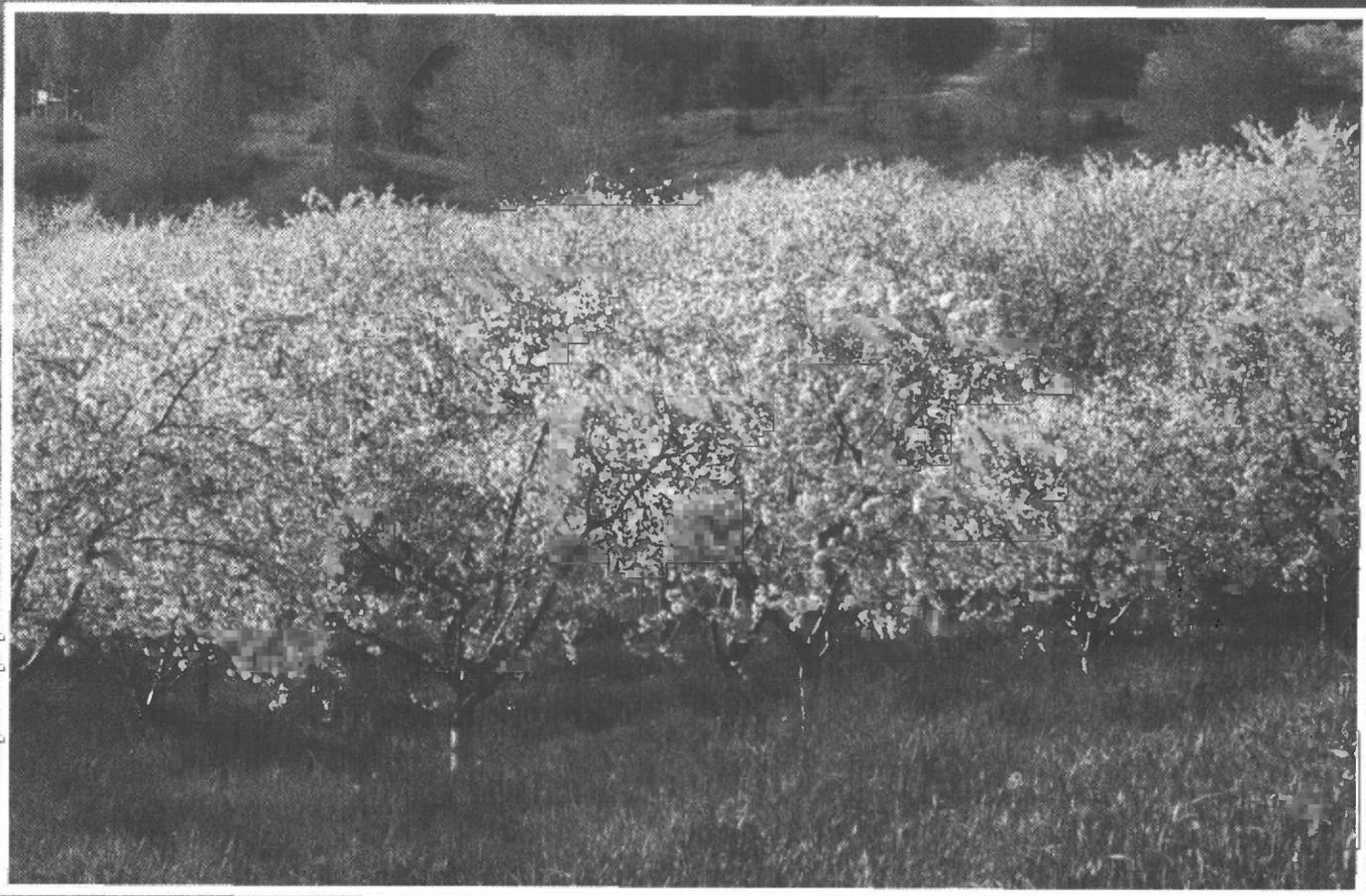


# FORGING NEW PROTECTIONS:

## Purchasing Development Rights To Save Farmland



*How Peninsula Township, Michigan,  
Designed and Built Support for Farmland Protection*

**Forging New Protections:  
Purchasing Development Rights to Save Farmland**  
*How Peninsula Township, Michigan, Designed and  
Built Support for Farmland Protection*



by:  
Dennis P. Bidwell, American Farmland Trust  
Dr. Joanne Westphal, Michigan State University,  
Institute for Public Policy and Social Research  
John Wunsch, Concerned Citizens in Support of PDR  
Valerie Berton, American Farmland Trust

American Farmland Trust is a private, nonprofit conservation organization founded in 1980 to protect the nation's agricultural resources. AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. Its action-oriented programs include public education, technical assistance in policy development and direct farmland protection projects. Basic annual membership is \$20. For membership information, contact AFT's National Office.

American Farmland Trust  
National Office  
1920 N Street, N.W., Suite 400  
Washington, D.C. 20036  
(202) 659-5170  
(202) 659-8339 (fax)  
farmtrust@aol.com

American Farmland Trust  
State and Local Programs Division  
Herrick Mill  
1 Short Street  
Northampton, Mass. 01060  
(413) 586-9330  
(413) 586-9332 (fax)  
slaft@aol.com

Editor: Valerie Berton  
Designer: Diane Buric

This publication was funded, in part, by grants from the W.K. Kellogg Foundation, Rotary Charities of Traverse City and the Americana Foundation.

Contact AFT's publication service at (800) 431-1499 to purchase copies of this report, \$15 plus shipping/handling.

© 1996 American Farmland Trust

 printed on recycled paper using soy ink

## Foreword

On August 2, 1994, the voters of Peninsula Township, Michigan, approved a property tax increase to fund a \$6 million program to purchase development rights on farmland. The vote capped many years of hard work by township farmers, elected leaders, activists and concerned citizens to support the local farming industry and better manage growth.

While purchase of development rights programs, or PDR programs, have been active in nine Northeastern and mid-Atlantic states, and in counties in New York, North Carolina, California and Washington, Peninsula Township was the first Midwestern community to tax itself to protect farmland by purchasing development rights. When existing efforts at planning and zoning to control growth appeared inadequate to protect farmland and open space in Peninsula Township, voters decided to pay farmers to keep their land in agriculture, giving them an alternative to dividing it into house lots.

Few would have predicted how much interest the election would stimulate, that a grassroots effort in a tiny Michigan township would become a story reported from coast to coast. Associated Press, *The New York Times*, *The Christian Science Monitor*, *The Los Angeles Times*, *The International Herald Tribune*, even the CBS program "This Morning" covered the vote and its implications for Peninsula Township and the Midwest.

The press coverage created demand for information about what had happened in Peninsula Township that exceeded expectations of program organizers. Township officials, AFT staffers, Michigan State University professors and local activists involved in the vote received inquiries from Michigan, the Midwest and nationwide.

This interest suggested the need for a case study detailing the Peninsula Township experience. In cooperation with the Institute for Public Policy and Social Research at Michigan State University, AFT produced this case study to address a myriad of questions about Peninsula Township's precedent-setting vote.

The interest in Peninsula Township's initiative, however, goes beyond that 1994 vote. The deeper issue tapped by the voters of Peninsula Township is the need to plan for agriculture's future and embrace methods that share the cost of conservation between landowners and the public that benefits from it.

We hope this case study can serve as an inspiration for communities considering PDR and other tools to protect farmland and manage growth. The citizens of Peninsula Township remind us that a shared vision and hard work can reverse a scenario considered inevitable in so many other communities. They show us we can protect our land resources and preserve the heritage that gives our communities their very identities.



Ralph Grossi  
AFT President

## Acknowledgments

I am very grateful to many people and organizations for their assistance in the preparation of this case study.

I would especially like to thank my three co-authors: Dr. Joanne Westphal of Michigan State University's Institute for Public Policy and Social Research; John Wunsch, organizer of Concerned Citizens in Support of PDR; and AFT's Valerie Berton, who contributed writing as well as editing to this ambitious project.

Thanks also to AFT's Julia Freedgood, who provided assistance throughout the publication process, and Bob Wagner and Gary Kozel, who proofread the final document draft.

Special thanks also are due Rob Manigold and Gordon Hayward of Peninsula Township, Ginny Coulter of the township's Planning and Zoning Commission and Glen Chown of the Grand Traverse Regional Land Conservancy. In addition to providing leadership to the PDR effort, they served as advisers to the production of this case study and reviewers of preliminary drafts.

Finally, thanks to Rotary Charities of Traverse City, the W.K. Kellogg Foundation and Americana Foundation for their support of AFT's efforts in Peninsula Township, generally, and for this case study, specifically.

Respectfully submitted,

Dennis P. Bidwell  
Washington, D.C.  
March 1996

## Introduction

This case study chronicles the development of a purchase of development rights program in Peninsula Township, Michigan. American Farmland Trust hopes the study will help citizens and policymakers in other communities devise programs and policies to protect important farmland resources.

The case study begins with a review of PDR programs — what purchase of development rights means, how programs typically work and the relationship between PDR and conservation easements. An important point of this chapter is that PDR is not the “silver bullet” of farmland protection. Rather, it is merely one technique that is most effective when used in the context of a comprehensive approach to land use and growth management.

Chapter 2 describes the setting that gave rise to the effort to pass PDR in Peninsula Township, including the region’s settlement patterns, farming history, and unique agricultural and historic resources — as well as threats to those resources. The background is included as a reminder that any community’s efforts to protect its land resources are rooted in developing a widespread appreciation of the value and uniqueness of its history and natural surroundings.

In Chapter 3, the case study reviews efforts underway since the 1960s to influence land use patterns and manage growth in Peninsula Township. Comprehensive planning, the dramatic loss of productive and scenic farms, efforts by residents to block controversial housing developments, the emerging role of land trusts in saving important farms and strong township leadership all combined to create the PDR program. PDR programs are not born overnight — they are most likely to succeed when they grow out of careful planning, public education and citizen involvement.

Chapter 4 outlines the process used by Peninsula Township to design its PDR program: planning funded by private foundations and other sources, baseline mapping, opinion surveys and focus groups, input from PDR experts around the country and formation of citizen study groups. The major components of the program as it evolved — property selection criteria, application procedures, valuation procedures, funding issues — are reviewed.

Chapter 5 details the community organizing, public education, demonstration projects and campaign structure that helped produce a public vote affirming the funding of a PDR program in August 1994. This section contains considerable detail on the nitty-gritty of running a public education campaign.

The story continues in Chapter 6 with Peninsula Township’s approach to translating electoral victory into an operating PDR program. Appraiser selection, solicitation of applications, preparation of easement and purchase agreement documents and various other technical issues are discussed.

The study concludes (Chapter 7) with thoughts that can be drawn from Peninsula Township’s experience as PDR is contemplated in other communities.

*Any community’s efforts to protect its land resources are rooted in developing a widespread appreciation of the value and uniqueness of its history and natural surroundings.*

Woven through the narrative are several key pieces of information that consistently have been the subject of questions put to Peninsula Township officials, AFT and MSU staff and others involved in developing the PDR program. Here are brief answers to the most frequently asked questions.

*How did the township pay for the planning and groundwork that preceded the enactment of the PDR program?*

Peninsula Township's PDR program is largely the result of thousands of hours volunteered by committed citizens. Much of the expertise provided by the township, AFT, Michigan State University and the Grand Traverse Regional Land Conservancy was made possible by the generous support of Rotary Charities of Traverse City, Americana Foundation and Michigan's Coastal Zone Management program.

*What were the legal underpinnings for Peninsula Township's PDR program?*

The Township Planning Commission amended the township's master plan to incorporate protection of agricultural land through new policies, an "agriculture preserve area" and regulations safeguarding scenic views. Prior to the election, the Township Board adopted a PDR ordinance that detailed the program. The township also relied on two Michigan legislative acts as legal support for the PDR program.

*How did residents secure a positive vote in what generally is considered an anti-tax climate?*

The citizens committee that worked to secure voter approval of PDR very effectively reached out to farmers, the real estate community, business interests, resident associations, and environmental and conservation groups to put together the votes needed to pass the ordinance and subsequent tax referendum.

*Who decides which farms can participate?*

The township appointed a seven-member volunteer committee to work with township staff to oversee the implementation of the program, including the soliciting and ranking of applications. The committee is required to rank applications based on criteria contained in the ordinance: agricultural productivity, significance of scenic views, adjacency to land already protected by conservation easement or land covered by another PDR application. The Township Board makes final decisions on PDR purchases based on recommendations from the committee.

*Who will hold and enforce the conservation easements?*

The township will hold title to the conservation easements purchased through the PDR program. The township will monitor the easements and has set aside \$40,000 for enforcement, should it prove necessary.

# Table of Contents

## Chapter 1: What is PDR?

Purchase of Development Rights Defined . . . . .	2
How PDR Works . . . . .	2
PDR Nationwide . . . . .	3

## Chapter 2: The Case Study Area: Peninsula Township

History of Agriculture on the Peninsula . . . . .	6
Development Threatens Agriculture . . . . .	7

## Chapter 3: Growth Management in Peninsula Township

Township Leaders Try to Curb Sprawl . . . . .	10
The Proposed Bluffs Developments . . . . .	11
The Murray Farm . . . . .	11
The Need for More Tools . . . . .	12

## Chapter 4: Designing the PDR Program

Surveying the Populace . . . . .	14
Public Education . . . . .	14
Citizen-Based Study Groups . . . . .	15
Planning for PDR . . . . .	16
Paying for PDR . . . . .	17
Citizens United Behind PDR . . . . .	17

## Chapter 5: The PDR Campaign

The Campaign Begins . . . . .	20
Underwood Farms . . . . .	20
Campaign Structure . . . . .	21
Educational Mailings . . . . .	21
Media Contact . . . . .	22
Personal Contact . . . . .	24
Video . . . . .	25
Support Within the Farm Community . . . . .	25
Demonstration Projects: Options to Buy Development Rights on Two Farms . . . . .	26
Opinion Surveys . . . . .	27
Positive Factors . . . . .	27
Arguments to Counter . . . . .	28
The Vote and its Aftermath . . . . .	29

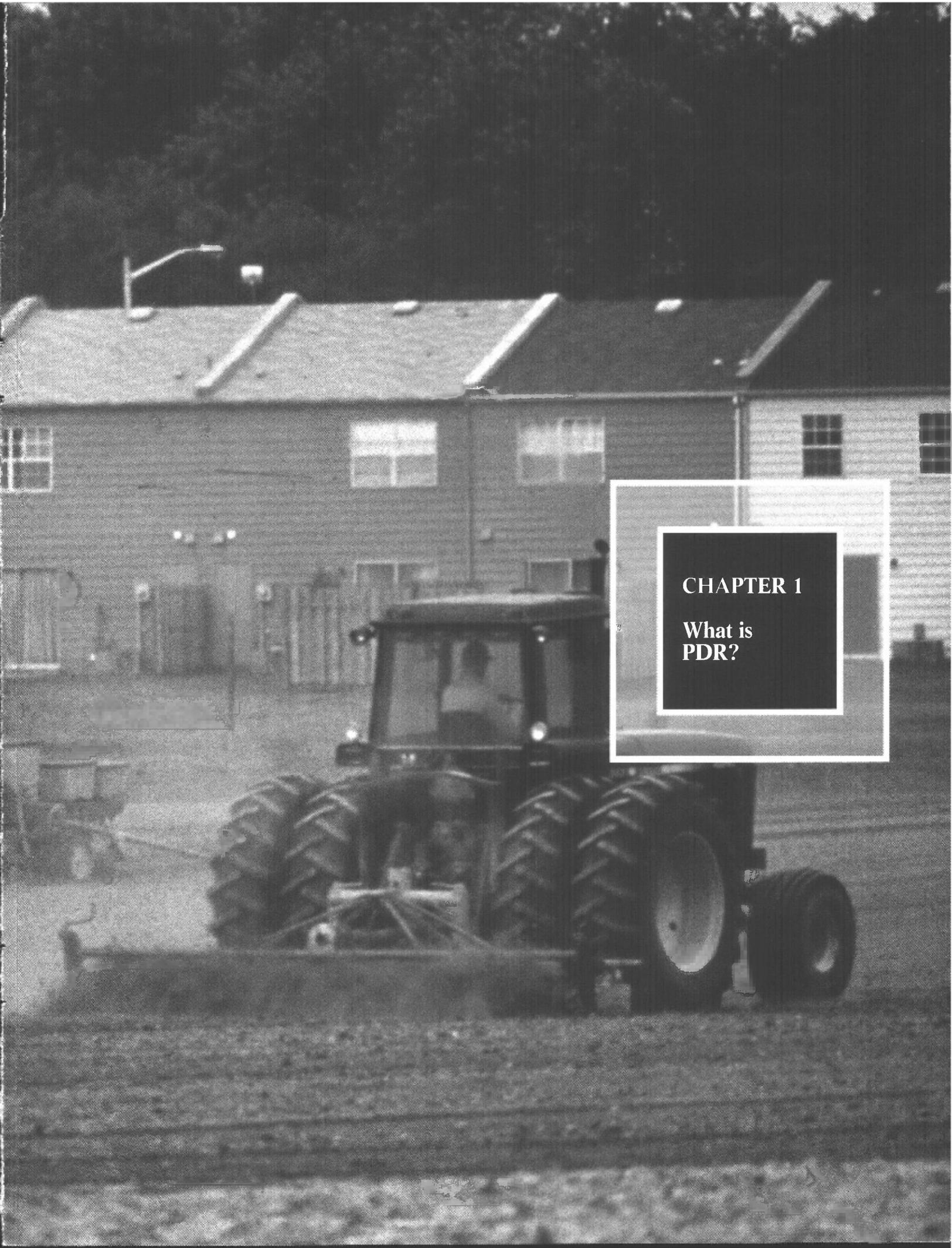
**Chapter 6: Preparing for Implementation**

Selection Committee . . . . . 32  
Appraiser Selection . . . . . 32  
Applications Solicited . . . . . 32  
Application Review . . . . . 33  
Appraisals . . . . . 33  
Finalizing Easement Language . . . . . 33  
Easement Purchase Negotiations . . . . . 34  
Tax Collections . . . . . 34  
Other Implementation Issues . . . . . 34

**Chapter 7: Implications for Other Communities Considering PDR**

Long-Range Outreach and Education . . . . . 36  
Farmer Involvement and Support . . . . . 36  
Surveys . . . . . 37  
Visible Development Projects . . . . . 37  
Demonstration Projects . . . . . 37  
Funding for Planning and Program Design . . . . . 38  
Sophisticated Campaigning . . . . . 38

Afterword . . . . . 39  
Resources . . . . . 40  
Appendices . . . . . 41



**CHAPTER 1**  
**What is PDR?**

## Purchase of Development Rights Defined

Purchase of development rights, or PDR, is a voluntary and compensatory farmland protection technique. PDR programs pay farmland owners to permanently restrict development on their land, offering liquid assets to farmers who are often “land rich and cash poor.”

Landowners possess a variety of rights, including the rights to use water resources, extract minerals or build on the property consistent with local regulations. They also possess the right to farm. These property rights may be assigned economic values. For example, mineral rights can be separated from the rest of the “bundle” of rights and sold or leased to an oil or gas company. In areas where real estate market forces are strong, the right to develop land often boasts more economic value than any other property ownership right.

When one right is removed from the land, all other rights and obligations of property ownership remain. When farmland owners sell their development rights, they retain ownership and can continue to farm their land as they did before. But they can only develop it according to the terms of the legal agreement they make when they sell their development rights. The land remains on the tax roll, and the taxable value should be — but isn't always — based on the remaining rights.

The legal mechanism used to permanently restrict the development rights on farmland is a conservation easement, a deed restriction recognized by federal law and the laws of every state, although sometimes by different names. Thus, PDR is known in some places as “purchase of conservation easements,” or PACE.

Conservation easements are voluntary agreements that remain with the land, generally in perpetuity, so the use restrictions remain in force for all future owners of the land. Flexible documents, conservation easements are negotiated between willing landowners and qualified conservation organizations or government agencies. They can cover all or part of a property and may allow the development of additional structures, including housing. Conservation easements used to protect agricultural land typically permit the building of barns, sheds, fences and other structures necessary for agricultural operations. Easement-holding organizations accept the responsibility to monitor and enforce the terms of the easements in perpetuity.

In PDR programs, conservation easements are put in place when landowners voluntarily agree to sell their development rights to a qualified nonprofit organization or governmental body with the authority and financing necessary to make easement purchases.

## How PDR Works

- All PDR programs are voluntary, ensure that participating landowners retain full ownership and control of the land and leave landowners with full rights to sell, transfer or mortgage their land, subject to the negotiated easement terms. PDR programs also are structured to reflect local priorities and the particulars of underlying legislation.

Most PDR programs determine how much to pay for development rights by assessing the difference between the land at its full market value and its value restricted by the terms of the easement. This value is generally established by a professional appraiser. Some PDR programs have opted to determine the purchase price of development rights by use of a formula, rather than by appraisals.

*When farmland owners sell their development rights, they retain ownership and can continue to farm their land as they did before.*

## How Development Rights are Valued

Fair market value of the property, before easement restrictions, as determined by appraisal \$1,200,000\*

### Less:

Fair market value of the property, subject to the terms of the conservation easement, as determined by appraisal \$750,000

### Equals:

Value of the development rights given up through the conservation easement \$450,000

\*hypothetical example

PDR programs around the country are funded in various ways, often by general obligation bonds. Other sources include real estate transfer taxes, general appropriations or other "special purpose" taxes. Funding for Pennsylvania's program shifted in 1993 from bonds to a two-cent-per-pack cigarette tax. Some jurisdictions, like Peninsula Township, have funded PDR programs with a property tax millage increase.

## PDR Nationwide

PDR programs offer farmers an alternative to selling for development, strengthen the future of farming in communities and generate funds for landowners that are often spent in ways that support the local economy. PDR programs can be politically popular because they provide a means for the public to preserve the rural character of their communities by providing fair compensation to landowners who elect to protect their properties.

Programs to purchase development rights have been used since 1976, when Suffolk County, N.Y., pioneered a program to protect agricultural land on Long Island. Maryland and Massachusetts launched statewide PDR programs in 1977. Since then, 15 states have established state or local-level PDR programs, resulting in the protection of close to 400,000 acres of farmland through purchased easements. Several others have recently established programs but have not yet used them to protect any farmland.

PDR programs are expensive, and developing the political support for PDR funding mechanisms is challenging. Additionally, PDR programs should never be seen as the panacea for a community. The most effective PDR programs are those that operate in the context of comprehensive farmland protection approaches. PDR programs have the most leverage when combined with agricultural districts, agricultural protection, zoning, comprehensive growth management and programs to enhance the economic viability of farming. Otherwise, a farm protected by a PDR program might become surrounded by non-farm development, calling into question the viability of agriculture in the area and the protected farm in particular.

## Purchase of Development Rights Programs\* as of 12/19/95

State	Year of Inception	Number of Farms	Number of Acres	Funds Spent to Date	State Funds Available	Main Source of Funds
California(a)	1980	57	43,785	\$47,356,894	\$109,000,000	Proposition 70, CA Coastal Conservancy, Property Tax
Connecticut	1978	164	25,042	\$73,430,000	\$8,800,000	State bond
Colorado(b)	1986	6	1,904	\$3,254,192	\$4,300,000	Property tax, state lottery
Maine	1990	1	307	\$380,000	\$0	
Maryland	1977	809(f)	117,319	\$125,098,899	\$8,100,000	Transfer tax, conversion tax
Massachusetts	1977	398	35,907	\$86,109,464	\$6,000,000	State bond
New Hampshire	1979	57	9,148	#	\$0	
New Jersey	1981	189	27,924	\$88,463,000	\$107,000,000	State bond
New York(c)	1976	154	6,941	\$46,000,000	\$4,950,000	Bonds, county/local match
North Carolina(d)	1987	21	1,255	\$1,785,000	\$0	Property tax
Pennsylvania	1989	561	69,752	\$121,718,305	\$15,280,000	Cigarette tax
Rhode Island	1982	30	2,428	\$14,000,000	\$0	
Vermont	1987	140	45,511	\$26,304,172	\$2,000,000	Bond, % of transfer tax, Farms for the Future funds (pilot)
Washington(e)	1979	187	12,600	\$58,000,000	\$1,500,000	Bonds
<b>Totals</b>			<b>399,823</b>	<b>\$691,899,926</b>		

\*Also known as Purchase of Agricultural Conservation Easements

# Currently unavailable

(a) Marin, Monterey and Sonoma Counties

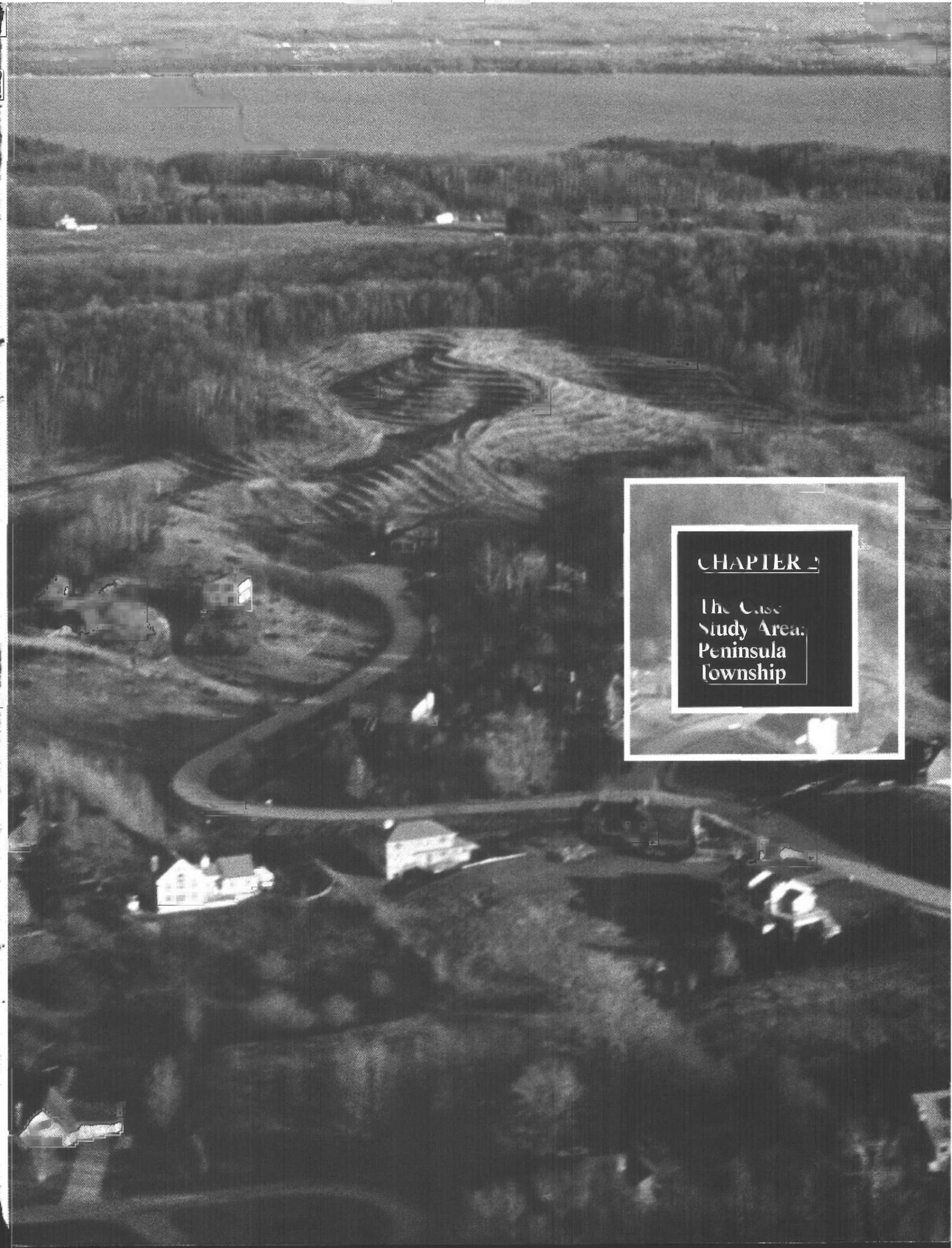
(b) City of Boulder

(c) Suffolk County, Towns of East Hampton, Southampton and Southold

(d) Forsyth and Wake Counties

(e) King County

(f) Recorded easements



**CHAPTER 2**

The Case  
Study Area:  
Peninsula  
Township

## History of Agriculture on the Peninsula

The Old Mission Peninsula, a 17-mile-long, 2 1/2-mile-wide land mass bisecting Grand Traverse Bay in the northwest part of lower Michigan, has supported agriculture as long as people have inhabited it. When the first European settlers arrived in 1839, Native Americans were growing corn, squash and apples within an extensive forest. The lumber industry, which began harvesting timber on the peninsula in 1847, accelerated the conversion of forest to farmland. Concurrently, treaties between the federal government and the native inhabitants opened land for homesteading.

Peninsula Township was incorporated on April 4, 1853. One year earlier, the Rev. Peter Dougherty, the region's first European settler, had planted a cherry orchard in the Old Mission town site. Another early settler, John Garland, raised the first peach crop in 1859. By 1867, so much fruit was grown that a fruit center and exchange was established on the peninsula to ship the produce to other ports on the Great Lakes.

The first commercial cherry orchard opened on the peninsula in 1893. Many area farmers followed suit, converting potato fields to cherry orchards to take advantage of the lucrative cherry market, which grew when lake and overland rail transportation improved. The cherry conversion was so rapid that by 1905, red tart cherries had become the dominant crop in the area. Fruit was shipped to Chicago, Milwaukee, Toledo and Detroit via rail or lake schooner.

Settlers bought the first recorded parcels in Peninsula Township between 1860 and 1865.

DESCRIPTION.	SECTION.	TOWNSHIP.	RANGE.	ACRES.	1000sq.	BY WHOM PURCHASED.	RESIDENCE.	KIND OF ENTRY.	FINAL PROOF.	DATE OF PATENT.	REMARKS.
242941014 629											
E 1/2 of N E 1/4				40		John Pulcifer	Grand Traverse Co. M.	R		Jan 18 1864	
N 1/2 " N E 1/4				40		Edwin Pulcifer	" " " " "	Warrant 1812		July 19 1864	
S 1/2 " N E 1/4				80		Alvin F. Allen	" " " " "	Warrant 1812		July 21 1860	
E 1/2 " S N 1/4				40		Hiram S. Allen	" " " " "	Warrant		Aug 11 1860	
N 1/4 " S N 1/4				40		Hiram S. Allen	" " " " "	Warrant		Aug 11 1860	
N 1/2 " S E 1/4				80		Alvin F. Allen	" " " " "		R	Dec 25 1860	
E 1/2 " S E 1/4				80		Harrison Pulcifer	" " " " "	Cash		Sept 4 1866	
S N 1/4 " S N 1/4				40		Hiram S. Allen	" " " " "	Warrant 1812		Aug 11 1860	
Lot No 1				6988		Alvin F. Allen	" " " " "	Warrant 1812		July 21 1860	
262941014											
N 1/2 of N E 1/4				40		Joseph B. Hamilton	Lansing Co M.	R		Sept 2 1864	
E 1/2 " N E 1/4											
N 1/2 " " "											
E 1/2 " S E 1/4				480		A. R. & J. R. Co.				Approved June 1870	
N 1/2 " S E 1/4				80		H. S. Beach	Grand Traverse M.	R		Patented Mar 28 1871	
										Nov 30 1864	

Courtesy of Jeanne Weerphal.

Over the years, peaches, pears, apricots, plums and apples were planted, but the importance of cherries to the area's regional identity cannot be understated. Almost every public institution and nearly every family has been touched by the industry. Weddings and other social functions were then and still are planned to avoid the harvest season. Cherries were so important that in 1923, community leaders instituted a religious ceremony to "bless" the blossoms. Over time, this ceremony evolved into the annual week-long National Cherry Festival, which attracts thousands of visitors to Traverse City every July.

Today the Grand Traverse area continues to produce almost 40 percent of the red tart cherries in the United States, thanks largely to the area's rolling terrain and unique microclimate. Cold air settles in the peninsula's valleys, creating warm pockets for planting atop hillsides. Lake Michigan, too, plays a large role. Its waters keep the area cool in the spring, thus preventing early buds that could be destroyed by frost. In fall, the lake warms the land mass long after summer has ended. As a result, the area has at least 50 more growing days per year than areas further inland at the same latitude.

However, the tart cherry industry has declined in the last decade. Failure to develop new markets has exacerbated the problem of limited demand for its large supply of cherries. In response, farmers have developed new enterprises, such as vineyards. By 1996, four wineries operated on the peninsula.

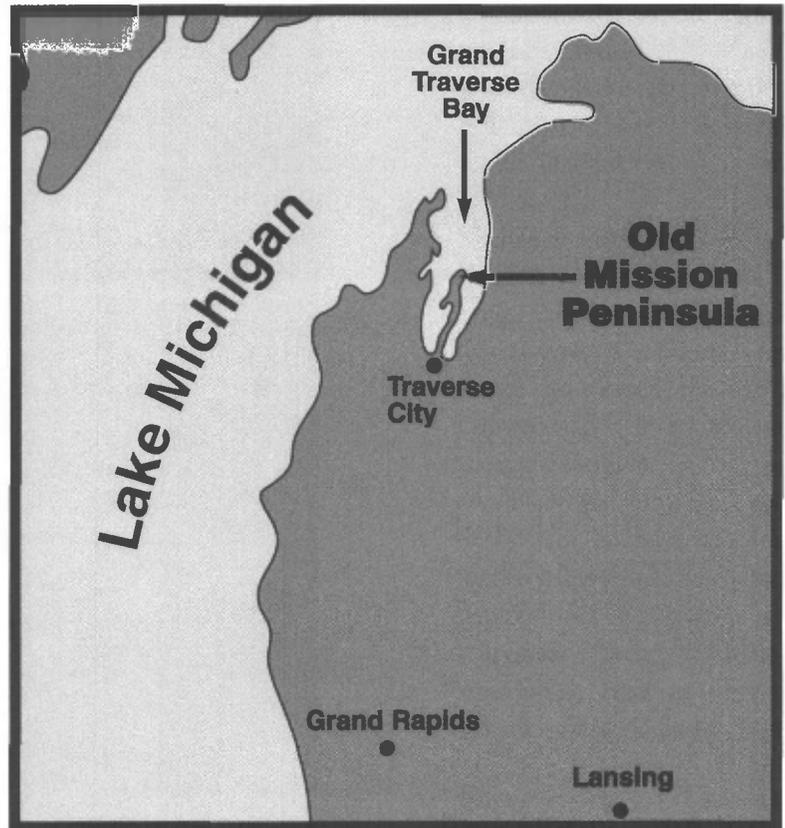
## Development Threatens Agriculture

Seasonal visitors have long been a part of the peninsula's history. In the late 1800s, church groups from Cincinnati and Chicago established separate summer resort areas on the peninsula. The resort guests struck a synergistic relationship with local farmers, who provided fresh fruits and vegetables in summer and cut ice in winter. In exchange, resort-goers provided markets for the farmers.

Church groups were just the beginning. Once discovered by wealthy residents of Chicago, Detroit and other large Midwestern cities, the scenic peninsula became a magnet as a summer "retreat" for the well-to-do, including Henry Ford, who owned an island within the township borders.

Despite the seasonal ebb and flow of visitors, many farm families and vacationers occupied the same property for four or five generations. Currently, 11 Centennial farms — farms in the same family for a century or more — are registered with the Michigan Bureau of History; at least 10 more likely could qualify for the designation.

In the last 25 years, growth of the Grand Traverse area has spurred a dramatic expansion in Peninsula Township's housing industry. Between 1980 and 1990, the township's population grew by 13 percent. Between 1970 and 1980, growth reached 45 percent.



*The Old Mission Peninsula is influenced by a warming microclimate created by Grand Traverse Bay.*

## Population Growth

Year	Peninsula Township	% Change
1930	1,107	
1940	1,146	3.5
1950	1,531	33.5
1960	2,013	31.4
1970	2,642	31.2
1980	3,833	45.1
1990	4,340	13.2

In many situations, farmers who are unable to meet production costs or mortgage payments have been forced to sell some of their land. In other cases, farmers, even profitable ones, are tempted by land values exceeding \$4,000 per acre because of a growing demand for housing. Many farmers have chosen to either sell individual building sites or their whole properties to developers and retire on the proceeds. Escalating land values and declining farm profits have combined with increasing conflicts between farmers and new homeowners to encourage conversion of farmland to residential development. Those factors threaten to destroy the peninsula's best soils and forever change its agricultural character and way of life.

*The Grand Traverse area produces close to 40 percent of the nation's red tart cherries.*

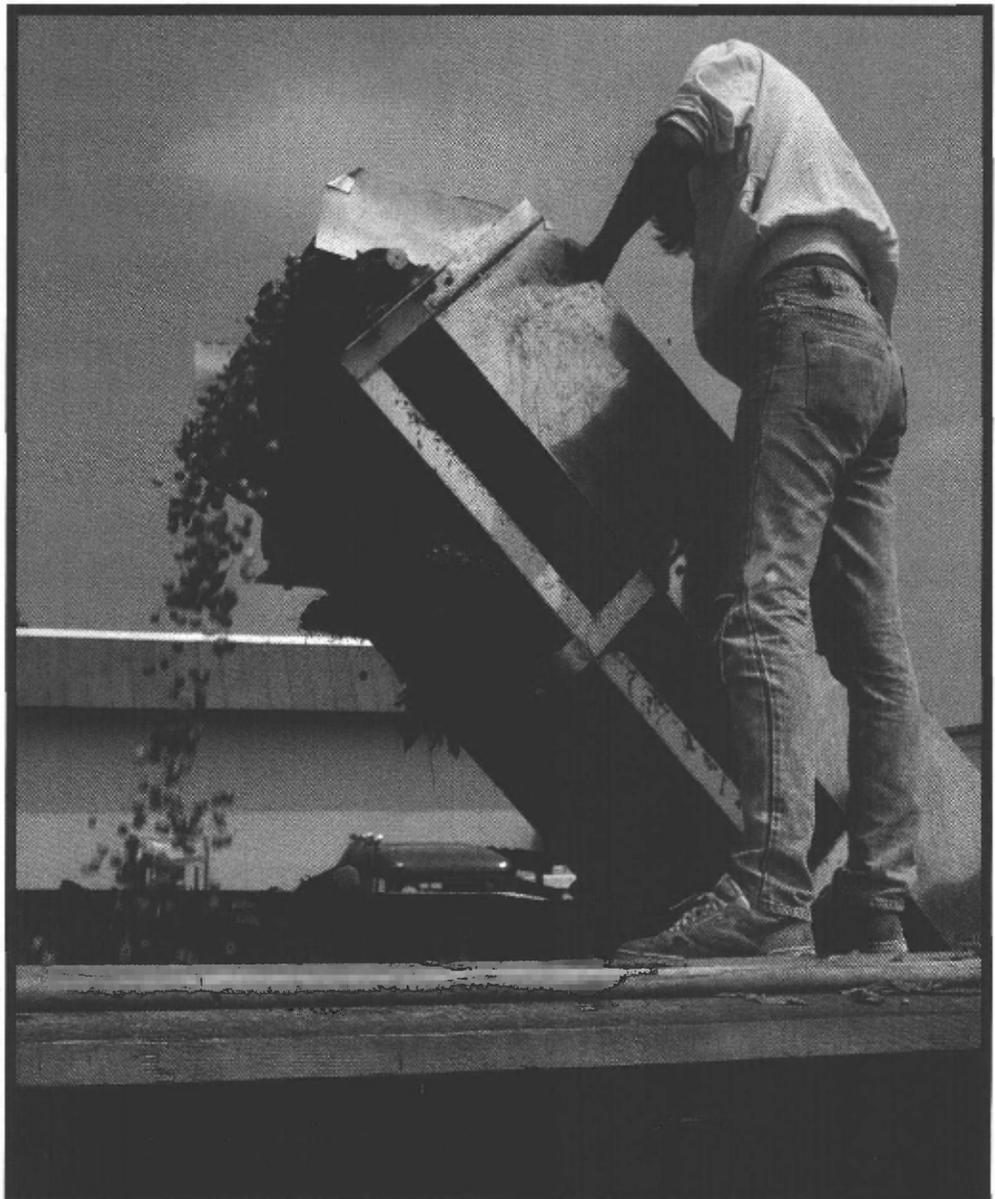
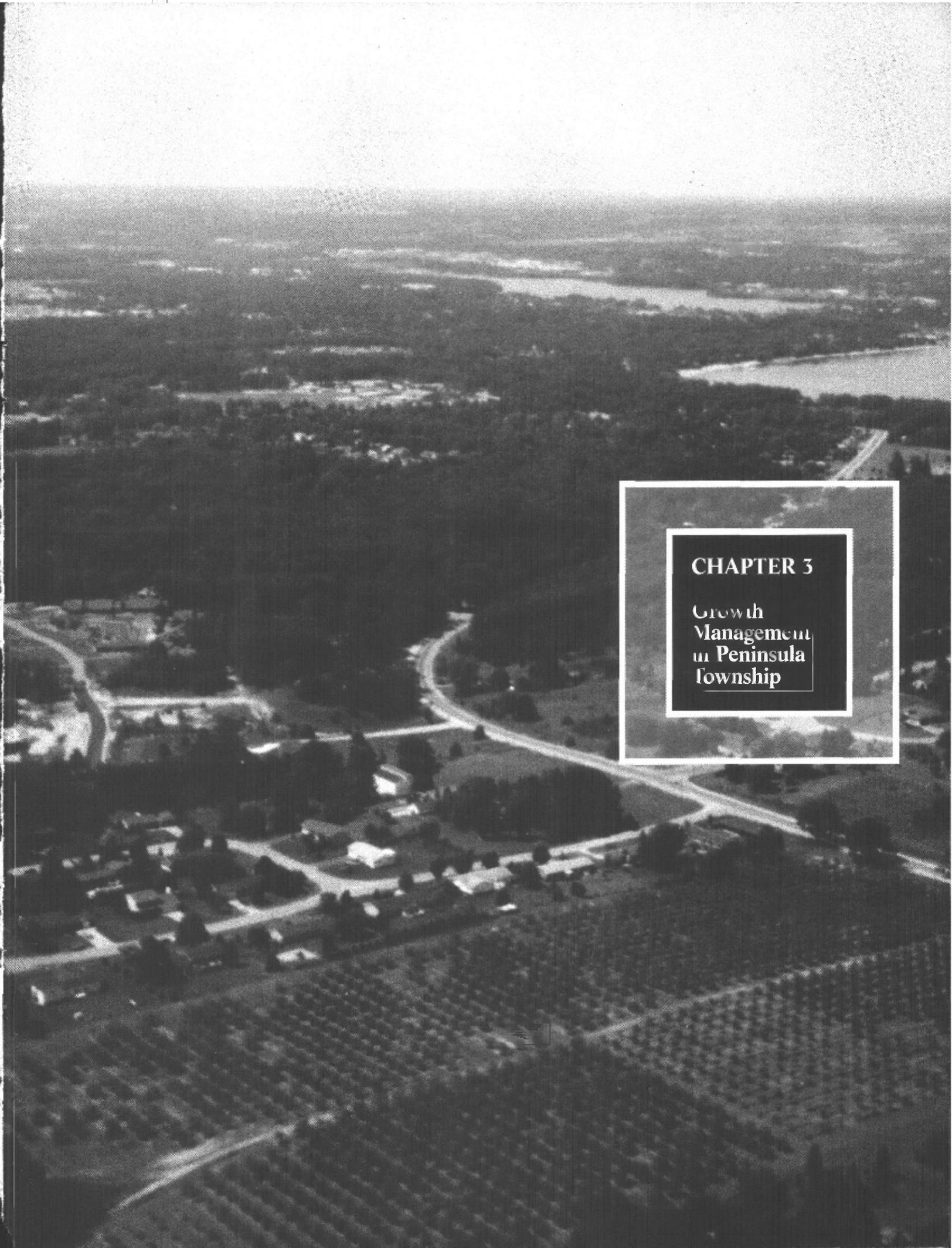


Photo courtesy of Joanne Westphal.



**CHAPTER 3**

**Growth  
Management  
in Peninsula  
Township**

## Township Leaders Try to Curb Sprawl

Under Michigan statute, Peninsula Township is governed by an elected Township Board, including a paid supervisor. A paid township planner and an appointed Planning and Zoning Commission recommend land use policies.

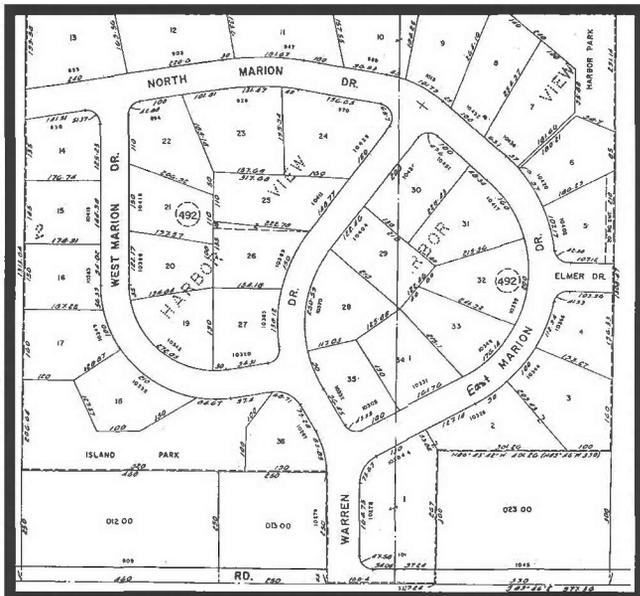
Peninsula Township formed its first Planning and Zoning Commission in 1968 in response to citizen perceptions that uncontrolled growth on the peninsula would threaten agriculture and create urban sprawl. That year, the Township Board also adopted the peninsula's first comprehensive zoning ordinance. The plan adopted by the Planning Commission strove to establish areas that would best support residential development.

An important feature was a large-lot residential zoning requirement of a minimum of five acres per dwelling unit on agricultural land. The purpose of this zoning was to keep the population density low in agricultural areas and prevent fragmentation of farm parcels.

Public hearings on the comprehensive plan were well attended. Many residents, including farmers, provided input on the minimum lot size requirement in the agricultural zone, which covered 10,000 of the township's 17,000 acres.

However, large-lot zoning failed to prevent fragmentation. The five-acre limitation did not deter the traditional core of vacationers and a new influx of permanent residents, who began to build homes along the shorelines and on former farms. The residential zoning did not take into account that some parcels are better suited for agriculture than others. On the peninsula, the best agricultural land is often on elevated slopes prized by developers for their scenic vistas. Five-acre zoning, in fact, may have increased the rate at which agricultural land was taken out of production once the preferred shoreline was developed. Requiring 25 acres or more for agricultural protection zoning might have been more effective.

*The Harbor View subdivision and the nearby Horizon Hills development house close to 300 residents on formerly productive farmland.*



Courtesy of Peninsula Township.

The plan was based on a development scenario that saw residential land use spreading from Traverse City north onto the peninsula, with the greatest density remaining in the most southerly quarter of the township. And because shoreline buildup also was anticipated, the majority of the shoreline was designated for residential use in the master plan.

In 1975, the Planning Commission revised the comprehensive plan to recognize that development was moving inland from the shoreline, not northward from Traverse City. Five-acre minimum lot sizes remained in effect. Since then, little variance to the comprehensive land use plan has been permitted. However a slow, almost insidious, conversion of farmland has taken place.

At first, the loss of commercial orchards occurred primarily on the heavy soils of the coastal plains — areas having low agricultural production, but high recreational potential. But by 1974, developers were converting higher, productive areas with the best agricultural conditions to satisfy new residents.

That year, the sale of two farms on some of the best cherry-growing land in the southern part of the township alerted the farming community to impending conflict with development. Both farms, owned by Victor Friday and Elmer Warren, were purchased by developers who rapidly converted them into two subdivisions. Horizon Hills and Harbor View now house close to 300 residents.

## The Proposed Bluffs Developments

From 1976 to 1987, a series of proposals for a subdivision known as “The Bluffs” created greater concern about development and its impacts. When township officials approved rezoning agricultural land on a substantial area in the central part of the peninsula to build the “Bluffs” development, local residents strongly opposed.

Public concern was so great that residents overturned the Township Board rezoning in a 1977 referendum. A new advocacy group called “Protect the Peninsula” emerged from the controversy. PTP became active in informing citizens about upcoming rezoning proposals.

In 1981, a second proposal — Bluffs II — generated opposition from shoreline owners, who joined PTP members in overturning the rezoning in a second referendum vote. In 1987, developers for Bluffs III applied for a special use permit to allow a golf course, a commercial area and an extensive housing development. The township board approved the special use permit, but PTP filed suit against the township and developer. The special use permit expired during the litigation, and the project died before it could break ground.

The fallout from the Bluffs proposals greatly affected the makeup of township personnel in 1988. Three new Township Board members, including Rob Manigold as supervisor, were elected on a preservation platform. The part-time township planner and part-time zoning administrator were replaced by Gordon Hayward as township planner/zoning administrator.

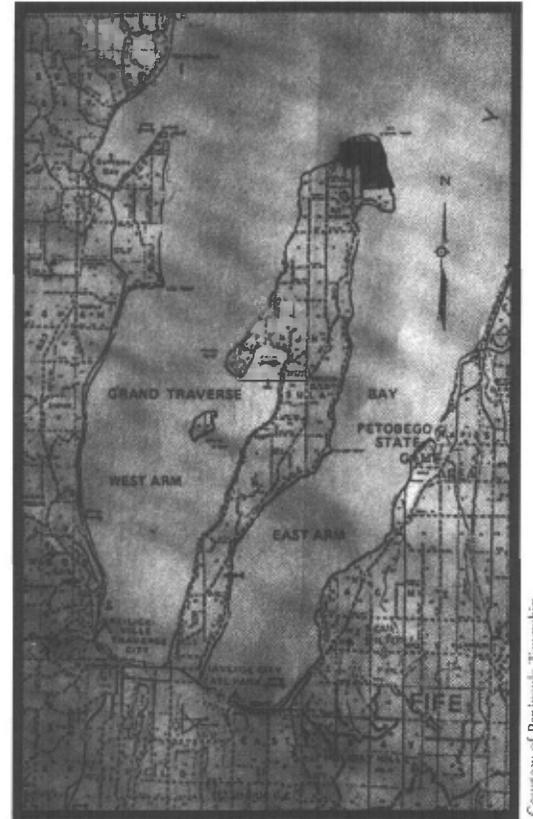
At the same time, a local land trust calling itself the Old Mission Conservancy formed. OMC, with Manigold as president, had protected more than 400 acres with voluntary conservation easements by 1992.

## The Murray Farm

The issue of residential growth versus farmland conservation surfaced again when a bank foreclosed on the owners of the 507-acre Murray farm in 1988. With 8,000 feet of Lake Michigan shoreline and prime cherry-growing land, the property was attractive to developers, who could build more than 100 single-family residences under existing zoning requirements.

The Murray property, believed to be the site of the Midwest’s oldest tart cherry orchard, beckoned developers because it overlooks the bay from the tip of the peninsula and adjoins a township park on leased state-owned land. Realizing the spinoff a development of that magnitude could have on peninsula agriculture, the new township supervisor, Rob Manigold, a fourth-generation farmer, solicited the help of American Farmland Trust. A private, nonprofit conservation organization founded in 1980 to protect the nation’s agricultural resources, AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment.

AFT purchased the land for \$2.1 million, holding the property until the Michigan Department of Natural Resources could buy it for a new state park. The Michigan DNR, committed to retaining agriculture on the site, combined agricultural use with a low-impact recreational area in the park’s concept plan.



Courtesy of Peninsula Township.

*American Farmland Trust purchased the 507-acre Murray Farm at the northern tip of the peninsula in 1988 to protect it from impending development.*

*Township leaders began to view an easement purchase program as a potential solution to the farmland conversion problem.*

The considerable publicity surrounding the Murray farm crisis and its subsequent protection by AFT generated much attention on the peninsula and in the region. For many, it was the wake-up call necessary to stimulate a discussion of how to ensure the peninsula's agricultural future.

As a further demonstration, AFT acquired the Horton farm, adjacent to the Murray property, and worked with the township to develop a limited development approach to protect the farm's orchardland. The orchards were resold subject to a conservation easement, while other, wooded parcels were sold subject to restrictive covenants that specified the location of a few residences.

## **The Need for More Tools**

Between 1968 and 1989, the peninsula lost 1,100 acres of agricultural land. With resident frustration mounting in the wake of the near loss of the Murray farm, the Planning Commission and Township Planner Gordon Hayward sought to update the comprehensive plan to protect existing agricultural land and open space.

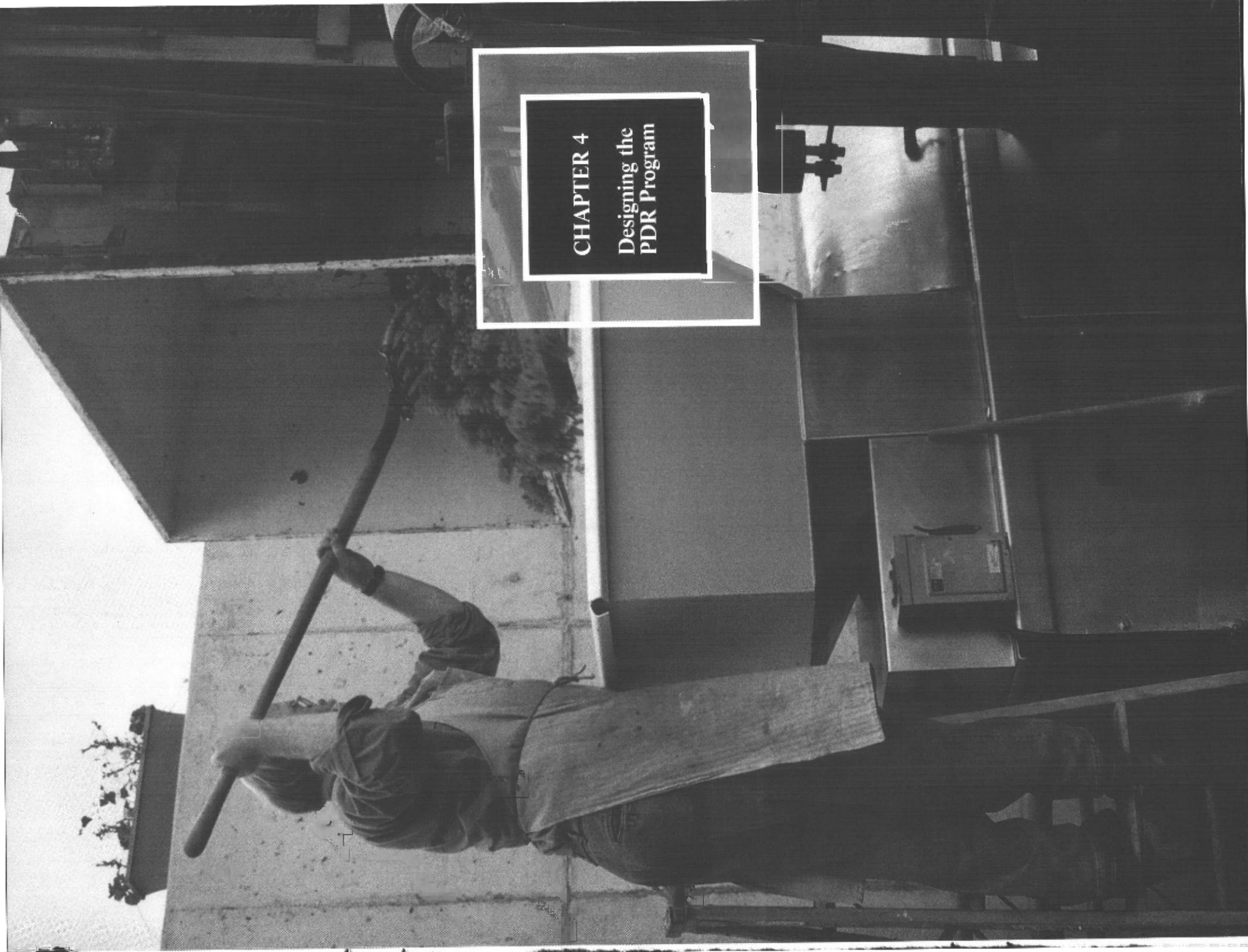
Hayward secured grants from the Michigan Coastal Zone Management program and Rotary Charities, a local foundation, as well as help from the Institute for Public Policy and Social Research and the Landscape Architecture Program at Michigan State University. The challenge was to protect farmland and scenic views while establishing areas that would best support residential development.

Township leaders had been skeptical when they heard about PDR in the 1970s. Now they began to view an easement purchase program as a potential solution to the farmland conversion problem. They recruited expertise from AFT, which provided information on PDR programs throughout the country and referrals to the people who created and implemented them. Township officials also tapped Michigan State University in the information-gathering effort and acquired a geographic information system for information and analysis.

MSU, the state's land grant university, has a long history of community assistance. In particular, MSU's Landscape Architecture Program often has worked with communities throughout the state on landscape design projects. Originally contacted to help with park design needs in the township, MSU soon joined the township in its quest to create a new comprehensive land use plan by creating new base maps of important physical and cultural features on the peninsula.

MSU provided maps depicting land use change and fruit-growing capabilities, historic sites like Centennial farms, viewsheds and other areas of significance to local residents, as well as management options for the township. Preliminary work on establishing a GIS-generated map for the township also was begun. Led by Dr. Joanne Westphal, research associate with MSU's Institute for Public Policy and Social Research, the university also contributed survey research and public education expertise to the planning effort.

Meanwhile, heightened interest in managing growth in the region spurred the formation of a regional land trust in 1991. Called the Grand Traverse Regional Land Conservancy, the Traverse City-based land trust received start-up funding from Rotary Charities. GTRLC worked with the Old Mission Conservancy — which concentrated its work on the peninsula — to secure conservation easements in the township to protect important natural habitat areas. The conservancies' first farmland conservation easement was recorded in 1992, helping further awareness about farmland protection.



**CHAPTER 4**  
**Designing the  
PDR Program**

*Of utmost concern was the nature and extent of new development, the loss of significant farmland and the increasing population in the township.*

Bringing PDR to Peninsula Township was a collaborative effort between township officials, planners, academicians, land trusts and local residents. Township Supervisor Rob Manigold was the main force behind the program. His constant contact with the farmers and the other Township Board members as well as his guidance for staff was key to making the program successful.

A township ordinance would provide the legal basis for enacting a PDR program and include a tax millage increase as its primary funding source. Board approval of the ordinance and voter approval of the millage increase were both needed to enact PDR in the community.

Before the Township Board approved a PDR ordinance in May 1994, it:

- Surveyed township residents;
- Publicized PDR;
- Formed citizen study groups to achieve resident input;
- Directed the Planning Commission to draft an ordinance; and
- Studied financing options.

## **Surveying the Populace**

The initial step in the planning effort involved an analysis of the conflict between residential development and agriculture. As part of this, the township conducted a series of surveys to gauge resident support of and interest in farmland conservation.

With guidance from MSU, township staff mailed a survey to residents and property owners in November 1990. Shortly thereafter, Westphal followed up with personal interviews of farmers. Along with the survey activity, the township and MSU undertook data collection of various types. Analysis of the data indicated some important changes occurring on the peninsula. Of utmost concern was the nature and extent of new development, the loss of significant farmland and the increasing population in the township.

The township had received a reliable set of baseline maps on soils, vegetation, topography, historic resources and changing land use patterns from MSU undergraduates in 1989 and 1990. Hayward, the township planner, enhanced the map data with new aerial photographs of current land use.

The need to overlap disparate pieces of data and to weigh or prioritize information drove an effort to computerize all the map data. Base maps and subsequent mapping activities were placed on a computerized geographic information system, or GIS, during 1991. Over time, individual tax parcel boundaries were digitized to identify property owners on a geographic or spatial basis, and assessment records were attached for landowner identification purposes.

## **Public Education**

AFT identified key speakers to address alternative planning options in the protection of agricultural and open space. In public forums in the township hall, Edward Thompson Jr., then AFT's general counsel, and Mike Leaman, manager of a PDR program in Forsyth County, North Carolina, presented information on the legal and practical aspects of establishing a PDR program. Both presentations were very well attended by area farmers and helped develop grower support. Manigold reinforced the forums' concepts at the local coffee shop, where he spent many hours hearing farmer concerns and offering suggestions.

The presentations were part of a broader educational program directed toward informing the electorate on planning issues facing the township. Several township newsletters describing progress on the comprehensive land use plan update were mailed to each property owner. Hayward contacted newspaper, radio and television reporters when significant actions or issues were being considered by the Township Board. When appropriate, press releases were distributed to help reporters understand the issues and reasons underlying specific planning actions.

Such outreach activities not only created public awareness about planning issues but also served as an important preparatory step in involving citizens in the revision of township policies affecting the comprehensive land use plan. By cultivating a relatively informed public, little time had to be spent backtracking and educating citizens on growth issues affecting the township.

## **Citizen-Based Study Groups**

In fall 1991, the township Planning and Zoning Commission requested assistance from citizens in 10 policy areas under consideration for Comprehensive Land Use Plan amendments. Each group — comprised of four to 10 people who were invited to participate or had responded to township notices — took charge of developing policy and action statements on a variety of topics, including agricultural policy, loss of natural resources and water and sewer service. (Appendix A)

The agricultural policy group recommended to the Planning and Zoning Commission that the township consider adopting a policy that would, in essence, recognize an agricultural preservation area on the peninsula. It also suggested that land within this area be considered for a township PDR program.

The natural resources/open space group, which recommended the protection of scenic vistas as a top priority for township government, also recommended use of PDR. The group's support of PDR for preserving both agricultural lands and scenic views later made up the thrust of the argument for PDR.

Several of the policy groups and township officials considered the fiscal consequences of continued sprawling residential development versus a policy of more compact, efficient development that protected farmland. Studies by AFT and the Michigan Society of Planning Officials evaluating the cost of community services showed that, as a rule, residential development does not generate sufficient revenues to support the cost of services required by schools, water, sewer, police, fire, roads, etc. On the other hand, COCS studies show that farmland generally more than pays for the services it requires. (Appendix B)

After six months, the policy groups generated a new set of public policies as well as a cadre of residents knowledgeable about land use and public policy issues. The policy groups gave formal presentations at a Planning Commission meeting that many consider pivotal to the success of the conservation effort. For the first time, a taxpayer-funded program with some control over land use and growth seemed feasible. Some individuals from this group became instrumental in generating citizen support for the ensuing PDR ordinance and tax referendum vote.

## Summary of Cost of Community Services\*

	Residential (including farm houses)	Commercial/Industrial	Farm/Forest/Open Land
<b>Connecticut</b>			
Hebron	1:1.06	1:0.47	1:0.43
<b>Massachusetts</b>			
Agawam	1:1.05	1:0.44	1:0.31
Deerfield	1:1.16	1:0.38	1:0.29
Gill	1:1.15	1:0.43	1:0.38
<b>New York</b>			
Beekman	1:1.12	1:0.18	1:0.48
North East	1:1.36	1:0.29	1:0.21
<b>Minnesota</b>			
Farmington	1:1.02	1:0.79	1:0.77
Lake Elmo	1:1.07	1:0.20	1:0.27
Independence	1:1.04	1:0.19	1:0.17
<b>Ohio</b>			
Madison Village	1:1.67	1:0.20	1:0.38
Madison Township	1:1.40	1:0.25	1:0.30

\*Ratios of municipal tax revenue to cost of community services.

Courtesy of AFT.

## Planning for PDR

In 1993, with help from Hayward and Westphal, the Planning Commission began to work with a diverse steering committee to formulate the PDR program and develop criteria for property selection. They modeled it after King County, Washington's PDR program, which included an ordinance and individual, tailored easements crafted from a "boilerplate."

The Planning Commission reviewed various farmland protection programs in considering what characteristics of farm property should be considered and which should have priority in Peninsula Township's program.

The prevailing view was that the township needed enough money to buy a block of protected land to avoid fragmented "islands" of protection surrounded by development. They believed a small parcel designated as farmland or open space in perpetuity might actually attract development to its periphery. The township decided on a program that would preserve sufficient farmland — some 3,000 acres — to ensure an agricultural industry in the township rather than a piecemeal approach. Their criteria included: agricultural productivity according to the tart cherry index, scenic significance and proximity to other protected lands.

The Planning Commission aimed for a selection process that would follow a logical progression and promote equitable evaluation of applicants. It agreed that a selection committee should include farmer representatives and others who would provide good geographic distribution from throughout the township.

The citizen study groups also addressed economic issues related to compensation for landowners seeking to sell their development rights. After spending a great deal of time trying to come up with a point system, the group decided to use case-by-case appraisals to reflect the disparity among township farms.

The township, meanwhile, investigated its legal ability to create and finance a purchase of development rights program. Hayward, in consultation with the township attorney, identified enabling legislation to establish a program. (Appendix C)

Two Michigan legislative acts served as the legal basis to create the PDR program. Act 116 of 1974, the Farmland and Open Space Preservation Act, defines development rights and development rights agreements. Act 197 of 1980, the Conservation and Historic Preservation Easement Act, specifically identifies conservation easements as an "interest" in property that can be bought, sold, recorded and enforced. Act 197 also specifies that easements may be assigned or sold to a governmental body or other legal entity.

The steering committee, along with the township planner, combined the legal information with recommendations from MSU. Ultimately, this information became the PDR ordinance, which was approved by the Township Board on May 4, 1994. (Appendix D) The vote was not taken lightly by township board members. Some were concerned the program would lead voters to protest against higher taxes.

## **Paying for PDR**

The matter of financing the township's PDR program entailed much deliberation by the Township Board, which first looked at whether to accrue the necessary funds up front or pay project by project. Considerations for financing included floating a bond issue to enable lump-sum purchases or using a property tax increase to make annual payments on installment contracts. Under Michigan law, only charter townships are permitted to float bond issues. Peninsula Township is not a chartered township; therefore, a referendum vote for a property tax increase became the best available solution. (Act 99, P.A. 1933 - Municipal Property, Purchase on Installments, served as the basis for carrying out the second financing option.) A referendum vote was scheduled for August 2, 1994.

## **Citizens Unite Behind PDR**

One year after the township-appointed policy groups completed their consideration of farmland protection issues, an independent group, "Concerned Citizens in Support of PDR" formed. Under the leadership of John Wunsch, a third-generation township orchard owner and musician, Concerned Citizens began to examine the advisability of PDR for Peninsula Township.

The PDR concept had been discussed throughout the township by government, conservancies, the agricultural community and the population at large for about four years. When the Planning Commission established ordinance language, residents were given something concrete. As a result, Concerned Citizens began to assess the practical value of PDR for Peninsula Township.

*Considerations for financing included floating a bond issue to enable lump-sum purchases or using a property tax increase to make annual payments on installment contracts.*

The group's founders operated from the following principles:

- 1) honest reporting of all research on the issues;
- 2) respect for the rights and practical needs of farmers; and
- 3) implementation of a program as independent of politics as possible.

Wunsch set the stage for a strong advocacy group by forming a study group more than a year before the referendum. He created a list of 50 potentially interested residents representing both "pro" and "con" viewpoints on PDR and invited them to participate in two meetings over the summer of 1993 to discuss the advisability of establishing a PDR program. Approximately 35 people attended the first two meetings, which seemed to promote positive feelings about the potential of a PDR program. At both meetings, participants suggested zoning could solve the problem without an added tax burden. Discussions ensued regarding private property rights and the tenuous and political nature of zoning. In the end, the meetings seemed to serve as a forum for venting frustrations about taxation and government control.

Meeting participants also received detailed information on the draft PDR ordinance and its financial implications. At the first meeting, Hayward gave an overview of

farmland protection in the township. The second get-together opened with a question-and-answer session on PDR. Wunsch and others urged the audience to get involved in creating recommendations for the township Planning Commission. Those not attending were asked to call or write in their opinions, and meeting minutes were sent to all interested persons.

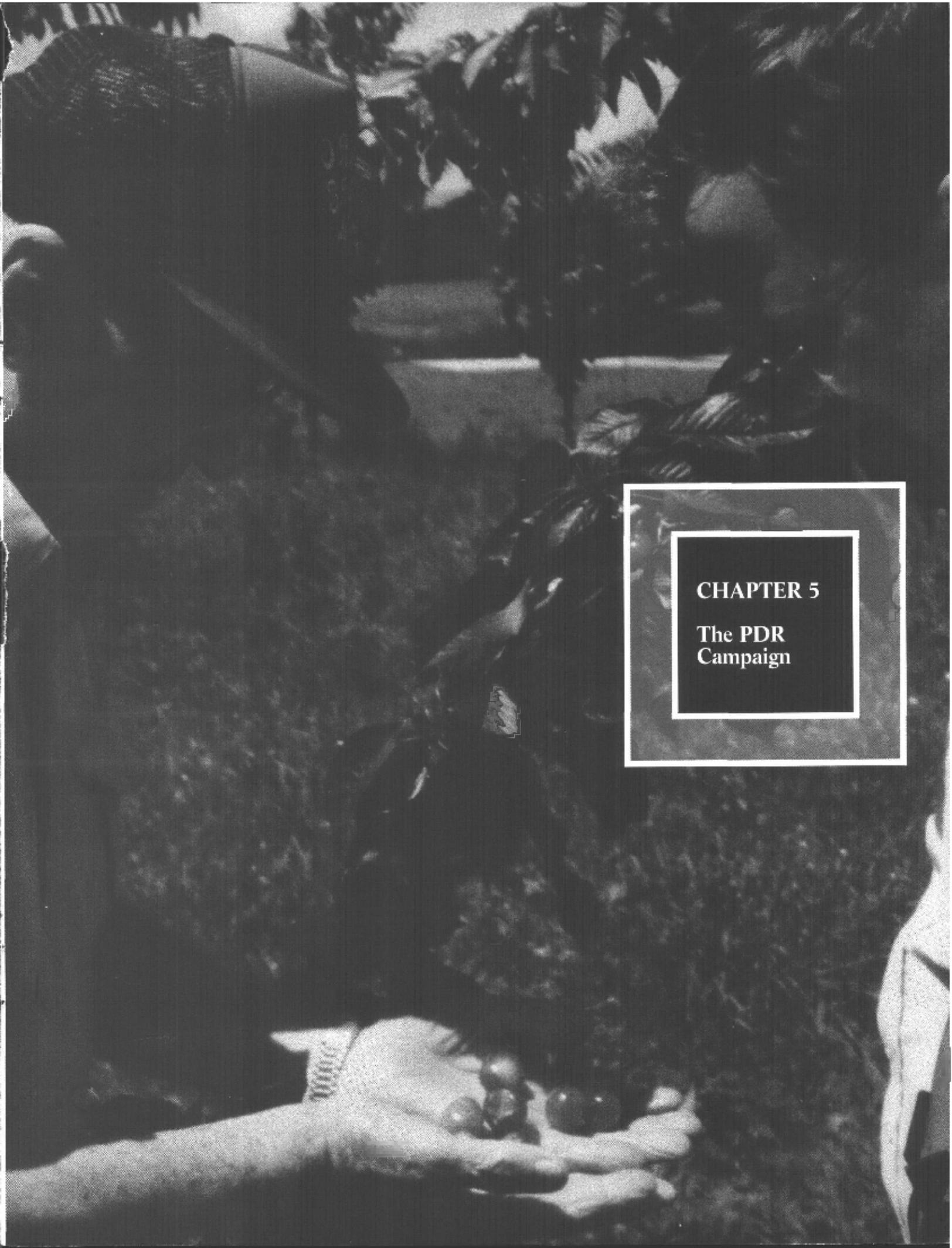
The meetings promoted lively debate and discussion on how PDR had worked in other areas. In the end, they resulted in a corps of volunteers that became the base from which a reporting committee, a steering committee, a financial committee and, finally, a campaign committee emerged.

The committees worked hard from fall 1993 through spring 1994, keeping in contact with a growing mailing list. They presented extensive recommendations to the township, including proposed changes to the draft ordinance and structure of the proposed PDR program; a 52-page report on various options to finance PDR, including how much acreage could be protected under each scenario; and a plan and timeline for the public education campaign.



Courtesy of Jeanne Westphal.

*A core group of township residents concerned development would continue to encroach on farmland organized to examine the feasibility of PDR.*



**CHAPTER 5**

**The PDR  
Campaign**

## The Campaign Begins

The campaign to influence voters in favor of the PDR referendum began just three months before the referendum date: August 2, 1994. A good deal of work was already in place.

Because "Concerned Citizens" began working as a study group in 1993, a team of about 65 informed people with a stake in the creation of PDR already had formed. The group — 30 of whom dedicated themselves to the day-to-day work of the campaign — also helped communicate that the proposed PDR program would be a creation of township residents in cooperation with township staff, not a bureaucratically imposed burden.

Among others, the core group of campaign volunteers included six individuals: Lou Coulter, farmer, Conservancy board member and soil district conservationist; Rex Hite, accountant and former member of the township Planning Commission; Jim Lively, Old Mission Conservancy board member and Council of Governments administrator; Mark Nadolski, realtor, long-time township activist and president of the citizen group "Protect the Peninsula;" Dr. Westphal from MSU and Wunsch. Two others later joined the effort: Fred Doelker, a media expert with campaign experience, and Judy Doelker, a graphic artist with experience in presenting complex issues to the public.

The campaign was coordinated centrally through its chairman, Wunsch, who, along with the core group and other volunteers, took responsibility for different activities, such as: volunteer coordination, door-to-door organization, media contacts, video production, TV advertising, speaker and volunteer training, informational mailings, fundraising, campaign planning and soliciting endorsements.

The campaign commenced in a highly emotional atmosphere driven by strong feelings both for and against a taxpayer-funded PDR program. Residents had seen a significant reduction in property taxes after Michigan legislators in 1993 had restructured the tax code to shift education funding from property taxes to the sales tax. Proponents justified PDR as a way to use tax authority on a local level to have immediate beneficial impacts on the township. Opponents saw it as the beginning of a process to increase local taxes and eliminate the recent gains in state tax relief.

## Underwood Farms

Adding to this atmosphere was a true sense of sadness by most residents, even those in opposition, at what they perceived as a hopeless scenario of farm after farm giving way to more and more residential development. This sense was made painfully real by the Township Board's approval in fall 1993 of the Underwood Farms development, which would convert some 500 acres of very scenic farmland at the southern end of the peninsula into houses and condominiums.

During the summer of 1993, while the citizen support group was forming, well-attended, heated public hearings were held on Underwood Farms. When the development was approved by the Planning and Zoning Commission after much negotiation with township officials, opposition to the loss of additional farmland in the township was galvanized. The development plan won awards for its preservation of scenic views and was seen as a "sensitive" development under existing zoning. But the Underwood Farms project made it clear that five-acre zoning could not save township farmland.

*The Underwood Farms project made it clear that five-acre zoning could not save township farmland.*

In May and June 1994, the early stages of the campaign, Underwood developers uprooted hundreds of cherry and apple trees in full bloom, pushed them into large piles and burned them. Meanwhile, heavy equipment began the irreversible process of grading excellent topsoil to create home sites. Located off the township's main artery just two miles onto the peninsula, the Underwood development signified what the future could bring. The fate of Peninsula Township agriculture looked bleak without a viable program to assist farmers who wanted to avoid development. To many, PDR provided the single bright spot on the horizon.

## Campaign Structure

While Underwood Farms provided the catalyst for the citizens' group, a thorough public education campaign about the PDR program was still needed. Lacking an example of a working PDR program nearby, campaign organizers anticipated that some residents might harbor negative misconceptions about PDR, a complex subject. A carefully paced and thorough presentation of the program was needed.

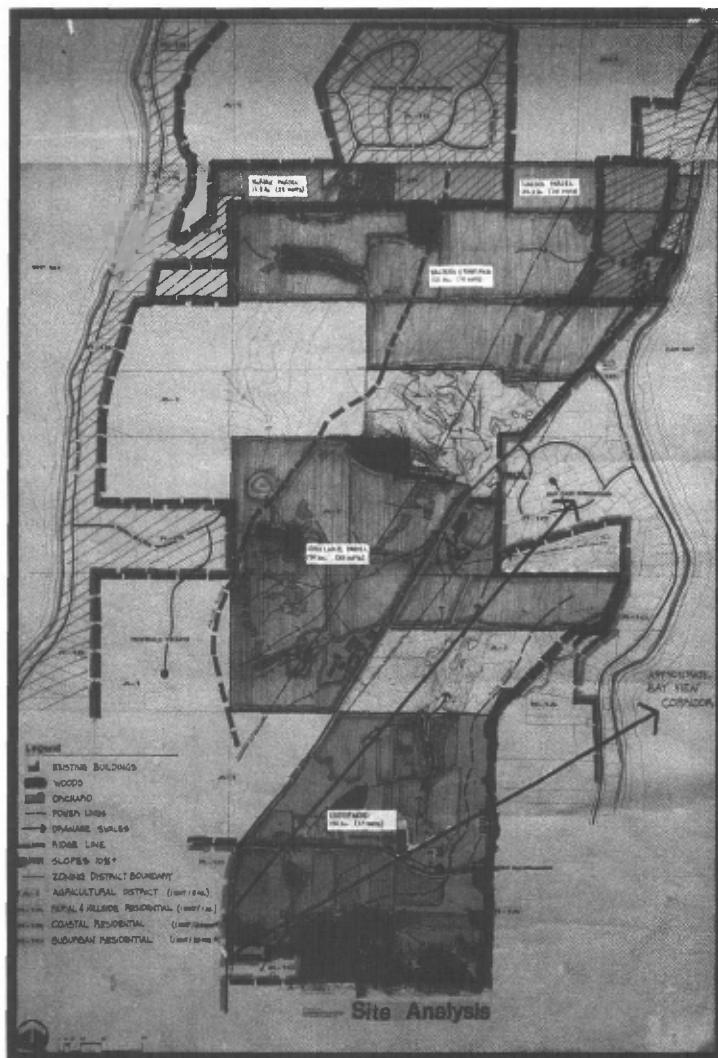
The educational campaign was mounted over 10 weeks. It began with an article in the main local newspaper, *The (Traverse City) Record-Eagle*, that introduced PDR and culminated with a series of newspaper advertisements that explained the proposed program and how it would work, listed the existing broad base of support for PDR and appealed to the emotions of people concerning the growth conflict.

The majority of campaign activities occurred in the final seven weeks before the August 2 vote. Those activities included:

- Educational mailings;
- Media contact;
- Personal contact;
- Education and contact through video;
- Demonstration projects (options to buy development rights on target farms); and
- An informational package assembled by Michigan State University and delivered door to door by neighborhood residents.

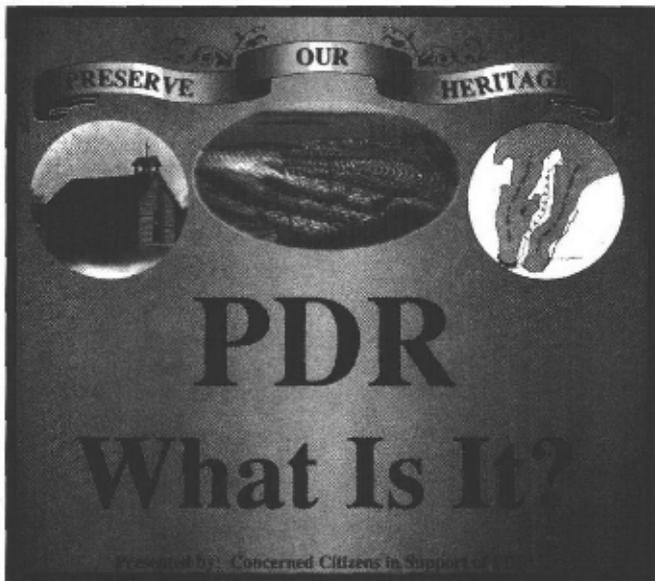
## Educational Mailings

Campaign organizers chose "Preserve Our Heritage" as the campaign motto. In an effort to harken to earlier times and values, especially the importance of farming to the region, the motto was printed as an old-style newspaper banner across the top of each mail piece. All print was warm brown on tan parchment paper. The net effect was both easy to read and consistent with the historical theme.



Courtesy of Peninsula Township.

*The hotly contested Underwood Farms project won awards for "sensitive development," but swallowed up 500 acres of farmland.*



*Concerned Citizens in Support of PDR mounted an informational campaign that included mass mailings outlining the PDR program and what was at stake.*

The campaign group put out five mailings. To reach every township resident, the group addressed the pieces to “postal patron” and purchased label lists designed to include as many residents as possible. The mailings offered detailed information on: the PDR concept; how the program would be implemented; principal arguments for and against PDR; a list of farmers who supported the program and why; and, finally, a list of residents who planned to vote yes on the millage referendum. The township distributed its own informational newsletter, careful to stay neutral.

## Media Contact

Campaign organizers used newspapers, radio and television to publicize the need to pass PDR in Peninsula Township. Educating and cultivating media representatives over the long term on specific issues was key to the initiative’s success.

Township officials, too, made sure newspapers and other media representatives were given sufficient information on the PDR program in a timely fashion.

**Newspapers.** Newspaper coverage consisted of articles, editorials and advertising. Campaign organizers cultivated the media by establishing contact with and providing information to reporters early on. The strategy made media communications during the campaign and just before the vote easier to maintain.

*The Record-Eagle* printed an article in early May, four weeks before the campaign started. The article included interviews with farmers for and against the proposed program. The story followed formal approval of the ordinance and referendum ballot measure by the township board.

*The Record-Eagle* also ran a story on PDR three days before the vote. PDR supporters such as American Farmland Trust and the Grand Traverse Regional Land Conservancy helped secure the second article by announcing that two farmers had signed options to signal their intent to sell development rights on their farms if the program passed. That article focused on the details of the options and the farms involved. This framing of the campaign through the media proved effective.

Two of the region’s alternative publications provided excellent support. *The Stewardship Quarterly*, published by Fen’s Rim, an Elk Rapids publisher, featured a lengthy article on the PDR concept 10 months before the election. *The Gazette*, a popular biweekly Fen’s Rim publication, featured a lengthy cover article in support of the program 11 days before the vote.

**Editorials.** Letters to the editor were cultivated and planned, with timing and content considered of paramount importance. Individuals supporting PDR wrote about particular issues under strict deadlines. One resident countered the concept that zoning could solve the problem. Another wrote about the historical success of easements to answer claims that they did not offer a permanent solution. Campaigners monitored the press and, when no negative letters appeared early that summer, held the positive letters until the last week before the vote to avoid instigating letters in opposition.

In late June, township officials met with *The Record-Eagle* editorial board. They hoped to counter concerns expressed earlier that month in an editorial and solicit more favorable copy on PDR. The meeting paid off — a supportive editorial appeared six days before the vote.

*The Record-Eagle* has a regular citizen editorial column. Wunsch submitted an editorial that focused on why to support PDR. It included points meant to deflect the fears of potential supporters about PDR, such as increased taxation, the longevity of easements and poor farmer participation. It appeared four days before the vote and was printed opposite a citizen column editorializing against the program.

The *Detroit News*, a state newspaper with extensive local readership, featured an article by columnist Tom BeVier, who lives in Peninsula Township. The favorable column appeared July 13, three weeks prior to the vote.

**Advertising.** The township Planning Commission survey conducted in April 1994 had determined residents received the vast majority of their information through the newspaper. Therefore, the majority of the campaign advertising budget was directed to *The Record-Eagle* rather than television or radio. All advertising was concentrated during the last week before the vote and consisted of three basic layouts.

An ad listing supporting farmers and non-farm voters appeared twice, as did a photographic comparison of healthy orchards with farmland undergoing development. Another ad — a simple verbal outline of the program's basic premises, best features and supporting organizations — appeared once.

A second comparison photo ad ran the night before the vote and included a ballot sample, enlarged text of the ballot language and examples of actual costs of the proposed millage increase on three different home values. An accompanying ad also contained an eye-catching graphic by well-known illustrator Glenn Wolff depicting five pastoral scenes from the township and one scene of bulldozers destroying an orchard to build new houses. It ran under the headline: "PDR — Six reasons to vote yes on August 2nd." (Appendix E)

**Radio.** While campaigners decided against purchasing radio advertising, a number of well-respected programs covered the issue. WIAA, the local National Public Radio affiliate, began coverage 10 months before the vote with interviews of residents following the township's first public forum on the concept. WIAA also ran coverage of the referendum question six weeks prior to the election. Both

RECORD-EAGLE  
**OPINION**

**Our view**

**'Yes' vote will help preserve peninsula's unique qualities**

It is not an outrageous thought to look into the next century and see what the pressures of a growing population and new development will have on Old Mission Peninsula.

The signs of growth are apparent, and its ramifications on the peninsula's valuable farmland — one of the few natural micro-climates needed for successful cherry and grape farming — are potentially devastating. Already, the peninsula is "built out," as predicted in 1990 when a township study showed that an average of 53 houses a year had been built there from 1980 to 1990.

While growth is inevitable in a prized location like the peninsula, that doesn't mean that the rural and scenic character of the township has to be compromised in the process. Fortunately, there is a way to preserve the peninsula's agricultural persona, but keep the door open to controlled growth in the process.

On Aug. 2, Peninsula Township voters will go to the polls to decide the fate of a purchase-of-development-rights program that will cost them 1.25 mills for 15 years. That amounts to \$62.50 a year for a house valued at \$100,000.

Over 15 years, it will raise \$2.6 million to purchase development rights to an estimated 1,100 acres of farmland. There is a total of 8,500 acres of land on the peninsula currently being farmed or that would be good for farming.

We urge a YES vote for the following reasons:

■ It is a voluntary program and will help financially-strapped farmers stay in busi-

ness, preserve unique farmland and protect the scenic views that make the Grand Traverse region so beautiful and so popular.

■ Only 1 percent to 2 percent of the land in the United States has the unique characteristics of the land in Peninsula Township.

■ Peninsula Township has practiced good zoning for years. Township planners and officials say that traditional zoning — no matter how good it is — just will not protect farmland from development pressure.

■ In the long run, tax dollars needed to support sewer, water, roads, fire and other services for increased residential development would be greater than purchasing development rights. A 1989 American Farmland Trust study showed that residential developments cost taxpayers \$1.12 to \$1.36 in municipal services for every \$1 they generate in taxes. Agricultural land only requires 21 to 48 cents for each \$1 in taxes.

■ It would set a precedent for the Midwest that addresses a serious problem — the loss of farmland. The state lost some 8 million acres — or 39 percent of its farmland between 1954 and 1992. Similar purchases of development rights have helped preserve other unique farmland in Green River Valley in Washington and Forsyth County in North Carolina.

Appropriately, peninsula voters will have the final say on this issue. We hope their actions result in a program that protects the farmland that is so valued and irreplaceable. After all, it is the farmland, the views and the natural beauty that sets the peninsula apart from any other part of Michigan.

*An editorial in favor of the PDR program ran in The Record-Eagle six days before the referendum.*

*Organized personal contact with voters took three forms: door-to-door campaigning, advertised public presentations and privately sponsored presentations in homes.*

programs were aired statewide on "Michigan This Afternoon." The citizens' group and township staff trying to publicize public forums started cultivating WIAA coverage more than a year before the vote.

The week of June 20, WTCM, a primary commercial station, aired a week-long series of news spots about the upcoming vote. The news spots were segments edited from a series of interviews with Township Planning Commission Chairwoman Virginia Coulter, a supportive local farmer and Wunsch. Wunsch and Hayward also appeared on a morning call-in talk show. The program provided ample time to elaborate on the PDR program and questions from voters. It aired one week before the vote and generated favorable calls.

**Television.** Television advertising was made possible by a campaign contribution specifically granted for that purpose, making cost comparisons to radio and newsprint irrelevant. Both cost effectiveness and good demographics made cable the only television outlet chosen. Two spots were aired on a rotation of several different cable networks during the week before the vote. Both spots featured members of the advocacy group making brief personal statements followed by vistas of farmland and viewsheds in the township.

The citizen group made contact with all television news outlets eight weeks prior to the vote in an effort to enhance coverage. While this contact may have prompted regular news coverage at the time of the election, only one outlet made a commitment to present information on the PDR program before the vote. A TV spot on the local 6:30 a.m. community news program, "Good Morning, Michigan" on WGTU TV 29 reminded viewers that the PDR issue would be decided the following week and that a "yes" vote could provide protection for area farms. Such morning television programs typically draw a substantial audience.

TV news coverage was extensive the last few days before the vote. Interviews with Coulter, Wunsch and farmers in favor of and opposed to PDR were aired. Additionally, "CBS This Morning" ran an interview with Township Supervisor Rob Manigold and a dissenting farmer the morning of the vote.

## **Personal Contact**

Organized personal contact with voters took three forms: door-to-door campaigning, advertised public presentations and privately sponsored presentations in homes.

The door-to-door campaign, which was organized by Rex Hite, volunteer coordinator, was designed to cover all homes on populous roadways, but not in subdivisions. Hite, along with other campaign organizers, determined that this geographic coverage would be the practical limit of the volunteer hours available for such a labor-intensive effort.

Visits were launched five weeks prior to the vote. Nineteen volunteers were briefed, given information packages and assigned a route. (Appendix F)

Initial plans called for reaching subdivision residents through their neighborhood association meetings. This strategy failed because most associations met only annually and had held their annual meeting in the spring before the campaign began. Those associations that had not yet met could not find room for the PDR issue on their full agendas.

As an alternative strategy, three public meetings were arranged and advertised in *The Record-Eagle*. Two were held at local churches, and the third became part of the Old Mission Conservancy's annual membership meeting. Spin-off publicity was garnered in church bulletins and OMC's meeting notices.

The meetings each included a slide presentation, an educational video and a question-and-answer period. Wunsch gave a presentation, as well as Grant Parsons, a local attorney who followed environmental and community issues and who had reviewed the PDR proposal for the citizens' group. Either Hayward or Westphal were available for questions regarding the ordinance. Numerous hand-outs were made available, including copies of the video, newspaper articles, sample ballots, maps of the preservation zone, ordinances, the informational tabloid and copies of the postcard that introduced PDR in the initial mailing. Audience members were invited to put a personal note of endorsement on the cards and leave them in friends' doors or mailboxes. They were also asked to put their names on the "yes" voter list. Another meeting with the same format was held at the home of a supportive citizen who invited all subdivision residents to attend.

As the vote neared, it became clear the personal contact effort headed by Rex Hite would not reach all subdivision residents due to limited time and manpower. At that point, Wunsch called Westphal at MSU for assistance in getting information to subdivision residents. Westphal devised a packet containing pro and con information that was designed to be delivered door to door by neighborhood residents. (Appendix G)

## Video

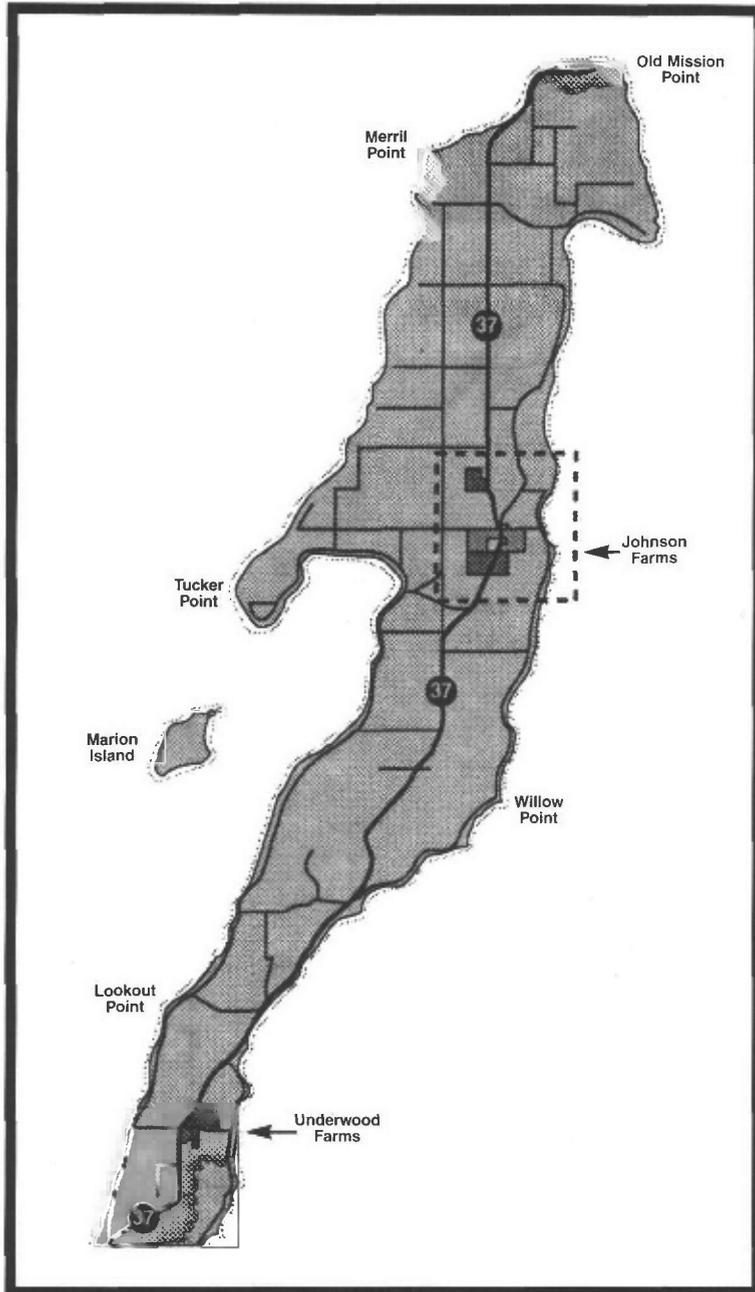
The citizen advocacy group produced an 18-minute video entitled, "In Our Own Words: How PDR will benefit the residents of Old Mission Peninsula." The video contained scenic views of the township and its farms with discussions by four residents: Molly Levin, a senior member of the farm community; Herb Sawin, a subdivision resident; Westphal and Wunsch. The dialogue avoided extensive detail about the program, concentrating instead on why each thought there was a need for PDR in the township.

Close to 300 copies of the video were produced and distributed freely throughout the community. Subdivision residents received a copy of the video as part of the MSU information packets. The public access cable system, which would have been a natural outlet, had not yet come on line in the community. However, the community library and local grocery store had videos available for check-out. Videos also were given out freely to people who were encouraged to pass them on after viewing. Feedback indicated they were widely viewed and worked in the favor of the successful PDR vote.

## Support Within The Farm Community

Despite all the education efforts, no clear consensus had emerged from the agricultural community by the month before the campaign. Supervisor Manigold had maintained a low-key but ongoing dialogue with farmers. He brought farmer concerns and questions to the Planning Commission and committees and returned with information so the program would meet their approval. Much of Manigold's efforts were an attempt to counter concerns that most farmers did not support the program. Many non-farming residents, who make up 95 percent of the township population, thought PDR should not be approved if farmers did not support it.

*Many non-farming residents, who make up 95 percent of the township population, thought PDR should not be approved if farmers did not support it.*



Courtesy of John Wunsch.

*Locations of PDR demonstration farms, which created concrete examples for farmers and others to evaluate, and the Underwood Farms project.*

To counter perceived farmer opposition, the citizens' group amassed signatures of farmers who supported the PDR program. They left petitions at a fruit-receiving center, and a local vintner worked to gain signatures. Wunsch, who had grown up working on family farms, conducted a "tractor-to-tractor" survey, asking the question: "Regardless of whether you would put your land in the program, do you believe that the passage of the Purchase of Development Rights Ordinance will be a positive step toward the continuation of agriculture in Peninsula Township?" When 61 farmers were asked to sign the statement, 57, or almost one-third of the total farm community, added names to publicly support the PDR concept. Organizers considered this show of support critical to passing the millage.

### **Demonstration Projects: Options to Buy Development Rights on Two Farms**

PDR, a complex concept, can be understood easier with demonstrations of how development rights are sold. Dennis Bidwell, AFT's director of land protection, proposed to campaign organizers that publicizing demonstration projects involving real farms and real farmers before the vote might help promote the program.

With the support of campaign organizers and township officials, Bidwell worked with Glen Chown, executive director of the Grand Traverse Regional Land Conservancy, to identify opportunities to demonstrate PDR in a tangible way. The plan was to find a few viable and visible farms and obtain from the owners options to purchase the farms' development

rights. This would show that real farmers supported PDR both in concept and reality.

In addition, the options would show voters the details: the prices per acre that typically would be paid by the PDR program, the appraisal approach, negotiation of prices and conservation easement terms.

In setting out to find supportive farmers, Bidwell and Chown found Walter Johnson an attractive candidate. Johnson owns an 80-acre cherry farm homesteaded by Johnson's great-grandfather in 1858, and co-owns another 105-acre farm with his son, Ward. The Johnsons, respected members of the agricultural community, own properties that would score highly on the criteria system spelled out in the ordinance. Additionally, both farms were highly visible, with extensive frontage on the township's main road. Finally, Walter Johnson would not be bashful about talking to the press about his commitment to PDR.

With funds provided by Rotary Charities, AFT commissioned appraisals of the two farms to obtain fair market value estimates and estimates of value restricted by the proposed easements. Bidwell and Chown discussed the terms of the proposed conservation easements with the Johnsons, discussed prices based on appraisals and drafted the terms of options to purchase the development rights on the farms. After several conversations, acceptable terms were found, and the Johnsons signed the option agreements. On the 80-acre farm, the agreement provided that development rights would be sold for \$146,000, or \$1,825 per acre. On the 105-acre farm, development rights would be sold for \$198,500, or \$1,890 per acre. (Appendix H)

Johnson was willing to have his farm serve as a model because he believed PDR represented an opportunity to gain extra income while guaranteeing that good farmland would always be kept available for agriculture. He also was attracted to the fiscal benefits for the township, which he thought would benefit by avoiding the costs of expanded municipal services required for additional residential development.

AFT, GTRLC and campaign organizers timed the announcement of the option agreements to gain as much leverage as possible before the vote. The stories in the local press outlined concrete examples of how the PDR program would work — the type of land to be protected, the per-acre cost and how the process itself would function. The last of the campaign group's mailings described the option agreements on the demonstration farms. (Appendix I) Campaign organizers credit the option agreements with helping convince voters that real farmers not only supported the PDR program in concept but also were ready and willing to participate.

## Opinion Surveys

Two surveys, funded by Coastal Zone Management and Rotary Charities, identified township residents' knowledge of issues and the levels to which they would accept a millage vote. A 1994 survey by Northeast Research of Grand Blanc, Michigan, indicated a majority — 49 percent “yes” and 15 percent “no”— of 343 voters questioned would cast a ballot in favor of paying additional taxes to fund farmland and scenic view protection. (Appendix J)

## Positive Factors

A number of other factors are believed to have given the PDR campaign a boost. One was a concerted effort to involve younger residents. Many community youths gravitated to the positive aspects of the project and its goal of a better environment for Peninsula Township.

The citizens' group contacted young people working local food service jobs and informed them about PDR and the reasoning behind it. The group gave the youths the PDR video along with requests to spread the information to other young voters.

Campaign organizers decided early to avoid seeking endorsements from professional politicians and government officials to keep the ballot question free of partisanship. That also helped avoid the potentially divisive process of asking community organizations for public statements of endorsement. However, individuals were asked for permission to be publicly listed as residents who planned to vote “yes.”

A number of local, regional and national foundations had been asked for funding early in the process to develop and study PDR. Help from Rotary Charities and the Americana Foundations, as well as the Coastal Zone Management Program and technical

*Johnson was willing to have his farm serve as a model because he believed PDR represented an opportunity to gain extra income while guaranteeing that good farmland would always be kept available for agriculture.*

expertise from AFT, helped garner public support. During the campaign, such organizations were cited for contributing to the development of the program, creating a de facto endorsement in the mind of voters. Creating informational mail pieces early in the campaign that did not push for “yes” votes made it possible to obtain donations from organizations that did not want to fund lobbying materials.

Volunteer hours were conserved by contracting all print work to a company that also handled mailing. This freed volunteers from stuffing envelopes, sorting for bulk mailings, stamping envelopes and other clerical tasks, making them available for personalized contacts with voters.

Finally, expenses were reduced by using “postal patron” labels rather than addresses for all rural routes. Postage rates are lower for bulk mailings with the postal patron address than they are for bulk mailings using actual names and addresses, which are required on non-rural routes.

## Arguments to Counter

One of the principal arguments against PDR throughout the process of developing and campaigning for the program was a concern that farmers would not participate. The establishment of the demonstration projects, in which landowners actually signed agreements to sell their development rights, contingent upon passage of the millage — along with publicizing the names of 57 supportive farmers — were effective responses.

Those demonstration project agreements, however, were not ready until just before the vote. While the timing created a burst of favorable pre-election publicity, the “negative farmer” argument needed to be countered beforehand. The citizens’ organization pointed to the positive experiences of others. In five of the six PDR programs the citizens’ organization had researched, farmers were on waiting lists to sell their development rights, and the sixth program was not structured to allow waiting lists. In most cases, when the programs were introduced, there was significant skepticism about farmers’ desire to participate.

Another pervasive concern was whether the easements would be truly long lasting. The campaign worked to educate people about the history of easements, which have been used for more than 100 years, starting with protection of scenic highways and parks. According to the Land Trust Alliance, more than 450,000 acres were protected by conservation easements by 1991. Since then, LTA has reported about a 6 percent increase in total easements and virtually no losses from protection. Publicizing such statistics went a long way to counter concerns about the perpetuity of easements.

Four specific points about Peninsula Township’s proposed program also helped. First, the township stated its intention to contract with experienced and qualified individuals or recognized conservancies for negotiating easements, preparing baseline reports and monitoring easements. Second, the township made a commitment that baseline reports and the procedures for monitoring easements would conform to LTA’s 1989 “Standards and Practices Guidebook.” Third, the township attorney, the township bond counsel and a number of attorneys retained by the citizens’ group had found the ordinance to be legally sound. Finally, the ordinance provided for the establishment of a permanent stewardship fund of no less than \$40,000 that could only be used for enforcement purposes.

*In five of the six PDR programs the citizens’ organization had researched, farmers were on waiting lists to sell their development rights.*

The concern of PDR being “one more subsidy program” was met with the argument that a subsidy is an ongoing payment to support a business rather than a one-time purchase of something of value to the community, based on fair appraised price. In addition, PDR backers argued that the program was geared particularly toward protecting unique farmland.

Some claimed more aggressive zoning would achieve the same end without a new tax. The citizens’ group contended that such zoning would be subject to changing politics — assuming it could pass at all — and therefore was not a permanent solution. By contrast, PDR is a voluntary and permanent contract, not a regulation, and therefore not subject to changing political whims.

The fear that PDR would lead to higher taxes was rebutted in the campaign by explaining how an increasing population would otherwise mean more municipal services and considerably higher taxes. Cost of community services studies by AFT, which has studied areas throughout the Northeast as well as in Ohio and Minnesota, and a Peninsula Township staff study of Michigan townships substantiated that claim. The campaign also pointed out that current residents had an opportunity to maintain the township’s rural character in a fair way by sharing the cost of protection. A helpful statistic was that the \$3 million to be generated by the tax increase could either buy a few miles of sewer main or about 1,500 acres of conservation easements. (Township officials later re-estimated the figure, taking into account expected increases in the tax base and inflation at \$6 million over 15 years.)

A “mistrust of government” argument was countered by highlighting the program’s local nature. It would be created, funded and administered purely on a local basis, with all operations taking place within a few miles of voters’ homes, not in a distant location.

## The Vote and its Aftermath

The PDR vote was held on August 2, 1994. The final count was 1,208 to 1,081 in favor of a 1.25 mill tax increase over 15 years. The new program was expected to provide for the purchase of development rights on about 20 percent of the peninsula’s farmland. If so, nearly 2,000 acres of agricultural land and open space will remain undeveloped and permanently available for agriculture.

Supporters were elated at the program’s passage, feeling they had helped shape a new future in Peninsula Township. Opponents, however, immediately proposed a vote recall. That failed to muster much support, and, shortly after, was dropped.

The celebration of PDR supporters was tempered with some disappointment at the closeness of the vote. Organizers recognized some mistakes were made during the campaign, that, while not enough to cost the vote, affected the margin of victory. A key mistake took place before the campaign started. The ballot question lacked a title identifying the issue. It was titled “proposition” rather than “PDR,” “farmland protection” or some other identifying language.

# PROPOSAL

## PROPOSITION

Shall the limitation on general ad valorem taxes which may be assessed against all property in Peninsula Township, Grand Traverse County, Michigan, be increased as provided by Section 6, Article IX of the Michigan Constitution of 1963 by one and one quarter (1-1/4) mills of the assessed valuation as equalized by the State of Michigan of all property in Peninsula Township (\$1.25 per \$1,000.00 of SEV) for a period of fifteen (15) years, 1994 through 2008, for the purpose of purchasing development rights in farmland and open space lands that are voluntarily offered by property owners in accordance with the Purchase of Development Rights Ordinance No. 23, adopted by the Peninsula Township Board on May 4, 1994; and shall the Township levy such increase in millage for such purpose during such period, which will raise in the first year of such levy an estimated \$267,234.00.

YES

NO

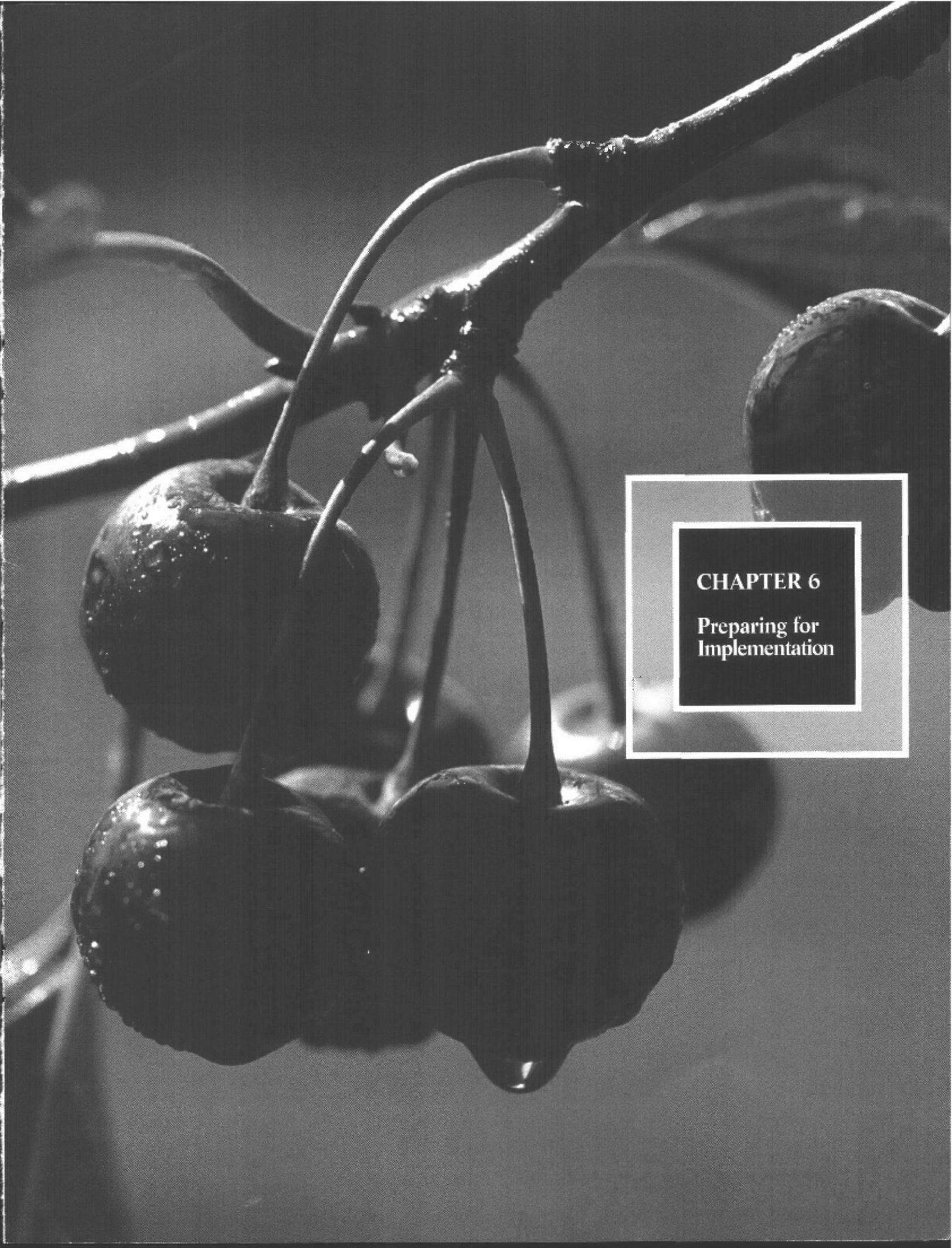
*Referendum ballot language.*

*Campaign organizers acknowledge the final ad campaign should have been spread over the last two weekends before the referendum.*

A second mistake was not realizing a large percentage of residents vote by absentee ballot even though they live in the township full time or during the summer months. Absentee ballots were cast more than a week before the vote, before the final weekend when the citizens' group placed its strongest ad campaign and mailed an announcement of the demonstration projects. Instead, campaign organizers acknowledge the final ad campaign should have been spread over the last two weekends before the referendum.

The third mistake was not using red tag forms on the bulk mailings. This technique identifies political mailings to postal employees, thereby ensuring that arrival will be expedited. Thus, a critical lesson was learned late in the campaign. For no extra cost, political mailings can be sent under a "red tag" granted by the post office. Mailers need only fill out one extra form at the time of the mailing, which gives the bulk mailing bag a special status to ensure it goes out promptly. On one route, none of the mailings reached their destinations except the one delivered with "red tag" status.

The final mistake was not investigating why a particular door-to-door route responded negatively. Inquiries would have revealed the route had not received the mailings that had introduced other residents to the PDR program and set the stage for door-to-door volunteers.



**CHAPTER 6**

**Preparing for  
Implementation**

## Selection Committee

One of the first post-election actions taken by the Township Board was to appoint a citizen selection committee to work with township officials in implementing the PDR program. Twenty residents responded to a public notice and applied to serve on the seven-member volunteer committee. Following interviews, the Township Board appointed a committee of two farmers and five other residents representing different parts of the township. An "ex-officio" member and a substitute also were selected. One of those appointed had been a visible opponent of the program.

The duties of the selection committee included recommending an appraiser; soliciting applications to the program; ranking applicants; reviewing appraisals; drafting terms and conditions of sales; and field-verifying applications.

## Appraiser Selection

Appraisers play an important role in a PDR program. Peninsula Township needed to contract with an appraiser to determine the economic value of the development rights foregone when program participants convey conservation easements to the township.

The ordinance mandated that the township select a real estate appraiser for the PDR program based on a bid process. Criteria used to determine eligibility were established, and a public request for proposals was placed in *The Record-Eagle*. In response to a public notice, four appraisal firms submitted proposals for consideration by the selection

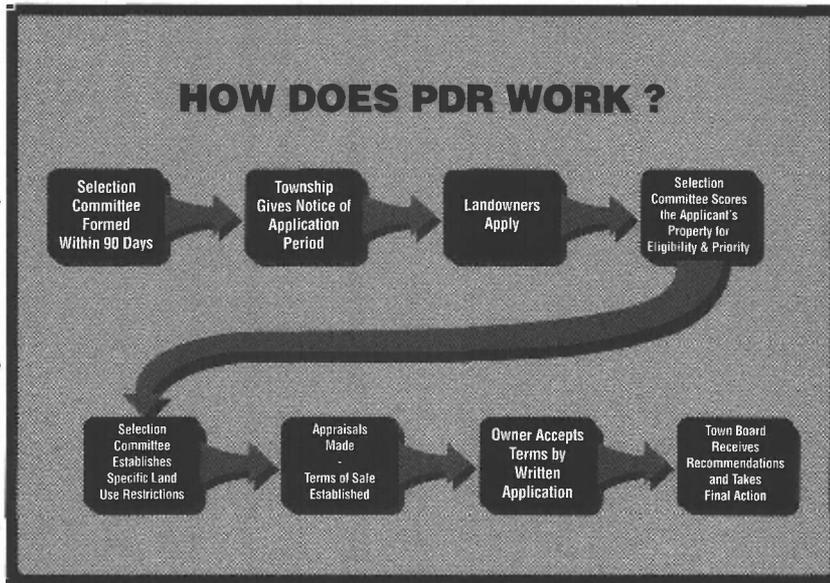
committee. The committee determined that three of the firms were qualified for this type of valuation work, then selected the lowest bidder. The firms were asked to submit bid prices for both small and large parcels, and for both "interim" appraisals (value estimates without complete reports) and full narrative appraisals. The firms were asked to bid on the assumption that they would conduct a total of 40 to 70 appraisals per year. In late 1994, the selection committee recommended and the Township Board selected an appraisal firm.

## Applications Solicited

After designing application forms, the selection committee provided public notification in December 1994 that applications to participate in the program would be received until a January 15, 1995 deadline. All township farm owners received application information by mail.

Prior to the deadline for submission of applications, the township sponsored two public meetings specifically aimed at potential farm owner applicants.

Co-sponsored by the Cooperative Extension Service and the Grand Traverse County Farm Bureau, the first meeting featured financial and tax advisers from the Agricultural Economics Department of Michigan State University who made presentations on the



financial and tax implications of conservation easement sales through the PDR program. Hypothetical case studies were used to illustrate the sales. Some 75 farmers and other residents attended this first meeting.

A second meeting held in April 1995 was aimed at 45 landowners who had submitted applications to protect 100 parcels totaling about 3,500 acres. There, township officials and members of the selection committee explained all aspects of the program. The appraiser also was present to explain the conservation easement valuation process.

An important participant in these meetings was Walter Johnson, one of the farmers who had agreed to sell a conservation easement on his property — at a price determined by appraisal — in the final weeks before the August 1994 vote. His experience with the appraisal process and negotiating the sale of an easement was very instructive to other farmers.

## Application Review

Soon after the January 15 deadline, township staff plotted all applicant parcels on a township map and mailed back to applicants a map highlighting the parcels they submitted as a means of verifying the land covered.

As specified in the ordinance, the selection committee ranked the applicant parcels on the basis of agricultural productivity as measured by the fruit site inventory map and scenic views.

Additional points were allotted for parcels adjacent to other land submitted by applicants to the program or adjacent to land already protected by conservation easements. The application review resulted in a ranking of all applications in March 1995.

## Appraisals

Appraisals were then commissioned for the top-ranked applications, potentially covering about 2,000 acres. The appraisal process for each property was launched by a tour of the parcel by the landowner, appraiser, members of the selection committee and township planner. One objective of these initial visits was to clarify what, if any, rights to build additional residences would be reserved by the landowners.

## Finalizing Easement Language

Meanwhile, the Planning Commission completed its work on the basic conservation easement language for the program (Appendix K). The township's conservation easement was based on language from Michigan Department of Natural Resources easement agreements and input from AFT, and was refined based on easements used by other PDR programs around the country.

This basic conservation easement can be adapted in two respects to fit the particular circumstances of individual parcels. First, as described in the ordinance, landowners may elect to retain the right to not more than one building site per 20 acres for residences, as long as the building sites do not detract from farm operations. Second, for parcels lying within viewsheds targeted by the program, building restrictions tailored to the parcel are included. These restrictions are determined by the Planning Commission based on tours of the parcels, so any restrictions remain specific to each property.

*Landowners may elect to retain the right to not more than one building site per 20 acres for residences, as long as the building sites do not detract from farm operations.*

## Easement Purchase Negotiations

The Township Board decided to enter into a contract with the Grand Traverse Regional Land Conservancy to assist in negotiating the easement acquisition terms with applicant landowners once appraisals had been completed. Under this arrangement, the selection committee will finalize the terms of a purchase contract and the conservation easement itself, subject to final approval by the Township Board.

The Conservancy also will be responsible for preparing baseline condition reports for each property. Baseline reports create documentation the township will use in future years as it monitors whether the terms of the conservation easements are being honored, a process critical to the enforcement of the easements.

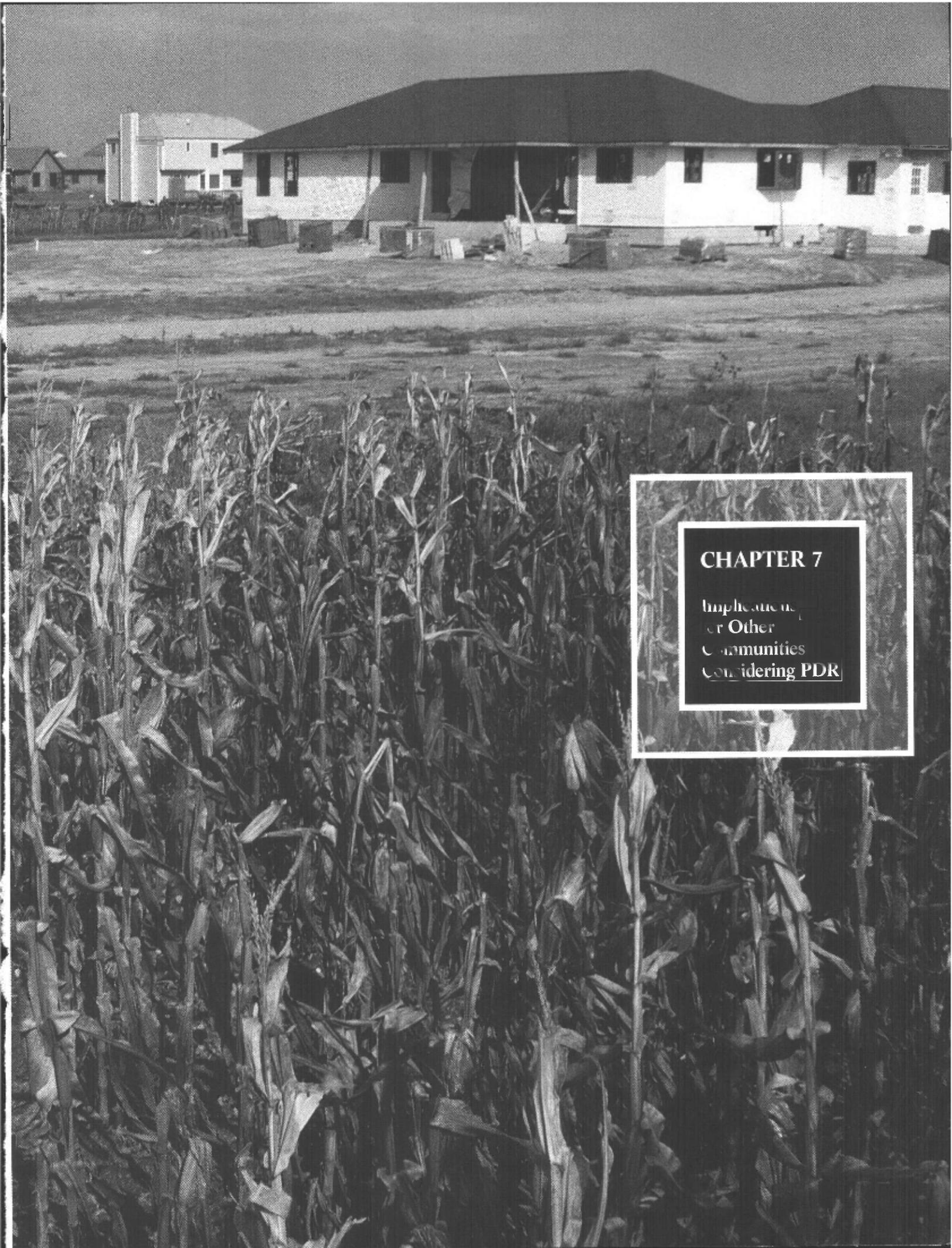
## Tax Collections

As authorized by the ordinance, the Township Treasurer included a 1.25 mill tax increase in the property tax bills mailed out in December 1994. In February 1995, when these tax payments were received by the township, the tax receipts dedicated to the PDR program were placed in a restricted account available to pay program expenses and to make the initial payments on installment purchase contracts as they are finalized.

## Other Implementation Issues

1. *Installment contracts:* Township staff finalized the basic contract to be used in purchasing conservation easements on a 15-year installment basis. The contract provides for conveyance of the deed of conservation easement to the township at the time of contract closing and the township's initial contract payment. (Appendix L)
2. *Lump sum payment possibilities:* Because some PDR program applicants would prefer a lump sum payment for sale of their development rights instead of the tax advantages of installment payments over 15 years, the township is exploring the possibility that one or more financial institutions or individuals would agree to purchase a farm owner's installment contract as a means of providing program participants with access to a lump sum payment alternative.
3. *Title insurance:* The township will arrange for the purchase of title insurance policies on all conservation easements it purchases.
4. *Subordination agreements:* Because many of the properties for which applications have been submitted are encumbered by mortgages, the township developed a basic subordination agreement that must be executed by all mortgage holders in order for the township to proceed with purchase of conservation easements. Such an agreement establishes that the conservation easement has priority over the mortgage in the event of a foreclosure. Generally, lenders will consider subordinating debt to a conservation easement to the extent they are convinced the land has sufficient value as collateral even when the land's development rights have been removed. (Appendix M)
5. *Matching funds:* Because the township seeks the ability to protect more land than will be possible with the projected \$6 million in property tax collections, it has applied to the state's Natural Resources Trust Fund and private sources for funds to match those generated within the township.

*Baseline reports create documentation the township will use in future years as it monitors whether the terms of the conservation easements are being honored, a process critical to the enforcement of the easements.*



## CHAPTER 7

Implications  
for Other  
Communities  
Considering PDR

Many communities throughout Michigan and elsewhere have responded with great interest to the PDR experience of Peninsula Township. The successful campaign to enact PDR in this township offers some potential lessons and conclusions about designing and gaining voter approval for PDR elsewhere.

## **Long-Range Outreach and Education**

Much of Peninsula Township's success can be attributed to the period during which local leaders and the citizenry worked together to learn more about the zoning, planning and land protection tools available to them. The extent of outreach and educational activities over the years meant that citizen groups, farmers, business leaders, township officials and the press all had a background in the issues before an intensive campaign was launched.

This does not mean that a community considering a PDR program must be prepared to devote five years to workshops and forums before crafting a PDR program. The Peninsula Township experience can no doubt be streamlined. However, to gain voter approval for a tax increase requires extensive groundwork and public education. Recent support from the Michigan Department of Agriculture and the Michigan Farm Bureau which are both producing PDR videos, as well as an increasing interest from foundations and other state agencies, suggests increasing support for PDR in Michigan.

Part of any community-organizing process involves fostering a measure of understanding and appreciation of the community's history, its resources and its general strengths. In Peninsula Township, township leaders and MSU devoted considerable time to documenting the peninsula's agricultural history and inventorying the landmarks and vistas that have created a special connection between township citizens, their community and their land. Fostering a connection between agricultural productivity, history and environmental significance is an important part of the process of developing support for an initiative such as PDR or farmland protection in general.

The potential to utilize planning and zoning regulations and farmland protection tools varies greatly depending on local politics. But it is generally important to try these approaches before launching a PDR initiative. This is true for at least two reasons.

First, the educational and outreach process associated with discussions of planning and zoning is important in developing a broad understanding of land use issues and in engaging the citizenry in a process of affirmatively shaping the community's future. This process also can lead to an understanding of the limits of planning and zoning tools and the need to develop alternatives.

Second, PDR programs work most effectively when operated in conjunction with reasonable land use regulations. PDR programs that operate without agricultural zoning can run the risk of paying very large per-acre amounts for conservation easements on farms that may soon be surrounded by development. To truly protect economically viable masses of farmland, PDR programs should be coupled with other land protection and economic development approaches.

## **Farmer Involvement and Support**

In some communities, it is tempting to develop PDR programs on the basis of apparent urban and suburban support, especially if the agricultural community constitutes a typically small portion of the citizenry. Failure to fully involve the agricultural community in the development of a PDR program in such circumstances can be fatal.

*PDR programs that operate without agricultural zoning can run the risk of paying very large per-acre amounts for conservation easements on farms that may soon be surrounded by development.*

PDR programs should be designed with full input from the agricultural community. Producer involvement can help ensure PDR administrators will incorporate program features that will later induce farmers participation. As seen in the Peninsula Township experience, even if farmers only constitute 5 percent of the voters, their influence on the electoral process can be considerable.

## Surveys

The Peninsula Township experience shows the importance of surveys in clarifying issues, developing an appreciation for a community's resources, identifying resources the public wants protected and determining the most effective means for conveying information to the public. Moreover, surveys help design specific elements of a PDR program, test the extent to which voters would agree to tax themselves to support a program and identify positive features and elements of concern that should be considered in developing an electoral campaign. Carefully designed and professionally implemented surveys administered at several points in the planning process before a PDR program is developed and promoted generally constitute a wise investment of dollars.

## Visible Development Projects

Just as PDR programs have been created in response to development pressure endangering productive farmland, individual PDR programs might experience an electoral boost when the voters are confronted with a particularly dramatic and visible example of important and productive farmland being lost to sprawl. The conversion of Peninsula Township's Underwood Orchards — one of the largest, most visible and most scenic farms on the peninsula — into the 500-acre Underwood Farms development certainly had an important effect on the attitudes of peninsula residents. Such highly visible examples of farmland conversion should not be overlooked as potential educational tools.

*Dramatic examples of farmland conversion can galvanize a community to protect its remaining farmland.*

## Demonstration Projects

Peninsula Township's PDR campaign was given a last-minute boost when it was announced that a farm owner had signed a formal option to sell his development rights contingent on voter approval of the PDR measure.

This information provided the voters with 1) solid evidence that farmers really did support the program, even to the point of entering into binding agreements; 2) visible examples of what their tax dollars would protect;

**FOR SALE**  
**WATERFRONT LOTS**

**COLDWELL BANKER**

**SCHMIDT REALTORS®**

An Equal Opportunity Company and Equal Member of Coldwell Banker Real Estate Affiliates, Inc.

**150' x  
2 ACRE  
PARCELS**

**CALL DAVE ALLEN OR  
HOWARD G. LA TOURNEAU  
616-271-6161**

Courtesy of AFTI.

3) concrete illustrations of how the mechanics of the program would operate (appraisal, negotiation of price, negotiation of easement terms, sales agreement); and 4) actual sales prices, based on the real market, in order to gauge typical prices per acre and prices per farm involved in the program.

Negotiating such option agreements is an appropriate way for land trusts to use their expertise to educate the public about a pending PDR program.

*Negotiating such option agreements is an appropriate way for land trusts to use their expertise to educate the public about a pending PDR program.*

## **Funding for Planning and Program Design**

It is doubtful Peninsula Township could have developed its PDR program without private foundation and other funding support to finance surveys, appraisal work, demonstration projects, visits from experts from around the country and the like. Any effort to develop a PDR program will likely depend on securing the kind of dedicated funding unavailable in the typical limited municipal budget. Private land trusts can play an important role in assisting with this work and serving as the recipient for such funds.

## **Sophisticated Campaigning**

The Peninsula Township experience shows the value of well-designed campaign materials distributed according to an organized timeline. Because of a limited budget of less than \$5,000, cost-effective, high-impact means for conveying information had to be identified. Materials were delivered through traditional means — newspapers, the mail, door-to-door visits, radio and TV — and state-of-the-art approaches such as videotapes. Campaign money spent in the design of materials and the careful orchestration of their delivery are dollars very well spent.

## Afterword

As this case study goes to print, Peninsula Township is negotiating with farm owners who qualify for the first round of PDR easement purchases. The timetable for these first purchases will be affected by decisions on matching funds from state and other sources, as well as any requirements that may accompany those supplemental funds.

Statewide, support for PDR is growing. At its annual meeting in December 1995, the Michigan Farm Bureau adopted a position in support of local PDR programs funded jointly by state and local sources. Legislation to this effect is expected to be introduced in the Michigan Legislature in 1996. Meanwhile, at least two counties in Michigan are actively pursuing the development of their own PDR programs. Peninsula Township's experience is widely acknowledged as one of the factors propelling this statewide interest in PDR.

## Resources

The following organizations and agencies may be of assistance in providing information on the topics covered in this case study:

- Peninsula Township Planning Department, 13235 Center Road, Traverse City, Mich. 49686; (616) 223-7322.  
Contact: Gordon Hayward, Planner and Zoning Administrator
- American Farmland Trust — State and Local Programs Division, Herrick Mill, 1 Short St., Northampton, Mass. 01060; (413) 586-9330; slaft@aol.com.  
Contact: Bob Wagner, Director of State and Local Programs
- Institute for Public Policy and Social Research, Michigan State University, 326 Berkey Hall, East Lansing, Mich. 48824; (517) 353-7880  
Contact: Joanne Westphal, Associate Professor
- Michigan Department of Agriculture, 611 West Ottawa St., Lansing, Mich. 48909, P.O. Box 33017, Lansing, Mich. 48909; (517) 335-4560.  
Contact: Dave Skjaerlund, Farmland Preservation Resource Specialist
- Grand Traverse Regional Land Conservancy, 624 Third St., Traverse City, Mich. 49684; (616) 929-7911.  
Contact: Glen Chown, Executive Director



APPENDICES

## Appendix A: Policy Group Structure

The following study committees were formed in fall 1991 to help the township Planning and Zoning Commission form policies for the township Master Plan.

<b>Committee</b>	<b>Number of participants</b>
Agricultural Policy	6
Commercial/Industrial	6
Historical	7
Natural Resource/Open Space	5
Parks and Recreation	5
Public Facilities	6
Residential Development	5
Sewer and Water	6
Solid Waste	3
Transportation and Roads	4

## Appendix B: Summary of Cost of Community Services Studies

In a series of studies that look at the local property tax contribution of farm, forest and open land, American Farmland Trust has found that the annual income raised from these land uses exceeds their demand for community services. Cost of Community Services studies try to answer three claims commonly heard at local meetings in rural or urban-edge communities:

1. Residential development will lower property taxes by increasing the tax base;
2. Farmland gets an unfair tax break when it is assessed at its actual use for agriculture instead of its potential use for development;
3. Open lands, including productive farms and forests, are interim uses just waiting around to be developed to their "highest and best use."

Of these claims, AFT is most concerned about the use of fiscal arguments to oppose farmland protection efforts such as agricultural zoning, conservation easement programs and tax relief.

While it is obvious that a rural acre with a new house will generate more total revenue than an acre of cows or corn, this says little about a community's bottom line. Especially in areas where farming and forestry are still important industries, it is important to consider the real property tax contribution of privately owned natural resources. They may be lower revenue generators, but they do not require much in the way of public infrastructure or services.

To get at these issues, AFT developed an inexpensive, easy-to-understand way to apportion the direct costs of public services to specific land uses, called Cost of Community Services studies. They were designed for use by local citizens and officials in rural and urban-edge communities that could not afford more elaborate studies. COCS studies analyze community budgets on a case-by-case basis to determine the net property tax contribution from farm, forest and open lands. In the process, these lands are compared to other community land uses.

COCS studies are not predictive and do not judge the overall public good or long-term merits of any land use or taxing structure. Instead, they look at municipal records to determine the direct demand for community services on a land use basis that specifically includes farmland and other open land uses.

COCS studies reorganize existing financial records to compare annual income to the annual expense of public services for different land use sectors. They are a snapshot in time of costs versus revenues per land parcel.

Instead of interpreting data for gross impacts, COCS studies review local income and expenses to find out current contributions. To achieve this, basic land use categories are defined that include farmland and forestland. Municipal budgets are reorganized accordingly. Income and expenses are allocated by land use for a recent year and analyzed using a spread-sheet program. Then a ratio is determined that shows how much was spent on public services for every dollar raised by each land use.

Although the process is straightforward, ensuring reliable figures requires the assistance of local officials and service providers. The hardest problem is how to interpret existing records to reflect COCS land use categories. Allocations require a significant amount of probing, including extensive personal interviews. Once revenues and expenditures are disbursed by land use, the relative demand for services can be appraised.

## **Appendix B: Summary of Cost of Community Services Studies – continued**

AFT's findings in six northeastern studies, two in Ohio and three in Minnesota are consistent with other fiscal studies: residential demand for services exceeds the revenues it generates. Commercial and industrial developments add more to municipal budgets than they demand in services. Where AFT's work differs from traditional studies is that it looks specifically at the working landscape. AFT finds the contribution similar to commercial and industrial land use — as a direct revenue generator. While farm and other undeveloped lands may not produce much in the way of revenue, their direct demand on the public services is modest.

Although many people think of farmland as an extension of residential development, agriculture is a commercial land use, albeit resource-based, that also provides communities with environmental and scenic benefits. AFT findings underscore the fact that privately owned and managed farmland is far more than open space waiting around to be converted to a potential highest and best use. It deserves fiscal recognition and respect.

# Appendix C: Legal Opinion on Township Purchase of Conservation Easements

BAUCKHAM, SPARKS, ROLFE & THOMSEN, P.C.  
ATTORNEYS AT LAW  
500 PARK BUILDING  
132 WEST SOUTH STREET  
KALAMAZOO, MICHIGAN 49007

HARRY F. SMITH 1906-1972  
JOHN H. BAUCKHAM  
KENNETH C. SPARKS  
CRAIG A. ROLFE  
LYNDA E. THOMSEN  
JOHN K. LOHRSTORFER  
EILEEN W. WICKLUND  
CAROL L.J. HUSTOLES  
THOMAS M. CANNY

TELEPHONE  
616-382-4500  
TELECOPIER  
616-382-2040

January 10, 1992

William L. Wise  
RUNNING, WISE, WILSON, FORD & PHILLIPS  
326 State Street  
P.O. Box 686  
Traverse City, Michigan 49685-0686

Re: Conservation Easements

Dear Mr. Wise:

We have done some investigation with regard to your question concerning whether townships may lawfully expend township funds to purchase conservation easements. It is our conclusion that townships may lawfully expend funds for such a purpose. Our reasons follow.

The Legislature has authorized "a governmental entity" to acquire a "conservation easement" in the same manner as the governmental entity acquires an interest in land. See the Conservation and Historic Preservation Easement Act, MCL 399.251-399.257.

A conservation easement is defined in that Act as:

"An interest in land which provides limitation 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."

Since the Legislature has expressly authorized the creation of "conservation easements" and the acquisition of such easements by governmental entities, and has not expressly stated that a

## Appendix C: Legal Opinion on Township Purchase of Conservation Easements – continued

William L. Wise  
January 10, 1992  
Page 2

---

"governmental entity" is forbidden to pay funds of the governmental entity to acquire such easements, our first reaction is that Legislature has implicitly recognized that creation of conservation easements is in the interest of the public health, safety and general welfare and serves a legitimate public purpose. In further support of this analysis is the reference in Section 2 of the Act to "an order of taking" which, in our experience, is a prerequisite to the exercise of eminent domain. As you know, the power of eminent domain may only be exercised when property is being acquired by a unit of government for a public purpose. (However, we note that the purpose of the Act as stated in the statute is to permit the creation of "voluntary conservation... easements" and the exercise of the power of eminent domain would be inconsistent with "voluntary" creation of such an easement; be that as it may, it appears that the Legislature has, at a minimum, expressly authorized a governmental entity to accept/acquire conservation easements).

We note that the statutes expressly authorize townships to create a township park commission which has the authority to acquire, maintain, manage and control township parks and places of recreation. See MCL 41.426 through MCL 41.428. We also note that MCL 41.428 expressly authorizes a city or village to appropriate out of their funds' money to contribute toward the cost of acquisition, support, maintenance, upkeep, and improvement of land acquired by a township, or two or more townships, for use as a free public park,...or other place of recreation." This language, we believe, demonstrates the Legislature's recognition that a variety of units of government have the power and authority to acquire land to be used for places of recreation, and to expend public money for that purpose.

It would be our preference that if a township is going to expend public monies for a conservation easement, there be some type of "public use" authorized in the easement document. That "public use" may be very limited in a sense that it could, conceivably, be limited to a situation where a township would hold the land, or the interest in the land, to preserve it in its natural state and the public access to the land would be limited to a "viewing area" on the edge or to certain limited nature trails or educational programs or limited recreational use. (We note that it is our opinion that preservation of open spaces without any sort of immediate public use but for purposes of preserving a natural environment for future generations in at

Appendix C: Legal Opinion on Township Purchase of Conservation  
Easements - continued

William L. Wise  
January 10, 1992  
Page 3

---

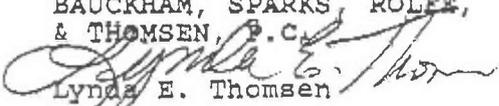
least part of the Township would probably be upheld by a Court as a "legitimate public purpose" and within the authority of a township, particularly in light of the statutes we have cited above and the purposes and goals of other statutes such as the Township Rural Zoning Act and the Township Planning Act. Since we believe the purpose of conservation easements is consistent with these other powers, we are of the opinion that expenditures of Township funds to acquire such easements would, under the circumstances be lawful)

In summary, it is our opinion that in view of the Legislature's statutory authorization of the creation of conservation easements, and the acquisition of such easements by "governmental entities" without any prohibition on expenditure of public funds for such easements, together with the Legislature's authorization of acquisition by townships of land to be used as parks or for other recreational purposes, an expenditure of government funds for that purpose would be authorized especially if the conservation easement document makes express provision for some sort of public use, even if that public use is limited in its scope and extent.

Of course, if the township holds an annual meeting, and if the township board has not been authorized to purchase or acquire land, then at the upcoming annual meeting, we highly recommend that the electors authorize the acquisition of conservation easements that are being contemplated or give the township board general authorization by buy and sell land and interests in land. Obviously, we believe that it is important that the township have your assistance in the drafting of any conservation easement where township funds are going to be expended for the acquisition. Please note that we have not investigated what effect, if any, conservation easements have upon the status of property as taxable property, or upon its value for purposes of property taxes. That is a separate issue, as we understand it. We hope that this has been of assistance to you. If anything further is necessary, please advise.

Very truly yours,

BAUCKHAM, SPARKS, ROLEE,  
& THOMSEN, P.C.

  
Lynda E. Thomsen

LET:ss

# Appendix D: Purchase of Development Rights Ordinance

## PENINSULA TOWNSHIP PURCHASE OF DEVELOPMENT RIGHTS

### ORDINANCE

Approved by Peninsula Township Board May 4, 1994

#### Ordinance Contents

<u>SECTION 1</u>	<u>Findings and Declaration of Purpose</u> . . . . .	1
<u>SECTION 2</u>	<u>Definitions</u> . . . . .	2
<u>SECTION 3</u>	<u>Authorization</u> . . . . .	3
<u>SECTION 4</u>	<u>Retained Residential Development Rights</u> . . . . .	4
<u>SECTION 5</u>	<u>Eligible Lands and Priority of Acquisition</u> . . . . .	4
<u>SECTION 6</u>	<u>Selection Committee</u> . . . . .	6
<u>SECTION 7</u>	<u>Selection</u> . . . . .	6
<u>SECTION 8</u>	<u>Duration of Acquired Interests</u> . . . . .	8
<u>SECTION 9</u>	<u>Related Costs</u> . . . . .	8
<u>SECTION 10</u>	<u>Supplemental Funds</u> . . . . .	8
<u>SECTION 11</u>	<u>Township Purpose</u> . . . . .	9
<u>SECTION 12</u>	<u>Development Rights Acquisition Fund</u> . . . . .	9
<u>SECTION 13</u>	<u>Development Rights Enforcement Fund</u> . . . . .	9

## Appendix D: Purchase of Development Rights Ordinance – continued

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE relating to the acquisition of voluntarily offered interests in Farmland and Open Space Land in Peninsula Township: 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 acquisition. 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.

BE IT ORDAINED BY THE PENINSULA TOWNSHIP BOARD:

### SECTION 1 Findings and Declaration of Purpose

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.

(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 they also include 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. However, 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.

(3) The agricultural industry in Peninsula Township provides the opportunity to harvest locally grown fruit and vegetables to sell at roadside stands and other local outlets in the Township. 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 is permanently lost to the citizens of Peninsula Township.

(4) 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 Comprehensive 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.

## Appendix D: Purchase of Development Rights Ordinance – continued

(5) Agriculture on Old Mission Peninsula is predominantly fruit production; the majority of the nation's tart cherries are grown within this region. Of the 17,000 acres of land in Peninsula Township, there are currently 12,000 acres in the Agricultural District of which some 7,000 acres provide the basis for the township's currently active agricultural enterprises.

(6) 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 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 uses.

(7) 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 the public interests which are served by Farmlands and Open Space Lands within the Township.

(8) Properties on which the Township has purchased the Development Rights should remain substantially undeveloped in order to promote their "Agricultural Use".

(9) The acquisition of interests in Farmland and Open Space Lands as provided in this Ordinance is a public purpose of Peninsula Township and financing such acquisition requires that the Township enter into purchases or installment purchases not to exceed statutory limits.

### SECTION 2 Definitions

(1) "Agricultural Use" means substantially undeveloped land devoted to 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.

(2) "Agricultural Rights" means an interest in and the right to use and possess land for purposes and activities related to open space, horticultural and other agricultural uses.

(3) "Appendix A" of this Ordinance means the maps 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 appended to this Ordinance for more readily accessible public reference.

(4) "Chairperson" means the member of the Selection Committee who is elected Chairperson by the Selection Committee.

(5) "Development" means an activity which materially alters or affects the existing conditions or use of any land.

(6) "Development Rights" means an interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agriculture and open space.

## Appendix D: Purchase of Development Rights Ordinance – continued

(7) "Development Rights Easement" means a grant, by an instrument, whereby the owner relinquishes to the public in perpetuity, the right to develop the land as may be expressly reserved in the instrument, and which contains a covenant running with the land, not to develop, except as this right is expressly reserved in the instrument.

(8) "Eligible Land" means Farmland and Open Space Land for which the purchase of "Development Rights Easements" with tax funds are authorized pursuant to this Ordinance.

(9) "Farmland and Open Space Land" means those lands shown in the Township Master Plan as an Agricultural Preserve Area as adopted and amended from time to time by the Peninsula Township Planning Commission.

(10) "Full Ownership" means fee simple ownership.

(11) "Governmental Agency" means the United States or any agency thereof, the State of Michigan or any agency thereof, any Township, City or municipal corporation.

(12) "Owner" means the party or parties having the fee simple interest, a real estate contract vendor's or vendee's interest, or a mortgagor's or mortgagee's interest in land.

(13) "Parcel" means contiguous property under one ownership that is included in an application.

(14) "Permitted Use" means any use contained within a development rights easement essential to the farming operation or which does not alter the open space character of the land.

(15) "Selection Committee" means the Committee formed pursuant to Section 6 of this Ordinance to advise the Township Board in the selection of Eligible Lands for purchase.

(16) "Substantially Undeveloped Land" means land on which there is no more than 1 residential dwelling unit (exclusive of migrant housing units) for each 20 acres of land.

(17) "Supervisor" means the Peninsula Township Supervisor.

(18) "Township Board" means the Peninsula Township Board.

(19) "Value of Development Rights" means the difference between the fair market value of Full Ownership of the land (excluding the buildings thereon) and the fair market value of the Agricultural Rights plus any Residential Development Rights to be retained by the owner.

### SECTION 3 Authorization

(1) The Township Board is hereby authorized to expend tax revenues to acquire 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 is authorized to enter into cash purchase and/or installment purchase contracts consistent with applicable law. When installment purchases are made, the Township 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.

## Appendix D: Purchase of Development Rights Ordinance – continued

(3) The Township Board is further authorized to contract with other parties, for example American Farmland Trust, to participate jointly in the acquisition of interests in Eligible Lands.

(4) The Township shall contract with a recognized and legally established non-profit land conservancy or other experienced and qualified individual that would share in the process of negotiating easements and establishing both the baseline studies and the procedures for monitoring of any conservation easements acquired under this Ordinance and would be done in accordance with "The Standards and Practices Guidebook" issued in 1989 by the Land Trust Alliance.

(5) Interest which the Township owns in property other than Eligible Lands may be exchanged for property interests in Eligible Lands on an equivalent appraised value basis. If the property interest exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value in the exchange.

(6) The Township Board shall budget on an annual basis for monitoring of all Development Rights Easements purchased under the authority of this Ordinance (Not to exceed \$1000.00 annually from General Fund Money).

### 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) It is in the best interest of property owners and of the Program to Purchase Development Rights that property owners retain some residential development rights so long as the land remains substantially undeveloped. When property owners retain some development rights their land value remains higher than it would be if they sold all their Development Rights and the value of the Development Rights to be purchased is correspondingly reduced.

(3) Applications for the sale of Development Rights may include a provision to retain the right to build residential dwellings (Residential Development Rights), 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.

(4) The building locations for retained Residential Development Rights may be restricted in the negotiated "Development Rights Easement" in order to protect Scenic Views identified in the Township Comprehensive Plan.

### SECTION 5 Eligible Lands and Priority of Acquisition

The tax revenues 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:

Voluntary application by the property owner and included in the Agriculture Preservation Area Map adopted by the Peninsula Township Planning Commission as it may from time to time be amended.

## Appendix D: Purchase of Development Rights Ordinance – continued

### Criteria for Selection Within Same Priority.

The following criteria shall be used in determining which offers to accept in the event that funds are not adequate in any Selection Round to purchase Development Rights on all Eligible Lands of equal priority for which valid offers have been received by the Township:

#### Cumulative Points

- 21-30 1. Parcel by class is shown on Prime Scenic View Map adopted by the Peninsula Township Planning Commission.
- a. Class I - (30)
  - b. Class II - (27)
  - c. Class III - (24)
  - d. Class IV - (21)
- 20-30 2. Parcels with percentages of green and/or yellow rated sites as shown on the Red Tart Cherry Site Inventory for Grand Traverse County published by the Soil Conservation Service.
- a. 90 % or more - (30)
  - b. 50% to 89.9% - (25)
  - c. 30% to 49.9% - (20)
- 10 3. Contiguous with other properties currently being farmed.
- 10 4. Parcel which is greater than 10 acres and is adjacent to agricultural lands that are permanently preserved or on which Development Rights have been offered for sale.
- 5 5. Parcels offered for development rights purchase that are 10 acres or more in size.
- 5 6. Parcels which are less than 10 acres in size and adjacent to agricultural lands that are permanently preserved or on which Development Rights have been offered for sale.

### Up to 25 points for Physical Characteristics based on PROFESSIONALLY QUALIFIED site analysis to be used when other point totals are equal (Tie Breaker).

- (25) 7. Physical Characteristics
- a. Soil Factors
    - (1) Texture
      - 2 (a) Coarse loamy sand
      - 1 (b) Fine loamy sand
    - (2) Drainage
      - 2 (a) Well drained
      - 1 (b) Moderately well drained
    - (3) Depth/rooting restrictions
      - 2 (a) No restrictions to 48 inches
      - 1 (b) Coarse fragments
  - b. Physiographic Factors
    - (1) Slope
      - 2 (a) 2-12%
      - 1 (b) 0-2%
    - (2) Elevation
      - 2 (a) Minimum 640 feet above sea level.
    - (3) Air Drainage
      - 2 (a) Uninterrupted airflow to major air storage basin.
      - 1 (b) Minor obstruction of air flow to major air storage basin.

## Appendix D: Purchase of Development Rights Ordinance – continued

### SECTION 6 Selection Committee

(1) A seven-member Selection Committee shall be appointed by the Township Board within ninety (90) days following the approval of the Millage 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 three members shall be two years and terms of four 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 the Millage vote have been spent and in any event no later than eight years after the Millage election.

(5) No member shall vote on the selection of individual parcels in which they have an interest or on individual parcels adjacent to property in which they have an interest.

### SECTION 7 Selection

Beginning in the first year following the Millage election and continuing at least once a year until all proceeds of the Millage election have been expended, the Township Board shall conduct a voluntary property selection process (herein called "Selection Round") generally as follows:

(1) In each Selection Round the Development Rights on all Eligible Land properties offered shall be eligible for purchase. In all Selection Rounds properties of higher priority shall be purchased with available funds before properties of lower priority are purchased, provided:

- a. If the average appraised value per acre of Development Rights on a given parcel deviates by 30% or more from the median appraised value of all appraised properties, then the Township Board may renegotiate for a lower price and/or seek outside funding for the purchase of Development Rights on that parcel.
- b. In the interest of protecting a significant amount of agricultural land, the Township Board may determine not to buy all or any of the development rights on a particular parcel if the Board makes a finding that it is in the best interest of the program to protect a larger number of acres rather than a smaller number of acres of higher valued development rights.
- c. In the event that points are assigned to properties based on a viewshed and the whole scenic view is not protected because either some of the properties in the viewshed are not offered or an easement that protects the scenic view cannot be successfully negotiated, then the Selection Committee shall determine and remove those scenic view points from all parcels that might be obstructed by development on the non-protected parcel.

## Appendix D: Purchase of Development Rights Ordinance – continued

- d. The selection committee shall remove points that were given because the property was adjacent to properties with offered development rights and those adjacent development rights are no longer offered.
- e. 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.

(2) The Township Board shall begin each Selection Round by giving notice in one newspaper of general circulation in Peninsula Township. The notice shall describe the properties eligible for purchase in that Selection Round, the general procedure to be followed in the selection process, including an estimated time schedule for the steps in the process, and shall invite the Owners of such properties to make application for purchase of Development Rights by the Township and to describe the property interest which the Owner is willing to sell, such document shall include any residential development rights to be retained by the owner.

(3) Upon closing of the application period, the Selection Committee shall review each application which has been received to determine the eligibility and priority classification of each property interest and to verify ownership by title search. 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 Comprehensive Plan the Selection Committee shall request the Planning Commission to provide recommended building and/or vegetation restrictions as necessary to protect the scenic view.

(4) For those applications which meet the requirements of SECTION 5. Eligible Lands and Priority of Acquisition above, the Selection Committee shall cause an appraisal of the applicant's property interest to be made. A "before and after" appraisal shall be made to determine the Value of Development Rights. One appraisal shall determine the fair market value of Full Ownership of the land (excluding buildings thereon) and one shall determine the fair market value of the Agricultural Rights plus any specifically retained Residential Development Rights.

(5) Appraisals shall be made by State Certified Appraisers selected by the Selection Committee on a bid basis. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. In the event that the low bidder has a conflict of interest associated with a potential easement, the second low bidder will conduct that appraisal. In any event, the same appraiser shall conduct the before and after appraisals.

(6) 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 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, within the time allowed on the selection schedule have a review appraisal be made at the Owner's expense by a State Certified appraiser. The appraisal shall then be filed with the Selection Committee. The Selection Committee shall use both appraisals to reach an agreement as to the appropriate value of the development rights.

## Appendix D: Purchase of Development Rights Ordinance – continued

(7) Terms and conditions of sale and information on the effect of the sale may be discussed by the entire Selection Committee with Owners prior to the submission of written applications.

(8) Written applications by owners who desire to have their Development Rights purchased by the Township shall be submitted on forms provided by the Township. These written offers shall include any development options desired to be retained by the owners.

(9) Upon receiving the recommendations of the Selection Committee, the Township Board shall take final action on such recommendations.

### SECTION 8 Duration of Acquired Interests

Development Rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity, provided that: If the Township Board shall find that Farmland and Open Space Land described in this Ordinance can no longer reasonably be used for "Agricultural Use" as to any interest in land acquired with Millage proceeds, the Township Board shall submit to the voters of the Township a proposition to approve of the disposition of such interest. Only upon a majority vote approving such proposition can such interest be disposed of by the Township and the proceeds of such disposition shall only be used for the acquisition of interests in "Eligible Lands" as provided in this Ordinance. A "before and after" appraisal shall be made to determine the Value of Development Rights, and the Township shall not sell the Development Rights for an amount less than the appraised value of the Development Rights determined as follows. One appraisal shall determine the fair market value of Full Ownership of the land (excluding buildings thereon) and one shall determine the fair market value of the Agricultural Rights plus any retained development rights. Appraisals of the fair market value of Full Ownership or of a property interest other than Development Rights shall be made by State Certified Appraisers selected by the Selection Committee on a bid basis. The selected appraiser shall not have a property interest, personal interest or financial interest in Eligible Lands. In the event that the low bidder has a conflict of interest associated with a potential easement, the second low bidder will conduct that appraisal. In any event, the same appraiser shall conduct the before and after appraisals.

### SECTION 9 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 shall be paid from the proceeds of the Millage, however, the Township shall not be responsible for expenses incurred by the Owner incident to this transaction.

### SECTION 10 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 the Millage in the manner provided by this Ordinance and in accordance with the applicable laws or terms governing such grant.

Appendix E: Newspaper Ad That Ran the Day Before the Election

**ATTENTION PENINSULA TOWNSHIP VOTERS**

**P.D.R. -  
SIX REASONS TO VOTE YES AUGUST 2**

**PAID FOR BY CONCERNED CITIZENS IN SUPPORT OF PURCHASE OF DEVELOPMENT RIGHTS**

## Appendix F: Campaign Information Package

- Several copies of an 18-minute video produced by the citizens' group featuring scenic views of the township and its farms and discussions by four residents;
- A copy of the proposed ordinance;
- A study sheet of anticipated questions with clear answers;
- Copies of the main tabloid information mailer;
- A page suggesting approaches to the people they encountered;
- A summary of other programs in the country and their experiences with PDR;
- A map of the eligible agricultural zone;
- A list of the proposed program's features;
- A list of foundations that had supported the effort to date;
- Copies of a favorable article from the Detroit Free Press;
- A sample ballot; and
- A sign-up sheet for those willing to have their names publicly listed as supporters or "yes" voters.

## **Appendix G: MSU Information Package and Distribution System**

Using the voter registration list for each subdivision, packets contained a household checkoff list on one side and a letter of introduction/solicitation on the other that requested households to pass the envelope to the next address. A neighborhood "captain" was identified in each subdivision and charged with the task of delivering packets to the first house on the list, periodically shepherding the envelope through the neighborhood and gathering it after it reached the last house. Preliminary investigation indicates the envelopes reached more than 51 percent of all subdivision houses on the peninsula.

The information packet was designed so residents could distribute them within their neighborhoods. Each packet contained a letter informing residents about the purpose and content of each envelope, who was sponsoring the packets (MSU) and what to do with the packet once a household had reviewed its contents.

A list of registered voters with their respective addresses from the county clerk's office was printed on the envelope; each household was asked to check off the names of those reviewing the materials and to drop off the packet to the next house on the list. Neighborhood "captains" delivered the packets to the first house on the list, then shepherded the packet through the neighborhood by periodically checking on the packet's whereabouts.

Each packet served from three to 10 households. Over a one-week period, nearly 51 percent of households had been checked off the list. One hundred and fifty packets were created; 31 subdivisions and 856 households were contacted in this manner.

The fact that this package was presented by an independent educational institution and was specifically designed to present both sides of the issue made it more likely to put information into the hands of both supportive and non-supportive voters, a major plus for the campaign.

The carefully designed distribution system that moved it from house to house through all the subdivision neighborhoods made up for the failure of the original plan to use subdivision associations to contact subdivision residents. Distribution required only a minimal commitment by one volunteer in each neighborhood.

## Appendix H: Easement Purchase Option Agreement

### OPTION TO PURCHASE A CONSERVATION EASEMENT

On this 26 day of July, 1994, in consideration of their mutual promises and the payments to be made under paragraph A.2. hereof, WALTER W. JOHNSON and MARY LOUISE JOHNSON, husband and wife, residing at 18062 Old Mission Road, Traverse City, Michigan, 49686 ("Seller"), grants to AMERICAN FARMLAND TRUST, INC., a District of Columbia nonprofit corporation with principal offices at 1920 N Street, N.W., Suite 400, Washington, D.C. 20036 ("Purchaser") the following rights with respect to a parcel of approximately 80 acres, located in Peninsula Township, Grand Traverse County, Michigan, more particularly described in Attachment "A" hereto ("Land"), upon terms set forth herein.

#### A. GENERAL TERMS

1. DURATION. The rights herein shall remain in effect, until 12:01 A.M. on May 1, 1995 unless Peninsula Township's millage measure of August 2, 1994 is defeated by the voters in which case the option will expire on August 3, 1994.

2. CONSIDERATION. In consideration of the grant of these rights, Purchaser shall, upon the signing hereof, deposit the sum of \$100.00 which shall be distributed in accordance with paragraphs B.2. and B.3. hereof.

3. COMPLETE AGREEMENT. The parties agree that this written Agreement, including Attachment A hereto, shall constitute their entire agreement, and that no oral statements or promises not embodied in this writing shall be valid.

4. PURCHASER'S RIGHT TO ASSIGNMENT. Purchaser intends to assign this agreement and its right to purchase the development rights under the terms of this Agreement to Peninsula Township. Notwithstanding anything herein to the contrary, Purchaser may assign only to Peninsula Township without the prior written consent of the Seller.

5. SUCCESSION. The parties agree that this Agreement shall be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

6. SURVIVAL OF RIGHTS. Delivery and acceptance of the Deed of Conservation Easement shall constitute full compliance by Seller with the terms of this Agreement, except for warranties contained in the Deed of Conservation Easement. However, any agreements contained herein that relate to rights, obligations or acts of the parties which are to exist or be performed after the delivery of the Deed of Conservation Easement, shall survive such delivery.

7. SPECIFIC PERFORMANCE. Upon breach by Seller of this grant of an option to purchase and right of first refusal, Purchaser shall be entitled to specific performance of the terms of this grant agreement.

## Appendix H: Easement Purchase Option Agreement – continued

### B. OPTION TO PURCHASE A CONSERVATION EASEMENT

1. EXERCISE OF OPTION. Purchaser may exercise this option by notifying the Seller in writing of its intention of so doing, and by requesting that a date for closing of title be scheduled to occur within ninety (90) days of the receipt of such notice by Seller.

2. FORFEIT OF CONSIDERATION. If, at the expiration of this option, Purchaser has not exercised this option in the manner prescribed in paragraph B.1. hereof, the Purchaser shall forfeit to Seller all sums paid under paragraph A.2. hereof.

3. PURCHASE PRICE AND TERMS OF PAYMENT. The Purchase Price shall be **One Hundred and Forty Six Thousand Dollars (\$146,000.00)**, less an amount to be determined by a qualified appraiser and agreed to by the parties reflecting the value of the right to build a residential unit on one parcel of 5 acres or less should Seller decide to retain such right, payable in equal annual cash installments over a fifteen-year period, in accordance with an installment purchase contract to be agreed to by the parties. The contract will provide for interest payments on the declining balance at a rate equal to the then current interest rate being paid by Peninsula Township under its Purchase of Development Rights program as described by Peninsula Township Ordinance No. 23. The deposit to be paid by Purchaser under paragraph A.2. shall be a credit against the initial payment paid under terms of the installment purchase contract.

4. RIGHT OF ACCESS. Purchaser and its agents shall have the right to reasonably access the Land, upon prior notice to Seller, throughout the term of the option for purposes related to this option agreement including, but not limited to, inspection, appraisal, surveying and engineering measurements. Purchaser agrees to hold Seller harmless for any costs, losses, damages or injuries arising from the exercise of any such rights of access; further, Purchaser while exercising such rights of access shall not cause any damage to the Land.

5. CONSENT OF LENDERS. As noted elsewhere in this Option Agreement or in the proposed Easement attached hereto, Seller is obligated (if Purchaser elects to exercise its option) to cause all of its mortgage holders (if any) to formally subordinate their mortgage interests to the interests acquired by Purchaser. Purchaser will provide assistance to Seller in obtaining such subordination.

6. CLOSING AND POSSESSION. The closing of title shall occur at a location to be mutually agreed upon by the parties, within ninety (90) days following the exercise of this option, or a mutually acceptable time thereafter. Seller shall pay all closing costs (except purchaser's attorney fees), including but not limited to the cost of title search and insurance, transfer taxes, recording fees, and Seller's attorney's fees.

7. TITLE TO BE CONVEYED. Seller shall convey, by Deed of Conservation Easement, in the form of Attachment "B" hereto, as defined in Michigan Compiled Laws Sec. 399.252, and further defined by Peninsula Township Ordinance No.

**Appendix H: Easement Purchase Option Agreement – continued**

23, and in a form sufficient to transfer title, free and clear of all liens and encumbrances whatsoever (except as may be agreed upon pursuant to Paragraph 5 above), which shall restrict the use of the property to agricultural and open space uses.

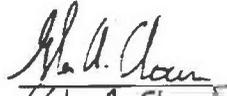
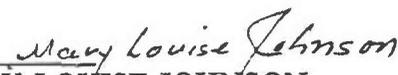
The parties agree that, if Seller cannot convey such title satisfactory to Purchaser at closing, Seller shall have an additional thirty (30) Days in which to cure any defect and perfect title. If, at the end of such period, Seller cannot convey title as stipulated herein, Purchaser may terminate this agreement and recover from Seller all payments made on its account, together with interest accrued at nine percent per annum, or seek appropriate remedies for breach.

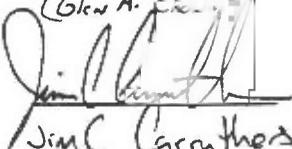
8. ACTION CONTRARY TO THE TERMS OF THE CONSERVATION EASEMENT. During the Option period, Seller agrees to refrain from and not allow any action that would violate the terms of the Conservation Easement, Attachment "B", as if the Conservation Easement were in effect during the Option period.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first above written.

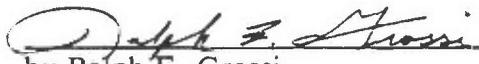
WITNESS

"SELLER"

  
WALTER W. JOHNSON  
  
MARY LOUISE JOHNSON

  
JIM C. CARUTHERS

AMERICAN FARMLAND TRUST, INC.  
"Purchaser"

  
by Ralph E. Grossi  
President

  
Raymond Waldock

  
Raymond Waldock

Appendix H: Easement Purchase Option Agreement – continued

ACKNOWLEDGEMENTS

County of Grand Traverse )

State of Michigan ), SS:

The foregoing instrument was subscribed and sworn before me on this 26 day of July, 1994, by WALTER W. JOHNSON and MARY LOUISE JOHNSON.



Notary Public (Seal)

My commission expires: 11/17/96

JAMES C. CARRUTHERS  
NOTARY PUBLIC - GRAND TRAVERSE CO. MICH.  
MY COMMISSION EXPIRES 11-17-96

City of Washington )

District of Columbia), SS:

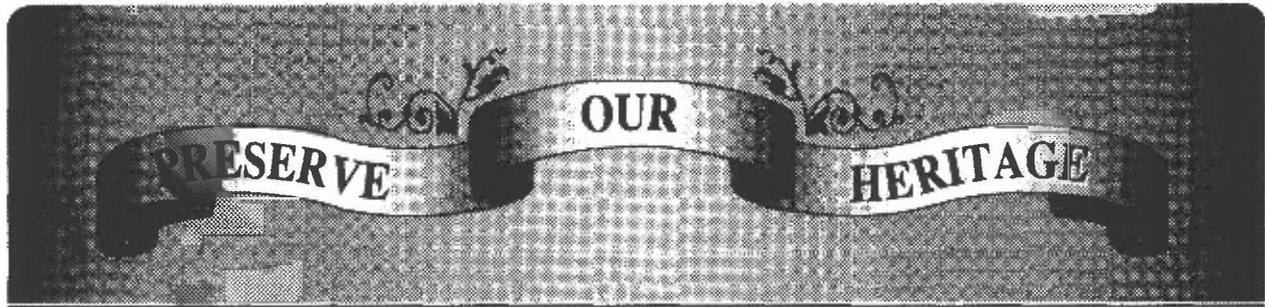
Personally appeared before me RALPH E. GROSSI, President, American Farmland Trust, known to me or satisfactorily proven and acknowledged that he executed the foregoing instrument as his free act and deed on this 12th day of August 1994



Notary Public (Seal)

My commission expires: 5/15/99

## Appendix I: Mailings from Concerned Citizens in Support of PDR



Volume 2

OLD MISSION PENINSULA, MICH.

July 22, 1994

### **IS THIS A LEGALLY SOUND PROGRAM?**

Conservation easements and land conservancys have been with us *throughout the country's history*. This paticular tax-based ordinance has been researched by the township attorney and by the township's bond counsel; both found it to be legally sound. Additionally, this citizen group consulted a number of attorneys in the process of deciding to back the program.

### **WHY SHOULD I VOTE TO RAISE MY OWN TAXES?**

First, we can pay these taxes now to preserve our agricultue, views and open spaces, or we can pay later to provide the needed services to become completely residential in the future. Further, we have the oppotunity NOW to maintain the *character of our community BEFORE it is lost*, and to do it in a fair way by sharing in the cost of that preservation.

### **ARE FARMERS INTERESTED IN PARTICIPATING IN THIS P.D.R. PROGRAM?**

YES. In a 1993 survey approximately 2,000 acres worth said yes, they were interested. In 1994 500 acres worth actually applied for P.D.R. through a hoped-for state program which may be able to preserve 60-100 acres in our township in the future. Currently, approximately 300 more acres have asked to have appraisals done as a demonstration of how the program would work.

It is also noteworthy that in five of the six P.D.R. programs we researched across the country

people were skeptical that farmers would participate, but now all six have a waiting list of farmers wanting to enter the program.

### **ISN'T THIS A SUBSIDY PROGRAM?**

NO. This is NOT A SUBSIDY. A subsidy is an ongoing payment to support a business. This is a one-time (in each case) purchase of something of value to the community based on fair appraisals.

### **CAN'T WE DO THE SAME THING WITH ZONING?**

NO. ZONING IS NOT IN PERPITUITY; it is subject to changes in township politics. Trying to do this with zoning would give no compensation for the taking of property rights, an unfair process which has recently been successfully challenged in the courts. In contrast, P.D.R. is a VOLUNTARY contract versus a regulation and therefore not subject to questions of taking.

### **IS THIS PROGRAM BIG ENOUGH TO MAKE A DIFFERENCE?**

YES. There are currently about 6,000 acres being actively formed in Peninsula Township. This program will cover approximately 1,500 acres. That is 20% of the active agriculture, a significant portion.

Additionally, the establishment of a permanent core of agriculture will ensure the presence of an agricultural industry, which legally justifies the current maximum density of one house per five acres throughout all the other agricultural property, which does not end up in the P.D.R. program.



## Appendix J: Excerpt From Opinion Survey Results by Northeast Research

To finance this plan, the township would need to pass either an additional millage or a bond issue.

If cost was about \$200 a year  
44% would support this plan  
38% would oppose it  
18% don't know/undecided

If cost was about \$400 a year  
17%\* would support this plan  
17% would oppose it  
10% don't know/undecided

If the cost was about \$600 a year  
6%\*\* would support this plan  
6% would oppose it  
5% don't know/undecided

\* Percentage of total survey; however, only those respondents who would support \$200 per year were asked this question

\*\* Percentage of total survey; only those in favor of plan at \$400 per year were asked this question

## Appendix K: Basic Township Conservation Easement

### DEVELOPMENT RIGHTS EASEMENT Township Board Approved DRAFT

THIS DEED AND AGREEMENT is made this \_\_\_\_ day of \_\_\_\_, 199\_\_, BY AND BETWEEN \_\_\_\_\_ ("Grantor"), in favor of PENINSULA TOWNSHIP, a quasi-municipal corporation, of Grand Traverse County, Michigan, having an address at 13235 Center Road, Traverse City MI, 49686-8560, ("Grantee").

#### WITNESSETH

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in Peninsula Township, Grand Traverse County, Michigan, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property possesses agricultural, scenic, and/or open-space values (collectively, "conservation values") of great importance to Grantor, Peninsula Township, the people of Grand Traverse County and the people of the State of Michigan; and

WHEREAS, the Property is located within Peninsula Township, a community with an agricultural-based economy in an area presently experiencing rapid development, including the subdivision of prime farmland; and

WHEREAS, maintaining the scenic and rural beauty of the area along with preserving the agricultural industry of Peninsula Township is an important planning goal of Peninsula Township and area residents; and

WHEREAS, the Township Board has made specific findings of fact regarding the importance of protecting the conservation values of certain lands within Peninsula Township and the citizens of Peninsula Township through their Township Board have established Peninsula Township Purchase of Development Rights Ordinance No. 23 (the "Ordinance") to acquire, through voluntary participation of Grantor, an interest in the Property for the protection of conservation values; and

WHEREAS, the Grantor recognizes that the Property has been identified as Farmland and Open Space Land as defined in the Ordinance; and

WHEREAS, the Grantor is willing to grant and convey to the Grantee the Development Rights in the Property as such rights are defined in the Ordinance (said rights being the interest 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 agricultural and/or open space uses), on the terms and conditions and for the purposes hereinafter set forth; and

## Appendix K: Basic Township Conservation Easement – continued

WHEREAS, the Grantee is willing to purchase the Development Rights in the Property and accept this instrument of conveyance; and

WHEREAS, the conservation of the Property by this Easement guarantees that the land will forever be available for agricultural production and/or open space uses; and

WHEREAS, the specific conservation values of the Property are documented ("Baseline Documentation", dated \_\_\_\_\_, 19\_\_\_\_, on file at the office of Grantee and incorporated herein by this reference) in an inventory of relevant features of the Property, consisting of reports, maps, photographs, and other documentation (list attached hereto as Exhibit C) that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns including, without limitation, those existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

NOW THEREFORE WITNESSETH, that the Grantor, for and in consideration of \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) lawful money of the United States of America, paid to the Grantor by the Grantee, the receipt whereof is hereby acknowledged, and the Grantors being therewith fully satisfied, does by these presents grant, bargain, sell, transfer and convey unto the Grantee forever all Development Rights in respect to the Property, hereby perpetually binding the Property to the restrictions limiting permitted activities to agricultural and open space uses as specifically delineated in the covenants, terms, and conditions contained herein, and do also grant such interests, rights and easements, make such covenants and subject the land to such servitude as is necessary to bind the Property in perpetuity to such restrictions.

### PURPOSE

It is the purpose of this Easement to assure that the Property will be retained forever in its predominantly agricultural, scenic, and/or open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property.

## Appendix K: Basic Township Conservation Easement – continued

I. Uses Restricted to Agricultural and Open Space Uses; Agricultural and Open Space Uses Defined. Use of the land is permanently restricted to solely agricultural and/or open space uses.

A. "Agricultural Use," means substantially undeveloped land devoted to the production of horticultural, silvicultural and agricultural crops and animals useful to man, including fruits; nuts; vegetables; mushrooms; green house plants; Christmas trees; timber; forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding, boarding and grazing; and the following related uses and activities:

1. Retail and wholesale sales of the above agricultural products grown on the farm;
2. Composting of agricultural plants, animal manures and residential lawn materials.
3. The lying fallow or nonuse of the Property;
4. The use of a Licensed Agricultural Labor Camp or Agricultural Labor Camp including the right to build farm labor housing structures to house migrant farm laborers while they are principally employed on the grantor's farm operation. (limitations on location, if any, shall be shown on Exhibit B);
5. Tenant house, as a part of farm property for full-time farm employees associated with the principal use of the Property; provided, however, that such Tenant house shall be counted as a reserved dwelling unit as shown on Exhibit B;
6. Agricultural buildings and structures including new buildings such as greenhouses, roadside stands and other structures and improvements to be used solely for agricultural purposes. (limitations on their location, if any, shall be shown on Exhibit B);
7. Storage of Agricultural Machinery, Equipment and Agricultural Materials including but not limited to chemicals and fertilizers. (limitations on their location, if any, shall be shown on Exhibit B);
8. Processing of agricultural products is allowed provided a majority of the agricultural products processed are grown by the Grantor's farm operation;
9. Other Agricultural Practices that may in the future be determined by the Township Board to be a common agricultural practice in the region after the use is recommended by the Planning Commission and at least one other state or nationally recognized agricultural organization.

B. "Open Space uses," as used herein, means:

1. Agricultural uses as defined above;
2. Non-agricultural uses that conserve natural, scenic, or designated historic resources;

Approved by Township Board Page 3

## Appendix K: Basic Township Conservation Easement – continued

3. Windbreaks and other vegetation unless restricted as shown on Exhibit B.
- C. Open space and agricultural uses do not include the following:
1. The construction, habitation, or other use of a dwelling unit, except to the extent such use is specifically reserved in this instrument;
  2. The construction or expansion of buildings and structures for non-agricultural uses, except to the extent such use is specifically reserved in this instrument;
  3. The dumping or storage of non-agricultural solids or liquid wastes, including but not limited to trash, rubbish, or noxious material;
  4. The construction or use of golf courses, parking lots not associated with agricultural uses, athletic fields, campgrounds, travel trailer parks, institutional structures, livestock auction yards, veterinary hospitals and clinics, commercial sawmills (not including the temporary use of a sawmill for sawing timber grown on the Property), public buildings and public service installations, incinerators and sanitary land fills, sewage treatment and disposal installations (not including tile fields for residential dwellings shown on Exhibit B), commercial airports and airfields, non-agricultural warehousing or vehicle raceways or animal raceways other than those principally used for the exercise of animals grown, boarded or produced on the Property.

### II. Further Restrictions on Use of the Property:

Potential uses of the Property are limited in that the Grantor, his heirs, successors, and assigns shall only be entitled to use, lease, maintain, or improve the Property for agricultural and/or open space uses, and they shall comply with the following terms, conditions, restrictions, and covenants, which are permanently binding on the Property:

- A. No mining, drilling or extracting of oil, gas, gravel, or minerals on or under the Property shall be permitted that causes disruption of the surface of the Property to any extent that adversely affects the agricultural production or the preservation of scenic views, and no part of the land shall be used for storage or processing of gas, oil, or minerals taken from the Property, other than storage for agricultural uses or the private use of the occupants of the Property.
- B. Sand and gravel extraction for use on the farm is permitted, however, no commercial sales of sand and/or gravel shall be permitted without approval of the Township Board. Any such approval for commercial sales shall be consistent with the intent of Ordinance #23 and Section A. above.

Approved by Township Board Page 4

## Appendix K: Basic Township Conservation Easement – continued

- C. No surface activities, including excavation for underground utilities, pipelines, or other underground installations, shall be permitted that cause permanent disruption of the surface of the Property. Temporarily disrupted soil surfaces shall be restored in a manner consistent with agricultural uses, including replacement of a minimum of four (4) inches of topsoil and seeding within a reasonable period of time after such disruption.
- D. No signs shall be erected on the Property except for the following purposes:
  - 1. To state the name of the property and the name and address of the occupant;
  - 2. Historic designation;
  - 3. No Trespassing signs;
  - 4. To advertise any use or activity consistent with the agricultural or open space uses as herein defined; or to advertise the property for sale or rent.
  - 5. Signs required by local, state, or federal statute.
- E. The property shall not be used to contribute toward the satisfaction of any open space or setback requirement, contained in any statute, ordinance, regulation, or law involving the use of other real property.

III. Reserved Rights: Grantor reserves to himself, and to his personal representatives, heirs, successors and assigns, all rights accruing from his ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved and shall be deemed not inconsistent with the purposes of this Easement:

- A. Right to Convey: The right to sell, give or otherwise convey the Property, provided such conveyance is subject to the terms of this Easement.
- B. Right to Divide: Any new parcels resulting from a division of the Property shall be subject to the terms of this Easement.
- C. Reservation of Dwelling Unit(s):
  - 1. The Grantor reserves the right to the use of \_\_\_\_\_ dwelling unit(s) along with accessory uses on the land as shown on Exhibit B. If the right to build a dwelling unit is retained, the permitted dwelling shall be constructed on a parcel within the "Building Envelope/s" as shown on Exhibit B including adequate land for sewage disposal. The Grantor reserves the right of an ingress and egress easement for utilities and a driveway between the building envelope/s and \_\_\_\_\_ road. The location of the permitted driveway is as shown in Exhibit B.

## Appendix K: Basic Township Conservation Easement – continued

2. No more than \_\_\_\_\_ dwelling unit(s) in total (reserved and existing) will be permitted regardless of whether the Property is subdivided by the Grantor or by any successor in interest of the Grantors.
3. If the Property is subdivided, the number of dwelling units allocated to each subdivided parcel out of the total number of dwelling units specified above shall be indicated in the deed to each such parcel and on the face of any plat or other instrument creating the subdivision or conveying an interest in the Property; however failure to indicate the number of such dwelling units thereon shall not invalidate or otherwise affect the restriction of the total number of dwelling units on the Property.
4. Grantor shall have the right to renovate or replace existing permitted residences or agricultural buildings and structures. Improvements, shall be substantially in their current or permitted locations as shown in Exhibit "B".

### IV. Additional Covenants and Agreements

- A. Covenant Against Encumbrances. The Grantor covenants that they have not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the Development Rights hereby conveyed, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.
- B. Access. No right of access by the general public to any portion of the Property is conveyed by this instrument.
- C. Taxes. If the Grantor becomes delinquent in payment of taxes such that a lien against the Property is created, the Grantee, at its option, shall have the right to discharge said lien, or take other actions as may be necessary to protect the Grantee's interest in the Property and to assure the continued enforceability of this instrument.
- D. Remedies. If the Grantors, their heirs, successors, assigns, agents, or employees violate or allow the violation of any of the terms, conditions, restrictions, and covenants set forth herein, then the Grantee will be entitled to all remedies available at law or in equity, including, but not limited to injunctive relief, rescission of contract, or damages, including actual attorney's fees and court costs reasonably incurred by the Grantee in prosecuting such action(s). No waiver or waivers by the Grantee, or by its successors or assigns, of any breach of a term, condition, restriction, or covenant contained herein shall be deemed a waiver of any subsequent breach of such term, condition, restriction or covenant or of any other term, condition, restriction, or covenant contained herein.

## Appendix K: Basic Township Conservation Easement – continued

- E. No Alteration or Amendment. The terms, conditions, restrictions, and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the Grantee, or its successors or assigns, and any such alteration or amendment shall be consistent with the purposes of Peninsula Township Ordinance No. 23, as heretofore or hereafter amended.
- F. Restrictions Binding on Successors. The Grantor and Grantee agree that the terms, conditions, restrictions, and covenants contained herein shall be binding upon the Grantor, his agents, personal representatives, heirs, assigns, and all other successors in interest to the Property and possessors of the Property, and shall be permanent terms, conditions, restrictions, covenants, servitudes, and easements running with and perpetually binding the Property.
- G. Transfer of Rights by Grantee. The Grantee agrees that the Development Rights to the Property shall not be sold, given, divested, transferred, or otherwise reconveyed in whole or in part in any manner except as provided in Peninsula Township Ordinance No. 23, as heretofore or hereafter amended. The Grantor, his personal representatives, heirs, successors, or assigns, shall be given the right of first refusal to purchase the Development Rights in the Property provided such disposition and reconveyance be lawfully approved.
- H. Condemnation. If the Property is subject to any condemnation action, and if a mutually acceptable agreement as to the compensation to be provided to the Grantee is not reached between Grantee and Grantor within a reasonable period of time, the Grantor will request that the Grantee be made a party to such action in order that it be fully compensated for the loss of, or devaluation in, the Development Rights hereby conveyed.
- I. No Affirmative Obligations; Indemnification. Grantor, his successors, heirs, or assigns, retain ownership with full rights to control and manage the Property and shall bear all costs and liabilities of any kind related to property ownership, operation, and maintenance, including maintaining adequate comprehensive general liability insurance. Grantee, in purchasing the Development Rights and related interests described herein, assumes no affirmative obligations whatsoever for the management, supervision or control of the Property or of any activities occurring on the Property. Grantor shall indemnify Grantee and hold Grantee harmless from all damages, costs (including but not limited to, actual attorneys' fees and other costs of defense incurred by Grantee), and other expenses of every kind arising from or incident to any claim or action for damages, injury,

## Appendix K: Basic Township Conservation Easement – continued

or loss suffered or alleged to have been suffered on or with respect to the Property. This paragraph is intended to ensure that none of the liabilities attendant on land ownership are inadvertently transferred to Grantee under this Easement as the Grantee will have no management responsibilities and will exercise no direct control over any potential hazards on the Property.

- J. Grantee's Right to Enter onto the Property. After giving reasonable notice to the possessors of the Property, the Grantee or its authorized representative shall have the right to enter from time to time onto the Property for the purposes of inspection and enforcement of the terms, conditions, restrictions and covenants hereby imposed. This is to occur no more than once per year unless the Grantee has good reason to believe a violation has taken place.
- K. Termination of Party's Rights and Obligations. A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the instrument or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- L. All uses Must Comply with Applicable Laws. None of these covenants, terms, and conditions shall be construed as allowing a use that is not otherwise permitted by applicable state and local laws, codes, standards, and ordinances.
- M. Severability. If any section or provision of this instrument shall be held by any court of competent jurisdiction to be unenforceable, this instrument shall be construed as though such section or provision had not been included in it, and the remainder of this instrument shall be enforced as the expression of the parties' intentions. If any section or provision of this instrument is found to be subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail. If any section or provision of this instrument is determined to be ambiguous or unclear, it shall be interpreted in accordance with the policies and provisions expressed in Peninsula Township Ordinance No. 23.
- N. Pronouns. If more than one joins in the execution hereof as Grantor, or either be of the feminine sex, or a corporation, the pronouns and relative words used herein shall be read as if written in plural, feminine or neuter, respectively.

Appendix K: Basic Township Conservation Easement – continued

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals the day and year first above written.

Signed in the presence of: GRANTORS  
 \_\_\_\_\_  
 \_\_\_\_\_

GRANTEE  
 PENINSULA TOWNSHIP

By: \_\_\_\_\_  
 Robert K. Manigold  
 Supervisor

By: \_\_\_\_\_  
 Lorrie DeVol, Clerk

STATE OF MICHIGAN )  
 ) ss.  
 COUNTY OF GRAND TRAVERSE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, by \_\_\_\_\_ Grantor herein.

\_\_\_\_\_  
 Notary Public  
 Grand Traverse County, Michigan  
 My commission expires: \_\_\_\_\_

STATE OF MICHIGAN )  
 ) ss.  
 COUNTY OF GRAND TRAVERSE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, by ROBERT K. MANIGOLD AND LORRIE DEVOL, Supervisor and Clerk of PENINSULA TOWNSHIP, a quasi-municipal corporation, of behalf of the Township.

\_\_\_\_\_  
 Notary Public  
 Grand Traverse County, Michigan  
 My commission expires: \_\_\_\_\_

## Appendix L: Installment Purchase Contract

### DEVELOPMENT RIGHTS CONTRACT

THIS AGREEMENT, dated as of \_\_\_\_\_, 19\_\_, by and between the Township of Peninsula, County of Grand Traverse, Michigan (the "Township"), and \_\_\_\_\_ (the "Vendor"), is as follows:

1. Purchase Price, Title and Useful Life. In consideration of the mutual covenants to be performed between the parties hereto as hereinafter expressed, the Vendor hereby sells and conveys unto the Township the Development Rights Easement attached hereto and incorporated herein as Exhibit "A". The Township agrees to pay and the Vendor agrees to accept a net purchase price of \$\_\_\_\_\_ (the "Purchase Price") which is payable in fifteen (15) annual principal and interest installments of \$\_\_\_\_\_, commencing \_\_\_\_\_, 19\_\_ and ending on \_\_\_\_\_, 20\_\_. Tax prorations, if any, and/or recording expenses with respect to the Development Rights Easement are in addition to the Purchase Price. The installments of principal hereunder shall be subject to prepayment in whole or in part and in inverse order of maturity on any date.

The Township shall pay interest on the unpaid balance of the Purchase Price at a rate of interest equal to \_\_\_% per annum from the date of this Agreement, computed on the basis of a 360 day year, which interest shall be payable annually commencing \_\_\_\_\_, 19\_\_ through the final date of payment of this Agreement. The annual payment sums set forth in the preceding paragraph are inclusive of interest. The Purchase Price includes the Development Rights and other rights, if any, assigned and conveyed by Vendor to Township. The Township agrees that the useful life of the Development Rights is at least equal to or longer than the date of the final payment hereunder.

2. Warranty. The Vendor warrants the Development Rights as set forth in the easement delivered to Township by Vendor in connection herewith. Any warranties with respect to the Development Rights shall not be assigned, but shall remain enforceable by the Township.

3. Entire Agreement. This Agreement (and the documents expressly incorporated by reference herein) constitutes the entire agreement of the parties. All prior to contemporaneous agreements, understandings, representations and statements, oral or written, are hereby terminated.

4. Amendments. Any attempt to modify the terms of this Agreement or of any supporting document shall be ineffectual unless in writing and signed by all parties.

5. Security and Tax Covenant. The obligation of the Township to pay principal and interest under this Agreement is a general obligation of the Township. The Township shall include in

**Appendix L: Installment Purchase Contract – continued**

its budget and pay each year, until this Agreement is paid in full, such sum as may be necessary each year to make all payments hereunder, when due. The Township covenants that it shall comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to delivery of this Agreement in order that interest thereon be (or continue to be) excluded from gross income for federal income tax purposes. The Township has designated the obligations under this Agreement as "qualified tax-exempt obligations" for purposes of deduction of interest expense by financial institutions.

6. Counterparts. This Agreement may be signed in any number of counterparts, which counterparts shall be considered as one and the same instrument.

Signed in the presence of:

Vendor:

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Township of Peninsula:

\_\_\_\_\_  
 \_\_\_\_\_

By: \_\_\_\_\_  
 Robert K. Manigold  
 Its: Supervisor

By: \_\_\_\_\_  
 Lorrie DeVol  
 Its: Clerk

State of Michigan )  
 ) ss.  
 County of Grand Traverse )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public  
 Grand Traverse County, Michigan  
 My commission expires: \_\_\_\_\_

**Appendix L: Installment Purchase Contract – continued**

State of Michigan                    )  
  ) ss.  
County of Grand Traverse        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by Robert K. Manigold and Lorrie DeVol, the Supervisor and Clerk of Peninsula Township, a municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
Grand Traverse County, Michigan  
My commission expires: \_\_\_\_\_

Instrument drafted by:  
Running, Wise, Wilson, Ford &  
Phillips, P.L.C.  
By: Richard W. Ford  
326 E. State Street  
P.O. Box 686  
Traverse City, MI 49685-0686

## Appendix M: Subordination Agreement

### PURCHASE OF DEVELOPMENT RIGHTS

#### SUBORDINATION OF LIEN

This Subordination of Lien is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ banking corporation, whose address is \_\_\_\_\_ (the "Lien Holder") and Peninsula Township, a municipal corporation, whose address is 13235 Center Road, Traverse City, Michigan, 49686 (the "Township").

#### W I T N E S S E T H:

WHEREAS, said Lien Holder possesses a lien or encumbrance on the land described on Exhibit "A" attached hereto and incorporated herein by reference, which said lien or encumbrance is recorded in Liber \_\_\_\_\_, page \_\_\_\_\_, Grand Traverse County Records; and

WHEREAS, the owners of the land upon which there is a lien or encumbrance can only convey their development rights under the Peninsula Township Purchase of Development Rights Ordinance to the Township upon condition that said existing lien or encumbrance be subordinated to the conveyance of development rights to the Township.

NOW, THEREFORE, the Lien Holder, in consideration of the sum of One Dollar (\$1.00) to them in hand paid and other valuable consideration, the receipt of which is acknowledged, does hereby contract and agree with the Township that said conveyance of development rights to the Township of said lands is superior to the lien or encumbrance now held by the Lien Holder and to carry out said purpose, the Lien Holder does hereby release, grant and convey unto the Township the priority of its title to and lien upon said lands to the extent that the lien or encumbrance now held by it shall be subordinate to the deed or instrument conveying development rights to the Township.

It is expressly understood and agreed that except for such subordination, the lien or encumbrance now held by the Lien Holder shall be and remain in full force and effect.

**Appendix M: Subordination Agreement – continued**

IN WITNESS WHEREOF, the Lien Holder and Township have executed this Subordination of Lien on the day and year first above written.

Signed in the presence of:

LIEN HOLDER:

\_\_\_\_\_, a  
\_\_\_\_\_ banking corp.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Its:

TOWNSHIP:

Township of Peninsula, a  
municipal corp.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Robert K. Manigold,  
Supervisor

By: \_\_\_\_\_

Lorrie DeVol, Clerk

State of Michigan )  
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 19\_\_ by \_\_\_\_\_, the  
\_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_ banking corporation, on behalf of the  
corporation.

\_\_\_\_\_  
Notary Public  
County, MI  
My commission expires: \_\_\_\_\_

