

## Barry County Open Space Preservation Ordinance

Adopted by the Barry County Board of Commissioners on \_\_\_\_\_

Ordinance No. \_\_\_\_\_

AN ORDINANCE creating the Barry County Open Space Preservation Program, which permanently protects open space lands by acquiring Conservation Easements voluntarily offered by property owners; authorizes the cash purchase, installment purchase, or donation of such Conservation Easements; and provides the standards and procedures for the acquisition and placement of the Conservation Easements on the properties.

THE PEOPLE OF THE COUNTY OF BARRY, MICHIGAN, DO ORDAIN:

### Section 1. Declaration of Purpose

A. *Purpose of the program.* It is the purpose of the Barry County Open Space Preservation Program and this Open Space Preservation Ordinance to protect open space land in order to preserve the rural character and scenic attributes of Barry County, to maintain and enhance environmental benefits, and to maintain the quality of life of Barry County residents.

B. *Importance of open space land.* Barry County's open space land contributes significantly to the open space and natural resource benefits of the county, including rural character, scenic beauty, cultural heritage, hunting and other recreational opportunities, and the environmental benefits including protection of water quality and watersheds, protection of wildlife habitat, protection of natural ecosystems, and prevention of soil erosion. In this way Barry County's open space land increases the overall quality of life and makes the County an attractive place to live and work for all County residents.

C. *Development and loss of open space land.* The natural resources, productive farmland, and rural character of Barry County make it a desirable place to live and work. As people continue to move into the countryside, open space land is converted to residential and other developed uses, resulting in a permanent loss of open space land.

D. *The impact of the loss of open space land.* Open space land is an irreplaceable resource. When open space land is converted to residential or other developed uses, a critical community resource is permanently lost to the citizens of Barry County. Since open space land has water and air quality, recreational, ecological, habitat, and aesthetic value, Barry County should make an effort to protect such land to ensure the long-term viability of our environment and our quality of life.

E. *State and local policies.* It is the policy of the State of Michigan and Barry County to protect, preserve and enhance open space land as evidenced by township master plans, Part 361, Farmland and Open Space Preservation, of the Natural Resources and Environmental Protection Act (NREPA), PA 451 of 1994, as amended, MCL 324.36101 *et seq.*, the State Agricultural Preservation Fund, being Part 362 of NREPA, MCL 324.36201 *et seq.*, PA 262 of 2000, Part 21, Subpart 11, Conservation and Historic Preservation, of NREPA, MCL 324.2140 *et seq.*, the Michigan Zoning Enabling Act, PA 110 of 2006, MCL 125.3506-125.3509, the Barry County Farmland Preservation Ordinance, and other state and local statutes and policies.

F. *Value of Conservation Easement.* Open space land may have a greater market value for future

development than for remaining in a natural state. The open space views and natural surroundings are features desired for residential home sites. This fact encourages the purchase of open space land for future residential development, regardless of the current zoning of such lands.

G. *Mechanism to achieve purpose.* The acquisition of Conservation Easements on open space land through the Barry County Open Space Preservation Program as provided for in this Ordinance is a public purpose of Barry County. The acquisition of conservation easements requires that Barry County enter into agreements with property owners to obtain such Conservation Easements. Open space lands on which Barry County has acquired conservation easements shall remain undeveloped and in a natural state.

H. *Intent of Ordinance.* The intent of this Ordinance is to provide a mechanism for the preservation of open space land in Barry County through the acquisition of conservation easements. The actual number of acres that will be protected through the acquiring of conservation easements will remain the prerogative of the Barry County Board of Commissioners.

**Section 2. Definitions.** As used in this Ordinance:

A. “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. “Conservation values” means all natural and agricultural values of land.

C. “Development” means an activity that materially alters or affects the existing conditions or use of land.

D. “Development rights” means 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 as is set forth in a conservation easement.

E. “Natural land” means undeveloped, uncultivated, non-agricultural land, including the water over such land.

F. “Open space land” means natural land or farmland or a combination of these.

G. “Owner” means a person or party having a freehold estate in land coupled with possession and enjoyment.

H. “Permitted use” means any use authorized within a conservation easement that does not adversely affect the conservation values of the land.

I. “Prohibited use” means any use not authorized within a conservation easement or that adversely affects the conservation values of the land.

J. “Property” means a quantity of land in the possession of a single owner.

K. “Purchase of development rights (PDR) program” means a program in which a qualified organization purchases the development rights of property and a permanent conservation easement is placed on the property.

### **Section 3. Authorization**

A. Part 21, Subpart 11 of the Natural Resource and Environmental Protection Act, PA 451 of 1994, as amended, (MCL 324.2140-324.2144), authorizes the creation of permanent conservation easements as non-possessory interests in land or water and permits such easements to be held by charitable and other entities. The Michigan Zoning Enabling Act, PA 110 of 2006 (MCL 125.3506-3509), authorizes county governments to acquire conservation easements on land in their counties.

B. Based on state law and this ordinance the Barry County Board of Commissioners is authorized:

- i. to acquire conservation easements on open space land throughout Barry County. Such acquisitions may be by purchase, gift, grant, bequest, devise, covenant or contract. Barry County shall only acquire conservation easements on open space land that is voluntarily offered by a property owner;
- ii. to enter into installment purchase contracts, options, and agreements, or take receipt of donations of easements, consistent with applicable law. In such contracts, Barry County is authorized to pay interest on the unpaid principal at a legal rate of interest consistent with prevailing market conditions at the time of execution of the contracts;
- iii. to contract with recognized and legally established nonprofit land trusts or other experienced and qualified individuals, parties or entities that would assist Barry County in the process of negotiating conservation easements and purchase contracts, preparing baseline documents, and monitoring the conservation easements acquired under this Ordinance;
- iv. to seek grants from state and federal governments and private foundations, organizations and individuals for funding expenditures incurred in carrying out this Ordinance; and
- v. to borrow money and issue bonds for any purpose within the scope of this Ordinance.

### **Section 4. Barry County Conservation Easement Board**

A. The Barry County Farmland and Open Space Preservation Program shall consist of a Farmland Preservation Program (Barry County Farmland Preservation Ordinance) and an Open Space Preservation Program (this Ordinance).

B. The Barry County Conservation Easement Board shall oversee and serve as the administrative body of both the Farmland Preservation Program and the Open Space Preservation Program. Members of the Board shall be appointed as described in Section 4. of The Barry County Farmland Preservation Ordinance.

C. Members of the Barry County Conservation Easement Board shall serve three-year staggered terms. Members may be re-appointed to successive three-year terms by the Barry County Board of Commissioners. Membership on the Board shall be subject to the conditions described in Section 4.A. of the Barry County Farmland Preservation Ordinance.

D. The Barry County Conservation Easement Board shall oversee the Barry County Open Space Preservation Program and shall be responsible for the items listed in Section 4.C. of Barry County Farmland Preservation Ordinance, except that the *Selection Criteria for Protection of Open Space Land* and any other documents specific for the Open Space Preservation Program shall be used. The Board will inform the Barry County Board of Commissioners of any violation of the provisions of any conservation easement.

E. The Barry County Conservation Easement Board shall comply with the provisions of Sections

4.D. through 4.F. of the Barry County Farmland Preservation Ordinance in connection with the Barry County Farmland and Open Space Preservation Program.

### **Section 5. Eligibility for Application**

Any property owner may submit an application to the Open Space Preservation Program of the Barry County Farmland and Open Space Preservation Program, provided the property owner has signed the application and the property is open space land. Barry County shall not acquire conservation easements under this Ordinance from land subject to a city, village, or township zoning ordinance, unless all of the following requirements are met:

- i) The Barry County Open Space Preservation Program provisions are consistent with the plan upon which the city, village, or township zoning is based.
- ii) The legislative body of the city, village, or township adopts a resolution authorizing the property owner to apply to the Open Space Preservation Program within the city, village or township.
- iii) The city, village or township provides Barry County with written approval of the acquisition.

### **Section 6. Criteria for Reviewing and Ranking Applications**

The Barry County Conservation Easement Board shall establish and use selection criteria for ranking all parcels submitted to the Barry County Open Space Preservation Program, which criteria shall be subject to the approval of the Barry County Board of Commissioners.

### **Section 7. Application, Selection, Approval and Monitoring Process**

In connection with the application, selection, approval, and monitoring process for the Barry County Open Space Preservation Program, the Barry County Conservation Easement Board shall follow the provisions of Section 7 of Barry County Farmland Preservation Ordinance, except the *Selection Criteria for Protection of Open Space Land* will be used, and a conservation easement (rather than an agricultural conservation easement) will be prepared. The Barry County Board of Commissioners shall have the responsibility of enforcing the provisions of conservation easements.

### **Section 8. Conservation Easement Provisions**

The conservation easement that is executed between the property owner and the Barry County Board of Commissioners will permanently protect the property's conservation values and prevent any use that would significantly impair or interfere with the conservation values of the open space land. The conservation easement shall state that the conservation easement is permanent and runs with the land, and that it may not be terminated except as provided for in the conservation easement.

### **Section 9. Duration of the Conservation Easement**

The duration of a conservation easement acquired under this Ordinance shall follow the provisions of Section 9 of the Barry County Farmland Preservation Ordinance, except the name of the fund for depositing proceeds is changed by this Ordinance to the Barry County Farmland and Open Space Preservation Fund. All references to the Farmland Preservation Fund in any Ordinance or Resolution shall mean the Barry County Farmland and Open Space Preservation Fund.

### **Section 10. Determining the Value of Conservation Easements on Open Space Land**

A. The Barry County Conservation Easement Board shall utilize a state certified appraiser to determine the value of the conservation easements, or shall establish a points-based appraisal method and formula for determining the value of the conservation easements. The appraisal may calculate the value of the conservation easements as the difference between the fair market value of the property with all development rights intact, and the value of the property with a conservation easement in place. The Barry County Conservation Easement Board may establish guidelines, consistent with state standards, for the state certified appraiser to use in determining these values. The points-based appraisal method may be used and is authorized under PA 262 of 2000. The Barry County Conservation Easement Board shall review the points-based appraisal method at the end of each application cycle and compare values relative to actual fair market sales in Barry County and make any appropriate adjustments.

B. The property owner may obtain, within a reasonable time frame, an appraisal of the conservation easement from a state certified appraiser at the property owner's expense. The appraisal may calculate the value of the conservation easement as the difference between the fair market value of the property with all development rights intact and the value of the property with a conservation easement in place. The Barry County Conservation Easement Board may establish guidelines, consistent with state standards, for the state certified appraiser to use in determining these values.

C. The Barry County Conservation Easement Board shall approve the price to be offered and paid for each conservation easement acquisition. If the property owner obtains an independent appraisal, the Barry County Conservation Easement Board may elect to renegotiate the initial offer based on additional information.

D. The property owner may be paid a cash payment, offered an installment purchase contract, make a donation, or a combination of all three.

### **Section 11. Related Costs**

The costs of services ordered by the Barry County Conservation Easement Board in relation to the Barry County Open Space Preservation Program shall follow the provisions of Section 11 of Barry County Farmland Preservation Ordinance, except that the costs shall be paid from all available Farmland and Open Space Preservation Program funding sources.

### **Section 12. Funding of Program**

A. Available funding for the Barry County Open Space Preservation Program shall be deposited in a special Farmland and Open Space Preservation Fund. Money in the Farmland and Open Space Preservation Fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Barry County money. The revenues in the Farmland and Open Space Preservation Fund, both from deposit and investment, shall be applied and used solely for the purpose of purchasing conservation easements and placing conservation easements under this Ordinance, making payments obligated under installment purchase contracts, promoting open space preservation programs, or paying for the costs of administering or enforcing the Barry County Farmland and Open Space Preservation Program.

B. Supplemental or matching funds from private sources or other governmental agencies, including local municipalities, the State, or the Federal Government, may become available to pay a portion of the cost of acquiring conservation easements, or to supplement or enlarge such acquisitions.

C. The Barry County Open Space Preservation Program may be financed through one or more of the following sources: (i) county assessments as permitted by law, (ii) other governmental funds, (iii) donations, (iv) bonds or notes as permitted by law, (v) grants, (vi) revenue from funds, (vii) general appropriations by Barry County, (viii) proceeds from the sale of conservation easements by Barry County under this Ordinance, and (ix) other sources approved by the Barry County Board of Commissioners and permitted by law.

### **Section 13. Amendments**

This Ordinance may be amended by a majority vote of the Barry County Board of Commissioners.

### **Section 14. Severability**

Any provision of this Ordinance that 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 this Ordinance and such other provisions shall remain in full force and effect.

### **Section 15. Effective Date**

This Ordinance shall become effective on the date that notice of its adoption is published in a newspaper of general circulation in Barry County.

S://dropbox/sheridanlandconsulting/barrycounty/stacy'sfile/barry county open space ordinance draft 2-13-19