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A REVIEW OF CITY POLICIES AND PROCESSES TO ENABLE FIVE LAND-BASED VENTURE TYPES IN DETROIT

Report prepared for the City of Detroit's Planning
and Development Department



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ABOUT CENTER FOR COMMUNITY PROGRESS

The mission of Center for Community Progress is to foster strong, equitable communities where vacant, abandoned, and deteriorated properties are transformed into assets for neighbors and neighborhoods. Founded in 2010, Community Progress is the leading national, nonprofit resource for urban, suburban, and rural communities seeking to address the full cycle of property revitalization. The organization fulfills its mission by nurturing strong leadership and supporting systemic reforms. Community Progress works to ensure that public, private, and community leaders have the knowledge and capacity to create and sustain change. It also works to ensure that all communities have the policies, tools, and resources they need to support the effective, equitable reuse of vacant, abandoned, and deteriorated properties. More information is available at www.communityprogress.net.

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1. INTRODUCTION

To help strengthen the link between the reuse of land, entrepreneurship, and local job creation, the City of Detroit's Planning and Development Department (City) applied for assistance from the Center for Community Progress' (Community Progress) Technical Assistance Scholarship Program (TASP) and was selected through a national, competitive process. Specifically, the City requested that Community Progress examine existing local codes and ordinances and identify barriers that would prevent the creation or expansion of land-based ventures.

SELECTED LAND-BASED VENTURES

The City and Detroit Land Bank Authority (DLBA) identified an initial set of five land-based venture types:

1. **Tree farm/plant nursery:** Parcel(s) of land used to raise or harvest more than 10 containerized or in-ground trees or plants.
2. **Orchard:** Parcel(s) of land used to establish, care for, or harvest (for consumption) more than 10 fruit or nut-bearing trees.
3. **Cut Flowers:** Parcel(s) of land used to plant and harvest flowers.
4. **Mixed/Urban Farm:** Parcel(s) of land used to grow and harvest food and non-food crops for personal or group use.
5. **Composting Facility:** Parcel(s) of land used to make and sell compost.

The City and DLBA selected the five land-based ventures as the first options to explore, due to the high volume of inquiries they receive that fall into these categories. While this report is limited to these five land-based ventures, the City and DLBA plan to expand this list moving forward.

METHODOLOGY AND FINDINGS

Community Progress partnered with the Great Lakes Environmental Law Center (GLELC), a Detroit-based nonprofit environmental law firm, to explore potential barriers to land-based venture development. The following local laws, ordinances and policies were reviewed:

- The Detroit Zoning Ordinance and Master Plan of Policies;
- Part 201 of the Michigan Natural Resources and Environmental Protection Act, which regulates the cleanup of properties contaminated with a hazardous substance;

- The laws and ordinances that regulate the siting, development, and operation of composting facilities, including Part 115 of the Michigan Natural Resources and Environmental Protection Act and Chapter 105 of the Wayne County Code of Ordinances; and
- Real property disposition policies of both the Detroit Land Bank Authority and the Detroit Building Authority.

After review of local laws, ordinances, and policies, and discussions with local officials,¹ we concluded that:

1. All five uses are allowed at some level in the city, and
2. Public entities can dispose of their significant land assets to private entities for the five land-based ventures.

While there are no outright legal barriers to land reuse for the five land-based ventures, there are significant hurdles that land-based ventures and the City will encounter as it works to increase the:

1. Number of land-based ventures (volume), and
2. Size of land-based ventures (scale).

This work is not intended to identify every hurdle. After a review of the City's zoning, land disposition, and permitting and site plan review processes, however, we identified some key hurdles and considerations for the City to examine as it promotes greater reuse of vacant land for land-based ventures. They are summarized in Table 1 on page 6.

¹ This included meetings and interviews during two full-day site visits, one TASP project team meeting, and multiple stakeholder interviews with the Planning and Development Department; Building, Safety Engineering and Environmental Department; Housing and Revitalization Department; Office of Sustainability; Detroit Economic Growth Corporation; Detroit Land Bank Authority; Detroit Building Authority; City Planning Commission; Detroit Water & Sewerage Department; and Wayne County.

Table 1: Hurdles and Considerations for Zoning, Public Land Disposition, and the Overall Process

Zoning	Public Land Disposition	Overall Process
Hurdles		
<p>Areas of the city where highly productive, larger-scale uses can occur by-right are limited, restricting volume and scale of reuse</p> <p>Current zoning does not prioritize the development of land-based ventures</p> <p>The conditional land use process, which is time consuming and costly, will be required for the conversion of property needed for most of the five land-based ventures</p> <p>The zoning ordinance establishes a restrictive list of the accessory uses that are allowed at an urban farm or urban garden. These lists do not fully encompass the accessory uses commonly associated with an urban farm and urban garden</p>	<p>Purchase of public land is facilitated by two different processes, depending on the owners (DLBA or City), which differ in terms of decision-making, cost and length</p> <p>It is not immediately clear to the public how an entity that does not qualify for the Community Partner or Side Lot programs can acquire a property from DLBA, nor is it clear how the City and DLBA make acquisition decisions</p> <p>Publicly owned vacant land is scattered throughout the city, and does not always form large enough areas of contiguous parcels in a location desirable for a large-scale land-based venture</p>	<p>Conditional land use changes for low-risk uses and higher-risk uses are often equally burdensome, dissuading the conversion of land to lower-risk uses²</p> <p>The processes for conditional land use and permitting are neither clear nor consistent for those in and outside of City government</p> <p>Applicants are required to submit similar information repeatedly throughout the process and requirements for plot plans are inconsistent across departments</p> <p>The high degree of involvement across City departments in light of the high volume of properties that need to go through the acquisition and conditional land use process will create capacity pain points – elongating the process and requiring significant City capacity</p>
Considerations		
<p>City should determine which uses are a priority (or at least lower risk) and in what geographies and then modify zoning, or potentially apply an overlay district, to reflect those priorities</p> <p>Consider an amendment to the zoning ordinance so that urban farms and urban gardens may establish other accessory uses and structures that meet the general definition of those terms</p>	<p>Consider outlining on DLBA's and the City's website the process and criteria for land-based venture property sales on DLBA's and the City's website</p> <p>Consider articulating a clear disposition priority for the five land-based ventures in specific areas to increase the likelihood of disposition for that purpose amongst other uses</p> <p>Consider consolidating and streamlining the disposition of public land (e.g. one entity, one process)</p> <p>Consider ways to proactively acquire vacant land and re-zone land prior to sale, creating larger areas more desirable for land-based venture development</p> <p>Consider examining current discounting practices on land sales to lower the cost burden for land-based ventures</p>	<p>Complete a detailed process analysis and identify ways to reduce inefficiencies in the sale and permitting process, both from the customer's and City's perspectives</p> <p>Publish a clear outline or process map walking customers through the land purchase and permitting processes</p> <p>Identify ways to minimize the cost and burden for lower-risk uses</p>

² Elevated risk infers a higher intensity use with a heightened noise or environmental risk to surrounding properties.

2. ZONING

BACKGROUND

While Detroit's master plan is a long-range policy guide for the physical arrangement and appearance of the city, the zoning ordinance is a tool used to put the master plan's policies into operation through the regulation of land use.³ Detroit's zoning ordinance: divides all property within the city into one of several zoning districts; describes which uses are allowable in each zoning district and whether the use is permitted by-right or conditionally; describes regulations for the design and operation of specific uses; and establishes dimensional and intensity regulations for principal and accessory buildings and structures.

We examined the zoning ordinance and master plan to determine:

1. If the five land-based ventures are permitted uses in Detroit's zoning districts, and
2. If so, where those uses are permitted in the city.

WHAT PRINCIPAL USE CLASSIFICATIONS DO THE FIVE LAND-BASED VENTURES FALL INTO?

Determining the appropriate principal use classification for a land-based venture is imperative because it determines: 1) the intensity and dimensional restrictions for that use, and 2) where that business can be located, as discussed in the next section.

Unfortunately, there is not a 1:1 match between the five land-based ventures and the current use definitions in the zoning ordinance. For this reason, a business could fall into one of several different principal use categories depending on:

1. The size (acreage) of the operation,
2. The types and numbers of plants/trees used,
3. Whether or not sales will occur on site, and
4. The configuration of the zoning lot [see page 8 for more detail].

³ City of Detroit, Master Plan of Policies, 8 (July 2009), available at http://www.detroitmi.gov/Portals/0/docs/Legislative%20Policy%20Reports/City%20Planning%20Commission/MP%20change%2014_permit%20establishment%20of%20small%20and%20large%20scale%20agriculture.pdf?ver=2016-07-14-162425-040

Additionally, how the principal use is classified affects the accessory uses that are allowed on the site. A person may, within limits, establish accessory uses and structures that are incidental and subordinate in area and purpose to the principal uses allowed on the zoning lot. If the principal use is an urban garden or urban farm, there is a designated list of accessory uses allowed. This list is restrictive, meaning that only those listed are considered an acceptable accessory use. For more discussion on accessory uses, see Appendix A.

Understanding Zoning Lots

A *zoning lot* is defined as “[a] single tract of land located within a single block that at the time of filing for a building permit is designated by its owner or developer as a tract to be used, developed, or built upon as a unit under single or unified ownership or control.”⁴

Additionally, a *block* is defined as “[a] tract of land bounded by streets or by a combination of streets, public parks, cemeteries, railroad rights-of-way, harbor lines, centerlines of waterways, or corporate boundary lines of the City of Detroit.”⁵

Based on these definitions, a flower or mixed vegetable and fruit operation that is separated by a public right of way, such as a street or an alley, is regarded as two distinct land uses for the purposes of the zoning ordinance, because it exists on two distinct zoning lots. The picture provided illustrates how the definition of a zoning lot functions.

Hypothetically, a land-based venture’s operation may exist on all of the property outlined in red. Collectively, the land-based venture uses more than one acre of property. However, each zoning lot, outlined in red, is under one acre. Therefore, a person seeking to establish a cut flower or mixed vegetable farm would need to seek zoning approvals for three distinct urban gardens, as opposed to a single urban farm. This is significant because in R1, R2, and R3 districts⁶, which are very common in heavily vacant residential neighborhoods, while an “urban garden” is a by-right land use, an urban farm is a conditional land use. This means an urban farm is not a matter-of-right and would require a more extensive City approval process.



Note: The above photo represents an instance of a zoning lot where the alley has not been vacated. The red lines indicate the boundaries of three distinct parcels that collectively form a single farming operation that takes up more than one acre, but is treated as three distinct lots. Source: Google Earth

⁴ § 61-16-124

⁵ § 61-16-42

⁶ Single-Family, Two-Family and Low Density Residential Districts

The City has developed a series of common and acceptable lot configurations for use by land-based ventures. These project configurations can be found in Appendix B.

In Table 2 below, we summarize the conditions of and associated use classifications for each of the land-based venture types, according to the City's zoning ordinance. Table 2 assumes that each venture type is the principal use on the zoning lot.

Table 2: Use Classifications for Five Land-Based Ventures

Venture Type and Conditions	Use Category	Specific Land Use
<p>“Tree farm/plant nursery” A plant nursery may be regarded as a “greenhouse,” “garden center,” “nursery with stock for retail sales,” or “nursery, wholesale only.” A tree farm may be regarded as an “urban garden” or “urban farm”</p>		
<i>Condition:</i>		
If the nursery primarily consists of a greenhouse(s), which is/are defined as “a building or structure whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants for personal use and/or for subsequent sale.” ⁷	Agricultural Uses	Greenhouse
If the nursery imports most of the items it sells, such as plants, potting soil, and garden equipment, even if there is a greenhouse as accessory use. ⁸	Retail Sales and Service; Sales-Oriented	Stores of a generally recognized retail nature whose primary business is the sale of new merchandise (garden center)
If the nursery cultivates and sells plants on-site on a retail basis.	Retail Sales and Service; Sales-Oriented	All other (nursery with stock for retail sales) ⁹
If the nursery cultivates and sells plants on-site on a wholesale basis.	Industrial Service	All other (nursery, wholesale only) ¹⁰
10 or fewer trees raised for wood products, Christmas trees, or for transplant, on a zoning lot that is 1 acre or less.	Agricultural Uses	Urban Garden
11 or more trees raised for wood products, Christmas trees, or for transplant, on any sized lot. ¹¹	Agricultural Uses	Urban Farm
<p>Orchard An orchard is regarded as an “urban farm.”</p>		
<i>Condition:</i>		
11 or more fruit/nut bearing trees, on any sized lot ¹²	Agricultural Uses	Urban Farm

⁷ § 61-16-92

⁸ § 61-16-92

⁹ Note: This specific land use falls under the “All Other” category listed in § 61-12-50 in the Use Table in Article XII, Division 1.

¹⁰ Note: This specific land use falls under the “All Other” category listed in § 61-12-61 in the Use Table in Article XII, Division 1.

¹¹ § 61-16-182

¹² § 61-16-143

Table 2: Use Classifications for Five Land-Based Ventures (continued)

Venture Type and Conditions	Use Category	Specific Land Use
Cut Flowers Mixed/Urban Farm A land-based venture that grows food or non-food crops (flowers) for personal or group use may be classified as an “urban garden” or “urban farm,” based on the size of its zoning lot and presence of fruit/nut trees.		
<i>Condition:</i>		
Growing food and non-food crops (including up to 10 or fewer fruit/nut trees and/or tree farm trees) on a zoning lot that is one acre or less	Agricultural Uses	Urban Garden
Growing food and non-food crops (including 11 or more fruit/nut trees and/or tree farm trees) on a zoning lot that is one acre or less	Agricultural Uses	Urban Farm
Growing food and non-food crops (with or without any number of fruit/nut/tree farm trees) on a zoning lot that is larger than one acre	Agricultural Uses	Urban Farm
Composting Facility A composting facility’s land use classification will depend on whether the facility’s operations are indoors or outdoors		
<i>Condition:</i>		
Composting is conducted outside	Waste-Related Use	Outdoor operations of all waste-related land uses
Composting is conducted inside of a building	Waste-Related Use	Waste, scrap materials: indoor storage, handling and/or transfer

WHERE ARE THE FIVE LAND-BASED VENTURES ALLOWED?

Detroit’s zoning ordinance divides real property within its jurisdiction into one of four general zoning districts: residential, commercial, industrial, or special purpose,¹³ as shown in Map 1 on page 12. In addition to classifying real property into zoning districts, the zoning ordinance also lists principal uses of land that are allowed in Detroit and in which zoning districts they are permitted. Principal uses are either allowed:

1. **“By-right”** meaning as a matter-of-right. A customer simply needs to submit a permit application and plans if they are changing the parcel’s use to a by-right use;

¹³ We do not summarize special purpose districts in this report because we understand that these districts do not come up very frequently in the context of land-based ventures. The most relevant special purpose district seems to be the Planned Development District (PDD) and the approval processes are often distinctly different from those involved in the general zoning districts. For example, establishing an urban farm in a PDD is a completely different process than establishing it in an existing general zoning district.

2. **“Conditionally”** meaning they are allowed in accordance with the terms and conditions described in an official decision letter from the Buildings, Safety Engineering and Environmental Department (BSEED). A customer would need to go through a significantly longer and more expensive process to receive the official decision letter, which must be obtained before receiving other necessary permits; or
3. **“Not permitted”** meaning they are not allowed. In these instances, a person with a legal interest in the property at issue may file a petition with the City Clerk to amend the zoning classification of the property.¹⁴

In Table 3 below, we summarize which districts the five land-based ventures are permitted in on a by-right or conditional basis.

Table 3: Where the Five Land-Based Ventures are Allowed By-Right or Conditionally

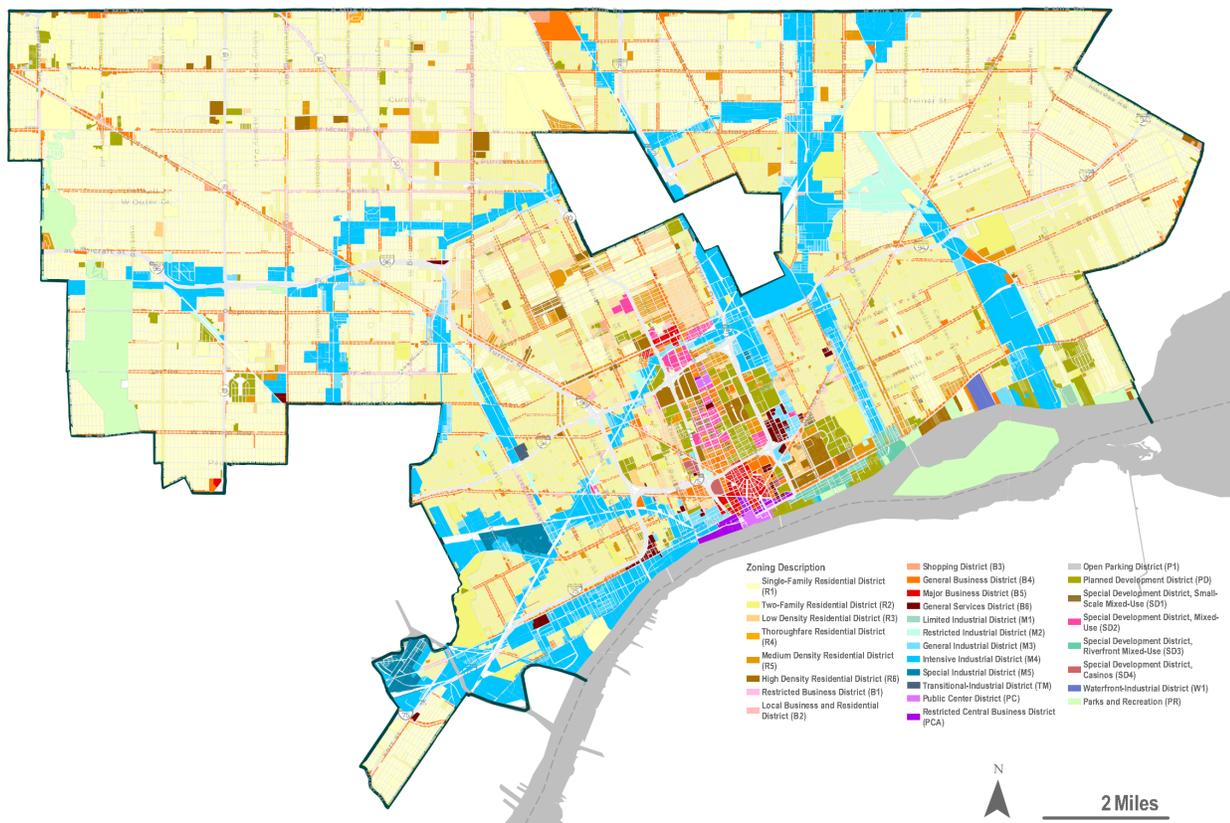
Use	Residential						Business						Industrial				
	R1	R2	R3	R4	R5	R6	B1	B2	B3	B4	B5	B6	M1	M2	M3	M4	M5
Tree farm/plant nursery																	
No sales on site, 1 acre or less, 10 or fewer trees: "Urban Garden"	R	R	R	R	R	R	R	R	R	R	C	R	C	C	C	C	C
No Sales on site, 11 or more trees, any sized lot: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C
No sales on site, mostly greenhouses: "Greenhouse"	C	C	C	R	R	R	R	R	R	R	C	R	R	R	R	R	R
Sales on site, mostly goods imported to site: "Stores of a generally recognized retail nature whose primary business is the sale of new merchandise" (Garden Center)									R	R	R	R	R	R	R	R	
Sales on site, most goods cultivated on site: Retail sales and service; sales-oriented "All Other" (Nursery with stock for retail sales)									C	C	C	C	C	C	C	C	
Sales on site (wholesale), most goods cultivated on site: Industrial Service "All Other" (Nursery, wholesale only)																C	C
Orchard																	
11 or more trees, any sized lot: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C
Cut Flowers																	
1 acre or less: "Urban Garden"	R	R	R	R	R	R	R	R	R	R	C	R	C	C	C	C	C
Over 1 acre: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C
Mixed/Urban Farm																	
1 acre or less, 10 or fewer trees: "Urban Garden"	R	R	R	R	R	R	R	R	R	R	C	R	C	C	C	C	C
1 acre or less, 11 or more trees: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C
Over 1 acre, regardless of number of trees: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C
Composting Facility																	
Composting outside of a building: "Outdoor operations of all waste-related land uses"																C	C
Composting inside of a building: "Waste, scrap materials: indoor storage, handling and/or transfer"															C	C	C

--- Denotes zoning with the widest range of by-right uses for land-based ventures

¹⁴ See, § 61-3-73

No Zoning District allows all of the five land-based ventures by-right. The Business Districts, specifically B2, B3, B4, and B6¹⁵ allow the most land-based ventures by-right. Maps 1-5 in Appendix C show where each land-based venture is currently allowed by-right and conditionally according to current zoning and available public land. The M4 (General Industrial) district allows the most types of land-based ventures on a conditional basis. While having that degree of land use flexibility in the Business and Industrial districts may be viewed as advantageous, the land-based nature of these businesses means these areas will almost certainly have more environmental contamination challenges, with their own set of regulatory considerations, as discussed further in Appendix E. Additionally, the B2, B3, B4, and B6 districts represent a relatively small portion of the city's land area and do not align well with the future vision for land-based innovation productive areas¹⁶ as identified in the Detroit Future City Framework.

Map 1: Current Zoning



Note: This map was developed by the City of Detroit in October 2018. It is displayed as received by the City.

¹⁵ Local Business and Residential, Shopping, General Business and General Services Districts

¹⁶ The innovation productive areas are defined as “landscapes [that] put vacant land to productive, active uses.” Land-based ventures would fall under this area. For more details, see the Land Use Element of the Detroit Future City Framework.

HURDLES AND CONSIDERATIONS

After review of the zoning ordinance and master plan, it appears that each of the five land-based venture categories we examined are allowed in the city of Detroit, either by-right or conditionally.

While current zoning permits all of the land-based ventures, there are some key hurdles, related to the zoning ordinance and master plan, that may impede the City's goal to see an increase in the volume and scale of the five land-based ventures.

A full analysis of every hurdle was outside of the scope of this work, but we summarize some hurdles and considerations related to the zoning ordinance and master plan that the City may want to examine as it pursues its goal to support land-based ventures.

A key underlying challenge is the original platting of Detroit in a way more suitable for the urban environment than land-based venture development. Lots were mostly designed for single-use purposes geared for residential and commercial uses; their dimensions and zoning designations are a product of that original platting approach. For this reason, while we hope the City improves zoning and permitting processes, this underlying platting approach will remain a challenge to the City's efforts to reuse vacant land for land-based ventures. An examination of large-scale replatting was outside the scope of this project and is therefore not addressed in this report.

Hurdles

Areas of the city where highly productive, larger-scale uses can occur by-right are limited, restricting volume and scale of reuse. Since only a small portion of the city's land area is zoned to allow highly productive land-based ventures by-right (B2, 3, 4, 6) and this zoning is generally along corridors with parcels 100' deep, not on larger areas of land, it is unlikely that the City will see an increase in larger scale land-based ventures. These businesses: 1) must go through the conditional use process and 2) will likely encounter greater risk, and therefore cost, related to environmental contamination.

Current zoning does not prioritize the development of land-based ventures. While some businesses are allowed across the city, neither the zoning ordinance nor any other ordinance or policy provides direction on where the City of Detroit *prefers* large-scale land-based ventures to locate. As a result, department decisions regarding DLBA or DBA land sales can vary depending on the staff tasked with reviewing the offer, and it can be difficult for land-based ventures to identify DLBA or DBA owned property it could feasibly purchase.

The conditional land use process, which is time consuming and costly, will be required for the conversion of property needed for most of the five land-based ventures. The majority of land in the city is zoned residential and does not permit most land-based ventures by-right. For this reason, most land-based ventures must go through the conditional use process. As discussed earlier, establishing a conditional land use is significantly more burdensome than establishing a by-right use,

and includes increased filing fees, more detailed application requirements, and longer processing periods for necessary zoning approvals. These procedural hurdles can chill the development of new land-based ventures.

The zoning ordinance establishes a restrictive list of the accessory uses allowed at an urban farm or urban garden. These lists do not fully encompass the accessory uses commonly associated with an urban farm and urban garden, creating a more extensive approvals process in such instances. See additional discussion on accessory uses in Appendix A.

Considerations

City should determine which uses are a priority (or at least are lower risk) and in what geographies and then modify zoning, or potentially apply an overlay district, to reflect those priorities. The Planning and Development Department has already taken steps to determine where different uses align with existing zoning. If the City identifies which uses are a priority, and where they should ideally be located in the city, then zoning could be changed as needed to permit more uses by-right or conditionally where appropriate.

An overlay district for land-based ventures is another option to facilitate these changes. By creating an overlay district, Detroit could create more tailored zoning regulations for property within that district that allows land-based ventures to establish themselves more easily. Because residential areas present the fewest environmental challenges, making land-based venture development here easier could save businesses significant environmental mitigation costs.

Consider an amendment to the zoning ordinance so that urban farms and urban gardens may establish other accessory uses and structures that meet the general definition of those terms.

Given the significant array of accessory needs, for land-based ventures, the existing list may be too restrictive. For example, many urban gardens are for-profit enterprises that require accessory structures for washing, trimming, and packaging produce and cold storage to safely and efficiently prepare their product for customers. However, the zoning ordinance does not allow urban gardens to have accessory structures for cold storage and processing. Requiring ordinance language related to urban garden and farm accessory uses to match that of other accessory use definitions (which are far broader) could better reflect the needs and common uses of those sites.

3. PUBLIC PROPERTY DISPOSITION

BACKGROUND

Having access to and site control of land is vital to the establishment of a land-based venture. Without a secure interest (lease or ownership) in the property, land-based venture operators are unlikely to invest the resources (time, talent, money, soil enrichment) to establish and maintain a successful business. Given the substantial amount of vacant property owned or held by public entities—currently and anticipated—the disposition processes of these entities play a significant role in the feasibility and sustainability of land-based ventures.

Therefore, we conducted an initial examination of public land disposition programs and policies to determine:

1. Which public entities own land that can be repurposed for the five land-based ventures and where it is located, and
2. If and how that land can be transferred to private individuals or entities for the purposes of the five land-based ventures.

WHAT ENTITIES OWN PUBLIC LAND AND WHERE IS IT LOCATED?

In general, public property ownership in Detroit is divided among two entities: the City of Detroit's Planning and Development Department (PDD), which primarily owns non-residential property, and the Detroit Land Bank Authority (DLBA), which primarily owns residential property. While the Planning and Development Department owns property, the disposition of its property is managed by the Detroit Building Authority (DBA).

Beyond DLBA and PDD, there are 2,198 parcels held under fragmented public ownership consisting of 29 additional City and Wayne County agencies. These include the Housing Commission, Detroit Water and Sewerage Department, Detroit Economic Growth Corporation, and Wayne County. Because this is a small portion of publicly held land overall, we do not discuss disposition of land from these entities in this report. We do, however, include a count of these properties in Table 4, since the City has stated some may be suitable for land-based ventures.

City/DBA

The City can acquire property via purchase, or voluntarily by gift, grant, condemnation, devise, or bequest with the approval of City Council, but it does not often exercise those powers. Generally speaking, the City's existing inventory of property was acquired via tax foreclosure – the County transferred to the City parcels that were not sold via public auction. The City has since transferred the majority of the residential properties it owned to the DLBA. The City's remaining inventory consists of commercial and industrial land.

The City currently owns 8,101 parcels, which amounts to roughly 1,810 acres, or 2.8 square miles.

DLBA

The DLBA is a quasi-governmental authority established pursuant to the Michigan Land Bank Fast Track Act. The DLBA has broad powers to acquire real property by a number of methods, including gift, transfer, exchange, purchase, or otherwise. Additionally, the DLBA acquires residential properties most commonly from the Wayne County Treasurer that were subject to foreclosure for delinquent property taxes, but were not sold through the tax foreclosure auction.

DLBA also has the ability to sell property below fair market value and does so in a number of cases. According to its program guidelines, it may offer a 20% discount to land-based ventures that can demonstrate 1) adjacency, 2) social and economic impact, or 3) special environmental considerations. If an applicant demonstrates more than one of these three, the DLBA may provide a discount of up to 40%.

Based on inventory data the City provided, the DLBA owns 94,429 parcels in the city, which amounts to roughly 25% of all parcels in the city – 8,818 acres or 13.8 square miles. In other words, these parcels make up an area larger than the City of Royal Oak. Around 70% of DLBA's inventory, amounting to 5,979 acres or 9.34 square miles, consists of structure-free land. As the City pursues its ambitious demolition program, that number continues to grow.

DLBA's inventory spans across the city and significantly aligns with the areas for future productive and innovative land reuses identified in the Detroit Future City Framework. The scale and location of DLBA's inventory makes it a critical actor when it comes to increasing the scale and volume of land-based ventures.

As Table 4 below shows, while the City and DLBA have a robust inventory of vacant land citywide and in the priority reuse areas, 87% of publicly owned parcels are located in districts zoned R1 and R2, which restricts permissible land-based ventures as discussed earlier. Additionally, as noted by City and DLBA staff, much of this inventory does not create large, contiguous multi-parcel areas for development.

Table 4: Where the Five Land-Based Ventures are Allowed By-Right or Conditionally

Use	Residential						Business						Industrial					
	R1	R2	R3	R4	R5	R6	B1	B2	B3	B4	B5	B6	M1	M2	M3	M4	M5	
Tree farm/plant nursery																		
No sales on site, 1 acre or less, 10 or fewer trees: "Urban Garden"	R	R	R	R	R	R	R	R	R	R	C	R	C	C	C	C	C	
No Sales on site, 11 or more trees, any sized lot: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C	
No sales on site, mostly greenhouses: "Greenhouse"	C	C	C	R	R	R	R	R	R	R	C	R	R	R	R	R	R	
Sales on site, mostly goods imported to site: "Stores of a generally recognized retail nature whose primary business is the sale of new merchandise" (Garden Center)								R	R	R	R	R	R	R	R	R		
Sales on site, most goods cultivated on site: Retail sales and service; sales-oriented "All Other" (Nursery with stock for retail sales)								C	C	C	C	C	C	C	C	C		
Sales on site (wholesale), most goods cultivated on site: Industrial Service "All Other" (Nursery, wholesale only)																C	C	
Orchard																		
11 or more trees, any sized lot: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C	
Cut Flowers																		
1 acre or less: "Urban Garden"	R	R	R	R	R	R	R	R	R	R	C	R	C	C	C	C	C	
Over 1 acre: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C	
Mixed/Urban Farm																		
1 acre or less, 10 or fewer trees: "Urban Garden"	R	R	R	R	R	R	R	R	R	R	C	R	C	C	C	C	C	
1 acre or less, 11 or more trees: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C	
Over 1 acre, regardless of number of trees: "Urban Farm"	C	C	C	R	R	R	R	R	R	R	C	R	C	C	C	C	C	
Composting Facility																		
Composting outside of a building: "Outdoor operations of all waste-related land uses"																C	C	
Composting inside of a building: "Waste, scrap materials: indoor storage, handling and/or transfer"															C	C	C	
DLBA-Owned Property																	Total	
Parcels	40,049	48,462	3,553	70	925	61	2	82	9	788	-	-	-	44	76	307	1	94,429
Total Acreage	4,033	4,169	344	7	113	14	0	8	2	73	-	-	-	12	9	34	0	8,818
Acreage of Parcels with Structures	1,508	1,202	70	1	22	0	0	2	0	16	-	-	-	1	4	12	-	2,839
Acreage of Parcels without Structures	2,525	2,967	274	6	90	13	0	6	2	58	-	-	-	10	5	22	0	5,979
PDD-Owned Property																	Total	
Parcels	359	928	162	20	100	13	11	412	86	3,691	21	48	-	319	329	1,598	4	8,101
Total Acreage	248	199	67	2	54	6	1	52	30	418	14	23	-	75	77	544	1	1,810
Acreage of Parcels with Structures	179	74	49	0	24	2	-	7	2	44	6	8	-	12	5	177	0	590
Acreage of Parcels without Structures	59	107	15	2	14	2	1	40	9	327	4	14	-	61	62	299	0	1,017
Other Publicly Owned Property																	Total	
Parcels	781	699	78	4	54	14	3	19	11	280	34	9	-	25	36	151	-	2,198
Total Acreage	1,824	882	102	1	257	100	1	14	4	258	13	24	-	297	53	587	-	4,419
Acreage of Parcels with Structures	617	261	63	0	234	60	1	11	3	47	6	23	-	276	25	418	-	2,045
Acreage of Parcels without Structures	1,207	621	39	0	23	40	0	3	1	54	7	0	-	21	29	161	-	2,207
Total Publicly Owned Property																	Total	
Total Parcels	41,189	50,089	3,793	94	1,079	88	16	513	106	4,759	55	57	-	388	441	2,056	5	104,728
Total Acres of Structure-Free Land	3,792	3,695	328	8	128	56	1	48	12	440	11	15	-	93	95	482	0	9,202

 Denotes zoning with the widest range of by-right uses for land-based ventures

 Denotes zoning where 87% of publicly owned parcels are located

CAN PUBLIC LAND BE DISPOSED OF FOR THE PURPOSES OF THE FIVE LAND-BASED VENTURES?

DLBA

Once property is acquired by the DLBA, it has broad authority as to the manner in which it may convey the property to another. Notably, the DLBA has the power to sell, transfer, exchange, lease, or otherwise dispose of the property on whatever terms and conditions and in whatever manner it deems appropriate, including for free. The only general disposition limitation is a locally established one: a request to purchase 10 or more parcels (within a 12-month period) from DLBA requires approval from City Council. To facilitate the disposition of vacant parcels, the DLBA has created three main disposition programs, two of which primarily relate to the five land-based ventures:

- Community partnership program (CPP)
- Economic development program (ED)
- Side lot program

Generally speaking, if a tax-exempt nonprofit corporation wants to purchase a limited amount of vacant property for one of the five land-based ventures, disposition would fall under the CPP. If an interested buyer owns an occupied residential property and wants to acquire the adjacent contiguous parcels for a land-based venture (e.g. a homesteading project), then disposition would most likely occur under the Side Lot program. In all other circumstances, disposition falls under the ED program. In Table 5, we summarize key aspects of the programs, according to information provided by DLBA and City staff, and from the DLBA website (www.buildingdetroit.org).

Table 5: DLBA Community Partner, Economic Development, and Side Lot Programs

	Community Partnership Program	Economic Development Program	Side Lot Program
Who can purchase?	<p>Community partners. To become a community partner, the entity must meet the following standards</p> <ul style="list-style-type: none"> • Nonprofit, faith-based, or community development organization • Located in the City of Detroit • Current on property taxes • Free of blight violations/fines • Defined geographic service area under 5 square miles • Recommended by city council member or district manager 	<p>A nonprofit community partner that is purchasing 10 or more parcels in one 12-month timeframe.</p> <p>OR</p> <p>any other entity that meets the following standards:</p> <ul style="list-style-type: none"> • Current on property taxes • Free of blight violations/fines 	<p>An individual or entity that meets the following standards</p> <ul style="list-style-type: none"> • Holds title to the primary contiguous parcel, which must be an occupied residential property • Side lot must be an unimproved residential parcel of less than 5,000 sq ft. and be contiguous to the primary parcel • Current on property taxes • Free of blight violations/fines
How many parcels?	No minimum. Maximum 9 parcels in a 12-month period.	No minimum; no maximum.	No minimum. Maximum 9 parcels in a 12-month period – those purchases require City Council approval.
For what sales price?	Can receive 20% discount on fair market value.	Parcels are generally sold for fair market value. For land-based ventures, projects potentially receive 20% discount.	<ul style="list-style-type: none"> • \$100 per vacant parcel • Generally \$250 per parcel when parcel contains an accessory structure such as a garage.
Any restrictions specific to establishing the 5 LBV?	Use is not restricted, however, if a conditional land use process is required, title will transfer only following successful completion of conditional land use process.	Use is not restricted, however, if a conditional land use process is required, title will transfer only following successful completion of conditional land use process.	Use is not restricted, however, if a conditional land use process is required, title will transfer only following successful completion of conditional land use process.
Other factors impacting disposition decision?	<ul style="list-style-type: none"> • City/DLBA Regional Team review and recommendation • City Council approval required when 10 or more parcels are requested by a single partner in a 12-month period. 	<ul style="list-style-type: none"> • City/DLBA Regional Team review and recommendation • City Council approval required for 10 or more parcel projects 	

City/DBA

The Detroit Building Authority manages the disposition of all properties owned by the City of Detroit Planning and Development Department, primarily commercially and industrially zoned properties. Persons interested in acquiring property owned by the Planning and Development Department can submit an offer to purchase via a Property Application Form, which is filled out and submitted online.¹⁷

The DBA uses a non-governmental contractor to determine the fair market value of the property to inform a proposed purchase price. If the DBA and the purchaser are able to negotiate an agreeable purchase price, the sale must be approved by City Council via a resolution before it can be executed.

The information contained in this document and Table 5 was assembled based on conversations with DBA and City staff during our site visits, since written disposition policies and procedures were not provided to the consultant team.

In Table 6 below we summarize some of the key aspects of the disposition program.

Who can purchase?	An individual, business or nonprofit that: <ul style="list-style-type: none"> • Has no blight violations in city of Detroit • Is current on property taxes
How many parcels?	No minimum, no maximum
For what sales price?	Fair market value or a discounted price if applicant can demonstrate social impact
Any restrictions for the 5 LBV?	None
Other factors impacting disposition decision?	<ul style="list-style-type: none"> • City/DLBA Regional Team review and recommendation • City Council approval required for all sales

Table 6:
City of Detroit Property Disposition, Managed by DBA

HURDLES AND CONSIDERATIONS

After review of the City of Detroit and Detroit Land Bank Authority property disposition practices, it appears that the DLBA and DBA can dispose of property to private individuals or entities for each of the five land-based ventures we examined. There are some key hurdles, however, that may impede the City’s goal to see an increase in the volume and scale of the five land-based ventures.

A full analysis of every hurdle and corresponding recommendation was outside of the scope of this piece of work, but we do summarize some for the City to examine as it pursues its goal to support land-based ventures.

¹⁷ Property Application Form, available at <http://app.detroitmi.gov/PropertyApplicationForm/>

Hurdles

Purchase of public land is facilitated by two different processes, depending on the owner (DLBA or City), which differ in terms of decision making, cost, and length. While the entry point to purchase property from the DLBA or the DBA is the online Property Application Form, from there the processes diverge significantly. Given that DBA property is still owned by the City, and is generally zoned for commercial or industrial use, the purchase price is usually significantly higher than properties purchased from the DLBA, which are residentially zoned. In addition, City Council must approve all DBA sales, which can increase processing time by a couple of months.

It is not immediately clear to the public how an entity that does not qualify for the Community Partner or Side Lot programs can acquire a property from DLBA, nor is it clear how the City and DLBA make disposition decisions. While the online Property Application Form provides a simple and effective entry point for people looking to purchase property from the DLBA or DBA, there is very little additional information to guide someone in submitting a well-informed offer. In particular, there is a lack of public information describing the process steps and timeline by which DLBA or DBA make disposition decisions.

Publicly owned vacant land is scattered throughout the city, and does not always form large enough areas of contiguous parcels in a location desirable for a large-scale land-based venture. Large-scale land-based ventures can include dozens of relatively small parcels, but contiguity is still key – and aggregating those parcels to establish a single, consolidated operation can be a significant barrier. While the City and DLBA own a considerable amount of land, the number of contiguous publicly owned parcels forming more than one acre of land is limited. Those that do exist, the City pointed out, may also be challenged by a combination of factors: undesirable location for interested land-based ventures, undesirable location to support City revitalization efforts, and unsuitable zoning. Other locations that may be more desirable from a land-based venture's perspective, may have fragmented ownership, requiring the land-based venture to find and successfully negotiate the purchase of land from private entities in order to aggregate enough land for a viable business.

Considerations

Consider outlining the process and criteria for land-based venture property sales on DLBA's and the City's website. The City and the DLBA should make the disposition process clear and transparent by establishing how offers to purchase are processed, including which departments are involved in the review, and for which specific criteria each department is reviewing the offer. When the process map initiated through the TASP project is complete, a customer-oriented version could be developed and published online and provided directly to interested applicants.

Consider articulating a clear disposition policy related to location to increase the likelihood of disposition for land-based ventures. While land-based ventures are allowed in a wide variety of zoning districts, either conditionally or by-right, the City has informally limited or encouraged land-based venture development in different areas. Large-scale land-based ventures may be best situated in

specified areas based on a number of factors including environmental risk, proximity to homes, etc. Once the City has determined appropriate areas, these priorities should be reflected in disposition policies.

Consider consolidating and streamlining the disposition of public land: one entity, one process.

To avoid differing land purchase processes, particularly in cases where a single land-based venture is interested in purchasing multiple parcels that are owned by both the City and the DLBA, these entities could consider consolidating property ideal for land-based ventures under a single entity.

Consider ways to proactively acquire vacant land and re-zone land prior to sale, creating larger areas more desirable for land-based venture development. The DLBA has the legal ability to proactively acquire vacant land, an opportunity to aggregate parcels to create larger areas of land. Additionally, land that is not currently zoned to facilitate swifter, lower cost development could be re-zoned prior to sale. This would reduce the time and cost for land-based ventures to get started.

Consider examining current discounting practices on land sales to lower the cost burden for land-based ventures. While the DLBA often applies a 20% - 40% discount for land-based venture projects, the City and DLBA may consider working with prospective land-based ventures to better understand the extent to which a deeper discount or guaranteed discount may enable more successful projects. A consistent discounting policy should be applied by the City and DLBA if properties for land-based ventures are not consolidated under a single ownership entity. Additionally, the City could request inclusion of future or potential land-based venture uses in broker price opinions/fair market valuations if it is not already doing so to establish FMV.

4. PROCESS

BACKGROUND

As discussed previously, following the completion of our review of local ordinances and regulations and discussions with City officials, we did not find any regulatory barrier that would outright prevent the reuse of publicly held land for the five land-based ventures. While the existing zoning and policies for public land disposition present some hurdles, some of which were listed previously, perhaps the largest, immediate hurdle Community Progress and the City identified was the lack of an articulated process that documents the current steps for an individual to purchase vacant land and receive the necessary permits to implement their land-based venture.

For this reason, Community Progress and the City added a preliminary process mapping component to the scope of this report, and through a site visit working session and follow up reviews, documented the existing process steps. This process map provides the foundation for future process improvements. It is included in Appendix D.

The number of steps and level of review required in the process for an individual/entity depends primarily on:

1. Whether or not they need to purchase land from a public entity
 - a. From one or both public entities?
 - b. How many parcels?
2. If the future use is by-right or conditional

Depending on those two factors, the process will vary widely in terms of length, cost, and complexity both for the purchaser and the City. For example, to install a cut flower farm of one acre (10 parcels from DLBA), there are:

14 Major stages of process/approval	13 Departments or public entities involved in process
<ol style="list-style-type: none"> 1. Customer submits Property Application Form 2. Application review and approval by City Regional Team and DLBA Board of Directors 3. City Council review/approval Option to Purchase, contingent on conditional land use approval 4. Customer submits site plan application to BSEED 5. Conditional land use review and recommendation by PDD, CPC, DPW, DWSD, Health Dept. 6. BSEED holds public Special Land Use Hearing 7. BSEED approves conditional land use 8. Title transfers subject to development agreement with DLBA 9. Parcel modification to Assessor 10. Building permit application review by BSEED 11. Property inspection by BSEED 12. Certificate of Acceptance issued by BSEED 13. DLBA reviews to ensure development is completed pursuant to schedule in purchase agreement 14. DLBA issues Proof of Completion <i>Full ownership vests to owner</i> 	<ol style="list-style-type: none"> 1. Buildings, Safety Engineering and Environmental Department 2. City Council 3. City Planning Commission 4. Department of Neighborhoods 5. Department of Public Works 6. Detroit Building Authority 7. Detroit Land Bank Authority 8. Health Department 9. Housing and Revitalization Department 10. Jobs and Economy Team 11. Office of the Assessor 12. Planning and Development Department 13. Water and Sewerage Department

HURDLES AND CONSIDERATIONS

Following review of local ordinances, and workshops with City and DLBA staff, there is now a working internal process map for the disposition and permitting of land for the five land-based ventures. While the mapping of the process has been an effective tool to clarify some internal conversations, there remain hurdles that may impede the City's goal to see an increase in the volume and scale of the five land-based ventures.

Hurdles

Conditional land use changes for low-risk uses and higher-risk uses are often equally burdensome, dissuading the conversion of land to lower-risk uses. Not all land-based ventures are created equal. A community orchard with 11 fruit trees that uses organic practices is currently regulated the same as a commercial orchard with hundreds of trees that will involve pesticide application. Similarly, a 1.1-acre flower farm with limited to no mechanical equipment is regulated the same as a 20-acre vegetable farm with large tractors and greenhouses.

The processes for conditional land use and permitting are neither clear nor consistent for those in and outside of City government. Other than the statutory language in the zoning ordinance, there is very little information that informs a land-based venture how the conditional land use decision-making process functions.

Applicants are required to submit similar information repeatedly throughout the process and requirements for plot plans are not consistent amongst departments. There are as many as five potential applications or forms involved in the purchase and permitting process for land-based ventures, all of which require much of the same information with no way to connect or import already-submitted information into additional forms during the process. Additionally, both the City and the DLBA request a plot plan or drawing of the proposed development at different stages in the process, without very clear direction on expectations for the drawing. There is not a defined list of requirements, nor sample plot plan drawings to guide submission.

The high degree of involvement across City departments in light of the high volume of properties that need to go through the acquisition and conditional land use process will create capacity pain points – elongating the process and requiring significant City capacity. For example, requiring City Council review for purchases of 10 or more parcels from DLBA and for all purchases from DBA would create the need for City Council to approve as many as 4,400 separate transactions. This does not take into account those that involve a more extensive conditional land use process.

Considerations

Complete a detailed process analysis and identify ways to reduce inefficiencies in the sale and permitting process, both from the customer's and City's perspectives. The process mapping exercise conducted as a part of this project helped lay the foundation for ongoing efforts to streamline steps. Some improvements may include: communicating all application expectations up front, ensuring plot plan requirements are consistent across entities, consolidating land-based-venture-eligible property under a single entity like the DLBA to sell more efficiently, and establishing one responsible entity for post-purchase inspections.

Publish a clear outline or process map walking customers through the land purchase and permitting process. When the process map initiated through this project is complete, a customer-oriented version could be developed and published online and provided to interested applicants. Our understanding is that the City is also working to make the process more user-friendly through other efforts like the Development Resource Center, a new online permitting and site plan system, and an improved development website (www.detroitdevelopment.org). The City should continue prioritizing these efforts and clearly articulating the process steps and the City's expectations of customers.

Identify ways to minimize the cost and burden for lower-risk uses. While other suggestions have been made previously in this report on how to reduce potential cost/burden (such as a discounted purchase prices, more by-right possibilities), the City could also look for opportunities in the processes itself. Some adjustments could include sharing a timeline at each step, modifying the permit or conditional land use fee schedule so it is not cost-prohibitive, and reducing the total number of steps for low-risk uses.

5. CONCLUSION

Our research did not uncover any regulatory barrier that would outright prevent the reuse of publicly held land for the five land-based ventures. After review of local laws, ordinances, and policies,¹⁸ and discussions with local officials, we determined that:

1. All five uses are allowed at some level in the city, and
2. Public entities can dispose of their significant land assets to private entities for the five land-based venture types.

While there are no outright legal barriers for land reuse for the five land-based ventures, there are challenges and accompanying considerations we have identified in three key areas:

1. Zoning,
2. Public land disposition, and
3. Overall process.

These are hurdles that the City must work to address to successfully increase the number and scale of permitted land-based ventures. Some of the considerations could be applied through a pilot program—targeting a priority area with zoning, public land disposition, and general process improvements.

In addition to the hurdles and recommendations in the body of this report, in Appendix E we summarize other considerations regarding county and state regulations for composting facilities, regulations for environmental contamination and remediation, and the role of real property taxation. These issues came up during TASP site visit discussions and stakeholder interviews that we researched in addition to the primary charge of this project. They deserve further examination to fully understand the extent of their impact of land-based venture creation and growth in Detroit.

¹⁸ This report has focused its analysis on the following:

- the Detroit zoning ordinance and master plan of policies;
- Part 201 of the Michigan Natural Resources and Environmental Protection Act, which regulates the cleanup of properties contaminated with a hazardous substance;
- the laws and ordinances that regulate the siting, development, and operation of composting facilities, including Part 115 of the Michigan Natural Resources and Environmental Protection Act and the Chapter 105 of the Wayne County code of ordinances; and
- real property disposition policies of both the Detroit Land Bank Authority and the Detroit Building Authority.

APPENDIX A: ACCESSORY USES

In addition to the principal use, a person may also establish accessory uses and structures and conduct activities that are clearly incidental and subordinate to the principal uses allowed on the zoning lot.¹⁹ In general, **an accessory use is defined as a use that is:**

- Incidental and subordinate to and devoted exclusively to a principal building or a principal use legally existing on the same zoning lot;
- Is subordinate in area, extent and purpose to the principal building or principal use, and;
- Contributes to the comfort, convenience or necessity of the occupants, business or industry of the principal structure or principal use served.²⁰

An accessory building or structure is defined as a building or structure that is:

- Subordinate to and services a principal building or a principal use legally existing on the same zoning lot;
- Is subordinate in area, extent and purpose to the principal building or principal use; and
- Contributes to the comfort, convenience or necessity of the occupants, business or industry of the principal structure or principal use served.²¹

Michigan courts have considered whether a given use may be considered as an accessory use pursuant to a variety of local zoning ordinances across the state. While zoning ordinances vary from municipality to municipality, many define “accessory use” in a similar manner to Detroit. Michigan courts have stated that for a use to be “incidental,” it must be a use that enhances the principal use of the property.²² For example, the Michigan Supreme Court has held that the use of a residential garage for the storage of private passenger automobiles was a valid accessory use, but that the use of the garage for the storage of commercial trucks for a wholesale fruit and produce business was not because such use was not incidental to the principal use of the property, which was a private residence.²³

¹⁹ § 61-12-361

²⁰ § 61-16-31

²¹ § 61-16-31

²² *Lerner v. Bloomfield Township*, 106 Mich. App. 809, 814 (1981)

²³ *People v. Scrafano*, 307 Mich. 655 (1943)

The “subordinate” requirement has also been interpreted by Michigan courts. In *Ida Township v. Southeast Michigan Motorsports*, the Court of Appeals considered the total area utilized for both the principal and accessory use, the number of people engaged in the accessory use, and the frequency of use for both the accessory and principal use in determining whether a claimed accessory use was subordinate to the principal use.²⁴ Additionally, Michigan courts have considered whether a business activity can be an accessory use. It has been emphasized that to be a valid accessory use, a business use must be “clearly incidental” to the principal use of the property.²⁵ For example, a business use that involves the sale of goods imported from an off-site location may not be regarded as a permissible accessory use.²⁶

In addition to the general definition of “accessory use” provided above, the zoning ordinance also specifically describes what accessory uses may be allowed on an urban farm and an urban garden. Specifically, the zoning ordinance states that only the following accessory uses and structures are allowed on an urban garden:²⁷

- Greenhouses
- Farm Stands
- Hoophouses or high tunnels, and similar structures used to extend the growing season
- Signs; subject to the provisions of Article VI of the zoning ordinance
- Benches, bike racks, raised/accessible planting beds, compost bins, picnic tables, garden art, rainwater catchment systems
- Tool sheds and shade pavilions
- Garages

The zoning ordinance states that only the following accessory uses and structures are allowed on an urban farm:²⁸

- All uses and structures permitted on an urban garden
- Aquaculture
- Aquaponics
- Hydroponics
- Barns and/or other buildings for storage
- Structures for cold storage and processing

Additionally, the zoning ordinance expressly allows for the “[s]ale of farm products grown or produced at urban gardens and urban farms...” as an accessory use at a farm stand located on the

²⁴ *Ida Township v. Southeast Mich. Motorsports*, 2013 Mich. App. 1516 (2013)

²⁵ *City of Muskegon Heights v. Wilson*, 363 Mich. 263, 267 (1961); *Groveland v. Jennings*, 106 Mich. App. 504, 513 (1981)

²⁶ *Groveland v. Jennings*, 106 Mich. App. 504, 513 (1981), citing *Arundel Supply Corp v. Cason*, 265 Md. 371 (1972) (holding that “. . . the washing, screening and batching of materials ‘trucked in’ from other places...” was not an accessory use)

²⁷ § 61-12-412

²⁸ § 61-12-413

property of the urban garden or urban farm from which the farm product is grown or produced.²⁹ **Notably, the zoning ordinance’s list of allowable accessory uses and structures for urban gardens and urban farms is exclusive, meaning that only those accessory uses and structures expressly listed are allowed.** However, since these uses and structures are expressly allowed, it is possible that the general requirements for accessory uses and structures, as described in their respective definitions, does not apply.³⁰ For example, a land-based venture that desires to establish one of the listed accessory uses or structures at an urban garden or urban farm may not have to establish that the accessory use or structure also satisfies the definition of an “accessory use” or an “accessory structure.” However, this issue has not been considered by Michigan courts.

In general, an accessory use or structure is allowed to accompany any by-right or approved conditional use without additional zoning approvals.³¹ However, a permit is required for any accessory structure exceeding 100 square feet of gross floor area, although it is unclear exactly what type of permit is required for such structures.³² If an activity or use of land fails to qualify as an accessory use, it is considered a second principal use.³³

²⁹ § 61-12-327

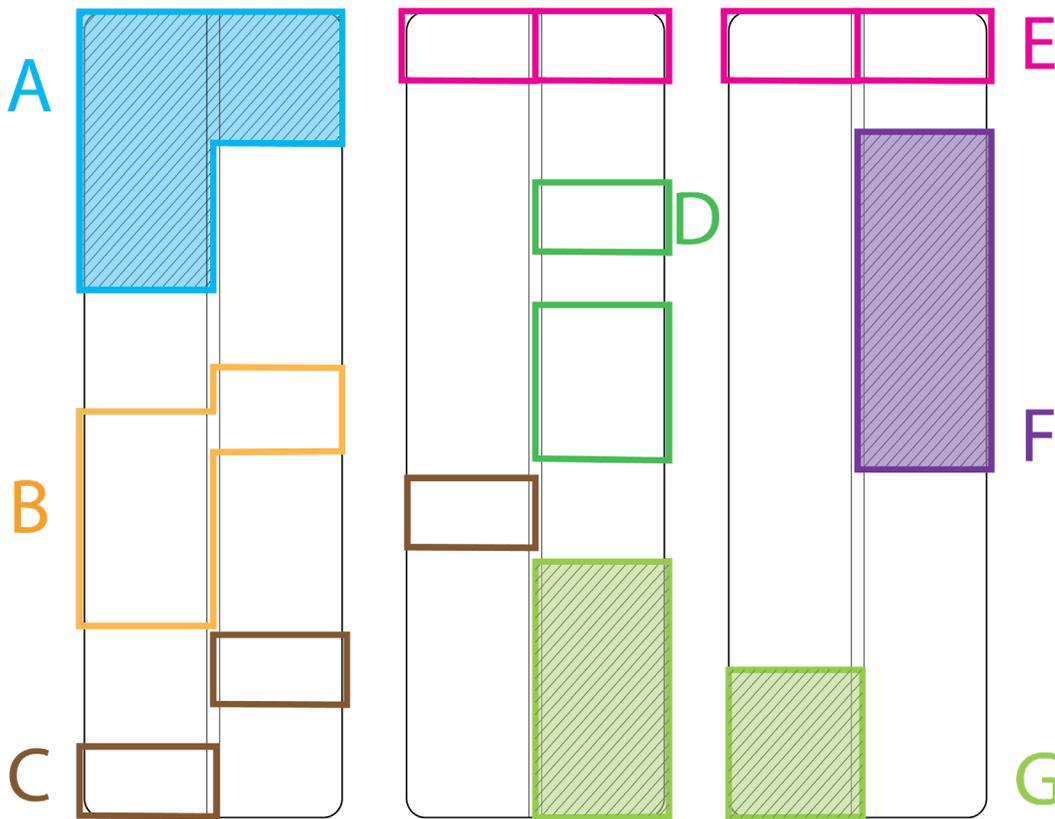
³⁰ See, *Northampton Area Sch. Dist. v. Zoning Hearing Bd. of Lehigh*, 64 A.3d 1152 (2013) (stating that where a use is expressly declared to be an allowable accessory use, it is unnecessary to inquire into whether it is an allowable accessory use in accordance with the zoning ordinance’s general definition of that term)

³¹ § 61-12-361

³² § 61-12-365

³³ § 61-12-353

APPENDIX B: LAND-BASED VENTURE PROJECT CONFIGURATIONS



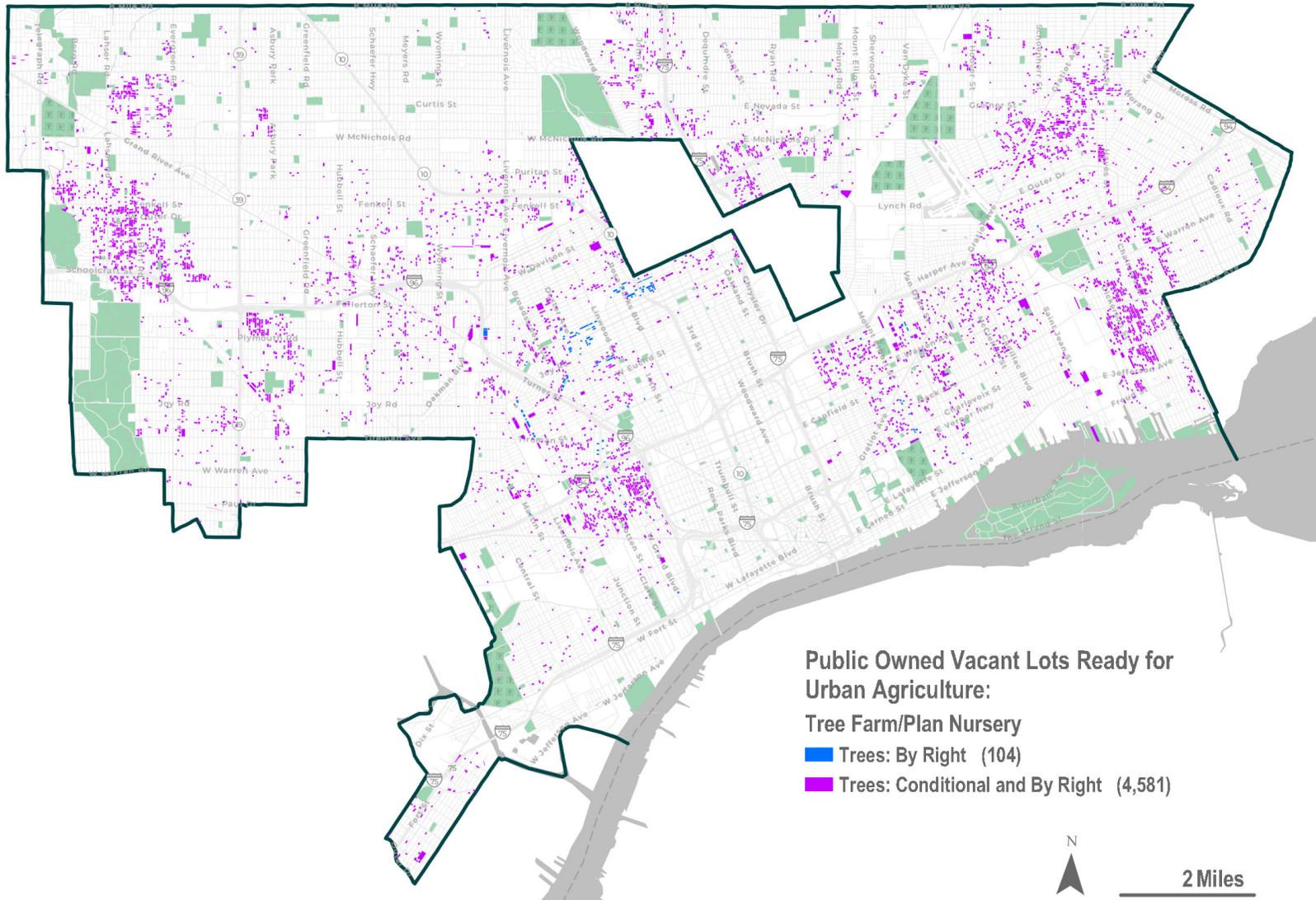
	A	B	C	D	E	F	G
BSEED to issue single project permit	x						x
Preferred for future proactive disposition by the City and its agencies	x					x	x
Department of Public Works - TBD							
Detroit Water and Sewerage Department - TBD							

Notes: The City of Detroit developed the above image and table. The filled line configurations - A, F, and G - represent configurations that the City plans to proactively endorse for land-based ventures, while unfilled configurations represent existing common configurations.

APPENDIX C: CONDITIONAL AND BY-RIGHT USE MAPS FOR FIVE LAND-BASED VENTURES

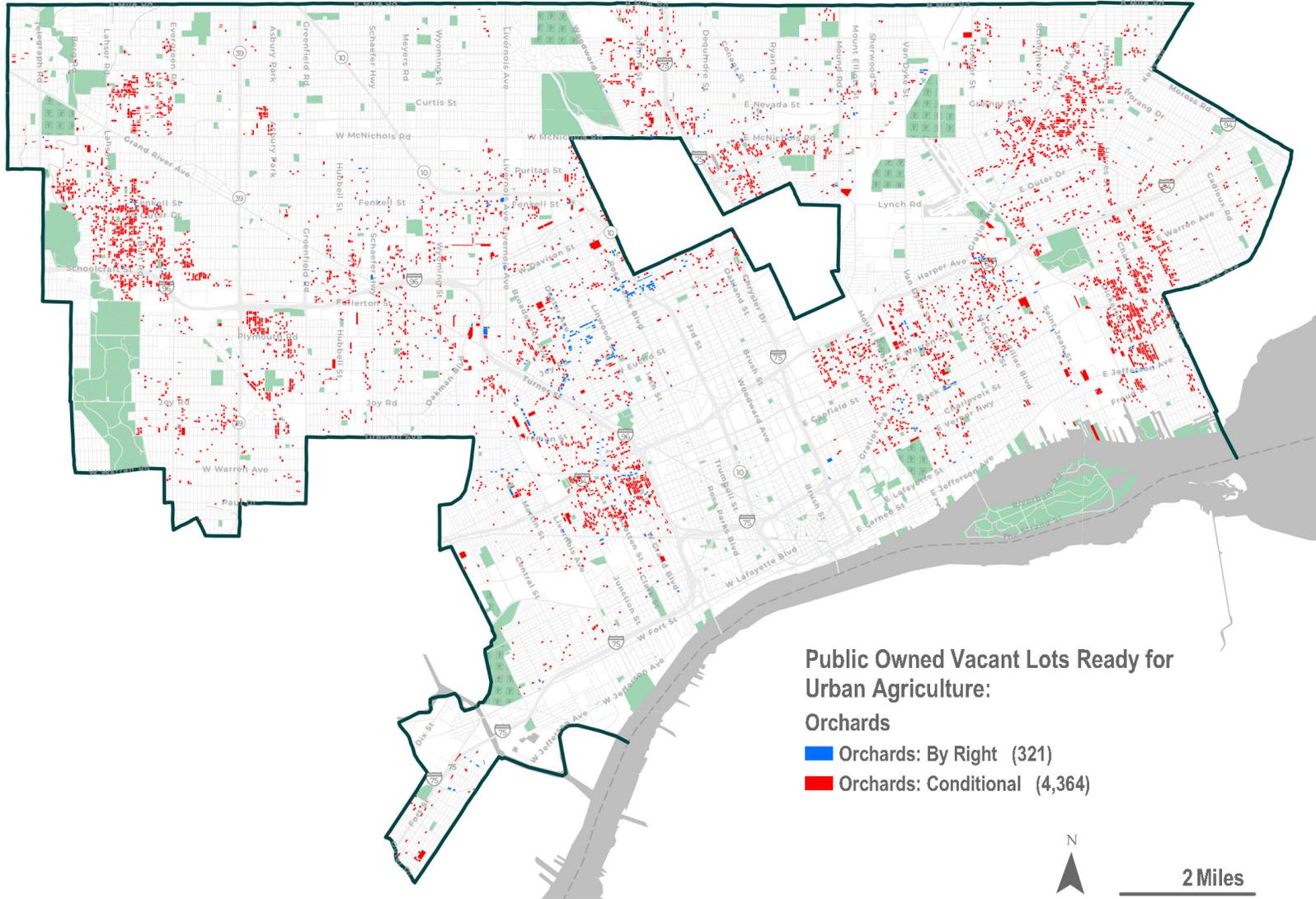
These maps were developed by the City of Detroit to illustrate current publicly owned vacant land inventory and where they believe the five land-based ventures would be allowed conditionally and by-right per current zoning. For a more detailed breakdown of conditional and by-right uses, see Table 4 on page 17 and Map 1 on page 12 showing current zoning.

Map 1: Publicly owned land where Tree Farms/Plant Nurseries are allowed by-right and conditionally per current zoning



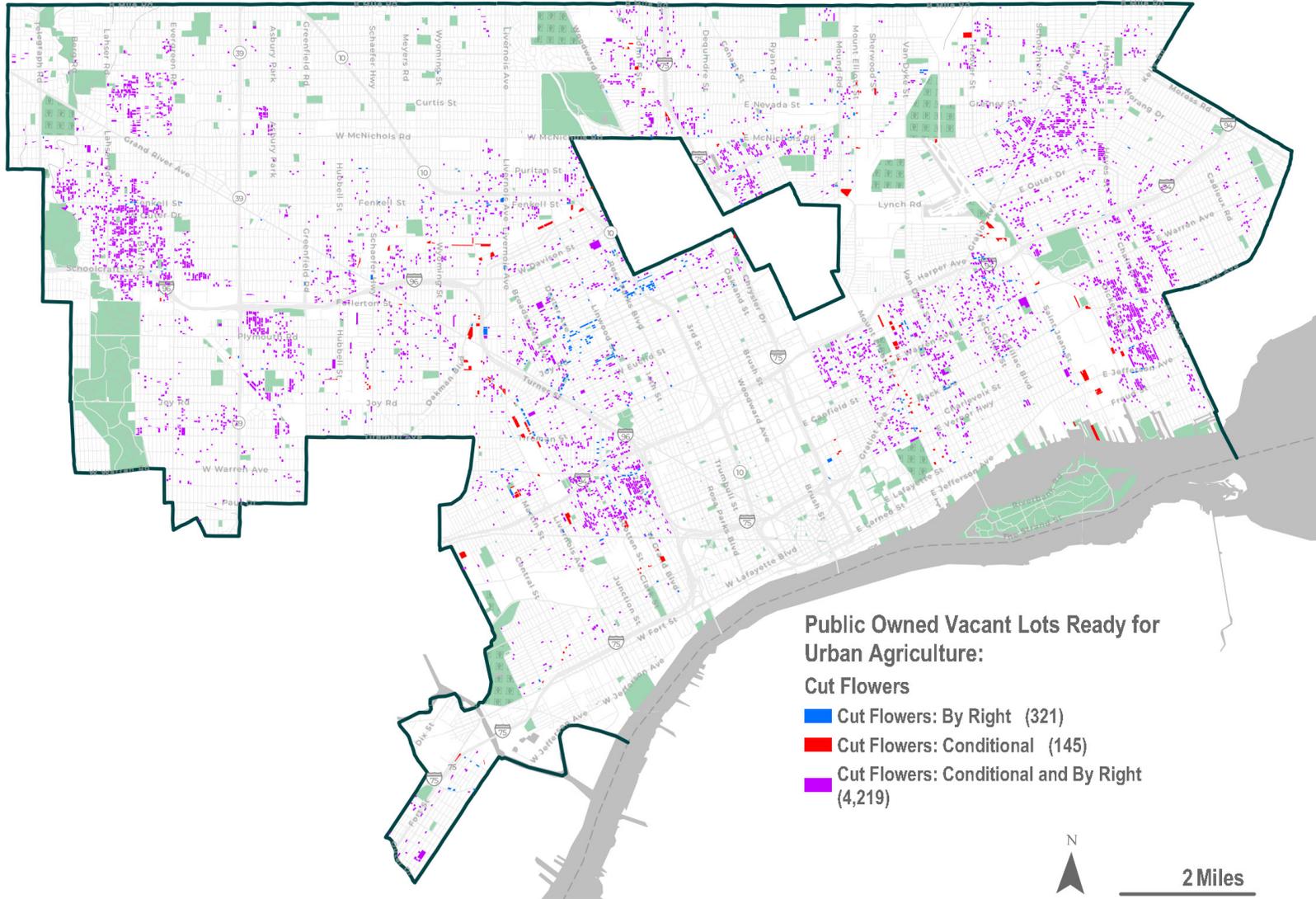
Note: This map was developed by the City of Detroit in October 2018. It is displayed as received by the City.

Map 2: Publicly owned land where Orchards are allowed by-right and conditionally per current zoning



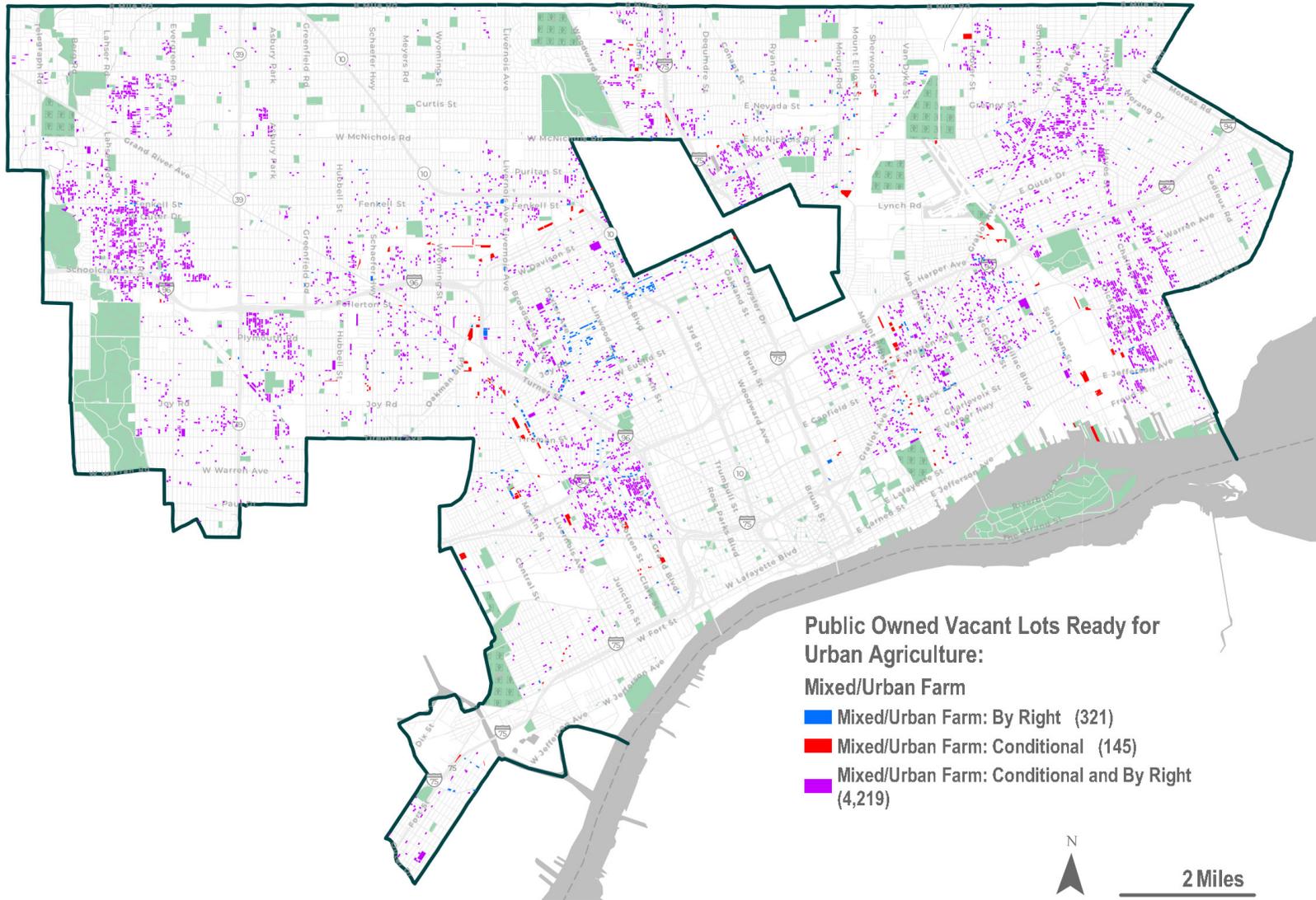
Note: This map was developed by the City of Detroit in October 2018. It is displayed as received by the City.

Map 3: Publicly owned vacant land where Cut Flowers are allowed by-right and conditionally per current zoning



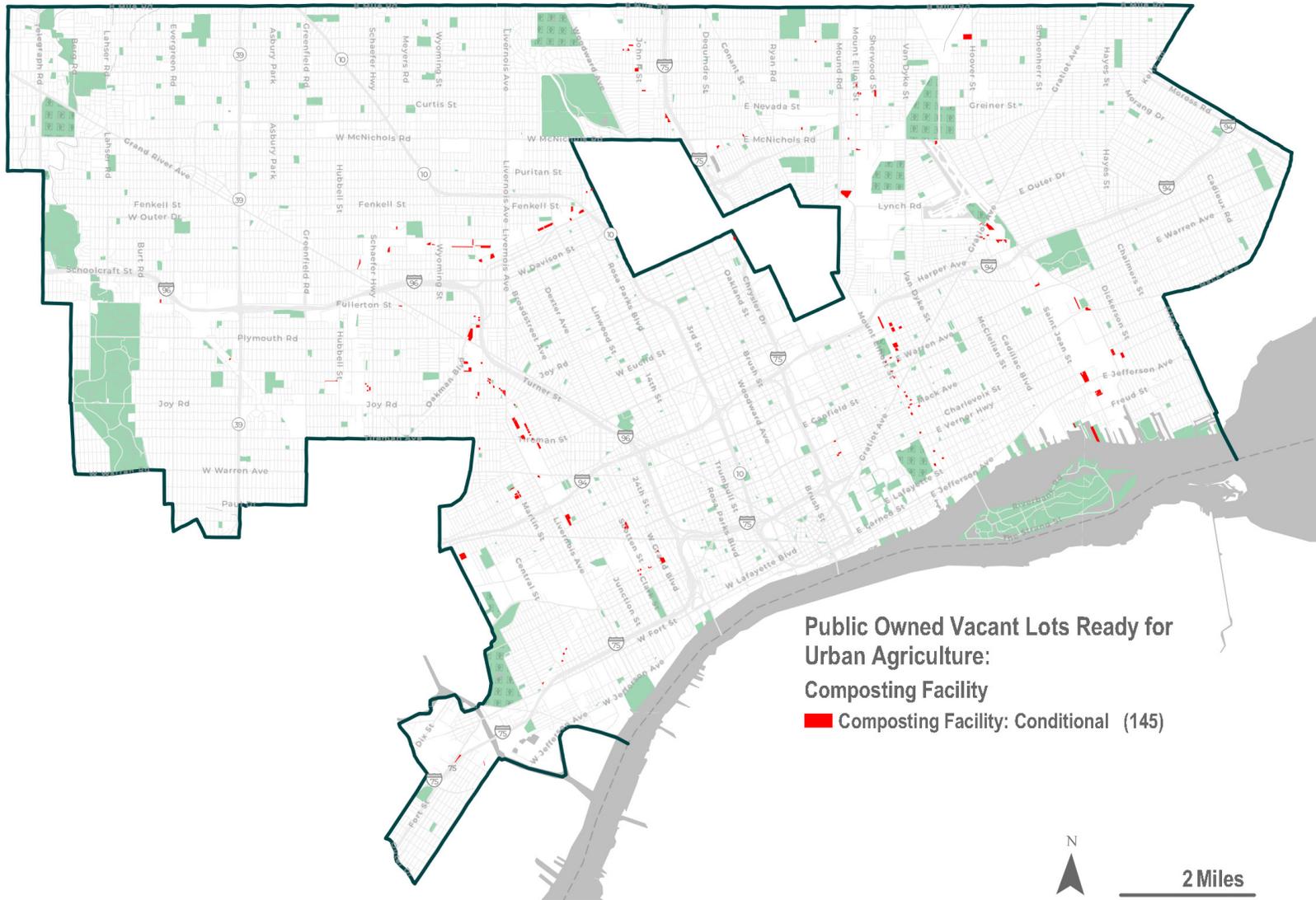
Note: This map was developed by the City of Detroit in October 2018. It is displayed as received by the City.

Map 4: Publicly owned vacant land where Mixed/Urban Farms are allowed by-right and conditionally per current zoning



Note: This map was developed by the City of Detroit in October 2018. It is displayed as received by the City.

Map 5: Publicly owned land where Composting Facilities are allowed by-right and conditionally per current zoning



Note: This map was developed by the City of Detroit in October 2018. It is displayed as received by the City.

APPENDIX D: PROCESS MAP

Community Progress and the City added a preliminary process mapping component to the scope of this report, and through a site visit working session and follow up reviews, documented the existing process steps for land-based ventures to acquire publicly owned land and properly permit their project. The process map on the following pages provides the foundation for future process improvements.

APPENDIX D:(Continued) PROCESS MAP

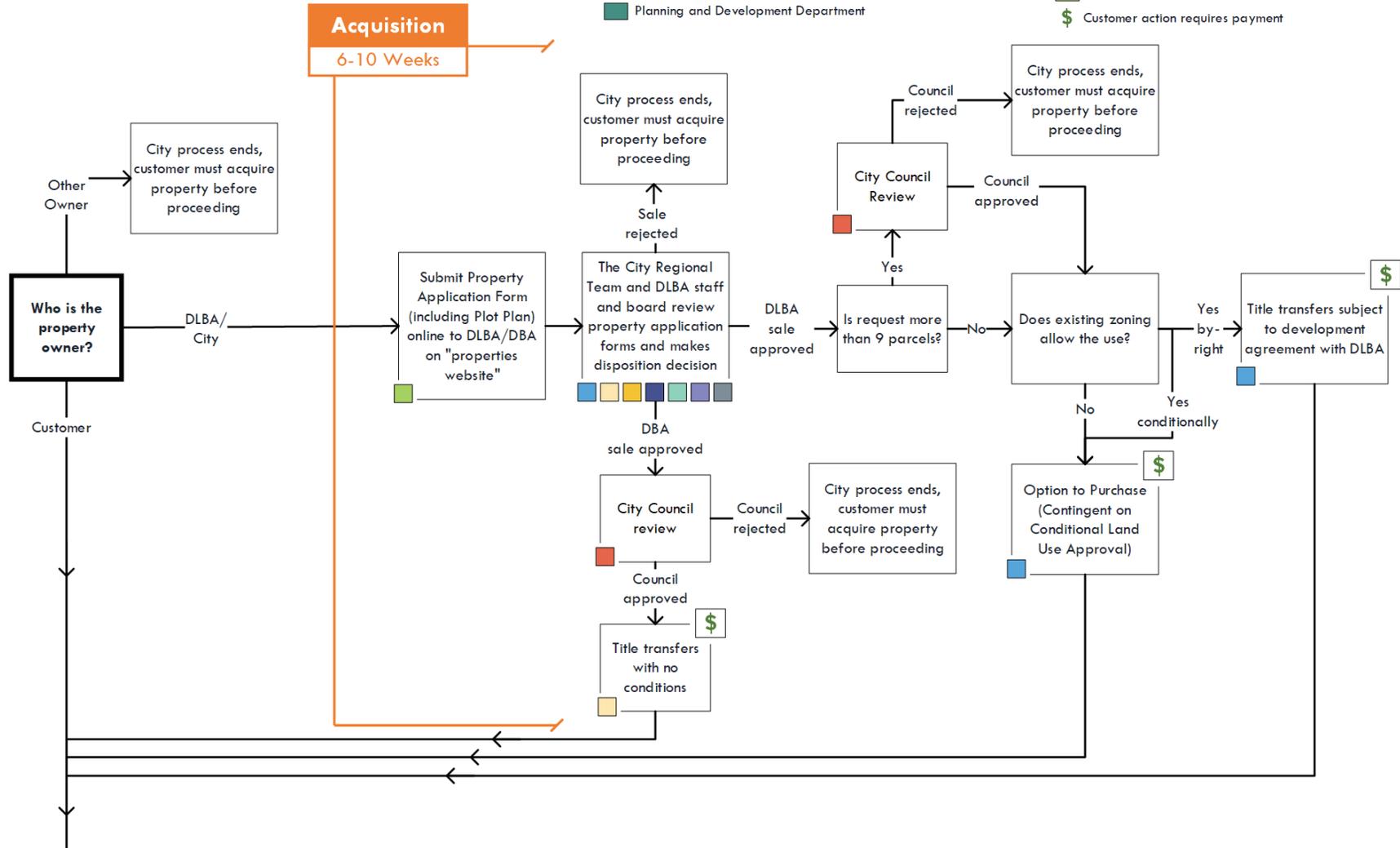
City of Detroit
Acquisition and Permitting Process
For Land-Based Ventures

Current Process

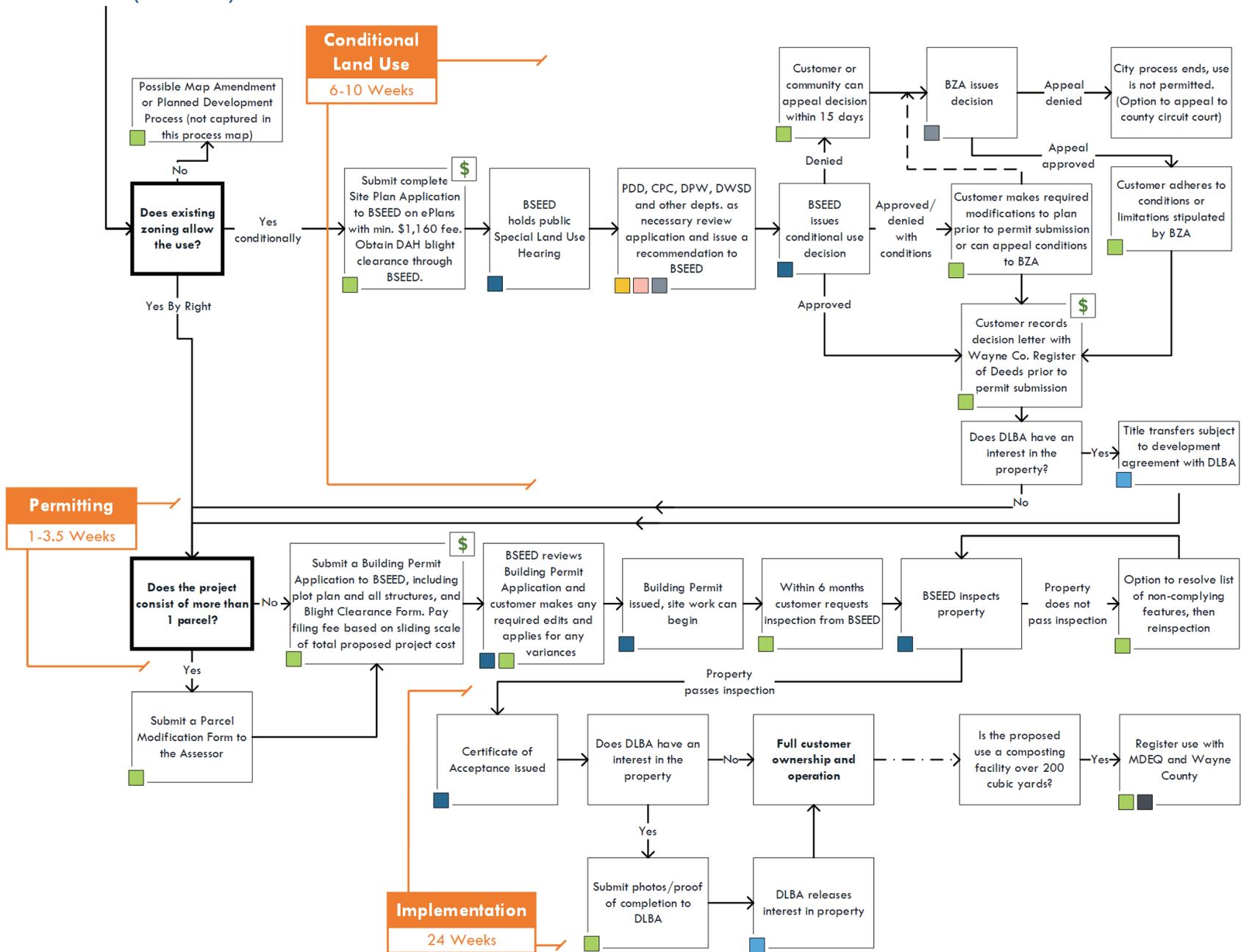
Legend

- Buildings, Safety Engineering and Environmental Department
- City Council
- City Planning Commission
- Detroit Building Authority
- Detroit Land Bank Authority
- Department of Neighborhoods
- Housing and Revitalization Department
- Jobs and Economy Team
- Office of the Assessor
- Planning and Development Department

- Other City Depts:
 - Department of Public Works
 - Health Department
 - Water and Sewerage Department
 - Detroit Economic Growth Corporation
- Other State or County Depts:
 - Wayne County
 - Michigan Department of Environmental Quality
- Customer
- Customer action requires payment



APPENDIX D:(Continued) PROCESS MAP



APPENDIX E: OTHER CONSIDERATIONS

Beyond the key local policies and regulations detailed in this report – zoning, master plan, permitting, and public land disposition – the City should take into consideration these additional regulatory or policy issues that the five land-based ventures will encounter when establishing or scaling up their operations, such as:

1. County and state regulations regarding composting facilities,
2. Environmental contamination, and
3. Real property taxation.

COUNTY AND STATE REGULATIONS REGARDING COMPOSTING FACILITIES

In addition to the local land use regulations described in Detroit’s zoning ordinance, a composting facility may also be required to comply with

1. Part 115 of the Michigan Natural Resources and Environmental Protection Act (NREPA) and
2. Wayne County’s solid waste ordinance.

Part 115 of the Michigan Natural Resources and Environmental Protection Act (NREPA)

Part 115 of the NREPA Act sets forth the permitting and licensing requirements for the establishment and operation of a composting facility. Notably, Part 115 does not require all composting facilities to register with the state. Registration is only required for composting facilities that contain more than 200 cubic yards of yard clippings, or that contain less than 200 cubic yards of yard clippings but create a nuisance.

If a composting facility is not required to register with the state, it is not subject to any significant operational requirements pursuant to state law. If a composting facility is required to register with the state, it must comply with a few key operational requirements, such as:

- Restrictive set back requirements (e.g. 200 feet from a residence, outside of a 100-year flood plain), and
- Total compostable material on site must be less than 5,000 cubic yards and cannot exist on site for more than 3 years.

Wayne County's solid waste ordinance

In addition to the regulations imposed by Part 115 of NREPA, all composting facilities are also subject to regulations imposed by Wayne County's code of ordinances. According to its text, the Wayne County ordinance is seemingly applicable to all composting operations, regardless of their size.³⁴ Functionally, the requirements of the Wayne County ordinance are only applied to composting facilities that have registered with the state pursuant to Part 115 of NREPA. For those facilities, Wayne County requires all composting facilities to:

- Submit a site plan and an operations plan,³⁵ a landscaping plan in accordance with specified requirements,³⁶ a nuisance abatement plan, and a contingency abatement plan detailing how the facility will respond to a malfunctioning operation and any resulting nuisances, and
- Be graded at a minimum of 1% slope and to direct any water that has leaked from the composting to either be collected, directed to a sewer or body of water pursuant to a National Pollutant Discharge Elimination System permit.³⁷

ENVIRONMENTAL CONTAMINATION LIABILITY & REMEDIATION REGULATIONS

Under current zoning, commercially and industrially zoned land allows the most by-right uses related to land-based ventures and is also the land most-likely to experience contamination. For this reason, it is important to understand regulations around existing contamination and the potential impact of those regulations on land-based ventures, which fall into two main areas:

1. Liability potential, and
2. Financial implications.

Part 201 of NREPA details remediation activities and liability for contaminated properties. In short, 1) the MDEQ has broad powers to remediate (either itself or by approving individuals) contaminated sites; 2) in addition to the party responsible for initial contamination, any owner who purchased a contaminated property on or after June 5, 1995 may be liable for the contamination;

³⁴ A composting facility is broadly defined as "a facility where composting of yard clippings and other compostable material occurs using composting technology. Composting technology may include physical turning, windrowing, aeration, or other mechanical handling of organic matter." Wayne County Ord. 105-21

³⁵ Wayne County, MI., Code § 105-71(b)(1)-(2); Wayne County, MI., Code § 105-71(f)(8)

³⁶ Wayne County, MI., Code § 105-37

³⁷ Wayne County, MI., Code § 105-71(f)

3) liability by a current owner can be avoided if a baseline environmental assessment is conducted within 45 days of purchase. Phase I of a baseline environmental assessment can run from \$1,500 to \$6,000 depending on the size of the property.

Given the amount of land needed for a large-scale land-based venture, the legal risks associated with contaminated properties are a serious concern. When purchasing any property, land-based venture owners are risking taking on additional liability for unknown contamination. This risk can be mitigated by hiring an environmental professional to conduct a baseline environmental assessment, but this requires a significant financial investment and does not address all potential sources of liability. This risk is particularly pronounced when purchasing commercial or industrial property, because of the higher likelihood of a previous contaminating land use compared to residential property. The risk of legal liability and the cost of mitigating the risk creates a particularly strong deterrent to pursuing opportunities, particularly on commercial and industrial sites, for land-based ventures.

Part 201 of NREPA

Remediation Regulations

This section of NREPA establishes regulations for the remediation of properties that have been contaminated with a hazardous substance and grants the MDEQ broad powers to effectuate such remediation. Specifically, in instances where the MDEQ determines that a property is contaminated with a hazardous substance,³⁸ the MDEQ may:

- undertake a response activity³⁹ on its own,
- approve a response activity by any person,⁴⁰ or
- require persons specified as liable to abate the danger or threat.⁴¹

Additionally, private parties may generally conduct a response activity without the prior approval of the MDEQ.⁴²

In general, a response activity must be sufficient to assure the protection of the public health, safety, and welfare, and the environment with respect to the environmental contamination addressed by the remedial action.⁴³

³⁸ Hazardous substance is broadly defined as “[a]ny substance that the [MDEQ] demonstrates, on a case by case basis, poses an unacceptable risk to the public health, safety, or welfare, or the environment, considering the fate of the material dose-response, toxicity, or an adverse impact on natural resources; [h]azardous substance as defined in the comprehensive environmental response, compensation, and liability act. . . ; [h]azardous waste as defined in part 111; [p]etroleum as described as a regulated substance in section 21303.” MCL 324.20101(x)

³⁹ A “response activity” is defined as “evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of community health and enforcement actions related to any response activity.” MCL 324.20101(vv).

⁴⁰ MCL 324.20118(1)

⁴¹ MCL 324.20119(1)

⁴² MCL 324.20114a

⁴³ MCL 324.20118(3)(a)

Liability Regulations

In establishing remediation regulations, Part 201 also regulates liable parties to contaminated sites. Part 201 also broadly defines who may be liable for cleanup costs. Potentially liable parties include:

- the person or organization that is responsible for causing the contamination,
- any person who purchased a contaminated property on or after June 5, 1995 (regardless of whether they caused the contamination or not),⁴⁴ or
- current owners of the property.

If a person is liable under Part 201, then they may be jointly and severally liable for

- all costs of a response activity incurred by the State,
- costs of a response activity incurred by any other person, and
- damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the contamination.⁴⁵

To avoid liability, a current (non-labile) owner or prospective purchaser can conduct a baseline environmental assessment before purchase or within 45 days of purchase or occupancy and provide the baseline environmental assessment⁴⁶ to the MDEQ within 6 months.⁴⁷ A baseline environmental assessment consists of a Phase I assessment and, if the Phase I assessment identifies that there is or is likely to be any hazardous substances in, on, or at the property, a Phase II assessment.

Phase I of the assessment consists of

- interviewing current owners and occupants of the property,⁴⁸
- a search for the existence of environmental cleanup liens against the subject property that have been filed or recorded under federal, state, or local law,⁴⁹
- a review of federal, state, and local government records or databases of government records of the subject property and adjoining properties,⁵⁰ and
- a visual, on-site inspection of the property and adjoining properties.

A Phase II assessment consists of

- taking soil, groundwater, and building material samples and
- subjecting them to a laboratory analysis to determine if hazardous substances are present on the property.

⁴⁴ MCL 324.20126

⁴⁵ MCL 324.20126a(1)

⁴⁶ A baseline environmental assessment is a written document that describes the results of an evaluation of environmental conditions at a property - MCL 324.20101(1)(f), (c); A baseline environmental assessment is generally prepared by an environmental professional in accordance with industry standards published by ASTM International - 40 C.F.R. § 312.11

⁴⁷ MCL 324.20126(1)(c)

⁴⁸ 40 C.F.R. § 312.23

⁴⁹ 40 C.F.R. § 312.25

⁵⁰ 40 C.F.R. § 312.26

Even if an owner is not liable for remediation costs under Part 201, they are still responsible for “Due Care,” mitigating exposure to hazardous substances, preventing exacerbation of the contamination, notifying adjacent landowners if migration is suspected, and taking reasonable measures against foreseeable things third parties may do to exacerbate the contamination. New owners are also required to comply with any land or resource use restrictions placed on the property due to contamination.⁵¹ This adds to their potential liability, even in instances where a baseline environmental assessment is performed, and ultimately to their costs.

REAL PROPERTY TAXATION

Given that many land-based ventures will require significant amounts of real property, a municipality’s regulations and policies which determine how that property will be taxed are consequential in the financial success of a land-based venture. Specifically, there are some unique tax issues that may impact zoning approvals and the taxable value of property for land-based ventures.

There are many aspects of real property taxation that could impact a land-based venture and a robust analysis of all regulations related to real property taxation was outside of the scope of this report. However, we highlight three potential hurdles for the City to consider:

1. Impact of property transfers, additions, and combinations on the taxable value
2. Applicability of the Qualified Agricultural Property Exemption
3. Lot combinations and the Detroit Land Bank Authority specific tax

The Michigan General Property Tax Act states that all real property not expressly exempted shall be subject to taxation.⁵² The Michigan constitution also requires the legislature to provide for the uniform general ad valorem taxation of real property.⁵³ Accordingly, the Michigan General Property Tax Act provides for a uniform procedure for how real property taxes are to be assessed.

Impact of Property Transfers, Additions, and Combinations on the Taxable Value

Taxable Value Cap

The Michigan constitution places a cap on how much property taxes may increase annually – taxes cannot increase by more than 5% or the inflation rate, plus all additions.⁵⁴ Therefore, if the value of a piece of property increases dramatically, the property taxes paid for that property will not increase proportionally. Property taxes remain capped until there is a transfer of ownership.⁵⁵

⁵¹ MCL 324.20107a(1)

⁵² MCL 211.1

⁵³ Michigan Constitution Article IX, § 3

⁵⁴ Mich. Const. Art. IX, § 3; MCL 211.27a(2)(a)

⁵⁵ Id.; MCL 211.27a(3)

Transfer of Ownership

When a property changes hands, the taxes are uncapped, and the new owner will be taxed based upon the uncapped true cash value.⁵⁶ The uncapped true cash value of the property may be significantly higher than the capped true cash value, which may cause the new owner to pay significantly more than the preceding owner in property taxes.

Property Additions

Additions are defined to include previously omitted real property, previously omitted personal property, new construction, previously exempt property, replacement construction, environmental contamination remediation, and public services (utilities, right of ways, etc.).⁵⁷ New construction, remediation, and public services are the likely additions a land-based venture might encounter. An “addition” to a parcel may cause property taxes to increase independent of the cap. For example, if the capped taxable value of the parcel is \$5,000 and the owner adds new construction with a true cash value of \$10,000, the owner would pay taxes on \$5,000 capped + (\$10,000*.5) NOT on \$15,000.⁵⁸

Property Combinations

Post combination, the owners would pay for land values of both lots on one tax bill.

Impact on land-based ventures

Given the above, land-based ventures may pay increased property taxes in three situations, adding to their operating costs: 1) if it purchases a property, it will pay the property taxes based on the uncapped true cash value of that property; 2) if it puts any additions on their property, it will pay increased property taxes based upon that addition; and 3) if it combines property, the property tax may increase based upon ownership prior to the combination.

Scenarios

- Parcel 1 and Parcel 2 are both owned by land-based venture operator
 - Tax calculation: Parcel 1 capped value + Parcel 2 capped value = tax
 - Note: Combination does not trigger an uncapping of either property
- Parcel 1 is owned by land-business operator and they acquire Parcel 2 through a transfer of ownership
 - Tax calculation: Parcel 1 capped value + Parcel 2 uncapped value = tax
 - Note: Combination does not trigger an uncapping of Parcel 1. The transfer of ownership triggers the uncapping of Parcel 2
- Parcel 1 and Parcel 2 are acquired by land-based venture operator through a transfer of ownership
 - Tax calculation: Parcel 1 uncapped value + Parcel 2 uncapped value = tax
 - Note: The transfer of ownership triggers the uncapping of both Parcel 1 & 2.

⁵⁶ Id.

⁵⁷ MCL 211.34d(1)(b)(iii)

⁵⁸ MCL 211.34d(1)(b)(ii)

Applicability of the Qualified Agricultural Property Exemption

The Michigan General Property Tax Act provides a partial real property tax exemption for qualified agricultural property which may be applicable to land-based ventures located in Detroit. The partial exemption exempts the taxpayer from certain local school operating millages.⁵⁹ In Detroit, that would exempt the taxpayer from 18 mills.⁶⁰

There are two ways that a property owner can claim the exemption:⁶¹

1. If the property at issue is classified as “agricultural” property on the current assessment roll by the local assessor, then the property exemption is automatically granted by the local assessor.⁶²
 - a. This is not currently relevant for land-based ventures in Detroit, as Detroit does not have an “agricultural” category of assessment.
2. If the property at issue is not classified as “agricultural” property on the current assessment roll by the local assessor, then a person must file an affidavit to claim the exemption by using Form 2599.⁶³ In order to qualify, more than 50% of the acreage of the property must be devoted to an agricultural use.⁶⁴ The definition of agricultural use is broad and includes the production of plants and animals useful to humans, including berries, herbs, flowers, nursery stock, fruits, vegetables, and Christmas trees.⁶⁵
 - a. This would be the relevant way to claim the exemption for land-based ventures in Detroit

Lot Combinations and the Detroit Land Bank Authority Specific Tax

As discussed earlier, many land-based ventures will involve multiple parcels of property acquired from multiple owners, including the Detroit Land Bank Authority, the Detroit Building Authority, and private owners. Given the zoning permit processes, many land-based ventures will want to combine contiguous parcels involved in their operation with the Detroit tax assessor.

⁵⁹ MCL 211.7ee(1)

⁶⁰ Michigan State Tax Commission, Qualified Agricultural Property Exemption Guidelines, Dec. 2013, available at https://www.michigan.gov/documents/Qualified_Agricultural_Prop_139854_7.pdf; Michigan 2017 Millage Rates – A Complete List, Dec. 2017, available at https://www.michigan.gov/documents/taxes/2017_Total_Rates_Report_-_Web_609678_7.pdf

⁶¹ It is unclear whether the two ways by which a property owner may claim the Qualified Agricultural Property Exemption would result in different substantive outcomes in regard to the taxable value of the property at issue.

⁶² MCL 211.7ee(2); Notably, a property's tax classification is based on its current use and the six classification categories provided in the Michigan General Property Tax Act. One classification is “agricultural real property. If a land-based business in Detroit is primarily using real property for an agricultural use, it should be classified as agricultural property. See, MCL 211.34c; Michigan State Tax Commission, Property Classification, Dec. 2013, available at https://www.michigan.gov/documents/treasury/ClassificationRealProperty_195107_7.pdf

⁶³ MCL 211.7ee(2); Claim for Farmland (Qualified Agricultural) Exemption from Some School Operating Tax, available at https://www.michigan.gov/documents/2599f_2606_7.pdf

⁶⁴ Michigan State Tax Commission, Qualified Agricultural Property Exemption Guidelines, Dec. 2013, available at https://www.michigan.gov/documents/Qualified_Agricultural_Prop_139854_7.pdf

⁶⁵ MCL 211.7dd(d); MCL 324.36101(b)

Properties sold by the DLBA are exempt from the ad valorem property tax and instead are subject to a specific tax for a period of 5 years. This specific tax enables the DLBA to collect 50% of the property tax revenue for 5 years (commonly referred to as the “5/50”).

A property owner cannot combine a parcel sold by the DLBA, within the 5/50 period, with a property purchased from another party unless the DLBA provides a waiver of its right to collect the 5/50, effectively exempting the parcel from the specific tax and pushing the parcel back to the ad valorem tax rolls.

The 5/50 is one of the only dedicated sources of revenue established by state law to support land banks, and for that reason it is essential to their operation. Were the DLBA to waive its 5/50 on a majority of its land assets to enable lot combinations with other properties, it would have a considerable impact on its budget to support its future operations.



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