

AGRICULTURAL **I**MPACT **S**TATEMENT



STH 29: CTH "U" to Woodland Road Project

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**Wisconsin Department of Agriculture,
Trade, and Consumer Protection
DATCP #3748**



Agricultural Impact Statement

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Acronyms

AIS	Agricultural Impact Statement
AEA	Agricultural Enterprise Area
CTH	County Trunk Highway
DATCP	Department of Agriculture, Trade, and Consumer Protection
FDM	Facilities Development Manual
FHA	Federal Highway Administration
FPP	Farmland Preservation Program
NRCS	Natural Resources Conservation Service
ROW	Right-of-Way
STH	State Trunk Highway
USDA	U.S. Department of Agriculture
WisDOT	Wisconsin Department of Transportation

AGRICULTURAL IMPACT STATEMENT

**STH 29: CTH “U” – Woodland Road
Brown County
Wisconsin Department of Transportation
Project ID #: 9200-06-00**

1. Introduction

The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) has prepared this agricultural impact statement (AIS) in accordance with §32.035, *Wisconsin Statutes*. 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. 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 AIS is an informational and advisory document that describes and analyzes the potential effects of the proposed project on farm operations and agricultural resources. The AIS reflects the general objectives of 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.

DATCP should be notified of such projects regardless of whether the proposing agency intends to use its condemnation authority in the acquisition of project lands. The proposing agency may not negotiate with or make a jurisdictional offer to a landowner until 30 days after the AIS is published. Please see Appendix I for the Wisconsin Statute regarding AIS.

2. Description of the Project

Project Description and Location

The Wisconsin Department of Transportation (WisDOT) is proposing to reconstruct and realign portions of State Trunk Highway (STH) 29 from the limits of its intersection with County Trunk Highway (CTH) “U”, east to its intersection with Woodland Road. The project length is approximately 3.8 miles. The proposed construction will occur at three major areas (Figure 1):

- The intersection of STH 29 and CTH “U”, including partial realignment of Old Highway 29 Drive
- The intersection of STH 29 and CTH “VV”, including reconstruction of Marley Street and Triangle Drive, and realignment of Milltown Road
- The northern extension of North Pine Tree Road to pass over STH 29 approximately 6,600 feet east of the STH 29 and CTH “VV” intersection

The project is located within the villages of Howard and Hobart, in the northeast corner of Brown County (Figure 1). STH 29 serves as the dividing line between the two areas, with the village of Howard located north of STH 29 and the village of Hobart located south of STH 29.

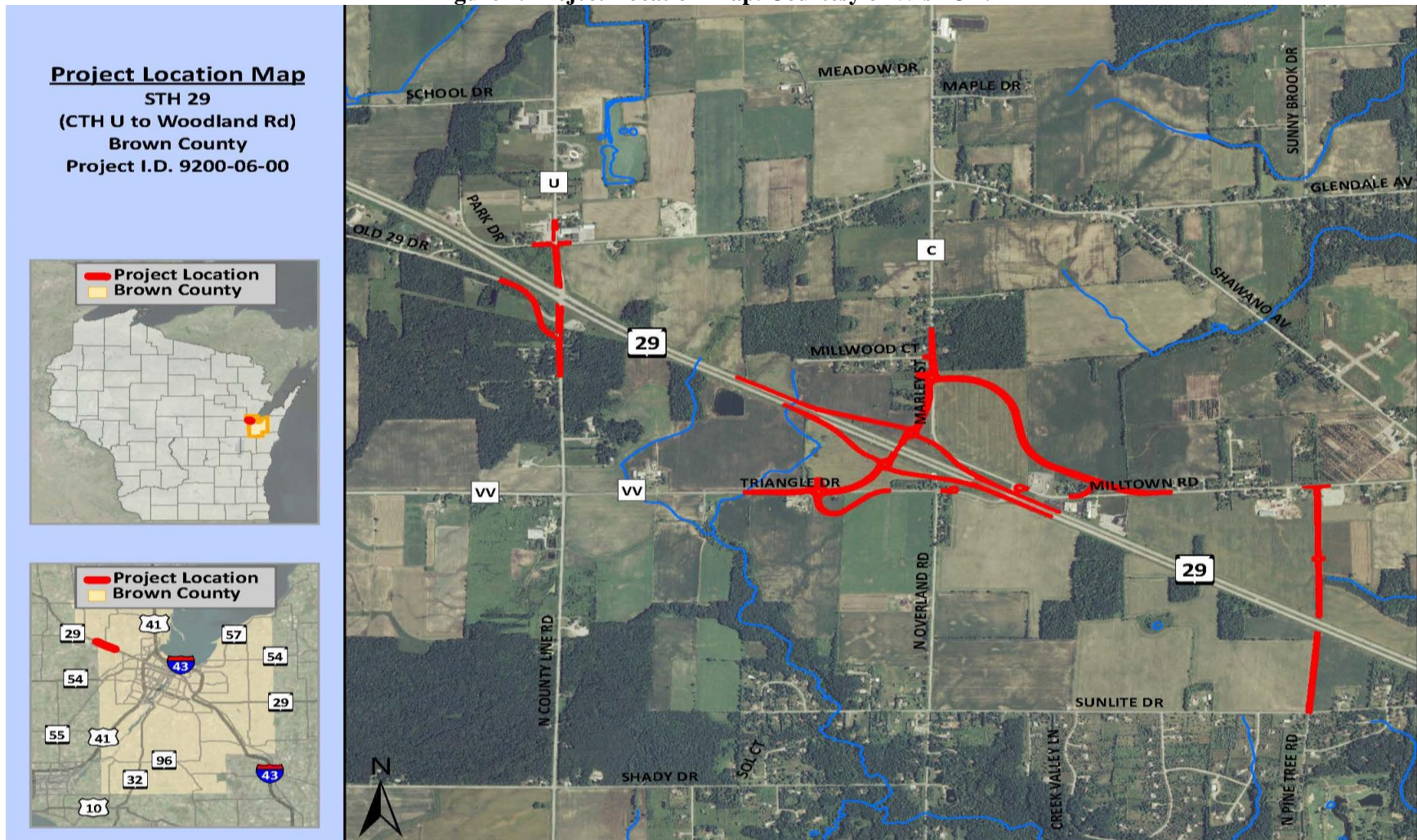
WisDOT has indicated that the project is currently in the design phase and the schedule of acquisitions and construction has not yet been identified.

Existing Highway

STH 29 is a primary east/west roadway serving the north central Wisconsin area. It is the most heavily traveled east/west highway in that area and is a crucial component in WisDOT’s Wisconsin Corridors 2020 Plan.

The existing right-of-way (ROW) along STH 29 in the project area is approximately 250 feet, with larger widths at its intersection with CTH “U” and CTH “VV”.

Figure 1. Project Location Map. Courtesy of WisDOT.



Project Need

The need for this project is based on the following transportation issues identified in the Environmental Assessment completed by WisDOT for the WIS 29 Corridor Preservation Plan (2008):

Corridor Preservation

The components of the preferred alternative were identified as part of the long-term plan to convert the STH 29 corridor from an expressway to a freeway to accommodate expected increases in traffic.

Safety, Operation, and Mobility

The purpose of the WIS 29 Corridor Preservation Plan is to preserve and enhance the long-term safety, operation, and mobility of STH 29. Driving in the current proposed project area can be difficult due to high traffic volumes combined with increased pressure from urban development. The current design of the project area makes it challenging to cross or to get onto STH 29. As traffic in the future increased on STH 29, the number of conflicts between vehicles entering and exiting from the current intersections will also increase. The proposed project is a component of a long-term effort to convert STH 29 into a limited access freeway in which all access will be provided solely at interchanges, no longer at at-grade intersections.

Land Use and Transportation Planning Coordination

The improvements at the proposed project intersections were identified in the WIS 29 Corridor Preservation Plan in cooperation with Brown County, the villages of Howard and Hobart, and the Oneida Tribe of Indians of Wisconsin. Access to STH 29 plays a vital role in the ongoing land use, economic development, and transportation planning that those jurisdictions are currently engaged in. The interchange conversion and associated alternations to the local road system have been coordinated with these communities.

Project Alternatives

WisDOT evaluated the following alternatives and selected Alternative 3 as the best choice to fulfill the needs of the project while minimizing the impacts to environmental, community, and economic resources:

Alternative 1 – No Build

This alternative consists of no improvements to the existing roadway other than routine maintenance and resurfacing. Other than temporarily improving the pavement surface, this alternative would not address the safety concerns at existing intersections and would not be consistent with the area and regional land use plans, which were developed in conjunction with the WIS 29 Corridor Preservation Plan. Alternative 1 was eliminated early in the project development phase and is not proposed for future consideration.

Alternative 2 – Conceptual Design from the WIS 29 Corridor Preservation Plan

This alternative was developed in the 2008 WIS 29 Corridor Preservation Plan and includes the following elements:

- Closure of the existing at-grade intersection of STH 29 and CTH “U” to be replaced with the construction of an overpass of CTH “U” over STH 29.
- Construction of a grade-separated diamond interchange at STH 29 and CTH “VV”, located approximately 1,700 feet west of the existing intersection.
- Construction of the connections to local roads Milltown Road, Triangle Drive, and Old Highway 29.
- Extension of North Pine Tree Road north from its current intersection with Sunlite Drive (south of STH 29) to meet Milltown Road (north of STH 29). An overpass of North Pine Tree Road over STH 29 would be constructed where the extension meets STH 29.

The impacts associated with the proposed construction were evaluated in the Environmental Assessment and this alternative was given a Finding of No Significant Impact based on Federal review. The ROW needed to implement Alternative 2 was officially mapped under Wisconsin Statute 84.295.

Alternative 3 – Final Overpass, Interchange, and Associated Roadway Design (Preferred Alternative)

This alternative includes the majority of the elements from Alternative 2, but with adjustments incorporating engineering, environmental, and public involvement factors. Compared to the elements of Alternative 2, Alternative 3 differs in the following ways:

- Based on the results of an Intersection Control Evaluation and public comments, roundabouts would be constructed at 4 locations, in order from south to north:
 - CTH “VV” and Triangle Drive
 - CTH “VV” and STH 29 eastbound ramp terminus
 - Marley Street and STH 29 westbound temp terminus
 - Marley Street and Milltown Road
- The CTH “VV” interchange ramps would be slightly relocated to meet the roundabouts at the ramp termini.
- A median along the extension of North Pine Tree Road would be eliminated and bicycle accommodations would be added.

A more detailed description of the proposed construction and realignment involved in Alternative 3, as well as figures displaying the locations of the construction and alignment, can be found in Section 4 – Description of the Preferred Alternative.

3. Agricultural Setting

The information provided in this section is intended to describe the existing agricultural sector of Brown County in general terms. Later in this report, in Section 5 – Agricultural Impacts, individual farm operations will be described.

Agricultural Productivity

According to a 2011 report published by the University of Wisconsin – Extension, Brown County is number 6 in the state in the value of milk and dairy products, number 5 in the value of livestock and poultry products, and number 2 in the value of cattle and calves.

Table 1 displays the amount of harvested acres for selected crops in Brown County from 2009 to 2013. The amount of harvested acres of corn for silage significantly increased while the amount of alfalfa hay slightly decreased (USDA NASS Annual Wisconsin Agricultural Statistics Bulletin).

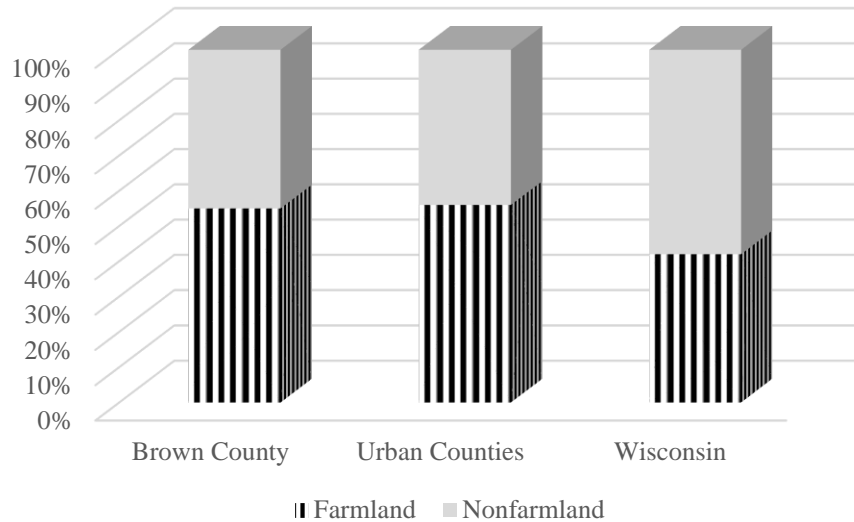
Table 1. Acres of Selected Crops from 2009 to 2013.

Crop	Harvested Acres				
	2009	2010	2011	2012	2013
Corn for Grain	27,200	35,200	24,300	26,700	18,500
Corn for Silage	29,500	27,100	40,800	44,400	49,000
Soybeans	21,200	18,700	19,300	19,200	17,400
Winter Wheat	14,500	10,500	14,000	10,100	8,050
Alfalfa Hay	31,600	26,300	21,300	19,200	20,900

Land in Farms

Brown County is classified as an urban county, which is defined as having an average of more than 100 residents per square mile. According to the *2012 Census of Agriculture*, Brown County has 181,197 acres of land in farms, which represents 55 percent of the total land area. Land in farms consists primarily of agricultural land used for crops, pasture, or grazing. It also includes woodland and wasteland not actually under cultivation or used for pasture or grazing, providing it was part of the farm operator's total operation. The average for urban counties is 188,648 acres of land in farms or 56 percent of the total county land area. These can be compared to the average of 202,346 acres or 42 percent of land in farms among all Wisconsin counties. Refer to Figure 2 for a graphic comparison of the percentage of land in farms in Brown County, urban counties, and Wisconsin.

Figure 2. Percentage of Land in Farms.



According to the *2012 Census of Agriculture*, The amount of land in farms from 2007 to 2012 decreased from 187,167 to 181,197 acres (a 3 percent loss) in Brown County. In Wisconsin as a whole, the amount of land in farms declined from 15.2 to 14.6 million acres (a 4 percent loss) during this time (Table 2).

Table 2. Change in the Acres of Farmland, 2007 to 2012.

Location	Acres of Farmland in 2007	Acres of Farmland in 2012	Change in Acres	Percentage Change
Brown County	187,167	181,197	5,970	-3
Wisconsin	15,190,804	14,568,926	621,878	-4

Number of Farms

According to the 2012 Census of Agriculture, Brown County gained 58 farms (a 5.0 percent increase) between 2007 and 2012 as the total number rose from 1,053 to 1,111. Wisconsin as a whole lost 12 percent of its farms as the total number of farms in the state dropped from 78,463 in 2007 to 69,754 in 2012 (Table 3).

Table 3. Change in the Number of Farms, 2007 to 2012.

Location	Number of Farms in 2007	Number of Farms in 2012	Change in the Number of Farms	Percent Change
Brown County	1,053	1,111	58	+5
Wisconsin	78,463	69,754	8,709	-12

Size of Farms

Table 4 shows that the average size of farms fell 9 percent from 2007 to 2012 in Brown County and rose 7 percent in Wisconsin as a whole (2012 Census of Agriculture).

Table 4. Change in the Average Size of Farms, 2007 to 2012.

Location	Average Farm Size (Acres)		
	2007	2012	Change in Size
Brown County	178	163	-15
Wisconsin	194	209	+15

Table 5 shows the number of farms in each size category in 2012 for Brown County and all Wisconsin counties (2012 Census of Agriculture). Proportionately, Brown County has more farms that are smaller than 49 acres compared to the average for all Wisconsin counties.

Table 5. Number of Farms per Size Category in 2012.

Location	0 to 49 Acres		50 to 179 Acres		180 to 499 Acres		More than 500 Acres	
	No.	%	No.	%	No.	%	No.	%
Brown County	586	53	269	24	189	17	67	6
Wisconsin	22,428	32	25,502	37	15,688	22	6,136	9

Property Taxes and Values

Table 6 lists the 2013 average property tax, assessed value, and sale price per acre of agricultural land in Brown County, urban counties, and all Wisconsin counties. The assessed values and property taxes are based on the "use value" of agricultural land. Wisconsin Statutes define agricultural land as "land, exclusive of buildings and improvements, that is devoted primarily to agricultural use."

Table 6. Farmland Taxes and Value.

Location	2013/14 Dollars per Acre of Farmland		
	Average Tax per Acre	Assessed Value per Acre	Sale Value
Brown County	\$3.38	\$170	\$8,123
Urban Counties	3.70	200	6,303
Wisconsin	3.32	171	4,442

In 2013/14, average property taxes on Brown County agricultural land were close to the Wisconsin average and lower than the average of all urban counties in Wisconsin (Wisconsin Department of Revenue).

On average, the assessed value of farmland in Brown County was the same as the average for all Wisconsin counties and significantly lower than the average for all Wisconsin urban counties (Wisconsin Department of Revenue).

The average sale price of farmland in Brown County was significantly higher than the average for urban counties and for all Wisconsin counties (USDA NASS 2014 Wisconsin Agricultural Statistics Bulletin). These values do not include farmland sold and converted to nonfarm use and do not include agricultural land with buildings or improvements.

Farmland Preservation

The state of Wisconsin Farmland Preservation Program (FPP) provides counties, towns, and landowners with tools to aid in protecting agricultural land for continued agricultural use and to promote activities that support the larger agricultural economy. Through this program, counties adopt state-certified farmland preservation plans, which map areas identified as important for farmland preservation and agricultural development based upon reasonable criteria. The Brown County Farmland Preservation Plan was certified by DATCP in 2012. The plan identifies farmland preservation areas in the county and provides tax credit eligibility to farmers who wish to participate in the FPP.

Within these farmland preservation areas, local governments and owners of farmland can petition for designation by the state as an Agricultural Enterprise Area (AEA). This designation highlights the importance of the area for agriculture and further supports local farmland preservation and agricultural development goals. Designation as an AEA also enables eligible landowners to enter into farmland preservation agreements. Through an agreement, a landowner agrees to voluntarily restrict the use of their land for agriculture for fifteen years and to follow the state soil and water conservation standards to protect water quality and soil health. The land to be acquired for this project is not part of an AEA nor does it contain any FPP agreements.

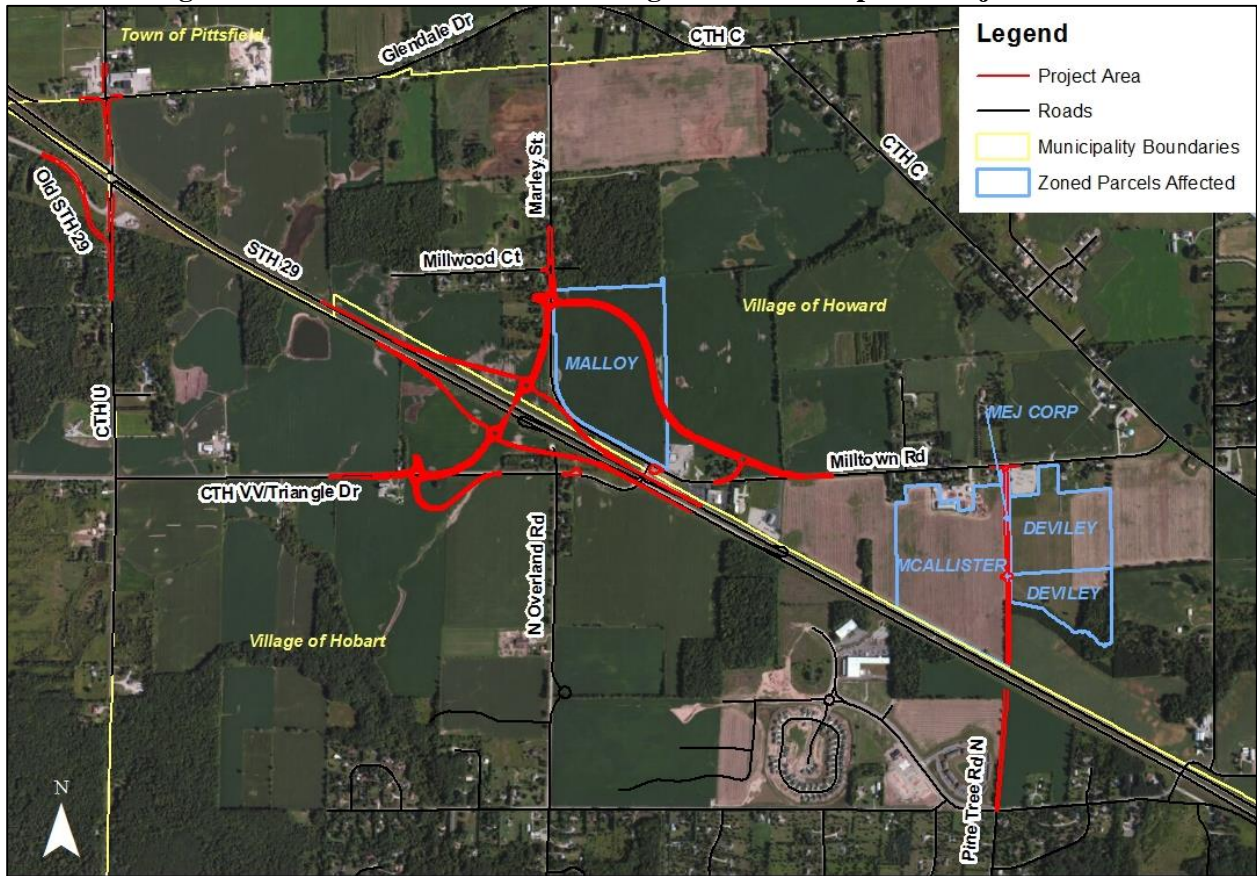
In addition, local governments may choose to adopt and have certified a farmland preservation zoning ordinance to ensure that landowners covered by the ordinance are eligible to claim farmland preservation tax credits. The villages of Howard and Hobart have adopted their own exclusive agricultural zoning ordinance. Under the FPP, landowners can receive \$7.50 per acre in tax credits on land zoned for exclusive agricultural use. Farmland owners having land acquired that is zoned for agricultural use should expect to no longer receive tax credits on that land (Figure 3). This district does not charge a fee for land taken out of agricultural zoning.

Drainage Districts

Drainage districts are local governmental districts that are 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. Approximately 176 active boards exist within 31 Wisconsin counties.

There are no drainage districts located within the project area.

Figure 3. Farmland Preservation Zoning Within the Proposed Project Area.



Soils

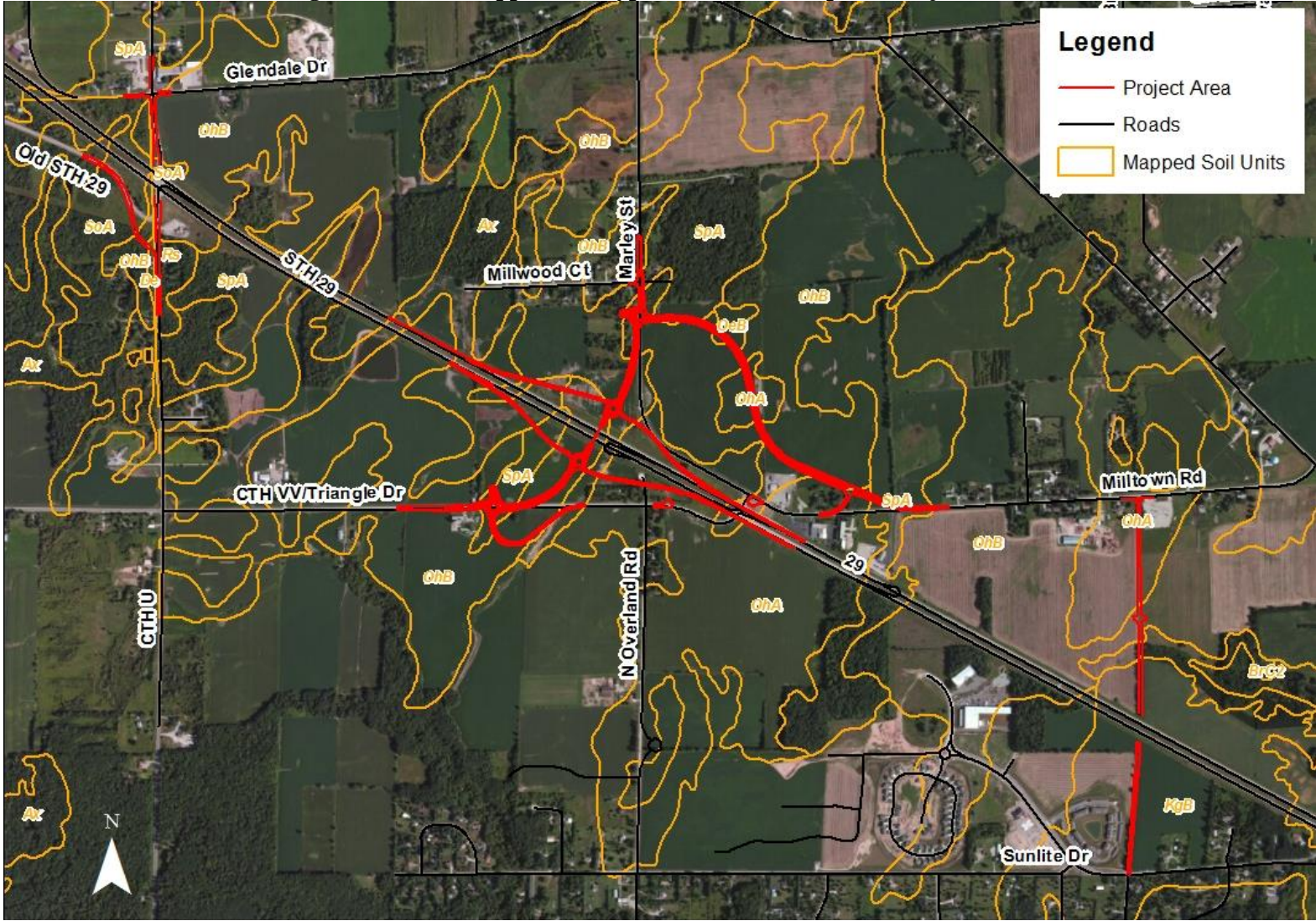
The Natural Resources Conservation Service (NRCS) *Soil Survey of Brown County* identified multiple soil series that will be affected by the proposed project (Table 7). Figure 4 displays the location of each soil type within the limits of the project. Please refer to Appendix II for the NRCS farmland soil classifications definitions and Appendix III for descriptions of capability classes of soil.

Table 7 shows that all soil types but one are designated as prime farmland. The farmland being acquired for this project (see Section 5 –Agricultural Impacts) will remove nearly 66 acres of prime farmland out of production.

Table 7. Mapped Soil Units Within the Proposed Project Area.

Map Unit Symbol	Description	Rating	Capability Class	Drainage Class	Landform	Permeability	Depth to Water Table (inches)
BrC2	Boyer loamy fine sand, 6 to 12% slopes, eroded	Farmland of statewide importance	IIIe	Well drained	Outwash plains	moderate	60-80
KgB	Kewaunee loam, gravelly substratum, 2 to 6% slopes	Prime farmland	Ile	Well drained	Ground moraines	moderate	60-80
SoA	Solona sandy loam, 1 to 3% slopes	Prime farmland if drained	IIw	Somewhat poorly drained	Depressions and drainageways of ground moraines	moderate	0-6
SpA	Solona loam, 1 to 3% slopes	Prime farmland if drained	IIw	Somewhat poorly drained	Depressions and drainageways of ground moraines	moderate	0-6
Ax	Angelica silt loam	Prime farmland if drained	IIw	Poorly drained	Depressions and drainageways of ground moraines	slow	0
OeB	Onaway sandy loam, 2 to 6% slopes	Prime farmland	Ile	Well drained	Ground moraines	moderate	60-80
OhA	Ossineke fine sandy loam, 0 to 2% slopes	Prime farmland if drained	Ile	Moderately well drained	Drumlins, moraines	moderate	12-24
OhB	Onaway loam, 2 to 6% slopes	Prime farmland	Ile	Well drained	Ground moraines	moderate	60-80
Rs	Roscommon muck	Not prime farmland	VIw	Poorly drained	Depressions on outwash plains and lake plains	slow	0

Figure 4. NRCS Mapped Soil Types Within the Proposed Project Area.



4. Description of the Preferred Alternative

Alternative 3 (See Section 2 – Description of the Project) was selected by WisDOT as the best alternative to fulfill the needs of the project, while reducing the impacts to the greatest extent possible to agricultural, environmental, community, and economic resources. A description of the proposed construction and realignment at the three major areas that comprise Alternative 3 follows.

STH 29 and CTH "U" Intersection

The existing STH 29 and CTH "U" intersection will be closed, and in its place, an overpass of CTH "U" will be constructed over STH 29 (Figure 5). Approximately 0.52 miles of CTH "U" and 0.29 miles of Old Highway 29 Drive will be reconstructed and/or realigned as part of this new configuration.

Figure 5. Proposed Construction at the STH 29 and CTH "U" Intersection.



STH 29 and CTH “VV” Intersection

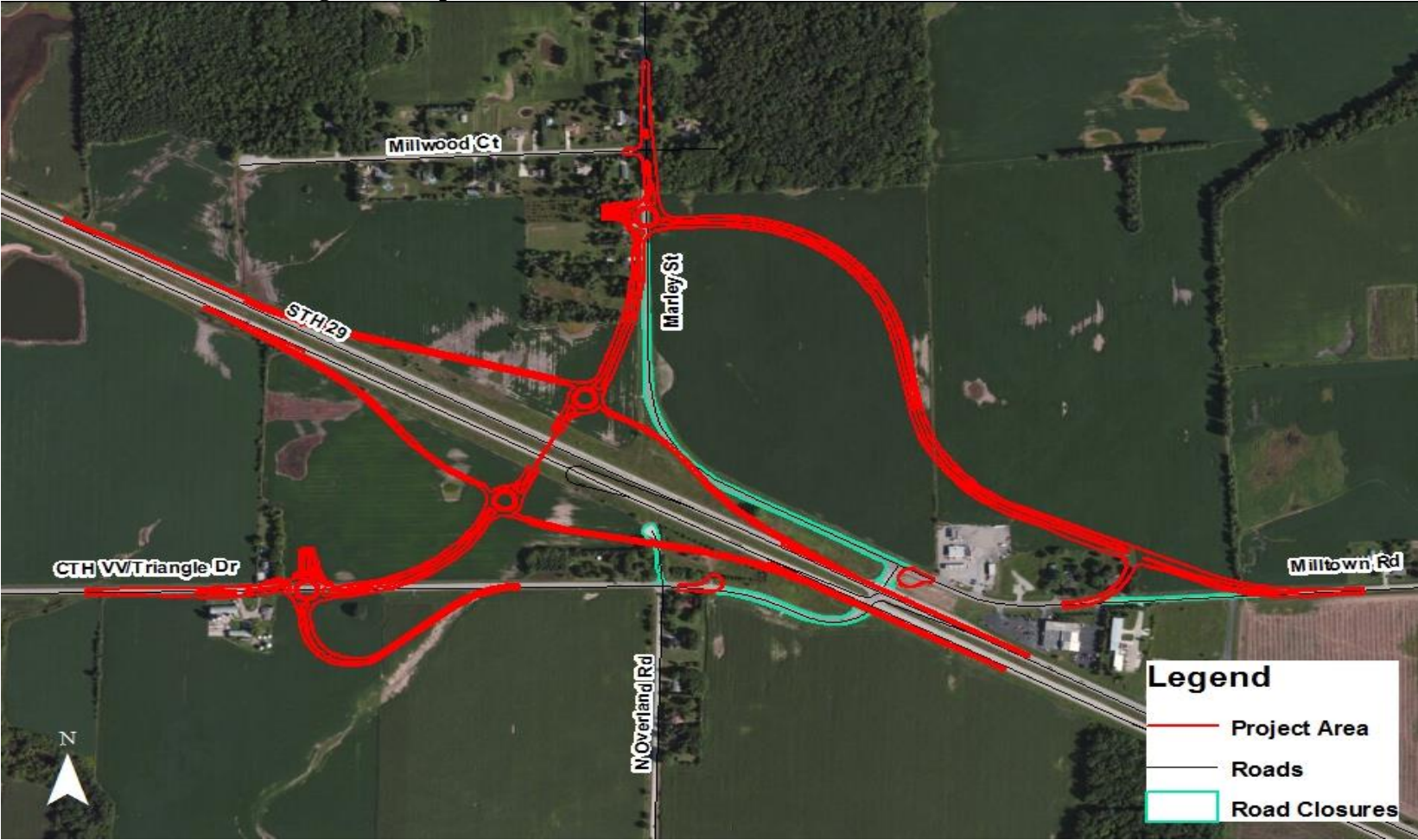
The existing STH 29 and CTH “VV” intersection will be closed, and instead, a diamond interchange will be constructed (Figure 6). This diamond interchange will be constructed approximately 1,700 feet west of the existing STH 29 and CTH “VV” intersection. In order for this new interchange to connect to local roads, a roundabout will be constructed at the westbound ramp terminus to connect Marley Street to the north, as well as the construction of a roundabout at the eastbound ramp terminus to connect CTH “VV” to the south.

As part of this new configuration, Marley Street will be slightly realigned to the west and Milltown Road will be realigned to the north of its existing location. Milltown Road will connect to Marley Street at a newly constructed roundabout located approximately 375 feet south of the existing intersection on Millwood Court and Marley Street. A cul-de-sac will be constructed where the existing Milltown Road alignment will be terminated.

In addition, CTH “VV”/Triangle Drive will also be reconstructed to align with the new diamond interchange. A roundabout will be constructed at the CTH “VV”/Triangle Drive intersection to connect to the new diamond interchange. A cul-de-sac will be constructed east of the Triangle Road and Overland Road intersection. The existing cul-de-sac located north of the Overland Road and Triangle Drive intersection will be closed.

Approximately 0.91 miles of CTH “VV” and 0.81 miles of Marley Street will be reconstructed and/or realigned as part of this new configuration.

Figure 6. Proposed Construction at the STH 29 and CTH "VV" Intersection.



North Pine Tree Road Extension

North Pine Tree Road will be extended north from its current intersection with Sunlite Drive (south of STH 29) to meet Milltown Road (north of STH 29). An overpass of North Pine Tree Road over STH 29 will be constructed where the extension meets STH 29 (Figure 7). This overpass will be located approximately 6,600 feet east of the STH 29 and CTH "VV" intersection and will provide a link between future developments within the villages of Howard and Hobart. Approximately 0.72 miles of North Pine Tree Road will be reconstructed and/or realigned as part of this new configuration.

Figure 7. Proposed Construction of the North Pine Tree Road Extension.



5. Agricultural Impacts

The proposed project will require the fee-simple acquisition of 66.1 acres of farmland from 10 landowners. The affected landowners are listed in Table 8 below, along with land use of the acres to be acquired. Figures 8-10 show the location of the acquired agricultural land at each of the three major areas.

Table 8. Proposed Farmland Acquisitions.

Landowner	Type of Land	Fee Simple Acquisition (Acres)
Howard & Frances Seligmann	Cropland	0.46
Packerland Properties & Investment Co. LLC	Cropland	0.69
Deviley Seven LLC – Roger and Kathleen Deviley	Cropland/Woodland	1.52
MEJ Corporation	Cropland/Woodland/Easement	3.51
James & Sandra Kropp Revocable Living Trust	Cropland	5.02
Joseph & Mary Jo Brusky	Cropland	5.97
David J. Lewis	Cropland/Pasture	7.07
Malloy Trust – Sandra Malloy	Cropland	12.57
Robert & Kathleen McAllister	Cropland	13.39
Hilgenberg Sturgul Inc. – Terry Hilgenberg	Cropland/Pasture	15.9
Total		66.1

Figure 8. Agricultural Impacts at the STH 29 and CTH "U" Intersection. Courtesy of Federal Highway Administration (FHA).



Figure 9. Agricultural Impacts at the STH 29 and CTH "VV" Intersection. Courtesy of FHA.

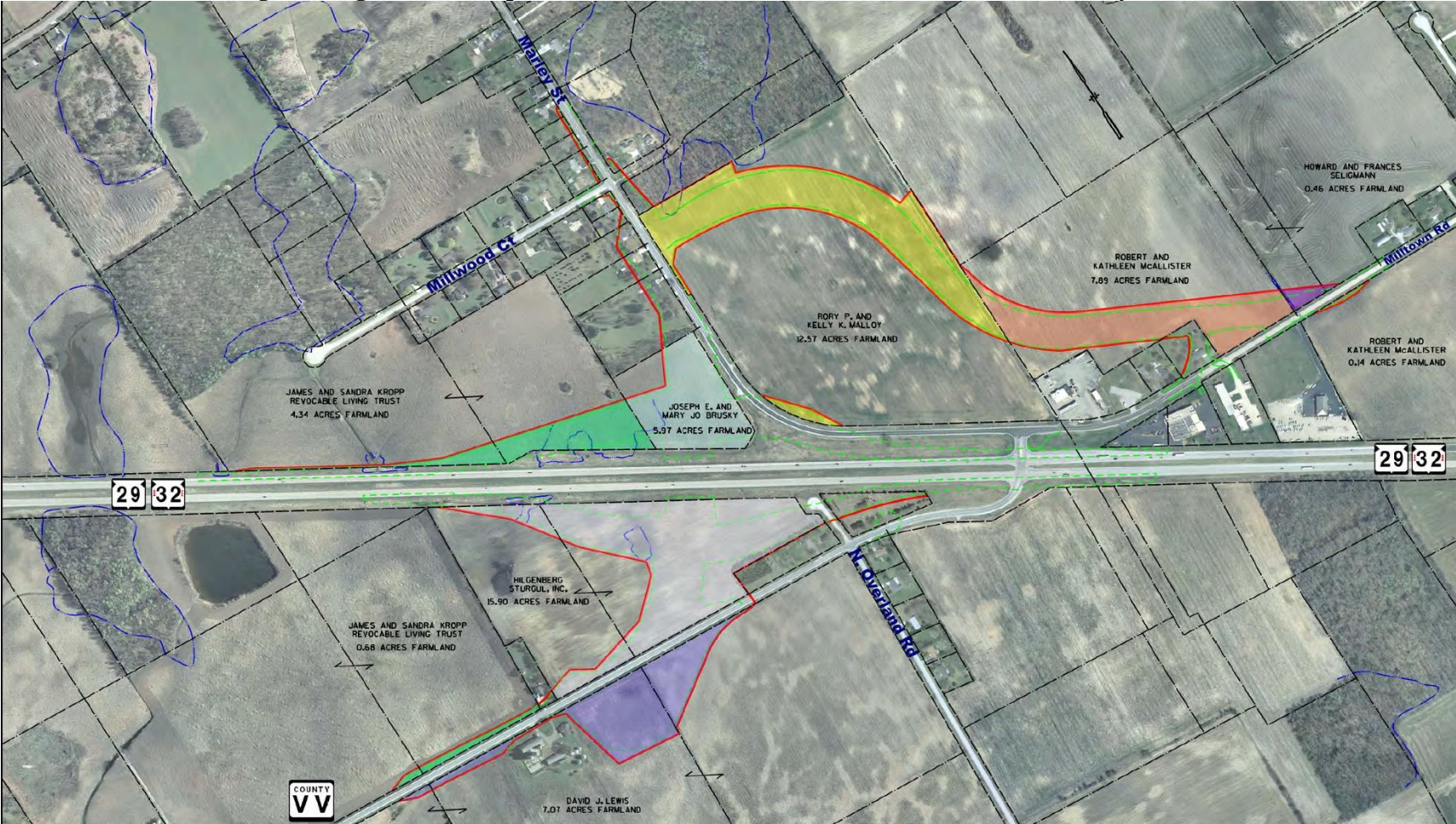


Figure 10. Agricultural Impacts at the North Pine Tree Road Extension. Courtesy of FHA.



DATCP contacted each of the affected landowners by phone and mail who would lose more than 5 acres of land due to the proposed project. The information provided by those who could be reached, as well as information on the potential agricultural impacts landowners raised as concerning, is summarized in the following paragraphs.

Landowner Comments

Farm Owner/Operator(s): Malloy Trust – administrator Sandra Malloy

Proposed Acquisition: Fee-simple acquisition of 12.57 acres, plus 5.2 land locked acres

The affected parcel is owned by the Malloy Trust and is currently rented. The tenant rotates cash crops of corn and soybeans. The Malloy Trust parcel (VH-43) is being affected due to the proposed realignment of Milltown Road, part of the STH 29 and CTH “VV” intersection reconstruction (Figure 9).

Ms. Malloy is concerned that the realignment of Milltown Road will divide the 50 acres of land owned in that area by Malloy Trust. She prefers WisDOT to realign Milltown Road along the property line to avoid dividing the land and making it harder to farm.

Ms. Malloy is also concerned about how the severed northeast portion of the affected parcel, 5.2 acres in size, will be accessed once the realigned Milltown Road is constructed (Figure 9). Ms. Malloy also raised a concern about the possible impacts of construction (soil compaction, rutting, topsoil mixing, etc.). WisDOT will only be constructing on the 12.57 acres purchased from Ms. Malloy and therefore any construction impacts should only occur on that property and should not affect any adjacent property owned by the Malloy Trust.

Farm Owner/Operator(s): Joseph and Mary Jo Brusky

Proposed Acquisition: Fee-simple acquisition of 5.97 acres

The affected parcel is owned by Joseph and Mary Jo Brusky and is currently rented. The tenant rotates cash crops of corn and soybeans. The Brusky parcel (VH-51) is being affected due to the proposed construction of the roundabout on the westbound terminus of the STH 29 and CTH “VV” diamond interchange (Figure 9).

Mr. Brusky responded to DATCP’s survey by phone and indicated that he did not have any agricultural related concerns about the proposed project.

Farm Owner/Operator(s): Robert and Kathleen McAllister

Proposed Acquisition: Fee-simple acquisition of 13.39 acres

The McAllister's own and rent a total of 741 acres in the area that are used to grow corn, soybeans, and wheat. The McAllister parcels (VH-37, 53, 55, and 55-6) are being affected due to the proposed realignment of Milltown Road and the extension of North Pine Tree Road (Figures 9 and 10).

The McAllister's oppose the alternative that WisDOT has selected and prefer that WisDOT select one of the other two alternatives as they are more economical and do not waste as much farmland and tax payer money. They are opposed to the preferred alternative (Alternative 3), as it creates unusable farmland wedges, destroys homes, and has a negative impact on existing businesses. The McAllister's are also concerned that this acquisition will take 9% of their tillable acres in the village of Howard and the associated loss in income base.

The McAllister's are very concerned that the proposed realignment and construction could affect the drainage on their adjacent land. The McAllister's have previously had land acquired by WisDOT for the installation of a J-turn on STH 29 that was constructed in 2012. Since construction, the McAllister's adjacent farmland drainage has experienced flooding. The McAllister's are concerned that the construction of the proposed project could result in similar impediment of drainage on their adjacent land not acquired by WisDOT.

Farm Owner/Operator(s): James and Sandra Kropp

Proposed Acquisition: Fee-simple acquisition of 5.02 acres

The affected parcel is owned by James and Sandra Kropp and is currently rented. The Kropp parcels (VH-50 and 52, HB-484 and 490) are being affected due to the proposed construction of the eastbound and westbound termini of the STH 29 and CTH "VV" diamond interchange (Figure 9).

The Kropp's are concerned about potential impacts to drainage and field access on their affected parcels.

Potential Agricultural Impacts

Severance and Future Access

The proposed project will sever the property of several farmland owners. The project will create a barrier on farms with land on both sides of the proposed realignments, creating a division between farmland that is currently contiguous. If WisDOT cannot provide access to a severed parcel, WisDOT will offer to purchase that land. Compensation for the value of the severed parcel should be addressed in the appraisal.

Existing Access to Farmland

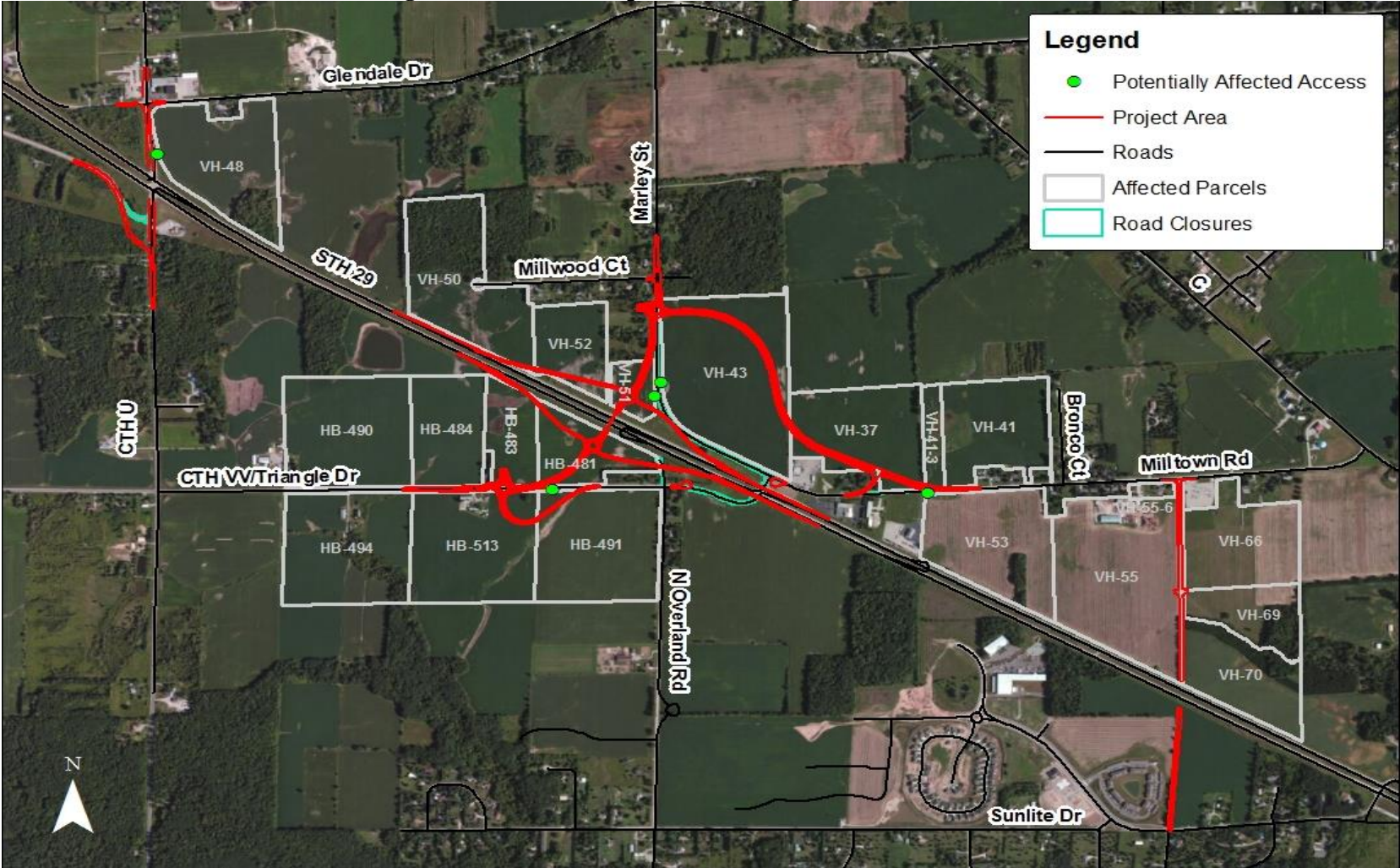
Existing farmland access points could also be impacted by the proposed project. Figure 11 displays current farm access points that could be affected by the proposed realignment and reconstruction, as identified from 2011 aerial imagery. WisDOT should consult with the landowners whose existing farm access will be impacted. Please see Appendix IV for more information and the Wisconsin statutes pertaining to access.

Drainage

Although this area of Brown County is not generally prone to drainage issues, the construction of the proposed project could potentially affect drainage on adjacent farmland. Some acquired parcels contain soil types that have somewhat poor to poor drainage classifications (see Table 7 in Section 3 – Agricultural Setting). This land is more likely to have existing drainage concerns and construction could disrupt the adequate water movement pattern, potentially amplifying current drainage problems. WisDOT should consult with the landowners to ensure that long-term impacts to drainage and drainage tiles do not occur.

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 to maintain, to the extent practicable, the original drainage flow patterns. Landowners whose property is damaged by improper construction or maintenance of highway facilities and highway drainage structures may file a claim with WisDOT within three years after the damage occurs. Please refer to Appendix V for the statutes pertaining to drainage rights.

Figure 11. Potential Impacts to Existing Farm Access Roads.



Landowner Guide to Wisconsin Eminent Domain Law

Appraisal Process

Eminent domain is the government's ability, under Section 3 of Article 4 of the Wisconsin Constitution, to condemn or take private property for public use. Wisconsin law entitles the landowner to "just compensation", or fair market value, for the loss of property.

Before negotiations begin, WisDOT will provide an appraisal of the affected property to the landowners. An appraisal is an estimate of fair market value. This will be the basis for WisDOT's compensation offer. The amount of compensation is based on the appraisal(s) and is established during the negotiation process between WisDOT and the individual landowner.

Landowners have the right to obtain their own condemnation appraisal of their property and could be compensated for the cost of this appraisal if the following conditions are met:

- 1.) The appraisal must be submitted to WisDOT within 60 days after the landowner receives the WisDOT appraisal.
- 2.) The appraisal fee must be reasonable.
- 3.) The appraisal must be complete

WisDOT is required by law to provide landowners with information about their rights in this process before the negotiation begins. Please see Appendix VI for more information and the Wisconsin statutes pertaining to eminent domain and property acquisitions.

Relocation Rights

Under the Wisconsin Relocation Law, public agencies and local governments undertaking a publicly funded activity that displaces persons from their homes, farms, or businesses are required to file a relocation plan with the state's Relocation Unit. A relocation plan needs to explain the steps the agency or local government will take to help displaced owners and tenants find suitable replacement dwellings, farms or business locations; inform displaced persons on available state, federal, and local assistance programs; determine costs of relocation payments and services; and ensure that persons are not required to vacate dwellings without reasonable opportunity to find replacement dwellings (Wisconsin State Energy Office).

6. RECOMMENDATIONS

DATCP recommends the following as ways to mitigate the potential adverse impacts to agriculture associated with the proposed project:

1. To address potential drainage problems that may occur as a result of the project, project officials should discuss design and construction plans with the Brown County land conservationist during the design process for this project.
2. The county land conservationist should also be consulted to ensure that construction proceeds in a manner that minimizes crop damage, soil compaction, and soil erosion on adjacent farmland.
3. Landowners and operators should be given advanced notice of acquisition and construction schedules so that farm activities can be adjusted accordingly. To the extent feasible, the timing of the acquisition and construction should be coordinated with the landowners and operators to minimize crop damage and disruption of farm operations.
4. WisDOT should consult with the landowner whose current and future access to farmland is affected. Where access is relocated or a new access point provided, WisDOT should consult with the affected landowner(s) to ensure that the new or altered access point is in a safe location for efficient farm use.
5. Current farm operators should be allowed to continue farming land acquired for the proposed project until it is needed for construction as long as there is adequate time to complete the growing season and harvest the crops.

Literature Cited

- Brown County Planning Commission. 2012. 2013-2017 Brown County, WI Farmland Preservation Plan.
<http://www.public.applications.co.brown.wi.us/plan/planningfolder/General%20Planning/Working%20Lands/2013-2017%20Brown%20County%20Farmland%20Preservation%20Plan%20FINAL%2021412.pdf>.
- Lind Weinger LLC. Wisconsin Eminent Domain Landowner Guide.
http://www.wisconsineminentdomain.com/uploads/7/0/1/1/7011926/landowner_guide.pdf.
- United States Department of Agriculture, National Agricultural Statistics Service (NASS). 2012 Census of Agriculture.
http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_2_County_Level/
- United States Department of Agriculture, National Agricultural Statistics Service (NASS). Annual Statistical Bulletin.
http://www.nass.usda.gov/Statistics_by_State/Wisconsin/Publications/Annual_Statistical_Bulletin/index.asp.
- United States Department of Agriculture, Natural Resource Conservation Service (NRCS). Web Soil Survey. *Soil Survey of Brown County, WI*.
- University of Wisconsin Extension – Agriculture and Natural Resources. 2011. Brown County Agriculture: Value and Economic Impact.
<http://www.uwex.edu/ces/ag/wisag/documents/agimpactbrochBrownCoFINAL.pdf>.
- Wisconsin Agricultural Statistics. 2013. Wisconsin Agricultural Statistics Service, National Agricultural Statistics Service USDA, Wisconsin Department of Agriculture, Trade and Consumer Protection.
- Wisconsin Department of Agriculture, Trade, and Consumer Protection. 2007. *County Drainage Board Handbook*.

Wisconsin Department of Commerce. The Rights of Landowners Under Wisconsin Eminent Domain Law.

<http://www.stateenergyoffice.wi.gov/docview.asp?docid=22817&locid=160>.

Wisconsin Department of Revenue, Division of Research and Policy, Sales and Property Tax Policy Team.

Wisconsin Department of Transportation. Bureau of Aeronautics. 2012. *Environmental Investigations Guidelines for Land Acquisitions*.

Wisconsin Legislature. Statute 84.295. Freeways and expressways.

<http://docs.legis.wisconsin.gov/statutes/statutes/84/295>.

Wisconsin State Energy Office. Relocation Assistance.

<http://www.stateenergyoffice.wi.gov/section.asp?linkid=1783&locid=160>.

STH 29: CTH “U” to Woodland
Road Project

Agricultural Impact Statement

APPENDICES

Appendix I: Agricultural Impact Statements

DATCP is required to prepare an Agricultural Impact Statement (AIS) whenever more than five acres of land from at least one farm operation will be acquired for a public project if the agency acquiring the land has the authority to use eminent domain for the acquisition(s). The DATCP has the option to prepare an AIS for projects affecting five or fewer acres from each farm. An AIS would be prepared in such a case if the proposed project would have significant effects on a farm operation. The agency proposing the acquisition(s) is required to provide the DATCP with the details of the project and acquisition(s). After receiving the needed information, DATCP has 60 days to analyze the project's effects on farm operations, make recommendations about it, and publish the AIS. DATCP will provide copies of 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 proposing agency may begin negotiating with the landowner(s) for the property.

The following Wisconsin Statute provides information on the purpose and role of the AIS.

Section 32.035 of the Wisconsin Statutes describes the Agricultural impact statement:

(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 (1), 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:* The department shall prepare an agricultural impact

statement for each project, except a project under Ch. 81 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.

Appendix II: NRCS Soil Farmland Classification

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 available for these uses (the land could be cropland, pastureland, rangeland, forestland, 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.

Unique Farmland

Unique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

Additional Farmland of Statewide Importance

This is land, in addition to prime and unique farmland, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate state agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some states, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by state law.

Additional Farmland of Local Importance

In some local areas, there is concern for certain additional farmland for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. In places, additional farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Appendix III: Soil Capability Classes

Land suited to Cultivation and Other Uses:

Class I soils have few limitations that restrict their use.

Class II soils have some limitations that reduce the choice of plants or require moderate conservation practices.

Class III soils have severe limitations that reduce the choice of plants or require special conservation practices, or both.

Class IV soils have very severe limitations that restrict the choice of plants, require very careful management, or both.

Land Limited in Use-Generally Not Suited to Cultivation

Class V soils have little or no erosion hazard but have other limitations impractical to remove that limit their use largely to pasture, range, woodland, or wildlife food and cover.

Class VI soils have severe limitations that make them generally unsuited to cultivation and limit their use largely to pasture or range, woodland, or wildlife food and cover.

Class VII soils have severe limitations that make them unsuited to cultivation and that restrict their use largely to grazing, woodland, or wildlife.

Class VII soils have very severe limitations that make them unsuited to cultivation and that restrict their use largely to grazing, woodland, or wildlife.

Class VIII soils and landforms have limitations that preclude their use for commercial plant production.

Soil Capability Subclasses

A subclass is a group of capability units within a class which has the dominant soil or climatic limitations for agricultural use. Capability Class I has no subclasses. There are four subclasses, designated by letter symbols and defined as follows:

- e** Erosion susceptibility is the dominant problem or hazard. Both erosion susceptibility and past erosion damage are major soil factors for placement in this subclass.
- s** Soil limitations within the rooting zone, such as shallowness of rooting zones, stones, low moisture-holding capacity, low fertility that is difficult to correct, and salinity or sodium, are dominant.
- w** Excess water is the dominant hazard or limitation. Poor soil drainage, wetness, high water table, and overflow are the criteria for placing soils in this subclass.
- c** Climate (temperature or lack of moisture) is the only major hazard or limitation.

Appendix IV: Access

WisDOT must reconstruct any entrance to property abutting a highway if there is a change in the highway alignment affecting that entrance. If a new highway severs property, WisDOT must provide an entrance to both parcels of land. The landowner is responsible for the maintenance of these access points after construction is completed.

WisDOT has the authority to limit the number of access points to and from rural segments of the state trunk system serving more than 2,000 vehicles per day. Access to a road or private property may be taken away if WisDOT determines a need for access control. A controlled-access highway is one where the entrance to and departure from the highway is limited. Access controls can be placed on a new or existing highway and WisDOT can limit access by providing a grade separation, service roads or closing access to an intersecting road. Additional access to a controlled-access highway will not be provided without WisDOT's written permission. When a controlled-access highway severs a parcel, WisDOT may provide a crossover point for the owner to travel between the severed parcels. The access in these cases is removed when the parcels are no longer owned by the same party.

DATCP recommends that farmland owners concerned about access should consult these texts for further information.

Section 86.05 of the Wisconsin Statutes states that access shall be provided to land which abuts a highway:

(1) 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.

Appendix V: Drainage

Roads and railroad grades must be constructed and maintained so they do not impede the general flow of surface water in an unreasonable manner. Roads and railroad grades must be constructed with adequate ditches, culverts and other facilities to maintain a practical drainage pattern.

DATCP recommends that farmland owners concerned about drainage should consult these texts for further information.

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

Appendix VI: Eminent Domain

Fair compensation for a partial taking of property under eminent domain is the larger of two figures: (1) the fair market value of the acquired property or (2) the fair market value of the entire parcel before the acquisition minus the fair market value of the remaining parcel. Compensation will be paid for the land acquired, any improvements acquired (structures, fencing, etc.), loss of access, loss of a use of this property, and damages resulting from severance of the property (including land and improvements). The condemnor may provide compensation for increased travel distances.

In addition to other compensation, a condemnor is required to make a payment of \$50,000 or less to any displaced farm or business owner who has owned the property for at least one year and who purchases a comparable replacement farm or business within two years of the acquisition. The amount of this payment would include any additional amount of money needed to equal the reasonable cost of a replacement farm or business, any increased interest or debt service charges, and closing costs. Displaced renters may also receive compensation if they rent or lease a comparable replacement farm or business within two years of the acquisition. If the displaced tenant rents or leases a comparable farm or business, the payment would include the amount needed to rent the replacement property for four years. This payment would not exceed \$30,000. If the renter decides to purchase a comparable farm or business, the payment would be equal to the rental or lease of that property for four years plus closing fees.

If a project would displace any person, business, or farm operation, the condemnor must file and have approved a written relocation payment plan and a relocation assistance service plan with the Department of Commerce. The condemnor must determine the relocation payment, assist displaced persons, businesses, and farm operations to find comparable replacement properties, provide information about any government assistance to displaced persons, and coordinate the displacement with other project activities in a timely manner to avoid causing hardship.

DATCP recommends that farmland owners concerned about eminent domain powers and the acquisition of land should consult these texts for further information. For a complete description of the eminent domain law, please see Wisconsin Statutes Chapter 30.

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 that 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:

(4) 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 that 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.

Appendix VII: Mailing List

David J. Lewis 2734 Tulip Court Green Bay, WI 54313	Sandra Malloy 1140 Pinecrest Road Green Bay, WI 54313	DOA Division of Energy Service, Relocation Unit 101 E Wilson St, 6 th floor Madison, WI
Terry Hilgenberg Hilgenberg Sturgul Inc PO Box 555 Shawano, WI 54166	Governor Scott Walker 115 E State Capitol Madison, WI	Sen. Jerry Petrowski Transportation Committee Room 123 S State Capitol Madison, WI
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James W & Sandra M Kropp 214 Triangle drive Oneida, WI 54155	DOT Central Office Files Hill Farms, Madison WI	State Documents Section Library of Congress 101 Independence Ave SE Washington, DC 20540
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