



# DRIFTLESS

## AREA LAND CONSERVANCY

January 18, 2023

Dave Garfoot, Treasurer, Town of Primrose  
8670 Garfoot Drive  
Mount Horeb, WI 53572

Re: Tax Exemption for Real Properties (the "Properties") Owned by Driftless Area Land Conservancy ("DALC") and Comprising the Following Tax Key Numbers:

0507-353-9500-7	0507-354-8500-8	0507-354-9030-0
0507-351-9150-3	0507-352-9500-8	0507-353-8000-4
0507-353-8500-9	0507-353-8670-4	0507-353-9000-2

Dear Mr. Garfoot:

Today DALC paid its real estate tax installment due with respect to the referenced Properties. We are making this payment (the first installment of 2022 Property Taxes due) under protest because DALC continues to believe the Properties are entitled to tax exemption. We sent a similar letter, dated July 29, 2022 to the Town of Primrose and the Dane County Treasurer with our last tax payment. We will be applying for exemption again for 2023, and we are looking forward to discussing this matter with the Town of Primrose at their February 7, 2023 board meeting.

As you are aware, DALC is a Wisconsin nonstock corporation, recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code. As part of its mission, as a public charity, DALC acquires and preserves rural property in the Driftless Area of Wisconsin and opens that property up for study, use and enjoyment by academics, conservationists and the general public.

DALC believes the Properties are entitled to exemption from real property taxes under Section 70.11(20) of the Wisconsin Statutes because the Properties are "*held in trust in the public interest.*"

To be "*held in trust for the public interest,*" and eligible for exemption under 70.11(20) the Properties must be owned by a nonprofit organization (they are) and meet each of the four (4) following requirements:

Under 70.11(20)(a), the Properties must be used to preserve native plant and animal life ... or geological or geographical formations of scientific interest. The Properties are used to restore to health and preserve native grasslands, promote more environmentally focused agriculture and to preserve geological and geographic formations unique to the Driftless Area;

Under 70.11(20)(b), the Properties must be open to the public, subject to reasonable restrictions. The Properties are open to the public, generally by appointment for tours to



environmental groups, school classes and other groups and individuals interested in the Driftless Area;

Under 70.11(20)(c), no pecuniary profit must accrue the owners or members of DALC. DALC is a nonstock, nonprofit corporation, and as such, DALC has no owners or members and all revenues are reinvested into DALC's charitable mission; and

Under 70.11(20)(d), the Dane County Board must not have determined (i) the Properties are not owned by a nonprofit organization and (ii) the requirements of 70.11(20)(a)-(c) have not been fulfilled. The Dane County Board has made no such determination.

Accordingly, based the forgoing, the Properties are eligible for exemption, and to that end, DALC has filed an application for exemption (the "Application for Exemption") for 2022, and will file another application for 2023.

DALC's 2022 Application for Exemption was denied by the Town of Primrose's assessor (the "Assessor").

In his denial, the Assessor contends the Properties are not eligible for exemption because the Properties are "*tilled for agricultural use*," and that under 70.11(20)(a) and (b), properties that are "*tilled for agricultural use*" are not entitled to exemption under 70.11(20). We respectfully disagree.

Use of real property for both agricultural and conservation purposes should not prevent exemption. In this case, two-thirds (2/3) of the Properties are used to directly promote conservation and one-third (1/3) is used to promote conservation agriculture, a collection of agricultural practices that focuses on restoration and preservation of soil health, which supports conservation and the environment through improved water quality and prevention of soil erosion. These practices are defined by the USDA's Natural Resources Conservation Service (NRCS). We maintain that:

First, only 104 acres of the entire 308 acres comprising the Properties are leased for farming. Accordingly, two-thirds (2/3) of the Properties are already maintained in their natural state.

Second, in compliance with 70.11(20)(a), the Properties are used to preserve native plant and animal life ... or geological or geographical formations of scientific interest, because by protecting the Properties from development, DALC is protecting "geological and geographical formations of scientific interest," namely, the Driftless Area.

Third, with respect to the one-third (1/3) used for agriculture, these areas are farmed pursuant to a written lease requiring the tenant-farmer to use certain soil conservation practices, with the goal of providing a buffer to the restoration and management of the adjacent exceptional biodiverse natural communities of oak savanna, sand prairie, and wet meadow. In addition, all farming is undertaken pursuant to a Nutrient Management Plan approved by the Dane County Land & Water Resources Department and cropping practices that prohibit plowing of existing pasture or meadowland, cutting of live trees or removal of corn stalks, corn cobs, straw or other crop residue. A copy of the lease is available upon request and was forwarded with the July 29, 2022 letter.

Fourth, the lease requires the one-third (1/3) used for farming to rotate corn, soybeans and alfalfa-hay, in the manner of "contour strip farming", a conservation practice recommended by the NRCS.

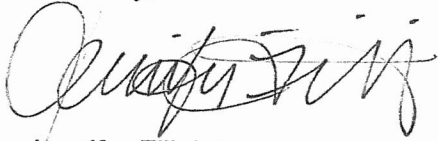
Demonstrating how conservation and agriculture can co-exist to the benefit of both is a key part of DALC's mission to preserve and protect the natural and agricultural landscape of the Driftless

Area. We do not wish to exclude farmers from the land, and indeed excluding the Kempfers from this farmland would be detrimental to their farming operation.

Based on all of the foregoing, DALC plans to file an appeal of the exemption denial and request reimbursement of taxes paid to date, all as provided for in the Wisconsin Statutes.

Please contact me with any questions.

Sincerely,



Jennifer Filipiak

Executive Director

O. (608) 930-3252, Email [jennifer@driftlessconservancy.org](mailto:jennifer@driftlessconservancy.org)

Cc: Jeffrey Femrite, Scholz Nonprofit Law, LLC, via email