

PENINSULA TOWNSHIP
PURCHASE OF DEVELOPMENT RIGHTS ORDINANCE #23
AMENDMENT #3

Approved by Peninsula Township Board of Trustees May 4, 1994

Amendment #1 - Revised August 25, 2003, amending Section 8 to provide a process for amending easements and adding Section 14 Severability.

Amendment #2 - Revised February 28, 2017, amending Section 6(4) regarding Committee termination.

Amendment #3 - Revised July 12, 2022.

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ORDINANCE No.23

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At a meeting of the Township Board of Peninsula Township, Grand Traverse County, Michigan, held at the Peninsula Township Hall on July 12, 2022, at 7:00 p.m., Township Board Member [REDACTED] moved to adopt the following Ordinance, which motion was seconded by Township Board Member [REDACTED]:

AN ORDINANCE, enacted in accordance with the Michigan Zoning Enabling Act of 2006, as amended, relating to the acquisition of voluntarily offered interests in farmland and open space land in Peninsula Township that resulted in calling an election by the voters of the Township on August 2, 1994, to authorize the cash purchase and/or installment purchase contracts under Act 99 of 1933 and for the purpose of providing funds for such acquisitions. The principal and interest on such contracts shall be payable out of annual tax levies to be made upon all of the taxable property within the Township in excess of constitutional and statutory limits and from any other money which may become legally available and used for such purposes. This Ordinance shall not be construed to enable the transfer of Development Rights.

SECTION 1 FINDINGS AND DECLARATION OF PURPOSE

BE IT ORDAINED BY THE PENINSULA TOWNSHIP BOARD:

The Township Board finds that:

1. Peninsula Township is a desirable place to live and visit because of its panoramic views of agricultural acreage interspersed with stands of trees, open fields and rolling terrain. The framing of many of these views with the sight of clean, open bay waters creates a spectacularly spacious effect. The views, agriculture and open spaces, woodlands, wetlands and dark night sky are all considered valuable natural and aesthetic resources which should be protected to benefit the public.
2. The climate, significant changes in elevation and proximity to water make this a unique area where certain crops can be grown as well as or better than anywhere else. These resources not only include more than seven thousand acres of land suitable for farming, but also other woodland, wetlands and open lands adjacent to these farmlands. Such lands provide unique, aesthetic and economic benefits to the citizens of the Township and are an important part of the Township's heritage.
3. Peninsula Township is experiencing substantial development pressure because of its location adjacent to Traverse City. The same characteristics which have made this area so desirable for fruit production also make it attractive for residential sites.
4. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of Agricultural Use. When such land is converted to residential or other urban uses which do not require those special characteristics, an important community resource and public benefits are permanently lost to the citizens of Peninsula Township.
5. It is the policy of the State of Michigan and Peninsula Township to protect, preserve and enhance agricultural and open space lands as evidenced by the Peninsula Township Master Plan including open space policies, the Farmland and Open Space Preservation Act of 1974 (P. A.

116), the Historic and Conservation Easement Act and the Township Ordinances regulating land use by zoning and subdivision control. However, these policies and regulations, by themselves, have not been effective in providing long-term protection of farmland, shoreline and open space lands under the pressure of increasing urban development.

6. Of the 17,000 acres of land in Peninsula Township, there are about 12,000 acres in the Agricultural District which provides the basis for the Township's active agricultural enterprises. The agricultural industry in Peninsula Township provides the opportunity to harvest locally grown fruit and vegetables for national distribution as well as for sale at roadside stands and at other local and regional outlets.
7. Generally, farmland and open space lands which are close to urban centers have a greater market value for future urban development than their market value for farming or open space, and prime fruit growing land has the same features of high elevations and proximity to water that are components of desirable residential areas. This fact encourages the speculative purchase of these lands at high prices for future development, regardless of the current zoning of such lands. Farmland which has a market value greater than its agricultural value does not attract sustained agricultural investment and eventually this land is sold by farmers and removed from Agricultural Use.
8. The permanent acquisition by the Township of voluntarily offered interests in farmland and open space lands within the Township, as provided in this Ordinance and as authorized by the Constitution and statutes of the State of Michigan, will permit these lands to remain in farmland and open space in a developing urban area and provide long-term protection for public benefits which are served by farmlands and open space lands within the Township.
9. Properties on which the Township has purchased the Development Rights should remain substantially undeveloped in order to promote their "Agricultural Use".
10. The acquisition of interests in farmland and open space lands as provided in this Ordinance is a public purpose of Peninsula Township that will yield public benefits. Financing such acquisitions requires that the Township enter into purchases or installment purchases not to exceed statutory limits.
11. The objective of voluntarily purchasing Development Rights from land owners in the manner prescribed in this ordinance is consistent with the Peninsula Township Master Plan.
12. The Township Board finds and declares that the use of Township Purchase of Development Rights Funds for the purpose of paying in whole or in part the cost of acquisition of interest in Eligible Lands as set forth herein, will promote the public health, safety and general welfare of the people of Peninsula Township.

SECTION 2 DEFINITIONS

The terms defined below shall mean the following throughout this Ordinance regardless of capitalization. All other terms shall be interpreted according to their plain and ordinary meanings based on the context of their use in the Ordinance.

1. "Accounts" are appropriately labeled accounting departments within the Purchase of Development Rights Fund that have unique cash general ledger account numbers and related general ledger activities.

2. "Agricultural Use" is the production of plants and animals useful to man, including fruits; grapes; nuts; vegetables; green house plants; Christmas trees; forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding and grazing; and other similar uses and activities on substantially undeveloped land.
3. "Appendix A" of this Ordinance includes the maps and related materials which describe designated areas of Eligible Lands for purposes of priority of acquisition as provided in this Ordinance. Official large-scale maps describing such areas in detail are hereby filed with the Peninsula Township Clerk and incorporated herein by this reference. Smaller scale maps generally illustrating such areas are provided in the Appendix of this Ordinance for more accessible public reference.
4. "Closing Costs" are the costs including but not limited to legal, survey, title search and accounting related to the process of purchasing Development Rights.
5. "Conservation Easement" is a grant, by an instrument, whereby the owner relinquishes the Development Rights to the public in perpetuity but remains in private ownership. A Conservation Easement is a legal and recorded instrument that contains a covenant that runs with the land extinguishing Development Rights, except as may be expressly reserved in the instrument.
6. "Contiguous" describes two or more parcels of land with a common boundary or point that may be separated solely by a private roadway or public right-of-way.
7. "Development" is an activity which materially alters or affects the existing conditions or use of any land.
8. "Development Rights" are interests in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agriculture and open space.
9. "Eligible Land" is farmland and open space land for which the purchase of a "Conservation Easement" with tax funds are authorized pursuant to this Ordinance. Eligible Land is depicted in the Appendix A.
10. "Excess Millage Revenue" is the Purchase of Development Rights millage revenue that is available for expenditures after meeting bond payment, monitoring and administration cost obligations.
11. "Master Plan" is a plan adopted by Peninsula Township in accordance with the Michigan Planning Enabling Act of 2008. A Master Plan is intended to be a guiding document for how a community wishes to develop in future years.
12. "Open Space" is land that is not developed for residential, commercial, or industrial purposes. When it is included in a Conservation Easement it remains in private ownership and is not open to public access except as allowed by the landowner and subject to the Conservation Easement terms.
13. "Owner" is the party or parties having the fee simple interest, a real estate contract vendor's or vendee's interest, a mortgagor's or mortgagee's interest in land, or other legal interest in land that authorizes the sale of Development Rights under this Ordinance.
14. "Parcel" is contiguous property under one ownership that is included in an application.

15. "Peninsula Township Purchase of Development Rights (PDR) Ordinance" is Peninsula Township Ordinance No. 23 as adopted May 4, 1994, as subsequently amended.
16. "Residential Development Right" is the right to build a residential dwelling.
17. "Selection Committee" is the Committee formed pursuant to Section 6 of this Ordinance to advise the Township Board in the selection of Eligible Lands for purchase.
18. "Substantially Undeveloped Land" is land on which there is no more than one (1) residential dwelling unit for each twenty (20) acres of land (exclusive of migrant housing units) or other buildings used for non-agricultural, commercial, or industrial purposes.
19. "Township Board" is the elected or duly appointed Peninsula Township Board of Trustees.
20. "Value of Development Rights" is the difference between the fair market value of the land without the Conservation Easement and its fair market value as restricted by the Conservation Easement.
21. "Zoning Ordinance" is the Peninsula Township Zoning Ordinance, adopted June 5, 1972 and as subsequently amended.

SECTION 3 AUTHORIZATION

1. The Township Board is hereby authorized to expend tax revenues to acquire and administer property interests in the farmlands and open space lands described and prioritized in Section 5 of this Ordinance. The property interest acquired may be either the Development Rights, or any lesser interest, easement, covenant or other contractual right. Such acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the appraised value determined as provided in this Ordinance. The collected tax revenues shall be used to acquire such property interests only upon application of the Owner and in a strictly voluntary manner.
2. The Township Board is authorized to finance the PDR program using all of the mechanisms described in Section 125.3509 of the Michigan Zoning Enabling Act as amended. This includes borrowing money and issuing bonds or notes.
3. The Township Board is further authorized to contract with other parties to participate jointly in the acquisition of interests in Eligible Lands.
4. The Township Board is authorized to establish a Purchase of Development Rights fund and separate accounts to manage, monitor, and enforce the Purchase of Development Rights program.
5. The Township Board is authorized to enter into cash purchase and/or installment purchase contracts consistent with applicable law. When installment purchases are made, the Township Board is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract and adjusted for the tax-exempt status of such interest.

6. On an annual basis, the Township Board shall budget from the Purchase of Development Rights fund to contract for the monitoring of all Conservation Easements purchased under the authority of this Ordinance or donated under the authority of the Peninsula Township Donation of Development Rights Ordinance, No. 45.

7. The Township shall contract with a recognized and legally established non-profit land conservancy or other experienced and qualified individual(s) that would share in the process of negotiating easements and establishing both the baseline reports and the procedures for the monitoring of any Conservation Easements acquired under this Ordinance.

SECTION 4 RETAINED RESIDENTIAL DEVELOPMENT RIGHTS

1. To promote the "Agricultural Use" of properties on which the Township has purchased the Development Rights, it has been determined that such properties should remain Substantially Undeveloped.

2. Applications for the sale of Development Rights may include a provision to retain the right to build residential dwellings, provided that no retained Residential Development Rights would result in more than one dwelling unit per twenty (20) acres of land (exclusive of approved migrant housing units). This is not to preclude the sale of all the remaining Development Rights on a property that has existing dwelling units in excess of one dwelling unit per twenty acres of land.

3. The building locations for retained Residential Development Rights may be restricted in the negotiated "Conservation Easement" in order to protect Scenic Views identified in the Township Master Plan.

4. When a future home site is being retained within a Conservation Easement, the boundaries of the building envelope for such home site and associated structures shall be no less than one acre and the boundaries of such building envelope shall be surveyed by a registered surveyor and proper monumentation shall be placed on the property.

SECTION 5 ELIGIBLE LANDS AND PRIORITY OF ACQUISITION

The tax revenues generated for the acquisition of Development Rights shall be used to purchase property interests in the following lands in the following order of their priority subject to the provisions of Section 7.

Primary criteria that all properties must meet:

All properties for consideration must be located within the boundaries of the Agriculture Preservation Area Map (Appendix A) adopted by the Peninsula Township Planning Commission. Applications shall be complete and shall be submitted voluntarily.

Up to ten percent of the tax revenues generated for acquisition of Development Rights may be allocated to spend on acquiring unused Development rights from properties with existing Conservation Easements

or similar encumbrances restricting Development. The following criteria shall be used in determining the priority by which these applications are processed.

Priorities for acquisition of existing reserved Development Rights.

Cumulative Points	Criteria
0-100	One point for every one percent of the project costs that will be funded by non-millage dollars from other entities (federal or state grants, neighborhood group(s), foundation(s), individual(s), etc.) or will be donated by the landowner (the landowner accepts less than the appraised value).
0 or 25	Acquisition of reserved development site(s) results in a ratio of not more than 1 home site for each 40 acres of land encumbered in an existing PDR easement.
Total	

Priorities for acquisition of Development Rights on new property.

The following criteria shall be used in determining the priority by which applications are initially processed. The scoring of applications may change during the process as owners make decisions regarding their applications and other factors change (i.e., outside funding).

Cumulative Points	Criteria
0 or 10	Parcel is shown on Prime Scenic View Map adopted by the Peninsula Township Planning Commission. (10 points if any part of the subject property is included in an identified Prime Scenic View area depicted in Appendix 1, 0 points if not)
0-100	One point for every one percent of the project costs that will be funded by non-millage dollars from other entities (federal or state grants, neighborhood group(s), foundation(s), individual(s), etc.), or will be donated by the landowner (wherein the landowner accepts less than the appraised value).
0 or 5	Parcel that is contiguous to another parcel that is subject to an existing Conservation Easement. Five points awarded if contiguous, 0 points if not.
Varies	One point for each whole acre (rounded) to be included in proposed Conservation Easement.
Total	

SECTION 6 SELECTION COMMITTEE

1. A five-member Selection Committee shall be appointed by the Township Board within ninety (90) days following the approval of a millage to use funds towards the purposes of this Ordinance by the voters. The Selection Committee shall advise the Township Board in the selection of Eligible Lands on which Development Rights are offered for acquisition by their owners. Selection Committee recommendations for the selection of Eligible Lands shall be made by a majority of its members.

2. The Selection Committee shall consist of residents and/or property owners of the Township chosen to provide equitable representation of geographical and agricultural interests. The Township Board may appoint ex-officio members.

3. The Selection Committee may consult experts as it may desire and the Township Board may appropriate funds for that purpose.

4. Members shall serve three-year terms, except that the initial term of two members shall be two years and terms of three members shall be three years. Members may be removed by the Township Board for good cause as determined by the Township Board. Members shall not be compensated for their services but shall be reimbursed for expenses actually incurred in the performance of their duties. Members may be reappointed to successive terms but the Selection Committee shall be terminated when the proceeds of any millage to carry out the purposes of this Ordinance have been spent.

5. No member shall vote on the selection of parcels in which they or any immediate family member has a direct or indirect interest, or on any parcels that are contiguous to property in which they or any immediate family member has a direct or indirect interest.

SECTION 7 SELECTION PROCESS

Beginning in the first year following approval of an initial millage to carry out the purposes of this Ordinance and continuing until all proceeds of any such millage to carry out the purposes of this Ordinance have been expended, the Township Board shall request that the Selection Committee conduct a property selection process (herein called "Selection Round"), that is initiated by creating an application period. The selection process will generally take place as follows:

1. The Township Board shall begin each Selection Round with an application period by giving notice on the Township website and publishing at least one notice in one newspaper of general circulation in Peninsula Township. The notice shall describe the general program eligibility requirements, application and general program procedures and shall be published fifteen (15) days prior to the opening of an application period.
2. A list of interested parties in the PDR program shall be kept by the Township Planner and Selection Committee. The parties shall be notified about Selection Rounds via email and a certified letter to the last address of record at least fifteen (15) days prior to the opening of an application period. Applicants of previous rounds that were unsuccessful shall also receive this notification. Previous applicants shall need to reapply if they wish to participate in the program.
3. Written applications by owners who desire to have their Development Rights purchased by the Township shall be submitted on forms provided by the Township. Applications must include all information needed to perform a preliminary ranking of the proposal and may require attachments and documentation.
4. Terms and conditions of a proposed sale may be discussed by the entire Selection Committee with Owners prior to the submission of written applications.
5. Upon closing of the application period, the Selection Committee shall review each application which has been received for completeness, program eligibility and validity of information including a title search.
6. The Selection Committee shall score each application as submitted. A ranked list of projects will be generated from highest to lowest scoring.

7. Upon closing of each application period, the Selection Committee shall identify an initial group of projects to move forward with a Conservation Easement acquisition. The size of groups shall be determined by the Selection Committee.
8. For those highest-ranking applications, the Selection Committee or a Township designated professional shall negotiate the terms of each project with the Owner.
9. For those highest-ranking applications, the Selection Committee shall order an appraisal. A "before and after" appraisal shall be made to determine the Value of Development Rights. The appraisal shall determine the difference between the fair market value of the land without Conservation Easement and its fair market value as restricted by the Conservation Easement. The cost of this initial appraisal will be borne by Peninsula Township via the Purchase of Development Rights Fund and included in the Purchase of Development Rights budgets as specified in this Ordinance.
10. Appraisals shall be in writing and shall be furnished to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Township or by Owners of the property appraised in writing, but corrections of the appraisal may be made only by the appraiser. If an Owner of property believes it has not been adequately appraised, such Owner may, and within the time allowed on the selection schedule have a review appraisal be made at the Owner's expense provided it meets the criteria and requirements as determined by the Selection Committee. The Selection Committee may use both appraisals to reach an agreement as to the appropriate value of the Development Rights.
11. All appraisals of properties with approved Special Use Permits (SUP) shall include a written review of the SUP and the section of the Zoning Ordinance that governs it as it applies to residential and allowed uses.
12. All appraisals shall be performed by an individual holding a Certified General Appraiser License from the State of Michigan, Department of Licensing and Regulatory Affairs (or other successor licensing entity) and shall meet other criteria, requirements and qualifications as determined by the Selection Committee. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. The same appraiser shall conduct the before and after appraisals.
13. In each Selection Round, the Development Rights on all Eligible Land shall be eligible for purchase. However, properties of higher priority (in accordance with the ranking system described in SECTION 5) shall be purchased with available funds before properties of lower priority are purchased, provided:
 - a. In the interest of protecting as much Eligible Land as possible, the Township Board may determine to buy only a portion of the Development Rights on a particular parcel if it is in the best interest of the program.
 - b. Should other ranking-related conditions change with one or more applications, the Selection Committee shall reprioritize and re-score applications accordingly, resulting in updated application ranking.
 - c. In the event that the ranking of applications results in an equal number of points between one or more applications (i.e., a tie), the Selection Committee shall determine the higher-ranking application(s) with an unbiased lottery (such as drawing assigned numbers from a container).

d. For properties located within a Prime Scenic View as shown on the Map adopted and as may from time to time be amended by the Peninsula Township Planning Commission as part of the Township Master Plan, the Selection Committee shall request the Planning Commission to recommend building and/or vegetation restrictions as necessary to protect the scenic view.

14. If a property owner and Selection Committee cannot reach agreement on the acquisition, the application may be withdrawn for subsequent consideration.

15. Upon receiving the recommendations of the Selection Committee, the Township Board shall take final action to execute all closings.

16. The Selection Committee may receive and act on appeals of any factual nature by affected property owners, and any appeal may be reviewed by the Township Board.

SECTION 8 CLOSING, MONITORING & ENFORCEMENT

Closing Requirements:

The Township must obtain the following information for closing on any Purchase of Development Rights.

1. Evidence of clear title (no lien holder(s) or signature from lien holder(s) authorizing participation in the PDR program).
2. Survey of the property including any retained residential building envelopes prepared by a licensed surveyor.
3. Draft of negotiated Conservation Easement.
4. Legal review of all supporting documents.
5. Township Board approval of the Conservation Easement.
6. Execution of the Conservation Easement and the baseline documentation by all parties.
7. Recording of the Conservation Easement by the Register of Deeds.

Monitoring:

The Township shall monitor all properties with established Conservation Easements to ensure compliance with this Ordinance.

1. A Conservation Easement data base shall be established and maintained in the Planning and Zoning Departments listing all parcels subject to donated or purchased Conservation Easements.
2. The party engaged by the Township for monitoring shall conduct annual site visits of all Conservation Easements held by the Township. Findings for all properties shall be recorded in the Conservation Easement data base.
3. Any conveyance of property with a Conservation Easement shall have the Conservation Easement registered upon the subsequent deed.

Enforcement and Penalties:

1. The Township Board shall enforce the terms of all Conservation Easements held by the Township.
2. Enforcement of violations shall include but are not limited to the removal of non-compliant structures, termination of occupancy of structures and removal of adaptations of structures that are not permitted under a Conservation Easement.
3. Any person or entity that violates any provision of this Ordinance shall be deemed responsible for a municipal civil infraction and shall be subject to a civil penalty. A fee schedule for violations specifying such civil penalties shall be established and adopted by the Township Board within ninety (90) days of passage of this Ordinance. In addition to municipal civil infractions and civil penalties, this Ordinance may be enforced by a civil action against an alleged violator for injunctive or other relief requesting actions, including but not limited to, property owner compliance with Conservation Easements, as authorized by law.

SECTION 9 DURATION OF ACQUIRED INTERESTS AND RELINQUISHMENT OF ANY INTERESTS

Development Rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity, subject to the following:

The Conservation Easement may be extinguished only if it is impossible to fulfill the conservation purposes as described in the Conservation Easement.

- a) If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated by the Township Board. Any extinguishment shall go through judicial proceedings. The Township Board shall hold a public hearing to address the partial or complete termination of a Conservation Easement to consider the input of the public. Notice of the public hearing shall be by mail to all property owners within the Township. All costs associated with said public hearing shall be paid by the requester. Notwithstanding the foregoing, the Owner and Township intend that the Conservation Easement is not subject to the legal doctrine of “changed conditions” that is applied to traditional servitudes. The Township will then be entitled to compensation in accordance with the applicable provisions of the Internal Revenue Code Treasury Regulations.

SECTION 10 AMENDMENT OF CONSERVATION EASEMENTS

Because of the public trust that is inherently involved with the Purchase of Development Rights and the corresponding intent that all Conservation Easements endure in perpetuity, amendments of Conservation Easements can only be amended in compliance with strict standards. Procedures for the administration of the amendment process, including all fees, appraisals, and surveys, will be established and adopted by the Township Board within 90 days of the passage of this Ordinance. An application for

an amendment of a Conservation Easement and any amendment of the terms and conditions of a Conservation Easement shall proceed in accordance with the following provisions:

1. **Application.** An application for amending a recorded Conservation Easement shall be made to the Township Clerk on a form approved by the Township Clerk, along with a non-refundable fee as determined by the Township Board by resolution.

2. **Application Costs.**

a. Neither the Township general fund nor the Purchase of Development Rights Fund shall be responsible for any expense incident to the request for amendment, unless the Township is the applicant.

b. All costs associated with the requested amendment, including but not limited to appraisals, attorney fees, public hearings, and publication fees, shall be paid by the applicant, unless the Township is the applicant.

c. Prior to undertaking any direct expenses related to the request, the Township Board shall require a deposit to cover the estimated costs associated with consideration of the request. All unexpended funds shall be returned to the applicant.

3. **Review.** The proposed amendment shall receive legal review for this ordinance and applicable laws, rules, and regulations as well as for compliance with this ordinance, current Land Trust Standards and Practices, and amendment principles published by The Land Trust Alliance or other similar industry standards.

4. **Public Hearing.** The Township Board shall hold a public hearing prior to consideration of an amendment to a Conservation Easement. The notice shall meet the same time requirements as a notice for a Planning Commission public hearing for a Zoning Ordinance amendment under the Michigan Zoning Enabling Act or successor statute.

5. **Notice.** All property owners within 1,320 feet of the property seeking the Conservation Easement Amendment shall be given written notice of the application for amendment of an existing Conservation Easement. The notice shall include the existing and proposed conditions. It shall also state where the public hearing will be held and where the application can be viewed. The notice shall also include the legal description and the street address of the parcel to allow the public to locate the property.

6. **Standards.** An amendment to a Conservation Easement shall only be granted by the Township Board if the amendment satisfies all of the following principles.

a. **Principles.** The amendment:

(i) Serves the public interest and is consistent with the Conservation Easement program as described in the Findings and Declaration of Purpose in the Ordinance.

(ii) Complies with all applicable laws, rules and regulations.

(iii) Does not result in private inurement or confer impermissible private benefit.

(iv) Is consistent with the original easement's intent and conservation purposes.

- (v) Is consistent with the intent of the grantor and any direct funding source.
- (vi) Has a net beneficial or neutral effect on the conservation values protected by the original easement.

b. **Examples.** The following list is meant to be examples of actions that may be appropriate outcomes of a proposed amendment.

- (i) The amendment decreases the number of future dwelling units.
- (ii) The amendment decreases the probability of parcel fragmentation.
- (iii) The amendment results in a scattering of residences less than prior to the amendment.
- (iv) The amendment decreases the amount of driveway across prime and unique agricultural land necessary to access dwellings.
- (v) The amendment increases the net amount or quality of productive agricultural land as a result of the amendment.
- (vi) The amendment results in no new buildings located in identified scenic views.

The Township Board shall make written findings of fact as to the foregoing conditions and standards. Any amendments to Conservation Easements shall be at the absolute discretion of the Township Board.

7. **Appraisal of Changes in Value.** Prior to a final decision on a proposed amendment to a recorded Conservation Easement, the Township shall obtain at the applicant's expense, an appraisal of the property to determine if the value of the retained Development Rights has increased as a result of the proposed amendment. The appraisal shall meet the same criteria as described in Section 7 above. If the appraisal indicates that the value of the retained Development Rights has increased as a result of the proposed amendment, the amendment shall not be approved.

8. **Publication.** The Township Board shall publish its decision to amend a Conservation Easement in the same manner as an amendment to the Township Zoning Ordinance.

9. **Public Hearing.** A decision by the Township Board to amend a Conservation Easement shall be subject to a public hearing with notice as provided by the Township Board.

10. **Recording.** All approved amendments that are no longer subject to referendum shall be recorded at the Grand Traverse County Register of Deeds Office along with written findings of fact which explain the reasons for the amendment.

SECTION 11 TRANSFER OF DEVELOPMENT RIGHTS

The transfer of Development Rights onto a property encumbered by a Conservation Easement held by the Township is prohibited.

SECTION 12 RELATED COSTS

The costs of appraisal, engineering, surveying, planning, financial, legal and other services lawfully incurred incident to the acquisition of interests in Eligible Lands by the Township, and for monitoring and legal defense of the Purchase of Development Rights program shall be paid from the proceeds of a millage enacted to carry out the purposes of this Ordinance. The Township General Fund nor the Purchase of Development Rights Fund shall be responsible for expenses incurred by the Owner incident to this transaction.

SECTION 13 SUPPLEMENTAL FUNDS

Supplemental or matching funds from other governmental agencies or private sources may become available to pay a portion of the cost of acquiring Development Rights, or some lesser interest in Eligible Lands or to supplement or enlarge such acquisition. The Township Board is hereby authorized to utilize such funds to purchase interests in Eligible Lands or to otherwise supplement the proceeds of a millage to carry out the purposes of this Ordinance in the manner provided by this Ordinance and in accordance with the applicable laws or terms governing such grants or other funding opportunities.

SECTION 14 PURCHASE OF DEVELOPMENT RIGHTS FUND

A. PURCHASE OF DEVELOPMENT RIGHTS ENFORCEMENT ACCOUNT

The Township Board shall establish and maintain a Purchase of Development Rights Enforcement Account (herein "Enforcement Account") in an amount of not less than two hundred and fifty thousand dollars (\$250,000), from excess millage revenue to be used solely for enforcement expenses, including initial follow-up with the landowner, review and inspection of remedial measures, and legal, engineering and other professional services. Money in such Enforcement Account may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money. The interest received from the deposit of such revenues shall be applied and used solely for the purposes set forth in this Section.

B. PURCHASE OF DEVELOPMENT RIGHTS MONITORING ENDOWMENT

The Township Board shall establish and maintain a Purchase of Development Rights Monitoring Endowment (herein "Monitoring Endowment") to accomplish monitoring activities specified in this Ordinance. Initial funds for the Monitoring Endowment shall come from excess millage revenue, after the initial years of excess millage revenue first supplement, on a continuing basis, the Enforcement Account to the required balance of two hundred and fifty thousand dollars (\$250,000). If the Enforcement Account falls below the required balance, excess millage revenue will go initially to replenishing any diminished balance below two hundred and fifty thousand dollars (\$250,000). Said excess millage contributions to the Monitoring Endowment will stop when the balance reaches two and a half million dollars (\$2,500,000), after which earnings will accrue to achieve a minimum target balance of four million dollars (\$4,000,000) with a cap of four and a half million dollars (4,500,000). Funds generated by the endowment that exceed four

and a half million dollars (\$4,500,000) balance may replenish, on a continuing basis, the Enforcement Account and thereafter to funding future purchases. The Township Board is authorized to increase the amounts specified above to reflect values in future dollars. During the life of the millage to carry out the purposes of this Ordinance, millage funds shall be used for all monitoring expenses, including contracting for monitoring and any incidental expenses for monitoring Conservation Easements held by the Township. Upon the sunset of the millage, proceeds from the Monitoring Endowment shall be used solely for the purposes set forth in this Section.

C. PURCHASE OF DEVELOPMENT RIGHTS OPERATIONAL ACCOUNTS

Three separate accounts shall be established to manage millage revenue, bond proceeds and operational expenditures. These accounts shall be:

1. A Millage Receiving Account, which shall be used for receiving millage funds, transfer of revenue to the Bond Payment Account, and for paying other costs, such as administration, monitoring, or deposits into the Enforcement Account, or Monitoring Endowment, and any expenditure of excess millage funds for purchase and closing costs. Revenue can be accumulated in this account.
2. A Bond Project Account, where bond proceeds will be deposited and held and which shall only be used for paying for purchases of Development Rights and closing costs.
3. A Bond Payment Account, which only receives funds from the Millage Receiving Account in time to make bond payments.

SECTION 15 SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance.

SECTION 16 EFFECTIVE DATE

This Ordinance shall become effective seven (7) days after publication of a notice of adoption of this Ordinance, except as otherwise provided by MCL 125.3402.

SECTION 17 REPEAL

All other ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

YEAS: _____

NAYS: _____

ABSENT/ABSTAIN _____

ORDINANCE DECLARED ADOPTED:

Isaiah Wunsch, Peninsula Township Supervisor

CERTIFICATION

I, Becky Chown, Clerk of Peninsula Township, do hereby certify that the foregoing is a true and accurate copy of Ordinance No. _____ adopted by Peninsula Township on the _____, 2022. A summary of the Ordinance was duly published in the _____ newspaper, a newspaper that circulates within Peninsula Township, on _____, 2022. Within 1 week after such publication, I recorded the Ordinance in a book of ordinances kept by me for that purpose, including the date of passage of the Ordinance, the names of the members of the Township Board voting, and how each member voted. I filed an attested copy of the Ordinance with the Grand Traverse County Clerk on _____, 2022.

Becky Chown, Peninsula Township Clerk

**PENINSULA TOWNSHIP
NOTICE OF ADOPTION**

**PURCHASE OF DEVELOPMENT RIGHTS ORDINANCE #23
AMENDMENT #3**

On July 12, 2022, the Peninsula Township Board adopted a third amendment to its Purchase of Development Rights Ordinance, Ordinance No. 23, which, under the authority of the Michigan Zoning Enabling Act, codifies a purchase of development rights program to protect agricultural and other eligible lands for the public health, safety, and general welfare of the Township. The Ordinance has the following sections and catch lines: Section 1: Findings and Declaration of Purpose; Section 2: Definitions; Section 3: Authorization; Section 4: Retained Residential Development Rights; Section 5: Eligible Lands and Priority of Acquisition; Section 6: Selection Committee; Section 7: Selection Process; Section 8: Closing, Monitoring & Enforcement; Section 9: Duration of Acquired Interests and Relinquishment of Any Interests; Section 10: Amendment of Conservation Easement; Section 11: Transfer of Development Rights; Section 12: Related Costs; Section 13: Supplemental Funds; Section 14: Purchase of Development Rights Fund; Section 15: Severability; Section 16: Effective Date, which is seven (7) days after publication of this notice of adoption except as otherwise provided by MCL 125.3402; and Section 17: Repeal. A true copy of the Ordinance is available for inspection and may be obtained at the offices of Peninsula Township, 13235 Center Road, Traverse City MI 49686.

Becky Chown, Peninsula Township Clerk
Phone: 231-223-7321
clerk@peninsulatownship.com

APPENDIX A



PENINSULA TOWNSHIP

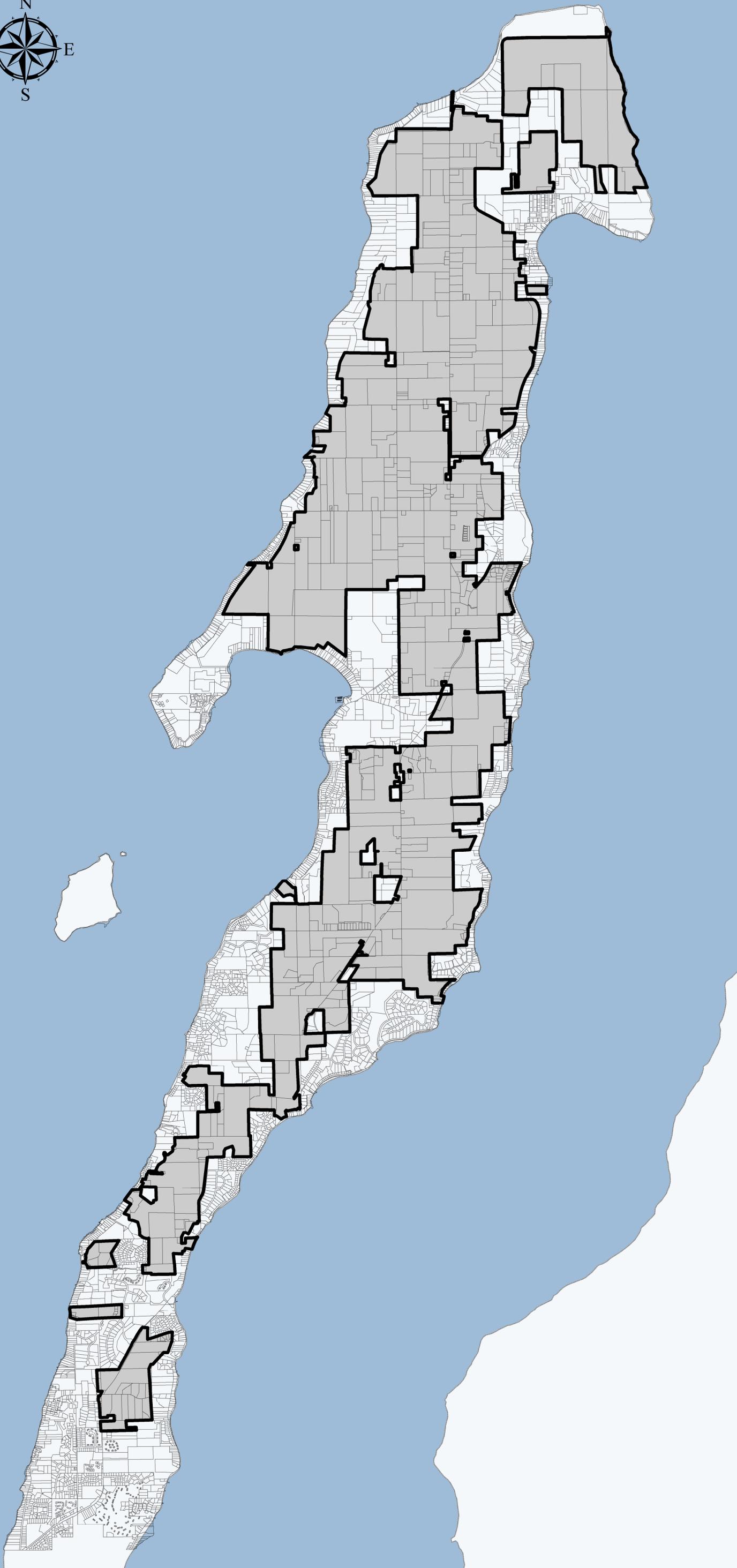
AGRICULTURAL PRESERVATION AREA (APA)

 PARCELS

 APA



Create Date: February 11, 2020





PENINSULA TOWNSHIP

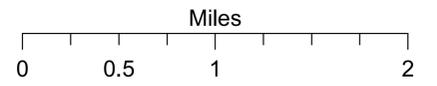
PRIME SCENIC VIEWS

 HIGHWAYS

 LOCAL ROADS

 PARCELS

 VIEWSHED



Create Date: April 17, 2020

