



U.S. Department
of Transportation
**Federal Highway
Administration**

FHWA – WI Division

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In Reply Refer To:
HDA-WI

Date: February 25, 2015

FEDERAL HIGHWAY ADMINISTRATION FINDING OF NO SIGNIFICANT IMPACT

Project ID: 3070-00-03/05/06 & 73/74
Highway: WIS 73 & USH 12/18 Interchange
Termini: Fadness Rd – London Rd
County: Dane

This finding of no significant impact is based on the attached environmental document, which has been independently evaluated and determined to adequately and accurately discuss the environmental issues and impacts of the proposed project.

It provides sufficient evidence and analysis for determining that an environmental impact statement is not required.

Accordingly, it is concluded this project will not have any significant impact on the human environment.

Approved:

Name: Johnny M Gerbitz
Title: Field Operations Engineer

Attachment

ENVIRONMENTAL EVALUATION OF FACILITIES DEVELOPMENT ACTIONS

Wisconsin Department of Transportation
DT2094 12/2013

BASIC SHEET 1 -- PROJECT SUMMARY

Project ID 3070-00-03/05/06	Project Termini From: Fadness Road To: London Road	Funding Sources (check all that apply) <input checked="" type="checkbox"/> Federal <input checked="" type="checkbox"/> State <input type="checkbox"/> Local
Construction ID 3070-00-73/74	Nearest Community Towns of Christiana and Deerfield	Estimated Project Cost and Funding Source (state and/or federal). Year of Expenditure (YOE) dollars include delivery cost. \$14.7 million (2012)
Route Designation (if applicable) WIS 73 and US 12/18 National Highway System (NHS) Route <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No (WIS 73)	Section / Township / Range S3 and 4/T6/R12E	Real Estate Acquisition Portion of Estimated Cost (YOE) \$800,000 (2012)
Project Title WIS 73/US 12/18 Intersection Reconstruction Project	County Dane	Utility Relocation Portion of Estimated Cost (YOE) \$86,300 (2012)
Bridge Number(s) (if applicable) B-13-801, B-13-802 C-13-2074, C-13-3095	Scheduled start date - m/d/yyyy (Operational Planning Meeting (OPM) or Scoping Meeting) 2/13/2012	Right of Way Acquisition
		Acres
		Fee
		TLE
		PLE

Functional Classification of Existing Route (FDM 3-6-2)	Urban	Rural	WisDOT Project Classification (FDM 3-5-2)	
Freeway/Expressway	<input type="checkbox"/>	<input type="checkbox"/>	Resturfacing	<input type="checkbox"/>
Principal Arterial	<input type="checkbox"/>	<input type="checkbox"/>	Pavement Replacement	<input type="checkbox"/>
Minor Arterial	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Reconditioning	<input type="checkbox"/>
Major Collector	<input type="checkbox"/>	<input type="checkbox"/>	Expansion	<input type="checkbox"/>
Minor Collector	<input type="checkbox"/>	<input type="checkbox"/>	Bridge Rehabilitation	<input type="checkbox"/>
Collector	<input type="checkbox"/>	<input type="checkbox"/>	Bridge Replacement	<input type="checkbox"/>
Local	<input type="checkbox"/>	<input type="checkbox"/>	"Majors" Project (there are both state and federal majors)	<input type="checkbox"/>
No Functional Class	<input type="checkbox"/>	<input type="checkbox"/>	SHRM	<input type="checkbox"/>
			Reconstruction	<input checked="" type="checkbox"/>
			Preventive Maintenance	<input type="checkbox"/>
			Safety	<input type="checkbox"/>
			Other -- Describe:	<input type="checkbox"/>

FHWA Draft Categorical Exclusion (CE), Draft Type 2c/WisDOT Draft Environmental Report (ER). No significant impacts indicated by initial assessment.

FHWA Final Categorical Exclusion (CE), Type 2c/WisDOT Final Environmental Report (ER). No significant impacts will occur.

FHWA Environmental Assessment (EA), Type 3/WisDOT Environmental Assessment (EA). No significant impacts indicated by initial assessment.

Signature - Company/Organization: *[Signature]* Date - m/d/yyyy: 2-6-14 Title: *[Title]*
 Signature - Director, Bureau of Technical Services: *[Signature]* Date - m/d/yyyy: 2/11/14
 Signature - Company/Organization: *[Signature]* Date - m/d/yyyy: 2-6-14 Title: *[Title]*
 Signature - *[Signature]* Date - m/d/yyyy: 5-1-2014 Title: Field Ops Eng.
 Region Aeronautics Rails & Harbors FHWA FAA FTA FRA

After reviewing and addressing substantive public comments, updating the Environmental Assessment (EA) and coordinating with other agencies, it is determined this action:

Will NOT significantly affect the quality of the human environment. This document is a Final Categorical Exclusion / Final Environmental Report.

Will NOT significantly affect the quality of the human environment. This document is a Finding of No Significant Impact (FONSI).

Has potential to significantly affect the quality of the human environment. Draft Environmental Impact Statement (EIS) required.

PREPARER

Signature - Company/Organization: *[Signature]* Date - m/d/yyyy: 10-2-14 Title: *[Title]*
 Signature - Director, Bureau of Technical Services: *[Signature]* Date - m/d/yyyy: 10/30/14
 Signature - Company/Organization: *[Signature]* Date - m/d/yyyy: 10-8-14 Title: *[Title]*
 Signature - *[Signature]* Date - m/d/yyyy: 2/25/2015 Title: *[Title]*
 Region Aeronautics Rails & Harbors FHWA FAA FTA FRA

ENVIRONMENTAL ADDENDUM A

Wisconsin Department of Transportation

WIS 73/US 12/18 Intersection Reconstruction Project (I.D. 3070-00-03/05/06)

Alternative 4A	Total Length of Center Line of Existing Roadway 3.5 miles Length of This Alternative 3.5 miles
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- 1. Date(s) of Public Notice:** May 12, 2014 (Wisconsin State Journal)
May 14, 2014 (Cambridge News/Deerfield Independent)
May 28, 2014 (Wisconsin State Journal and Cambridge News/Deerfield Independent)
- 2. In: (Name of Newspaper):** Wisconsin State Journal and Cambridge News/Deerfield Independent
- 3. Dates Environmental Assessment made available to public:**

From May 12, 2014

To June 26, 2014
- 4. Public Hearing:**
 Was not required, explain: _____
 Opportunity was given but no hearing was held.
 No requests for a public hearing were received.
 Requests for a public hearing were not substantial.
 Was held on June 11, 2014
- 5. Summarize comments from the Public Hearing and Public Notice of Availability. Characterize public support or opposition to the project. Include a summary of the changes to the environmental document and the project resulting from comments:** (Note: Alternatives proposed by the public and subsequently rejected should be identified and the reasons for rejecting them included.)

The EA documents the numerous public involvement activities and there has been consistent support for this project from the public, local officials, and agency representatives. Public comments received throughout the public involvement process were reviewed and evaluated individually by the project team. Follow-up contact with individuals was initiated to provide clarity to the issue and ensure that the comment was addressed during the preliminary design and environmental evaluation process. Issues of land use, traffic operations, access, and safety were addressed, and in some cases, the design was revisited or changed to accommodate the public's needs.

All landowners with property affected by the proposed action have rights that may be exercised under Wisconsin Eminent Domain Law Procedures Under sec. 32.06 Wisconsin Statutes. A detailed pamphlet named "The Rights of Landowners Under Wisconsin Eminent Domain Law Domain Pamphlet" WI Department of Administration (2012), was available at the Public Hearing. This pamphlet discusses landowner rights and procedures for the eminent domain process and is attached to this document as Exhibit 1. Copies of this pamphlet can also be found at the following website: <http://www.dot.state.wi.us/projects/seregion/164/docs/ownersrightspamphlet.pdf>

The Public Hearing included the following testimony:

- One (1) person provided written testimony
- One (1) agency provided written testimony

Written Testimony #1: Area resident with interest in family farm

The area resident raised two questions for the project team: First, "...why not detour the traffic for the duration of the project and keep the 12/18 hwy in its existing location?" The second question was if WisDOT has accounted for a potential rising water table as a result of the fill activities associated with construction. The full transcript of this testimony as well as responses from the WisDOT Project Manager is included in Exhibit 2.

A traffic detour on US 12/18 was considered but not selected as the Preferred Alternative because of two main reasons. First, because US 12/18 is a long-truck route and a major commuter route, the detour length would be too far for the existing traffic volume. Second, the Preferred Alternative will allow for future four-lane alignment through the area.

WisDOT performed geotechnical investigations to assure the soils beneath the roadway will be stable, and the roadway will not sink over time. However, groundwater elevations change over time which makes it difficult to design for future droughts or rainy years. WisDOT will use materials that allow water to drain and not act as dams for the movement of groundwater.

Written Testimony #2: Wisconsin Department of Natural Resources (WDNR)

The WDNR provided review and comments in a letter dated June 26, 2014 (see Exhibit 3). The letter indicates that..." A description of the proposed seeding and management plan has not been provided." Also, "The mitigation assessment did not include performance standards or goals for vegetation, hydrology or other measures typical of mitigation plans. We will wait to issue final comments or concurrence on the proposal until additional information such as performance standards and proposed management and monitoring are provided." The letter also states that, "The mitigation plan should provide information on the conservation easements including the term and remaining time of the agreement...consideration should be given to permanently protecting restored areas if they are not already."

The mitigation assessment that the WDNR refers to in their comment letter was the On-Site Mitigation Assessment Findings Report (dated 3/18/13). The Compensation Site Plan for the Hoesly Parcel Wetland Mitigation Site was mailed to the WDNR and the U.S. Army Corps of Engineers on 6/26/14. WisDOT feels that the mitigation plan provides WDNR additional details with respect to their areas of concern such as plan details (proposed seeding and maintenance); performance standards for vegetation and hydrology; and site protection (easement duration).

6. Describe selected alternative:

- Selected alternative is the same as that described on form DT2094, Environmental Evaluation of Facilities Development Actions.
- Selected alternative is different from that described on form DT2094, Environmental Evaluation of Facilities Development Actions. Explain changes and why another alternative was selected.

Alternative 4A was selected as the Preferred Alternative. However, modifications have occurred since FHWA's initial signature on May 1, 2014. These changes are discussed below:

- The State Historic Preservation Officer (SHPO) was provided a Section 106 Amendment on June 30, 2014 documenting the additional 12.5 acres of right of way needed for the Proposed Action. The SHPO signed the Section 106 Amendment on 7/24/14. SHPO concurred with "No historic properties in the APE." (see Exhibit 5)
- The EA originally stated that two concrete box culverts would be replaced and one concrete box culvert would be extended. Instead, one concrete box culvert will be replaced (B-13-359) and two concrete box culverts will be extended (C-13-105 and B-13-358).
- Additional coordination with property owners was conducted on July 3, 2014. A letter was sent explaining that culverts, C-13-105 and B-13-358, will be extended over Mud Creek and may increase the flood water elevation on their property(s) (see Exhibit 4).

WIS 73/US 12/18 Intersection Reconstruction Project

(I.D. 3070-00-03/05/06)

Exhibit 1: The Rights of Landowners Under Wisconsin Eminent Domain Law
Domain Pamphlet

Exhibit 2: Public Hearing Written Testimony #1

Exhibit 3: Public Hearing Written Testimony #2

Exhibit 4: Notification of Backwater Increase for Zoned Floodplain

- WIS 73 Tributary to Mud Creek Culvert Extension (C-13-105)
- US 12/18 Mud Creek Culvert Extension (B-13-358)

Exhibit 5: Section 106 Documentation



THE RIGHTS OF LANDOWNERS

Under Wisconsin
Eminent Domain Law

Procedures Under
sec. 32.05
Wisconsin Statutes

Highways, Streets, Storm & Sanitary Sewers,
Watercourses, Alleys, Airports, and Mass Transit Facilities

Revised February, 2012

FOREWORD

This pamphlet is published by the Wisconsin Department of Administration in cooperation with the Attorney General, pursuant to sec. 32.26 (6), of Wisconsin statutes. The pamphlet is to be given to property owners or their representatives by the acquiring authority prior to initiation of negotiations for property being acquired for a public project.

The material in this pamphlet provides information on how the condemnation process works in Wisconsin. It should serve as a reference for you, but it is not intended to cover every possible eventuality or every right you may have in individual cases. A further source of information is Chapter 32 of the Wisconsin statutes which contains the law that is summarized in this pamphlet.

Direct questions about this pamphlet to:
Relocation Unit
State Energy Office
Wisconsin Department of Administration
P.O. Box 7868, Madison, WI 53707
(608) 267-0317

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INTRODUCTION

Community growth sometimes necessitates the public's need to own certain properties and right-of-ways for the greater public good. This need may conflict with private ownership. Consequently, government has had to resort to its right to acquire private land for public uses even without the consent of private owners—the eminent domain power.

This power derives from the Wisconsin Constitution, Art. IX, sec. 3. The Legislature has

FEDERAL LAW

When a project is receiving federal financial assistance, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) may provide additional or different protections than those outlined in this pamphlet. You should receive supplemental information from the acquiring authority if federal law applies.

delegated this power by statute to numerous authorities and has specified the purposes for which such power can be used. Generally, departments, municipalities, boards, commissions, public officers, and various public and quasi-public corporations are delegated this power. Some of the purposes for which the Legislature has specified that condemnation can be used are highway construction or improvement, reservoirs, dams, public utility sites, waste treatment facilities, city redevelopment and energy lines.

Wisconsin has long had statutes regulating the exercise of eminent domain power. This pamphlet is intended to give citizens information about Wisconsin's eminent domain procedure, the workings of the condemnation process, and the rights of property owners in this process. It is, by necessity, of a general nature and is not a substitute for legal advice in individual cases, since many aspects of Wisconsin law cannot be covered in general terms. Another source of information for citizens is the particular authority which is acquiring the property.

The goal is to achieve equality of information for both parties during the negotiation process and to reach satisfactory settlements, equitable to both the property owner and the public.

THE LANGUAGE OF EMINENT DOMAIN

(This glossary defines terms used in the pamphlet)

Acquiring Authority

A public or quasi-public entity vested with the constitutional or statutory power to acquire private property for a public use.

Additional Items Payable

Persons displaced by the public project are to be fairly compensated by the payment of relocation assistance and assistance in the acquisition of replacement housing.

Appraisal

A written report, by a professional and disinterested person skilled in valuation, describing the property that is to be acquired and reaching a documented conclusion as to the fair market value of such property.

Award of Compensation

A document which is served upon a property owner after a refusal of a jurisdictional offer, stating the amount of just compensation. It names all persons with a record interest in the property, describes the property acquired, and includes the date of occupancy by the acquiring authority. The recording of this document passes title in the property to the acquiring authority. This term also describes the payment made to the property owner for the property. For negotiated sales, the amount of compensation is stated in the conveyance.

Condemnation Commission

A group of local residents, appointed by the circuit court of a county for fixed terms, who have the authority to determine just compensation for the property being acquired.

Date of Acquisition and Date of Evaluation

The day on which the award of compensation is recorded in the office of the register of deeds in the county where the land is located. The fair market value of the property on this day is just compensation to the property owner for the acquisition. For negotiated sales, the date of acquisition and the date of evaluation is the date the conveyance is recorded with the register of deeds.

Easement

An interest in real property which gives the acquiring authority the legal right to use the property for a specific purpose or to restrict the property owner's use of the land. Ownership and title to the property remain with the property owner.

Eminent Domain

The power of the state to acquire private property for a public use.

Fair Market Value

The amount for which property could be sold in the open market between a willing buyer and a willing seller.

Full Narrative Appraisal

A detailed and comprehensive description of the process an appraiser uses to reach a documented conclusion of a property's fair market value. The report must contain the appraiser's rationale for determining value and be documented by market data which supports the appraiser's rationale.

Incidental Expenses

Reasonable and necessary amounts, defined by statute, payable to the owner of real property acquired for a public use. Generally, incidental expenses compensate for expenses you may incur in transfer of your property to the acquiring authority. They include recording fees, mortgage prepayment penalties and other items.

Jurisdictional Offer

A written notice given by the acquiring authority to the owner of property and any mortgagee of record which informs the recipients of the proposed public use, what property is being acquired, and the amount of compensation to be paid.

Kline Law

A special condemnation procedure provided by the Legislature for condemnations by the City of Milwaukee.

Lis Pendens

A notice filed with the register of deeds within 14 days of the jurisdictional offer to notify all interested parties that the property described is in the process of being acquired for a public use.

Litigation Expenses

The sum of the costs, disbursements and expenses including reasonable attorney, appraisal and engineering fees necessary to prepare for, or participate in, actual or anticipated proceedings before a condemnation commission or any court.

Relocation Order

An order issued by the acquiring authority describing the proposed public project. It describes the old and new locations and includes all property needed for the project. Within 20 days after its issuance it must be filed with the county clerk in the county in which the lands are located.

Severance Damages

Damages which may result when only part of a person's property is condemned. Generally, these items of damage compensate for any loss in value of the remaining property due to the acquisition.

Uneconomic Remnant

Any portion of the property remaining after a partial acquisition which is of little value or substantially impaired economic viability due to its size, shape or condition.

PART ONE BEFORE NEGOTIATIONS TO ACQUIRE PROPERTY BEGINS

After you have been contacted by the acquiring authority, you have the right to a full narrative appraisal of the property sought to be acquired. This appraisal is done by an appraiser hired or employed by the agency, and the law requires the appraiser to confer with the owner or the owner's representative, if reasonably possible, when making the appraisal. Any and all appraisals made by the acquiring authority must be provided to you.

You have the right to have your own full narrative appraisal of the property made by a qualified appraiser. The reasonable cost of this appraisal may be submitted to the acquiring authority for payment, if the appraisal meets the standards set forth in sec. 32.09 of Wisconsin statutes, but, if you have such an appraisal made and wish to be paid for its cost, it must be submitted to the authority within 60 days after you receive the authority's full narrative appraisal. Your appraisal will be considered during negotiations.

The acquiring authority is required to file a relocation order with the county clerk of the county in which your property is located, unless the appraisal estimates that compensation will be less than \$1,000 in the aggregate. This order describes the layout of the project, old and new locations, and the property interests sought to be acquired. It must be filed within 20 days after its issuance by the agency, and is available for public inspection.

If a public project, other than a town highway, involves the acquisition of any interest in any farm operation of more than five acres, the Department of Agriculture, Trade and Consumer Protection (DATCP) may be required to prepare an agricultural impact statement prior to the acquisition of any land. Even if the acquisition is less than five acres, DATCP may prepare a statement if the acquisition will have a significant effect on the farm operation.

If an environmental impact statement is required by another statute, the requirements of the agricultural impact statement may be met by the environmental impact statement. Also, if an

easement for an electric transmission line, excluding a high voltage line, is being acquired over a farm operation, an agricultural impact statement is not required.

A “farm operation” is defined by law as an activity conducted primarily for the production of commodities for sale or home use in such quantity that the commodities contribute materially to the support of the farm operator. The acquiring authority may gather the necessary information for the impact statement. DATCP must prepare the statement within 60 days after receiving the information from the acquiring authority. After preparation, the statement must be published by DATCP. For a 30 day period after publication, the acquiring authority is precluded from negotiating with the property owner or making a jurisdictional offer.

The law also requires that the agricultural impact statement be distributed by DATCP to various offices and individuals. You can obtain a copy from your local library or from any local unit of government in the area affected. You may also request a copy directly from DATCP.

PART TWO THE NEGOTIATION PERIOD

After a relocation order has been filed and appraisals are completed, the acquiring authority must attempt to negotiate with the owner or the owner’s representative for purchase of the needed property. The statutes require that you be provided an informational pamphlet on eminent domain procedure before negotiation begins. If you are also displaced as a result of the acquisition, the law requires that you receive a pamphlet on relocation benefits. The owner’s full narrative appraisal must be considered as a part of the negotiation. Also, any rights you may have for additional items payable (relocation benefits) can be included in the negotiations.

During negotiations, the acquiring authority must provide a map showing all property affected by the proposed project. Along with this map you must be given the names of at least 10 neighboring landowners to whom offers are being made. The names of all offerees if less than 10 owners are affected must be given. Any maps in the possession of the authority showing the property affected can be inspected, and copies will be made available at reasonable cost. At this point, condemnation is not involved, only negotiations for purchase.

If you agree to a negotiated purchase, the acquiring authority must record the conveyance with the register of deeds in the county where the land is located. Also, all owners of record should receive by certified mail the conveyance and a notice of their right to appeal within six months after the date of the recording of the conveyance. Such an appeal would challenge the amount of compensation received by the property owner. The procedure used for this appeal is described in Parts 6 and 7 of this pamphlet, except that an appeal from a negotiated price must be taken within six months. The date the conveyance is recorded is the date of acquisition.

PART THREE PARTIAL ACQUISITIONS AND EASEMENTS

If only a part of your property is acquired, other than for an easement, two different calculations may be made to determine the fair market value of the part acquired. In such partial acquisitions, fair market value is the greater amount of either the fair market value of the part acquired or the difference between the value of your property before the acquisition and its value after, giving effect to severance damages set forth in sec. 32.09 of Wisconsin Statutes.

If only part of your property is acquired and you are left with an uneconomic remnant, the acquiring authority must also offer to acquire the uneconomic remnant. You must consent to the acquisition in order for the remnant to be acquired.

When an easement over your property is acquired, the compensation required is the difference between the value of your property immediately before the date of evaluation and its value immediately after the date of evaluation. Severance damages may also be paid where such damages exist and are allowed by statute.

If your land is zoned or used for agricultural purposes and an easement is acquired for a high voltage transmission line or a fuel pipeline, you will be entitled to choose between a lump sum payment for the easement or an annual payment representing just compensation for the acquiring of the easement for one year. The acquiring authority should be able to answer any questions on your eligibility for this choice and the terms of each alternative. Sec. 32.09 (6r) (a), (b), and (c) of Wisconsin statutes details the law on lump sum versus annual payments.

PART FOUR THE JURISDICTIONAL OFFER TO PURCHASE

If negotiations do not lead to a purchase of the needed interest by the acquiring authority, a jurisdictional offer must be given to the owner and to any mortgagee of record. You will receive the notice by personal service or by certified mail.

This very important document will provide you with vital information on the acquisition of your property. Items that must be included are a statement of the nature of the project, a description of the property to be acquired, and a statement of the proposed date the acquiring authority will occupy the property. Included in the document is the amount of compensation to be paid for your property, including a statement that any additional items payable may be claimed for relocation assistance. An owner has 20 days from the receipt of this offer to accept or reject it.

Within fourteen days from the day you receive the jurisdictional offer, a lis pendens will be filed with the register of deeds in the county where the property is located. The lis pendens provides notice to any interested party of the possibility that the property may be acquired for a public use.

If you accept the jurisdictional offer, title will be transferred and you will be paid the amount specified in the offer within 60 days. This 60 day period can be extended by mutual written consent of the property owner and the acquiring authority. Incidental expenses for which you may be eligible under sec. 32.195 of the statutes relating to transfer of your property to the acquiring authority will also be paid. If the property owners of record reject the jurisdictional offer in writing, or do not act upon it within the 20 day period, the acquiring authority may make an award of compensation.

PART FIVE THE AWARD OF COMPENSATION

This procedure allows the acquiring authority, after the jurisdictional offer is rejected or not accepted, to make a written declaration stating the amount of compensation to be paid, the description of the property, the date of occupancy and other information. The amount of compensation offered must be equal to or more than the amount of the jurisdictional offer. You will receive a copy of the award by personal service or certified mail.

You will then receive payment for your property, by check, for the amount of compensation provided in the award less any outstanding tax liens and prorated taxes. The acquiring authority may mail the check to you or deposit it with the clerk of the circuit court for your benefit. After payment is made, the award will be recorded with the register of deeds in the county where the land is located. This action passes title to the property to the acquiring authority. This date becomes the "date of acquisition" and any questions as to the value of your property will be resolved based on the value on this date.

PART SIX HEARING BEFORE THE COUNTY CONDEMNATION COMMISSION

As of the date of acquisition, a property owner may appeal to the county condemnation commission from the amount of an award within two years, or from the amount of a conveyance within six months. This is accomplished by applying to the circuit court or county judge in the county where the land is located. Alternatively, this procedure may be waived and a property owner may appeal directly to circuit court. (See Part 7)

A county will have six to 12 commissioners, depending on the county population. They are local individuals, residents of the county or adjoining county, and are appointed by the circuit court. They serve staggered three year terms and generally sit in groups of three.

Within seven days after the chairperson of the commission is notified of the petition by the judge, three of the commissioners are selected to hear the case. The hearing date, time, and place are fixed by the chairperson, and will not be less than 20 days nor more than 30 days from the day the court assigned the petition to the chairperson. At least 10 days prior notice will be given to all parties. The commission proceedings are more informal than court proceedings, and are governed by statute. The amount of the jurisdictional offer or award of compensation cannot, by law, be disclosed to the commission. You have a right to appear and to present evidence. A majority of the members have the power to make all decisions. Within 10 days after the end of the hearing, a written award is made and filed with the clerk of circuit court. The clerk will notify the parties of the award.

Should the commission's award exceed the amount paid by the acquiring authority, and if neither party appeals from the award of the commission to the circuit court, interest is paid on the amount of the increase for the period from the date of acquisition until the date of the commission award, if the amount of the increase is paid within 14 days of the commission award.

If you or the acquiring authority are dissatisfied with the award of the condemnation commission, either can appeal to the circuit court of the county where the property is located. This must be done within 60 days of the filing of the condemnation commission's award. In case of such appeal by you or the acquiring authority, the amount of compensation awarded by the commission is not paid pending outcome of the appeal.

PART SEVEN APPEAL OF JUST COMPENSATION TO CIRCUIT COURT

As of the date of acquisition, a property owner has two years to appeal from the amount of an award of damages, or six months to appeal from the amount of a conveyance. An owner may choose to go first to the condemnation commission (see Part 6), or go directly to circuit court.

The statutes require certain notices and papers to be filed to accomplish an appeal. It would be advisable to secure legal counsel to aid you in your appeal. The procedure may be found in sec. 32.05 (9) of Wisconsin statutes.

You have a right to a jury trial on the issue of just compensation. The measure of just compensation is the fair market value of the property acquired from you as of the date of acquisition, as calculated under sec. 32.09, stats.

You have the right to appeal from the judgment of the circuit court to the court of appeals within six months of the notice of the entry of judgment of the circuit court.

PART EIGHT ACTION TO CONTEST THE RIGHT OF CONDEMNATION

This action challenges the right of the authority to condemn the property described in the jurisdictional offer. This action must be commenced in circuit court within 40 days from the postmark of the certified letter containing notice of the jurisdictional offer.

If you do not challenge the acquiring authority's right to acquire your property within this 40 day period, you will lose your right to do so.

In addition, if you accept and retain any money awarded for your property, you may not challenge the acquiring authority's right to acquire.

In this proceeding, you may challenge any defects in the procedure the authority has used and the "public" nature and necessity of the proposed use.

PART NINE LITIGATION EXPENSES AND COSTS

The law provides for the payment of litigation expenses by the acquiring authority under any one of the following circumstances:

- if it is determined by a court that the acquiring authority does not have the right to condemn;
- if the award of the condemnation commission is greater than the jurisdictional offer, or the highest written offer prior to the jurisdictional offer, by at least \$700. and 15%, and the award is not appealed;
- if the jury verdict approved by the court exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, by at least \$700. and 15%.
- if the property owner appeals an award of the condemnation commission which exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, by at least \$700. and 15%, and the court-approved jury verdict exceeds the award of the condemnation commission by at least \$700. and 15%;
- if the acquiring authority appeals an award of the condemnation commission, and the court-approved jury verdict is \$700. and 15% greater than the jurisdictional offer or the highest written offer prior to the jurisdictional offer;
- if the property owner appeals an award of the condemnation commission which is not 15% greater than the jurisdictional offer or the highest written offer prior to the jurisdictional offer, and court-approved jury verdict is at least \$700 and 15% higher than the jurisdictional offer or highest written offer prior to the jurisdictional offer.

Unless you come under one of these specific categories, you will not be able to recover litigation expenses from the acquiring authority.

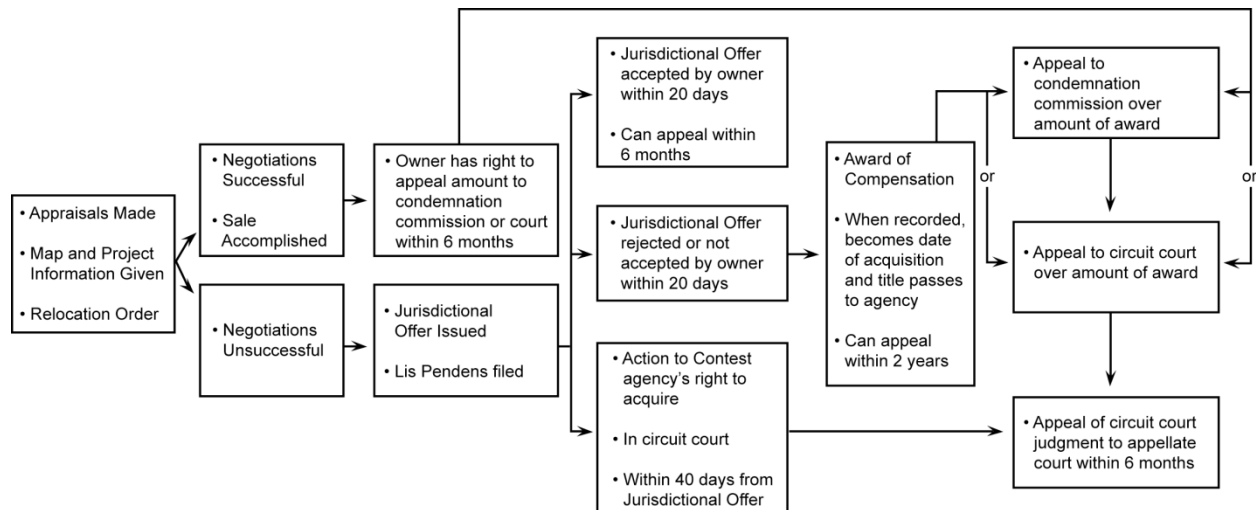
The Legislature has provided "costs" (statutorily determined payments to successful parties in proceedings challenging just compensation) to litigants who are successful but who do not fit into any of the categories mentioned above. If the just compensation awarded by the court or condemnation commission exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, the property owner will be deemed the "successful" party. You may be

required to pay “costs” to the acquiring authority if you are unsuccessful in challenging the compensation you have received or the acquiring authority’s right to acquire the property. “Costs” are defined in Ch. 814 of Wisconsin statutes.

PART TEN OCCUPANCY

No occupant may be required to move from a dwelling or move a business or farm without at least 90 days’ written notice from the acquiring authority. An occupant shall have rent free use of the property for 30 days beginning with the 1st or 15th day of the month after title vests in an agency, whichever is sooner. Rent charged for use of a property between the date of acquisition and the date of displacement may not exceed the economic rent, the rent paid by a tenant to the former owner or the occupant’s financial means if a dwelling, whichever is less.

The acquiring authority may not require the persons who occupied the premises on the date title vested in the acquiring authority to vacate until a comparable replacement property is made available. If you damage or destroy any acquired property after the date that title vests in the acquiring authority, you may be liable for the damage.



-----Original Message-----

From: Aaron Mikkelson [mailto:amikkelson04@yahoo.com]
Sent: Thursday, June 12, 2014 5:17 PM
To: Pringle, Craig - DOT
Subject: RE: 73/12/18 intersection inquiry

Hey Craig, Aaron Mikkelson here. Two questions concerning last night's hearing. It was mentioned that the 12/18 roadbed would be moved south between the Mikkelson farm buildings and the bank... the reason (I think) I heard for this roadbed movement south was to permit traffic flow on the existing roadbed while construction is underway?... Question: Why not detour the traffic for the duration of the project and keep the 12/18 hwy in its existing location? Was there conversation about detouring/not detouring traffic within the D.O.T. ? What did the conversation entail or what was the reasoning? A lack of detouring forces additional ground to be needed. For what? Four lanes were not needed now according to last night's hearing so why is land needed for four lanes now?

Second thought:

Where the new south 73 leg headed west and north will approach Art Mikkelson's field, it sounded like there will be a significant amount of fill put in? I worry that such amounts of fill will affect the water table in that area... it certainly won't help the already delicate (risen) water table in the north end of that field due to prior "wetland reserve tactics" used in that area in years past. Has this been accounted for in the design process? I know it's hard to measure such affects after the fact/ or after the construction is completed but is there anything that can be done to ensure that this is accounted for?

That is all,

Thank you for your time,

-Aaron

From: "Pringle, Craig - DOT" <Craig.Pringle@dot.wi.gov>
To: 'Aaron Mikkelson' <amikkelson04@yahoo.com>,
Cc: DOT I39 Project <I39Project@dot.wi.gov>, Chris Dry <CDry@emcsinc.com>,
Darren Fortney <dfortney@sehinc.com>, Mike McCarthy
<MMcCarthy@emcsinc.com>
Date: 06/17/2014 01:09 PM
Subject: RE: 73/12/18 intersection inquiry

Hi Aaron

There are a couple reasons for the alignment of US 12 shifting south. The first and primary reason is what you mention below - for traffic management and constructability. Early on it was decided by both FHWA and WisDOT (during many different meetings when this project was discussed) that detouring highway 12 would not be allowable. The basis was that it is a USH

route, a long truck route, and a major commuter route. There is not a good detour route for USH 12 - it would require 12 to be detoured up highway 26 to I-94 and then down I-39 back to highway 12. Our traffic section was not comfortable with that detour length given the volume of traffic on 12. The second reason is that it does allow for the future four lane alignment through that area. You are correct that four lanes are not needed now. But, both FHWA and our statewide design people were adamant that any design accommodate a future four lane section. There was also concern that whatever we did, we would not want to impact the NRCS easement in the future, so we were told to make sure that would not be an issue in the future. If we kept it on the existing alignment, we would not be able to ever widen it to the north because of the cemetery, and if we didn't buy enough land to the south, we wouldn't be able to do that without impacting the NRCS easement a second time.

FHWA and our statewide design folks were actually pushing pretty hard to build the four lane section through here as a part of our project. The guidance in the design manuals actually DOES say it should be four lanes based on projected traffic volumes and the type of road it is, even if it isn't four lanes on either side (east and west) of it. My argument against that was that for many, many years it would remain an 'orphaned' section of four lanes on 12 surrounded on both ends by 2 lane roadway. In the meantime, until the volumes warranted a four lane, and until a study/environmental document was done, and funding found, etc., this four lane section would sit and not be fully necessary. And the current construction costs would increase, and the maintenance costs, and the overall impacts, because the four lane section would need to be extended further west and east to accommodate the lane drop and the ramp merges (you don't want a left lane dropping at the same time a ramp lane is coming on and dropping).

So building off alignment is really a combination of planning for the future as well as a desire to not have highway 12 traffic detoured for that amount of time just for that mile long section of construction. It helps address both of those issues.

For your second question - There are geotechnical investigations done to help assure that the soils beneath the roadway will be stable, and the roadway will not sink (compress the soils beneath the new roadway) over time. The roadway in that area will go through some marsh area and some sand area. Impacts to the groundwater table are not specifically looked at during design. It would be difficult to measure what changes happen and what variables would have caused that change, even in the before and after case. Groundwater elevations change for many reasons, usually over the course of years, and it would be difficult to design for future droughts or rainy years, as an example, as both of those impact shallow groundwater tables. In the marsh area that would be excavated for the roadbed, it is typical that a larger (3 inch +) be used, with limited amounts of fines (stone dust), to stabilize the soil, often with a geotextile fabric to help separate the native soil from the stone. This allows water to drain freely through the layer, so it would not act as a dam for the movement of shallow groundwater. That isn't the primary purpose of putting that size stone in, but it accomplishes being free draining as well. In the areas that are sand, they already have a good ability to drain freely. So I don't know what the specific concerns would be as to how it would impact the groundwater table, but any material we put in should not act to inhibit groundwater from moving freely.

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
South Central Region Headquarters
3911 Fish Hatchery Road
Fitchburg, WI 53711-5397

Scott Walker, Governor
Cathy Stepp, Secretary
Mark Aquino, Regional Director
Telephone 608-275-3266
FAX 608-275-3338
TTY Access via relay - 711



June 26, 2014

Craig Pringle
Project Manager
WisDOT SW Region - Edgerton Office
111 Interstate Blvd.
Edgerton, WI 53534

Subject: **DNR Review and Comments:**
Environmental Assessment
Project I.D. 3070-00-03/05/06
WIS 73/US 12/18 Intersection Reconstruction Project

Dear Craig:

We have received and reviewed the Draft Environmental Assessment (EA) for the WIS 73/US 12/18 Intersection Reconstruction Project. The purpose of the project is to provide an intersection that is safe and meets the operational needs of WIS 73, which is a minor arterial roadway and an alternate route for Interstate 39/90. In order to do this, the project proposes to create a continuous route of WIS 73. The project is 2.7 miles in length beginning at Fadness Road in the Town of Christiana and terminating at London Road in the Village of Deerfield. The proposed action will require the acquisition of a portion (16 acres) of a parcel currently enrolled in the USDA-NRCS Wetland Reserve Program (WRP). A mitigation site called the Hoesly Site is proposed to be constructed as part of this project to compensate for impacts to the WRP lands. Additional project impacts include the replacement of two concrete box culverts and extension of one concrete box culvert. We have already provided comments on these waterways and structures and on other environmental impacts of this proposal. We have reviewed the document and the Hoesly mitigation proposal and have the following comments regarding the EA.

Wetland Impacts:

A wetland investigation of the project area was conducted in 2012 and we provided concurrence with wetland boundaries on October 16, 2012. Wetlands have been identified within the project area and all wetland impacts must be avoided and/or minimized to the greatest extent possible. A total of 3.85 acres of wetland will be filled by the project. 1.27 acres of unavoidable wetland impacts outside of the WRP easement will be compensated by mitigation at the London Wetland Mitigation Bank Site (1.409 acres total bank site mitigation). The remaining wetland impacts (2.58 acres) are located with the WRP and will be restored at an adjacent contiguous land at a ratio of 1.5:1 for a total of 3.87 mitigation acres.

USDA-NRCS WRP Wetlands

There is a 60-acre conservation easement enrolled in the Wetland Reserve Program (WRP) located west of WIS 73 and south of US 12/18. The preferred alternative, Alternative 4A, will require 16 acres for the conservation easement that will need to be mitigated on adjacent contiguous land. A parcel of land called Hoesly has been selected by WisDOT and the NRCS to compensate for these impacts. The site will need to be restored and protected to NRCS standards for WRP property. The restoration activities include a drain tile exploration and disablement, creation of a ditch and berm system on the west property line and maintenance of the exiting ditch to facilitate drainage from west and southern portions of the site. The proposed site would then be seeded and managed for native wetland species. A description of the proposed seeding and management plan has not been provided.

The mitigation assessment report states that post construction management of invasive species would likely be required due to the existing vegetation and seed bank of invasive species. We agree that post construction vegetation management should be a part of the proposed plan. The mitigation assessment did not include performance standards or goals for vegetation, hydrology or other measures typical of mitigation plans. We will wait to issue final comments or concurrence on the proposal until additional information such as performance standards and proposed management and monitoring are provided. For example, the NRCS standards and information on how they will be measured should be described in the report.

WRP land is retained in private ownership with a conservation easement that allows the NRCS to access the site for management activities and monitoring. WRP easements can be permanent or have terms of 10 or 30 years. The mitigation plan should provide information on the conservation easements including the term and remaining time of the agreement. We would be more supportive of an investment of public dollars for restoration if the conservation easement protecting the restoration area is permanent or long-term. Consideration should be given to permanently protecting restored areas if they are not already.

Thank you for the opportunity to participate in the planning stages of this project. If any of the concerns or information provided in this letter requires further clarification, please contact this office at 608-275-3301.

Sincerely,

Eric Heggelund

Eric Heggelund
Environmental Analysis & Review Specialist
South Central Region

CC: Russ Anderson - SCR
Jenny Grimes, WisDOT Environmental Coordinator
Simone Kolb, USACE

Parcels Affected By C13-105 0.01ft Water Surface Elevation Increase

<u>PARCELNO</u>	<u>ConctOwner</u>	<u>BillingStr</u>	<u>BillingCty</u>	<u>OwnerReturnReceipt</u>
061204180008	SHAUL REV LIVING TR, DONALD & JOAN	816 SHAUL LN	DEERFIELD WI 53531	X
061204185003	ARTHUR M MIKKELSON & ALYCE S MIKKELSON	3428 THORSTAD LN	DEERFIELD WI 53531	X
061204186708	DOLLIE R BIRKREM	2970 STATE HIGHWAY 73	DEERFIELD WI 53531	X
061204285002	ROBERT P RIEGE & KIM D RIEGE	140 FAIR OAK RD	DEERFIELD WI 53531	X
061204195001	BETTE L HOESLY	3002 STATE HIGHWAY 73	DEERFIELD WI 53531	X
061204199007	EDWARD L KUBINA JR & JO ANN KUBINA	3027 STATE HIGHWAY 73	DEERFIELD WI 53531	X
061204280007	ARNOLD J BERGE & JANET L BERGE	961 NULAND RD	DEERFIELD WI 53531	X



Wisconsin Department of Transportation

111 Interstate Blvd., Edgerton WI 53534-9399 (608) 884-1234 FAX (608) 884-1220 www.dot.wisconsin.gov



[Date]

[Land Owner]

[Address]

[City]

**Subject: Notification of Backwater Increase for Zoned Floodplain
WIS 73 Tributary to Mud Creek Culvert Extension (C-13-105)
WIS 73 and 12/18 Intersection Reconstruction
London Rd. – Fadness Rd., Dane County
WisDOT Project I.D. 3070-00-03/05**

Dear [Land Owner]:

The Wisconsin Department of Transportation is extending a culvert on STH 73 over a Tributary to Mud Creek in 2015. The existing culvert is a single cell concrete box culvert that is 8-feet wide and 7-feet tall. The existing culvert is approximately 56-feet long and it will be extended approximately 20-feet upstream and 18-feet downstream as part of the STH 73 roadway improvements. The extended culvert may at some time increase the flood water elevation on your property.

Flood water elevations are estimated using the predicted 100-year flood elevation. The predicted 100-year flood elevation is the best estimate of the highest flood water elevation that will likely occur during a 100-year period; it is a flood elevation that has 1 in 100 chance of being reached in any given year. The predicted 100-year flood elevation for the bridge with the new extended box culvert will be approximately 1/8-inch (0.01-feet) higher than the previously predicted 100-year flood elevation for your property.

Our review shows that this increase in the predicted 100-year flood water elevation for your property does not diminish your property's value or usefulness and will not result in any damage to you for which the law entitles you to be paid.

A prepaid, self-addressed envelope is enclosed for your convenience should you choose to respond on the enclosed form concerning this matter. Any response should be made within 15 days from the date of this letter. Your failure to respond will indicate you have no comment but will not prevent you from pursuing any lawful claim you may have in the future.

You are, however, advised of section 88.87(1) and (2), Wisconsin Statutes, a copy of which is included for your information. In relevant part, that statute permits a property owner to file a claim for damage resulting from unreasonable or unnecessary water accumulation from highway construction that unreasonably impedes water flow. The damaged property owner must file a claim within 90 days after the alleged damage occurs.

Yours sincerely,



Craig Pringle, Project Manager
WisDOT Southwest Region – Edgerton Field Office
111 Interstate Blvd.
Edgerton, WI 53534-9399
(608) 884-7132
craig.pringle@dot.wi.gov

Enclosures: As Noted

cc: Jennifer Grimes, WisDOT I-39 Corridor Environmental Coordinator
Eric Heggelund, WDNR Transportation Liaison
Jeremy Balousek, Dane County Land and Water Resources Dept.

Landowner Response

I wish to receive the following additional information:

I have the following questions, comments, or concerns:

I have no further comments, questions, or concerns.

(Date)

(Name)

(Address)

(Signature)

2011-12 Wisconsin Statutes updated through 2013 Wis. Act 380 and all Supreme Court Orders entered before June 4, 2014. Published and [certified](#) under s. 35.18. Changes effective after June 4, 2014 are designated by NOTES. (Published 6-4-14)

SUBCHAPTER VIII

RIGHTS OF DRAINAGE; PRIVATE DRAINS; MISCELLANEOUS PROVISIONS

88.87 Road grades not to obstruct natural drainage, landowners not to obstruct highway drainage; remedies.

(1) It is recognized that the construction of highways and railroad grades must inevitably result in some interruption of and changes in the preexisting natural flow of surface waters and that changes in the direction or volume of flow of surface waters are frequently caused by the erection of buildings, dikes and other facilities on privately owned lands adjacent to highways and railroad grades. The legislature finds that it is necessary to control and regulate the construction and drainage of all highways and railroad grades so as to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters due to a highway or railroad grade construction and to impose correlative duties upon owners and users of land for the purpose of protecting highways and railroad grades from flooding or water damage.

(2)

(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 waters 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 the 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.

(d) Failure to give the requisite notice by filing a claim under par. (c) does not bar action on the claim if the city, village, town, county, railroad company or department of transportation had actual notice of the claim within 3 years after the alleged damage occurred and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant city, village, town, county, railroad company or department of transportation.

(3)

(a) It is the duty of every owner or user of land who constructs any building, structure or dike or otherwise obstructs the flow of stream water through any watercourse or natural or man-made channel or obstructs the flow of surface water through any natural or man-made channel, natural depression or natural draw through which surface waters naturally flow:

1. To provide and at all times maintain a sufficient drainage system to protect a downstream highway or railroad grade from water damage or flooding caused by such obstruction, by directing the flow of surface waters into existing highway or railroad drainage systems; and

2. To protect an upstream highway or railroad grade from water damage or flooding caused by such obstruction, by permitting the flow of such water away from the highway or railroad grade substantially as freely as if the obstruction had not been created.

(b) Whoever fails or neglects to comply with a duty imposed by par. (a) is liable for all damages to the highway or railroad grade caused by such failure or neglect. The authority in charge of maintenance of the highway or the railroad company which constructed or maintains the railroad grade may bring an action to recover such damages. An action under this paragraph shall be commenced within the time provided by s. [893.59](#) or be barred.

(c) The authorities in charge of maintenance of highways or railroad companies maintaining railroad grades and their agents and employees may enter any lands for the purpose of removing an obstruction in a watercourse or highway drainage ditch which is in violation of par. (a) and which is flooding or causing damage to a highway under its jurisdiction.

(4) If a railway company fails to comply with sub. (2), any person aggrieved thereby may file a complaint with the office of the commissioner of railroads setting forth the facts. The office shall investigate and determine the matter in controversy in accordance with ch. [195](#), and any order it makes in such proceeding has the same effect as an order in any other proceeding properly brought under ch. [195](#).

History: [1977 c. 29 s. 1654 \(8\) \(c\)](#), (9) (f); [1979 c. 323](#); [1981 c. 347](#); [1993 a. 16, 123, 456](#).

Sub. (2) (c) requirements are mandatory conditions precedent to bringing an action under this section. *Van v. Town of Manitowoc Rapids*, [150 Wis. 2d 929, 442 N.W.2d 557](#) (Ct. App. 1989).

This statute preempts common law claims; the claims period under sub. (2) (c) begins to run when the damage is first discovered and is not extended if damage continues. *Pruim v. Town of Ashford*, [168 Wis. 2d 114, 483 N.W.2d 242](#) (Ct. App. 1992).

Despite a finding that a railroad was not responsible for increased water flow that resulted in flooding, an order to the railroad to install a drainage pipe was proper. *Soo Line Railroad v. Commissioner of Transportation*, [170 Wis. 2d 543, 489 N.W.2d 672](#) (Ct. App. 1992).

Sub. (2) (a) imposes a duty on railroads to refrain from impeding water flow. The railroad commissioner may act prospectively under sub. (4) to prevent flooding. Sub. (2) (c) applies when there has been actual damage, but does not require actual damage for the commissioner to act under sub. (4). *Chicago & North Western Transportation Co v. Commissioner of Railroads*, [204 Wis. 2d 1, 553 N.W.2d 845](#) (Ct. App. 1996), [95-2509](#).

This section does not impose on a circuit court a positive duty to grant injunctive relief under specified conditions, but provides an alternative remedy to an action for damages under ch. 32. The common law preference for legal over equitable relief applies. As such, to obtain an injunction it must be shown that the injunction is necessary to prevent future harm to the property and there is no adequate legal remedy. *Kohlbeck v. Reliance Construction Company, Inc.* [2002 WI App 142, 256 Wis. 2d 235, 647 N.W.2d 277, 01-1404](#).

Parties who can state a claim against DOT under both ss. 32.10 and 88.87 may choose to file suit in either Dane County or the county in which the property lies. *Kohlbeck v. Reliance Construction Company, Inc.* [2002 WI App 142, 256 Wis. 2d 235, 647 N.W.2d 277, 01-1404](#).

The state was not a proper party for claims against the Department of Transportation as the two are distinct legal entities. Service on the state of a summons and complaint that named the state and not the DOT as a party does not constitute service on the DOT necessary to establish personal jurisdiction over the DOT. *Hoops Enterprises, III, LLC v. Super Western, Inc.* [2013 WI App 7, 345 Wis. 2d 733, 827 N.W.2d 120, 12-0062](#)

Parcels Affected By B-13-358 0.003ft Water Surface Elevation Increase

<u>PARCELNO</u>	<u>ConctOwner</u>	<u>BillingStr</u>	<u>BillingCty</u>	<u>OwnerReturnReceipt</u>
061203287002	MAX E BARTH TR & RUTH I BARTH TR	800 S. HOLLIDAY DR #303	WAUNAKEE WI 53597	X
061204180008	SHAUL REV LIVING TR, DONALD & JOAN	816 SHAUL LN	DEERFIELD WI 53531	X
061204185003	ARTHUR M MIKKELSON & ALYCE S MIKKELSON	3428 THORSTAD LN	DEERFIELD WI 53531	X
061204186708	DOLLIE R BIRKREM	2970 STATE HIGHWAY 73	DEERFIELD WI 53531	X
061204285002	ROBERT P RIEGE & KIM D RIEGE	140 FAIR OAK RD	DEERFIELD WI 53531	X
061204285708	JOAN I HALVERSON	1109 ROTHIE RD	DEERFIELD WI 53531	X
061204290014	MARY L WEBER & BRIAN D MALONEY	990 HILLCREST RD	DEERFIELD WI 53531	X
061204490003	JANICE K ROOD & RONALD D KAUFMAN	957 HILLCREST RD	DEERFIELD WI 53531	X
061203288900	JERRY W SIMS & JULIE M SIMS	3097 FADNESS RD	DEERFIELD WI 53531	X
061203290007	BYRON L BUCHLI & SHARON L BUCHLI	3055 FADNESS RD	DEERFIELD WI 53531	X
061204195001	BETTE L HOESLY	3002 STATE HIGHWAY 73	DEERFIELD WI 53531	X
061204199007	EDWARD L KUBINA JR & JO ANN KUBINA	3027 STATE HIGHWAY 73	DEERFIELD WI 53531	X
061204280007	ARNOLD J BERGE & JANET L BERGE	961 NULAND RD	DEERFIELD WI 53531	X
061204291013	DAVID J ZANDER & JUDY G ZANDER	1076 HILLCREST RD	DEERFIELD WI 53531	X



Wisconsin Department of Transportation

111 Interstate Blvd., Edgerton WI 53534-9399 (608) 884-1234 FAX (608) 884-1220 www.dot.wisconsin.gov



[Date]

[Land Owner]

[Address]

[City]

**Subject: Notification of Backwater Increase for Zoned Floodplain
US 12/18 Mud Creek Culvert Extension (B-13-358)
WIS 73 and 12/18 Intersection Reconstruction
London Rd. – Fadness Rd., Dane County
WisDOT Project I.D. 3070-00-03/05**

Dear [Land Owner]:

The Wisconsin Department of Transportation is extending a culvert on USH 12/18 over Mud Creek in 2015. The existing culvert is a twin cell concrete box culvert that has cells that are 12-feet wide and 7-feet tall. The existing culvert is approximately 80-feet long and it will be extended approximately 14-feet upstream and 17-feet downstream as part of the USH 12/18 roadway improvements. The extended culvert may at some time increase the flood water elevation on your property.

Flood water elevations are estimated using the predicted 100-year flood elevation. The predicted 100-year flood elevation is the best estimate of the highest flood water elevation that will likely occur during a 100-year period; it is a flood elevation that has 1 in 100 chance of being reached in any given year. The predicted 100-year flood elevation for the bridge with the new extended box culvert will be approximately 3/64-inch (0.003-feet) higher than the previously predicted 100-year flood elevation for your property.

Our review shows that this increase in the predicted 100-year flood water elevation for your property does not diminish your property's value or usefulness and will not result in any damage to you for which the law entitles you to be paid.

A prepaid, self-addressed envelope is enclosed for your convenience should you choose to respond on the enclosed form concerning this matter. Any response should be made within 15 days from the date of this letter. Your failure to respond will indicate you have no comment but will not prevent you from pursuing any lawful claim you may have in the future.

You are, however, advised of section 88.87(1) and (2), Wisconsin Statutes, a copy of which is included for your information. In relevant part, that statute permits a property owner to file a claim for damage resulting from unreasonable or unnecessary water accumulation from highway construction that unreasonably impedes water flow. The damaged property owner must file a claim within 90 days after the alleged damage occurs.

Yours sincerely,



Craig Pringle, Project Manager
WisDOT Southwest Region – Edgerton Field Office
111 Interstate Blvd.
Edgerton, WI 53534-9399
(608) 884-7132
craig.pringle@dot.wi.gov

Enclosures: As Noted

cc: Jennifer Grimes, WisDOT I-39 Corridor Environmental Coordinator
Eric Heggelund, WDNR Transportation Liaison
Jeremy Balousek, Dane County Land and Water Resources Dept.

Landowner Response

I wish to receive the following additional information:

I have the following questions, comments, or concerns:

I have no further comments, questions, or concerns.

(Date)

(Name)

(Address)

(Signature)

2011-12 Wisconsin Statutes updated through 2013 Wis. Act 380 and all Supreme Court Orders entered before June 4, 2014. Published and [certified](#) under s. 35.18. Changes effective after June 4, 2014 are designated by NOTES. (Published 6-4-14)

SUBCHAPTER VIII

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(1) It is recognized that the construction of highways and railroad grades must inevitably result in some interruption of and changes in the preexisting natural flow of surface waters and that changes in the direction or volume of flow of surface waters are frequently caused by the erection of buildings, dikes and other facilities on privately owned lands adjacent to highways and railroad grades. The legislature finds that it is necessary to control and regulate the construction and drainage of all highways and railroad grades so as to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters due to a highway or railroad grade construction and to impose correlative duties upon owners and users of land for the purpose of protecting highways and railroad grades from flooding or water damage.

(2)

(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 waters 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 the 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.

(d) Failure to give the requisite notice by filing a claim under par. (c) does not bar action on the claim if the city, village, town, county, railroad company or department of transportation had actual notice of the claim within 3 years after the alleged damage occurred and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant city, village, town, county, railroad company or department of transportation.

(3)

(a) It is the duty of every owner or user of land who constructs any building, structure or dike or otherwise obstructs the flow of stream water through any watercourse or natural or man-made channel or obstructs the flow of surface water through any natural or man-made channel, natural depression or natural draw through which surface waters naturally flow:

1. To provide and at all times maintain a sufficient drainage system to protect a downstream highway or railroad grade from water damage or flooding caused by such obstruction, by directing the flow of surface waters into existing highway or railroad drainage systems; and

2. To protect an upstream highway or railroad grade from water damage or flooding caused by such obstruction, by permitting the flow of such water away from the highway or railroad grade substantially as freely as if the obstruction had not been created.

(b) Whoever fails or neglects to comply with a duty imposed by par. (a) is liable for all damages to the highway or railroad grade caused by such failure or neglect. The authority in charge of maintenance of the highway or the railroad company which constructed or maintains the railroad grade may bring an action to recover such damages. An action under this paragraph shall be commenced within the time provided by s. [893.59](#) or be barred.

(c) The authorities in charge of maintenance of highways or railroad companies maintaining railroad grades and their agents and employees may enter any lands for the purpose of removing an obstruction in a watercourse or highway drainage ditch which is in violation of par. (a) and which is flooding or causing damage to a highway under its jurisdiction.

(4) If a railway company fails to comply with sub. (2), any person aggrieved thereby may file a complaint with the office of the commissioner of railroads setting forth the facts. The office shall investigate and determine the matter in controversy in accordance with ch. [195](#), and any order it makes in such proceeding has the same effect as an order in any other proceeding properly brought under ch. [195](#).

History: [1977 c. 29 s. 1654 \(8\) \(c\)](#), (9) (f); [1979 c. 323](#); [1981 c. 347](#); [1993 a. 16, 123, 456](#).

Sub. (2) (c) requirements are mandatory conditions precedent to bringing an action under this section. *Van v. Town of Manitowoc Rapids*, [150 Wis. 2d 929, 442 N.W.2d 557](#) (Ct. App. 1989).

This statute preempts common law claims; the claims period under sub. (2) (c) begins to run when the damage is first discovered and is not extended if damage continues. *Pruim v. Town of Ashford*, [168 Wis. 2d 114, 483 N.W.2d 242](#) (Ct. App. 1992).

Despite a finding that a railroad was not responsible for increased water flow that resulted in flooding, an order to the railroad to install a drainage pipe was proper. *Soo Line Railroad v. Commissioner of Transportation*, [170 Wis. 2d 543, 489 N.W.2d 672](#) (Ct. App. 1992).

Sub. (2) (a) imposes a duty on railroads to refrain from impeding water flow. The railroad commissioner may act prospectively under sub. (4) to prevent flooding. Sub. (2) (c) applies when there has been actual damage, but does not require actual damage for the commissioner to act under sub. (4). *Chicago & North Western Transportation Co v. Commissioner of Railroads*, [204 Wis. 2d 1, 553 N.W.2d 845](#) (Ct. App. 1996), [95-2509](#).

This section does not impose on a circuit court a positive duty to grant injunctive relief under specified conditions, but provides an alternative remedy to an action for damages under ch. 32. The common law preference for legal over equitable relief applies. As such, to obtain an injunction it must be shown that the injunction is necessary to prevent future harm to the property and there is no adequate legal remedy. *Kohlbeck v. Reliance Construction Company, Inc.* [2002 WI App 142, 256 Wis. 2d 235, 647 N.W.2d 277, 01-1404](#).

Parties who can state a claim against DOT under both ss. 32.10 and 88.87 may choose to file suit in either Dane County or the county in which the property lies. *Kohlbeck v. Reliance Construction Company, Inc.* [2002 WI App 142, 256 Wis. 2d 235, 647 N.W.2d 277, 01-1404](#).

The state was not a proper party for claims against the Department of Transportation as the two are distinct legal entities. Service on the state of a summons and complaint that named the state and not the DOT as a party does not constitute service on the DOT necessary to establish personal jurisdiction over the DOT. *Hoops Enterprises, III, LLC v. Super Western, Inc.* [2013 WI App 7, 345 Wis. 2d 733, 827 N.W.2d 120, 12-0062](#)



SECTION 106 REVIEW ARCHAEOLOGICAL/HISTORICAL INFORMATION

Wisconsin Department of Transportation
DT1635 6/2014

SHPO
RECEIVED

For instructions, see [FDM Chapter 26](#).

I. PROJECT INFORMATION

Amended Submittal (include new information only)

Project ID 3070-00-03/05/06	Highway – Street WIS 73/US 12/18 Intersection Reconstruction	County Dane	DIV HIST PRES
Project Termini Fadness Road to London Road		Region – Office Southwest	
Regional Project Engineer – Project Manager Craig Pringle (608) 242-8058		(Area Code) Telephone Number (608) 242-8058	
Consultant Project Engineer – Project Manager Darren Fortney, SEH		(Area Code) Telephone Number (608) 620-6191	
Archaeological Consultant Robert Watson, CCRG		(Area Code) Telephone Number (414) 446-4121	
Architecture/History Consultant Shelley Greene, CCRG		(Area Code) Telephone Number (414) 446-4121	
Date of Need August 1, 2004		SHSW Number 13-0233/DA	
Return a Signed Copy of This Form to Craig Pringle (craig.pringle@dot.wi.gov)			

II. PROJECT DESCRIPTION

Project Length 2.7 miles	Land to be Acquired: Fee Simple 36 acres	Land to be Acquired: Easement 16.2 acres
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Distance as measured from existing centerline	Existing	Proposed	Other Factors	Existing	Proposed
Right-of-Way Width	Varies 33' to 75'	Varies 33' to 200'	Terrace Width	N/A	N/A - Rural
Shoulder	3' to 4'	10'	Sidewalk Width	N/A	N/A - Rural
Slope Intercept	Varies	Varies	Number of Lanes	2	2
Edge of Pavement	11'	12'	Grade Separated Crossing	0	1
Back of Curb Line	N/A	N/A	Vision Triangle acres	N/A	N/A
Realignment	N/A	Varies 0' to 575'	Temporary Bypass acres	N/A	N/A
Other – List:			Stream Channel Change	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Attach Map(s) that Depict "Maximum" Impacts.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Tree Topping and/or Grubbing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Brief Narrative Project Description: Include all ground disturbing activities. For archaeology, include plan view map indicating the maximum area of ground disturbance and/or new right-of-way, whichever is greater. Include all temporary, limited and permanent easements. For amendments (e.g. design refinements, scope changes, etc) description should only include new/added project actions and materials.

This form is being completed to include the additional 12.5 acres of land outside the original surveyed Area of Potential Effect (APE). These additional areas are needed for drainage, water quality purposes, and minor roadway modifications made during the design process. See EXHIBIT 1 for new locations hatched in red.

The proposed project is located in Dane County in South-Central Wisconsin along WIS 73 at the US 12/18 intersections in the towns of Christiana and Deerfield. The project begins at Fadness Road and continues north to London Road. The project is approximately 2.7 miles in length.

Add continuation sheet, if needed.

SECTION 106 REVIEW ARCHAEOLOGICAL/HISTORICAL INFORMATION (continued)

Wisconsin Department of Transportation DT1635

III. CONSULTATION

How has notification of the project been provided to:

- Property Owners
 - Public Information Meeting Notice
 - Letter - Required for Archaeology
 - Telephone Call
 - Other: Archaeologists met with landowners when present for survey
- Historical Societies/Organizations
 - Public Information Meeting Notice
 - Letter
 - Telephone Call
 - Other: e-mail
- Native American Tribes
 - Public Info. Mtg. Notice
 - Letter
 - Telephone Call
 - Other:

Attach one copy of the base letter, list of addresses and comments received. For history include telephone memos as appropriate.

IV. AREA OF POTENTIAL EFFECTS - APE

ARCHAEOLOGY: Area of potential effect for archaeology is the existing and proposed ROW, temporary and permanent easements. Agricultural practices do not constitute a ground disturbance exemption.

HISTORY: Describe the area of potential effects for buildings/structures.

The APE includes all resources immediately adjacent to, or within the viewshed of the WIS 73/US 12/18 intersections.

V. PHASE I - ARCHAEOLOGICAL OR RECONNAISSANCE HISTORY SURVEY NEEDED

ARCHAEOLOGY	HISTORY
<input checked="" type="checkbox"/> Archaeological survey is needed <input type="checkbox"/> Archaeological survey is not needed <input type="checkbox"/> Screening list (date) <input type="checkbox"/> Burial site in project area, Wis. Stat. 157.70 applies	<input checked="" type="checkbox"/> Architecture/History survey is needed <input type="checkbox"/> Architecture/History survey is not needed <input type="checkbox"/> Screening list (date) <input type="checkbox"/> No structures or buildings of any kind within APE <input type="checkbox"/> Non-Survey History Documentation attached

VI. SURVEY COMPLETED

ARCHAEOLOGY	HISTORY
<input type="checkbox"/> NO archaeological sites(s) identified - ASFR attached <input checked="" type="checkbox"/> NO potentially eligible site(s) in project area - Phase I Report attached <input type="checkbox"/> Potentially eligible site(s) identified-Phase I Report attached <input type="checkbox"/> Avoided through redesign <input type="checkbox"/> Phase II conducted - go to VII (Evaluation) <input type="checkbox"/> Phase I Report - Cemetery/cataloged burial documentation	<input checked="" type="checkbox"/> NO buildings/structures identified - Report attached <input type="checkbox"/> Potentially eligible buildings/structures identified in the APE - Report attached <input type="checkbox"/> Avoided through redesign <input type="checkbox"/> Previously listed/eligible property identified in the APE - Report attached

VII. DETERMINATION OF ELIGIBILITY (EVALUATION) COMPLETED

<input type="checkbox"/> No arch site(s) eligible for NRHP - Phase II Report attached <input type="checkbox"/> Arch site(s) eligible for NRHP - Phase II Report attached <input type="checkbox"/> Site(s) eligible for NRHP - DOE attached	<input type="checkbox"/> No buildings/structure(s) eligible for NRHP - DOE attached <input type="checkbox"/> Building/structure(s) eligible for NRHP - DOE attached
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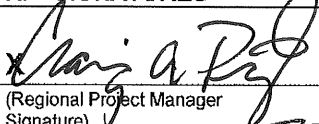
VIII. COMMITMENTS/SPECIAL PROVISIONS - must be included with special provisions language

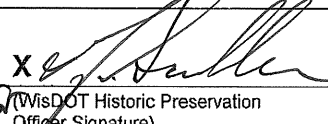
- Per Wis. Stat. 157.70 obtain burial authorization from WHS one year prior to construction.

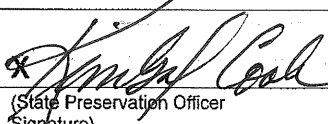
IX. PROJECT DECISION


- No historic properties (historical or archaeological) in the APE.
- No historic properties (historical or archaeological) affected.
- Historic properties (historical and/or archaeological) may be affected by project;
 - Go to Step 4: Assess affects and begin consultation on affects.
 - Documentation for Determination of No Adverse Effects is included with this form. WisDOT has concluded that this project will have No Adverse Effect on historic properties. Signature by SHPO below indicates SHPO concurrence in the DNAE and concludes the Section 106 Review process for this project.

X. SIGNATURES

 6-27-14
 (Regional Project Manager Signature) (Date - m/d/yy)

 7/14/14
 (WisDOT Historic Preservation Officer Signature) (Date - m/d/yy)

 July 24 2014
 (State Preservation Officer Signature) (Date - m/d/yy)

 6-23-14
 (Consultant Project Manager Signature) (Date - m/d/yy)