

AGRICULTURAL IMPACT STATEMENT



**DATCP
#4271**

**CTH KR: CTH H to Old Green Bay Road
Kenosha and Racine Counties
WisDOT # 3763-00-04**



**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
*PUBLISHED OCTOBER 12, 2018***

AGRICULTURAL IMPACT STATEMENT

DATCP #4271
CTH KR: CTH H to Old Green Bay Road
Kenosha and Racine Counties

WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

Sheila E. Harsdorf, Secretary

Brian Kuhn, Acting Administrator
Division of Agricultural Resource Management

Keith Foye, Director
Bureau of Land and Water Resources

Alice Halpin, Author

Published October 12, 2018

TABLE OF CONTENTS

DATCP SUMMARY OF ANALYSIS AND RECOMMENDATIONS..... 1

 Recommendations to the Wisconsin Department of Transportation 1

 Recommendations to Farmland Owners..... 1

I. INTRODUCTION 2

II. PROJECT DESCRIPTION..... 2

 Existing Highway 4

 Need 4

 Alternatives 4

III. AGRICULTURAL SETTING 4

 Agricultural Productivity 4

 Land in Agriculture 5

 Number and Size of Farms..... 6

 Property Taxes and Values 7

 Farmland Preservation 7

 Drainage Districts..... 8

IV. SOILS 8

 Farmland Soil Definitions..... 8

 Soils Affected by the Proposed Project 9

V. AGRICULTURAL LANDOWNER IMPACTS 10

 DATCP Questionnaire to Farmland Owners..... 10

 Appraisal and Compensation..... 10

VI. MAILING LIST 12

APPENDIX A: DATCP Statutes for Agricultural Impact Statements 14

APPENDIX B: Additional Information Sources..... 21

TABLES

Table 1: Acres of Selected Crops from 2012 through 2016 5

Table 2: Acres of Land in Farms 6

Table 3: Change in the Number of Farms between 1997 and 2012 6

Table 4: Farm Size Distributions in 1997 and 2012..... 6

Table 5: Farmland Taxes and Values..... 7

Table 6: Soils Affected by the Project..... 9

Table 7: Acres to be Acquired from Each Farmland Owner 10

FIGURES

Figure 1: Project Overview Map 3

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 expansion of County Trunk Highway (CTH) KR (DATCP #4271) in accordance with [Wis. Stat. §32.035](#). The Wisconsin Department of Transportation (WisDOT) is proposing to expand the existing highway from two to four lanes between CTH H and Old Green Bay Road. Old Green Bay Road is also named CTH X north of CTH KR and CTH M south of CTH KR. The project is located along the Kenosha/Racine County border.

As part of its review of the project, DATCP sent questionnaires to agricultural property owners who will have 4 or more acres of land acquired. Of the 47 property owners that will be affected by the proposed project, 15 own farmland and 2 of those have 4 or more acres that will be acquired for this project. Neither of the farmland owners who were sent questionnaires responded to this request for information.

Having reviewed the materials provided by WisDOT, DATCP makes the following recommendations.

Recommendations to the Wisconsin Department of Transportation

- If the project requires the relocation or alteration of access to farmland, WisDOT should consult with the affected landowners and renters to ensure that access points are placed in reasonably safe and efficient locations for farm operations.
- WisDOT should consult with the Kenosha and Racine County land conservationists 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 all of the farmland owners and renters advanced notice of acquisition and construction schedules so that farm activities can be adjusted accordingly.

Recommendations to Farmland Owners

- The affected farmland owners should fully describe and discuss property improvements and farm operations with the appraisers so that the appraisers can appropriately value the extent of the project's impacts on the property.

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 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.

The proposing agency may not negotiate with or make a jurisdictional offer to a landowner until 30 days after the AIS is published.

II. PROJECT DESCRIPTION

The Wisconsin Department of Transportation (WisDOT) is proposing to reconstruct 2.8-miles of County Trunk Highway (CTH) KR as a four-lane divided highway. The project will extend from CTH H to Old Green Bay Road.

CTH KR is also called 1st Street, and Old Green Bay Road is also known as CTH X north of CTH KR and CTH M south of CTH KR. The project is located along the boundary of the village of Mount Pleasant in Racine County and the village of Sommers in Kenosha County. Refer to Figure 1 for the Project Location Map. WisDOT proposes to acquire 30 acres of land from 15 farmland owners for the project. Land acquisitions are anticipated to begin in January of 2019 and construction is expected to start in January of 2021.

The project will expand the width of the right-of-way for CTH KR to 233 feet. Most of the added right-of-way width will be north of the existing alignment. New bridges will replace the two existing at-grade railroad crossings. The existing Pike River box culvert will be replaced with a new bridge structure.

The project will also include the realignment of 72nd Avenue south of CTH KR so it will align with 90th Street north of CTH KR. The village of Somers owns the existing 72nd Avenue and will determine if, as a result of this project, any former road right-of-way is in excess and should be sold.

A 10-foot wide multi-use path will be constructed on both sides of the highway from CTH H to 90th Street. From 90th Street to Old Green Bay Road, the multi-use path will only be constructed on one side of the highway. WisDOT has not yet determined which side of CTH KR the remaining portion of the multi-use path will be constructed on.

As part of this project, WisDOT will convert 22.7 acres of farmland owned by the village of Mt. Pleasant to highway right-of-way.

WisDOT will replace and/or realign any driveways affected by the project to restore access to adjacent properties.

Existing Highway

CTH KR currently has two 12-foot-wide driving lanes with shoulders. It is an important link between Interstate 94 (I-94) and State Trunk Highway (STH) 31.

Need

WisDOT has indicated that land use in the project area is changing from agricultural to urban. Currently, CTH KR handles 9,000 to 9,500 vehicles per day. By 2042, WisDOT estimates that this will increase to 18,000 to 20,000 vehicles per day because of economic development in the area, including the Foxconn manufacturing campus.

WisDOT has also determined that stopping sight distances on the affected roads are inadequate. Stopping sight distance is the minimum distance required by the driver of a vehicle traveling at a given speed to bring the vehicle safely to a stop after sighting an object in the path. Additionally, the existing roads lack sufficient drainage facilities in some locations.

Alternatives

WisDOT rejected the no-build alternative because it would not increase the capacity of the highway nor would it improve any of the WisDOT-identified deficiencies. The proposed project is the only alternative that would expand capacity of CTH KR while minimizing impacts to adjacent properties.

III. AGRICULTURAL SETTING

The following information is intended to describe the existing agricultural sector for Kenosha and Racine Counties in general terms. The majority of the data provided in this section was obtained from the USDA, National Agricultural Statistics Service.

Agricultural Productivity

The majority of agricultural production in Kenosha and Racine Counties occurs in the western portions of both counties rather than in the eastern areas, where the proposed project is located. The eastern areas have more urban development than the western areas of the counties.

Because of the Foxconn manufacturing campus and adjacent development, the eastern areas of these counties will continue to lose agricultural land.

Farmers in both counties tend to rely on cash crop production rather than on livestock for a large part of the agriculture sector. In 2016, Racine County ranked eleventh and Kenosha County ranked seventeenth out of Wisconsin’s 72 counties in the production of winter wheat.

Table 1 identifies the harvested acres of selected crops in Kenosha and Racine Counties from 2012 through 2016. In this brief period, there are no obvious trends in production for either county. However, starting in 2013, Racine County farmers harvested more acres of soybeans than acres of corn for grain. Two factors are likely to be the major reasons for this. First, in recent years, the profit margin for soybeans has tended to be slightly higher than for corn, and second, Racine County has tended to raise fewer head of livestock than other counties, which means less need for on-farm feed production. Corn tends to be the preferred grain that is fed to cattle, especially dairy cattle.

Table 1: Acres of Selected Crops from 2012 through 2016

Crop	County	Harvested Acres				
		2012	2013	2014	2015	2016
Corn for Grain	Racine	33,900	30,700	32,700	33,100	34,500
	Kenosha	29,700	28,200	27,900	26,600	22,800
Soybeans	Racine	33,000	33,400	37,100	35,500	35,800
	Kenosha	21,800	22,400	24,200	24,000	NA
Winter Wheat	Racine	8,400	8,920	7,170	7,100	7,290
	Kenosha	5,800	6,650	4,800	4,400	4,770
Alfalfa Hay	Racine	5,360	6,970	NA	6,370	5,630
	Kenosha	NA	3,740	4,740	3,940	NA

* NA = data not published

Land in Agriculture

Kenosha and Racine Counties are classified as urban counties, which are defined as having 100 or more residents per square mile. In 2017, Kenosha County had a population of 168,065 residents and Racine County had a population of 195,146 residents (Wisconsin DOA). The population density of Kenosha County was 618 residents per square mile and for Racine County, it was 587 residents per square mile. These are both much higher than the average for the state, which was 107 residents per square mile. According to the USDA NASS 2012 Census of Agriculture, Kenosha County has 76,632 acres of land in farms or 43.9 percent of the county’s land area and Racine County has 109,964 acres of land in farms or 51.6 percent of the county. Both counties have a higher proportion of land in farms than the statewide average of 42.2 percent of land in farms.

From 1997 to 2012, the acres of land in farms decreased by 10.6 percent in Racine County. In Kenosha County, the decline was 9.6 percent during the same period. These are higher than the 2.2 percent decrease in the amount of land in farms observed for the state as a whole (USDA NASS 2012 and 1997 Census of Agriculture). The larger percentage decreases in Racine and Kenosha Counties show strong pressures on farmland owners in those counties to convert their farmland to non-agricultural use compared to farmland owners in the rest of the state.

Table 2: Acres of Land in Farms

Location	1997	2012
Racine County	123,012	109,964
Kenosha County	84,744	76,632
Wisconsin	14,900,205	14,568,926

Number and Size of Farms

Kenosha County and Wisconsin as a whole both saw an increase in the number of farms from 1997 to 2012 while Racine County experienced a loss during the same period (Table 3). For both counties and the state as a whole, the number of very small farms (those under 50 acres) increased while the numbers in all other farm size categories decreased (Table 4).

Table 3: Change in the Number of Farms between 1997 and 2012

Location	Number of Farms 1997	Number of Farms 2012	Change in the Number of Farms	Percent Change
Racine County	554	575	+21	+3.8%
Kenosha County	388	359	-29	-7.5%
Wisconsin	65,602	69,754	+4,152	+6.3%

Table 4: Farm Size Distributions in 1997 and 2012

Location	0 to 49 Acres		50 to 179 Acres		180 to 499 Acres		More than 500 Acres	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Racine County, 1997	227	41.0%	177	31.9%	98	17.7%	52	9.4%
Racine County, 2012	293	50.9%	154	26.8%	81	14.1%	47	8.2%
Kenosha County, 1997	157	40.5%	117	30.1%	66	17.0%	48	12.4%
Kenosha County, 2012	185	51.5%	93	25.9%	41	11.4%	40	11.2%
Wisconsin, 1997	12,815	19.5%	24,546	37.4%	22,228	33.9%	6,013	9.2%
Wisconsin, 2012	22,428	32.1%	25,502	36.6%	15,688	22.5%	6,136	8.8%

Property Taxes and Values

Table 5 details the 2017 average property tax, assessed value, and sale price per acre of farmland in Racine and Kenosha Counties, urban counties, and all of 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) This data can indicate the level of demand for land in each of the geographic areas. Where land is used as collateral for farm operation loans, higher land values can make larger loans possible. However, higher land values make buying land for farm expansion more costly.

Table 5: Farmland Taxes and Values

Location	2017 Dollars per Acre of Farmland		
	Average Tax	Assessed Value*	Sale Value
Racine County	\$3.60	\$213	\$7,724
Kenosha County	\$4.09	\$241	\$7,380
Urban Counties	\$3.49	\$207	\$7,046
Wisconsin	\$3.43	\$175	\$4,960

Source: USDA, National Agricultural Statistic Service and Wisconsin Department of Revenue.

* The assessed value is an “equalized value” calculated by DOR to correct for variability in estimating the taxable value of real property across municipalities.

The 2017 average property taxes on Racine County farmland were 3.2 percent higher than the urban county average and 5.0 percent higher than the average for Wisconsin. In Kenosha County, the average property tax on farmland was 17.2 percent higher than the urban county average and 19.2 percent higher than the statewide average.

The average assessed value of Racine County farmland was 2.9 percent higher than the urban county average and 21.7 percent higher than the statewide average. Kenosha County’s average assessed value of farmland was 16.4 percent higher than the urban county average and 37.7 percent higher than the average for Wisconsin.

The average sale price of farmland in Racine County was 9.6 percent higher than the average for urban counties and 55.7 percent higher than the average for the state. Likewise, Kenosha County’s average sale price on farmland was 4.7 percent higher than the average for urban counties and 48.8 percent higher than the statewide average. This data does not include farmland sold and converted to nonfarm use nor farmland with buildings or improvements.

Farmland Preservation

Wisconsin’s Farmland Preservation Program (FPP) provides counties, towns, and landowners with tools to aid in protecting agricultural land for continued agricultural use and to promote activities that support the larger agricultural economy. Through this program, counties adopt state-

certified farmland preservation plans that map areas identified as important for farmland preservation and agricultural development based upon reasonable criteria. None of the farmland that would be affected by the proposed project is zoned for exclusive agricultural use. DATCP certified the Racine County Farmland Preservation Plan in 2015 and the Kenosha County Farmland Preservation Plan in 2013. The plans identify farmland preservation areas in the counties and local governments may choose to adopt an exclusive agricultural zoning ordinance to ensure that landowners covered by the ordinance are eligible to claim farmland preservation tax credits. Such an ordinance must also be certified by DATCP.

Within these farmland preservation areas, local governments and owners of farmland can petition for designation by the state as an Agricultural Enterprise Area (AEA). This designation highlights the importance of the area for agriculture and further supports local farmland preservation and agricultural development goals. Designation as an AEA also enables eligible landowners to enter into farmland preservation agreements. Through an agreement, a landowner agrees to voluntarily restrict the use of his/her land for agriculture for fifteen years. None of the land that could be acquired for this project is part of an AEA.

Both AEAs and FPP zoning areas are required to follow the state soil and water conservation standards to protect water quality and soil health.

Drainage Districts

There are no drainage districts within the project limits.

IV. SOILS

Farmland Soil Definitions

Farmland soil is classified by the USDA based on its ability to produce crops. Protecting prime farmland, prime farmland, if drained, and farmland of statewide importance should be a priority for construction projects.

Prime Farmland

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. It has the soil quality, growing season, and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, prime farmlands have 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 farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

Prime Farmland if Drained

This farmland is prime farmland but requires draining in order to have the best combination of physical and chemical characteristic for producing food, feed, forage, fiber, and oilseed crops.

Farmland of Statewide Importance

The criteria for defining and delineating this soil are to be determined by the appropriate state agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some states, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by state law.

Non-prime soils

Non-prime soils have limitations in terms of agricultural production and may be more susceptible to damage from electric line construction.

Soils Affected by the Proposed Project

The following table lists the soils that will be affected most by the proposed project. Based on a desktop review of USDA NRCS Soil Survey data, the most prevalent soil within the project limits is Varna silt loam, followed by Elliott silty clay, Ashkum silty clay loam, Markham silt loam, and finally Navan silt loam. Additional soils in small amounts would also be affected. Most of the affected soils are prime and prime, if drained soils.

Table 6: Soils Affected by the Project

Map Unit	Soil Name	Classification	Natural Drainage	Depth to Water Table (in.)	Available Water Storage	Capability Class
VaB	Varna silt loam 2 to 6% slopes	Prime	Well Drained	24 to 60	High	2e
EtB	Elliott silty clay loam, 2 to 6% slopes	Prime if drained	Somewhat Poorly Drained	0 to 24	Moderate	2e
AtA	Ashkum silty clay loam, 0 to 2% slopes	Prime where drained	Poorly Drained	0 to 12	Moderate	2w
MeB2	Markham silt loam 2 to 6% slopes, eroded	Prime	Moderately Well Drained	24 to 60	High	2e
Na	Navan silt loam	Prime if drained	Poorly Drained	About 0	High	2w

V. AGRICULTURAL LANDOWNER IMPACTS

The following table lists the farmland owners who will be affected by the proposed project and the number of acres to be acquired from each of them.

Table 7: Acres to be Acquired from Each Farmland Owner

Property Owner	Acres
Pamela J. Antosh and Ned E. Lashley	1.1
Borzynski Brothers Properties	9.1
Gitzlaff Properties LLC	1.6
Edwin G. and Marcella Mueller	3.4
Michael A. and Kathleen M. Murphy	4.5
Lawrence P. Ricchio and Sheryl S. Nielsen	2.2
Rossi Investments LLP	3.1
8 acquisitions each one acres or less	5.0
Total	30.0

Table 8 lists the farmland owners who will lose buildings as a result of the proposed project.

Table 8: Affected Buildings of Agricultural Properties

Farmland Owners	Buildings to be Acquired
Scott A. Gustin and Kathleen Murphy	House located outside of the right-of-way
Lawrence P. Ricchio and Sheryl S. Nielsen	One house and one garage at 8424 County Line Road, and one house and one garage at 8404 County Line Road
Michael A. and Kathleen M. Murphy	Two large commercial structures, one house, and two garages

Because of the potential displacement impacts of the proposed project, the acquiring entity will be required to file a relocation service assistance plan in accordance with [Wis. Stat. § 32.25](#).

DATCP Questionnaire to Farmland Owners

DATCP sent questionnaires to the owners of the Borzynski Brothers Properties because of the relatively large loss of land and Michael Murphy because of a loss of buildings. Neither of these landowners responded.

Appraisal and Compensation

Three local entities will acquire the needed land for the proposed project. On the north side of CTH KR from CTH H to 90th Street, the village of Mount Pleasant will acquire the needed land. Racine County will acquire the needed land on the north side of CTH KR from 90th Street to Old

Green Bay Road. The needed land on the south side of CTH KR from CTH H to Old Green Bay Road will be acquired by Kenosha County.

Before negotiations begin, the appropriate local entity will provide an appraisal of the affected property to each landowner. 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 the appropriate local entity within 60 days after the landowner receives the local entity's 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 the local entity and the individual landowners. Local entities are required by law to provide landowners with information about their rights in this process before negotiations begin. [Wis. Stat. § 32.035\(4\)\(d\)](#) additionally stipulates that the acquiring entity cannot negotiate with a landowner or make a jurisdictional offer until 30 days after the AIS is published.

VI. MAILING LIST

GOVERNOR SCOTT WALKER 115 E CAPITOL	SEN TERRY MOULTON AGRICULTURE COMMITTEE 310 S CAPITOL
SENATOR JERRY PETROWSKI TRANSPORTATION COMMITTEE ROOM 123 SOUTH, STATE CAPITOL	REP LEE NERISON AGRICULTURE COMMITTEE 310 N CAPITOL
REPRESENTATIVE JOHN SPIROS TRANSPORTATION COMMITTEE ROOM 15 NORTH, STATE CAPITOL	RESOURCES FOR LIBRARIES (15) DOCUMENT DEPOSITORY PROGRAM 2109 SOUTH STOUGHTON ROAD
STATE DOCUMENTS SECTION THE LIBRARY OF CONGRESS 10 FIRST ST S E WASHINGTON DC 20540-0001	WISDOT LIBRARY 4822 MADISON YARDS WAY
WISDOT CENTRAL OFFICE FILES 4822 MADISON YARDS WAY	DOA RELOCATION UNIT LEGAL SERVICES 101 E. WILSON STREET - FLOOR 10
STEVE HOFF WISDOT 141 NW BARSTOW ST WAUKESHA WI 53188-3789	WENDY CHRISTENSEN RACINE COUNTY CLERK 730 WISCONSIN AVE RACINE WI 53403
MAUREEN MURPHY MT PLEASANT VILLAGE ADMINISTRATOR 8811 CAMPUS DR MT PLEASANT WI 53406	STEPHANIE KOHLHAGEN MT PLEASANT VILLAGE CLERK 8811 CAMPUS DR MT PLEASANT WI 53406
MARY KUBICKI KENOSHA COUNTY CLERK 1010 56TH ST KENOSHA WI 53140	WILLIAM MORRIS SOMERS VILLAGE ADMINISTRATOR PO BOX 197 SOMERS WI 53171
TIMOTHY KITZMAN SOMERS VILLAGE CLERK PO BOX 197 SOMERS WI 53171	EDWIN G & MARCELLA MUELLER 220 OLD GREEN BAY RD KENOSHA WI 53144
MICHAEL A & KATHLEEN M MURPHY 8114 COUNTY LINE RD RACINE WI 53403	LAWRENCE P RICCHIO & SHERYL S NIELSEN 9721 THREE MILE RD FRANKSVILLE WI 53126
ROSSI INVESTMENTS LLP 13912 60TH ST BRISTOL WI 53104	GITZLAFF PROPERTIES LLC 2441 100TH AVE KENOSHA WI 53144
BORZYNSKI BROS PROPERTIES PO BOX 133 FRANKSVILLE WI 53126	PAMELA J ANTOSH & NED E LASHLEY W4181 WHITE SWAN LN RED GRANITE WI 53190
DAN TRELOR KENOSHA CO CONSERVATION DEPT 19600 75TH ST SUITE 185-3 BRISTOL WI 53104	LEIGH PRESLEY KENOSHA & RACINE CO UWEX 19600 75TH ST BRISTOL WI 53104
CHAD SAMPSON RACINE CO LAND CONSERVATION 14200 WASHINGTON AVE STURTEVANT WI 53177-1253	KENOSHA PUBLIC LIBRARY 812 56 TH ST PO BOX 1414 KENOSHA WI 53141-1414

RACINE PUBLIC LIBRARY 75 SEVENTH ST RACINE WI 53403-1201	KENOSHA NEWS 5800 7TH AVE KENOSHA WI 53140
JULIE ANDERSON RACINE CO PUBLIC WORKS & DEVELOPMENT 14200 WASHINGTON AVE STURTEVANT WI 53177	CLEMENT ABONGWA KENOSHA CO DIVISION OF HIGHWAYS 19600 75TH ST SUITE 122-1 BRISTOL WI 53104-9772
THE JOURNAL TIMES 212 4TH ST RACINE WI 53403	

Copies of the final AIS will be emailed to the following:

- Newspapers - Agri-View and Country Today.

APPENDIX A: DATCP STATUTES FOR AGRICULTURAL IMPACT STATEMENTS

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 highway 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. Landowners may also wish to consult with an attorney who should have expertise in eminent domain proceedings. In addition, any Wisconsin licensed appraiser that landowners employ regarding a project where eminent domain could be used 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 administration.
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 administration 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 administration.

(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 administration 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.

APPENDIX B: ADDITIONAL INFORMATION SOURCES

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

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

[Department of Administration \(doa.wi.gov\)](http://doa.wi.gov)

[Relocation Assistance](#) includes several publication on landowner rights under Wisconsin eminent domain law

- [Wisconsin Relocation Rights Residential](#)
- [Wisconsin Relocation Rights for Businesses, Farm and Nonprofit Organizations](#)
- [The Rights of Landowners under Wisconsin Eminent Domain Law](#), Procedures under sec. 32.06 Wis. Stats. (Condemnation procedures in matters other than highways, streets, storm & sanitary sewers, watercourses, alleys, airports and mass transit facilities)

[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 different 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/>)



**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**

**DIVISION OF
AGRICULTURAL RESOURCE MANAGEMENT**

Agricultural Impact Program
P.O. Box 8911
Madison, WI 53708-8911
608-224-4650

https://datcp.wi.gov/Pages/Programs_Services/AgriculturalImpactStatements.aspx