



## Summary:

- › Land protection can be done by acquiring land or by acquiring certain property rights in land.
- › A number of state and federal funding sources are available for land acquisition.
- › State law authorizes the use of conservation easements to preserve land with conservation value in its natural state.
- › Local units of government can also institute purchase of development rights and transfer of development rights programs.

## Types of Land Protection:

There are two basic types of land protection. The first is the acquisition of property. The second is the acquisition of certain property rights from the property owner. In both cases, the acquisition is done by a governmental body or organization devoted to land protection.

## Acquiring property

There are a number of sources of funding to acquire coastal land with conservation value. These programs typically require that a plan of some kind be in place first, then a competitive application process, and typically a local match of some amount (25%, 1:1, etc.).

Here are some examples:

### Federal Sources -

[Coastal Zone Management Act](#) - Coastal Estuarine Land Conservation Program (CELCP)

<http://coastalmanagement.noaa.gov/land/welcome.html>

The CELCP program focuses on coastal and estuarine properties. The National Oceanic and Atmospheric Administration administers the grants through the DEQ. DEQ issues a request for proposals, then recommends the top applications to NOAA for funding.

To be eligible, the state is required to draft a CELCP plan. Michigan's draft CELCP plan is at:

[www.michigan.gov/documents/deq/deq-ess-clm-DraftCELCP-May07\\_211204\\_7.pdf](http://www.michigan.gov/documents/deq/deq-ess-clm-DraftCELCP-May07_211204_7.pdf)

[North American Wetland Conservation Act](#) - NAWCA

[www.fws.gov/birdhabitat/grants/NAWCA/Standard/US/Overview.shtm](http://www.fws.gov/birdhabitat/grants/NAWCA/Standard/US/Overview.shtm)

The NAWCA program is focused on wetland wildlife habitat. The U.S. Fish and Wildlife

Service administers NAWCA grants of up to \$1 million. There are also small grants categories. The deadlines for applications this year are March 7 and August 1, 2008.



## State Sources -

### [Michigan Natural Resources Trust Fund:](#)

The Department of Natural Resources (DNR) manages this fund to provide financial assistance to local governments in order to purchase land or rights in land for public recreation or protection because of its environmental importance or its scenic beauty.

The local government applying for the grant must match 25% of the project's cost.

The local unit of government needs to have a DNR-approved recreation plan. The property for which the grant is sought should be in the plan or at least similar to other properties identified in the plan.

The MNRTF also has a small acquisition grants initiative for projects under \$100,000.

Grant applications are accepted twice a year:

April 1st - applications for land acquisition and recreation development projects. Any development project applications must be submitted by this date.

August 1st - applications for land acquisition projects only.

For a grant application and other forms:

**[www.michigan.gov/dnr/0,1607,7-153-10366\\_37984\\_38165-126160--,00.html](http://www.michigan.gov/dnr/0,1607,7-153-10366_37984_38165-126160--,00.html)**

### [Great Lakes Fishery Trust:](#)

**<http://www.glft.org/geninfo.htm>**

Land acquisition is an eligible activity for Great Lakes Fishery Trust grants. Only one has been given out for this purpose, to preserve Humbug Marsh in the Detroit River. A grant request for land acquisition has to be brought before the Trust board by a board member.

### [Michigan State Waterways Commission:](#)

**[http://www.michigan.gov/dnr/0,1607,7-153-39002\\_23334---,00.html](http://www.michigan.gov/dnr/0,1607,7-153-39002_23334---,00.html)**

The Waterways Commission may fund land acquisition if there are navigational improvements involved.

## Acquiring Rights in Property

### Conservation Easements:

Conservation easements are the legal instrument used to acquire rights to develop or otherwise use property. State law defines a conservation easement as:

An interest in land that provides limitations on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water,

whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition. MCL 324.2140.

The easement must be recorded with the register of deeds in the county where the land is located. MCL 324.2141.

A conservation easement is enforceable against the owner of the land or body of water despite a lack of privity of estate or contract. MCL 324.2141.

A general sample conservation easement is included with the materials, and can be found at:

[www.deq.state.mi.us/documents/deq-water-wetlands-conservationeasements.pdf](http://www.deq.state.mi.us/documents/deq-water-wetlands-conservationeasements.pdf)

A sample conservation easement that protects coastal property in Leelanau County is also included in the materials.

### **Purchase of Development Rights (PDR)**

PDR is used to protect working farms and forest land. The funding usually comes from a millage and grant money.

Peninsula Township had the first PDR program in Michigan. Its PDR ordinance is included in the materials, and can also be found at:

[www.peninsulatownship.com/developmentrights/ordinance.pdf](http://www.peninsulatownship.com/developmentrights/ordinance.pdf)

Local units of government may enter into intergovernmental agreements to jointly administer PDR programs. The statute giving this authority is the Urban Cooperation Act, MCL 124.501, *et seq.*

### **Transfer of Development Rights (TDR)**

Another option for preserving property through the use of incentive-based zoning regulation is TDR.

TDR is not specifically authorized by the Michigan Zoning Enabling Act. However, the planned unit development (PUD) portion of that statute does provide for a form of TDR:

...Unless explicitly prohibited by the planned unit development regulations, if requested by the landowner, a local unit of government may approve a planned unit development with open space that is not contiguous with the rest of the planned unit development. MCL 125.3505(3).

The way TDR works under this statute is that a PUD is approved that involves two properties, a "sending parcel" and a "receiving parcel." The sending parcel transfers some of the units that the zoning ordinance allows to be built on it to the receiving parcel, which then can add those units to the units that the zoning ordinance allows to be built on it. A condition of allowing more units on the receiving parcel is placing a conservation easement on the portion of the sending parcel that has "sent" its units away.

It is important that a zoning ordinance that uses TDR identify specific sending and receiving areas, preferably by zoning district. Typically, coastal areas and agricultural areas are sending zones, and higher density areas where infrastructure exists are receiving zones.

A model of this approach is included with the materials.

## Zoning

There are also a number of zoning techniques available to protect land. These include:

- › Moratoria
- › Conservation subdivisions
- › Clustered housing
- › Buildable area regulations

Examples of each of these techniques are included in the materials.