

AGRICULTURAL IMPACT STATEMENT



**DATCP
#4192**

**I-39 / STH 60 Interchange
Columbia County
WisDOT ID # 1012-01-04/74**



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

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

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DATCP RECOMMENDATIONS

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has prepared this Agricultural Impact Statement (AIS) for the proposed WisDOT reconstruction of the interchange at I-39 and State Trunk Highway (STH) 60 in accordance with [Wis. Stat. §32.035](#).

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

- If acquired land is not immediately needed for roadway construction, WisDOT should allow the current operators to continue farming the cropland as long as there is adequate time for crops to mature and be harvested.
- The Columbia County land conservationist should be consulted to ensure that construction proceeds in a manner that minimizes drainage problems, crop damage, soil compaction, and soil erosion on adjacent farmland.
- Landowners and operators should be given advanced notice of acquisition and construction schedules so that farm activities can be adjusted accordingly.

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 and 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. 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 the interchange at I-39 and State Trunk Highway (STH) 60. This project is located in section 20 of the town of Arlington T10N-R9E in Columbia County. Figure 1 show the project location. The project will require the fee-simple acquisition of 13.7 acres from three farmland owners. Acquisitions of the needed land are expected to begin in 2018 and construction is expected to start in the fall of 2020.

WisDOT is proposing to replace the northbound and southbound bridges. The interchange will be reconfigured from a partial cloverleaf to a full diamond interchange. Diamond interchanges are the most common type of interchange and are more in line with drivers' expectations for rural interchanges. A full diamond interchange also gives WisDOT more flexibility if/when I-39 is expanded to an eight-lane freeway.

The conversion to a diamond interchange will require the acquisition of land in the northwest and southeast quadrants of the existing interchange with varying right-of-way widths. The existing land use in the northwest quadrant is mixed and includes agricultural and commercial land. The anticipated amount of agricultural land to be acquired for the northwest quadrant is approximately 3.1 of 5.4 total acres. In the southeast quadrant, the land use is all agricultural and the anticipated acquisition is 8.1 acres.

STH 60 will be lowered to meet vertical clearance standards. STH 60 will also be divided at the interchange to provide left and right turn lanes. No agricultural land acquisitions are planned along STH 60.

Figure 1: Project Location Map



Existing Highways

I-39 is a 6-lane freeway with a concrete barrier in the median. The existing right-of-way varies, but is typically 300 feet wide. The current interchange has a partial cloverleaf configuration with two exit loops and two diamond on-ramps. Existing ramps are in the northeast and southwest quadrants.

STH 60 is a two lane rural highway.

Need

The I-39 bridges over STH 60 were built in 1961 and are at the end of their service life. The roadway adjacent to the bridges was replaced in 2009. Both the exit- and on-ramps were built with design standards that are not used today.

Alternatives

Partial cloverleaf interchange with updated ramps: WisDOT rejected this alternative because it would require adding a lane to both interstate bridges for deceleration to the exit ramp as well as the acquisition of more right-of-way than for the proposed project. To meet today's standards for super-elevation, the radius of the loop for the off-ramps would need to be increased significantly, and require the purchase of residential and commercial properties in the northeast and southwest quadrants. This design is also less flexible if future I-39 traffic conditions warrant the expansion of the interstate from three to four lanes in each direction.

III. AGRICULTURAL SETTING

The following information is intended to describe the existing agricultural sector of Columbia County in general terms. Section IV, "Affected Properties" discusses the specific potential impacts from this project and the concerns of the agricultural property owners and renters.

Agricultural Productivity

Columbia County ranked sixth out of Wisconsin's 72 counties in the production of corn for grain, eighth in winter wheat, and twelfth in soybeans in 2015. (USDA NASS Annual Wisconsin Agricultural Statistics Bulletin).

Table 1 shows the number of acres harvested annually of selected crops in Columbia County for 2011 through 2015. Overall, the amount of land where corn for grain and winter wheat was harvested decreased while the amount of land where soybean and alfalfa hay was harvested increased. These changes led to a loss of 6,500 acres of cropland used for these crops during this five-year period.

Table 1: Acres of Selected Crops Harvested

Crop	2011	2012	2013	2014	2015
Corn for Grain	126,500	125,500	112,600	114,800	98,800
Corn for Silage	NA	NA	NA	NA	NA
Soybeans	38,000	37,800	40,300	45,200	47,900
Winter Wheat	13,400	8,600	9,560	10,000	7,600
Alfalfa Hay	16,700	19,900	17,900	23,100	28,000

NA = data not published

Land in Agriculture

Columbia County is classified as a rural county, a county with an average of less than 100 residents per square mile. The current population of the county is 57,028 residents. According to the 2012 Census of Agriculture, Columbia County had 307,973 acres of land in farms or approximately 62.2 percent of the total land area; whereas, the average for rural counties is 38.7 percent of the total land area. 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 Columbia County land in farms declined by 11.6 percent. In Wisconsin as a whole, the amount of land in farms declined by 10.2 percent. This shows that, on average, Columbia County is losing farmland at a similar rate to the state as a whole. The loss of farmland is likely due to development.

Table 2: Acres of Land in Farms

Location	1997	2012
Columbia County	348,218	307,973
Wisconsin	16,232,744	14,568,926

Number and Size of Farms

Between 1997 and 2012, the number of Columbia County farms declined by 4.5 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 16 acres in Columbia 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 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, 1997 and 2012

Location	1997		2012	
	Number of Farms	Average Size of Farms (acres)	Number of Farms	Average Size of Farms (acres)
Columbia County	1,637	213	1,564	197
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
Columbia County	\$4.30	\$239	\$6,862
Rural Counties	\$3.02	\$160	\$4,106
Wisconsin	\$3.15	\$170	\$5,131

In 2015, average property taxes on Columbia County farmland were 42.4 percent higher than the average for rural counties and 36.5 percent higher than the average for Wisconsin (Wisconsin Department of Revenue). This high tax rate may be one of the factors causing farmland owners to convert their property to non-farm uses in Columbia County.

The average assessed value of farmland in Columbia County was 49.4 percent higher than the average for rural counties and 40.6 percent higher than the average for Wisconsin as a whole (Wisconsin Department of Revenue).

In Columbia County, the average sale price of agricultural land was 67.1 percent higher than the average for rural counties and 33.7 percent higher 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. AFFECTED PROPERTIES

Soils

The reconstruction of the interchanges will take farmland in the northwest and southeast quadrants of the existing interchange out of production. The soils that will be affected in the greatest quantities are listed along with their soil properties in Table 5 below.

Table 5: Soil Affected by the Project

Map Unit	Soil Name	Classification	Natural Drainage	Depth to Water Table	Available Water Storage	Capability Class
RdC2	Ringwood wilt loam, 6 to 12% slopes-erode	Statewide Importance	Well Drained	More than 80 Inches	High	3e
RdB2	Ringwood silt loam, 1 to 6% slopes-eroded	Prime	Well Drained	More than 80 Inches	High	2e
PnB	Plano silt loam, till substratum, 2 to 6% slopes	Prime	Well Drained	40 to 45 Inches	High	2e
PnA	Plano silt loam, till substratum, 0 to 2% slopes	Prime	Well Drained	40 to 45	High	1

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

None of the proposed acquisitions are located within any drainage districts.

Acquisitions from Farmland Owners

The proposed reconstruction of the I-39 and STH 60 interchange requires the fee-simple acquisition of 13.65 acres of land from three farmland owners and 0.9 of an acre of easements from eight farmland owners. The fee-simple acquisitions are listed in Table 6.

Table 6: Proposed Property Acquisitions

Farmland Owners	Acquisitions in Acres
Henry R. Nelson Residuary Trust, c/o Julie Larsen	8.10
4 Golden Spoons LLC	5.40
One acquisition that is less than 1 acre	0.15
TOTAL	13.65

DATCP staff contacted the owners of the two largest affected farm properties by mail. We received a completed questionnaire from the Henry R. Nelson Residuary Trust, but not from the 4 Golden Spoons LLC. Information provided by the Nelson Trust is summarized below.

Farmland Owner: Henry R. Nelson Residuary Trust, c/o Julie Larsen
Proposed Acquisition: Fee-simple acquisition of 8.1 acres

The Trust owns 267.08 acres of land consisting of 252 acres of cropland and 15.08 acres in other use. The owner also indicated that 129.39 acres of this property are zoned A-1 (Agriculture) and the remaining 137.69 acres are zoned C-3 (Commercial – Highway Interchange). In an average year, the renters grow 109 acres of corn and 143 acres of hay.

The renters indicated that the affected farmland is very productive. They have farmed this land for 30 years and has invested time and money in building the soils on this property. Specifically, they have used lime to raise the pH of the soil, which makes any phosphorous and potassium fertilizer more readily available for plants to take up. The renter is also very concerned about the added runoff from the expanded interchange. Proper safeguards are needed to prevent additional runoff water from flooding adjacent cropland.

The Trust owns a billboard that might be part of the proposed acquisition. The owners is concerned that is the billboard is acquired, revenue from the lease of this billboard will be lost.

Farmland Owner: 4 Golden Spoons LLC
Proposed Acquisition: Fee-simple acquisition of 5.4 acres

In addition to the cropland that will be affected by the proposed project, the owners are concerned that the project will significantly affect their other business on this land, Bill’s Towing and Auto Repair LLC. The owners provided no other information about their property or concerns.

Drainage

The renters of the Nelson property are very concerned that the project is constructed so that any increased runoff is properly managed so it doesn't affect adjacent cropland.

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.

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	LRC DOCUMENTS DEPT UW-STEVENS POINT 900 RESERVE ST STEVENS POINT WI 54481-1985
SUSAN M MOLL COLUMBIA COUNTY CLERK 400 DEWITT ST PORTAGE WI 53901	GEORGE PLENTY ARLINGTON TOWN CHAIR W9048 LOPER DR POYNETTE WI 53955-9622
PEGGY BENSON ARLINGTON TOWN CLERK N1899 KOHN RD LODI WI 53555-9413	HENRY R NELSON RESIDURY TRUST C/O AMELIA NELSON 718 N LAKE RD OCONOMOWOC WI 53066
4 GOLDEN SPOONS LLC W11494 REYNOLDS RD LODI WI 53555	KURT CALKINS LAND & WATER CONSERVATION DEPT PO BOX 485 PORTAGE WI 53901
COLUMBIA COUNTY UWEX COLUMBIA CO ANNEX 120 W CONANT ST PORTAGE WI 53901	LODI WOMAN'S CLUB PUBLIC LIBRARY 130 LODI ST LODI WI 53555-1217
PORTAGE PUBLIC LIBRARY 253 W EDGEWATER ST PORTAGE WI 53901-2117	PORTAGE DAILY REGISTER PO BOX 470 PORTAGE WI 53901
BRIAN TAYLOR WISCONSIN DEPARTMENT OF TRANSPORTATION 2101 WRIGHT ST MADISON WI 53704-2559	SHAUN ANDERSON WISCONSIN DEPARTMENT OF TRANSPORTATION 2101 WRIGHT ST MADISON WI 53704-2559

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

APPENDIX A: 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 B: 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



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

**DIVISION OF
AGRICULTURAL RESOURCE MANAGEMENT**

Agricultural Impact Program

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