

DATE: April 24, 2021
TO: House Committee on Agriculture
FROM: William E. Hamilton
RE: House Concurrent Resolution No. 7

Background

Section 36105 of the Natural Resources and Environmental Protection Act (NREPA) provides for voluntary open space development rights easements between landowners and the "state land use agency," meaning the Michigan Department of Agriculture and Rural Development (MDARD). Such easements are used to restrict development of land meeting the definition of "open space" under NREPA and to preserve the character of such land as open space. Section 36103 of NREPA requires that such easements have an initial term of not less than ten years, with a maximum term of 90 years.¹

Landowners are not paid for the land or development rights under these easements, but do receive a reduction in property taxes related to the development rights of the land under easement. Under provisions of NREPA, the property owners are liable for ad valorem property taxes attributable to the land under easement, but are not liable for ad valorem property taxes related to the easement property's development rights as separately valued and assessed. Section 36106 of NREPA states that "the amount of cost shall be returned to the local governing body if lost revenues are indicated." In effect, the State of Michigan reimburses the affected local units of government, e.g. a county or township government or school district, for the revenue loss resulting from the sheltering of the development rights from property taxes.

The payment to local units for property tax revenue loss as a result of open space development rights easements is made from the Agriculture Preservation Fund, a state restricted fund, appropriated in MDARD budgets.

MDARD representatives indicate that the criteria for open space development rights easements under section 36101 is relatively restrictive. There are currently 10 open space easements under the definitions of section 36101(j)(i) of NREPA. The parcel that is the subject of HCR No. 7 would be the 11th open space easement.

Description and Analysis of the Resolution

Approval of House Concurrent Resolution No. 7 by both the House and the Senate would signify legislative approval of an open space easement previously approved by MDARD. The legislative approval of such easements is required by section 36105 of NREPA.

The subject parcel is a 55.21-acre parcel in Vergennes Township, Kent County. The easement would be for ten years. The resolution indicates an annual cost of \$1,703.44 per year. This cost represents the taxes forgone as a result of the easement. MDARD would reimburse the township for this lost tax revenue from funds appropriated from the restricted Agriculture Preservation Fund.

¹ NREPA provisions dealing with farmland and open space preservation are found in Part 361 of NREPA: <http://legislature.mi.gov/doc.aspx?mcl-451-1994-III-1-LAND-HABITATS-361>