

WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

THE WISCONSIN WORKING LANDS INITIATIVE

QUESTIONS AND ANSWERS

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<http://www.datcp.state.wi.us/workinglands/index.jsp>

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Draft – February 13, 2009

1. Overview

What is the Working Lands Initiative (WLI)?

The Working Lands Initiative is a cooperative state, local and private effort to save Wisconsin farmland, to promote agriculture, to protect the environment, and to minimize land use conflicts. State legislation will create the necessary framework for this effort.

Why do it now?

- Wisconsin's population is growing steadily, and there are growing conflicts over land use. If we don't act soon, these conflicts will get worse and will become much harder to resolve.
- Wisconsin farmland is being *permanently lost* at an alarming rate. If we don't act soon, it will be too late to save key agricultural resources on which our future depends.
- Land use conflicts and fragmentation threaten our agricultural economy.
- We need agricultural lands for food, quality of life, a healthy environment, a strong business climate, water quality, flood prevention *and* Wisconsin's emerging bio-economy.

What does WLI include?

- Tools and incentives for local preservation of agricultural land.
- Financial tools and incentives to help farmers keep land in agricultural use and employ good conservation practices.
- Renewed emphasis on farmland preservation planning.
- Increased flexibility for county and local government.
- More modern, workable standards for farmland preservation zoning. WLI will encourage compact, focused development rather than wasteful sprawl.
- "Agricultural enterprise areas" that are locally targeted for agricultural preservation and development.
- An updated approach based on current agricultural practices and land use realities.
- Local cooperative focus, with less cumbersome state oversight.

What will the WLI legislation do?

- Overhaul and modernize Wisconsin's 30-year-old farmland preservation program.
- Help local governments modernize outdated farmland preservation plans and zoning ordinances.
- Enhance soil and water conservation.
- Create a new state program (PACE) for targeted purchases of agricultural conservation easements from *willing landowners*.

What will WLI cost?

- There will be *no added state cost* and *no unfunded local mandates*.
- State budget dollars for agriculture will *stay in agriculture*.
- WLI will *consolidate and enhance current farmer tax credits*. The enhanced tax credits will increase land preservation and conservation incentives, at no added cost to taxpayers.
- WLI will *not* change the Use Value Assessment program in any way.
- WLI will use existing (unused) bonding authority to fund the purchase of agricultural conservation easements from willing landowners (PACE).
- WLI will create a state Working Lands Trust Fund, funded by “conversion fees” for land rezoned out of farmland preservation districts. The “conversion fees” will help discourage excessive conversion of agricultural land, and help fund state and local farmland preservation efforts.
- Better planning and zoning will reduce local government and private sector costs, minimize costly land use conflicts, encourage agricultural investment, and facilitate sound development.

How will WLI promote better planning?

- Population growth and development needs are straining scarce land resources. Planning is needed to preserve farmland and minimize land use conflicts, but most county farmland preservation plans are more than 20 years out of date.
- WLI offers farmland preservation tax credits in counties that update their farmland preservation plans. Counties with the most development pressure will update first.
- WLI streamlines cumbersome state certification of county plans. State certification may be based on county self-certification.
- WLI gives counties more flexibility in planning farmland preservation areas, based on current agricultural practices and land use realities.
- WLI makes it easier to integrate farmland preservation plans with county and local comprehensive plans, if any (WLI does not *require* comprehensive plans).
- WLI offers planning grants and technical assistance.

How does WLI affect local zoning?

- Sound local zoning minimizes land use conflicts. WLI provides incentives, but does not require or limit local zoning. County and local governments make their own decisions.
- WLI offers tax credits to farmers covered by local farmland preservation zoning that meets WLI standards. Zoning must be based on updated plans (see above).
- WLI gives county and local governments more flexibility to design farmland preservation zoning districts that include other *compatible uses* (including compatible infrastructure, farm-related businesses, residences and natural areas).

- WLI streamlines state certification of farmland preservation zoning ordinances (certification allows farmers to claim tax credits). State certification may be based on county and local self-certification.
- Whenever land is rezoned out of a farmland preservation zoning district at the owner's request, the owner must pay a "conversion fee." The local government must find that the rezoning is justified, and will not impair other agricultural land use.
- The rezoning "conversion fee" helps fund WLI (including county planning), so there is no added cost to taxpayers. Local governments may charge a supplementary fee to fund their farmland preservation work.
- WLI does not involve any state-level zoning.

How does WLI affect residential development?

- Farmland preservation can coexist with careful residential development.
- WLI eliminates counterproductive 35-acre minimum lot size requirements in farmland preservation districts. Current minimum lot size requirements may actually encourage wasteful land use and "sprawl."
- WLI encourages more compact residential "cluster" development. Appropriately-placed residences and "clusters" may be constructed in farmland preservation zoning districts, subject to farmland preservation density standards. Local governments may supplement those standards, as needed, based on local conditions.

How does WLI affect farmland preservation agreements?

- Under current law, farmers may claim tax credits if their land is covered by a farmland preservation zoning ordinance *or* by an individual *farmland preservation agreement*. A farmland preservation agreement is a contract, between the farmer and the state, which remains in effect for 10 to 25 years.
- Farmland preservation agreements are often widely scattered, and that limits their collective impact.
- WLI eliminates individual farmland preservation agreements, except in specifically targeted "agricultural enterprise areas" (see below) where the agreements can have a more focused collective impact. The cost savings will help fund WLI.
- Existing agreements remain in effect until their scheduled termination date, but may not be renewed (except in "agricultural enterprise areas").
- Farmers covered by existing agreements may choose to claim tax credits under the new law (the new credits are more favorable).

What is an "agricultural enterprise area?"

- WLI provides for the creation of clearly-defined "agricultural enterprise areas."
- An "agricultural enterprise area" is locally targeted for agricultural preservation and development.
- The Department of Agriculture, Trade and Consumer Protection (DATCP) may designate an "agricultural enterprise area" in response to a petition signed by the affected county, each affected town, and at least 5 farmers in the designated area.

- Designation of an “agricultural enterprise area” does not, by itself, control or limit land use (it is *not* a zoning ordinance). But farmers in the designated area may enter into voluntary farmland preservation agreements with DATCP, and receive tax credits. Tax credits are higher if local farmland preservation zoning also applies.
- An “agricultural enterprise area” may be part of a broader local strategy to promote agriculture (and related enterprises). The strategy may include other local initiatives such as zoning, agricultural conservation easements, development grants, cooperative agreements and siting incentives.
- DATCP may designate a limited number of “pilot” areas totaling up to 200,000 acres in the first 2 years. Eventually, DATCP may designate areas totaling up to a million acres (about the size of Marathon County). The cost (for farmer tax credits in the designated areas) will be offset by the expiration of existing farmland preservation agreements in other parts of the state.

What is an agricultural conservation easement?

- WLI creates a new state program (PACE) to purchase agricultural conservation easements from *willing landowners*. This is an added tool for preserving important agricultural land.
- An easement restricts nonagricultural development of the covered land, but the farmer retains ownership. Participating farmers can augment their income while continuing to farm the land.
- An easement runs with the land. The farmer may sell the land, but the easement is still in place (it is binding on subsequent landowners).
- An easement continues indefinitely. However, a court may vacate an easement that no longer serves its intended purpose.

How will the PACE easement program work?

- DATCP will work with cooperating entities (local governments or nonprofit conservation organizations) to purchase agricultural conservation easements.
- Easements must be consistent with county and local land use plans and zoning ordinances. DATCP may give priority to “agricultural enterprise areas.”
- DATCP may pay up to 50% of the fair market value of the *easement* (not 50% of the total land value, since the farmer still owns and operates the land).
- The cooperating entity must arrange for the rest of the easement purchase cost, but may get funding from other sources. The landowner may also donate part of the easement value, to get favorable federal tax treatment.
- The State of Wisconsin will be a joint holder of the easement, with the cooperating entity.
- The State of Wisconsin may issue up to \$12 million in bonds to fund the PACE program. This new bonding authority is offset by a reduction in unused bonding authority under the Conservation Reserve Enhancement Program (CREP), so there is

no net increase in state bonding authority. The \$12 million bond revenue authorization may be used over a number of years (it is *not* an *annual* authorization).

- Beginning in the FY 2011-12 biennium, debt service on the revenue bonds will be largely funded from the Working Lands Trust Fund (see above).

How does WLI affect state tax credits for farmers?

- The current *farmland preservation tax credit* (income tax credit) is intended to encourage farmland preservation and conservation practices. However, the current tax credit is based on a complex formula that considers farm income, property tax payments and other variables. Farmers must wade through 18 pages of tax credit forms and instructions. Many farmers are disqualified by outdated income limits, and the tax benefit is declining. Annual tax credit claims have dropped from \$35 million in 1987 to just over \$12.7 million today, so the credit no longer provides a strong incentive for farmland preservation.
- The current *farmland tax relief credit* (income tax credit) was originally designed to provide property tax relief, but has been greatly overshadowed by Use Value Assessment. The current tax credit does little to encourage farmland preservation or conservation practices, but costs an average of \$15 million per year.
- WLI will repeal these current tax credits, and use the savings to finance a new and enhanced *farmland preservation tax credit*. The new tax credit will provide a stronger incentive for farmland preservation and conservation practices, without increasing state costs. The total estimated cost for the new tax credit (about \$27.3 million per year) is approximately equal to the combined costs of the current tax credits. WLI will *not* change the current Use Value Assessment program in any way.
- Under WLI:
 - Farmers will be able to claim tax credits if they are covered by a *farmland preservation zoning ordinance* or a *farmland preservation agreement* (new agreements will be limited to “agricultural enterprise areas”).
 - Tax credits will be calculated as a flat amount per acre. The amount will depend on whether the land is covered by an agreement (\$5 per acre), a zoning ordinance (\$7.50 per acre), or both (\$10 per acre). The Department of Revenue may adjust tax credit amounts between years, as necessary, to keep total costs within appropriation limits (just as it does now for the Farmland Tax Relief Credit).
 - Tax claim forms will be much simpler (a few lines instead of 18 pages).
- Under WLI (as under the current farmland preservation law), farmers claiming tax credits must comply with state soil and water conservation standards. Counties must initially certify compliance by *new* claimants (counties already monitor *existing* claimants). Counties may suspend tax credit eligibility for noncompliance (as under current law).

What will WLI do for farmers?

- Preserve agricultural lands on which the future of Wisconsin farming depends.
- Minimize land use conflicts that threaten agricultural enterprises.
- Provide enhanced, simplified tax incentives for farmers to keep land in agricultural use, and adopt soil and water conservation practices.
- Maintain the legitimate rights and prerogatives of land owners.
- Recognize current agricultural practices, infrastructure needs, and land use realities.
- Provide new tools that will allow farmers to supplement income and realize tax savings, while protecting farmland.
- Provide greater predictability and certainty, to facilitate farm investment decisions.
- Focus and coordinate agricultural preservation and development efforts.

What will WLI do for county and local governments?

- Minimize increasingly serious and costly land use conflicts.
- Encourage sound planning and development, and offer planning resources.
- Provide greater local flexibility consistent with farmland preservation, including flexibility in the design of land use plans, zoning ordinances and “agricultural enterprise areas.”
- Facilitate public-private cooperation, and locally-driven solutions.
- Eliminate cumbersome procedural requirements, and streamline state approvals.
- Make it easier for local governments to integrate farmland preservation planning with comprehensive planning (without mandating comprehensive plans).
- Preserve local decision-making and choice.

What will WLI do for other users of land?

- Maintain a clean environment, strong local communities, and high quality of life.
- Encourage harmonious resolution of land use issues.
- Minimize increasingly serious and costly land use conflicts.
- Facilitate sound development, consistent with farmland preservation.
- Update farmland preservation plans and zoning standards to recognize current land use realities and development needs.
- Maintain a healthy business and investment climate. WLI will facilitate business and investment decisions by providing greater consistency, clarity and certainty.
- Maintain the legitimate rights and prerogatives of land owners.

What will WLI do for the State of Wisconsin?

- Preserve threatened agricultural resources, on which our entire future depends.
- Provide a modern, progressive framework for coordinating state and local planning, development and farmland preservation efforts.
- Maintain local leadership and control, and statewide cooperation.

- Maintain a strong, progressive agricultural and business climate.
- Maintain a healthy environment, strong local communities, and high quality of life.
- Streamline state government and processes.
- Maximize efficiency, and minimize state costs.
- Encourage new initiatives and new solutions.

2. Budget Impact

How will WLI affect the state budget deficit?

The Working Lands Initiative (WLI) will preserve farmland, promote agricultural development, reduce pollution from farm runoff, improve local planning, and enhance current tax credits for farmers. It will do all this at *no added cost* to the State of Wisconsin. WLI will pay for itself. Here is how it works:

- ***Consolidate and simplify current tax credits for maximum impact:***
 - Eliminate the outdated Farmland Tax Relief Credit (\$15 million per year), and substitute an expanded Farmland Preservation Tax Credit (increase to \$27.3 million per year, from current \$12.7 million). The money stays in agriculture, but the tax credit is tied to agricultural land preservation and conservation practices (“more bang for the buck”). Claimants must be located in farmland preservation zoning districts, or covered by individual farmland preservation agreements.
 - Allow current farmland preservation agreements to expire (they are widely scattered and unfocused). Limit new agreements to priority “agricultural enterprise areas,” for maximum collective impact. Expiration of current agreements will fund new agreements.
 - Do *not* change Use Value Assessment in any way.
- ***Shift current unused bonding authority to fund purchase of agricultural conservation easements (PACE):***
 - Use \$12 million in currently-unused bonding authority under the Conservation Reserve Enhancement Program (CREP) to fund a new PACE program (similar to programs that have worked well in other states).
 - No net increase in current bonding authority, but money stays in agriculture and strengthens high priority farmland preservation.
 - Bonding may fund up to 50% of the cost to purchase agricultural conservation easements from *willing landowners*. Cooperating entities (local governments and nonprofit conservation organizations) put up the remainder. Federal funding can help, and federal tax laws encourage farmer donations of land to cover part of the cost.

- ***Collect a rezoning “conversion fee” to discourage excessive conversion of farmland (and help pay for farmland preservation programs):***
 - Landowner pays a “conversion fee” to county or local government if land is rezoned out of a certified farmland preservation zoning district at the landowner’s request.
 - The basic “conversion fee” is 3 times the agricultural “use value” of the rezoned acreage.
 - County or local government may (by ordinance) require a supplementary fee to fund local farmland preservation work (WLI does not require).

- ***Create a state Working Lands Trust Fund:***
 - Annually deposit rezoning “conversion fee” revenues to a state Working Lands Trust Fund.
 - Beginning in the *FY 2011-13 biennium*, the trust fund will pay for all of the following (and possibly more, depending on actual “conversion fee” revenues):
 - PACE agricultural conservation easements (debt service on bond revenue funding).
 - Farmland preservation planning grants to counties.
 - Funding for *existing staff* to administer the farmland preservation and PACE programs (replace existing funding sources).

- ***Improve program efficiency:***
 - Avoid complex Land and Water Conservation Board certification process.
 - Allow DATCP to certify local plans and ordinances based on local self-certification (DATCP may audit as necessary).
 - Clarify and streamline current procedures.

How will WLI affect county and local budgets?

WLI helps counties pay for needed farmland preservation work, and avoids “unfunded mandates.”

- County and local governments choose whether to participate. There is no state mandate, but farmers in participating jurisdictions get tax credits.
- WLI provides planning grants to update county farmland preservation plans (most plans are more than 20 years out of date). WLI provides \$420,000 per year for farmland preservation planning grants to counties.
- WLI streamlines standards and procedures, and offers more local flexibility.
- Under its current Soil and Water Resource Management program, DATCP will continue funding county staff to monitor soil and water conservation compliance on farms receiving farmland preservation tax credits.
- County and local governments may charge rezoning “conversion fees” (in addition to the basic “conversion fee” described above) to pay for farmland preservation planning, zoning and conservation compliance work.

3. Farmland Preservation Planning

How will WLI promote better planning?

Planning is essential for farmland preservation. Population growth and development needs are straining scarce land resources. Planning can preserve farmland and minimize land use conflicts, but most county farmland preservation plans are more than 20 years out of date.

- WLI offers farmland preservation tax credits in counties that update their farmland preservation plans.
- Counties with the most development pressure must update first. WLI offers planning grants and technical assistance.
- WLI streamlines cumbersome state certification of county plans (required for tax credit eligibility). State certification may be based on county self-certification.
- WLI gives counties more flexibility in planning farmland preservation areas, based on current agricultural practices and land use realities.
- WLI makes it easier to integrate farmland preservation plans with county and local comprehensive plans, if any (WLI does not *require* comprehensive plans).

What are the incentives for counties?

Counties are not required to participate in the farmland preservation program. But there are strong incentives to participate:

- Participation will preserve valuable farmland, strengthen local economies, promote orderly development, protect the environment, minimize costly land use conflicts, facilitate investment decisions, and maintain a high quality of life.
- Farmers in participating counties will qualify for tax credits. WLI will augment current tax credits, and make them more attractive.
- WLI provides \$420,000 per year for farmland preservation planning grants to counties.

What must counties do to participate?

- A participating county must have a farmland preservation plan. DATCP must certify that the plan meets WLI standards (in order for farmers to claim tax credits). WLI simplifies the current standards and certification process.

- Counties currently participating in the farmland preservation program must update their plans (most plans are more than 20 years out of date, and no longer reflect current land use realities). If counties fail to update by a certain date, farmers will lose tax credit eligibility.

How soon must counties update their plans?

Updates must be certified between 2011 and 2015 (varies by county). Counties with the most development pressure must update first. The following deadlines are based on a county's *population growth per square mile* between 2000 and 2007:

- December 31, 2011 for a county with a growth rate of more than 9%.
- December 31, 2012 for a county with a growth rate of more than 3.75% but not more than 9%.
- December 31, 2013 for a county with a growth rate of more than 1.75% but not more than 3.75%.
- December 31, 2014 for a county with a growth rate of more than 0.8% but not more than 1.75%.
- December 31, 2015 for a county with a growth rate of not more than 0.8%.

Will WLI help pay for the planning effort?

Yes. DATCP will provide planning grants to help pay county costs. WLI provides \$420,000 per year for farmland preservation planning grants. A grant may reimburse up to 50% of a county's cost to prepare a plan. Grant amounts may vary (based on county size, etc.) but will average about \$30,000 per county. DATCP and UW will also provide technical assistance, background data and examples.

Does WLI simplify the planning process?

Yes. WLI does all of the following:

- Simplifies plan content standards and procedural requirements.
- Gives counties more flexibility.
- Makes it easier for a county to integrate its farmland preservation plan with its comprehensive plan if any (WLI does not require a county to have a comprehensive plan).

Does WLI simplify the plan certification process?

Yes. WLI does all of the following:

- Simplifies certification procedures.
- Avoids required certification by the Land and Water Conservation Board.
- Allows DATCP to certify based on county self-certification.
- Ensures 90-day turnaround.

What must a farmland preservation plan include?

A county determines the contents of its farmland preservation plan (WLI does *not* tell counties which land to target for preservation). But a county plan must do all of the following:

- State the county’s policy related to farmland preservation and agricultural development.
- Document overall development needs and trends that may affect farmland preservation and agricultural development (population growth, economic trends, housing, transportation, utilities, communications, business development, community facilities and services, energy, waste management, municipal expansion, environmental preservation, etc.).
- Describe all of the following (state agencies and UW-extension can help):
 - Current agricultural land uses in the county.
 - Key agricultural resources, including land, soil and water resources.
 - Key infrastructure for agriculture, including key processing, storage, transportation and supply facilities.
 - Significant trends related to agricultural land use, agricultural production, agricultural enterprises, and conversion of agricultural lands.
 - Anticipated changes in the nature, scope, location and focus of agricultural production, processing, supply and distribution.
 - County goals for agricultural development.
 - Actions that the county will take to preserve farmland and promote agricultural development.
 - Key land use issues related to farmland preservation and agricultural development, and plans for addressing those issues.
- Identify “*farmland preservation areas*” that the county plans to preserve for agriculture and related enterprises, such as agricultural processing.
 - A “farmland preservation area” is *not* just an unplanned multi-purpose rural area (what some jurisdictions call a “general agriculture” area).
 - A “farmland preservation area” is an area that the county *plans to preserve for agriculture and related uses* (it may also include natural resource preservation areas such as wetlands).
 - A “farmland preservation area” must be clearly mapped to show which land parcels are included.
 - Farmers in a “farmland preservation area” get tax credits if their land is covered by farmland preservation zoning (county or local) or by an individual farmland preservation agreement.

How does a county's farmland preservation plan relate to its comprehensive plan, if any?

A county's farmland preservation plan:

- Must be consistent with the county's comprehensive plan, if any (WLI does not require a comprehensive plan).
- Must be adopted as part of the comprehensive plan or, if adopted separately, incorporated into the comprehensive plan.
- May cross-reference information from the comprehensive plan (and vice versa).
- May be adopted using the same procedures (WLI eliminates current inconsistent procedures).

How does a county get its plan certified?

In order for farmers to claim tax credits, DATCP must certify that the county's farmland preservation plan meets WLI standards (see above). WLI greatly simplifies the current certification process, and guarantees a maximum 90-day turnaround. DATCP may certify based on county self-certification. A county need only submit the following:

- A copy of the county farmland preservation plan.
- A brief summary of the plan, including any changes from the previous plan (if any).
- A brief summary of the process by which the plan was developed, including public hearings, notice to affected local governments, county approval, and any key unresolved issues between the county and local governments.
- The relationship of the plan to the county comprehensive plan, if any.
- A statement, signed by the county corporation counsel and the county planning director or chief elected official, certifying that the plan meets applicable minimum requirements (see above).

DATCP may certify a plan for up to 10 years.

- DATCP must also certify plan amendments, if any (certification ends on the same date as the underlying plan certification).
- DATCP may certify a plan subject to conditions (if those conditions are needed to attain compliance with WLI standards).
- Although DATCP may certify based on the county's self-certification, DATCP has the option to review and independently verify the county's certification as necessary.

4. Farmland Preservation Zoning

Does WLI create state zoning?

No. All zoning decisions are made at the county or local level.

Does WLI change or limit county or local zoning authority?

No. WLI does not change or limit the current authority of county and local governments to adopt, amend, repeal and enforce zoning ordinances of their own choosing.

Does WLI *require* a county or local government to adopt a zoning ordinance, or to change any existing ordinance?

No. County and local governments are free to determine their own zoning regulations. However, farmers may claim tax credits if they are covered by a farmland preservation zoning ordinance that meets WLI standards. For this and other reasons, many county and local governments will want to adopt new farmland preservation ordinances or update their existing ordinances. Current tax credits will expire if existing ordinances fail to meet WLI standards, and are not updated to meet those standards.

How can a county or local government ensure that farmers will be eligible for state tax credits?

Farmers may claim tax credits if they are covered by a farmland preservation zoning ordinance that meets WLI standards. A county or local government may adopt a new ordinance, or update an existing ordinance to meet WLI standards. Some existing ordinances may require significant changes, but others may already meet the new standards.

In order for farmers to claim tax credits, DATCP must certify that existing, new or updated ordinances meet WLI standards. Tax credit eligibility under *existing* ordinances will expire if the ordinances are not re-certified by a certain date. WLI simplifies current certification standards and procedures.

If an existing ordinance is *not* re-certified, when will tax credits stop?

Existing certifications expire between 2012 and 2016 (dates vary by county) unless the current certification specifies a later date (some current certifications extend up to 10 years). If an ordinance is not re-certified by the relevant deadline date, farmers will no longer qualify for farmland preservation tax credits.

Counties with the most development pressure must re-certify their ordinances first. The following deadlines are based on a county's *population growth per square mile* between 2000 and 2007:

- December 31, 2012 for a county with a growth rate of more than 9%.
- December 31, 2013 for a county with a growth rate of more than 3.75% but not more than 9%.
- December 31, 2014 for a county with a growth rate of more than 1.75% but not more than 3.75%.
- December 31, 2015 for a county with a growth rate of more than 0.8% but not more than 1.75%.
- December 31, 2016 for a county with a growth rate of not more than 0.8%.

What standards apply to a certified ordinance?

In order to be certified (for tax credit purposes), a farmland preservation ordinance must meet all of the following criteria:

- The ordinance must clearly designate farmland preservation zoning districts in which land uses are limited according to WLI standards (see below).
 - Each district must be clearly mapped to indicate which land parcels are included.
 - Maps must be correlated to the ordinance text.
- The ordinance text must identify the types of land uses allowed in each farmland preservation district (WLI provides more flexibility than current law).
 - Allowed uses may vary, as long as they meet WLI standards.
 - Allowed uses may include “permitted uses” (allowed without a permit) and “conditional uses” (allowed by permit).
- The ordinance (county or local) must be substantially consistent with the county’s certified “farmland preservation plan.” Land included in a farmland preservation zoning district must be part of a “farmland preservation area” identified in the county plan.

How does a county or local government get its ordinance certified?

In order for farmers to claim tax credits, DATCP must certify that a farmland preservation ordinance meets WLI standards. WLI simplifies the current certification process, and guarantees a maximum 90-day turnaround. DATCP may certify an ordinance based on county and local self-certification. An applicant (county or local government) need only submit the following:

- A copy of the ordinance.
- A brief summary of the ordinance, including any changes from the previously certified ordinance (if any).

- A brief summary of the process by which the ordinance was developed, including public hearings, notice to other governmental units, county or local approval, and any key unresolved issues between governmental units.
- The relationship of the ordinance to the county’s certified farmland preservation plan, including any material inconsistencies between the ordinance and the plan.
- A statement, signed by the county planning director or chief elected official, certifying that the proposed farmland preservation zoning districts are located in “farmland preservation areas” identified in the certified county plan.
- A statement, signed by the applicant’s attorney or chief elected official, certifying that the ordinance meets applicable legal requirements.

DATCP may certify an ordinance for up to 10 years.

- DATCP must also certify ordinance amendments that comprehensively revise existing ordinances, or that extend coverage to new towns.
- DATCP may certify an ordinance subject to specified conditions (if those conditions are needed to attain compliance with WLI standards).
- Although DATCP may certify based on county and local self-certification, DATCP may independently verify as necessary.

What land uses are allowed in a “farmland preservation zoning district?”

A zoning ordinance must identify the types of land uses allowed in farmland preservation zoning districts (other uses are prohibited). County and local governments are free to determine allowed uses, as long as those uses are allowable under WLI standards. WLI identifies the general types of uses that are allowable. WLI does *not* allow industrial, commercial or urban residential uses that are inconsistent with farmland preservation.

An ordinance may allow some types of land uses as “permitted uses” (without a permit) and others as “conditional uses” (with a permit). Some types of land uses might fall into both categories, depending on size and other factors. For example, an ordinance might classify most livestock operations as “permitted uses,” but might require a “conditional use” permit for operations over 500 animal units (consistent with the state Livestock Facility Siting Law).

What about prior nonconforming uses?

When a farmland preservation zoning district is created or revised, there are often a few pre-existing land uses in the district that do not conform to the new zoning standards. Those “prior nonconforming uses” may continue, but may not be materially expanded or altered. Pre-existing non-farm residences may be enlarged or remodeled, as long as no new family dwelling units are added.

Can there be differences between farmland preservation zoning districts?

Yes, as long as the zoning standards comply with WLI and the differences are not arbitrary or capricious. For example, based on local land use plans and development goals, an ordinance might create one district mainly for large-scale agricultural production and processing, and another district mainly for small-scale farming and agri-tourism.

What land uses may be allowed as “permitted uses” (without a permit)?

Subject to general ordinance standards, an ordinance may allow any of the following as “permitted uses” (without a permit) in a farmland preservation zoning district:

- “Agricultural uses,” including any of the following:
 - Crop or forage production.
 - Keeping livestock (includes conventional livestock and other animals such as horses, farm-raised deer and farm-raised fish).
 - Beekeeping.
 - Nursery, sod or Christmas tree production.
 - Floriculture.
 - Aquaculture.
 - Fur farming.
 - Forest management (for example, land enrolled in Wisconsin’s managed forest program).
 - Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.
 - Other activities that DATCP may identify by rule.
- “Accessory uses,” including any of the following land uses on a farm:
 - Buildings, improvements, business operations and activities that are part of, or incidental to, an “agricultural use.”
 - A farm residence.
 - A non-agricultural enterprise, conducted by a farm operator, that does not require additional non-farm buildings, does not employ more than 4 full-time employees, and does not limit the current or future agricultural use of farmland (for example, a roadside stand, or a daycare or consulting business).
 - Other “accessory uses” that DATCP identifies by rule.
- “Agriculture-related uses,” including agricultural equipment, supply, storage, processing and waste processing facilities. DATCP may identify other “agriculture-related uses” by rule.

- Non-farm residences constructed in a residential “cluster” that meets WLI standards, provided that a conditional use permit has already been issued for the “cluster” development (see below).
- Undeveloped natural resource and open space areas.
- Transportation, utility, communication or other uses whose location is determined by preemptive state or federal actions.
- Other uses that DATCP identifies by rule.

What land uses may be allowed as “conditional uses” (with a permit)?

An ordinance may allow any of the following as “conditional uses” (with a permit) in a farmland preservation zoning district:

- “Agricultural” uses, including “accessory” and “agriculture-related” uses (see above).
 - Although these are often allowed as *permitted uses* (without a permit), an ordinance might require a permit in some cases.
 - For example, an ordinance might generally classify livestock operations as “permitted uses,” but might require a “conditional use” permit for operations over 500 animal units (consistent with the state Livestock Facility Siting Law).
- Non-farm residences or residential “clusters” that meet WLI standards for farmland preservation districts (see below).
- Transportation, communications, pipeline, electric transmission, utility or drainage uses that meet WLI standards for farmland preservation districts (see below).
- Governmental, institutional, religious or nonprofit community uses that meet WLI standards for farmland preservation districts (see below).
- Nonmetallic mineral extraction that meets WLI standards for farmland preservation districts (see below).
- Oil and gas exploration or production that is licensed by the Wisconsin Department of Natural Resources.
- Other uses that DATCP authorizes by rule.

What is a “farm residence” versus a “non-farm residence?”

A “farm residence” is normally allowed as a “permitted use” (without a zoning permit) in a farmland preservation zoning district (ordinances may vary). Under WLI, a “non-farm residence” *always* requires a permit unless constructed in a residential “cluster” for which a permit has already been issued. “Non-farm residences” and residential “clusters” must meet WLI standards for farmland preservation districts.

A “farm residence” means any of the following structures located on a farm parcel:

- A single-family or duplex residence that is the only residential structure on the farm *or* is occupied by any of the following:
 - An owner or operator of the farm.
 - A parent or child of an owner or operator of the farm.
 - An individual who earns more than 50% of his or her gross income from the farm.
- A state-certified migrant labor camp.

A “non-farm residence” means any single-family or multi-family residence other than a “farm residence.”

What are the standards for a “non-farm residence” in a farmland preservation zoning district?

A non-farm residence *always* requires a permit unless constructed in a residential “cluster” for which a permit has already been issued (see below). A zoning authority may issue a permit for a non-farm residence if all of the following apply (the ordinance may specify more restrictive standards):

- The ratio of non-farm residential acreage (house *and lot*) to farm acreage on the “base farm tract” will be not more than 1 to 20. A “base farm tract” includes all contiguous land that is part of a single farm when the zoning district is first certified under WLI.
- There will be no more than 4 dwelling units in non-farm residences (nor more than 5 dwelling units in residences of any kind) on the “base farm tract.”
- The location of the non-farm residence (house *and lot*) will not do any of the following:
 - Convert prime farmland if there are reasonable alternative locations.
 - Significantly impair or limit the current or future agricultural use of other protected farmland.

There is *no minimum lot size requirement* under WLI.

- Many farmland preservation ordinances currently require 35 acre lots, which can actually encourage “sprawl.”
- WLI allows for more compact development, subject to density standards (see above).
- Under WLI, a county or local government may elect to keep *or eliminate* its current 35-acre lot size requirement, as long as the ordinance meets the new WLI standards.

What are the standards for a “non-farm residential cluster” in a farmland preservation zoning district?

A zoning authority may issue a permit for a “non-farm residential cluster,” on which 2 or more non-farm residences may be constructed, if all of the following apply (the ordinance may specify more restrictive standards):

- The non-farm residences will be constructed on contiguous parcels.
- Restrictive covenants ensure that, if *all* of the residences are constructed, *each residence* will meet the WLI standards for non-farm residences (see above).

What are the standards for transportation, communications, pipeline, electric transmission, utility, and drainage uses in a farmland preservation zoning district?

These non-agricultural uses are allowed only by permit (unless their location is determined by preemptive state or federal action). A permit may be issued for uses that meet the following standards (the ordinance may specify more restrictive standards):

- The use and its location are consistent with the purposes of the farmland preservation district.
- The use and its location are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- The use is reasonably designed to minimize conversion of land.
- The use does not substantially impair or limit the current or future agricultural use of surrounding parcels.
- Construction damage to agricultural land is minimized, and repaired to the extent feasible.

What are the standards for governmental, institutional, religious or nonprofit community uses of land in a farmland preservation zoning district?

These non-agricultural uses are allowed only by permit (unless their location is determined by preemptive state or federal action). A permit may be issued for uses that meet the following standards (the ordinance may specify more restrictive standards):

- The use and its location are consistent with the purposes of the farmland preservation district.

- The use and its location are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- The use is reasonably designed to minimize conversion of land.
- The use does not substantially impair or limit the current or future agricultural use of surrounding parcels.
- Construction damage to agricultural land is minimized, and repaired to the extent feasible.

What are the standards for nonmetallic mineral extraction operations (such as gravel pits) in a farmland preservation zoning district?

A zoning authority may issue a permit for nonmetallic mineral extraction if all of the following apply (the ordinance may specify more restrictive standards):

- The operation complies with applicable Department of Natural Resources and Department of Transportation requirements.
- The operation and its location are consistent with the purposes of the farmland preservation district.
- The operation and its location are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
- The operation is reasonably designed to minimize conversion of land.
- The operation does not substantially impair or limit the current or future agricultural use of surrounding parcels.
- The ordinance requires the operator to restore the land to agricultural use, consistent with any required locally approved reclamation plan, when extraction is completed.

May land be rezoned out of a farmland preservation district?

Yes. A county or local government may rezone land out of a farmland preservation zoning district, using normal rezoning procedures. But land may not be rezoned at the request of a landowner unless all of the following apply:

- The zoning authority makes the following findings, after public hearing:
 - The land is better suited for a use that is not allowed in the farmland preservation zoning district.
 - The rezoning is consistent with the county or local comprehensive plan, if any.
 - The rezoning is substantially consistent with the county farmland preservation plan.
 - The rezoning will not substantially impair or limit current or future agricultural use of surrounding land that is zoned or legally restricted to agricultural use.
- The landowner pays a “conversion fee,” for the rezoned acreage, equal to 3 times current “use value” (the zoning ordinance may impose a “supplementary” fee in addition to this “basic” fee).

By March 1 of each year, a county or local government must report to DATCP the total acres rezoned during the preceding year, and must submit to DATCP all of the “basic” rezoning “conversion fees” collected during the previous year. DATCP must deposit these “conversion fee” revenues to the Working Lands Trust Fund.

The county or local government may keep any “supplementary” conversion fees that it collects, and may use those fee revenues for farmland preservation planning, zoning and conservation compliance work.

Is agricultural land in a farmland preservation district exempt from special sewer and water assessments?

Yes. However, a local government may deny the use of improvements for which the special assessment is levied unless the landowner pays the assessment voluntarily (same as current law).

5. Farmland Preservation Agreements

What is a farmland preservation agreement?

Under current law, farmers in participating counties may claim tax credits if their land is covered by a “farmland preservation agreement.” A farmland preservation agreement is a contract between a farmer and DATCP, under which the farmer agrees to keep land in agricultural use for a period of time specified in the agreement. *Under current law*:

- The land must be located in a *farmland preservation area* identified in the county’s certified farmland preservation plan.
- A farmer may claim tax credits under an agreement, even if the land is not covered by farmland preservation *zoning*. But tax credits are higher if the land is also zoned.
- An agreement may be for a term of 10 to 25 years.
- An agreement is recorded with the county register of deeds, and is binding on subsequent landowners for the term of the agreement.
- An agreement may not be released, except for certain specified reasons.

How will WLI change the use of farmland preservation agreements?

Farmland preservation agreements are now widely scattered, and that limits their collective impact. WLI eliminates farmland preservation agreements, except in specifically targeted “agricultural enterprise areas” (see below) where they can have a more focused collective impact. The cost savings will help fund WLI.

- New agreements must be for at least 15 years.
- Existing agreements remain in effect until their scheduled termination date, but may not be renewed (except in “agricultural enterprise areas”).
- The parties may amend an existing agreement so that the farmer may claim (higher) tax credits under WLI for the duration of the existing agreement.
- WLI simplifies the process for creating new agreements.
- DATCP may release an agreement at any time if all of the following apply:
 - All owners of the covered land consent.
 - DATCP finds that the release will not impair or limit agricultural use of other protected farmland.
 - The landowners pay a “conversion” fee equal to 3 times the “use value” of the land (fee revenues are deposited to the Working Lands Trust Fund).

6. Soil and Water Conservation

How will WLI reduce soil erosion and pollution runoff on farms?

Under WLI (as under current law), farmers who claim farmland preservation tax credits must comply with state soil and water conservation standards, including pollution runoff standards.

- Farmers claiming tax credits must comply with the standards, regardless of whether they receive any other cost-sharing.
- Enhanced tax credits will make it more attractive for farmers to participate (farmers are not *required* to claim tax credits).

How will compliance be monitored?

- Farmers claiming tax credits must certify, on their tax form, that they are complying.
- Counties will monitor compliance, as they do under current law (DATCP provides county staffing grants under current Soil and Water Resource Management program). Under WLI, counties must inspect each claimant's farm at least once every 4 years.
- A first-time claimant must include a county certificate of compliance with the claimant's tax form (*not required* for existing claimants, who are already monitored).
- County may withdraw tax credit eligibility for noncompliance (as under current law). DATCP rules spell out the procedure, which ensures "due process" for affected farmers.

What standards apply?

Farmers claiming tax credits must comply with farm conservation standards that DATCP has adopted by rule. All of the standards can be found in Wisconsin Administrative Code chapter ATCP 50. The ATCP 50 standards provide a "one-stop reference" because:

- They incorporate and implement applicable pollution runoff standards adopted by the Department of Natural Resources.
- Counties are no longer required to adopt their own standards. All farmers claiming tax credits must meet the same statewide standards. WLI eliminates the current requirement for counties to adopt their own standards (consistent with ATCP 50), and have those standards approved by the Land and Water Conservation Board.

How will WLI affect a county's conservation compliance workload?

- Counties already monitor conservation compliance by farmers who claim farmland preservation tax credits. DATCP provides annual county staffing grants for this purpose, under its Soil and Water Resource Management program.
- WLI offers more attractive tax credits for farmers, which could increase farmer participation. WLI also requires counties to inspect participating farms at least once every 4 years. That could increase county workload for initial compliance certification and ongoing monitoring.
- DATCP will be cognizant of county workload changes, if any, when it awards annual staffing grants to counties under its Soil and Water Resource Management program.
- Counties may charge rezoning "conversion fees" under county farmland preservation zoning ordinances (county fees, if any, are added to the minimum "conversion fee" required by WLI). Counties may use the fee revenues to pay for farmland preservation work, including conservation compliance work.

7. Enhanced Tax Credits for Farmers

Who may claim farmland preservation tax credits under WLI?

An owner of farmland (*any size farm*) may claim farmland preservation tax credits (*income tax credits*) if all of the following apply:

- The farm is located in a certified *farmland preservation zoning district* or is covered by an individual *farmland preservation agreement*.
- The farm produced at least \$6,000 in “gross farm revenues” during the relevant tax year (or at least \$18,000 in “gross farm revenues” during the last 3 years including the relevant tax year).
- The claimant paid, or is legally responsible for paying, property taxes on the farm for the relevant tax year.
- The farm is in compliance with state soil and water conservation standards (ATCP 50). New claimants must submit a *one-time* certificate of compliance from the county land conservation committee (*not* required if the farmer received tax credits in the previous year under the old or new law). The county may withdraw certification if the farm falls out of compliance.

What are “gross farm revenues”?

“Gross farm revenues” means gross receipts from “agricultural use” of a farm (*excluding rent receipts*), less the cost of livestock or other agricultural items purchased for resale which are sold or otherwise disposed of during the taxable year.

What is “agricultural use?”

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

- Crop or forage production.
- Keeping livestock. “Livestock” includes cattle and other bovine animals, swine, poultry, sheep, goats, horses and other equines, farm-raised deer, farm-raised game birds, camelids (llamas and alpacas), ratites (ostriches and emus) and farm-raised fish.
- Beekeeping.
- Nursery, sod or Christmas tree production.
- Floriculture.
- Aquaculture.
- Fur farming.
- Forest management (for example, land enrolled in a managed forest program).
- Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.
- Other activities that may be identified by DATCP rule.

How is the tax credit computed?

The new farmland preservation tax credit is a flat per-acre amount (it is no longer based on farm income or on the size of a claimant's property tax payments). That will make it much easier for farmers to claim and compute the credit. There is no longer any eligibility cap based on farm income. If the credit exceeds the claimant's pre-credit tax liability, the claimant gets the difference as a tax refund.

What is the tax credit amount?

A farm owner may claim the following farmland preservation tax credit (income tax credit) on qualifying farm acreage:

- \$10 per acre if the qualifying acres are located in a certified farmland preservation zoning district and are *also* covered by an individual farmland preservation agreement (new agreements are only available in "agricultural enterprise areas" designated under WLI).
- \$7.50 per acre if the qualifying acres are located in a certified farmland preservation zoning district, but are *not* covered by an individual farmland preservation agreement).
- \$5 if the qualifying acres are covered by an individual farmland preservation agreement, but are *not* located in a certified farmland preservation zoning district. New agreements are available only in "agricultural enterprise areas" designated under WLI. Existing agreements may be amended so that farmers covered by those agreements may claim the new (higher) credit for the remaining term of the agreement.

The Department of Revenue may adjust tax credit amounts between years, as necessary, to keep total costs within appropriation limits (just as it does now for the Farmland Tax Relief Credit).

What acreage qualifies?

A farm owner may claim tax credits on *all* of the acreage comprising a farm, even if some of that acreage (such as wetland, the farmhouse and yard, or an unmanaged woodlot) is not strictly devoted to "agricultural use." But in order for a farm owner to claim tax credits, the land comprising the entire farm must be *primarily* devoted to agricultural use.

If only part of a farm is located in a certified farmland preservation zoning district or covered by a farmland preservation agreement, the farm owner may claim tax credits only for the covered acreage. If an entire farm is jointly owned by 2 or more persons, each person may claim tax credits on a share of the total farm acreage that is proportionate to the person's farm ownership share.

What if a farm is rezoned or transferred during the tax year?

A farm owner may *not* claim tax credits on a farm that is rezoned out of a farmland preservation zoning district during the relevant tax year, *unless* one of the following applies:

- The farm is covered by an individual farmland preservation agreement.
- The claimant transferred ownership of the farm during the tax year and all of the following apply:
 - The farm was located in a farmland preservation zoning district when the transfer occurred.
 - The claimant paid the farm property taxes for that year.

If a farm is transferred during the tax year, the buyer and seller may share in the tax credit based on their respective shares of the property tax payment for that year (if one party pays the entire annual property tax bill, that party gets the entire credit). A land contract is considered a transfer of ownership (even though the seller technically retains title until contract payments are completed over a period of years).

When does the tax credit become available?

The *enhanced farmland preservation tax credit* will first become available for the 2010 income tax year (tax paid in 2011).

- *Current* farmland preservation and farmland tax relief credits will continue to apply in the 2009 tax year, but will be replaced by the *enhanced farmland preservation tax credit* beginning with the 2010 tax year.
- Farmers covered by an *existing* farmland preservation zoning ordinance *will be eligible* for the *enhanced farmland preservation tax credit* beginning with the 2010 tax year. However, that eligibility will eventually expire unless the ordinance is recertified for compliance with new WLI zoning standards.
- Farmers covered by an *existing* farmland preservation agreement may elect to claim the *enhanced farmland preservation tax credit* (in lieu of the current credit) beginning with the 2010 tax year. However, their eligibility for farmland preservation tax credits will expire when their current agreements expire (they may still claim tax credits if they are covered by zoning). DATCP will not renew existing agreements, except designated “agricultural enterprise areas.”

8. Agricultural Enterprise Areas

What is an “agricultural enterprise area?”

An “agricultural enterprise area” is a contiguous land area, devoted primarily to agricultural use, which DATCP designates as an “agricultural enterprise area” in response to a local application. An “agricultural enterprise area” is locally targeted for agricultural preservation and development.

Who designs an “agricultural enterprise area?”

Local governments and land owners play the leading role in planning and designing “agricultural enterprise areas.” “Agricultural enterprise areas” are flexible enough to meet different local conditions and goals. The designation of an “agricultural enterprise area” may be one helpful part of a locally-coordinated effort to preserve farmland and promote agricultural development.

What are the goals?

Agricultural preservation and development are the primary goals. But an “agricultural enterprise area” may also serve other compatible goals, and may include compatible land uses such as environmental preservation. It may also include compatible infrastructure that supports agriculture (transportation, communication, supply and processing facilities, energy production, agri-tourism, etc., depending on the local vision).

Is land use restricted in an “agricultural enterprise area?”

The designation of an “agricultural enterprise area” does not, by itself, control or limit land use within the designated area (it is not a zoning ordinance). However:

- Farmers in the designated area may enter into voluntary farmland preservation agreements with DATCP. Those farmers will receive income tax credits in return for keeping their land in agricultural use (15-year agreement). Under WLI, such agreements will *only* be available to farmers in “agricultural enterprise areas.”
- A county or local government *may* support the “agricultural enterprise area” with zoning restrictions (but is not required to do so). Farms covered by a certified farmland preservation zoning ordinance are eligible for even higher tax credits.
- A local application may cite other locally-organized land use or development efforts (agricultural conservation easements, development grants, etc.) that will contribute to the success of the “agricultural enterprise area.”

What are the minimum requirements for an “agricultural enterprise area?”

An “agricultural enterprise area” must meet the following minimum requirements:

- It must be a contiguous land area. There is no minimum size requirement, but DATCP must give preference to areas that include at least 1,000 contiguous acres.
- It must be *primarily* in agricultural use (actual farming, which may include forest management). However, it may also include compatible land uses such as environmental preservation and infrastructure development that supports agriculture.
- It must be included within a farmland preservation area designated under a certified *county farmland preservation plan* (it *may* also be covered by a farmland preservation zoning ordinance, but that is not required).
- Other minimum requirements, if any, that DATCP specifies by rule.

Who can apply for designation of an “agricultural enterprise area?”

The designation of an “agricultural enterprise area” must be based on a local application that demonstrates a cooperative local commitment to agricultural preservation and development in the designated area. The application *must* be signed by all of the following (it *may* also be signed by other interested parties or landowners):

- The county in which the proposed “agricultural enterprise area” is located (if the area is in 2 or more counties, all counties must sign).
- Each town or municipality in which the proposed “agricultural enterprise area” is located.
- Owners of at least 5 working farms in the proposed “agricultural enterprise area.” An application need *not* be signed by all of the farmers in the proposed area.

What must an application include?

An application *must* include all of the following information (it *may* include any other information that the applicants wish to submit in support of the application):

- The name and address of each applicant.
- A summary of the application, including purpose and rationale.
- A map that clearly identifies the boundaries of the proposed area.
- Documentation showing that the proposed area meets the minimum requirements for designation of an “agricultural enterprise area” (see above).
- A clear description of current land uses in the proposed area.
- A clear description of agricultural land use and development goals for the area (including any complementary non-agricultural land use and development goals).
- A plan for achieving the agricultural land use and development goals, including any planned land use controls, land purchases, investments, grants, financial incentives, cooperative agreements, promotion and public outreach.

- A clear description of current and proposed land use controls in the area, *if any* (zoning ordinances, farmland preservation agreements, purchases of agricultural or conservation easements, private restrictive covenants, land donations, etc.).

If a local application meets minimum requirements, is approval guaranteed?

No. An application must meet minimum standards in order to be considered. However, DATCP may approve or disapprove qualified applications, and may choose among competing applications. DATCP will consider the overall quality of the applications, including:

- Stated local goals.
- Demonstrated local commitment and cooperation.
- The likely effectiveness of the local plan for achieving agricultural preservation and development.

Local conditions, goals, opportunities and strategies may differ. DATCP expects, and welcomes, a variety of different local approaches.

Is there a limit on the number of “agricultural enterprise areas” that DATCP may designate?

In the first 2 years of the program (prior to January 1, 2012), DATCP may designate no more than 10 “agricultural enterprise areas” encompassing a combined total of no more than 200,000 acres. Eventually, DATCP may designate “agricultural enterprise areas” encompassing a combined total of up to one million acres (about the size of Marathon County).

Why limit the number of designated “agricultural enterprise areas?”

The limits are designed to focus agricultural preservation and development efforts, and encourage a strong local focus. There is also a fiscal rationale. Because the designation of “agricultural enterprise areas” makes farmers in those areas eligible for tax credits, there is a cost to the state. WLI creates a limited “pilot” program in the first 2 years, to assess workability and cost. The program may ultimately be expanded to include up to one million acres.

What is the likely cost to the state?

In the long term, if DATCP approves “agricultural enterprise areas” totaling one million acres, the total state revenue cost will be about \$8 million per year. Most of that cost will be offset by the expiration of farmland preservation agreements under the current farmland preservation program (the “working lands” legislation will halt the creation or renewal of farmland preservation agreements *except* in “agricultural enterprise areas,” where they can have a more focused collective impact).

How will DATCP designate “agricultural enterprise areas?”

The designation of “agricultural enterprise areas” will have a state revenue impact, and will make some farmers eligible for tax credits that are not available to farmers outside the designated areas. It is therefore important to designate those areas in a formal, open and transparent way.

WLI requires DATCP to designate “agricultural enterprise areas” by administrative rule. Because the normal rulemaking process takes so long, DATCP is authorized to use a modified “emergency” rule process:

- DATCP is *not* required to make the normal “finding of emergency.”
- DATCP *is* required to hold a public hearing.
- DATCP must publish the rule in the official state newspaper (the rule takes effect upon publication).
- DATCP must notify all state legislators.

How long will “agricultural enterprise areas” remain in effect?

An “agricultural enterprise area” will remain in effect indefinitely, until it is repealed or modified by rule. If an “agricultural enterprise area” is repealed, DATCP will no longer enter into farmland preservation agreements with farmers in that area. However, farmers may continue to claim tax credits under existing agreements until those agreements expire.

Who is eligible for tax credits in an “agricultural enterprise area?”

Farmers in an “agricultural enterprise area” may enter into *voluntary* farmland preservation agreements with DATCP. Under those agreements, the farmers will receive income tax credits in return for keeping their land in agricultural use. Such individual agreements will *only* be available to farmers in “agricultural enterprise areas.”

An eligible farm must show at least \$6,000 in “gross farm revenues” in the past year, or \$18,000 over the past 3 years. “Gross farm revenues” include receipts from agricultural operations, including receipts from managed woodlot operations, commodity programs and conservation programs (but *not* rent receipts).

An “agricultural enterprise area” must be primarily devoted to agricultural use (farming). It may also include other agriculture-related and non-agricultural uses (agricultural supply and processing facilities; transportation, communication and utility uses; occasional non-farm residences, etc.) But only farmers can enter into farmland preservation agreements and claim tax credits.

A farmer in an “agricultural enterprise area” may enter into a farmland preservation agreement, and claim tax credits, even if the farmer was not one of those signing the original application to designate the area (see above). No farmer is *required* to enter into a farmland preservation agreement.

What is the size of the farmland preservation tax credit?

A farmer in an “agricultural enterprise area” may qualify for the following applicable income tax credit:

- \$5 per acre for land that is covered by a farmland preservation agreement, but is *not* located in a certified farmland preservation zoning district.
- \$7.50 per acre for land that is covered by a certified farmland preservation zoning district, but is *not* covered by a farmland preservation agreement.
- \$10 per acre for land that is covered by a farmland preservation agreement *and* a farmland preservation zoning district.

Under WLI, new farmland preservation agreements will *only* be available to farmers in “agricultural enterprise areas.” The Department of Revenue may adjust tax credit amounts between years, as necessary, to keep total costs with appropriation limits (just as it does now for the Farmland Tax Relief Credit).

Are farmers in “agricultural enterprise areas” protected from encroaching development and land use conflicts?

The designation of an “agricultural enterprise area” does not, by itself, control or limit land uses in the designated area (it is not a zoning ordinance). However, it can be an attractive part of a local land use and development “package” that can preserve, protect and promote agricultural enterprise. The availability of farmland preservation tax credits provides an extra incentive for farmers to participate.

A local “package” may include a variety of local initiatives including farmland preservation zoning, voluntary farmland preservation agreements, agricultural and conservation easements, land purchases, private land use covenants and donations, development grants, cooperative agreements, financial incentives and more. The emphasis is on local initiative, local planning and local cooperation to address a wide variety of different local conditions and local visions.

The designation of an “agricultural enterprise area” does not automatically qualify the designated area for state development grants or other financial assistance, nor does it automatically protect the area from the exercise of land condemnation authority (e.g., for highway or utility construction). But it is a significant factor that may be considered by responsible government authorities.

How are “agricultural enterprise areas” related to “agricultural development zones” designated by the Wisconsin Department of Commerce?

There is no direct connection (yet). But, over time, the designation of “agricultural enterprise areas” may help focus state agricultural development assistance, and add a critical land use dimension to state agricultural promotion efforts.

9. Agricultural Conservation Easements (PACE)

What is an agricultural conservation easement?

- WLI creates a new state program (PACE) to purchase agricultural conservation easements from *willing landowners*. This is an added tool for preserving important agricultural land.
- An easement restricts nonagricultural development of the covered land, but the farmer retains ownership. Participating farmers can augment their income while continuing to farm the land.
- An easement runs with the land. The farmer may sell the land, but the easement is still in place (it is binding on subsequent landowners).
- An easement continues indefinitely, but a court may vacate an easement that no longer serves its intended purpose.

How will the PACE easement program work?

- DATCP will work with cooperating entities (local governments or nonprofit conservation organizations) to purchase agricultural conservation easements under the new PACE program.
- Easements must be consistent with county and local land use plans and zoning ordinances. DATCP may give priority to “agricultural enterprise areas.”
- DATCP may pay up to 50% of the fair market value of the *easement* (not 50% of the total land value, since the farmer still owns and operates the land).
- The cooperating entity must arrange for the rest of the easement purchase cost, but may get funding from other sources. Farmers may also donate part of the easement value, to get favorable federal tax treatment.
- The State of Wisconsin will be a joint holder of the easement, with the cooperating entity.
- DATCP must appoint an advisory council to advise DATCP on proposed easements.

How will PACE be funded?

The State of Wisconsin may issue up to \$12 million in bonds to fund the PACE program. This new bonding authority is offset by a reduction in unused bonding authority under the Conservation Reserve Enhancement Program (CREP). The money stays in agriculture, but there is no net increase in state bonding authority. The \$12 million bond revenue authorization may be used over a number of years (it is *not* an *annual* authorization).

Beginning in the FY 2011-12 biennium, debt service on the revenue bonds will be largely funded from the Working Lands Trust Fund (“conversion fees” paid by landowners whose land is rezoned out of farmland preservation zoning districts at their request). Depending on the amount of “conversion fee” revenues available, the Working Lands Trust Fund may also be used as a direct source of funding for PACE grants (supplementing or replacing bond revenue funding).

How will DATCP identify easement opportunities?

DATCP will solicit easement proposals at least annually, in consultation with an advisory council. DATCP will issue each solicitation in writing, and publish notice of the solicitation. In each solicitation, DATCP will describe available funding amounts, application deadlines, application procedures, and preliminary criteria for evaluating easement proposals.

Who may submit an easement proposal?

A “cooperating entity” (local government or qualified nonprofit conservation organization) may submit an easement proposal. A proposal must initially include all of the following:

- The identity of the cooperating entity, and information showing that it is a qualified entity.
- A description of the land that would be subject to the proposed easement, including location, acreage and current use.
- The name and address of each owner of the land.
- Evidence that all of the owners are willing to convey the proposed easement.
- A commitment to arrange the easement purchase and share in the purchase cost, subject to DATCP reimbursement of its agreed share.
- The purpose and rationale for the proposed easement.
- Information that DATCP needs to evaluate the easement proposal (see criteria below).

How will DATCP evaluate easement proposals?

DATCP must determine that the proposed easement will serve a public purpose (required for bond revenue funding). In making that determination, DATCP must consider all of the following:

- The value of the easement in preserving agricultural production capacity.
- The importance of the easement in protecting or enhancing waters of the state or other public assets.
- The extent to which the easement will conserve important or unique agricultural resources.
- The extent to which the easement will be consistent with county and local farmland preservation plans and zoning ordinances.
- The extent to which the easement will enhance an “agricultural enterprise area” designated under WLI (see above).
- The availability, practicality and effectiveness of other methods to preserve the land in question.
- The proximity of the land to other land that is protected for agricultural or conservation use, and the extent to which the easement will enhance that protection.
- The likely cost-effectiveness of the easement.

- The likelihood that, without the easement, the land will be converted from agricultural use.
- The apparent willingness of all the landowners to convey the easement.

If DATCP gives preliminary approval, what must the applicant do?

DATCP, after consulting with an advisory council, may give preliminary approval to an easement proposal. Before any contract is signed, the cooperating entity must submit all of the following to DATCP:

- A copy of the proposed legal document that will be used to convey the easement.
- A professional appraisal (by a state-certified appraiser) showing the fair market value of the proposed easement.
- The easement purchase cost.
- An estimate of the transaction costs that the cooperating entity will incur in connection with the easement purchase (out-of-pocket expenses for land surveys, land descriptions, appraisals, title verification, preparation of legal documents, reconciliation of conflicting property interests, documentation of existing land uses, and closing).
- A complete title search.
- Documentation showing, to DATCP’s satisfaction, that any material title defects or conflicting property interests have been resolved.

How does the easement purchase proceed?

If everything is in order, DATCP may enter into a contract authorizing the cooperating entity to proceed with the easement purchase. The cooperating entity must initially pay the full purchase and transaction costs. DATCP will then reimburse the cooperating entity for its agreed share.

DATCP may agree to reimburse up to 50% of the appraised value of the easement, and all of the transaction costs. The cooperating entity may accept contributions from other sources to help finance its share of the purchase cost (the farmer may also donate a portion of the appraised value of the easement, to get favorable federal tax treatment).

When the easement document has been signed by the landowner and accepted by the cooperating entity, the cooperating entity must submit it for DATCP acceptance. Upon DATCP acceptance, the cooperating entity must record the document with the county register of deeds, provide DATCP with a certified copy, and submit proof of payment (purchase and transaction costs). DATCP will then reimburse the cooperating entity for its agreed share of the costs.

What are the terms of the easement?

Terms may vary, but the following minimum requirements apply:

- The easement must prohibit development that would make the covered land unavailable or unsuitable for agricultural use.
- The easement must continue indefinitely, except that a court may terminate an easement that no longer serves its intended purpose.
- DATCP and the cooperating entity must be joint holders of the easement.
- The cooperating entity may not transfer or relinquish its interest without 60 days prior notice to DATCP. The transfer or relinquishment of the cooperating entity's interest does not affect DATCP's interest.
- Either DATCP or the cooperating entity may enforce and defend the easement.