

# Land Use in Farmland Preservation Zoning Districts

## Wisconsin Working Lands Initiative

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Following are sections of chapter 91 Wis. Stats. regarding allowable land uses in certified farmland preservation zoning districts. These sections are followed by applicable definitions from chapter 91.

Please note that s. 91.44 permitted uses may be allowed as conditional uses, but conditional uses (s. 91.46) may not be listed as permitted uses.

### Uses

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.

### Permitted Uses

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.

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## **Conditional Uses**

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.

92.46 (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.

91.46 (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.

91.46 (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).

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## **Conditional Uses, continued**

91.46 (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.

91.46 (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.

91.46 (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.

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## **Definitions**

91.01 (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.

91.01 (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.

91.01 (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.

91.01 (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.