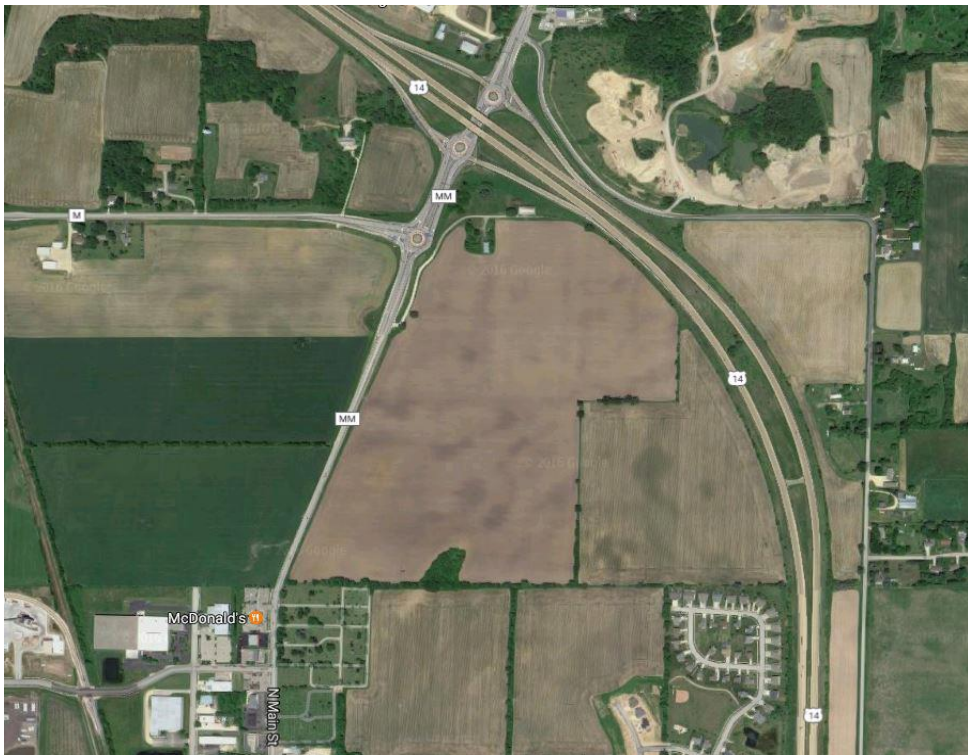


AGRICULTURAL IMPACT STATEMENT



**DATCP
#4239**

**USH 14/CTH MM
Salt Shed and Park & Ride
Dane County
WisDOT ID # 5155-04-04/80**



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

PUBLISHED APRIL 3, 2018

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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 SUMMARY OF ANALYSIS AND RECOMMENDATIONS

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 Wisconsin Department of Transportation (WisDOT) is proposing to construct a new salt shed and park & ride south of the US Highway (USH) 14 and County Trunk Highway (CTH) MM interchange. WisDOT submitted project information to DATCP on December 8, 2017. The proposed project will require the fee-simple acquisition of 8.3 acres of land from a 106-acre parcel of farmland owned by Arthur Donaldson and farmed by Randy Shotliff.

As part of its review of the project, DATCP spoke with Arthur Donaldson's son, Terry Donaldson. DATCP staff also spoke to Mr. Shotliff, the renter of the cropland.

Having reviewed all of the materials provided by WisDOT and other available information plus the comments from the owner and renter, DATCP recommends the following actions to mitigate impacts to the adjacent farmland and farmland operation.

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 landowner and renter to ensure that there is minimal interference with farm operations.
- WisDOT should consult with the Dane County land conservationist prior to the start of construction to ensure that construction proceeds in a manner that minimizes drainage problems, crop damage, soil compaction, and soil erosion on adjacent farmland.
- WisDOT should give Mr. Terry Donaldson and Mr. Shotliff advance notice of acquisition and construction schedules so that farm activities can be adjusted accordingly.

Recommendations to the Agricultural Property Owner

- The affected landowner should fully describe and discuss property improvements and farm operations with the appraisers so that they 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 DATCP may choose to prepare an AIS if an acquisition of 5 or fewer acres will have a significant impact on a farm operation. Significant impacts could include the acquisition of buildings, the acquisition of land used to grow high-value crops, or the severance of land. WisDOT may not negotiate with or make a jurisdictional offer to a landowner until 30 days after the AIS is published.

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

II. PROJECT DESCRIPTION

WisDOT is proposing to construct a salt shed, park & ride lot, and a fourth leg off an existing roundabout south of the US Highway (USH) 14 and County Trunk Highway (CTH) MM interchange. This project is located mostly in the southern half of section 36 in the city of Fitchburg in Dane County. Figure 1 shows the location of the project. The project will require the fee-simple acquisition of 8.3 acres of land from a 106-acre parcel owned by Arthur Donaldson. The land will be acquired sometime in or about July of 2018 and construction is expected to start in the spring of 2020.

The salt shed will store road salt and provide space for the maintenance of road equipment. The location of the proposed salt shed will allow for convenient distribution and use of salt in south central Dane County. WisDOT is proposing the park & ride lot to facilitate multimodal options for the traveling public.

Figure 1: Project Location



Alternatives

WisDOT considered and rejected several alternative locations for this project.

One alternate site considered for the project is located in the northeast quadrant of the USH 14 and CTH MM interchange, north of Schuster Road. WisDOT rejected this site because it is too close to an existing gravel pit. Additionally, it would require a portion of Schuster Road to be relocated for the proposed park & ride lot.

Another alternate site is located in the southeast quadrant of the CTH MM and CTH M intersection. This site was rejected because it tends to pond with water after heavy rains and the owner is not a willing seller.

A third alternate site considered is located in the northwest quadrant of the CTH MM and CTH M intersection and was rejected because of the steep grade along CTH M, which would make access difficult for Dane County plows.

III. AGRICULTURAL SETTING

The following information is intended to describe the existing agricultural sector in Dane County in general terms. Section IV, "Agricultural Landowner Impacts" discusses the specific potential impacts.

Agricultural Productivity

In 2016, Dane County ranked first out of Wisconsin’s 72 counties in the production of corn for grain, second in soybeans, third in milk and in winter wheat, and seventh in alfalfa hay (USDA NASS Annual Wisconsin Agricultural Statistics Bulletin).

Table 1 shows the number of acres harvested annually of selected crops in Dane County for 2012 through 2016. These numbers reflect a possible slight overall shift from dairy which requires mainly hay and silage, to cash crops, chiefly corn and soybeans.

Table 1: Acres of Selected Crops Harvested

Crop	2012	2013	2014	2015	2016
Corn for Grain	160,700	166,900	177,700	144,500	176,500
Corn for Silage	43,600	NA	NA	45,600	NA
Soybeans	75,500	74,400	78,800	85,000	80,400
Winter Wheat	14,000	16,200	14,000	14,500	13,600
Alfalfa Hay	27,700	34,600	34,900	26,600	25,200

NA = data not published

Land in Agriculture

Dane County is classified as an urban county, which has an average of more than 100 residents per square mile. The current population of the county is 524,787 residents. According to the

2012 Census of Agriculture, Dane County had 504,420 acres of land in farms or approximately 65.6 percent of the total land area. Agricultural land use in urban counties averages 56.3 percent, while for Wisconsin as a whole, farmland represents 42.2 percent of land use. Land in farms consists primarily of agricultural land used for crops, pasture, or grazing. It also includes woodland and wasteland, providing it is part of the overall farm operation.

From 1997 to 2012, the acres of Dane County land in farms declined by 1.7 percent. In Wisconsin as a whole, the amount of land in farms declined by 10.2 percent. However since 2012, more land has been taken out of production in Dane County and development pressure remains high, particularly surrounding the city of Madison.

Table 2: Acres of Land in Farms

Location	1997	2012
Dane County	512,971	504,420
Wisconsin	16,232,734	14,568,926

Number and Size of Farms

Between 1997 and 2012, the number of Dane County farms increased by 5.9 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 9 acres in Dane County and increased by 5 acres in Wisconsin from 1997 to 2012. Changes in the size of farms can indicate a change in the types of crops grown on those farms. Small farms tend to grow specialty crops and organic produce while larger farms tend to grow cash crops and raise livestock.

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

Location	1997		2012	
	Number of Farms	Average Size of Farms (acres)	Number of Farms	Average Size of Farms (acres)
Dane County	2,595	198	2,749	183
Wisconsin	79,541	204	69,754	209

Property Taxes and Values

Table 4 details the 2016 average property tax, assessed value, and sale price per acre of agricultural land in Dane County, urban 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	2016 Dollars per Acre of Farmland		
	Average Tax	Assessed Value	Sale Value
Dane County	\$4.04	\$238	\$9,170
Urban Counties	\$3.22	\$181	\$7,199
Wisconsin	\$3.17	\$173	\$5,221

In 2016, average property taxes on Dane County farmland were 25.5 percent higher than the average for urban counties and 27.4 percent higher than the average for Wisconsin (Wisconsin Department of Revenue). This relatively high tax rate may be one factor causing farmland owners to convert their property to non-farm uses in Dane County.

The average assessed value of farmland in Dane County was 31.5 percent higher than the average for urban counties and 37.6 percent higher than the average for Wisconsin as a whole (Wisconsin Department of Revenue).

In Dane County, the average sale price of agricultural land was 27.4 percent higher than the average for urban counties and 75.6 percent higher than the average for Wisconsin (NASS Wisconsin 2017 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 2016 and may not accurately reflect the current market for farmland.

IV. AGRICULTURAL LANDOWNER IMPACTS

Soils

Just over 81 percent of the soils that will be affected by the proposed project are Plano silt loam with a gravelly substratum and 0 to 2 percent slopes. Of the remaining project area soils, 12 percent are Plano silt loam with a gravelly substratum and 7 percent are Batavia silt loam with gravelly substratum, both with 2 to 6 percent slopes. The following table includes information about each of these soils.

Table 5: Soil Properties

Map Unit	Soil Name	Classification	Natural Drainage	Depth to Water Table	Available Water Storage	Capability Class
PoA	Plano silt loam, gravelly substratum with 0 to 2% slopes	Prime	Well Drained	More than 80 Inches	High	1

Map Unit	Soil Name	Classification	Natural Drainage	Depth to Water Table	Available Water Storage	Capability Class
PoB	Plano silt loam, gravelly substratum with 2 to 6% slopes	Prime	Well Drained	More than 80 inches	High	1
BbB	Batavia silt loam, gravelly substratum with 2 to 6% slopes	Prime	Well Drained	More than 80 Inches	High	2e

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

Drainage Districts

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

Acquisitions from Farmland Owners

The proposed project will require the fee-simple acquisition of 8.3 acres of land from one farmland owner, Arthur Donaldson. The parcel is mostly cropland but includes three outbuildings. Mr. Donaldson’s son, Terry, indicated that his only concern about the project is how WisDOT will store the salt so that it is contained and doesn’t migrate to adjacent land.

The proposed salt shed design will include a stormwater detention pond and grass swales to treat stormwater runoff as required under [Wis. Admin. Code Ch. Trans 401](#) - Construction Site Erosion Control and Storm Water Management Practices. WisDOT will also meet all requirements of [Wis. Admin. Code Ch. Trans 277](#) – Highway Salt Storage Requirements, which include but are not limited to construction requirements, yearly inspections, and standards to prevent the migration of highway salt to adjacent properties or waters of the state.

Randy Shotliff rents the land to grow corn, soybeans, sweet corn, lima beans, and other crops in rotation. While Mr. Shotliff would prefer not to lose any farmland, he believes the project is needed and accepts that there will be tradeoffs because of the project.

Buildings

The proposed acquisition will include three buildings. According to WisDOT, the white pole building, located on the northeast side of the lot, is 110 by 60 feet. The blue pole building, located on the south side of the lot is 60 by 40 feet. Randy Shottliff indicated that he stores machinery, hay, and straw in these buildings. The corn crib, located on the northeast side of the lot, is not currently in use. Several trees will also be included in the proposed acquisition.

Property Access

Access to the remaining Donaldson property will persist in the current general location; however, some minor modifications may be needed.

Drainage

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

[Wis. Stat. § 88.87](#) 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 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.

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 JOHN SPIROS TRANSPORTATION COMMITTEE 15 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	LORRAINE BETZEL WISCONSIN DEPT OF TRANSPORTATION 2101 WRIGHT ST MADISON, WI 53704
TERRY DONALDSON PO BOX 976 BELOIT WI 53512-0976	SCOTT McDONNELL DANE COUNTY CLERK 210 MLK JR BLVD RM 106A MADISON WI 53703-3342
PAT MARSH FITCHBURG CITY ADMINISTRATOR 5520 LACY RD FITCHBURG WI 53711	PATTI ANDERSON FITCHBURG CITY CLERK 5520 LACY RD FITCHBURG WI 53711
LAURA HICKIN DIRECTOR DANE CO LAND & WATER RESOURCES DEPT 5201 FEN OAK DR RM 208 MADISON WI 53718-8827	HEIDE JOHNSON DANE CO UWEX 5201 FEN OAD DR RM 138 MADISON WI 53718
FITCHBURG PUBLIC LIBRARY 5530 LACY RD FITCHBURG WI 53711	MADISON PUBLIC LIBRARY 201 W MIFFLIN ST MADISON WI 53703-2597
WISCONSIN STATE JOURNAL 1901 FISH HATCHERY RD PO BOX 8058 MADISON WI 53708	RANDY SHOTLIFF 2761 CRINKLE ROOT DR FITCHBURG WI 53711

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

APPENDIX A: APPLICABLE STATUTES AND REQUIREMENTS

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: INFORMATION SOURCES

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

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

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

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

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

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

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

For general legal information and assistance in finding a lawyer

Background Resources

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



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