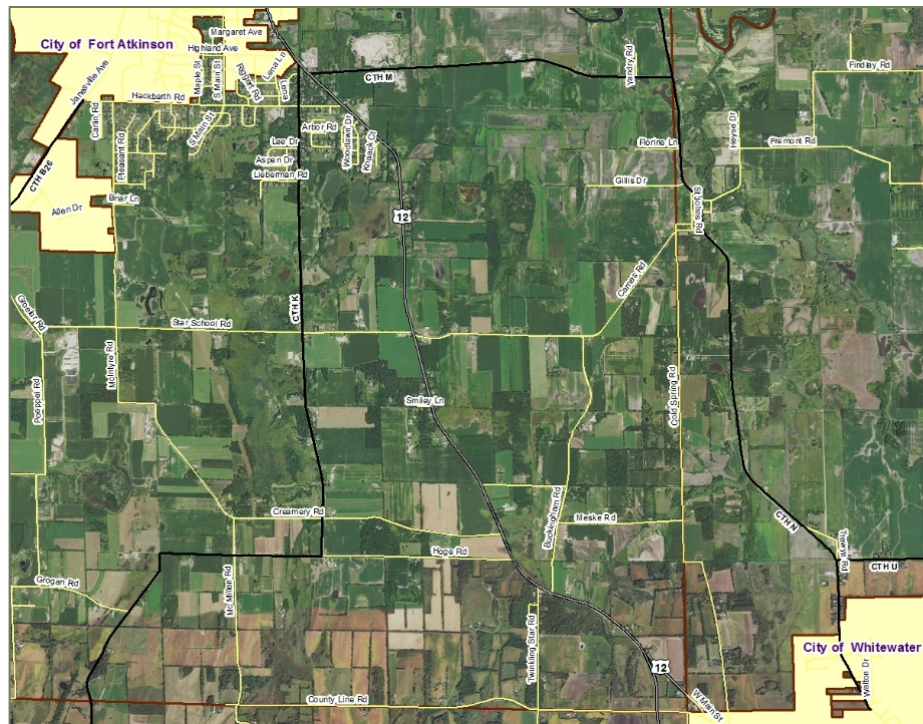


AGRICULTURAL IMPACT STATEMENT



**DATCP
#4272**

**USH 12: Fort Atkinson to Whitewater
Jefferson County
WisDOT # 3575-03-01/71**



**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
*PUBLISHED OCTOBER 17, 2018***

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DATCP #4272
USH 12: Fort Atkinson to Whitewater
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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

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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 resurfacing and reconstruction of U.S. Highway (USH) 12 between the city of Fort Atkinson and the city of Whitewater in Jefferson County (DATCP #4272). The project is proposed by the Wisconsin Department of Transportation (WisDOT).

The project will require the acquisition of 6.05 acres of land in fee-simple and 8.85 acres of easements from 11 farmland owners. The fee-simple acquisitions are generally located at curves and at intersections, and the easements are located where grading is needed.

As part of its review of the project, DATCP sent a questionnaire to the one farmland owner who would have more than 5 acres of land acquired for the proposed project. The farmland owner's response is summarized in the section on landowner impacts.

Having reviewed all of the materials provided by WisDOT and the comments from the property owner, DATCP makes the following recommendations.

Recommendations to WisDOT

- During project design, WisDOT should consult with the Jefferson County Conservationist to ensure that construction proceeds in a manner that minimizes drainage problems, crop damage, soil erosion and soil compaction on adjacent farmland.
- 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 practical locations for farm operations.
- Farmland owners and operators should be given advance notice of acquisition and construction schedules so that farm activities can be adjusted accordingly.
- When WisDOT acquires land well in advance construction, WisDOT should consider allowing the farmer to continue cropping the land if there is adequate growing season for the crop to mature and be harvested before construction begins.

Recommendations to the 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.

As stated in Wis. Stat. §32.035(4)(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.

The full text of [Wis. Stat. §32.035](#) is included in Appendix A. Additional references to statutes that govern eminent domain and condemnation processes and other sources of information are also included in Appendices A and B.

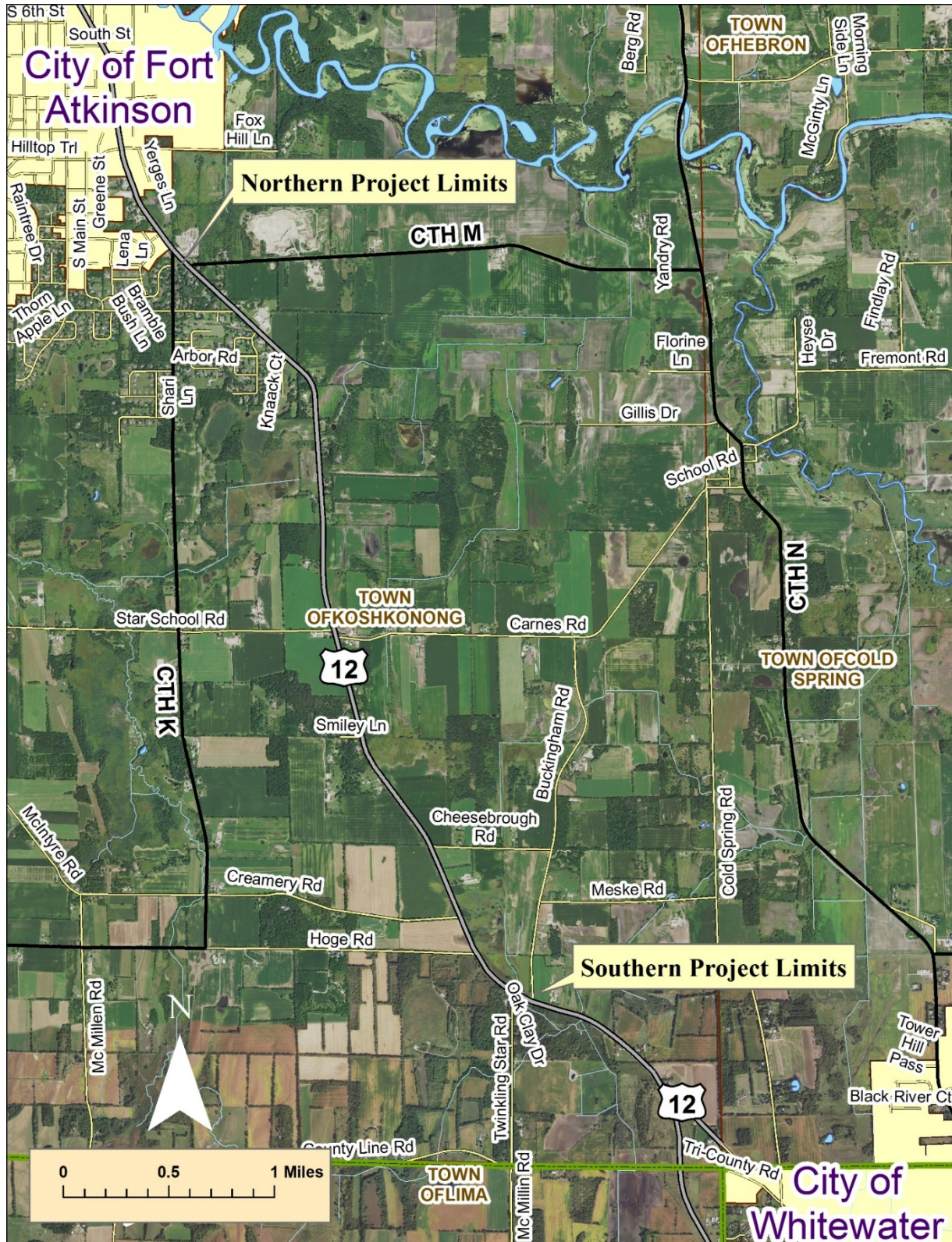
II. PROJECT DESCRIPTION

The Wisconsin Department of Transportation (WisDOT) proposes to reconstruct 4 miles of U.S. Highway (USH) 12 from 650 feet south of County Trunk Highway (CTH) M southeast of the city of Fort Atkinson to Buckingham Road northwest of the city of Whitewater. This project is located in the town of Koshkonong T5N-R14E in Jefferson County. The project location is shown in Figure 1. WisDOT proposes to acquire 6.05 acres of land in fee-simple and 8.85 acres of land in easements from eleven farmland owners for the proposed project. Acquisitions will begin in April of 2019 and construction is expected to take place in 2022.

WisDOT will widen the right-of-way of USH 12 to 88 feet, within the project limits, affecting both sides of the highway. The driving lanes will remain 12 feet wide, but the shoulders will be widened to 10 feet with 5 feet of pavement and 5 feet of gravel. Intersections will be reconfigured to meet current safety and design standards. WisDOT will also add curb and gutter at the intersections. Portions of the existing highway will be relocated slightly to straighten

curves and flatten the existing grade. WisDOT will replace and upgrade all of the culverts within the project limits.

Figure 1: Project Location Map



Existing Highway

USH 12 is a two-lane roadway. Each driving lanes is 12 feet wide and the shoulders are 6 feet wide with 3 feet of pavement and 3 feet of gravel. The existing right-of-way generally ranges from 66 to 83 feet wide, but is wider at a few curves.

Need

WisDOT has indicated that the existing pavement is worn and rutted, and the subgrade is failing. As previously described, various aspects of the roadway should be upgraded to meet current design standards. These include curves, grade, intersection configuration, shoulder width, and culverts.

Alternatives

WisDOT considered and rejected the no build alternative because it would not improve the pavement or the geometrics of the roadway. Only replacing the pavement was also rejected because it would not improve the roadway geometrics or replace any culverts.

III. AGRICULTURAL SETTING

The following information is intended to describe the existing agricultural sector for Jefferson County in general terms. Section V, Agricultural Landowner Impacts discusses the specific potential impacts from this project on agriculture. The majority of the data provided in this section was obtained from the USDA, National Agricultural Statistic Service.

Agricultural Productivity

Although Jefferson County is an urban county surrounded by urban counties, it has a strong agricultural sector. In 2016, Jefferson County ranked seventh out of Wisconsin's 72 counties in the production of soybeans, tenth in corn for grain, and twelfth in winter wheat.

Table 1 shows the harvested acres of selected crops in Jefferson County from 2012 through 2016. During this brief period, there are no obvious trends in Jefferson County's crop production.

Table 1: Acres of Selected Crops from 2012 to 2016

Crop	Harvested Acres				
	2012	2013	2014	2015	2016
Corn for Grain	80,000	70,300	82,600	74,800	82,300
Soybeans	50,900	49,000	51,700	53,000	52,700
Winter Wheat	6,800	8,140	NA	6,700	6,370
Alfalfa Hay	13,700	14,200	19,200	12,600	11,300

* NA = data not published

Land in Agriculture

Jefferson County is classified as an urban county, which has 100 or more residents per square mile. In 2017, Jefferson County had a population of 84,412 residents (Wisconsin DOA) with a population density of 152 residents per square mile. This is higher than the average for the state, which was 107 residents per square mile. According to the USDA NASS 2012 Census of Agriculture, Jefferson County had 227,901 acres of land in farms or 63.9 percent of the county. This is much higher than the statewide average of 42.2 percent of land in farms.

In Jefferson County, the acres of land in farms decreased by 5.9 percent from 1997 to 2012. This is slightly higher than the 4.1 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 decrease in Jefferson County shows slightly stronger pressure on farmland owners in Jefferson County to convert their farmland to non-agricultural use compared to farmland owners in the state as a whole.

Table 2: Acres of Land in Farms

Location	1997	2012
Jefferson County	242,301	227,901
Wisconsin	14,900,205	14,568,926

Number and Size of Farms

From 1997 through 2012, the number of farms in Jefferson County slightly declined while Wisconsin as a whole experienced an increase (Table 3).

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
Jefferson County	1,240	1,225	-15	-1.2%
Wisconsin	65,602	69,754	+4,152	+6.3%

Table 4 details the farm-size distribution in Jefferson County and Wisconsin for the years of 1997 and 2012. Between these years, the number and percentage of very small farms (0 to 49 acres) increased in both Jefferson County and the state. However for the other farm size categories, Jefferson County showed a decrease, especially in the mid-range size categories of 50 to 179 acres and 180 to 499 acres. Wisconsin, on the other hand, experienced little change to the number and percentage in farms 50 to 179 acres and farms that were more than 500 acres. There was a more substantial drop in farms 180 to 499 acres in size.

Table 4: Farm Size Distribution in Jefferson County and Wisconsin

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
Jefferson County, 1997	320	25.8%	522	42.1%	311	25.1%	87	7.0%
Jefferson County, 2012	486	39.7%	414	33.8%	240	19.6%	85	6.9%
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 Jefferson County, urban counties, and 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
Jefferson County	\$3.82	\$234	\$5,826
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 Jefferson County farmland were 9.5 percent higher than the urban county average and 11.4 percent higher than the Wisconsin average. The assessed value of Jefferson County farmland was 13.0 percent higher than the urban county average and 33.7 percent higher than the statewide average. The average sale price of farmland in Jefferson County was 1.7 percent lower than the average for urban counties and 17.5 percent higher than the average for the state. 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. Most of the property affected by this project is zoned A-1 Farmland Preservation. DATCP certified the Jefferson County Farmland Preservation Plan in 2012. The plans identify farmland preservation areas in the county and local governments may choose to adopt an exclusive agricultural zoning ordinance to ensure that farmland covered by the ordinance is eligible for 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 to agriculture for fifteen years. None of the land that would 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

USH 12 does not cross any Drainage Districts within the project limits.

IV. SOILS

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 Kidder loam with 2 to 6 percent slopes. The soils are listed in descending order of area covered by the project in Table 6. Additional soils in small amounts will also be affected. Most of the affected soils are classified as prime farmland.

Table 6: Soils Affected by the Project

Map Unit	Soil Name	Classification	Natural Drainage	Depth to Water Table (in.)	Available Water Storage	Capability Class
KfB	Kidder loam, 2 to 6% slopes	Prime	Well Drained	>80	Moderate	2e
KeB	Kidder sandy loam, 2 to 6% slopes	Prime	Well Drained	>80	Moderate	2e
LaB	Lamartine silt loam, 2 to 6% slopes	Prime where Drained	Somewhat Poorly	12 to 24	Moderate	2e
BpB	Boyer sandy loam, 2 to 6% slopes	Prime	Well Drained	>80	Low	3s
KfC2	Kidder loam, 6 to 12% slopes-eroded	Statewide Importance	Well Drained	>80	Moderate	3e
WxB	Whalan Loam, 2 to 6% slopes	Prime	Well Drained	>80	Moderate	2e
KgB	Kidder loam, moderately well drained, 2 to 6% slopes	Prime	Moderately Well Drained	30 to 80	Moderate	2e

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.

V. AGRICULTURAL LANDOWNER IMPACTS

Table 7 lists the farmland owners who will be affected by the proposed project and the number of acres to be acquired by WisDOT.

Table 7: Acres to be Acquired from Each Farmland Owner

Property Owner	Acres of Fee-simple Acquisition	Acres of Easement Acquisition
Marcia A. Stade Trust	2.09	3.12
William P. & Karen M. Stade	0.85	0.85
Advanced Disposal	1.06	2.25
John A. Kriedeman	0.35	0.69
Pond Hill Dairy Farm	0.53	0.76
6 acquisitions each one acres or less	1.07	1.18
Total	6.05	8.85

Only one farmland owner, the Marcia A. Stade Trust, will lose more than 5 acres of land as a result of the proposed project. DATCP mailed a questionnaire to the Stade Trust to gather information about the trust owner’s farmland and concerns about the project. The landowner’s concerns are summarized below.

The Marcia A. Stade Trust owns 240 acres of land that is farmed by William P. Stade. This property consists of 183 acres of cropland, 27 acres of woodland, 7 acres for the buildings, 7 acres of wetlands and drainage ditch, 5.5 acres of pasture, and 10 acres for road easements.

The owner is concerned that the project will affect access to this property, consisting of two driveways and five field entrances. All of them are needed for farming. One driveway on the east side of USH 12 provides access to the house and the other driveway on the west side of USH 12 provides access to the barn. One field entrance is located on the west side of USH 12 across from the house and the other four field entrances are on the east side of USH 12.

The owner also indicated that the project could affect fencing on both sides of USH 12 that hold cattle. Compensation for the fencing within the area acquired by WisDOT will be included in the appraisal. If fencing or other improvements are damaged outside of the right-of-way, the owner could receive damages, or the improvement will be restored, repaired, or replaced to a condition similar or equal to that existing before the damage was done.

Appraisal and Compensation

Before negotiations begin, WisDOT 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 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.

WisDOT is required to provide landowners with information about their rights in this process before negotiations begin. [Wis. Stat. § 32.035\(4\)\(d\)](#) additionally stipulates that WisDOT 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 123 SOUTH CAPITOL	REP LEE NERISON AGRICULTURE COMMITTEE 310 N CAPITOL
REP JOHN SPIROS TRANSPORTATION COMMITTEE 15 NORTH 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	JEREMY HALL WISDOT 2101 WRIGHT ST MADISON WI 53704-2559
MARCIA A STADE TRUST N26643 COUNTY ROAD BA RICHLAND CENTER WI 53581	BARBARA A FRANK JEFFERSON COUNTY CLERK 311 S CENTER AVE JEFFERSON WI 53549-1701
BILL BURLINGAME KOSHKONONG TOWN CHAIR N593 BLACKHAWK BLUFF MILTON WI 53551	KIM CHENEY KOSHKONONG TOWN CLERK W5609 STAR SCHOOL RD FORT ATKINSON WI 53538
MARK WATKINS JEFFERSON CO CONSERVATION 311 S CENTER AVE RM 113 JEFFERSON WI 53549-1701	LAVERN GEORGSON UWEX 864 COLLINS RD JEFFERSON WI 53549
JEFFERSON PUBLIC LIBRARY 321 S MAIN ST JEFFERSON WI 53549-1772	DWIGHT FOSTER PUBLIC LIBRARY 102 E MILWAUDEE AVE FORT ATKINSON WI 53538-2049
ERVIN L YOUNG MEMORIAL LIBRARY 431 W CENTER ST WHITEWATER WI 53190-1915	DAILY JEFFERSON COUNTY UNION 28 MILWAUKEE AVE W FORT ATKINSON WI 53538

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 WisDOT 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.

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 curbing, 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: 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)

[Department of Natural Resources \(dnr.wi.gov\)](http://dnr.wi.gov)

- [Managed Forest Law](#)

[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



**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