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TO: Al Robinson, Chair
Ways & Means Committee

THROUGH: Robert E. Guenzel
County Administrator

FROM: Curtis N. Hedger
Office of Corporation Counsel

DATE: August 2, 2000

SUBJECT: Amendment of Open Space Ordinance Passed by the Board of
Commissioners in June 1998

Board Action Requested

County Administration is requesting that the Washtenaw County Board of Commissioners amend the Open Space Ordinance passed by the Board in June 1998 to add substantive changes.

Background

At its June 17, 1998 meeting, the Board of Commissioners adopted an Open Space Ordinance. This Ordinance was passed in anticipation of the passage of a millage proposal on the November 1998 ballot to fund a comprehensive land preservation strategy, including the preservation of open space within the County. The ballot proposal failed and the land preservation strategy was never implemented.

Discussion

The proposed comprehensive land preservation strategy put forth in 1998 included a Purchase of Development Rights program and urban renewal in addition to the preservation of open spaces within the County. The ballot proposal calling for a millage to fund this comprehensive land preservation strategy failed. In June 1998, the Board of Commissioners adopted an Open Space Ordinance that provided a framework of how open spaces could be purchased by the County should the millage pass. Under this Ordinance, the Board of Commissioners ultimately determined whether to purchase a particular parcel of open space property. The County's Planning Commission and Parks and Recreation Commission, along with a specialized review group created under the Ordinance, (Open Space Technical Advisory Committee or "OSTAC") reviewed the property under consideration and gave recommendations on the proposed purchased which were directed to the Board of Commissioners through Administration. The Board of Commissioners is now considering whether to approve a ballot proposal for the November 2000 general election calling for a 0.25 millage increase to fund the purchase

of natural areas within the County. This is a streamlined proposal which only deals with the purchase of natural areas within the County and does not address the other land preservation tools of the comprehensive land preservation strategy put forth for the 1998 general election. In connection with the pending ballot proposal, it has been proposed that the County's Open Space Ordinance passed in June 1998 be amended to reflect the most recent thinking on how such areas should be purchased by the County. First the words, "open space" are changed to "natural areas." This phrase more accurately describes the types of lands to be purchased should the fall millage proposal pass. (The change in language from "open space" to "natural areas" necessarily changes the acronym OSTAC to NATAC—Natural Areas Technical Advisory Committee). The Application Process in Section 5 is also changed. The County's Parks and Recreation Commission now is ultimately charged with deciding whether to purchase any particular parcel of natural areas land. The Parks and Recreation Commission receives advisory recommendations from the County's Planning Commission as well as NATAC before making a decision on whether to purchase the natural areas under review. The amendment also streamlines the criteria NATAC uses to determine whether to recommend purchase of the natural space areas under review. Finally, a new Section 9 is added that unequivocally states that the County may not use its powers of condemnation to take natural areas land affected by the Ordinance.

Impact on Personnel

The County's Parks and Recreation Department will staff NATAC. Moreover, the County's Planning Commission gives a recommendation on whether the property under consideration should be purchased.

Impact on Budget

There is no impact on the County's general fund as all monies to fund the purchase of property and maintenance of property as well as to administer such property purchases will come from the increased millage if approved by the voters at the general election in November.

Impact on Indirect Costs

There are no indirect costs associated with this request.

Impact on Other County Departments

The County's Parks and Recreation Commission will ultimately determine whether to purchase a particular parcel of natural areas land. The Parks and Recreation Department will staff NATAC. The County's Planning Commission will review each proposed purchase and give the Parks and Recreation Commission a recommendation on purchasing any particular parcel. Finally, Corporation Counsel will assist the Parks and Recreation Commission in providing legal documents to complete a sale.

Conformity to County Policies

This request conforms to County Policies.

Attachments

The proposed Natural Areas Ordinance, with changes clearly marked by strikeouts and bold type, is attached to the Resolution following this Memorandum.

A RESOLUTION APPROVING AMENDMENTS TO THE OPEN SPACE ORDINANCE
APPROVED BY THE BOARD OF COMMISSIONERS WHICH INCLUDES THE NAME
CHANGE TO NATURAL AREAS ORDINANCE

WASHTENAW COUNTY BOARD OF COMMISSIONERS

AUGUST 2, 2000

WHEREAS, on June 17, 1998 the Washtenaw County Board of Commissioners adopted an Open Space Ordinance setting forth the procedures to be followed by the County in the purchase of open space land; and

WHEREAS, this Ordinance was passed as part of a comprehensive land strategy which included other land preservation tools; and

WHEREAS, the 1998 land preservation strategy was to be funded by a millage increase; and

WHEREAS, the proposed millage increase was defeated; and

WHEREAS, the County is currently reviewing whether to approve ballot language for the November 2000 general election increasing millage by 0.25 mills for 10 years for the sole purpose of purchasing and maintaining natural areas land, as well administering the program; and

WHEREAS, the County now proposes to amend the existing Ordinance to streamline the application process and make other changes necessary to insure a successful program.

WHEREAS, the words, "open space" are changed to "natural areas."; and

WHEREAS, natural areas accurately describes the types of lands to be purchased should the fall millage proposal pass; and

WHEREAS, this matter has been reviewed by Corporation Counsel, the Finance Office, the County Administrator's Office and the Ways & Means Committee

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners approves the proposed amendments to the Natural Areas Ordinance and adopts the amended Natural Areas Ordinance as attached hereto and made a part hereof

BE IT FURTHER RESOLVED that the Board of Commissioners hereby directs the County Clerk to publish the amended Ordinance in a newspaper of general circulation in the County.

ORDINANCE NO.

AN ORDINANCE providing procedures and standards for **the** Washtenaw County's purchase of fee simple and lesser interests in ~~open space~~ **natural area** land within Washtenaw County.

BE IT ORDAINED BY THE WASHTENAW COUNTY BOARD OF COMMISSIONERS:

SECTION 1: Declaration of Purpose

The Washtenaw County Board of Commissioners declares that Washtenaw County is a desirable place to live, work and visit in large part because of the existence of natural ~~and scenic and other open space~~ areas within the County. ~~Open space~~ **Natural** areas have aesthetic as well as practical benefits for County citizens. In addition, the purchase of ~~open space~~ **natural** areas can be used to protect fragile lands and environmentally threatened lands. ~~historic resources, and scenic areas.~~ **Preserving open space land** **The purchase of natural areas** within the County will further these public benefits. **Passive recreation would be an appropriate use of this land.**

SECTION 2: Definitions

- (1) ~~“Administration” means the Washtenaw County Administrator and related staff.~~
- (1) “County Board” means the Washtenaw County Board of Commissioners.
- (2) “Full Ownership” means fee simple ownership.
- (3) “Governmental Agency” means the United States or any agency of the United States, the State of Michigan or any agency of the State of Michigan, any Township, City or Municipal Corporation.
- (4) ~~“Open Space Land”~~ **“Natural Areas Land”** means any land ~~approved by the County Board which, if preserved, would conserve natural or scenic resources, including the promotion of the conservation of soils, wetlands and beaches; preserve historic sites; and preserve idle potential farmland of not less than twenty (20) acres which is substantially undeveloped and because of its soil, terrain and location is capable of future agricultural use.~~ **Parks and Recreation Commission which if preserved, would provides the function of conserve conserving natural resources, including the promotion of the conservation of soils, wetlands and riparian areas waterways, habitat, and special plants, animals, and plant communities.**
- (5) “Parks and Recreation Commission” means the Washtenaw County Parks and Recreation Commission.
- (6) **“Passive Recreation” means walking, jogging, bird watching, nature studies, quiet picnicking and other quiet inactive pastimes.**
- (7) “Planning Commission” means the Washtenaw County Metropolitan Planning Commission.
- (8) “Property Owner” means the party or parties having the fee simple ownership interest in land.

SECTION 3: Authorization

Pursuant to ~~MCLA 45.3, Washtenaw County~~ **MCLA 46.358**, the **Parks and Recreation Commission** has the right to purchase and hold real estate ~~for the use in the name~~ of the County.

SECTION 4: ~~Open Space~~ **Natural Areas** Technical Advisory Committee

(1) The County Board shall create **and appoint, upon recommendation of the Parks and Recreation Commission** a ~~five member~~ **seven-member** body under this Ordinance to be named the ~~Open Space~~ **Natural Areas** Technical Advisory Committee ("**NATAC**"). **NATAC** shall function as an advisory body to assist the ~~County Board Parks and Recreation Commission~~ in determining whether it should purchase a particular ~~Open Space~~ **natural areas** parcel offered for sale to the County. ~~Washtenaw County Metropolitan Planning Commission Parks and Recreation staff shall staff NATAC.~~ **Policies and Operating Procedures of NATAC shall be established by the Parks and Recreation Commission.**

(2) **NATAC** members must be County residents. At least one member shall be appointed who has a demonstrable level of expertise in **each of the following areas professions:** (a) fisheries **biology/aquatic ecology** ~~wildlife manager/biologist~~; (b) **botanist/forestry**; (c) ~~hydrologist~~ **wildlife management**; (d) ~~landscape architect~~ **professional land use planning**; ~~and~~ (e) ~~an environmental educationer~~; (f) **professional real estate or development practice**; and (g) **land trust/conservation**. In addition, the County Board may appoint ex-officio members.

~~(3) To the extent of available funding, NATAC may consult experts.~~

(3) **NATAC** members shall serve two-year terms, except that the initial terms of ~~three~~ **four** of the members shall be for a three-year period. The County Board may reappoint members to successive terms. The County Board shall have the discretion to remove **NATAC** members for good cause. **NATAC** members shall not be compensated for their services but shall be reimbursed for attending meetings and for mileage as provided under the Rules of the County Board.

(4) The County Board may terminate **NATAC** upon approval of 2/3 of the County Board elected and serving.

(5) Individual **NATAC** members shall disclose any potential conflict of interest and abstain from any discussion or voting on the matter in which he/she has a conflict.

SECTION 5: Application Process

(1) Either the ~~County~~ **Parks and Recreation Commission** or a property owner may initiate discussion pertaining to the sale of ~~open space~~ **natural areas** property to the County. A property owner interested in selling ~~open space~~ **natural areas** land to the County shall complete an application on a form provided by the ~~County~~ **Parks and Recreation Commission**. Completed applications shall be forwarded to ~~County Administration~~ **the Parks and Recreation Commission**.

(2) ~~County Administration~~ **The Parks and Recreation Commission** shall forward all completed applications to the following groups for advisory opinions: (1) the local unit where the ~~open space~~ **natural areas** property is located; (2) the Planning Commission; **and** (3) **NATAC**. ~~and (4) the Parks and Recreation Commission.~~ The Planning Commission, ~~Parks and Recreation Commission~~ and **NATAC** shall co-operate **with each other and the Parks and Recreation Commission** as necessary to fulfill their respective duties under this Ordinance.

(3) The Planning Commission shall consider how the application affects the following areas: (1) long range planning; (2) existing land use; (3) current zoning; (4) compliance with County and local unit master plans; (5) impact on fragile lands/natural resources; and (6) impact on infrastructure and the community as a whole.

(4) ~~NATAC shall give County Administration~~ **the Parks and Recreation Commission** an advisory opinion on the following issues: (1) should the ~~County Parks and Recreation Commission~~ **County Parks and Recreation Commission** purchase the ~~open space~~ **natural areas** under review; and (2) how much the ~~County Parks and Recreation Commission~~ **County Parks and Recreation Commission** should pay for that property. ~~NATAC shall rank~~ **evaluate** the applications based on the criteria in this Ordinance to determine which properties the ~~County Parks and Recreation Commission~~ **County Parks and Recreation Commission** should appraise for possible fee simple purchase. ~~In its recommendation to County Administration, the Parks and Recreation Commission, NATAC shall state the reasons why the County Parks and Recreation Commission did not consider a property for fee simple purchase.~~

~~(5) The Parks and Recreation Commission shall review the following areas: (1) whether the property is suitable for recreational purposes; and (2) the cost of managing the property.~~

(5) ~~County State Certified Appraisers, selected by the Parks and Recreation Commission selected State Certified Appraisers~~ shall complete the appraisals. Any ~~County Parks and Recreation Commission selected Appraiser~~ **County Parks and Recreation Commission** selected Appraiser shall immediately disclose any conflict of interest he/she might have in appraising the property. The ~~County Parks and Recreation Commission~~ **County Parks and Recreation Commission** shall choose an alternate Appraiser if a conflict of interest is discovered. Appraisals shall be in writing and will be furnished to the property owner for review. The ~~County Parks and Recreation Commission~~ **County Parks and Recreation Commission** or property owner may point out errors of fact, provided, however, that only the Appraiser may correct the appraisal. A property owner who disagrees with the appraisal may, within a reasonable time, obtain a second appraisal from a State Certified Appraiser at the owner's expense. This appraisal shall be filed with ~~County Administration, the Parks and Recreation Commission,~~ **the Parks and Recreation Commission**, which will promptly forward it to **NATAC**. ~~NATAC shall use both appraisals when completing its recommendation to County Administration.~~ **the Parks and Recreation Commission.**

~~(6) County Administration~~ **The Parks and Recreation Commission** shall review the recommendations from the local unit, Planning Commission, ~~Parks and Recreation Commission and NATAC and make a final recommendation to the Board of Commissioners on whether the open space natural areas property should be purchased and at what price.~~

(7) ~~The County Board~~ **Parks and Recreation Commission** at a regularly scheduled or special meeting shall make the final decision on whether to purchase the ~~open space natural areas~~ **open space natural areas** property and at what price. Notwithstanding any advisory recommendations, the ~~County Board~~ **County Parks and Recreation Commission** has complete discretion to determine whether to purchase any proposed ~~open space natural areas~~ **open space natural areas** property and may decide not to buy any particular property if it finds that such action is in the County's best interest. **The opportunity for donation and/or matching funds may be part of the decision to purchase the property.** The ~~County Board~~ **County Parks and Recreation Commission** shall direct that a Phase I environmental audit be completed prior to the completion of the purchase. ~~The County Board~~ **Parks and Recreation Commission** may direct ~~request County Administration to negotiate for a lower price and/or seeking outside funding for the purchase of the parcel under consideration.~~

(8) After agreeing to purchase an open-space **natural areas** property, the County Board **Parks and Recreation Commission** shall direct the Office of Corporation Counsel to complete the documents necessary to complete the transaction.

SECTION 6: Criteria for Deciding Whether to Purchase Open-Space **Natural Areas** Land

The County Board **Parks and Recreation Commission** and **NATAC** will use the criteria below to evaluate property and the **Parks and Recreation Commission** shall use such criteria when deciding whether to purchase a particular parcel. ~~may use criteria, including, but not limited to those criteria listed below, when it determines whether to purchase open space~~ **natural areas** property. Likewise, **NATAC** may use criteria, including, but not limited to those criteria listed below, when evaluating properties prior to making its recommendation to County Administration. ~~the Parks and Recreation Commission.~~ **NATAC** shall develop and use a selection criteria model approved by the County Board **Parks and Recreation Commission** to rank the properties:

- ~~Significant Landforms: lakes, rivers, creeks, large hills or other significant landforms on the proposed sale property.~~
- ~~Natural Areas: use of the Coefficient of Conservatism, a nationwide rating system using vegetative inventories to rate uniqueness and quality of natural areas.~~
- ~~Fragile Lands Model: unique, highly sensitive and sensitive rankings — based on 1993 Fragile Lands Study developed by the Washtenaw County Metropolitan Planning Commission.~~
- ~~Contiguity of Feature: will acquisition encompass an entire or significant portion of a feature sufficient enough to preserve it adequately?~~
- ~~Adjacency: will acquisition contribute to the buffer, connection, expansion or preservation of a preexisting nearby conservation/agricultural feature?~~
- ~~Headwaters: the location of headwaters on the proposed sale property.~~
- ~~Historical Features: the existence of farms, mills, homesteads or other historical features on the proposed sale property, including sites listed on the National Register of Historic Places and/or the State of Michigan's Register of Historic Places and/or included in a local historic district.~~
- ~~Special Wildlife Breeding Area: the existence of heron rookeries, unique fish spawning area, bird of prey roosts and other area instrumental in the reproductive cycle of rare or unusual wildlife.~~
- ~~Wildlife Habitat Considerations: Special plants and animals, migration corridors based on formal habitat evaluation procedures and the Michigan Department of Natural Resources Natural Features Inventory.~~
- ~~Plant Communities: Special plants and their habitats.~~
- ~~Local Character Continuity: will acquiring the open space property help to preserve a unique character or atmosphere of the local community?~~
- ~~Scenic Views/Viewsheds: Does this site contain a scenic view of viewshed?~~
- ~~Underserved Areas: Is the site located in an underserved part of the County?~~
- ~~Proximity and Accessibility to Populated Areas: Is the site located near a populated center and/or relatively to the public?~~
- ~~Threat of Development: Is the site located in an area with high development pressure?~~

- ~~Cost Considerations: Total price vs. budget, donation potential, cost sharing, leasing opportunities, operation and maintenance costs, liability and insurance costs, etc., of the site.~~
- ~~Economic Considerations: Highest and best use, loss of tax base, alternative development, etc., of the site.~~
- ~~Environmental Education: The site provides educational opportunities on the environment.~~
- **Public Water Resources: property with water resources frontage; property located in a headwaters area important to protect water quality; property which overlies a groundwater recharge area that supports a public water supply; or, property which includes wetlands.**
- **Special Plants, Animals and Plant Communities: property which supports wildlife populations or habitat or adds to already protected property/ies which would protect wildlife populations or habitat; property which has plant species listed by the State of Michigan as “Endangered,” “Threatened,” or “Special Concern,” and/or unique vegetative communities.**
- **Recreational and Scientific Values: property which provides public access to public waters or trails or protects a trail corridor; or, property which is a well-documented site of scientific study.**
- **Proximity to Protected Land and Development Potential: property which abuts or is otherwise integral to a permanently protected tract of public or private land being held for conservation or recreation purposes.**
- ~~Leverage: property for which the acquisition cost to the County is less than the appraised value of the property due to landowner donation, private donations or other public funds used as matching monies.~~

SECTION 7: 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 ~~open space~~ **natural areas** property within the County. The County Board authorizes such funds to be used to purchase ~~open space~~ **natural areas** properties within the County.

SECTION 8: ~~Open Space~~ **Natural Areas** Acquisition Fund

Available funding for the purchase of ~~open space~~ **natural areas** land shall be deposited in a special fund in the office of the Washtenaw County Treasurer (“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 along with the revenues from the sale of any ~~open space~~ **natural areas** property purchased pursuant to this Ordinance shall be applied and used solely for the purchase of ~~open space~~ **natural areas** land under this Ordinance, **provided, however, that no more than 7% of increased millage funds used to purchase land under this Ordinance may be used annually to administer a land preservation program or maintain lands purchased under this Ordinance.**

SECTION 9: Condemnation

No funds generated from any source that are used to procure natural area lands under this Ordinance shall be used to condemn any public or private property.

SECTION 10: 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 11: Amendments

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

SECTION 12: Repeal of Conflicting Ordinances

All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistencies or conflicts.

h: general/open