

Appendix A

Appendix A

Summary of required elements under ATCP 50.12
Land and water resource management plan.

Rule Provision	Explanation of Requirement
GENERAL	
Plans must provide reasonable detail. 50.12(2)	"Reasonable detail" means a level of information and degree of assurance that would satisfy outside reader that you have addressed a particular planning requirement. For example, in explaining the "Assemble Data" section, the guidelines for Plan Development Process state, "Enough data should be included to provide the reader with a clear picture of the situation." Reasonable detail means that you should be specific about issues and activities, but does not require that you reproduce everything in your plan. You are encouraged to include references to supporting documents.
PLAN DEVELOPMENT AND PUBLIC PARTICIPATON	
Appoint and consult with a local advisory committee of interested persons. 50.12(3)(a)	This requirement means that the LCC must convene and consult with an advisory committee of interested persons. While it is true that LCC has the responsibility to select committee members, the purpose and function of the advisory committee would not be served if the LCC assigned only its members to the committee. In effect, there would be no separate body to consult with. To ensure adequate participation, the note to ATCP 50.12(3)(a) provides that committee selection "should" reflect a broad spectrum of public interests, including representatives from: <ul style="list-style-type: none">• Affected farmers, businesses and landowners.• Agricultural, business, conservation and environmental, civic and recreational organizations.• Federal, state, local and tribal officials.• The University of Wisconsin and other educational institutions. For more information, see the Plan Development Process under "Public Participation" in the Land And Water Resource Management Plan Guidelines (" <i>Guidelines</i> ")
Make a reasonable effort to notify landowners affected by committee findings under 50.12(2) (d) and (e), and give them an opportunity to present information related to the accuracy of the Committee's findings. ATCP 50.12(4)(b)	This is described in the <i>Guidelines'</i> Plan Review and Approval Process under "Notification." Notification must include findings concerning the key water quality and soil erosion problem areas, and the conservation practices needed to address these key problem areas.
Hold at least one public hearing on the plan. ATCP 50.12(4)(a)	This is described in the <i>Guidelines'</i> Plan Review and Approval Process under "Timeline." Note: The county land conservation committee should consult with the department before holding public hearings on a land and water resource management plan.
The department's approval does not take effect if the county board does not approve the plan ATCP 50.12(5)	This is described in the <i>Guidelines'</i> Plan Review and Approval Process under "Timeline." Note: The county board may approve the county land and water resource management plan before or after the department approves the plan. The plan approved by the county board must be the same plan approved by the department. The preference is for plans to have county board approval at the same time of department approval.

ASSESSMENT OF WATER QUALITY AND SOIL EROSION CONDITIONS

<p>Water quality and soil erosion conditions throughout the county. The plan shall include water quality assessments available from DNR, if any. 50.12(2)(a)</p>	<p>This requirement is described in the <i>Guidelines'</i> Plan Development Process under "Assessment of Water Quality and Resource Conditions." In terms of scope, you should cover conditions beyond those specifically identified as key problems. Specifically, you must, at a minimum, include summaries of water quality assessments available from DNR and reference other pertinent DNR documents and reports. A list of such assessments is included under "Assemble Data." You should also include conditions that may be the subject of future actions. You should identify and use other planning vehicles to address land use issues as needed. This may include local comprehensive or "smart growth" plans (ch. 66, Stats.), the North American Waterfowl Management Plan, Comprehensive Conservation Plan for the Upper Mississippi Wildlife and Fish Refuge, and Lake Michigan Lake Wide Management Plan, to name only a few.</p>
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GOALS, OBJECTIVES AND PRIORITIES

<p>Water quality objectives for each water basin, priority watershed as defined in s. 281.65 (2) (c), Stats. and priority lake as defined in s. 281.65 (2) (be), Stats. The county shall determine water quality objectives in consultation with DNR. 50.12(2)(c)</p>	<p>The plan must include objectives in these areas. Developing objectives is explained in the <i>Guidelines'</i> Plan Development Process under "Goals, Objectives and Priorities." [Note: this requirement may be combined with those in 50.12(2)(a)]</p> <p>DNR basin plans and priority watershed plans contain a plethora of recommendations. To streamline this process, you can ask DNR to identify its top 10 areas of concern in the county.</p> <p>You should strive to address and be consistent with DNR objectives. This does not mean that local or county water quality priorities should be ignored or automatically reduced to a lower priority. The issues brought forward by the local advisory committee or any technical work group needs to be considered as well.</p>
<p>Key water quality and soil erosion problem areas. The county land conservation committee shall identify key water quality problem areas in consultation with DNR. ATCP 50.12(2)(d)</p>	<p>Counties must document the process used to target key problem areas. This process involves issue identification, and ranking issues according to county articulated criteria. In the case of water quality problems, counties must work with DNR to define key problems. The DNR top 10 approach could be used here as well. When identifying priority areas in your county, you should use the impaired water 303(d) list. Other information that can be used includes DNR list of ORW-ERW waterbodies and your counties transect survey. Key problems are those that rank at the top of the issues after the county completes its planning process.</p>

<p>A plan to identify priority farms in the county. ATCP 50.12(2)(f)</p>	<p>As first step, counties must only set out their plan for identifying priority farms. The identification of priority farms may vary between counties, depending on local conditions, strategies and information. A county should focus on identifying or working with the following farms, or other categories of farms that the county identifies in its plan:</p> <ul style="list-style-type: none">▪ Critical sites that DNR designates under s. 281.65(4) (g) 8.am. Stats.▪ Farms subject to a DNR notice of intent under s. 281.20 or notice of discharge under ch. 283, Stats.▪ Farms located in watersheds draining to waters that DNR has listed pursuant to 33 USC 1313. This is also known as the “303(d) list of impaired waters.”▪ Farms that have large numbers of livestock, or significant problems with manure management.▪ Farms making clearly excessive nutrient applications.▪ Farms with clearly excessive rates of cropland erosion▪ Others as defined and identified by the county. <p>Use the agricultural performance standards and prohibitions the performance standards and prohibitions as criteria to characterize for the purposes of determining “significant manure management problems”, “excessive nutrient applications” and “excessive rates of cropland erosion.”</p> <p>In annual work plans and other documents prepared in regard to approved LWRM plan, counties will be expected to document activities consistent with their plan for prioritizing farms.</p>
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<p>Identifies applicable performance standards and prohibitions related to the control of pollution from nonpoint sources s. 92.10(6)(a)(4)</p>	<p>Effective October 1, 2002, the state has enforceable performance standards and prohibitions to control farm and urban runoff. Counties need to identify applicable standards and prohibitions in their LWRM plans. This is described in the <i>Guidelines'</i> Plan Implementation Process under "Performance Standards and Prohibitions."</p> <p>In terms of the agricultural performance standards and prohibitions, counties may use their LWRM plans to record their preferences regarding the NR 151 implementation. As part of this strategy, counties have the following options to implement agricultural nonpoint source pollution control standards and prohibitions under NR 151:</p> <ul style="list-style-type: none"> • Conducting information and education activities; • Systematically selecting and evaluating parcels for compliance with standards and prohibitions; • Notifying landowners of their compliance status; • Providing or arranging for the provision of technical assistance; • Making cost sharing available as needed to install or implement BMP's; • Issuing required notices and conducting enforcement activities; • Tracking and reporting program activities and progress; and; • Monitoring compliance. <p>Activities designed to implement NR 151 may meet the planning requirements under ATCP 50. For example, you can link identifying priority farms with a systematic selection and evaluation of parcels for compliance purposes. A county's decision to implement performance standards may influence its competitiveness for certain grants such TRM and UNPS&SW.</p>
<p>Conservation practices needed to address key water quality and soil erosion problems. ATCP 50.12(2)(e)</p>	<p>This is a type of objective setting that is described in the <i>Guidelines'</i> Plan Development Process under "Set Goals and Objectives." When defining conservation practices, you should take into consideration the requirements of ATCP 50, including the new standard for nutrient management plans.</p>

<p>County strategies to encourage voluntary implementation of conservation practices under s. ATCP 50.04. County strategies may include information and education, cost-sharing, technical assistance and other strategies.</p> <p>50.12(2)(g)</p>	<p>The performance standards and farm conservation practices in the new nonpoint rules address issues of statewide concern. For many counties, they offer tools to address key problem areas identified by the county. Where appropriate, counties will set goals, identify objectives and define action relevant steps to implement the new standards and practices. In connection with this specific element, a county should address the voluntary aspect of implementation through methods such as technical assistance.</p> <p>In addressing the “voluntary compliance” element, you might draw upon this NR 151 implementation components: information and education activities, inventory and systematic evaluation of parcels for compliance, and technical assistance. Looking at this from different perspective, your implementation preferences for NR 151 allow you to meet planning requirements for LWRM plan approval.</p> <p>Counties should identify other agencies and groups that can assist in encouraging voluntary implementation of conservation practices. Such groups include DNR, NRCS, DATCP, UW-Extension, and non-profit conservation organizations.</p>
<p>COMPLIANCE AND ENFORCEMENT</p>	
<p>State and local regulations that the county will use to implement the county plan. The department may require the county to provide copies of relevant local regulations, as necessary, and may comment on those regulations.</p> <p>50.12(2) (b)</p>	<p>Your planning objectives and actions determine the extent of the state and local regulations you will include. Your list of regulations may include:</p> <ul style="list-style-type: none"> • NR 151.09 or NR 151.095 Implementation and enforcement of performance standards and prohibitions. • Manure storage facility ordinances adopted under s. 92.16, Stats. • County livestock regulations adopted under s. 92.15, Stats., chapter 59 or other statutory authority, • Town agricultural Shoreland management ordinances adopted under s. 92.17, Stats. <p>This is not a complete list of regulations. For local regulations, you will need to identify the local government agency that administers the regulation, and can provide copies of the regulation.</p> <p>If you are relying on regulations to enforce performance standards or farm conservation practices, you will need to describe your compliance procedures (see comments below). You may be required to provide DATCP copies of regulations referenced in your plan or related to your plan to DATCP for review. This is described in the <i>Guidelines’</i> Plan Implementation Process under “Compliance and Enforcement.”</p>

<p>Compliance procedures, including notice, hearing, enforcement and appeal procedures, that will apply if the county Takes action against a landowner for failure to implement conservation practices required under this chapter, ch. NR 151 or related local regulations.</p> <p>50.12(2)(h)</p>	<p>Compliance procedures must be included only if you are prepared to enforce farm standards and practices. If you have an ordinance that requires compliance with the manure management prohibitions, for example, you should explain the compliance procedures you will use in the event of enforcement.</p> <p>Your compliance procedures should conform to the requirements of ATCP 50, including cost-share requirements for enforcement of local regulations in ATCP 50.54(2). To the extent that you are enforcing performance standards and prohibitions, you should refer to NR 151.09 (Implementation and enforcement procedures for cropland performance standards) and NR 151.095 (Implementation and enforcement procedures for livestock performance standards and prohibitions). You should also consider applicable due process requirements in ch. 68, Stats.</p> <p>In addressing this compliance element, you might draw upon these NR 151 implementation components: providing technical assistance, making cost sharing to install or implement BMP's, issuing required notices and conducting enforcement activities.</p>
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PLANNED ACTIVITIES

The county’s multi–year work plan to implement the farm conservation practices under s. ATCP 50.04, and achieve compliance with performance standards under ch. NR 151. The plan shall identify priorities and expected costs.

ATCP 50.12(2)(i)

With the submission of the LWRM plan, counties must include a work plan that covers at least the first and second year of plan implementation. For subsequent years of plan implementation, counties are expected to file annual work plans with the county’s grant application on or before April 15 of each year. These annual work plans will serve to meet the rule requirements over the life of the approved county LWRM plan.

At a minimum, a work plan must describe the county’s goals, objectives, and expected actions related to the performance standards and farm conservation practices. But you are not committed to specific products, and have flexibility to work within the framework for planning options. You may address implementation of these agricultural performance standards and prohibitions: sheet, rill and wind erosion (NR 151.02), manure storage facilities (NR 151.05), clean water diversions (NR 151.06), nutrient management (NR 151.07), manure management prohibitions (NR 151.08). You may also address these non-agricultural performance standards: construction site performance standard for new development and redevelopment (NR 151.11), post-construction performance standard for new development and redevelopment (NR 151.12), developed urban area performance standard (NR 151.13), non-municipal property fertilizer performance standard (NR 151.14). You may focus on implementation of farm conservation practices such as nutrient management in compliance with ATCP 50.04(3).

Under ch. 92, work plans can include other planned county activities and the priorities for such activities. These include activities identified as cost-shareable in ATCP 50 such as buffer installation and well abandonment.

Implementation should be linked to expected costs and available funds. DATCP fully expects that counties will adjust priorities and implementation schedules based on economic or other reasons. This is described in the *Guidelines’* Plan Implementation Process under “Multi-Year Description of Planned Activities.”

INFORMATION AND EDUCATION

How the county will provide information and education related to land and water conservation, including information related to farm conservation practices and cost–share funding.

50.12(2)(k)

This is a familiar element, and is discussed in detail in the *Guidelines’* Plan Implementation Process under “Information and Education.” The new twist involves education concerning aspects of the new rule. DNR and DATCP are working together to provide materials and other assistance.

You can use this element to satisfy a component of the DNR implementation strategy for NR 151.

COORDINATION	
<p>How the county will coordinate its land and water conservation program with federal, state and local agencies.</p> <p>50.12(2)(L)</p>	<p>This is described in the <i>Guidelines'</i> Plan Implementation Process under "Coordination." It focuses on coordination with agency stakeholders. Potential partners include:</p> <ul style="list-style-type: none"> • NRCS • DNR • UWEX • Neighboring LCDs <p>An example that could be cited is the cooperative agreement between the county and NRCS.</p> <p>Counties should tailor their coordination efforts to correspond with specific agency initiatives. For example, DNR is working with counties and DATCP to develop an implementation strategy for NR 151. Counties retain flexibility and discretion to propose plans that are appropriate for their local conditions.</p>
MONITORING AND EVALUATION	
<p>How the county will monitor and measure its progress under 50.12(2) (i).</p> <p>50.12(2)(j)</p>	<p>This section is described in the <i>Guidelines'</i> Plan Implementation under "Monitoring and Evaluation." To meet the rule requirements, you must specifically explain how you will track the county's progress in implementing the performance standards and conservation practices. Under Sec. 92.10, you are required to develop a system to monitor the progress of all activities described in the plan. The following are some methods that may help you in these tasks: status reviews, transect survey, historic data and mapping system; DNR water quality monitoring strategy, compliance strategies, evaluation strategy for operation and maintenance.</p> <p>This requirement is designed to ensure accountability. For this requirement to be most effective, counties must follow simple and uniform procedures for measuring and reporting progress. WCA has recommended a system that would allow information to be easily aggregated and presented to the legislature.</p> <p>In addressing this compliance element, you might draw upon these NR 151 implementation components: tracking and reporting program activities and progress and monitoring.</p> <p>DATCP and DNR are in the process of identifying what information will be needed from the counties in order for each agency to develop regional and statewide reports on status of implementation, identifying trends and general conservation program evaluation.</p>
PLAN DEVELOPMENT	
<p>Note: LWRM plans describe in reasonable detail steps necessary to meet each of the following process requirements.</p>	
<p>Appoint and consult with a local advisory committee of interested persons.</p> <p>50.12(3)(a)</p>	<p>This is described earlier in this document under Plan Development and Public Participation.</p>
<p>Assemble relevant data, including relevant land use, natural resource, and water quality and soil data.</p> <p>50.12(3) (b)</p>	<p>See above section regarding "Assessment of Water Quality and Soil Erosion Conditions." Also this is described in the <i>Guidelines'</i> Plan Development Process under "Assemble Data."</p>

<p>Consult with DNR 50.12(3)(c)</p>	<p>See above sections regarding “Assessment of Water Quality Resource Conditions” and “Goals, Objectives and Priorities.” In addition to the required consultation noted above, counties should seek specific guidance from DNR regarding the nature and extent of consultation, including a discussion of appropriate agency contacts.</p> <p>DNR regions should be able to provide each county with a list of appropriate contacts</p>
<p>Assess resource conditions and identify problem areas. 50.12(3)(d)</p>	<p>See above section regarding “Goals, Objectives and Priorities.” In addition, this is described in the <i>Guidelines’ Plan Development Process</i> under “Assess Resource Conditions.”</p>
<p>Establish and document priorities and objectives. 50.12(3)(e)</p>	<p>See above section regarding “Goals, Objectives and Priorities.” In addition, this is described in the <i>Guidelines’ Plan Development Process</i> under “Identify and Prioritize Issues and Problems” and “Set Goals and Objectives”</p>
<p>Project available funding and resources. 50.12(3)(f)</p>	<p>This is related to the work plan element, 50.12(2)(i) discussed above. This is also described in the <i>Guidelines’ Plan Development Process</i> under “Define Action Steps.”</p>
<p>Establish and document a plan of action. 50.12(3)(g)</p>	<p>This is related to the work plan element, 50.12(2) (i) discussed above. This also is described in the <i>Guidelines’ Plan Development Process</i> under “Define Action Steps.”</p>
<p>Identify roles and responsibilities. 50.12(3)(h)</p>	<p>This is related to the coordination-planning element, 50.12(2) (L) discussed above. This also is described in the <i>Guidelines’ Plan Implementation Process</i> under “Coordination.”</p>

CHAPTER 91
FARMLAND PRESERVATION

	SUBCHAPTER I		
	DEFINITIONS AND GENERAL PROVISIONS		
91.01	Definitions.	91.42	Land use in farmland preservation zoning districts; general.
91.02	Rule making.	91.44	Permitted uses.
91.03	Intergovernmental cooperation.	91.46	Conditional uses.
91.04	Department to report.	91.48	Rezoning of land out of a farmland preservation zoning district.
	SUBCHAPTER II	91.49	Use of conversion fee revenues.
	FARMLAND PRESERVATION PLANNING	91.50	Exemption from special assessments.
91.10	County plan required; planning grants.		SUBCHAPTER IV
91.12	Certified plan.		FARMLAND PRESERVATION AGREEMENTS
91.14	Expiration of plan certification.	91.60	Farmland preservation agreements; general.
91.16	Certification of plan by the department.	91.62	Farmland preservation agreements; requirements.
91.18	Requirements for certification of plan.	91.64	Applying for a farmland preservation agreement.
91.20	Applying for certification of plan.	91.66	Terminating a farmland preservation agreement.
	SUBCHAPTER III	91.68	Violations of farmland preservation agreements.
	FARMLAND PRESERVATION ZONING	91.70	Farmland preservation agreements; exemption from special assessments.
91.30	Authority to adopt.		SUBCHAPTER V
91.32	Certified ordinance.		SOIL AND WATER CONSERVATION
91.34	Expiration of zoning certification.	91.80	Soil and water conservation by persons claiming tax credits.
91.36	Certification of zoning ordinance by the department.	91.82	Compliance monitoring.
91.38	Requirements for certification of ordinance.		SUBCHAPTER VI
91.40	Applying for certification of ordinance.		AGRICULTURAL ENTERPRISE AREAS
		91.84	Agricultural enterprise areas; general.
		91.86	Agricultural enterprise area; petition.

SUBCHAPTER I
 DEFINITIONS AND GENERAL PROVISIONS

91.01 Definitions. In this chapter:

(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 par. (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 accessory use.

(1m) “Agricultural enterprise area” means an area designated in accordance with s. 91.84.

(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.
- 4m. Floriculture.
5. Aquaculture.
6. Fur farming.
7. Forest management.

8. 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.

(5) “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 the date that the department under s. 91.36 (1) first certifies the farmland preservation zoning ordinance covering the land or on an earlier date specified in the farmland preservation zoning ordinance, 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.

(6) “Certified farmland preservation plan” means a farmland preservation plan that is certified as determined under s. 91.12.

(7) “Certified farmland preservation zoning ordinance” means a zoning ordinance that is certified as determined under s. 91.32.

(8) “Chief elected official” means the mayor of a city or, if the city is organized under subch. I of ch. 64, the president of the council of that city, the village president of a village, the town board chairperson of a town, or the county executive of a county, or, if the county does not have a county executive, the chairperson of the county board of supervisors.

(9) “Comprehensive plan” has the meaning given in s. 66.1001 (1) (a).

(10) “Conditional use” means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a political subdivision.

(11) “County land conservation committee” means a committee created under s. 92.06 (1).

(12) “Department” means the department of agriculture, trade and consumer protection.

(13) “Farm” means all land under common ownership that is primarily devoted to agricultural use.

(14) “Farm acreage” means size of a farm in acres.

91.01 FARMLAND PRESERVATION

(15) “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).

(16) “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).

(b) Identified under s. 91.10 (1) (d) in a farmland preservation plan described in s. 91.12 (2).

(17) “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.

(18) “Farmland preservation zoning district” means any of the following:

(a) An area zoned for exclusive agricultural use under an ordinance described in s. 91.32 (1).

(b) A farmland preservation zoning district designated under s. 91.38 (1) (c) in an ordinance described in s. 91.32 (2).

(19) “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.

(20) “Gross farm revenues” has the meaning given in s. 71.613 (1) (g).

(20m) “Livestock” means bovine animals, equine animals, goats, poultry, sheep, swine, farm–raised deer, farm–raised game birds, camelids, ratites, and farm–raised fish.

(21) “Nonfarm residence” means a single–family or multi–family residence other than a farm residence.

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

(22m) “Overlay district” means a zoning district that is superimposed on one or more other zoning districts and imposes additional restrictions on the underlying districts.

(23) “Owner” means a person who has an ownership interest in land.

(23m) “Permitted use” means a use that is allowed without a conditional use permit, special exception, or other special zoning permission.

(24) “Political subdivision” means a city, village, town, or county.

(25) “Prime farmland” means any of the following:

(a) An area with a class I or class II land capability classification as identified by the natural resources conservation service of the federal department of agriculture.

(b) Land, other than land described in par. (a), that is identified as prime farmland in a certified farmland preservation plan.

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

(27) “Protected farmland” means land that is located in a farmland preservation zoning district, is covered by a farmland

preservation agreement, or is otherwise legally protected from nonagricultural development.

(28) “Taxable year” has the meaning given in s. 71.01 (12).
History: 2009 a. 28.

91.02 Rule making. (1) The department shall promulgate rules that set forth technical specifications for farmland preservation zoning maps under s. 91.38 (1) (d).

(2) The department may promulgate rules for the administration of this chapter, including rules that do any of the following:

(a) Identify accessory uses under s. 91.01 (1) (e).

(b) Identify agricultural uses under s. 91.01 (2) (b).

(c) Identify agriculture–related uses under s. 91.01 (3) (b).

(d) Identify base farm tracts under s. 91.01 (5) (b).

(e) Specify requirements for certification under s. 91.18 (1) (b).

(f) Require information in an application for certification of a farmland preservation plan or amendment under s. 91.20 (4).

(g) Specify types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3.

(h) Specify exceptions to the requirement that land in a farmland preservation zoning district be included in a farmland preservation area under s. 91.38 (1) (g).

(i) Specify requirements for certification of a farmland preservation zoning ordinance under s. 91.38 (1) (i).

(j) Require information in an application for certification of a farmland preservation zoning ordinance or amendment under s. 91.40 (5).

(k) Authorize additional uses in a farmland preservation zoning district under s. 91.42 (4).

(L) Authorize additional uses as permitted uses in a farmland preservation zoning district under s. 91.44 (1) (g).

(m) Authorize additional uses as conditional uses in a farmland preservation zoning district under s. 91.46 (1) (j).

(o) Designate agricultural enterprise areas and modify and terminate designations of those areas under s. 91.84.

(p) Require information in an application for a farmland preservation agreement under s. 91.64 (2) (h).

(r) Prescribe procedures for compliance monitoring under s. 91.82 (3).

History: 2009 a. 28.

91.03 Intergovernmental cooperation. State agencies shall cooperate with the department in the administration of this chapter and in other matters related to the preservation of farmland in this state. State agencies shall, to the extent feasible, cooperate in sharing and standardizing relevant information, identifying and mapping significant agricultural resources, and planning and evaluating the impact of state actions on agriculture.

History: 2009 a. 28.

91.04 Department to report. At least once every 2 years, beginning not later than December 31, 2011, the department shall submit a farmland preservation report to the board of agriculture, trade and consumer protection and provide copies of the report to the department of revenue and the department of administration. The department shall prepare the report in cooperation with the department of revenue and shall include all of the following in the report:

(1) A review and analysis of farmland availability, uses, and use trends in this state, including information related to farmland conversion statewide and by county.

(2) A review and analysis of relevant information related to the farmland preservation program under this chapter and associated tax credit claims under subch. IX of ch. 71, including information related to all of the following:

(a) Participation in the program by political subdivisions and landowners.

(b) Tax credit claims by landowners, including the number of claimants, the amount of credits claimed, acreage covered by tax credit claims, the amount of credits claimed under zoning ordinances and under farmland preservation agreements, and relevant projections and trends.

(c) The number, identity, and location of counties with certified farmland preservation plans.

(d) Trends and developments related to certification of farmland preservation plans.

(e) The number, identity, and location of political subdivisions with certified farmland preservation zoning ordinances.

(f) Trends and developments related to certification of farmland preservation zoning ordinances.

(g) The number, nature, and location of agricultural enterprise areas.

(h) The number and location of farms covered by farmland preservation agreements, including new farmland preservation agreements, and the number and location of farms for which farmland preservation agreements have expired.

(i) Conservation compliance by landowners under s. 91.80 and compliance activities by county land conservation committees under s. 91.82.

(j) Rezoning of land out of farmland preservation zoning districts under s. 91.48, including the amounts of conversion fees paid to political subdivisions under s. 91.48 (1) (b).

(k) Program costs, cost trends, and cost projections.

(L) Key issues related to program performance and key recommendations, if any, for enhancing the program.

History: 2009 a. 28.

SUBCHAPTER II

FARMLAND PRESERVATION PLANNING

91.10 County plan required; planning grants. (1) By January 1, 2016, a county shall adopt a farmland preservation plan that does all of the following:

(a) States the county's policy related to farmland preservation and agricultural development, including the development of enterprises related to agriculture.

(b) Identifies, describes, and documents other development trends, plans, or needs, that may affect farmland preservation and agricultural development in the county, including trends, plans, or needs related to population and economic growth, housing, transportation, utilities, communications, business development, community facilities and services, energy, waste management, municipal expansion, and environmental preservation.

(c) Identifies, describes, and documents all of the following:

1. Agricultural uses of land in the county at the time that the farmland preservation plan is adopted, including key agricultural specialties, if any.

2. Key agricultural resources, including available land, soil, and water resources.

3. Key infrastructure for agriculture, including key processing, storage, transportation, and supply facilities.

4. Significant trends in the county related to agricultural land use, agricultural production, enterprises related to agriculture, and the conversion of agricultural lands to other uses.

5. Anticipated changes in the nature, scope, location, and focus of agricultural production, processing, supply, and distribution.

6. Goals for agricultural development in the county, including goals related to the development of enterprises related to agriculture.

7. Actions that the county will take to preserve farmland and to promote agricultural development.

7m. Policies, goals, strategies, and proposed actions to increase housing density in areas that are not identified under par. (d).

8. Key land use issues related to preserving farmland and to promoting agricultural development and plans for addressing those issues.

(d) Clearly identifies areas that the county plans to preserve for agricultural use and agriculture-related uses, which may include undeveloped natural resource and open space areas but may not include any area that is planned for nonagricultural development within 15 years after the date on which the plan is adopted.

(dm) Describes the rationale used to determine which areas to identify under par. (d).

(e) Includes maps that clearly delineate all areas identified under par. (d), so that a reader can easily determine whether a parcel is within an identified area.

(f) Clearly correlates the maps under par. (e) with text that describes the types of land uses planned for each area on a map.

(g) Identifies programs and other actions that the county and local governmental units within the county may use to preserve the areas identified under par. (d).

(2) If the county has a comprehensive plan, the county shall include the farmland preservation plan in its comprehensive plan and shall ensure that the farmland preservation plan is consistent with the comprehensive plan. The county may incorporate information contained in other parts of the comprehensive plan into the farmland preservation plan by reference.

(3) To adopt a farmland preservation plan under sub. (1), a county shall follow the procedures under s. 66.1001 (4) for the adoption of a comprehensive plan.

(4) The department may provide information and assistance to a county in developing a farmland preservation plan under sub. (1).

(5) A county shall notify the department before the county holds a public hearing on a proposed farmland preservation plan under sub. (1) or on any amendment to a farmland preservation plan. The county shall include a copy of the proposed farmland preservation plan or amendment in the notice. The department may review and comment on the plan or amendment.

(6) (a) From the appropriation under s. 20.115 (7) (dm) or (tm), the department may award a planning grant to a county to provide reimbursement for up to 50 percent of the county's cost of preparing a farmland preservation plan required under sub. (1). In determining priorities for awarding grants under this subsection, the department shall consider the expiration dates for plan certification under s. 91.14.

(b) The department shall enter into a contract with a county to which it awards a planning grant under par. (a) before the department distributes any grant funds to the county. In the contract, the department shall identify the costs that are eligible for reimbursement through the grant.

(c) The department may distribute grant funds under this subsection only after the county shows that it has incurred costs that are eligible for reimbursement under par. (b). The department may not distribute more than 50 percent of the amount of a grant under this subsection for a farmland preservation plan before the county submits the farmland preservation plan for certification under s. 91.16.

History: 2009 a. 28.

91.12 Certified plan. The following farmland preservation plans are certified, for the purposes of this chapter and s. 71.613:

(1) An agricultural preservation plan that was certified under s. 91.06, 2007 stats., if the certification has not expired.

(2) A farmland preservation plan that was certified under s. 91.16 if the certification has not expired or been withdrawn.

History: 2009 a. 28.

91.14 FARMLAND PRESERVATION

91.14 Expiration of plan certification. (1) Except as provided under sub. (4), the certification of a farmland preservation plan that was certified under s. 91.06, 2007 stats., expires on the date provided in the certification or, if the certification does not provide an expiration date, on the following date:

(a) December 31, 2011, for a county with an increase in population density of more than 9 persons per square mile.

(b) December 31, 2012, for a county with an increase in population density of more than 3.75 but not more than 9 persons per square mile.

(c) December 31, 2013, for a county with an increase in population density of more than 1.75 but not more than 3.75 persons per square mile.

(d) December 31, 2014, for a county with an increase in population density of more than 0.8 but not more than 1.75 persons per square mile.

(e) December 31, 2015, for a county with an increase in population density of not more than 0.8 person per square mile.

(2) The certification of a farmland preservation plan that the department certifies under s. 91.16 expires on the date specified under s. 91.16 (2).

(3) For the purposes of sub. (1), a county's increase in population density is the number by which the county's population per square mile based on the department of administration's 2007 population estimate under s. 16.96 exceeds the county's population per square mile based on the 2000 federal census.

(4) The secretary of agriculture, trade and consumer protection may delay the date for the expiration of a county's farmland preservation plan for up to 2 years beyond the date under sub. (1) upon a written request from the county demonstrating to the secretary's satisfaction that a delay would allow the county to concurrently develop a farmland preservation plan and a comprehensive plan or an update to a comprehensive plan.

History: 2009 a. 28.

91.16 Certification of plan by the department. (1) GENERAL. The department may certify a farmland preservation plan or an amendment to a farmland preservation plan as provided in this section.

(2) CERTIFICATION PERIOD. (a) The department may certify a farmland preservation plan for a period that does not exceed 10 years. The department shall specify the expiration date of the certification of the farmland preservation plan in the certification.

(b) The certification of an amendment to a certified farmland preservation plan expires on the date that the certification of the farmland preservation plan expires, except that the department may treat a comprehensive revision of a certified farmland preservation plan as a new farmland preservation plan and shall specify an expiration date for the certification of the revised farmland preservation plan as provided in par. (a).

(3) SCOPE OF DEPARTMENT REVIEW. (a) The department may certify a county's farmland preservation plan or an amendment to the farmland preservation plan based on the county's certification under s. 91.20 (3), without conducting any additional review or audit.

(b) The department may do any of the following before it certifies a county's farmland preservation plan or amendment:

1. Review the farmland preservation plan or amendment for compliance with s. 91.18.

2. Review and independently verify the application for certification, including the statement under s. 91.20 (3).

(4) DENIAL OF CERTIFICATION. The department shall deny a county's application for certification of a farmland preservation plan or amendment if the department finds any of the following:

(a) That the farmland preservation plan or amendment does not comply with the requirements in s. 91.18.

(b) That the application for certification does not comply with s. 91.20.

(5) WRITTEN DECISION; DEADLINE. The department shall grant or deny an application for certification under this section no more than 90 days after the day on which the county submits a complete application, unless the county agrees to an extension. The department shall issue its decision in the form required by s. 227.47 (1).

(6) CONDITIONAL CERTIFICATION. The department may grant an application for certification under this section subject to conditions specified by the department in its decision under sub. (5). The department may certify a farmland preservation plan or amendment contingent upon the county board adopting the farmland preservation plan or amendment as certified.

(7) EFFECTIVE DATE OF CERTIFICATION. A certification under this section takes effect on the day on which the department issues its decision, except that if the department specifies conditions under sub. (6), the certification takes effect on the day on which the department determines that the county has met the conditions.

(8) EFFECTIVENESS OF PLAN AMENDMENTS. For purposes of this chapter and s. 71.613, a certified farmland preservation plan does not include an amendment adopted after July 1, 2009, unless the department certifies the amendment.

(9) WITHDRAWAL OF CERTIFICATION. The department may withdraw a certification that it granted under sub. (3) (a) if the department finds that the farmland preservation plan materially violates the requirements under s. 91.18.

History: 2009 a. 28.

91.18 Requirements for certification of plan. (1) A farmland preservation plan qualifies for certification under s. 91.16 if it complies with all of the following:

(a) The requirements in s. 91.10 (1) and (2).

(b) Any other requirements that the department specifies by rule.

(2) An amendment to a farmland preservation plan qualifies for certification under s. 91.16 if it complies with all of the requirements in sub. (1) that are relevant to the amendment and it does not cause the farmland preservation plan to violate any of the requirements in sub. (1).

History: 2009 a. 28.

91.20 Applying for certification of plan. A county seeking certification of a farmland preservation plan or amendment to a farmland preservation plan shall submit all of the following to the department in writing, along with any other relevant information that the county chooses to provide:

(1) The proposed farmland preservation plan or amendment.

(2) All of the following background information:

(a) A concise summary of the farmland preservation plan or amendment, including key changes from any previously certified farmland preservation plan.

(b) A concise summary of the process by which the farmland preservation plan or amendment was developed, including public hearings, notice to and involvement of other governmental units within the county, approval by the county, and identification of any key unresolved issues between the county and other governmental units within the county related to the farmland preservation plan or amendment.

(c) The relationship of the farmland preservation plan or amendment to any county comprehensive plan.

(3) A statement, signed by the county corporation counsel and the county planning director or chief elected official, certifying that the farmland preservation plan or amendment complies with all of the requirements in s. 91.18.

(4) Other relevant information that the department requires by rule.

History: 2009 a. 28.

SUBCHAPTER III

FARMLAND PRESERVATION ZONING

91.30 Authority to adopt. A political subdivision may adopt and administer a farmland preservation zoning ordinance in accordance with s. 59.69, 60.61, 60.62, or 62.23.

History: 2009 a. 28.

91.32 Certified ordinance. The following zoning ordinances are certified, for the purposes of this chapter and s. 71.613:

(1) An exclusive agricultural use zoning ordinance that was certified under s. 91.06, 2007 stats., if the certification has not expired or been withdrawn.

(2) A farmland preservation zoning ordinance that was certified under s. 91.36 if the certification has not expired or been withdrawn.

History: 2009 a. 28.

91.34 Expiration of zoning certification. (1) Except as provided under sub. (4), the certification of a farmland preservation zoning ordinance that was certified under s. 91.06, 2007 stats., expires on the date provided in the certification or, if the certification does not provide an expiration date, on the following date:

(a) December 31, 2012, for a county with an increase in population density of more than 9 persons per square mile or a city, village, or town in such a county.

(b) December 31, 2013, for a county with an increase in population density of more than 3.75 but not more than 9 persons per square mile or a city, village, or town in such a county.

(c) December 31, 2014, for a county with an increase in population density of more than 1.75 but not more than 3.75 persons per square mile or a city, village, or town in such a county.

(d) December 31, 2015, for a county with an increase in population density of more than 0.8 but not more than 1.75 persons per square mile or a city, village, or town in such a county.

(e) December 31, 2016, for a county with an increase in population density of not more than 0.8 person per square mile or a city, village, or town in such a county.

(2) The certification of a farmland preservation zoning ordinance that the department certifies under s. 91.36 expires on the date specified under s. 91.36 (2).

(3) For the purposes of sub. (1), a county's increase in population density is the number by which the county's population per square mile based on the department of administration's 2007 population estimate under s. 16.96 exceeds the county's population per square mile based on the 2000 federal census.

(4) The secretary of agriculture, trade and consumer protection may delay the date for the expiration of a political subdivision's farmland preservation zoning ordinance for up to 2 years beyond the date under sub. (1) upon a written request from the political subdivision demonstrating to the secretary's satisfaction that a delay would allow the political subdivision to concurrently develop a farmland preservation zoning ordinance and a comprehensive plan or an update to a comprehensive plan.

History: 2009 a. 28.

91.36 Certification of zoning ordinance by the department. (1) **GENERAL.** The department may certify a farmland preservation zoning ordinance or an amendment to a farmland preservation zoning ordinance as provided in this section.

(2) **CERTIFICATION PERIOD.** (a) The department may certify a farmland preservation zoning ordinance for a period that does not exceed 10 years. The department shall specify the expiration date of the certification of the farmland preservation zoning ordinance in the certification.

(b) The certification of an amendment to a certified farmland preservation zoning ordinance expires on the date that the certification of the farmland preservation zoning ordinance expires, except that the department may treat a comprehensive revision of a certified farmland preservation zoning ordinance as a new farmland preservation zoning ordinance and specify an expiration date

for the certification of the revised farmland preservation zoning ordinance as provided in par. (a).

(3) **SCOPE OF DEPARTMENT REVIEW.** (a) The department may certify a farmland preservation zoning ordinance or amendment to a farmland preservation zoning ordinance based on statements submitted under s. 91.40 (3) and (4), without conducting any additional review or audit.

(b) The department may do any of the following before it certifies a farmland preservation zoning ordinance or amendment:

1. Review the farmland preservation zoning ordinance or amendment for compliance with the requirements under s. 91.38.

2. Review and independently verify the application for certification, including the statements under s. 91.40 (3) and (4).

(4) **DENIAL OF CERTIFICATION.** The department shall deny an application for certification of a farmland preservation zoning ordinance or amendment if the department finds any of the following:

(a) That the farmland preservation zoning ordinance or amendment does not comply with the requirements in s. 91.38.

(b) That the application for certification does not comply with s. 91.40.

(5) **WRITTEN DECISION; DEADLINE.** The department shall grant or deny an application for certification under this section no more than 90 days after the day on which the political subdivision submits a complete application, unless the political subdivision agrees to an extension. The department shall issue its decision in the form required by s. 227.47 (1).

(6) **CONDITIONAL CERTIFICATION.** The department may grant an application for certification under this section subject to conditions specified by the department in its decision under sub. (5). The department may certify a farmland preservation zoning ordinance or amendment contingent upon the political subdivision adopting the farmland preservation zoning ordinance or amendment as certified.

(7) **EFFECTIVE DATE OF CERTIFICATION.** A certification under this section takes effect on the day on which the department issues the certification, except that if the department specifies conditions under sub. (6), the certification takes effect on the day on which the department determines that the political subdivision has met the conditions.

(8) **AMENDMENTS TO ORDINANCES; CERTIFICATION.** (a) Except as provided in par. (b), an amendment to a certified farmland preservation zoning ordinance is automatically considered to be certified as part of the certified farmland preservation zoning ordinance.

(b) An amendment to a certified farmland preservation zoning ordinance that is one of the following and that is adopted after July 1, 2009, is not automatically considered to be certified:

1. An amendment that is a comprehensive revision of a certified farmland preservation zoning ordinance.

2. An amendment that extends coverage of a certified farmland preservation zoning ordinance to a town that was not previously covered.

3. An amendment of a type specified by the department by rule that may materially affect compliance of the certified farmland preservation zoning ordinance with the requirements under s. 91.38.

(c) The department may withdraw certification of a farmland preservation zoning ordinance if, as a result of an amendment adopted after July 1, 2009, the amended farmland preservation zoning ordinance fails to comply with the requirements under s. 91.38. This paragraph applies regardless of whether the farmland preservation zoning ordinance was originally certified under s. 91.06, 2007 stats., or under this section.

(d) A political subdivision shall notify the department in writing whenever the political subdivision adopts an amendment that is described in par. (b) 1. to 3. to a certified farmland preservation zoning ordinance. The political subdivision shall include a copy

91.36 FARMLAND PRESERVATION

of the amendment in the notice. This paragraph does not apply to an amendment that rezones land out of a farmland preservation zoning district.

History: 2009 a. 28.

91.38 Requirements for certification of ordinance.

(1) A farmland preservation zoning ordinance does not qualify for certification under s. 91.36 unless all of the following apply:

(a) The farmland preservation zoning ordinance includes jurisdictional, organizational, and enforcement provisions that are necessary for proper administration.

(c) The farmland preservation zoning ordinance clearly designates farmland preservation zoning districts in which land uses are limited in compliance with s. 91.42.

(d) The farmland preservation zoning ordinance includes maps that clearly delineate each farmland preservation zoning district, so that a reader can easily determine whether a parcel is within a farmland preservation zoning district; that are correlated to the text under par. (e); and that comply with technical specifications that the department establishes by rule.

(e) The text of the farmland preservation zoning ordinance clearly describes the types of land uses authorized in each farmland preservation zoning district.

(f) The farmland preservation zoning ordinance is substantially consistent with a certified farmland preservation plan.

(g) Except as provided by the department by rule, land is not included in a farmland preservation zoning district unless the land is included in a farmland preservation area identified in the county certified farmland preservation plan.

(h) If an overlay district, such as an environmental corridor, is superimposed on a farmland preservation zoning district, all of the following apply:

1. The farmland preservation zoning ordinance clearly identifies the overlay district as such.

2. The overlay district is shown on the maps under par. (d) in a way that allows a reader to easily identify the underlying farmland preservation zoning district and its boundaries.

3. The overlay district does not remove land use restrictions from the underlying farmland preservation zoning district.

(i) The farmland preservation zoning ordinance complies with any other requirements that the department specifies by rule.

(2) An amendment to a farmland preservation zoning ordinance qualifies for certification under s. 91.36 if it complies with all of the requirements in sub. (1) that are relevant to the amendment and it does not cause the farmland preservation zoning ordinance to violate any of the requirements in sub. (1).

(3) The limits on land uses in farmland preservation districts under s. 91.42 are minimum standards for certification of a farmland preservation zoning ordinance under s. 91.36.

History: 2009 a. 28.

91.40 Applying for certification of ordinance. A political subdivision seeking certification of a farmland preservation zoning ordinance or amendment to a farmland preservation zoning ordinance shall submit all of the following to the department in writing, along with any other relevant information that the political subdivision chooses to provide:

(1) The complete farmland preservation zoning ordinance or amendment proposed for certification.

(2) All of the following background information:

(a) A concise summary of the farmland preservation zoning ordinance or amendment, including key changes from any previously certified farmland preservation zoning ordinance.

(b) A concise summary of the process by which the farmland preservation zoning ordinance or amendment was developed, including public hearings, notice to and involvement of other governmental units, approval by the political subdivision, and identification of any key unresolved issues with other governmental

units related to the farmland preservation zoning ordinance or amendment.

(c) A description of the relationship of the farmland preservation zoning ordinance or amendment to the county certified farmland preservation plan, including any material inconsistencies between the farmland preservation zoning ordinance or amendment and the county certified farmland preservation plan.

(3) A statement, signed by the county planning director or the chief elected official, certifying that the farmland preservation zoning ordinance or amendment complies with s. 91.38 (1) (g) and (h).

(4) A statement, signed by the applicant's attorney or chief elected official, certifying that the farmland preservation zoning ordinance or amendment complies with all applicable requirements in s. 91.38.

(5) Other relevant information that the department requires by rule.

History: 2009 a. 28.

91.42 Land use in farmland preservation zoning districts; general. A farmland preservation zoning ordinance does not qualify for certification under s. 91.36, if the farmland preservation zoning ordinance allows a land use in a farmland preservation zoning district other than the following land uses:

(1) Uses identified as permitted uses in s. 91.44.

(2) Uses identified as conditional uses in s. 91.46.

(3) Prior nonconforming uses, subject to s. 59.69 (10), 60.61 (5), or 62.23 (7) (h).

(4) Other uses allowed by the department by rule.

History: 2009 a. 28.

91.44 Permitted uses. **(1)** Except as provided in s. 84.01 (34), a farmland preservation zoning ordinance does not comply with s. 91.42 if the farmland preservation zoning ordinance allows as a permitted use in a farmland preservation zoning district a land use other than the following land uses:

(a) Agricultural uses.

(b) Accessory uses.

(c) Agriculture-related uses.

(d) Nonfarm residences constructed in a rural residential cluster in accordance with an approval of the cluster as a conditional use under s. 91.46 (1) (e).

(e) Undeveloped natural resource and open space areas.

(f) 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 conditional use permit for that use.

(g) Other uses identified by the department by rule.

(2) The department may promulgate rules imposing additional limits on the permitted uses that may be allowed in a farmland preservation zoning district in order for a farmland preservation zoning ordinance to comply with s. 91.42.

History: 2009 a. 28.

91.46 Conditional uses. **(1) GENERAL.** Except as provided in s. 84.01 (34), a farmland preservation zoning ordinance does not comply with s. 91.42 if the farmland preservation zoning ordinance allows as a conditional use in a farmland preservation zoning district a land use other than the following land uses:

(a) Agricultural uses.

(b) Accessory uses.

(c) Agriculture-related uses.

(d) Nonfarm residences that qualify under sub. (2) or that meet more restrictive standards in the farmland preservation zoning ordinance.

(e) Nonfarm residential clusters that qualify under sub. (3) or that meet more restrictive standards in the farmland preservation zoning ordinance.

(f) Transportation, communications, pipeline, electric transmission, utility, or drainage uses that qualify under sub. (4).

(g) Governmental, institutional, religious, or nonprofit community uses, other than uses covered by par. (f), that qualify under sub. (5).

(h) Nonmetallic mineral extraction that qualifies under sub. (6).

(i) Oil and gas exploration or production that is licensed by the department of natural resources under subch. II of ch. 295.

(j) Other uses allowed by the department by rule.

(1m) ADDITIONAL LIMITATIONS. The department may promulgate rules imposing additional limits on the conditional uses that may be allowed in a farmland preservation zoning district in order for a farmland preservation zoning ordinance to comply with s. 91.42.

(2) NONFARM RESIDENCES. A proposed new nonfarm residence or a proposal to convert a farm residence to a nonfarm residence through a change in occupancy qualifies for the purposes of sub. (1) (d) if the political subdivision determines that all of the following apply:

(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 to 20 after the residence is constructed or converted to a nonfarm residence.

(b) There will not be more than 4 dwelling units in nonfarm residences, nor, for a new nonfarm residence, more than 5 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:

1. Convert prime farmland from agricultural use or convert land previously used as cropland, 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 nonfarm residence.

2. Significantly impair or limit the current or future agricultural use of other protected farmland.

(3) NONFARM RESIDENTIAL CLUSTER. A political subdivision may issue one conditional use permit that covers more than one nonfarm residence in a qualifying nonfarm residential cluster. A nonfarm residential cluster qualifies for the purposes of sub. (1) (e) if all of the following apply:

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

(b) The political subdivision imposes legal restrictions on the construction of the nonfarm residences so that if all of the nonfarm residences were constructed, each would satisfy the requirements under sub. (2).

(4) TRANSPORTATION, COMMUNICATIONS, PIPELINE, ELECTRIC TRANSMISSION, UTILITY, OR DRAINAGE USE. A transportation, communications, pipeline, electric transmission, utility, or drainage use qualifies for the purposes of sub. (1) (f) if the political subdivision determines that 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.

(5) GOVERNMENTAL, INSTITUTIONAL, RELIGIOUS, OR NONPROFIT COMMUNITY USE. A governmental, institutional, religious, or nonprofit community use qualifies for the purposes of sub. (1) (g) if the political subdivision determines that 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.

(6) NONMETALLIC MINERAL EXTRACTION. Nonmetallic mineral extraction qualifies for the purposes of sub. (1) (h) if the political subdivision determines that all of the following apply:

(a) The operation complies with subch. I of ch. 295 and rules promulgated under that subchapter, with applicable provisions of the local ordinance under s. 295.13 or 295.14, 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 farmland preservation zoning ordinance requires the owner to restore the land to agricultural use, consistent with any required locally approved reclamation plan, when extraction is completed.

History: 2009 a. 28.

91.48 Rezoning of land out of a farmland preservation zoning district. (1) A political subdivision with a certified farmland preservation zoning ordinance may rezone land out of a farmland preservation zoning district without having the rezoning certified under s. 91.36, if all of the following apply:

(a) The political subdivision finds all of the following, after public hearing:

1. The land is better suited for a use not allowed in the farmland preservation zoning district.

2. The rezoning is consistent with any applicable comprehensive plan.

3. The rezoning is substantially consistent with the county certified farmland preservation plan.

4. The rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

(b) Beginning on January 1, 2010, the person who requests the rezoning pays to the political subdivision, for each rezoned acre

91.48 FARMLAND PRESERVATION

or portion thereof, a conversion fee equal to the greater of the following:

1. Three times the per acre value, for the year in which the land is rezoned, of the highest value category of tillable cropland in the city, village, or town in which the rezoned land is located, as specified by the department of revenue under s. 73.03 (2a).

2. An amount specified in the certified farmland preservation zoning ordinance.

(2) A political subdivision shall by March of 1 each year provide all of the following to the department:

(a) A report of the number of acres that the political subdivision has rezoned out of a farmland preservation zoning district under sub. (1) during the previous year and a map that clearly shows the location of those acres.

(b) A report of the total amount of conversion fees that the political subdivision received as conversion fees under sub. (1) (b) for the rezoned acres under par. (a).

(c) A conversion fee equal to the amount under sub. (1) (b) 1. for each rezoned acre reported under par. (a).

(3) A political subdivision that is not a county shall by March 1 of each year submit a copy of the information that it reports to the department under sub. (2) (a) and (b) to the county in which the political subdivision is located.

(4) If a political subdivision fails to comply with sub. (2), the department may withdraw the certification granted under s. 91.06, 2007 stats., or under s. 91.36 for the political subdivision's farmland preservation zoning ordinance.

History: 2009 a. 28.

91.49 Use of conversion fee revenues. (1) All conversion fees received under s. 91.48 (2) (c) shall be deposited in the working lands fund.

(2) If a political subdivision specifies a conversion fee under s. 91.48 (1) (b) 2. that is higher than the amount that is specified in s. 91.48 (1) (b) 1. and required to be paid to the department under s. 91.48 (2) (c), the political subdivision shall use the difference for its costs related to farmland preservation planning, zoning, or compliance monitoring.

History: 2009 a. 28.

91.50 Exemption from special assessments.

(1) Except as provided in sub. (3), no political subdivision, special purpose district, or other local governmental entity may levy a special assessment for sanitary sewers or water against land in agricultural use, if the land is located in a farmland preservation zoning district.

(2) A political subdivision, special purpose district, or other local governmental entity may deny the use of improvements for which the special assessment is levied to land that is exempt from the assessment under sub. (1).

(3) The exemption under sub. (1) does not apply to an assessment that an owner voluntarily pays, after the assessing authority provides notice of the exemption under sub. (1).

History: 2009 a. 28.

SUBCHAPTER IV

FARMLAND PRESERVATION AGREEMENTS

91.60 Farmland preservation agreements; general.

(1) **AGREEMENTS AUTHORIZED.** The department may enter into a farmland preservation agreement that complies with s. 91.62 with the owner of land that is eligible under sub. (2).

(2) **ELIGIBLE LAND.** Land is eligible if all of the following apply:

(a) The land is operated as part of a farm that produced at least \$6,000 in gross farm revenues during the taxable year preceding the year in which the owner applies for a farmland preservation

agreement or a total of at least \$18,000 in gross farm revenues during the last 3 taxable years preceding the year in which the owner applies for a farmland preservation agreement.

(b) The land is located in a farmland preservation area identified in a certified farmland preservation plan.

(c) The land is in an agricultural enterprise area designated under s. 91.84.

(3) **PRIOR AGREEMENTS.** (a) Except as provided in par. (c) or s. 91.66, a farmland preservation agreement entered into before July 1, 2009, remains in effect for the term specified in the agreement and under the terms that were agreed upon when the agreement was last created, extended, or renewed.

(b) The department may not extend or renew a farmland preservation agreement entered into before July 1, 2009.

(c) The department and an owner of land who entered into a farmland preservation agreement before July 1, 2009, may agree to modify the farmland preservation agreement in order to allow the owner to claim the tax credit under s. 71.613 rather than the tax credit for which the owner would otherwise be eligible.

History: 2009 a. 28.

91.62 Farmland preservation agreements; requirements.

(1) **CONTENTS.** The department may not enter into a farmland preservation agreement unless the agreement does all of the following:

(a) Specifies a term of at least 15 years.

(b) Includes a correct legal description of the tract of land covered by the farmland preservation agreement.

(c) Includes provisions that restrict the tract of land to the following uses:

1. Agricultural uses and accessory uses.

2. Undeveloped natural resource and open space uses.

(2) **FORM.** The department shall specify a form for farmland preservation agreements that complies with s. 59.43 (2m).

(3) **EFFECTIVENESS.** A farmland preservation agreement takes effect when it is signed by all owners of the land covered by the farmland preservation agreement and by the department.

(4) **RECORDING.** The department shall provide a copy of a signed farmland preservation agreement to a person designated by the signing owners and shall promptly present the signed agreement to the register of deeds for the county in which the land is located for recording.

(5) **CHANGE OF OWNERSHIP.** A farmland preservation agreement is binding on a person who purchases land during the term of a farmland preservation agreement that covers the land.

History: 2009 a. 28.

91.64 Applying for a farmland preservation agreement.

(1) **SUBMITTING AN APPLICATION.** An owner who wishes to enter into a farmland preservation agreement shall submit an application, on a form provided by the department, to the county clerk of the county in which the land is located.

(2) **CONTENTS OF APPLICATION.** A person submitting an application under sub. (1) shall include all of the following in the application:

(a) The name and address of each person who has an ownership interest in the land proposed for coverage by the agreement.

(b) The location of the land proposed for coverage, indicated by street address, global positioning system coordinates, or township, range, and section.

(c) The legal description of the land proposed for coverage.

(d) A map or aerial photograph of the land proposed for coverage, showing parcel boundaries, residences and other structures, and significant natural features.

(e) Information showing that the land proposed for coverage is eligible under s. 91.60 (2).

(f) A description of every existing mortgage, easement, and lien, other than liens on growing crops, on land proposed for cov-

erage, including the name and address of the person holding the lien, mortgage, or easement.

(g) A signed agreement from each person required to be identified under par. (f) subordinating the person's lien, mortgage, or easement to the agreement.

(h) Any other information required by the department by rule.

(i) Any fee under sub. (2m).

(2m) COUNTY PROCESSING FEE. A county may charge a reasonable fee for processing an application for a farmland preservation agreement.

(3) COUNTY REVIEW. (a) A county shall review an application under sub. (2) to determine whether the land proposed for coverage meets the requirements under s. 91.60 (2) (b) and (c). The county shall provide its findings to the applicant in writing within 60 days after the day on which the county clerk receives a complete application.

(b) If the county finds under par. (a) that the land proposed for coverage meets the requirements under s. 91.60 (2) (b) and (c), the county shall promptly send all of the following to the department, along with any other comments that the county chooses to provide:

1. The original application, including all of the information provided with the application.

2. A copy of the county's findings.

(4) DEPARTMENT ACTION ON APPLICATION. (a) The department may prepare a farmland preservation agreement that complies with s. 91.62 and enter into the farmland preservation agreement under s. 91.60 (1) based on a complete application and on county findings under sub. (3) (b).

(b) The department may decline to enter into a farmland preservation agreement for any of the following reasons:

1. The application is incomplete.

2. The land is not eligible land under s. 91.60 (2).

History: 2009 a. 28.

91.66 Terminating a farmland preservation agreement. (1) The department may terminate a farmland preservation agreement or release land from a farmland preservation agreement at any time if all of the following apply:

(a) All of the owners of land covered by the farmland preservation agreement consent to the termination or release, in writing.

(b) The department finds that the termination or release will not impair or limit agricultural use of other protected farmland.

(c) The owners of the land pay to the department, for each acre or portion thereof released from the farmland preservation agreement, a conversion fee equal to 3 times the per acre value, for the year in which the farmland preservation agreement is terminated or the land is released, of the highest value category of tillable cropland in the city, village, or town in which the land is located, as specified by the department of revenue under s. 73.03 (2a).

(1m) All conversion fees received under sub. (1) (c) shall be deposited in the working lands fund.

(2) The department shall provide a copy of its decision to terminate a farmland preservation agreement or release land from a farmland preservation agreement to a person designated by the owners of the land and shall present a copy of the decision to the register of deeds for the county in which the land is located for recording.

History: 2009 a. 28.

91.68 Violations of farmland preservation agreements. (1) The department may bring an action in circuit court to do any of the following:

(a) Enforce a farmland preservation agreement.

(b) Restrain, by temporary or permanent injunction, a change in land use that violates a farmland preservation agreement.

(c) Seek a civil forfeiture for a change in land use that violates a farmland preservation agreement.

(2) A forfeiture under sub. (1) (c) may not exceed twice the fair market value of the land covered by the agreement at the time of the violation.

History: 2009 a. 28.

91.70 Farmland preservation agreements; exemption from special assessments. (1) Except as provided in sub. (3), no political subdivision, special purpose district, or other local governmental entity may levy a special assessment for sanitary sewers or water against land in agricultural use, if the land is covered by a farmland preservation agreement.

(2) A political subdivision, special purpose district or other local governmental entity may deny the use of improvements for which the special assessment is levied to land that is exempt from the assessment under sub. (1).

(3) The exemption under sub. (1) does not apply to an assessment that an owner voluntarily pays, after the assessing authority provides notice of the exemption under sub. (1).

History: 2009 a. 28.

SUBCHAPTER V

SOIL AND WATER CONSERVATION

91.80 Soil and water conservation by persons claiming tax credits. An owner claiming farmland preservation tax credits under s. 71.613 shall comply with applicable land and water conservation standards promulgated by the department under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c).

History: 2009 a. 28.

91.82 Compliance monitoring. (1) **COUNTY RESPONSIBILITY.** (a) A county land conservation committee shall monitor compliance with s. 91.80.

(b) For the purpose of par. (a), a county land conservation committee shall inspect each farm for which the owner claims farmland preservation tax credits under subch. IX of ch. 71 at least once every 4 years.

(c) For the purpose of par. (a), a county land conservation committee may do any of the following:

1. Inspect land that is covered by a farmland preservation agreement or farmland preservation zoning and that is in agricultural use.

2. Require an owner to certify, not more than annually, that the owner complies with s. 91.80.

(d) At least once every 4 years, the department shall review each county land conservation committee's compliance with par. (b).

(2) NOTICE OF NONCOMPLIANCE. (a) A county land conservation committee shall issue a written notice of noncompliance to an owner if the committee finds that the owner has done any of the following:

1. Failed to comply with s. 91.80.

2. Failed to permit a reasonable inspection under sub. (1) (c) 1.

3. Failed to certify compliance as required under sub. (1) (c) 2.

(b) A county land conservation committee shall provide to the department of revenue a copy of each notice of noncompliance issued under par. (a).

(c) If a county land conservation committee determines that an owner has corrected the failure described in a notice of noncompliance under par. (a), it shall withdraw the notice of noncompliance.

91.82 FARMLAND PRESERVATION

pliance and notify the owner and the department of revenue of the withdrawal.

(3) PROCEDURE. The department may promulgate rules prescribing procedures for the administration of this section by land conservation committees.

History: 2009 a. 28.

SUBCHAPTER VI

AGRICULTURAL ENTERPRISE AREAS

91.84 Agricultural enterprise areas; general. (1) DESIGNATION. (a) 1. The department may by rule designate agricultural enterprise areas targeted for agricultural preservation and development.

2. The department may by rule modify or terminate the designation of an agricultural enterprise area.

(b) Subject to par. (c), the department may designate agricultural enterprise areas with a combined area of not more than 1,000,000 acres of land.

(c) Before January 1, 2012, the department may designate not more than 15 agricultural enterprise areas with a combined area of not more than 200,000 acres of land.

(e) The department may not designate an area as an agricultural enterprise area unless all of the following apply:

1. The department receives a petition requesting the designation and the petition complies with s. 91.86.

3. The parcels in the area are contiguous. Parcels that are only separated by a lake, stream, or transportation or utility right-of-way are contiguous for the purposes of this subdivision.

4. The area is located entirely in a farmland preservation area identified in a certified farmland preservation plan.

5. The land in the area is primarily in agricultural use.

(f) In designating agricultural areas under this subsection, the department shall give preference to areas that include at least 1,000 acres of land.

(2) EMERGENCY RULES. The department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural preservation area or modifying or terminating the designation of an agricultural preservation area. Notwithstanding s. 227.24 (1) (c) and (2), a rule promulgated under this subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to determine that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(3) EFFECT OF DESIGNATION. The designation of an area under sub. (1) allows owners of eligible land within the area to enter into farmland preservation agreements with the department. If the department modifies or terminates the designation of an area under sub. (1) and that modification or termination results in land covered by a farmland preservation agreement no longer being located in a designated area, the farmland preservation agreement remains in effect for the remainder of its term, but the department may not extend or renew the farmland preservation agreement.

(4) MAP. In a rule designating an agricultural enterprise area, the department shall include a map that clearly shows the bound-

aries of the proposed agricultural enterprise area so that a reader can easily determine whether a parcel of land is located within the agricultural enterprise area.

(5) EFFECTIVE DATE OF DESIGNATION. The designation of an agricultural enterprise area takes effect on January 1 of the calendar year following the year in which the rule designating the area is published, unless the rule specifies a later effective date.

History: 2009 a. 28.

91.86 Agricultural enterprise area; petition. (1) DEFINITION. In this section, “eligible farm” means a farm that produced at least \$6,000 in gross farm revenues during the taxable year preceding the year in which a petition is filed requesting the department to designate an area in which the farm is located as an agricultural enterprise area or a total of at least \$18,000 in gross farm revenues during the 3 taxable years preceding the year in which a petition is filed.

(2) PETITIONERS. (a) The department may consider a petition requesting that it designate an area as an agricultural enterprise area if all of the following jointly file the petition:

1. Each political subdivision in which any part of the proposed agricultural enterprise area is located.

2. Owners of at least 5 eligible farms located in the area.

(b) Each petitioner under par. (a) who is an individual shall sign the petition. For a petitioner that is not an individual, an authorized officer or representative shall sign the petition.

(3) CONTENTS OF PETITION. (a) The department may not approve a petition requesting that it designate an area as an agricultural enterprising [enterprise] area unless the petition contains all of the following:

NOTE: The correct term is shown in brackets. Corrective legislation is pending.

1. The correct legal name and principal address of each petitioner.

2. A summary of the petition that includes the purpose and rationale for the petition.

3. A map that clearly shows the boundaries of the proposed agricultural enterprise area so that a reader can easily determine whether a parcel of land is located within the proposed area.

4. Information showing that the proposed agricultural enterprise area meets the requirements under s. 91.84 (1) (e).

5. A clear description of current land uses in the proposed agricultural enterprise area, including current agricultural uses, agriculture-related uses, transportation, utility, energy, and communication uses, and undeveloped natural resource and open space uses.

6. A clear description of the agricultural land use and development goals for the proposed agricultural enterprise area, including proposed agricultural uses, agriculture-related uses, and relevant transportation, utility, energy, and communication uses.

7. A plan for achieving the goals under subd. 6., including any planned investments, grants, development incentives, cooperative agreements, land or easement purchases, land donations, and promotion and public outreach activities.

8. A description of any current or proposed land use controls in the proposed agricultural enterprise area, including farmland preservation agreements.

(b) Petitioners under sub. (2) may include in the petition the names and addresses of other persons who propose to cooperate in achieving the goals under par. (a) 6.

History: 2009 a. 28.

CHAPTER 92

SOIL AND WATER CONSERVATION AND ANIMAL WASTE MANAGEMENT

92.02	Legislative intent.	92.11	Regulation of local soil and water resource management practices.
92.025	State soil erosion control goals.	92.115	Municipal soil conservation on private lands.
92.03	Definitions.	92.12	Intergovernmental cooperation.
92.04	Land and water conservation board.	92.13	State and local agencies to cooperate.
92.05	Department.	92.14	Soil and water resource management program.
92.06	Land conservation committees.	92.15	Local regulation of livestock operations.
92.07	Land conservation committee; powers.	92.16	Manure storage facilities.
92.09	Land conservation committee staff.	92.17	Shoreland management.
92.10	Land and water resource management planning program.	92.18	Training and certification.

Cross Reference: See also ch. ATCP 50, Wis. adm. code.

92.02 Legislative intent. (1) The legislature finds that the soil resources of this state are being depleted by wind and water erosion and that the waters of this state are being polluted by non-point sources of pollution. The legislature further finds that these are statewide problems endangering the health and welfare of the state's citizens, its recreational resources, agricultural productivity and industrial base.

(2) The legislature declares it to be the policy of this state to halt and reverse the depletion of the state's soil resources and pollution of its waters.

(3) It is the intent of the legislature to implement this policy by enacting this soil and water conservation law to:

(a) Establish goals and standards for conservation of soil and water resources;

(b) Provide for cost sharing, technical assistance, educational programs and other programs to conserve soil and water resources;

(c) Encourage coordinated soil and water conservation planning and program implementation; and

(d) Enable the regulation of harmful land use and land management practices by county ordinance where necessary to achieve the purposes of this chapter.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.025 State soil erosion control goals. It is the intent of the legislature that:

(1) **STATUTORY GOAL.** The soil erosion rate on each individual cropland field in the state does not exceed the tolerable erosion level on or after January 1, 2000.

(2) **INTERIM GOALS; COUNTIES.** The soil erosion rate in each county in the state does not exceed 1.5 times the tolerable erosion level on or after July 1, 1990 and does not exceed the tolerable erosion level on or after July 1, 1993.

(3) **INTERIM GOALS; INDIVIDUAL CROPLAND FIELDS.** The soil erosion rate in each individual cropland field in the state does not exceed 3 times the tolerable erosion level on or after July 1, 1990, and does not exceed 2 times the tolerable erosion level on or after July 1, 1995.

(4) **INTERIM GOAL; STATE-RUN FARMS.** The soil erosion rate on individual cropland fields of farms owned by the University of Wisconsin System or any other department or agency of state government does not exceed the tolerable soil erosion level on or after July 1, 1990.

History: 1985 a. 29.

92.03 Definitions. In this chapter:

(1) "Agency" means any department, agency, board, commission, committee, council, officer, subdivision or instrumentality, corporate or otherwise, of this state.

(2) "Board" means the land and water conservation board created under s. 15.135 (4).

(3) "Department" means the department of agriculture, trade and consumer protection.

(4) "Landowner" means any person over 18 years of age and any partnership, limited liability company, firm, or corporation that holds title to land lying within a county, whether or not this land is subject to easement, mortgage, lien, lease, or restrictive covenant, except that this term does not include any person who is under guardianship, a person who is adjudicated incompetent, or a person who is mentally ill. A person, partnership, limited liability company, firm, or corporation is deemed to hold title to land if the person, partnership, limited liability company, firm, or corporation has any of the following:

(a) Title as sole owner.

(b) Title as a joint owner.

(c) Title as owner of an undivided interest.

(d) Title as sole or joint trustee or as sole or joint assignee.

(e) A land contract vendee's interest therein.

(5) "Land user" means any person who uses land as an operator, lessor or renter.

(6) "Secretary" means the secretary of the department.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1993 a. 16, 112; 2005 a. 387.

92.04 Land and water conservation board. (1) **POWERS.**

(a) *Hearings.* The board may hold public hearings in the performance of its functions.

(b) *Delegation.* The board may delegate to its chairperson or to one or more of its members any of its powers or duties.

(c) *Soil and water conservation studies and recommendations.* The board may make studies and recommendations on matters relating to soil and water conservation.

(2) **DUTIES.** (a) *Advise secretary and department.* The board shall advise the secretary and department on matters relating to exercise of the department's authority under this chapter.

(b) *Review land and water resource management plans.* The board shall review land and water resource management plans prepared under s. 92.10 and make recommendations to the department on approval or disapproval of those plans.

(c) *Review and approve soil and water conservation standards.* The board shall review soil and water conservation standards prepared under s. 92.105. The board shall establish guidelines for the approval of these standards.

NOTE: Section 92.105 was repealed by 2009 Wis. Act 28. Corrective legislation is pending.

(d) *Review plans.* The board shall review annual grant allocation plans developed under s. 92.14 (6) (b) and make recommendations to the department on approval, modification or disapproval of the plans.

92.04 SOIL, WATER AND ANIMAL WASTE

(e) *Review joint evaluation plan.* The board shall review the evaluation plan prepared under s. 92.14 (13). After its review, the board shall make recommendations on the plan to the department and to the department of natural resources.

(f) *Review annual reports.* The board shall review the annual reports under ss. 92.14 (12) and 281.65 (4) (o).

(g) *Advise the University of Wisconsin System.* The board shall advise the University of Wisconsin System annually on needed research and educational programs relating to soil and water conservation.

(h) *State erosion control goals; compliance and evaluation.* The board shall review compliance with state soil erosion control goals established under s. 92.025. The board shall notify the department and the legislature if these goals are not achieved or if it is unlikely that these goals will be achieved.

(i) *Tolerable erosion levels.* The board shall establish a tolerable erosion level based on an erosion rate which is acceptable and maintains long-term soil productivity.

(j) *Records.* The board shall keep a full and accurate record of all proceedings before it and all actions taken by it.

(k) *Review of pollution abatement determinations.* The board shall review and affirm or reverse decisions of county land conservation committees under s. 281.20 (3) (b) when review is requested under s. 281.20 (5). The board may conduct an informal hearing that is not a contested case under ch. 227.

(L) *Review of critical site determinations.* The board shall review and affirm or reverse decisions of county land conservation committees under s. 281.65 (7) (a) 2. when review is requested under s. 281.65 (7) (b). The board may conduct an informal hearing which is not a contested case under ch. 227.

(3) **RULES REVIEW.** (a) *Board review.* The board shall review all rules of the department relating to implementation of this chapter prior to promulgation.

(b) *Submission for review.* Before submitting proposed rules to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board has 30 days to submit comments on the proposed rules to the department.

(c) *Emergency rules.* If the department promulgates an emergency rule under s. 227.24, it shall provide a copy of the rule to the board prior to publication of the rule in the official state paper.

(d) *Hearing.* The chairperson of the board, or his or her designee from the board, may cochair with the department any public hearing held by the department on proposed rules.

(e) *Dissenting report.* The department shall submit to the board a copy of the report required under s. 227.19 (2) on proposed rules. The board may prepare a dissenting report stating its recommendations on the proposed rules. The board shall prepare any dissenting report within 10 days from the date of receipt of the department's report. The department shall attach the dissenting report to the department's report, send them to the presiding officer of each house of the legislature and distribute copies under s. 227.19 (2). The department shall cause a statement to appear in the Wisconsin administrative register to the effect that a dissenting report of the board was submitted to the presiding officer of each house of the legislature.

(f) *No rule-making power.* The board has no rule-making authority on matters relating to soil and water conservation.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1983 a. 416; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (8); 1987 a. 27; 1993 a. 16, 166; 1995 a. 227; 1997 a. 27.

Cross Reference: See also ch. ATCP 50, Wis. adm. code.

92.05 Department. (1) **CENTRAL AGENCY.** The department is the central agency of this state responsible for setting and implementing statewide soil and water conservation policies and administering the state's soil and water conservation programs. The department shall coordinate its soil and water conservation program with the nonpoint source water pollution abatement program established under s. 281.65, the inland lake protection and

rehabilitation program established under ch. 33 and other programs with objectives related to soil and water conservation administered by the department of natural resources or by other state or federal agencies.

(2) **POWERS.** (a) *Accept gifts.* The department may accept contributions of money or gifts for soil and water conservation purposes.

(b) *Require reports.* The department may require reports from the counties as needed.

(3) **DUTIES.** (a) *Information.* The department shall keep county land conservation committee members generally informed of activities and experience useful to them.

(b) *Development; coordination.* The department shall assist in developing and coordinating the plans and programs of each county.

(c) *Rules.* The department shall promulgate rules governing implementation of this chapter and distribution of state or federal funds by the department to the counties. The department shall comply with the procedures under s. 92.04 (3) in promulgating these rules.

(d) *Advise University of Wisconsin System.* The department shall advise the University of Wisconsin System annually on developing research and educational programs relating to soil and water conservation.

(e) *Studies.* The department may undertake studies and investigations and make and issue reports and recommendations with respect to state soil and water conservation program needs. Biennially, the department shall prepare a state soil and water conservation report. This report shall include a description of present soil and water resource uses and a projection of future trends, an assessment of soil and water conservation problems in relation to soil and water resource use practices and any actions necessary to correct or solve these problems including specific goals, action schedules, program evaluation criteria and provisions for the coordination of these actions with programs developed by other agencies for the development, management and conservation of soil, water and related natural resources. This report shall include the identification of counties and specific parcels within these counties where soil and water conservation problems are most acute and recommendations for actions necessary to correct or solve these problems.

(f) *Nonpoint source water pollution abatement.* The department shall perform the duties specified for the department in the nonpoint source water pollution abatement program under s. 281.65 (5).

(g) *Watershed protection and flood prevention act.* The department has responsibility over programs provided by 16 USC 1001 to 1008 relating to the planning and carrying out of works of improvement for soil and water conservation and other purposes.

(h) *Model ordinances.* The department shall make available model ordinances for counties and municipalities concerning regulation and control of land use and land management practices as authorized under s. 92.11.

(i) *Provide staff.* The department shall provide staff to assist the board in performing its statutory duties.

(j) *Milkhouse wastewater.* The department, in consultation with appropriate state and federal agencies, shall promulgate guidelines for determining eligibility for financial assistance under ss. 92.14 and 281.65 for milkhouse wastewater.

(k) *Nutrient management rules.* The department shall promulgate rules to improve agricultural nutrient management in this state. The rules shall be consistent with rules promulgated under s. 281.16 (3) and shall include incentives, educational and outreach provisions and compliance requirements.

(L) *Technical assistance; performance standards.* The department shall provide technical assistance to county land conservation committees and local units of government for the development of ordinances that implement standards adopted under s.

3 Updated 07–08 Wis. Stats. Database
Not certified under s. 35.18 (2), stats.

SOIL, WATER AND ANIMAL WASTE 92.07

92.07 (2), 92.15 (2) or (3) or 281.16 (3). The department's technical assistance shall include preparing model ordinances, providing data concerning the standards and reviewing draft ordinances to determine whether the draft ordinances comply with applicable statutes and rules.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1987 a. 27; 1991 a. 309; 1995 a. 227; 1997 a. 27; 1999 a. 9; 2009 a. 28.

Cross Reference: See also ch. ATCP 50, Wis. adm. code.

92.06 Land conservation committees. (1) CREATION; MEMBERSHIP. (a) *Creation.* Each county board shall create a land conservation committee.

(b) *Membership.* 1. The county board shall appoint to the land conservation committee at least 2 persons who are members of the committee on agriculture and extension education created under s. 59.56 (3) (b).

2. The county board shall appoint to the land conservation committee a person who is the chairperson of the county agricultural stabilization and conservation committee created under 16 USC 590h (b) or other county agricultural stabilization and conservation committee member designated by the chairperson of the county agricultural stabilization and conservation committee.

3. The county board may appoint to the land conservation committee any number of members who are also members of the county board.

4. The county board may appoint to the land conservation committee up to 2 members who are not members of the county board.

(c) *Terms.* Each member of the land conservation committee shall serve for a term of 2 years or until a successor is appointed, whichever is longer.

(d) *Reimbursement.* Each member of the land conservation committee shall be reimbursed for necessary expenses and shall be paid the same per diem as members of other county board committees.

(e) *Programs and responsibilities.* The county board may assign other programs and responsibilities to the land conservation committee.

(2) DESIGNATED REPRESENTATIVES. The county board shall designate a representative of each county committee with responsibilities related to natural resource management to serve as an adviser to the land conservation committee. The county board shall designate, at a minimum, representatives from any county zoning or land use, forestry, parks and solid waste committees. In addition, the land conservation committee may invite any state, federal or local agency with which the county or committee has a memorandum of understanding to designate a representative to advise the land conservation committee.

(4) PUBLIC PARTICIPATION. The committee shall actively solicit public participation in the planning and evaluation of soil and water conservation programs.

History: 1981 c. 346; 1985 a. 29; 1995 a. 201.

Appointments to the conservation committee are made by the county board, not the county executive. 76 Atty. Gen. 173.

Committee responsibilities and prohibitions of private interests in public contracts are discussed. 76 Atty. Gen. 184.

92.07 Land conservation committee; powers.

(1) POWERS GENERALLY. Each land conservation committee may carry out the powers delegated to the committee subject to the approval of the county board.

(2) STANDARDS. Each land conservation committee may develop and adopt standards and specifications for management practices to control erosion, sedimentation and nonpoint source water pollution. The standards and specifications for agricultural facilities and practices that are constructed or begun on or after October 14, 1997, and, if cost-sharing is available to the owner or operator under s. 92.14 or 281.65 or from any other source, for agricultural facilities and practices that are constructed or begun before that date shall be consistent with the performance stan-

dards, prohibitions, conservation practices and technical standards under s. 281.16 (3). The land conservation committee shall use the rules promulgated under s. 281.16 (3) (e) to determine whether cost-sharing is available.

(3) DISTRIBUTE FUNDS. Each land conservation committee may distribute and allocate federal, state and county funds made available to the committee for cost-sharing programs or other incentive programs for improvements and practices relating to soil and water conservation on private or public lands, and within the limits permitted under these programs, to determine the methods of allocating these funds.

(5) EDUCATIONAL AND OTHER PROGRAMS. Each land conservation committee may encourage research and educational, informational and public service programs, advise the University of Wisconsin System on educational needs and assist the University of Wisconsin System and the department in implementing educational programs under ss. 36.25 (7), 59.56 (3) and 92.05.

(6) PREVENTIVE AND CONTROL MEASURES AND WORKS OF IMPROVEMENT. Each land conservation committee may carry out preventive and control measures and works of improvement for flood prevention and for conservation, development, utilization and control of water within the county. These preventive and control measures and works of improvement may include, but are not limited to, changes in the use of land and use of engineering operations such as terraces, terrace outlets, desilting basins, floodwater retarding structures, floodways, dikes and ponds, methods of cultivation and the growing of vegetation. These preventive and control measures and works of improvement may be carried out on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the land, and on any other lands within the county upon obtaining the consent of the landowner or the necessary rights or interests in the land.

(7) ASSISTANCE. Each land conservation committee, in the name of the county, may cooperate with, enter into agreements with, or furnish financial, technical, planning or other assistance to any agency, governmental or otherwise, or any landowner or land user within the incorporated or unincorporated parts of the county, in carrying out resource conservation operations and works of improvement for flood prevention or for the conservation, development, utilization and protection of soil and water resources within the county.

(7m) ASSISTANCE TO THE DEPARTMENT OF TRANSPORTATION. Each land conservation committee shall cooperate with the department of transportation as requested under s. 85.195.

(8) OBTAIN PROPERTY. Each land conservation committee, in the name of the county, may obtain options upon and acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property or rights or interests in property or in water. A land conservation committee may maintain, administer and improve any properties acquired. A land conservation committee may receive income from these properties on behalf of the county and may expend this income in carrying out the purposes and provisions of this chapter. A land conservation committee may sell, lease or otherwise dispose of the property or interests in property in furtherance of the purposes and the provisions of this chapter.

(9) MACHINERY AVAILABILITY. Each land conservation committee may make available, on terms it may prescribe, to landowners and land users within the incorporated and unincorporated parts of the county, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and other material or equipment which will assist the landowners and land users in carrying on operations upon their lands for the conservation of soil resources, for the prevention and control of soil erosion, for flood prevention, for the conservation, development and utilization of water or for the prevention of nonpoint source water pollution.

(10) STRUCTURES. Each land conservation committee may construct, improve, operate and maintain structures necessary or

92.07 SOIL, WATER AND ANIMAL WASTE

convenient for the performance of any of the operations or activities authorized in this chapter.

(11) ADMINISTRATION OF PROJECTS OR PROGRAMS. Each land conservation committee, in the name of the county, may acquire, by purchase, lease or otherwise, and administer, any soil conservation, flood prevention, water management or nonpoint source water pollution abatement project or combinations of these projects, and participate in programs concerned with the conservation of natural resources located within the county undertaken by the United States or any of its agencies, or by this state or any of its agencies. A land conservation committee may administer, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil conservation, flood prevention, water management, water quality improvement, nonpoint source water pollution abatement, erosion control, erosion prevention project or resource conservation program within the county. A land conservation committee may act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation or administration of any resource conservation program within the county. A land conservation committee, on behalf of the county, may accept donations, gifts and contributions in money, services, materials or otherwise from any source and use or expend these moneys, services, materials or other contributions in carrying on its operations.

(12) CONTRACTS; RULES. Each land conservation committee, in the name of the county, may make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(13) CONTRIBUTIONS; AGREEMENTS. As a condition to extending any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, a land conservation committee may require contributions in money, services, materials or otherwise to any operations conferring the benefits, and may require landowners and land users to enter into and perform agreements or covenants respecting the use of land as will lead to conservation of soil and water resources.

(14) ENTER UPON LANDS. Each land conservation committee may enter upon any lands within the county to examine the land and make surveys or plans for soil and water conservation without being liable for trespass in the reasonable performance of these duties. This authorization applies to the land conservation committee members and their agents.

(15) ADMINISTRATION AND ENFORCEMENT OF ORDINANCES. A land conservation committee may, if authorized by the county board, administer and enforce those provisions of an ordinance enacted under s. 101.65 (1) (a) related to construction site erosion, a zoning ordinance enacted under s. 59.693 or an ordinance enacted under authority granted under s. 281.33 (3m).

NOTE: Sub. (15) is shown as amended eff. 1–1–10 by 2009 Wis. Act 28. Prior to 1–1–10 it reads:

(15) ADMINISTRATION AND ENFORCEMENT OF ORDINANCES. A land conservation committee may, if authorized by the county board, administer and enforce those provisions of an ordinance enacted under s. 101.65 (1) (a) related to construction site erosion, a zoning ordinance enacted under s. 59.693 or an ordinance enacted under authority granted under s. 101.1205.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1991 a. 309; 1993 a. 16; 1995 a. 201; 1997 a. 27; 1999 a. 9; 2009 a. 28.

Cross-reference: See ss. 59.70 (20) (c) and 60.10 (2) (i) for authorization of county or town appropriations.

92.09 Land conservation committee staff. The land conservation committee may employ county soil and water conservation staff, subject to the approval of the county board. The county soil and water conservation staff is responsible for the administration of the county soil and water conservation program and may exercise the powers granted to the land conservation committee.

History: 1981 c. 346.

92.10 Land and water resource management planning program. (1) CREATION. There is created a land and water resource management planning program. The department, board

and land conservation committees jointly shall develop and administer this program.

(2) PURPOSES. The purposes of the land and water resource management planning program are to conserve long-term soil productivity, protect the quality of related natural resources, enhance water quality and focus on severe soil erosion problems.

(4) IMPLEMENTATION; DEPARTMENT DUTIES. (a) *Data.* The department shall develop a systematic method of collecting and organizing data related to soil erosion. The department shall cooperate with the department of administration under s. 16.967 in developing this methodology or any related activities related to land information collection.

(c) *Plan assistance.* The department shall assist land conservation committees in preparing land and water resource management plans.

(d) *Plan review.* The department shall review and approve or disapprove land and water resource management plans submitted by the land conservation committees. The department may require land conservation committees to indicate specific projects to be funded under each plan and the related cost-sharing rates.

(5) IMPLEMENTATION; BOARD DUTIES. (a) *Plan review.* The board shall review land and water resource management plans submitted by the land conservation committees and make recommendations to the department.

(b) *Solicit comments.* The board shall solicit comments on land conservation committee plans from the agencies identified as advisers to the board under s. 15.135 (4).

(6) IMPLEMENTATION; COMMITTEE DUTIES. (a) *Plan preparation.* A land conservation committee shall prepare a land and water resource management plan that, at a minimum, does all of the following:

1. Includes an assessment of water quality and soil erosion conditions throughout the county, including any assessment available from the department of natural resources.

2. Specifies water quality objectives for each water basin, priority watershed, as defined in s. 281.65 (2) (c), and priority lake, as defined in s. 281.65 (2) (be).

3. Identifies the best management practices to achieve the objectives under subd. 2. and to achieve the tolerable erosion level under s. 92.04 (2) (i).

4. Identifies applicable performance standards and prohibitions related to the control of pollution from nonpoint sources, as defined in s. 281.65 (2) (b), and to soil erosion control, including those under this chapter and chs. 281 and 283 and ss. 59.692 and 59.693.

5. Includes a multiyear description of planned county activities, and priorities for those activities, related to land and water resources, including those designed to meet the objectives specified under subd. 2. and to ensure compliance with the standards and prohibitions identified under subd. 4.

6. Describes a system to monitor the progress of activities described in the plan.

7. Includes a strategy to provide information and education related to soil and water resource management.

8. Describes methods for coordinating activities described in the plan with programs of other local, state and federal agencies.

(b) *Notification.* A land conservation committee shall notify landowners and land users of the results of any determinations concerning soil erosion rates and nonpoint source water pollution, and provide an opportunity for landowners and land users to present information relating to the accuracy of the determinations during preparation of the land and water resource management plan.

(c) *Hearings.* A land conservation committee shall hold one or more public hearings on the land and water resource management plan.

(d) *Plan submission.* A land conservation committee shall submit the land and water resource management plan to the board and department.

(8) DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES. The department of natural resources shall provide counties with assistance in land and water resource management planning, including providing available water quality data and information, providing training and support for water resource assessments and appraisals and providing related program information.

History: 1981 c. 346; 1983 a. 524; 1985 a. 29; 1987 a. 27; 1989 a. 31; 1997 a. 27 ss. 2488s to 2489L, 9456 (3m); 1999 a. 9; 2003 a. 33 s. 2811; 2003 a. 48 ss. 10, 11; 2003 a. 206 s. 23; 2005 a. 25 ss. 1742, 2493.

92.11 Regulation of local soil and water resource management practices. (1) PROPOSED ORDINANCES. To promote soil and water conservation or nonpoint source water pollution abatement, a county, city, village or town may enact ordinances for the regulation of land use, land management and pollutant management practices.

(2) APPLICABILITY; CONTENTS. (a) An ordinance enacted under this section may be applicable throughout the county or to any part of the county, including both incorporated and unincorporated areas.

(b) An ordinance enacted under this section may prohibit land uses and land management practices which cause excessive soil erosion, sedimentation, nonpoint source water pollution or storm water runoff.

(3) PRESENTATION; NOTICE; HEARING; COUNTY BOARD ADOPTION. Any ordinance proposed by the land conservation committee under this section shall be presented to the county board together with a report on the need for the ordinance and its expected economic and environmental impact. Within 2 weeks after its receipt, the county board shall publish the proposed ordinance as a class 2 notice, under ch. 985, in a newspaper having general circulation throughout the county and make the report available for public inspection. The county board shall hold one or more public hearings on the proposed ordinance before taking final action. The county board shall adopt, adopt with revisions or disapprove the ordinance.

(4) REFERENDUM; LOCAL APPROVAL REQUIRED. (a) *Definition.* As used in this subsection, “affected area” means the entire town, all of a village within the county or all of a city within a county if an ordinance adopted under this section or a revision to an ordinance adopted under this section is applicable to any part of the town, village or city.

(b) *Referendum required.* No ordinance adopted under this section and no revision to an ordinance adopted under this section may take effect in any affected area in that county unless the ordinance or revision is approved by referendum.

(c) *Wording of ballot question; procedure.* The county board shall include the wording of the question to be placed before the electors in the referendum as a part of the ordinance adopted under this section or the revision to an ordinance adopted under this section. Upon the adoption of the ordinance or revision the county board shall forward a copy of the ordinance or revision to the county clerk who shall cause the question to be placed before the voters of the affected area in the next spring or general election occurring not less than 45 days after the adoption of the ordinance or revision. The form of the ballot shall correspond substantially to the form prescribed under s. 5.64 (2).

(d) *Approval; disapproval.* If the question placed before the electors in the referendum is approved by a majority of all votes cast on that subject in an affected area in that county, the ordinance adopted under this section or the revision to an ordinance adopted under this section takes effect in that affected area. Otherwise, the ordinance or revision does not take effect in that affected area.

(5) ENFORCEMENT. (a) The county board shall by ordinance prescribe administrative procedures and provide personnel necessary for the enforcement of any ordinance enacted under this section. Ordinances enacted under this section may be enforced through civil forfeiture or through issuance of an injunction by the circuit court in an action initiated by the county or land conservation committee. The court may award reasonable attorney fees to

any plaintiff in a successful action for enforcement through injunction.

(b) At least one year before the county or land conservation committee may initiate an action for enforcement, the land conservation committee shall make a reasonable effort to contact the landowner or land user in person and to furnish the landowner or land user all of the following:

1. An explanation orally and in writing of the reasons for the excessive soil erosion.

2. A management plan which, if followed, would reduce soil erosion to a rate established as acceptable by the land conservation committee. The management plan shall, with reasonable limits, set forth all of the options which are available to the landowner or land user to achieve acceptable soil erosion rates.

3. An explanation of the financial aids and technical assistance which are available to the landowner or land user. These may include, but are not necessarily limited to, cost-sharing, loans, tax incentives and technical assistance available from the land conservation committee and other agencies.

(6) BOARD OF ADJUSTMENT. The county board shall provide for the appointment of a board of adjustment in any county which adopts an ordinance under this section.

(7) CONSTRUCTION. Any ordinance enacted under this section shall be liberally construed in favor of the county. It shall be construed as setting minimum requirements for the purposes stated and not as a limitation on other powers granted the county board and land conservation committee.

History: 1981 c. 346; 1987 a. 27; 1993 a. 246; 1999 a. 182.

An ordinance passed under this section may be applicable to incorporated as well as unincorporated areas of the county. 77 Atty. Gen. 87.

92.115 Municipal soil conservation on private lands.

Any city, village or town by its governing body or through a committee designated by it for the purpose, may contract to do soil conservation work on privately owned lands but no contract may involve more than \$1,000 for any one person and the amount of work done for any one person may not exceed \$1,000 annually.

History: 1975 c. 312; 1981 c. 317, 346; 1999 a. 150 s. 371; Stats. 1999 s. 92.115.

92.12 Intergovernmental cooperation.

Counties, cities, villages, towns and public agencies with natural resource responsibilities in the same or different counties may cooperate in carrying out the purposes of this chapter. If a problem of soil or water conservation is defined in part by drainage basin boundaries beyond a single county’s borders or otherwise transcends these borders, the respective counties, cities, villages, towns and public agencies with natural resource responsibilities may enter into mutually binding agreements and contracts containing, but not limited to, provisions for mutually enforced and administered regulatory ordinances and cost-sharing distribution arrangements.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.13 State and local agencies to cooperate.

Agencies of the state having jurisdiction over, or charged with the administration of any state-owned lands, and any county or other governmental subdivision of the state having jurisdiction over, or charged with the administration of any county-owned or other publicly owned lands, shall cooperate to the fullest extent with the land conservation committee in carrying out programs under this chapter. The land conservation committee may enter and perform work upon these publicly owned lands. The provisions of land conservation practices ordinances enacted under s. 92.11 are applicable to these publicly owned lands, and shall be in all respects observed by the agencies administering the lands.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.14 Soil and water resource management program.

(1) DEFINITIONS. In this section:

(a) “Best management practices” has the meaning given under s. 281.65 (2) (a).

92.14 SOIL, WATER AND ANIMAL WASTE

(b) “Nonpoint source” has the meaning given under s. 281.65 (2) (b).

(c) “Priority watershed” has the meaning given under s. 281.65 (2) (c).

(2) ESTABLISHMENT. There is created a soil and water resource management program, which has all of the following purposes:

(a) Enhancing protection of surface water and groundwater resources in this state.

(c) Providing statewide financial and technical assistance for land and water conservation activities at the county level.

(d) Promoting cost-effective land and water conservation activities.

(e) Promoting soil and water conservation by persons claiming farmland preservation tax credits under subch. IX of ch. 71.

(g) Promoting and attaining the soil erosion control goals specified under s. 92.025.

(h) Encouraging innovative local strategies, regulations and incentives to address soil and source water conservation activities.

(i) Increasing local technical assistance to address soil and water resource problems.

(j) Enhancing the administration and coordination of state nonpoint source water pollution abatement activities by the department and the department of natural resources, including providing a single process for grant application, funding allocation, reporting and evaluation.

(3) BASIC ALLOCATIONS TO COUNTIES. To help counties fund their land and water conservation activities, the department shall award an annual grant from the appropriation under s. 20.115 (7) (c), (qe), or (qf) or s. 20.866 (2) (we) to any county land conservation committee that has a land and water resource management plan approved by the department under s. 92.10 (4) (d), and that, by county board action, has resolved to provide any matching funds required under sub. (5g). The county may use the grant for land and water resource management planning and for any of the following purposes, consistent with the approved land and water resource management plan:

(a) County land conservation personnel to administer and implement activities directly related to any of the following:

1. Compliance with soil and water conservation requirements applicable to persons claiming farmland preservation tax credits under subch. IX of ch. 71.

2. Animal waste management activities and ordinances under s. 92.16.

4. Nonpoint source water pollution abatement activities.

5. Other conservation activities determined by the county to be necessary for conservation and resource management in that county.

(b) Grants to farmers for implementing best management practices required under a shoreland management ordinance enacted under s. 92.17, including reimbursement for all of the following:

1. The cost of fencing that the landowner installs in order to comply with the ordinance.

2. The cost of providing a well for livestock if, as a result of complying with the ordinance, the livestock does not have adequate access to water for drinking purposes.

(c) Implementing land and water resource management projects approved in plans under s. 92.10.

(d) Implementing land and water resource management projects undertaken to comply with soil and water conservation requirements applicable to persons claiming farmland preservation tax credits under subch. IX of ch. 71.

(e) Construction of a facility or system related to animal waste management by a farmer who has received a notice of discharge under ch. 283 or management practices required under a notice to a farmer under s. 281.20 (3). The amount of a grant for management practices required under a notice to a farmer under s. 281.20 (3) shall be based on the cost of the method of controlling nonpoint

source pollution that the department determines to be the most cost-effective.

(f) Training required under s. 92.18 or any other training necessary to prepare personnel to perform job duties related to this section or s. 281.65.

(g) Technical assistance, education and training, ordinance development or administration related to this chapter or s. 281.65.

(5g) MATCHING FUNDS. (a) Except as provided in par. (b), if a grant under sub. (3) provides funding for salary and fringe benefits for more than one county staff person, a county shall provide matching funds, as determined by the department by rule, equal to 30% of the cost of salary and fringe benefits for the 2nd staff person and 50% of the cost of salary and fringe benefits for any additional staff persons for whom the grant provides funding.

(b) For a grant awarded for a year before 2010, the department shall require a county to provide matching funds for priority watershed project staff equal to not less than 10% nor more than 30% of the staff funding that was provided to the county for 1997 for a priority watershed that was designated before July 1, 1998. This paragraph does not apply to matching funds for priority watershed project staff after the termination date that was in effect on October 6, 1998, for the priority watershed project.

(5r) ANNUAL GRANT REQUEST. Every land conservation committee shall prepare annually a grant request that describes the land and water resource staffing needs and activities to be undertaken or funded by the county under this chapter and ss. 281.65 and 281.66 and the funding needed for those purposes. The grant request shall be consistent with the county’s plan under s. 92.10. The land conservation committee shall submit the grant request to the department.

(6) ADMINISTRATION OF GRANTS. (b) The department and the department of natural resources shall prepare an annual grant allocation plan identifying the amounts to be provided to counties under this section and ss. 281.65 and 281.66. In the allocation plan, the departments shall attempt to provide funding under this section for an average of 3 staff persons per county with full funding for the first staff person, 70% funding for the 2nd staff person and 50% funding for any additional staff persons and to provide an average of \$100,000 per county for cost-sharing grants. The department shall submit that plan to the board.

(d) The board shall review the annual allocation plan submitted to it under par. (b) and make recommendations to the department of agriculture, trade and consumer protection and the department of natural resources on approval, modification or disapproval of the plan.

(g) Every grant awarded to a county under this section and s. 281.65 shall be consistent with the plans under s. 92.15, 1985 stats., and under this section and ss. 92.10 and 281.65.

(gm) A county may not provide cost-sharing funds using funds provided under this section in an amount that exceeds 70% of the cost of a project, except in cases of economic hardship, as defined by the department by rule.

(h) 1. A county may not provide cost-sharing funds using funds provided under this section for the construction of any facility or system related to animal waste management unless all of the following conditions are met:

a. The facility or system is necessary to meet surface water or groundwater quality objectives.

b. The facility or system is designed consistent with rules of the department and with the technical standards of the county and is designed to be constructed and operated to avoid water pollution.

c. The facility or system will use the most cost-effective method to meet water quality standards.

d. The grant for the facility or system, combined with all other governmental funding, is no more than an amount specified by the department by rule, except that there is no limit on the amount of the grant if the principal purpose of the facility or system is to prevent or control barnyard runoff.

7 Updated 07–08 Wis. Stats. Database
Not certified under s. 35.18 (2), stats.

3. Nothing in this paragraph affects the authority of the department of natural resources to act under ch. 283.

(i) No cost-sharing funds from any grant awarded under this section may be distributed to a landowner or land user unless he or she, by contract with the grant recipient, agrees to do all of the following:

1. Maintain any funded practice for its normal expected life, replace it with an equally effective practice or improvement or repay the cost-sharing funds to the grant recipient.

2. Conduct all land management and pollutant management activities in substantial accordance with the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 and with plans approved under this section, under s. 92.15, 1985 stats., and under ss. 92.10 and 281.65, or to repay the cost-sharing funds.

(k) The department shall identify by rule the types of cost-shared practices and the minimum grant amounts for cost-sharing grants that require any subsequent owner of the property to maintain the cost-shared practice for the life of the cost-shared practice, as determined by the department.

(L) A county may provide cost-sharing funds from a grant under this section to replace a structure or facility at a new location, rather than to repair or reconstruct the structure or facility, if the relocation reduces water pollution and replacement is cost-effective compared to repairing or reconstructing the structure or facility.

(m) The department of agriculture, trade and consumer protection and the department of natural resources shall assist counties in conducting the activities for which grants under sub. (3) may be used.

(7) MAINTENANCE OF EFFORT. The department may not make a grant to a county under this section in any fiscal year unless that county enters into an agreement with the department to maintain or increase its aggregate expenditures from other sources for land and water conservation activities at or above the average level of such expenditures in its 2 fiscal years preceding August 1, 1987.

(8) RULES. In consultation with the department of natural resources, the department shall promulgate rules to administer this section and the department's duties under s. 281.65.

(10) TRAINING. The department may contract with any person for services to administer or implement this chapter, including information and education and training.

(12) ANNUAL REPORT. Annually, the department, in cooperation with the department of natural resources, shall submit a report on the progress of the program under this section and s. 281.65 to the board.

(13) EVALUATION PLAN. The department, jointly with the department of natural resources, shall prepare a plan, which includes water quality monitoring and analysis, for evaluating the program administered under this section and s. 281.65 and submit the plan to the board. The board shall make recommendations to the department and the department of natural resources on the plan. The department shall review and approve or disapprove the plan and shall notify the board of its final action on the plan. The department shall implement any part of the plan for which the plan gives it responsibility.

(14) APPLICATION, ALLOCATION, REPORTING AND EVALUATION. The department, jointly with the department of natural resources, shall develop a single set of grant application, reporting and evaluation forms for use by counties receiving grants under this section and ss. 281.65 and 281.66. The department, jointly with the department of natural resources, shall implement a single process for grant application, funding allocation, reporting and evaluation for counties receiving grants under this section and ss. 281.65 and 281.66.

(14m) COORDINATION. The department of agriculture, trade and consumer protection and the department of natural resources, jointly, shall review applications from counties for grants under sub. (5r) and, for projects and activities selected to receive funding

SOIL, WATER AND ANIMAL WASTE 92.17

shall determine whether to provide funding under this section or under s. 281.65 or 281.66.

(15) FINANCIAL INFORMATION. The department shall consult with the department of natural resources when it prepares the information which it submits to the department of administration under s. 16.42.

History: 1987 a. 27, 297; 1989 a. 56; 1991 a. 39, 309; 1993 a. 16, 166, 213; 1995 a. 27, 225, 227; 1997 a. 27; 1999 a. 9, 185; 2001 a. 16; 2009 a. 28.

92.15 Local regulation of livestock operations. (1) In this section:

(a) "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained or stabled.

(b) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumental-ity or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(2) Notwithstanding ss. 92.11 and 92.17, a local governmental unit may enact regulations of livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3).

(3) (a) Notwithstanding ss. 92.11 and 92.17, a local governmental unit may enact regulations of livestock operations that exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3) only if the local governmental unit demonstrates to the satisfaction of the department of agriculture, trade and consumer protection or the department of natural resources that the regulations are necessary to achieve water quality standards under s. 281.15.

(b) The department of agriculture, trade and consumer protection and the department of natural resources shall, by rule, specify procedures for review and approval of proposed local governmental unit regulations under par. (a).

(4) A local governmental unit may not apply a regulation under sub. (2) or (3) to a livestock operation that exists on October 14, 1997, unless the local governmental unit determines, using the rules promulgated under s. 281.16 (3) (e), that cost-sharing is available to the owner or operator of the livestock operation under s. 92.14 or 281.65 or from any other source.

(5) Any livestock operation that exists on October 14, 1997, and that is required to obtain a permit under s. 283.31 or that receives a notice of discharge under ch. 283 may continue to operate as a livestock operation at the same location notwithstanding s. 59.69 (10) (a) or 62.23 (7) (h) or any zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7), if the livestock operation is a lawful use or a legal nonconforming use under any zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7) on October 14, 1997.

History: 1997 a. 27; 1999 a. 9.

Cross Reference: See also ch. NR 151, Wis. adm. code.

92.16 Manure storage facilities. A county, city, village or town may enact an ordinance requiring manure storage facilities constructed after July 2, 1983, to meet the technical standards of the county, city, village or town and rules of the department. The department shall adopt rules for ordinances setting standards and criteria for construction of manure storage facilities.

History: 1983 a. 27; Stats. 1983 s. 92.16; 1983 a. 410 s. 24n; Stats. 1983 s. 92.34; 1985 a. 8 s. 10; Stats. 1985 s. 92.16; 1987 a. 27; 1993 a. 246.

Cross Reference: See also ss. ATCP 50.95, Wis. adm. code.

An ordinance passed under this section is applicable only in unincorporated areas of the county. 77 Atty. Gen. 87.

92.17 Shoreland management. (1) GUIDELINES ORDINANCE. The guidelines for a shoreland management ordinance shall establish standards for activities related to the purpose of maintaining and improving surface water quality.

(2) AUTHORITY TO ENACT ORDINANCE. (a) A city or village may enact a shoreland management ordinance.

92.17 SOIL, WATER AND ANIMAL WASTE

(ag) A county may enact a shoreland management ordinance. A county shoreland management ordinance does not apply in any town that enacts an ordinance under par. (ar).

(ar) A town may enact a shoreland management ordinance that is prepared under sub. (1).

(b) If a county, city or village proposes to enact an ordinance based on the guidelines prepared under sub. (1), or if a town proposes to enact a shoreland management ordinance, the county, city, village or town shall submit a draft of the ordinance to the department.

(c) The board shall review a draft of an ordinance submitted under par. (b) and make recommendations to the department.

(d) The department shall review and approve or disapprove a draft of an ordinance submitted under par. (b).

(e) A county, city or village may enact an ordinance based on the guidelines prepared under sub. (1) only if the draft of the ordinance is approved by the department under par. (d). A town may enact a shoreland management ordinance only if the draft of the ordinance is approved by the department under par. (d).

(2m) AUTHORITY TO ENFORCE ORDINANCE. A county may not enforce a shoreland management ordinance unless the county uses funds provided under s. 92.14 (3) for grants for the purposes under s. 92.14 (3) (b). A city, village or town may not enforce a shoreland management ordinance unless the county in which the city, village or town is located uses funds provided under s. 92.14 (3) for grants for the purposes under s. 92.14 (3) (b).

(2r) DEPARTMENT NOT TO REQUIRE ENACTMENT. The department may not require a county, city, village or town to enact an ordinance under this section as a condition of any other program administered by the department.

(4) COOPERATION. The department shall consult with the governing bodies of counties, cities, villages and towns to secure voluntary uniformity of regulations, so far as practicable, shall identify low-cost practices and shall extend assistance to counties, cities, villages and towns under this section.

History: 1991 a. 309; 1993 a. 213; 1999 a. 9.

Cross Reference: See also s. ATCP 50.58, Wis. adm. code.

92.18 Training and certification. (1) The department shall, by rule, establish a program of training and certification for

persons who review plans for, conduct inspections of or engage in activities under any of the following:

(a) This chapter.

(b) Section 281.65, if those activities relate to agricultural practices.

(2) The department shall do all of the following:

(a) Identify those persons involved in plan review or inspections who are required to obtain certification.

(b) Establish the requirements for and the term of initial certification, and the requirements for recertification upon expiration of that term. To the extent possible, the department shall establish the requirements for certification in conformance with the engineering approval system used by the federal soil conservation service in providing technical assistance under 7 CFR 610.1 to 610.5. The department may require applicants to pass an examination in order to receive initial certification.

(c) Establish different levels of certification as the department determines is appropriate.

(d) Identify persons other than inspectors and plan reviewers who may benefit from the training program, and encourage those persons to enroll in the training program.

(2m) If a person is certified under this section to review plans for, or conduct inspections of, a type of agricultural engineering practice at one of the levels under sub. (2) (c), the department shall allow the person to review plans for, or conduct inspections of, all types of agricultural engineering practices at that same level without requiring any additional certification.

(3) The department may impose fees for the training and certification program.

(4) The department shall promulgate rules under this section in consultation with the department of natural resources.

(5) Any training required under this section may be conducted by the department or the department of natural resources or by another person with the approval of the department.

(6) The department may suspend or revoke a certification under this section for failure to comply with this section or rules promulgated under this section.

History: 1991 a. 309; 1995 a. 227; 1999 a. 9.

Appendix A

Land and Water Resource Management Plan Review Checklist

County: _____

Date Plan Submitted to DATCP for Review: _____

Preliminary Review Date: _____ Final Review Date: _____

PLAN DEVELOPMENT AND PUBLIC PARTICIPATION

YES

NO

1. Does the plan or documentation submitted with the plan indicate consultation with a local advisory committee that reflects a broad spectrum of public interests and perspectives?

[ATCP 50.12(3)(a)]

2. Does the plan or documentation submitted with the plan indicate that the county made a reasonable effort to notify affected landowners of committee findings about key problems and needed conservation practices, and provide an opportunity for landowners to present information on the accuracy of committee findings?

[s. 92.10(6)(b); ATCP 50.12(4)(b)]

Note: The required public hearing provides an opportunity to present information.

3. Does the plan or documentation submitted with the plan indicate the county held a public hearing on the plan?

[s. 92.10(6)(c); ATCP 50.12(4)(a)]

If yes, what was the date(s) of the public hearing(s)?

4. Does the plan or documentation submitted with the plan indicate that the county board approved the plan?

[ATCP 50.12(5)]

If yes, what was the date of county board approval?

**ASSESSMENT OF WATER QUALITY AND SOIL EROSION
CONDITIONS**

YES

NO

5. Does the plan include a county-wide assessment of water quality and soil erosion conditions which describes:

Relevant land use, natural resource, water quality and soil data, including (i) the distribution of major soil types and surface topographic features; (ii) watershed areas, including their geographic boundaries, and (iii) land use categories and their distribution, if available?

b) Water quality information from basin water quality plans or from other sources, including DNR water quality assessments?

c) Soil erosion conditions, including an estimate of the soil erosion rates for (i) the county as a whole, (ii) for local areas where erosion rates are especially high; and (iii) watershed or other geographical areas, if known?
[s. 92.10(6)(a)1.; ATCP 50.12(2)(a)]

GOALS, OBJECTIVES AND PRIORITIES

6. Does the plan specify in reasonable detail:

a) Water quality objectives, including those for each water basin, priority watershed and priority lake?

b) Consultation with DNR concerning those water quality objectives for each water basin, priority watershed and priority lake?
[s. 92.10(6)(a)2.; ATCP 50.12(2)(c)]

7. Does the plan describe in reasonable detail:

a) Key water quality and soil erosion problem areas?

b) Consultation with DNR to identify water those key quality problems areas?

- | | <u>YES</u> | <u>NO</u> |
|--|--------------------------|--------------------------|
| 8. Does the plan describe in reasonable detail a plan to identify priority farms in the county?
[ATCP 50.12(2)(f)] | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Does the plan describe in reasonable detail: | | |
| a) Applicable performance standards, prohibitions and conservation practices to address nonpoint source pollution control goals? [s. 92.10(6)(a)4.] | <input type="checkbox"/> | <input type="checkbox"/> |
| <i>Note: In addition to the performance standards and prohibitions authorized by chapters. 92 and 281, Stats. this may include those under ch. 283 and ss. 59.692 and 59.693, Stats.</i> | | |
| b) Conservation practices and best management practices needed to address key water quality and erosion problems? [s. 92.10(6)(a)3.;ATCP 50.12(2)(e)] | <input type="checkbox"/> | <input type="checkbox"/> |
| c) County strategies to encourage voluntary implementation of conservation practices listed under s. ATCP 50.04? [s. 92.10(6)(a)4.;ATCP 50.12(2)(g)] | <input type="checkbox"/> | <input type="checkbox"/> |

COMPLIANCE AND ENFORCMENT

- | | | |
|---|--------------------------|--------------------------|
| 10. Does the plan describe in reasonable detail: | | |
| a) State and local regulations that the county will use to implement the county plan? [ATCP 50.12(2)(b)] | <input type="checkbox"/> | <input type="checkbox"/> |
| b) compliance procedures, including notice, hearing, enforcement and appeal procedures, that will apply if the county takes action against a landowner for failure to implement conservation practices required under this chapter, NR 151 or related local regulations? [ATCP 50.12(2)(h)] | <input type="checkbox"/> | <input type="checkbox"/> |

PLANNED ACTIVITIES

- | | | |
|---|--------------------------|--------------------------|
| 11. Does the plan include a multiyear work plan that describes planned county activities to: | | |
| a) Meet specific water quality objectives and priorities identified in the county's strategic plan (see no. 6-9 above)? | <input type="checkbox"/> | <input type="checkbox"/> |
| b) Achieve compliance with the performance standards and prohibitions, including implementation of farm conservation practices required under ATCP 50.04? [s. 92.10(6)(a)5.;ATCP 50.12(2)(i)] | <input type="checkbox"/> | <input type="checkbox"/> |

12. Does the work plan identify the priorities for each activity listed in 11a) and b) above?
[s. 92.10(6)(a)5.;ATCP 50.12(2)(i)]

YES

NO

13. Does the work plan identify the expected costs for activities based on a reasonable assessment of available funding and resources?
[s. 92.10(4)(d);ATCP 50.12(2)(i);ATCP 50.12(3)(f)]

INFORMATION AND EDUCATION

14. Does the plan describe in reasonable detail an information and education strategy?
[s. 92.10(6)(a)7.;ATCP 50.12(2)(k)]

COORDINATION

15. Does the plan describe how the county will coordinate its land and water conservation program with federal, state and local agencies, including roles and responsibilities?
[s. 92.10(6)(a)8.;ATCP 50.12(2)(L) and (3)(h)]

MONITORING AND EVALUATION

16. Does the plan describe in reasonable detail a system to monitor planned activities and measure the progress of activities in meeting the goals and objectives in the work plan?
[s. 92.10(6)(a)6.;ATCP 50.12(2)(j)]

STAFF RECOMMENDATION

17. Does staff recommend approval of this plan?

Statement of Justification:

Date Reviewed: _____ Staff Signature _____

