4. Agricultural Conservation Easement Programs

a) What is an agricultural conservation easement?

Property owners actually own several distinct rights:

- the right to use their property;
- to sell, lease or leave their property to their heirs;
- to borrow money against their property, and
- (subject to reasonable land use regulations) to construct buildings on their property or to mine it.  

Conservation easements are a legal instrument landowners use to select one or more of these rights and sell or transfer them to another party. Under Wisconsin law (s.700.40, Wis. Stats.), conservation easements may be used to retain or protect “natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a burial site, or preserving the historical, architectural, archaeological or cultural aspects of real property.” Conservation easements are recorded with the Register of Deeds, and are a durable property right, like a warranty deed or an access easement.

Agricultural conservation easements are intended to strengthen areas planned and designated as farmland protection areas in a certified county farmland preservation plan. They also support the protection of farmland in Agricultural Enterprise Areas. Land encumbered by an agricultural conservation easement has permanent restrictions placed on its use; these restrictions are designed to ensure that workland is always available for farming. Land with an agricultural conservation easement remains on the property tax rolls and the landowner continues to be responsible for payment of property taxes.

Under an agricultural conservation easement, the landowner continues to:

- Privately own and manage the land
- Farm the land according to a farm conservation plan
- Keep title to the property
- Be eligible for farmland preservation income tax credit (if standards are met for tax credit eligibility)
- Control public access to the land.

b) General Goals And Objectives For Agricultural Conservation Easement Programs

(1) Support and complement any existing or future PDR, Purchase of Agricultural Conservation Easements (PACE), or transfer of development (TDR) programs developed by the county, local, state or federal governments;

(2) Encourage inclusion of natural resource lands, farmlands, and woodlands under conservation easement;

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1 “Purchase of Agricultural Conservation Easements Fact Sheet” Farmland Information Center, 2005.
(3) Base on voluntary participation on lands where private landowners continue to manage their property and public access is not required;

(4) Focus easement purchases to areas planned for long-term or permanent agricultural or natural resource use

(5) Make sure that all land protection is in permanent agreements and conservation easements have secondary easement holders to provide lasting public benefit.

(6) Allow cities and villages to grow in accordance with local and county comprehensive plans.

c) County Registry Of Interested Sellers.

(1) Dane County will maintain a voluntary, online database of landowners interested in selling conservation easements on their property.

d) Purchase of Agricultural Conservation Easements (PACE) Programs

(1) Overall Program Description. Purchase of Agricultural Conservation Easements, or PACE (also known as Purchase of Development Rights, or PDR) programs use public dollars to pay landowners who voluntarily give up the ability to develop some or all of their property. Government or nonprofit entities negotiate directly with landowners to purchase a conservation easement on the property that prohibits specific uses on the land, such as dividing off a lot and building a home.

(2) State and Federal Grant Programs. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP)’s PACE program and the U.S Department of Agriculture (USDA)’s Farm and Ranch Lands Protection Program provide state and federal funding for the purchase of agricultural conservation easements. Cooperating local entities (local governments or non-profit conservation organizations) can apply for grants to cover as much as 50% of the cost of the purchase of the easements. The state and local entities (but not the federal government) are co-holders of easements purchased with these state and federal funds.

(3) PACE Grant Eligibility and Ranking Criteria Maps. Map xx shows landholdings ranked by selected Wisconsin Department of Agriculture, Trade and Consumer Protection PACE grant criteria* (http://www.datcp.state.wi.us/workinglands/pace_application.jsp).

* Note: does not include qualitative, site-specific or other criteria that cannot be generally mapped

Map xx shows landholdings ranked by the U.S. Department of Agriculture Farmland and Ranchland Protection Program grant criteria** (http://www.wi.nrcs.usda.gov/programs/fpp.html).

** Note: does not include qualitative, site-specific or other criteria that cannot be generally mapped. The Dane County Department of Planning and Development maintains both of these maps, and updates them on an annual basis. Current Wisconsin and USDA ranking information is also available online through DCiMap, Dane County’s online geographic information system (http://dcimap.co.dane.wi.us/dcimap/).
(4) **Mapping and Appraisal Assistance.** For town, city or village governments, or qualified non-profit conservation organizations under state and federal PACE programs seeking to purchase conservation easements on agricultural lands in Dane County, the Dane County Department of Planning and Development will provide, free of charge:

(a) Density Study Reports to determine development potential under the *Dane County Comprehensive Plan* and help establish appraised values of target properties, and;

(b) A map of the target property showing soils (including percentage of prime and state-significant soils), any specialty crops and any state-qualified unique farmland to meet grant application requirements of the State of Wisconsin or the U.S. Department of Agriculture.

(5) **Conservation Compliance Certification.** Wisconsin PACE grant eligibility standards require that target properties have a qualified farm conservation plan in effect, and that all county, state and federal soil and water conservation standards are met. Applications for conservation compliance certification, including appropriate inspection and review fees, should be made to the Land Conservation Division of the Dane County Land & Water Resources Department no later than 30 days in advance of the grant application deadline. Further details are available from the Land Conservation Division.

(6) **County Board Resolutions of Support.** The Dane County Board of Supervisors will consider resolutions in support of PACE grant applications by town, city or village governments or by qualified non-profit conservation organizations under state or federal PACE programs, provided target lands are shown in an Agricultural Preservation Area in the Farmland Preservation Plan Map of this plan. Requests for consideration should be received by the Dane County Department of Planning and Development no later than 60 days from the grant application deadline, to allow time for county review and approval.

(7) **County Acquisition Program.** As funding permits, Dane County may work directly with willing sellers to purchase agricultural conservation easements on agricultural lands within Agricultural Preservation Areas. For such projects, Dane County will work on its own or with project partners, and will seek to match its own acquisition funds with local, state and federal grant programs as much as possible. County-funded Purchase of Agricultural Conservation Easement projects should include lands that meet at least one of the criteria below.

(a) Target lands fall within the boundaries or buffer areas for projects identified in the *Dane County Parks and Open Space Plan*.

(b) Projects include lands targeted for wetland restoration or streambank easements identified as critical to the protection and enhancement of water quality as part of the *Land and Water Legacy Fund*.

(c) Projects include lands within designated Agricultural Enterprise Areas.
(d) Projects are in areas where landowners have demonstrated a commitment to long-term or permanent agricultural use.

(e) Maintenance of project lands in permanent agricultural or open space use would:

(i) minimize boundary conflicts between agriculture and incompatible uses;

(ii) result in substantial benefits to ground or surface water quality;

(iii) protect significant natural hydrologic functions

(iv) prevent productive agricultural lands from irreversible conversion out of agriculture or agriculture-related uses, or;

(v) protect agricultural infrastructure, soil and water conservation practices or other significant public or private investments in agriculture or agriculture-related uses.

e) Transfer of Development Rights (TDR)

(1) Overall Program Description. Transfer of Development Rights, or TDR, programs are a method to shift residential development from one portion of a community to another, or from one community to another. Local units of government identify sending areas (areas where development is discouraged) and receiving areas (areas where development is encouraged). Landowners in sending areas are allocated development rights based on density policies and criteria identified in adopted plans. Plan policies specify the number of potential building sites or nonfarm development available on a particular property. Landowners seeking to develop in a receiving area must first buy a certain amount of development rights from landowners in a sending area. Once a development right is purchased and transferred, the landowner in the sending area records a conservation easement that prohibits development on all or a portion of his or her property. As with Purchase of Agricultural Conservation Easement programs, landowners who have transferred development rights retain other rights, including the right to farm, manage and keep their land private.

(2) Dane County TDR Zoning Ordinance. Sections 10.158 and 10.159 of the Dane County Zoning Ordinance provide a legal and administrative framework to support town-initiated Transfer of Development Rights (TDR) programs. The ordinance includes two overlay zoning districts:

(a) TDR-S (s.10.158, Dane County Code). The TDR-S district is used to designate TDR sending areas. The TDR-S overlay can be applied to the A-1EX(Exclusive Agriculture) or CO-1 (Conservancy) zoning districts. The TDR-S district does not limit any permitted or conditional uses allowed in the underlying zoning. Instead, the TDR-S district adds a new permitted use allowing landowners to transfer development rights away
from their property by recording a conservation easement with the county Register of Deeds.

(i) Transferred development rights must be consistent with adopted town and county comprehensive plans. Depending on adopted town and county plan policies, development rights may be transferred to a receiving area in the same town, or to another town, city or village. Development rights may also be sold to a public conservation agency or nonprofit land trust and extinguished. Landowners in the TDR-S district may choose to sell some, all or none of the development rights allocated to them under the town density policy, and may negotiate whatever price they feel is fair.

(ii) A-1EX (TDR-S) zoned parcels remain eligible for state farmland preservation tax credits. As long as they have not already transferred all their development rights, landowners with land zoned A-1EX(TDR-S) may still rezone and divide their land to create new residential lots, consistent with density caps and other policies in the adopted town, city, village or extraterritorial and county comprehensive plan.

(iii) Sending areas should be within an Agricultural Preservation Area as shown on the Farmland Preservation Plan Map.

(b) **TDR-R (s.10.159, Dane County Code).** The TDR-R district is used to designate TDR receiving areas. The TDR-R overlay can be applied to the A-1(non-exclusive), and all the A-2 (Agriculture), R (Residential), and RH (Rural Homes) zoning districts. The TDR-R overlay requires that any change of use (such as a zoning permit or conditional use permit) that would increase residential density must be accompanied by a transferred development right from a parcel in the TDR-S district.

(i) Before obtaining zoning permits for property in the TDR-R district, developers must present recorded deed notice documents on both the sending and receiving parcels that:

(a) track the number of rights transferred;

(b) identify the location of the sending parcel, and;

(c) reference a recorded conservation easement on an appropriate TDR-S-zoned parcel.

(ii) Transferred development rights must be consistent with adopted comprehensive plans. Development in TDR-R districts must comply with any adopted siting criteria, development standards, environmental protection requirements, zoning setbacks or other land development regulations.

(iii) Within the Extra Territorial Jurisdiction (ETJ) of a city or village, the town and municipality must comply with adopted intergovernmental cooperation (and if necessary, dispute resolution)
procedures in all applicable comprehensive plans before rezoning lands to the TDR-R district.

(iv) Designated receiving areas should generally be within areas shown as Non-Farm Planning Areas in the Farmland Preservation Plan Map of this plan.

(v) Farm to Farm Transfers. The county board may consider limited TDR-R overlay zoning within Agricultural Preservation Areas as shown on the Farmland Preservation Plan Map, provided all of the following criteria are met:

(a) development is transferred from more productive to less productive agricultural land, as determined by either the Dane County Land Evaluation and Site Assessment (LESA) system, or by equivalent ranking or siting criteria in the adopted town and county comprehensive plan, and;

(b) resulting development does not cause the proportion of land area under a certified Farmland Preservation Zoning district to fall below 80% of the countywide area of the Agricultural Preservation Area, as required by DATCP certification requirements.

(3) Town Implementation. At a minimum, town boards would need to do four things before either the TDR-S or TDR-R overlay districts could apply in their town:

(a) Adopt a resolution saying they wish to apply the TDR ordinance within the town;

(b) Amend, if necessary, the land use section of their comprehensive plan to establish appropriate TDR policies;

(c) Have the town comprehensive plan amendment adopted by the county board as part of the Dane County Comprehensive Plan, and;

(d) Rezone individual parcels (either on a case-by-case basis as TDR proposals are made, or by a town-initiated “blanket rezone”) to the TDR-S district, TDR-R district, or both.

The Dane County Department of Planning and Development maintains model local government resolutions and model comprehensive plan language to accommodate several different TDR program options. These documents are available online at: http://www.countyofdane.com/plandev/planning/transfer_rights.aspx, or by contacting the Department of Planning and Development.