

How Will the Wisconsin Working Lands Program Affect Development of Farmland?

The Wisconsin Working Lands Program (WLP) was included as part of the state budget and signed into law on June 29, 2009. The WLP repeals and recreates the Wisconsin Farmland Preservation program under Chapter 91 of the Wisconsin Statutes. While the new law attempts to preserve Wisconsin farmland and promote agricultural business, it also significantly limits the ability of landowners to develop farmland into residential and other non-agricultural uses. The WLP accomplishes this by permitting the implementation of farmland preservation zoning and planning, the creation of agricultural enterprise areas and the purchase of agricultural conservation easements.

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1. Farmland Preservation Zoning

1. **Background.** Under the WLP, local governments may elect to adopt a farmland preservation zoning ordinance, or update an existing one, and have such ordinance certified by the state. In order to obtain certification, a farmland preservation zoning ordinance must meet or exceed certain statutory requirements, including minimum standards for residential construction. Once a new or updated farmland preservation ordinance has been certified by the state, owners of land subject to the ordinance are able to claim a farmland preservation tax credit. If a municipality elects not to update an existing farmland preservation ordinance or enact a new one, landowners will not be eligible to claim the tax credit.

2. **Residential Construction.** One of the more noteworthy provisions of the WLP concerns the impact to residential development in farmland preservation zoning districts. The new law imposes minimum zoning standards that significantly limit an owner's ability to construct residential homes on his or her farmland. Below is a summary of the new zoning requirements under the WLP relating to residential construction.

1. **Conditional Use Permits.** Conditional use permits are required for all new non farm residences constructed within a farmland

preservation district and may be required for new farm residences at the option of the zoning authority. A conditional use permit may be required for each new residence or, if permitted by the zoning ordinance, an approved "cluster" of two or more contiguous nonfarm residences that otherwise meet the minimum state standards set forth in the zoning ordinance.

2. Standards. In order to obtain a conditional use permit for a residence within a farmland preservation zoning district, certain minimum statutory standards must be met. It is important to note that while these minimum state standards must be included within a local zoning ordinance to ensure certification from the state, a local municipality may elect to enact a more restrictive ordinance that includes additional requirements. The minimum standards include the following:
 1. For each farm parcel, the ratio of all nonfarm residential acreage to farm acreage must not exceed 1 to 20;
 2. No more than four dwelling units in nonfarm residences are permitted on each farm parcel; and
 3. The location of nonfarm residences will not (i) convert cropland or prime farmland if there are reasonable alternative locations, or (ii) significantly impair the current or future agricultural use of other protected farmland.

While no minimum residential lot size is required by the new law, the state zoning standards required for the issuance of a conditional use permit nonetheless seek to significantly limit the number of nonfarm residences constructed within a farmland preservation district by incorporating density caps and unit limits. In addition, the new law imposes additional burdens on the person seeking the conditional use permit by requiring proof that the location of the residence will not cause the conversion of prime farmland and that the development of such residence will not impair protected farmland (which farmland could technically be located apart

from the residence parcel).

3. **Prior Non-Conforming Uses.** The new zoning standards set forth in the WPL do not apply to residences that existed prior to the date a new farmland preservation zoning ordinance is created or revised, even if such existing residences do not meet the new zoning standards. These residences may continue to exist, but may not be expanded or modified in violation of existing laws related to prior nonconforming uses. In addition, the location and number of existing residences may be taken into account during the issuance of a conditional use permit, as they may affect the density and unit limits described above.

3. **Conversion Fee.** As of January 1, 2010, any landowner wishing to rezone land from a certified farmland preservation zoning district to another use must pay a conversion fee to the local government. The conversion fee is equal to the greater of (1) three times the highest value category of tillable cropland within the applicable municipality as specified by the Department of Revenue, or (2) as otherwise specified in the certified farmland preservation zoning ordinance. Based upon the state's average assessed value for farmland of \$270 per acre in 2009, an estimate of the conversion fee that a landowner can expect to pay is around \$810 per acre. The farmland preservation conversion fee is in addition to the use value penalty that is assessed against landowners that convert land taxed as agricultural to a non agricultural use. Farmland located within a farmland preservation zoning district that is being developed for nonagricultural purposes will now often be subjected to both the conversion fee and the use value penalty.

2. **Other Provisions of the Working Lands Program**

1. **Farmland Preservation Planning.** Pursuant to the state's former Farmland Preservation Program, most counties have already prepared farmland preservation plans. These plans, however, are likely outdated and are set to expire by December 31, 2015. Under

the WLP, grants are available to counties for developing updated farmland preservation plans. These grants may be used by counties for reimbursement of up to 50% of the costs of preparing a plan (with a maximum of \$30,000). The state must certify the county plans once they have been prepared.

- 2. Agricultural Enterprise Areas.** An Agricultural Enterprise Area is a designation by the state on areas of contiguous agricultural land made in response to a petition filed by a local government. The WLP allows landowners and local governments to cooperate in developing Agricultural Enterprise Areas that are designed to identify land deemed critical for preserving continued agricultural use. Once land has been placed into an Agricultural Enterprise Area, landowners are able to enter into farmland preservation agreements with the state that allow them to claim tax credits in exchange for using the land for agricultural purposes for at least 15 years. A conversion fee must be paid by any landowner who wants to be released from the agreement.
- 3. Purchase of Agricultural Conservation Easements.** The WLP enables the state to provide local governments or nonprofit organizations with up to 50% of the cost of purchasing Agricultural Conservation Easements from willing landowners. The land subject to the easements must be located within a farmland preservation area designated under a certified county plan. The easement restricts the landowner from developing the affected land for any purpose that is inconsistent with or unsuitable for agricultural purposes.

The WLP has the ability to impact a large portion of the roughly 16 million acres of agriculture land in Wisconsin, along with the \$59 billion agriculture business in the state. Landowners, farmers, developers and others at stake are encouraged to contact me or any other trusted Reinhart real estate attorney for advice and guidance relating to this new law.

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