



MICHIGAN AGRICULTURAL PRESERVATION FUND POLICIES AND PROCEDURES

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 (NREPA). 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. To qualify, the local unit of government must meet the following minimum standards:

- 1) The local unit of government has adopted a **Purchase of Development Rights (PDR) Ordinance** that is consistent with NREPA, the Michigan Zoning Enabling Act and the policies established by the Board. The ordinance must contain all the items outlined in the Michigan Zoning Enabling Act, including:
 - a) A method to determine the value of the development rights.
 - b) An application procedure.
 - c) A scoring system (may be assigned to local board to develop).

- 2) The local unit of government has adopted a **comprehensive land use plan** that includes a plan for agricultural preservation. The local unit of government can be covered within a **regional plan**. *The plans must be prepared within the last 10 years and reviewed or updated within the last 5 years.* 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.
- 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.

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

- 1) 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.
- 2) The legislative body of the city, village or township adopts a resolution authorizing the PDR program to apply.
- 3) As part of the application procedure for the 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 level 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 and Rural Development (MDARD) for review. Determination on the qualification of the program will be made by MDARD staff. Only programs qualified prior to the Board's request for applications may apply during the current application cycle.

APPLICATION PROCEDURE FOR GRANTS

The application package will be sent to all qualified PDR programs. The application package will include 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:

- 1) Estimated value of the development rights for each parcel and basis or method used to determine value.
- 2) Township resolutions, comprehensive plans and zoning ordinances (if applicable).
- 3) Written approval by the township(s) for each purchase.
- 4) Signed option to sell by the landowner (signed local PDR application accepted)
- 5) Map of each property
- 6) Map showing the location of all properties proposed, as well as land that is already permanently protected.
- 7) Soil map showing all properties proposed and the prime and unique soils within the property. (See USDA Web Soil Survey Website)

LOCAL GOVERNMENT SCORING SYSTEM

Applications will be scored considering various public policy objectives and based on points awarded, grants will be made. All local PDR programs shall, at a minimum, include items (1) through (5) listed below in their property scoring system and selection process. The weight given to each item is at the discretion of the local entity.

- 1) Farmland that has a capacity suited for the production of feed, food and fiber.
- 2) Farmland that would complement and is part of a documented, long term plan for land preservation by the local unit of government in which the farmland is located.
- 3) 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.
- 4) 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.
- 5) Farmland that will help to enhance other local open space initiatives in the community such as connecting a wildlife habitat corridor or preserving unique habitats and natural features that benefit local conservation efforts.

FUNDING

Grants will be awarded based on the following criteria:

- Amount of funding available in the current application cycle.
- Number of applications received in the current application cycle.
- Awarded score of the individual application.
- How the application fits with the Core Values of the Agricultural Preservation Fund Board. Core Values are the items the Board feels are important the local PDR programs and preservation of farmland in Michigan. Core Values may change over time and with each application cycle. The Core Values that the program application meets will be identified during the application review process by the Agricultural Preservation Fund.

SCORING SYSTEM

The following system will be used by the Board to prioritize grant applications from local PDR programs. Up to 400 points will be awarded for property related points and up to 600 points will be awarded for Local PDR Program related points, for a total of 1000 possible points.

PROPERTY RELATED POINTS (400)

1. Agricultural Capacity and Productivity

Policy objective: To preserve the land that holds Michigan's prime and unique agricultural soils.

Points will be awarded on the following basis:

Multiply the percent of land area in the application that is classified as prime and unique or locally significant agricultural land, as defined by the USDA-NRCS, times 50.

Total Points Available: 150

2. Conservation Plan or Comprehensive Nutrient Management Plan

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.

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 NRCS) or a comprehensive nutrient management plan (written by a certified plan writer) times 50.

Note: A conservation plan may be in process at the time of application, but it must be completed and approved prior to closing. Conservation plans will not be awarded points if older than 3 years.

Total Points Available: 50

3. Michigan Agricultural Environmental Assurance Program Participation

Policy objective: The Michigan Agricultural Environmental Assurance Program (MAEAP) 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 contribute to the sustainability of the agricultural operation.

Points will be awarded on the following basis:

50 points will be awarded if the farm in the grant application are verified through MAEAP. If the farm has participated in MAEAP Phase 1 training and has a risk assessment but is not MAEAP verified, a maximum of 25 points will be awarded.

Total Points Available: 50

4. Amount of Agricultural Land in the Landowner's Application

Policy Objective: To encourage large agricultural tracts of land to be preserved.

Points will be awarded on the following basis:

The number of acres of agricultural land in an application by a landowner divided by the number of total acres applied for in the application cycle, times 50.

Total Available Points: 50

5. Property Location

Policy Objective: To encourage blocks of agricultural land be preserved so that existing agricultural support infrastructure remains viable and in the local community.

Points will be awarded on the following basis:

The total acres of qualified agricultural land (active farmland) in the local PDR program area divided by the total acres of land in the local PDR program, times 100.

Note: Qualified agricultural land may also be designated as Personal Residence Exemption (PRE) when the farm residence is located on the farmland. This land is also considered as active farmland.

Total Point Available: 100

LOCAL PDR PROGRAM RELATED POINTS (600)

6. Local Farmland Preservation Commitment

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.

Points will be awarded on the following basis:

- Up to 75 points will be awarded if a community has a dedicated funding source for farmland preservation (millage, user fees, local tax).
- Up to 25 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 (maps that include parcel level priorities will score higher).

Total Available Points: 100

7. Matching Funds

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.

The minimum required match is 25% per property. Matching funds can include funds from a local unit of government, federal grants, donations by the landowner of the proposed property and any other sources. A letter of commitment will be required from the source of the match with the application.

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 amount over 25%, times 200. (30% match = 60 points)

Total points available: 100

8. Intergovernmental Cooperation

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 greater community.

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 one or more of the following:

- Joint planning agreements under the Joint Municipal Planning Act.
- Intergovernmental agreements related to farmland preservation between more than one legal jurisdiction.
- Transfer of Development Rights programs that are between more than one legal jurisdiction.
- Cooperative efforts between contiguous townships to coordinate land use decisions.
- 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.

In general, it is intended that the maximum points under this category be awarded for local governments that have entered into intergovernmental agreements under the Urban Cooperation Act of 1967. The purpose of the Agreement being to coordinate the preservation of farmland within the communities. Less than the total points will be awarded for other cooperative efforts between local programs such as general land use, agriculture or funding for farmland preservation.

Total Points Available: 50

9. Local Planning Training

Policy Objective: Local decision makers should have training in and a general understanding of conservation easement content, restrictions and enforcement, negotiation techniques, land appraisals, federal charitable benefits for donations, local tax implications, 1031 like kind exchanges, post mortem election under Federal tax law, capital gains questions associated with conservation easements.

Points will be awarded on the following basis:

The percent of the members of the local governing body associated with operating the local PDR program that has received conservation easements training in the past 4 years, times 50.

Total Points Available: 50

10. Local Capacity to Execute

Policy Objective: Local PDR programs must be appropriately staffed to be successful. Local programs that have allocated appropriate support for staff (or partnerships in place) and have acquired and monitor conservation easements have the best chance for success.

Points will be awarded on the following basis:

Points based on the capacity to complete, hold and monitor easements.

Examples of points awarded include:

- The applicant already holds conservation easements.
- There is available staff, consultants or partnerships (such as land conservancies) to execute and maintain the program.
- Application has never had bad performance on past MDARD grants.

Total Available Points: 150

11. Local Agricultural Planning

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.

Points will be awarded based on the tools the local unit of government has adopted to preserve farmland:

- Township comprehensive land use plans that are compatible with county or regional comprehensive land use plans.
- Communities participating in Joint Municipal Planning under the Joint Municipal Planning Act.
- Zoning ordinances that are consistent with the comprehensive land use plan and effectively preserves agriculture.
- Adoption of a Non-Contiguous Planned Unit Development Ordinance.
- Sliding Scale zoning allowed in agricultural areas.
- Density based zoning.

- Increased residential densities in areas served with public utilities, such as a minimum of 4 units per acre in single family areas and 10 units per acre per acre in single family areas and 10 units per acre in multiple family areas.
- Other unique or unusual techniques for preserving farmland.

Total Available Points: 50

12. Agricultural Economic Development Plan

Policy Objective: To maintain the economic viability of farmland and agriculture.

Points will be awarded on the following basis:

Points will be awarded if an economic development plan is developed regionally or locally to address agricultural viability. The plan in its entirety must be submitted with the application.

Total Available Points: 100

BOARD POLICIES FOR THE AGRICULTURAL PRESERVATION FUND

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 dollars).

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 a conservation easement. This amount may be increased by the Board up to \$7,500 based on supporting documentation provided by the local government applicant.

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.

CONFLICT OF INTEREST

The following language used in grant agreements regarding conflict of interest has been adopted by the Board:

14. POLICY: No member of the legislature, judicial, or executive branch of state or federal governments or any local unit of government official shall personally benefit from this grant agreement. No member of the Grantee's Board of Director's, its employees, partner agencies or their families shall have any personal benefit from this grant except as follows:

Commissioners of county boards, township board members and volunteer members of a local Agricultural Preservation Boards or their family members may be considered for a grant from the Michigan Agriculture Preservation Fund if;

1. The local elected board member or volunteer board review member recuses themselves from all parts in the review and scoring of applications by the local government program for parcels they or other family members own, and;
2. The Michigan Agricultural Preservation Fund Board has reviewed a request from the elected board or local preservation program and has approved the elected board member or volunteer or family member for the grant.

NOTE: If federal funds are used, their conflict of interest policy will supersede Agricultural Preservation Fund Board policy.

REIMBURSEMENT FOR LOCAL APPRAISAL AND TITLE WORK

The following reimbursements for appraisal and title work costs to a qualified PDR program has been adopted by the Board:

15. POLICY: The Board will provide reimbursement to qualified PDR programs for the first three initial easement grants for appraisals and title work for applications selected by the Board for funding, with the following limitations:

1. The maximum reimbursement for a development rights appraisal will be \$5,000.
2. The maximum reimbursement for title work will be \$1,000.
3. The local program is required to provide copies of the billing for these services in order to receive reimbursement.

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.