

ORDINANCE

SUBJECT: FARMLAND PRESERVATION COMMITTEE

COMMITTEE: PLANNING RESOURCES AND DEVELOPMENT COMMITTEE

FIRST CONSIDERATION: March 18, 2010

FINAL CONSIDERATION: April 20, 2010

ORDINANCE # 80 - 4/10 **PUBLICATION DATE** May 10, 2010

The County Board of Supervisors of La Crosse County does ordain as follows:

**AN ORDINANCE TO CREATE S. 1.65 ENTITLED "FARMLAND PRESERVATION COMMITTEE"
AND CHAPTER 32 ENTITLED "FARMLAND PRESERVATION" OF THE GENERAL CODE
OF LA CROSSE COUNTY, WISCONSIN**

ANALYSIS

Section 1 of this ordinance creates a Farmland Preservation Committee consisting of 9 members appointed by the County Board Chair and confirmed by the County Board. Three of the Committee members shall be County Board Supervisors and the remaining 6 members will be appointed from various interest groups who have a stake in the preservation of farm and forest land.

The responsibilities of this Committee include: develop procedures for the Purchase of Agriculture Conservation Easement (PACE) Program, assess applications for participation in the PACE Program, make recommendations regarding conservation easements and acceptance of such easements by the County, and establish easement monitoring procedures. The Committee is a special committee that will report its recommendations to the Planning, Resources and Development (P,R & D) Committee. The County Board will make the final decision on whether to accept a conservation easement on a parcel of land.

Section 2 of the Ordinance creates Chapter 32 of the Code entitled "Farmland Preservation." This chapter creates the PACE Program that authorizes La Crosse County to accept voluntarily conveyed conservation easements to protect farm and forest land in perpetuity. In addition, the program objectives include: implementing the County Comprehensive Plan, preserve a critical component of the local economy by protecting viable farm and forest lands, encourage private investment in agriculture and forestry, maintain agricultural related infrastructure in the community, capitalize on the benefits created by farming and forestry operations, and build upon the State's strong history of farm and forest land protection.

The PACE Program has minimum eligibility criteria including: all owners of the property shall sign a program application, the easement shall be on at least 35 contiguous acres, the land shall be located in an unincorporated area of La Crosse County, 51% of the easement shall be used for agriculture or at least 80 % shall be devoted for silvicultural uses (undeveloped forest land devoted to production of trees utilized in the forest products industry), agricultural/forestry uses must be permitted under zoning ordinances applicable to the parcel, and all encumbrances must be satisfied and removed or the lien holder, mortgagee or creditor must consent in writing to the easement prior to the conveyance of the easement to the County.

If an easement is denied by the Farmland Preservation Committee, there is a right of appeal to the P,R & D Committee.

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A property owner (Grantor) who makes application to participate in the PACE Program will be charged an application fee set by the County Board and will incur other costs including surveying, title insurance, attorney fees, recording fees, and appraisal fees. The conveyance of a conservation easement is believed to constitute a qualified conservation contribution as defined by the IRS, but it is the responsibility of the Grantor to determine what amount, if any, is tax deductible.

The conservation easement shall perpetually protect the area's agricultural and silvicultural uses and shall run with the land regardless of transfers in property ownership. Existing structures and areas anticipated to be used for future structures shall be excluded from the land to be placed under easement. Included in the conservation easement are provisions requiring the legal description of the property, the adoption and implementation of a conservation plan, the development of a Forest Stewardship Plan where there is an area containing 10 acres or more of forest land, and the notification of the Zoning Department in advance of construction of structures or uses that may have an adverse impact on the conservation values of the property such as mining.

A Committee member who wishes to participate in the PACE Program must abstain from participating in any Committee deliberation or voting on the consideration of the easement.

The La Crosse Zoning, Planning and Land Information Department is charged with the monitoring and enforcement of the conservation easement for La Crosse County. If a violation of the easement is discovered, the Department shall prepare a report and attempt to achieve voluntary compliance by the property owner with the provisions of the easement. However, if the voluntary compliance efforts are unsuccessful, the County may seek to enforce the conservation easement by commencing an action in court seeking an order requiring correction of the violation.

INFORMATION:

County Board Rules: Governing Body s. 2.02(8) states, in part: Ordinances are drafted by the Corporation Counsel. After the ordinance has been reviewed by a standing committee, each Supervisor will be given a copy of the ordinance showing the deleted language (grayed) and the new language (underlined) and an analysis of the intent of the ordinance. After introduction to the County Board, the ordinance shall be referred to the next monthly meeting unless waived by a 2/3 vote of the Supervisors present and a public hearing may be held if requested by a Supervisor. An amendment may be introduced and debated at either the original or the referred meeting. Copies of the ordinances of the County of La Crosse in their entirety are available with Corporation Counsel, County Clerk, or www.co.la-crosse.wi.us/code/.

(Rev. 3/03)

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**AN ORDINANCE TO CREATE S. 1.65 ENTITLED "FARMLAND PRESERVATION COMMITTEE"
AND CHAPTER 32 ENTITLED "FARMLAND PRESERVATION" OF THE GENERAL CODE OF
LA CROSSE COUNTY, WISCONSIN**

The County Board of Supervisors of the County of La Crosse does ordain as follows:

Section 1. Section 1.65 is created to read:

1.65 FARMLAND PRESERVATION COMMITTEE.

(1) **Membership.** Members of the Farmland Preservation Committee shall be appointed by the County Board Chair, subject to confirmation by the County Board. A Committee member shall be an elector of La Crosse County. The Committee shall consist of 9 members to be composed as follows: 3 County Board Supervisors; 1 representative from town government; 1 representative from the city/village government; 1 representative from real estate or development interests; 1 representative with agricultural interests; 1 representative with forestry interests; and 1 representative with local conservation interests, at least 3 to be farmers in La Crosse County if possible.

(2) **Term.** the initial term of members shall be staggered as follows: 1 supervisor and 2 representatives shall serve a 1 year term; 1 supervisor and 2 representatives shall serve a 2 year term; and 1 supervisor and 2 representatives shall serve a 3 year term. Appointments after the initial term shall be for a term of 3 years and members may be reappointed to successive 3 year terms.

(3) **Vacancy.** If any member ceases to be an elected official of the governmental entity that he/she represents, then that person's position on the Committee shall become vacant. Vacancies may also result from the removal or resignation of a member. Vacancies shall be filled for the remainder of the unexpired term in the same manner that original appointments are made.

(4) **Responsibilities.** The Committee shall be responsible for general oversight of the Purchase of Agricultural Conservation Easements (PACE) Program, including the following:

(a) Review and recommend any needed changes to the ordinance establishing the PACE Program.

(b) Develop an application form and procedure for the PACE Program.

(c) Review and provide oversight in assessing all applications according to the general purposes, objectives and provisions of the PACE Program set forth in Chapter 32, including but not limited to the minimum eligibility criteria.

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(d) Make recommendations regarding individual conservation easement instruments, including but not limited to the defined restrictions and reserved rights under the conservation easement.

(e) Make recommendations regarding acceptance of easements.

(f) Establish monitoring procedures and oversee subsequent monitoring to insure easement compliance in coordination with the La Crosse County Zoning, Planning and Land Information Department and La Crosse County Corporation Counsel.

(5) Reporting. The Farmland Preservation Committee shall report to the Planning, Resources, and Development (PR&D) Committee, which shall approve, deny or amend the recommendations prior to consideration by the County Board. The final decision making authority is with the County Board.

Section 2. Chapter 32 entitled "Farmland Preservation" is created to read:

CHAPTER 32: FARMLAND PRESERVATION.

32.01 INTRODUCTION.

(1) La Crosse County is blessed with one of the most diverse landscapes in Wisconsin. Agriculture and other open land comprise 42% of the landscape, while forests comprise 33%, and other intensive land uses (e.g., residential, commercial) make up 10% of the landscape. According to the most recent data, agriculture has an economic impact of \$435 million (17% of the local economy) and employs 13% of the workforce, while forestry contributes \$110 million in output and employs 2.5% of the County workforce. Both industries are critical components of the local economy, rivaled only by the manufacturing industry.

(2) The La Crosse County Purchase of Agricultural Conservation Easement (PACE) Program is the culmination of several historic and contemporary initiatives addressing local citizen concern for loss of farmland and fragmentation of forestland. The program builds upon the foundation of the long standing state government focus on farm and forestland protection best exemplified in the Farmland Preservation Law, use value taxation, the Stewardship Program, and the Managed Forest Law. It helps landowners take advantage of income tax breaks, builds a foundation that La Crosse County can use to capitalize on Wisconsin's Working Lands Initiative, and fosters implementation of the county and local comprehensive plans. In fact, development of an easement program is a priority action step identified in the County Comprehensive Plan.

(3) The La Crosse County Comprehensive Plan 2007-2027 establishes several goals targeting the preservation of natural resources that fuel the farm and forestry economy, including:

(a) Farmland Preservation Goal: Direct growth away from prime farmland and protect productive agricultural operations from the encroachment of incompatible uses. Evaluate and utilize programs and initiatives that support this goal.

(b) Natural Resources Goal: Preserve and protect the overall beauty and natural resources of the County as these areas contribute to quality of life and are a critical component of the County's economic development strategy. Protect features including bluffs, coulees, wetlands, wildlife habitats, lakes, rivers, streams, woodlands, remnant prairies/grasslands, open spaces, and groundwater recharge areas.

(4) Some of the supporting objectives in the plan include:

(a) Encourage the protection of economically productive areas including farmland and forests.

(b) Develop realistic strategies to protect prime and productive agricultural lands from the encroachment of development. Define and differentiate between lands with high and marginal agricultural value.

(c) Continue to protect the various natural resources that exist in different parts of the County as they significantly contribute to the quality of life. Promote consistency among different standards managed at the Federal, State, County, and local levels.

32.02 PROGRAM PURPOSE. The La Crosse County Purchase of Agricultural Conservation Easement (PACE) Program authorizes La Crosse County to accept voluntarily conveyed conservation easements that protect viable farm and forest lands and the conservation values of these lands in perpetuity.

32.03 PACE PROGRAM OBJECTIVES.

(1) Create a voluntary, permanent option to protect farm and forest land by authorizing La Crosse County to accept conservation easements.

(2) Implement the La Crosse County Comprehensive Plan 2007-2027. The Comprehensive Plan includes many goals, objectives, policies, and action steps focused on the protection of farm and forest land, including development of an easement program.

(3) Preserve a critical component of La Crosse County's local economy by protecting viable farm and forest lands from incompatible, non-agricultural and/or non-silvicultural uses.

(4) Encourage private investment in agriculture and forestry. Conservation easements can function to provide financial resources to the landowner that can be used to invest in the operation, protect property from incompatible uses, and create large tracts of preserved land that are less susceptible to public or private challenges affecting the right to use the property in a manner consistent with currently accepted agricultural and silvicultural practices.

(5) Maintain agricultural related infrastructure in the community. Viability of the agriculture industry is dependent upon adequate infrastructure, such as, cooperatives, feed mills, veterinarians, implement dealers, and processing facilities. Viability of this infrastructure is

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dependent upon the existence of the agriculture industry. Farmland protection supports the interdependent relationship between the industry and agriculture.

(6) Capitalize on the positive benefits created by farming and forestry operations. In addition to its economic benefits, La Crosse County's farm and forestland contribute significantly to surface and ground water quality, wildlife and fish habitat, the tourism economy, open space, rural character, scenic beauty, cultural heritage, and the overall quality of life.

(7) Build upon Wisconsin's strong history of farm and forestland protection. Wisconsin has long been recognized as a leader in farm and forestland protection not only through a variety of policies supported by state statute and administrative rule, but also through the premier preservation programs, including the Farmland Preservation Law, use value taxation, Stewardship Program, and the Managed Forest Law.

32.04 DEFINITIONS.

(1) "Agricultural Use" means substantially undeveloped cropland and pasture that is devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, including beef, swine, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes enrollment in a federal or state conservation program.

(2) "Base property inventory" means a report prepared by the Zoning, Planning and Land Information Department consisting of maps, photographs, and a narrative description sufficient to establish the condition of the property at time of easement conveyance. The inventory will be used to monitor changes in use or condition of the property.

(3) "Certified Survey Map" means a map, prepared in accordance with Section 236.34 of the Wisconsin Statutes for the purpose of dividing land into not more than four (4) parcels inclusive of the remnant parcel); or used to document for recording purposes survey and dedication data relating to single parcels.

(4) "Grantor" means all property owners of the parcel(s) from which an easement is to be conveyed. If land is subject to land contract, the grantor means the vendee in agreement with the vendor.

(5) "Land unsuitable for producing merchantable timber", at least, includes water, bog, rock outcrops, sand dunes, vacant farmland, roadway, utility right-of-way, or railroad right of way.

(6) "Forest Stewardship Plan" is more comprehensive than a basic management plan or management recommendations. It incorporates landowner objectives with sustainable forestry management. It may also provide detailed information for protection and enhancement

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of other natural resources, such as, water, soil, and wildlife. The plan shall include all three of the following components:

(a) Stand level description of current forest condition;

(b) Scheduled forest management practices that will protect or enhance the forest, the practices will use prescriptions consistent with Wisconsin Department of Natural Resources silvicultural standards; and

(c) A detailed stand-level map.

(7) "Plat of Survey" means a metes and bounds description of the property that includes monumentation.

(8) "Silvicultural use" means substantially undeveloped forest land that is devoted to the production of trees to be utilized in the forest products industry, including lumber, pulp, veneer, maple syrup, Christmas trees, carbon credits, and other similar uses and activities. Silvicultural use includes enrollment in a federal or state conservation program.

32.05 MINIMUM ELIGIBILITY CRITERIA. Any La Crosse County property owner may submit an application to the Farmland Preservation Committee, but only applications that meet the following minimum criteria will be considered.

(1) All owners of the property shall sign the application, indicating their interest in voluntarily conveying a conservation easement on at least 35 contiguous acres. Easements proposed on areas less than 35 contiguous acres may be considered by the Committee on a case by case basis.

(2) The easement to be conveyed shall be located in an unincorporated area of La Crosse County.

(3) Any area of the easement to be conveyed shall not be located within a ½ mile of a City, Village, or Sanitary Sewer District boundary as of the effective date of this ordinance. The ½ mile boundary is static upon the effective date of this ordinance and will not move due to future annexations or sewer district expansions. The area of the easement to be conveyed may be within the ½ mile boundary if written permission is obtained from the governmental entities that are within this boundary.

(4) At least 51% of the area of the conservation easement shall be devoted to agricultural use or at least 80% shall be devoted to silvicultural uses.

In some instances, the easement area may not reach either percent land use minimum requirement, but the total of farmland and forest land is 80% or more of easement area (i.g., 40% farmland, 40% forested, 20% wetland). Such parcels will be considered on a case by case basis by the Committee.

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(5) Agricultural and/or forestry activities must be permitted uses under all applicable zoning ordinances on a parcel subject to a conservation easement.

(6) All encumbrances, including but not limited to liens, mortgages, and judgments, against the parcel(s) must be satisfied and removed, or the lien holder, mortgagee, or creditor shall consent in writing to the grant of the conservation easement and agree that its interest in the parcel shall be subject to the easement. Encumbrances are not intended to include enrollment of the property in any currently existing state and/or federal conservation program(s). Clear title must be provided before an easement may be conveyed to La Crosse County.

32.06 APPLICATION PROCESS.

(1) Landowners wishing to convey a conservation easement shall complete an application that is developed by the Farmland Preservation Committee and submit it to the Zoning, Planning and Land Information Department prior to April 1st of each year. The Department will determine if the application is complete. Upon receipt of a completed application, the Committee will meet within 45 days to make a recommendation on the application to the Planning, Resources, and Development (PR&D) Committee.

(2) After receiving the recommendation of the Farmland Preservation Committee on a landowner's application, the PR&D Committee shall act on the recommendation either approving, modifying and approving, or disapproving the application. If the action of the PR&D committee is favorable to granting the application, it shall report to the County Board its recommendation to approve. If the PR&D Committee recommends denial of the application, it shall report its recommendations to the County Board with the reasons for the action.

(3) Upon receipt of the PR&D Committee report on the application to convey a conservation easement to the County, the County Board may approve the application as recommended by the PR&D Committee or with amendments, or it may deny the application, or it may refuse to deny the application as recommended by the PR&D Committee in which case it may refer the application back to the Committee with directions to further consider the application and report the application back to the County Board which may then approve or reject the application.

32.07 PARTY RESPONSIBILITIES.

(1) Grantors shall be charged an application fee as determined from time to time by the County Board without the requirement of an amendment to this Code. Grantors will incur other costs, such as, surveying, title search and insurance, attorney, accountant, recording, and appraisal fees. The County's role is to accept, monitor, and enforce the easement. It is the Grantor's responsibility to adequately analyze the conveyance of the conservation easement to determine personal impacts, including income tax deductibility and value of the easement.

(2) The conveyance of a conservation easement is believed to constitute a qualified conservation contribution as defined by the United States Internal Revenue Service and other applicable state regulations. The act of La Crosse County accepting the easement does not, create the determination that the conveyance meets the requirements for a qualified conservation

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contribution. The IRS makes the final determination of whether it is a qualified conservation contribution. The Grantor of the conservation easement is responsible for determining this designation and associated tax deductibility.

32.08 CONSERVATION EASEMENT PROVISIONS.

(1) The conservation easement shall perpetually protect the easement area's agricultural and silvicultural uses by preventing any other use that is inconsistent with the purposes of the PACE Program.

(2) The conservation easement shall run with the land regardless of transfers in property ownership. The easement shall be held by the County in perpetuity unless an entity authorized under Wis. Stats. s. 32.02 to acquire real property by condemnation determines that acquisition of the property is necessary for a public purpose. In such case, the entity exercising the power of eminent domain shall compensate the County for the value of the conservation easement as determined by a qualified appraiser. The County shall deposit proceeds into a fund dedicated to working farm and forestland preservation.

(3) An area large enough to include existing structures and anticipated future structures shall be excluded from the land to be placed under easement, except existing structures that are intended for seasonal use. Structures with running water are not considered for seasonal use. In the event that the landowner wants to build structures outside of this area, the structures must be consistent with agricultural or silvicultural uses and local zoning code. Construction of residential structures is prohibited.

(4) The conservation easement shall at least include the following provisions:

(a) Who is giving and receiving the easement, i.e. the Grantor and the Grantee.

(b) Legal description and base property inventory, which may require a plat of survey at the discretion of the Farmland Preservation Committee.

(c) A conservation plan to implement current Department of Natural Resources Administrative rule 151 standards will be adopted and implemented for any easement area containing active cropland within 5 years of easement conveyance. The property owner is responsible for continued implementation.

(d) A Forest Stewardship Plan will be developed and implemented for any easement area containing 10 or more contiguous acres of forestland within 5 years of easement conveyance. The property owner is responsible for updating and continually implementing the plan.

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(e) The Zoning, Planning and Land Information Department shall be notified in advance of construction of any structures or exercise of any rights reserved to the landowner that may have an adverse impact on the conservation values of the property.

(f) Excavation of sand, gravel, rock, minerals, or other non-metallic or metallic materials that significantly impairs or interferes with the long term agricultural or silvicultural use of the property is prohibited. Such mining is allowed if the long term agricultural and silvicultural use is maintained, a reclamation plan consistent with Wisconsin Department of Natural Resources Administrative Code NR 135 identifying that this use is preserved has been approved, the property owner has received prior written approval of the County Board of Supervisors, and mining occurs for a period not to exceed 25 years from date of reclamation plan approval.

Landowners interested in tax benefits should consult their tax attorney regarding mining because the current applicable tax codes do not allow for income tax deductions if surface mining could occur.

32.09 CONFLICT OF INTEREST. A Committee member who wishes to convey an easement, whose family member wishes to convey an easement, or who has a financial stake in an organization, incorporation, etc. that wishes to convey an easement may not participate in any deliberation of the Committee when said easement is being considered.

32.10 SEVERABILITY. Should any provision of this Ordinance be adjudged invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of any other provision of this Ordinance.

32.11 ENFORCEMENT.

(1) The La Crosse County Zoning, Planning & Information Department shall enforce the terms of each conservation easement accepted by La Crosse County.

(2) The Department shall at least annually inspect all land from which easements have been voluntarily conveyed to determine compliance. The first inspection shall be completed within 1 year of the date of easement conveyance. Written notice of an inspection to be conducted shall be mailed by certified mail to the owner(s) at least 10 days prior to the inspection. An inspection shall be performed between the hours of 7 am and 6 pm on a weekday that is not a legal holiday, or a date and time agreeable to the Department and the owner(s).

(3) Following inspection, the Department shall prepare a written report indicating whether or not the provisions of the easement are being observed. The final report shall be mailed to the property owner(s) within 14 days of inspection.

(4) In the event of discovery of a violation of the conservation easement, a written notice shall be sent by certified mail to the property owner within 14 days of discovery and shall include the following:

(a) A copy of the inspection report.

- (b) A copy of the deed of easement.
- (c) A description of the action or condition that constitutes the violation.
- (d) A statement of measures to correct the violation within 60 days after mailing of the violation notice.

(5) Sixty days following the mailing of the violation notice, the County shall commence and prosecute an action seeking an order requiring correction of the violation, enjoining further violation, and other appropriate relief, unless:

- (a) The Department determines that a violation has been corrected.
- (b) The Department determines that the owner(s) has commenced necessary corrective measures and they cannot be reasonably completed within the 60 day period.
- (c) The Department works with the owner(s) to identify a period not to exceed 1 year within which the corrective measures can be completed.

(6) The owner(s) of the land from which easements have been voluntarily conveyed shall bear the costs associated with the correction of a violation of the easement, including:

- (a) Costs of work required and materials used to correct the violation.
- (b) Administrative costs incurred by La Crosse County.
- (c) Court costs and reasonable attorneys' fees incurred by La Crosse County.

Section 3. This Ordinance shall take effect the day after passage and publication.

Dated this 20 day of APRIL, 2010.

LA CROSSE COUNTY
 By: [Signature]
 Steve Doyle, County Board Chair
 By: [Signature]
 Linda Stone, County Clerk

PASSED: April 20, 2010
 PUBLISHED: MAY 10, 2010

STATE OF WISCONSIN
 COUNTY OF LA CROSSE
 I, Linda A. Stone, County Clerk of La Crosse County do hereby certify that this document is a true and correct copy of the original ordinance required by law to be in my custody and which the County Board of Supervisors of La Crosse County adopted at a meeting held on the 20th day of April, 2010.

[Signature]
 Linda A. Stone, La Crosse County Clerk