

Washington County Planning and Parks Dept.
333 E Washington Street, Suite 2300
PO BOX 2003
West Bend, WI 53095-2003

STUDY GROUP & PLANNING STAFF

Washington County Farmland and Open Space Preservation Study Group

Dan Stoffel, Washington County Board Supervisor, Chairperson
Ellen Goeller, Agribusiness Cluster Council/Dairy Farmer, Vice-Chairperson
Mike Becker, Farm Bureau/Dairy Farmer
Jim Bennett, Town of Hartford Chairperson
Ross Bishop, Agribusiness Cluster Council/Farmer
Angie Curtes, Ozaukee Washington Land Trust
Ann Enright, Washington Board of Realtors®
Matt Heiser, Village of Kewaskum President
Leander Herriges, Town of Wayne Chairperson
Therese Gripenrog, Department of Natural Resource
Mary Krumbiegel, County Board Supervisor
Scott Mathie, Metropolitan Builders Association
Sue Millin, Land Conservation Partnership
Bill Ohm, MSA Professional Services Inc.
Joe Peters, Town of Barton Supervisor/Farmer
Bruce Sadowski, Pike Lake Sportsman Club

Washington County Planning and Parks Department

Paul Mueller, Administrator
Debora Sielski, Assistant Administrator for Planning
Peter Wagner, Planner
Blaine Delzer, County Conservationist

USDA, Natural Resource Conservation Service

Mark Baran, District Conservationist

Washington County UW-Extension

Alan Linnebur, Farm Business Educator, UW-Extension
Kevin Struck, Growth Management Educator, UW-Extension

For more information:

Washington County Planning and Parks Department
333 E. Washington Street, Suite 2300
P.O. Box 2003
West Bend, WI 53905
262-335-4445
E-mail: webplan@co.washington.wi.us
www.co.washington.wi.us



Farmland and Open Space Preservation Tools

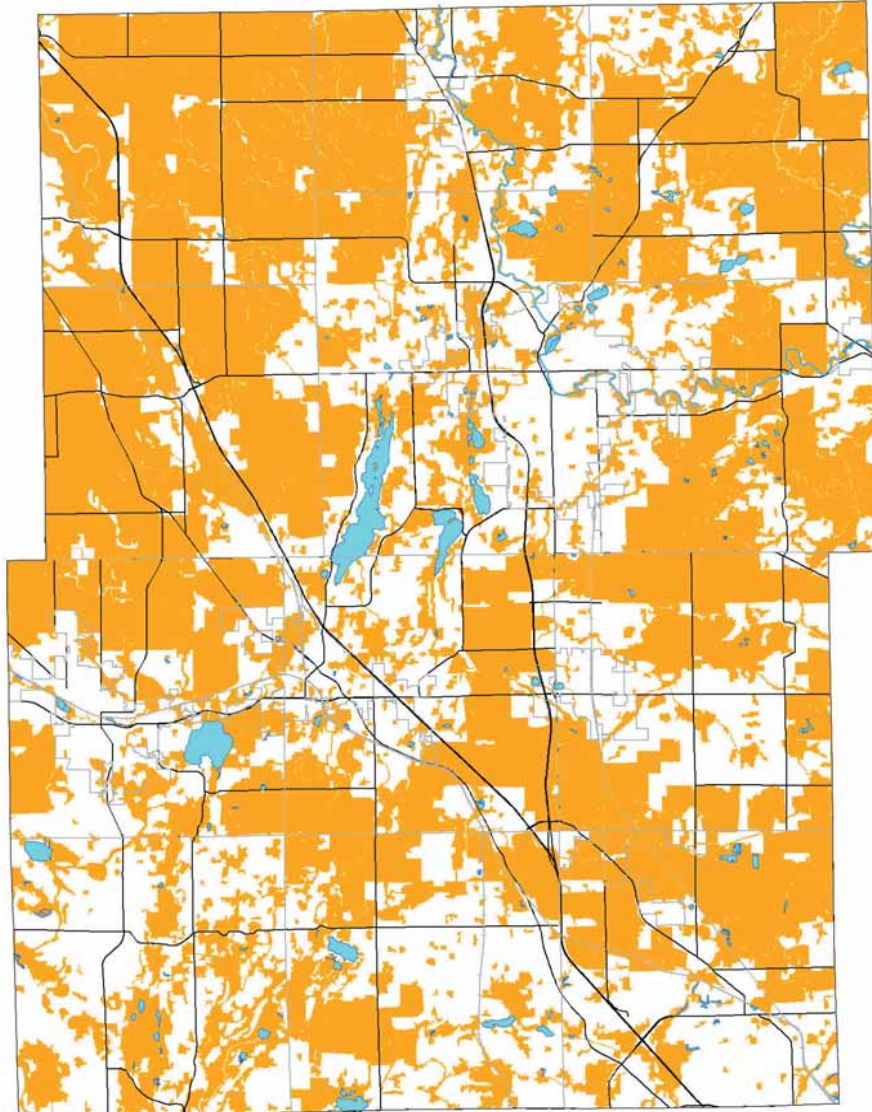
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The full Farmland and Open Space Preservation Tools
Report is on the internet at:

www.co.washington.wi.us

Open Space in Washington County



Open Space

0 1 2 3 4 Miles



Open Space as defined in the Park and Open Space Plan for Washington County; 2020
All information subject to errors and omissions and is not certified by Washington County.

Map produced 1/14/05 by the Washington County GIS and Planning Divisions of the Planning and Parks Department

Funding Strategies

Preserving farmland and open space requires adequate and continuous funding. An effective program combines several funding strategies that may include federal, state, local, and private money to successfully preserve farmland and open space in a community. The following are examples of potential funding strategies a community may use to fund a farmland and/or open space preservation program.

Bonds

General obligation bonds are essentially IOUs issued by cities, states and other public entities to finance large public projects. The issuer agrees to repay the amount borrowed plus interest over a specified term – typically 20 to 30 years. General obligation bonds may require approval by the legislature or voters or both. Through bonding, large amounts of money can become available within a relatively short period of time to implement a preservation program. Bonds increase a government's debt and reduce its debt capacity, which may conflict with other capital needs.

Tax Levy

Money collected from property taxes, assessments charged to real property owners based on a percentage of the assessed property value, are allocated for government operations and outstanding debt. A local government may allocate tax levy dollars for farmland and open space preservation purposes. The tax levy can provide a steady stream of financing while broadly distributing the tax burden.

Sales Tax

Sales tax is the assessments charged on the retail price of purchased merchandise. A dedicated percentage of revenue generated by a sales tax can be used to fund a farmland and/or open space preservation program. This funding strategy can provide a steady stream of funding for a preservation program.

Impact Fees

Impact fees, established by Wisconsin statute in 1993, are fees that are typically collected from developers or property owners at the time a building permit is issued to pay for capital improvements and land acquisition that provides capacity to serve new growth. The intent of these fees is to avoid burdening existing customers with the costs of providing capacity to serve new development and passing the costs to new property owners.

Charitable Donations, Foundations, Land Trusts

Privately funded programs may exist in a community providing grant dollars pertaining to farmland and/or open space preservation efforts.

State & Federal Grants

Federal and State programs are available to provide grants to support local government or non-profit preservation programs. However, funding may require matching funds and in-kind services for applicants to be eligible.



Preservation Tools

Purchase of Development Rights (PDR)

The purchase of development rights (PDR) is a land conservation tool that communities can use to protect important natural resources such as farmland, woodlands, and wetlands. Under a PDR program, a unit of government (city, village, town, county, or state), or a non-profit conservation organization, such as a land trust, buys the development rights to land and places a conservation easement on the land. PDR programs are voluntary and the sellers of their development rights retain ownership and control of their land. They can sell or transfer their property at any time, but because of the easement, the land is permanently protected from certain types of development stated in the easement. The value of development rights to agricultural lands is based on the difference between what a property would be worth for non-farm development purposes (typically based on the development uses permitted under existing zoning) and its value to a farmer for agricultural purposes.

Benefits	Limitations
<ul style="list-style-type: none"> • Permanently protects land from development • Landowner is paid to protect their land • Local government can target locations effectively • Land remains in private ownership and on the tax rolls • Program is voluntary 	<ul style="list-style-type: none"> • Can be costly for local units of government, therefore land is protected at a slower rate • Land remains in private ownership – typically no public access • Since program is voluntary, it can be challenging to preserve large tracts of contiguous land

Transfer of Development Rights (TDR)

The Transfer of Development Rights is a tool that establishes areas within a community, called zones, that define areas for preservation (sending zones), and areas for more growth (receiving zones). Sending zones can be areas of agricultural land, open space, historic properties or any other properties that are important to the community. Receiving zones are areas that the community has designated as appropriate for development. Often these areas are selected because they are located close to existing development, jobs, shopping, schools, transportation, infrastructure and other urban services. The sending site owner enters into a deed restriction that spells out the amount of future development and the types of land use activities that can occur on the property. When that deed-restriction is recorded, the sending site owner is able to sell a commodity created by the community's TDR ordinance called a transferable development right or a "TDR". By selling their TDR's, sending site owners often are fully compensated for the development potential of their property without having to endure the expense and uncertainty of actually trying to develop it.

Benefits	Limitations
<ul style="list-style-type: none"> • Permanently protects land from development pressures • Landowner is paid to protect their land • Local government can target locations effectively • Low cost to local unity government • Utilizes free market mechanisms • Land remains in private ownership and on the tax roll 	<ul style="list-style-type: none"> • Can be complex to manage • Receiving area must be willing to accept higher densities • Difficult program to establish, especially in areas without County zoning • Program will not work in rural areas where there is little to no development pressure on the area to be preserved • Limited to Cities/Villages/Towns, no statutory authorization in Wisconsin for countywide program • May require cooperative agreements among several local governments to establish sending and receiving zones

Purpose



On July 28, 2004, the Washington County Planning, Conservation, and Parks Committee requested the Planning and Parks Department to study various means of preserving farmland and open space in Washington County.

In response to the request, the Farmland and Open Space Study Group was formed, composed of farmers, conservationists, developers, realtors, and local municipal representatives. The Study Group's goal was to research and analyze different tools and funding sources that could be used in Washington County for farmland and open space preservation and provide the Washington County Planning, Conservation, and Parks Committee a report to assist in decision-making regarding farmland and open space preservation as

recommended in *A Park and Open Space Plan for Washington County: 2020*.

The Farmland and Open Space Preservation Study Group composed a mission statement to provide a framework for the study. The mission statement is as follows:

"To objectively research, analyze, and develop a variety of tools and techniques for farmland and open space preservation accommodating projected growth in Washington County."

The Farmland and Open Space Preservation Tools Report provides detailed information about the tools that may be used to preserve farmland and open space, potential funding strategies, and potential funding sources. This report does not make recommendations about which tools should be applied to preserve farmland and open space in Washington County.

The Farmland and Open Space Preservation Study was developed in response to:

- Development pressures in Washington County and its local governments to convert farmland into subdivision developments.
- Local municipalities' request for current information on ways to preserve farmland.
- Recommendations outlined in *A Park and Open Space Plan for Washington County: 2020*.
- Requests from agencies detailing strategies on how land can be developed while still preserving the natural resources of the area.



Urban Growth, Open Space, and Agriculture Trends



Information on urban growth characteristics, such as population and household characteristics, agricultural trends, and areas of open space provide an essential basis for the analysis of preservation methods for farmland and open space in Washington County. Existing and forecasted population characteristics and changes in farming have a direct influence on the amount of farmland and open space available now and in the future. Summary highlights are presented below:

- Washington County has experienced significant population growth, growing from 33,902 persons in 1950 to 117,493 persons in 2000 according to the U.S. Census with the estimated population forecast for Washington County to be 149,500 in 2025 and 157,300 in 2035¹.
- Washington County has experienced significant household growth. In 2000, there were 43,843 households in Washington County, and this number is expected to grow to 58,800 in 2025 and 62,800 in 2035².
- In 2000, urban land uses – consisting of residential, commercial, industrial, governmental and institutional, recreational, and transportation, communication and utility uses - encompassed about 78.7 square miles, or 18 percent of the total area of the County. Nonurban lands – consisting of agriculture, woodlands, wetlands, surface water, landfills, extractive areas, and other open lands - encompasses approximately 356.9 square miles, or about 82 percent of the County³.
- Open space is defined and consists of natural resources and of the following: primary environmental corridors, secondary environmental corridors, isolated natural resource areas, natural areas, critical species habitat sites, geological and archeological areas, prime agricultural land, and lands located within established Department of Natural Resources project boundaries. (According to A Park and Open Space Plan for Washington County: 2020).
- Wisconsin Agricultural Statistical Service statistics show that, between 1980 and 2002, Washington County saw 34 percent of its farmland taken out of agricultural production.
- Since 1990, agricultural land values have seen sharp increases, rising at an average annual rate of 12 percent⁴.



Source:

1. Southeastern Wisconsin Regional Planning Commission
2. Southeastern Wisconsin Regional Planning Commission
3. A Park and Open Space Plan for Washington County: 2020
4. Wisconsin Agricultural Statistical Services

Preservation Tools

Donation

A donation occurs when a landowner transfers agricultural land or open space to a governmental entity or to a land trust in the form of a charitable gift. Land donations of real property can be arranged in various ways to suit the needs and desires of a donor.

Benefits	Limitations
<ul style="list-style-type: none"> • Private and completely voluntary • Long-term agricultural land protection • Tax benefits may accrue to the donor, such as state and federal income taxes, capital gains, and estate taxes • Tool includes willing buyer and willing seller • Increase in adjoining property values 	<ul style="list-style-type: none"> • Limited usage due to the absence of monetary benefits – owners must be in position to benefit from tax advantages • Maintenance and organizational costs exist to manage the property by the recipient organization • Land may be taken off tax rolls • Donor is responsible for property appraisal costs

Bargain Sale

This type of transaction represents a balance between an outright sale of the property at fair market value and a land donation. An outright sale makes the conveyance more expensive for the entity acquiring it, whereas the donation of an entire property may not be attractive to a landowner. The landowner may, with a bargain sale arrangement, sell the land to a trust or government at a lower price and contribute the balance of the value as a charitable gift, which can be claimed as an income tax deduction.

Benefits	Limitations
<ul style="list-style-type: none"> • Voluntary program • Landowner may be able to receive capital gains and income tax benefits on the percentage of the land's value that was donated • Tool includes willing buyer and willing seller 	<ul style="list-style-type: none"> • Recipient of land needs to fund land acquisition which may still be costly • Landowner receives less monetary compensation compared to the open market

Conservation Easement

Conservation easements are a legally binding agreement made voluntarily between a landowner (public or private) and a qualifying organization (also public or private), in which permanent limits are placed on a property's use and development. Conservation easements limit land to specific uses and thus protect it from development. All conservation easements legally bind future landowners. Land protected by conservation easements remains on the tax rolls and is privately owned and managed. While conservation easements limit development, they do not affect other private property rights.

Benefits	Limitations
<ul style="list-style-type: none"> • Permanently protects land from development • Landowners may receive income, estate, and/or property tax benefits • Land remains in private ownership and on the tax rolls 	<ul style="list-style-type: none"> • Tax incentives may not provide enough compensation for many landowners • Since program is voluntary, it can be challenging to preserve large tracts of contiguous land or specific areas to be protected

Preservation Tools

Sliding Scale Zoning

The sliding-scale approach lowers the permissible density of development as the acreage of the lot being subdivided increases. In most cases, the permissible density under sliding-scale zoning is based on certain physical and ecological characteristics. For example, a twenty acre lot under sliding-scale zoning could be subdivided into two lots, but a 100 acre tract may only be subdivided into four lots, and a 500 acre tract may only be divided into ten lots.

Benefits	Limitations
<ul style="list-style-type: none"> • Areas of open space and resource sensitivity may be zoned with low density restrictions • Flexibility is high 	<ul style="list-style-type: none"> • Reduction in property values may result on properties where density restrictions require a “downzoning” from the current density levels of permissible development • Requires extensive staff time and expertise to implement • Extensive mapping of resources may be necessary before implementing sliding-scale zoning • Tracking compliance complicated by the number of sliding-scale density zones that may exist

Incentive Based Tools

Incentive based tools are voluntary and are mostly based on the willingness of the landowner to sell their property. Incentive based tools include options review by developer, conservation easements and purchase and transfer of development rights programs, where a landowner sells the development right of their land. Where public access and use are desired or complete ownership control is preferred, outright donation, purchase, or bargain sale of land to a government entity, conservation organization, or public charity should be utilized for permanently protecting lands of preservation importance.

Fee Simple Purchase

In a fee simple land purchase, the buyer acquires full title to a parcel, along with the entire bundle of rights that comes with it. This type of purchase allows for permanent open-space protection. A municipality or nonprofit agency uses funds to purchase land available. In most cases, fee-simple acquisition for open space is based on a willing seller, willing buyer basis to obtain property. With open-space preservation, fee-simple acquisition primarily involves a conservation organization, or the State, County, or Local government working with a willing landowner.

Benefits	Limitations
<ul style="list-style-type: none"> • Permanently protects land from development pressures • Public access to purchased land if purchased by public entity or private group using public funds • Tool includes willing buyer and willing seller • Increase in adjoining property values 	<ul style="list-style-type: none"> • Costly for recipient to purchase land • Land may be taken off the tax rolls

Preservation Tools

Regulatory Based Tools

Regulatory-based tools are implemented by local governments through adoption of a zoning, land division or other land use ordinance. Such tools that can be used to protect farmland and open space include agricultural protection zoning, conservation subdivision development, lot averaging, incentive zoning, overlay districts, and sliding-scale zoning.

Agricultural Protection Zoning (Exclusive Agriculture Zoning)

This tool helps maintain a sense of “rural character” by restricting non-farm-related development and requiring relatively large minimum parcel sizes (typically 35 acres). In addition, agricultural zoning benefits farmers by providing them protection from large-scale urban development whose residents might find their farming practices a nuisance.

Benefits	Limitations
<ul style="list-style-type: none"> • Helps prevent agricultural land from becoming fragmented by residential development • Clearly identifies agriculture as primary land use • Easily implemented by municipalities • Able to protect large areas of agricultural land 	<ul style="list-style-type: none"> • Does not permanently preserve agricultural land • Does not protect agricultural land from annexation

Incentive Zoning (Density Bonus)

This approach assumes that if specified criteria are met, then a proposed development would be approved with more use of a site (such as more dwelling units per acre) than would otherwise be permitted by the community. That is, greater development density would be allowed if certain conditions are met.

Benefits	Limitations
<ul style="list-style-type: none"> • Allows for the protection of environmentally sensitive areas while providing development to occur on the property • Does not impose any direct costs on landowners and developers 	<ul style="list-style-type: none"> • Neighbors may oppose due to concerns of increased density of development • May not be mandatory tool; thus there is little assurance that desired project designs will be implemented by developers • Can be difficult for local officials to enforce unless bonus criteria are clearly spelled out in an ordinance or policy document

Mitigation Ordinances and Policies

Farmland mitigation programs involve protecting farmland by providing equivalent farm acreage elsewhere when agricultural land is converted to other uses, or paying a fee when farmland is converted to other uses. Typical ordinances require developers to permanently protect one acre of farmland for every acre of agricultural land they convert to other uses. Developers can place an agricultural conservation easement on farmland in another part of the community or pay a fee to satisfy mitigation.

Benefits	Limitations
<ul style="list-style-type: none"> • Low cost for a local government to permanently protect agricultural land • Existing policies permanently protects land from development pressures 	<ul style="list-style-type: none"> • Sometime in the future there may not be enough remaining farmland to meet mitigation policies for future development • Requires staff resources to implement • Regulations and/or ordinances can change as demographics and political realities shift

Preservation Tools

Conservation Subdivision Development (Cluster Development)

Conservation or cluster development is a development pattern for residential, commercial, industrial, or institutional uses, or a combination of these uses, in which buildings are grouped together rather than evenly spread over the land as in a conventional development. The intent of conservation development is to concentrate structures in those areas most suitable for building while preserving natural or cultural features. Residential conservation subdivisions cluster houses on smaller parcels of land while additional land that would have been allocated to individual lots is preserved as open space.

Figure A: Conventional Development

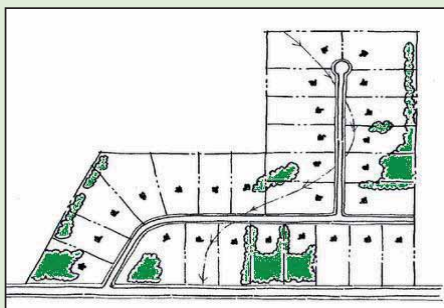
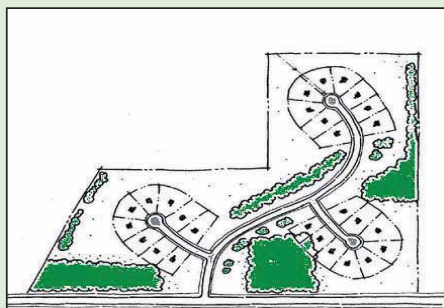


Figure B: Cluster Development



Benefits	Limitations
<ul style="list-style-type: none"> Helps maintain a rural character of an area Provides permanent open space protection for a community Protects best natural resources of an area Developers may experience greater profits by selling parcels next to open space Reduces impact of development on watersheds Less expensive to provide municipal public services to development depending on how clustering can be accomplished 	<ul style="list-style-type: none"> Maintenance costs of created open space Limited accessibility to low-income households Protected land is typically owned by homeowners association – little to no public access Improper implementation of tool may create conventional subdivisions Minimum lot sizes may not be small enough to offset costs of land preservation Limits, but does not stop residential development in agricultural areas

Options Review for Developers

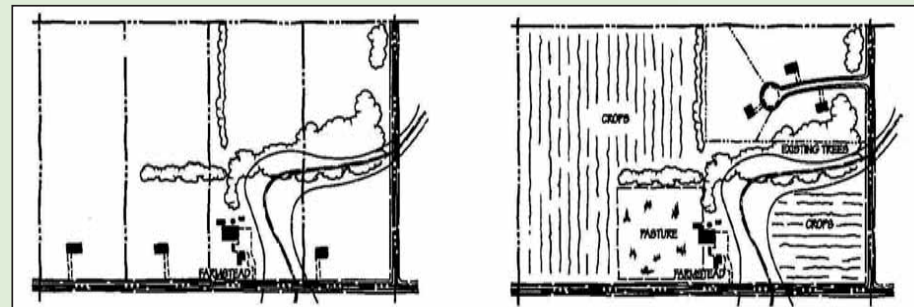
This tool would require developers to consult with public agencies and local non-profit organizations working on farmland preservation prior to coming forward with subdivision or site plan applications. This creates the opportunity to explore ways to protect portions of the site for preservation for the purpose of farmland use and/or natural resource conservation.

Benefits	Limitations
<ul style="list-style-type: none"> Opportunity for developers to consult with public agencies and local organizations to explore farmland and open space preservation areas within a development 	<ul style="list-style-type: none"> Staff resources needed to implement program Not mandatory, therefore developers may choose not to participate

Preservation Tools

Lot Averaging

Maintaining an overall rural density, lot sizes would be permitted to vary as long as the lot area that is taken from one lot is transferred to one or more other lots, so that a minimum average lot size is maintained within the development site concerned. Although no common open space is created, the advantages of lot averaging includes flexibility in site design and preservation of farmland and/or environmentally sensitive areas.



Both figures comply with 5 acre density. Fig. A is conventional 5-acre density land division. Fig. B illustrates 5-acre density using lot averaging.

Benefits	Limitations
<ul style="list-style-type: none"> Allows flexibility in site design and preservation of farmland or environmentally sensitive areas Useful in creating a few residential parcels 	<ul style="list-style-type: none"> Requires staff resources to track land divisions

Overlay Districts

An overlay district is used to establish alternative land development requirements within a specific area of a community that requires special attention, such as an environmentally sensitive area or rapidly developing highway corridor. The overlay, such as historic, conservation, or agriculture, is usually superimposed over conventional zoning districts. It consists of a physical area with mapped boundaries and an ordinance detailing requirements that are either added to, or in place of, those of the underlying regulations. Overlay districts specify requirements that take precedence over those of the underlying districts they cover. Overlays are frequently used to manage development in particular areas of a community.

Benefits	Limitations
<ul style="list-style-type: none"> Help protect natural resources in desired areas in the community Easily implemented Recognizes land dedicated to agriculture or other specific use Help protect large blocks of land 	<ul style="list-style-type: none"> Additional zoning requirement Not a permanent solution to protect land from development pressures Sanctions for withdrawing from district may not be strong enough to discourage conversion out of a specific land use