

WAUPACA COUNTY CODE OF ORDINANCES

Chapter 47

Waupaca County Voluntary Conservation Easement Donation Ordinance

I. Introduction

The Waupaca County Working Farm and Forest Lands Conservation Easement Program is the culmination of several historic and contemporary initiatives addressing local citizen concern for loss of farmland and fragmentation of forestland.

The Waupaca County-Year 2030 Comprehensive Plan establishes several goals targeting the preservation of the natural resources that fuel the farm and forestry economy, including:

- Maintain the viability, operational efficiency, and productivity of the County's agricultural resources for current and future generations.
- Preserve and protect woodlands and forest resources for their economic, aesthetic, and environmental values.

Some of the supporting objectives in the plan include:

- ✓ Protect productive farmland from fragmentation and conflicts with non-agricultural uses.
- ✓ Allow for farming expansion in areas where conflict with existing residential land uses can be prevented or mitigated.
- ✓ Protect the investments made in both public infrastructure (roads) and private lands and improvements that support the agriculture industry.
- ✓ Allow for the opportunity to accommodate creative and unique forms of agriculture.
- ✓ Explore opportunities to allow farmers and farmland owners to secure financial benefits for the preservation of farmland.
- ✓ Identify lands where the primary intent is to preserve productive farmland and to allow for farming expansion.
- ✓ Manage growth to prevent conflict between residences and agricultural odors and dust.
- ✓ Manage growth to protect large, interconnected green space areas.
- ✓ Conserve large contiguous wooded tracts in order to reduce forest fragmentation, maximize woodland interiors, and reduce the edge/area ratio.
- ✓ Support efforts that preserve the integrity of working forest land, especially the forest resources of northwestern Waupaca County.

II. Program Purpose

The Waupaca County Working Farm and Forest Lands Conservation Easement Program permits and empowers Waupaca County to accept voluntarily conveyed conservation easements that protect viable farm and forest lands in perpetuity.

III. Program Objectives

- A. Create a voluntary, permanent option to protect farm and forest land.* The program empowers Waupaca County to accept voluntarily conveyed conservation easements that protect farm and forest lands and the conservation values of these lands in perpetuity.
- B. Implement the Waupaca County-Year 2030 Comprehensive Plan.* 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.

- C. *Preserve a critical component of Waupaca County's local economy by protecting viable farm and forest lands from incompatible, non-agricultural and/or non-silvicultural uses.* Agriculture and forestry are major and critical components of the local economy that require land resources that are not burdened by the challenges associated with nearby incompatible uses.
- D. *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.
- E. *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 dependent upon the existence of the agriculture industry. Farmland protection supports the interdependent relationship between the industry and agriculture.
- F. *Capitalize on the positive externalities created by farming and forestry operations.* In addition to its economic benefits, Waupaca 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.
- G. *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.

IV. Definitions

"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.

"Base property inventory" means a report prepared by the Land and Water Conservation Department (herein after "LWCD") 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.

"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.

"Grantor" means all property owners of the parcels 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.

"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.

"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 of other natural resources, such as, water, soil, and wildlife. The plan shall include all three of the following components: 1) stand level description of current forest condition; 2) 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, 3) a detailed stand level map.

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

"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.

V. Waupaca County Working Farm and Forest Lands Protection Program-Oversight

A. The Land & Water Conservation Committee (herein after "LWCC") will provide program oversight in the following forms:

1. The LWCC shall be responsible for reviewing and recommending any amendments to Chapter 47, Waupaca County Code of Ordinances.
2. The LWCC shall approve or deny all donated easement applications at a properly noticed LWCC meeting in compliance with Wisconsin's Open Meetings Law.
3. At times when state or other external funding is available for purchased or partially purchased conservation easements, the LWCC shall seek easement approval recommendations from the Working Farm and Forest Lands Protection Commission described in the following section.

B. The Working Farm and Forest Lands Protection Commission formation and composition is as follows:

1. It shall be a volunteer, nine (9) member Commission with the following composition, at a minimum: one County Supervisor; one representative from town government; one representative from city/village government; one representative from real estate or development interests; two representatives with agricultural interests; two representatives with forestry interests; and one individual representing local conservation interests. A commission member may represent multiple interests.
2. Appointments to the Commission shall be made by Waupaca County Board Chairman at a properly noticed meeting of the Waupaca County Board of Supervisors.
3. Individuals interested in serving on the Commission may contact the Land and Water Conservation Department Head at any time to express interest or for more information.

- C. Terms and Compensation for the Working Farm and Forest Lands Protection Commission
1. Each member shall serve three-year terms beginning on April 1st, with the exception that the County Supervisor appointed in his/her role as Supervisor shall serve a two-year term consistent with his/her elected office.
 2. Members may be reappointed to successive two-year (for Supervisor appointed in that capacity) or three-year (for all other appointees) terms by the County Board Chairman. No member may serve more than three successive terms.
 3. Vacancies due to removal or resignation shall be filled for the remainder of a term by appointment by the County Board Chairman.
 4. Members will not be compensated for their services with the exception that a County Board Supervisor representing County government shall receive meeting and mileage reimbursement consistent with Waupaca County Code of Ordinances, Chapter 2.
- D. The Commission when active (that is, at times when state or other external funding is available for the purchasing of conservation easements) shall meet at least annually to elect the following officers:
1. A Chair who shall preside at all meetings.
 2. A Vice-Chair who shall serve as presiding officer in the absence of the Chair.
 3. A Secretary who shall insure compliance with Wisconsin's Open Meetings Law and maintain Commission records, including but not limited to posting agendas, recording minutes, and responding to public records requests.
 4. Any other officers the Commission deems necessary for effective operations.
 5. During periods where there is no available state funding, there is no minimum meeting requirement.
- E. The Commission may adopt rules of procedure governing its deliberations. In the absence of any such rules, the Commission shall conduct its proceedings in accordance with Robert's Rules of Order, latest revised edition.
- F. The Commission shall be responsible for the following:
1. Reviewing and providing oversight in assessing all purchased easement applications according to the general purpose, objectives, and provisions of this ordinance, including but not limited to the minimum eligibility criteria.
 2. Making recommendations regarding individual purchased conservation easement instruments, including, but not limited to the defined restrictions and reserved rights under the conservation easement to the LWCC.
 3. Making recommendations regarding acceptance of an easement to the LWCC.
 4. The Commission shall report directly to the Waupaca County Land and Water Conservation Committee (herein after "LWCC"), which shall approve, deny, or amend the Commission's recommendations prior to consideration by the Waupaca County Board of Supervisors. Final decision making authority lies with the Board of Supervisors.
 5. Donated conservation easements will be the responsibility of the LWCC.
- G. Should an application be denied by the Commission, the applicant has the right to appeal the Commission's denial to the Waupaca County LWCC within 30 days of its decision. An appeal shall be commenced by filing with the Waupaca County Land and Water Conservation Department Head a written notice of appeal specifying the decision being appealed and the grounds for the requested relief. Upon receipt of such a notice, the Department Head shall immediately notify the Waupaca County LWCC and shall make available to the LWCC all papers and

files constituting the record of the decision being appealed. A hearing of the Appeal shall be heard within 30 days of receipt of the appeal notice.

VI. Minimum Eligibility Criteria

Any Waupaca County property owner may submit an application to the LWCC (for voluntary easements) or Commission (for purchased easements), but only proposed easements that meet the following minimum criteria will be considered.

- A. All property owners have signed the application, indicating 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 LWCC or Commission respectively on a case by case basis.
- B. The area from which the easement is to be conveyed is located in a Waupaca County Town, not a City or Village.
- C. The area from which the easement is to be conveyed is not located within a 1/2 mile of a City, Village, or Sanitary Sewer District boundary as of the date of ordinance adoption. That is, the 1/2 mile boundary is static upon ordinance adoption and will not move due to future annexations or sewer district expansions. The area from which the easement is to be conveyed can be within the 1/2 mile boundary if written permission is obtained from the appropriate governing body(ies).
- D. Each individual parcel (i.e., not a sum total of the easement area of all parcels) from which an easement is to be conveyed, not including any area to be excluded from the easement per Section IX.C. of this ordinance, must have at least 51% of its area planned for future agriculture or forestry (i.e., Agriculture Enterprise, Agriculture Retention, Private Recreation and Forestry, Agriculture or Forestry). If this threshold cannot be met with the aforementioned planned land use classifications, but it can be met with the addition of land planned for Resource Protection that is deemed suitable for agriculture or forestry production by the LWCC or Commission, then this criterion is considered met.
- E. At least 51% of the area from which the easement is to be conveyed must be devoted to agricultural use or at least 80% must be forested.

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 (e.g., 40% farmland, 40% forested, 20% wetland). Such parcels will be considered on a case by case basis by the Commission.

- F. Agricultural and/or forestry activities are permitted under all applicable zoning ordinances.
- G. All encumbrances, including but not limited to liens, mortgages, and judgments, against the parcel/s must be subordinated, satisfied or removed. Encumbrances is 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 can be conveyed.

VII. Application Process

Landowners wishing to convey a donated conservation easement shall complete an application that is developed by the LWCC and submit it to the Land and Water

Conservation Department. The Department will determine if the application is complete. Upon receipt of a complete application, LWCC shall make a recommendation to the County Board at its next scheduled meeting. The County Board shall accept or deny the easement at its next scheduled meeting following a recommendation by the LWCC.

Landowners wishing to apply for a purchased conservation easement, when State or external funds are available, shall complete an application that is developed by the LWCC and submit it to the Land and Water Conservation Department. The Department will determine if the application is complete. Upon receipt of a complete application, the Commission will meet within 45 days to make a recommendation to the Land and Water Conservation Committee (LWCC). The LWCC shall make a recommendation to the County Board at its next scheduled meeting. The County Board shall accept or deny the easement at its next scheduled meeting following a recommendation by the LWCC.

VIII. Party Responsibilities

Grantors will be charged an application fee. Grantors will incur other costs, such as, surveying, title search and insurance, attorney, accountant, recording, and appraisal fees. The County's only roles are to accept, monitor, and enforce the easement. It is the Grantor's responsibility to adequately analyze the donation to determine personal impacts, including income tax deductibility and value of the easement.

The conveyance of a donated easement is believed to constitute a qualified conservation contribution as defined by the United States Internal Revenue Service and other applicable state regulations. The IRS, however, is responsible for the final determination of qualified conservation contribution. The simple act of Waupaca County accepting the easement does not, however, create the determination of qualified conservation contribution. The easement Grantor is responsible for determining this designation and associated tax deductibility.

IX. Conservation Easement Provisions

- A. The conservation easement shall perpetually protect the easement area's agricultural and silvicultural use by preventing any other use.
- B. 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 a Court of competent jurisdiction determines that eminent domain can and should be used for a specific 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.
- C. 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.
- D. The conservation easement shall at least include the following provisions:
 1. Who is giving the easement and who is receiving the easement.
 2. Legal description and base property inventory, which might require a plat of survey per LWCC or Commission discretion.
 3. A conservation plan to implement current Wisconsin Administrative Code Chapter NR 151 standards will be adopted and implemented for any

easement area containing active cropland within 2 years of easement conveyance. The property owner is responsible for continued implementation.

4. A Forest Stewardship Plan will be developed and implemented for any easement area containing 10 or more contiguous acres of forestland within 2 years of easement conveyance. The property owner is responsible for updating and continually implementing the plan.
5. The Land and Water Conservation 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.
6. 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 Administrative Code NR 135 identifying that this use 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 initial reclamation plan approval. Landowners interested in tax benefits should consult a tax attorney regarding mining.

X. Conflict of Interest

A LWCC or Commission member who wishes to convey an easement, whose family member wishes to convey an easement, or who has a financial stake in another entity, including but not limited to an organization and/or corporation that wishes to convey an easement may not participate in any deliberation of the LWCC or Commission when said donation is being considered.

XI. Amendment or Repeal

This ordinance may be amended or repealed only by affirmative vote of the County Board at a properly noticed County Board of Supervisors meeting. It is not intended by this Ordinance to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to law. However, whenever this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern. Any further amendments, revisions, modifications, or newly-created provisions of the Wisconsin Statutes and/or Administrative Code, or the Internal Revenue Service Code or administrative regulation, as may amended from time to time, that affect this Ordinance are incorporated herein and intended to be part of this Ordinance.

XII. 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.

XIII. Enforcement

- A. The Waupaca County Board shall enforce the terms of each easement in accordance with Wis. Stat. § 59.52(6).
- B. On behalf of the Board, the Land and Water Conservation Department will at least biennially inspect all land from which easements have been conveyed to determine compliance. The first inspection shall be completed within one 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 7a.m. and 6p.m. on a weekday that is not a legal holiday, or a date and time agreeable to the Department and the owner/s.

- C. 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.
- D. In the event of violation discovery, a written notice shall be sent by Land and Water Conservation Department Head by certified mail within 14 days of discovery and shall include the following:
 - 1. A copy of the inspection report.
 - 2. A copy of the deed of easement.
 - 3. A description of the action or condition that constitutes the violation.
 - 4. A statement of measures to be taken to correct the violation within 60 days after mailing of the violation notice.
- E. Sixty days following the mailing of the violation notice, the LWCC shall refer enforcement of the Code violation to Corporation Counsel for commencement of a civil action seeking an order requiring correction of the violation, enjoining further violation, and other appropriate relief in his/her discretion.
- F. 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:
 - 1. Costs of work required and materials used to correct the violation.
 - 2. Administrative costs incurred by Waupaca County.
 - 3. Court costs and reasonable attorneys' fees incurred by Waupaca County

Adopted May 19, 2009

Amended September 22, 2009

Repealed and recreated December 19, 2017