ADMINISTRATIVE RULES
Environmental Assessment

☒ Original ☐ Updated ☐ Corrected

1. Summary

In 2013, the Wisconsin Department of Revenue (DOR) commenced the administrative rule process to amend a portion of Chapter Tax 18, Assessment of Agricultural Property. The rule amendment process was completed with an effective date of July 1, 2015. Current action is needed because of a March 16, 2021, Wisconsin Supreme Court decision in Applegate-Bader Farm, LLC v Wisconsin Department of Revenue. The decision requires DOR to complete an Environmental Assessment process compliant with the Wisconsin Environmental Policy Act (WEPA).

DOR has prepared this Environmental Assessment in compliance with the Wisconsin Supreme Court's March 2021 decision and WEPA. This Environmental Assessment discloses the comments provided to DOR during the 2013-2015 rule process. The Assessment goes on to address other contentions made after the rule process.

2. Subject administrative rule and rule purpose

The subject administrative rule is Chapter Tax 18, Assessment of Agricultural Property, Wis. Admin. Code.

State law and Tax 18.04, Wis. Admin. Code provide the purpose of Chapter Tax 18:

- Sec. 70.32(2)(c)1i., Wis. Stats.: "*Agricultural use" means agricultural use as defined by the department of revenue by rule and includes the growing of short rotation woody crops, including poplars and willows, using agronomic practices*
- Tax 18.04, Wis. Admin. Code: *The purpose of this chapter is to provide definitions and procedures for the department and municipal assessors to classify certain real property as agricultural or other, and to value such property for property tax purpose*

3. Description of action

- DOR's action was specific to Tax 18.05(1), Wis. Admin. Code and was meant to provide further clarity regarding what land in federal and state pollution control and soil erosion programs should be classified as agricultural property that qualifies for use-value assessment. Tax 18.05(1), Wis. Admin. Code previously defined what land in specific federal and state pollution control and soil erosion programs qualified for agricultural use.
- This listing had not been updated since 2000. The rule amendment addressed changes in the listed programs that occurred since the rule was enacted and also identified general criteria for determining what land in federal and state pollution control and soil erosion programs qualifies for agricultural use under the subchapter. The amendment provides consistency and clear standards for property owners and assessors.

4. Public comments

- The public comment period was December 31, 2013 until January 14, 2014
- A public hearing was held on Tuesday, January 14, 2014 at 1:30 p.m.
- DOR's report to the legislature provided a summary of all written and verbal comments and DOR's action in response

5. Environmental comments

The following lists the environmental comments provided to DOR:

1. WI Department Agriculture Trade and Consumer Protection, October 25, 2013
    a. Proposed language does not mention practices included in the Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP), including grasslands for wildlife habitat, tree planting, and grassed waterways under ATCP 50.96
    b. Rule is supported if it continues requiring the land to be in agricultural production to be eligible for use-value assessment. Land removed from the program when program expires needs to be available again for agricultural production.

2. Lafayette County property owner, November 5, 2013

    Owns 398 acres of conservation land and indicates it would be very helpful for their land to not be taxed recreational land, giving them additional funds to further the restoration and not give rise to the temptation to return to field crops

3. WI Wetlands Association, November 5, 2013
    a. Supports decision to review and revise the eligibility criteria for use-value assessment under Tax 18.05(1)(d) and (e)
    b. Supports restoration and development of wetlands under state and federal programs as an eligible practice
    c. Supports replacement of the list of programs with eligibility criteria; however, rule should be as prescriptive as possible because there is no public review of the Wisconsin Property Assessment Manual (WPAM)
    d. Expresses concerns about the broad language of the rule specifically that the draft language appears to apply to a much broader array of projects and lands
    e. Not clear on the distinction between temporary and permanent easements

   f. Supports inclusion of standards for farm conservation practices, filter strips, riparian buffers, and streambank/shoreline protection
   g. Concerned of potential for some CRP practices to lose current use-value eligibility
   h. Reference to ATCP 50 should contain reference to "the No. 667 and subsequent versions"
   i. Concerned assessors are in the position of determining if parcel adheres to the technical standards
   j. Economic impacts affecting Wetlands Reserve Program (WRP) owners and the municipal tax base are diminished as WRP lands are currently classified incorrectly (receiving use-value assessment) in many municipalities

4. WI Waterfowl Association, November 6, 2013

   Generally supportive of proposed rule language; suggests inclusion of the Partners for Fish and Wildlife Program, as this federal program helps control pollution and soil erosion runoff. Lands in this program may have been agricultural production at time of enrollment.

5. WI Department of Natural Resources, November 11, 2013

   Recommends land entered into Managed Forest Land not be eligible.

6. Marquette County property owner, Wisconsin, November 21, 2013
   a. Concerned proposed draft opens up more land to use-value assessment
   b. Suggests removing "temporary" and "permanent" language to eliminate various complications in the application of the two types of easements and thus decouple future use

7. Portage County property owner, December 5, 2013

   Requests Tax 18.05(1) and the WPAM are enacted to designate agricultural lands restored to wetlands under state and federal easement programs as qualified for agricultural property tax assessment.

8. Person, December 5, 2013

   Supports Tax 18.05(01) and the WPAM enacted to designate agricultural lands restored to wetlands under state and federal easement programs as qualified for agricultural property tax assessment.

9. Pepin County property owner, December 5, 2013

   Supports classifying WRP property as agricultural land for property tax assessment purposes and requests that revisions to Tax 18.05(01) and the WPAM be enacted to clearly designate agricultural lands restored to wetlands under state and federal easement programs as qualified for agricultural property tax assessment.

10. Wetland Reserve Program, January 14, 2014, public hearing summary
    a. Wetland restoration resulting from WRP projects benefits upstream and downstream property owners and agriculture as well as adjacent waterways through the removal and filtering of sediment and other run-off. WRP benefits agriculture and conservation, and a rule including WRP lands for use-value assessment benefits the state.
    b. Changing the rule stops the disincentive for future participation in WRP
    c. Reclassification of WRP acres as agricultural property and eligible for use-value assessment through the rule provides the opportunity for farms to be passed to the next generation due to property tax reductions
    d. Some lands enrolled in WRP were formerly tiled and farmed but were taken out of crop production as result of failed attempts to remove water through tiling and other methods. Constant drain tiling was required to be able to farm.
    e. Land was enrolled in WRP when desirable crops could no longer be raised on the land
    f. WRP enrollment was considered to recoup some of the investment into the land, while giving back to nature after the land was drained from what it once was
    g. Proposed revisions to Tax 18.05 were supported as the changes enable wetlands restored through state and federal easement programs such as WRP, to retain agricultural tax treatment
    h. Wetlands are an important part of a sustainable agricultural landscape

11. Other January 14, 2014, public hearing speakers
    a. Proposed revisions to the rule were supported through wetland restoration and development practices as eligible for agricultural tax classification, providing the land is subject to a temporary or permanent easement under state or federal program. The land was in a qualified agricultural use prior to restoration. Restoration conforms to standards in NRCS Technical standards for wetland restoration.
    b. Tax 18.05(1)(d) is supported in applying use-value assessment to land that temporarily enrolled in state of federal easement programs if various criteria were fulfilled, including that the terms of that easement or program do not restrict the return of the land to farming after the completion of the program
    c. Oppose the inclusion of a provision granting agricultural use-value assessment to land that is permanently removed from agricultural production. "If the land can never be farmed again, it is in opposition to the idea of use-value assessment."
    d. Clarify the requirements to explicitly state that the qualifying easement shall adhere to the soil and water conservation resource standards and practices of ATCP 50

12. Wisconsin Towns Association, January 14, 2014, public hearing written comment

    Supports the proposed rule as it provides consistency in local assessment by having a review of the named eligible programs and list of those programs provided in the WPAM. Modification of the rule supports the fairness and equity issues raised by the Wisconsin Wetlands Association.

13. Wisconsin Corn Growers, January 14, 2014, public hearing written comment
    a. Supports removing the list of conservation programs, as it is outdated
    b. Lands enrolled in conservation programs under permanent easements prohibiting cropping or pasturing should not be eligible for use-value assessment. If a management plan or emergency declaration causes the land to be cropped or pastured, the land should be reclassified as agricultural land at that time.
    c. The rule should include wind breaks and grassed waterways

14. Natural Resources Conservation Service, January 14, 2014, public hearing written comment

    Proposed rule changes make state and federal wetland easement land eligible for agricultural tax classification, improving the competitiveness of Federal easement programs.

15. Pepin County property owner, January 14, 2014, public hearing written comment

    Revised rule recognizes WRP property owners for their conservation efforts benefitting the public through the potential of lower taxes.

16. Wisconsin Farm Bureau Federation, January 14, 2014, public hearing written comment
    a. The revised rule provides an opportunity for the current conservation program list to be timely updated, while outdated programs and those no longer in existence are removed
    b. Supports revised rule language on temporary enrolled program lands, like those in Conservation Reserve Program (CRP), which allow return to agricultural production
    c. Conservation programs under a permanent easement that prohibit the cropping or pasturing of the land should not be eligible for use-value assessment
    d. Land in any given year, which due to a management plan or emergency declaration, is actually cropped or pastured should be classified as agricultural land for the following year
    e. Voluntarily installed conservation practices, such as grassed waterways and wind breaks, should be classified as use-value because these conservation practices were installed, as prescribed under ATCP 50, to meet state water quality standards

17. Wisconsin Land and Water Conservation Association, January 14, 2014, public hearing written comment
    a. The established criteria in the proposed rule, further defined in the WPAM, instead of named programs, recognizes the changing nature of conservation programming and allows the department the flexibility it needs to appropriately provide guidance to assessors
    b. Including WRP lands under a use-value classification would remove a disincentive to participation in that program

18. Columbia County property owner, January 14, 2014, public hearing written comment

    Requests the revisions to Tax 18.05 (1) and the WPAM be enacted to clearly designate agricultural lands restored to wetlands under state and federal easement programs as qualified for agricultural property tax assessment.

19. Dane County property owner, January 14, 2014, public hearing written comment

    Supports Tax 18 revision so as to not penalize private property owners for making wise land management choices that benefit Wisconsin as a whole.

20. Michael Fields Agricultural Institute, January 14, 2014, public hearing written comment

    Extend use-value property tax treatment to WRP lands and to lands enrolled in the NRCS's Emergency Watershed Protection and Floodplain Easement Program.

21. WI Woodland Owners Association, January 14, 2014, public hearing written comment
    a. Supports the change to allow programs such as WRP to be considered as agricultural following enrollment
    b. Does not support the proposed rule change to no longer list the specific programs/easements that would qualify under Tax 18. The reason for this opposition is that there are no formal processes for public notification, review, and legislative approvals if programs are only identified in a guidance manual.
    c. Further states that the proposed rule language "The …Assessment Manual….shall list the qualifying easements and programs according to the ATCP 50 provisions" is not clear what these "provisions" are. ATCP 50 identifies conservation practices that must be used on the land to achieve compliance with DNR performance standards under NR 151. It does not identify programs that would remove land from agricultural production nor does it have provisions for identifying programs that should be listed. A definition of ATCP 50 provisions is needed if the approach of not listing specific program eligibility moves forward.
    d. The proposed rule references ATCP 50.72, 50.83, 50.88, and 50.98. These sections describe how land that is taken out of production must meet conservation standards if cost sharing is received. Other ATCP 50 sections, such as critical area stabilization, diversions, field windbreaks, grade stabilization, and waterway systems are not mentioned.

e. Proposed rule appears to duplicate requirements for installation and maintenance of various practices, and requirements already in place and used by those governmental agencies managing these various conservation programs
f. Rather than eliminating the list of programs, the revised rule should list and update programs without differentiating between easements. Having to periodically update the rule if new programs come into existence is rare enough that it would not justify the need for a procedure out of the normal rule making process.
g. The potential loss of the tax base due to the enrollment of lands into use-value eligible programs or contracts is not addressed in the proposed rule revision

22. WI Department Agriculture Trade and Consumer Protection, January 16, 2014

    Proposes language referred to ATCP 50 related to standards and practices for temporary and permanent state and federal programs. ATCP 50.04, 50.06, 50.72, 50.83, 50.88, and 50.98 are the provisions to be referenced. Tax 18 should reflect updated ATCP 50 with an effective date of May 1, 2014.

23. WI State Cranberry Growers Association, WI Pork Association, WI Cattleman's Association, WI Farm Bureau, and WI Corn Growers Association
    a. Clarify their concerns regarding the permanent removal of land from agricultural production
    b. Want the rule to reflect that land receiving agricultural assessment is available for agricultural production and believes the requirement that land enrolled in temporary programs is not prohibited from returning to agricultural production achieves this goal. Likewise, permanent easement land is not required to have the ability to return to some level of agricultural production.
    c. Suggest that land enrolled in a permanent easement program be required to have an authorization for agricultural production (cropping, haying, or grazing) to qualify

24. WI Wetlands Association, February 24, 2014
    a. Suggests revised rule language violates uniformity as lands under temporary agreements limit use in the same manner as permanent conservation easements do
    b. Revised proposal creates numerous administrative challenges for assessors and requires further tracking of contracts, eligible programs and site specific variables on a parcel by parcel basis
    c. Revised proposal undermines the ability of the affected conservation programs to provide critically-needed water quality improvements
    d. Defines a condition where identical 'looking' properties do not receive the same use-value classification if a permit is not obtained

25. Attorney, March 19, 2014
    a. Claims provisions of the revised rule are unwieldy for assessors, suggesting added discovery requirements
    b. Defines a condition where identical "looking" properties do not receive the same use-value classification if a permit is not obtained, while use may not be agricultural "haying and or grazing"
    c. Questions uniformity and equal protection under the application of a current and future use standards or speculative use
    d. Proposes a solution based on the base acreage of the farm under federal code and federal definitions of agricultural use, deeming WRP land to be part of the base acreage of a farm, and to be agricultural land
    e. Rationale indicated permanent easement lands provide greater value to sustainable agriculture
    f. Wisconsin Farm Bureau Federation's concerns are simply pre-text for its opposition to WRP

26. Marquette County property owner, March 19, 2014
    a. Suggests broad language "agricultural conservation program supporting sustainable agriculture" and the elimination of the requirement that land was in agricultural production before entering the program
    b. Suggests problems with a rule that relies on past and future land use, but not current land use
    c. Rules should be clear, succinct, and subject to narrow interpretation. Rules should also be easy to administer, and in this case, not require assessors to perform tasks or analyses they are poorly equipped to perform.

6. Comments not related to the environment

1. Other January 14, 2014, public hearing speakers
    a. Clarification in the rule provides consistent assessment of eligible property
    b. The current rule is outdated and replacement of the list of programs with criteria is preferential. The rule supports flexibility to deal with new programs, terminated or consolidated programs, and residual easements and rules that have simply undergone a name change.
    c. The current rule does not address the potential loss of the tax base in communities subject to various enrollment programs and easements

2. League of Municipalities, January 14, 2014, public hearing written comment

    Opposes the proposed rule on the merits of the increased definition of qualifying agricultural programs and resultant tax shift.

7. Alternatives

This section describes and compares the alternatives possible for the rule amendment.

- Alternative 1 – do not amend rule
  Outdated eligible program list would continue with the rule language remaining as follows:
  - (d) Land enrolled in any of the following federal agriculture programs: the conservation reserve program under 7 CFR 1410; the conservation reserve program 1986−1990 under 7 CFR 704; the water bank program under 7 CFR 752; the agricultural conservation program under 7 CFR 701; or, provided that the land was in agricultural use under par. (a), (b) or (c) at the time of enrollment, the environmental quality incentives program under 7 CFR 1466 or the conservation contract program under 7 CFR 1951, Subpt. S, Exh. H.
  - (e) Land that is subject to an easement under any of the following programs provided that the land was in agricultural use under par. (a), (b) or (c) at the time the easement was acquired: the stream bank protection program under s. 23.094, Stats.; the conservation reserve enhancement program under s. 93.70, Stats.; or the nonpoint source water pollution abatement program under s. 281.65, Stats.

- Alternative 2 – amend rule to include temporary easements and programs along with permanent easements and programs
  Tax 18.05 (1) (d) and (e) are repealed and recreated to read:
  - (d) Commencing with the January 1, 2015 assessment, land without improvements subject to a temporary federal or state easement or enrolled in a temporary federal or state program if that land was in agricultural use under par. (a), (b), or (c) when it was entered into the easement or program, and that the terms of the easement or program do not restrict the return of the land to agricultural use under par. (a), (b), or (c) after the easement or program is satisfactorily completed. Qualifying easements and programs shall adhere to standards and practices provided under the July 2011 No. 667 version of s. ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98. The Wisconsin Property Assessment Manual, authorized under s. 73.03 (2a), Stats., shall list the qualifying easements and programs according to the ATCP provisions.
  - (e) Commencing with the January 1, 2015 assessment, land without improvements subject to a permanent federal or state easement or enrolled in a permanent federal or state program if that land was in agricultural use under par. (a), (b), or (c) when it was entered into the easement or program. Qualifying easements and programs shall adhere to standards and practices provided under the July 2011 No. 667 version of s. ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98. The Wisconsin Property Assessment Manual, authorized under s. 73.03 (2a), Stats., shall list the qualifying easements and programs according to the ATCP provisions.

- Alternative 3 – amend rule to include temporary easements and programs along with permanent easements and programs
  Tax 18.05 (1) (d) and (e) are repealed and recreated to read:
  (d) Land without improvements subject to a federal or state easement or enrolled in a federal or state program if all of the following apply:
  - 1. The land was in agricultural use under par. (a), (b), or (c) when it was entered into the qualifying easement or program, *and*
  - 2. Qualifying easements and programs shall adhere to standards and practices provided under the January 31, 2014 No. 697 version of s. ATCP 50.04, 50.06, 50.71, 50.72, 50.83, 50.88, 50.91, 50.96, or 50.98. The Wisconsin Property Assessment Manual, authorized under s. 73.03 (2a), Stats., shall list the qualifying easements and programs according to the ATCP provisions, *and*
  - 3. a. The terms of the temporary easement or program do not restrict the return of the land to agricultural use under par. (a), (b), or (c) after the easement or program is satisfactorily completed, o*r*
  - b. The terms of an easement, contract, compatible use agreement, or conservation plan for that specific parcel authorized an agricultural use, as defined in par. (a), (b), or (c), for that parcel in the prior year

8. Comparison of alternatives

Alternative 1

- The first alternative does not amend the rule
- The subject section of the rule, listing eligible programs, was last updated in 2000. The list is out of date, programs are no longer available, programs have changed names, further the language does not permit evolution, alterations, and combinations of programs resulting from law changes and program changes.

Alternative 2

- The second alternative is to amend the rule
- This proposed alternative addresses changes in the listed programs that occurred since the rule was enacted and also identifies general criteria for determining what land in federal and state pollution control and soil erosion programs qualifies for agricultural use under the subchapter. This rule amendment includes temporary easements and programs along with permanent easements and programs as eligible for agricultural classification.

Alternative 3

- The third alternative also amends the rule
- This alternative also addresses changes in the listed programs that occurred since the rule was enacted and also identifies general criteria for determining what land in federal and state pollution control and soil erosion programs qualifies for agricultural use under the subchapter. This proposed alternative also provides consistency and clear standards for property owners and assessors. The rule amendment includes temporary easements and programs and only permanent easements and programs with a conditional use permit authorizing agricultural use for that parcel in the prior year. This ensures these lands are available for agricultural production.

9. Responses to environmental comments

The following lists categories of environmental comments and DOR's responses:

- Include additional agricultural land practices
  - Alternative 2 applies to lands under qualifying easements and programs adhering to ATCP 50.04, 50.06, 50.72, 50.83, 50.88, or 50.98
  - Alternative 3 was updated to include the following additional ATCP provisions: 50.71, 50.91, 50.96; these are pollution and soil erosion control practices in ATCP 50

- Update rule with new list of programs
  - Alternative 2 and Alternative 3 define eligible lands, while the WPAM defines eligible programs
  - Alternative 2 and 3 do not include or remove conservation programs by name, thus permitting evolution, alterations, and combinations of programs resulting from law changes and program changes
  - DOR finds these interests, which were expressed in public comments, to outweigh the concerns that the current rule eliminates the formal processes for public notification, review, and legislative approvals if programs are only identified in a guidance manual. The criteria for eligibility, on which the guidance material are based, are still subject to the formal rule-making process, including gubernatorial and legislative review.

- Land available for agricultural use and a return to agricultural use
  - Alternative 2 does not define a requirement for easements under a permanent federal or state program or contract to have an authorized agricultural use in writing for the prior year
  - Alternative 3 includes language under Tax 18.05(1)(d)3.b. for land entered into an easement or program where the easement, contract, compatible use agreement, or conservation plan for the specific parcel granted agricultural use for that parcel in the prior year
    - This change ensures these lands are available for agricultural production
    - This responds to concerns raised by representatives of agricultural groups that the proposed rule allows land permanently removed from agricultural production to receive use-value assessment

- Include temporary and permanent contracts and easements
  - Clear distinctions are present between temporary and permanent easements
  - Land in a temporary easement can be returned to agricultural production at the end of the easement, and often is when commodity prices rise. Additionally, temporary easements are more likely to offer a buyout provision where land may be immediately returned to agricultural production upon payment of a certain sum to the authorizing agency; therefore, additional modifications to the rule were not made.
  - Contracts, conservation plans, and compatible use agreements may allow for modifications to lands in a permanent program or easement. The plans and agreements define compatible use as defined by the practice installed.
  - Alternative 3 includes language for eligibility to receive agricultural classification when specific parcels of land identified in the easement, contract, compatible use agreement, or conservation plan are permitted to engage in an agricultural production. Authorization for compatible agricultural production practices under common permanent programs includes the following:

    - Conservation Reserve Enhancement Program (CREP): Offers compatible uses if identified in the conservation plan
    - Wetlands Reserve Program (WRP): Compatible use agreements are issued by the federal Natural Resources Conservation Service and may allow for haying and grazing on certain WRP lands
    - Nonpoint Source Water Pollution Abatement Program: DOR is not aware of any provisions in this program allowing for permitted agricultural production practices
    - Stream Bank Protection Program: DOR is not aware of any provisions in this program allowing for permitted agricultural production practices

- Apply federal regulations and definitions
  - Alternative 2 and Alternative 3 were developed using Wisconsin state law and specifications from Wisconsin agricultural standards and programs, providing for consistent application of the rule through consistent definitions and terminology.
  - Distinctions between federal programs under the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) and USDA Farm Service Agency (FSA) were identified in both the current and prior rule-making processes. Adoption of federal programs and terminology could create the potential for contradictions between the intent of agricultural

use-value and conservation program requirements. Easements and programs through the NRCS and FSA may or may not provide for agricultural use, tilling and or pasturing, as a requirement for enrollment.

- Chapter Tax 18, Assessment of Agricultural Property, must provide this requirement and maintain a relationship to agriculture. Alternative 3 language requires an agricultural use when first enrolling in the program or easement. Alternative 3 language also allows for temporary easements and programs to qualify as agricultural. However, Alternative 3 does not allow lands in a permanent easement or program to automatically qualify for agricultural classification. These permanent programs remove land from agricultural use and do not provide for a possible return to agricultural use. An exception is if a conditional use permit is issued authorizing agricultural use.

- Wetlands and Wetlands Reserve Program (WRP)
  - There was support for identifying WRP acreage classified as agricultural land for tax purposes, and lands restored to wetlands under state and federal easement programs
    - DOR finds that all lands should be viewed through the same criteria on an ongoing basis, and therefore, Alternatives 2 and 3 do not specify WRP, or lands in any specific program, as agricultural use.
    - Reference to ATCP 50.98, Wetland Restoration, is included in Alternative 2 and Alternative 3
  - Wetlands provide benefits to agricultural and non-agricultural lands
    - These benefits are not questioned; however, not everything that benefits agricultural land constitutes agricultural use
    - Parcels with barns, well pumps, and dikes may benefit agricultural land, but these are not considered to be in agricultural use and do not receive use-value classification since they are not producing agricultural products
    - Both wetlands and watersheds benefits agricultural land but are not defined as land in agricultural use in general
  - Agricultural conservation use has, since the origin of the statute, been considered to be an agricultural use; however, it is distinguishable from general conservation use
    - Previously, DOR distinguished by program
    - However, programs may evolve rapidly, Alternative 2 and Alternative 3 remove agricultural conservation by program name and include the agricultural practices for determining what programs and easements qualify from year-to-year
  - Alternative 3 defines agricultural use with criteria showing that certain conservation land has sufficiently established nexus with agricultural production and an option for returning to agricultural production as justification for defining it as agricultural use.
    - Useful criteria include whether or not the land was in agricultural use at the time of enrollment, whether or not the program or easement complies with state standards for agricultural conservation, and whether or not the land may be returned to agricultural production, and if so, when and under what circumstances
  - Wisconsin Wetlands Association (WWA) collected 2010 and 2013 information and contends lands in programs not covered by the rule are often assessed as agricultural land
    - DOR found this information not applicable to this analysis: The information provided does not mention contact with the assessor to determine the basis and timing for the classification determinations. Agricultural classification is based on the use during the prior production season and being compatible with agricultural use on the associated January 1 assessment date. As a result, the year the data was gathered is not the same as the timeframe when an assessor gathers data for property assessment and classification purposes. For example, a parcel classified agricultural for 2010 was primarily devoted to an agricultural use during 2009 and compatible with agricultural use on January 1, 2010. That same parcel may have ceased agricultural use during 2010 and enrolled in WRP during 2010. As a result, the timeframes when the information was gathered by WWA may not agree. The classifications in question may have been correct.
    - The information provided does not mention anything about environmental harm or wetland degradation
    - The sample size of five counties and just over 5,000 acres of land also calls into question the ability to determine a reliable analysis. Wisconsin has 72 counties in the state with over 11,000,000 acres of land classified as agricultural and over 2,000,000 acres of land classified as undeveloped for property assessment and taxation purposes. The reasoning for the selection of these counties and those particular 5,000 acres were not disclosed, this leads questioning to whether standard statistical processes were used for the analysis by the Wetlands Association.
    - Even if the data supported misclassification of land, Alternative 3 resolves any confusion by providing a clear set of eligible programs to assist property owners and assessors in determining eligibility for agricultural classification. The rule provides for an annual update of this list to ensure a current, standardized, set of information to determine if a program or easement qualifies for agricultural classification.
    - WWA also commented on the tangential positive economic impact of wetlands. These benefits are not questioned; however, not everything that benefits agricultural land constitutes agricultural use. Parcels with barns, well pumps, and dikes may benefit agricultural land, but these are not considered to be in agricultural use and do not receive use-value classification because they are not producing agricultural products. Both wetlands and watersheds benefits agricultural land but are not defined as land in agricultural use in general. This rule does not deal specifically with wetland restoration or conservation, and to the extent that this is an indirect effect of the rule change, DOR is unable to measure the impact.

10. Supplemental analysis

A party raised an April 11, 2000, publication "Use-value assessment not enough to help farmers, conservationists" by Joshua Ramish and Dan Undersander of the UW-Madison Agronomy Department, which provided information on property taxes. The publication

mentions concern with the increasing property values and property taxes on "waste" land and "forest" land and contends that the conservation practices are being undermined by the rule in effect at that time. The study claimed, "Landowners can actually lower their taxes by taking land out of conservation and putting it back into production."

The April 2000 study and the statements on property values and property taxes are no longer applicable or accurate

- There have been multiple changes to state property assessment laws after this study rendering it and its contentions inapplicable. The study focuses on increasing values and taxes on "waste" land and "forest" land and contends there is motivation for taking land out of conservation for an agricultural use and reduced taxes.
- State law and administrative have since been created and amended providing reduced valuation and taxation for the "waste" and "forest" lands in question
- Property owners no longer need to take land out of conservation and put it back into production for lower taxes. Property owners have options. Property owners can benefit from a reduced value and taxes through the following changes to state law and administrative rules without having to take land out of conversation and put it back into production:
  - 2003 Wisconsin Act 33 creates the undeveloped (formerly known as "waste") and agricultural forest classes of property. Effective for the 2004 assessment year, undeveloped land and agricultural forest land are assessed at 50 percent of full value versus the prior 100 percent full value. The state law provides for a reduction in value of 50 percent of these types of land that were the subject of the 2000 study.
  - 2017 Wisconsin Act 115 creates the classification specific to drainage district corridors. A drainage district establishes a legal mechanism for managing drains and related facilities to ensure reliable drainage. The primary purpose is draining lands for agriculture. Land in a district corridor is assessed in the same property classification as the land adjoining the corridor. For example, a drainage district corridor adjoining a corn field classified and assessed as agricultural would have this same classification and assessment. This is another example of a state law that also provides for a reduction in the value for lands, termed "waste," which was the subject of the 2000 study. The law provides yet another example of how property owners can obtain lower taxes and not take land out of conservation.
  - Clearinghouse Rule CR 13-102 amends Chapter Tax 18, Assessment of Agricultural Property. At the time of the 2000 study, the rule listed specific federal and state programs as those qualifying for agricultural classification – nine in total. Effective July 1, 2015, the rule change provides for agricultural classification of lands enrolled in multiple programs and easements. Lands enrolled in the eligible programs are typically those a property owner would consider putting back into production. The new rule lists standardized criteria for programs and easements to qualify. There are 32 qualifying easements and programs for 2021. The current Administrative Rule renders the 2000 study inapplicable.

State laws providing for reduced valuation and taxes of "waste" and "forest" lands

- Property owners are not required to have agricultural classification for a reduced value and tax. Property owners no longer need to put conservation land back into agricultural production.
- The following lists the many state property assessment laws providing for reduced valuation and taxes of "forest" land and conservation, "waste" lands. With these laws and the associated reduced assessed values, property owners have many options and can enjoy a reduced value and reduced taxes through these current state laws and administrative rules without having to take land out of conversation and put it back into production.
  - Sec. 70.32(2)(c)1d., Wis. Stats.: "Agricultural forest land" means land that is producing or is capable of producing commercial forest products, if the land satisfies any of the following conditions:
    - a. It is contiguous to a parcel that has been classified in whole as agricultural land under this subsection, if the contiguous parcel is owned by the same person who owns the land that is producing or is capable of producing commercial forest products. In this subdivision, “contiguous" includes separated only by a road.
    - b. It is located on a parcel that contains land classified as agricultural land in the property tax assessment on January 1, 2004, and on January 1 of the year of assessment
    - c. It is located on a parcel at least 50 percent of which, by acreage, was converted to land that is classified as agricultural land in the property tax assessment on January 1, 2005, or thereafter
  - Sec. 70.32(2)(c)4., Wis. Stats.: “Undeveloped land" means bog, marsh, lowland brush, uncultivated land zoned as shoreland under s. 59.692 and shown as a wetland on a final map under s. 23.32 or other nonproductive lands not otherwise classified under this subsection.
  - Sec. 70.32(4), Wis. Stats.: Beginning with the assessments as of January 1, 2004, agricultural forest land shall be assessed at 50 percent of its full value, as determined under sub. (1), and undeveloped land shall be assessed at 50 percent of its full value, as determined under sub. (1).
  - Sec. 70.32(5), Wis. Stats.: Beginning with the assessments as of January 1, 2017, the assessor shall assess the land within a district corridor described under s. 88.74 in the same class under sub. (2) (a) as the land adjoining the corridor, if the adjoining land and the land within the corridor are owned by the same person.
  - Sec. 18.05(1)(d), Wis. Admin. Code, allows for agricultural classification of lands enrolled in eligible easements and programs. Under the following current rule language, there are 32 qualifying easements and programs for 2021: Land without improvements subject to a federal or state easement or enrolled in a federal or state program if all of the following apply:
    - 1. The land was in agricultural use under par. (a), (b), or (c) when it was entered into the qualifying easement or program, *and*
    - 2. Qualifying easements and programs shall adhere to standards and practices provided under the January 31, 2014, No. 697 version of s. ATCP 50.04, 50.06, 50.71, 50.72, 50.83, 50.88, 50.91, 50.96, or 50.98. The Wisconsin Property

Assessment Manual, authorized under s. 73.03 (2a), Stats., shall list the qualifying easements and programs according to the ATCP provisions, *and*

- 3. a. The terms of the temporary easement or program do not restrict the return of the land to agricultural use under par. (a), (b), or (c) after the easement or program is satisfactorily completed, *or*
- 3. b. The terms of an easement, contract, compatible use agreement, or conservation plan for that specific parcel authorized an agricultural use, as defined in par. (a), (b), or (c), for that parcel in the prior year.

Property owners are not converting land to agricultural land

- Wisconsin property assessment data does not support the contention that property owners are converting undeveloped land to agricultural land. The following chart provides acres of land by property class for the 2000 and 2015 property assessment years and the amount of change over the 15-year period.

Property Class/Program	2000	2015	2000/2015 Comparison
Agricultural	12,792,631	12,047,883	(744,748)
Agricultural Forest	-	2,183,501	2,183,501
Forest	7,120,966	3,601,275	(3,519,691)
Undeveloped	2,226,612	2,837,610	610,998
FC/MFL	2,498,708	3,305,206	806,498

- As the chart shows, the undeveloped class increased in acreage; it did not decrease. Land defined by state law as "…bog, marsh, lowland brush, uncultivated land zoned as shoreland under s. 59.692 and shown as a wetland…" is not decreasing and shifting to an agricultural use. On the contrary, the undeveloped class of property increased in acreage during this 15-year period by 610,998 acres.
  - For the 2000 property assessment year, there were 2,226,612 acres of land classified as undeveloped and 12,792,631 acres of land classified as agricultural
  - The number of agricultural acres decreased when comparing 2000 with 2015 by a total of 744,748 acres
  - The number of undeveloped acres increased when comparing 2000 with 2015 by a total of 610,998 acres
  - With the decrease of agricultural acres and increase of undeveloped acres, the data does not support a contention of property owners converting undeveloped land to agricultural land
- The chart shows a decrease in the forest class of property; however, a majority of the decrease can be explained by the increase to the agricultural forest property class and increase to the DNR's Forest Crop (FC) and Managed Forest Land (MFL) programs.
  - For the 2000 property assessment year, there were 7,120,966 acres of forest land
  - The number of forest acres decreased when comparing 2000 data with 2015 data by a total of 3,519,691
  - However, the increases to the agricultural forest class of property at 2,183,501 and additional acres in the DNR's FC and MFL programs of 806,498 account for a majority of the decrease to the forest class of property
  - The increase between the agricultural forest and MFL program, or 2,989,999, account for 85 percent of the decrease to the forest class during the same period

When Alternative 3 is in effect – acres of bog, marsh, lowland brush, shoreland and wetland continued to increase

- The following chart provides the same sets of data for the 2015 and 2020 assessment years and the amount of change over that 5-year period.

Property Class/Program	2015	2020	2015/2020 Comparison
Agricultural	12,047,883	11,894,589	(153,294)
Agricultural Forest	2,183,501	2,222,043	38,542
Forest	3,601,275	3,520,612	(80,663)
Undeveloped	2,837,610	2,885,294	47,684
FC/MFL	3,305,206	3,508,881	203,675

- As the chart shows, the trend continued – the undeveloped class increased and did not decrease over the five-year period:
  - For the 2015 property assessment year, there were 2,837,610 acres of land classified as undeveloped, 12,047,883 acres of land classified as agricultural and 3,601,275 acres of forest land
  - The number of agricultural acres decreased when comparing 2015 with 2020 by a total of 153,294 acres
  - The number of undeveloped acres increased when comparing 2015 with 2020 by a total of 47,684 acres
  - The number of forest acres decreased when comparing 2015 data with 2020 data by a total of 80,663. However, the increases to the agricultural forest class of property at 38,542 and additional acres in the DNR's FC and MFL programs of 203,675 surpass the reduction to the forest class. This data shows the forest acres are not being converted to agricultural use and are remaining in a forestry use.
  - The data does not support a contention of property owners converting undeveloped land to agricultural land

Compatible use permits for haying and grazing often benefit land enrolled in easements and programs

- Comments were made on the rule's inclusion of compatible use permits, contending that the use permits incentivize degradation because they may encourage grazing and haying activity. Unsubstantiated contentions were also made that haying and grazing harm the environment.
- In general, the issuance of compatible use agreements are the responsibility of the program or easement holder. The easement holder is paying the property owner to preserve the land, making the owner subject to certain rules and regulations. It is the responsibility of the easement holder, e.g., the Wisconsin Department of Natural Resources, to determine what land uses would or would not impact the desired current and future state of that land and the applicable regulations.
- More specifically looking at the Wetlands Reserve Program (WRP), these comments are not supported by the U.S. Department of Agricultural (USDA) Natural Resources Conservation Service (NRCS) information for WRP:
  - Compatible use agreements provide activities that both further the long-term protection and enhancement of the wetland and other natural values of the project area
  - Haying ensures (1) adequate regrowth of vegetation to provide winter cover and early spring nesting cover (2) maintenance of adequate wildlife habitat quality and other wetland functions and values
- The Wisconsin Wetlands Association also explained that haying and grazing can often be used to maintain or improve the health of the wetlands
- A publication by New Jersey Division of Fish & Wildlife describes grazing benefits in North America, which control the invasion of plants. "…by doing what cows do – had broken up the plants' dense rhizomes and had improved the burrowing quality of the soil for the bog turtle. The same was true in areas where goats had been given seasonal access to wetland pastures…" "…Controlling unwanted vegetation with livestock has been widely practiced in North America and Europe for some time. Livestock have been used to manage utility line rights-of-way, curtail the invasions of exotic species, control brush, and even create firebreaks…." "…livestock can become a conservation tool for the threatened bog turtle – without harming sensitive wetland ecosystems."
- The USDA-NRCS also maintains the benefits of grazing for water quality and specifically mentions grazing the areas adjacent to streams. "Modern grazing land management is one of the most important ways that farmers and ranchers can reduce erosion and water pollution and diversify income. For example, natural drainage areas on farms and the riparian areas adjacent to streams can be planted to grazing land plants. These forage plants capture runoff and sediment from the fields and protect water quality. Where sufficient plant material is left in grassed waterways or stream buffer zones for soil and water conservation purposes, a significant amount of the plant material can be grazed or mechanically harvested."
- The viability of haying or grazing is up to the various state and federal agencies that administer the programs. No data has been provided to substantiate that the new rule causes environmental harm.
- The rule includes permanent easements with compatible agricultural uses and therefore allows more opportunities for lands to qualify for agricultural classification.

Program enrollment not related to eligibility for agricultural classification

- Contentions were made that being eligible for agricultural property assessment classification is an enrollment incentive
- Data shows this is not the case – trends do not support program and easement enrollment depending on classification as agricultural land for property assessment and taxation purposes
- The Conservation Reserve Program (CRP) has been and continues to be a program that enables land to qualify as agricultural
  - 2007 data from the USDA reported just over 600,000 acres of Wisconsin land enrolled in CRP type programs
  - However, 2017 data from the USDA reported just over 230,000 acres of Wisconsin Land enrolled in CRP
  - The data shows a decrease in the number of acres enrolled in CRP over the 10-year period, 2007 to 2017, by 370,000, even though CRP land was consistently eligible for agricultural classification
  - Factors other than tax status may impact program enrollment. Property owners may consider the price of corn, soybeans, cotton as a factor. A property owner may receive more income from producing a crop than enrolling the land in CRP.
  - While there may be any number of reasons a property owner may or may not enroll in CRP, the declining enrollment does not support a contention that individuals only enroll in programs qualifying as agricultural for property assessment classification and property taxes.

Wetland Reserve Program (WRP) easement enrollments also show agricultural classification not a factor

- Contentions were also made that all wetlands programs, temporary and permanent, should be eligible for agricultural property assessment classification
- As the title provides, Chapter Tax 18, Assessment of Agricultural Property, is specific to agricultural land and agricultural use. The portion of the rule defining eligible uses cannot include those uses without an agricultural relationship. Therefore, the current rule adheres to this standard, allowing programs and easements with a prior agricultural use and the ability to have a current or future agricultural use as eligible for agricultural classification.
- Looking specifically at WPR:
  - The 2000 version of the rule did not include WRP, temporary or permanent easements, as a qualifying agricultural use
  - The new rule, effective 2015, provides for the eligibility of WRP for agricultural property assessment classification
  - Land enrolled in a temporary WRP, e.g., 30-year easement, is eligible when the land was in an agricultural use at the time of enrollment. Land enrolled in a permanent WRP is eligible only if the land was in an agricultural use at the time of enrollment and has a compatible, agricultural, use agreement for that assessment year.

- However, whether WRP is eligible for agricultural classification is not a factor when considering NRCS data. The data clearly illustrates agricultural classification is not a factor for program enrollment.
- Between 2010 and 2014:
  - The 2000 rule was in effect and WRP was not eligible for agricultural classification
  - There were 86 enrollments in the permanent WRP easement
  - There were seven enrollments in the temporary WRP easement
- Between 2015 and 2019:
  - The 2015 rule was in effect and temporary WRP easements were eligible for agricultural classification
  - There were 47 enrollments in the permanent easements
  - There were two enrollments in temporary easements
- Seven of 93 WRP enrollments, or 7 percent, selected a temporary easement prior to temporary WPR easements being eligible for agricultural classification
- Two of 49 WRP enrollments, or 4 percent, selected a temporary easement when these easements were eligible for agricultural classification
- The numbers show a drop with preference for temporary easements during a time when these easements would be eligible for agricultural classification
- There is no data supporting inclusion in rule and agricultural classification are factors for enrollment:
  - The WRP data from 2015 through 2019 does not suggest agricultural property assessment classification was a significant factor for enrollment considerations as total enrollments decreased when compared to prior years
  - A vast majority of new program enrollments are opting for a permanent easement versus the temporary easement, further illustrating agricultural classification is not a factor for easement enrollment
- Data does not support program enrollments being dependent on property assessment and property taxation. More specifically, the eligibility of agricultural classification for a program does not have a clear or measurable relationship on program enrollments.

11. Recommendation

State law, sec. 70.32, Wis. Stats., identifies property classes for assessment and taxation purposes. One class is agricultural, which is defined by state law as "land, exclusive of buildings and improvements and the land necessary for their location and convenience, that is devoted primarily to agricultural use." There are other classes of property identified by state law that include residential, undeveloped and productive forest land. State law define these classes as well. For example, state law defines undeveloped land as "bog, marsh, lowland brush, uncultivated land zoned as shoreland under s. 59.692 and shown as a wetland on a final map under s. 23.32 or other nonproductive lands not otherwise classified under this subsection."

This rule process was specific to the agricultural class of property and Chapter Tax 18, Assessment of Agricultural Property, and did not infringe upon the other classes of property defined by state law and therefore excluded such property as homes (the residential class) and bogs (the undeveloped class).

- Alternative 1 continues to identify specific programs and easements no longer available. Alternative 1 does not allow for DOR to create and maintain a current list of programs and easements eligible for agricultural classification. Alternative 1 does not achieve the purpose of the rule amendment. Alternative 2 provides agricultural classification for easements and programs that do not allow agricultural use or a return to agricultural use. The language of Alternative 2 is not in agreement with state law establishing the classes of property for property assessment and property taxation purposes. This alternative allows the agricultural classification of lands never to be used for agricultural purposes again. The rule language must maintain a relationship to agriculture, whether a current agricultural use or the ability for a future return to an agricultural use. Lands permanently removed from agricultural use do not provide for a possible return to agricultural use. Alternative 2 does not achieve the purpose of the rule amendment.
- Alternative 3, the final rule language, (1) is within the state law definition of agricultural, (2) maintains a separation between those lands eligible for a return to agricultural and those permanently removed from agricultural, (3) identifies standard agricultural practices, (4) identifies eligible land as agricultural when enrolling in the program or easement, and (5) identifies eligible programs as those allowing for a current and or return to agricultural

DOR was provided with land conservation information from many individuals and groups.

- The information generally outlined the benefits of land conservation and how this agricultural rule needed to embrace those conservation practices by allowing all such easements and programs of any type and any duration to qualify for the agricultural class of property
- The statements did not necessarily focus on agricultural standards and practices; however, they did mention these conservation efforts can benefit agricultural land and the environment. The statements did not provide a measurable environmental impact should Alternative 2 or Alternative 3 exclude certain conservation land. Further, the comments do not draw a clear relationship between the decisions of conservation practices and property assessment and taxation.

1. **Many state laws and administrative rules provide incentives for keeping land as undeveloped and forest**
   - Current law provides reduced valuation and taxation for the undeveloped land and forest land – providing land conservation options
   - Property owners no longer need to take land out of conservation and put back it into production for lower taxes

- Property owners have options; they can benefit from a reduced value and reduced taxes through the changes to state law and administrative rules discussed in section 10 above without having to take land out of conversation and put it back into production

2. **Property owners are not converting conservation land to agricultural land**
   - Wisconsin property assessment data does not support the contention that property owners are converting undeveloped land to agricultural land
   - The acres of undeveloped land continually show increases over the last 15 years
   - The acres of agricultural land continually show decreases over the last 15 years
   - Property owners are not taking undeveloped lands and converting these lands to agricultural uses
   - There is no substantive data to show land is being taken out of conservation and placed into agricultural production

3. **Program enrollment not related to eligibility for agricultural classification**
   - Data shows program and easement enrollment is not dependent on classification as agricultural land for property assessment and taxation purposes
   - The Conservation Reserve Program (CRP) has been and continues to be a program that enables land to qualify as agricultural
     - The data shows a decrease in the number of acres enrolled in CRP over the 10-year period, 2007 to 2017, by 370,000
     - Property owners may consider the price of corn, soybeans, cotton as a factor. That is, the property owner receives more income from producing a crop than enrolling the land in CRP.
     - While there may be any number of reasons a property owner may or may not enroll in CRP, the declining enrollment does not support a contention that they only enroll in programs qualifying as agricultural for property assessment classification and property taxes

4. **Wetland Reserve Program (WRP) easement enrollments show agricultural classification is not a factor**
   - The 2000 version of the rule does not include WRP, temporary or permanent easements, as a qualifying agricultural use
   - The new rule, effective 2015, provides for the eligibility of WRP for agricultural property assessment classification
   - Land enrolled in a temporary WRP, e.g., 30-year easement, is eligible when the land was in an agricultural use at the time of enrollment. Land enrolled in a permanent WRP is eligible only if the land was in an agricultural use at the time of enrollment and has a compatible, agricultural, use agreement for that assessment year.
   - However, whether WRP is eligible for agricultural classification is not a factor when considering NRCS data. The data clearly illustrates agricultural classification is not a factor for program enrollment.
   - Seven of 93 WRP enrollments, or 7 percent, selected a temporary easement prior to temporary WPR easements being eligible for agricultural classification
   - Two of 49 WRP enrollments, or 4 percent, selected a temporary easement when these easements were eligible for agricultural classification
   - The numbers show a drop with preference for temporary easements during a time when these easements would be eligible for agricultural classification. There is no data supporting inclusion in rule/agricultural classification is a factor for enrollment.

No significant change to the environmental

Alternative 3 (the current rule) makes no significant change to the environment, much less an adverse and measurable one. At the same time, that definition conforms to the statutory requirement that DOR define "agricultural use" and not other uses. The current rule “reduces barriers to restoring wetlands.” Factual data illustrates there is no trend of converting conservation land to agricultural uses. Federal agencies and others are proponents of occasional wetland haying and grazing. Program and easement enrollments have not been influenced by whether the program or easement qualifies as agricultural. Therefore, in review of the comments and information provided to DOR, there is no significant environmental impact information to change DOR's course of action finalizing an Agricultural Assessment rule that:

- Maintains a direct connection to state property assessment, and classification law and state law definitions for the agricultural class of property
- Requires agricultural use at the time of program or easement enrollment
- Requires a current or future option for the land to return to an agricultural use
- Combines with other state laws creating multiple opportunities and motivations for property owners

DOR does not find a need to complete a further environmental analysis under sec. 1.11, Wis. Stats., and recommends concluding the environmental review with this document.

12. Sources of information

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23. AgriPulse, Collapse in CRP acreage poses challenge for climate policy by Philip Brasher, February 17, 2021: https://www.agri-pulse.com/articles/15343-collapse-in-crp-acreage-poses-challenge-for-climate-policy
24. Sec. 1.11, Wis. Stats.: https://docs.legis.wisconsin.gov/statutes/statutes/1/11

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