may be purchased or condemned by the public authority or railroad company having control of the highway or railroad grade to aid in the prevention of damage to property owners which might otherwise occur as a result of failure to comply with par. (a).

(c) If a city, village, town, county, or railroad company or the department of transportation constructs and maintains a highway or railroad grade not in accordance with par. (a), any property owner damaged by the highway or railroad grade may, within 3 years after the alleged damage occurred, file a claim with the appropriate governmental agency or railroad company. The claim shall consist of a sworn statement of the alleged faulty construction and a description, sufficient to determine the location of the lands, of the lands alleged to have been damaged by flooding or water-soaking. Within 90 days after the filing of that claim, the governmental agency or railroad company shall either correct the cause of the water damage, acquire rights to use the land for drainage or overflow purposes, or deny the claim. If the agency or company denies the claim or fails to take any action within 90 days after the filing of the claim, the property owner may bring an action in inverse condemnation under ch. 32 or sue for such other relief, other than damages, as may be just and equitable.

WisDOT [specification 205.3.3](#) further describes its policies concerning drainage:

- (1)** During construction, maintain roadway, ditches, and channels in a well-drained condition at all times by keeping the excavation areas and embankments sloped to the approximate section of the ultimate earth grade. Perform blading or leveling operations when placing embankments and during the process of excavation except if the excavation is in ledge rock or areas where leveling is not practical or necessary. If it is necessary in the prosecution of the work to interrupt existing surface drainage, sewers, or under drainage, provide temporary drainage until completing permanent drainage work.
- (2)** If storing salvaged topsoil on the right-of-way during construction operations, stockpile it to preclude interference with or obstruction of surface drainage.
- (3)** Seal subgrade surfaces as specified for subgrade intermediate consolidation and trimming in 207.3.9.
- (4)** Preserve, protect, and maintain all existing tile drains, sewers, and other subsurface drains, or parts thereof, that the engineer judges should continue in service without change. Repair, at no expense to the department, all damage to these facilities resulting from negligence or carelessness of the contractor's operations.

APPENDIX C: INFORMATION SOURCES

[DATCP \(datcp.wi.gov\)](http://datcp.wi.gov)

- [Agricultural Impact Statements](#)
- [Farmland Preservation](#)
- [Wisconsin Farm Center](#): provides services to Wisconsin farmers including financial mediation, stray voltage, legal, vocational, and farm transfers

[U.S. Department of Agriculture \(www.usda.gov\)](http://www.usda.gov)

- [National Agricultural Statistics Service](#)
- [Web Soil Survey](#)
- [Soil Quality – Urban Technical Note No. 1, Erosion and Sedimentation on Construction Sites](#)

[Wisconsin Department of Safety and Professional Services \(dsps.wi.gov\)](http://dsps.wi.gov)

Look-up for state certification status of three types of [real estate appraisers](#)

[State Bar of Wisconsin \(www.wisbar.org\)](http://www.wisbar.org)

For general legal information and assistance in finding a lawyer

Background Resources

- [Wolkowski, R., Soil Compaction: Causes, concerns and cures](#)
University of Wisconsin-Extension, A3367, 2008.
- Hughes, Jodi D., Tires, traction and compaction, University of Minnesota Extension, website (<http://www.extension.umn.edu/agriculture/tillage/tires-traction-and-compaction/>)



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**DIVISION OF
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