

**SUTTONS BAY TOWNSHIP
PURCHASE OF DEVELOPMENT RIGHTS ORDINANCE**

ORDINANCE NO. No. 1 of 2013

AN ORDINANCE creating the Suttons Bay Township Purchase of Development Rights (“PDR”) Program which is designed to protect farmland and open spaces by acquiring rights from a willing landowner creating agricultural conservation easements, authorizes the cash purchase and/or installment purchase of such development rights and/or the purchase of options on such rights and provides the procedures and standards governing the purchase of such development rights or options.

BE IT ORDAINED BY THE SUTTONS BAY TOWNSHIP BOARD:

SECTION 1: FINDINGS AND DECLARATION OF PURPOSE

(1.1) **PURPOSE OF THE PROGRAM:** Suttons Bay’s agricultural land is a unique and economically important resource. These lands support a locally important and nationally unique agricultural industry that includes orchards, vineyards, forage crops, specialty crops and livestock. Suttons Bay’s climate and topography make it uniquely suited to fruit production including cherries, apples and grapes. It is the primary purpose of the Suttons Bay Purchase of Development Rights Ordinance to implement a permanent option to protect farmland; to maintain a long-term positive business environment for agriculture; preserve the rural character and scenic attributes; enhance tourism and other important environmental benefits and to maintain the quality of life of township residents. The Township finds that these are all public benefits.

(1.2) **MECHANISM TO ACHIEVE PURPOSE:** The purchase of development rights and the placement of an agricultural conservation easement on farmland and other eligible land as provided for in this Ordinance is a public purpose of Suttons Bay Township and financing such purchases requires that the Township enter into agreements with property owners to obtain such rights.

The Suttons Bay Township PDR Program, as defined in this Ordinance, is established by and for Suttons Bay Township and shall be administered as set forth in this Ordinance.

Properties from which the Township has purchased development rights and entered into agricultural conservation easements should remain substantially undeveloped in order to remain viable for agricultural use.

(1.3) **IMPORTANCE OF OTHER NON-AGRICULTURAL ATTRIBUTES OF FARMLAND:** In addition to its economic benefits, Suttons Bay’s farmland contributes significantly to open space and natural resources that are important to the region’s tourism industries and also

contributes substantially to the quality of life and the cultural heritage of the township's residents. In a survey, initiated by the Suttons Bay Township Planning Commission in 2010 (and designed by the Michigan State University Extension and Northwest Michigan Council of Governments), there was broad support among the residents (both farmers and non-farmers) for public action to slow the conversion of farmland to developed uses. The residents surveyed indicated that preserving farmland was important to help the farm economy and to preserve the rural character and scenic beauty of Suttons Bay. The scenic beauty and rural character associated with farms and farming also help make Suttons Bay Township an attractive tourist destination. According to the Leelanau Agricultural Fact Book, authored by the Land Information Access Association in June, 2006, overall sales of agricultural products countywide have been estimated at about \$20 - \$30 million annually, exceeding \$34 million in 2004. Processing and distribution of agricultural products added another \$16 million. Michigan State's Travel, Tourism & Recreation Resources Center further estimated that in 1996, the most recent data available at that time, tourists spent more than \$50 million in Leelanau County, and this figure has almost certainly grown since then.

(1.4) VALUE OF DEVELOPMENT RIGHTS: The potential for long term population growth and development threaten Suttons Bay Township's agricultural land base, the ability of farmers to farm and the long-term viability of the county's agricultural industry. Some of the same characteristics that make Suttons Bay Township uniquely suited to some forms of agricultural use also make it attractive for residential home sites. As the population increases, agricultural land is converted to residential and other developed uses. A land cover analysis conducted by the Land Information Access Association and the Leelanau Agriculture Alliance found that between 1990 and 2000, about 10,000 acres were converted from agricultural use in Leelanau County.

(1.5) STATE AND LOCAL POLICIES: It is the policy of the State of Michigan, Leelanau County and Suttons Bay Township to protect, preserve and enhance agricultural lands as evidenced by the Leelanau County General Plan; Suttons Bay Community Joint Master Plan; Part 361 of the Natural Resources and Environmental Protection Act (NREPA), Farmland and Open Space Preservation, being MCL 324.36101 et seq.; Subpart 11 of NREPA, Conservation and Historic Preservation Easement, being MCL 324.2140 et seq.; portions of the Michigan Zoning Enabling Act, P.A. 110 of 2006 as amended, MCLA 125.3507 through MCLA 125.3509; and other state and local statutes and policies. These measures provide enabling legislation, however, the responsibility for long-term protection of agricultural land from the pressure of increasing residential and commercial development lies with each community.

(1.6) THE IMPACT OF FARMLAND LOSS: Certain features of good farmland in Suttons Bay Township may have a greater market value for future residential development than market value for farming. Agriculture and residential development share the demand for well-drained soils, slope, and proximity to water, elevation and open spaces. This fact encourages the speculative purchase of farmland at high prices for future residential development, regardless of the current zoning. Farmland, which has a greater development potential and market value than its agricultural value, does not attract sustained agricultural investment and eventually is sold to non-farmers and removed from agricultural use.

Land suitable for farming is an irreplaceable natural resource. When such land is converted to residential or other more developed uses, a critical community resource is permanently lost to the citizens of Suttons Bay Township. Local farmers report that residential development in agricultural areas makes farming more difficult by increasing conflict over farming practices, trespass, liability exposure and property damage. Because agricultural land is an invaluable economic, cultural, natural and aesthetic resource, the Township should make an effort to maintain enough agricultural land in a substantially undeveloped state to ensure the long-term viability of agriculture in the township.

Cost of Community Services (COCS), developed by the Farmland Information Center provides studies that help address three misperceptions that are commonly made in rural communities facing growth pressures. The Farmland Information Center (FIC) is a clearinghouse for information about farmland protection and stewardship. The FIC is a public/private partnership between the USDA Natural Resources Conservation Service and American Farmland Trust.

Misperceptions about Farmland Preservation

- (a) Open lands - including productive farms and forests - are an interim land use that should be developed to their "highest and best use."
- (b) Agricultural land gets an unfair tax break when it is assessed at its current use value for farming or ranching instead of at its potential use value for residential or commercial development.
- (c) Residential development will lower property taxes by increasing the tax base.

While it is true that an acre of land with a new house generates more total tax revenue than an acre of hay or corn, this tells us little about a community's bottom line. In areas where agriculture is a major industry, it is especially important to consider the real property tax contribution of privately owned working lands. Working and other open lands may generate less revenue than residential, commercial or industrial properties, but they require far less cost to the public in terms of public infrastructure and fewer services.

COCS studies conducted over the last 20 years show working lands generate a net surplus in tax revenues than they receive back in public services. On average, because residential land uses do not cover their costs, they must be subsidized by other community land uses.

Past studies show that the cost of providing public services per \$1.00 revenue raised are:

Residential Property \$1.16
Working & Open Land \$0.35

(1.7) ECONOMIC IMPORTANCE OF FARMLAND AND AGRICULTURE: Suttons Bay Township's agricultural land is a unique and economically important resource. Currently there are 9,972 acres of land assessed as agricultural in the township which comprises 40% of the total township acreage. These lands support a locally important and globally unique agricultural industry which includes fruit production and processing, dairy and livestock, food from grains and vegetables, nursery and greenhouse crops as well as distribution of agricultural products on a

regional, national and international level. The Township's climate and topography make it uniquely suited to fruit production including cherries, apples and grapes. According to the Leelanau Agricultural Fact Book, agriculture typically generates over 1,200 full-time and part-time jobs in Leelanau County.

Underscoring the importance of protecting our agricultural resources in Suttons Bay Township and the Grand Traverse Region, this area's soils and the Lake Michigan "micro-climate enable fruit-growing that is globally rare. Unlike most other agricultural commodities, very few places on Earth can produce fruit such as cherries, apples and other "stone" fruits in commercially viable quantities.

SECTION 2: DEFINITIONS

(2.1) "Agricultural Conservation Easement" means a conveyance by a written instrument, in which, subject to permitted uses, the owner continues to keep the land in private hands and extinguishes the right to develop the land in perpetuity, for public good, creating a covenant running with the land preventing non-farm development. An agricultural conservation easement may permanently protect both acreage in active agricultural use and acreage with other conservation value, including but not limited to the farm's wooded areas, steep slopes and ridges, wetlands, stream corridors and shoreline.

(2.2) "Agricultural Land" or "Agricultural Use" means substantially undeveloped land devoted to the production of farm products. Farm products means those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, maple syrup, dairy and dairy products, poultry and poultry products, cervidae (deer), livestock (including breeding and grazing), equine (horses), fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, ornamental plants, greenhouse products, seeds, grasses, nursery stock, trees and tree products, mushrooms and other similar products, or any other product which incorporates the use of food, feed, fiber or fur as determined by the Michigan Commission of Agriculture. "Agricultural land" also includes the terms, "farm, farm operation, farm product and generally accepted agricultural and management practices" as defined by the Michigan Right to Farm Act, MCLA 286.471 et seq. 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 wood lot.

(2.3) "Agricultural Value" is the value of land for agricultural use as separated from any values associated with any anticipated future development of the land.

(2.4) "Baseline Report" means the report generated in tandem with the agricultural conservation easement that documents, using text, photos and diagrams, the state of the property to be protected at the time an agricultural conservation easement is signed and recorded. It is an essential tool, kept as part of the permanent file, to assist all future monitoring efforts and ensure that the restrictions embodied in agricultural conservation easements are adhered to by all parties.

(2.5) "Conservation Values" are the agricultural, scenic, open space, and ecological values of prominent importance to the owner, the SBFPPB, and the public.

(2.6) "Development" means an activity by any person or entity that materially alters or affects the existing conditions or use of any land.

(2.7) "Development Rights" means an interest in and the right to use and subdivide land for any and all residential, commercial, and industrial purposes and activities that are not incidental to agricultural use.

(2.8) "Development Rights Ordinance" means this PDR Ordinance adopted by the Suttons Bay Township Board of Trustees pursuant to the authority of Sections 507 through 509 [MCL 125.3507 – 125.3509] of the Michigan Zoning Enabling Act.

(2.9) "Fair Market Value" the value of the land, as determined by an appraisal by a state licensed real estate appraiser or a state certified general real estate appraiser, taking into account any potential future use of said land.

(2.10) "Farm" for the purpose of this ordinance, means one or more of the following:

i. A farm is all contiguous land under one ownership that is at least 40 acres in size, contains some land in agricultural use, and is within Suttons Bay Township. If all contiguous land under one ownership contains land outside Suttons Bay Township, only that portion of the land within Suttons Bay Township is considered part of the farm. "One ownership" includes parcels registered under different titles if a single individual or entity has controlling interest in all parcels.

ii. A farm of five acres or more in one 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 land enrolled in the set-aside or conservation reserve program.

iii. A farm designated by the Michigan Department of Agriculture as a specialty farm in one 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, fowl, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.

(2.11) "MASS" is the Michigan Agricultural Statistics Service.

(2.12) "MDA" is the Michigan Department of Agriculture.

(2.13) "NREPA" is the Natural Resources and Environmental Protection Act (1994 PA 451, as amended, being MCL 324.101 et seq.)

(2.14) "NRCS" is the Natural Resources Conservation Service.

(2.15) "Option" is a contract that gives a buyer the right to purchase an interest in property at a future time at a specified price.

(2.16) "PDR" means "Purchase of Development Rights" although it may also refer to a transfer of development rights through donation or other means.

(2.17) "Permitted Use" means any use permitted by an agricultural conservation easement essential to the farming operation or which does not alter the agricultural character of the land and which complies with Right to Farm Act and generally accepted agricultural management practices as defined by the Michigan Department of Agriculture.

(2.18) "Property Owner" means the party or parties having a fee simple interest in land or any party that owns severed development rights to land.

(2.19) "Retained Development Rights" are any rights retained by a Suttons Bay Township PDR Program participant to build future residential structures on property enrolled in the program.

(2.20) "Severed Development Rights" are "Development Rights" to land that have been legally separated from the land and are owned by a party other than the owner of the land.

(2.21) "State" means the State of Michigan.

(2.22) "Substantially Undeveloped Land" means land on which there is no more than one residential dwelling unit (exclusive of housing units directly associated with the farming operation) for each 40 acres of land.

(2.23) "Suttons Bay Farmland Preservation Board" (SBFPB) is the board appointed to administer the Suttons Bay Township PDR Program.

(2.24) "Suttons Bay Farmland Preservation Fund" is a separate fund established for the sole purpose of purchasing development rights to farmland and other eligible land under the Suttons Bay Township PDR Program.

(2.25) "Township Board" means the Suttons Bay Township Board.

(2.26) "USDA" is the United States Department of Agriculture.

SECTION 3: AUTHORIZATION

(3.1) Pursuant to the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended, MCLA 125.3507 through MCLA 125.3509, the Suttons Bay Township Board is authorized to establish and administer a Purchase of Development Rights of Agricultural Land program in the township. Such acquisition may be by purchase, gift, grant, bequest, devise, covenant, or contract but only at a price which is equal to or less than the development rights value as determined by valuation methods described in this Ordinance.

(3.2) The Suttons Bay Farmland Preservation Board (SBFPB) may contract with recognized and legally established nonprofit land trusts, or other experienced individuals or qualified nonprofit groups that would assist the SBFPB in establishing baseline reports, negotiating agricultural conservation easements and purchase contracts, procedures for monitoring, and actual monitoring of any agricultural conservation easements acquired under this Ordinance

(3.3) Interests in non-agricultural land owned by Suttons Bay Township may be exchanged for property interests in agricultural land or other eligible land on an equivalent appraised value basis. If the property interest exchanged is not exactly equal in appraised value, payments shall be made by either party to provide net equivalent value in the exchange.

SECTION 4: SUTTONS BAY FARMLAND PRESERVATION BOARD

(4.1) There is hereby established the Suttons Bay Farmland Preservation Board (SBFPB) whose purpose shall be to oversee the Suttons Bay Township Farmland Preservation Program. The SBFPB shall consist of five (5) members who shall be appointed by the Township Board and shall, to the extent possible, consist of:

- (a) two individuals with agricultural operations or agribusinesses within the township;
- (b) one representative from township government;
- (c) one individual with real estate or development interests; and
- (d) one individual representing local conservation interests.

The Township Board may also appoint two alternate members. An alternate member may be called to serve as a member of the SBFPB in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on an application in which a member has abstained for reasons of conflict of interest. The alternate member appointed shall serve with respect to a particular application until a final decision is made on the application. An alternate member serving on the SBFPB has the same voting rights as a regular member

(4.2) The SBFPB shall adopt by-laws which shall become effective upon approval of the Township Board.

(4.3) To the extent of available funding and with Township Board approval, the SBFPB may contract with experts for consulting services.

(4.4) Voting and at-large members of the SBFPB shall serve three-year terms; except that the initial terms of the voting members are staggered so that one of the members serve for one year, two other members serve for two years, and the remaining three members serve for three years. SBFPB members may be re-appointed to successive three-year terms by the Township Board. The Township Board shall have the discretion to remove SBFPB members for inefficiency, neglect of duty or malfeasance in office. Vacancies due to removal or resignation shall be filled for the remainder of a term by appointment by the Township Board. Members shall not be compensated for their services although a per diem reimbursement for attending meetings, for mileage and for other approved expenses shall be at the discretion of the Township Board.

(4.5) Individual SBFPB members shall disclose any potential conflict of interest and shall not vote when a conflict exists. A conflict of interest includes, but is not limited to,

- (a) the board member is the applicant; or
- (b) the board member, a relative, or a business associate could receive financial gain or benefit from the acceptance of the application.

SECTION 5: ELIGIBILITY

(5.1) Any property owner may submit an application to the Suttons Bay Township PDR Program provided it meets the following requirements:

- (a) the property owner has signed the application indicating they are interested in voluntarily selling the development rights to the parcel;
- (b) the property is not designated for commercial, industrial, or high density residential uses under the Suttons Bay Community Joint Master Plan; and
- (c) agricultural activities are a permitted use on the parcel under all applicable zoning ordinances.

(5.2) At the applicant's discretion, an application may include more than one farm, as defined in Section 2.10, so long as no farm included in the application is more than one mile from another. A farm that is more than one mile from another requires a separate application to participate in the program.

(5.3) To be eligible to sell development rights to any PDR program, a landowner must have a legal and/or ownership interest in the development rights of the nominated land. Instances in which a landowner may not own development rights eligible for sale may include:

- (a) if the development rights have been sold or donated to another party;
- (b) if no further development of the land is permitted under current zoning and land use regulations; or
- (c) density on the property already exceeds the maximum density permitted.

An owner of severed development rights to eligible land may apply to the program even if the owner of such rights does not own the land from which the rights were severed. If severed development rights are nominated for the program, the terms of the existing agricultural conservation easement must be consistent with the minimum agricultural conservation easement provisions as set forth in this Ordinance.

(5.4) Once a landowner, or owner of severed development rights, has put together an application defining the specific land that would be nominated for purchase of development rights, he or she must satisfy two additional conditions to be eligible to participate in the Suttons Bay Township PDR Program. First, the application must be consistent with the zoning or master plan; second, the Township Board must approve the individual application.

SECTION 6: APPLICATION PROCESS

(6.1) The SBFPB shall, on an annual basis, conduct a property selection process (herein called the "selection round") to accept applications from property owners who voluntarily offer to sell development rights under the Suttons Bay Township PDR Program. The application process shall be conducted as follows:

(6.2) The SBFPB shall make application forms available to property owners and will inform property owners where such applications may be obtained. The SBFPB shall decide the length and timing of the selection round.

(6.3) It is the intention of this Ordinance to allow property owners who own severed development rights to agricultural or other eligible land to participate in the Suttons Bay Township PDR Program on a footing equal to that of parties with fee simple ownership of the land. This provision permits local government units, non-profits, private individuals, or others to respond quickly to emerging preservation opportunities where time is of the essence by purchasing development rights. To encourage this quick response capability, applications from parties who own severed development rights will be evaluated by the same criteria as applications from those with fee simple ownership of land.

(6.4) At the close of each selection round, the SBFPB, exercising its reasonable discretion, shall use information provided by the applicant to make an initial determination of an application's eligibility based on eligibility requirements listed in Section 5 of this Ordinance. If the SBFPB determines that an application is not eligible, it shall notify the applicant.

(6.5) For those applications determined to be eligible, the SBFPB shall obtain, verify, and analyze additional information necessary for ranking applications as specified in the scoring criteria listed in Section 7 of this Ordinance. Information may be obtained, verified, and analyzed through interviews with applicants, site visits, requests to local and state government units, and the use of Geographic Information Systems (GIS) services.

(6.6) Once it has ranked all eligible applications in a selection round, the SBFPB, exercising its reasonable discretion, shall select a number of the highest ranking applications on which to pursue the purchase of development rights. The SBFPB will determine the number of properties selected for further consideration based on the total number of applications and available program resources. The SBFPB will then use procedures described in Sections 6.8 through 6.12 of this Ordinance to determine the value of development rights for selected applications.

(6.7) The value of development rights of a farm is the difference between the appraised fair market value of the farm, less the farm's agricultural value, as adjusted for retained development rights,

(6.8) Fair market value for the purposes of this program is the appraised market value of the land taking into account any anticipated future use of the land. Fair market value shall be determined by a SBFPB selected qualified appraiser utilizing the appraisal method directed by the anticipated funding source. The selected appraiser shall immediately disclose any conflict of interest he/she might have in appraising the property. The SBFPB shall choose an alternate appraiser when the SBFPB's initial appraiser discloses a conflict of interest. Appraisals must be in writing, shall be conducted at the property owner's expense, and furnished to the SBFPB for review. The SBFPB or the property owner may point out errors of fact in any appraisal, provided, however, that only the appraiser may correct the appraisal.

(6.9) If an applicant elects to retain a portion of the development rights on the property, the value of development rights must be adjusted to reflect the value retained in the land above its agricultural value. Appraisal of the value of permitted future residences will be based on the lot sizes and locations specified in the agricultural conservation easement. Appraisals will be conducted by a SBFPB selected state certified appraiser using standard appraisal practices. The selected appraiser shall immediately disclose any conflict of interest he/she might have in appraising the property. The SBFPB shall choose an alternate appraiser when the SBFPB's initial appraiser discloses a conflict of interest. Appraisals must be in writing, shall be conducted at the property owner's expense, and furnished to the SBFPB for review. The SBFPB or the property owner may point out errors of fact in any appraisal, provided, however, that only the appraiser may correct the appraisal.

(6.10) Any part of a farm that an applicant chooses to leave out of an application will be treated as retained development rights for the purposes of calculating development rights value. Appraisal and appeal procedures are identical to those described in Section 6.9 of this Ordinance.

(6.11) The SBFPB at a regularly scheduled or special meeting shall identify the specific properties on which it recommends the Township effect the purchase of development rights. It may also elect to extend program resources by seeking additional funding or matches from state and/or other sources for some or all of the properties under consideration. It may also choose to negotiate with the property owner for a lower price, or negotiate for and accept a landowner match of some portion of the agricultural conservation easement value.

(6.12) Once the SBFPB has completed its selection of properties on which to purchase development rights in a given selection round, the SBFPB will submit a formal recommendation to the Township Board for final approval. The Township Board may alter the recommendations made by the SBFPB only with a finding of fact that the scoring system described in this ordinance has not been accurately or appropriately applied to a specific application.

(6.13) Once the Township has been awarded funding to complete the acquisition of the development rights for a particular property, the SBFPB shall then ask the Township's legal counsel to review and/or prepare as necessary the appropriate agricultural conservation

easements to be signed by all parties. No easement shall be executed by the Township until said easement has been approved by the Township's legal counsel. Each agricultural conservation easement shall be drafted in accordance with the requirements listed in Section 8 of this Ordinance so that it shall be legally recorded in the Leelanau County Register of Deed office and shall specifically contain a provision indicating that the agricultural conservation easement runs with the land and may not be terminated except as provided for in this Ordinance.

SECTION 7: CRITERIA AND SCORING

(7.1) The Suttons Bay Township Purchase of Development Rights Ordinance is designed to facilitate securing state, federal and other dollars available for farmland preservation. Thus the funding source shall dictate the criteria and scoring system used for ranking and evaluating all applications. The funding programs are incentive based and points are awarded for meeting various criteria. One such funding source is offered by the State of Michigan through the Michigan Agricultural Preservation Fund Board's, "Local Purchase of Development Rights Program."

SECTION 8: AGRICULTURAL CONSERVATION EASEMENT PROVISIONS

(8.1) Once the SBFPB and the property owner agree on the sale of development rights for a parcel or parcels of land, an agricultural conservation easement shall be executed which, at a minimum, shall contain the following provisions:

- (a) A granting clause deeding the development rights from the owner to the township resulting in an extinguishment of these development rights;
- (b) A clause restricting the use of the land to specific agricultural activities permitted under Right to Farm Act and generally accepted agricultural management practices (including but not restricted to the definition of "agricultural land" contained in Section 2 of this ordinance);
- (c) A clause which defines construction of buildings and residential structures permitted under the easement;
- (d) An enforcement clause acknowledging that the breach of the agricultural conservation easement by the property owner, or his/her successors, will result in irreparable harm to the township which cannot be measured, thus giving the township the right to obtain an injunction to stop the breach;
- (e) A clause indicating that the easement runs with the land and is binding on the property owner's successors in interest. In addition, the easement must contain a clause giving the township an option to purchase the remainder of the property interest should the property owner, or his/her successors in interest, attempt to repurchase the development rights;
- (f) A clause providing how the costs for the annual monitoring of the agricultural conservation easements will be borne by the parties; and
- (g) Additional provisions as may be required by funding entities, if any.

SECTION 9: RETAINED RESIDENTIAL DEVELOPMENT RIGHTS

(9.1) A participant in the Suttons Bay Township Farmland PDR Program may sell all future development rights on property enrolled in the program or, alternatively, may elect to retain the right to build some future residential structures on the property. When property owners retain some development rights, the value of development rights offered for sale is reduced because value is retained in the land over and above its agricultural value.

(9.2) The configuration of retained development rights will be negotiated between the applicant and the SBFPB. Retained building sites must be identified on a site plan map and shall be located so as to cause minimum interference with agricultural use of the land.

(9.3) Unless required otherwise by restrictions imposed by funding entities, retained Development Rights shall not result in more than one dwelling unit per 40 acres of land for farms as defined in Section 2.10.i.

SECTION 10: MONITORING AND ENFORCEMENT

(10.1) In order to provide for monitoring an agricultural conservation easement, the SBFPB and/or a legally authorized entity established for such purposes by the SBFPB shall cause to be prepared a baseline report for each completed agricultural conservation easement that documents the condition of the land and structures covered by the agricultural conservation easement. At a minimum, the baseline report shall include descriptions of:

- (a) background about how the property came to be conserved;
- (b) how the development rights were acquired;
- (c) how the parcel was selected;
- (d) intent of the grantor;
- (e) the general location of the property;
- (f) the physical environment (topography, soils, vegetation, human made structures, zoning, etc.); and
- (g) a photograph, aerial photograph, and/or maps showing the parcel and the vicinity.

(10.2) The SBFPB or agent shall monitor each agricultural conservation easement no less than once per year to ensure compliance with the terms of the agricultural conservation easement. Monitoring shall be done in the following manner:

- (a) a written notice that the inspection will be conducted will be mailed by certified mail to the landowner at least 10 days prior to the inspection;
- (b) all monitoring inspections shall be performed at a date and time agreeable to both the inspector and the landowner;
- (c) within 10 days of the inspection, the SBFPB shall prepare, or cause to be prepared, a written inspection report that includes the following information:
 - (1) the identification of the land inspected;
 - (2) the name of the owner of the land at the time the agricultural conservation easement was originally acquired and the name of the current owner;

- (3) a description of modifications in the number, type, location, or use of any structures on the land since the date of the filing of the agricultural conservation easement; and
- (4) a statement of whether the provisions of the agricultural conservation easement have been observed;
- (d) a copy of the inspection report shall be mailed by certified mail to the landowner.
- (e) copies of inspection reports will also be delivered to any other parties as required.

(10.3) On agricultural conservation easements in which the State of Michigan holds the agricultural conservation easement jointly with the Township Board, it is the responsibility of the Township to monitor and enforce the agricultural conservation easement. In the event that the Township fails to adequately enforce the agricultural conservation easement provisions, the state may choose to enforce the agricultural conservation easement and the Township shall reimburse the state for expenses incurred in enforcing the agricultural conservation easement.

(10.4) An agricultural conservation easement shall contain remedies for the Township in the event that a landowner violates the terms of the easement.

SECTION 11: DURATION OF ACQUIRED INTERESTS OF DEVELOPMENT RIGHTS; TERMINATION, EXTINGUISHMENT AND/OR CONDEMNATION

(11.1) An agricultural conservation easement created through this Ordinance may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill its conservation purpose(s), or by exercise of eminent domain.

(11.2) The rights and obligations in an agricultural conservation easement created through this Ordinance run with the land and apply to all heirs, successors, and agents. It is binding upon, and inures to the benefit of, the owner's and the township's successors in interest. All subsequent owners of the property protected by an agricultural conservation easement are bound to all its provisions to the same extent as the original owner.

(11.3) An agricultural conservation easement created through this Ordinance may only be terminated or extinguished by a court of competent jurisdiction upon a request to terminate made by the owner, the SBFPB and the Suttons Bay Township Board and after a finding by the court that the conditions or circumstances on or surrounding the Protected Property have changed to such a degree that it has become impossible to fulfill the conservation purpose(s) of the agricultural conservation easement.

(11.4) In the event the court makes such a finding, the landowner must repay the current fair market value of the development rights, as determined by a certified appraiser, at the time of repurchase; and a repayment received shall be allocated to Suttons Bay Township and all other contributors in the same proportion as the proportion for the original funding for the original purchase of the development rights of the parcel, if any, less the proportionate share contributed by the landowner.

SECTION 12: RELATED COSTS

(12.1) The costs of appraisal, engineering, surveying, planning, financial, legal, environmental assessments, developing baseline assessments, and other services ordered by the SBFPB in relation to the Suttons Bay Township PDR Program shall be paid by the property owner or any available farmland preservation program funding sources, including the state and federal matching funds. The nominal costs for the annual monitoring of agricultural conservation easements may be borne or shared by the SBFPB, the property owner, and/or an authorized agent responsible for such monitoring, but in any case shall be agreed upon by the parties prior to finalizing an application to the Suttons Bay Township PDR Program. Neither the SBFPB nor the Township shall be responsible for any other expenses incurred by the owner incidental to this transaction.

SECTION 13: SUPPLEMENTAL FUNDS

(13.1) Supplemental or matching funds from other governmental agencies or private sources may become available to pay a portion of the cost of acquiring development rights or to supplement or enlarge such acquisitions. The Township Board authorizes the SBFPB to use such funds to purchase development rights in agricultural land or other eligible land.

SECTION 14: FARMLAND PRESERVATION MONIES

(14.1) Available funding for the Suttons Bay Township PDR Program shall be deposited in a restricted fund for farmland preservation. Money in the fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money. The revenues from the deposit and/or investment of the fund shall be applied and used solely for the purchase of development rights under this Ordinance promoting agricultural land preservation within the Township, or costs of administering the PDR program.

SECTION 15: AMENDMENTS

(15.1) This Ordinance may be amended after receiving a majority vote of those elected and serving on the Suttons Bay Township Board and by following the procedures for amendments as outlined in the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended.

SECTION 16: SEVERABILITY

(16.1) 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; and in such instance the remaining provisions of the ordinance shall be interpreted in such manner as to give effect to the legislative intent of the Township Board.

Ordinance No. 1 of 2013 was adopted on the 16th day of January, 2013 by the Suttons Bay Township Board of Trustees, as follows:

Motion by: Herman

Seconded by: Drozdalski

Roll Call Vote: Herman, Drozdalski, Bahle, Bergman, Van Huystee

MOTION CARRIED

I certify that this is a true copy of Ordinance No. 1 of 2013 adopted at a Special Meeting of the Suttons Bay Township Board of Trustees on January 16, 2013 and published in the Leelanau Enterprise on January 24, 2013.

Effective Date: FEBRUARY 1, 2013

DATED:

Feb 1 2013 

Sandra Van Huystee, Suttons Bay Township Clerk

SUTTONS BAY TOWNSHIP
NOTICE OF ADOPTION

PLEASE TAKE NOTICE that the Suttons Bay Township Board at a special meeting on January 13, 2013 at 9:00 AM in the Suttons Bay Township Offices, Suttons Bay, Michigan, adopted Ordinance No. 1 of 2013, an Ordinance to provide for the purchase of development rights to help protect farmland and open spaces within the Township.

The following is a synopsis:

Section 1: Findings and Declaration of Purpose; Section 2: Definitions; Section 3: Authorization; Section 4: Suttons Bay Farmland Preservation Board; Section 5: Eligibility; Section 6: Application Process; Section 7: Criteria and Scoring; Section 8: Agricultural Conservation Easement Provisions; Section 9: Retained Development Rights; Section 10: Monitoring and Enforcement; Section 11: Duration of Acquired Interests of Development rights; Termination, Extinguishment and/or Condemnation; Section 12: Related Costs; Section 13: Supplemental Funds; Section 14: Farmland Preservation Monies; Section 15: Amendments; Section 16: Severability

This Ordinance shall become effective eight (8) days after publication in a newspaper of general circulation within the township.

The complete Ordinance is available at the Suttons Bay Township Office 95 W. Fourth Street, Suttons Bay, MI 49682 during regular office hours.

Sandra VanHuystee
Suttons Bay Township Clerk