

An Overview of Wisconsin's Livestock Facility Siting Law



Paving the way for factory farms in Wisconsin

Jamie Saul, Staff Attorney
Midwest Environmental Advocates

The Livestock Facility Siting Law

- The statute itself was enacted in 2004
- The “Siting Rule,” issued by the Department of Agriculture, Trade, and Consumer Protection (DATCP) in 2006, contains most of the legal requirements and standards
- For this presentation, I use the phrase “Siting Law” to mean both the statute and the rule, working in combination.

Why should you care about this law?

A basic understanding will help you...

- Have a voice in how and where new livestock facilities are located in your community
- Understand how you can influence local siting decisions that directly affect your quality of life
- Become familiar with your right to challenge a local siting decision if you feel it was inconsistent with the law
- Recognize that the law is heavily biased in favor of the rapid expansion of CAFOs

Stated purpose of the Siting Law:

To provide for the “uniform regulation of livestock facilities.”

These are NOT stated purposes:

- *Protect drinking water and surface water*
- *Guard against the negative health effects of hazardous air emissions*
- *Ensure a high quality of life for residents of rural Wisconsin*

What does the Siting Law do?

- Establishes uniform state standards to be used by local governments to make siting decisions for new or expanding livestock operations
- Provides for an application and approval process that must be used by those local governments who choose to license livestock operations
- Restricts the ability of local governments to direct the location of new livestock facilities through zoning or protective ordinances.

What does the Siting Law NOT do?

- Give local governments any additional authority to manage the growth of livestock operations than they already had prior to the law's passage
- Require local governments to do anything if they choose not to pass a siting ordinance or employ conditional use permits
- Affect any other regulations that may apply (such as any permits required by the DNR)

Or, in DATCP's own words:

- “This rule replaces local regulations that, in some cases, have made it nearly impossible to start or expand livestock operations.”
 - *Predictability is good, but this law goes too far:*
- “A properly completed [siting] application essentially guarantees local approval.”
 - *What happened to local control of land use?*

The Siting Law in Practice

First – a local government must enact a siting ordinance to even gain access to the uniform state standards of the Siting Law

- The Siting Law is not self-executing:

“The livestock facility siting law *does not require* local approval. But *if* local approval is required, the political subdivision must grant or deny approval based on [the siting law].” (Wis. Admin. Code ATCP § 51.02)

- If there is no local siting ordinance, the standards found in the Siting Law are virtually meaningless and offer no opportunity for communities to weigh in.

The Siting Law in Practice

Second, in most instances the livestock operation must propose to have at least 500 Animal Units for the Siting Law to apply.

- “Animal Unit” = an equivalency determination, based on animal weight, used to compare different species.
 - 500 AU = approximately 350 milking cows, 1,250 pigs, or 27,500 chickens.
- Less than 500 AU = no siting regulation (unless there is a relevant local ordinance that pre-dates the Siting Law)

The Siting Law in Practice

- **Third**, for *expanding* livestock facilities, the proposed expansion must be at least 20%
 - Expansion from 500 AU to 550 AU (or from roughly 350 to 385 dairy cows) = no local regulation of livestock siting allowed (only 10% expansion)
 - Expansion from 500 AU to 650 AU (or from roughly 350 to 455 dairy cows) = the siting law would apply (30% expansion)

The Siting Law in Practice

- **Fourth**, if there is a local ordinance and the planned facility is of the requisite size:
 - The owner of the proposed facility must complete a DATCP-designed application that addresses each of the five standards found in the law
 - The local government may not require any additional information from the applicant

What substantive environmental standards were created by the Siting Law?

Five different standards relating to:

- 1) Location of livestock structures
- 2) Odor and air emissions
- 3) Nutrient Management
- 4) Waste storage facilities
- 5) Runoff management

Standard #1:

Location of livestock structures

- Defines “livestock structures” to include any physical structure that is used to house or confine livestock or to store feed or manure
- Permits local governments to require a minimum setback from property lines and public roads (up to a certain cap)
- Includes a specific and mandatory setback of 350 ft. for manure storage structures (with some exceptions)

Standard #2:

Odor and air emissions

- A maximum calculated “odor score” is required. Score is based primarily on:
 - *Predicted odor from livestock structures*
 - *Separation distance from those structures to the nearest affected neighbor*
 - *Management practices used to control odor*
- The odor standard does not apply if:
 - *All structures are at least 2,500’ from nearest neighbor*
 - *The facility is an expanding facility, up to 1,000 AU*

Standard #3:

Nutrient Management

- Generally requires that manure be managed and land-applied consistent with technical guidelines established by the USDA
- These guidelines, in theory, dictate how, when, and where manure may be spread on land
- The goal of these standards: “minimize nutrient entry into surface water, groundwater, and atmospheric resources while maintaining and improving the physical, chemical, and biological condition of the soil.” (*NRCS, Nutrient Management Code 590 (September 2005)*)
- But a complete Nutrient Management Plan is not required

Standard #4:

Waste storage facilities

- The general standard is that all waste storage facilities must be built to minimize the risk of structural failure or the potential for discharge of waste to surface or ground water
- This is presumed to be true if the facilities are built in accordance with certain USDA technical standards for construction
- Additionally, for open waste lagoons, excess storage capacity is required

Standard #5:

Runoff management

- This standard includes a variety of requirements that address issues such as:
 - Discharge of polluted runoff from feed storage facilities
 - Diversion of runoff from certain feedlots and waste storage facilities
 - Livestock access to surface waters
 - *Etc.*

Local review of siting applications (this is where it gets interesting...)

- There is a presumption of compliance with the state standards so long as the application is properly filled out
 - *No independent review of the application materials is required by the siting law*
- This presumption may be rebutted by “clear and convincing evidence” that the standard has not been met
 - *Example: What if the county board has “some” evidence showing that the state standard has not been met? This may not be “clear and convincing” enough, and the application may have to be granted anyway.*
- Conclusion: *The Siting Law essentially requires that a local government take the applicant’s word that the standards have been met.*

Can a local government enact its own, more stringent siting standards?

Yes, but it is likely to be quite difficult:

Local standards most stringent than the state standards must:

- 1) *Be based on “reasonable and scientifically defensible findings of fact” that*
 - 2) *“Clearly show that the standards are needed to protect public health or safety”*
- What about standards that are intended to protect public health or safety? (Maybe... but is “intended” the same as “needed?”)
 - What about standards that protect public welfare, quality of life, etc? (Probably not – the law only says “public health or safety.”)
 - **Conclusion:** The Siting Law has set a very high bar for enacting local environmentally-protective livestock siting standards

Can you still using zoning to control the location of livestock operations?

Yes, but its not easy:

Scenario 1:

- If the zoning ordinance involves a cap on the size of livestock operations – there must also be a *sacrifice zone* that allows livestock operations of unlimited size.

Zone A1 = Livestock operations capped at 1,000 AU	Zone A2 = “Sacrifice Zone” No size limit!
---	--

See Wis. Stat. § 93.90(3)(b).

Can you still using zoning to control the location of livestock operations?

Yes, but its not easy:

Scenario 2:

- If the zoning ordinance involves an outright prohibition on livestock operations – it must be based on “reasonable and scientifically defensible findings of fact . . . that clearly show that the prohibition is necessary to protect public health or safety.”

Zone A1:

No size
limit or
prohibition

Zone A2:

Complete
prohibition of
livestock
operations –
requires scientific
findings of fact.

See Wis. Stat. § 93.90(3)(c).

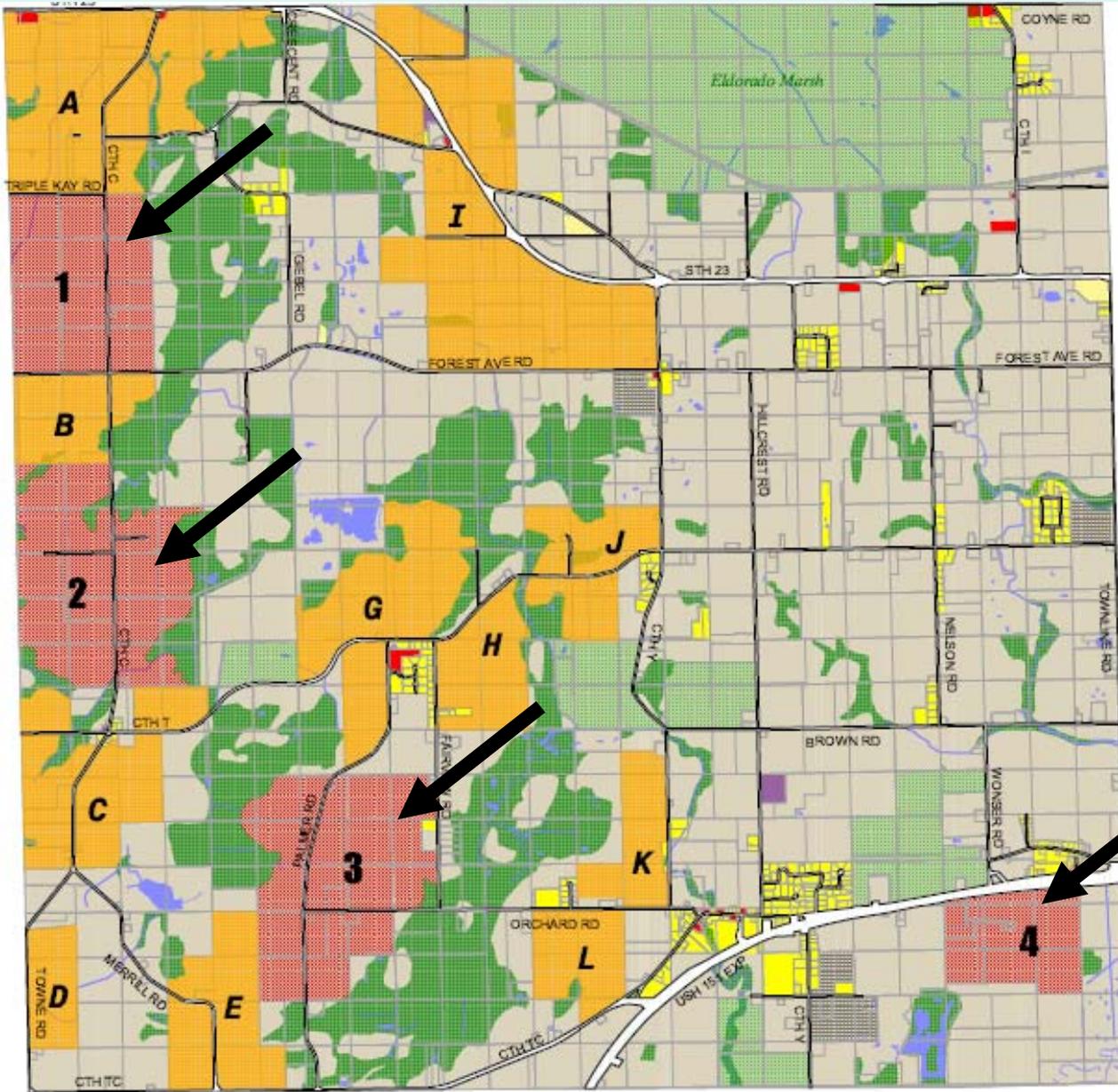
**Town of Lamartine
(Fond du Lac County)
Proposed zoning
ordinance**

Red Zones
“Agricultural
Enterprise District”

Operations <1,000
AU are allowed

Operations >1,000
AU are special
uses, subject to a
livestock siting
application

These are the
“sacrifice zones”



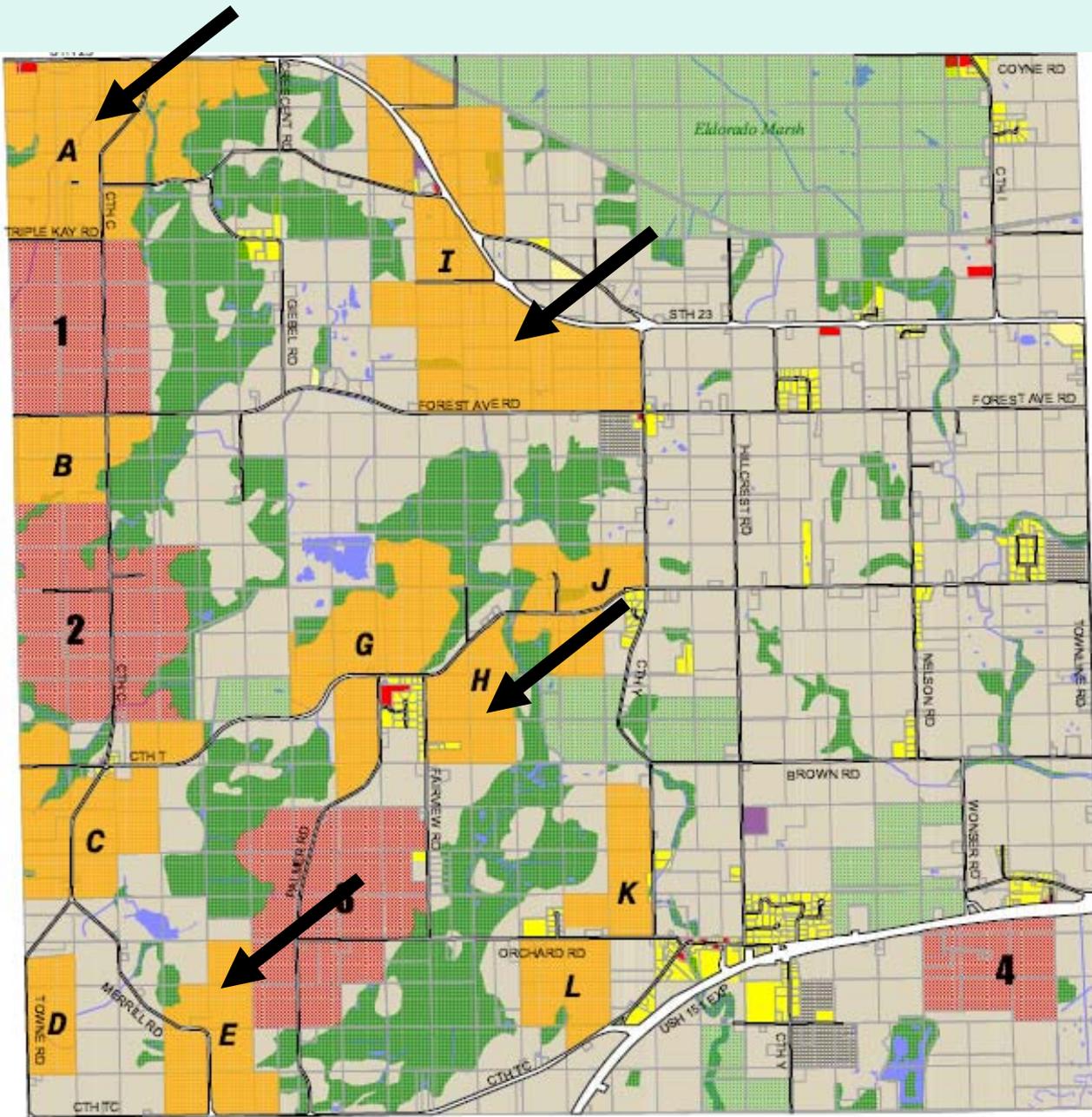
Town of Lamartine
(Fond du Lac County)
Proposed zoning ordinance

Orange Zones
“General Agricultural
Districts”

Operations <500 AU
are allowed

Operations from 500
– 1,000 AU are
special uses, subject
to a livestock siting
application

Operations > 1,000
AU are prohibited

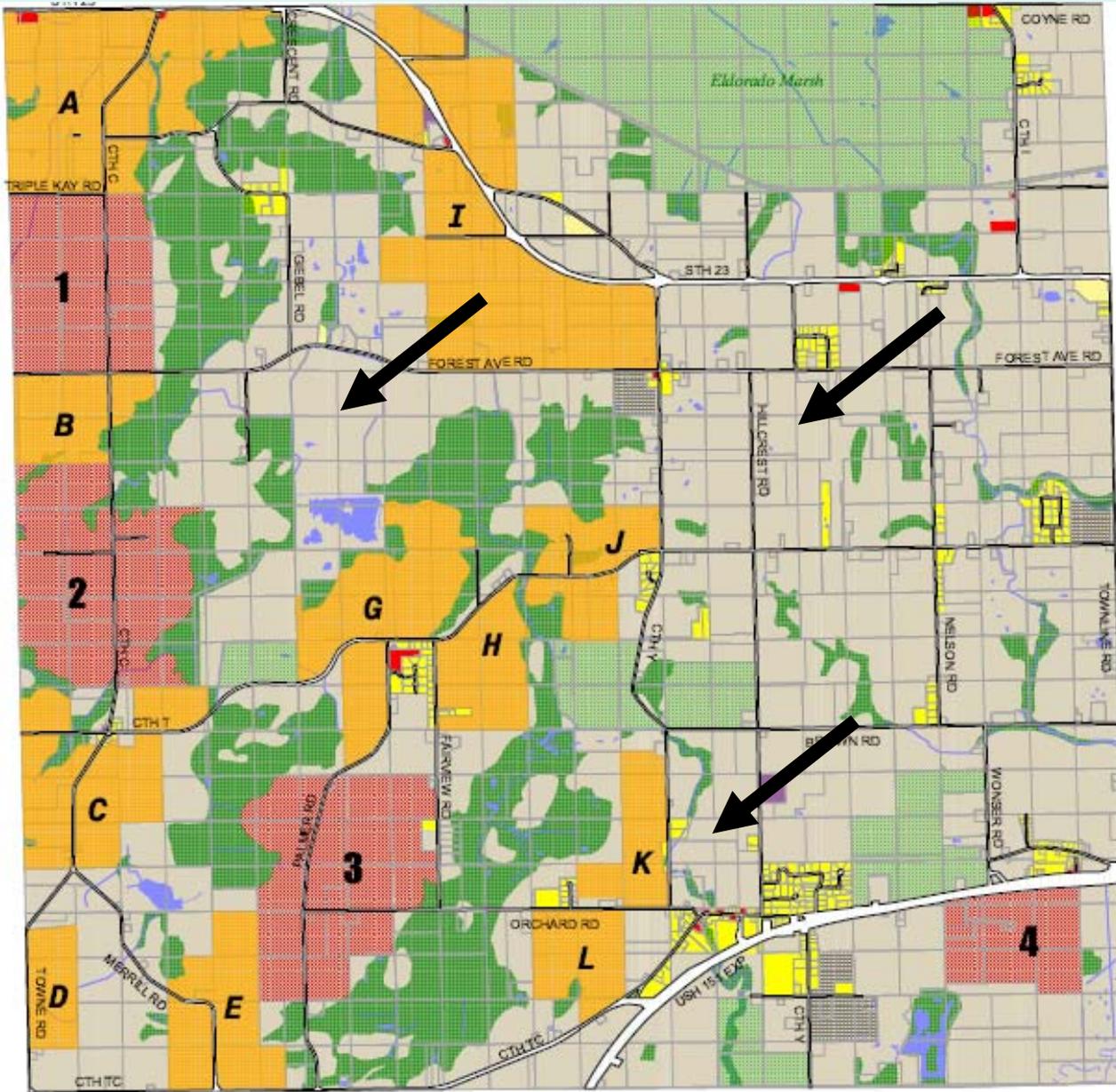


**Town of Lamartine
(Fond du Lac County)
Proposed zoning
ordinance**

Gray Zones
“Exclusive Agricultural
District”

Operations < 500 AU
are allowed (no siting
application required)

Operations > 500 AU
are prohibited



Lessons on using Zoning

- Think carefully about your zoning districts – some priorities might include:
 - Create just a few small “sacrifice zones” where CAFOs can go – there is no requirement for size, number, or location
 - Think about conflicting land uses – keep the “sacrifice zones” away from established residential areas, special natural resource areas, etc.
- State agribusiness groups will be gunning for you – they fight every local proposal and will stack the town meetings with producers and lobbyists
- DATCP approval is not required – but you must submit the ordinance to DATCP within 30 days. Seek their advice because DATCP staff is knowledgeable and helpful, but YOU decide where to draw your boundaries!

The Siting Law is bad for local government:

- Creates a highly complex regulatory scheme, but leaves implementation to towns and counties that often lack the resources or expertise needed to administer it
- Caps the fee that may be charged to review the siting application at \$1,000 – this is a lot of money, but is it enough to:
 - Hire a crop consultant to review the Nutrient Management data?
 - Hire an engineer to review the facility designs?
 - Cover staff time for public meetings and other administration?
- Strips traditional local authority to govern how land is used through zoning or local ordinances

The Siting Law is bad for communities that want sustainable agriculture:

- The “presumption of compliance” makes it difficult to engage in thoughtful review of local siting applications
 - In most cases, the local government will lack the resources to review the application carefully, and will simply grant it.
- The limitations placed on more restrictive local standards make it impossible to protect public welfare or quality of life
- The restrictions placed on local zoning powers make it challenging to protect highly-valued natural resources such as:
 - *Pristine rivers and watersheds*
 - *Local drinking water supplies*
 - *Prized wildlife habitat areas*

Conclusion

- The Livestock Facility Siting Law has effectively:
 - *Paved the way for rapid expansion of increasingly large confined livestock operations*
 - *Stripped local governments of much of their traditional authority to control land use while burdening them with an incredibly complex and contentious licensing scheme*
 - *Made it difficult for citizens to protect their communities from the risk of water and air pollution*
- **BUT**, your community should still have a siting ordinance in place – something is better than nothing!

Next Steps?

- We need to restore some local authority to take into account localized concerns, such as high-quality waterways, unique topography, etc.
 - “Uniform state standards” make little sense because our land and natural resources are not uniform!
- We need to increase the scientific understanding of the environmental and public health impacts of livestock operations so that local restrictions are scientifically sound and truly protective of public health and the environment.
- We need to return zoning power to local communities so that at least some areas can be maintained “CAFO-free.”