State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: November 27, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Division of Agricultural Resource Management

SUBJECT: **Farmland Preservation Program Biennial Report**

PRESENTED BY: Keith Foye and Brian Loeffelholz

RECOMMENDATION:
This farmland preservation (FPP) report is required every two years based on s. 91.04, Wis. Stats. The report is made in cooperation with the Wisconsin Department of Revenue (DOR) and copies of the report are to be sent to DOR and to the Department of Administration. DOR has provided information for the report related to farmland preservation tax credits paid under Chapter 71, Stats. It is being presented to the Board for informational purposes only. No Board action is required. This is the second report since the farmland preservation law changed in July 2009.

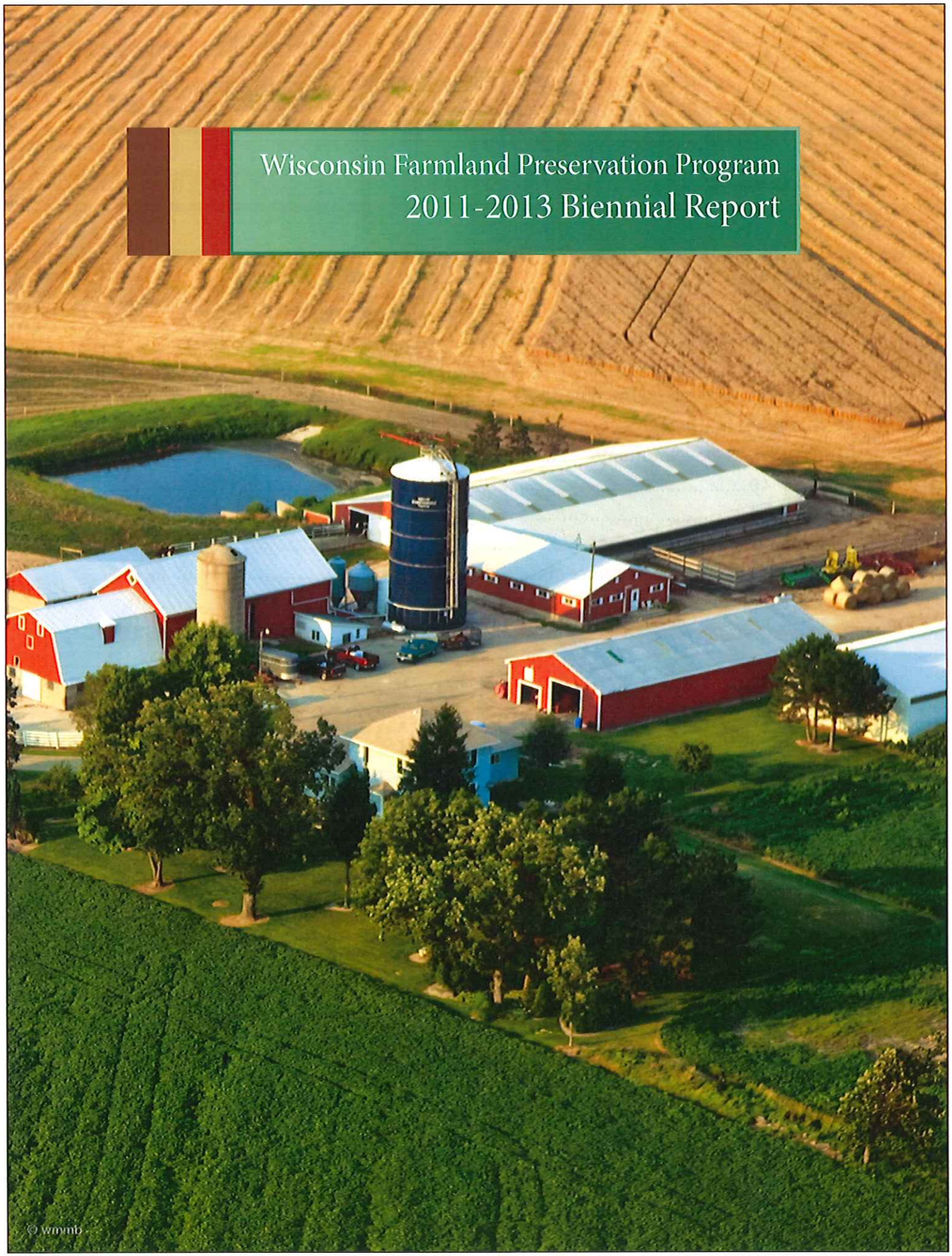
SUMMARY / BACKGROUND:
Over the past two years, the department has continued implementing the 2009 changes to the statutes. Major efforts have been ongoing in all aspects of the program. This report covers the department's efforts to implement the farmland preservation program, including: agricultural enterprise areas; farmland preservation agreements, planning, and zoning. The report also contains information on farmland availability, trends in farmland use, program participation by local governments and landowners, farmland preservation tax credits, adherence to soil and water conservation practice requirements, program costs and trends, and recommendations and issues identified by the department.

There are several key items to report:

- The rate of farmland sold for development in 2012 was about 2.8 percent compared to 4.5 percent in 2010, and the average statewide price for farmland sold for development in 2012 was about $7,200 per acre. This compares to 2010 when land sold for developed averaged about $5,900 per acre, but still less than the average in pre-recession 2007 of over $10,000 per acre.
- There were about 8 percent fewer farmland owners collecting FPP tax credits over the previous biennium, with 200,000 fewer acres being claimed than in 2010. In tax year 2012, tax credit claims were submitted by about 14,600 farmers for $18.6 million, an increase of about $600,000 over tax year 2010, with an average tax credit of $6.88 per acre.
- Fourteen farmland preservation plans and 20 local farmland preservation zoning ordinances have been certified during the biennium under the new law.

- Staff completed the work for developing ATCP 49, the administrative rule for the farmland preservation program. The rule has been forwarded for publication. It will take effect the first day of the month following publication, presumably in early 2014.
- During the past two years, a total of 17 Agricultural Enterprise Areas (AEA) have been designated or modified covering over 460,000 acres. As of January 2014, the AEAs designated will total 25 covering about 750,000 acres in 19 counties, 72 towns and one reservation. About 1,000 farmers have signed petitions supporting the designations.
- There have been 340 signed new farmland preservation agreements in AEAs out of 370 applicants so far in this biennium. These 340 agreements cover almost 71,000 acres. Additional agreements are expected prior to the end of the year. The department also administers almost 1,500 pre-2009 agreements covering about 240,000 acres. There were 970 of the old agreements covering 123,000 acres which have expired over the past two years.
- Staff reviewed the conservation compliance activities of all 70 counties with FPP. Counties had issued 660 Notices of Noncompliance from 2011-2013, which is almost double over the previous reporting period. There were 7,800 farms that still need to be monitored for soil and water conservation.
- During the review period, staff has worked on promulgating revisions to ATCP 50, the rule for the soil and water resource management program, which includes provisions regarding the soil and water conservation standards for FPP. The rule has been approved by the Board and referred last month to the legislature for review. It is anticipated that the rule would go into effect in the summer/fall of 2014.

Wisconsin Farmland Preservation Program
2011-2013 Biennial Report



Contents

Farmland Trends 4
Participation and Tax Credits 5
  Participation 5
  Tax Credits 7
Farmland Preservation Plans 8
  Number and Location 8
  Trends and Developments 9
Farmland Preservation Ordinances 11
  Number and Location 11
  Trends and Developments 12
  ATCP 49 13
  Rezoning 13
Agricultural Enterprise Areas 14
Farmland Preservation Agreements 17
Conservation Compliance 19
Program Costs, Issues & Recommendations 21

Board of Agriculture, Trade & Consumer Protection

Andy Diercks—Chair
Richard Cates, Jr.
Mike Dummer
Enrique E. Figueroa, Ph. D.
Pamela Garvey
John Koepke
Margaret Krome
Miranda Leis
Mark Schleitwiler

State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

November 2013

Board of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718

Dear ATCP Board Members:

Under 2009 Wisconsin Act 28, the Wisconsin Department of Agriculture, Trade and Consumer Protection (Department) in cooperation with the Wisconsin Department of Revenue, must provide a biennial report on farmland preservation to the Board of Agriculture, Trade and Consumer Protection and the Department of Administration (Board). This report is for the 2011-2013 biennium and succeeds the initial report by the Department submitted to the Board in December 2011.

Agriculture is a vital part of Wisconsin's economy and cultural identification. The Department has worked over the past biennium to promote development and investment in Wisconsin agriculture to help ensure that the resources are currently and will remain available for agriculture into the future. The Department worked over the past biennium to continue implementing and to expand the components of the Farmland Preservation Program, Ch. 91, Wisconsin Statutes. This includes addressing issues and concerns reported in the previous biennial report.

This report is submitted by the Department to satisfy the required reporting in s. 91.04, Wis. Stats. The report contains information on farmland availability, trends in farmland use, program participation by local governments and landowners, farmland preservation tax credit claim figures, adherence to soil and water conservation practice requirements, program costs and trends, and recommendations and issues identified by the department.

Sincerely,

Ben Brancel

Ben Brancel
Secretary

Farmland Trends

Farmland availability, use and conversion in Wisconsin have seen some interesting trends over the past decade. We can see these developments in total agricultural acreage, converted acreage, and land sales statistics summarized below.

Farmland Loss

The USDA Natural Resource Conservation Service conducts the National Resources Inventory (NRI) every five years. The NRI provides reliable statewide estimates of Wisconsin farmland converted to urban, built-up or rural transportation uses – land use categories generally considered to be developed land.

Data from the 2012 NRI is not yet available, but from 1997- 2007, Wisconsin lost about 564,100 acres of farmland. Acreage dropped from 14,262,300 acres in 1997 to 13,698,200 acres in 2007. About 226,600 acres of this acreage, or 40.2 percent, was lost to developed uses. However, from 2002 to 2007, about 51 percent of farmland loss was due to development. During those five years, 112,500 farmland acres were developed – an average loss of 22,500 acres of farmland per year.

Land Sales

The USDA National Agricultural Statistics Service and the Wisconsin Department of Revenue compile the Wisconsin Agricultural Land Sales report annually. This report indicates that about 4.5 percent of Wisconsin agricultural land sold in 2010 went to non-farm use, compared to about 2.8 percent in 2012. This was a steep decline from pre-recession figures; in 2007, conversion to non-farmland use made up 12.8 percent of farmland sales.

Figure 1: Land sale prices

Statewide, the average price per acre was $4,615 for farmland sold for agricultural use in 2012, compared to $7,229 for farmland sold for non-farm uses. Again, this was a significant change from pre-recession sales; in 2007, the average price per acre was $3,518 for farmland sold to continue in agricultural use, while that for farmland diverted to non-farm use was $10,125. *(See Figure 1)*

Participation and Tax Credits

Participation

Landowners who qualify for the Farmland Preservation Program are eligible to claim farmland preservation tax credits on their state income tax filing. They claim farmland preservation tax credits by filing either the schedule FC-A or schedule FC:

- Schedule FC-A is for those with land in a certified farmland preservation zoning district or enrolled under a new or modified farmland preservation agreement. These landowners claim $5 per acre credit for land under a farmland preservation agreement; $7.50 per acre credit for land in a farmland preservation zone; or $10 per acre credit for land covered by agreement and in a farmland preservation zone.

- Schedule FC is for landowners with land under an agreement established prior to July 2009, when the farmland preservation law changed. These landowners calculate their tax credit based on a formula considering their income and the amount of property taxes paid.

The following summary is based on data provided by the Wisconsin Department of Revenue (DOR), based on tax years 2011 and 2012.

Number of Claims

Landowners claimed farmland preservation claims in 1,173 towns, cities and villages in 71 of the 72 counties. The majority of claims occurred in the southern half of Wisconsin, and claims were highest in jurisdictions with certified farmland preservation zoning districts. *(See Figure 4, pg. 6)*

The number of claimants dropped 4 percent from the previous year in each year of the biennium, continuing the steady decrease in the number of claims since 1989. *(See Figure* 2) In 2011, there were 15,231 farmland preservation tax credit claims: 4,413 using schedule FC and 10,818 using schedule FC-A. In 2012, there were 14,598 farmland preservation tax credit claims: 3,024 claims using schedule FC and 11,574 using the schedule FC-A. *(See Table 1, pg. 7)*

Acreage

Total acreage reported as a base for all claims also declined by almost 4 percent annually in 2011 and 2012. In 2011, claims covered 2,815,412 acres, and in 2012, they covered 2,688,257 acres. *(See Table 1, pg. 7)* However, the 4 percent annual decline in acreage is much lower than the 8 percent rate reported in the previous biennium. The total reported acreage is about 19.6 percent of Wisconsin's total agricultural land, as estimated by the 2007 NRI.

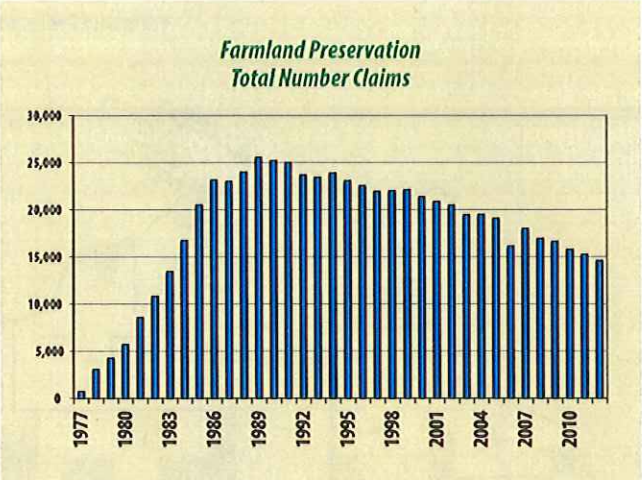


Figure 2: Farmland preservation total tax credit claims

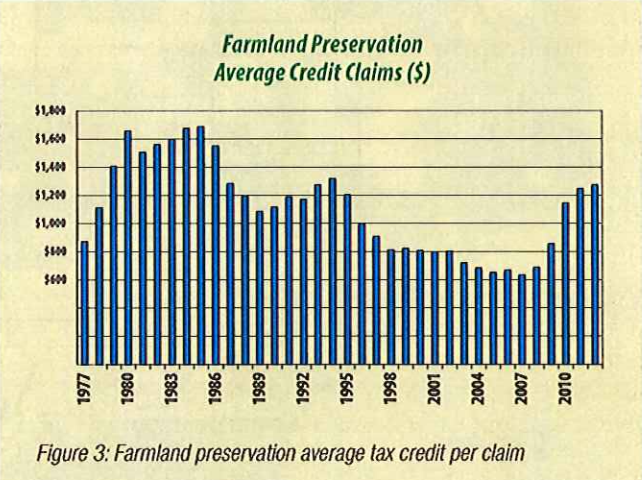


Figure 3: Farmland preservation average tax credit per claim

Two-thirds of the acreage reported was filed under schedule FC-A in this biennium; in the previous biennium, the acreage was split almost equally between claims filed under schedule FC and FC-A. An average acreage of 185 acres per claim was reported in both 2011 and 2012. This value has remained relatively consistent, hovering around 200 acres per claim over the years, and matches closely with the average Wisconsin farm size of 195 acres (USDA National Agricultural Statistics Service).

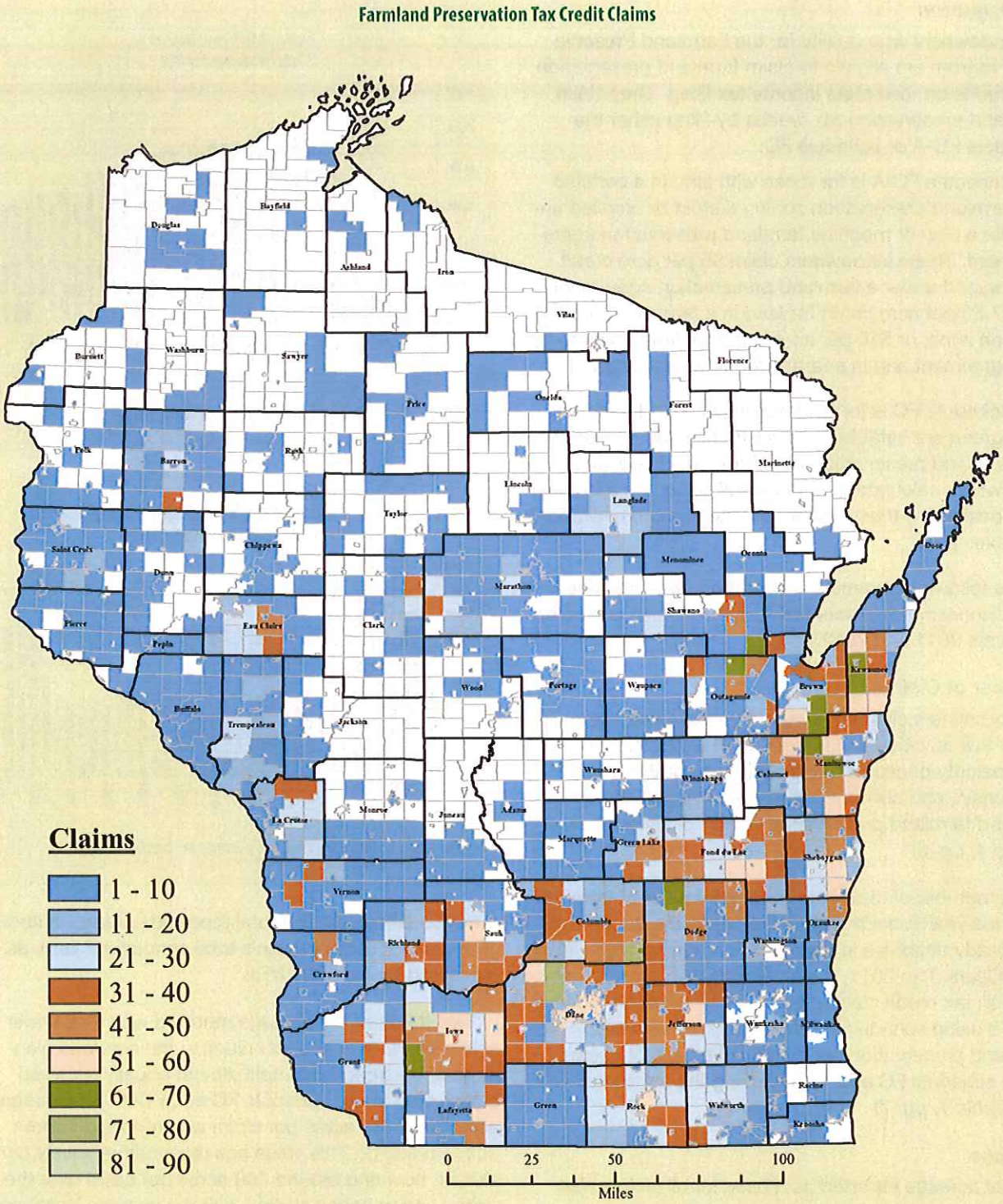


Figure 4: Farmland preservation tax credit claims by town

Tax Credits

Tax credit claims under the Farmland Preservation Program totaled about $19 million in 2011 and $18.6 million in 2012. These are the highest total credits claimed since 1997. Average credit per claim also grew both years. The average was $1,246 in 2011 and $1,274 in 2012, marking the fourth consecutive year of increases.

Average credits per claim have returned to levels last seen in 1995. Averages dropped after enactment of the agricultural use value tax rate in the 1995-97 budget. *(See Figure* 3, pg. 5) When the new farmland preservation law took effect in 2009, averages began rising again. Use value tax assessments often reduce farmer's property taxes, one of the factors in the tax credit formula used prior to tax year 2010, that often reduced the farmland preservation tax credit. The average per acre per year tax credit that began in tax year 2010, resulted on average in increased amount of tax credits.

Over 80 percent of the credits claimed were filed using schedule FC-A, under the new provisions of the farmland preservation law. These credits totaled about $15.5 million in 2011 and $16.5 million in 2012. The average credit of $1,425 claimed under the schedule FC-A was up from the previous biennium. The average claimed per acre was $7.68. *(See Table 1)* Claims reported on schedule FC-A were primarily at $7.50 per acre, for land within certified farmland preservation zoning districts. *(See Figure 5)*

Claims using schedule FC declined in both 2011 and 2012 and are expected to decline further as agreements signed under the old law expire. In 2012, only $2.1 million in credits was distributed under schedule FC, less than half of what was reported on schedule FC in the previous biennium. Further, the average credit under schedule FC has declined to less than $700 per claim, with an average per-acre credit of $3.88. Both are much lower than those credits claimed under the schedule FC-A *(See Table 1)*.

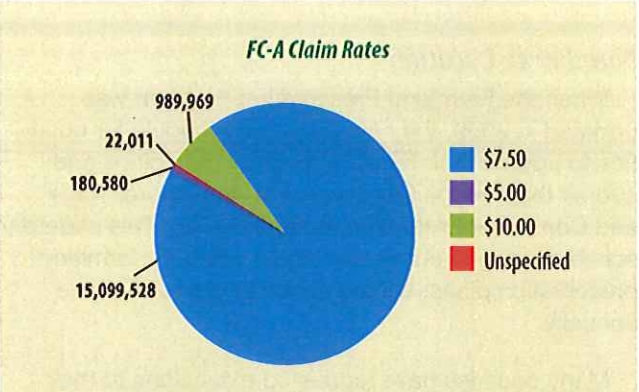


Figure 5: Schedule FC-A claims by credit rate

In the previous biennial report, we reported that many claimants were filing the incorrect tax form. Since that time, the Wisconsin Department of Agriculture, Trade and Consumer Protection has worked with tax preparers and the Wisconsin Department of Revenue to increase awareness of which schedule claimants should use. As a result, a much higher percentage of claims was correctly reported under schedule FC-A in 2011 and 2012 over the previous biennium. In 2010, almost 50 percent of claimants still used Schedule FC. In 2011, 70 percent of claimants used the new schedule FC-A, and by 2012,about 80 percent of claims used schedule FC-A.

Schedule	Credits			Acres		
	Claims	Sum	Mean	Claims	Sum	Mean
2011 Tax Year (Claimed in 2012)						
FC	4,413	$3,434,551	$778.28	4,413	790,850	179
FCA	10,818	$15,547,253	$1,437.17	10,818	2,024,562	187
Totals:	15,231	$18,981,804	$1,246.26	15,231	2,815,412	185
2012 Tax Year (Claimed in 2013)						
FC	3,024	$2,096,166	$693.18	3,024	540,240	179
FCA	11,574	$16,498,346	$1,425.47	11,574	2,148,017	186
Totals:	14,598	$18,594,512	$1,273.77	14,598	2,688,257	184

Table 1: 2011 & 2012 farmland preservation tax credits

Farmland Preservation Plans

Number & Location

When the Farmland Preservation Program was updated in 2009, the new law set a schedule for counties to update their farmland preservation plans and submit them to the Department of Agriculture, Trade and Consumer Protection for certification. This statutory schedule staggered the expiration dates for farmland preservation plans, setting about 14 plans to expire annually.

Many counties have requested extensions to their farmland preservation plan certification dates under s. 91.14, Stats., creating a backlog *(See Figure 6)*:

- 11 counties requested and received extensions from 2010 and 2011 into the current biennium.
- 9 counties requested and received certification extensions from 2012 to 2013.
- 2 counties requested and received certification extensions from 2012 to 2014.
- 8 counties requested and received certification extensions expiring at the end of 2013. One of these was a county that had asked for a one-year extension in 2012.

Because of the number of certification extensions, the schedule for expiring farmland preservation plans looks much different than it did in 2011. Since 2011, thirteen counties have updated their plans. Four more counties are expected to have their plans certified by the end of 2013. *(See Figure 7)*

The number of requests for extension may be partly attributed to a lapse in planning grant funds, causing grant awards to be delayed for one fiscal year. Planning grants up to $30,000 are available to help counties update their farmland preservation plans. The planning grants have proven to be a vital resource, with almost all eligible counties receiving grants and only one requesting less than the maximum.

Fewer counties have pursued map amendments between 2011 and 2013 than in the previous biennium. From 2009 to 2011, map amendments helped landowners become eligible to participate in other aspects of the farmland preservation program before their counties undertook full-scale updates to farmland preservation plans. In the previous biennium, there was a direct

Farmland Preservation Plan Certification Expiration Dates

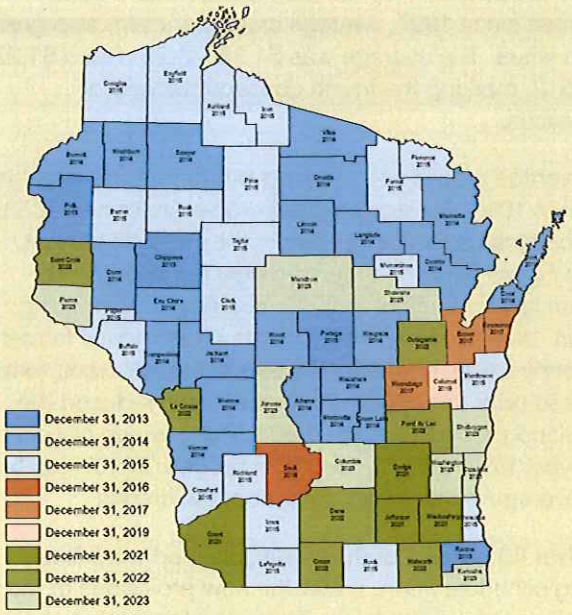


Figure 6: Schedule of county Farmland Preservation Plan certification expirations

Counties with Updated Farmland Preservation Plans

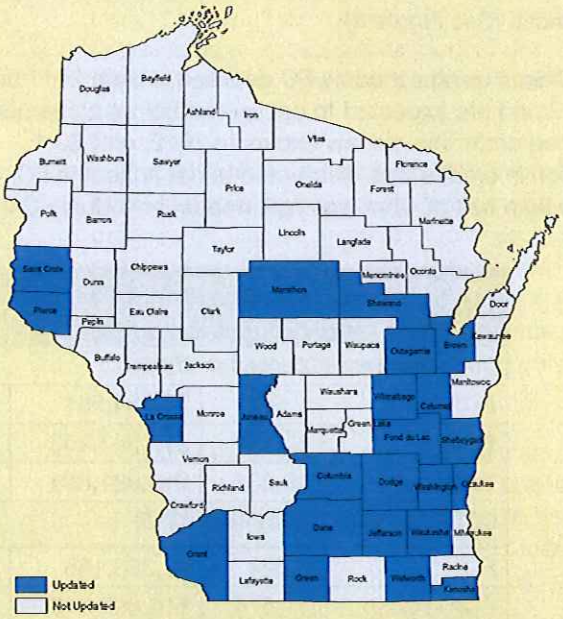


Figure 7: Counties that have updated their Farmland Preservation plans since 2009

correlation between plan amendments, particularly map amendments, and Agricultural Enterprise Area and Purchase of Agricultural Conservation Easement applicants. However, very few counties pursued plan amendments from 2011 to 2013, and only one was for the purpose of designating an Agricultural Enterprise Area.

In addition to the full certification requests, many counties have requested preliminary reviews of their farmland preservation plans. These requests range from complete review to feedback on selected portions of the plan. The department has accommodated these requests as much as possible. While formal certification reviews always take precedence over preliminary analyses, staff have found that preliminary reviews often make the certification process proceed more quickly and smoothly for both the department and the county involved.

Trends and Developments

Many counties have used the farmland preservation planning process to take stock of the vital role that agriculture has played and continues to play in their local economy. Some counties, such as Sheboygan County, have focused on different implementation tools above and beyond farmland preservation zoning and Agricultural Enterprise Areas for protecting agricultural lands. These efforts include outreach to real estate agents to help them better inform non-farmer buyers about the reality of building or developing in rural Wisconsin.

Although counties have less land in farmland preservation areas than in the 1980 plans, many have engaged in a thoughtful effort to include only those lands that will truly remain in agricultural use. Development pressures have increased on much of the state since those early plans were adopted, but it should also be noted that since 2009 counties can no longer include agricultural transition lands that would undergo non-agricultural development in the next 15 years. This has removed from plans a lot of farmland on the outskirts of expanding cities and villages, as well as lands in easy driving distance to urban centers where long-distance commuters may build and buy homes.

In identifying lands to plan for farmland preservation, many counties have continued to rely on criteria such as soils, current and historic land use, proximity to agricultural infrastructure, and contiguity with other agricultural lands and open space. Where counties rely on such objective criteria, farmland preservation areas tend to be clustered in larger, uninterrupted blocks. *(See Figure 8)*

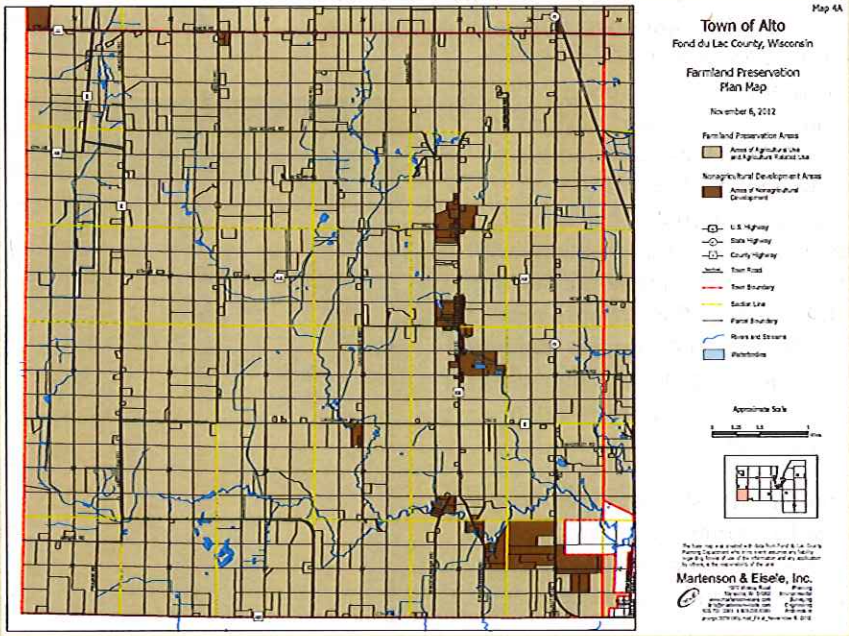


Figure 8: Farmland Preservation plan map for the Town of Alto in Fond du Lac County

Where landowner preference has been the predominant driving factor, the farmland preservation area tends to be haphazard and scattered. *(See Figure 9)* Farmers within these counties have little opportunity to participate in other aspects of the farmland preservation program, such as Agricultural Enterprise Areas. Indeed, it is nearly impossible to draw a contiguous boundary encompassing five eligible landowners within such counties. In some towns, a farmland preservation plan map amendment either has been or will be necessary to adjust the farmland preservation plan map area, whether due to burgeoning interest in Agricultural Enterprise Areas or the fact that the landowner preference model failed to capture each interested landowner. Most counties have involved town governments in developing their plans, either through local cluster meetings or individual meetings with each town. Though time-consuming for the counties, this process has served to recognize the role that local knowledge plays in predicting which lands are most likely to remain in agricultural use.

Some towns share a common view of how to identify lands for farmland preservation, but others may have differing opinions such as believing woodlots should be excluded from farmland preservation areas. This has lead to somewhat inconsistent maps across the county.

Other counties have mapped farmland preservation areas for all towns within the county, and then required that the town adopt a resolution to be a part of the county farmland preservation plan. This has created holes in county plans where towns were unwilling to plan land for agricultural use within the next 15 years. These towns are then not eligible to participate in farmland preservation zoning or Agricultural Enterprise Areas.

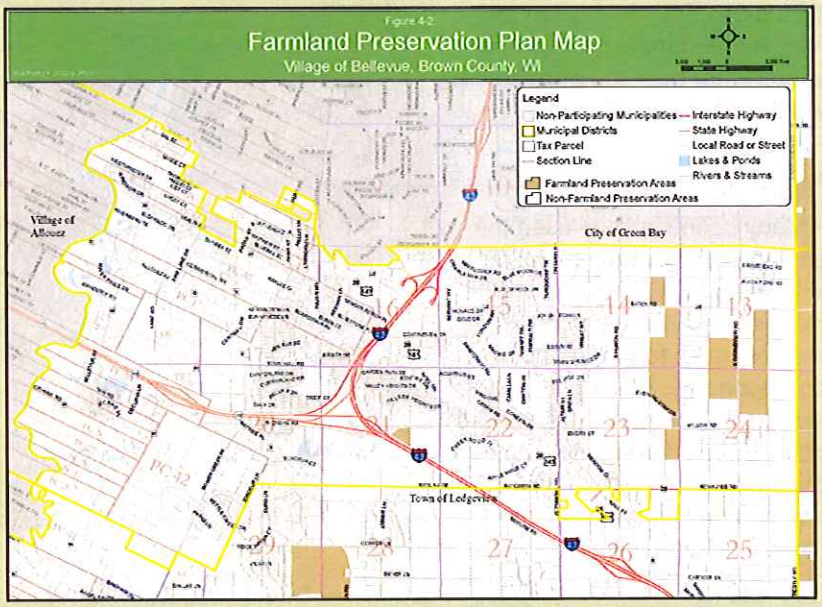


Figure 9: Farmland Preservation plan map for the Village of Bellevue in Brown County

Farmland Preservation Ordinances

Number & Location

Local governments have continued updating their farmland preservation zoning ordinances to comply with chapter 91 requirements. These ordinances are submitted to the Department of Agriculture, Trade and Consumer Protection for certification, which confirms that the ordinances do not allow uses other than those identified in the statutes. The department anticipates certifying 20 farmland preservation zoning ordinances in the two years ending December 31, 2013. *(See Table 2)*

Zoning ordinances may be administered by counties, towns, cities, or villages. *(See Figure 10, pg. 12)* Most of the zoning ordinances that the department has certified in the past two years have come from towns, but the department has certified three county zoning ordinances.

Within those counties that have recently certified farmland preservation plans, towns have started requesting certification of their farmland preservation zoning ordinances. In counties with town-administered zoning, this can mean an increase of zoning certification requests from towns interested in continuing with the farmland preservation program. For example, the department certified the Fond du Lac County farmland preservation plan in 2012. In 2013, the department will likely certify farmland preservation zoning ordinances for 10 towns located within Fond du Lac County.

Similar to farmland preservation plans, the department continues to grant certification expiration extensions for farmland preservation zoning ordinances. Since 2011, the department has granted 68 extensions. Often, these requests reflect a delayed expiration of the county's farmland preservation plan certification date. In some instances, the expiration of an ordinance occurred before the expiration of a plan and the extensions have allowed towns and counties to better coordinate their planning and zoning efforts. *(See Figure 11, pg. 12)*

The department has seen very few new towns adopting farmland preservation zoning ordinances. A number of towns have decided to discontinue certification, often because their residents' participation in the farmland preservation program has significantly decreased over the past decade. One new town in Vernon

County	Jurisdiction	Authority	Certification Type	Ordinance also amended between 2009 - 2011
Dodge	Dodge County	County	Full Text and Map	Yes
Dodge	Town of Theresa	Town	Full Text and Map	No
Dodge	Town of Herman	Town	Full Text and Map	Yes
Fond du Lac	Town of Alto	Town	Full Text and Map	No
Fond du Lac	Town of Auburn	Town	Full Text and Map	Yes
Fond du Lac	Town of Byron	Town	Full Text and Map	Yes
Fond du Lac	Town of Calumet	Town	Full Text and Map	No
Fond du Lac	Town of Clayton	Town	Full Text and Map	No
Fond du Lac	Town of Eldorado	Town	Full Text and Map	No
Fond du Lac	Town of Empire	Town	Full Text and Map	No
Fond du Lac	Town of Lamartine	Town	Full Text and Map	Yes
Fond du Lac	Town of Osceola	Town	Full Text and Map	Yes
Fond du Lac	Town of Taycheedah	Town	Full Text and Map	No
Jefferson	Jefferson Count	County	Full Text and Map	No
La Crosse	Town of Burns	Town	Full Text and Map	No
Outagamie	Town of Kaukauna	Town	Full Text and Map	No
Outagamie	Outagamie County	County	Full Text and Map	No
Vernon	Town of Christiana	Town	Full Text and Map	No
Winnebago	Town of Nepeuskun	Town	Full Text and Map	No
Winnebago	Town of Vinland	Town	Full Text and Map	No

Table 2: Farmland Preservation zoning ordinances certified between 2011 and 2013

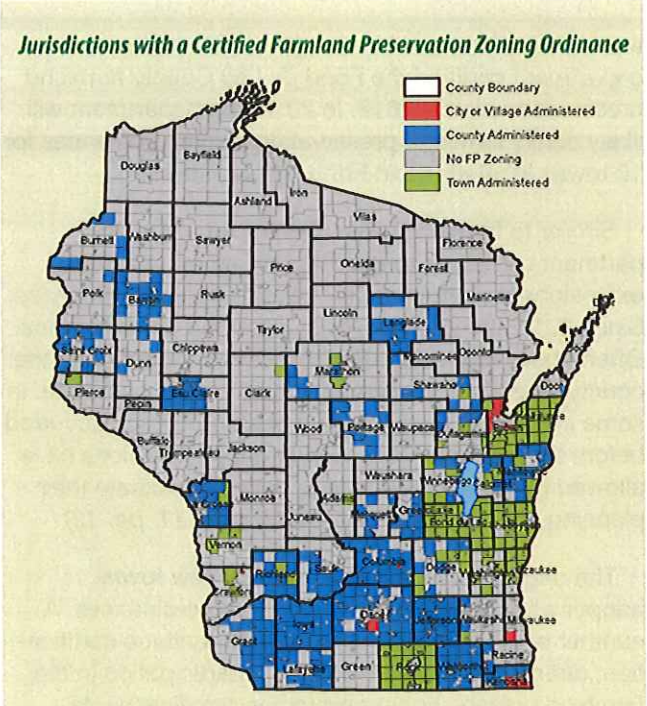


Figure 10: Cities, villages, towns, and counties with certified Farmland Preservation zoning ordinances

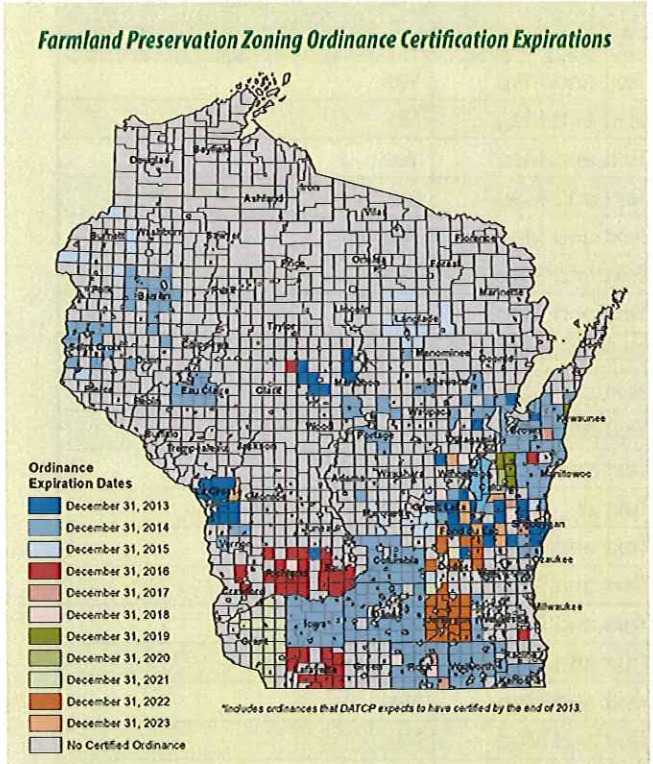


Figure 11: Schedule of Farmland Preservation zoning ordinance certification expirations

County and one in Winnebago County have decided to adopt farmland preservation zoning. These towns became certified so their farmland owners could participate in the program.

Trends and Developments

Recent updates to farmland preservation plans have enabled participating towns and counties to use the planning documents to guide their farmland preservation zoning decisions, resulting in maps that designate well over 80 percent of the farmland preservation plan area as the farmland preservation zoning district. *(See Figure 12, pg. 13)*

Chapter 91 uses the concept of a base farm tract to control and limit housing density and nonfarm acreage over time, which gives zoning authorities the option of issuing conditional use permits to allow limited nonfarm residences. However, Chapter 91 does not include any provisions to track the resulting housing density, so landowners could inadvertently violate the law as land is sold off.

This concept of a base farm tract was included in many text amendments certified during the 2009-2011 biennium, because the statute also required landowners to pay a conversion fee if their land was rezoned out of the certified farmland preservation district. Conditional use permits offered the opportunity to allow limited nonfarm residences in the farmland preservation zoning district without having to pay the penalty.

The conversion fee was eliminated in 2011, so landowners can rezone land out of the district without penalty. Since then, the trend has been away from the base farm tract option, and many ordinances certified in 2012 and 2013 have not included the conditional use permit option. Because of the difficulty in tracking base farm tracts over time, many local governments have found it easier to administer the farmland preservation zoning ordinance if a conditional use permit for a nonfarm residence is not an option.

Those jurisdictions that do wish to limit the amount of acreage removed from the district over time have employed different techniques in their ordinances. These techniques include the use of an overlay district to limit future development rights as well as fixed-term conservation easements to ensure that the balance of farmland remains available for agricultural use.

ATCP 49

Local governments have had certain difficulties implementing the farmland preservation program since 2009, some stemming from confusion with the farmland preservation zoning section of chapter 91. In response, the department has been working on ATCP 49 over the past two years to clarify certain provisions within the statutes. The rule adds to definitions, clears up certain procedural matters, and establishes mapping requirements. Many of the rule's provisions were included in response to comments from local government officials with direct experience implementing the farmland preservation program since 2009.

In addition to farmland preservation zoning, ATCP 49 also deals with farmland preservation planning and agreements. It provides guidelines for developing a rationale to identify a farmland preservation plan area. Most importantly, the rule establishes that a rationale may not be based primarily on landowner preference. Instead, the rule requires local governments to use objective criteria to establish the farmland preservation plan area, so the plan serves to protect the land for future generations of farmers.

Rezoning

Beginning in 2010, s. 91.48, Stats., has required local governments to report by March 1 of each year the number of rezones out of the district in the preceding year. Before 2011, local governments had to include the total statutory conversion fees collected for the previous year rezones. Currently, the report shows only the total number of acres removed from the district, the number of rezones granted, and the location of those rezones.

The department has had issues collecting reports from all jurisdictions with farmland preservation zoning. In 2012, the department received reports from just 114 local governments and in 2013, from 115 jurisdictions. Some local governments may simply forget to submit their reports each year, and the department currently does not have enough staff to contact 300 local zoning authorities individually. The department does maintain the authority to withdraw certification of a farmland preservation zoning ordinance if the local government refuses to comply with the statutory requirement.

From reports that have been received from local governments with certified ordinances, there has been an increase in the number of acres rezoned out of the district since the conversion fee was removed. The reports received in 2011 for 2010 rezones showed that only 778 acres were rezoned. In 2011, close to 10,000 acres were rezoned. In 2012, the number dropped to just over 3,000 acres. As noted above, the elimination of the conversion fee and the decision at the local level not to issue conditional use permits for nonfarm residences in the farmland preservation district may have played a role in the increased number of acres rezoned out of farmland preservation district during this biennium and the timing of these rezones.

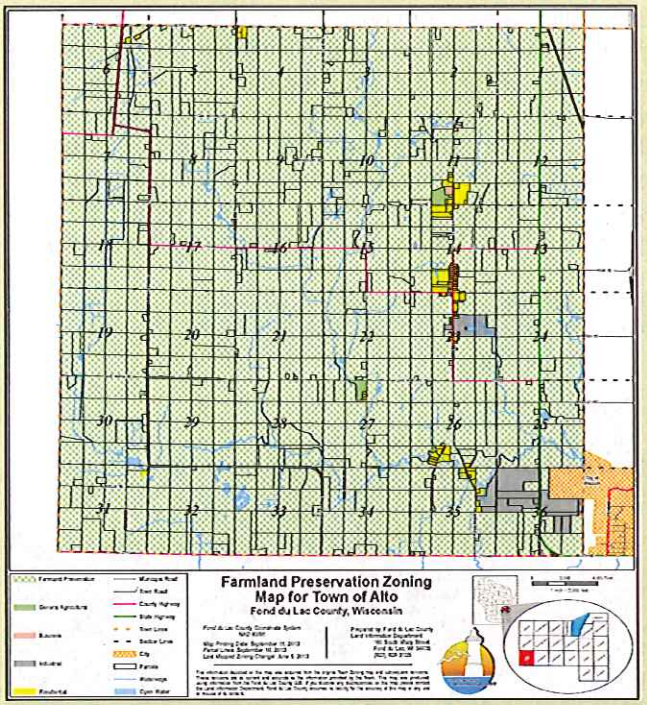


Figure 12: Farmland Preservation zoning ordinance map for the Town of Alto in Fond du Lac County

Agricultural Enterprise Areas

The Wisconsin Department of Agriculture, Trade and Consumer Protection designates Agricultural Enterprise Areas (AEAs) after evaluating local petitions submitted cooperatively by local landowners and their town and county governments. The AEA designation not only supports local land use policies and plans, but also is intended to encourage preserving agricultural land use and to promote agricultural economic development appropriate to the area. Landowners within an AEA can receive tax credits in exchange for signing a farmland preservation agreement to keep their land in agricultural use for at least 15 years and to meet state standards for soil and water conservation.

By January 1, 2014, 25 agricultural enterprise areas will be designated statewide, totaling almost 750,000 acres in 19 counties, 72 towns, and one reservation *(See Figure 13, Table 3: pg.15).* Nearly 1,000 landowners signed the petitions requesting designation of these areas, and hundreds of other stakeholders signed the petitions as cooperators. The Department of Agriculture, Trade and Consumer Protection currently has authority to designate up to one million acres as AEAs.

The 25 designated AEAs follow a mixture of natural, political, and parcel boundaries and range in size from 1,600 acres to 164,000 acres. The type of agricultural production varies from one AEA to another, due to differences in landowner and community participation, type of agricultural land use, and natural variation of the landscape across Wisconsin. In general, farms in the AEAs are traditional row crop and livestock farms, but the local agricultural economies of the AEAs also support a diverse range of other types of farms and agricultural businesses. Some producers within designated AEAs have a growing interest in crops for biofuel production, development of value-added agriculture, and a movement toward more specialty agricultural production.

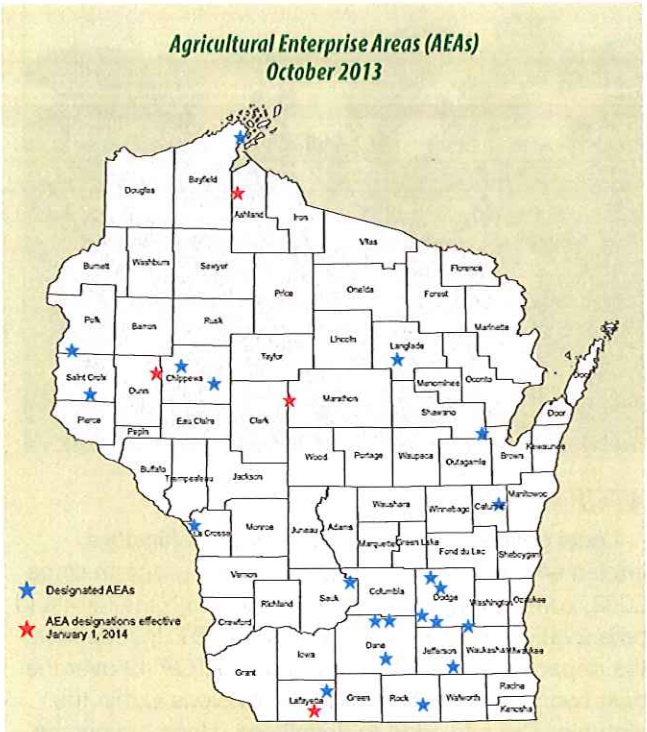


Figure 13: AEAs in Wisconsin

Since 2010, about 370 landowners have applied for farmland preservation agreements that will keep nearly 80,000 acres in agricultural land use for at least next 15 years. This is about 16 percent of the total eligible AEA acres designated by 2013. In addition, about 510,000 acres of the nearly 750,000 acres designated as AEAs by the end of 2013 are within a certified farmland preservation zoning district. This zoning certification offers additional protections for maintaining agricultural land use.

Landowners with land in a certified zoning district and with a farmland preservation agreement may claim $10 per acre farmland preservation tax credit, while landowners with only an agreement may claim the $5 per acre credit. Landowners with farmland preservation agreements in AEAs are estimated to be eligible for about $680,000 dollars in farmland preservation tax credits for tax year 2013.

Dairy operation located in the Ashippun Oconomowoc AEA

AEA Name	Total Acres	Year Designated (Year(s) Modified)	AEA Location (County and Town)
Antigo Flats AEA	74,104	2010 (2012)	Langlade and Marathon Counties: Towns of Ackley, Antigo, Neva, Peck, Polar, Price, Rolling, Vilas, Harrison
Ashippun-Oconomowoc AEA	28,841	2010	Dodge and Waukesha Counties: Towns of Ashippun, Oconomowoc
Bayfield AEA	2,821	2010	Bayfield County: Town of Bayfield
Bloomer Area AEA	4,380	2010	Chippewa County: Town of Bloomer
Cadott Area AEA	1,640	2010	Chippewa County: Towns of Goetz and Delmar
La Prairie AEA	21,093	2010	Rock County: Towns of La Prairie, Turtle
Maple Grove AEA	21,669	2010	Shawano County: Town of Maple Grove
Rush River Legacy AEA	8,370	2010	St. Croix County: Town of Rush River
Scuppernong AEA	14,015	2010	Jefferson County: Towns of Cold Spring, Hebron, Palmyra, Sullivan
Squaw Lake AEA	9,607	2010	Polk and St. Croix Counties: Towns of Alden, Farmington, Somerset. Star Prairie
Town of Dunn AEA	10,038	2010	Dane County: Town of Dunn
Windsor AEA	10,775	2010	Dane County: Town of Windsor
Burnett AEA	14,736	2011	Dodge County: Town of Burnett
Fairfield AEA	9,501	2011	Sauk County: Town of Fairfield
Heart of America's Dairyland AEA	164,332	2011 (2012, 2013)	Clark and Marathon Counties: Towns of Mayville, Colby, Unity, Beaver, Loyal, Brighton, Hull, Johnson, Frankfort, Holton
Hilbert Ag Land on Track AEA	28,217	2011	Calumet County: Towns of Brillion, Chilton, Rantoul, Woodville
Trenton AEA	26,492	2011	Dodge County: Town of Trenton
Elba-Portland AEA	38,580	2012	Dodge County: Towns of Elba, Portland
Halfway Creek Prairie AEA	1,647	2012	La Crosse County: Towns of Onalaska and Holland
Pecatonica AEA	45,776	2012	Lafayette County: Towns of Argyle, Blanchard, Lamont
Shields-Emmet AEA	16,051	2012	Dodge County: Towns of Shields, Emmet
Vienna-Dane-Westport AEA	20,681	2012	Dane County: Towns of Vienna, Dane, Westport
Fields, Waters, and Woods AEA	41,089	2013	Ashland and Bayfield Counties: Towns of Marengo, Ashland, White River, Kelly; Bad River Reservation
Southwest Lead Mine Region AEA	103,143	2013	Lafayette County: Towns of Gratiot, Monticello, Shullsburg, Wiota
Town of Grant AEA	25,920	2013	Dunn and Chippewa Counties: Towns of Grant, Colfax, Sand Creek, Otter Creek, Auburn, Cooks Valley
Total	**743,518**		

Table 3: List of AEAs by size (also have location and designation date)

AEA	Acres*	Percent of AEA	Estimated tax credits	Assumption in estimating tax credit
Antigo Flats AEA	27,029	36%	$264,555	$10/acre in Langlade County; $5/acre in Marathon County
Ashippun-Oconomowoc AEA	423	1%	$4,110	$10/ in Waukesha County;
Bayfield AEA	0	0	0	$5/acre in Dodge County
Bloomer Area AEA	487	11%	$21,900	
Cadott Area AEA	1,062	65%	$5,310	$5/acre
La Prairie AEA	1,753	8%	$17,530	$5/acre
Maple Grove AEA	2,443	11%	$24,430	$10/acre
Rush River Legacy AEA	0	0	$0	$10/acre
Scuppernong AEA	60	0	$600	
Squaw Lake AEA	240	2%	$1,200	$10/acre
Town of Dunn AEA	0	0	$0	$5/acre
Windsor AEA	941	9%	$9,410	
Burnett AEA	2,664	18%	$26,640	$10/acre
Fairfield AEA	331	3%	$1,655	$10/acre
Heart of America's Dairyland AEA	34,215	35%	$230,075	$5/acre
Hilbert Ag Land on Track AEA	2,260	8%	$22,600	$10/acre for 11,800 acres; $5/acre for 22,415 acres
Trenton AEA	1,550	6%	$15,500	$10/acre
Elba-Portland AEA	2,455	6%	$24,550	$10/acre
Halfway Creek Prairie AEA	186	11%	$1,860	$10/acre
Pecatonica AEA	646	1%	$6,460	$10/acre
Shields-Emmet AEA	140	1%	$1,400	$10/acre
Vienna-Dane-Westport AEA	112	1%	$1,120	$10/acre
Vienna-Dane-Westport AEA	112	1%	$1,120	$10/acre
Fields, Waters, and Woods AEA	NA	NA	NA	
Southwest Lead Mine Region AEA	NA	NA	NA	
Town of Grant AEA	NA	NA	NA	
Total	**78,997**		**$680,905**	

Table 4: Farmland Preservation Agreement Applications and Estimated Associated Tax Credits in AEAs

**Based upon agreement applications submitted by September 16, 2013*

NA = landowners in the AEA not eligible to sign agreements until after January 1, 2014

Farmland Preservation Agreements

Farmland preservation agreements continue to be part of the farmland preservation program. Under Chap. 91, Stats., the department administers three types of farmland preservation agreements:

- **New agreements**
  Landowners with land in a designated AEA may sign new voluntary 15-year farmland preservation agreements.
- **Existing agreements**
  Landowners who signed farmland preservation agreements prior to July 2009 may continue under the provisions of their agreement until it expires.
- **Modified agreements**
  Landowners with existing agreements may modify it to become eligible for the per- acre farmland preservation tax credit available under the new program.

There are a total of 1,800 active new, existing and modified farmland preservation agreements enrolled to date with the department, covering 313,964 acres. This includes 1,466 agreements that were entered into prior to July 2009, covering 243,041 acres. However, about 970 agreements have expired in 2012 and 2013, covering 123,000 acres. Another 437 agreements are scheduled to expire in 2014 and 2015, covering 60,107 acres.

Calendar Year	Agreement Expirations		Agreement Buyouts	
	Number	Acres	Number	Acres
2011	810	101,274	3	429
2012	605	72,705	4	825
2013	365	50,184	3	668
2014	275	38,451		
2015	162	21,655		

Table 5: Farmland preservation agreement expiration

In addition, each year some landowners opt to terminate their farmland preservation agreement through the buyout process. For calendar years 2012 and 2013, the department processed seven farmland preservation agreement buyouts covering 1,493 acres. In 2012 and 2013, 30 landowners chose the option to modify their existing agreement to come under the provisions of the new law and collect the per acre tax credit. *(See Figure 14, pg. 8, Table 4)*

The department has been receiving and processing applications for new farmland preservation agreements since the first Agricultural Enterprise Areas were designated. The number and acreage of new agreements applied for within each AEA can be seen in *Table 5 (pg. 16).*

Farmland Preservation Agreement Location & Expirations

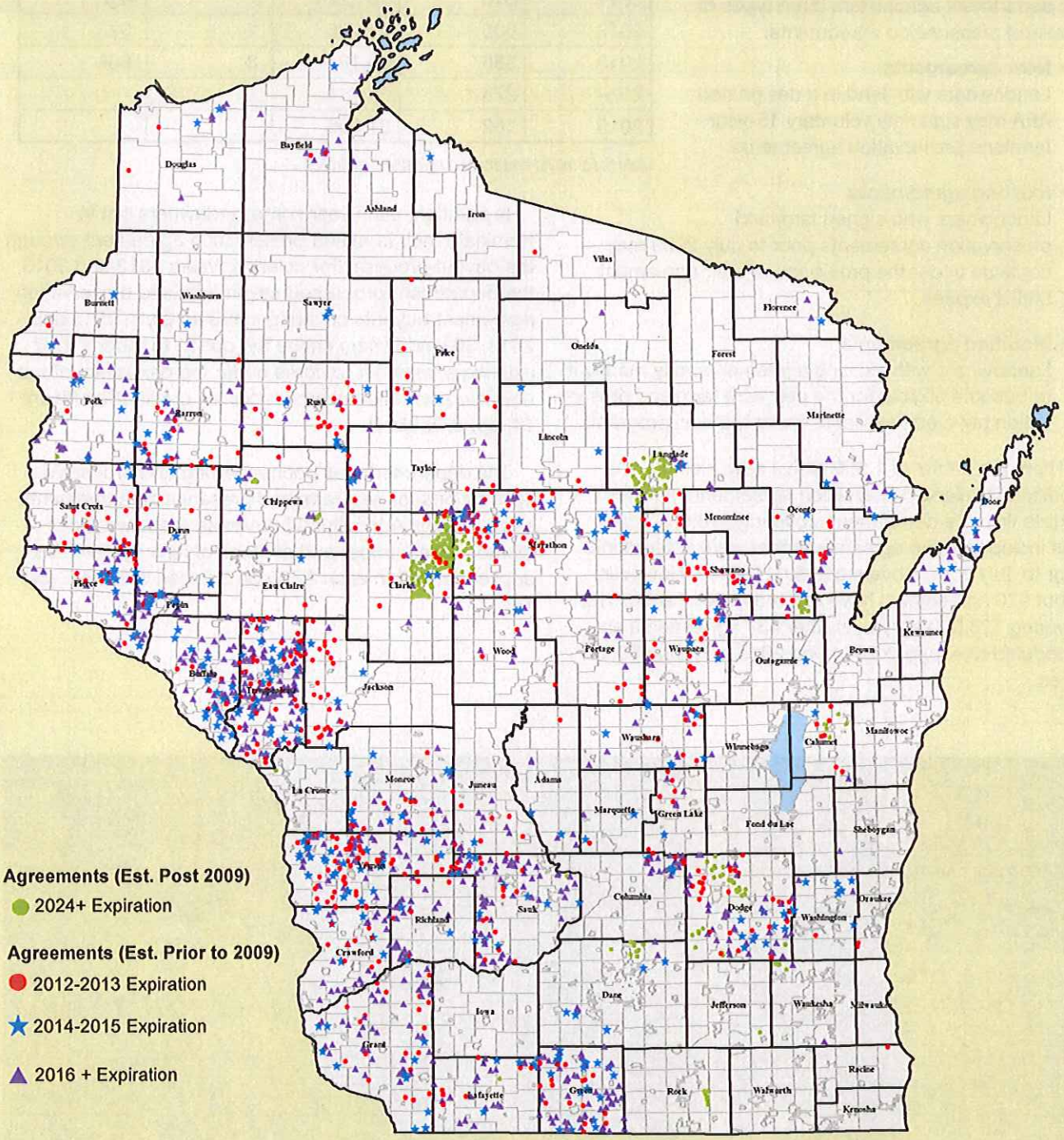


Figure 14: Agreement locations

Conservation Compliance

The farmland preservation program provides tax credits to participating farmers in exchange for implementing soil and water conservation standards to protect Wisconsin waters from soil, fertilizer, and manure pollution. County conservation departments inspect participating farms every four years to determine if they are following these standards. When farms are determined to meet these requirements, counties issue the landowner a Certificate of Compliance. Additionally, counties may require participants to self-certify their compliance annually. The soil and water conservation standards include:

- Diverting clean water runoff away from all feedlots, manure storage areas, and barnyards by roof runoff controls such as gutters or tiled infiltration trenches, or overland flow diversions. This prevents clean water from flowing through contaminated areas, where it may become polluted before entering water quality management areas (WQMA) – for example, the land adjacent to streams, ponds and lakes.
- Ensuring that manure storage facilities meet the NRCS 313 standard if they were constructed or substantially altered after 2002; that they have no visible signs of leakage or failure; and that they are maintained to prevent overflow.
- Developing and implementing a nutrient management plan according to the NRCS 590 standard and cropping fields to meet tolerable soil loss ("T").
- Ensuring each storage facility is closed according to standards or that continued use has been approved if no manure has been added or removed within 24 months.
- Restricting unconfined manure piles to areas outside of a WQMA.
- Maintaining sod or vegetative cover that preserves stream bank or lakeshore integrity if livestock have access to the bank or shore.
- Preventing significant discharge from a feedlot or stored manure from flowing into waters of the state.

ATCP 50

ATCP 50 is the administrative rule that governs the soil and water resource management program in the Department of Agriculture, Trade and Consumer Protection. The program operates in cooperation with the Department of Natural Resources, along with county land conservation committees, the Land and Water Conservation Board, and other state and federal agencies. In 2011, new soil and water conservation standards were added to NR 151, which is the DNR's administrative rule for runoff management. As a result, DATCP revised ATCP 50 during 2012 and 2013 to incorporate these new standards and to align all of our state and federal programs as much as possible. The new provisions in ATCP 50 include:

Contour strip cropping reduces soil loss and nutrient runoff from fields

- Calculating and following a phosphorus index on all cropland and pastures.
- Meeting T and following a 590 Nutrient Management Plan on pastured fields.
- Maintaining a tillage setback from surface water bodies.
- Preventing significant discharge of process wastewater such as feed leachate and milk house waste to waters of the state.

Since farmland preservation tax credit claimants must also adhere to the state performance standards, the ATCP 50 rule revision identifies county responsibilities for monitoring landowner compliance and documentation of inspections. The updated version of ATCP 50 is anticipated to become effective in mid- to late 2014.

Notices of Noncompliance

Notices of noncompliance, may be issued to:

- Farmland preservation tax credit claimants who do not meet the standards.
- Farmland preservation tax credit claimants who fail to show progress toward meeting the standards.
- Those who previously claimed the tax credit, but voluntarily choose not to do so in future years because of cost of compliance or other reasons.

Landowners who receive notices of noncompliance are not eligible to claim the tax credit until they come into compliance, the notice is canceled, and they receive a certificate of compliance.

In 2011, counties issued 169 notices of noncompliance. In 2012, they issued 273, and in 2013, they issued 219.

Counties use a variety of strategies to encourage landowners to participate in and comply with FPP. Directing cost-share funds to claimants who are not currently complying with the performance standards is one way counties help farmers cancel a notice of noncompliance.

To claim tax credits for 2010 and beyond, claimants must certify on their tax returns that they are in compliance. To certify their compliance, they must:

- Fully comply with the NR 151, agricultural performance standards and prohibitions incorporated into ATCP 50, or
- Possess a performance schedule for their farm with a compliance deadline set by the county, for those who entered the farmland preservation program under the 2009 law, or
- Follow conservation requirements in farmland preservation agreements for agreements signed prior to 2004.
- Follow applicable ATCP 50 standards for agreements signed after 2004.

Trends

In 2012, department staff reviewed 70 of 72 county land conservation departments' conservation compliance activities under ss. 91.80 and 91.82, Wis. Stats. There are 15,228 farmland preservation tax credit claimants in these 70 counties. Of these claimants:

- 1,115 received certificates of compliance
- 4,052 received performance schedules to achieve compliance before 2015
- 7,814 FPP claimants have yet to be contacted by county staff to determine their compliance status
- 2,247 claimants were found to be in full compliance, but were not issued a certificate of compliance

Nutrient management plans help farmers decide where, when and how much manure to spread on cropland

Claimant reviews are completed by calendar year, so complete data for 2013 is not yet available.

Several factors influence the ability of county land conservation staff to contact all participants in their counties. Many counties (46) said they have insufficient staff to conduct compliance reviews, with most needing a full-time equivalent to dedicate to compliance activities. Another factor is privacy regulations outlined in Department of Revenue statutes, which protect the identities of participants so that land conservation departments charged with determining program compliance do not know who is claiming the tax credits in their jurisdictions.

Even given these hurdles, the number of notices of noncompliance issued in Wisconsin has almost doubled over the preceding report period. One reason is that some claimants have voluntarily declined participation in the farmland preservation program. However, to counteract this issue, farmer training is available for nutrient management planning assistance, which allows farmers to prepare their own nutrient management plans. This has increased nutrient management planning over the previous report period by 80 percent, with more than 1,200 farmers writing their own nutrient management plans in 2013. Additionally, the largest increases in nutrient management acreage observed in 2013 coincide with the counties that have the highest number of farmland preservation participants.

Program Costs, Issues & Recommendations

Costs

Planning grants

The department may offer grants for farmland preservation planning through June 30, 2016, to reimburse counties for up to 50 percent of the costs of preparing a farmland preservation plan. The maximum grant is $30,000. All counties are eligible to receive grants in the year that their certified plans expire. In 2009-2011, grants went to 14 counties. Calumet and Waukesha counties were also eligible, but did not apply. Grant recipients in the second round, 2011-2013, had payments delayed until after July 1, 2012, as a result of a lapse in the funding source. The counties receiving grants in the second round were Chippewa, Columbia, Door, Dunn, Eau Claire, Fond du Lac, Green, Marathon, Pierce, Polk, Sauk, and Sheboygan. County planning grants awarded during the third round will provide funding to 12 counties using appropriations in FY 2014.

Tax credits

The farmland preservation tax credits for tax year 2012 (paid in FY 2013) totaled about $18.6 million to about 14,600 claimants on about 2.7 million acres. The trend continued of landowners using Schedule FC instead of Schedule FC-A, although to a lesser degree than in previous years. Schedule FC is the form for the old farmland preservation law. On average, calculating the tax credit using this form results in a lower tax credit than the claimant would receive with the per-acre rate available using Schedule FC-A.

Staff

Eight staff positions in the department are partly or wholly assigned to farmland preservation and affiliated programs. Several of these staff are also assigned to other programs. Together they total 5.2 FTE positions, with about $400,000 per year allocated to fund them. Funding is from segregated funds, program revenues, and federal funds.

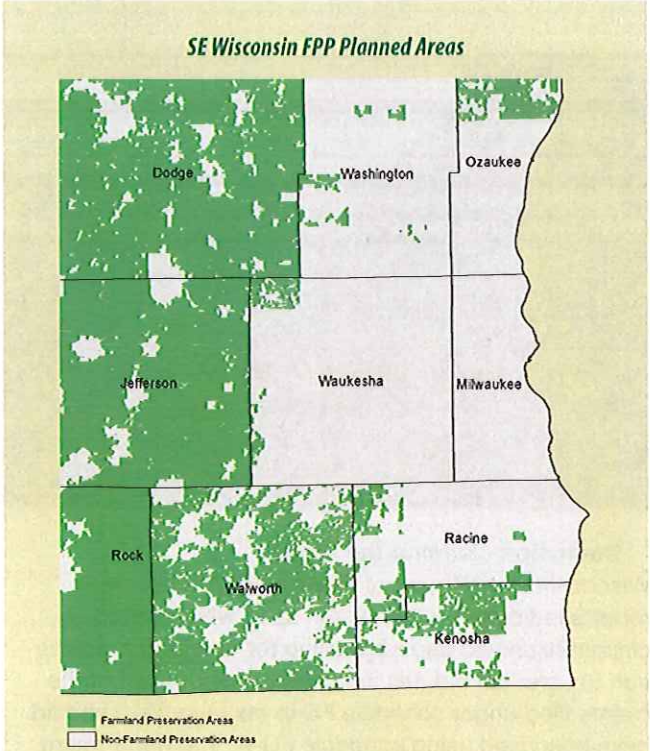


Figure 15: Map showing Farmland Preservation plan area in SE WI

The farmland preservation law revisions have accelerated the rate at which farmland preservation plans and ordinances expire. Thus, annual requests for certification through the department have increased and are expected to continue to increase over the next few years. To accommodate the increased workload, the department anticipates reassigning staff in the current biennium.

Issues

The primary challenges the department faces include ensuring correct tax credit claims by participants, increasing the allowable acreage of designated agricultural enterprise areas, creating additional incentives for landowners in agricultural enterprise areas, and addressing challenges resulting from a reduction in county staff.

Confusion claiming the credit

Wisconsin Department of Revenue (DOR) tax credit reports indicate that confusion as to which schedule claimants should use when filing for farmland preservation tax credits. Figures indicate that about half of the claims filed under schedule FC in tax year 2010 should have been filed using schedule FC-A. The department continues to work with DOR to correct this situation. The estimated number of claimants using the wrong form declined from about 3,500 in tax year 2010 to only a few hundred in tax year 2012.

Development pressures

The department has encountered instances where local governments no longer view the farmland preservation program in the same manner as when plans were developed in the 1980s. The average price for farmland sold for development statewide resulted in an increased sale price of almost $4,000 per acre in 2008, the year the recession struck. As a result, some local governments are willing to identify farmland for preservation only if the landowner first voluntarily chooses to participate in the farmland preservation program by claiming the farmland preservation tax credit. The improved economy will likely result in a continuation of this programmatic challenge, especially in Southeast Wisconsin, the Fox Valley, the area in Wisconsin closest to Minneapolis-St. Paul, and areas within close commuting distance of cities with 50,000 plus populations. *(See Figure 15, pg. 21)*

AEA acreage and incentives

In the past four years, the department has designated about 750,000 acres for agricultural enterprise areas, of the 1 million acres authorized by statute. In the process of revising their farmland preservation plans and through other local planning efforts, local governments are looking for tools to help them to protect critical farmland resources. The AEA program has provided a valuable tool to help preserve agricultural land over the past four years. An increase in the number of acres allowed for AEA designation would help additional communities meet farmland preservation goals.

AEAs have successfully garnered support for the designation from agricultural businesses and other partners supportive of the local agricultural economy. Although the farmland preservation tax credits provide an incentive for landowners to participate in an AEA, the program lacks a comparative incentive for agricultural and related businesses that are essential to sustain the local farm economy. Developing incentives for these businesses would support the local agricultural infrastructure, promote agricultural products, create local jobs and ensure the continuation of agriculture in these rural communities.

County staffing

Although the components of the farmland preservation program are administered at the state level, they must be implemented at the local level. This is true for farmland preservation plans, ordinances, and agreements; agricultural enterprise areas; and conservation compliance reviews. Consequently, the department relies on local and county staff with appropriate technical expertise and experience to make the program successful. The recession has led to a reduction in funding from the counties and state for county conservation staff, which has limited or removed local technical expertise to implement and maintain the farmland preservation program across Wisconsin. Some counties have

reduced local funding of conservation staff. Although the 2013-2015 biennial budget returned staffing grants through the soil and water resource management program closer to previous levels, this funding is scheduled to sunset and return to reduced levels in the 2015-2017 biennium. This will put additional strain on soil and water conservation efforts, especially on efforts to implement conservation requirements for the 15,000 farmland preservation participants on 2.7 million acres of the state's farmland.

Outreach

During the report period, department staff provided presentations on the farmland preservation program at about 50 meetings, conferences, and hearings with more than 1,700 attendees. There were also five Working Lands Connection newsletters delivered via email and the department's website.

The goal of the farmland preservation program is to preserve the land for agriculture and protect the states soil and water quality resources

Recommendations

Based on the experience implementing the revised farmland preservation law over the past two biennia, the department has a number of recommendations for enhancing the program.

Outreach

There is still a need to provide information to local economies about the farmland preservation program and the importance of maintain a solid agricultural base. The first recommendation is to continue outreach efforts for the farmland preservation program by the department. This could include hosting workshops, publishing newsletters, identifying new opportunities and audiences, and enhancing existing and developing new relationships with partners. The more knowledge that is disseminated about the program, the more likely the program will continue to be successful and meet the land use and soil and water conservation goals of the program.

AEAs

The department also recommends an increase in the acreage allotment for agricultural enterprise Areas. The current maximum acreage allowed for designation under s. 91.84(1) Wis. Stats. is 1 million acres. However, within the first four years of the program about 750,000 acres have already been designated as AEAs. The department also recommends establishing additional incentives related to agricultural economic development and for landowners who sign farmland preservation agreements.

Staffing grants

The department also recommends maintaining the current level of staffing grants to local land conservation departments to support county efforts to implement the soil and water conservation requirements of the farmland preservation program. There are almost 15,000 farmland owners participating in the program, and adequate staff is needed to ensure implementation of the required agricultural nonpoint pollution performance standards on about 2.7 million acres of farmland. Achieving conservation compliance on farmland preservation acres will assist landowners in meeting the state's overall water quality goals. The department is interested in providing adequate staffing grant funding to support conservation work.

Wisconsin Department of Agriculture, Trade & Consumer Protection
Bureau of Land and Water Resources
2811 Agriculture Drive
PO Box 8911
Madison, WI 53708-8911
(608) 224-4620
http://datcp.state.wi.us

The report is available on the following website:
http://datcp.wi.gov/Environment/Working_Lands_Initiative/

ARM PUB 234.indd
revised 11/13