Ottawa County Farmland Development Rights Ordinance

Ordinance No: 24-1
As Amended November 12, 2024

AN ORDINANCE creating the Ottawa County Farmland Preservation Program which protects farmland by acquiring development rights voluntarily offered by landowners. This Ordinance authorizes the cash purchase and/or installment purchases of such development rights through sources other than the County General Fund, places an agricultural conservation easement on the property which restricts future development, and provides the standards and procedures for the purchase of development rights and the placement of an agricultural conservation easement.

THE PEOPLE OF THE COUNTY OF OTTAWA, MICHIGAN, DO ORDAIN:

Section 1: Declaration of Purpose

A. Economic importance of farmland and agriculture.

Ottawa County's agricultural land is a unique and economically important resource. These lands support a locally important and globally unique agricultural industry that includes; dairy, livestock, food from grains, vegetables, fruit, and nursery and greenhouse crops. Ottawa County's climate, topography, and accessibility make it uniquely suited to the production, processing, and distribution of agricultural products on a regional, national, and international level. Ottawa County's economic base is also supported by a variety of agriculturally related businesses including farm equipment, fuel, veterinarians, grain dealers, packaging plants, and professional services.

B. Importance of other non-agricultural attributes of farmland.

In addition to its economic benefits, the County's farmland contributes significantly to the open space and natural resource benefits, including rural character, scenic beauty, cultural heritage, hunting and other recreational opportunities, and the environmental benefits including watershed protection and wildlife habitat. By enhancing the scenic beauty and rural character of the county and providing other open space benefits, the county's farmland increases the overall quality of life and makes the county an attractive place to live and work for all of the county's residents.

C. The extent of development and farmland loss.

Among other factors, Ottawa County's natural resources, productive farmland and rural character have made it become a desirable place to live and work. Ottawa County's population growth has continued to increase dramatically. As the population increases and people move into the countryside, land is converted to non-agricultural uses.

D. The Impact of farmland loss.

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 the County. Residential development in agricultural areas also makes farming more difficult by increasing conflict over farming practices and increased trespass, liability exposure and property damage. Because agricultural land is an invaluable economic, natural and aesthetic resource, the county

should make an effort to maintain certain agricultural land in a substantially undeveloped state to ensure the long-term viability of agriculture and to create a long-term business environment for agriculture in the County.

E. State and local policies.
It is the policy of the State of Michigan and Ottawa County to protect, preserve and enhance farmland as evidenced by Township Master Plans, the Farmland and Open Space Preservation Act, the State Agricultural Preservation Fund, the Conservation and Historic Preservation Easement Act, portions of the County Zoning Act, and other state and local statutes and policies. These measures by themselves, however, have not effectively provided sufficient long-term protection of farmland in Ottawa County from the pressure of increasing residential and commercial development.

F. Value of development rights.
Generally, farmland has a greater market value for future residential development than the market for farming. The features of good farmland, such as perkable soils and open space views, are also the features desired for residential home sites. This fact encourages the speculative purchase of farmland at high prices for future residential development, regardless of the current zoning of such lands. Farmland which has a greater development potential and market value than its agricultural value does not attract sustained agricultural investment and eventually is sold to non-farmers and removed from agricultural use.

G. Purpose of the program.
It is the purpose of the Ottawa County Farmland Preservation Program and this development rights ordinance to protect farmland in order to maintain a long-term business environment for agriculture in the county, to preserve the rural character and scenic attributes of the county, to enhance important environmental benefits and to maintain the quality of life of county residents.

H. Mechanism to achieve purpose.
The purchase of development rights and the placement of an agricultural conservation easement on farmland through the Ottawa County Farmland Preservation Program as provided for in this Ordinance is a public purpose of Ottawa County. Acquisition of development rights requires that the County enter into agreements with property owners to obtain such development rights. Properties on which the County has purchased development rights and entered into an agricultural conservation easement shall remain substantially undeveloped in order to remain viable for agricultural use.

I. *Intent of Ordinance*.
The intent of this ordinance is to provide a mechanism for farmland preservation. It is not the intent of this ordinance to provide or commit County General Funds for this program. The funding of activities under this ordinance will remain the prerogative of future County Boards of Commissioners. The actual number of acres for which development rights will be purchased will also remain the prerogative of future County Boards of Commissioners.

Section 2: Definitions

A. “Agricultural conservation easement” means a conveyance by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

B. “Agricultural use” means substantially undeveloped land 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.

C. “Development” means an activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with an agricultural use.

D. “Development rights” means an interest in land that includes the right to construct a building or structure, to improve land for development, to divide a parcel for development purposes or to extract minerals incidental to a permitted use or as set forth in an agricultural conservation easement.

E. “Farmland” means 1 or more of the following:

(i) A farm of 40 or more acres in one ownership, with 51% or more of the land area devoted to an agricultural use.

(ii) A farm of five acres or more in one 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.

(iii) A farm designated by the Department of Agriculture as a specialty farm, in one 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.

(iv) Parcels of land described above do not have to be contiguous but must constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland.

F. “Intensity of development” means the height, bulk, area, density, setback, use, and other similar characteristics of development.

G. “Parcel” means a quantity of land in the possession of a single owner.

H. “Permitted use” means any use expressly authorized within an agricultural conservation easement consistent with the farming operation or that does not adversely affect the productivity or agricultural use of the land. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least three of the immediately preceding five years. Permitted use includes oil and gas exploration and extraction, but does not include other mineral development that is inconsistent with an agricultural use.

I. “Property owner” means the party or parties having a freehold estate or fee simple interest in land.

J. “PDR program” means a program as defined in the County Zoning Act for the Purchase of Development Rights by a county.

Section 3: Authorization

A. Pursuant to the Zoning and Enabling Act, the County Board of Commissioners is authorized to purchase the development rights of farmland throughout the County. Such acquisition may be by purchase, gift, grant, bequest, devise, covenant or contract. The County shall only purchase development rights with contributions originating from sources other than the County General Fund, and on farmland that is voluntarily offered for sale by a property owner.

B. The County is authorized to enter into installment purchase contracts, options, and agreements or take receipt of tax-deductible donations of easements, consistent with applicable law. 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 purchase contract.

C. The County may contract with recognized and legally established nonprofit land trusts or other experienced and qualified individuals, parties or entities that would assist the County in the process of reviewing and processing grants, negotiating easements and purchase contracts, purchasing development rights, establishing baseline studies and procedures for monitoring, actual monitoring of any agricultural conservation easements acquired under this Ordinance**,** and enforcement of the conservation easement agreement. Payment for said contracts will be from contributions from sources other than those originating from the County General Fund.

D. The County is authorized to seek grants from Federal and State government and private foundations, organizations and individuals for funding for expenditures incurred in carrying out this ordinance.

Section 4: County Agricultural Preservation Board

A. The County Board of Commissioners shall create a seven member body under this Ordinance to be named the County Agricultural Preservation Board. The seven voting members shall be residents of the county and will be appointed by the County Board of Commissioners and will include:

(a) one County Commissioner

(b) three individuals with agricultural interests

(c) one representative from township government

(d) one individual with real estate or development interests

(e) one individual representing local conservation interests.

B. Members of the County Agricultural Preservation Board shall serve three-year terms, with the exception that the County Commissioner representative shall be designated on an annual basis. The initial term shall be staggered so that one of the agricultural representatives and the real estate representative serve an initial one-year term, another agricultural representative and the local township representative serve an initial two-year term and the third agricultural representative and the local conservation representative serve an initial three-year term. Members may be re-appointed to successive three-year terms by the County Board of Commissioners. The County Board of Commissioners shall have the discretion to remove members for inefficiency, neglect of duty or malfeasance in office. Vacancies due to removal or resignation shall be filled for the remainder of a term by appointment by the County Board of Commissioners. Members shall not be compensated for their services. Further, members must comply with the Ottawa County Attendance Policy.

C. The County Agricultural Preservation Board shall oversee the County's Purchase of Development Rights Program and shall be responsible for:

(i) Establishing selection criteria for the ranking and prioritization of applications. The selection criteria must be approved by the County Board of Commissioners prior to each application cycle.

(ii) Reviewing and providing oversight in scoring all applications according to the adopted selection criteria.

(iii) Ranking and prioritizing the top scoring applications for acquisition and making recommendations to the County Board of Commissioners for the purchase of development rights.

(iv) Approving the restrictions and permitted uses under the agricultural conservation easement.

(v) Establishing the price to be offered to the property owner and authorize negotiations for the purchase of development rights and agricultural conservation easement. All purchases of development rights and agricultural conservation easements must be approved by the County Board of Commissioners.

(vi) Establishing monitoring procedures and overseeing subsequent monitoring to insure compliance with the agricultural conservation easement. Enforcement of the agricultural

conservation easement in the case of non-compliance shall be the responsibility of the County Board of Commissioners or an agency that the Board of Commissioners contracts with (utilizing funds other than those originating from the County General Fund) to enforce the program.

D. Individual County Agricultural Preservation Board members shall not sell development rights to farmland under the Ordinance during their term in office. Agricultural Preservation Board members shall disclose any potential conflict of interest and may not vote when a conflict exists. Conflicts of interest include, but are not confined to, situations where:

(1) the member is a close relative of the applicant

(2) the board member has a close business association or ties with the applicant

(3) the board member, a relative, or a business associate could receive financial gain or benefit from the acceptance of the application.

E. The County shall contract with qualified and experienced individuals or entities to administer, oversee, and execute the Ottawa County PDR Program. Contracted services will be funded through fees assessed to the landowner or local unit of government as outlined in section 11.

F. The County Agricultural Preservation Board shall provide the County Board of Commissioners with an annual report outlining the administration of the program, issues addressed and outcomes of the program for the preceding year, including the selection criteria, number of applications, number of eligible properties, agricultural value, development rights purchased, and other information regarding the status and activities undertaken with respect to this ordinance.

Section 5: Eligibility for Application

Any property owner may submit an application to the county farmland preservation program provided the application meets the following requirements:

A. The property owner has signed the application, indicating interest in voluntarily selling the development rights to the parcel.

B. At least 51% of the parcel's area is devoted to an active agricultural use and no more than 49% of the parcel may be devoted to non-agricultural open space consisting of wetlands, woodlands, or otherwise unusable land.

C. The property is not planned for commercial or industrial uses under the township, city or village master plan.

D. Agricultural activities are a permitted use on the parcel under all applicable zoning ordinances.

Further, the County shall not purchase development rights under a development rights ordinance from land subject to a township**,** city, or village zoning ordinance unless all of the following requirements are met:

A. The development rights ordinance provisions for the PDR program are consistent with the plan upon which the township, city, or village zoning are based.

B. The legislative body of the township, city, or village adopts a resolution authorizing participation in the PDR Program.

C. The city, village or township provides the county with written approval to purchase the development rights through the County PDR Program.

Section 6: Criteria for Reviewing and Ranking Applications
The County Agricultural Preservation Board shall establish selection criteria for ranking and prioritizing all eligible parcels submitted to the County Farmland Preservation Program which criteria shall be subject to the approval of the County Board of Commissioners.

A. The selection criteria shall place an emphasis on farmland that:

i. As part of the application procedure for the specific proposed purchase of development rights, the city, village, or township provides the county with written approval to purchase the development rights through the County PDR Program.

ii. Has a productive capacity suited for feed, food, fiber, and fuel and has a greater potential for long-term agricultural production. Specific selection criteria may be based on soil classifications, parcel size, agricultural income, enrollment in the Farmland and Open Space Preservation Act, or the implementation of a soil conservation plan.

iii. Is under the threat of development. Specific selection criteria may be based on proximity to public sanitary sewer or water, the extent of development activity in the township or the amount of road frontage.

iv. Complements other farmland protection efforts in the County. Specific selection criteria may include proximity to other permanently protected farmland, proximity to other protected lands or surrounding land enrolled in the State Farmland and Open Space Preservation Act, or inclusion in an agricultural zoning district.

Selection criteria shall also include the following:

A. Availability of additional matching funds provided by a local unit of government, landowner or private sources.

B. Other factors considered important by the County Agricultural Preservation Board such as unique physical, historical or environmental characteristics.

Section 7: Application and Selection Process

A. The County shall on an annual basis, at the discretion of the County Agricultural Preservation Board, conduct a voluntary application and selection process for property owners who wish to sell development rights under the County Farmland Preservation Program.

B. The County Agricultural Preservation Board shall begin each application cycle by giving reasonable public notice of the deadline for the receipt of applications to the County Farmland Preservation Program. Notification may include publication in a newspaper of general circulation within the County, through the County Farm Bureau, County Conservation District, County MSU-Extension Service, local township offices, and other organizations.

C. All applications represent the applicant's intent to sell the development rights of the property to the County subject to mutually acceptable terms. The application will remain active per annual written approval of landowner, provided there are no subsequent modifications to the scoring criteria or application that requires additional information. Local cities, villages, and townships will be asked to sign a letter of continued support for standing landowner applications and all applications, both new and old, will be scored and ranked for each cycle.

D. The County Agricultural Preservation Board shall give notice to each city, village, or township in which an applicant for the purchase of development rights has been received, and the disposition of that application.

E. At the close of the application deadline, an initial determination of eligibility shall be completed by the County Agricultural Preservation Board or individuals or entities which have contracted with the County to perform those services. The property owner shall be notified if their application is not eligible for the program. Each application shall be evaluated and scored according to selection criteria approved by the County Agricultural Preservation Board and the County Board of Commissioners prior to the application cycle.

F. The County Agricultural Preservation Board shall rank parcels according to the selection criteria score but shall also individually evaluate and prioritize the top scoring parcels. The County Agricultural Preservation Board may reprioritize the top scoring parcels based on individual review of each application and establishing a priority on which development rights should be purchased first based on available funds. The written rationale for reprioritization of the top scoring parcels shall be included with each application.

G. The final ranking and prioritization of applications shall be submitted to the County Board of Commissioners for their approval.

H. Agricultural value shall be based upon a price established by the County Agricultural Preservation Board using a state certified appraiser.

I. Upon mutual agreement to the terms of the purchase by the property owner and the County Agricultural Preservation Board, but before the approval of the County Board of Commissioners, a title search shall be completed before signing and recording of the agricultural conservation easement. Any questions or concerns regarding clear title to the property shall be resolved prior to signing of the agricultural conservation easement. All individuals, parties or entities with an

interest in the property must be willing to agree to the terms and provisions of the agricultural conservation easement.

J. Each purchase of development rights and agricultural conservation easement requires the approval of the County Board of Commissioners. The County Board of Commissioners may alter the recommendation by the County Agricultural Preservation Board to purchase the development rights at its discretion.

K. Once the application has been approved for purchase by the County Board of Commissioners, the County and the property owners shall sign the agricultural conservation easement and it shall be legally recorded with the County Clerk's office.

L. The County shall notify the appropriate local unit of government of each agricultural conservation easement.

M. The agricultural conservation easement will be monitored in accordance with procedures and guidelines established by the County Agricultural Preservation Board.

Section 8: Agricultural Conservation Easement Provisions

A. Upon the agreement of the sale of development rights by the County Agricultural Preservation Board, the property owner and the County Board of Commissioners, the County and the property owner shall execute an agricultural conservation easement, approved by the County Agricultural Preservation Board and the County Board of Commissioners, that will perpetually protect the parcel's agricultural use by preventing any use that would significantly impair or interfere with the agricultural value or use of the farmland. The agricultural conservation easement shall contain a provision indicating that the easement runs with the land and may not be terminated except as provided for in this Ordinance and the easement.

B. Restrictions on that portion of the property included in the agricultural conservation easement shall include, but not be limited to, the following:

(i) Property shall not be divided into parcels less than 40 acres in size.

(ii) The construction of residences for new owners of any divisions shall be prohibited.

(iii) Construction of any other buildings, unless they are built for uses consistent with farming operations shall be prohibited.

(iv) Commercial or industrial activity that is inconsistent with a typical farming operation shall be prohibited.

(v) Excavation of topsoil, sand, gravel, rock, minerals or other materials that significantly impairs or interferes with the agricultural values of the property shall not take place without prior written approval of the County Board of Commissioners or its designee.

C. Permitted uses and retained development rights in the agricultural conservation easement shall include, but not be limited to, the following:

(i) Construction of buildings necessary for and consistent with agricultural uses.

(ii) The right to construct one additional residence for an individual essential to the farm operation as defined in section 36110(5) of the Natural Resources and Environmental Protection Act, MCL 324.36110(5); MSA 13A.36110(5). Structure built must be in conformance with all applicable federal, state and local laws, ordinances and regulations.

(iii) The right to maintain, renovate, add on to, or replace existing structures. Structure built must be in conformance with all applicable federal, state, and local laws, ordinances and regulations.

(iv) The right to sell, mortgage, bequeath or donate the property, provided any conveyance will remain subject to terms of the easement.

Section 9: Duration of the Agricultural Conservation Easement

A. The agricultural conservation easement shall run with the land regardless of transfers in property ownership. It is the intent of this ordinance to preserve valuable farmland through the establishment of permanent conservation easements. Development rights acquired pursuant to this Ordinance shall be held by the County in perpetuity and the development rights may be repurchased by the landowner only when a court of competent jurisdiction has determined through eminent domain that the use of those development rights is necessary for a specific public interest, need or purpose.

B. Upon a court's determination of eminent domain and that the purchase of the development rights from the County is necessary for a specific public interest, need or purpose, the parties exercising the use of the development rights through eminent domain or the landowner shall pay the fair market value of those development rights at the time of their purchase to the County, as determined by a State Certified Appraiser, before the termination of the agricultural conservation easement. The value of the development rights shall be determined as the difference between the fair market value of the property with all development rights intact and the value of the property for agricultural use with an agricultural conservation easement in place or the value of the developments. If the appraiser has a conflict of interest associated with a potential appraisal, the appraiser shall report the conflict to the County and the County shall select another appraiser to complete the appraisal.

C. The County will deposit the proceeds from any repurchases into the farmland preservation fund and the proceeds shall be used to reimburse the County for the expense associated with selling the development rights under eminent domain. Remaining funds shall be used to purchase additional development rights and agricultural conservation easements on additional farmland within the county.

Section 10: Determining the Value of the Agricultural Conservation Easement

A. The County Agricultural Preservation Board shall utilize a state certified appraiser to determine the value of the development rights utilizing funds not originating from the County General Fund, prior to each application cycle. The appraisal may calculate the value of the development rights as the difference between the fair market value of the property with all

development rights intact and the value of the property for agricultural use with an agricultural conservation easement in place.

B. The property owner may obtain, within a reasonable time frame, an independent appraisal of the development rights from a state certified appraiser at the property owner's expense. The appraisal may calculate the value of the development rights as the difference between the fair market value of the property with all development rights intact and the value of the property for agricultural use with an agricultural conservation easement in place.

C. The County Agricultural Preservation Board shall approve the price to be offered and paid for the agricultural conservation easement. If the property owner obtains an independent appraisal, the County Agricultural Preservation Board may elect to renegotiate the initial offer based on qualified circumstances.

D. The property owner may be paid a cash payment or offered an installment purchase contract, or a combination of both. Payment will be made through contributions from sources other than those originating from the County General Fund.

Section 11: Related Costs

The cost to administer, oversee, and execute the PDR Program will be paid for through the following fees: Application Fee, Application Ranking Fee, Grant Processing Fee, and Development Rights Acquisition Fee. The fees shall be paid by the landowner or the township, city, or village in which the property is located. Other technical expenses, such as, but not limited to, title searches, appraisals, and surveying shall also be paid for by the landowner or the township, village, or city in which the property is located. These costs are separate from the administrative and processing fees. The County, at its discretion, may use the Farmland Preservation Fund to help offset the cost of fees or technical expenses if such funding is available.

Section 12: Farmland Preservation Fund

A. Available funding for the County farmland preservation program shall be deposited in a special farmland preservation fund. Money in such farmland preservation 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 farmland preservation fund shall be applied and used solely for the purpose of purchasing of development rights and agricultural conservation easements under this Ordinance, making payments obligated under installment purchase contracts, promoting farmland preservation programs, or paying for costs of administering, monitoring, and enforcing the county farmland preservation program. Ottawa County is not liable for any cost that might exceed the available funds in the Farmland Preservation Fund.

B. Supplemental or matching funds from private sources or other governmental agencies, including local municipalities, the State or Federal government, may become available to pay a portion of the cost of acquiring development rights or agricultural conservation easements or to supplement or enlarge such acquisitions. The County Board of Commissioners authorizes the County Agricultural Preservation Board to use such funds to purchase development rights of farmland and acquire agricultural conservation easements.

C. The County, upon approval by the County Board of Commissioners, may finance the County Farmland Preservation Program through one or more of the following sources:

(i) Proceeds from the sale of development rights by the County under Section 9.

(ii) Grants

(iii) Donations

(iv) Special assessments as permitted by law

(v) Other sources approved by the County Board of Commissioners and permitted by law

(vi) Fees as outlined in section 11

Section 13: Amendments
This Ordinance may be amended at the discretion of the County Board of Commissioners by majority vote.

Section 14: 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 15: Effective Date
This ordinance shall become effective on the date upon which notice of its adoption is published in a newspaper of general circulation in Ottawa County.

YEAS: Commissioners Bergman, Zylstra, Bonnema, Miedema, Curran, Kleinjans, Belknap, Rhodea, Moss

NAYS: Commissioners Cosby and Wenzel

ABSTENTIONS: None

John Teeples, Chairperson
Ottawa County Board of Commissioners

Justin Roebuck
Ottawa County Clerk/Register

STATE OF MICHIGAN
COUNTY OF OTTAWA

Subscribed and sworn to before me, a Notary Public, this 17 day of February, 2025,

by Jessica L. Kass.

Jessica L. Kass
Notary Public, State of Michigan
County of Ottawa
My Commission Expires 04/04/2027
Acting in the County of Ottawa

Notary Public
Ottawa County, Michigan
Acting in Ottawa County, Michigan
My Commission Expires: 4/4/2027