

PENINSULA TOWNSHIP
DONATION of DEVELOPMENT RIGHTS ORDINANCE
(DDR, No. 45)

THE TOWNSHIP OF PENINSULA, GRAND TRAVERSE COUNTY, MICHIGAN
ORDAINS:

Section 101 General Provisions

- A. Title: This Ordinance shall be known and cited as the Peninsula Township Donation of Development Rights Ordinance.
- B. Statement of Intent
1. In an effort to continue reducing both social development pressures and physical negative impacts to the township, this Ordinance offers a legal mechanism for local residents to donate property development rights to Peninsula Township for conservation purposes. The Donation of Development Rights (DDR) ordinance allows the Township to accept development rights throughout the township to assist the existing Purchase of Development Rights Program (PDR) through protection and preservation of agricultural lands, sensitive natural areas and open space. Peninsula Township's unique physical conditions regarding the natural existence of a microclimate, vastly sloping topography, and optimal soil conditions for fruit production has brought recognition to the township as an economically stable agricultural area. Additionally, the Peninsula's aesthetic qualities of rolling hills, open space, and prime scenic views make the Township a prime target for development potential. The creation of the DDR program should also protect those existing lands which have been development restricted, by means of a conservation easement or through the PDR program, and support the existing rural character of the land permanently.
 2. Donations shall be transferred to the Township by means of recording an established perpetual conservation easement over any accepted property(s). The nature of the donation should allow the subject property to remain substantially undeveloped to protect sensitive lands from future development pressures. Parcels may possess the ability to host minimal structures or improvements upon the land to promote their existing agricultural or open space usage; however, this should in no way preclude them from utilizing the land for conservation purposes.
 3. Those properties entered into the DDR program will not necessarily qualify for additional tax incentives. Personal tax benefit inquiries should be reviewed by private financial and/or legal counsel prior to any official donation action taking place by a property owner. Additionally, the adoption of this Ordinance does not require Peninsula Township to accept any conservation easements offered.

Section 102 Definitions

A. The following terms shall be defined as provided herein:

Agricultural Preserve Area: Those lands possessing favorable physical conditions to support both agriculture and open space land uses. Said area is identified upon the Township's Agricultural Preserve Map as found within the Peninsula Township Master Plan.

Building Envelope: A defined rectangular and congruent ninety thousand (90,000) square foot area upon the land located within a conservation easement area within which retained development rights may be exercised.

Complete Donation of Development Rights: The donation of all available development rights on a parcel of land to the Township, except for the uses authorized by this Ordinance.

Conservation Easement: A grant, by an instrument, whereby the owner relinquishes to the Peninsula Township, its successors and assigns 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.

Development Area: The portion of a parcel of land excluded from the conservation easement area.

Natural Area: Land containing significant natural habitat for endangered, threatened or rare species, biologically diverse areas, and land with high quality habitat for flora and fauna as identified by wildlife experts.

Open Space Area: Land that serves multiple conservation purposes such as the protection of significant agricultural land, offers the public scenic benefits from a public roadway, waterway, recreational area, trail, or other public land, or offers a broad scenic vista across the property to other scenic landscapes.

Partial Donation of Development Rights: The donation of some, but not all, available development rights on a parcel of land to the Township.

Principle Residential Structure: Any building or structure or part thereof occupied as the home, residence or sleeping place of one or more persons either permanently or transiently.

Structure: Anything manmade which is built or constructed, an edifice or building of any kind, or a piece of work artificially built up or composed of parts joined together in some definite manner.

Section 103 Administration of DDR Program.

A. Initial Application. An application for a donation of a development right shall be submitted to the Peninsula Township Planner. The application shall include, at a minimum, the following information:

1. Applicant contact information

2. A description of parcel(s), or the portion of a parcel, to be subject to the conservation easement, a description of any building envelope, and a description of any development area.
 3. Information demonstrating that the parcel(s) satisfies the standards for approval contained in Section 104 of this Ordinance.
 4. Any development rights or land uses that the applicant would like to retain.
- B. Preliminary Review. The Peninsula Township Planner shall review every application and draft conservation easement for completeness and work with the Applicant in developing the draft conservation easement and acquiring any information needed to evaluate the application.
- C. Final Review and Approval. The Township Board shall review the application and the final draft of the conservation easement in light of the Standards for Approval specified in Section 104 of this Ordinance. If the Township determines that accepting the proposed donation of development rights on the parcel would benefit the public purposes of this Ordinance, then the Township may, in its discretion, vote to approve accepting the donation of the development rights. The Township may also deny the application or provide suggestions for additional revisions.

Section 104 Standards for Approval

- A. Intent & Purpose: For purposes of this program, Peninsula Township is interested only in those properties in the Township that have characteristics which benefit the general public. Parcels eligible for the donation of development rights include those which possess public scenic views, outdoor recreation, educational opportunities, protection of an environmental system, reduction in local population density, and preservation of open space or historical lands.
- B. General Standards: When evaluating a proposed donation of development rights, the Township Board shall evaluate and make factual findings regarding the following criteria in determining whether accepting a proposed donation of development rights would serve the public purposes of this Ordinance:
1. Whether the parcel falls within one or more of the following land preservation categories.
 - a. Open Space Area. Land that because of regional variations in topography, geology, biology, cultural and/or economic conditions or because of unique physical characteristics or because it would reduce local population density and will benefit the general public in terms of scenic enjoyment.
 - b. Agricultural Preserve Area. Land that because of unique soils, topography, or other characteristics will continue to support existing farms and potential new agricultural endeavors for the active growth of regional crops.
 - c. Natural Area. Land that because of significant natural habitat for fish, wildlife, plants, or unique ecosystems should remain relatively undisturbed.
 2. Whether the parcel is adjacent or proximately located to other parcels that have been protected or preserved under this Ordinance, the PDR Ordinance, or through other land conservation measures.
 3. Whether donation of development rights of the given parcel is consistent with the Township's Master Plan.

4. Whether donation of development rights is consistent with or benefits the uses of adjoining or nearby parcels.
 5. Whether the development area on a parcel is no more than twenty-five (25%) of the total land area of the parcel or meets the minimum lot size under the Peninsula Township Zoning Ordinance for the zoning district in which it is located whichever is greater.
- C. Specific Standards: In addition to meeting the general standards specified in Section 104.B of this Ordinance, a donation of development rights shall comply with the following applicable specific standards:
1. If the donation of development rights will be a complete donation of development rights, then the subject property(s) shall meet all of the following standards:
 - a. The property has no existing principle residential structure(s) located on it.
 - b. The property has land area sufficient to meet the minimum lot size requirements of or is a lawful nonconforming lot of record under the Peninsula Township Zoning Ordinance for the zoning district in which it is located, or is adjacent to a parcel or land that is subject to an existing conservation easement either through the Township's PDR Program or through this Ordinance.
 - c. The property in its entirety is included within the conservation easement.
 - d. The property owner does not retain any development rights on the property, except as provided in this Ordinance.
 2. If the donation of development rights will be a partial donation of development rights, then the subject property(s) shall meet all of the following standards:
 - a. The property has land area sufficient to meet the minimum lot size requirements of or is a lawful nonconforming lot of record under the Peninsula Township Zoning Ordinance for the zoning district in which it is located, or is adjacent to an existing conservation restricted parcel.
 - b. The property falls within no less than two (2) of the land preservation categories of Section 104.B.1 of this Ordinance.
 - c. Except for any development area retained by the property owner, the property in its entirety is included within the conservation easement.
 - d. The property owner retains some development rights on the property as specified in the conservation easement, which can only be exercised within the building envelop.
- D. Additional Information. At any point during the evaluation and approval process, the Township may request additional information from the Applicant to assist the Township in evaluating whether the standards for approval have been met. The applicant shall be responsible for all costs associated with providing the Township with requested information.
- E. No Obligation to Accept Easements. The adoption of this Ordinance does not require Peninsula Township to accept conservation easements offered.

- F. Tax Benefits. Those properties entered into the DDR program will not necessarily qualify for additional tax incentives. Personal tax benefit inquiries should be reviewed by private financial and or legal counsel prior to any official donation action taking place by a property owner.

Section 105 Permitted Uses of Land Under a Conservation Easement

- A. Intent: Although property under a conservation easement is subject to the public enjoying the benefits of the preserved land, this does not mean that the general public may physically access said lands, unless authorized by the property owner. In addition, properties under a conservation easement may be used consistent with any development rights retained by the property owner and as provided in this Section, regardless of whether development rights were retained by the property owner.
- B. Regulations for Retained Development Rights: All development rights retained by the property owner on a parcel of land subject to a conservation easement shall comply with all of the following regulations:
1. The development rights shall only be exercised within a building envelop legally described and identified upon the subject parcel(s) via a new land survey.
 2. The development rights shall only encompass the following land uses:
 - a. Existing and/or proposed new buildings that may be constructed in compliance with the Peninsula Township Zoning Ordinance then in effect, including but not limited to agricultural storage buildings, accessory structures and residential dwellings, and existing and/or proposed new onsite well and septic systems and other associated infrastructure. Any building or structure developed as authorized herein may be altered in the future, but only in a manner consistent with the regulations contained in this subsection.
 - b. Storage of equipment, agricultural machinery or related agricultural materials.
 - c. Any use authorized under Section 105.C of this Ordinance.
- C. Permitted Uses Independent of Retained Development Rights: Regardless of whether a property owner has retained development rights, the following land uses are permitted on all portions of a parcel of land subject to a conservation easement, subject only to the regulations of the Peninsula Township Zoning Ordinance then in effect:
1. A regional non-motorized trail system for the general public.
 2. The keeping of animals as defined by the Peninsula Township Zoning Ordinance.
 3. Farming operations, subject to the following requirements:
 - a. Uses as defined within the State of Michigan's Right to Farm Act No. 93 of 1981, and in compliance with the established Generally Accepted Agricultural Management Practices (GAAMPs).
 - b. Construction and maintenance of access roads to the site including but not limited to farm lanes, logging roads, and two-tracks that relate to farming, forestry or other permitted agricultural uses.

- c. Alterations to the existing topography of the property to further the agricultural use of the land.

Section 107 Monitoring

- A. Monitoring of the property subject to the conservation easement will occur on an annual basis and will focus on maintaining compliance with the terms of the agreed upon conservation easement.
- B. Township staff will attempt to contact land owner(s) prior to inspecting the property subject to the conservation easement.
- C. The designated inspector shall have access to the property and any accessory structures existing upon the land.

Section 108 Enforcement

- A. Any person who shall violate any provision of this Ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws, and shall be subject to a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars. Each day this Ordinance is violated shall be considered as a separate violation.
- B. The Township Zoning Administrator is hereby designated as the authorized township official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.
- C. A violation of this Ordinance is hereby declared to be a nuisance per se and is declared to be offensive to the public health, safety and welfare.
- D. In addition to enforcing this Ordinance through the use of a municipal civil infraction proceeding, the Township may initiate proceedings in the Circuit Court to abate or eliminate the violation per se or any other violation of this Ordinance.

Section 109 Severability

Each of the provisions of this Ordinance is severable, and if any part is held invalid for any reason by a court of competent jurisdiction, the remaining parts shall remain in full force and effect.

Section 110 Effective Date

This Ordinance shall become effective thirty (30) days after being published in a newspaper of general circulation with the Township.

TOWNSHIP OF PENINSULA

By: _____
Rob Manigold, Supervisor

By: _____
Monica Hoffman, Clerk