

MODEL FARMLAND PRESERVATION ZONING ORDINANCE

What follows below is a farmland preservation zoning ordinance that local governments may use as a reference in creating or updating their own farmland preservation zoning ordinance. This particular version allows some nonfarm residences in the farmland preservation district with a conditional use permit. This model ordinance follows the restrictions found in chapter 91 of the Wisconsin Statutes: in order to issue a conditional use permit for a nonfarm residence on a base farm tract, the ratio of nonfarm residential acreage to farm acreage is no greater than 1:20 and there would be no more than 4 nonfarm residences or 5 residences of any kind after the residence is constructed. A political subdivision may be more restrictive if it chooses, by, for example, limiting the number of nonfarm residences to 2.

Please note that a political subdivision may choose not to include all of the uses listed below in its certified farmland preservation district. Alternatively, the political subdivision may list any of the uses found under Permitted Uses (Section (D)) as Conditional Uses (Section (E)). If the political subdivision lists additional uses as Conditional Uses under Section (E), be sure that there are conditions identified in the ordinance that must be found before a conditional use permit for that use may be issued.

Text in italics and between brackets should not be included in a political subdivision's zoning ordinance. This text needs to be replaced with text specific to the political subdivision. For example, the political subdivision should replace "[zoning authority]" with the political subdivision's name.

FARMLAND PRESERVATION DISTRICT

(A) Purpose. The intent of this district is to maintain highly productive agricultural lands in food and fiber production by effectively limiting encroachment of non-agricultural development and minimizing land use conflicts among incompatible uses.

(B) Definitions. The following definitions apply in the A-1 Farmland Preservation District:

- (1) Accessory Use means any of the following land uses on a farm:
 - (a) A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use.
 - (b) An activity or business operation that is an integral part of, or incidental to, an agricultural use.
 - (c) A farm residence.
 - (d) A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in paragraph (a) or (c), that employs no more than 4 full-time employees annually, and that

does not impair or limit the current or future agricultural use of the farm or of other protected farmland.

(e) Any other use that the department, by rule, identifies as an agricultural use.

(2) Agricultural Use means any of the following:

(a) Any of the following activities conducted for the purpose of producing an income or livelihood:

1. Crop or forage production.
2. Keeping livestock.
3. Beekeeping.
4. Nursery, sod, or Christmas tree production.
5. Floriculture.
6. Aquaculture.
7. Fur farming.
8. Forest management.
9. Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

(b) Any other use that the department, by rule, identifies as an agricultural use

(3) Agriculture-related use means any of the following:

(a) An agricultural equipment dealership, facility providing agricultural supplies, facility for storing or processing agricultural products, or facility for processing agricultural wastes.

(b) Any other use that the department, by rule, identifies as an agriculture-related use.

(4) Base farm tract means one of the following:

(a) All land, whether one parcel or 2 or more contiguous parcels, that is in a farmland preservation zoning district and that is part of a single farm on <enter

date here that is either the date that DATCP certifies ordinance or an earlier date determined by the local government regardless of any subsequent changes in the size of the farm.

- (b) Any other tract that the department by rule defines as a base farm tract.
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- (5) Conditional use means a use allowed under a conditional use permit issued by the political subdivision.
 - (6) Department means the department of agriculture, trade and consumer protection.
 - (7) Farm means all land under common ownership that is primarily devoted to agricultural use.
 - (8) Farm acreage means size of a farm in acres.
 - (9) Farmland preservation agreement means any of the following agreements between an owner of land and the department under which the owner agrees to restrict the use of land in return for tax credits:
 - (a) A farmland preservation agreement or transition area agreement entered into under s. 91.13, 2007 stats., or s. 91.14, 2007 stats.
 - (b) An agreement entered into under s. 91.60(1), Stats.
 - (10) Farmland preservation area means an area that is planned primarily for agricultural use or agriculture-related use, or both, and that is one of the following:
 - (a) Identified as an agricultural preservation area or transition area in a farmland preservation plan described in s. 91.12(1), Stats.
 - (b) Identified under s. 91.10(1)(d) in a farmland preservation plan described in s. 91.12(2), Stats.
 - (11) Farmland preservation plan means a plan for the preservation of farmland in a county, including an agricultural preservation plan under subch. IV of ch. 91, 2007 stats.
 - (12) Farm residence means any of the following structures that is located on a farm:
 - (a) A single-family or duplex residence that is the only residential structure on the farm or is occupied by any of the following:
 - 1. An owner or operator of the farm.

2. A parent or child of an owner or operator of the farm.
3. An individual who earns more than 50 percent of his or her gross income from the farm.

(b) A migrant labor camp that is certified under s. 103.92.

(13) Livestock means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.

(14) Nonfarm residence means a single-family or multi-family residence other than a farm residence.

(15) Nonfarm residential acreage means the total number of acres of all parcels on which nonfarm residences are located.

(16) Owner means a person who has an ownership interest in land.

(17) Permitted use means a use that is allowed without a conditional use permit, special exception, or other special zoning permission.

(18) Prior nonconforming use means a land use that does not conform with the farmland preservation zoning ordinance but that existed lawfully before the farmland preservation zoning ordinance was enacted.

(19) Protected farmland means land that is located in the farmland preservation zoning district, is covered by a farmland preservation agreement, or is otherwise legally protected from nonagricultural development.

(C) Land Use in the Farmland Preservation District; General. Only the following land uses are allowed in a farmland preservation zoning district:

(1) Uses allowed under Section (D) as a permitted use.

(2) Uses allowed under Section (E) with a conditional use permit.

(3) Prior nonconforming uses, subject to [*choose s. 59.69(10), 60.61(5), or 62.23(7)(h), Wis. Stats., as applicable*]

(D) Permitted Uses

(1) Agricultural Uses

(2) Accessory Uses

(3) Agriculture-related Uses

(4) Nonfarm residences constructed in a rural residential cluster in accordance with an approval of the cluster as a Conditional Use under Section (E).

(5) Undeveloped natural resource and open space areas.

(6) A transportation, utility, communication, or other use that is required under state or federal law to be located in a specific place or that is authorized to be located in a specific place under a state or federal law that preempts the requirement of a special use permit for that use.

(7) Other uses identified by DATCP rule.

(E) Conditional Uses

(1) Creation of a nonfarm residence or conversion of a farm residence to a nonfarm residence through a change in occupancy, subject to the following requirements.

(a) The ratio of nonfarm residential acreage to farm acreage on the base farm tract on which the residence is or will be located will not be greater than 1:20 after the residence is constructed or converted to a nonfarm residence.

(b) There will not be more than four dwelling units in nonfarm residences, nor more than five dwelling units in residences of any kind, on the base farm tract after the residence is constructed or converted to a nonfarm residence.

(c) The location and size of the proposed nonfarm residential parcel, and, for a new nonfarm residence, the location of the nonfarm residence on that nonfarm residential parcel, will not do any of the following:

(i) Convert prime farmland from agricultural use or convert land previously used as crop land, other than a woodlot, from agricultural use if on the farm there is a reasonable alternative location or size for a nonfarm residential parcel or a nonfarm residence.

(ii) Significantly impair or limit the current or future agricultural use of other protected farmland.

(2) Creation of a nonfarm residential cluster that covers more than one nonfarm residence if all of the following apply:

(a) The parcels on which the nonfarm residences would be located are contiguous.

- (b) Each nonfarm residence constructed in the nonfarm residential cluster must satisfy the requirements of E(1).
- (3) Transportation, communication, pipeline, electric transmission, utility, or drainage uses, if all of the following apply:
- (a) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
 - (b) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
 - (c) The use is reasonably designed to minimize conversion of land at and around the site of the use, from agricultural use or open space use.
 - (d) The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
 - (e) Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.
- (4) Governmental, institutional, religious, or nonprofit community uses, if all of the following apply:
- (a) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
 - (b) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
 - (c) The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.
 - (d) The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
 - (e) Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.
- (5) Nonmetallic mineral extraction, if all of the following apply:

- (a) The operation complies with Subchapter I of Chapter 295, Wisconsin Statutes, and rules promulgated under that subchapter, with applicable provisions of local ordinances under Wis. Stat. § 295.13 or Wis. Stat. § 295.14 (including all applicable provisions of this ordinance), and with any applicable requirements of the department of transportation concerning the restoration of nonmetallic mining sites.
 - (b) The operation and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
 - (c) The operation and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations outside the farmland preservation zoning district, or are specifically approved under state or federal law.
 - (d) The operation is reasonably designed to minimize the conversion of land around the extraction site from agricultural use or open space use.
 - (e) The operation does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
 - (f) The owner agrees to restore the land to agricultural use, consistent with any required reclamation plan, when extraction is completed.
- (6) Oil and gas exploration or production that is licensed by the department of natural resources under Subchapter II of Chapter 295, Wisconsin Statutes.

(F) Rezoning Land Out of a Farmland Preservation Zoning District.

- (1) Except as provided in sub. (2), the [zoning authority] may not rezone land out of the farmland preservation zoning district unless the [zoning authority] finds all of the following in writing, after public hearing, as part of the official record of the rezoning:
 - (a) The rezoned land is better suited for a use not allowed in the farmland preservation zoning district.
 - (b) The rezoning is consistent with any applicable comprehensive plan.
 - (c) The rezoning is substantially consistent with the [county] farmland preservation plan, which is in effect at the time of the rezoning.
 - (d) The rezoning will not substantially impair or limit current or future agricultural use of other protected farmland.
- (2) Subsection (1) does not apply to any of the following:

(a) A rezoning that is affirmatively certified by the Wisconsin Department of Agriculture, Trade and Consumer Protection under ch. 91, Wis. Stats.

(b) A rezoning that makes the farmland preservation zoning ordinance map more consistent with the county farmland preservation plan map, certified under ch. 91, Wis. Stats., which is in effect at the time of the rezoning.

(3) By March 1 of each year the *[zoning authority]* shall provide to the Wisconsin Department of Agriculture, Trade and Consumer Protection a report of the number of acres that the *[political subdivision]* has rezoned out of the farmland preservation zoning district under sub. (1) during the previous year and a map that clearly shows the location of those acres. *[If not a county then the political subdivision must also provide a copy of the information reported under this paragraph to the county in which the political subdivision is located].*