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TO: Jeff Irwin, Chair  
Ways & Means Committee

THROUGH: Robert E. Guenzel  
County Administrator

FROM: Anthony VanDerworp  
Planning and Environment Director

DATE: June 7, 2006

SUBJECT: Revised Purchase of Development Rights Ordinance

**BOARD ACTION REQUESTED:**

The action requested is the adoption of the revised Purchase of Development Rights Ordinance. These revisions are necessary to meet the Michigan Agricultural Preservation Fund's (State PDR Program) Policies and Procedures. These revisions will allow landowners in townships that do not have adopted Purchase of Development Rights Ordinances to qualify to be eligible for the Michigan Agricultural Preservation Fund (MAPF). The Washtenaw County Purchase of Development Rights Ordinance, with these revisions, can also be used in future years as part of a County-wide Purchase of Development Rights program involving townships that have an adopted PDR ordinance through a future Urban Cooperation Agreement (UCA) with the County. The revised ordinance was reviewed and then supported by the Planning Advisory Board on May 22, 2006.

The action requested also includes initiating the process to appoint the Agricultural Lands Preservation Advisory Committee (ALPAC) by the Washtenaw County Board of Commissioners according to the Washtenaw County Purchase of Development Rights Ordinance. The purpose of appointing ALPAC would be to advise the Washtenaw County Board of Commissioners on making an application to the MAPF in 2006 and future MAPF application rounds. The appointments of the Washtenaw County ALPAC is anticipated to occur at the August 2, 2006 Board of Commissioners meeting. The Planning Advisory Board recommended approval for the Washtenaw County Board of Commissioners to appoint the ALPAC at its May 22, 2006 meeting.

The action requested also includes soliciting resolutions only from townships which do not have an adopted purchase of development rights ordinances authorizing the County PDR Program and Ordinance to apply in the township for the purposes of applying to the MAPF in 2006.

Additionally, the action requested also includes the Board of Commissioners to direct the County Administrator to initiate the process to begin the negotiation process with the 11 townships within Washtenaw County that have adopted PDR ordinances with the goal of agreeing on an UCA in 2007 to be ready to make a County-wide application in 2007 to the MAPF, involving as many jurisdictions in the County that are interested in participating. The Planning Advisory Board recommended approval to proceed with the negotiating an UCA with

the 11 townships who have adopted PDR ordinances to the Washtenaw County Board of Commissioners at its May 22, 2006 meeting.

### **BACKGROUND:**

These actions will allow Washtenaw County to become a qualified program for the MAPF, and establish the opportunity to collaborate and cooperate with township and local purchase of development rights programs within Washtenaw County in future years. The collaboration and cooperation with the township purchase of development rights programs will award more points from the MAPF program and allow applications to the program from Washtenaw County and its communities to be more competitive for MAPF grant awards. It will also allow an opportunity for more communities to be eligible to the MAPF program.

In July 2005 the Michigan Department of Agriculture (the administrative agency of the MAPF) indicated that Washtenaw County's PDR Ordinance and program would not be able to qualify unless changes were made to the Washtenaw County PDR Ordinance that would meet the MAPF's Standards and Guidelines. As a result, five (5) individual townships within Washtenaw County became qualified local PDR programs for the MAPF program and applied to the state as individual township programs. Landowners located in townships without an adopted PDR ordinance and without a MAPF qualified program were not able to apply to the MAPF program last year, as they could only be covered by the Washtenaw County PDR Ordinance and program.

Since last year's MAPF application round, the Michigan Agricultural Preservation Fund Board has proposed to replace their *Standards and Guidelines* of their program with new proposed *Policies and Procedures*. The new proposed Policies and Procedures will require Townships that have adopted PDR ordinances who wish to be a part of a County-wide program (who have adopted County PDR ordinances as well) to develop an UCA (P.A. 7 of 1967: MCL 124.501 – 124.512) in order to address how both the Township programs and the County program will interact and work together. This includes how the townships' and the County's application processes will work together. There are currently 11 townships within Washtenaw County that have adopted PDR ordinances. They include Ann Arbor Township, Augusta Township, Bridgewater Township, Dexter Township, Freedom Township, Manchester Township, Pittsfield Township, Scio Township, Superior Township, Webster Township and York Township. Due to the nature of negotiating an UCA between multiple jurisdictions, developing an UCA will take time and will not be possible for making a complete County-wide application to the MAPF in 2006. The UCA would need to be negotiated over the next several months with the 11 townships with adopted PDR ordinances with the goal of agreeing to the UCA in 2007 to be ready to make a complete County-wide application in 2007 to the MAPF. This will allow applications from Washtenaw County to be more competitive statewide, while also allowing more landowners within the County to be eligible to participate in the program in the future. Most of the qualified programs in Michigan that are applying to the MAPF program are county programs.

Townships which have adopted PDR ordinances and that want to apply to the MAPF program will need to apply to the MAPF on their own in 2006. The County can apply in 2006 with only the townships which do not have an adopted PDR ordinance and are willing to participate in the County PDR program by an adopted resolution indicating their participation. The Washtenaw County PDR Ordinance will not preclude townships with adopted PDR ordinances from applying to the MAPF on their own, according to the Michigan Department of Agriculture.

The eight (8) townships who do not have an adopted PDR ordinance are Lima Township, Lodi Township, Lyndon Township, Northfield Township, Salem Township, Saline Township, Sharon Township, and Sylvan Township. These townships can choose to participate in the Washtenaw County PDR Program and Ordinance by passing a resolution authorizing the County PDR

Program and Ordinance to apply in the township, per both the MAPF's Policies and Procedures and the Washtenaw County PDR Ordinance. Ypsilanti Township is not likely to be eligible to the program due to the Township's master plan designations and because of planned and anticipated future sanitary sewer designations within the Township.

The Washtenaw County ALPAC, as outlined in the Washtenaw County PDR Ordinance, will advise the Washtenaw County Board of Commissioners on making an application to the MAPF. Its appointment is necessary in order to advise the Board of Commissioners on applications to the MAPF program in 2006 and in future MAPF application rounds.

## **DISCUSSION:**

### Washtenaw County PDR Ordinance Revisions

These revisions to the Washtenaw County Purchase of Development Rights Ordinance will meet the MAPF Policies and Procedures according to the Michigan Department of Agriculture. The revisions also include some minor corrections for clarity and consistency of terminology.

Since the revised PDR Ordinance varies from the original version, and the revisions to the ordinance in 2004, the significant revisions are outlined below to serve as a guide while reviewing the attached revised ordinance:

1. Authorization (Section 3)
  - a. Inserted language authorizing the County to make an application to the state and federal programs on behalf of the County and local units of government.

Discussion: The Michigan Department of Agriculture recommended this addition to the ordinance so that it recognizes that the County can make an application to state and federal farmland preservation programs for the County and local units of government.

2. Application Process (Section 4)
  - a. Deleted text that eliminates the bifurcated process based on the availability of County funds for the acquisition of Development Rights. One branch of the bifurcated process was to assist property owners in local units of government that do not have an approved ordinance when **County funds are not available**. The second branch of the process was to occur when **County funds are available**. The deleted text eliminates the first branch of the bifurcated process when **County funds are not available**, "Section 4A No County PDR Acquisition Funds" and consolidates the former bifurcated process into only one option to the Application process, which is that County funds are available. The "County funds" in this discussion relate to the administrative costs required by the MAPF Policies and Procedures.

Discussion: The MAPF Policies and Procedures requires that the entity in which the purchase of development rights ordinance has been utilized to apply to the MAPF is required to be responsible for the administrative costs related to appraisals, monitoring and enforcement, and other costs associated with developing the agricultural conservation easement. The MAPF will not fund these costs. These costs, according to the MAPF Policies and Procedures, are the responsibility of the applying program. The MAPF Policies and Procedures will also not allow the landowner to pay for these costs. The MAPF Policies and Procedures will not allow local programs to apply to the program if they do not take responsibility of these administrative costs. Section 4A in the Washtenaw County PDR Ordinance is one of the significant reasons why Washtenaw County could not qualify for the MAPF in 2005. These revisions now assume that Washtenaw County will be responsible for these costs. These revisions will meet the MAPF Policies and Procedures according to the Michigan Department of Agriculture. Matching funds for the acquisition of the actual agricultural conservation easement,

however, are not required to be eligible to the program if a landowner who applies to the program is willing to take at least 25% less of the value of the appraised value of the agricultural conservation easement.

- b. Deleted “To the extent possible,” and deleted “should” and replaced with “shall” for line 1.1 regarding ALPAC members shall be County residents.

Discussion: The Planning Advisory Board recommended this change at their May 22, 2006 meeting. They recommended that all ALPAC members shall be Washtenaw County residents.

- c. Deleted a duplicated “One representative from real estate development interests” that is included on the same line as “1.1.2. Two (2) representatives from the Planning Advisory Board.”

Discussion: This is a duplication. “One representative from real estate development interests” is included in 1.1.3. on its own line.

- d. Inserted language on requiring ALPAC members to disclose any potential conflicts of interests related to a discussion or a vote of ALPAC.

Discussion: The Michigan Department of Agriculture is strongly recommending that there be provisions within local (County) PDR ordinances that relates to conflicts of interests for ALPAC members or similar boards in other jurisdictions.

- e. Inserted language on the “before and after” appraisal to determine the value of the Development Rights to be purchased.

Discussion: The MAPF Policies and Procedures requires that a local (or County) PDR ordinance include a method to establish the price to be paid for the agricultural conservation easement. Specifically, the appraisal method must be included in the PDR ordinance. The “before and after” appraisal is acceptable to the MAPF program for a method to determine the price to be paid for an agricultural conservation easement.

- f. Inserted the full title of the “County Clerk/Register of Deeds.”

Discussion: The MAPF requires “Register of Deeds” legally records the agricultural conservation easement onto the deed of the property. This insertion illustrates that the County Clerk/Register of Deeds is the same office in Washtenaw County.

### 3. Criteria for Deciding Whether to Purchase the Development Rights from Farmland and Other Eligible Land (Section 5)

- a. Inserted language in the “Eligibility” section that a local unit of government is required to pass a resolution in order to authorize the County PDR program to apply in the local unit of government and language indicating that the County PDR ordinance will only be allowed to be applied in a local unit of government if the County PDR ordinance provisions are consistent with the plan upon which the local unit of government’s zoning are based.

Discussion: This ordinance language is required according to the MAPF Policies and Procedures.

- b. Inserted language in the “Eligibility” section replacing “Washtenaw County Land Use Policies” with the new title of the Washtenaw County Comprehensive Plan: *A Comprehensive Plan for Washtenaw County.*

Discussion: To update the title of the Washtenaw County Comprehensive Plan. The County Comprehensive Plan has been adopted since the last revisions of the County PDR Ordinance.

- c. Inserted language in Part V Programs/Partnership section of the Scoring Criteria under C. Conservation Plan that includes a Comprehensive Nutrient Management Plan (CNMP) as part of the criteria of being award up to 3 points.

Discussion: The MAPF Policies and Procedures include CNMP's as part of their scoring system of evaluating local PDR programs. The Michigan Department of Agriculture recommended including CNMP's in the County's Scoring Criteria as a way of encouraging landowners to participate in the program. This will also help encourage landowners to participate in the County PDR program application to the MAPF who participate in this program.

#### 4 Related Costs (Section 8)

- a. Deleted the sentence: "The County will engage in the payment of such costs only if PDR Funds are available."

Discussion: As discussed in number 2 above, the County is responsible for these costs in order to meet the MAPF Policies and Procedures.

#### 5. Agricultural Conservation Easement Monitoring and Enforcement (Section 11)

- a. Inserted "ent" at the end of "consist."

Discussion: Grammatical correction.

#### 6. Sections 4 and 5.

- a. Inserted the term "local unit of government" for both "local governmental unit" and "township" throughout the document.

Discussion: For consistency with the defined term "local unit of government" found in Section 2: Definitions.

#### Appointment of Agricultural Lands Preservation Advisory Committee (ALPAC)

The resolution also directs the County Administrator to solicit candidates for appointment to the ALPAC according to the Washtenaw County Purchase of Development Rights Ordinance. The formal appointment of individuals to ALPAC is anticipated at the August 2, 2006 Washtenaw County Board of Commissioners meeting. ALPAC will need to hold their first meeting and be sworn into office during the month of August 2006 in order to meet the anticipated deadlines of the MAPF application round in 2006. According to the Washtenaw County PDR Ordinance, ALPAC members should be County residents and be appointed from the following groups:

1. Three (3) representatives who are engaged in agricultural production or operate agricultural businesses;
2. Two (2) representatives from the Planning Advisory Board;
3. One (1) representative from real estate development interests;
4. One (1) representative of environmental/conservation groups or natural resources professional;
5. In addition, the County Board shall appoint one (1) County Commissioner who shall participate in ALPAC as a non-voting ex-officio member. If the Board of Commissioners is unable to fill a specifically designated slot on the Committee with an individual from the designated area, it may appoint a general public member to fill that slot.

Prior to holding an application round in 2006, townships which do not have adopted PDR ordinances who would like to participate in the MAPF through the Washtenaw County PDR Program and Ordinance will need to pass a resolution authorizing the County PDR Program and Ordinance to apply in the township.

#### Urban Cooperation Agreement (UCA)

The resolution also directs the County Administrator to begin the process of negotiating an Urban Cooperation Agreement with the eleven (11) townships in Washtenaw County that have adopted PDR ordinances with the goal of developing a complete County-wide purchase of development rights program that would be eligible to apply to the MAPF for future application rounds. This includes communicating with the eleven (11) townships with adopted PDR ordinances on the purpose of the UCA and to develop the UCA document and to redraft any changes recommended for the UCA until an agreed UCA is developed by all the participating entities. The goal is to finalize the UCA in 2007 to allow enough time for both the local and County PDR application rounds to take place in order to apply to the MAPF in 2007.

#### Program Funding

In moving forward with a County-wide PDR initiative, the County will be guaranteeing funding for the administration of a PDR program. An estimate for funding this program includes the following three categories: application, acquisition and monitoring & enforcement.

- Application expenses are related to determining estimated value and title work for a property, are dependent on the number of applications (properties) submitted on a yearly basis, and are estimated at \$500 per property. Since several applications are expected to be submitted each year, the annual application expense is estimated at \$2,500 to \$5,000 per year (5-10 applications per year).
- Acquisition expenses are tied to an actual award of State PDR funds for an application previously submitted. Acquisition expenses include a before/after appraisal, baseline property condition survey for monitoring purposes, and transaction closing costs, and are estimated at \$3,000. Additionally, a land survey for clean title and a Phase I environmental site assessment (if needed) could add an additional cost estimated at \$2,500. Because of the historical and anticipated State PDR funding levels, it is not expected that more than one award of State PDR funds for acquisition will be made to the County per year. Total costs for these activities are estimated at \$3,000 to \$5,500 per acquisition.
- Monitoring and enforcement expenses are estimated at \$500 per year/per property.

Although the County will be guaranteeing funding for a PDR program, there are opportunities to contain the costs. Cost containment possibilities could include areas such as limiting the number of applications made each year, requiring the local government to pay part of the expenses (i.e., appraisal costs), utilizing County staff resources for some of the activities (i.e., partnering with Parks & Recreation to use their land acquisition appraiser or utilizing Planning & Environment staff for Phase I environmental site assessment review or monitoring & enforcement activities).

#### **IMPACT ON HUMAN RESOURCES:**

PDR administration activities are estimated at approximately .25 FTE per year (covered through current department staffing).

#### **IMPACT ON BUDGET:**

For the 2006-07 budget there will be no direct impact due to the Department of Planning & Environment's commitment of dollars from their consulting and contracts line item to assist with the first and second year application rounds. For future years, please see the section above on "Program Funding" for impact on budget.

**IMPACT ON INDIRECT COSTS:**

No impacts are indicated for this Resolution

**IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:**

Adoption by the Board of the revised PDR Ordinance may result in expanded relationships and funding partnerships with other local units of government and non-profit organizations engaged in the acquisition of development rights and farmland protection.

**CONFORMITY TO COUNTY POLICIES:**

This action is in conformance with county policies.

**ATTACHMENTS/APPENDICES:**

Attachment A: Resolution

Attachment B: Planning Staff Memo to the Planning Advisory Board

Attachment C: Revised Purchase of Development Rights Ordinance

A RESOLUTION TO ADOPT THE REVISED WASHTENAW COUNTY PURCHASE OF DEVELOPMENT RIGHTS (PDR) ORDINANCE, TO DIRECT THE COUNTY CLERK TO PUBLISH A NOTICE OF ITS ADOPTION IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY, TO DIRECT THE COUNTY ADMINISTRATOR TO SOLICIT CANDIDATES FOR APPOINTMENT OF THE AGRICULTURAL LANDS PRESERVATION ADVISORY COMMITTEE, TO DIRECT THE COUNTY ADMINISTRATOR TO SOLICIT RESOLUTIONS FROM TOWNSHIPS WHICH DO NOT HAVE ADOPTED PDR ORDINANCES AUTHORIZING THE COUNTY'S PDR ORDINANCE TO APPLY IN THE TOWNSHIP AND TO DIRECT THE COUNTY ADMINISTRATOR TO BEGIN THE PROCESS OF NEGOTIATING AN URBAN COOPERATION AGREEMENT WITH TOWNSHIPS WITHIN THE COUNTY WHICH HAVE ADOPTED PDR ORDINANCES

WASHTENAW COUNTY BOARD OF COMMISSIONERS

June 7, 2006

WHEREAS, on June 17, 1998 the Washtenaw County Board of Commissioners adopted the Washtenaw County Purchase of Development Rights Ordinance; and

WHEREAS, the County's Purchase of Development Rights ("PDR") program was to be primarily funded through a County millage that was ultimately defeated in November 1998; and

WHEREAS, the County's Purchase of Development Rights Ordinance was revised by the Board of Commissioners on May 5, 2004 to be consistent with state and federal legislation; and

WHEREAS, the Michigan Agricultural Preservation Fund (State PDR Program) was established in 2000 by the State of Michigan to provide grants to eligible local units of government for the purchase of agricultural conservation easements through local Purchase of Development Rights programs (PDRs) to preserve farmland; and

WHEREAS, the Michigan Agricultural Preservation Fund Board originally adopted *Standards and Guidelines for the Michigan Agricultural Preservation Fund* (MAPF) in 2004 for applying local PDR programs to the Fund; and

WHEREAS, Washtenaw County's Purchase of Development Rights Ordinance did not meet the MAPF's Standards and Guidelines in 2005; and

WHEREAS, the MAPF Board has proposed to replace their adopted *Standards and Guidelines for the MAPF* with new *Policies and Procedures for the MAPF*; and

WHEREAS, the revised Washtenaw County Purchase of Development Rights Ordinance will meet the new *Policies and Procedures for the MAPF*; and

WHEREAS, Section 4 of this ordinance addresses the Agricultural Lands Preservation Advisory Committee ("ALPAC"); and

WHEREAS, Section 4 (1) of this ordinance indicates that the County Board shall create and appoint ALPAC consisting of seven members for the purposes of assisting 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; and

WHEREAS, ALPAC members should be County residents and be appointed from the following groups: Three (3) representatives who are engaged in agricultural production or operate agricultural businesses, two (2) representatives from the Planning Advisory Board, one (1) representative from real estate development interests, and one (1) representative of environmental/conservation groups or natural resource professional, and additionally, the

County Board shall appoint one (1) County Commissioner who shall participate in ALPAC as a non-voting ex-officio member and if the Board of Commissioners is unable to fill a specifically designated slot on the Committee with an individual from the designated area, it may appoint a general public member to fill that slot; and

WHEREAS, the *MAPF Policies and Procedures* requires townships that have adopted PDR ordinances who wish to be a part of a County-wide program through a County PDR Ordinance to develop an Urban Cooperation Agreement (P.A. 7 of 1967: MCL 124.501 – 124.512) in order to address how both the township programs and the County program will interact and work together; and

WHEREAS, given the demonstrated nature of negotiating Urban Cooperation Agreements with multiple entities, developing an Urban Cooperation Agreement (UCA) with the townships who have adopted PDR ordinances will not be completed for a complete County-wide application to the MAPF in 2006; and

WHEREAS, once Washtenaw County becomes an qualified program of the MAPF for the 2006 application round of the program, Washtenaw County can make an application to the MAPF in 2006 for only those townships who do not have adopted PDR ordinances and which have passed a resolution authorizing the County PDR Program and Ordinance to apply in the township; and

WHEREAS, the revised Washtenaw County PDR Ordinance, the solicitation of candidates for appointment to ALPAC, the solicitation of non-PDR Ordinance Townships for Resolutions allowing the County PDR Program and Ordinance to apply in their Township, and the process to begin negotiating an UCA with townships within the County who have adopted PDR ordinances has been reviewed by Corporation Counsel, the Finance Department, Human Resources, the County Administrator's Office and the Ways & Means Committee;

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners hereby adopts the revised Purchase of Development Rights Ordinance and directs the County Clerk to publish a notice of its adoption in a newspaper of general circulation in the County.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners authorizes and directs the County Administrator to solicit candidates for appointment as members of the ALPAC.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners authorizes and directs the County Administrator to solicit resolutions only from townships which do not have adopted PDR ordinances authorizing the County PDR Program and Ordinance to apply in the township for the purposes of applying to the MAPF in 2006.

BE IT FURTHER RESOLVED that the number of applications that the County shall process on behalf of participating townships shall not exceed twenty (20) per year.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners authorizes and directs the County Administrator to begin the process of negotiating an UCA with townships within the County which have adopted PDR ordinances for the purposes of developing a complete County-wide program to apply to the MAPF for the 2007 application round and for future application rounds of that program.