

BERRIEN COUNTY FARMLAND AND OPEN SPACE PRESERVATION ORDINANCE

ORDINANCE NUMBER 21

**Adopted September 9, 2004
Effective September 9, 2004**

WHEREAS, The Governor and Legislature of the State of Michigan have declared the protection and preservation of farmland and open space to be a statewide policy through amendments to the County, Township, City and Village zoning enabling acts plus establishment of the Agricultural Preservation Fund pursuant to Part 362 of the Natural Resources and Environmental Act (P.A. 262 of 2000), plus enactment of the Farmland and Open Space Preservation Act (P.A. 116 of 1974, MCLA 554.702), and the Historic and Conservation Easement Act (P.A. 197 of 1980, MCLA 399.251), and

WHEREAS, The Berrien County Board of Commissioners hereby declares that protection and preservation of farmland and open space is also a significant countywide policy supported by many local units of government within the County as well as a significant majority of residents of Berrien County, and

WHEREAS, It has been determined by the Berrien County Board of Commissioners that a formal countywide program to protect and preserve farmland and open space within Berrien County is necessary to implement the policy to protect and preserve farmland and open space within Berrien County.

**THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF
BERRIEN COUNTY, MICHIGAN:**

ARTICLE I

INTENT, FINDINGS, PURPOSE AND LEGISLATIVE AUTHORITY

Section 1.01 - Intent

The intent of this ordinance is to create the *Berrien County Farmland and Open Space Preservation Program* that will:

- A. Protect eligible farmland by purchasing development rights voluntarily offered for purchase by landowners,
- B. Authorize acceptance of voluntary donations and the cash purchases and/or installment purchase of development rights of eligible farmland and the placement of a conservation easement on these properties that restricts the future development,
- C. Establish a county comprehensive plan element to be prepared in collaboration with local units of government within Berrien County that describes geographic areas within Berrien County where eligible property should be protected and preserved,
- D. Provide procedures and guidelines for selecting the farmland parcels to be protected, for determining the value to be paid for those rights, and for the repurchase of those rights for properties that no longer comply with the protection and preservation policies of the program and goals of the Berrien County Comprehensive Plan.

Section 1.02 - Findings

The Berrien County Board of Commissioners finds that:

- A. Berrien County is a desirable place to live, work and visit in large part because of the availability of farmland and open space stimulating the human spirit through scenic views that include wetlands, woods, agricultural fields and wildlife habitat areas which are recognized as invaluable natural and aesthetic resources of Berrien County that should be protected,
- B. The climate, variety of soils and terrain make Berrien County well suited to the production of a great diversity of row crops, specialty crops and livestock, including many foods available for direct human consumption,
- C. The largest land use in acreage within Berrien County is farmland currently in active agricultural production,
- D. Open space lands including woodlands, wetland and other environmentally significant open space land areas are usually a significant feature of these farmlands,

- E. These lands provide unique, aesthetic and economic benefits to the citizens of Berrien County and are an important part of the County's natural and agricultural heritage,
- F. Berrien County is experiencing substantial residential development and due to its location to surrounding urbanized areas, attractive landscapes and its excellent public schools, exhibits characteristics that will continue to make Berrien County an attractive place for residential and other development in the future,
- G. The agricultural industry in Berrien County provides the opportunity to harvest locally grown foods to sell at roadside stands, farmers' markets, local retail food stores and other local outlets in the area,
- H. Commercial production agriculture is a significant contributor to the economy in Berrien County. This includes providing employment opportunities for residents offered by agricultural producers, agricultural product processors, agricultural equipment suppliers, farm service suppliers, and retail sellers of products manufactured within Berrien County,
- I. Agriculture in Berrien County significantly contributes to the local economy through the wine and tourism industry and in direct sales of agricultural products at the farm gate,
- J. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of agricultural use and when such land is converted to residential or other uses a critical county resource is permanently lost to the current and future citizens of Berrien County and the State of Michigan,
- K. Efforts of local units of government through local comprehensive planning, zoning, subdivision and land division regulations have not been totally effective in providing long-term protection of farmland and open space under the pressure of increasing development,
- L. Generally, farmland and open space lands which are close to urban centers have a greater market value for future development than their market value for farming or open space and such land often has the same features that are considered valuable components for residential and other development encouraging the speculative purchase of these lands at high prices for future development, regardless of the current zoning of such lands,
- M. There exists in Berrien County, farmland having a market value greater than its agricultural value, land which currently does not attract sustained agricultural investment and that eventually could be sold by farmers and removed from agricultural use,
- N. The acquisition, by Berrien County, the State, the United States, or other qualified conservancy organizations, of voluntarily offered interest in farmland and open space lands within Berrien County, with the intention of being permanent, as

provided in this ordinance and as authorized by the Constitution and Statutes of the State of Michigan, will permit these lands to remain in farmland and open space and provide long-term protection for the public interests that are served by farmland and open space lands in Berrien County,

- O. The Governor and the Legislature enacted Michigan Public Act 262 of 2000 that created an agricultural preservation fund within the State Treasury to provide grants to local units of government to assist in the acquisition of farmland conservation easements provided that the local unit has adopted an ordinance for the purchase of development rights and that the local unit has an updated comprehensive land use plan that includes a plan for farmland preservation,

- P. The establishment of a farmland and open space preservation program will provide specific public benefits to Berrien County, including:
 - 1. Lessening congestion on certain streets, roads and highways,
 - 2. Promoting the concentration of population in appropriate areas,
 - 3. Lessening scattered urban sprawl development, which will lead to increased efficiencies in the provision of governmental services,
 - 4. Retention of the historic rural character of the county necessary for the continuation of the county tourism industry,
 - 5. Increasing opportunities and incentives for young farmers to carry on the agricultural legacy important to the county,
 - 6. Supporting existing efforts to cooperatively plan communities,
 - 7. Maintaining quality hunting, fishing, and other recreational activities,
 - 8. Retention of large blocks of farmland suitable for economic agricultural production purposes,
 - 9. Retention of large blocks of open space including woodlands, wetlands, and wildlife habitat to protect the natural environment of the county including the protection of lakes, rivers streams, and underground aquifers, and
 - 10. To encourage the most appropriate use of land throughout the county.

- Q. The establishment of a farmland and open space preservation program including any cost necessary incident to such acquisition, and the monitoring and enforcement of development right conservation easements, or the participation

with the state, qualified land conservancy or any other party for such purposes will promote the public health, welfare, safety and general welfare of the people of Berrien County.

Section 1.03 - Purpose and Legislative Authority.

The purpose of this ordinance is to establish the authorization and manner in which the county is to acquire development rights in farmland and other eligible land as provided for in this ordinance pursuant to the County Zoning Act, P.A. 569 of 1996, as amended, MCLA 125.231 through MCLA 125.240, and Subpart 11 of Part 21 of the Natural Resources and Environmental Protection Act, P.A. 451 of 1994 as amended, MCLA 324.2140 through MCLA 324.2144.

ARTICLE II

DEFINITIONS

Section 2.01 - Definitions

Agricultural use - 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 or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

Agriculture Conservation Easement - A conveyance by 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. (See also conservation easement and development rights easement.)

Before and After Appraisal - An appraisal that determines the value of the full ownership of the land, before the development rights are severed, and the fair market value of the parcel after the development rights are severed.

Board of Commissioners - The Board of Commissioners of Berrien County, Michigan.

Certification/Re-Certification - Acceptance of the township, city, village, and or county farmland and open space element or plan by the Michigan Department of Agriculture as being compliant with the standards and guidelines of the Michigan Agricultural Preservation Fund, P.A. 262 of 2000, under Part 362 of the Natural Resources and Environmental Policy Act, Act 451 of 1994 amended.

Conservation Easement - See Development Rights Easement.

County - Berrien County.

County Planning Commission - The Berrien County Planning Commission that was established by the Board of Commissioners pursuant to the County Planning Act, P.A. 282 of 1945, as amended, MCLA125.01 through 125.240.

Development - An activity that materially alters or affects the existing conditions or use of any land.

Development Rights - 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, or to extract minerals incidental to a permitted use or a special land use or specific development rights, set forth in a development rights easement in accordance with the provisions of this ordinance.

Development Rights Easement - A grant, by an instrument, in which the owner relinquishes to the public in perpetuity the right to undertake development of the land, and that contains a covenant running with the land, not to undertake development, subject to permitted uses.

Development Rights Value - The difference between the fair market value of the full ownership of the land (excluding the buildings thereon) and the fair market value of the land if the use were restricted to an agricultural use.

Element, Farmland and Open Space Element of County Plan – The map and accompanying text prepared in accordance with the *Standards and Guidelines Established for the Michigan Agricultural Preservation Fund*, and adopted in accord with the provisions of the County Planning Act, Act 282 of 1945, MCLA 125.01 through 125.240, as amended.

Farmland - Farmland as defined in Part 361 of the Natural Resources and Environmental Protection Act (NREPA), Act 451 of 1994, containing one or more agricultural uses or a parcel of land currently fallow that can be used for one or more agricultural uses.

Fee Simple - A common synonym for ownership in which the owner has total and complete ownership not encumbered by any means including the rights of unrestricted use, power to dispose of the property, and the ability to transfer owners of the property by will or inheritance.

Intensity of Development - The height, bulk, area, density, setback, use and other similar characteristics of development authorized by law, typically the township (or other local government) zoning ordinance.

Land Conservancy, Qualified - A Michigan registered not-for-profit corporation designated as a 501(c)(3) tax exempt charitable trust pursuant to the Federal Internal Revenue Code, organized for the specific purpose to serve as a land conservancy and which meet the following criteria, as determined by the Berrien Board of Commissioners:

- A. Has been incorporated in the State of Michigan for a period of not less than two years and remains a corporation in “good standing” with the Michigan Department of Commerce,
- B. Has an active and qualified Board of Directors that set policy and supervise the business operations of the corporation and its land conservancy operations,
- C. Has the equivalent of one full-time qualified professional staff with educational training and a minimum of two years experience in land conservancy operations,
- E. Has an operating budget and other financial resources sufficient to carry out the purposes of the conservancy,
- F. Has adopted and operates pursuant to the *Statement of Land Trust Standards and Practices* (current edition) of the Land Trust Alliance, and
- G. Has access to qualified legal counsel and other professional resources necessary for the conduct of the activities of the conservancy.

Land Preservation Board (LPB) - The advisory board formed pursuant to this ordinance to advise the County Board of Commissioners regarding the selection of eligible lands for purchase.

Like Kind Replacement - A similar amount (acreage) which in the determinations of the LPB and the County Planning Commission, is:

- A. Located within a farmland or open space area as defined in the Berrien County comprehensive plan, farmland and open space preservation element,
- B. Fulfills the preservation goals and objectives of the farmland and open space plan element in an equal or superior capacity, and
- C. Is at a location where there is immediate development pressure, and if not preserved, a request to withdraw the land from the preservation/protection classification of the farmland and open space element of the Berrien Comprehensive Plan would, in the determination of the Berrien County planning commission likely be made.

Natural water bodies and water courses - A natural lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water. Inland Lakes and Streams, Part 301 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.30101 *et seq.*;

Open Space, as part of a farmland parcel - Land, as defined in Part 323 and/or Part 361 of the Natural Resources and Environmental Protection Act (NREPA), Act 451 of 1994 that meets one of the following definitions:

- A. Any undeveloped site included in a national registry of historic places or designated as a historic site pursuant to state or federal law,
- B. River front ownership subject to designation under part 305, (P.A. 451 of 1994) to the extent that full legal descriptions may be declared open space under the meaning of this part, if the under developed parcel or government lot parcel or portions of the undeveloped parcel or government lot parcel as assessed and owned is affected by that part and lies within 1/4 mile of the river,
- C. Undeveloped lands designated as environmental areas under Part 323, including unregulated portions of those lands,
- D. Any other area approved by the local governing body, the preservation of which area in its present condition would conserve natural or scenic resources, including the promotion of the conservation of soils, wetlands, and beaches; the enhancement of recreation opportunities; the preservation of historic sites, or

- E. Idle potential farmland of not less than 40 acres that is substantially undeveloped and because of its soil, terrain, and location is capable of being devoted to agricultural uses as identified by the department of agriculture.

Owner and Landowner - A person having a freehold (fee simple) estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.

Purchase of Development Rights (PDR) Program - A program prepared and adopted pursuant to Section 32 of the County Zoning Act, P.A. 183 of 1943, as amended, MCLA 125.231 through 125.240.

Participating Local Unit of Government - Any Berrien County Township, City or Village that has a farmland and open space preservation element within their comprehensive plan, a zoning ordinance consistent with this element as determined by the county planning commission and has provided written notice (in the form of a resolution approved by the local legislative body) to participate in the purchase of development rights program as set forth in Section 4.04 of this ordinance.

Permitted Use, Agriculture - Any use contained within a development rights easement essential to the farming operation or that does not alter the agricultural character 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 percent of the stored, processed, or merchandised products are produced by the farm operator for at least three of the immediately preceding five years. Entertainment agriculture, such as you pick fruit operations, petting farms, Christmas tree farms and farm markets that include ancillary related uses are permitted as long as more than 50 percent of the gross receipts for the entire agricultural activity are attributable to the agricultural product being marketed and the facility has been approved by the participating township and/or county.

Sand dunes - Freshwater sand dunes are sand formations created through an interaction of windblown and water fluctuation processes containing open areas, wetlands, grasslands, scrub shrub, and woodland plant communities, regulated by the Sand Dune Protection and Management, Part 353 of the Michigan Natural Resources and Environmental Protection Act, MCL §§ 324.35301 *et seq.*; (Legislative Findings MCL § 324.35302);

Significant natural area/wildlife habitat - A large area of unmodified or slightly modified land, retaining its natural character and influence, without significant habitation, which is conserved so as to preserve its natural condition, support wildlife, and promote biodiversity, regulated by the Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.35501 *et seq.*; (Legislative Findings § 324.35502);

Wetlands - Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a fen, bog, swamp, or marsh regulated Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Act - MCL §§ 324.30301 *et seq.*; (Legislative Findings MCL § 324.30302);

ARTICLE III

AUTHORIZATIONS

Section 3.01 - Purchase of Farmland Development Rights.

Pursuant to P.A. 183 of 1943, as amended, MCLA, 125.231 through 125.240 the Berrien County Board of the Commissioners is authorized to purchase or acquire the development rights from farmland throughout Berrien County by purchase, gift, grant, bequest, devise, covenant, or contract but only at a price which is equal to or less than the fair market value of the development rights as determined by valuation methods approved in this ordinance.

Section 3.02 - Limitation Upon Purchases

The County shall only purchase development rights for farmlands that:

- A. Meets the definition of eligible farmland or other eligible land as set forth in this ordinance,
- B. Is located within the jurisdiction of a participating local unit of government,
- C. Is voluntarily offered for sale by an owner of farmland or other eligible land,
- D. Has been determined to be consistent with the farmland and open space elements of the comprehensive plan of the participating local government and the Berrien County Comprehensive Plan, and
- E. The application has been reviewed and approved by the planning commission and legislative body of the participating local government.

Section 3.03 - Means of Purchase and Payment

The county is authorized to enter into cash purchase and/or installment purchase contracts, options, and agreements or the receipt of tax-deductible (and other) donations of easements, consistent with applicable law. When installment purchases are made, the county is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract for the tax-exempt status of such interest.

Section 3.04 - Use of Qualified Land Conservancy Assistance

The County may contract with a qualified land conservancy, other legally established land trust or other experienced and qualified nonprofit groups that would assist the county in conducting the purchase of development rights program, establishing baseline studies, procedures for monitoring, and actual monitoring of any development rights easements acquired under this ordinance, including holding joint interest in county conservation easements.

Section 3.05 - Repurchase or Exchange of Property Interest in Development Rights Easements County owned interests in farmland and other eligible land may be exchanged for property interests in farmland land or other eligible land on an equivalent appraised value basis, upon affirmative findings that:

- A. The property subject to the easement is no longer consistent with the farmland and open space element of the comprehensive plan of the participating local government and Berrien County due to any one of the following:
1. The quality of the farmland is such that agricultural production cannot be made economically viable with generally accepted agricultural and management practices,
 2. Surrounding conditions now exist that impose physical obstacles to the agricultural operations or prohibit essential agricultural practices,
 3. A significant natural physical change in the farmland that occurred resulting in a generally irreversible and permanent limitation upon the productivity of the farmland,
 4. A court order that restricts the use of the farmland so that agricultural production cannot be economically viable,
 5. A court ordered public purpose condemnation being imposed on all or a portion of the property resulting in the remainder of the farmland for which the development rights have been purchased no longer being economically viable for agriculture production.
- B. The planning commissions of participating local units of government and the county have taken such action to amend the farmland and open space element of the comprehensive plans of the participating local government and Berrien County, removing the subject land from the protection/preservation area designation.
- C. The property owner has requested to repurchase the development rights,
- D. The property owner and the LPB have reached a tentative agreement defining compensation due the County for the repurchase of the development rights based on the appreciated development rights value or an amount of like kind replacement farmland or other eligible land of equal value to replace the amount of land for which the development rights are being repurchased. If the property interest exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value for the repurchase or exchange. Such cash payments are to be used to purchase other eligible farmland through the program.

ARTICLE IV

FARMLAND AND OPEN SPACE PRESERVATION PLAN

Section 4.01 - County Farmland and Open Space Preservation Plan Element

Prior to the purchase of any development rights by the Berrien County Board of Commissioners pursuant to this ordinance, the county planning commission shall prepare a comprehensive plan farmland and open space preservation element. If the comprehensive plan currently has an element that fulfills the planning requirements set forth in Section 4.02, the county planning commission shall review the element and after public hearing re-certify the element as being compliant with the terms of this ordinance.

Section 4.02 - Farmland and Other Eligible Land and Open Space Planning Requirements

The farmland and open space comprehensive plan element shall, at minimum, contain the following:

- A. A future land use map indicating the areas intended for the preservation of farmland,
- B. Text describing the strategies intended to be used in order to preserve farmland, including purchase of development rights and other techniques,
- C. Language indicating why farmland should be preserved in the county (for example: cost of services studies, economic benefit to the county, etc.),
- D. A description of how and why the preservation area(s) was/were selected, and
- E. A description of the process used to prepare the element and the involvement and participation of local units of government within the county, farmland owners (producers) and the general public.

Section 4.03 - Involvement of Local Units of Government in the Planning Process

The county planning commission shall develop and carry out a process to allow each local unit of government in Berrien County the opportunity to participate in the preparation or re-certification of the farmland and open space element of the Berrien County Comprehensive Plan. At minimum, the county planning commission shall:

- A. Send notice to each chief elected official and the chair of each planning commission (where a planning commission has been established) for each local unit government within the county, notifying them that the county planning commission will commence the preparation of the element or commence a process to re-certify the current plan element, or
- B. Provide a process for each local unit of government to prepare a plan element for their local government that meets the requirements of Section 4.02 that can be included within the county plan element, or a process that will allow the local unit

of government to adopt the county plan element as the element of the local unit of government's comprehensive plan.

Section 4.04 - Farmland and Open Space Preservation Element Adoption/Re-certification

The county planning commission shall comply with the notification, public hearing and adoption procedures as prescribed by the County Planning Act, P.A. 282 of 1945, as amended MCLA 125.104 b and 125.105, when adopting a new or amended comprehensive plan element.

The county planning commission shall provide public notice as required by County Planning Act, P.A. 282 of 1945, as amended, MCLA 125.104 b and 125.105, including written notification to each chief elected official and chair of each planning commission (where a planning commission has been established) of the meeting at which re-certification of the farmland and open space element shall be considered by the county planning commission.

Section 4.05 - Declaration of Intent to Participate in Purchase of Development Rights Program

The county planning commission shall, prior to the adoption of a farmland and open space preservation element, or re-certification of an existing element, notify each chief elected official and the chair of each planning commission (where a planning commission has been established) of each local unit government within the county that the county planning commission will adopt (or re-certify) a farmland and open space element of the county comprehensive plan that the element will serve as the basis for the identification of land that may be acquired, (fee simple or partial interest), pursuant to the provisions of this ordinance.

Any local unit of government within Berrien County, may provide written notification in the form of a resolution adopted by the legislative body, the resolution which has been approved by the local unit of government planning commission, indicating the intent of the local unit of government to participate in the purchase of development or conservation easement rights, as set forth within this ordinance. Only local units of government that have an adopted comprehensive plan farmland and open space preservation element meeting the requirements of Section 4.02 and has in force a zoning ordinance consistent with this plan element, as determined by the county planning commission, shall be accepted as a participating local unit of government.

Section 4.06 – Approval by the County Board of Commissioners

The secretary of the county planning commission, upon adoption or re-certification of the farmland and open space preservation element of the county comprehensive plan, shall certify a copy of the plan element to the County Board of Commissioners by filing a certified copy with the County Clerk.

Section 4.07 - Effect of the Approval of the Farmland and Open Space Plan Element

After the date of the certification required in Section 4.06, the County Board of Commissioners shall not acquire, by any means, an interest in any property for preservation purposes not fully consistent with the adopted county farmland and open space preservation element.

ARTICLE V

LAND PRESERVATION BOARD

Section 5.01 - Establishment of the Berrien County Land Preservation Board

The Berrien County Land Preservation Board (LPB) shall be a separate board reporting directly to the Berrien County Board of Commissioners. Appointments to the Land Preservation Board shall be made by the Board of Commissioners. All appointees shall serve at the pleasure of the Board of Commissioners. Members and operation of the LPB shall subscribe to the rules and procedures established by the county board of commissioners governing all boards, commissions and committees of Berrien County including, member compensation, rules of procedure, public meeting notice, open meeting compliance, disclosure of conflicts, including applicable financial and accounting policies.

The Land Preservation Board shall include nine (9) members who are residents of the County of Berrien; composition of the LPB shall include:

- 1-Member of the Berrien County Board of Commissioners
- 1-Member of the Berrien County Planning Commission
- 3-Members representing farming
- 1-Member representing the interest of realtors or developers
- 1-Member representing the conservancy community
- 2-Members that are elected officials from municipalities participating in the farmland preservation program

Section 5.02 - Duties and Functions of the Berrien County Land Preservation Board

The LPB shall function as an advisory body to Berrien County Board of Commissioners and assist the County Board in determining:

- A. The priority for the purchase of farmland development rights for all property submitted by landowners for consideration,
- B. Whether the County should enter a purchase agreement for the development rights from an eligible parcel of farmland including any other eligible land thereto,
- C. The price and method of compensation relative to the purchase of the development rights from an eligible parcel of farmland including any other eligible land thereto.

In addition to the duties above, the LPB shall:

- D. Prepare and administer an application and application prioritization process that results in a prioritized listing of farmland properties,

- E. Publish the prioritized listing of farmland property, file a copy of the listing with each participating local unit of government and make copies available to general public, and
- F. Prepare for approval by the Berrien Board of Commissioners, applications for state, federal or other sources of grant funds to assist the purchase of development rights pursuant to the provisions of this ordinance.

Section 5.03 - Staff Services and Technical Assistance

The County Planning Department shall provide staff services for the operation of the LPB. The LPB may consult experts and secure services of technical advisors, as required, to assist in the performance of the duties and functions of the LPB.

ARTICLE VI

APPLICATION AND PRIORITIZATION PROCEDURES

Section 6.01 - Application

The LPB shall take action to prepare an application for submission of eligible properties and provide copies of the application to each participating local unit of government. At minimum the application shall include the following information:

- A. The name of the landowner(s) filing the application,
- B. The address and phone number of the applicant,
- C. Proof of ownership of the property submitted in the application,
- D. A legal description and property tax identification number of the land being submitted in the application,
- E. An indication of total number of nominated acres currently in agricultural use,
- F. The size of the parcel,
- G. The type/types of crop(s) grown including number of acres each,
- H. Any other information deemed necessary to complete the application by the LPB as requested on the application form,
- I. A statement indicating the application has been reviewed by the planning commission and legislative body of the participating local unit of government in which the property is located,
- J. A signed and notarized statement that the owners are voluntarily submitting the application for prioritization and possible acquisition of farmland development rights.

Section 6.02 - Submission of Applications - Notice of Availability

At least once annually, the LPB shall establish a time period for acceptance of applications. Notice of the application and period of availability of applications shall be published in a newspaper(s) of general circulation within the County not less than ninety-days (90) prior to any submission deadline established by the LPB. In addition, the LPB shall seek additional means of public notice including publication in the Berrien Farm Bureau, MSU Extension, Conservation District and other newsletters and venues as deemed appropriate.

All applications for consideration shall:

- A. Be made only on an application form approved by the LPB,

- B. Be signed by the owner(s) of the land being considered,
- C. Be submitted prior to the deadline for receipt of applications for the selection year as set forth by the LPB, and
- D. Contain all required information.

Section 6.03 - LPB Review and Certification of Eligibility

The applications shall be forwarded to the LPB for scoring, review and recommendation.

Section 6.04 - Prioritization and Scoring Criteria

The LPB shall develop selection criteria and a numerical scoring system to be used by the LPB to consider and select farmland applications for consideration by the county board of commissioners for purchase of development rights.

- A. The farmland selection criteria shall place a priority on the purchase of development rights of farmland that meets one or more of the following:
 - 1. Farmland that has a productive capacity suited for the production of feed, food, and fiber, including but not limited nursery stock operations and the raising of horses,
 - 2. Farmland that would complement and is part of a documented, long-range effort or plan for land preservation,
 - 3. Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is protected,
 - 4. Farmland in which matching funds have been provided by either the landowner or another source,
 - 5. Other criteria as may be deemed appropriate by the LPB.

The LPB shall submit the initial and any future amendments of the developed selection criteria and scoring system to the participating local units of government for review and concurrence. The initial selection criteria and scoring system and any future amendments to the selection criteria and the scoring system must be approved by a 2/3 majority vote of the LPB in order to be considered for concurrence by the legislative bodies of all participating local units of government. Concurrence with the selection criteria and scoring system shall be by resolution of the legislative body of $\frac{3}{4}$ ^{ths} of all participating local units of government and shall be required prior to the LPB recommending any purchase to the Berrien County Board of Commissioners.

Section 6.05 - Prioritization and Notice of Prioritization

The LPB shall complete the numeric prioritization of all certified applications using the prioritization criteria prepared pursuant to Section 6.04. Notice of the ranking of all application and the prioritized score of applications shall be transmitted to the Berrien County Board of Commissioners and each participating local unit of government.

Section 6.06 - Carry-Forward Provisions

A certified application may be carried forward to the next selection period, provided the applicant and participating local unit of government authorizes the LPB to carry forward the application. Such application shall be reprioritized among all certified application submissions, using the current score. If changes to the application have been made that would result in a modification of the score, a new application must be submitted.

Section 6.07 – Application Fee

The LPB may assess an application fee to applicants at the time of initial application and/or at the time of the real estate closing for eligible properties accepted for purchase.

ARTICLE VII

METHOD OF DETERMINING VALUE AND PAYMENT

Section 7.01 - Appraisal Method of Valuation

Upon approval of an application under the terms of this ordinance the LPB will initiate an appraisal of the applicant's property. Said appraisal shall be a "before and after" appraisal. Under the "before and after" scenario, one appraisal will determine the value of the full ownership of the land, before the development or conservation easement rights are severed, and one will determine the fair market value of the parcel with the development or conservation easement rights severed. The amount to be offered would be the difference between the before appraisal and the after appraisal. The development or conservation easement rights value will be determined based on the legally permissible intensity of development as set forth by zoning ordinance of the local unit of governments in effect at the time the development or conservation easement is to be purchased.

Section 7.02 - Qualifications of Appraisers

Currently licensed Michigan State Certified Appraisers selected by the LPB on a bid basis will make all appraisals. The selected appraiser will not have a property interest, personal or financial interest in the selected parcel.

Section 7.03 - Owner to Receive Appraisal and Right of Valuation Review

All appraisals will be in writing and will be furnished to the respective owners for review at the time an offer is made. If an owner of property believes the property has not been adequately appraised, said owners may, within 90 days from the date of an offer, have a review appraisal made at the owner's expense, by a currently licensed Michigan State Certified Appraiser. The review appraisal will be filed with the LPB.

Section 7.04 - LPB to Recommend Amount of Purchase Offer Based on Appraisal

The LPB will recommend to the Berrien Board of Commissioners an amount to be offered for the development or conservation easement rights based on the opinion of value contained in the appraisal and in the case of where a second appraisal has been prepared, the review appraisal.

Section 7.05 – Action by the County Board of Commissioners

Upon reviewing the application, the County Board of Commissioners shall, at a regular meeting of the Board:

- A. Approve the application; or
- B. Approve the application subject to specific conditions; or
- C. Deny the application, stating specific reasons for the denial; or
- D. Postpone action on the application to a specified date.

ARTICLE VIII

PROVISIONS AND DURATION OF ACQUIRED EASEMENTS

Section 8.01 - Provisions of the Easement

The easement encumbering the development rights of farmland property shall contain provisions restricting the use of the land for permitted agricultural use and indicate that the development rights are to be held in trust by the public. The easement shall also contain provisions restricting public access and limiting the uses of the land such that the existing agricultural use will be preserved. The easement shall contain a method for enforcement of the provisions of the easement as well as a procedure for modification and/or termination of the easement.

Provisions of the easement shall include:

- A. That the easement shall run with the land in perpetuity and may not be terminated except as provided for in this ordinance,
- B. The property subject to the easement may not be divided into parcels smaller than 40 acres unless approved by the holder(s) of the conservation easement,
- C. Construction of any new residential dwellings of any type is prohibited,
- D. Construction of any new building, except for agricultural use buildings, shall first be approved by the holder(s) of the conservation easement,
- E. Only agricultural activities are permitted on the land,
- F. That excavation of topsoil, sand, gravel, rock, minerals or other materials that significantly impairs the use of the land as prescribed above shall be prohibited,
- G. That the land owners may maintain, renovate, add to or replace existing structures,
- H. That the property subject to the easement may be sold, mortgaged, bequeathed or donated provided that any conveyance is subject to the terms and conditions of the conservation easement, and
- I. The procedures for filing the easement with the County Register of Deeds.

Section 8.02 - Duration of Easements

Development and conservation easement rights acquired pursuant to this Ordinance shall be held in trust by the County of Berrien, the participating local unit of government and the State of Michigan, the United States, land conservancy or other organization as deemed appropriate by the Berrien County Board of Commissioners for the benefit of the citizens of Berrien County and the State of Michigan in perpetuity. If the Berrien County Board of Commissioners in concurrence with the participating local unit of government and any holder of interest in the

subject property of the easement finds the farmland or open space upon which development or conservation rights have been acquired meets the requirements of Section 3.05 of this ordinance, the Berrien County Board of Commissioners may approve the disposition of their interest in the land.

For development or conservation easement rights held jointly by Berrien County and another entity, such as a land conservancy, trust or the State of Michigan, all parties to the easement must concur with the disposition of the development rights interest in the land.

Section 8.03 - Valuation Methodology Upon Termination of Easements

If the county approves the disposition of development or conservation easement rights acquired on a parcel, the value of the development rights to be sold shall be determined by a “before and after” appraisal based on the value of the property at the time the request for disposition is made. The “before and after” appraisal shall be made by a currently licensed Michigan State Certified Appraiser, selected by the LPB on a bid basis. The appraisal shall establish the fair market value of the property as if the development or conservation easement rights were still attached to the property and the fair market value of the property with the development or conservation easement rights severed. The difference between fair market value with development rights and the fair market value with the development or conservation easements rights severed would be required to be repaid to the Berrien County in order for the development or conservation easement rights to be reconnected to the parcel. The development or conservation easement rights value shall be determined based on the legally permissible intensity of development as set forth by zoning ordinance of the local unit of governments in effect at the time the development or conservation easement was purchased.

Section 8.04 - Like Kind Replacement Land Policy

It is policy of Berrien County to seek the replacement of like kind land that will replace any land released from the Berrien County Farmland and Open Space Preservation Program pursuant to Section 3.05 of this ordinance. An applicant seeking to repurchase development or conservation easement right from any land enrolled in the program shall be allowed to offer like kind replacement land to replace the amount of land being requested to be released from the program.

Any land offered for replacement shall be consistent with the farmland and open space element as determined by the Berrien County Board of Commissioners.

Section 8.05 - Use of Cash Payment from Repurchases

Proceeds from the repurchase of any development or conservation easement rights or the acquisition of the development or conservation easement rights of a parcel through an eminent domain will be deposited into the Farmland and Open Space Preservation Fund of the County and will be used to acquire the development and conservation easement rights of other farmland and open space land within Berrien County.

ARTICLE IX

EASEMENT OVERSIGHT RESPONSIBILITIES

Section 9.01 - Annual Review and Site Visit of All Easements

The LPB will annually review all easements in which Berrien County holds an interest. A written report concerning the status of each easement the condition of the land and compliance with the terms of the easement, and an on-site inspection, shall be made. This report shall be filed with the Berrien County Board of Commissioners and any participating local unit of government where an easement is held.

ARTICLE X

PRESERVATION ACQUISITION AND STEWARDSHIP FUND

Section 10.01 - Establishment of the Preservation and Stewardship Fund

The Berrien County Treasurer is hereby directed to establish the Land Acquisition and Stewardship Fund within the accounts of Berrien County. This account shall be subject to accounting policies and auditing requirements of Berrien County. Hereinafter, all revenue and expenses for the operation of the farmland and open space preservation program will be accounted within this fund, in a form that will separate revenue and expenses related to the acquisition and maintenance of farmland development rights or conservation easements purchased and the stewardship of such easements.

Section 10.02 - Funding Sources

The Farmland and Open Space Program may be financed by grants, donations, bonds or notes issued pursuant to MCLA 125.233, general fund revenue, special assessments pursuant to MCLA 125.233, and other sources as approved by the Berrien County Board of Commissioners and permitted by law.

Section 10.03 - Funding and Preferences for Local Contributions

The Berrien County Board of Commissioners may choose to request approval for additional taxes to fund the local purchase of development or conservation easement rights program. If such millage is approved all funds shall be deposited into the Fund according to the terms of the approved millage proposal.

If funds are appropriated and/or a millage is passed by any participating local unit of government priority will be given by the LPB to the selection of parcels within that participating local unit of government including any submission to the state for matching funds.

Section 10.04 - Funds from Participating Local Units of Government

Funds from participating local units of government not directed to a specific application, supplemental matching funds, or gifts from other governmental agencies or private sources may become available to pay a portion of the cost of acquiring other development or conservation easement rights. The Berrien County Board of Commissioners is hereby authorized to utilize such funds to purchase interests in farmland or open space to otherwise supplement any proceeds directly generated by the county in accordance with the applicable laws or terms governing such grants.

ARTICLE XI

AMENDMENTS, SEVERABILITY, CONFLICTING ORDINANCES

Section 11.01 - Amendments

This ordinance may be amended by the Berrien County Board of Commissioners.

Section 11.02 - 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 11.03 - 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.

ARTICLE XII

ADOPTION AND EFFECTIVE DATE

Section 12.01 - Adoption

Passed, adopted and approved this _____ day of _____, 2004 by the Board of County Commissioners, Berrien County, Michigan.

Section 12.02 - Effective Date

This ordinance shall become effective on _____, 2004.

**BOARD OF COUNTY COMMISSIONERS
BERRIEN COUNTY, MICHIGAN.**

Chair

CERTIFICATION

I hereby certify that the above is a true and complete copy of an ordinance adopted by the Board of Commissioners of Berrien County, Michigan, at a regular meeting held on the ____ day of _____, 2004, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said act.

County Clerk