



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

Renewable Energy Frequently Asked Questions

Is commercial energy production an agricultural use?

No. Energy production is not an agricultural use, regardless of whether it is commercial or accessory to a farm for the purposes of the farmland preservation law. Agricultural use is defined in s. 91.01(2), Wis. Stats. to include any of the following activities for the purpose of producing an income or livelihood: crop or forage production, keeping livestock, beekeeping, nursery, sod or Christmas tree production, floriculture, aquaculture, fur farming, forest management, or enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

What is dual-use?

Dual-use for commercial energy production is sometimes referred to as agrivoltaics. This refers to a land use where the farmland is used for agriculture and solar photovoltaic energy generation.

Can you site renewable energy facilities on lands covered by an effective farmland preservation agreement?

Commercial energy production is not an allowable use on land subject to an effective farmland preservation agreement. Lands covered by post-2009 farmland preservation agreements are restricted to agricultural uses, accessory uses, undeveloped natural resource and open space uses, and pre-existing uses defined in the terms of an agreement. If a landowner chooses to sign a lease to allow for the siting of a renewable energy facility on property covered by an effective farmland preservation agreement, they will be required to release those lands, prior to any change in land use that would violate the terms of their farmland preservation agreement.

Can you site renewable energy facilities (i.e. solar panels, wind turbines) on lands zoned in a farmland preservation zoning district?

Commercial renewable energy production may be an allowable use in a farmland preservation zoning district. Whether the use is permitted or conditionally permitted depends on the context and the local ordinance. Project scale may affect whether the local zoning authority may regulate the use.

- **Accessory** (Wis. Stat. § 91.44(1)(b) or Wis. Stat. § 91.46(1)(b)) - may be permitted or conditionally permitted depending on how the local zoning ordinance has been written.
- **Commercial** renewable energy generation (Wis. Stat. § 91.44(1)(f) or Wis. Stat. § 91.46(1)(f)) may be authorized uses in farmland preservation zoning districts.

How does renewable energy facility siting affect the farmland preservation tax credits?

Under s. 71.613(1)(h), Wis. Stats., "Qualifying acres" means the number of acres of a farm that correlate to a claimant's percentage of ownership interest in a farm in a certified zoning district, covered by an effective farmland preservation agreement or both.

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Under s. 91.01(13), Wis. Stats., "Farm" means all land under common ownership that is primarily devoted to agricultural use. Primarily for our purposes shall be interpreted to have the common meaning of more than 50%.

Since renewable energy production is not an agricultural use, conversion of farmland to renewable energy infrastructure may result in a reduction of the number of qualifying acres where the land that previously constituted a farm is no longer *primarily* devoted to agricultural use.

Factors for consideration:

- Farm and primary land use are determined on a common ownership basis, not necessarily on a parcel by parcel basis
- Common ownership refers to joint holding of assets as an indivisible unit rather than as individuals with common property.
- Landowner still needs to meet eligibility criteria on qualifying acres, including gross farm revenue, to file a tax credit claim

What are some examples of renewable energy siting and the resulting impacts to tax credit eligibility?

- If John Farmer has a 100 acres of cropland in a certified zoning district, and this year determines to lease 52 acres for renewable energy production, the amount of land primarily devoted to agricultural use has reduced from 100 to 48 acres (48% of his commonly owned land is devoted to agricultural use). Thus John Farmer now has 48 qualifying acres.
- If John Farmer has a 100 acres of cropland in a certified zoning district, and this year determines to lease 20 acres for renewable energy production (which is subsequently sited), the amount of land primarily devoted to agricultural use has reduced from 100 to 80 acres. 80% of his commonly owned land is primarily devoted to agricultural use. Under the current law, John Farmer may continue to claim the 100 acres.

What facilities go to the Public Service Commission for review and approval?

In Wisconsin, the Public Service Commission (PSC) has review authority over electric generation projects of 100 megawatts (MW) or more, as well as public utility electric generation projects that are less than 100 MW but exceed the cost threshold identified in Wis. Stat. §196.49(5g)(ar). Solar projects and wind farms that will generate less than 100 MW that are proposed by a public utility also require a certificate of authority (CA) from the PSC. Other solar projects and windfarms that will generate less than 100 MW require the approval of a local entity, such as the county or town.

Proposed projects may also require wetlands, waterway, and construction storm water permits among others from the Department of Natural Resources.

What facilities go to the zoning authority for review and approval?

Projects that fall below the electric generation threshold or cost threshold for a CA or certificate of public convenience and necessity (CPCN) require the approval of a local entity such as the county or town. Proposed projects below 100 MW may also require wetlands, waterway, and construction storm water permits among others from the Department of Natural Resources.