

POLICIES AND PROCEDURES
FOR THE
THE MICHIGAN AGRICULTURAL
PRESERVATION FUND

Approved
June 27, 2006

QUALIFICATION PROCEDURE FOR GRANTS FROM THE AGRICULTURAL PRESERVATION FUND

The Michigan Agricultural Preservation Fund and Agricultural Preservation Fund Board were established in 2000 under Part 362 of the Natural Resources and Environmental Protection Act, (MCL 324.36201 to 324.36207). The act provides for the establishment of the agricultural preservation fund, the creation of the board, the development of an application procedure, selection criteria and the adoption of various standards and guidelines for the awarding of grants by the Board. This document establishes the qualification procedure, application procedure, scoring system, and policies to be used in administering the fund.

QUALIFICATION PROCEDURE AND CRITERIA

Prior to applying for a grant, the local unit of government (county or township) must be qualified to be eligible to make a grant application. In order for the local unit of government to qualify the following minimum standards must be met:

- 1) The local unit of government has adopted a **Purchase of Development Rights (PDR) ordinance** that is consistent with Part 362 of the Michigan Natural Resources and Environmental Protection Act (MCL 324.36201 to 324.36207), and the Michigan Zoning Enabling Act (MCL 125.3101 to 125.3702), and the policies established by the Board. The ordinance must contain all the items outlined in the Michigan Zoning Enabling Act, including:
 - a method to determine the value of the development rights,
 - an application procedure, and
 - a scoring system (may be assigned to local board to develop).
- 2) The local unit of government has a **comprehensive land use plan** that has been adopted within the last 10 years and reviewed and/or updated within the last 5 years. [See Part 362 of the Natural Resources and Environmental Protection Act (MCL 324.36201 to 324.36207), Township Planning Act (MCL 125.321 to 125.333), and County Planning Act (MCL 125.101 to 125.115)]. The comprehensive land use plan must contain an agricultural preservation component, consisting of:
 - a) The areas intended for agricultural preservation are clearly depicted on the future land use map.
 - b) A description of how and why the preservation area was selected.
 - c) Goals for farmland preservation.
 - d) Language indicating why farmland should be preserved in the community (cost of services studies, economic benefit to the community etc.)

- e) Text describing the strategies intended to be used in order to preserve the agricultural land, including Purchase of Development Rights (PDR) but should include other techniques.

** The local unit of government may also be covered by a regional plan that has the agricultural preservation component described above, unless local unit of government has a PDR ordinance, then the comprehensive plan that is approved must be the plan on which the zoning ordinance is based.

- 3) A **monitoring and enforcement plan** for the farmland conservation easements has been established.

County Level, Township Level, and Multi-Level PDR Programs

A program can qualify as a township PDR program, a county PDR program in which the townships participate, a multi-township program, or a multi-county program. Multi-township or multi-county programs require an intergovernmental agreement between the units of government involved.

As required by the Michigan Zoning Enabling Act (MCL 125.3508), the county shall not purchase development rights from land subject to a city, village, or township zoning ordinance unless all of the following requirements are met:

- (a) The development rights ordinance provisions for the County PDR program are consistent with the plan upon which the city, village, or township zoning is based.
- (b) The legislative body of the city, village, or township adopts a resolution authorizing the PDR program to apply in the city, village or township.
- (c) 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 of the purchase.

** If a township has enacted its own PDR Ordinance but wishes to participate in a County-wide PDR program, an intergovernmental agreement will be required to address how the programs will interact.

All information must be submitted to the Michigan Department of Agriculture (MDA) for review. Determination on the qualification of the program will be made by MDA staff. Only programs qualified prior to the request for applications may apply during that application cycle.

APPLICATION PROCEDURE FOR GRANTS

The application package will be sent to all qualified PDR programs. The application package will include the instructions and forms to be completed by the qualified entity and returned to the Department. Applications will be due **60 days** after the application package is released. Applications must include:

- Estimated value of the development rights for each parcel and basis or method used to determine value.
- Township resolutions, comprehensive plans, and zoning ordinances (if applicable)
- Written approval by the township(s) for each purchase
- Signed option to sell by the landowner (signed application OK)
- Map of each individual parcel
- Map showing the location of all parcels proposed as well as land that is already permanently protected
- Soil map showing all parcels proposed and a list of the prime and unique soils in your county or township. (Maps and soil lists are available at your local NRCS Service Center).

LOCAL GOVERNMENT SCORING SYSTEM

Grants will be made based on points awarded considering various public policy objectives. All local PDR programs shall, at a minimum, include items (a) through (e) listed below in their parcel scoring system and selection process (Part 362 of the Michigan Natural Resources and Environmental Protection Act (MCL 324.36205). The weight given to each category is at the discretion of the local entity.

- (a) Farmland that has a productive capacity suited for the production of feed, food and fiber.
- (b) Farmland that would complement and is part of a documented, long-range effort or plan for land preservation by the local unit of government in which the farmland is located.
- (c) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is subject to an agricultural conservation easement under this part or part 361, or a development rights agreement under part 361, or in which development rights have been acquired under part 361.
- (d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.
- (e) Farmland that will help to enhance other local open space initiatives in the community such as connecting an open space or wildlife habitat corridor, or in

preserving unique habitats/natural features that benefit local conservation efforts. (This provision is not in statute but was adopted by the Board.)

SCORING SYSTEM

The following system will be used by the Board to prioritize grant applications from Local PDR Programs:

PARCEL RELATED POINTS

<p>1. AGRICULTURAL CAPACITY AND PRODUCTIVITY <i>Policy Objective: To preserve the land that holds Michigan's prime and unique agricultural soils.</i></p> <p>Points will be awarded on the following basis: Multiply the percent of the land area in the application that is classified as prime and/or unique agricultural land, as defined by the USDA-NRCS, times 150</p>	<p>Total Points Available: 150</p>
<p>2. CONSERVATION PLAN OR COMPREHENSIVE NUTRIENT MANAGEMENT PLAN– <i>Policy Objective: The public investment in farmland preservation should not only require legal preservation of the farmland but also functional preservation of the resources. The completion of a conservation plan for the property is an indication that the landowner has made a commitment to preserve those resources.</i></p> <p>Points will be awarded on the following basis: Multiply the percent of land in the grant application that will be subject to a conservation plan, approved by a NRCS Certified Conservation Planner, or a comprehensive nutrient management plan written by a certified plan writer, times 50 points. Note: all plans must be written, approved, or revised within the last three years from the date of application.</p>	<p>Total Points Available: 50</p>
<p>3. MAEAP PARTICIPATION – <i>Policy Objective: The MAEAP program (Michigan Agricultural Environmental Assurance Program) assists farms in establishing environmentally sound agricultural practices. Farms that are certified under the MAEAP program should receive preferential treatment because environmentally sound agricultural practices will</i></p>	<p>Total Points Available: 50</p>

<p><i>contribute to the sustainability of the agricultural operation.</i></p> <p>Points will be awarded on the following basis: 50 points will be awarded if <u>any</u> of the farms in the grant application are verified through MAEAP.</p>	
<p>4. PARCEL SIZE – total possible points 50 <i>Policy Objective: To encourage large agricultural tracts of land be preserved.</i></p> <p>Points will be awarded on the following basis: <u># of parcels 80 acres and over</u> # of total parcels submitted X 50 points</p>	<p>Total Points Available: 50</p>
<p>5. PARCEL LOCATION – total possible points 100 <i>Policy Objective: To encourage blocks of agricultural land be preserved in order for farms to remain economically viable.</i></p> <p>Points will be awarded on the following basis: Multiply the percent of acres that create contiguous blocks of farmland (or preserved land) by 100.</p>	<p>Total Points Available: 100</p>

TOTAL PARCEL POINTS: 400

LOCAL PDR PROGRAM RELATED POINTS

<p>6. LOCAL FARMLAND PRESERVATION COMMITMENT <i>Policy Objective: To encourage local commitment in farmland preservation as evidenced by the type and degree of financial participation at the local level as well as the designation of local priorities.</i></p> <p>Points will be awarded on the following basis:</p> <ul style="list-style-type: none"> • Up to 50 points will be awarded if a community has a dedicated funding source for farmland preservation (examples include: milage, user fees, local tax). • Up to 50 points if a map is submitted that includes areas for farmland preservation that are prioritized. Points will be awarded based on the level of detail of the map (i.e. maps that include parcel level priorities will score higher). 	<p>Total Points Available: Up to 100</p>
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<p>7. MATCHING FUNDS</p> <p><i>Policy Objective: To encourage local programs to seek and utilize any funding resources available in order to leverage all funding sources more efficiently and effectively.</i></p> <p><u>The minimum required match is 25% per parcel.</u> Matching funds can include funds from a local unit of government, donations by the landowner of the proposed parcel, or any other sources (including federal grants). A letter of commitment will be required from the source of the match with the application.</p> <p>Points will be awarded on the following basis: For match over the 25% minimum, the amount of points awarded will equal the percentage of match multiplied by 100. (30% match = 30 points).</p>	<p>Total Points Available: 100</p>
<p>8. INTERGOVERNMENTAL COOPERATION</p> <p><i>Policy Objective: To empower local units of government to work together in the land use area in creative or innovative ways that preserve farmland in the entire community.</i></p> <p>Points will be awarded on the following basis: Points will be awarded based on the demonstration of intergovernmental cooperation. Demonstration may be shown by submission of:</p> <ul style="list-style-type: none"> ☞ Joint planning agreements under the Joint Municipal Planning Act (MCL 125.131 to 125.143) ☞ Intergovernmental agreements ☞ Reports or products from projects in which the units of government have cooperated together. ☞ Examples of other efforts that might qualify as intergovernmental cooperation in the land use area <p><i>(A single township program will <u>NOT</u> be eligible in this category).</i></p>	<p>Total Points Available: 100 (prev 120)</p>

<p>9. LOCAL PLANNING TRAINING – possible 75 points <i>Policy Objective: Local land use decisions makers should have training needed to make sound land use decisions.</i></p> <p>Points will be awarded on the following basis: Multiply the percent of the planning commissioners in the participating units of government that have completed training within the last 18 months under a program such as the Citizen Planner program, the Michigan Association of Planning, the Michigan Townships Association and/or a similar program, times 75 (Master Citizen Planner program would qualify as long as they are in good standing).</p> <p>Participating units of government include planning commissions in qualified county programs and townships that have passed resolutions or have intergovt. agreements, <u>or</u> planning commissions from qualified township programs.</p>	<p>Total Points Available: 75</p>
<p>10. LOCAL CAPACITY TO EXECUTE <i>Policy Objective: Local purchase of development rights programs must be appropriately staffed to be successful. Local programs that have allocated appropriate staff support or the partnerships in place to be successful, and have acquired and monitored conservation easements in the past have the best chance for success.</i></p> <p>Points will be awarded on the following basis: Points based on the capacity to complete, hold, and steward the easement. Points will be awarded subjectively. Examples of items that will be considered include:</p> <ul style="list-style-type: none"> ☞ If the applicant already holds an conservation easement. ☞ Available staff, consultant, or other partnerships have been created to execute the program ☞ Applicant has never had bad performance on past MDA grants. 	<p>Total Points Available: 50</p>

<p>11. LOCAL AGRICULTURAL PLANNING <i>Policy Objective: To encourage local units of government to utilize a variety of tools through the planning and zoning process to preserve farmland in their community.</i></p> <p>Points will be awarded based on the tools the local unit of government employs to preserve farmland. Examples of such tools include:</p> <ul style="list-style-type: none"> • Township master plans that are compatible with county or regional master plans. • Communities participating in <u>Joint Municipal Planning</u> under the Joint Municipal Planning Act (MCL 125.131 to 125.143). • <u>Zoning ordinances</u> that are consistent with the master plan and effectively preserves agriculture. • Adoption of a <u>Non-Contiguous Planned Unit Development Ordinance</u> • <u>Sliding Scale zoning</u> allowed in agricultural areas. • <u>Density based zoning.</u> 	<p>Total Points Available: 125</p>
<p>12. AGRICULTURAL ECONOMIC DEVELOPMENT PLAN <i>Policy Objective: To maintain the economic viability of farmland and agriculture.</i></p> <p>Points will be awarded on the following basis: Points awarded if an economic development plan is developed regionally or locally to address agricultural economic development or agricultural viability. The plan in its entirety must be submitted with the application.</p>	<p>Total Points Available: 50</p>

TOTAL LOCAL PROG. POINTS 600

TOTAL POINTS POSSIBLE 1000

FUNDING

Grant awards will be based on the following criteria:

- Amount of funding available in the current application cycle
- Number of application received in the current application cycle
- Awarded score of the individual application
- How the application fits with any or all of the CORE VALUES of the Agricultural Preservation Fund Board.

Core Values are the items the Agricultural Preservation Fund Board feels are important in the creation of PDR programs and preservation of farmland in the State of Michigan. Core Values may change over time and may change each application cycle. The core values that the program application meets will be identified during the application review process by the Agricultural Preservation Fund Board.

BOARD POLICIES FOR THE AGRICULTURAL PRESERVATION FUND

The purpose of this document is to list those policies established by the Board. This list is to be provided to all communities intending to apply for grant money under the program.

MATCHING FUNDS

The following sections of the Part 362 "Agricultural Preservation Fund" of the Natural Resources and Environmental Protection Act address the provision of matching funds:

324.36205 Evaluation criteria for applications for grants to purchase agricultural conservation easements.

Sec. 36205.

(1) An application submitted to the board under section 36203 shall be evaluated according to selection criteria established by the board. The criteria shall place a priority on the acquisition of agricultural conservation easements on farmland that meets 1 or more of the following:

(d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.

(4) A grant shall require that a portion of the cost of acquiring an agricultural conservation easement shall be provided by the applicant or another person.

- 1. POLICY:** The minimum amount of matching funds required to submit an application is 25% of the estimated value of the development rights to be paid for all parcels submitted in a particular grant application. Administrative or other costs are not eligible as match.
- 2. POLICY:** Qualifying matching funds submitted with a grant application may be from a local unit of government, the owner of the easement rights to be acquired, other sources or any combination of sources (including federal).

MAXIMUM AMOUNT TO BE PAID PER ACRE

The following section of the statute concerns the maximum amount to be paid per acre:

324.36205 Evaluation criteria for applications for grants to purchase agricultural conservation easements.

(3) The board may establish a maximum amount per acre that may be expended with money from the fund for the purchase of agricultural conservation easements.

- 3. POLICY:** A maximum amount of \$5,000 per acre may be paid from the Agricultural Preservation Fund toward the purchase price of an easement.

REPURCHASE OF DEVELOPMENT RIGHTS

The following section of the statute concerns the repurchase of conservation easements:

324.36206 Awarding of grants and requirements for agricultural conservation easements.

(6) An agricultural conservation easement acquired under this part may be transferred to the owner of the property subject to the agricultural conservation easement if the state and the local unit of government holding the agricultural conservation easement agree to the transfer and the terms of the transfer.

- 4. POLICY:** The Agricultural Conservation Easements are meant to exist in perpetuity. However, the local government PDR ordinance shall provide for the repurchase of development rights by the landowner under the County or Zoning Planning Acts. If the local unit of government and the State jointly holds an agricultural conservation easement the following standards for review, approval and repayment will be used by the State.

- 1) The State will use those standards listed in Section 36111b(7) of NREPA for approval of repurchase, limited to those provisions listed in Section 36111a(1)(a).
- 2) If approval for repurchase is granted the landowner must repay the current fair market value of the rights, as determined by a certified appraiser, at the time of repurchase.
- 3) A repayment received shall be allocated to the local unit of government and the State in the same proportion as the proportion for the original purchase of the development rights of the parcel.
- 4) Funds returned to the State shall be placed in the Agricultural Preservation Fund established under Part 362 of NREPA.

A local entity may have standards for the repurchase of development rights that are more restrictive than the standards established by the Agricultural Preservation Fund Board.

MONITORING AND ENFORCEMENT

The following section of the statute concerns the monitoring of agricultural conservation easements:

324.36206 Awarding of grants and requirements for agricultural conservation easements.

(5) An agricultural conservation easement acquired under this part shall be held jointly by the state and the local unit of government in which the land subject to the agricultural

conservation easement is located. However, the state may delegate enforcement authority of 1 or more agricultural conservation easements to the local units of government in which the agricultural conservation easements are located.

5. **POLICY:** Unless otherwise agreed to by the State, the enforcement and monitoring of the easement shall be the responsibility of the local unit of government. Monitoring of easements shall occur no less than once a year.
6. **POLICY:** The participating local unit of government shall file with the Agricultural Preservation Fund Board, no later than January 31: a copy of the inspection reports for inspections conducted during the prior year, and an annual report which summarizes the number of inspections, violations detected, violations resolved and the circumstances surrounding unresolved violations.
7. **POLICY:** Adequate provision shall be made in the easement language for enforcement by the State in the event that the local government fails to adequately enforce the provisions of the easement. Included in the easement shall be provision for the reimbursement to the State for expenses in the event the local unit of government fails to enforce the provisions of the easement. The monitoring and enforcement of an easement by the State due to the failure of the local unit of government to do so, does not obligate the State to continue the monitoring and enforcement of the provisions of the easement in the future.
8. **POLICY:** In order to provide for monitoring of the easement a baseline report shall be developed documenting the condition of the land and structures on the easement site. The baseline report shall contain the following minimum components:
 1. Description and background of the property.
 2. How the development rights were acquired.
 3. How the parcel was selected.
 4. General location.
 5. Intent of the grantor.
 6. Physical environment (topography, soils, vegetation, human made structures, zoning, etc.)
 7. A photograph, aerial photos and maps of the parcel and vicinity.

DEFINITION OF ELIGIBLE FARMLAND

9. **POLICY:** In order to qualify for submission of a grant, each parcel submitted in an application must meet or exceed the definition of "farmland" as found in Section 36201(h). This definition reads as follows:

(h) "Farmland" means 1 or more of the following:

- (i) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.

- (ii) 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.
- (iii) 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.
- (iv) 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.

DISBURSEMENT OF FUNDS

The following sections of the statute concern the awarding of grants by the Board:

324.36206 Awarding of grants and requirements for agricultural conservation easements.

Sec. 36206.

(1) After the board determines which grants should be awarded, and the amount of the grants, the department shall distribute the grants to the local units of government awarded the grants. The department shall condition the receipt of a grant upon the department's approval of the agricultural conservation easements being acquired.

10. POLICY: Funds awarded to a local unit of government under a grant from the Agricultural Preservation Fund must be expended within 2 years of the date the grant award is made. The Agricultural Preservation Fund Board may grant an extension of the initial 2 year time period upon request by the local unit of government for such an extension. Such an extension will only be granted once based on a finding by the Board that such an extension is reasonable.

11. POLICY: Funds awarded to a local unit of government shall be utilized by that local government to purchase the development rights on parcels submitted as part of their grant application

METHOD TO ESTABLISH THE PRICE TO BE PAID

The following section of the statute concerns the manner in which a local unit of government may determine the price to be paid for the conservation easements purchased with grant money:

324.36203 Eligibility requirements for a local government to submit a grant application.

(2) A grant application shall be submitted by the local unit of government applying for the grant. A local unit of government is eligible to submit a grant application under this section if both of the following requirements have been met:

(a) The local unit of government has adopted a development rights ordinance providing for a purchase of development rights program pursuant to the county zoning act, 1943 PA 183, MCL 125.201 to 125.240, the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600, that contains all of the following:

(i) An application procedure.

(ii) The criteria for a scoring system for parcel selections within the local unit of government.

(iii) A method to establish the price to be paid for development rights, which may include an appraisal, bidding, or formula-based process.

(b) The local unit of government has adopted, within the last 10 years, a comprehensive land use plan that includes a plan for agricultural preservation or the local unit of government is included within a regional plan that was prepared within the last 10 years that includes a plan for agricultural preservation.

12. POLICY: As listed in statute local units of government may utilize an appraisal, bidding or formula-based system to determine the price to be paid for development rights. Prior to submission of a grant application local programs must receive certification by the department that the method to determine the price to be paid is based on sound principles to provide an equitable value to the participating landowner. In no case should the value paid to the landowner for their development rights exceed the market value of the property in question.

CRITERIA FOR PARCEL SELECTION.

The following section of the statute concerns criteria that shall be used by local units of government to select parcels for development rights purchase and for inclusion in the grant submission process.

324.36205 Evaluation criteria for applications for grants to purchase agricultural conservation easements.

Sec. 36205. (1) An application submitted to the board under section 36203 shall be evaluated according to selection criteria established by the board. The criteria shall

place a priority on the acquisition of agricultural conservation easements on farmland that meets 1 or more of the following:

- (a) Farmland that has a productive capacity suited for the production of feed, food, and fiber.*
- (b) Farmland that would complement and is part of a documented, long-range effort or plan for land preservation by the local unit of government in which the farmland is located.*
- (c) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is subject to an agricultural conservation easement under this part or part 361, or a development rights agreement under part 361, or in which development rights have been acquired under part 361.*
- (d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.*
- (e) Other factors considered important by the board.*
- (f) Farmland that will help to enhance other local open space initiatives in the community such as connecting an open space or wildlife habitat corridor, or in preserving unique habitats/natural features that benefit local conservation efforts. (This provision is not in statute but was adopted by the Board.)*

13. POLICY: At a minimum, all local programs shall consider items (a) through (e) in their scoring system and selection process. The weight given to each category is at the discretion of the particular local unit of government program. Other selection criteria may be utilized by the local units of government in addition to the ones listed in Section 36205 of the statute.

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) "Department" means the Michigan Department of Agriculture.

(D) "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, or to divide a parcel for development purposes.

(E) "Local Unit of Government" for purposed of this document means county, township, village, or city.

(F) "Purchase of Development Rights" means a payment is provided to a landowner for the value of the developments associate with a defined land parcel. The owner still owns the land but is compensated for relinquishing the right to develop it as real estate. Agriculture and other compatible uses of the land are allowed to continue.