

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

Approved by Peninsula Township Board of Trustees May 4, 1994

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

Revised February 28, 2017, amending Section 6(4) regarding Committee termination.

Revised June 22, 2022, for TB Public Hearing **July 12, 2022**, summary of amendments attached as Appendix B.

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AN ORDINANCE, enacted in accordance with the Michigan Zoning Enabling Act of 2006, as amended, relating to the acquisition of voluntarily offered interests in farmland and open space land in Peninsula Township that resulted in calling an election by the voters of the Township on August 2, 1994, to authorize the cash purchase and/or installment purchase contracts under Act 99 of 1933 and for the purpose of providing funds for such acquisitions. The principal and interest on such contracts shall be payable out of annual tax levies to be made upon all of the taxable property within the Township in excess of constitutional and statutory limits and from any other money which may become legally available and used for such purposes. Although the authorization for the Purchase of Development Rights Ordinance is located in the Zoning Enabling Act, there was no legislative intent whatsoever to have the legal review of Purchase of Development Rights Ordinances based on Zoning Law. This ordinance is a separate and unique ordinance and is not a Zoning Ordinance. This Ordinance shall not be construed to enable the transfer of development rights.

SECTION 1 FINDINGS AND DECLARATION OF PURPOSE

BE IT ORDAINED BY THE PENINSULA TOWNSHIP BOARD:

The Township Board finds that:

1. Peninsula Township is a desirable place to live and visit because of its panoramic views of agricultural acreage interspersed with stands of trees, open fields and rolling terrain. The framing of many of these views with the sight of clean, open bay waters creates a spectacularly spacious effect. The views, agriculture and open spaces, woodlands, wetlands and dark night sky are all considered valuable natural and aesthetic resources which should be protected to benefit the public.
2. The climate, significant changes in elevation and proximity to water make this a unique area where certain crops can be grown as well as or better than anywhere else. These resources not only include more than seven thousand acres of land suitable for farming, but also other woodland, wetlands and open lands adjacent to these farmlands. Such lands provide unique, aesthetic and economic benefits to the citizens of the Township and are an important part of the Township's heritage.
3. Peninsula Township is experiencing substantial development pressure because of its location adjacent to Traverse City. The same characteristics which have made this area so desirable for fruit production also make it attractive for residential sites.
4. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of Agricultural Use. When such land is converted to residential or other urban uses which do not require those special characteristics, an important community resource and public benefits are permanently lost to the citizens of Peninsula Township.
5. It is the policy of the State of Michigan and Peninsula Township to protect, preserve and enhance agricultural and open space lands as evidenced by the Peninsula Township Master Plan including open space policies, the Farmland and Open Space Preservation Act of 1974 (P. A. 116), the Historic and Conservation Easement Act and the Township Ordinances regulating land use by zoning and subdivision control. However, these policies and regulations, by themselves,

have not been effective in providing long-term protection of farmland, shoreline and open space lands under the pressure of increasing urban development.

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

SECTION 2 DEFINITIONS

1. "Accounts" are appropriately labeled accounting departments within the Purchase of Development Rights Fund that have unique cash general ledger account numbers and related general ledger activities.
2. "Agricultural Use" is the production of plants and animals useful to man, including fruits; grapes; nuts; vegetables; green house plants; Christmas trees; forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding and grazing; and other similar uses and activities on substantially undeveloped land.

3. "Agricultural Right" is an interest in and the right to use and possess land for purposes and activities related to open space, horticultural and other Agricultural Uses.
4. "Appendix A" of this Ordinance includes the maps and related materials which describe designated areas of Eligible Lands for purposes of priority of acquisition as provided in this Ordinance. Official large-scale maps describing such areas in detail are hereby filed with the Peninsula Township Clerk and incorporated herein by this reference. Smaller scale maps generally illustrating such areas are provided in the Appendix of this Ordinance for more accessible public reference.
5. "Closing Costs" are the costs including but not limited to legal, survey, title search and accounting related to the process of purchasing development rights. They are the costs included on the title closing statement document, which are costs that the tax code allows to be capitalized to establish the taxation basis.
6. "Conservation Easement" is a grant, by an instrument, whereby the owner relinquishes the development rights to the public in perpetuity but remains in private ownership. A Conservation Easement is a legal and recorded instrument that contains a covenant that runs with the land extinguishing development rights, except as may be expressly reserved in the instrument.
7. "Contiguous" describes two or more parcels of land with a common boundary or point that may be separated solely by a private roadway or public right-of-way.
8. "Development" is an activity which materially alters or affects the existing conditions or use of any land.
9. "Development Rights" are interests in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agriculture and open space.
10. "Eligible Land" is farmland and open space land for which the purchase of a "Conservation Easement" with tax funds are authorized pursuant to this Ordinance. Eligible Land is depicted in the Appendix A.
11. "Excess Millage Revenue" is the Purchase of Development Rights millage revenue that is available for expenditures after meeting bond payment, monitoring and administration cost obligations.
12. "Master Plan" is a plan adopted by Peninsula Township in accordance with the Michigan Planning Enabling Act of 2008. A Master Plan is intended to be a guiding document for how a community wishes to develop in future years.
13. "Open Space" is land that is not developed for residential or commercial purposes. When it is included in a Conservation Easement it remains in private ownership and is not open to public access except as allowed by the landowner and subject to the conservation easement terms.
14. "Owner" is 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.
15. "Parcel" is contiguous property under one ownership that is included in an application.

16. "Peninsula Township Purchase of Development Rights (PDR) Ordinance" is Peninsula Township Ordinance No. 23 as adopted May 4, 1994, as subsequently amended. The Purchase of Development Rights Ordinance is a separate ordinance from the zoning ordinance, not to have legal review based on Zoning Law.
17. "Permitted Use" is any use contained within a Conservation Easement essential to the Agricultural Use of the property or which does not alter the open space character of the land.
18. "Residential Development Right" is the right to build a residential dwelling.
19. "Selection Committee" is the Committee formed pursuant to Section 6 of this Ordinance to advise the Township Board in the selection of Eligible Lands for purchase.
20. "Substantially Undeveloped Land" is land on which there is no more than one (1) residential dwelling unit (exclusive of migrant housing units) or other buildings for each twenty (20) acres of land.
21. "Township Board" is the elected Peninsula Township Board of Trustees.
22. "Value of Development Rights" is the difference between the fair market value of the land without the conservation easement and its fair market value as restricted by the conservation easement.
23. "Zoning Ordinance" is the Peninsula Township Zoning Ordinance, adopted June 5, 1972 and as subsequently amended.

SECTION 3 AUTHORIZATION

1. The Township Board is hereby authorized to expend tax revenues to acquire and administer property interests in the farmlands and open space lands described and prioritized in Section 5 of this Ordinance. The property interest acquired may be either the Development Rights, or any lesser interest, easement, covenant or other contractual right. Such acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the appraised value determined as provided in this Ordinance. The collected tax revenues shall be used to acquire such property interests only upon application of the Owner and in a strictly voluntary manner.
2. The Township Board is authorized to finance the PDR program using all of the mechanisms described in Section 125.3509 of the Michigan Zoning Enabling Act as amended. This includes borrowing money and issuing bonds or notes.
3. The Township Board is further authorized to contract with other parties to participate jointly in the acquisition of interests in Eligible Lands.
4. The Township Board is authorized to establish a Purchase of Development Rights fund and separate accounts to manage, monitor, and enforce the Purchase of Development Rights program.
5. The Township 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.

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

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

SECTION 4 RETAINED RESIDENTIAL DEVELOPMENT RIGHTS

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

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

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

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

SECTION 5 ELIGIBLE LANDS AND PRIORITY OF ACQUISITION

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

Primary criteria that all properties must meet:

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

Up to ten percent of the tax revenues generated for acquisition of development rights may be allocated to acquire retained development rights associated with past agreements and reserved building sites.

The following criteria shall be used in determining the priority by which these applications are processed.

Priorities for acquisition of existing reserved development rights.

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

Priorities for acquisition of development rights on new property.

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

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

SECTION 6 SELECTION COMMITTEE

1. A five-member Selection Committee shall be appointed by the Township Board within ninety (90) days following the approval of 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 two members shall be two years and terms of three members shall be three years. Members may be removed by the Township Board for good cause as determined by the Township Board. Members shall not be compensated for their services but shall be reimbursed for expenses actually incurred in the performance of their duties. Members may be reappointed to successive terms but the Selection Committee shall be terminated when the proceeds of the Millage vote have been spent.

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

SECTION 7 SELECTION PROCESS

Beginning in the first year following the Millage election and continuing until all proceeds of the Millage election have been expended, the Township Board shall request that the Selection Committee conduct a property selection process (herein called "Selection Round"), that is initiated by creating an application period. The selection process will generally take place as follows:

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

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

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

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

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

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

SECTION 8 CLOSING, MONITORING & ENFORCEMENT

Closing Requirements:

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

Monitoring:

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

Enforcement:

1. The Township Board shall enforce the terms of all conservation easements held by the Township.

2. Enforcement of violations shall include but are not limited to the removal of non-compliant structures, termination of occupancy of structures and removal of adaptations of structures that are not permitted under the conservation easement.
3. A fee schedule for violations shall be established and adopted by the Township Board within ninety (90) days of passage of this ordinance.

SECTION 9 DURATION OF ACQUIRED INTERESTS AND RELINQUISHMENT OF ANY INTERESTS

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

The Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the conservation purposes as described in the conservation easement, or by exercise of eminent domain.

- a) **Unexpected Change in Conditions.** If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated. The Township Board shall submit to the voters of the Township a proposition to approve the disposition of such interest. If a majority vote approves such proposition, the extinguishment must go through judicial proceedings. The Township will then be entitled to compensation in accordance with the provisions of the Internal Revenue Code Treasury Regulations Section 1.170A-14(g) (6) (ii). Notwithstanding the foregoing, the Owner and Township intend that the Conservation Easement not be subject to the legal doctrine of “changed conditions” that is applied to traditional servitudes.

Eminent Domain. If the property is taken, in whole or in part, by power of eminent domain, then the Township will be entitled to compensation as determined by the method set forth in Internal Revenue Code Treasury Regulations Section 1.170A-14(g)(6)(ii).

SECTION 10 AMENDMENT OF CONSERVATION EASEMENTS

Because of the public trust that is inherently involved with the Purchase of Development Rights and the corresponding intent that all Conservation Easements endure in perpetuity, amendments of Conservation Easements can only be amended in compliance with strict standards. Procedures for the administration of the amendment process, including all fees, appraisals, and surveys, will be established and adopted by the Township Board within 90 days of the passage of this ordinance. An application for an amendment of a Conservation Easement and any amendment of the terms and conditions of a Conservation Easement shall proceed in accordance with the following provisions:

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

2. Application Costs.

- a. Neither the Township general fund nor the PDR fund shall be responsible for any expense incident to the request for amendment.
- b. All costs associated with the requested amendment, including but not limited to appraisals, attorney fees, public hearings, and publication fees, shall be paid by the applicant, unless the Township is the applicant.
- c. Prior to undertaking any direct expenses related to the request, the Township Board shall require a deposit to cover the estimated costs associated with consideration of the request. All unexpended funds shall be returned to the applicant.

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

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

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

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

- a. **Principles.** The amendment:
 - (i) Serves the public interest and is consistent with the Conservation Easement program as described in the Findings and Declaration of Purpose in the Ordinance.
 - (ii) Complies with all applicable laws, rules and regulations.
 - (iii) Does not result in private inurement or confer impermissible private benefit.
 - (iv) Is consistent with the original easement's intent and conservation purposes.
 - (v) Is consistent with the intent of the grantor and any direct funding source.
 - (vi) Has a net beneficial or neutral effect on the conservation values protected by the original easement.
- b. **Examples.** The following list is meant to be examples of actions that may be appropriate outcomes of a proposed amendment.
 - (i) The amendment decreases the number of future dwelling units.
 - (ii) The amendment decreases the probability of parcel fragmentation.

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

The Township Board shall make written findings of fact as to the foregoing conditions and standards.

7. Appraisal of Changes in Value. Prior to a final decision on a proposed amendment to a recorded Conservation Easement, the Township shall obtain at the applicant's expense, an appraisal of the property to determine if the value of the retained development rights is increased as a result of the amendment. The appraiser shall meet the same criteria as described in Section 7 above. If the appraisal indicates that the value of the retained development rights is increased as a result of the proposed amendment, the property owner shall pay to the Township Purchase of Development Rights Fund an amount equal to the amount of the increase in the event the amendment is approved.

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

9. Referendum. A decision by the Township Board to amend a Conservation Easement shall be subject to a referendum with the same standards and procedures for a referendum on a Zoning Ordinance amendment. A petition for referendum shall state any action until the decision has been approved by the voters.

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

SECTION 11 TRANSFER OF DEVELOPMENT RIGHTS

The transfer of development rights onto a property encumbered by a conservation easement held by the Township is not allowed.

SECTION 12 RELATED COSTS

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

SECTION 13 SUPPLEMENTAL FUNDS

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

SECTION 14 PURCHASE OF DEVELOPMENT RIGHTS FUND

A. PURCHASE OF DEVELOPMENT RIGHTS ENFORCEMENT ACCOUNT

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

B. PURCHASE OF DEVELOPMENT RIGHTS MONITORING ENDOWMENT

The Township Board shall establish and maintain a Purchase of Development Rights Monitoring Endowment (herein "Monitoring Endowment"). Initial funds for the Monitoring Endowment shall come from excess millage revenue, after the initial years of excess millage revenue first supplement the Enforcement Account to the required balance of two hundred and fifty thousand dollars (\$250,000). Said excess millage contributions to the Monitoring Endowment will stop when the balance reaches two and a half million dollars (\$2,500,000), after which earnings will accrue to achieve a minimum target balance of four million dollars (\$4,000,000) with a cap of four and a half million dollars (4,500,000). Funds generated by the endowment that exceed four and a half million dollars (\$4,500,000) balance will go initially to replenishing any diminished balance below two hundred and fifty thousand dollars (\$250,000) in the Enforcement Account and thereafter to funding future purchases. The Township Board is authorized to index these amounts in the future as necessary. During the life of the millage, millage funds shall be used for all monitoring expenses, including contracting for monitoring and any incidental expenses for monitoring conservation easements held by the Township. Upon the sunset of the millage, proceeds from the Monitoring Endowment shall be used solely for the purposes set forth in this Section.

C. PURCHASE OF DEVELOPMENT RIGHTS OPERATIONAL ACCOUNTS

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

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

SECTION 15 SEVERABILITY

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