



Deputy Clerk



Res. No. 04-0089

WASHTENAW COUNTY PURCHASE OF DEVELOPMENT RIGHTS ORDINANCE

*Date of Adoption by Board of Commissioners – May 5, 2004*

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ORDINANCE NO.: \_\_\_\_\_

AN ORDINANCE creating the Washtenaw County Purchase of Development Rights ("PDR") Program that provides for the acquisition of voluntarily offered Development Rights in Farmland and Other Eligible Land in Washtenaw County, authorizes the cash purchase and/or installment purchase contracts of such Development Rights and provides the procedure and standards governing the purchase of such Development Rights.

BE IT ORDAINED BY THE WASHTENAW COUNTY BOARD OF COMMISSIONERS:

### **SECTION 1: Findings and Declaration of Purpose**

The Washtenaw County Board of Commissioners finds that:

1. Washtenaw County is a desirable place to live, work and visit in large part because of the availability of farmland. Agriculture is an invaluable natural, economic and aesthetic resource and should be protected.
2. The climate, variety of soils and terrain make the County well suited to the production of a great number of row crops, specialty crops and livestock, including the highest production of sheep of any county in Michigan. These resources include more than 170,000 acres of land currently in agricultural production. Such lands provide unique, aesthetic and economic benefits to the citizens of the County and are an important part of the County's natural and agricultural heritage. Washtenaw County is experiencing substantial residential development, however, because of its location to the highly urbanized areas of southeast Michigan, its strong economy and its excellent public schools. The same characteristics that have made this area so desirable for agricultural production and recreation also make it attractive for residential sites.
3. The agricultural industry in Washtenaw County provides the opportunity to harvest locally grown fruits and vegetables to sell at roadside stands, farmer's markets, local retail food stores and other local outlets in the County. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of agricultural use. When such land is converted to residential or other more developed uses that do not require those special characteristics, a critical community resource is permanently lost to the citizens of Washtenaw County.
4. It is the policy of the State of Michigan and Washtenaw County to protect, preserve and enhance farmlands as evidenced by Washtenaw County Land Use Policies for land use management, Natural Resources Environmental Protection Act (P.A. 451 of 1994, MCLA 324.101 - 324.90106, the Conservation and Historic Preservation Easement Act (P.A. 197 of 1980, MCLA 399.251), portions of the County Zoning Act, specifically P.A. 569 of 1996, MCLA 125.231 through MCLA 125.240 and other state and local statutes and policies. These measures by themselves, however, have not effectively provided long-term protection of agricultural areas from the pressure of increasing residential and commercial development.
5. Agriculture in Washtenaw County produces a notable array of crops and livestock including, but not limited to, corn, soybeans and other vegetables and fruit; as well as hogs, sheep and dairy and beef cattle. Of the County's nearly 460,000 acres, approximately 170,000 acres are involved in agricultural production resulting in over \$50 million in annual agricultural sales within Washtenaw County.
6. Generally, farmlands that are close to urban centers have a greater market value for future residential development than their market value for farming. Prime farmland has the same features (such as perkable soils) that are components of desirable residential areas. This fact encourages the speculative purchase of these lands at high prices for future residential development, regardless of the current zoning of such lands. Farmland that has a market value greater than its agricultural value does not attract sustained agricultural investment and eventually is sold by farmers and removed from agricultural use.

7. The County's PDR Program will sustain the preservation of farmland near developing urban areas and provide long-term protection for the public interests served by farmland in the County.
8. Properties, or portions thereof, on which Development Rights have been purchased should remain substantially undeveloped in order to promote their agricultural character.
9. The purchase of Development Rights in farmland and other eligible land as provided in this Ordinance is a public purpose of Washtenaw County and financing such purchases requires agreements with property owners to obtain such Rights.

## **SECTION 2: Definitions**

1. "Administration" means the Washtenaw County Administrator and related staff.
2. "Agricultural Conservation Easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity (subject to Section 8) his or her development rights and makes a covenant running with the land not to undertake actions prohibited by the easement.
3. "Agricultural Rights" means an interest in and the right to use and possess land for purposes and activities related to horticultural and other agricultural uses.
4. "Agricultural Use" means farmland devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program, a federal conservation reserve program, or a wetland reserve program. Agricultural use does not include the management and harvesting of a woodlot where such woodlot exceeds 49% of the land considered within an application.
5. "County Board" means the Washtenaw County Board of Commissioners.
6. "Development" means an activity that materially alters or affects the existing conditions or use of any land that is not associated with agricultural use.
7. "Development Rights" means an interest in land that includes the right to construct a building or structure, to improve land for development and/or to divide a parcel for development purposes that is not associated with agricultural use.
8. "Farmland" means 1 or more of the following:
  - 8.1. A farm of 40 or more acres in 1 ownership, with 51 % or more of the land area devoted to an agricultural use.
  - 8.2. A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51 % or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land.
  - 8.3. A farm designated by the department of agriculture as a specialty farm in 1 ownership that has produced a gross annual income of \$2,000.00 or more from an agricultural use. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.

- 8.4. Parcels of land in 1 ownership that are not contiguous but which constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.
9. "Full Ownership" means fee simple ownership.
10. "Governmental Agency" means the United States or any agency thereof, the State of Michigan or any agency thereof.
11. "Local Unit of Government" means a city, a village, a township, a group of townships working in cooperation, or Washtenaw County that is intending to submit a grant for agricultural preservation funds.
12. "Other Eligible Land" means land that has a common property line with farmland from which development rights have been purchased and that is not divided from that farmland by a state or federal limited access highway.
13. "Permitted Use" means any use contained within an Agricultural Conservation Easement essential to the farming operation or which does not alter the agricultural character of the land.
14. "Property Owner" means the party or parties having the fee simple interest in land.

### **SECTION 3: Authorization**

1. Pursuant to P.A. 569 of 1996, MCLA 125.231 through MCLA 125.240, the County Board is authorized to purchase the Development Rights of farmland and other eligible land throughout the County. Such acquisition may be by purchase, gift, grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the appraised value of the Development Rights as determined in this Ordinance. The County shall only purchase Development Rights, or aid in the purchase of Development Rights, that are voluntarily offered for sale by an owner of agricultural or other eligible land. The County is authorized to acquire, hold, manage, and enforce conservation easements or their equivalent.
2. The County is authorized to enter into cash purchase and/or installment purchase contracts, and agreements for the receipt of tax-deductible donations of easements, consistent with applicable law. When installment purchases are made, the County is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract for the tax-exempt status of such interest.
3. The County may contract with recognized and legally established nonprofit land trusts, other experienced and qualified nonprofit groups or other local units of government that would assist the County in establishing baseline studies, procedures for monitoring and/or the management of any Agricultural Conservation Easements acquired under this Ordinance. Such studies and monitoring must conform to "The Standards and Practices Guidebook" issued in 1993 by the Land Trust Alliance, or its revised version as it becomes available.
4. County owned interests in non-farmland may be exchanged for property interests in farmland or other eligible land on an equivalent appraised value basis. If the property interest exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value in the exchange.

### **SECTION 4: Application Process**

The County PDR Program can process applications in either of the two application categories defined as 4A and 4B. These two categories are based upon whether or not County funds are available for the direct acquisition of Development Rights as well as whether or not a local unit of government has an approved Purchase of Development Rights Ordinance.

Prior to accepting any applications to the County's PDR Program or providing application processing assistance to property owners in local units of government without an approved PDR Ordinance, the County shall submit this Ordinance to each local unit where it intends to purchase Development Rights or provide application processing assistance. The County shall not purchase Development Rights from, or process applications on behalf of, any property owner located in a local unit of government that has failed to take official action approving the County's Purchase Development Rights Program.

#### 4A: No County PDR Acquisition Funds.

In the event no County PDR Acquisition Funds are available and a property owner within a local unit of government without an approved PDR Ordinance wants to obtain federal, state and local PDR Program funds, the County may process the application to said PDR Programs under this ordinance. All applications processed must meet the eligibility requirements and be scored pursuant to Section 5, Part I and Part II, respectively.

Application materials must have the information necessary to meet the eligibility review and scoring process detailed in Section 5. Materials needed to secure the Development Rights on a property must be consistent with the Section 6, Section 7 and Section 11 of this Ordinance. Planning and Environment staff will assist applicants to ensure application packages will satisfy the federal, state, county and local requirements.

Applicants are responsible for all costs related to the purchase of development rights including, but not limited to:

- Appraisals by State Certified Appraisers
- Developing the Agricultural Conservation Easement
- Monitoring and Enforcement of the Agricultural Conservation Easement
- Other services lawfully incurred in relation to the acquisition and management of the development rights

#### 4B: County PDR Acquisition Funds Available.

In the event the County has PDR Funds, applications submitted are subject to all parts of this ordinance and will be processed as follows.

1. In the event that more than one application is submitted to the program, the County Board shall create an Agricultural Lands Preservation Advisory Committee ("ALPAC"). ALPAC shall assist the County Board in determining whether it should purchase the Development Rights on a particular parcel as well as how much the County should pay for those rights; Washtenaw County Department of Planning and Environment shall staff ALPAC.
  - 1.1. To the extent possible, ALPAC members should be County residents and be appointed from the following groups:
    - 1.1.1. Three (3) representatives who are engaged in agricultural production or operate agricultural businesses;
    - 1.1.2. Two (2) representatives from the Planning Advisory Board; One representative from real estate development interests;
    - 1.1.3. One (1) representative from real estate development interests;
    - 1.1.4. One (1) representative of environmental/conservation groups or natural resources professional;
    - 1.1.5. In addition, the County Board shall appoint One County Commissioner who shall participate in ALPAC as a non-voting ex-officio member. If the Board of Commissioners is

unable to fill a specially designated slot on the Committee with an individual from the designated area, it may appoint a general public member to fill that slot.

- 1.2. The terms of ALPAC members and other conditions of the advisory group shall be set by the County Board at the time of creation.
2. The County Board shall begin each Selection Round by giving notice that the County is accepting applications from property owners of farmland and other eligible land to purchase Development Rights. This notice shall run for one consecutive week in a newspaper of general circulation in Washtenaw County. The notice shall describe the properties eligible for purchase in the Selection Round and shall invite the owners of such properties who are interested in selling their Development Rights to the County to send applications expressing such an interest to County Administration. The County shall make application forms available to property owners and will inform property owners where such applications may be obtained.
3. At the close of the Selection Round, County Administration shall forward all applications to County Planning and Environment Staff that shall complete a checklist containing the eligibility requirements listed in Section 5, Part I of this Ordinance for each parcel proposed to be included in the County's PDR program. The completed checklist will provide an initial determination of whether the property qualifies for the County's PDR program. County Planning and Environment staff shall send the completed checklist for each property to the property owner and the local unit of government where the property is located. If a local governmental unit refuses to approve a property owner's application to participate in the County's PDR program for any reason, the County shall reject the application and take no further action in the matter. Planning and Environment staff shall obtain preliminary appraisals for those properties, which comply with the Checklist and have been approved by the local unit.
4. After the local governmental unit approves a property owner's County PDR application, County Administration shall forward the application and the preliminary appraisal to ALPAC.
  - 4.1. ALPAC shall give the County Board an advisory opinion on the following issues
    - 4.1.1. Should the County purchase the Development Rights under review
    - 4.1.2. How much the County should pay for those Rights.
  - 4.2. To that extent, ALPAC shall rank the applications based on the criteria in this Ordinance and determine which properties should receive final appraisals for possible inclusion in the PDR program.
  - 4.3. Upon completing its review, ALPAC shall transmit all applications with its rankings and recommendations to County Administration.
5. Final appraisals shall be completed after ALPAC has ranked the properties and completed its review. County selected State Certified Appraisers shall complete the final appraisal. The selected appraiser shall immediately disclose any conflict of interest he/she might have in appraising the property. The County shall choose an alternate appraiser when the County's initial appraiser discloses a conflict of interest. Final appraisals must be in writing and shall be furnished to the property owner for review. The County or the property owner may point out errors of fact in any appraisal, provided, however, that only the appraiser may correct the appraisal. A property owner who disagrees with the County's appraisal may, within a reasonable time, obtain a second appraisal from a State Certified Appraiser at the owner's expense. The appraisal shall then be filed with County Administration, which will send a copy of the appraisal to ALPAC as soon as it is available.
6. County Administration shall review the recommendations of ALPAC and make a final recommendation to the County Board on whether the Development Rights should be purchased and at what price. County Administration shall give special weight to and notify the County Board of properties whose owners are able to attract matching funds or are willing to accept less than market value. County Administration shall also give special consideration to properties located in local communities that have farmland preservation programs.

7. The County Board at a regularly scheduled or special meeting shall make the final decision on whether to purchase the Development Rights and at what price. The County Board has complete discretion, regardless of property ranking or recommendations by ALPAC, and Administration, to determine whether to purchase the Development Rights and may decide not to buy all or any of the Development Rights on a particular parcel if it finds that it is in the best interest of the PDR Program. The County Board may direct Administration to negotiate for a lower price and/or seek outside funding for the purchase of Development Rights on any parcel under consideration.
8. After agreeing to purchase the Development Rights on a parcel of land, the County Board shall direct the Office of Corporation Counsel to complete an Agricultural Conservation Easement to be signed by the County and the property owner. The Easement shall be drafted so that it may be legally recorded in the County Clerk's office and shall specifically contain a provision indicating that the Easement runs with the land and may not be terminated except as provided in this Ordinance.
9. The County shall notify the appropriate local governmental unit on its decision for each pending Development Rights application.

**SECTION 5: Criteria for Deciding Whether to Purchase the Development Rights from Farmland and Other Eligible Land**

CRITERIA FOR SELECTION: The following criteria shall be used to assist ALPAC in determining the order in which applications will be prioritized in any Selection Round.

This numerical ranking system has been developed to prioritize farmland and other eligible land for purposes of the County's PDR Program. After an initial screening for eligibility through Part I of the ranking system, properties will be evaluated using this system. It is the intention of the users of this system to direct efforts toward high quality farmland and other eligible land in areas of the County.

Appropriateness is determined by favorable natural conditions and location factors that make agricultural uses a viable undertaking both currently and in the future. Areas targeted for preservation are those lands shown in Township Master Plans as being zoned for agricultural use as adopted and amended from time to time by the respective Township Planning Commissions.

DESCRIPTION OF THE SYSTEM: The farmland ranking system consists of six parts. Part I contains eligibility requirements that will be used in the checklist referenced in Section 4. Parts II, III, IV, V, and VI address topics that ALPAC will use to rank the properties. Points are only awarded for Parts II, III, IV, V and VI. The maximum point value is 100.

PART	TOTAL POINTS (100 PTS)
I – Eligibility	-----
II – Characteristics of Farmland	35
III – Potential for Development Pressure	25
IV – Leveraged Properties	25
V – Programs/Partnerships	10
VI – Open Space Value	5

PRIORITIES: The point value arrived at will be used to prioritize farmland and other eligible land for purchase of Development Rights. Higher point values indicate higher priority for purchase. All property in a single ownership may be included in one application.

**PART I: ELIGIBILITY**

County Staff reviews the following screening factors to determine eligibility and forwards their findings to the Agricultural Lands Preservation Advisory Committee (ALPAC).

**A. Local Unit of Government's Approval of the County Purchase of Development Rights Program**

*Has the Local Unit of Government taken official action to participate in the County's PDR Program through adoption of a resolution or adoption of County ordinance?*

If yes, then proceed to Criteria B.

If no, then reject application.

**B. Development Rights Already Purchased and/or Conservation Easements Placed on the Property**

*Has the Development Rights on the nominated parcel been purchased in perpetuity by the State and/or has a conservation easement been placed on the nominated parcel?*

If yes, then reject application.

If no, then proceed to Criteria C.

**C. Permitted use According to Local Zoning**

*Is agriculture a permitted use according to the zoning designation for the nominated parcel?*

*Or if the nominated parcel is considered "other eligible land" as defined in this ordinance, is the current or proposed use of the nominated parcel a permitted use according to the local government's zoning ordinance?*

If yes, then proceed to Criteria D of Part I.

If no, then recommend rejection of application.

**D. Current Land Use of Nominated Property**

*Is the current primary land use of the nominated parcel agricultural as defined in this ordinance or is the nominated parcel considered "other eligible land" as defined in this ordinance?*

If yes, then proceed to Criteria E of Part I.

If no, then recommend rejection of application.

**E. Local Government's Master Plan**

*Is the nominated parcel located in an area designated as Agriculture or other eligible land according to the most recently adopted local government's master land use plan?*

If yes, then proceed to Criteria F of Part I

If no, then recommend rejection of application.

**F. Washtenaw County Land Use Policies**

*Is purchase of development rights on the nominated parcel consistent with Washtenaw County Land Use Policies?*

If yes, then proceed to Criteria G of Part I.

If no, then recommend rejection of application

**G. Contamination on the Site**

*Is the site free of any known environmental contamination?*

If yes, then proceed to Part II.

If no, then recommend rejection of application.

**II. CHARACTERISTICS OF FARMLAND**

**A. Quality of Soils**

<i>Soils Classifications on Property</i>	<i>Score</i>
75% or more Class I, II	10
50 – 74% Class I, II	8
50% or more Class I, II, III	6
Less than 50% Class I, II, III	0

**B. Size of Parcel Offered for Development Rights Purchase**

<i>Acreage</i>	<i>Score</i>
80 acres or more	10
20 acres to 79 acres	7
5 acres to 19 acres	3

**C. Farmland in Agricultural Use**

<i>Percent of Property in Agricultural Use</i>	<i>Score</i>
90% & Up	10
76% to 90%	8
61% to 75%	6
51% to 60%	4

**D. Scenic, Historical or Architectural Features**

<i>Features</i>	<i>Score</i>
Farm site provides a vista (a broadly sweeping view visible from a roadway, including but not limited to variety of vegetation types such as woodlands and farm fields and may have topographic variations), unique historical or architectural features, including architecturally significant barn(s) or has been designated as a centennial farm	5

Farm site provides an accent (attractive view but narrower in scope and weaker in impact than a vista) 3

No contribution or not significantly visible 0

*\*Architecturally significant barns viewed during scoring may or may not be permanently protected within an Agricultural Conservation Easement*

### **III. POTENTIAL FOR DEVELOPMENT PRESSURE**

#### **A. Adjacent Land Use**

<i>Percent of Perimeter in Agricultural Use</i>	<i>Score</i>
75-100%	6
50-74%	4
25-49%	2
Less than 25%	0

## B. Adjacent Land Use Designation

<i>Percent of Perimeter designated as Agricultural Land Use/ Zoning</i>	<i>Score</i>
75-100%	6
50-74%	4
25-49%	2
Less than 25%	0

## C. Amount of Road Frontage

<i>Frontage</i>	<i>Score</i>
1,000 or more feet	6
500 to 999 feet	3
100 to 499 feet	1
0 to 100 feet	0

## D. Proximity to Existing and Proposed Public Sanitary Sewer/Water Service Area

Proposed public service areas include areas depicted on the local government master plans for uses that will require central services (e.g. activity centers, mixed use districts and residential uses greater than two dwelling units per acre.) These areas do not include small systems designed to serve only one development such as manufactured housing developments, lake systems or other areas not capable of expansion.

<i>Proximity</i>	<i>Score</i>
2 miles or more away ( <i>Long-term agricultural use viable, Minimal development pressure</i> )	4
1/2 mile or more, but less than to 2 miles ( <i>Long-term agricultural use viable, Most development pressure</i> )	7
Less than 1/2 mile away ( <i>Adjacent uses impact long-term viability of agricultural use</i> )	0

## IV. LEVERAGED PROPERTIES

### A. Farmland in which matching funds from other sources accompany application

<i>Percentage of funding from other sources</i>	<i>Score</i>
75% & up	15
50% to 74%	12
25% to 49%	9
>0% to 24%	6

### B. Applicant's willingness to accept a percentage of the appraised value of the development rights on the property

<i>Percent of appraised value accepted</i>	<i>Score</i>
Less than 40% of appraised value	10

40% to 59% of appraised value	8
60% to 75% of appraised value	6
76% to 90 % of appraised value	4
Greater than 90% of appraised value	0

**V. PROGRAMS/PARTNERSHIPS**

**A. Local Zoning Techniques and Other Preservation Programs**

*The local government uses zoning techniques and other preservation programs which are supportive of farmland preservation (local PDR program, local TDR program, cluster zoning, sliding scale zoning, voluntary) agricultural security areas, Planned Unit Development, etc)*

	Score
3 or more zoning techniques and preservation programs	4
2 zoning techniques and preservation programs	3
1 zoning technique and preservation programs	2
No zoning techniques or preservation programs that support farmland preservation	0

**B. P.A. 116 Participation**

<i>Property enrolled in PA 116</i>	Score
Applicant property enrolled in PA 116	3

**C. Conservation Plan**

<i>Extent of Conservation Plan</i>	Score
USDA Natural Resource Conservation Service (NRCS) conservation plan implemented	3
Conservations practices used on property (documented) 2	
Limited or no conservation practices used	0

**VI. OPEN SPACE VALUE**

**A. Proximity to Existing Private and/or Public Protected Land**

(e.g. agricultural conservation easements, federal/state/local parks, game areas, forests, recreational areas or any other public land protected from development in perpetuity)

<i>Proximity</i>	Score
Directly adjacent	5
Not adjacent, but within 1 mile	3
Not adjacent and not within 1 mile	0

**SECTION 6: Agricultural Conservation Easement Provisions**

Once the County and the property owner agree on the sale of Development Rights for a parcel of land, they shall execute an Agricultural Conservation Easement, which, at a minimum, shall contain the following provisions:

1. Purpose of the easement.
2. A granting clause deeding the Development Rights from the property owner to the County and its other contributing partners.
3. A clause restricting the use of the land to specific agricultural activities and the permitted uses allowed on the property.
4. A clause that addresses the construction of buildings and residential structures on the property.
5. The Rights of Washtenaw County and its contributing partners.
6. An enforcement clause acknowledging that the breach of the easement by the property owners or his/her successors will result in irreparable harm to the County which cannot be measured thus giving the County the right to obtain an injunction to stop the breach.
7. A clause indicating that the easement runs with the land and is binding on the property owner's successors in interest.
8. Remedies to Washtenaw County, including enforcement and monitoring.
9. Notice to undertake permitted actions.
10. Ownership costs and liabilities.
11. Amendment provisions. (Amendment provisions shall be restrictive rather than permissive.)
12. Option language giving the County a 60-day option to purchase the remainder of the property interest should the property owner or his/her successors in interest attempt to repurchase the development rights.

#### **SECTION 7: Duration of Acquired Interests/Repurchase of Development Rights**

1. Development Rights acquired pursuant to this Ordinance shall run with the land and be held by the County in perpetuity, provided, however, that a property owner who has sold Development Rights to the County may repurchase those Rights upon the following conditions:
  - 1.1. Fifty (50) years have passed since the Development Rights were sold; and
  - 1.2. The County Board, upon receiving a recommendation from Administration and ALPAC, determines that the property may not be reasonably used for Agricultural Use. A recommendation will be based on the following factors:
    - 1.2.1. That, because of the quality of the farmland, agricultural production cannot be made economically viable with generally accepted agricultural and management practices
    - 1.2.2. That surrounding conditions impose physical obstacles to the agricultural operation or prohibit essential agricultural practices
    - 1.2.3. That significant natural physical changes in the farmland have occurred that are generally irreversible and permanently limit the productivity of the farmland
    - 1.2.4. That a court order restricts the use of the farmland so that agricultural production cannot be made economically viable
  - 1.3. The local unit where the property is located agrees that the property is no longer suitable for agricultural purposes and thus consents to the repurchase;
  - 1.4. The repurchase of the development rights is consistent with the purpose of the County's PDR program as determined by the County Board; and
  - 1.5. The County chooses not to exercise its 60-day option to purchase the remainder of the property interests in the parcel.

2. Once the County Board determines that a property is eligible to have its Development Rights repurchased, the owner shall pay the fair market value of those rights at the time of their return, as determined by a State Certified Appraiser. The property owner may not challenge this appraisal. If the Appraiser has a conflict of interest associated with a potential appraisal, he/she shall report the conflict to the County and the County shall select another Appraiser to complete the appraisal. The County will deposit the proceeds from any repurchases into a separate fund that shall be used to purchase additional Development Rights or for other agriculture land preservation means available within the County.
3. A repayment received shall be allocated to all original contributing fund partners in the same proportion as the proportion for the original purchase of the development rights of the parcel.

### **SECTION 8: Related Costs**

The costs of appraisal, engineering, surveying, planning, financial, legal, environmental assessments and other services lawfully incurred in relation to the purchase of Development Rights shall be paid by the County or any of its contributing partners. Payment of these costs shall be negotiated between contributing partners. The County will engage in the payment of such costs only if PDR Funds are available. The County shall not be responsible for any expenses incurred by the Owner incident to this transaction.

### **SECTION 9: Supplemental Funds**

Supplemental or matching funds from other Governmental Agencies or private sources may become available to pay a portion of the cost of acquiring Development Rights or to supplement or enlarge such acquisitions. The County Board authorizes such funds to be used to purchase Development Rights in farmland or other eligible land.

### **SECTION 10: Development Rights Acquisition Fund**

Available funding for the County PDR program shall be deposited in a special fund ("Acquisition Fund"). Money in such Acquisition Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of County money.

The revenues from the deposit and/or investment of the Acquisition Fund shall be applied and used solely for the purchase of Development Rights under this Ordinance or promoting farmland preservation means within the County.

### **SECTION 11: Agricultural Conservation Easement Monitoring and Enforcement**

#### 11A -- Agricultural Conservation Easements secured with state funds

1. Should an Agricultural Conservation Easement be secured with state funds the monitoring and enforcement procedures will be consist with state rules and guidelines.

#### 11B -- Agricultural Conservation Easements secured without state funds

1. Washtenaw County or any of its contributing partners on a specific purchase of development rights project may assume the responsibility of monitoring and enforcement of an Agricultural Conservation

Easement, so long as said party is deemed to be legal and capable of assuming this responsibility. The party responsible for the monitoring and enforcement will be identified as such within the Agricultural Conservation Easement.

2. In order to provide for monitoring of the easement a baseline report shall be developed by Washtenaw County or the party responsible for monitoring and enforcement of the agricultural conservation easement documenting the condition of the land and structures on the easement site. The baseline report shall contain the following minimum components:
  - 2.1. General description and location of the property
  - 2.2. A copy of any and all assessments used in obtaining the Agricultural Conservation Easement
  - 2.3. Description of physical environment (topography, soils, vegetation, human made structures, zoning, adjacent land uses, etc.)
  - 2.4. A photograph, aerial photos and maps of the parcel and vicinity
3. Once a year, Washtenaw County or the party responsible for monitoring and enforcement of the Agricultural Conservation Easement shall conduct a monitoring inspection. This monitoring inspection shall be conducted in the following manner:
  - 3.1. A written notice of the monitoring inspection will be mailed by certified mail to the owner prior to the visit. Efforts should be made prior to mailing the notice by Washtenaw County or the party responsible for monitoring and enforcement to coordinate this inspection with the landowner.
  - 3.2. The inspection should be conducted at time agreeable by all involved parties.
  - 3.3. A written report of the monitoring inspection will be prepared. The report should embody the following information:
    - 3.3.1. Name and address of the property owner
    - 3.3.2. A general description of the property.
    - 3.3.3. A description of modifications to the number, type, location or use of any structures on the land and/or use of the land, since the date of the filing of the agricultural conservation easement.
    - 3.3.4. A statement of whether the provisions of the agricultural conservation easement have been observed.
    - 3.3.5. A copy of the final report shall be sent to the landowner and legal parties of the Agricultural Conservation Easement.

## **SECTION 12: Development Rights Enforcement Fund**

The County Board shall establish a special fund ("Enforcement Fund") from the funding available for the PDR program to be used for enforcement expenses, including initial follow-up with the landowner, review and inspection of remedial measures and legal, engineering and other professional services. Money in the Enforcement Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of County money.

The revenues from the deposit and/or investment of the Enforcement Fund shall be applied and used solely to enforce the County's rights under this Ordinance.

## **SECTION 13: Severability**

Any provision of this Ordinance which is found by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision contained in the Ordinance and such other provisions shall remain in full force and effect.

## **SECTION 14: Amendments**

This Ordinance may only be amended by a majority vote of the County Board members elected and serving.