

## Chapter Three Farmland Protection Tools

### 1. Overview

This chapter describes those tools that are intended to help protect farmland from incompatible land development. Some of the tools are unique to Wisconsin, while others have been used in various parts of the United States.

The tools are grouped into broad categories for organizational purposes. The last section of this chapter presents a summary of those tools that the towns and Winnebago can use to help protect farmland. Benefits and limitations are described along with funding requirements and availability and status of current implementation.

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### 2. Educational Tools

#### “Options” Review for Developers

The County could request (or require) property owners who wish to develop their property to meet with government institutions or non-government (conservation) organizations to discuss farmland and open space preservation alternatives. This may require additional government resources to manage such as design consultants, design review committees or a landscape architect who can advise property owners on land development scenarios.

#### Educational Workshops

University Extension Agents, conservation organization representatives, experienced land owners, tax advisors and others can be invited to give presentations to local land owners in order to educate local officials and interested land owners. UW Extension can also be a resource for statewide ‘webinar’ events that offer statewide sharing of information and question and answer sessions at very reasonable costs.

### 3. Financing Tools

#### Use Value Assessment

In 1974 the Wisconsin Legislature amended the Rule of Uniform Taxation (Article VIII, Section 1) in the Wisconsin Constitution to permit the preferential treatment of agricultural land. The 1995-1997 Budget Act changed the standard for assessing agricultural land in Wisconsin from market value to use value. The goal of this legislation, known as ‘use value assessment’, was to protect Wisconsin’s farm economy and curb urban sprawl by assessing farmland based upon its agricultural productivity, rather than its potential for development. Specifically, the value of agricultural land for assessment purposes was changed from market value to use value.

In a use value assessment system, the use of the land is the most important factor in determining its assessed value. Use value in Wisconsin is specific to land only. The use value legislation passed in 1995 requires that the assessed value of farmland be based on the income that could be generated from

its rental for agricultural use. Income and rental from farming are a function of agricultural capability. Because any land could theoretically be used for agricultural purposes, statutes and administrative rules limit the benefit of use value assessment to only those lands that qualify as 'land devoted primarily to agricultural use.'

The implementation of use-value assessment in Wisconsin has helped farmers maintain lower property taxes on their agricultural land. As an example, equalized values for agricultural lands in Winnebago County were \$21,116,150 in 2004, or 1.15 percent of total equalized value. The equalized values rose to \$23,549,850 in 2008, but the percentage fell to 0.98 percent of the total equalized value. The impact of use value assessment is the logical explanation for the decreasing percentage. This example shows that "Use Value" is working as a tool to preserve farmland in Winnebago County.

#### **Key Terms**

**Use Value Assessment** – The assessment of farmland based on agricultural production rather than on its potential for development.

**Transfer of Development Rights (TDR)** – The transmission of a parcel's bundle of development rights to another parcel slated for development in order to preserve an intended use such as agriculture on the transferring parcel.

**Conservation Easement** – a legal restriction recorded on a parcel intended to preserve the parcel from certain levels of development.

**Urban Growth Boundary** – A regional boundary placed to control urban sprawl and mandate certain levels of development density in and out of the boundary.

**Conservation Subdivision** -Wisconsin's 'Smart Growth' Law defines a conservation subdivision as "a housing development in a rural setting characterized by compact lots and common open space, where the natural features of the land are maintained to the greatest extent possible."

**Table 4. Acres Assessed as Agricultural Use: 2000-2006**

<b>Civil Division</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>Net Change 2000 to 2006</b>
Town of Algoma	2,894	2690	2,585	2,420	2,427	2,435	2,357	-537
Town of Black Wolf	5,976	5893	5,859	5,756	5,796	5,749	5,777	-199
Town of Clayton	15,042	14,860	13,988	13,789	13,140	12,986	12,767	-2,275
Town of Menasha	885	885	920	922	995	999	977	92
Town of Neenah	2,239	2234	1,760	1,794	1,711	1,523	1,564	-675
Town of Nekimi	14,209	14,125	13,989	13,886	13,759	13,697	13,681	-528
Town of Nepeuskun	13,941	13,928	13,810	13,700	13,668	10,350	10,363	-3,578
Town of Omro	14,689	14,586	14,589	14,551	14,567	14,468	14,370	-319
Town of Oshkosh	3,767	3,440	3,240	3,136	3,121	3,117	3,088	-679
Town of Poygan	9,937	9,209	9,185	9,075	9,076	8,779	8,717	-1,220
Town of Rushford	13,993	13,930	13,980	13,767	13,734	13,751	13,719	-274
Town of Utica	15,684	15,612	15,532	15,414	13,441	13,511	13,571	-2,113
Town of Vinland	14,087	14,045	13,993	13,931	13,943	13,449	13,428	-659
Town of Winchester	12,677	12,490	8,714	8,809	8,996	9,003	8,985	-3,692
Town of Winneconne	8,351	8,347	8,298	8,131	8,081	7,941	6,560	-1,791
Town of Wolf River	9,676	9,653	9,667	9,602	9,626	9,579	9,520	-156
Village of Winneconne	53	53	53	53	49	49	46	-7
City of Appleton	0	0	0	0	0	0	0	0
City of Menasha	0	0	0	0	0	0	0	0
City of Neenah	0	0	0	0	0	0	0	0
City of Omro	320	320	322	327	318	325	307	-13
City of Oshkosh	403	505	564	569	557	589	550	147
<b>Total</b>	<b>158,823</b>	<b>156,805</b>	<b>151,048</b>	<b>149,632</b>	<b>147,005</b>	<b>14,2300</b>	<b>14,0347</b>	<b>-18,476</b>

Source: University of Wisconsin-Madison, College of Agricultural and Life Sciences, Program on Agricultural Technology Studies

## Managed Forest Law

Wisconsin's Managed Forest Law (MFL) promotes sustainable forestry practices on private property by providing significant tax savings to property owners. Parcels with at least 10 acres of forestland used for wood products are eligible.

The goal of the MFL program is to encourage long-term sound forest management. MFL is a tax incentive program for industrial and non-industrial private woodland owners who manage their woodlands for forest products while also managing for water quality protection, wildlife habitat, and public recreation. In return for following an approved management plan, property taxes are set at a lower rate than normal.

## 4. Planning Tools

### Comprehensive Plans

Comprehensive Planning is an essential method of defining a long range, citizen driven vision for land use planning. Although the planning process is involved and can take a year or more to complete, depending on the size of the jurisdiction, a comprehensive, citizen driven plan that articulates a vision and the objectives required to implement the vision can be a very effective tool in shaping local land use policy and regulation. In addition, comprehensive plans can serve to assure granting agencies, conservation organizations and other potential partners in a publicly supported vision, resulting in a greater likelihood of participation by potential partners in farmland preservation. Comprehensive plans can also provide support to local decision making bodies when difficult land use decisions need to be made.

Under Wisconsin's Comprehensive Planning Law, Wisconsin Statute Section 66.1001, nine elements must be included in a comprehensive plan: (issues and opportunities; housing; economic development; transportation; utilities and community facilities; agriculture, natural and cultural resources; land use; intergovernmental cooperation; and implementation. These nine elements offer an organized method of comprehensively addressing and analyzing farmland preservation impacts on the community.

The Wisconsin Department of Administration commissioned the creation of element guides after the comprehensive planning legislation was passed in order to provide guidance on each section of the comprehensive plan. The 'Guide to Planning for Agriculture in Wisconsin, 2002' is available online at the Department of Administration's website. This element guide provides excellent guidance on farmland preservation inventory techniques and implementation strategies.

The land use element of a comprehensive plan typically includes an inventory of the planning area's resources. Modern Geographic Information Systems (GIS) provide a valuable tool for analyzing land information data in layers to best understand where valuable agricultural resources exist.

Typically the implementation element of a comprehensive plan will offer short, medium and long range objectives and an action plan to accomplish each objective which can articulate the tools needed by community officials to accomplish the objective. This section is particularly helpful in setting annual priorities for the community and a quick reference for officials to understand the tools available to accomplish planning objectives.

### Sewer Service Plans

Chapter NR 121, Wisconsin Administrative Code, establishes the requirements for sewer service area (SSA) planning in order to provide structure to wastewater treatment for both individual communities and communities sharing wastewater treatment facilities. The Wisconsin DNR is responsible for working with local agencies to develop Sewer Service Area plans that guide publicly sewered growth to protect water quality.

Sewer service area planning helps protect communities from adverse water quality impacts by anticipating growth patterns in the planning area and making recommendations on growth patterns that best serve water quality goals. A sewer service area plan identifies land most suitable for new development and land use planning options that can mitigate adverse water quality impacts on the community. Plans typically identify environmentally sensitive areas where development would have an adverse impact upon water quality that may be considered for farmland preservation initiatives.

Geographic information systems can be a useful tool in analyzing layers of geographic data that can serve both farmland preservation initiatives and water quality preservation goals.

**Table 5. Status of Sewer Service Plans: 2017**

SSA Plan	Municipalities In Winnebago County	Last Update	Next Scheduled Update
Butte des Morts	Towns of Oshkosh, Vinland, Winneconne	1/29/2002	None scheduled (plant capacity issues)
Fond du Lac	Town of Black Wolf	6/5/2001	In progress (expected completion in 2017)
Fox Cities–Grand Chute/Menasha West	Towns of Clayton, Neenah, Menasha; cities of Appleton, Neenah	2/13/2006	None scheduled (probably 2018 initiation)
Fox Cities–Neenah/Menasha	Towns of Clayton, Neenah, Menasha, Vinland; cities of Appleton, Neenah, Menasha	2/13/2006	None scheduled (probably 2018 initiation)
Larsen/Winchester	Towns of Clayton, Winchester	3/1/2002	None scheduled (prior to 2020)
Omro	C. Omro; Towns of Omro, Winneconne	11/30/2009	None scheduled
Oshkosh	Towns of Algoma, Black Wolf, Nekimi, Oshkosh	11/06/2007	None scheduled (probably 2019 initiation)
Winneconne	T. Winneconne, V. Winneconne	9/22/2003	None scheduled (possible 2018/19 in conjunction with comprehensive plan update)

Source: East Central Wisconsin Regional Planning Commission

## 5. Regulatory Tools

### Urban Growth Boundaries

According to the Farmland Preservation Center, Wisconsin has seen the conversion of over 500,000 acres of agricultural land to urbanization since 1982 prompting debate over whether or not regulatory control over urban sprawl is necessary to protect prime agricultural lands around urban centers.

Urban growth boundaries are defined as a regional regulatory boundary that is set in place in an attempt to control urban sprawl and mandate certain land use densities in and out of the boundary. Urban growth boundaries are a planning tool that can serve to promote urbanization while protecting valuable agricultural assets in a region.

Arguments for urban growth boundaries cite the importance of promoting urban infill, utilizing existing infrastructure investment to its highest and best use and discouraging costly sprawl and protecting the rural aesthetic. Cons include the potential for higher real estate prices within the urban area and the removal of market options for land owners outside the boundary.

Urban growth boundaries must be considered carefully due to these factors and may be considered along with other tools such as the purchase of development rights (PDR) or conservation easements.

Urban growth boundaries are commonplace around the world from the 'greenbelt' cities of Europe and Canada to Scandinavian countries which have a more abrupt transition from urban to rural land use patterns.

### **Infill Development and Increased Densities in Urban Areas**

Local units of government may use density bonuses as part of their development review and/or subdivision approval process. This approach assumes that if specified criteria are met, then a proposed development would be approved with more use of a site (such as more dwelling units per acre) than would otherwise be permitted by the community. That is, greater development density would be allowed if certain conditions are met. These "density bonuses" are a form of incentive that a community can offer to a developer who does the kind of development that a community seeks. Thus, a local government can legally and equitably say to each developer: if you do what we would like in your development, then you can increase the amount of development and thereby pay for more of the improvements we request.

Density bonuses may be used to achieve a wide array of community objectives, such as preservation of agriculture land, open space, and view sheds, and conservation of wetlands, water bodies, forests, meadows and other natural features that the community values. A list of density bonus criteria is not a freestanding document, but would need to be incorporated into a community's subdivision, zoning, or other development review regulations.

- Allows for the protection of environmentally sensitive areas while providing development to occur on the property
- Does not impose any direct costs on landowners and developers
- Neighbors may oppose due to concerns of increased density of development
- May not be mandatory tool; thus there is little assurance that desired project designs will be implemented by developers
- Can be difficult for local officials to enforce unless bonus criteria are clearly spelled out in an ordinance or policy document



### **Traditional Agricultural Zoning**

Agricultural protection zoning designates agriculture as the preferred primary land use. Its defining characteristic is the extent to which it permits new non-agricultural development. It keeps agricultural land contiguous, maintains a sense of rural character, and prevents large-scale residential developments whose residents may find agricultural activities to be a nuisance. It usually establishes a large minimum requirement for parcel sizes, usually around 35 acres. This type of zoning, however, does not permanently preserve agricultural land and does not protect it from annexation.

- Helps prevent agricultural land from becoming fragmented by residential development
- Clearly identifies agriculture as primary land use
- Easily implemented by municipalities
- Able to protect large areas of agricultural land

- Does not permanently preserve agricultural land
- Does not protect agricultural land from annexation

Large lot zoning, also known as low-density residential zoning, is a zoning technique creating lot sizes 40 acres or more. The perceived effectiveness of large lot zoning is based on the theory that limiting development density will preserve the open space and agricultural character of an area. The premise of large lot zoning is to select a minimum lot size that is large enough to prevent fragmentation of agriculture and to discourage non-farm homebuyers from purchasing land to build on in the country. Lot sizes ranging from three to ten acre-lots have proven ineffective in preventing non-farm homebuyers from purchasing agricultural land for residential development. In areas where farmland preservation is particularly important to the community, individual lot sizes of 40 to 160 acres may be applicable. Minimum lot sizes in this range may be utilized by niche agricultural industries such as gardening and greenhouses.

Large lot zoning, however, is generally not considered to be an effective farmland preservation tool since low density development patterns create parcel sizes which are "too big to mow, but too little to plow." In areas of marginal farming production, this technique can have a detrimental effect by requiring large lots for individual homes and taking large parcels out of production for that purpose. This technique may be effective in maintaining rural character, but not farmland. Maintenance of rural character is enhanced if low residential densities are combined with conservation subdivision design in communities that wish to accommodate residential development.

### Conservation Subdivision Design

Conservation or cluster development is a development pattern for residential, commercial, industrial, or institutional uses, or a combination of these uses, in which buildings are grouped together rather than evenly spread over the land as in a conventional development. The intent of conservation development is to concentrate structures in those areas most suitable for building while preserving natural or cultural features. Residential conservation subdivisions cluster houses on smaller parcels of land while additional land that would have been allocated to individual lots is preserved as open space.

Conservation developments can keep land available for agricultural use, but generally the land is kept as open space. In a typical conservation subdivision, each homeowner has access to all of the open space areas, which may be permanently preserved by a conservation easement. To provide maximum protection of subdivision open space, the conservation

Figure 1. Conservation Subdivision Design to Protect Farmland



easement should be assigned to organizations such as a homeowner's association, a government agency, or a land trust. This tool can achieve a variety of comprehensive planning objectives such as reducing the visual impacts of development, preserving rural character, natural features, environmentally sensitive lands, permanent open space or agricultural land, creating opportunities for nonpublic ownership of open space, and increasing the efficiency of infrastructure development.

Figure 1 illustrates how conservation/cluster zoning can accommodate development and conserve natural resources and open space. Although not commonly done in eastern Wisconsin to date, conservation subdivisions can also reserve areas for farming within the subdivision as shown in Figure 2.

It is important that when implementing a conservation/cluster ordinance that a community incorporates design principles for rural character

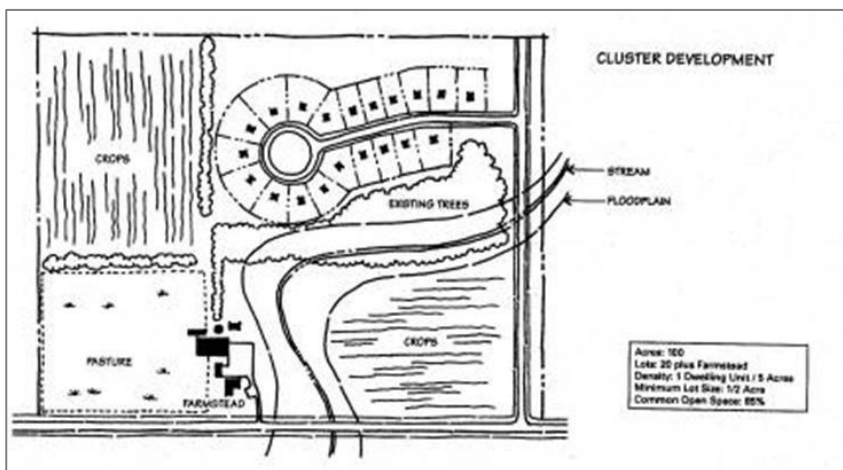
preservation such as preserving open space adjacent to existing perimeter roadways, clustering houses, separating cluster groups and providing open space adjacent to each lot. If design principles are not taken into account, developments may look more like a conventional subdivision layout and will not likely achieve the goal of preserving rural character.

The Town of Caledonia in Racine County provides a good example of a conservation subdivision ordinance. Conservation subdivisions can also be accommodated through a local zoning ordinance.

### Benefits and Limitations

- Helps maintain a rural character of an area
- Provides permanent open space protection for a community
- Protects best natural resources of an area
- Developers may experience greater profits by selling parcels next to open space
- Reduces impact of development on watersheds
- Less expensive to provide municipal public services to development depending on how clustering can be accomplished
- Maintenance costs of created open space
- Limited accessibility to low-income households
- Protected land is typically owned by homeowners association – little to no public access
- Improper implementation of tool may create conventional subdivisions

Figure 2. Conservation Subdivision Design to Protect Farmland





- Minimum lot sizes may not be small enough to offset costs of land preservation
- Limits, but does not stop residential development in agricultural areas

### **State-Certified Farmland Zoning**

Local governments may choose to adopt and have certified a farmland preservation zoning ordinance to ensure that landowners covered by the ordinance are eligible to claim farmland preservation tax credits (ch. 91, Wis. Stats.). Certification of a local farmland preservation zoning ordinance must be obtained through application to the department. A farmland preservation zoning ordinance does not qualify for certification under s. 91.36, if the farmland preservation zoning ordinance allows a land use in a farmland preservation zoning district other than the following:

- Agricultural uses.
- Accessory uses.
- Agriculture–related uses.
- Nonfarm residences constructed in a rural residential cluster.
- Undeveloped natural resource and open space areas.
- A transportation, utility, communication, or other use.
- Other uses identified by the department by rule.

### **Transfer of Development Rights**

The County could establish a program that allows individuals to shift a “bundle” of development rights from a parcel in a defined “sending” area to a parcel in a defined “receiving” area, an area designated as appropriate for development. This allows a community to preserve natural features and agricultural land, while at the same time, helps it to concentrate development around existing population centers and infrastructure. The process is managed through dual zoning that provides property owners a choice whether or not to participate. Owners who sell development rights are properly compensated without having to endure complications of actually developing the site. They can also continue to generate income from agricultural, forestry, or other natural land uses. The County should note that this requires additional government resources to manage, can be complex, and is only feasible in areas where there is pressure for more urban development.

The Transfer of Development Rights (TDR) is a tool that establishes areas within a community, called zones, that define areas for preservation (sending zones), and areas for more growth (receiving zones). Sending zones can be areas of agricultural land, open space, historic properties or any other properties that are important to the community.

Receiving zones are areas that the community has designated as appropriate for development. Often these areas are selected because they are located close to existing development, jobs, shopping, schools, transportation, infrastructure and other urban services.

In a traditional TDR program, sending area properties are rezoned to a form of dual zoning that gives the property owners a choice. The owners can choose not to participate in the TDR program and instead use and develop their land as allowed under the baseline zoning. Alternatively, they can voluntarily elect to use the TDR option. Under the TDR option, the sending site owner enters into a deed

restriction that spells out the amount of future development and the types of land use activities that can occur on the property. When that deed restriction is recorded, the sending site owner is able to sell a commodity created by the community's TDR ordinance called a transferable development right or a "TDR". By selling their TDRs, sending site owners often are fully compensated for the development potential of their property without having to endure the expense and uncertainty of actually trying to develop it. Also, when the sending sites have income-producing potential from non-urban uses, such as farming or forestry, the owners can continue to receive that income.

A traditional TDR ordinance creates a form of dual zoning for receiving areas as well. Developers can elect not to use the TDR option provided under this dual zoning. Under the baseline option, they do not have to acquire TDR's, but they also are limited to a lower, less-profitable level of development. Under the TDR option, developers buy and retire a specified number of TDRs in order to achieve a higher, more-profitable level of development. The price of TDRs is typically freely negotiated between willing buyers and sellers. The TDR ordinance can influence the price through the number of TDRs that the sending site owners are allowed to sell. When TDRs remain affordable, developers are able to achieve higher profits through the extra development allowed under the TDR option despite the additional cost of the TDRs.

- Permanently protects land from development pressures
- Landowner is paid to protect their land
- Local government can target locations effectively
- Low cost to local unit of government
- Utilizes free market mechanisms
- Land remains in private ownership and on tax roll
- Can be complex to manage
- Receiving area must be willing to accept higher densities
- Difficult program to establish, especially in areas without County zoning
- Program will not work in rural areas where there is little to no development pressure on the area to be preserved
- Limited to Cities/Villages/Towns, no statutory authorization in Wisconsin for countywide program
- May require cooperative agreements among several local governments to establish sending and receiving zones

## **6. Right-to-Farm Laws**

The County should be proactive in distributing information on policies that protect agricultural activities from overly restrictive land-use regulations. These state laws protect agricultural activities from threat of nuisance-based lawsuits. The County may consider requiring those selling property near farms to disclose information about these laws.

Right-to-farm laws are a state policy that states commercial agriculture is an important activity. The statutes help support the economic viability of farming by discouraging neighbors from filing lawsuits against agricultural operations. Twenty-three right-to-farm laws also prohibit local governments from enacting ordinances that would impose unreasonable restrictions on agriculture.

Wisconsin's "Right-to-Farm Law" (Sec. 823.08 Wis. Stats.) was enacted in 1981 to protect farmers from lawsuits, or the threat of lawsuits, where a plaintiff alleges that a normal farming practice poses a nuisance. The law was designed to protect farm operations, which use good management practices from nuisance lawsuits that challenge acceptable farming practices and the ability of farmers to responsibly continue producing food and fiber. The "Right-to-Farm Law" was strengthened in 1995 to provide recourse for farmers to collect on expenses they incurred from frivolous nuisance lawsuits brought against their operations.

Local communities may supplement the protection provided by the State with their own, more protective ordinance. Local ordinances may require that buyers of land in agricultural areas be provided with an Agricultural Nuisance Notice. Such notices inform buyers of agricultural land that agriculture is the primary economic activity of the area and that the buyer may experience inconvenience or discomfort arising from accepted agricultural practices. In some cases, the notice may be recorded on the deeds to new homes. Such notices may help to ensure that people who purchase houses in agricultural areas will recognize, and be more tolerant of, the sometimes inconvenient impacts of agricultural activities.

## **7. Voluntary Tools**

### **PACE Program**

As part of the 2009 Working Lands Initiative, the state of Wisconsin established the Purchase of Agricultural Conservation Easement (PACE) program to help fund the acquisition of farmland in the state to permanently protect it from development.

This program is a voluntary program, compensating landowners for their willingness to limit future non-farm development. The compensation is based on a professional appraisal, which determines the value of the easement. That appraised value is estimated as the difference between the value of the land for development, and its value for farming. This voluntary incentive program is primarily financed by a grant from the state of Wisconsin. A local agency, usually a local unit of government or a non-profit conservation organization, assists the landowner in applying for a grant award from the state. This award can be matched by a federal grant award, local grant dollars, or even the landowner. The local agency then uses these grant dollars to negotiate an offer to purchase the easement. A real estate transaction then occurs between the landowner and the local agency. This easement purchase is then recorded and placed on the deed of the property; the easement is to go with the deed in perpetuity. There are typically no stipulations for public access, hunting rights or other activities, which the landowner may consider to be invasive. Because this is a voluntary program, negotiated between two willing parties, the terms must be acceptable to both.

Benefits of Purchasing Agricultural Conservations Easements include:

- Perpetual protection of farmland for agricultural production
- Confidence by Ag landowners that conflicting development and land uses will not occur in the future.

- The agriculture economy is bolstered by an infusion of capital.
- A landowner is compensated for the benefits the public receives in open space and rural character.
- Minimizes urban sprawl and increases urban density levels.
- Increases the efficiency of delivery of government services.
- Minimizes public investment in additional development driven infrastructure.

What are some criteria for delineation areas that qualify for PACE Grants?

- Productive, prime, or unique soils.
- Farmland faced with development pressure.
- Preserved farmland that will compliment and be part of a comprehensive plan.
- Agricultural land that compliments other preservation efforts by creating a block of agricultural land.
- Agricultural land that utilizes other programs, which help keep the land in active production.
- Agricultural land that has matching funds from other sources to assist in the easement purchase.
- Land with important conservation features/ natural resources.

### **Agricultural Enterprise Areas**

An agricultural enterprise area (AEA) is a significant prong of the 2009 Working Lands Initiation. By definition, an AEA is a contiguous land area devoted primarily to agricultural use and locally targeted for agricultural preservation and agri-business development. In 2009 a pilot program was authorized to establish 15 AEAs in the state of no more than 200,000 acres. The pilot program is to run two years.

If successful, the state will allow up to 1,000,000 acres to be placed in AEAs statewide. If land is in an AEA, subject to a farmland preservation agreement, and meets eligibility and conservation requirements, the farmer can receive a tax credit of \$5 per acre. Land in an AEA is not required to be within a certified farmland preservation zoning district. However, if it is, the tax credit can go up to \$10 per acre. The designation of an AEA is voluntary and can be initiated by land owners by filing a petition with the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). Petitions filed with DATCP must meet minimum criteria, but additional evaluation criteria may be used to review competing petitions. As a minimum, the land subject of the petition must be identified as being in a farmland preservation area in the county's farmland preservation plan, be a contiguous land area, and primarily be used for agriculture. There must be a minimum of five separate landowners who sign the petition. Petitioners must also gain support from the local political sub-divisions, (towns/ villages.) Once an AEA is accepted and established, the landowners will sign a farmland preservation agreement, in order to collect the tax credits, and continue to promote agricultural land use within the AEA.

## Purposes

- The preservation of valuable agricultural land use
- Promotion of agri-business
- Cooperation between the AEA landowners
- Additional tax credits to landowners to infuse capital into the local agricultural economy

## Federal Programs

The Farm and Ranch Land Protection Program (FRPP) provides matching funds to help purchase development rights to keep productive farm and rangeland in agricultural uses. Working through existing programs, USDA partners with State, tribal, or local governments and non-governmental organizations to acquire conservation easements or other interests in land from landowners. USDA provides up to 50 percent of the fair market easement value of the conservation easement.

To qualify, farmland must: be part of a pending offer from a State, tribe, or local farmland protection program; be privately owned; have a conservation plan for highly erodible land; be large enough to sustain agricultural production; be accessible to markets for what the land produces; have adequate infrastructure and agricultural support services; and have surrounding parcels of land that can support long-term agricultural production. Depending on funding availability, proposals must be submitted by the eligible entities to the appropriate NRCS State Office during the application window.

## Sale or Donation of Conservation Easements

Conservation easements are legally-binding (recorded on the property deed), voluntary agreements between a property owner and government institution that places restrictions on the use and development of that property. They are usually structured in perpetuity, but may be for a predefined term. Easements may also only include parts of property instead of the entire parcel. Property owners may benefit from tax incentives.

## Bargain Sales and Property Donations

If there is a willing seller, a government institution or non-government (conservation) organization may consider permanent protection by purchasing full title to property, which includes the full "bundle of development rights" that come with it. The parties may also structure transaction as a "bargain sale" where owner sells at a below-market price, and contributes the remaining value as a charitable gift, which the owner can claim as an income tax deduction. The buyer can also consider leasing land back to previous owner to generate rent. Fee-simple purchase work best in time-sensitive situations or where there is a vision of community use for the land. The buyer should consider the increased costs of owning land and government institutions should note that a purchase may lower value of parcel, thereby reducing tax revenues. This loss may be offset, however, as it may increase the property values of adjoining parcels.

There may be instances where a property owner seeks to transfer his/her land title to government institution or non-government (conservation) organization as a charitable gift (or to benefit from tax incentives). This donation may take place immediately, or be a reserved life estate, where owner continues to own and live on property until death. The recipient should consider that more resources may be needed for continued operation and maintenance of the property.

## 8. Summary of Tools Available for Town/County Implementation

Table 6 provides a summary of those tools that the towns and the county can use to protect farmland from development.

**Table 6. Summary of Farmland Protection Tools for Town/County Implementation**

Tool	Benefits	Limitations	Funding Requirements and Availability	Status of Current Implementation
"Options" Review for Developers	<ul style="list-style-type: none"> <li>Provides opportunity to incorporate farmland and open space preservation into a development project</li> <li>Voluntary</li> </ul>	<ul style="list-style-type: none"> <li>Voluntary nature does not ensure protection of farmland</li> <li>Even with clustering, farmland can be developed and the protected remnant may be too small to use for traditional agriculture</li> <li>The desired lot design may not be permitted by local zoning or land division regulations, or both</li> </ul>	<ul style="list-style-type: none"> <li>Aside from potentially revising local regulations, no additional funding would be required if able to manage with existing staff</li> </ul>	<ul style="list-style-type: none"> <li>Currently not a required step in the development review process</li> </ul>
Sewer Service Plans	<ul style="list-style-type: none"> <li>Restrains urban/suburban development from encroaching on agricultural and other natural lands</li> </ul>	<ul style="list-style-type: none"> <li>Does not ensure long-term protection</li> <li>Only defines those areas which may be developed at a higher density – land may still be developed at a lower density</li> </ul>	<ul style="list-style-type: none"> <li>Current cost is an on-going expense</li> </ul>	<ul style="list-style-type: none"> <li>Already in practice</li> </ul>
Urban Growth Boundaries	<ul style="list-style-type: none"> <li>Establish clear designation between growth and preservation areas</li> <li>Promote more efficient use of existing transportation and utility infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>May be quite difficult to reach agreement on official boundaries</li> <li>Require additional regulations to uphold intent</li> <li>Would need to amend comprehensive plans</li> </ul>	<ul style="list-style-type: none"> <li>Funding for amending comprehensive plans and implementation would be required</li> </ul>	<ul style="list-style-type: none"> <li>Not being done</li> </ul>
Infill Development and Increased Densities in Urban Areas	<ul style="list-style-type: none"> <li>Permits urban and suburban development while preserving farmland and other natural resources</li> <li>Does not impose any direct costs on property owners or developers</li> </ul>	<ul style="list-style-type: none"> <li>Nearby residents may oppose increased density</li> <li>Does not help to ensure preservation if density bonuses are not mandatory</li> </ul>	<ul style="list-style-type: none"> <li>Aside from potentially revising local regulations, no additional funding would be required</li> </ul>	<ul style="list-style-type: none"> <li>Some municipalities encourage infill in their comprehensive plans</li> </ul>
Purchase of Development Rights (PDR)	<ul style="list-style-type: none"> <li>Permanently protects farmland</li> </ul>	<ul style="list-style-type: none"> <li>Lands most needing protection are often the most costly to protect</li> <li>Requires two willing parties</li> <li>Permanent funding source required for most consistent results</li> </ul>	<ul style="list-style-type: none"> <li>Requires on-going funding from county and/or municipalities</li> <li>Costly</li> </ul>	<ul style="list-style-type: none"> <li>Will be encouraged to be completed by local conservation organizations</li> </ul>

**Table 6. Summary of Farmland Protection Tools for Town/County Implementation - continued**

<b>Tool</b>	<b>Benefits</b>	<b>Limitations</b>	<b>Funding Requirements and Availability</b>	<b>Status of Current Implementation</b>
Transfer of Development Rights (TDR)	<ul style="list-style-type: none"> <li>• Permanently protects farmland or other natural areas</li> <li>• Farmers get “development value” for their land</li> <li>• Able to target specific areas for protection</li> <li>• Land remains in private ownership and on tax rolls</li> </ul>	<ul style="list-style-type: none"> <li>• Implementation can be complex and an ongoing commitment</li> <li>• May be difficult to craft a countywide program including cities and villages</li> <li>• Nearby residents may oppose increased density</li> </ul>	<ul style="list-style-type: none"> <li>• Cost involved with revising local regulations</li> <li>• Would likely require additional institutional resources to manage</li> </ul>	<ul style="list-style-type: none"> <li>• Not being done – there are a few examples elsewhere in Wisconsin</li> </ul>
Conservation Subdivision Design	<ul style="list-style-type: none"> <li>• Permanently protects farmland or other natural areas</li> <li>• Promotes more efficient use of new transportation and utility infrastructure</li> <li>• May increase values of adjacent residential properties</li> </ul>	<ul style="list-style-type: none"> <li>• Maintaining the farmland and/or open space would be an ongoing obligation of homeowners association</li> <li>• May be limited access to open space</li> <li>• May limit home ownership opportunities for some households</li> </ul>	<ul style="list-style-type: none"> <li>• Aside from potentially revising local regulations, no additional funding would be required</li> </ul>	<ul style="list-style-type: none"> <li>• Allowed as a PUD</li> </ul>
Traditional Zoning – Minimum Lot Size	<ul style="list-style-type: none"> <li>• Can slow the rate of fragmentation of larger agricultural parcels</li> <li>• Institutionally feasible for local governments to implement</li> </ul>	<ul style="list-style-type: none"> <li>• May encourage low-density development and conversion of farmland</li> <li>• Does not ensure permanent preservation</li> <li>• May increase costs of constructing transportation and utility infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>• No additional funding required</li> </ul>	<ul style="list-style-type: none"> <li>• Already in practice</li> </ul>
State-Certified Farmland Zoning	<ul style="list-style-type: none"> <li>• Property owners are eligible to receive state income tax benefit</li> <li>• Allows non-farm land divisions based on certain criteria</li> <li>• Allows certain commercial activities as a conditional use</li> </ul>	<ul style="list-style-type: none"> <li>• Does not ensure permanent protection</li> <li>• Conversion fee required if rezoning is approved by the jurisdiction</li> </ul>	<ul style="list-style-type: none"> <li>• Land development regulations would need to be revised to meet state requirements and certification process</li> </ul>	<ul style="list-style-type: none"> <li>• Already in practice</li> </ul>
PACE Program	<ul style="list-style-type: none"> <li>• Property owner is eligible to receive income tax benefit</li> <li>• Permanently protects farmland</li> <li>• Can reduce future land-use conflicts</li> <li>• Land remains in private ownership and on tax rolls</li> <li>• Voluntary involvement</li> </ul>	<ul style="list-style-type: none"> <li>• Requires two willing parties</li> <li>• Negotiations may be complex</li> <li>• A competitive process is used to only fund the top-rated applications – state funding is not guaranteed</li> </ul>	<ul style="list-style-type: none"> <li>• Petitioner needs to secure 50 percent of the cost of the easement from a participating entity such as a local or statewide land trust or a governmental jurisdiction</li> </ul>	<ul style="list-style-type: none"> <li>• This is a new state program</li> </ul>
Designation of an Agricultural Enterprise Area (AEA)	<ul style="list-style-type: none"> <li>• Property owner is eligible to receive income tax benefit</li> <li>• Promotes agricultural businesses</li> <li>• Voluntary involvement</li> </ul>	<ul style="list-style-type: none"> <li>• Does not ensure permanent protection</li> <li>• Must include at least 5 separate land owners and at least 1,000 acres</li> <li>• Agreement is for 15 years</li> <li>• A competitive process is used to only fund the top-rated applications – state approval is not guaranteed</li> </ul>	<ul style="list-style-type: none"> <li>• No governmental expenditure required other than the adoption of a resolution of County Board supporting the petitioner’s application for designation as an AEA</li> </ul>	<ul style="list-style-type: none"> <li>• Voluntary by landowners, County to support petitions.</li> </ul>