



Walworth County
Land Conservation Committee
Monday, December 20, 2010 at 1:30 p.m.

**Walworth County Government Center
County Board Room 114
Elkhorn, WI 53121**

Land Use and Resource
Management Department

*Dan Kilkenny – Chair, Jerry Grant - Vice Chair
Randy Hawkins - Supervisor*

Donald Henningfeld – USDA/FSA Representative, Dorothy C. Burwell – Citizen Member

(Posted in Compliance with Sec. 19.84 Wis. Stats.)

AGENDA

1. Call to order
2. Roll call
3. Approval of the agenda
4. Approval of minutes from November 15, 2010 LCC Meeting
5. Public Comment
6. Discussion/Possible Action – WLWCA Conference Report. Dorothy Burwell
7. Discussion/Possible Action – WLWCA Update Related to Resolution #3, Supporting Legislation to Comprehensive Well Water Testing Prior to Real Estate Transfers. Dorothy Burwell/Louise Olson (enclosure, page 1)
8. Discussion/ Possible Action – Correspondence related to Mary Beth Gibbons-Adams. Michael Cotter (enclosures, page 2 – 5)
9. Discussion/Possible Action – Farmland Preservation Plan Policy Options and Considerations. Fay Amerson/ LURM Staff
 - A. Non Metallic Mining - (enclosures, pages 6 – 10)
 - B. Non Farm Residences - (enclosures, pages 11 – 16)
 - C. AEA - (enclosures, pages 17 -18)
 - D. PACE - (enclosures, pages 19 – 26)
 - E. Agricultural Related Uses - (enclosures, pages 27 – 44)
10. Discussion/Possible Action – Proposed Zoning Ordinance Amendment referred by County Zoning Agency related to Farm Food Service in the A-4 Districts as a Farm Family Business – Debora Grube/ Matthew Weidensee - (enclosures, pages 45 – 46)
11. Next Meeting Date
12. Adjournment

It is possible that a quorum of the County Board or a committee of the County Board could be in attendance. Submitted by: Michael P. Cotter, Director, Land Use and Resource Management Department Louise Olson, Deputy Director, Land Conservation Committee Designee

Posted: December 15, 2010

Walworth County Land Conservation Committee

MINUTES

DRAFT

Monday, November 15, 2010 at 1:30 p.m.

Walworth County Board Room 114
Elkhorn, WI 53121

The meeting was called to order by LCC Chair Kilkenny at 1:30 p.m.

Roll call - Committee members present included: Supervisors Hawkins, Kilkenny, Grant, Citizen Member Burwell, and USDA/FSA Representative Henningfeld. A quorum was declared.

County staff present – David Bretl, County Administrator; Michael Cotter, Director of Land Use & Resource Management (LURM); Louise Olson, Deputy Director, LURM; Fay Amerson, Urban Manager, LURM; Neal Frauenfelder, Sr. Planner, LURM; Matt Weidensee, Associate Planner, LURM; Deb Grube, Sr. Zoning Officer; and Joann Douglas, Recording Secretary.

Also in attendance – Nancy Russell, Walworth County Board Chair; Greg Igl, USDA./NRCS; and Shirley Grant

Approval of the Agenda – **Supervisors Hawkins and Grant moved and seconded approval of the agenda. Motion carried 5-0.**

Approval of the Minutes – **Citizen Member Burwell and Supervisor Grant moved and seconded approval of the October 18, 2010 LCC meeting minutes as presented. Motion carried 5-0.**

Public Comment – None

Substandard A-1 Policy Review For Farmland Preservation Plan (FPP) – Fay Amerson reminded the committee members the Farmland Preservation Plan's pertinent information is now on the county website including the draft, all meeting minutes pertaining to FPP, fact sheets and a link to DATCP. Ms. Amerson said during the discussion of the Farmland Preservation Plan there would be decisions the LCC would need to make based on the new FPP law, Ch. 91, and reviewing/reaffirming what has been done thus far on FPP and documented in the Smart Growth Plan.

Discussion followed of Ag resource policies and programs, and some of the exceptions of uses allowed in a FPP zoning district. Neal Frauenfelder provided insight of the FPP requirement for conversion fees and ways to minimize the number of A-1 rezones. Many rezones are on existing substandard parcels of A-1 land. For example, a 30 acre parcel is made up of 5 acres zoned C-2 and 25 acres zoned A-1. The 25 acres A-1 is already substandard. To divide the 5 acres of C-2 off would require a rezone of the A-1 substandard parcel to A-2 before dividing off the 5 acres of C-2 since they are considered one parcel. Even though the C-2 is standard, a rezone is still required. Supervisor Kilkenny said there was concern at the town level about getting rid of small A-1 parcels just because they are small. Supervisor Grant asked if this is policy, county ordinance, or state law? It is a county ordinance. Creation of substandard lots is not exclusive to A-1 zoning. Matt Weidensee continued with discussion of other parcels to help the committee understand the ramifications of the zoning policy. Previously the county allowed people to split off A-1 and call it a legal substandard parcel even though it wasn't of record. However, the ordinance says you should not create a new lot. When the Zoning agency discovered these splits were being allowed, approximately 5 years ago, it was stopped. Deb Grube added the ordinance recognizes existing substandard parcels of record in the Register of Deeds Office on the effective date of the ordinance. The state defines parcels, but the county defines land use. Chair Kilkenny agreed that the

state definition should not drive our land use policy. Mr. Weidensee suggested perhaps the smaller substandard parcels could be split off with some type of a conditional use with conditions attached. Chair Kilkenny said there could be a stipulation that all A-1 land must stay together as one parcel when removing other zoning delineations like the C-2 in the example. Previously, there was nothing in the zoning code that allowed the zoning office to review parcel splits that were greater than 15 acres in size. Since then, the zoning code was amended to review all parcel splits. The subdivision control ordinance at the time said only parcels of 15 acres or less were reviewed. The question is, how to differentiate between legal and illegal substandard parcels. Deb Grube said this parcel split occurred in the mid 1990's before thorough reviews were being done and prior to amending the zoning code. Mr. Weidensee added that if changed policies allow someone to create a legal substandard parcel, other people may buy these illegal substandard parcels with the assumption they are buildable. Neal Frauenfelder added that this situation probably cannot be fixed with an ordinance change. When the county was zoned and mapped in the early 1970's, resource lines were followed to define zoning parcels rather than parcel lines. Example, woods got C-2 zoning, farm fields got A-1 or A-2, etc. That is the reason many parcels today have several zoning categories. Chair Kilkenny suggested using a type of farm separation that would separate out the non-farm zoning and combining and restricting all A-1 to remain intact and used or sold off for farming. Mr. Weidensee said the other concern with changing policy is that 15 townships are now comfortable with the comprehensive zoning amendment, all signed on, and are in agreement with the language of the zoning codes. If the county were to try to reinterpret the policy at this time, we would have to pass it by the townships first. Chair Kilkenny agreed with the ordinance change, but if it would allow the landowner more flexibility the townships would be in favor of the change. Fay Amerson said, this policy for substandard could be a recommendation in the farmland preservation plan. The FPP update should be an appendix to the Comp Plan. All the decisions about what is done with the final policy and ordinance changes come at a date when those changes are recommended. The FPP should just have the changes that are in Ch 91. The decision as whether or not that policy is adopted comes at a later date when you are doing the Comp Plan revisions. What needs to be decided for the FPP is: is this a policy that you recommend. Mr. Weidensee added that the one good thing about the policy is that it supports the land resource base that caused the A-1 to be A-1 in the first place and does not go away from the criteria of greater than 50% Class I, II, and III soils and is not being done because of the conversion fee, but rather the land use policy. **Chair Kilkenny entertained a motion to recommend language in the Farmland Preservation Plan that would permit the separation of legal substandard A-1 portions of lots subject to conditional use and deed restrictions. Seconded by Supervisor Hawkins. Motion carried 5-0.**

Criteria for Rezoning Land From A-1 – Neal Frauenfelder made the committee aware of the criteria used for rezones from A-1 land to another zoning district and any changes that may be needed to the Comp. Plan or the zoning ordinance because of SS Ch 91. The County standard already dealt with was using the criteria of greater than 50% Class I, II, and III soils for A-1 soils and has been placed in the Smart Growth Plan. The new state standards in Ch 91 that require action are as follows: In accordance with the Wisconsin Farmland Preservation Law, the proposed rezone out of a farmland preservation district may be approved by the County and Town only after findings are made based upon consideration of the following: a.) The land is better suited for a use not allowed in the farmland preservation zoning district; b.) The rezoning is consistent with the County certified comprehensive plan; c.) the rezoning is substantially consistent with the county certified farmland preservation plan; and d.) the rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use. Discussion followed regarding item d.) and the word “substantial”. Mr. Frauenfelder said, as a county, we could be more strict, and wording in the County standard that states “the proposed land use should be compatible with the remaining prime agricultural

land in the vicinity” could have a more restrictive statement added to it. **Supervisor Hawkins and USDA/FSA Representative Henningfeld moved and seconded to have the criteria for rezoning land from the A-1 Prime Agricultural Land Zoning District modified to reflect Farmland Preservation Law sec. 91.48. Motion carried 5-0.**

Non Metallic Mining Extraction – Conditional Use/A-1 Zoning Designation – Fay Amerson said they are responding to County Board Chair Russell’s suggestion and revisiting if non metallic mining in an agricultural preservation zoning district with a conditional use permit is allowed. Mr. Frauenfelder said that when this issue was previously brought up before the Smart Growth committee, which is made up primarily of town representatives, the towns were not in favor of using a conditional use permit as the method. They felt the towns would lose their veto authority. Nancy Russell asked if the Towns could be given conditional use veto authority on mineral extraction. Mr. Cotter stated that current state statutes would not allow that. Mr. Frauenfelder suggested contacting the towns to see if they changed their minds because of the conversion fee. He volunteered to discuss this issue at the Walworth County Towns Association Meeting. The Committee did not authorize Mr. Frauenfelder to attend the Towns Unit meeting. In the Farmland Preservation Plan, the LCC should identify uses that they would recommend in A-1 lands and conditions of approval. Discussion followed. **Citizen Member Burwell and Supervisor Grant moved and seconded having staff send a letter to DATCP asking the questions they deem appropriate related to dealing with nonmetallic mining and the Walworth County Farmland Preservation zoning ordinance. Motion carried 5-0.**

WLWCA 2010 Auction Donations – Louise Olson said Dorothy Burwell will be attending the WLWCA conference. Ms Olson reminded the LCC silent auction items are still needed if they know of any person or business who would like to donate. Ms Olson has forms to use for donating an auction item. They should contact Dorothy Burwell if they do have any items.

Next Meeting Date – Monday, December 20, 2010 at 1:30 p.m.

Adjournment – **On motion and second by Supervisor Hawkins and Grant, Chair Kilkenny adjourned the meeting at 2:55 p.m. Motion carried 5-0.**

Submitted by Joeann Douglas, Recording Secretary. Minutes are not considered final until approved by the committee at the next regularly scheduled meeting.



Thursday Note

An Update on Wisconsin Land and Water Conservation Issues

Volume 13, Issue 9

Thursday, November 11, 2010

LWCB Ballot and Candidate Bios Information

The following supervisors have been nominated to serve on the Land and Water Conservation Board: David Hammer, Lafayette County; Patrick Laughrin, Calumet County; Tom Rudolph, Oneida County; and Charles "Chuck" Wagner, Kewaunee County.

WLWCA will be emailing the ballot and the candidate biographies out to each county conservationist to share with their department and committee this week. This information can also be found on www.wlwca.org via a link from our conference page. Each county chair or designee can vote once. Completed ballots being mailed must be received at WLWCA by Friday, December 3. Ballots will be accepted at the conference until 6 pm on Thursday, December 9. Winners will be announced during Friday's business meeting.

~Chris Schlutt, Program Coordinator

Resolutions for the WLWCA Annual Meeting

This year the Area Associations sent four resolutions to the WLWCA board for their evaluation and for inclusion at the 2010 Annual Meeting in Wisconsin Dells. The resolutions pertain to the following issues.

- **Resolution #1:** *Requesting Elimination of the Potential for Asian Carp to Spread Throughout the Great Lakes and Surrounding Watersheds.* This resolution asks for the Attorney General of Wisconsin to pursue legal remedies to stop the carp. It also urges the governor to persuade the President and Congress to order the closure of the Chicago Sanitary and Ship Canal. The WLWCA Board of Directors recommended adoption of this resolution.
- **Resolution #2:** *Supporting Deer Management and Retention of Nine Day Deer Hunting Season.* This resolution expresses concern about the low deer herd population in the North Central and North East areas of Wisconsin. It also supports the retention of the nine day deer hunting season. The WLWCA Board of Directors recommended adoption of this resolution.
- **Resolution #3:** *Resolution Supporting Legislation to Require Comprehensive Well Water Testing Prior to Real Estate Transfers.* This resolution asks the Wisconsin legislature for changes to current law to require comprehensive well water testing prior to real estate transfer of property where the well is located. It also specifies the contaminants to be tested for. The WLWCA Board of Directors recommended adoption of this resolution.
- **Resolution #4:** *Reducing/Limiting the Number of WLWCA Attendees to the NACD National Conference.* This resolution seeks to set a policy of limiting to two the number of people sent from WLWCA to the National Association of Conservation Districts annual meeting. The WLWCA Board of Directors did not recommend adoption of this resolution.

~Julian Zelazny, Executive Director

2010 Conservation Farmer of the Year Announced!

WLWCA is pleased to announce that the 2010 Conservation Farmer of the Year award goes to Fountain Prairie Farms (John and Dorothy Priske) from Columbia County. Fountain Prairie Farms produces organic, pasture-raised highland beef which they sell to local high-end and specialty markets. They also operate a bed and breakfast on the farm that caters to the emerging agri-tourism market in Wisconsin.

The Priskes purchased their 280-acre farm in 1986 and worked through the ups and downs of growing corn and soybeans in traditional ways, along with raising beef, hogs and other specialty crops. They felt that there had to be a better way. They began a multi-year transition that has led them to now operating a 300 head herd of Scottish Highlanders raised on well managed pastures instead of continuing to grow corn and soybeans. They have restored both a 61-acre prairie wetland that was drained for cultivation and 28 acres of tall grass prairie, and they have adopted a wide range of conservation practices. The Priskes have taken the farm from having a questionable soil loss status in 1992 to a situation today in which they are building organic matter and have all but reduced soil loss from the farm. A 50 kilowatt windmill now generates electricity on the farm.

Fountain Prairie Farms not only protects the resources, but provides the Priskes the opportunity to provide high value locally grown food. They also open the farm for hosting pasture walks and provide educational meetings for many different organizations. WLWCA congratulates Fountain Prairie Farms for their conservation accomplishments and their commitment not only for today, but well into the future.

At the time of this writing, judging for the Outstanding Supervisor award had not been completed. Stay tuned for the results. Award winners will be honored at our dinner banquet on December 9 in Wisconsin Dells.

~Chris Schlutt, Program Coordinator

2010 State Conservation Poster & Speaking Contest Held

The 53rd annual State Conservation Poster and Speaking Contests were held in Stevens Point on Saturday, November 6. The winning speaker from each division has been invited to present their award-winning speech at our annual conference during the Thursday



MEMORANDUM

County Clerk

Kimberly S. Bushey
County Clerk

To: Nancy Russell, County Board Chair
David A. Bretl, County Administrator

From: Lee Ann Brunner, Deputy County Clerk *Lee Ann Brunner*

Date: November 22, 2010

Re: Communication from State Senator Robert W. Wirsch regarding
Mary Beth Gibbons-Adams

Attached is a copy of the above referenced communication. Michael Cotter has requested that the item be referred to the Land Conservation Committee.

Unless we receive other instructions from your office, we will include the item on the December 14, 2010 County Board Agenda under Communications and Matters to be Referred with a referral to the Land Conservation Committee.

Attachment

cc: ✓ Michael Cotter, LURM

RECEIVED

NOV 23 2010



ROBERT W. WIRCH
STATE SENATOR TWENTY-SECOND DISTRICT

November 3, 2010

Rick Stacey, Chairman
County Zoning Agency
PO Box 1001
100 West Walworth Street
Elkhorn WI 53121

Dear Mr. Stacey,

Thank you for providing me with a copy of the letter Walworth County officials received from Mary Beth Gibbons-Adams. Mrs. Gibbons-Adams resides in Senator Kedzie's district and I am certain she will receive a reply from him addressing her specific concerns.

In reading the letter Mrs. Gibbons-Adams wrote, it was clear that she made a difficult and painful decision to sell a portion of the land in trust in order to have funds to continue the care for her mother.

I shared the letter from Mrs. Gibbons-Adams with the Department of Agriculture, Trade and Consumer Protection and asked for their analysis of the issue. Keith Foye, Chief of the Land Management Section in the Department provided the following information:

I believe the 30 acre parcel is a problem under the current Walworth County zoning ordinance text because the County requires that the land to be zoned for farmland preservation the lot must be a minimum 35 acres. This requirement was removed from the state statutes as early as 2001 and is not a requirement in the newly adopted Chapter 91 as part of the Working Lands Initiative. I am not sure how large the entire parcel owned by Virginia Gibbons, however, in the 2006 plat book, a parcel is shown in the trust under the name Virginia Gibbons as being 131 total acres in Section 36 of the Town of Walworth.

One of the goals of the Working Lands Initiative was to encourage landowners to keep as much land in agricultural use as possible. The rezone conversion fee encourages landowners to think before splitting off larger lots primarily as residential lots. The rezone conversion fee is a per acre fee that if a smaller parcel is rezoned, there is less conversion fee charged. If the county is not going to update their zoning ordinance text until 2012, the date established in the new law, an alternative would be to increase the 30 acre parcel in question to a parcel of 35 acres. The parcel would then be large enough under the county ordinance to not have to be rezoned in order to split it off from the 131 acre farm parcel and sold. Then if only the 6 acre parcel was rezoned, the conversion fee would be reduced to about \$5,400.

The new law does provide the option to the County to allow nonfarm residential development within the farmland preservation zoning district through a conditional use process. The criteria requires that for every 1 acre of nonfarm residential acres there must remain 20 farm acres after the nonfarm residential acreage is issued a conditional use. Thus if the total parcel is 131 acres,

that would allow up to 6.2 acres with up to 4 conditional uses for nonfarm residences. The 6 acre parcel mentioned above could be allowed through a conditional use that would not trigger the rezone conversion fee. In order to use this option, the County would need to update their zoning ordinance text to conform to the new law and include the conditional use option. Dodge County and several towns have already chosen this option to allow some nonfarm residential development without having to rezone the parcel(s) out of the farmland preservation zoning district and without requiring the rezone conversion fee.

A bit of a longer term option may be to have the county review the surrounding land uses and determine whether the parcel(s) in question should be preserved in agricultural use into the future. The county is currently revising its farmland preservation plan and if the land would be better suited for development, or is not considered land that should be maintained in agricultural use over the next 15 years, such lands can be removed from the farmland preservation plan area, and rezoned consistent with the plan without being subject to the rezone conversion fee.

If you wish to discuss the application of the law in greater detail, Mr. Foye stated that his office is ready to assist you. He can be reached at (608) 224-4603. I am also enclosing a memo from Rick Stadelman, the Executive Director of the Wisconsin Towns Association on the Working Lands Initiative for your review.

While Mrs. Gibbons-Adams elected representatives will contact her directly, I hope the information I am providing from Mr. Foye and the Wisconsin Towns Association is helpful to you.

Sincerely,



Robert W Wirch
State Senator
22nd Senate District

Wisconsin Towns Association

Richard J. Stadelman, Executive Director

W7686 County Road MMM

Shawano, Wis. 54166

Tel. (715) 526-3157

Fax (715) 524-3917

Email: wtowns1@frontiernet.net

To: Members of Wisconsin State Legislature
From: Richard J. Stadelman, Executive Director
Re: **Working Lands Initiative and Conversion Fee**
Date: February 23, 2010

Wisconsin Towns Association supported the inclusion of the "Working Lands" initiative in the State Budget last year. This initiative had been developed beginning in 2005, before it was included in the 2009-2011 State budget bill. The initiative as signed into law revitalizes the past farmland preservation program by (i) putting a renewed emphasis on updated farmland preservation plans; (ii) changing tax credits for property owners to a per acre payment while eliminating the income factor for eligibility; (iii) creating a new agricultural enterprise area program, and (iv) creating a purchase of agricultural conservation easements program. This was accomplished in the state budget without taking new state funds while increasing projected state credits to property owners for farmland preservation to \$27 million per year for the tax year of 2010.

Concern has been raised about a conversion fee included in the initiative, which took effect as of January 1, 2010. This conversion fee requires that land zoned as exclusive ag zone must pay three times the highest use value per acre for the town, village, or city for each acre rezoned. This conversion fee was intended to deter future rezoning of exclusive ag land which has been identified in farmland preservation areas in county farmland preservation areas. An exception was written into the law to the requirement to pay the conversion fee when land zoned exclusive ag is rezoned to other than a "preservation ag zone," consistent with the updated farmland preservation plan. A second exception to the requirement of a conversion fee, written in the law, is for non-farm residences granted conditional uses (with a limit of four each farm base tract, plus the homestead) when a town or county provides such an option in their farmland preservation zoning ordinance.

This revised law will require towns and counties to update farmland preservation plans and identify the farmland preservation areas. These plans are to be updated within the next five years across the state. Lands currently in exclusive ag zoning which are not planned for agricultural use beyond the next fifteen years, should be taken out of the farmland preservation areas of the plans and rezoned to other than farmland preservation at this time, which will not result in a conversion fee. Having updated farmland preservation plans is a key component to the "working lands initiative."

Our Association believes that towns and counties should use the updating planning process to identify the farmland preservation areas and remove land that is not intended to be preserved for agricultural use in the future. Eliminating or delaying the conversion fee is contrary to the balance of the working lands initiative in that farmland preservation plans should be updated before land is removed from farmland preservation zones.

We would be happy to discuss this further with any legislator that may have further questions on the "working lands" program or the conversion fee. Please feel free to contact me.

Farmland Preservation Program Definitions

Agricultural Related Uses and Accessory Uses -- Chapter 91, Wisconsin State Statutes

“Accessory use” means any of the following land uses on a farm:

1. A building, structure or improvement that is an integral part of, or incidental to, an agricultural use.
2. An activity or business operation that is an integral part of or incidental to, and agricultural use.
3. A farm residence.
4. A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm that requires not buildings, structures, or improvements other than those described in (1) or (3), that employs no more than 4 full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.
5. Any other use that the department, (DATCP) by rule, identifies as an accessory use.

“Agricultural Use” means any of the following activities for the purpose of producing an income or livelihood:

1. Crop or forage production.
2. Keeping livestock.
3. Beekeeping.
4. Nursery, sod, or Christmas tree production.
5. Aquaculture.
6. Fur farming.
7. Forest management.
8. Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural conservation payment program.
9. Any other use that the department, (DATCP) by rule, identifies as an agricultural use.

“Agriculture-related use” means any of the following:

1. An agricultural equipment dealership, facility, providing agricultural supplies, facility for storing or processing agricultural products, or a facility for processing agricultural wastes.
2. Any other use that the department, (DATCP) by rule, identifies as an agricultural –related use.

Farm, Farm Residences and Non-farm Residences -- Chapter 91, Wisconsin State Statutes

“Base Farm Tract” means all land, whether one parcel or 2 or more contiguous parcels, that is in a farmland preservation district and that is part of a single farm on the date the Wisconsin DATCP certifies that the farmland preservation zoning ordinance covering the land or on an earlier date specified in the farmland preservation zoning ordinance, regardless of any subsequent changes in the size of the farm.

“Farm” means all land under common ownership that is primarily devoted to agricultural.

“Farm acreage” means size of a farm in acres.

“Farm residence” means any of the following structures that is located on a farm:

- a) A single-family or duplex residence that is the only residential structure on the farm or is occupied by any of the following:
 - 1) The owner or operator of the farm.
 - 2) A parent or child of an owner or operator of the farm.
 - 3) An individual who earns 50% of his or her gross income from the farm.
- b) A migrant labor camp that is certified under s. 103.92.

“Non-farm acreage” means the total number of acres of all parcels which nonfarm residences are located.

“Non-farm residence” means a single-family or multi-family residence other than a farm residence.

Farmland Preservation Program Definitions

Purchase of Agricultural Conservation Easements -- Chapter 93 and Chapter 700 of the Wisconsin Statutes

“Agricultural Conservation Easements” means a conservation easement, the purpose of which is to assure the availability of land for agricultural use.

“Conservation easement” means a holder’s nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural, scenic, or open space values of real property, assuring the availability for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a burial site, as defined in s. 157.70 (1) (b), or preserving the historical, architectural, archaeological or cultural aspects of real property.

“Cooperating entity” means a political subdivision or non profit conservation organization.

“Fair market value” means value as determined by a professional appraisal that is approved by the department.

“Holder” means either of the following:

1. A governmental body empowered to hold an interest in real property under the laws of this state or the United States.
2. Any charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.

“Nonprofit conservation organization” means a nonstick corporation, charitable trust, or other entity whose purposes include the acquisition of property for conservation or agricultural purposes, that is described in section 501 (c) (3) of the Internal Revenue Code, that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code, and that is a qualified organization under section 170 (h) (3) of the Internal Revenue Code.

“Political subdivision” means a city, village, town or county.

“Professional appraisal” means an appraisal conducted by a certified general appraiser as defined in s.458.01 (8).

“Purchase cost” means the amount paid to a landowner to acquire an agricultural conservation easement from the landowner.

“Third-party- enforcement right” means a right provide in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder is not a holder, to enforce any term of the easement.

“Transaction costs” means out-of-pocket expenses incurred in connection with the acquisition, processing, recording, and documentation of an agricultural conservation easement, including out-of-pocket expenses for land surveys, land descriptions, real estate appraisals, title verification, preparation of legal documents, reconciliation of conflicting property interests, documentation of existing land uses, and closing. “Transaction costs” does not include costs incurred by a cooperating entity for staffing, overhead or operations.

Nonmetallic Mining in Farmland Preservation Areas

The state farmland preservation program, (chapter 91, of the Wisconsin Statutes,) authorizes the County to allow nonmetallic mineral extraction in a farmland preservation zoning district, if conducted with a conditional use permit, if it is determined that all of the following apply:

- a) The operation complies state statutes and administrative rules, the County Nonmetallic Mining Reclamation Ordinance and any applicable requirements of the department of transportation concerning the restoration of the mining site.
- b) The operation and the location of the nonmetallic mining site in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
- c) The operation and the location of the mining site in the farmland preservation district are reasonable and appropriate, considering alternative locations outside the farmland preservation zoning district, or are specifically approved under state or federal law.
- d) The operation is reasonably designed to minimize the conversion of land around the mining site from agricultural use or open space use.
- e) The operation does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned or legally restricted to agricultural use.
- f) The farmland preservation zoning ordinance requires the owner to restore the land to agricultural use, consist with any required locally approved reclamation plan, when extraction is completed.

Current Policy adopted in the Comprehensive Plan (Page X-7)

The land use element of this comprehensive plan designates certain lands for mineral extraction, largely following existing M-3 Mineral Extraction zoning. Additional land for mineral extraction (sand, gravel, clay, stone) may be needed during the planning period, although the specific locations have not been determined. The County and the concerned town will consider proposals for new or expanded mineral extraction areas on a case-by-case basis, taking into account the impacts on adjacent land uses, impacts on the natural resource base, impacts on highways, and other factors. All such proposals will be subject to the County zoning ordinance and non-metallic mining reclamation ordinance. These areas will have to be rezoned into the M-3 Mineral Extraction zoning district and receive a conditional use permit. Such uses will be accommodated without amending the comprehensive plan. The property will be rezoned back to the original zoning following reclamation.

Public Opinion:

The policy of allowing nonmetallic mining as a conditional use in the A-1, Prime Agricultural Land District, was discussed extensively during the preparation of the County Comprehensive Plan by the Smart Growth Advisory Committee. The Advisory Committee included representatives from each Town. The Towns were not in favor of allowing mining in A-1 Prime Agricultural Land District, as a conditional use and wanted to maintain their zoning authority over nonmetallic mining activities.

Policy Consideration: Should the Farmland Preservation Plan recommend a new policy related to nonmetallic mining in Agricultural Preservation Areas, by allowing nonmetallic mining with a County-approved Conditional Use Permit?

Advantages of allowing nonmetallic mineral extraction activities within a farmland preservation zoning district with a County-approved Conditional Use Permit.

1. No need to rezone property back to original zone district after mining site has been successfully reclaimed to an agricultural use.
2. Property owner would not have to pay the rezone agricultural conversion fee if nonmetallic mining activities are conducted on parcel within a farmland preservation zoning district.
3. Generally nonmetallic mining is a temporary use.

Disadvantages of allowing nonmetallic mineral extraction activities within a farmland preservation zoning district with a County-approved Conditional Use Permit.

1. Towns would give up veto power enabled by a rezoning petition or action.
2. Inconsistent with the findings approved with County Comprehensive Plan.
3. Comprehensive Plan amendment necessary.

Other consideration:

Counties can be more restrictive than the state minimum standards.

State has not adopted Administrative Rules related to non metallic mining in an farmland preservation areas.

Staff recommendation memo Dated December 9, 2010.

12/20/2010 Land Conservation Committee Comments and Decisions:



MEMO

Date: December 9, 2010
To: Walworth County Land Conservation Committee
From: Staff
Walworth County Land Use and Resource Management Department
Re: **Nonmetallic Mining in a Farmland Preservation Area**

Land Use and Resource
Management Department

At the November 15, 2010 meeting, the Walworth County Land Conservation Committee directed the LURM Department Staff to contact the Wisconsin Department of Agriculture, Trade and Consumer Protection for guidance related to nonmetallic mining in farmland preservation areas. Responses were received from Keith Foye, DATCP and Professor Brian Ohm, UWEX.

The following is a summary of their responses:

1. **A landowner must still pay the rezone conversion fee**, even though the County Zoning Ordinance considers nonmetallic mining as a "temporary use and rezone".
2. Creating a nonmetallic mining overlay zoning district over a certified farmland preservation zoning district. (A-1) was a suggested.
3. The State Legislature may consider legislation enabling Towns to have authority to approve and deny conditional uses.
4. As a matter of law, the conditional use process is not an opportunity to decide whether to allow or not allow a nonmetallic mining operation within a certain zoning district. The conditional use process is used to focus on what conditions should be placed on certain uses permitted within a zoning district.
5. The County's current approach with requiring a rezone to mineral extraction zoning district (M-3) actually gives the county and the Towns the ability to say "no" to a rezone petition to permit nonmetallic mining in certain areas.

Staff recommendations:

While the recommendations provided by Keith Foye and Brian Ohm raised some interesting suggestions, those options did not totally address the issue of Town veto authority for new mineral extraction sites, on a case-by-case basis in farmland preservation areas without rezoning.

After much discussion, the staff believes this issue is too big to address in the farmland preservation planning process and should be further explored and considered in the next up-date of the County Comprehensive Plan and Zoning Ordinance when Towns are fully engaged in the review of nonmetallic mining in farmland preservation areas.

After consideration of all options, the staff recommends the County continue following the Comprehensive Plan recommendations and the Zoning Ordinance regulations when a mineral extraction site is proposed in a farmland preservation zoning district. This recommendation is based on the following:

1. **Consistent with the findings approved with the County Comprehensive Plan, (Smart Growth Plan).**
2. **The current rezoning process, is the only mechanism that directly gives the towns and the public the ability to voice their concerns about nonmetallic mining on land zoned for farmland preservation.**

Residential Construction in Farmland Preservation Zoning Districts

The updated Wisconsin Farmland Preservation Program allows for some limited residential development in farmland preservation zoning districts, by conditional use approval. (See Wisconsin Statutes ss. 91.42, 91.44 and 91.46)

There is no minimum lot size requirement for residential lots on parcels.

A proposed new nonfarm residence or a proposal to convert a **farm residence to a non-farm residence may be created**, if the County determines all of the following apply:

1. The ratio of nonfarm residential acreage to farm acreage on the base farm tract on which the residence is or will be located will not be greater than 1 to 20 acres after the residence is constructed or converted to a nonfarm residence.
2. There will not be more than 4 dwelling units in nonfarm residences, nor, for a new nonfarm residence, more than 5 dwelling units in residences of any kind, on the base farm tract after the residence is constructed or converted to a nonfarm residence.
3. The location and size of the proposed nonfarm residential parcel, and, for a new nonfarm residence, the location of the nonfarm residence on that nonfarm residential parcel will not do any of the following:
 - a) Convert prime farmland agricultural use or convert land previously used as cropland other than woodlot, from agricultural use if on the farm there is a reasonable alternative location or size for a nonfarm residential parcel or nonfarm residence.
 - b) Significantly impair or limit the current or future agricultural use of other protected farmland.

Current Policy adopted in the Comprehensive Plan (Page IX-6)

Prime agricultural land consists largely of agricultural lands covered by Capability Class I, II, and III soils as identified by the U.S. Natural Resources Conservation.

With certain exceptions, the lands identified as prime agricultural on the land use plan map will be retained in agricultural use and in related uses that are allowed as principal or conditional uses in the A-1 Prime Agricultural Land zoning district of the County zoning ordinance, with a minimum parcel size of 35 acres.

Public Opinion

Key findings of public opinion surveys conducted during the County comprehensive planning process (November 2007)

1. Regarding prime farmland, support for the minimum buildable lot size of 35 acres for A-1 zoned land substantially outweighs support for smaller lots. Regarding A-2 zoned land, the same is true for maintaining the current minimum building size of 20 acres.
2. Considerable more respondents indicate that residential growth should take place in urban areas than in rural areas of Walworth County.

Policy Consideration: Should the Farmland Preservation Plan recommend some level of residential development in a Farmland Preservation Zoning District?

Advantages to allowing non-farm residences by *Base Farm Track*:

1. Would allow property owners the ability to designate up to four non-farm residences, per *base farm track at 1:20 acre ratio*.
2. Allow for full flexibility in the new Farmland Preservation Law.
3. Allow for residential construction in a farmland preservation district under a conditional use permit, without rezoning or the payment of a conversion fee to the State.

Disadvantages to allowing non-farm residences by *Base Farm Track*:

1. Allowing non-farm residences on agricultural preservation zoning districts, as proposed in the up-dated Farmland Preservation Law, was considered, debated and rejected in the Smart Growth Planning process. The Smart Growth Technical Advisory Committee concluded that scattered mini-subdivisions embedded within predominately rural agricultural areas would result in land use conflicts and high costs to provide service isolated residential properties, (roads, schools , police and fire protection).

See Examples prepared by Staff

2. Any amendments to the Comprehensive Plan and Zoning Ordinance must be approved by the Towns and the County Board of Supervisors.
3. The staff has concerns regarding the *base farm track* concept on property rights, and the applicability of the forms of property ownership. If the Committee wishes to pursue this concept of *base farm track*, **a legal opinion should be formally requested** to help guide amendments to the zoning ordinance for compliance with the state farmland preservation requirements.
4. County would have to establish *base farm tracks* based on confusing guidelines established by the current law.

5. County would need establish a process to track numbers of non-farm residences per *base farm track* at an area ratio requirement of 1:20.
6. Increase County LURM Department workload.
7. County would have to conduct property analysis for each *base farm track* and establish a Planned Residential Development (PRD) to determine best location for non-farm residences prior to development of homes or parcel splits.
8. The total of five allowable residences per *base farm track* exceeds the number of residential homes typically allowed under the current farmland preservation and dilutes the farmland preservation efforts to date.
9. Property owners may need to establish deed restrictions or development covenants for allowable non-farm residences prior to sales of portions of *base farm tracks* to new owners.

Other considerations

Counties can be more restrictive than the state minimum standards.

State Administrative Rules for designating *base farm tracks*, additional uses and conditional uses in farmland preservation zoning districts have not been promulgated.

12/20/2010 Land Conservation Committee Comments and Decisions:

A-1 Zone Base Farm Track 80 acres

1:20 ratio = 80 Acres/ 20 = up to four acres used for Non-Farm Residence allowed

Max. 5 dwellings

Max. 4 non-farm dwellings allowed

1 acre per 4 non-farm lots
Or 2 acres per 2 non-farm lots
Or 4 acres per 1 non farm lot

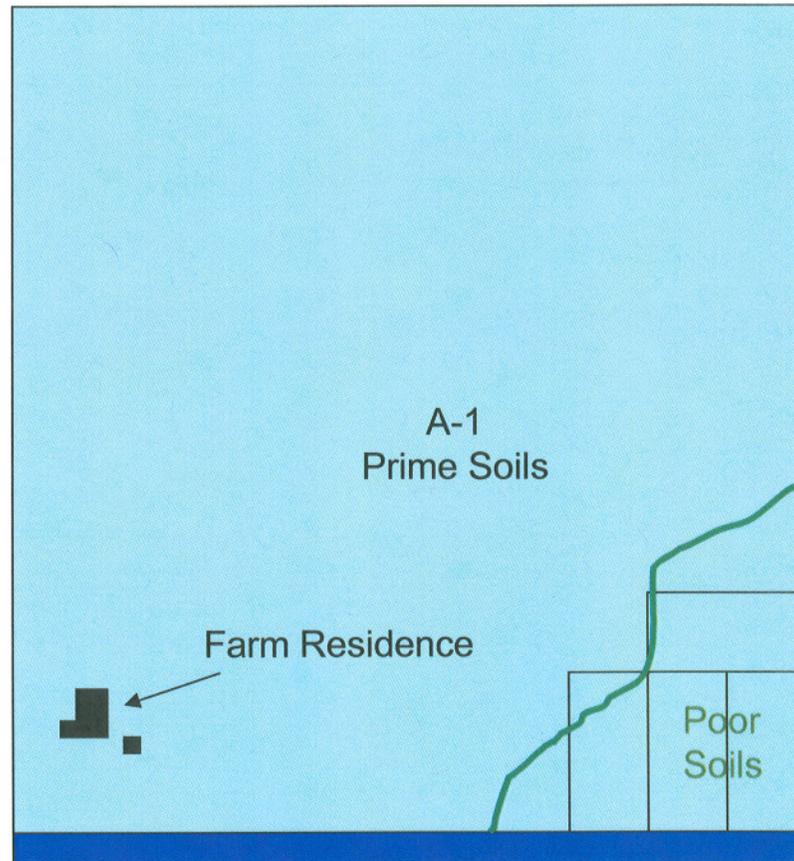
Must located homes in area of poor Soils.

Must obtain conditional use for non-farm dwellings.

Owner must file deed restriction that remainder of the undeveloped A-1 is restricted.

Owner must file deed restriction locking in the chosen lot configurations?

Owner must record Lots?



A-1 Zone Base Farm Track 80 acres

1:20 ratio = 80 Acres/ 20 = up to four acres used for Non-Farm Residence allowed

What happens when the Base Farm Track
Is further split?

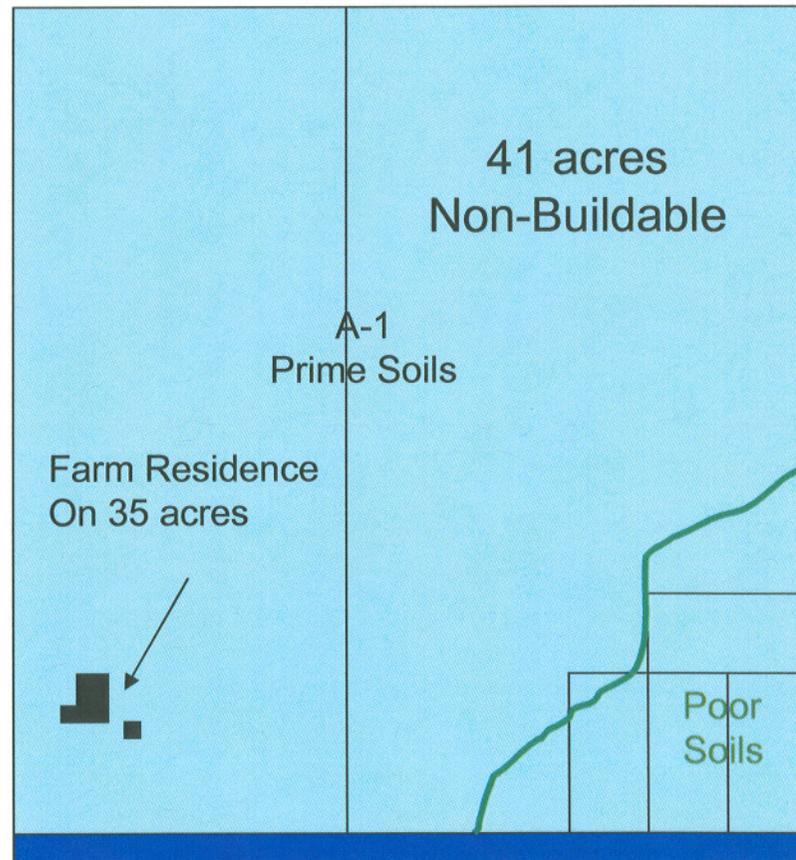
Depends on split location.

80 acres – 35 acres with farm res.
– 4 acres non-farm residence =
41 acres non-buildable

BUYER BE WARE!

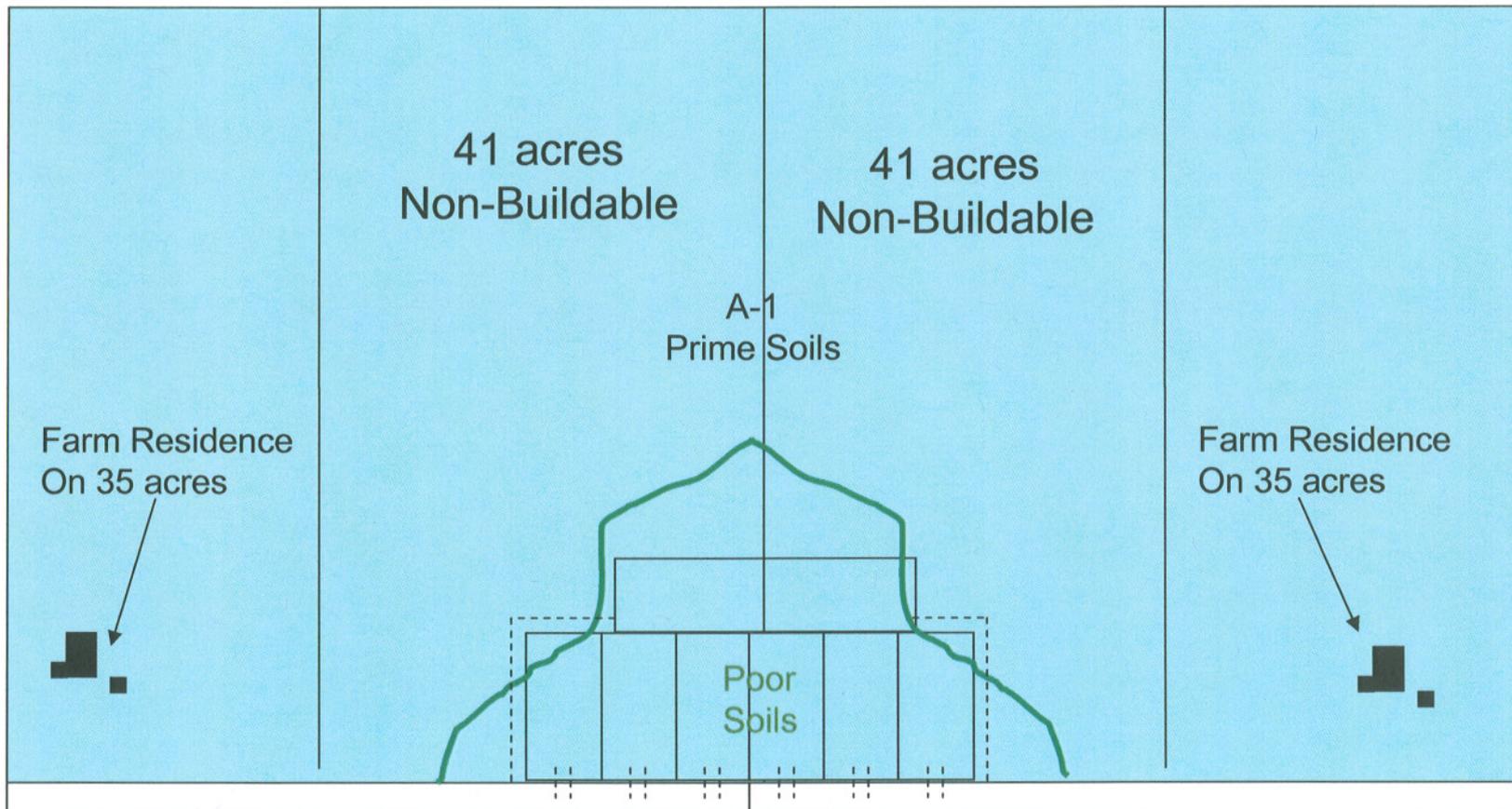
Who owns the rights to the non-farm lots?
Depends on if they were recorded?

Can the non-farm lots be reconfigured?



Two A-1 Zone Base Farm Tracks
80 acres each

1:20 ratio = 80 Acres/ 20 = up to four acres used for Non-Farm Residence allowed
On each Base Farm Track



Eight new driveways with no internal streets
Smart Growth?

Agricultural Enterprise Area

The state farmland preservation program, (chapter 91.84, of the Wisconsin Statutes,) authorizes the DATCP to designate Agricultural Enterprise Areas, (AEAs) based on a locally developed petition voluntarily submitted by at least 5 landowners and the affected local governments. The area proposed for an AEA must be; 1) located within a Farmland Preservation Area; 2) contiguous land; and 3) primarily in agricultural use.

Landowners within a state-approved AEA enter into voluntary Farmland Preservation Agreements with DATCP to remain in agricultural use for 15 years and implement a County-approved conservation plan. In return, the landowner receives tax credits, (\$10/acre if zoned for farmland preservation, \$5/acre if not zoned for farmland preservation).

A petition to establish an Agricultural Enterprise Area in Walworth County must be jointly filed by Walworth County, the town or municipality in which the proposed AEA is located and owners of at least 5 eligible farms in the proposed AEA.

In 2010, 12 AEAs were designed by the State. (1 is located in Rock County, 1 is located in Jefferson County, and one spans Waukesha and Dodge Counties).

Current Policy adopted in the Comprehensive Plan

None

Policy Considerations:

Should the Farmland Preservation Plan support the establishment of AEAs in Walworth County?

Should the Farmland Preservation Plan recommend areas where AEAs should be established?

Should the Farmland Preservation Plan recommend that the County establish a procedure for accepting and signing onto petitions to establish Agricultural Enterprise Areas?

Advantages.

1. Landowners of parcels, less than 35 acres, can receive tax credits if their land is in agricultural use and their gross farm revenue is \$6,000/year or \$18,000/year, over three-years of gross revenue.
2. The establishment of an AEA is a voluntary program and requires the collective and cooperative effort of a group of landowners.

Disadvantages:

1. Staff time required to review AEA proposals.
2. Staff time to develop conservation plans.

Other Considerations

1. The designation of AEA is a competitive process.
2. The designation of AEAs is by Administrative Rule.
3. Petitions for AEA designation are accepted once each year.
4. The contents of an AEA petition are listed in Chapter 91.86 (3).

Land Conservation Committee Comments and Decisions – 12/20/2010

Purchase of Agricultural Conservation Easements

The 2009-2010 State Biennial Budget Bill created bonding authority to fund a new state program for the purchase of agricultural conservation easements, (PACE) from willing landowners. The state may issue up to \$12 million in bonds to fund a grant program to assist, local units of government or non-profit conservation organizations and willing landowners permanently protect eligible farmland through the purchase of permanent conservation easements.

The state legislation regarding the purchase of agricultural conservation easements and the grant program is found Chapter 93.73 of the Wisconsin State Statutes.

Through a competitive grant process, the DATCP may award a unit of government or a non-profit conservation organization a grant to cover the cost to purchase an agricultural easement from a willing and eligible landowner, that does not exceed the sum of the following:

1. Fifty percent of the fair market value of the conservation easement.
2. The reasonable transaction costs related to the purchase of the conservation easement.

Under a PACE agreement, the landowner retains ownership, but the recorded easement permanently restricts non-agricultural development on the land covered by the easement.

The land is protected through a permanent and recorded agreement and is binding on subsequent landowners of the land covered by the easement. There can be multiple easement holders

The landowner receives an easement purchase payment, not a Farmland Preservation Tax Credit.

Current Policy adopted in the Comprehensive Plan (page X-7)

*A purchase of development rights (PDR) program represents a potential means for ensuring the preservation of farmland. Under a PDR program, landowners are compensated for committing their land to agricultural and open space use; easements placed on the land ensure that the lands concerned remain in such use. Because of the relatively high cost, PDR programs may prove most effective when targeted toward agricultural lands where long-term preservation is particularly important. To date, the use of PDR programs to preserve agricultural land has been very limited in Wisconsin. Nevertheless, **Walworth County and its towns, as well as nonprofit conservation organizations in the County, should explore the potential for establishing agricultural land PDR programs.** Legislation included in the 2009-2011 State budget bill created a State matching grant program that supports local efforts to purchase agricultural conservation easements—essentially the same as an agricultural land PDR program.*

Public Opinion related to compensating land owners to protect land.

Respondents to the public opinion survey, conducted during the Comprehensive Planning process, attached great importance to the preservation of farmland, with most saying that Walworth County should set agricultural land preservation as a goal and implement policies to achieve it. Most respondents indicated that the continued existence of the remaining family farms is important to the County's future. When respondents were asked whether they would support spending property tax dollars for the preservation of agricultural land by compensating land owners who agree to preserve their farmland, the results were mixed, although a majority would support some tax increase.¹

¹*When asked whether they would support spending property tax dollars for the preservation of agricultural land by compensating land owners who agree to preserve their farmland, the responses were as follows: "yes"—27 percent of all respondents; "maybe, depending upon the cost"—44 percent; "no"—27 percent; "no opinion"—2 percent. In a followup question addressed to those who indicated that they are potentially receptive to preserving agricultural lands with tax dollars, respondents were asked how much of a property tax increase they would be willing to support to carry out such a program. In answering this question, 614 individuals (53 percent of all respondents) specified an increase of at least 10 cents per \$1,000 of assessed valuation; 236 individuals (20 percent of all respondents) specified that there should be no property tax increase and that the program should be funded by other means; and 309 individuals (27 percent of all respondents) did not answer.*

Policy Considerations:

Should the Farmland Preservation Plan support the use of the PACE program in Walworth County?

Should the Farmland Preservation Plan recommend areas where PACE Grants should be directed? (See staff memo dated 12/10/2010 with attached maps)

Should the Farmland Preservation Plan recommend that the County establish a procedure for processing PACE Grant Applications?

Should the Farmland Preservation Plan recommend the County establish a *Walworth County Farmland Preservation Legacy Fund* for the purchase agricultural easements on targeted Walworth County Farmlands?

Advantages to Supporting the PACE program in Walworth County.

1. A tool to permanently protect Walworth County Agricultural Resources.
2. A tool to permanently protect Walworth County Natural Resources, including Environmental Corridors, Natural Areas and Critical Species Habitat Sites.
2. Walworth County will be a receiving county for conversion fees, rather than a donor County for other counties with active PACE programs.
3. Consistent with the recommendations of the County Comprehensive Plan.

Disadvantages to Supporting a PACE program in Walworth County.

1. Increase County LURM Workload to review PACE proposals, draft findings and prepared resolution for County Board Committee and County Board of Supervisors.
2. Budget and fiscal implications of establishing a County Farmland Preservation Legacy Fund.
3. Public pressure to assist organizations or towns in the preparation of PACE grant applications.

Other consideration:

In 2010, 16 PACE Grants were awarded, (Two PACE grants were awarded in Jefferson, covering 247 acres). These Grants are awarded by Administrative Rule

Land Conservation Committee Discussion and Decisions - 12/20/2010



MEMO

Date: December 10, 2010
To: Walworth County Land Conservation Committee
From: Staff
Walworth County Land Use and Resource Management Department
Re: **Recommended Areas for targeting Purchasing Agricultural Agreements (PACE)**

Land Use and Resource
Management Department

The 2009-2010 State Biennial Budget Bill created bonding authority to fund a new state program for the purchase of agricultural conservation easements, (PACE) from willing landowners. The state may issue up to \$12 million in bonds to fund a grant program to assist, local units of government or non-profit conservation organizations and willing landowners permanently protect eligible farmland through the purchase of permanent conservation easements.

The Walworth County Comprehensive Plan recommends Walworth County, towns and county non-profit conservation organizations explore the options for establishing an agricultural purchase of development rights program.

Staff recommendations:

The staff recommends the farmland preservation plan identify certain priority areas for targeting the acquisition of agricultural conservation easements. The staff supports designating certain farmland preservation areas that will complement other programs and efforts underway or fulfill other resource management needs and recommendations.

The preservation of farmland within the following areas, through a purchase of development rights program, will complement and strengthen other programs and activities underway or and resource management and protection needs.

1. Groundwater recharge areas, (Potential for very high, high and moderate recharge potential)
2. The Mukwonago River Watershed Area.
3. The Delavan WIN project.
4. Hackmatack Federal Wildlife Area, (proposed).

See attached maps of recommended targeted areas.

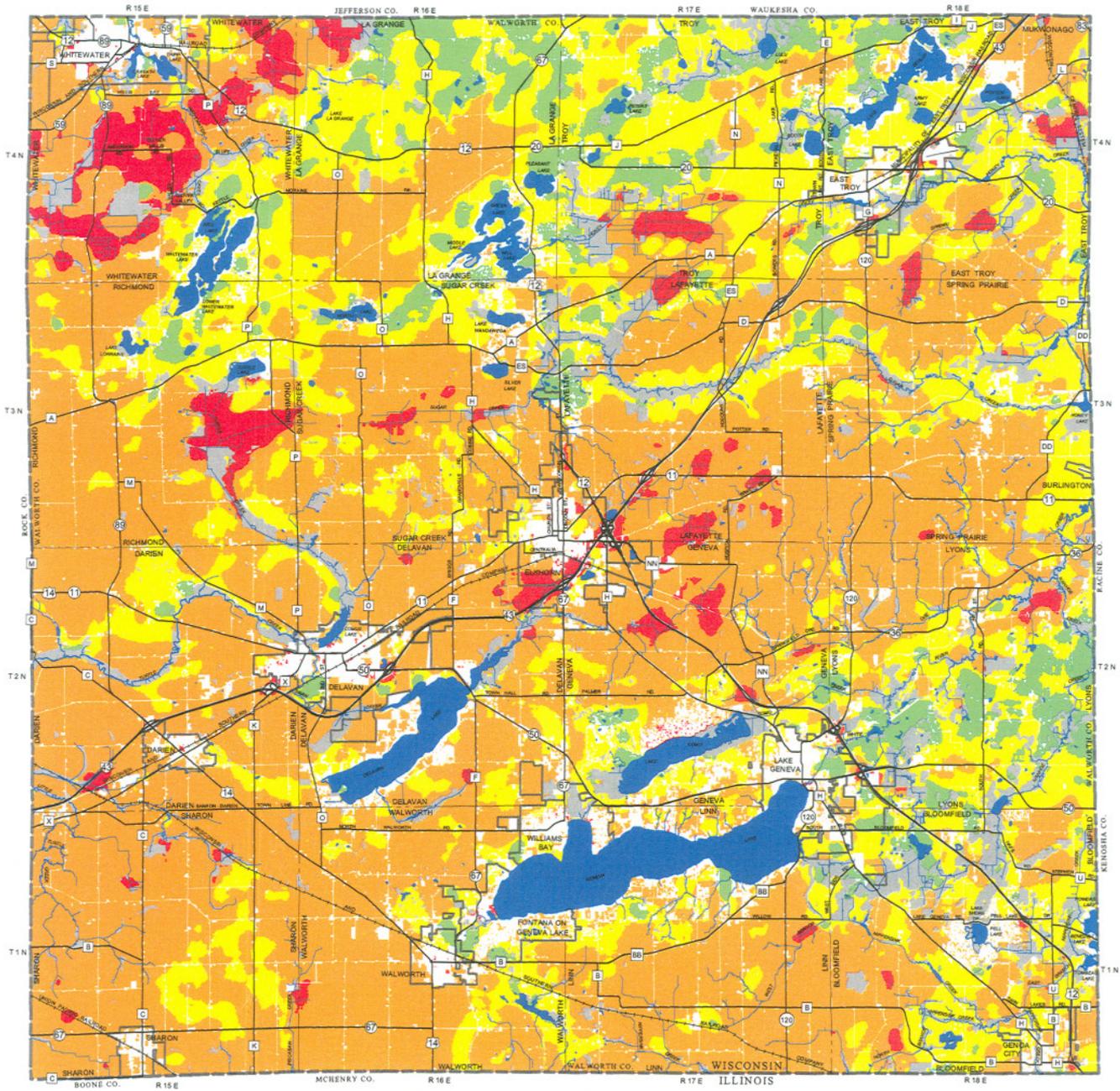
The preservation of farmland within the following areas through an agricultural easement program, will serve to protect and preserve large blocks of prime farmland in Walworth County

5. Big Foot Prairie.
6. Heart Prairie.
7. Rock Prairie
8. Little Prairie
9. Spring Prairie.

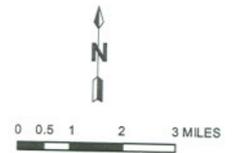
100 West Walworth Street
P. O. Box 1001
Elkhorn, WI 53121
Conservation Division
262-741-4972 tel
262-741-4973 fax

Map III-12

GROUNDWATER RECHARGE POTENTIAL IN WALWORTH COUNTY

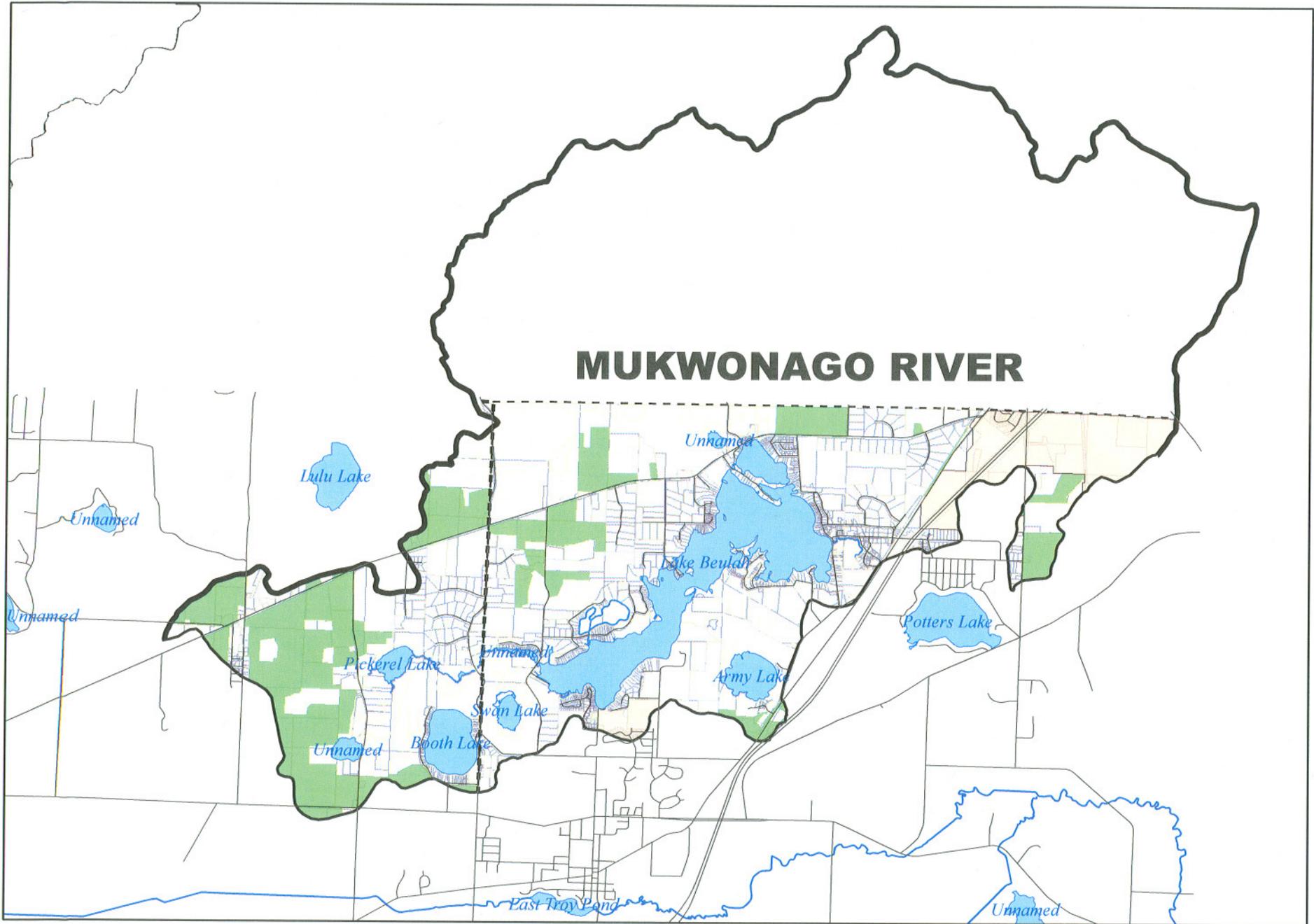


- LOW (38.3 SQUARE MILES)
- MODERATE (278.2 SQUARE MILES)
- HIGH (113.5 SQUARE MILES)
- VERY HIGH (18.2 SQUARE MILES)
- UNDEFINED (65.6 SQUARE MILES)
- EXISTING URBAN DEVELOPMENT: 2000 (62.3 SQUARE MILES)
- SURFACE WATER



Source: Wisconsin Geological and Natural History Survey and SEWRPC.

PLANNED FARMLAND PRESERVATION AREAS IN MUKWONAGO RIVER WATERSHED

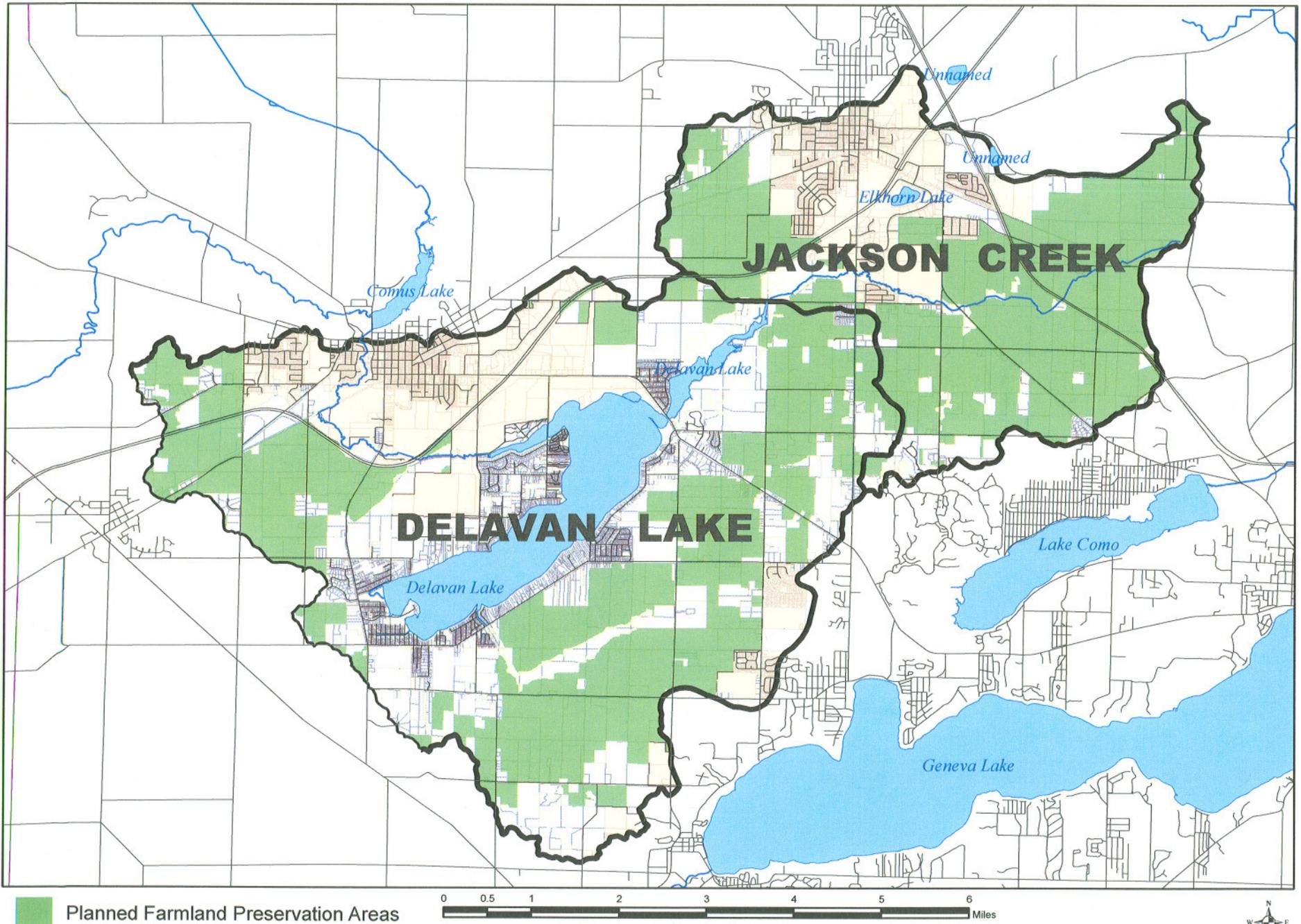


24

 Planned Farmland Preservation Areas



PLANNED FARMLAND PRESERVATION AREAS IN DELAVAN WIN PROJECT AREA



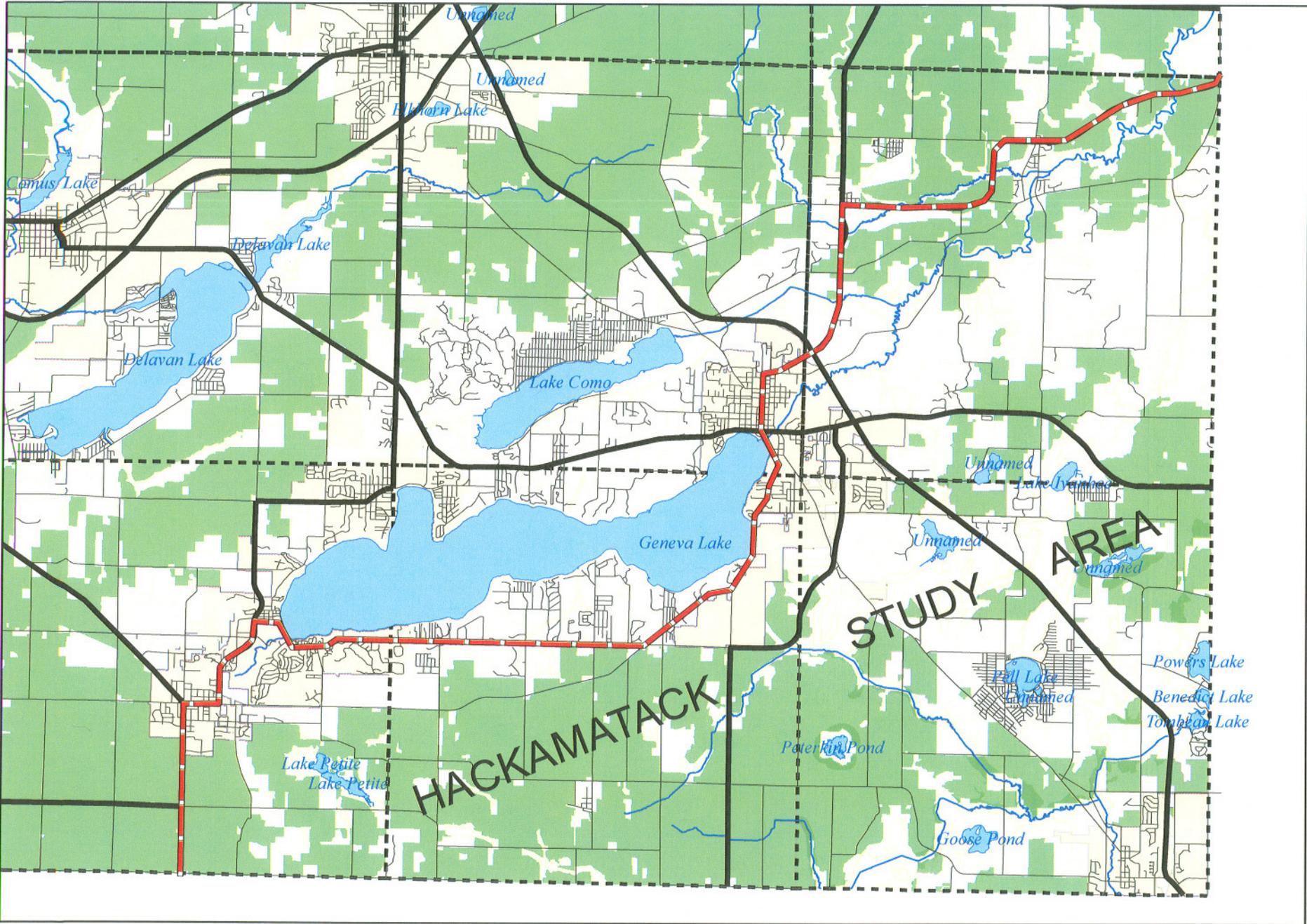
 Planned Farmland Preservation Areas

0 0.5 1 2 3 4 5 6 Miles



25

PLANNED FARMLAND PRESERVATION AREAS IN HACKAMATAACK STUDY AREA



26

- Planned Farmland Preservation Areas
- Hackamataack Study Extent



Agricultural-related Uses in Farmland Preservation Areas

The updated farmland preservation program, (chapter 91, of the Wisconsin Statutes,) authorizes the County to **allow additional agricultural-related uses** in a farmland preservation zoning district, with a conditional use permit, if it is determined that all of the following apply:

- a) The use supports agricultural uses in the farmland preservation zoning district in a direct and significant way, and is more suited to a farmland preservation zoning district than to an industrial or commercial zoning district.
- b) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
- c) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- d) The operation is reasonably designed to minimize the conversion of land at or around the use site from agricultural use or open space use.
- e) The use does not substantially impair or limit the current or future agricultural use of other protected farmland.
- f) Construction damage to the land remaining in agricultural use is minimized and repaired to the extent feasible.

Current Policy adopted in the Comprehensive Plan (Page X-7)

Areas which are in the future proposed for agricultural manufacturing, warehousing, and marketing uses (uses permitted in the A-4 zoning district)—where the proposed use is compatible with adjacent agricultural areas and consistent with County and town goals and objectives. All such proposals will be subject to the County zoning ordinance. Such areas would have to be rezoned into the A-4 Agricultural Related Manufacturing, Warehousing, and Marketing district and receive a conditional use permit. Such uses, if approved, will be accommodated without amending the comprehensive plan.

Policy Consideration: **Should the Farmland Preservation Plan recommend further consideration of the following uses (currently permitted as a conditional use in the A-1 district) within an Agricultural Preservation Zoning District? (see request submitted by Louise Olson to DATCP, dated 11/17/2010, and response from Keith Foye, dated 11/22/2010.)**

- Bottling of Spring Water
- Production of animal and marine fat and oils
- Off season storage facilities
- Land Restoration
- Business directory signs (exceeding two)
- Sewage Disposal Plants
- Airports, airstrips and landing fields
- Governmental and cultural uses such as . . . park and ride facilities
- Utilities, provided all principal structures . . . except business, park and industrial
- Schools and Churches
- Contractor storage yards
- Flea markets

Policy Consideration: **Should the Farmland Preservation Plan recommend further consideration of the following uses for additional agricultural – related uses and accessory uses, within an Agricultural Preservation Zoning District?**

- Commercial horse barns
- Farm Food Service (restaurant)

Advantages of allowing additional agricultural-related uses within a farmland preservation zoning district with a County-approved Conditional Use Permit.

1. Provides opportunities for farmers to increase their economic well-being by allowing non-traditional enterprises to be incorporated into existing farm operations.
2. Conversation fee would not apply.
3. Maintain large tracts of A-1 agricultural land

Disadvantages of allowing additional agricultural-related uses within a farmland preservation zoning district with a County approved Conditional Use Permit.

1. Towns would give up veto power enable by a rezone requirement.
2. New uses inconsistent with the findings approved with County Comprehensive Plan.
3. Comprehensive plan amendment necessary.
4. Additional uses would have to be carefully examined and limits created through the Zoning Ordinance, to make sure the uses are compatible with rural farm areas.

Other considerations

Counties can be more restrictive than the state minimum standards.

State has **not** adopted Administrative Rules regarding Agricultural-related uses in Farmland Preservation Areas.

12/20/2010 Land Conservation Committee Comments and Decisions:



November 17, 2010

Land Use and Resource
Management Department

Keith Foye and Richard Castelnuovo
Department of Agriculture, Trade and Consumer Protection
Ag Resource Management Division
P. O. Box 8911
Madison, WI 53708-8911

Dear Keith and Richard:

I am writing this correspondence related to permitted uses in our agricultural zoning districts. I have enclosed portions of our zoning ordinance for your review on permitted uses and conditional uses as listed in our ordinance. Would the uses that are listed be in compliance with the farmland preservation program and would we be able to incorporate them into our Agricultural Preservation Plan and Zoning Ordinance. I have **highlighted and underlined** the uses within the attachments for your review for the Department's opinion.

Sincerely,

Louise A. Olson, Walworth County Conservationist/Deputy Director
Walworth County Land Use and Resource Management Department

Attachments

100 West Walworth Street
P. O. Box 1001
Elkhorn, WI 53121
Conservation Division
262-741-4972 tel
262-741-4973 fax

Attachments:

Sec. 74-51. Agricultural districts.

A-1 Prime agricultural land district. The primary purpose of this district is to maintain, preserve, and enhance agricultural lands historically exhibiting high crop yields. Such lands are generally covered by Class I, II, and III soils as rated by the U.S. Natural Resource Conservation Service. As a matter of policy, it is hereby determined that the highest and best use of these lands is agriculture (Wis. Stats. ch. 91.01(10)). All structures and improvements must be consistent with agricultural use.

(1) *Principal uses.*

- a. Single-family dwelling.
- b. Dairying.
- c. Floriculture (cultivation of ornamental flowering plants).
- d. Grazing, subject to regulations in division 2.
- e. Livestock raising, except commercial feed lots.
- f. Orchards.
- g. Paddocks.
- h. Plant nurseries.
- i. Poultry raising, except commercial egg production.
- j. Raising of grain, grass, mint, and seed crops.
- k. Raising of tree fruits, nuts, and berries.
- l. Sod farming.
- m. Vegetable raising.
- n. Viticulture (grape growing).
- o. Equestrian trails.
- p. Forest and game management.
- q. Greenhouses.
- r. Nature trails and walks.
- s. Stables.
- t. Apiculture (beekeeping).
- u. Roadside stands not exceeding one per farm.
- v. The separation of farm structures from farmland. Farm residences or structures which existed prior to the adoption of this ordinance (July 9, 1998) may be separated from a larger farm parcel for the purposes of farm consolidation. The separation must conform with the regulations set forth in sections 74-39 and 74-40 of this ordinance; the parcel shall not be less than 40,000 square feet in area, nor greater than the larger of either five acres in area, or the acreage necessary to maintain the minimum yard required in the A-1, A-2, or A-3 district; it shall not leave the balance of the land in a substandard condition; and the property owner will be required to record deed restrictions on both the farm separation parcel and on a parcel which meets the minimum required by the applicable zoning district, which directly adjoins or abuts the majority of the farm separation parcel, and which meets the intent of these provisions. A plat of survey for said parcel shall be prepared by a registered land surveyor licensed in the State of Wisconsin. Said deed restriction shall state that no structures may be placed on the adjoining acreage without first obtaining a conditional use approval from the committee and that no land may be

deeded to the separation parcel which increases its size above that outlined above without first obtaining proper approval which may include a rezone.

w. Minor home occupation/professional home office.

(2) *Conditional uses.* (See division 4.)

- a. Housing for farm laborers.
- b. Housing for seasonal or migratory farm workers.
- c. Commercial feed lots.
- d. Livestock sales facilities.
- e. Veterinarian services for farm animals.
- f. Commercial fur farms.
- g. Commercial egg production.
- h. Land restoration.
- i. Mobile homes for farm laborers.
- j. Business directory signs.
- k. Sewage disposal plants.
- l. Airports, airstrips, landing fields and heliports, which are related to agricultural activities, including those which are used to assist the owner or operator with a means of transportation to and from the site.
- m. Governmental and cultural uses, such as fire, and police stations, community centers, libraries, public emergency shelters, parks, playgrounds, museums, and park and ride facilities.
- n. Utilities, provided all principal structures and uses associated with the utility are not less than 50 feet from all district lot lines except business, park and industrial.
- o. Schools and churches.
- p. Composting.
- q. Home occupations.
- r. More than one farm dwelling. If approval is granted for more than one farm dwelling, each additional dwelling may be separated from the farm lot provided that any parcel so created conforms with all regulations set forth in section 74-39 and 74-40 of this ordinance, except that no such parcel shall be less than 40,000 square feet in area nor greater than the larger of either five acres in area or the acreage necessary to maintain the minimum required setbacks.

s. Farm family business. Uses listed under A-4 zoning

t. Hunting and fishing club land without structures.

(3) *Area, height and yard requirements.*

TABLE INSET:

Lot (farm size)	Area	Minimum 35 acres
	Width	Minimum 300 feet
Building		
Farm dwelling	Height	Maximum 45 feet

	Agricultural structures	Height	Maximum two times their distance from the nearest lot lines (See division 9)
Yards			
	Farm dwelling and agricultural structures	Rear	Minimum 100 feet
		Side	Minimum 20 feet except structures used for the housing of animals must be located at least 100 feet from all lot lines
		Street:	
		Subdivision road	Minimum 25 feet
		Town road	Minimum 50 feet
		County road	Minimum 65 feet
		State and federal highway (not including freeways)	Minimum 85 feet

A-4 Agricultural-related manufacturing, warehousing and marketing district. The primary purpose of this district is to provide for the proper location and regulation of manufacturing, warehousing, storage, and related industrial and marketing activities that are dependent upon or closely allied to the agricultural industry.

(1) *Principal uses.*

- a. Fruit store.
- b. Grape growing.
- c. Production of sausages and other meat products providing that all operations be conducted within an enclosed building.
- d. Vegetable store.
- e. Veterinarian services.

(2) *Conditional uses.*

- a. Contract sorting, grading and packaging services for fruits and vegetables.
- b. Corn shelling, hay baling, and threshing activities.

c. Bottling of spring water.

- d. Grist mill services.
- e. Horticultural services.
- f. Poultry hatchery services.
- g. Production of animal and **marine fat** and oils.

- h. Canning of fruits, vegetables, preserves, jams, and jellies.
- i. Canning of specialty foods.
- j. Preparation of cereals.
- k. Production of natural and processed cheese.
- l. Production of chocolate and cocoa products.
- m. Coffee roasting and production of coffee products.
- n. Production of condensed and evaporated milk.
- o. Wet milling of corn.
- p. Cottonseed oil milling.
- q. Production of creamery butter.
- r. Drying and dehydrating fruits and vegetables.
- s. Preparation of feeds for animals and fowl.
- t. Production of flour and other grain mill products.
- u. Blending and preparing of flour.
- v. Fluid milk processing.
- w. Production of frozen fruits, fruit juices, vegetables and other specialties.
- x. Malt production.
- y. Meat packing.
- z. Fruit and vegetable pickling, vegetable sauces and seasoning, and salad dressing preparation.
- aa. Poultry and small game dressing and packing providing that all operations be conducted within an enclosed building.
- bb. Milling of rice.
- cc. Production of shortening, table oils, margarine and other edible fats and oils.
- dd. Milling of soy bean oil.
- ee. Milling of vegetable oil.
- ff. Sugar processing and production.
- gg. Production of wine, brandy, and brandy spirits.
- hh. Livestock sales facilities.
- ii. Grain elevators and bulk storage of feed grains.
- jj. Fertilizer production, sales, storage, mixing, and blending.
- kk. Sales or maintenance of farm implements and related equipment.
- ll. Transportation related activities primarily serving the basic agricultural industry.
- mm. Living quarters for watchman or caretaker.
- nn. Off-season storage facilities.**
- oo. Animal hospitals, shelter, and kennels.
- pp. Land restoration.**
- qq. Business directory signs (exceeding two).**
- rr. Sewage disposal plants.**
- ss. Airports, airstrips and landing fields.**
- tt. Governmental and cultural uses such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds, museums, and park-and-ride facilities.**
- uu. Utilities, provided all principal structures and uses associated with the utility are not less than 50 feet from all district lot lines except business, park and industrial.**
- vv. Schools and churches.**
- ww. Contractor storage yards.**
- xx. Production, packing, packaging, and light assembly of products from furs, glass, metals, paper, leather, plaster, plastics, textiles and wood.
- yy. Composting.

zz. Commercial greenhouses.

aaa. Flea markets.

bbb. Commercial stables.

ccc. Commercial stables with horse shows.

ddd. Retail sales related to those agricultural uses listed in A-4. The retail sales of ancillary non-agricultural items is subject to detailed plan approval by the committee.

Another would be farm food service(restaurant)

(3) Area, height and yard requirements.

TABLE INSET:

Lot	Area	Minimum, sufficient area for the principal structure and its accessory buildings, all required yards, and off-street parking and loading as required by section 74-203 of this ordinance
Building	Height	Maximum 70 feet
Yards	Rear	Minimum 75 feet
	Side	Minimum 75 feet
	Street:	
	Subdivision road	Minimum 25 feet
	Town road	Minimum 50 feet
	County road	Minimum 65 feet
	State and federal highways (not including freeways)	Minimum 85 feet
	Shore	Minimum 75 feet

CONDITIONAL USE – Division 4.

Sec. 74-61. Agricultural and related uses.

Except where specifically permitted as a principal use in division 3, the following agricultural and related uses shall be conditional uses and may be permitted as specified. All conditional uses in the A-1 district are limited to those that are consistent with agricultural use and found to be necessary in light of alternative locations available for any such uses (Wis. Stats. ch. 91.01(10)). In approving or disapproving the location of a conditional use, the county park and planning commission shall view the proposed site or sites and shall consider such evidence as may be presented at the public hearing bearing upon the general purpose and intent of this ordinance set forth in sections 74-28 and 74-29 and upon the particular land use problems related to development of the site or sites proposed.

(1) *Single-family dwellings* exceeding one per farm in A-1, A-2, and A-3 districts provided, however, that such dwellings may only be permitted when consistent with an agricultural use and that are occupied by an owner of the parcel, or a person who, or a family of which at least one adult member earns the majority of his or her gross income

from conducting the farm operations on the parcel, or a parent or child of an owner who conducts the majority of the farm operations on the parcel, or a parent or child of an owner who resides on the parcel and who previously conducted the majority of the farm operations on the parcel and laborers principally engaged in a principal or approved conditional use and only when the need for such additional units to support and carry on the principal or approved conditional use has been established. If conditional use approval is granted for one or more additional dwellings, such dwellings may be separated from the farm lot provided however, that any parcel so created conforms with all regulations set forth in sections 74-39 and 74-40 of this ordinance, except that no such parcel shall be less than 40,000 square feet in area nor greater than the larger of either five acres in area or the acreage necessary to maintain the minimum required setbacks.

(2) *Housing* for migratory or seasonal farm workers in the A-1, A-2 and A-3 Districts.

(3) *Commercial feed lots/livestock facility* in the A-1, A-2, and A-4 districts in accordance with the provisions of Wis. Stats. § 93.90, and ATCP 51 of Wis. Administrative Rules, if applicable, inclusive of all future amendments to any provisions of those sections of the Wisconsin Statutes and Administrative Rule. Applications for livestock facilities shall be approved unless the committee finds based on clear and convincing information and documentation that the application does not comply with requirements of the regulations.

(4) *Livestock sales barns* in the A-1, A-3 and A-4 districts.

(5) *Animal hospitals, shelters, and kennels* in the A-2, A-3, A-4 and A-5 agricultural districts, conservancy districts and the B-2, B-4 and B-5 business districts provided that the lot area is not less than five acres and further provided that, if animals are to be housed outside, there is a minimum building separation of 1,000 feet from the nearest residential structure existing at the time of the issuance of a zoning permit.

(6) *Veterinarian services* in the A-2 and A-4 districts.

(7) *Commercial stables* in the A-2, A-4, C-2, P-1, P-2 and B-5 districts. Tack rooms associated with commercial stables shall be used only by the owner and boarders.

(8) *Commercial stables* with horse shows and tack shop that permits off-site retail sales in the A-4 and P-1 districts.

(9) *Commercial raising* and propagation of fur-bearing animals in the A1, A-2 and A-3 districts.

(10) *Commercial egg production* in the A-1, A-2 and A-3 districts.

(11) *Land restoration* in the A-1, A-2, A-3, A-4, and C-2 districts when conducted in accordance with the county conservation standards. Any project designed and certified by NRCS, Land Conservation or the Department of Natural Resource Fish and Wildlife or water quality ponds may be exempt from the conditional use process.

(12) Agricultural-related manufacturing, warehousing, and marketing activities in the A-4 district, including contract sorting, grading, and packaging services for fruits and vegetables; corn shelling, hay baling, and threshing services; spring water bottling; grist mill services; horticultural services; poultry hatchery services; production of animal and marine fat and oil; canning of fruits, vegetables, preserves, jams, and jellies; canning of specialty foods; preparation of cereals; production of natural and processed cheese; production of chocolate and cocoa products; coffee roasting and production of coffee products; production of condensed and evaporated milk; wet milling of corn, cottonseed oil milling; production of creamery butter; drying and dehydrating fruits and vegetables; preparation of feeds for animal and fowl; production of flour and other grain mill products; blending and preparing of flour; fluid milk processing; production of frozen fruits, fruit juices, vegetables, and other specialties; malt production; meat packing; fruit and vegetable pickling, vegetable sauces and seasoning, and salad dressing

preparation; poultry and small game dressing and packing, providing that all operations be conducted within an enclosed building; milling of rice; production of sausages and other meat products; providing that all operations be conducted within an enclosed building; production of shortening, table oils, margarine and other edible fats and oils; milling of soy bean oil; milling of vegetable oil; sugar processing and production; production of wine, brandy and brandy spirits; livestock sales facilities; grain elevators and bulk storage of feed grain; fertilizer production, sales, mixing, storage and blending; sales or maintenance of farm implements and related equipment; and transportation-related activities primarily serving the basic agricultural industry. Any outside storage or display areas in conjunction with the above commercial and related uses may be permitted by the committee after considering such evidence as may be presented at the public hearing bearing upon the general purpose and intent of this ordinance. In no case shall the area be closer than 25 feet to any right-of-way.

Placement of structures in the A-1 prime agricultural land district, A-2 agricultural land district and A-3 agricultural holding district on parcels where the separation of farm structures has been approved and separated.

Farm family business is a use which is accessory to an agricultural use consisting of uses listed in the A-4 district except the production, packing, packaging, and light assembly of products from glass, metals, plaster, and plastics. A farm family business may be permitted as a conditional use for farm owners if limited to existing farm residence or farm structures not dedicated to agricultural uses. No more than two persons who are not members of the resident farm family may be employed in the farm family business (see Wis. Stats. 91.75(8))

(13) Signage for approved business on A-4 provided the sign is located at least five feet from property lines.

(14) Off-season storage facilities for boats, and other recreational vehicles, such as campers, travel trailers, snowmobiles, off-road vehicles, and motor homes in the A-4 district. Any outside storage or display areas in conjunction with this use may be permitted by the committee after considering such evidence as may be presented at the public hearing bearing upon the general purpose and intent of this ordinance. In no case shall areas be closer than 25 feet to any right-of-way.

(15) Hunting and fishing club land without structures in the A-1 zoning districts.

(16) *Retail sales* related to those agricultural uses listed in A-4. The retail sales of ancillary non-agricultural items is subject to detailed plan approval by the committee.

(Ord. of 6-11-02; Amd. of 1-14-03; Amd. of 1-11-05; Amd. of 3-8-05; Amd. of 5-10-05; Amd. of 8-9-05; Ord. No. 315-09/05, pt. II, 9-8-05; Ord. No. 353-04/06, pt. IV, 4-20-06; Ord. No. 591-12/09, pt. XIX, 12-15-09)



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Randy Romanski, Secretary

November 22, 2010

Louise A. Olson, Deputy Director
Walworth Co. Land Use &
Resource Management Dept.
100 West Walworth Street
P. O. Box 1001
Elkhorn, WI 53121

Dear Lou:

This letter responds to your request for guidance related to permitted and conditional uses in the A-1 Prime Agricultural Land District and the A-4 Agricultural-related Manufacturing, Warehousing and Marketing district in the Walworth County Farmland Preservation zoning ordinance.

I will first respond to the request to comment on the highlighted and underlined uses:

Section 74-51 Agricultural Districts:

A-1 Prime Agricultural Land District

(2) Conditional uses

Item s. - Farm family business, Uses listed under A-4 Zoning – The provision in the previous law related to farm family businesses must be identified under the new law as either an accessory use under s. 91.01(1), Stats., and be subject to these restrictions, or be identified as an agricultural related use under s. 91.01(3), Stats. The zoning ordinance references under A-1 in provision s. the term farm family business and the uses listed under A-4 zoning as a conditional uses in the A-1 district. All of these uses must be represented in terms of the new law and the definition of agricultural uses, accessory uses, and agricultural related uses.

A-1 Agricultural-related Manufacturing, Warehousing and Marketing District

(2) Conditional uses

Item c. – Bottling of spring water – This use would need to be allowed under the context of an accessory use under s. 91.01(1)(d), Stats., and be restricted to a use conducted by the owner or operator of the farm, utilizes existing structure, has no more than 4 full-time employees, and does not impair or limit current or future agricultural use of the farm or other protected farmland. To not have these restrictions, the county would have to determine that the bottling of spring water was an activity or business operation that is an integral part of, or incidental to an agricultural use.

Item g. – Production of animal and marine fat and oils – The same comment applies to the comment immediately above, except it is more likely a business could be incidental to an agricultural business for animal fats, although less likely related to marine unless it is an Aquaculture operation.

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Item nn. – Off season storage facilities – This use could be allowed but it would need to be identified as an accessory use and meet the requirements in s. 91.01(1), Stats.

Item pp – Land restoration – If this use means restoring land to an agricultural use, it is probably fine. What other land restoration activities would this allow? If this is a business, it would need to be identified as an accessory use and meet the requirements in s. 91.01(1), Stats.

Item qq. – Business directory signs (exceeding two) – This use would only be allowed if the use met the requirements of s. 91.01(1)(a), Stats., and was a structure that was an integral part of, or incidental to, an agricultural use or under (d) was attached to an existing building or structure (no new structures).

Item rr. – Sewage Disposal Plants – A sewage disposal plant would have to be allowed under s. 91.46(5), Stats., as a conditional use as a governmental use, or be allowed as a an agricultural related use as a facility for processing agricultural wastes. This use was probably not intended to cover processing of agricultural waste.

Item ss. – Airports, airstrips and landing fields – This use would have to be a conditional use allowed under s. 91.46(5), Stats., as a governmental use, or be allowed as a an accessory use and meet the requirements of accessory use and meet the requirements in s. 91.01(1), Stats.

Item tt. – Governmental and cultural uses such as ... , and park and ride facilities – These would be allowed as a conditional use if they meet the requirements in s. 91.46(5), Stats.

Item uu. – Utilities, provided all principal structures ... except business, park and industrial – This use would have to be a conditional use and meet the requirements in s. 91.46(4), Stats.

Item vv. - Schools and Churches - These would be allowed as a conditional use if they meet the requirements in s. 91.46(5), Stats.

Item ww. - Contractor storage yards - This use would need to be allowed under the context of an accessory use under s. 91.01(1)(d), Stats., and be restricted to a use conducted by the owner or operator of the farm, utilizes existing structure, has no more than 4 full-time employees, and does not impair or limit current or future agricultural use of the farm or other protected farmland. To not have these restrictions, the county would have to determine that the contractor storage yard was an activity or business operation that is an integral part of, or incidental to an agricultural use.

Item aaa. – Flea markets - This use would need to be allowed under the context of an accessory use under s. 91.01(1)(d), Stats., and be restricted to a use conducted by the owner or operator of the farm, utilizes existing structure, has no more than 4 full-time employees, and does not impair or limit current or future agricultural use of the farm or other protected farmland. To not have these restrictions, the county would have to determine that the contractor storage yard was an activity or business operation that is an integral part of, or incidental to an agricultural use.

Another would be a farm food service (restaurant) - This use would need to be allowed under the context of an accessory use under s. 91.01(1)(d), Stats., and be restricted to a use conducted by the owner or operator of the farm, utilizes existing structure, has no more than 4 full-time employees, and does not impair or limit current or future agricultural use of the farm or other

protected farmland. To not have these restrictions, the county would have to determine that the farm food service (restaurant) was an activity or business operation that is an integral part of, or incidental to an agricultural use.

Conditional Use – Division 4

Sec. 74-61 – Agricultural and related uses

Introduction and Item (1) Single-family dwellings - This language in the ordinance reflects the old law. The ordinance text must be updated to refer to the new definition in s. 91.01, Stats., for accessory use and agricultural related use. The concept of a use consistent with agricultural use is no longer used in the new statute and should be removed from the ordinance. The allowed residential uses should reflect the new statutory language either as a farm residence [definition in s. 91.01(19) Stats.] and non-farm residence [definition in s. 91.01(21), Stats.]. Farm residences can be allowed as an accessory use under s. 91.01(1), Stats., as either a permitted use or a conditional use. A non-farm residence may only be allowed as a conditional use meeting the standards in s. 91.46(2) or (3), Stats.

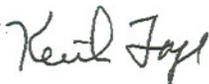
Item (12) – Agricultural-related manufacturing, warehousing, and marketing activities – This use listed as a conditional use in the ordinance must meet the requirements in the new statutes related to agricultural related uses and accessory uses. See the response for **A-1 Agricultural-related Manufacturing, Warehousing and Marketing District** on page 1. At the end of this section, there is language in the ordinance text related to farm family businesses. The ordinance text provided reflects the old law. There is no specific language in the new statutes that mentions farm family businesses. These uses need to reflect the new law and the definition of accessory use and agricultural related use mentioned several times in this document.

General Response

It is obvious that the zoning ordinance text that you attached to your letter is based on the old law. I would encourage Walworth County to look at the model zoning ordinance from our website to discuss the changes needed to make the zoning ordinance text comply with the new Chapter 91, Stats. The statutes allow a fair amount of flexibility in determining which uses are listed as permitted uses versus as conditional uses. They all do need to be framed either as an agricultural use, an accessory use, or as an agricultural related use based on the definition in the statutes. Also, s. 91.46, (2) to (6), Stats., list some other uses that must be conditional uses and must meet the standards in the statutes.

Please let me know if we can be of any further assistance.

Sincerely,



Keith Foye, Chief
Land Management Section
(608) 224-4603

cc: Kathy Pielsticker, Director, Bureau of Land and Water Resources



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Randy Romanski, Secretary

November 17, 2010

Louise A. Olson, Deputy Director
Walworth Co. Land Use &
Resource Management Dept.
100 West Walworth Street
P. O. Box 1001
Elkhorn, WI 53121

Dear Lou:

This letter responds to your request for guidance related to dealing with nonmetallic mining and the Walworth County Farmland Preservation zoning ordinance.

The county's current certified ordinance requires the county to rezone land in the certified farmland preservation zoning district (A-1) to the nonmetallic mining district (M-3) on a temporary basis until the mining is completed. This "temporary rezone" is reversed with the land being rezoned back into the certified A-1 district. I assume the rezone process then also involves the local towns in the decision process. The answer to your first question is yes, the rezoning from a certified district to an uncertified district would trigger the need for the landowner to pay the rezone conversion fee.

As far as alternatives, the previous, and current farmland preservation law, allows nonmetallic mining as a conditional use [see the current law in s. 91.46(1)(h) and (6), Wis. Stats.]. The conditional use requires that the landowner restore the land to agricultural use consistent with the locally approved reclamation plan when the extraction is completed. My understanding is that the county prefers to allow nonmetallic mining through both a rezone and conditional use process.

A second alternative would be to create an M-3 overlay zoning district over a certified farmland preservation zoning district. This alternative would require a rezoning process, and a conditional use, but because of the use of the overlay district, it would not remove the land from the underlying farmland preservation zoning district. The overlay district, per s. 91.38(1)(h), Stats., would need to maintain the land use restrictions from the underlying FPP zoning district, and it must be clear that this is an overlay district whereby the underlying zoning district can be readily identified.

The county could choose to use this overlay district over all other base districts in the zoning ordinance, or just use it as an overlay over the certified farmland preservation zoning districts. Utilizing an overlay nonmetallic mineral district would allow the landowner to continue to collect tax credits on the land involved in the nonmetallic mineral operation as long as the owner met the other requirements.

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Please let me know if we can be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Keith Foye".

Keith Foye, Chief
Land Management Section
(608) 224-4603

cc: Kathy Pielsticker, Director, Bureau of Land and Water Resources



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Randy Romanski, Secretary

November 17, 2010

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As far as alternatives, the previous, and current farmland preservation law, allows nonmetallic mining as a conditional use [see the current law in s. 91.46(1)(h) and (6), Wis. Stats.]. The conditional use requires that the landowner restore the land to agricultural use consistent with the locally approved reclamation plan when the extraction is completed. My understanding is that the county prefers to allow nonmetallic mining through both a rezone and conditional use process.

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The county could choose to use this overlay district over all other base districts in the zoning ordinance, or just use it as an overlay over the certified farmland preservation zoning districts. Utilizing an overlay nonmetallic mineral district would allow the landowner to continue to collect tax credits on the land involved in the nonmetallic mineral operation as long as the owner met the other requirements.

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Please let me know if we can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Keith Foye". The signature is written in a cursive style with a large initial 'K'.

Keith Foye, Chief
Land Management Section
(608) 224-4603

cc: Kathy Pielsticker, Director, Bureau of Land and Water Resources

BACKGROUND INFORMATION FOR PROPOSED ORDINANCE AMENDMENT.

Chapter 74 - Zoning Ordinance/ Shoreland Zoning Ordinance

Division 3

Section 74-51/ 74-178. Agricultural districts.

A-1 Prime agricultural land district. The primary purpose of this district is to maintain, preserve, and enhance agricultural lands historically exhibiting high crop yields. Such lands are generally covered by Class I, II, and III soils as rated by the U.S. Natural Resource Conservation Service. As a matter of policy, it is hereby determined that the highest and best use of these lands is agriculture (Wis. Stats. ch. 91.01(10)). All structures and improvements must be consistent with agricultural use.

(1) *Principal uses.*

- a. Single-family dwelling.
- b. Dairying.
- c. Floriculture (cultivation of ornamental flowering plants).
- d. Grazing, subject to regulations in division 2.
- e. Livestock raising, except commercial feed lots.
- f. Orchards.
- g. Paddocks.
- h. Plant nurseries.
- i. Poultry raising, except commercial egg production.
- j. . . .

(2) *Conditional uses.* (See division 4.)

- a. Housing for farm laborers.
- b. Housing for seasonal or migratory farm workers.
- c. Commercial feed lots.
- d. Livestock sales facilities.
- e. Veterinarian services for farm animals.
- f. Commercial fur farms.
- g. Commercial egg production.
- h. Land restoration.
- i. Mobile homes for farm laborers.
- j. . .
- s. **Farm family business.**
- t. Hunting and fishing club land without structures.

Division 13. Definitions.

Farm family business: Any lawful activity, except a farm operation, consisting of uses which are accessory to an agricultural use listed in the A-4 district except the production, packing, packaging, and light assembly of products from glass, metals, plaster, and plastics, conducted primarily for any of the following:

- (1) The purchase, sale, lease or rental of personal or real property;
- (2) The manufacture, processing or marketing of products, commodities or any other personal property;
- (3) The sale of services.

Proposed Ordinance Amendment (at the request of the Town of Spring Prairie). Additions are noted with **underlines** and deletions are noted with **cross-hatches**. Discussion before Walworth County Zoning Agency on November 18, 2010 and referred to Land Conservation Committee 12-20-10

Section 74-51/ 74-178

A-4 Agricultural related manufacturing, warehousing and marketing district. The primary purpose of this district is to provide for the proper location and regulation of manufacturing, warehousing, storage, and related industrial and marketing activities that are dependent upon or closely allied to the agricultural district.

(1) *Principal uses.*

- a. Fruit store.
- b. Grape growing.
- c. . .

(2) *Conditional uses.*

- a. Contract sorting, grading and packaging services for fruits and vegetables.
- b. Corn shelling, hay baling, and threshing services.
- c. Bottling of spring water.
- d. Grist mill services.
- e. Horticultural services.
- f. Poultry hatchery services.
- g. . . .
- bbb. Commercial stables.
- ccc. Commercial stables with horse shows.
- ddd. Retail sales related to those agricultural uses listed in A-4. The retail sales of ancillary non-agricultural items is subject to detailed plan approval by the committee.

eee. Farm food service

(3) *Area, height and yard requirements.*

Division 4. Conditional Uses

Section 74-61/74-188 Agricultural and related uses.

Except where specifically permitted . . .

(12) *Agricultural-related manufacturing, warehousing, and marketing activities* in the A-4 district, including contract sorting, grading, and packaging services for fruits and vegetables; corn shelling, hay baling, and threshing services; spring water bottling; grist mill services; . . . milling of vegetable oil; sugar processing and production; production of wine, brandy and brandy spirits; **farm food service**; livestock sales facilities; grain elevators and bulk storage of feed grain; fertilizer production, sales, mixing, storage and blending; sales or maintenance of farm implements and related equipment; and transportation-related activities primarily serving the basic agricultural industry. Any outside storage or display areas. . . general purpose and intent of this ordinance. In no case shall the area be closer than 25 feet to any right-of-way. . . .

Division 13 Definitions

Section 74-131/ 74-263 Definitions . . .

Farm food service: means the preparation, serving and sale of agricultural food products produced on the farm in a meal setting.

Farm stand . . .