

**DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT**

**ENVIRONMENTAL STEWARDSHIP DIVISION**

**FARMLAND AND OPEN SPACE PRESERVATION**

(By authority conferred on the department of agriculture and rural development by section 36116 of 1994 PA 451, MCL 324.36116)

**PART 1. GENERAL PROVISIONS**

**R 554.701 Definitions.**

Rule 1. (1) "Act" means 1994 PA 451, MCL 324.101 to 324.90106.

(2) "Department" means the department of agriculture and rural development.

(3) "Clerk" means the clerk of the local governing body or the person fulfilling the duties of the clerk.

(4) "Designated open space" means those open space lands as defined by section 36101(j)(i) of the act.

(5) "Gross annual income" means an average computed from 2 of the 3 tax years immediately preceding the year of application from the raising or harvesting of any agricultural commodities.

(6) "Has been devoted primarily to an agricultural use" means all land for which an application for a farmland development rights agreement has been filed shall have been under agricultural use, as defined in section 36101(b) of the act, for at least 1 year during the 36-month period immediately preceding filing the application.

(7) "Local open space" means those open space lands as defined by section 36101(j)(ii) of the act.

(8) "Specialty farm" means those enterprises of 15 or acres in size which meet the income requirements of section 36101(h)(iii) of the act, produce agricultural, horticultural or floricultural commodities or are engaged in the business of breeding or husbanding animals, rendering services, or yielding products customarily associated with agricultural operations.

(9) "State" means a major state department or agency thereof in agreement with the state land use agency.

(10) "Totally and permanently disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.

History: 1979 AC; 2013 AACCS.

**PART 2. ELIGIBLE LANDS**

**R 554.721 Rescinded.**

History: 1979 AC; 2013 AACS.

**R 554.722 Rescinded.**

History: 1979 AC; 2013 AACS.

**R 554.723 Local open space development rights easement.**

Rule 23 If an application for a local open space development rights easement is denied by the local governing body and is appealed to the state land use agency, the appeal may only be considered if the land covered by the application meets all of the following criteria:

- (a) Is 15 acres or more in size.
- (b) Does not contain any residential, commercial, or industrial structures.
- (c) Is not operated as a commercial facility.
- (d) Bears significant importance to the public interest of more than local concern as a valuable land resource.

History: 1979 AC; 2013 AACS.

**PART 3. APPLICATION FOR DEVELOPMENT RIGHTS AGREEMENT OR EASEMENT**

**R 554.731 Application.**

Rule 31. (1) The application shall be submitted to the clerk of the local governing body with the jurisdictional responsibility for the property cited in the application except that in those townships not having a duly adopted zoning ordinance pursuant to the Michigan Zoning Enabling Act, 2006 PA 110, MCL 125.3101 to 125.3702, the application shall be submitted to the clerk of the governing body of the county.

(2) The application shall contain a map which includes the following information:

- (a) All significant natural features, including but not limited to swamps, bogs, marshes, lakes, ponds, rivers, streams, woodlots, known mineral deposits and formations and sand dunes.
- (b) All physical improvements including but not limited to buildings, roads, feedlots, or any improvements under construction at the time of application.

(c) All acreage under active agricultural use by type of use.

(3) A copy of the most recent property tax assessment notice or tax bill shall accompany the application along with a statement by the applicant certifying the name of the owner of record, the legal description of the property and all liens, covenants, and other encumbrances affecting the title to the land.

History: 1979 AC; 2013 AACS.

**R 554.732 Certification and review.**

Rule 32. (1) The clerk shall certify the date of receipt of the application if the application meets the requirements of R 554.731 and the information contained in the application is accurate, to the best of the clerk's knowledge.

(2) The clerk shall provide a copy of the certification to the applicant.

(3) The clerk shall forward copies of the application to the reviewing agencies as required under the act. Notification shall include the final date for the acceptance of comments which shall be 30 days from the date of receipt of the application by the clerk.

(4) The clerk shall present the application at the next scheduled meeting of the local governing body and shall certify the date of presentation on the application.

(5) The 45-day review period for the local governing body commences when the application is presented to that body by the clerk.

History: 1979 AC.

### **R 554.733 Review.**

Rule 33. (1) In reviewing an application for a farmland development rights agreement or a designated open space development rights easement, the local governing body shall consider first the ability of the land cited in the application to meet the eligibility requirements of the act, sections 324.36101(h) and (j)(i)(A) to (C) respectively. The local governing body may then take into consideration the following:

(a) The physical resource characteristics for agricultural or designated open space use.

(b) Any encumbrance on the property.

(c) The relationship of the property to the entire farm operation if the application is for only a portion of the farm operation.

(d) The percentage of the land cited in the application which actually meets the definition for farmland or designated open space.

(e) Any other criteria which the local governing body can demonstrate as being relevant to the application.

(2) In reviewing an application for a farmland development rights agreement or a designated open space development rights easement, the state land use agency shall reject an application only if it is in nonconformance with the eligibility requirements in the act, sections 324.36101(h) and (j)(i)(A) to (C) respectively. In reviewing an application on appeal for a farmland development rights agreement or a designated open space development rights easement, the state land use agency shall consider the ability of the land cited in the application to meet the eligibility requirements of the act, sections 324.36101(h) and (j)(i)(A) to (C) respectively. The state land use agency may then take into consideration the following:

(a) The physical resource characteristics for agricultural or designated open space use.

(b) Any encumbrance on the property.

(c) The relationship of the property to the entire farm operation if the application is for only a portion of the farm operation.

(d) The percentage of the land cited in the application which actually meets the definition for farmland or designated open space.

(e) Any other criteria which the local governing body has demonstrated as being relevant to the application.

(3) In reviewing an application for a local open space development rights easement, the local governing body shall first consider the ability of the land cited in the application to meet

the eligibility requirements of the act, section 324.36101(j)(ii). The local governing body may then take into consideration the following:

- (a) The physical resource characteristics for open space use.
  - (b) Any encumbrance on the property.
  - (c) The percentage of the land cited in the application which actually meets the definition for local open space.
  - (d) Any other criteria which the local governing body can demonstrate as being relevant to the application.
- (4) In reviewing an application for a local open space development rights easement on appeal, the state land use agency shall consider the ability of the land cited in the application to meet the eligibility requirements of R 554.723.

History: 1979 AC; 2013 AACS.

### **R 554.734 Approval or rejection.**

Rule 34. (1) Approval or rejection of an application shall be by vote of the local governing body.

(2) The vote may be taken at either a regularly scheduled meeting of the local governing body or a special meeting called for the purpose of acting on the application. In each case the applicant shall be notified in writing by the clerk at least 5 days before the meeting of the time and place of the meeting.

(3) The clerk shall certify the results and date of the vote on the application.

(4) Within 10 days of the date the vote was taken, the clerk shall notify the applicant of the local governing body's decision. If rejected, the local governing body shall provide the applicant with a written statement citing the reasons for rejection.

(5) A locally approved application for a farmland development rights agreement or for a designated open space development rights easement, together with supporting materials, shall be forwarded to the state land use agency within 10 days of the date of approval by the local governing body.

(6) A copy of a locally approved application for a local open space development rights easement, together with copies of the supporting materials, shall be forwarded to the state land use agency for informational purposes within 30 days of the date of approval by the local governing body.

(7) The 60-day review period as provided in sections 36104 and 36106 of the act begins with receipt of the application or appeal request by the state land use agency.

(8) The applicant shall be notified within 15 days of the date of approval or rejection by the state land use agency. If rejected, the state land use agency shall provide the applicant with a written statement citing the reasons for rejection.

(9) All open space development rights easement applications approved by the state land use agency shall be submitted to the legislature under the provisions of section 36105(3) of the act.

(10) Upon approval of a farmland development rights agreement by the state land use agency or designated open space development rights easement by the legislature, the applicant shall have 30 days from date of receipt of the agreement or easement to execute the agreement or easement unless an extension is granted in writing by the state land use agency.

(11) Upon approval of a local open space development rights easement by the local governing body, the applicant shall have 90 days from the date of receipt of the local open space

development rights easement to execute the easement unless an extension is granted in writing by the local governing body.

History: 1979 AC; 2013 AACCS.

**R 554.735 Appeals.**

Rule 35. (1) The applicant has 30 days from the date of notification by the clerk within which to initiate an appeal of a rejection by the local governing body.

(2) The applicant's appeal request shall be by certified letter to the state land use agency with the application as presented to the local governing body, a copy of the reasons for rejection and all other materials as required under R 554.731.

(3) An applicant has 30 days to appeal a rejection by the state land use agency. An appeal of a rejection by the state land use agency shall be by certified letter to the director of the department.

History: 1979 AC.

**R 554.736 Reapplication.**

Rule 36. The 1-year waiting period for reapplication as provided in sections 36104 and 36106 of the act shall be from the date of notification of the last rejection permitted under the act, or if the applicant chooses not to appeal, from the date of expiration of the appeal period.

History: 1979 AC; 2013 AACCS.

**R 554.737 Assessments.**

Rule 37. (1) A copy of the state tax commission appraisal under sections 36105 and 36106 of the act shall be transmitted to the local assessor for the basis of the first assessment for the land covered by a farmland development rights agreement or an open space development rights easement. Subsequent assessments shall be reviewed annually by the local assessor in the same manner as other real property assessments. A copy of the termination appraisal by the state tax commission shall be transmitted to the local assessor.

(2) Subsequent to the execution of a farmland development rights agreement, the local assessing officer shall specify the state equalized valuation and the ad valorem taxes levied on the description and shall forward such information to the state land use agency by February 15 of each year until the agreement is terminated.

(3) Subsequent to the approval of a local open space development rights easement application by the legislature and execution of the easement by the applicant, the local assessing officer shall specify the state equalized valuation of the description exclusive of open space development rights, the state equalized valuation of the open space development rights and the ad valorem taxes not paid on the open space development rights and shall forward such information to the state land use agency by February 15 of each year until the easement is terminated.

History: 1979 AC; 2013 AACCS.

## **PART 4. TERMINATION OF A DEVELOPMENT RIGHTS AGREEMENT OR EASEMENT**

### **R 554.741 Application.**

Rule 41. (1) The application shall be made on forms prescribed by the department and shall contain all requested information.

(2) The application shall be submitted to the clerk of the local governing body with the jurisdictional responsibility for the property cited in the application except that in those cases of townships not having a duly adopted zoning ordinance pursuant to the Michigan Zoning Enabling Act, 2006 PA 110, MCL 125.3101 to 125.3702, the application shall be submitted to the clerk of the governing body of the county.

(3) The application shall contain a map which includes all significant changes to the natural features of the land cited in the original application.

(4) A land owner or his heirs qualifying under section 11(2) of the act, death or total and permanent disability, at his option, may request termination of a development rights agreement or easement. The request shall be made to the holder of the development rights by certified mail stating the reasons for termination request and shall include a doctor's statement of health or a copy of the death certificate.

History: 1979 AC; 2013 AACS.

### **R 554.742 Certification and review.**

Rule 4242. (1) The clerk shall certify the date of receipt of the application if the application meets the requirements of R 554.741 and the information contained in the application is accurate to the best of the clerk's knowledge.

(2) The clerk shall provide a copy of the certification to the applicant.

(3) The clerk shall forward copies of the application to the reviewing agencies as required under section 36104 of the act for farmland and designated open space and section 36106 of the act for local open space. Notification shall include the final date for the acceptance of comments, 30 days from the date of receipt of the application by the clerk.

(4) The clerk shall present the application at the next scheduled meeting of the local governing body and shall on the application certify the date of presentation.

(5) The 45-day review period for the local governing body shall commence when the application is presented to that body by the clerk.

History: 1979 AC; 2013 AACS.

### **R 554.743 Review.**

Rule 43. (1) In reviewing a termination application for a farmland development rights agreement or a designated open space development rights easement, the local governing body or the state land use agency shall consider the following:

(a) That the agreement or easement imposes continuing economic inviability causing hardships through the prevention of necessary improvements to the land. Economic inviability consists of continued uneconomic operation because of the restrictions in the agreement or easement and not merely the existence of uses of the land that allow higher returns.

(b) Other factors set forth in section 36111(1)(a) of the act.

(2) In reviewing a termination application for a local open space development rights easement, the local governing body shall consider the following:

(a) That the easement imposes continuing economic inviability causing hardships through the prevention of necessary improvements to the land. Economic inviability consists of continued uneconomic operation because of the restrictions in the easement and not merely the existence of uses of the land that allow higher returns.

(b) Surrounding conditions or significant natural physical changes in the land which are generally irreversible in nature and permanently affect the land.

(3) If a termination application is for a local open space development rights easement which was appealed to the state land use agency and concurred in by the legislature, the application shall be forwarded to the state land use agency for review and recommendation to the legislature for final determination. The state land use agency shall consider the following:

(a) That the easement imposes continuing economic inviability causing hardships through the prevention of necessary improvements to the land. Economic inviability consists of continued uneconomic operation because of the restrictions in the easement and not merely the existence of uses of the land that allow higher returns.

(b) Surrounding conditions or significant natural physical changes in the land which are generally irreversible in nature and permanently affect the land.

(c) That the property cited in the easement no longer bears significant importance to the public interest.

History: 1979 AC; 2013 AACS.

#### **R 554.744 Approval or rejection.**

Rule 44. (1) Approval or rejection of a termination application shall be by vote of the local governing body.

(2) The vote may be taken at either a regularly scheduled meeting of the local governing body or a special meeting called for the purpose of acting on the application. In each case the applicant shall be notified in writing by the clerk at least 5 days prior to the meeting of the time and place of the meeting.

(3) The clerk shall certify the results and date of the vote on the application.

(4) Within 10 days of the date the vote was taken, the clerk shall notify the applicant of the local governing body's decision. If rejected the local governing body shall provide the applicant with a written statement citing the reasons for rejection.

(5) A locally approved termination application for a farmland development rights agreement or for a designated open space development rights easement, together with supporting materials, shall be forwarded to the state land use agency within 10 days of the date of approval by the local governing body.

(6) A copy of a locally approved termination application for a local open space development rights easement, together with copies of the supporting materials, shall be

forwarded to the state land use agency for informational purposes within 30 days of the date of approval by the local governing body.

(7) The 60-day review period as provided in sections 36104 and 36106 of the act begins with receipt of the termination application or appeal request by the state land use agency.

(8) The applicant shall be notified within 15 days of the date of approval or rejection by the state land use agency. If rejected, the state land use agency shall provide the applicant with a written statement citing the reasons for rejection.

(9) All open space development rights termination applications approved by the state land use agency shall be submitted within 30 days to the clerk of the house of representatives and secretary of the senate. Copies shall be forwarded to all of the following:

(a) Chairman of the house taxation committee and chairman of the senate taxation committee.

(b) Chairmen of the appropriations committees.

(c) Directors of the house fiscal agency and senate fiscal agency.

(10) An applicant shall be notified by the state land use agency within 15 days of the date of approval or rejection by the legislature.

History: 1979 AC; 2013 AACS.

#### **R 554.745 Appeals.**

Rule 45. (1) The applicant has 30 days from the date of notification by the clerk within which to initiate an appeal of a rejection by the local governing body.

(2) An applicant's appeal request shall be by certified letter to the state land use agency with the application as presented to the local governing body, a copy of the reasons for rejection and all other materials as required under R 554.741.

(3) An applicant shall have 30 days to appeal a rejection by the state land use agency. An appeal of a rejection by the state land use agency shall be by certified letter to the office of the director of the department.

History: 1979 AC.

#### **R 554.746 Reapplication.**

Rule 46. The 1-year waiting period for reapplication as provided in sections 36104 and 36106 of the act shall be from the date of notification of the last rejection permitted under the act, or if the applicant chooses not to appeal, from the date of expiration of the appeal period.

History: 1979 AC; 2013 AACS.

#### **R 554.747 Rescinded.**

History: 1979 AC; 2013 AACS.

#### **R 554.748 Notice of change of eligible land owner.**



Rule 48. When the ownership of land covered by an agreement or easement is transferred by sale or land contract, within 30 days of the date of sale or execution of the land contract, by certified letter, the seller shall advise the holder of the development rights of the new owner of the legal title in the property accompanied by a signed declaration by the new owner that he will observe all provisions of the agreement or easement and accept all responsibilities of the agreement or easement until such time as it is terminated.

History: 1979 AC.

**R 554.749 Amendment procedures for development rights agreements and easements.**

Rule 49. A land owner seeking to alter or change the use of the land from those uses specified in a development rights agreement or easement shall file a request for an amendment to the agreement or easement with the holder of the development rights specifying the exact nature of the desired change and specific reasons for the change. This rule does not allow the removal of land from a development rights agreement or easement.

History: 1979 AC.

**R 554.750 Purchase of development rights or acquisition of agricultural conservation easements determination of value.**

Rule 50. When a development rights easement or an agricultural conservation easement is being acquired under section 36111b of the act and the land considered for acquisition is encumbered by a farmland development rights agreement under the act, enrollment in the development rights agreement shall not be used in determining the fair market value under section 36111b(4) of the act.

History: 2013 AACS.

**R 554.751 Oil and gas exploration and extraction on land enrolled in development rights easement or development rights agreement.**

Rule 51. The exploration and extraction of oil and gas on land covered by a development rights easement or development rights agreement is permitted provided the exploration and extraction operations does not substantially hinder the open space character or farming operations. Exploration and extraction activities may not commence until both of the following occur:

(a) The state land use agency has been notified, by certified mail, of the intended activity which shall include a site plan for the proposed facilities.

(b) The state land use agency has made a determination that the exploration or extraction operation, or both, does not substantially hinder the farming operation.

History: 2013 AACS.