

# AGRICULTURAL IMPACT STATEMENT



**DATCP  
#4158**

**Leona Street Stormwater Pond  
City of Appleton  
Outagamie County**



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

*PUBLISHED AUGUST 17, 2016*



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## **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

### Overview

The city of Appleton is proposing to construct a stormwater management pond in the town of Grand Chute adjacent to the eastern boundary of the city of Appleton. The city is proposing to purchase (fee-simple) 5.58 acres of land from Frances Romero and Charles Siekman in fee-simple. The acquisition of the needed land is expected to occur in September of 2016 and construction of the pond is expected to begin in April of 2019.

The project will include the construction of a stormwater management pond that will remove sediment and phosphorus from runoff water and control flooding up to a 100-year event. The pond will serve a fully developed 172.4-acre watershed, and it will have a sediment removal rate of 78 percent and a phosphorus removal rate of 58 percent. The project will include:

- A 3.4-acre pond
- An outlet structure consisting of a 12-inch diameter pipe with an overflow grate at the 100-year water surface elevation
- A 60-inch diameter inlet pipe and a 24-inch diameter outlet pipe
- Access from the north and the south
- A designated building area for future construction, and sanitary sewer and water main extension for potential future enhanced phosphorus treatment system

Figure 1: Project Location Map



The proposed pond is the second phase of a multi-stage implementation of the Ballard Road Basin Study. The storm sewer downstream from the pond, to a point just prior to the discharge in the Fox River, will be reconstructed with a larger pipe before the pond is connected to the public storm sewer system. Half of this pipe was constructed in 2012 and the second half is expected to be constructed in 2018. The city of Appleton will annex the acquired land. The overall plan will require additional storm sewer improvements upstream from the proposed pond that are part of future street reconstruction projects.

### **Project Need**

The stormwater pond is needed for both flood control and water quality improvement.

According to representatives of the city of Appleton, this area of the city has experienced unacceptable flooding. During events exceeding the storm sewer capacity, runoff flows in the public right-of-way, overtops Ballard Road, and floods the Waupaca Elevator property. During a July 2010 storm event, a 75-year event with 4.5 inches of rain in 12 hours, flooding was 4 feet deep in the south parking lot and loading dock area of the Waupaca Elevator property. During this same event, the house across the street experienced flooding close to its foundation.

The city of Appleton is subject to the Lower Fox River Total Maximum Daily Limit (TMDL) and Wisconsin Pollutant Discharge Elimination System (WPDES) Permit WI-S050075-2. The drainage area served by this pond drains to the TMDL reach of the Fox River downstream of the Appleton Middle Dam. Appleton's targets in the TMDL for this reach of the Fox River are 72 percent Total Suspended Solids removal and 40 percent Total Phosphorus removal. The portion of the city of Appleton draining to this segment of the Fox River is almost fully developed. This pond will help the city make progress toward meeting the TMDL targets.

### **Existing Facilities**

There are currently no existing facilities for flood control or water quality in this area of the city. The existing public storm sewers in the street rights-of-way are designed for a 5-year, 30-minute storm event. They will continue to function, and the various pipe size increases per the adopted study will be implemented with street reconstruction projects.

### **Alternatives**

Two alternatives to the proposed project were considered.

One alternative was underground storage under Ballard Road that included:

- Storage within the Ballard Road right-of-way,
- Increased sizes of other existing sewers on side streets,
- Relief sewer in Pauline Street,
- Use of the existing outfall to the Fox River.

This alternative did not meet flood control goals and actually increased flooding depths in some areas. Additionally, construction would be difficult with all of the other utilities in the right-of-way and water quality benefits would be limited, if any.

The other alternative considered was a parallel relief sewer along Ballard Road that included:

- A second storm sewer, approximately 54 to 60-inch diameter, under Ballard Road from Randall Avenue to the top of the bank of the discharge to the Fox River,
- Upsizing of storm sewers on side streets,
- Another relief sewer in Pauline Street,
- Use of the existing outfall to the Fox River.

This alternative largely met the goals for a 5-year storm and met the goals for a 100-year storm. However, it did not provide as much flood protection as the proposed pond, did not provide water quality benefits, and was not feasible to construct with all the other utilities located in the right-of-way.

The proposed Leona Street Pond with additional storm sewer improvements provides both flood control and water quality benefits without removing existing development.

### **III. AGRICULTURAL SETTING**

The following information is intended to describe the existing agricultural sector of Outagamie County in general terms. Section IV, Impacts on Agriculture discusses the specific potential impacts from this project and the concerns of agricultural property owner and renter.

#### **Agricultural Productivity**

Outagamie County is a leader in milk production in Wisconsin. In 2013, Outagamie County produced 988,000,000 pounds of milk, making it the eighth largest producer out of Wisconsin's 72 counties (USDA NASS Annual Wisconsin Agricultural Statistics Bulletin).

Table 1 shows the number of acres harvested annually of selected crops in Outagamie County for 2010 through 2014. Acreages for the crops listed are relatively consistent across the five-year period. The change in acres harvested of corn for grain correlate with prices. The increase in corn silage acreage in 2014 was linked to declines in prices of corn for grain. Changes in the number of acres of hay and silage harvested may occur as a result of the changes in dairy cattle numbers.



Table 1: Acres of Selected Crops Harvested

Crop	2010	2011	2012	2013	2014
Corn for Grain	58,900	59,300	64,800	62,300	48,300
Corn for Silage	23,100	25,500	22,500	22,500	26,000
Soybeans	49,300	50,500	51,500	44,500	54,300
Winter Wheat	8,200	10,500	7,700	6,760	7,340
Alfalfa Hay	21,000	20,400	16,800	14,500	20,900

**Land in Farms**

Outagamie County is classified as an urban county, defined as having an average of more than 100 residents per square mile. The current population of the county is 177,840 residents. According to the 2012 Census of Agriculture, Outagamie County has 247,482 acres of land in farms or 60.4 percent of the total land area, which is comparable to other urban counties. The average proportion of urban counties that is covered by farmland is 58.7 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 2007 to 2012, the acres of Outagamie County land in farms increased by 1.4 percent. In contrast, the amount of land in farms in Wisconsin as a whole decreased by 4.1 percent. The loss of farmland in Wisconsin is likely due to pressure from development. An increased use of marginal land for crop production could account for the increase in farmland in Outagamie County.

Table 2: Acres of Land in Farms

Location	2007	2012
Outagamie County	247,282	250,748
Wisconsin	15,190,804	14,568,926

**Number and Size of Farms**

Between 2007 and 2012, the number of farms declined by 14.1 percent in Outagamie County and declined by 11.1 percent in Wisconsin as a whole (2012 Census of Agriculture). The average size of farms rose by 32 acres in Outagamie County and by 15 acres in Wisconsin from 2007 to 2012. Increases in the average size of farms along with decreases in the number of farms generally points to an increased concentration of farm ownership.

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

Location	2007		2012	
	Number of Farms	Average Size of Farms (acres)	Number of Farms	Average Size of Farms (acres)
Outagamie County	1,362	182	1,170	214
Wisconsin	78,463	194	69,754	209

**Property Taxes and Values**

Table 4 details the 2014 average property tax, assessed value, and sale price per acre of agricultural land in Outagamie 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	2014 Dollars per Acre of Farmland		
	Average Tax	Assessed Value	Sale Value
Outagamie County	\$2.94	\$174	\$8,359
Urban Counties	\$3.52	\$201	\$6,725
Wisconsin	\$3.17	\$167	\$5,037

In 2014, average property taxes on Outagamie County farmland were 16.5 percent lower than the average for urban counties and 7.3 percent lower than the average for Wisconsin (Wisconsin Department of Revenue). It is unusual for the average property tax for an urban county like Outagamie County to be lower than the statewide average.

The average assessed value of farmland in Outagamie County was 13.4 percent lower than the average for urban counties and 4.2 percent higher than the average for Wisconsin as a whole (Wisconsin Department of Revenue).

In Outagamie County, the average sale price of agricultural land was 24.3 percent higher than the average for urban counties and 66.0 percent higher than the average for Wisconsin (NASS Wisconsin 2015 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**

All of the soil within the boundaries of the proposed project is Winneconne silt loam with 0 to 2 percent slopes. This soil is well drained and has moderate available water storage capacity. It is classified as prime farmland. 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. One limitation of Winneconne silt loam with 0 to 2 percent slopes is that the topsoil layer is only 9 inches thick. (Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at <http://websoilsurvey.nrcs.usda.gov/>. Accessed July 21, 2016.)

### **Affected Property**

The proposed acquisition of land for the Leona Street Stormwater Pond will affect one parcel of property with two owners. DATCP staff spoke to both owners and the current renter by phone.

**Farmland Owners:** Frances Romero 75% and Charles Siekman 25%

**Renter:** David Van De Hey, New Horizons Dairy

**Proposed Acquisition:** Fee-simple acquisition of 5.58 acres

Frances Romero and her brother Charles Siekman own 47.46 acres of land. The proposed acquisition represents 12 percent of this parcel. Ms. Romero indicated that the parcel does not have any drainage tiling. This parcel is mostly cropland and rented to David Van De Hey of New Horizons Dairy. The crops he grows including corn, hay, and winter wheat are all used on the farm for the livestock.

The city of Appleton has indicated that the proposed pond has been oriented to best accommodate continued farming practices and drainage for crops on the adjacent land. The current lease expires in December 2018 and the city will lease back the acquired area to New Horizon Dairy in 2017 and 2018 because construction of the pond is not scheduled to begin until 2019.

Access to the remaining Romero and Siekman property is on Wisconsin Avenue at the east end of the property and it will not be affected by this project. No structures, fences or irrigation systems will be affected. Some of the trees on the acquired land will be removed as part of the project. The city has indicated that the impact to the drainage ditch is at the high end, so it will continue to function for farm operations. The city anticipates purchasing the needed land in early fall of 2016.

Frances Romero indicated that she doesn't object to the proposed project, but she just wants to be treated fairly in the compensation process. Charles Siekman would prefer not to lose any farmland. He is concerned that the pond could become a breeding ground for mosquitoes. Mr. Siekman would prefer to see the stormwater discharged into the nearby Fox River if practicable. The city has indicated that allowing the stormwater to flow directly into the Fox River would not remove any pollutants from the water.

David Van De Hey indicated that while he would prefer not to lose any farmland, the proposed acquisition will not impact his overall farm operation significantly. He indicated that it is difficult to find replacement land in the vicinity of his operation. He has seen farmland in the area sold for \$12,000 per acre and rental costs are around \$250 per acre in the area.

Mr. Van De Hey's primary concern about the project is if the pond overfills and spills onto adjacent farmland. In general, if crops are inundated for more than 24 hours, yields and the health of the crop are likely to be negatively affected. If overflows are anticipated or observed, Mr. Van De Hey would like to see tile installed so that the runoff can be diverted away from cropland as much as possible.

### **Appraisal Process**

Before negotiations begin, the city of Appleton 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 the city of Appleton within 60 days after the landowner receives the city's appraisal.
- The appraisal fee must be reasonable.
- The appraisal must be complete.

The appraisal(s) will be the basis for the city of Appleton's compensation offer. The amount of compensation is based on the appraisal(s) and is established during the negotiation process between the city and the individual landowners. The city is required by law to provide landowners with information about their rights in this process before negotiations begin. The appraisal(s) will be the basis for the city of Appleton's compensation offer. The amount of compensation is based on the appraisal(s) and is established during the negotiation process between the city and the individual landowners. The city is required by law to provide landowners with information about their rights in this process before negotiations begin.

## V. RECOMMENDATIONS

- DATCP supports the city of Appleton’s plan to continue leasing the acquired property to New Horizon Dairy through the 2018 growing season until the parcel is needed for construction.
- DATCP recommends that if overflows of the pond are expected or observed, tiles should be installed so the runoff is diverted from adjacent cropland.
- The Outagamie County land conservationist should also 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.



**APPENDIX B: MAILING LIST**

GOVERNOR SCOTT WALKER 115 E CAPITOL	SEN TERRY MOULTON AGRICULTURE COMMITTEE 310 S CAPITOL
REP LEE NERISON AGRICULTURE COMMITTEE 310 N 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	SUE OLSON (3) APPLETON DEPARTMENT OF PUBLIC WORKS 100 N APPLETON ST APPLETON WI 54911-4799
FRANCES ROMERO 940 E COLLEGE AVE APPLETON WI 54911	CHARLES SIEKMAN 1100 N GREEN GROVE RD APPLETON WI 54911
DAVID VAN DE HEY NEW HORIZONS DAIRY 4240 ROSIN RD DEPERE WI 54115	LORI J O'BRIGHT OUTAGAMIE COUNTY CLERK 410 S WALNUT ST APPLETON WI 54911
JIM MARCH GRAND CHUTE TOWN ADMINISTRATOR 1900 W GRAND CHUTE BLVD GRAND CHUTE WI 54913-9613	KAREN L WEINSCHROTT GRAND CHUTE TOWN CLERK 1900 W GRAND CHUTE BLVD GRAND CHUTE WI 54913-9613
GREG BANECK OUTAGAMIE COUNTY CONSERVATIONIST 3365 W BREWSTER ST APPLETON WI 54914-1602	KEVIN JAREK OUTAGAMIE COUNTY - UWEX 3365 W BREWSTER ST APPLETON WI 54914
APPLETON BUBLIC LIBRARY 225 N ONEIDA ST APPLETON WI 54911-4780	APPLETON POST CRESCENT 306 W WASHINGTON ST PO BOX 59 APPLETON WI 54912

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







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**WISCONSIN DEPARTMENT OF AGRICULTURE,  
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)