



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
AND
WISCONSIN DEPARTMENT OF TRANSPORTATION**

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into by and between the Wisconsin Department of Agriculture, Trade, and Consumer Protection ("DATCP"), whose principal business address is 2811 Agriculture Dr., P.O. Box 8911, Madison, WI 53708-8911 and the Wisconsin Department of Transportation ("WisDOT"), whose service address is 4822 Madison Yards Way, Madison, WI 53705. The purpose of this MOA is to address issues of mutual interest to DATCP and WisDOT (referred to as the "Parties") regarding their respective statutory duties and responsibilities to uphold Wis. Stat. § 32.035 *Agricultural Impact Statement*.

RECITALS:

WHEREAS, the construction, reconstruction, maintenance, and repair of transportation facilities, such as highways, bridges, harbors, railroads, and airports may have adverse effects on the State's farm operations; and

WHEREAS, the intention of this MOA is to provide a framework for the provision of the services between DATCP - Agricultural Impact Statement (AIS) Program and WisDOT Division of Transportation System Development and the Division of Transportation Investment Management; and

WHEREAS, the primary outcome intended by this MOA is to improve services provided by the AIS Program that are subject to this MOA; and

WHEREAS, the parties intend to clarify their relationship to establish a common understanding regarding their roles, responsibilities, and procedures to facilitate the best provision of services between our agencies; and

WHEREAS, DATCP has authority under Wis. Stat. § 32.035 to prepare an AIS which assesses the impacts on the State's farm operations resulting from the acquisition by condemners of agricultural lands or any interests therein for projects involving the actual or potential exercise of the power of eminent domain; and

WHEREAS, WisDOT has authority under Wis. Stat. § 84.01 (15) to plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain, or arrange for maintenance by subdivisions of the state or by any other means, the national system of interstate highways, federal aid highway system, system of secondary and feeder roads, federal aid grade crossings projects, federal forest highway systems and projects and other highway and related projects; and

WHEREAS, the parties concur that each agency may continue to perform its statutory duties and responsibilities and assure that adverse effects on Wisconsin's farm operations, that may result from the improvement and maintenance of transportation facilities, are minimized to the most reasonably possible extent within the need to provide Wisconsin citizens, businesses, and industries with safe and efficient transportation systems.

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NOW, THEREFORE, DATCP and WisDOT hereby resolve and agree they will mutually support and adhere to the following principles, and exert their best efforts in doing so.

I. PURPOSE

The purpose of this MOA is to establish a framework to coordinate services between DATCP - AIS Program and WisDOT Division of Transportation System Development and the Division of Transportation Investment Management to improve services provided by the AIS Program.

A. Meetings and Consultation

1. Both parties agree to meet as needed to identify issues of mutual concern, discuss strategies to address identified issues, and provide/update key contacts to advance work related to the AIS program.

B. Designation of Contacts

1. WisDOT agrees to identify primary contacts to DATCP, and DATCP agrees to do the same on all issues identified in this agreement.

II. SCOPE OF WORK

A. APPLICABLE FEDERAL AND STATE REGULATIONS

1. DATCP

- a. DATCP is authorized to enter into agreements with other agencies under Wis. Stat. § 93.06(11).
- b. Section Wis. Stats. § 32.035(3) provides DATCP the authority to prepare an AIS for projects involving the actual or potential exercise of the powers of eminent domain affecting a farm operation.
- c. Section Wis. Stat. § 32.035(3) provides DATCP the authority to require the condemnor to compile and submit information about an affected farm operation, as a precondition to the completion of an agricultural impact statement.

2. WisDOT

- a. WisDOT is required to notify DATCP of any project involving the actual or potential exercise of its powers of eminent domain affecting a farm operation under Wis. Stat. 32.035(3).

B. DEFINITIONS

1. Non-Significant Acquisitions - *Non-significant acquisitions* are characterized by comparatively minor acquisitions of easements and/or fee simple rights totaling less than 1.0 acre from any one farm operation and where the loss of or impact to this agricultural land would not have a significant adverse effect on a farm operation.
2. Significant Agricultural Effect – the following are *significant agricultural effects* to a farm operation disqualifying a project from obtaining *Non-Significant Acquisition* status as defined in Section II.B.1:
 - a. Removal of a farm residence; or
 - b. Removal of a farm operation building; or
 - c. Loss of access to an aspect of a farm operation; or

- d. Loss of livestock related infrastructure; or
- e. Any additional effects mutually agreed upon by DATCP and WisDOT

C. WISDOT AGREES TO:

1. WisDOT shall coordinate with DATCP consistent with this agreement for all projects which propose to acquire interests in farm operations.
2. WisDOT shall include, as appropriate, DATCP's analysis of agricultural impacts as a part of the environmental documentation for each project.
3. WisDOT shall prepare and submit an Agricultural Impact Notification (AIN) consistent with criteria set forth below:
 - a. WisDOT shall report qualified non-significant acquisition projects to DATCP using a brief format AIN. At a minimum, the brief AIN shall include the WisDOT project ID number, project location and a statement confirming the project satisfies the definition of a non-significant acquisition project stated herein. WisDOT may submit the brief AIN on a per project basis or combine brief AINs into a collective report submitted to DATCP at intervals no greater than one year. The brief AIN may also include any additional criteria mutually agreed upon by DATCP and WisDOT.
 - b. WisDOT shall individually report projects acquiring one to five acres from any one farm operation and projects acquiring less than 1.0 acre from any one farm operation where there are one or more significant agricultural effects as defined in Section II.B.2 to DATCP. To report these projects, WisDOT will submit a completed summary AIN. Should the AIS program determine - based on a submitted summary AIN - that a proposed project requires an AIS, WisDOT shall prepare and submit the appropriate formal AIN, as described in Section II.C.3.c. Alternately, WisDOT may choose to report these projects to DATCP using a formal AIN in lieu of a summary AIN.
 - 1) A summary format AIN will include a written project description with the following information, as relevant to the project:
 - (i) Project Contact
 - (ii) WisDOT Highway Project ID number or Airport Layout Plan ID number
 - (iii) Highway number/name or airport name or project name
 - (iv) A brief project description/narrative
 - (v) Starting and ending points of the project or general description thereof
 - (vi) Project location (county, town, village, city)
 - (vii) A brief description of project activities
 - (viii) Number of farm operations affected
 - (ix) Acres of agricultural lands (defined as cropland, pasture, fallow fields, woodland areas, specialty crop/fields, farm residences/buildings, or other lands that serve an agricultural purpose) that will be impacted at each affected farm operation.
 - (x) How the agricultural lands will be acquired (easement, lease, fee-simple etc.).
 - (xi) Project location map with property acquisition areas clearly identified.
 - (xii) Project timing (e.g. start and end dates)
 - (xiii) Indicate if the project will receive Transportation Economic Assistant (TEA) grant funding
 - c. WisDOT shall individually report projects acquiring over five acres from any one farm operation to DATCP by submitting the appropriate completed formal AIN. Formal AIN forms and associated spreadsheets for highway projects or airport projects are available from the AIS program website agimpact.wi.gov. A complete formal AIN submission will include the required associated files in the formats described in the AIN form.

4. WisDOT shall provide in writing, additional information requested by DATCP within a reasonable number of days from the receipt of the request.
5. Following the submittal of an AIN to DATCP, WisDOT shall notify DATCP of any change in any project's acquisition of interests, including hardship acquisitions or protective purchases, in any farm operation and supply information at the appropriate level of detail as determined by DATCP. This requirement applies both before and after DATCP publishes the AIS for the project.
 - a. A notification of a change to DATCP is not required for any of the following:
 - 1) A landowner requests a change and the landowner is the only interest impacted by the revision.
 - 2) Qualified non-significant acquisition projects, unless the changed interest would disqualify the project from non-significant acquisition status.
6. WisDOT shall review and comment on a draft AIS, in a timely manner.

D. DATCP AGREES TO:

1. DATCP shall determine if a brief, summary, or formal AIN is complete or incomplete (i.e. completeness status). DATCP shall report to WisDOT the completeness status of all AINs within 10 business days of receipt. Should DATCP determine the AIN to be incomplete, DATCP's response shall include a list of additional project information required to complete the AIN.
2. DATCP shall respond to WisDOT within 10 business days of receiving a complete brief, summary, or formal AIN. In response to a brief AIN, DATCP will provide a statement acknowledging WisDOT's confirmation statement and releasing the project from the requirement to prepare an AIS. In response to a summary or formal AIN, DATCP shall respond to WisDOT with a signed letter either requiring or releasing the project from requirements to prepare an AIS.
3. DATCP shall prepare a draft AIS within 60 calendar days of receiving all requested information from WisDOT.
4. DATCP shall review, evaluate, and determine the need for an addendum or additional AIS whenever WisDOT changes a project after the date DATCP has published the AIS for the proposed acquisition of interests in any farm operation as described in Section II.C.5.
5. DATCP shall provide WisDOT copies of the draft AIS or supplement to an AIS for timely review by WisDOT.

E. AREAS OF MUTAL AGREEMENT

1. Advanced Acquisitions
 - a. Where DATCP and WisDOT agree that owners of farmland would suffer extreme and unnecessary hardship as a result of delaying an acquisition or there is protective benefit to the state, WisDOT may acquire parcels meeting these criteria in advance of satisfying the requirements of Wis. Stat. § 32.035. Such acquisitions are termed advanced acquisitions and must comply with the requirements of Wis. Stat. §§ 84.09 and 32.25(1).
 - 1) Notice of advanced acquisitions are only applicable to the specific agricultural parcel(s) to which hardship or protective purchase applies and not the entire project.
 - b. WisDOT shall notify DATCP of each proposed advanced acquisition that involves an interest in any farm operation necessary in advance of satisfying the requirements of Wis. Stat. § 32.035. The

notification shall include the reason(s) for the hardship or protective acquisition and property owner contact information.

- c. A notification of an advanced acquisition is not required when the acquisition occurs after it has been addressed in an AIS and the other requirements of Wis. Stat. § 32.035 have been satisfied.
 - d. DATCP shall respond to WisDOT within 10 business days of an advanced acquisition notice. In the response, DATCP will state whether the Department agrees with WisDOT or requires additional information to satisfy an incomplete advanced acquisition notice in accordance with Section V.A.2. Within an approval response, DATCP will include any recommendations or comments that are specific to the advanced acquisitions.
2. The usage of word “significant” in this agreement is specific to its application in Wis. Stat. § 32.035(4)(a)
 3. WisDOT and DATCP agree, as per Wis. Stat. § 32.035(4), that “town highway” projects pursuant to Wis. Stat. ch. 82 are exempt from the AIS process and as such do not require WisDOT to submit project notification to DATCP.
 4. WisDOT recognizes that DATCP may need to contact affected landowners to discuss a proposed acquisition and its effects on the farm operation in order to fully evaluate potential agricultural impacts.
 5. DATCP recognizes that agents acting under the direction of WisDOT may fulfill the obligations of this Cooperative Agreement.

III. FUNDING

- A. DATCP shall invoice WisDOT on a quarterly basis for all actual costs incurred by DATCP in its review and evaluation of all WisDOT plans submitted to DATCP and for WisDOT projects that require an AIS, with the exception of projects involving airports and Transportation Economic Assistant (TEA) projects. Airport and TEA projects shall be billed in compliance with Wis. Stat. §32.035(3).
- B. WisDOT shall issue payment to DATCP, within 30 days of receipt of a DATCP invoice for all actual costs incurred by DATCP in its review and evaluation of all WisDOT projects, plans, and studies submitted to DATCP for review.

IV. TERM AND TERMINATION

- A. Both parties agree to review of this MOA biennially – from the date the agreement is signed by the last Signatory – to identify issues of mutual concern, discuss strategies, work to address identified issues, and provide key contacts to advance work moving related to the AIS Program.
- B. This agreement can be amended by either party upon notification of the other party in writing, provided both parties concur with the amendment. Disagreements shall be resolved in a timely manner.
- C. This MOA may be terminated by either party upon sixty (60) days advance notice to the other party. By such termination, no party may nullify obligations incurred prior to the effective date of the termination. The sixty (60) days notice requirement may be waived by mutual written consent of the parties.

IN WITNESS WHEREOF, DATCP and WisDOT have executed this MOA as of the date this MOA is signed by the last Signatory. This MOA may be executed in multiple originals, which together shall constitute a single agreement. The parties agree to accept a handwritten signature or an electronic signature that complies with Wis. Stat. ch. 137 to execute this MOA.

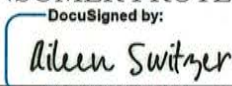
WISCONSIN DEPARTMENT OF
TRANSPORTATION

BY: 
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Craig Thompson

TITLE: Secretary

DATE: 7/1/2023 | 9:24 AM CDT

DEPARTMENT OF AGRICULTURE, TRADE,
AND CONSUMER PROTECTION

BY: 
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TITLE: Deputy Secretary

DATE: 6/29/2023 | 9:07 AM CDT