

# FARMLAND PRESERVATION AGREEMENT FACT SHEET

Wisconsin's Farmland Preservation Law provides tax credits to landowners who have signed a Farmland Preservation Agreement or a Transition Area Agreement. This sheet provides information on the terms of the Farmland Preservation Agreement, payback provisions, soil conservation requirements, procedures to use when land ownership changes (due to sale, death, formation of corporation or partnership, divorce, or for any other reason) and the treatment of Woodland Tax, Forest Crop, or Managed Forest Lands in the program.

## ELIGIBILITY REQUIREMENTS

In order for landowners in any county to participate in the program, under an agreement, the following requirements must be met:

1. County must adopt an agricultural preservation plan which is certified by the Land and Water Conservation Board.
2. The landowner must be a Wisconsin resident.
3. The landowner must own a minimum of 35 or more acres of contiguous land which produced gross farm profits of not less than \$6,000 in the last year or \$18,000 in the last three years, or own a parcel of 35 or more contiguous acres of land of which at least 35 acres are enrolled in the Conservation Reserve Program (CRP).
4. Farming operations must be conducted in compliance with county soil and water conservation standards.

## THE AGREEMENT PROVISIONS

A Farmland Preservation Agreement or Transition Area Agreement is subject to the following provisions:

1. A farmland preservation agreement expires 10 to 25 years from the effective date as specified by the applicant. A transition area agreement expires 5 to 20 years from the effective date as specified by the applicant.
2. No structures can be built unless they are consistent with agricultural use. "Use consistent with agricultural use" means any activity that meets all of the following conditions:
  - (a) The activity will not convert land that has been devoted primarily to agricultural use.
  - (b) The activity will not limit the surrounding land's potential for agricultural use.
  - (c) The activity will not conflict with agricultural operations on the land subject to a farmland preservation agreement.
  - (d) The activity will not conflict with agricultural operations on other properties.

Housing for the farm operator, parents or children of the farmer, and others earning a majority of their livelihood from the farm operation is permitted.

As a note of Interest - some financial institutions will not approve a loan for a home to be built for a parent or child

of the owner unless the land is transferred into their name. Also some financial institutions will not approve a loan for a home to be built on land subject to a farmland preservation agreement. They reason that if there is a default on the loan, the Department of Agriculture, Trade and Consumer Protection would be first in line as mortgage holder. DATCP does not subordinate its position.

3. No land improvements can be made unless they are consistent with agricultural use.
4. New structures or improvements made as part of a scenic, access, or utility easement or license or lease for oil and natural gas exploration or extraction will be considered consistent with agricultural use.
5. Landowners do not have to permit public access.
6. Farming operations must be conducted in substantial accordance with a locally approved farm conservation plan if the agreement was applied for before July 1, 1986, or in compliance with county soil and water conservation standards if the agreement was applied for on or after July 1, 1986.

7. The state agrees to provide the tax credits as calculated under the formula in ch. 71, Wis. Stats., providing that all of the requirements for tax credits are met by the owner. If the formula changes in the future, the owner is guaranteed credit as calculated by the formula in effect when the contract was signed or a higher credit if the new formula so provides. The minimum level of credit for an agreement will be as the law exists when the agreement takes effect. By law, the effective date is the date the signed agreement is postmarked or hand delivered to the department.

## SOIL CONSERVATION REQUIREMENTS

The Farmland Preservation Agreement requires that landowners meet applicable soil and water conservation requirements on land subject to the agreement. Actual requirements depend upon the date of the application for the agreement and the county in which the land is located. Meeting the soil and water conservation requirements is both an ongoing provision of the agreement and an annual eligibility requirement for claiming farmland preservation tax credits.

1. **AGREEMENTS APPLIED FOR ON OR BEFORE JUNE 30, 1986:**  
Lands must be farmed in accordance with a farm conservation plan approved by the county land conservation committee.

The committee is responsible for seeing that the plan is prepared and followed, and may allow a variance from the plan schedule.

**2. AGREEMENTS APPLIED FOR ON OR AFTER JULY 1, 1986:**

Land must be farmed in compliance with soil and water conservation standards adopted by the county land conservation committee. At a minimum, soil erosion on cropland must be reduced to tolerable rates within five years. The committee standards may include other requirements. The committee is responsible for monitoring compliance and issuing notices of noncompliance and may grant additional time for compliance due to individual circumstances.

Failure to meet the applicable requirements will lead to a loss of tax credit eligibility and may result in the penalties for use change under section 91.21(1), Wis. Stats., outlined on the back page of the agreement. Consult with your county land conservation department for specific requirements in your county.

**PAYBACK PROVISIONS**

The farmland preservation law provides that, under certain conditions, the landowner is responsible for paying back part or all of the tax credits received under the program. Many people refer to these as "rollback" provisions. The possible payback conditions are complex and no single rule will fit all situations.

**1. GENERAL PAYBACK PROVISIONS:**

- a. The maximum payback under any situation is the total amount of tax credits received over the preceding 10 years plus any interest (see below).
- b. The owner of the land at the time the land is removed from the program is responsible for paying the payback on credits received by earlier owners (total credits for the past 10 years with interest.)

**2. PAYBACK SITUATIONS UNDER FARMLAND PRESERVATION AGREEMENTS:**

<u>Situation</u>	<u>Payback</u>
a. <b>Land continues in program.</b> (Land is zoned for exclusive agricultural use.)	None under agreement.
b. <b>Contact expires at the end of its term and is not renewed by the landowner.</b>	None, if all the terms of the agreement have been met.

c. Contract is relinquished or partially released (withdrawn before normal expiration) requires county and state approval.	Tax credits received over last 10 years plus 6% compound interest from time received.
d. Relinquish agreement due to death or total disability	None.
c. Relinquishment of the agreement upon landowner request if the land has been in the program for a minimum of ten years, even if the agreement is for more than 10 years.	Tax credit received over last 10 years plus 9.3% compounded interest from date credit was received.

The decision on whether to sign a Farmland Preservation Agreement must be made by the owner, considering the specific situation of the owner's family and business. No single answer will be appropriate for all cases. The worksheet and this fact sheet are general information sheets and designed to help owners decide whether to apply for or sign an agreement.

**EARLY RELINQUISHMENT PROVISIONS**

The farmland preservation law provides that, under certain conditions, the agreement may be relinquished prior to its natural expiration date. These conditions, however, are very limited: It is extremely difficult to cancel an agreement before its natural expiration. The relinquishment provisions are as follows:

- 1. Section 91.17(2), Wis. Stats., permits relinquishment when the owner of land subject to a Farmland Preservation Agreement dies or is certified by a physician to be totally and permanently disabled. In this case, there is not a payback of tax credits received during the last 10 years. The application for relinquishment due to death of the owner must be made prior to the Final Judgment (before the land transfers title to someone other than a spouse).
- 2. Section 91.19, Wis. Stats., permits relinquishment if one or more of the following conditions exist:
  - a. That relinquishment or release will allow the owner to resolve foreclosure or bankruptcy proceedings by a voluntary settlement with a mortgagee or a creditor.
  - b. That significant natural physical changes in the land have occurred which are generally irreversible and permanently affect the land.
  - c. That surrounding conditions prohibit agricultural use.
  - d. That relinquishment or release will allow the owner to develop the land to assist local economic development.

- e. That relinquishment or release will allow for the transfer of the land and subsequent agriculturally related, utility, religious, or institutional uses that are 1.) consistent with agricultural use, and 2.) that are found to be necessary in light of the alternative locations available for such uses.
- f. The land was acquired, or is to be acquired by a local unit of government for public improvements or structures.

Approval for release or relinquishment under this section requires approval of the local government (usually the County Board) and the State Land and Water Conservation Board. Payback would be all tax credits claimed over the last 10 years, plus 6% compound interest from the time the credit was received.

### **PENALTY FOR USE CHANGE**

When an agreement is entered into, the landowner agrees to keep the land in Agricultural Use for a specified period of time. Section 91.21(1), Wis. Stats., provides for penalties if the use is changed to a nonagricultural use. 'Me owner of the land can be fined for "actual damages" which would be determined by the court, but the fine cannot be more than twice the value of the land when the owner's application was approved. The law also provides for a court-issued injunction which would require the owner to follow the terms of the agreement.

All contiguous land must be entered into the program. It is always best to exclude a parcel of land (with county approval) before you sign an agreement if you are considering a nonagricultural use on that parcel. An example of a non-agricultural use would be a quarry or sand pit.

Section 91.21(2), Wis. Stats. also provides for enforcement of compliance with the conservation requirements. Farm operations must be in compliance with the approved conservation plan at all times during the term of the agreement. The landowner has one year to comply with the conservation plan or standards before action (penalty for use change) would begin.

### **LAND OWNERSHIP CHANGE PROCEDURE**

In the event there is any change in the ownership (due to death, divorce, formation or dissolution of corporation or

### **MORE INFORMATION**

For more details on the tax credits and more precise estimates of the credit for your own situation, see the Farmland Tax Credit form (Schedule FC) and instructions prepared by the Wisconsin Department of Revenue (608/266-2442). For more information on the program in general, contact your county extension office, zoning office, land, conservation office, or write to or call the Farmland Preservation Program, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 891 1. Madison, Wisconsin 53708-891 1; phone (608)224-4634.

partnership, sale, etc.), the state office in Madison must be notified. The following steps are required:

- a. The legal document (land contract, warranty deed, death certificate, divorce decree, etc.) transferring ownership. It is recommended that the legal document make reference to the fact that the land is subject to the covenants, conditions and restrictions of a Farmland Preservation Agreement.
- b. The state office in Madison must be notified of the real estate transfer. A completed copy of the farmland preservation agreement transfer worksheet and a copy of the recorded warranty deed, land contract, etc., must be sent to the state office in Madison, so the land can be put in the new owner's name. Since the agreement automatically goes with the land, this process makes monitoring the agreement much simpler. It is also a statutory requirement.
- c. Once the state receives notification of land transfer, changes are made to the state data base.

If land ownership changes, a claimant may include both the buyer and the seller. Claimants will claim individually based on the property tax accrued during each claimant's month(s) of ownership. Prior to this amendment, the owner of the land at the end of the year was the only claimant and the real estate tax used in the credit calculation was prorated on the months of ownership.

### **TREATMENT OF WOODLAND TAX, FOREST CROP, OR MANAGED FOREST LAND IN RELATION TO THE FARMLAND PRESERVATION PROGRAM**

Although land subject to Woodland Tax, Forest Crop, or Managed Forest programs can be included in the Agreement, the property tax assessment for these programs cannot be included in the total amount of property tax when computing farmland preservation tax credits. Any questions regarding the treatment of lands subject to these programs can be directed to the state Dept. of Natural Resources (608/266-8019) who administers these programs or the state Dept. of Revenue (608/266-2442).