

CHAPTER 91

FARMLAND PRESERVATION

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SUBCHAPTER I

GENERAL PROVISIONS

91.01 Definitions. In this chapter:

(1) “Agricultural use” means beekeeping; commercial feed-lots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; participating in the milk production termination program under 7 USC 1446 (d); and vegetable raising.

(2) “Board” means the land and water conservation board.

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

(4) “Develop” means change to any use other than agricultural use.

(5) “Devoted primarily to agricultural use” means under agricultural use for at least 12 consecutive months during the preceding 36-month period.

(6) “Eligible farmland” means a parcel of 35 or more acres of contiguous land which is devoted primarily to agricultural use, including land designated by the department of natural resources as part of the ice age trail under s. 23.17, which during the year preceding application for a farmland preservation agreement produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or which, during the 3 years preceding application produced gross farm profits, as defined in s. 71.58 (4), of not less than \$18,000, or a parcel of 35 or more acres of which at least 35 acres, during part or all of the year preceding application, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

(7) “Farmland preservation agreement” or “transition area agreement” means a restrictive covenant, evidenced by an instrument whereby the owner and the state agree to hold jointly the right to develop the land except as may be expressly reserved in the instrument and which contains a covenant running with the land, for a term of years, not to develop except as expressly reserved in the instrument.

(8) “Local governing body having jurisdiction” means the city council, village board or town board if that body has adopted a certified ordinance under subch. V; or the county board where such a city, village or town zoning ordinance is not in effect.

(9) “Owner” means a resident of this state owning land and includes an individual, legal guardian, corporation incorporated in this state, business trust, estate, trust, limited liability company, partnership or association or 2 or more persons having a joint or common interest in the land. However, where land is subject to a land contract, it means the vendor in agreement with the vendee.

(10) “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.

History: 1977 c. 29, 418; 1981 c. 346; 1983 a. 27; 1987 a. 312 s. 17; 1987 a. 399, 403; 1991 a. 39, 286; 1993 a. 16, 112.

91.03 Interdepartmental cooperation. All other departments and agencies of state government shall cooperate with the board and the department in the exchange of information concerning projects and activities, including takings under eminent domain, which might jeopardize the preservation of land contemplated by this chapter. The department shall periodically advise other departments and agencies of state government of the location and description of land upon which there exist farmland preservation agreements or zoning for exclusively agricultural use and the departments and agencies shall administer their planning and projects consistent with the purposes of this chapter.

History: 1977 c. 29.

91.05 Preliminary agricultural areas delineation.

(1) For the purpose of assisting local units of government to preserve agricultural lands, the department and the department of commerce, under standards prepared by the board, and in connection with other state agencies, counties and county land conservation committees shall prepare or cause to be prepared, maps that

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locate lands in the state which should be considered for preservation because of their agricultural significance.

(2) Maps shall be prepared first for those portions of the state where the need for agricultural preservation is of the highest priority. Priority shall be based upon the degree of threat of agricultural alteration, loss to other usages, agricultural quality and agricultural importance.

(3) Agricultural maps shall be prepared utilizing the best practicable method and shall be based upon data such as soil surveys, aerial photography interpretation, existing agricultural zoning and surveys and may be supplemented by on-site surveys and other studies.

History: 1977 c. 29; 1979 c. 34; 1981 c. 314; 1981 c. 346 s. 38; 1995 a. 27 s. 9116 (5).

91.06 Certification. The board shall review farmland preservation plans and exclusive agricultural use zoning ordinances submitted to it under ss. 91.61 and 91.78 and shall certify to the appropriate zoning authority whether the plans and ordinances meet the standards of subchs. IV and V, respectively. Certifications may be in whole or in part.

History: 1977 c. 29.

The board may prospectively revoke a certification if notice and opportunity to be heard are given to the local zoning authority and landowners. 74 Atty. Gen. 78.

91.07 Rule-making authority. (1) The department shall promulgate rules to implement this chapter, except those provisions relating to the powers and duties of the board.

(2) The board shall promulgate rules to implement its powers and duties under this chapter.

History: 1991 a. 286.

SUBCHAPTER II

FARMLAND PRESERVATION AGREEMENTS

91.11 Eligibility. (1) An owner may apply for a farmland preservation agreement under this subchapter if:

(a) The county in which the land is located has a certified agricultural preservation plan in effect; or

(b) The land is in an area zoned for exclusive agricultural use under an ordinance certified under subch. V.

(2) An owner of land located in a county with a population density of less than 100 persons per square mile which has adopted a certified exclusive agricultural use zoning ordinance may apply under this subchapter even if the town in which the land is located has not approved the ordinance.

(3) In any county with a population density of 100 or more persons per square mile, an owner may apply for a farmland preservation agreement under this subchapter only if the county in which the land is located has a certified exclusive agricultural use zoning ordinance under subch. V and the town in which the land is located has approved the ordinance.

(3m) Notwithstanding sub. (3), in any county with a population density of 100 or more persons per square mile, an owner may apply for a farmland preservation agreement under this subchapter from July 1, 1988, to June 30, 1991. Any owner who signed an agreement which was applied for under this subsection is eligible to apply for another agreement prior to the expiration of that agreement.

(4) In any city, town or village that has adopted a certified exclusive agricultural use zoning ordinance under subch. V, or in any town that has approved a certified exclusive agricultural use zoning ordinance adopted by the county under subch. V, an owner may apply for a farmland preservation agreement only if the land is in an area zoned for exclusive agricultural use.

History: 1977 c. 29; 1979 c. 34; 1987 a. 399.

91.13 Farmland preservation agreements. (1) Any owner of eligible farmlands who desires to have the lands covered

by a farmland preservation agreement may apply to the county clerk by executing a form provided by the department. If an application is received by the county clerk on or after May 14, 1992, and it is not signed by all persons holding a recorded mortgage on the land to be covered by the agreement, the application is void and may not be processed by the county clerk. The application shall include a land survey or legal description of all eligible farmland to be covered under the agreement, a map showing significant natural features and all structures and physical improvements on the lands or an aerial photograph of all land which is an integral part of the owner's farming operation which is marked to indicate the farmland and structures to be covered by the agreement, the soil classification of the lands and such other data as the department deems reasonably necessary to determine the eligibility of the lands for coverage under the agreement.

(2) Upon receipt of the application, the county clerk shall forward the application to the local governing body having jurisdiction, if not the county, and shall send written notification to the department, county planning and zoning agency, the regional planning commission and the county land conservation committee. If the county has jurisdiction, the clerk shall also notify the board of the town in which the land is situated. If the land is within the boundaries of an incorporated municipality or is subject to an extraterritorial zoning ordinance adopted by a municipality under s. 62.23 (7a), the clerk shall send written notification to the governing body of the city or village.

(3) An agency or local governing body receiving written notice shall upon receipt of notification have 30 days to review, comment and make recommendations to the local governing body having jurisdiction.

(4) After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body having jurisdiction shall approve or reject the application within 120 days after the application is received unless time is extended by mutual agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon and consistent with the following:

(a) Whether the farmland is designated an agricultural preservation area in a certified agricultural preservation plan established under subch. IV or is an area zoned for exclusive agricultural use under an ordinance certified under subch. V.

(b) The productivity and viability of the land for agricultural use.

(c) The predominance of agricultural use on the land.

(d) The inclusion of all contiguous lands which are in single ownership.

(e) Whether the property is eligible farmland.

(f) Consistency with the county agricultural preservation plan.

(g) Other criteria established by the local governing body consistent with the agricultural preservation purposes of this chapter.

(5) The clerk of the local governing body having jurisdiction shall forward a copy of all approved applications for farmland preservation agreements, along with the comments and recommendations of the reviewing bodies, to the department. If action is not taken by the local governing body within the time prescribed or agreed upon, the applicant may proceed as provided in sub. (7) as if the application was rejected.

(6) The department may reject an application for a farmland preservation agreement which has been approved by a local governing body only if the land is not eligible farmland.

(7) If the application for a farmland preservation agreement is rejected by the local governing body or the department, the application shall be returned to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (4) (a) to (g), approve or reject the application.

(8) If an application is approved by the department or, on appeal, by the board, the department shall prepare and send to the applicant a farmland preservation agreement which shall include the following provisions:

(a) Except as provided under s. 91.75 (2), no structure may be built on the land except for use consistent with agricultural use or with the approval of the local governing body having jurisdiction and the department.

(b) Land improvements shall not be made except for use consistent with agricultural use or with the approval of the local governing body having jurisdiction and the department.

(c) A structure or improvement made as an incident to a scenic, access or utility easement or license, a lease for oil and natural gas exploration and extraction, and an easement granted for the purpose of using land as, or land used as, part of the ice age trail under ss. 23.17 and 23.293 and structures and improvements made as an incident to that use or those easements, is consistent with agricultural use under pars. (a) and (b).

(d) Farming operations shall be conducted in substantial accordance with a soil and water conservation plan prepared under s. 92.104. This paragraph applies to any farmland preservation agreement applied for prior to July 1, 1986.

(dm) Farming operations shall be conducted in compliance with reasonable soil and water conservation standards established under s. 92.105. This paragraph applies to a farmland preservation agreement applied for on or after July 1, 1986.

(e) The state agrees to pay, with respect to each year the agreement is in effect, the greater of the credits claimable under subch. IX of ch. 71, as such statute exists on the date the agreement takes effect, or the credits claimable under subch. IX of ch. 71, as such statute exists at the end of the year for which a claim for credit is filed, if all the requirements of subch. IX of ch. 71 are satisfied.

(f) The department shall not require the owner to permit public access onto the land.

(fm) A statement in boldface uppercase type that contains the following language: “UPON RELINQUISHMENT (WITHDRAWAL OR EXPIRATION) OF THIS AGREEMENT, A PAY-BACK OF CREDITS WITH INTEREST MAY BE REQUIRED.”

(g) Any other condition and restriction on the land as agreed to by the parties that is deemed necessary to preserve the land for agricultural use if it is not in conflict with the county agricultural preservation plan.

(9) If the owner executes the farmland preservation agreement, the owner shall return it to the department for execution on behalf of the state. An agreement shall become effective on the date it is delivered or mailed to the department for execution. The department shall within 30 days of receipt record the executed agreement with the register of deeds of the county in which the land is situated and notify the applicant, the local governing body having jurisdiction, all reviewing agencies and the department of revenue.

(10) Agreements under this subchapter shall be for not less than 10 years nor more than 25 years. An owner of eligible farmland which is subject to an agreement with a term of less than 25 years may extend the term of the agreement to 25 years with the approval of the department and of the local governing body having jurisdiction in which the eligible farmland is located.

(11) An applicant may reapply for a farmland preservation agreement following a one-year waiting period from notice of final determination of the original application by the local governing body having jurisdiction, the department, the board or a court on appeal.

(12) The value of the jointly owned development rights as expressed in a farmland preservation agreement shall not be exempt from general property taxation and shall be assessed to the owner of the land as part of the value of the land.

(13) The department may waive its approval authority under sub. (8) (a) or (b) for structures or improvements affecting less than 5 acres of land.

History: 1977 c. 29, 169, 418, 447; 1979 c. 233 s. 8; 1981 c. 346 ss. 33, 38; 1983 a. 311; 1985 a. 29; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 56; 1991 a. 39, 286.

91.14 Transition area agreements. An owner may apply for a transition area agreement under this subchapter if the farmland is located in an area identified as a transition area under a certified county agricultural preservation plan under subch. IV. The provisions of this subchapter, except ss. 91.11 (1) (b) and (4), 91.13 (4) (a) and (10) and 91.15, apply to agreements under this section. Agreements under this section shall be for not less than 5 nor more than 20 years, consistent with the county agricultural preservation plan.

History: 1977 c. 29.

91.15 Exemption from special assessments. A city, village, town, county or other governmental agency may not impose special assessments for sanitary sewers, water, lights or nonfarm drainage on land zoned for exclusively agricultural use under subch. V or for which a farmland preservation agreement under this subchapter has been recorded unless the assessments were imposed prior to the recording of the agreement or prior to zoning of the land for exclusively agricultural use under subch. V. Land covered by this exemption shall be denied use of an improvement created by the special assessment as long as the owner of the land has a recorded agreement under this subchapter or the land is zoned for exclusively agricultural use under subch. V, unless the owner has paid the amount that would have been paid had the land not been excluded.

History: 1977 c. 29, 418; 1983 a. 311.

91.17 Change of ownership. (1) Land subject to a farmland preservation agreement may be sold without a lien being filed under s. 91.19, subject to the reservation of rights contained in the agreement. The seller shall notify the department of any such transfer. The purchaser shall be liable under any subsequent lien under s. 91.19 only for the amount of tax credits paid on that portion of the land purchased.

(2) When the owner of land subject to a farmland preservation agreement dies or is certified by a physician to be totally and permanently disabled, the land may be released from the program under this chapter and shall not be subject to a lien under s. 91.19 (8).

(3) A residence or structure located on a parcel of 5 acres or less which is subject to an agreement and which, for purposes of farm consolidation and in compliance with the ordinances of the city, village or town and county in which it is located, is separated from other land subject to that agreement is not subject to a lien under s. 91.19 when that agreement expires if the residence or structure existed prior to the effective date of that agreement.

History: 1977 c. 29, 169; 1987 a. 399; 1993 a. 16.

91.19 Relinquishment of agreements. (1) A farmland preservation agreement shall be relinquished by the department on behalf of the state at the expiration of the term of the agreement.

(1m) Upon request, a farmland preservation agreement shall be relinquished by the department on behalf of the state when the owner of land subject to the agreement dies or is certified by a physician to be totally and permanently disabled.

(2) The department may relinquish the farmland preservation agreement or may release part of the land from a farmland preservation agreement prior to the termination date contained in the instrument as follows:

(a) The owner of the land may submit an application, on forms prescribed by the department, to the local governing body having jurisdiction requesting that the agreement be relinquished or that part of the land be released from the agreement. Upon receipt of the application, the clerk of the local governing body shall send

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written notification thereof to the persons specified under s. 91.13 (2), and such persons shall have 30 days from receipt of notification to review, comment and make recommendations to the local governing body having jurisdiction.

(b) After considering the comments and recommendations of the reviewing agencies and holding a public hearing, following the publication in the county of a class 2 notice, under ch. 985, the local governing body having jurisdiction shall approve or reject the application within 120 days after it is filed, unless the time is extended by mutual agreement of the parties involved. The local governing body having jurisdiction shall not approve an application for relinquishment or release under this subsection unless it finds one or more of the following:

1. That relinquishment or release will allow the owner to resolve foreclosure or bankruptcy proceedings by a voluntary settlement with a mortgagee or a creditor.

2. That significant natural physical changes in the land have occurred that are generally irreversible and permanently affect the land.

3. That surrounding conditions prohibit agricultural use.

4. Subject to par. (c), that relinquishment or release will allow the owner to develop the land to assist local economic development.

5. Subject to par. (c), that relinquishment or release will allow for the transfer of the land and subsequent agriculturally related, utility, religious or institutional uses that are consistent with agricultural use and that are found to be necessary in light of the alternative locations available for such uses.

(c) 1. The local governing body having jurisdiction may not approve an application for relinquishment or release under par. (b) 4. or 5. unless it finds that all of the following conditions exist:

a. Adequate public facilities to serve the proposed development or use exist or will be provided as part of the development.

b. The land is suitable for the proposed development or use.

c. The proposed development or use will not cause air pollution, water pollution or soil erosion that exceeds applicable state or local standards, adversely affect rare or irreplaceable natural areas or otherwise harm the environment.

d. The proposed development or use is consistent with remaining agricultural uses in the area.

e. The proposed development or use is consistent with the county's certified agricultural preservation plan, if a plan is in effect.

f. The proposed development is not for residential use.

g. The proposed development or use is consistent with local economic development plans.

h. There is no alternative location for the proposed development or use that is suitable.

2. As part of its review of an application for relinquishment or release under par. (b) 4. or 5., the local governing body having jurisdiction shall also consider all of the following factors:

b. The agricultural productivity of the land involved.

c. Whether the proposed development or use minimizes the amount of agricultural land converted to nonagricultural uses.

d. The economic costs and benefits of the proposed development or use to the local economy compared to the costs and benefits of the land for agricultural use.

e. The costs of providing public facilities to the proposed development or use, and the ability of affected local units of government to provide them.

(3) If the request for relinquishment of the farmland preservation agreement or release of part of the land from the agreement is approved by the local governing body having jurisdiction, a copy of the application, along with the comments and recommendations of the reviewing agencies, shall be forwarded to the board. The board shall, within 60 days, upon consideration of the factors in sub. (2) (b) and (c) 2., approve or reject the application for relinquishment or release.

If the board approves the application it shall notify the local governing body having jurisdiction and the department of revenue, prepare an instrument under sub. (7) and record it with the register of deeds of the county in which the land is located.

(4) If action is not taken by the local governing body having jurisdiction within the time period prescribed or agreed upon, the applicant may proceed as provided in sub. (5) as if the application was rejected.

(5) If the application for relinquishment of the agreement or release of part of the land from the agreement is rejected by the local governing body having jurisdiction, the application shall be returned to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (2) (b) and (c) 2., approve or reject the request for relinquishment or release. If the board approves the application it shall notify the local governing body having jurisdiction and the department of revenue, prepare an instrument under sub. (7) and record it with the register of deeds of the county in which the land is located.

(6) The department shall release from a farmland preservation agreement any land acquired for use as an electric generating facility authorized under s. 196.491 (3), or which involves acquisition of the fee by a utility or a cooperative organized under ch. 185 or 193 for purposes of generating electricity or other utility uses.

(6m) The department shall release from a farmland preservation agreement any lands acquired by the state or the federal government for public improvements or structures, including highway improvements.

(6p) The department shall release from a farmland preservation agreement any land subject to a farmland preservation agreement if the owner of the land has, before December 31, 1988, obtained state, county, city, village and town licenses, permits or approvals, other than those required under this chapter, to develop the land as a concert park.

(6s) (a) The department may release from a farmland preservation agreement any land acquired or to be acquired by a school board or the governing body of a municipality, as defined in s. 281.59 (1) (c), for public improvements or structures, including highway improvements, if all of the following occur:

1. An application for release of the land, made by either the owner or the local unit of government, is approved by the local governing body having jurisdiction and the board under the procedures of subs. (2) to (5).

2. The department finds that the conditions listed in sub. (2) (c) 1. exist.

3. The department considers the factors listed in sub. (2) (c) 2.

(b) If an owner of land subject to a farmland preservation agreement opposes an application brought by a local unit of government for release of that land, the owner may appeal the approval of that application by the local governing body having jurisdiction to the board according to the procedures in par. (c).

(c) If the application for release of any land from the agreement is approved by the local governing body having jurisdiction, the application shall be returned to the applicant, and a copy of the application to the owner, with a written statement regarding the reasons for approval. Within 30 days after receipt of a copy of the approved application, the owner may appeal the approval to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (2) (b) and (c) 2., approve or reject the request to disapprove the release. If the board approves the owner's appeal it shall notify the local governing body having jurisdiction.

(d) The board may waive its approval authority under this subsection for applications affecting less than 5 acres of land.

(6t) The department shall relinquish from a farmland preservation agreement land that has been subject to a farmland preservation agreement for at least 10 years if the owner of the land so requests.

(7) Whenever a farmland preservation agreement is relinquished under sub. (2) or (6t) or all or part of the land is released from a farmland preservation agreement under sub. (2) or (6p) or a transition area agreement is relinquished under sub. (2) or, subject to subs. (12) and (13), a transition area agreement is relinquished under sub. (1) or (1m), the department shall cause to be prepared and recorded a lien against the property formerly subject to the agreement for the total amount of all credits received by all owners of such lands under subch. IX of ch. 71 during the last 10 years that the land was eligible for such credit, plus interest at the rate of 9.3% per year compounded annually on the credits received from the time the credits were received until the lien is paid for farmland preservation agreements relinquished under sub. (6t) and 6% per year compounded annually on the credits received from the time the credits were received until the lien is paid for other agreements. No interest shall be compounded for any period during which the farmland is subject to a subsequent farmland preservation agreement or transition area agreement or is zoned for exclusive agricultural use under an ordinance certified under subch. V.

(8) Subject to subs. (12) and (13), upon the relinquishment of a farmland preservation agreement under sub. (1) or (1m), the department shall cause to be prepared and recorded a lien against the property formerly subject to the farmland preservation agreement for the total amount of the credits received by all owners thereof under subch. IX of ch. 71 during the last 10 years that the land was eligible for such credit, plus 6% interest per year compounded from the time of relinquishment. No interest shall be compounded for any period during which the farmland is subject to a subsequent farmland preservation agreement or transition area agreement or is zoned for exclusive agricultural use under an ordinance certified under subch. V.

(9) A lien recorded under this section shall be effective upon recording and shall be subordinate to a lien of mortgage which is recorded prior to the recording of the lien under this section.

(10) The lien may be paid and discharged at any time and shall become payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record to any person except the owner's child or if the land is converted to a use prohibited by the former farmland preservation agreement. Upon reentry in an agreement under this subchapter or upon zoning for exclusively agricultural use under an ordinance certified under subch. V, the portion of the lien on the land reentered or so zoned shall be discharged. The discharge of a lien does not affect the calculation of any subsequent lien under sub. (7) or (8). The proceeds from the payment shall be paid into the general fund.

(12) No lien may be filed under sub. (7) or (8), on the date of relinquishment, release or termination, for tax credits paid on lands or any portion of them which are zoned for exclusively agricultural use under an ordinance certified under subch. V.

(13) No lien may be filed under sub. (7) or (8) for any amount of tax credits paid under subch. IX of ch. 71 to any owner of farmland if, up to the date of relinquishment under sub. (1) or (1m) of the applicable farmland preservation agreement or transition area agreement, all of the requirements under this subchapter that relate to the agreement have been satisfied by the owner.

History: 1977 c. 29, 169, 418; 1979 c. 221; 1983 a. 311; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 286; 1993 a. 16; 1995 a. 27; 2003 a. 33; 2005 a. 441.

91.21 Penalty for use change. (1) If the owner or a successor in title of the land upon which a farmland preservation agreement has been recorded under this chapter changes the use of the land to a prohibited use without first acting under ss. 91.17 and 91.19 and the land is not relinquished under s. 91.19 (6p) or (6t), the owner or successor in title may be enjoined by the state, acting through the attorney general, or by the local governing body hav-

ing jurisdiction, acting through its attorney, and is subject to a civil penalty for actual damages, but in no case to exceed double the value of the land as established at the time the application for the agreement was approved.

(3) If the owner or a successor in title of the land upon which a farmland preservation agreement has been recorded under this chapter fails to comply with s. 91.13 (8) (d) or (dm), such person shall be given one year to restore compliance before the remedies of sub. (1) shall be applicable.

History: 1977 c. 29; 1989 a. 31; 1991 a. 39, 286.

91.23 Conversion. An owner under a farmland preservation agreement may at any time apply for a transition area agreement, and an owner under a transition area agreement may at any time apply for a farmland preservation agreement. If such an application is approved, the prior agreement shall be relinquished without a lien being filed under s. 91.19.

History: 1977 c. 29, 169.

SUBCHAPTER III

INITIAL AGREEMENTS

91.31 Eligibility. Prior to October 1, 1982, an owner may apply for an initial farmland preservation agreement under this subchapter if the county in which the land is located does not have a certified agricultural preservation plan in effect and if the eligible farmland is not in an area zoned for exclusive agricultural use under an ordinance certified under subch. V. Subchapter II applies to such farmland preservation agreements except as specifically provided in this subchapter. No agreements shall be made under this subchapter after September 30, 1982.

History: 1977 c. 29.

91.33 Applications. An application under this subchapter need not include the soil classification of the lands involved.

History: 1977 c. 29.

91.35 Agreement provisions. (1) Farmland preservation agreements under this subchapter shall require that a county land conservation committee conservation plan be either under development or in effect.

(2) Except as provided in s. 91.39, farmland preservation agreements under this subchapter shall expire on September 30, 1982.

History: 1977 c. 29, 169; 1981 c. 346 s. 38.

91.37 Liens. (1) If the owner withdraws during the term of an agreement under this subchapter, the lien shall apply to the amount of all credit under subch. IX of ch. 71 received for the period the land was subject to the agreement plus 6% interest per year compounded annually from the time the credit was received until it is paid.

(2) If at the end of an agreement under this subchapter, the owner does not apply for a renewal under s. 91.39 or an agreement under subch. II, the lien shall apply, without interest, to the credit received under subch. IX of ch. 71 for the last 2 years the land was eligible for such credit if the land is not subject to a certified exclusive agricultural use zoning ordinance under subch. V and either the county in which the land is located has not adopted a certified agricultural preservation plan, or, if such a plan is adopted, the farmland would not be eligible for an agreement under the terms of the plan.

(3) If at the end of an agreement under this subchapter, the owner does not apply for a renewal under s. 91.39 or an agreement under subch. II, although the land is eligible for an agreement under subch. II and is not subject to a certified exclusive agricultural use zoning ordinance under subch. V, the lien shall apply to all credit received during the period the land was subject to an agreement under this subchapter, plus 6% interest per year compounded from the time of expiration.

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(4) If at the end of an agreement under this subchapter, the farmland is not eligible for an agreement under subch. II because s. 91.11 (2), (3) or (4) is applicable, the lien shall apply, without interest, to the credit received under subch. IX of ch. 71 for the last 2 years the land was eligible for such credit. If after the expiration of an agreement the land or any portion of the land is zoned for exclusive agricultural use under an ordinance certified under subch. V, all or any portion of a lien filed under this subsection against such land shall be discharged. The discharge of a lien under this subsection does not affect the calculation of any subsequent lien under s. 91.77 (2).

(5) If at the end of an agreement under this subchapter, the owner does not apply for a renewal under s. 91.39 or an agreement under subch. II and only a portion of the land subject to the agreement is eligible for an agreement under subch. II, the lien shall be calculated under sub. (2) or (4) on that part of the land which is ineligible and under sub. (3) on that part which is eligible.

(6) No lien may be filed, on the date of the relinquishment or termination of an agreement or of the release of land from an agreement under this subchapter, for tax credits paid on lands or any portion thereof which are zoned for exclusively agricultural use under an ordinance certified under subch. V.

History: 1977 c. 29, 169, 418; 1983 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1991 a. 286.

91.39 Renewal. Such agreements may be renewed for a single one-year period only if an agricultural preservation plan is adopted by the county in which the farmland is located and the farmland is eligible for an agreement under subch. II under such plan.

History: 1977 c. 29.

91.41 Conversion. Any person subject to a farmland preservation agreement under this subchapter may apply under subch. II whenever the county in which the land is located adopts a certified agricultural preservation plan under subch. IV or whenever the farmland becomes subject to a certified exclusive agricultural use zoning ordinance under subch. V. In such case, the farmland preservation agreement under this chapter shall be relinquished under s. 91.19 without a lien being filed.

History: 1977 c. 29, 169.

SUBCHAPTER IV

AGRICULTURAL PRESERVATION PLANNING

91.51 Purpose. The purpose of this subchapter is to specify standards for county agricultural preservation plans required to enable farmland owners to enter into farmland preservation agreements under this chapter. Agricultural preservation planning shall be undertaken in accordance with s. 59.69 and agricultural preservation plans shall be a component of and consistent with any county development plan prepared under s. 59.69 (3).

History: 1977 c. 29; 1995 a. 201.

91.53 Studies. County agricultural preservation plans shall be based upon, without limitation because of enumeration, surveys, studies and analyses of agricultural use and productivity, natural resources and open space, population and population density, urban growth, housing and the character, location, timing, use and capacity of existing and future public facilities.

History: 1977 c. 29.

91.55 Content of plans. (1) County agricultural preservation plans shall, at a minimum, include:

(a) Statements of policy regarding preservation of agricultural lands, urban growth, the provision of public facilities and the protection of significant natural resource, open space, scenic, historic or architectural areas.

(b) Maps identifying agricultural areas to be preserved, areas of special environmental, natural resource or open space signifi-

cance and, if any, transition areas. Transition areas shall be areas in predominantly agricultural use which the plan identifies for future development. Any agricultural preservation areas mapped must be a minimum of 100 acres. Any transition areas mapped must be a minimum of 35 acres. In mapping agricultural preservation areas, the maps identifying preliminary agricultural preservation areas prepared under s. 91.05 shall be considered if the map is provided to the county at least 12 months prior to adoption of the agricultural preservation plan.

(2) The maps may include areas other than those mapped under s. 91.05. Areas mapped under s. 91.05 may be excluded from the county maps upon a finding that one or more of the following conditions exist:

(a) Existing or planned activities adjacent to the identified agricultural area are incompatible with agricultural use.

(b) The area is not economically viable for agricultural use.

(c) Substantial urban growth in the area or planned urban expansion has created a public need to convert agricultural land use to other uses.

(d) Maintenance of the area in agricultural use is not consistent with the goals and objectives of a county agricultural preservation plan.

(3) Statements regarding the coordination requirements of s. 91.59.

History: 1977 c. 29.

91.57 Implementation programs. County agricultural preservation plans shall include a program of specific public actions designed to preserve agricultural lands and guide urban growth. Such implementation programs shall include, without limitation because of enumeration:

(1) A general description of land use controls and programs to implement the policy statements of s. 91.55 (1).

(2) A program that describes the character, location, timing, use, capacity and financing of existing and proposed public facilities to serve existing and new development.

(3) An identification of procedures and standards for controlling the installation and maintenance of private waste disposal systems, specifically identifying areas not suitable for the installation of such systems.

(4) A program to protect areas of special environmental, natural resource or open space significance.

History: 1977 c. 29.

91.59 Coordination. (1) County agricultural preservation plans shall include agricultural preservation plans adopted by municipalities within the county if such plans comply with ss. 91.55 and 91.57.

(2) At least 60 days prior to the public hearing under s. 59.69 (3) (d), copies of the agricultural preservation plan shall be submitted for review and comment to all cities, villages and towns within the county, all adjoining counties and the regional planning commission to which the county belongs.

(3) County agricultural preservation plans must indicate how they compare with regional plans prepared under s. 66.0309 and must explain any discrepancies between the plans.

History: 1977 c. 29; 1995 a. 201; 1999 a. 150 s. 672.

91.61 Certification. Upon completion of county agricultural preservation plans described in this subchapter, copies of the plan may be submitted to the board for review and certification under s. 91.06.

History: 1977 c. 29.

91.63 Revisions. Counties shall continually review and evaluate the agricultural preservation plan in light of changing needs and conditions and shall provide for periodic revision of the agricultural preservation plan set forth in this subchapter. Revisions shall be made in the same manner as adoption of the plan.

History: 1977 c. 29.

SUBCHAPTER V

EXCLUSIVE AGRICULTURAL ZONING

91.71 Purpose. The purpose of this subchapter is to specify the minimum requirements for zoning ordinances designating certain lands for exclusively agricultural use, allowing the owners of such lands to claim the farmland preservation credit permitted under subch. IX of ch. 71.

History: 1977 c. 29, 418; 1987 a. 312 s. 17.

91.73 Procedures. (1) Except as otherwise provided, exclusive agricultural zoning ordinances shall be adopted and administered in accordance with ss. 59.69, 59.692, 59.693 and 59.694, 61.35 or 62.23 or subch. VIII of ch. 60.

(2) Exclusive agricultural zoning ordinances shall be consistent with county agricultural preservation plans established under subch. IV.

(3) A majority of towns in a county with a population density of 100 or more persons per square mile may reject adoption of a county exclusive agricultural use zoning ordinance under this subchapter for all towns within the county only by filing within 6 months after adoption of the ordinance by the county board certified copies of resolutions disapproving the ordinance with the county clerk. Notwithstanding s. 59.69 (5) (c), the procedure established in this subsection shall be the only procedure by which a town in such a county may reject the application of a county exclusive agricultural use zoning ordinance in that town.

(4) Amendments to the texts of existing county zoning ordinances to bring the ordinances into compliance with this chapter, which are adopted by the county board, shall be effective in any town which does not file a certified copy of a resolution disapproving of the amendment pursuant to s. 59.69 (5) (e) 3. or 6. In those towns which disapprove of the amendment the former agricultural zoning remains in effect and shall be so designated on the official zoning map.

History: 1977 c. 29, 169; 1979 c. 34; 1979 c. 233; 1983 a. 532 s. 36; 1987 a. 399; 1995 a. 201; 1997 a. 35.

91.75 Ordinance standards. A zoning ordinance shall be deemed an “exclusive agricultural use ordinance” if it includes those jurisdictional, organizational or enforcement provisions necessary for its proper administration, if the land in exclusive agricultural use districts is limited to agricultural use and is identified as an agricultural preservation area under any agricultural preservation plans adopted under subch. IV and if the regulations on the use of agricultural lands in such districts meet the following standards which, except for sub. (4), are minimum standards:

(1) A minimum lot size is specified.

(2) (a) In this subsection:

1. “Gross income” has the meaning given for Wisconsin adjusted gross income in s. 71.01 (13).

2. “Owner”, as defined in s. 91.01 (9), also includes a partner in a partnership, a member in a limited liability company and a shareholder in a corporation.

3. “Preexisting residence” means a residence whose initial construction begins before May 14, 1992.

(b) Except as provided in par. (c), the only residences, whether preexisting residences or not, that are allowed as permitted or conditional uses are those that have a use consistent with agricultural use and that are occupied by any of the following:

1. An owner of the parcel.

2. A person who, or a family at least one adult member of which, earns the majority of his or her gross income from conducting the farm operations on the parcel.

3. A parent or child of an owner who conducts the majority of the farm operations on the parcel.

4. A parent or child of an owner who resides on the parcel and who previously conducted the majority of the farm operations on the parcel.

(c) Preexisting residences located in areas subject to zoning under this section that do not conform to par. (b), but that were either permitted or continued residential uses under s. 91.75, 1989 stats., may be continued in residential use and may be exempted from any limitations imposed or authorized under s. 59.69 (10).

(3) No structure or improvement may be built on the land unless consistent with agricultural uses.

(4) Such ordinances shall be considered local ordinances for purposes of s. 196.491 (3) (i) and (4) (c) 3. and shall provide that gas and electric utility uses not requiring authorization under s. 196.491 (3) are special exceptions or permitted or conditional uses and are uses that are consistent with agricultural use.

(5) Special exceptions and conditional uses are limited to those agricultural-related, religious, other utility, institutional or governmental uses that are consistent with agricultural use and are found to be necessary in light of the alternative locations available for such uses. The department shall be notified of the approval of any special exceptions and conditional uses in areas zoned for exclusive agricultural use.

(6) For purposes of farm consolidation and if permitted by local regulation, farm residences or structures which existed prior to the adoption of the ordinance may be separated from a larger farm parcel. Farm residences or structures with up to 5 acres of land which are separated from a larger farm parcel under this section are not subject to the lien under s. 91.19 (8) to (10), as required in s. 91.77 (2) or 91.79.

(7) A structure or improvement made as an incident to a lease for oil and natural gas exploration and extraction, and an easement granted for the purpose of using land as, or land used as, part of the ice age trail under ss. 23.17 and 23.293 and structures and improvements made as an incident to that use or those easements, is consistent with agricultural uses under sub. (3) and may be permitted as a special exception or conditional use under sub. (5).

(8) (a) In this subsection, “farm family business” means any lawful activity, except a farm operation, conducted primarily for any of the following:

1. The purchase, sale, lease or rental of personal or real property.

2. The manufacture, processing or marketing of products, commodities or any other personal property.

3. The sale of services.

(b) A farm family business may be permitted as a special exception or conditional use under sub. (5) if limited to existing farm residences or structures or portions of the existing farmstead that are not dedicated to agricultural uses. No more than 2 persons who are not members of the resident farm family may be employed in the farm family business.

(9) (a) In this subsection, “locally approved reclamation plan” means any of the following:

1. A reclamation plan, submitted as required by a nonmetallic mining reclamation ordinance adopted under s. 66.038, 1995 stats., or s. 295.13, that fulfills reclamation standards established by the ordinance.

2. If no nonmetallic mining reclamation ordinance applies to a proposed nonmetallic mining site, a reclamation plan that is approved by a county planning and zoning agency or commission created under s. 59.69 (2) or a county land conservation committee created under s. 92.06, whichever is authorized to give the approval under the exclusive agricultural zoning ordinance.

(b) Nonmetallic mineral extraction, including clay and gravel extraction, may be permitted as a special exception or conditional use under sub. (5) if it is subject to a locally approved reclamation plan that is submitted by the mine operator or person proposing to perform the nonmetallic mineral extraction to the local governing body having jurisdiction and that provides for the restoration of the nonmetallic mineral extraction site to agricultural use.

History: 1977 c. 29, 169, 418; 1983 a. 311; 1987 a. 399; 1991 a. 39, 286; 1993 a. 112, 464; 1995 a. 201, 227; 1997 a. 252; 1999 a. 9; 2003 a. 89.

Cross Reference: See also s. NR 135.03, Wis. adm. code.

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“Governmental use,” as used in an exclusive agricultural zoning ordinance, was interpreted to mean any service, function, or facility that a governmental unit is authorized by statute to provide. A radio tower licensed to the University Board of Regents for the operation of a student radio station was a governmental use. Board of Regents of the University of Wisconsin v. Dane County Board of Adjustment, 2000 WI App 211, 238 Wis. 2d 810, 618 N.W.2d 537, 99–2662.

Community living arrangements may be entitled to locate in exclusive agricultural zoning districts under some circumstances. 76 Atty. Gen. 126.

91.77 Ordinance revisions. (1) A county, city, village or town may approve petitions for rezoning areas zoned for exclusive agricultural use only after findings are made based upon consideration of the following:

(a) Adequate public facilities to accommodate development either exist or will be provided within a reasonable time.

(b) Provision of public facilities to accommodate development will not place an unreasonable burden on the ability of affected local units of government to provide them.

(c) The land proposed for rezoning is suitable for development and development will not result in undue water or air pollution, cause unreasonable soil erosion or have an unreasonably adverse effect on rare or irreplaceable natural areas.

(2) Land which is rezoned under this section shall be subject to the lien provided under s. 91.19 (8) to (10) for the amount of tax credits paid on the land rezoned. If the rezoning occurs solely as a result of action initiated by a governmental unit, any lien required under s. 91.19 (8) to (10) shall be paid by the governmental unit initiating the action.

(3) The department shall be notified of all rezonings under this section.

History: 1977 c. 29, 169; 1983 a. 311.

91.78 Certification. Copies of exclusive agricultural zoning ordinances may be submitted to the board for review and certification under s. 91.06.

History: 1977 c. 29.

91.79 Conditional uses; lien. Any land zoned under this subchapter which is granted a special exception or conditional use permit for a use which is not an agricultural use shall be subject to the lien provided under s. 91.19 (8) to (10) for the amount of tax credits paid on the land granted such a permit.

History: 1977 c. 169.

91.80 Soil and water conservation. (1) ORDINANCE. Any county, city, village or town may require by separate ordinance that land for which an owner receives a zoning certificate under s. 71.59 (1) (b) be farmed in compliance with reasonable soil and water conservation standards established by the county land conservation committee.

(2) COMPLIANCE WITH STANDARDS. In order to be eligible for the farmland preservation credit, farming operations shall be conducted in compliance with reasonable soil and water conservation standards established under s. 92.105. This subsection applies as provided under s. 92.105 (7).

History: 1983 a. 27; 1985 a. 29; 1987 a. 312 s. 17.