

APPENDIX D: LAND PRESERVATION/PURCHASE OF DEVELOPMENT RIGHTS INFORMATION

Source: Farmland Preservation in Clinton County, Collection of Research Findings Conducted by the Clinton County Board of Commissioners in Association with The Rural Development Council of Michigan

EASEMENT PURCHASE PROGRAM: QUESTIONS AND ANSWERS

The following is adapted from materials prepared by The Rural Development Council of Michigan:

Q. WHAT IS A PRESERVATION EASEMENT?

A. An easement is a right. A "preservation easement" is a recorded document that limits the type and amount of development that may occur on a property. You may own a particular farm property "fee simple," meaning that you have all rights to occupy, use, and enjoy the land. One right that you have is the right to develop that property for commercial, residential, or other use as prescribed in your Township's zoning ordinance. When we say that we would like to "purchase an easement," we mean that we would like to purchase only the development rights associated with farm parcels so that they are preserved as farmland for the future.

Q. IF I SELL THE COUNTY A PRESERVATION EASEMENT, DO I STILL OWN THE LAND?

A. Yes. You are simply insuring that your farmland will be preserved for future generations. You still own the farm and may continue to enjoy its use.

Q. WILL SALE OF THE DEVELOPMENT RIGHTS TO MY LAND REDUCE ITS VALUE?

A. Yes. If you ever sell your land after having sold the County an easement, you will likely receive a lower price because you have already sold part of your interest in the land through the easement sale.

Q. IS THERE A MARKET FOR DEED RESTRICTED FARMLAND?

A. Yes. Due to its relatively low cost, there is a high demand for deed-restricted farmland among established farmers looking to increase their landholdings and new farmers who want to purchase affordable farmland. Some participants in the program have sold their development rights as a first step to selling the farm. Farmland Preservation Program staff are available to discuss recent sales of deed restricted land.

Q. HOW DO YOU DETERMINE THE VALUE OF MY DEVELOPMENT RIGHTS?

A. The easement value of your farm is affected by a number of variables-including location, zoning, road frontage, soil types, and development pressure. To determine the easement value, two state-certified appraisers will be hired by the County to appraise your property. Each appraiser values the fee simple or "before easement" value of your land and its restricted or "after easement" value. The difference between the two values is the appraised value of your "development rights," or what the County will pay you for your development easement.

For example:

Before = \$3,000/acre = Value of land unrestricted after = \$1,200/acre = Value of land if restricted

Payment = \$1,800/acre = Value of development rights (The price the County would pay to preserve the land.)

Q. WHY SHOULD I SELL MY DEVELOPMENT RIGHTS TO THE COUNTY?

A. Landowners have chosen to participate in the program for many reasons. Some farmers do not plan to develop their property, and appreciate the ability to access some of the land's equity while continuing to farm. Proceeds from easement sales have been used, for example, for the payment of debts or to finance needed capital investments. If you intend to pass the farm on to heirs, selling your development rights may offer special tax advantages. Finally, easement purchase provides compensation for farmland preservation - a particular benefit for landowners confronted with the possibility of being zoned into preservation. Only you can determine if the benefits of the program will work for you and your family.

Q. IF DEVELOPERS CAN OFFER ME A HIGHER PRICE, WHY SHOULD I SELL TO THE COUNTY?

A. One advantage of selling your development easement to the County is that the County offer is not subject to the multitude of conditions that developers frequently include in their agreements. Developer purchase offers are almost always based on numerous contingencies, such as approval of their development plan at certain densities and receipt of necessary state, regional, or local permits. The municipal review and approval process takes two or three years and the plan may ultimately be rejected. You may see very little, if any, money up front while you carry a substantial portion of the investment risk. It is important to understand that the County is purchasing only the development value of your farmland and that you retain the value of the land as a farm and, if applicable, a residence. Based on the resale of restricted farmland throughout the state, that value can be substantial.

Q. IF I SELL TO THE COUNTY WILL THE PUBLIC HAVE THE RIGHT TO COME ON MY PROPERTY?

A. No. The public is not granted any right to use your land. County elected officials remain strong proponents for the strengthening of right-to-farm laws and ordinances to protect farm properties that are preserved under the program. This will help to further strengthen your protection from public violations of your rights as a landowner.

Q. IS THIS PROGRAM OPEN TO EVERY FARM OWNER?

A. No. Farms will be scored according to numerous variables such as soil classifications, proximity to sewer and water etc. Only high-point ranking farms will be slated for preservation.

Q. WHAT DO I NEED TO DO TO BE CONSIDERED FOR THE PROGRAM?

A. Submit an application to the County Agricultural Preserve Board.

Q. DOES THE COUNTY'S FOCUS ON LARGE FARMS MEAN THAT THE COUNTY IS NOT INTERESTED IN SMALLER FARM PROPERTIES?

A. Not necessarily. Although program emphasis is placed on large farms of high soil quality, participation in the program may depend on the configuration of the applications submitted.

Q. AFTER I SELL MY DEVELOPMENT RIGHTS TO THE COUNTY, CAN I BUILD A HOUSE FOR A CHILD OR OTHER FAMILY MEMBER?

A. Not necessarily. You may be eligible for one more Residual Dwelling Site if the individual is essential to the farm operation.

Q. I HAVE A NON-AGRICULTURAL USE ON MY PROPERTY OR MAY WANT TO ESTABLISH ONE IN THE FUTURE. IS THIS ALLOWED?

A. Non-agricultural uses that have existed on the property prior to the time an application is submitted are allowed to continue. New uses would only be permitted if an area of the property is "excepted" from the easement. Current policy allows for the main house and associated structures to be excepted from the standard restrictions that are imposed when the development rights are sold. Excepted land, however, cannot be sold separately from the farm.

Q. WHEN WOULD THE COUNTY BUY MY DEVELOPMENT RIGHTS?

A. The County reviews all of the applications submitted by the application deadline. Following preliminary approval, it is anticipated that landowners will be made an offer within six months. Once a contract of sale is executed, the easement sale will close within approximately six months. In the event that a large number of applications are received, the appraisals and, consequently, offers would be done in batches so the timeline might be slightly longer.

Q. WHAT HAPPENS AFTER I SUBMIT MY APPLICATION?

A. All applications are reviewed to determine their relative ranking according to the counties adopted criteria. The criteria include soil quality, tillable acres, septic limitations, farm size, location to other applications, proximity to existing non-agricultural development, and municipal commitment. Based on the results of the ranking, the County will determine which applications will receive preliminary approval. Approved farms are then appraised in order to determine their easement value.

Q. AM I REQUIRED TO SUBMIT A BINDING OFFER WITH THE APPLICATION TO SELL THE DEVELOPMENT RIGHTS ON MY PROPERTY FOR A CERTAIN PRICE? A. No. The landowner is not required to specify a price for which he or she promises to sell to the County. The County will have two appraisals conducted on the farms that receive preliminary approval. The County's offer to purchase will be based on the fair market value of the development easement as reflected in the appraisals.

Q. AM I REQUIRED TO ACCEPT THE COUNTY'S OFFER?

A. No, the Easement Purchase Program is entirely voluntary. After you are informed of the offer you can either accept the value or reject it and "walk away."

POTENTIAL ADVANTAGES TO PARTICIPATING COUNTIES

Positive Tax Benefits - Farmland benefits local governments financially by providing more in tax revenue than it demands in local services. A recent American Farmland Trust Cost of Community Services study in Monmouth County, New Jersey, for example, found that residential properties used an average of \$1.31 worth of municipal services for every \$1 of taxes collected, while farmland used an average of only \$0.45 worth of municipal services for every \$1 of taxes collected. Landowners continue to pay property taxes even after their land becomes part of the Farmland Preservation Program.

Promote Municipal Planning Goals - Preserving farmland can be one part of an overall county growth plan that clusters new development and protects productive farmland, environmentally sensitive areas, open space recreation and viewshed properties, and the pastoral nature of the community. Preserved farms allow townships to avoid additional pressures on municipal infrastructure (e.g., schools, roads) that occur when residential developments are built.

Support to the Local Agricultural Industry - Preserving farmland helps preserve agriculture - an \$37 billion industry statewide. On the local level, preserving agriculture can provide a source of economic development, as input and processing businesses are attracted to a critical mass of operating agricultural businesses. Agri-tourism can also represent an important business opportunity, particularly near urban and suburban areas.

Protection of Natural Resources - When farms are preserved, natural systems are protected. Wetlands on farms provide necessary groundwater recharge and purification. Undeveloped steep and wooded slopes help prevent soil erosion and rainwater runoff.