



Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Agricultural Resource Management
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Rev.(10/10)

Farmland Preservation Program (ch. 91, Wis. Stats.)

Farmland Preservation Agreements INSTRUCTIONS

What Is a Farmland Preservation Agreement?

A *farmland preservation agreement* is a voluntary agreement between the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) and a farm owner:

- The farm owner agrees to preserve land for agricultural use and comply with state soil and water conservation standards.
- In return, the farm owner may claim state farmland preservation tax credits on the covered land. The covered land is also exempt from special assessments for sanitary sewers and water.
- A farmland preservation agreement runs with the land and is binding on subsequent owners of the covered land for the term of the agreement.

Law Changes

2009 Wisconsin Act 28 changed the law under which farmland preservation agreements are created. The new law took effect on July 1, 2009. This document explains the procedure for entering into a farmland preservation agreement under the new law.

Under the new law:

- Farmland preservation agreements may only be created in *agricultural enterprise areas*. DATCP designates these areas in response to local petitions.
- Agreements made under the old law remain in effect, but may not be renewed when they expire.
- Farmers in *agricultural enterprise areas* may enter into new 15-year agreements, and may claim enhanced tax credits under the new law. (Only Wisconsin residents may claim tax credits.)
- Tax credits are paid as a flat amount per acre of covered land (\$5 per acre, or \$10 per acre if the land is also covered by farmland preservation zoning).
- An agreement may cover *all or part* of a farm. However, the entire farm must comply with state soil and water conservation standards in order for the landowner to claim tax credits on that portion of the farm that is covered by the agreement. Please contact your local land conservation department with questions related to compliance.
- Land covered by an agreement is restricted to the following uses:
 - *Agricultural uses.*
 - *Accessory uses* such as farmhouses, farm structures, and farm activities that are incidental to an agricultural use.
 - *Undeveloped natural resource and open space uses.*
 - *Minor pre-existing uses*, such as local telephone lines, which are compatible with agricultural use.

Eligible Land

Under the new law, land is eligible for a farmland preservation agreement if ***all*** of the following apply:

- The land is operated as part of a farm that produced at least \$6,000 in *gross farm revenues* during the tax year preceding the year in which the landowner applies for the agreement, or a total of at least \$18,000 in gross farm revenues during the last 3 tax years preceding the year in which the landowner applies for the agreement. *Gross farm revenues* means gross receipts from *agricultural uses*, less the cost or other basis of livestock or other agricultural items purchased for resale which are sold or otherwise disposed of during the taxable year. *Gross farm revenue* includes receipts accruing to a renter, but does not include rent paid to the landowner. However, gross farm revenue produced by the renter on the landowner's farmland can be used to meet this eligibility requirement. Only the farm *owner* may claim tax credits.
- The land is located in a *farmland preservation area designated in a certified county farmland preservation plan*.
- The land is located in an *agricultural enterprise area* that DATCP has designated by rule under s. 91.84, Wis. Stats., in response to a local petition.

Current Land Uses and Stakeholders

A landowner applying for a farmland preservation agreement must disclose all of the following in the application (DATCP *may* require a formal title search or 3rd-party documentation, but does not ordinarily do so):

- *Other owners of the affected farm.* All owners must sign the farmland preservation agreement.
- *Persons holding other real estate interests in the farm* (such as land contract, mortgage, lien, lease, easement, right-of-way or mineral interests). These persons may also need to sign the agreement (acknowledging that their interests are subject to the agreement).
- *Existing land uses on the farm.*

DATCP may exclude land from coverage if conflicting land uses, clouds on title, or conflicting real estate interests are not resolved to DATCP's satisfaction.

CONSENT TO SUBORDINATE

Include a consent statement, signature and authentication, in the following form, for each of the following:

- The seller (or seller's successor in interest) under any existing land contract affecting the Covered Land.
- The holder of any existing real estate mortgage or lien on the Covered Land (does not include liens on growing crops, equipment, etc.).
- The holder or beneficiary of any existing easement, lease, reservation of mineral rights, or other encumbrance which applies to the Covered Land and which may materially affect this Agreement. If an encumbrance benefits another property, rather than a particular person, the current owner of that other property must sign the consent statement.

Applying for a Farmland Preservation Agreement

A landowner applying for a farmland preservation agreement must complete the attached FARMLAND PRESERVATION APPLICATION FORM and submit it to the *County Clerk of the county in which the land is located*. All required documentation must be attached to the application. A county may charge a reasonable processing fee for processing the application.

County Review

The county must review the application to determine whether the land covered by the proposed agreement meets all of the following requirements:

- The land is located in a *farmland preservation area* identified in the county's *certified farmland preservation plan*.
- The land is located in an *agricultural enterprise area* that DATCP has designated by rule under s. 91.84, Wis. Stats.

Within 60 days after the County Clerk receives a complete application, the county must make its findings and give a copy to the applicant. If the county finds that the above requirements are met, it must send the complete original application and attachments (with county findings) to DATCP.

DATCP Review

DATCP will review each application forwarded by a county. If everything is in order, DATCP may enter into a farmland preservation agreement with the landowner. DATCP may decline to enter into an agreement if any of the following apply:

- The application is incomplete.
- The covered land is not located in a farmland preservation area identified in a certified county farmland preservation plan.
- The covered land is not located in an agricultural enterprise area that DATCP has designated by rule under s. 91.84, Wis. Stats.
- The landowner fails to provide clarifying information or documentation reasonably required by DATCP.
- Any owner of the covered land, as well as mortgage/lien holders, fails or refuses to sign the agreement.
- The covered land is subject to conflicting uses or property interests that materially impair the purposes of the agreement, and the conflicts cannot be resolved to DATCP's satisfaction.

Agreement Form

DATCP will prepare a proposed farmland preservation agreement, based on the attached FARMLAND PRESERVATION APPLICATION FORM. An authorized DATCP official, and all owners of the covered land, must sign the agreement. Non-owners who hold a land contract, mortgage, leasehold, easement or other real estate interest in the covered land may also need to sign (acknowledging that their interests are subject to the agreement). Signatures must be notarized.

Recording the Agreement

DATCP will record the signed farmland preservation agreement with the county Register of Deeds (DATCP will pay the recording fee). The agreement takes effect when signed by all required parties and the DATCP. The agreement runs with the land and is binding on subsequent owners of the covered land, for the duration of the agreement.

Amending an Agreement

The parties to a farmland preservation agreement (or their successors in interest) may agree to amend a farmland preservation agreement at any time prior to the expiration of the agreement. Amendments must be consistent with the purpose of the agreement, and with applicable law (including ch. 91, Wis. Stats.) as it applies at the time of amendment.

An amendment must be signed by DATCP, and by all persons having an interest in the covered land at the time of the amendment (DATCP may also require other material interest holders, such as mortgage or easement holders, to sign). The amendment takes effect when signed by all required parties and DATCP. The expiration date of the amended agreement is the same as that of the original agreement (an amendment may not be used to extend the term of an agreement).

A landowner who wishes to amend a farmland preservation agreement, prior to the scheduled expiration date of the agreement, may call 608-224-4633, send an email to DATCPWorkingLands@wisconsin.gov, or send a written request to the address at the top of page one.

Releasing Land from an Agreement (Some or All)

At any time prior to the expiration of a farmland preservation agreement, DATCP may release land from coverage under the agreement (including an agreement created prior to July 1, 2009). DATCP may release all or part of the land covered by the agreement (a complete release terminates the agreement). A release must be requested on a release form from DATCP, signed by all persons having an ownership interest in the covered land at the time of the request. Before DATCP grants a release:

- DATCP must find that the release will not impair or limit agricultural use of other protected farmland in the area.
- The landowners requesting the release must collectively pay a conversion fee as provided in s. 91.66(1)(c), Wis. Stats. The amount of the conversion fee is based on the amount of land released. Conversion fee revenues are deposited to the state Working Lands Trust Fund, used to support statewide farmland preservation efforts.

If DATCP releases land from coverage under a farmland preservation agreement prior to the expiration date of the agreement, DATCP must record a copy of the release with the county Register of Deeds (the release takes effect on the recording date).

These release procedures do *not* apply to the normal expiration of a farmland preservation agreement at the end of its specified term. That expiration occurs automatically without any further action or recording by the landowner or DATCP and without any payment of conversion fees.

A landowner who wishes to apply for the release of land from an existing farmland preservation agreement prior to the scheduled expiration date of the agreement, should submit a completed request to release land from a farmland preservation agreement form. If a landowner has specific questions or concerns, they may call 608-224-4633, send an email to DATCPWorkingLands@wisconsin.gov, or send a written request to the address at the top of page one.

Applicable Law

A farmland preservation agreement, and the rights and responsibilities of the parties under the agreement, is interpreted in light of the farmland preservation law as it existed at the time of the agreement (or, to the extent affected by an amendment, at the time of the amendment). A farmland preservation agreement does not exempt a landowner from compliance with zoning ordinances or other applicable law.