

# AGRICULTURAL IMPACT STATEMENT



**DATCP  
#4163**

**CTH "S": CTH "H" to Brumback  
Boulevard  
Kenosha County  
WisDOT ID # 3210-00-05**



**WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION  
*PUBLISHED SEPTEMBER 29, 2016***



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Wisconsin Department of Transportation  
WisDOT ID#: 3210-00-05

Kenosha County

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

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## 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.

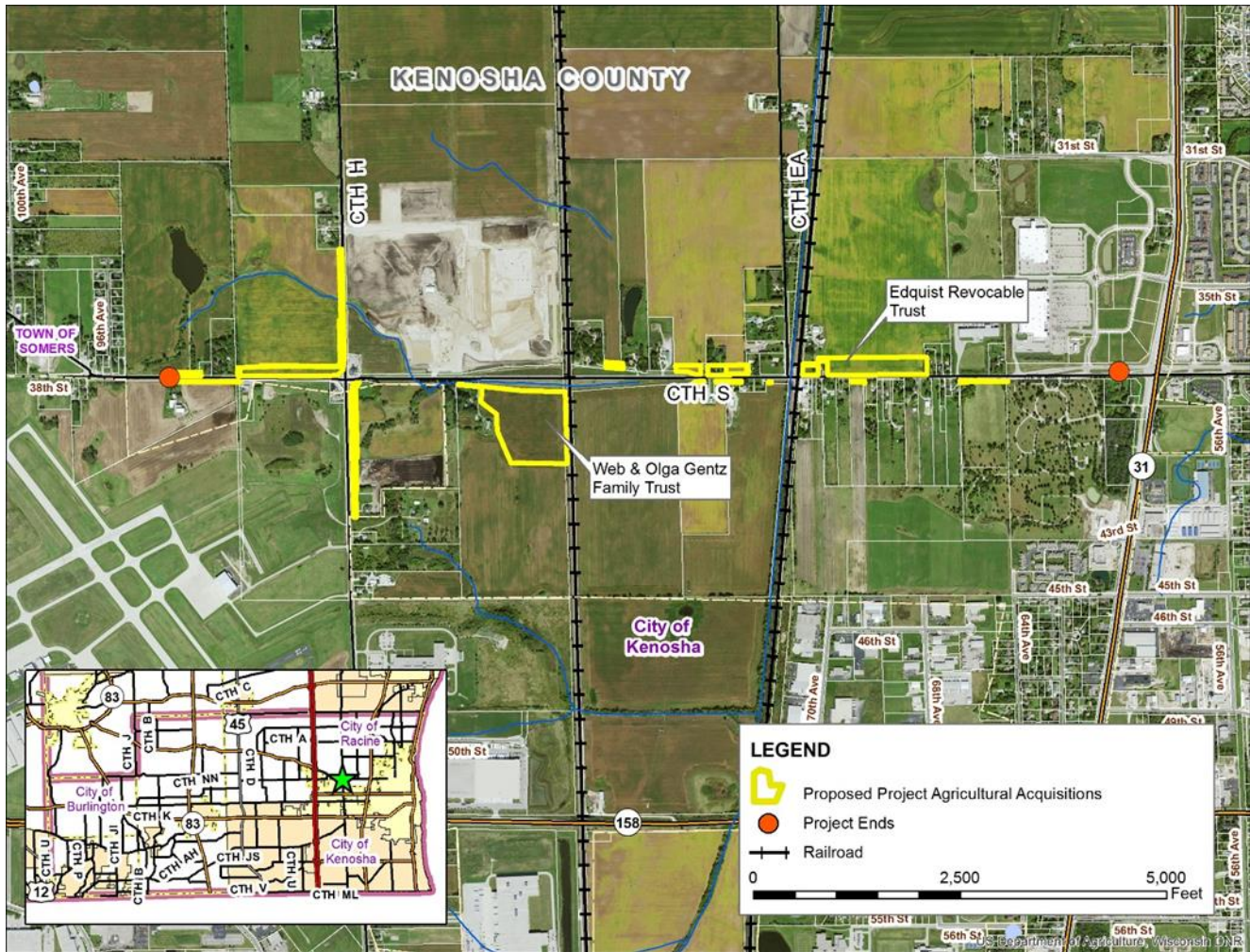
The DATCP is required to prepare an AIS when the actual or potential exercise of eminent domain powers involves an acquisition of interest in more than 5 acres of land from any farm operation. The term farm operation includes all owned and rented parcels of land; buildings and equipment; livestock; and 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

Kenosha County and the Wisconsin Department of Transportation (WisDOT) are proposing to reconstruct 2.2 miles of County Trunk Highway (CTH) "S" from CTH "H" to Brumback Boulevard in Kenosha County as a four-lane divided highway. This project passes through the town and village of Somers and the city of Kenosha. It will require the fee-simple acquisition of 31.8 acres of land from ten farmland owners. WisDOT anticipates that acquisitions of the needed land will start in April, 2017 and construction of the project will begin in 2019.

The proposed project begins 2,500 feet west of CTH "H" and continues east to Brumback Boulevard, just west of State Trunk Highway (STH) 31. CTH "S" will be reconstructed as a four-lane divided roadway with rural outside shoulders and a 30-foot median with curb and gutter. The existing CTH "S" bridge over the Canadian Pacific Railroad (CPRR) will remain and carry one direction of traffic. Another bridge will be constructed over the CPRR to carry the opposite direction of traffic. Detention ponds are being considered by Kenosha County to manage increased storm water runoff. Detention ponds (or dry ponds) are not permanent ponds, but temporarily store stormwater runoff to minimize erosion. Detention ponds are being proposed for this project because of the proximity of the airport. Since the ponds should not be permanently filled with standing water, they will attract less wildlife that could interfere with airport operations. It is possible that the east end of the project could have a retention (wet) pond which would permanently hold water. A shared-use path is planned along the north side of the roadway.

Figure 1: Project Location Map



### Existing Highway

CTH "S" is a two lane roadway where each lane is 12 feet wide. The shoulder width varies from 8 feet (3 feet paved/5 feet gravel) west of CTH "H" to 10 feet wide (3 feet paved/7 feet gravel) between CTH "H" and the South Branch Pike River, to 7 feet wide (3 feet paved/4 feet gravel) along the section of CTH "S" east of the South Branch of the Pike River. CTH "S" is classified as a minor arterial. An arterial is a principal roadway providing high-speed, high-volume travel between major points in both urban and rural areas. CTH "S" is also known as 38th Street, east of 96th Avenue. West of 96th Avenue, it is known as Burlington Road.

### Need

WisDOT has indicated that the predicted traffic volumes warrant expansion of this portion of the highway to four lanes. The proposed expansion will also improve safety by providing a roadway that meets WisDOT design standards and reduce roadway deficiencies that include substandard shoulder width, vertical alignment (grades), stopping sight distances, and clear zones. Stopping sight distance is the minimum distance required by the driver of a vehicle traveling at a given

speed to bring the vehicle to a stop after sighting an object in the driver’s path. A clear zone is the area along the roadside, starting at the edge of the travel lane and including the shoulder, which is available for safe use by errant vehicles.

### III. AGRICULTURAL SETTING

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

#### Agricultural Productivity

Kenosha County had the eighth highest yield per acre for corn in 2014 among all of Wisconsin’s 72 counties, 174.9 bushels per acre. The average yield statewide was 156 bushels per acre (USDA NASS Annual Wisconsin Agricultural Statistics Bulletin). Since Kenosha County is relatively small, its overall production of corn for grain was 38th in the state.

Table 1 shows the number of acres harvested annually of selected crops in Kenosha County for 2010 through 2014. Acreages for the crops listed are relatively consistent during this five-year period. The low number of acres of hay and silage harvested imply that the dairy sector is small in the county.

Table 1: Acres of Selected Crops Harvested

Crop	2010	2011	2012	2013	2014
Corn for Grain	27,400	29,100	29,700	28,200	27,900
Corn for Silage	4,200	2,500	4,000	3,600	4,890
Soybeans	23,600	22,100	21,800	22,400	24,200
Winter Wheat	4,500	6,500	5,800	6,650	4,800
Alfalfa Hay	NA	4,100	NA	3,740	4,740

NA = data not published

#### Land in Farms

Kenosha County is classified as an urban county, a county with an average of more than 100 residents per square mile. The current population of the county is 167,493 residents. According to the 2012 Census of Agriculture, Kenosha County had 76,632 acres of land in farms or approximately 44 percent of the total land area. The average proportion of urban counties that is covered by farmland is 56 percent. 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 Kenosha County land in farms declined by 9.6 percent. In Wisconsin as a whole, the amount of land in farms declined by 2.2 percent. This shows that, on

average, Kenosha County is losing farmland faster than the state as a whole. The loss of farmland is likely due to development.

Table 2: Acres of Land in Farms

Location	1997	2012
Kenosha County	84,744	76,632
Wisconsin	14,900,205	14,568,926

**Number and Size of Farms**

Between 1997 and 2012, the number of farms declined by 7.5 percent in Kenosha County, but increased by 6.3 percent in Wisconsin, as a whole (2012 Census of Agriculture). The average size of farms fell by 5 acres in Kenosha County and by 18 acres in Wisconsin from 1997 to 2012. Changes in the size of farms can indicate a change in commodities grown on those farms. Small farms tend to grow specialty and organic produce while larger farms tend to grow cash crops and raise large numbers of 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)
Kenosha County	388	218	359	213
Wisconsin	65,602	227	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 Kenosha 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	2015 Dollars per Acre of Farmland		
	Average Tax	Assessed Value	Sale Value
Kenosha County	\$4.31	\$234	\$6,707
Urban Counties	\$3.53	\$199	\$7,432
Wisconsin	\$3.15	\$170	\$5,780

In 2015, average property taxes on Kenosha County farmland were 22.1 percent higher than the average for urban counties and 36.8 percent higher than the average for Wisconsin (Wisconsin



Department of Revenue). This high tax rate may be one of the drivers causing farmland owners to convert their property to non-farm uses in Kenosha County.

The average assessed value of farmland in Kenosha County was 17.6 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 Kenosha County, the average sale price of agricultural land was 9.8 percent lower than the average for urban counties and 16.0 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 2014 and may not accurately reflect the current market for farmland.

## IV. AGRICULTURAL LANDOWNER IMPACTS

### Soils

The soils that will be affected by the proposed project consist of 53.3 percent prime farmland where drained, 42.4 percent prime farmland, and 4.3 percent soils of statewide importance. The soil series that will be affected in the largest quantities include: Ashkum silty clay loam with 0 to 2 percent slopes, Varna silt loam with 2 to 6 percent slopes, Elliott silty clay loam with 2 to 6 percent slopes, Markham silt loam with 2 to 6 percent slopes-eroded, and Symerton loam with 2 to 6 percent slopes P. Of these, the Varna, Markham, and Symerton soils are prime and the Ashkum and Elliot soils are classified as prime where drained. (USDA, Natural Resource Conservation Service's Web Soil Survey: <http://websoilsurvey.nrcs.usda.gov/> accessed August 17, 2016])

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 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.

### Drainage Districts

Almost all of the proposed project is located within the Pike Creek Drainage District. This district was suspended in 1981 and currently has no appointed drainage board.

Drainage districts are local governmental units organized to drain lands for agricultural use. Landowners who are part of a drainage district must contribute to the cost of constructing, maintaining, and repairing the district’s drains. Drainage districts are organized under Chapter 88 of the Wisconsin Statutes and are governed by county drainage boards. .

The Pike Creek Drainage District is currently in suspended status. "Active" districts assess members to perform maintenance, construct new infrastructure, and conduct drainage board proceedings. "Dissolved" districts have been discontinued by court order. In these districts county drainage boards can no longer levy assessments or perform maintenance. "Suspended" districts are districts that have not been legally dissolved and are not maintained or assessed. In order for the Pike Creek Drainage District to be formally dissolved, DATCP would need to petition the court to appoint county drainage board members.

WisDOT is required to work with a county drainage board where an active drainage district would be affected by a WisDOT project. No such board exists for the Pike Creek Drainage District.

**Affected Property**

The proposed reconstruction of CTH "S" will require the fee-simple acquisition of 30.9 acres of land from ten farmland owners and 0.9 of an acre of easements from eight farmland owners. They are listed in Table 5.

Table 5: Proposed Property Acquisitions

Farmland Owners	Acquisitions in Acres		
	Fee-Simple	Easement	Total
Ingebritson/Peterson Farm	0.221	0.124	0.345
Dustin Harpe	0	0.193	0.193
Living Light Christian Church	4.458	0.320	4.778
Web & Olga Gentz Family Trust	17.286	0.065	17.351
Fenske Family Asset Trust	0.941	0	0.941
Lori Santana	0.048	0.035	0.083
Herbert Barth Rev. Trust	1.317	0	1.317
Ewings, Ewings, Fliess, & Djordjevic	0.041	0.049	0.090
Oak Street #2 LLC	0.227	0.024	0.251
Edquist Rev. Trust	6.396	0.085	6.481
<b>TOTALS</b>	<b>30.935</b>	<b>0.895</b>	<b>31.830</b>

DATCP staff contacted the owners of the affected land by phone where the acquisition of land would be greater than 5 acres. Their comments are summarized below.

**Farmland Owners:** Edquist Revocable Trust, Edward and Nancy Edquist, trustees

**Operator:** Jeff Erhardt

**Proposed Acquisition:** Fee-simple acquisition of 6.4 acres and 0.09 of an acre of easement

The Edquist Revocable Trust owns about 98 acres of land, which is all cropland except for a small area for the house. The cropland is rented to the Edquists' nephew.

Edward Edquist indicated that the proposed acquisition will include his home. Because of this, WisDOT will be required to file a relocation service assistance plan in accordance with §32.25 of the Wisconsin Statutes. This plan will ensure that persons who are required to vacate their homes will have a reasonable opportunity to find replacement dwellings; help displaced owners and tenants find suitable replacement dwellings, farms or business locations; inform displaced persons about available state, federal, and local assistance programs; and determine costs of relocation payments and services. For more information, contact Relocation Assistance, DOA - Division of Energy, Housing and Community Resources, PO Box 7970, Madison, WI 53707-7970, or call (608)261-8404.

Mr. Edquist also indicated that there is tiling on the cropland that will be acquired for the proposed project.

**Farmland Owners:** Web and Olga Gentz Family Trust

**Operator:** Rossis

**Proposed Acquisition:** Fee-simple acquisition of 17.3 acres and 0.07 of an acre of easement

This property is about 150 acres. Most of this is cropland that is rented to Mr. Rossis. This property has drainage tiling and at least one drainage ditch that could be affected by the proposed project.

Olga Gentz indicated that she does not have any other concerns about the proposed project.

### Drainage

As noted earlier in the Soils section of this report, 53.3 percent of the soils that will be affected by the proposed project are classified as prime farmland where drained. Where these soils are cropped, they are also likely to be tiled. Both of the landowners who will lose the largest amounts of property due to the proposed project indicated that there are drainage tiles on their 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.

### Access

Because of the expansion of the CTH "S" to four lanes and the addition of a median, access in and out of properties along the highway will be right-in right-out only. This is likely to increase the length of at least one leg of trips in and out of these properties. Farmers accessing land adjacent to this highway will be forced to spend more time on roads traveling between the parcels of their operations. In addition to greater costs for fuel and equipment wear, longer trips on roadways will expose farmers to greater risks for traffic accidents and reduce the time that could be spent on other tasks.

## 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. RECOMMENDATIONS

- WisDOT should consider constructing crossovers in the median that would be available for agricultural use.
- If acquired land is not immediately needed for road or detention pond 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 Kenosha 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.

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## APPENDIX A: DATCP STATUTES FOR AGRICULTURAL IMPACT STATEMENTS

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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 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: 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	RELOCATION ASSISTANCE DOA DIVISION OF ENERGY HOUSING & RESOURCES PO BOX 7970 MADISON WI 53707-7970
EDWARD & MARY EDQUIST EDQUIST REVOCABLE TRUST 7026 38TH ST KENOSHA WI 53144	OLGA GENTZ WEB & OLGA GENTZ FAMILY TRUST PO BOX 431 SOMERS WI 53171
RACHEL DESOMBRE R A SMITH 16745 W. BLUEMOUND RD STE 200 BROOKFIELD WI 53005	MARY T SCHUCH-KREBS KENOSHA COUNTY CLERK 1010 56TH ST KENOSHA WI 53140
MARK MOLINARO SOMERS TOWN CHAIR 1011 12TH ST KENOSHA WI 53140	TIMOTHY KITZMAN SOMERS TOWN CLERK PO BOX 197 SOMERS WI 53171
DAN TRELOAR KENOSHA COUNTY CONSERVATIONIST 19600 75 <sup>TH</sup> ST STE 185-3 BRISTOL WI 53104	LEIGH PRESLEY KENOSHA COUNTY UWEX 19600 75 <sup>TH</sup> ST BRISTOL WI 53104
KENOSHA PUBLIC LIBRARY 812 56 <sup>TH</sup> ST PO BOX 1414 KENOSHA WI 53141-1414	KENOSHA NEWS 5800 7 <sup>TH</sup> AVE KENOSHA WI 53140

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









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TRADE AND CONSUMER PROTECTION**

**DIVISION OF  
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[https://datcp.wi.gov/Pages/Programs\\_Services/AgriculturalImpactStatements.aspx](https://datcp.wi.gov/Pages/Programs_Services/AgriculturalImpactStatements.aspx)