

## **Chapter Four**

# **BENZIE COUNTY PDR & LAND PRESERVATION ORDINANCE**

### **INTRODUCTION**

This is the first county-wide comprehensive Open Space and Natural Resource Protection Plan in Michigan. Several counties have adopted agricultural preservation plans (e.g. Clinton, and Lapeer), one county has adopted a preservation ordinance (Washtenaw) and one has created a preservation board that is working on a preservation plan and ordinance (Leelanau County). Many other counties are working on purchase of development rights (PDR) plans and ordinances, but no others have also focused on preservation of other open space lands in addition to agriculture (except incidentally). Likewise, no others are relying on such a wide range of implementation tools to implement the preservation program as Benzie County.

The first township in Michigan to focus on agricultural preservation using PDR was Peninsula Township in Grand Traverse County. It has already preserved nearly 4,000 acres using a locally voted millage, state and federal funds. Peninsula Township and Alpine Township (in Kent County) are also ready to begin adoption and implementation of a transfer of development rights ordinance (see next chapter). Meridian Charter Township in Ingham County, has passed a millage to implement a recently adopted local Land Preservation Ordinance (which does not focus on farmland), but they did not prepare a separate protection plan first. Instead they are relying on elements already in the Township Comprehensive Plan, and recently began the process of developing a Greenways Protection Plan, which will further shore up the planning basis for their open space preservation program.

There are several reasons Benzie County has taken a more comprehensive approach to land preservation than merely seeking to protect farmland:

- Public input during the planning process followed to create the Benzie County 2020 Comprehensive Plan revealed strong citizen support for preservation of natural rural character in Benzie County, wherever it might be and in whatever form it may take (e.g. wetlands, forests, sand dunes, water frontage, scenic viewsheds, wildlife habitat, agricultural land, etc).
- While agriculture is a very important part of the economy of Benzie County, it is a small part of the total land area of the county, especially compared to counties in southern Michigan where agriculture is the predominant land use and is under heavy impact from sprawl in general and nonfarm rural residential development in particular.
- Natural character as observed from the major county roads and state highways in Benzie County has a huge influence on the tourist economy

- of the county, and is more threatened by current development trends than the potential conversion of most agricultural land. Similarly, protection of forests and sensitive environments is critical to the long-term protection of water quality in the County, which is the source of so much of the natural character and tourist attraction.
- State and federal funds for PDR farmland protection and Michigan Natural Resources Trust Funds for other open spaces are very limited and competition for those funds is very great (and soon to be greater), suggesting that as long as those funds are limited it is unwise to expect large amounts of those funds to be made available for protection of open space in Benzie County.
  - However, in the absence of a local open space protection millage, those limited state and federal funds are presently "the principal game in town", when it comes to purchase of development rights. The only "other game" is voluntary donation of development rights or purchase of development rights through private donations usually arranged by a local land trust (or some combination as was done with the McKinley farm).
  - Yet, state PDR funds for farmland protection are only available to local farmers if the county has an adopted agricultural protection plan and an ordinance authorizing use of PDR.

As a result, in order to preserve priority open space lands in the County (including agricultural land), using as much funding from outside sources as possible, it is necessary to adopt a land preservation ordinance. There is a state statutory structure in place for local use of PDR for farmland protection, but not as formally for protection of other open spaces. But to meet the comprehensive objectives of this Plan, the ordinance authorizing PDR must be used to preserve not only agricultural land, but other open space lands as well.

#### **Purchase of Development Rights**

A purchase of development rights (PDR) program compensates the landowner for the value of lost development rights in exchange for maintaining the property at a desired use and density (usually very limited). Local governments in Michigan are currently permitted to use the purchase of development rights technique for farmland preservation under amendments to the three zoning enabling acts adopted in 1996 and for farmland, forestland, other open space and historic sites by means of conservation easements under PA 197 of 1980.

For example, PDR could be used to buy the development rights of farmland. The farmer would still own the land and could continue to farm it, but its development value would have been captured by the farmer and converted into dollars. In the future, the farmer could sell the farm to another farmer at its farmland value. In this case, the development value is the difference between its value for development (under local and state regulations and current market conditions), and its value in its present state for agricultural uses.

Development rights can be acquired and recorded through a deed restriction, through a conservation easement or similar legal instrument. These are recorded with the County Register of Deeds and remain permanently with the property. (See longer background discussion in Chapter Three.)

Combining these purposes creates a substantial challenge, since the ordinance decision structure must meet the requirements of the State Agricultural Preservation Fund Board so local farms can be considered for PDR protection using state funds, as well as be able to be used to leverage donations, other local funds and any other outside funds to purchase outright, or to purchase development rights on other open space lands deemed a priority for preservation in this Plan. To meet this challenge, it is important to understand the statutory structure for purchase of development rights, of conservation easements, of land preservation grant funds and a variety of other legal considerations.

This document, is intended to meet the statutory requirements for an agricultural preservation plan. A land preservation ordinance that authorizes PDR as well as other conservation purchases in order to implement this Plan is presented in Appendix M. This chapter also sets forth the statutory structure for purchase of development rights in Michigan and other related legal considerations. It establishes the purpose and benefits of the land preservation ordinance, it discusses the role and responsibilities of a local land preservation advisory committee, and it outlines application, review and approval procedures.

## **STATUTORY STRUCTURE & LEGAL CONSIDERATIONS**

Counties generally have limited authority to enact ordinances to protect or advance the public health, safety and general welfare. In this case however, three key statutes provide the principal legal authority for a county to develop and implement a plan and ordinance authorizing PDR. A fourth law provides key state funding to protect natural resources and scenic lands. These laws are listed below and are duplicated in Appendix K:

- Public Act 183 of 1943, **County Zoning Act** (Sections 31 - 40 authorizing a county PDR program were added by Public Act 569 of 1996).
- Public Act 262 of 2000, **Agricultural Preservation Fund** (which is Part 362 of the Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994)
- Public Act 197 of 1980, **Conservation and Historic Preservation Easement Act**, (now Subpart 11 of Part 21 of NREPA, Public Act 451 of 1994)
- Public Act 204 of 1976, Kammer Recreational Land Trust Fund, now the **Michigan Natural Resources Trust Fund**, (Part 19 of NREPA, Public Act 451 of 1994).

**County Zoning Act & Conservation and Historic Preservation Easement Act**  
Amendments to each of the three local zoning enabling acts in 1996 authorize the creation of a local development rights ordinance. Cities, villages and townships are authorized to have their own PDR programs, or may be subject to a county PDR program. Public Act 569 of 1996 provided the authority for PDR ordinances in the County Zoning Act. A county board of commissioners is

permitted to adopt a development rights ordinance that establishes, finances and administers a PDR program. A PDR program is only permitted to purchase development rights from a willing landowner.

On the surface, Section 31 (1) of the County Zoning Act appears to limit a county PDR program only to agricultural land and immediately contiguous open space, *"The PDR program may be used only to protect agricultural land and other eligible land."* However, the statute goes on to say *"This section and sections 32 and 33 do not limit any authority that may otherwise be provided by law for a county to protect natural resources, preserve open space, provide for historic preservation, or accomplish similar purposes."* Since PA 197 of 1980 authorized local governments to use conservation easements for *"agricultural, farming, open space, or forest use, or similar use or condition"* long before PA 569 of 1996 came along, and since conservation easements are the key vehicle used in PDR programs, it appears that a county can create and implement a PDR program for more than just agricultural land. However, it may be necessary to separate the farmland protection and other open space protection provisions within a land preservation ordinance; or to adopt two separate ordinances (one for farmland and one for other open spaces). Since this is potentially a fundamental legal issue, the County should get a legal opinion on it, as well as on the draft land preservation ordinance in Appendix M prior to its adoption. Refinements may well be necessary.

The County Zoning Act authorizes a county to adopt a development rights ordinance as part of the County Zoning Ordinance or as part of a separate freestanding ordinance (Section 31 (2)). Since the lands identified for protection in this Plan, are in all parts of the county, not just in townships subject to county zoning, the County Board of Commissioners should adopt a freestanding ordinance that applies countywide. The county is required to notify cities, villages and townships in the county of any application for the purchase of development rights and for the disposition of each application. Any purchases of development rights of farmland must be consistent with this Plan, as well as with the plan upon which the city, village, or township zoning is based. In addition, each jurisdiction must adopt a resolution authorizing the PDR program to apply in that jurisdiction, and each jurisdiction must approve in writing each PDR application prior to approval. The county is permitted to promote and enter into agreements between other counties or local governments within or outside the county for the purchase of development rights, including cross-jurisdictional purchase. This same structure should be used for the acquisition of interests in any other open space lands as well.

Section 32 (1) of the County Zoning Act provides:

*"A development rights ordinance providing for a PDR program shall specify all of the following:*

*(a) The public benefits that the county may seek through the purchase of development rights.*

- (b) *The procedure by which the county or a landowner may by application initiate a purchase of development rights, which shall include city, village, or township approval if required under subsection (5).*
- (c) *The development rights authorized to be purchased subject to a determination under standards and procedures required by subdivision (d).*
- (d) *The standards and procedure to be followed by the county board for approving, modifying, or rejecting an application to purchase development rights including the determination of all of the following:*
  - (i) *Whether to purchase development rights.*
  - (ii) *Which development rights to purchase.*
  - (iii) *The intensity of development permitted after the purchase of the land from which the development rights were purchased.*
  - (iv) *The price at which development rights will be purchased and the method of payment.*
  - (v) *The procedure for ensuring that the purchase or sale of development rights is legally fixed so as to run with the land.*
- (e) *The circumstances under which an owner of land from which development rights have been purchased under a PDR program may repurchase those development rights and how the proceeds of the purchase are to be used by the county."*

A PDR program may be financed through one or more of the following sources:

- General appropriations by the county
- Proceeds from the sale of development rights by the county subject to Section 32(3) of the County Zoning Act
- Grants
- Donations
- Bonds or notes issued under subsections (2) to (6) of Section 33 of the County Zoning Act
- General fund revenue
- Special assessments under subsection (7) of Section 33 of the County Zoning Act
- Other sources approved by the county board of commissioners and permitted by law.

The finance sources listed above are generally local in origin. A funding source that originates on the state level is described below.

### **Agricultural Preservation Fund**

Public Act 262 of 2000, (which is Part 362 of NREPA, Public Act 451 of 1994) created the Agricultural Preservation Fund. This fund is used to purchase development rights of selected farmland. An Agricultural Preservation Fund Board (APF Board) was created to make decisions among the PDR applications. Grants to eligible local units of government are awarded to purchase agricultural conservation easements. Easements can only be purchased on land that is at

least 51% agricultural. To be eligible, a local unit of government must (see Section 36203):

- Have adopted a development rights ordinance pursuant to the applicable zoning enabling act which contains the following:
  - An application procedure
  - The criteria for a scoring system for parcel selections within the local unit of government
  - A method to establish the price to be paid for development rights, which may include an appraisal, bidding or formula-based process.
- Have adopted within the last 10 years, a comprehensive land use plan that includes a plan for agricultural preservation or the local unit of government is included within a regional plan that was prepared within the last 10 years that includes a plan for agricultural preservation.

Applications must be evaluated based on selection criteria established by the APF Board (see Section 36205).

*"The criteria shall place a priority on the acquisition of agricultural conservation easements on farmland that meets 1 or more of the following:*

- (a) Farmland that has a productive capacity suited for the production of feed, food, and fiber.*
- (b) Farmland that would complement and is part of a documented, long-range effort or plan for land preservation by the local unit of government in which the farmland is located.*
- (c) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is subject to an agricultural conservation easement under this part or part 361, or a development rights agreement under part 361, or in which development rights have been acquired under part 361.*
- (d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.*
- (e) Other factors considered important by the board."*

The APF Board is permitted to establish a maximum amount to be paid for the purchase of agricultural easements and must require that a portion of the cost of acquiring an agricultural conservation easement be paid by the applicant or another person. A contribution of all or a part of the value of a conservation easement is allowed to count as a portion of the cost of acquiring the easement.

In reviewing permitted uses contained within an agricultural conservation easement, the APF Board is required to consider all of the following (see Section 36206(2)):

- (a) Whether the permitted uses adversely affect the productivity of farmland.*
- (b) Whether the permitted uses materially alter or negatively affect the existing conditions or use of the land.*

*(c) Whether the permitted uses result in a material alteration of an existing structure to a nonagricultural use.*

*"(d) Whether the permitted uses conform with all applicable federal, state, and local laws and ordinances".*

The APF Board makes a recommendation to the state Commission on Agriculture which makes the final decision on all Agriculture Protection Fund applications.

### **Michigan Natural Resources Trust Fund (and Land & Water Conservation Funds)**

The Michigan Natural Resources Trust Fund, and to a lesser degree, the federal Land & Water Conservation Fund are two primary sources for the acquisition of important natural resource lands. As such, applications to these funds are likely to leverage local PDR funds. Following is a brief summary of each program and in the case of the MNRTF, a summary of its history.

The Kammer Recreational Land Trust Fund Act (PA 204 of 1976)) was passed by the Michigan Legislature and signed into law on July 23, 1976. This Act created the Michigan Land Trust Fund. The purpose of the program was to provide a source of funds for public acquisition of recreational lands. Funds were accrued from the sale of oil, gas, and mineral leases and royalties from oil, gas, and mineral extractions on State lands.

On November 6, 1984, Michigan residents approved Proposal B. This State constitutional amendment created the Michigan Natural Resources Trust Fund (MNRTF) and required that oil, gas, and other mineral lease and royalty payments are to be placed in the Fund, with proceeds used to acquire land or rights in land for recreation uses or for protection of the land because of its environmental importance or its scenic beauty, and to develop public recreation facilities. The Michigan Legislature passed the Michigan Natural Resources Trust Fund Act of 1985 (Public Act 101) to implement the amendment. The MNRTF officially replaced the Michigan Land Trust Fund on October 1, 1985.

On November 9, 1994 Michigan residents cast their votes in favor of Proposal P which amended Section 35, Article IX of Michigan's constitution. This amendment provided protection to the MNRTF from further diversions and increases the cap on the Trust Fund principal from \$200 million to \$400 million. Public Act 451 of 1994 codified all of Michigan's environmental and natural resource protection laws into the Natural Resources and Environmental Protection Act (NREPA) and incorporated the MNRTF as Part 19. Local government applicants must provide at least a 25% match for MNRTF grants.

The Land and Water Conservation Fund (LWCF) is a federal program administered by the National Park Service (NPS) that provides financial assistance to the states for public outdoor recreation projects, including land

acquisition and the development of outdoor recreation facilities. The LWCF is very similar—in terms of types of projects that are funded, application requirements and long-term grantee obligations—to the MNRTF. A portion of the LWCF funds that come to Michigan are permitted to be used to fund local projects. The Michigan DNR makes recommendations to the NPS which grants final approval. Local government applicants must provide at least 50% match.

The DNR uses essentially the same form and process to evaluate MNRTF and LWCF proposals. Three of the scoring criteria are also the same. These criteria are used to score non-agricultural open space applications under the proposed Land Preservation Ordinance presented in Appendix M.

Following is a discussion of key elements of the land preservation ordinance.

## **PURPOSE OF LAND PRESERVATION ORDINANCE**

Chapter Two sets forth the lands that should be protected in Benzie County (see Table 5) and the benefits of protection to both landowners and the public (see Table 6). Listed below are some of the principal purposes and benefits of protecting the priority lands also illustrated on Map 9.

### **Key Purposes & Benefits**

This Plan recognizes that the pattern of population growth and commercial development have greatly eroded the natural and rural character of Benzie County in the last 20 years, and that continued growth of the same type will slowly undermine the quality of that character over time if some measures are not taken to reduce the negative impacts while still accommodating natural population growth and associated economic expansion. It is the purpose of this Plan to preserve open space lands in Benzie County that:

- Contain scenic views and the "up north" rural character along major roadways
- Contain sensitive lands and shorelines, including wetlands, sand dunes, floodplains, riverbanks, ecological corridors, inland lakes and rivers, and Lake Michigan shoreline,
- Consist of farms and forests in rapidly developing areas or are in scenic viewsheds,
- Are private in-holdings in areas of large contiguous state or federally owned land
- Are associated with important historical or cultural places in the county.

It is further the purpose of this Plan to:

- Retain the value and function of natural systems
- Reduce premature disinvestments in agriculture and forestry
- Protect the best farm and forest land in the county
- Reduce conflicts between new nonfarm residents and farm and forest enterprises

- Discourage urban sprawl
- Guide new development to places where there are adequate public services.

The principal benefits of preservation include:

- Maintaining the natural rural character of the county—which is a fundamental reason that many people live here and is the root of the tourist economy of the county.
- Maintaining the integrity of natural areas that contribute to the high water quality in the county—protecting the wetlands, shorelands and forests of the county will greatly contribute to preservation of high water quality. This in turn will preserve quality fish and wildlife habitat, as well as a multitude of other water based recreation opportunities that serve both residents and tourists and contribute greatly to the economy of the county.
- Maintaining the orchard farms and the value added agricultural enterprises that they support as well as the important economic contributions they make to the local economy. It also permits local foodstuffs to be readily available, without having to rely on other areas for all fresh food.
- Maintaining large forested areas that contribute to a diversity of wildlife not enjoyed in many areas while also enhancing hunting and recreational photography, hiking, snow shoeing, snowmobiling, cross country skiing and other opportunities.
- Maintaining the quality of the drinking water in the county by keeping large recharge areas free from development and stormwater runoff.
- Minimizing conflicts between residents of in-holdings and hunters and people recreating on state and federal land. Elimination of in-holdings will also improve the efficiency and effectiveness of public management of these lands.
- Maintaining important historic and cultural places that have helped define the community and provide the glue to link its people together.

These purposes and benefits are fundamental quality of life issues to people in Benzie County who live here because of its rural, "up north" natural scenic character. This character is made up of many elements and is slowly being eroded. This Plan seeks to maintain the quality of the natural undeveloped character of the county not only for the present, but also for future generations. It is believed that the economic benefits of this Plan, will inure to everyone and are at least as great as the benefits associated with continuing to live in a beautiful place. It is also recognized that living options with adequate public services in and adjacent to existing cities and villages in the County will be necessary to accommodate projected growth and are detailed in the Benzie County 2020 Comprehensive Plan.

At the same time it is recognized that many rural landowners want an option to permanently preserve their land in an open space use without seeing it developed, but that income needs or retirement often do not leave an option not

to sell for development. When the market value of open space land for development exceeds the value for retention as farm or forestland, the land normally will be sold for development. This Plan offers another option, retention of the land in an open space use, while allowing the landowner to capture the development value and still own the land or sell it to another person that wants to retain its open space uses. This is accomplished by the purchase and recording of a conservation easement to permanently protect the land from development, while still allowing its use for farming, forestry, hunting, recreation or other open space use. In some cases it will mean outright purchase of all rights to a parcel. The permanent protection of open space in Benzie County thus not only serves to advance the public health, safety and general welfare of the present and future citizens of the county as a whole, it also benefits the affected landowners who wish to continue to enjoy the natural rural character of the county while capturing the development value of their land.

### **BENZIE LAND PRESERVATION ADVISORY COMMITTEE**

In order to ensure objective, fair, well informed decisions are made on land preservation applications, a broadly based and balanced land preservation board must be created by the Benzie County Board of Commissioners. The principal responsibilities of this body are to receive, review and make recommendations on land preservation applications to the Benzie County Board of Commissioners. With staff support, as determined by the County Board of Commissioners, this committee will also perform necessary coordination activities with local units of government, county agencies, local land trusts, state and federal grant agencies and other land preservation boards. Terms of office will be 3 years, except the first terms will be staggered. Language to prevent participation in decisions in which a committee member has a conflict of interest will be included in the Land Preservation Ordinance.

The Benzie Land Preservation Advisory Committee (BLPAC) will be composed of 9 members who are residents of Benzie County with not more than one person representing each of the following:

1. farmers
2. forest managers
3. watershed management organizations
4. conservation organizations
5. the County Board of Commissioners
6. the County Planning Commission
7. townships in the county
8. cities and villages in the county
9. citizens at large.

Ex-officio, non-voting members of the BLPAC will include: the County Planning Director, a person from the Benzie Conservation District, and a person from the MSU Extension serving Benzie County.

Nominations to the BLPAC shall be requested from the County Chapter of the Michigan Farm Bureau, the County Chapter of the Michigan Townships Association, all local cities and villages, the Conservation District, land trusts serving the county, the County Planning Commission, the County Park and Recreation Commission, local trailways organizations, local watershed organizations, local conservation and hunt clubs, and the general public via a notice published in a local paper of general circulation in the county.

In making a decision on appointments, the County Board of Commissioners shall attempt to balance BLPAC membership geographically across the County and find persons with demonstrated knowledge or experience related to the purpose of the Land Preservation Program.

### **APPLICATION, REVIEW AND APPROVAL PROCEDURES**

The basic elements of the land preservation application, review and approval procedures include submittal requirements, review by the Conservation District, review by the local unit of government, review by the County Planning Commission, review and ranking by the BLPAC, and action by the County Board of Commissioners. Thereafter, farmland applications will be forwarded to the State Agricultural Preservation Fund Board for action, trust fund applications to the Michigan Natural Resources Trust Fund Board and others to the appropriate state or federal agency.

The details of these procedures are provided in the draft Land Preservation Ordinance in Appendix M. The rights in land, including development rights authorized to be purchased, are also spelled out in the ordinance. Following is a reiteration of the priority properties to be considered for purchase of development rights. The criteria for prioritizing agricultural properties is presented separately from all other properties. This is to ensure a similar method of ranking used by the State Agricultural Preservation Fund Board is also first used here in Benzie County. Two options for scoring non-agricultural land preservation applications are presented. The first parallels requirements of the Michigan Natural Resources Trust Fund, and the second parallels the structure of the agricultural scoring criteria.

#### **Priority PDR Properties**

Benzie County properties eligible for the land preservation program are described in Chapter Two (see Table 5 and Map 9) and re-listed here. They include:

*Land along major transportation corridors.* Preservation of scenic views can be accomplished through zoning and buffers. In some locations, PDR can also be used. It is not necessary to acquire the development rights to entire properties. The primary need here is to preserve the landscape scenery along the road. The development rights to a strip of land 200' to 500' wide, parallel to the highway is

the area most in need of preservation. Development can occur behind this buffer strip and signs at the highway can orient travelers to the commercial, industrial or residential developments behind. Development should be clustered behind the highway buffers; using common drives to better manage access (by reducing the number of driveways) for improved safety. The following highway corridors should be the highest priority targets for preservation:

- US 31 Honor to Grand Traverse County
- US 31 Honor to Manistee County
- M-115
- Particularly scenic spots along other corridors and view properties. There are many such places within Benzie County. The locations of important views, identified by citizens are shown on Map 1. As much of the land as possible within the view from those places should be protected through acquisition of development rights or scenic easements. The particular parcels that make up scenic views can be identified by computer programs that work with detailed topographic maps. A simpler approach is to stand on the best viewing locations and to mark the extent of the view on parcel maps.

It may be possible to trade the development rights or scenic easements to the highway buffer for certain modifications in the development of the portions of the highway properties behind the buffers. This should be provided for in zoning regulations.

Note that the lands in the category above may be agricultural, but most of it will not.

*Sensitive Lands & Shorelines.* These lands should be protected because development could cause harm to the natural resources upon which the economy and quality of life of Benzie County depends, because it could damage the quality of lake, stream and ground water and because it could reduce wildlife habitat and biological diversity. Sensitive lands also have scenic qualities. While state and local regulations exist to help protect some sensitive lands, these regulations are often inadequate. Sensitive lands and shorelines include lands in the following locations:

- Wetlands
- Sand dunes
- Floodplains
- Riverbanks
- Lakeshores
- Ecological corridors.

Because parcel lines rarely follow natural features, only portions of large parcels may need to be protected. In some cases, the areas that should be protected may cross parcel lines. Development rights may only need to be acquired on the sensitive portions of large parcels, leaving some part(s) of the property for appropriate development. However, a buffer between protected sensitive areas

and the remaining part of the parcel should be included within the area where development rights are sought. This is because most potential building activities can have a damaging effect on the environment that extends outward from the development. This effect is due to the operation of construction equipment that can do irreparable damage and to chemicals leaching into the ground from building materials.

*Farms and forests in rapidly developing areas.* While there are farms in many locations in Benzie County, the farms and forest areas that are the highest priority for protection are those in rapidly developing areas. Currently these areas are:

- Almira Township
- View properties in Joyfield and Almira Townships.

Protection approaches for these lands should focus on those that permit continued resource use of the land, such as fruit production, field crops, pasture, livestock or timber production. The two most appropriate protection approaches for large farm or forestlands are PDR and TDR. These two approaches may permit the property owner to continue to farm or harvest timber on the land or to sell the land to someone else for those activities. The landowner can receive the value of the development rights from the PDR or TDR program and then the value of the harvest until selling the land for the remaining property value. The land is perpetually available for farm or forest activities. A third approach, conservation subdivisions, can also be used. While it can retain a substantial part of the land for resource use, it does not protect all of it because some is used for residential development. Further, new residential development may not be appropriate next to more intensive farming or forestry practices. Often, conservation subdivisions retain open space for amenity, recreation and wildlife values.

*Private in-holdings in State or Federal land.* These are privately owned lands surrounded by state or federal land. If these lands can be converted to the same state or federal ownership as the surrounding land, management of forestry, recreation, wildlife habitat or mineral production can provide a greater return for the public good. Compensation for these lands can take the form of money for a buyout or a trade for other lands, probably publicly owned, but of less interest to public land managers. An example of the latter is an island of public land surrounded by private land. Trading those lands helps smooth the boundary of the public lands.

Generally, local funds are not used for this purpose since there may be state or federal funds or trades available. However, it is an important goal and the Benzie Land Preservation Advisory Committee can alert private landowners to the possibility and should lobby the state or federal government on behalf of landowners interested in such a sale or trade.

Private in-holdings can also be donated to the state or federal government, providing a substantial tax benefit to the landowner. The Benzie Land Preservation Advisory Committee can also provide information to the landowner.

*Historic/Cultural Places.* These include buildings with historic significance to the settlement of Benzie County, places where early settlers held meetings, attended school, held religious services and began local industries. It also includes archaeological sites.

If an historic or cultural site is threatened, the Benzie Land Preservation Advisory Committee should investigate the value of obtaining development rights. The Committee would likely transfer those rights to another organization with a purpose and track record of preserving historic and cultural sites at a later date.

### **CRITERIA FOR PRIORITIZING AGRICULTURAL PROPERTIES**

If Benzie County has a similar experience as that of other counties, there will be more property owners wishing to sell their development rights than there are funds to purchase them. The criteria below would be used by the Benzie Land Preservation Advisory Committee to select properties for acquisition of development rights. These criteria are based on those developed by State Agricultural Preservation Fund Board and the Rural Development Council of Michigan for Clinton and other counties in Michigan and is adapted for use in Benzie County. A copy of the state Dept. of Agriculture PDR application form and scoring criteria are found in Appendix D.

#### **Ranking System for Prioritizing Agricultural Land Applications**

The following scoring system is proposed for use by Benzie County to evaluate and prioritize Purchase of Agricultural Conservation Easements (PACE) or Purchase of Development Rights (PDR) applications by landowners interested in voluntarily protecting farmland from development. The objective of this rating system is to help prioritize farmland parcels that should be preserved for agricultural use. After all parcels have been scored, the Benzie Land Preservation Advisory Committee will then review and evaluate the highest scoring parcels and recommend to the County Board of Commissioners parcels for their approval to proceed with the purchase of the agricultural conservation easement. The scoring system should be evaluated and modified over time as the program develops.

#### Preliminary Information

- Is the application voluntarily initiated by the landowner? If not, it will not be considered.
- Is the landowner retiring or quitting farming with the intention of developing the land or selling it for development if PDR is not a viable option? If yes, determine the time parameters involved, if less than one year, do not consider further.

- Is at least 51% of nominated property devoted to agricultural use? If no, the property will not be eligible to receive state matching funds. However, it may still be eligible under the open space scoring criteria.
- Does the property have development rights remaining under current zoning? If not, it will not be considered further.
- Has the local city, village or township approved the landowner's application to the county? If no, the property will not be considered further. Approval of specific parcels would take into account the desire of a community to participate in the county program and consistency with the local master plan.
- Is the property planned for platted residential subdivisions, apartments, or for commercial or industrial use (or is within the designated urban services district) in the Benzie County 2020 Comprehensive Plan or in a locally adopted master plan? If yes, the property will not be considered further.
- Are agriculture activities a permitted use on the parcel under current zoning? If no, the property will not be considered further.
- Does the landowner control all rights associated with the property, such as minerals rights? If no, are the owners of the mineral rights willing to sign a subordination agreement? If yes, are the mineral rights presently leased out?
- It is important that the ownership and use of mineral rights be subordinate to the agricultural conservation easement. Mineral extraction is allowed provided that the use of the land for agriculture is not negatively impacted (e.g. surface mining would not be acceptable).

**Criteria Points System. The following scoring system has different categories, each with its own portion of the total points. The Total Maximum Points = 115**

### ***Agricultural Characteristics (40 Points)***

#### **1. Agricultural Productivity - Maximum Points: 20**

Priority is placed on productive farmland that has the highest capacity for agricultural production. The rating is based on a grouping of soil classifications established by the USDA NRCS according to the potential yield capabilities for agricultural use (yield potentials established by USDA) or for cherry orchards, the Cherry Site Index Maps or for forestland, the Prime Forest Map. [THESE MAPS ARE AVAILABLE THROUGH THE BENZIE COUNTY PLANNING DEPARTMENT OR THE BENZIE CONSERVATION DISTRICT.] The percentage of agriculturally productive soils will be calculated by local conservation district staff utilizing county USDA soil survey maps. [IN BENZIE COUNTY, THE SYSTEM DEVELOPED COULD BE REVISED AS SOON AS THE MODERN SOIL SURVEY IS COMPLETED, WHICH SHOULD BE BY 2003 IN DIGITAL AND 2005 FOR PUBLISHED SURVEY.] This percentage will be multiplied by the maximum points allowed for each soil grouping and the total from each grouping will be added for a total score for agricultural productivity.

Soil Classification Groupings: These would be established based on local agricultural commodities, such as fruit.

Group 1 - Group 2	20 pts
Group 3 - Group 4	15 pts
Group 5 - Group 6	10 pts
Group 7 - Group 8	5 pts
Group 9 - Group 10	0 pts

*Example: 70% of parcel has Group 2 soils x 20 pts = 14 pts; 30% of parcel has Group 3 soils x 15 pts = 4.5 pts; Total points = 18.5 pts*

## **2. Size of Parcel(s)- Maximum Points: 10**

Emphasis is placed on larger parcels with a higher percentage of tillable land to help create a more economically viable unit for agricultural production. The number of points for parcel size is multiplied by the percentage of tillable land for the total number of points for parcel size.

100 or more acres in size	10 pts
75 to 99 acres in size	8 pts
40 to 74 acres in size	6 pts
20 to 39 acres in size	0 pts
less than 20 acres in size	Subtract 10 points from total score

(The Benzie Land Preservation Advisory Committee may decide not to deduct points for parcels less than 20 acres in size if the parcel is adjacent to or within a previously protected property.)

*Example: 110 acre parcel has 90 tillable acres (81.8% tillable)  
Total points = .818 x 10 pts = 8.2 pts*

## **3. Soil Conservation Plan - Maximum Points: 5**

Points are awarded for property that has an approved and implemented soil conservation plan adopted by the landowner and USDA-NRCS to help reduce erosion of productive topsoil.

Implemented Soil Conservation Plan	5 pts
No Soil Conservation Plan Adopted	0 pts

*Example: Landowner has adopted and implemented a USDA-NRCS approved conservation plan. Total points = 5 pts*

## **4. Enrollment in the Farmland and Open Space Preservation Act (P.A.116)- Maximum Points: 5**

Emphasis is given to landowners who have already taken this step to temporarily protect their farmland by enrolling in the state Farmland and Open Space Preservation Act. If the entire parcel is enrolled, then the maximum score (5 pts)

would apply. If only a percentage of the parcel is enrolled, than the percentage is multiplied by the maximum number of points (5) to result in a score.

*Example: Two adjacent 50 acre parcels are submitted as part of the same application by the same land owner. Only one 50 acre parcel is currently enrolled (50%). Total points = 2.5 points*

### **Development Pressure (30 points)**

#### **5. Proximity to Existing Public Facilities - Maximum Points: 20**

##### **a. Public Sanitary Sewer and/or Water - Maximum Points: 10**

Additional priority is placed on parcels closer to existing community services with the exception that parcels adjacent to existing sewer and water lines should receive the lowest priority for preservation (the public has already made the investment and the land can be used for higher density development). Linear distance to existing, usable public sanitary sewer and/or water service will result in the following scoring options:

Less than 1/2 mile from sewer or water	0 points
1/2 mile or more but less than 2 miles	8 points
2 miles or more but less than 5 miles	10 points
More than 5 miles	6 points (the threat of development is likely lower)

*Example: Parcel is located 3 miles from existing sewer lines. Total points = 10 pts.*

##### **b. Road Frontage – Maximum Points: 10**

Road frontage is an indicator of development potential. Development potential will depend on both the length of frontage and the quality of the road. Assign the following points based on the length of road frontage.

No road frontage	0 points
Less than one quarter mile	1 point
At least one quarter mile but less than half a mile	2 points
At least one half mile but less than three quarters mile	4 points
Three quarters of a mile or more	6 points

If the farm has road frontage, assign the following additional points based on the quality of best road that fronts the farm.

State highway	4 points
County primary road	2 points
County secondary road	1 points
Private road	0 points

*Example: Parcel has 3,000 feet of frontage on a state highway = 8 points. Total points from Development Pressure example = 18 points.*

#### **6. Development Activity in Township - Maximum Points: 10**

Emphasis is placed on parcels located within townships that have a greater degree of development activity, placing the farmland under a greater threat of development. [WHILE SOME COUNTIES USE THE NUMBER OF WELL PERMITS IN A TOWNSHIP, IT IS RECOMMENDED THAT BENZIE COUNTY USE BUILDING PERMITS IN THE LAST 5 YEARS IF ACCURATE WELL PERMIT NUMBERS ARE DIFFICULT TO OBTAIN.] The townships will be divided into four groups.

Parcel located in a group of townships with the highest number of new building permits in last 5 yrs.	10 pts
Parcel located in a group of townships with the second highest number of new building permits	7 pts
Parcel located in a group of townships with the third highest number of new building permits	5pts
Parcel located in a group of townships with the lowest number of new building permits	3 pts
Parcel located in a city or village	0 pts

*Example: Parcel is located within a township that falls into a group of townships that have the second largest tier of new building permits. Total points = 7 pts*

#### **Additional Agricultural Protection Efforts (25 points)**

#### **7. Location to other protected property - Maximum Points: 15**

Priority is placed on parcels which are adjacent to other previously protected land to help create a block of preserved farmland, helping to create a long-term business environment conducive to agriculture and protecting the public's investment by minimizing the potential for the parcel to be surrounded by development. The potential for future land use conflicts is also minimized when blocks of agricultural land can be protected or buffered from future development.

A. Parcel is near other private land that has already been permanently protected from development through a conservation easement or deed restriction (development rights may have been purchased, transferred or donated).

Parcel is adjacent to protected land	10 pts
Parcel is not adjacent but within 1 mile of protected land	7 pts
Parcel is not adjacent but is 1 mile from protected land	3 pts
Parcel is not within 1 mile of protected land	0 pts

B. More than 50% of the land within a 1 mile (4 square miles area) of the parcel is enrolled in the Farmland and Open Space Preservation Act OR if the parcel is adjacent to land under public ownership that is specifically designated for long term natural resource use or conservation purposes protected from development.  
5 pts total if it not 0 Pts

*Example: Parcel is adjacent to a previously protected farmland parcel =10 pts  
75% of the surrounding land within 1 mile is in P.A. 116 = 5 pts*

#### **8. Agricultural District Zoning Designation - Maximum Points: 10**

Additional points are given to parcels that are designated as an agricultural district.

Exclusive Agricultural District (Restricts Residential Development)	10 pts
General Agricultural District	3 pts
Non-Agricultural District	0 pts

*Example: Parcel has been designated as an exclusive agricultural district under current zoning (1 house per 40 acres). Total points= 10 pts*

#### **Other Criteria (20 points)**

#### **9. Additional Points Based on Matching Funds - Maximum Points: 15**

Emphasis will be placed on parcels that have additional matching funds other than county or state sources. Matching funds could be money contributed by townships, private or non-profit sources or could be an offer by the landowner to accept an offer less than appraised value (up front commitment to accept a certain percent discount (e.g. 10-20%) of the development rights value). A letter of commitment regarding matching funds must accompany application. As a result, priority consideration will be given to parcels that townships have agreed to provide additional funding.

25 percent or more of PDR value	15 pts
15 to 24 percent of PDR value	12 pts
10 to 14 percent of PDR value	8 pts
5 to 9 percent of PDR value	4 pts
1 to 4 percent of PDR value	0 pts

*Example: Parcel is located within a township that has agreed to provide additional funding which will cover 25% of the development rights value. Total points = 15 pts.*

#### **10. Unique Environmental Characteristics - Maximum Points: 5**

Additional points will be given to parcels that have unique physical or environmental characteristics or will enhance the goals and objectives of the Benzie County 2020 Comprehensive Plan.

Parcel has unique features	5 pts
Parcel does not have unique features	0 pts

## CRITERIA FOR PRIORITIZING NON-AGRICULTURAL PROPERTIES

Since no other Michigan county has a comprehensive open space preservation program for other than agricultural property, and since both the Michigan Natural Resources Trust Fund (MNRTF) and federal Land and Water Conservation Fund (LWCF) have historically been used largely to purchase all rights in a parcel, not simply the development rights, there is no directly analogous state program to the Agricultural Preservation Fund program for non-agricultural property to link to. Yet, because the MNRTF and LWCF are the likely state and federal sources of money for natural resource land acquisition, it is pertinent to draw from the criteria used in the MNRTF and LWCF programs, as well as from programs and open space acquisition criteria in use in other states (notably Minnesota) as one scoring option.

Eleven evaluation criteria are used to score MNRTF applications by the Natural Resources Commission (NRC) of the Dept. of Natural Resources. The NRC is permitted to consider other criteria as well. Three of the eleven criteria below with an asterisk (\*) are also required criteria for scoring applications to the LWCF.

1. Protection and use of significant natural resources.
2. Use of inland waters.
3. Population served.
4. Economic benefits.
5. Hunting, fishing and other wildlife-related values.
6. Need for proposal.\*
7. Capability of applicant.\*
8. Site and project quality.\*
9. Relationship to special initiatives of the MNRTF Board.
10. Financial need of the applicant.
11. Local match contribution.

Any unit of government, including school districts, or any combination of units in which authority is legally constituted to provide recreation is eligible to receive MNRTF or LWCF grants if they have a DNR-approved recreation plan. That means the Benzie County Park and Recreation Plan must be amended to clarify that its scope is public and quasi-public park and recreation lands and facilities and that natural resource and open space protection is covered by this Plan. It also means that this Plan must be incorporated by reference into the County Park and Recreation Plan.

### **Scoring System for Prioritizing Non-agricultural Land Applications**

Following is the scoring system for Benzie County to evaluate and prioritize purchase of land conservation easements or purchase of development rights applications by landowners interested in voluntarily protecting natural resource and other open space lands that do not qualify as farmland from development. After all parcels have been scored, the Benzie Land Preservation Advisory Committee will then review and evaluate the highest scoring parcels and recommend to the County Board of Commissioners parcels for their approval to proceed with the purchase of a conservation easement.

#### Preliminary Information

- Is the application voluntarily initiated by the landowner? If not, it will not be considered.
- Is the property a priority property as illustrated on Map 9? If not, the property will not be given priority consideration for PDR protection without a special finding by the BLPAC that it otherwise has highly valuable characteristics consistent with this Plan that make it worthy of special consideration for protection.
- Does the property have development rights remaining under current zoning? If not, it will not be considered further.
- Is the landowner retiring or quitting the open space use with the intention of developing the land or selling it for development if PDR is not a viable option? If yes, determine the time parameters involved, if less than one year, do not consider further.
- Is at least 51 % of nominated property devoted to an important non-farming resource use such as forest management, wetland, sand dune, shoreline or is especially scenic? If no, the property will not be considered further under this preservation program.
- Has the local city, village or township approved the landowner's application to the county? If no, the property will not be considered further. Approval of specific parcels would take into account the desire of a community to participate in the county program and consistency with the local master plan.
- Is the property planned or zoned for platted residential subdivisions, apartments, or for commercial or industrial use (or is within the designated urban services district) in the Benzie County 2020 Comprehensive Plan or in a locally adopted master plan? If yes, the property will not be considered further unless it links to important parcels with similar natural resource or scenic characteristics on abutting properties.
- Are agricultural, forestry, recreation, low density single family residential or similar low intensity activities permitted uses on the parcel under current zoning? If no, the property will not be considered further.
- Does the landowner control all rights associated with the property, such as minerals rights? If no, are the owners of the mineral rights willing to sign a subordination agreement? If yes, are the mineral rights presently leased out?

- It is important that the ownership and use of mineral rights be subordinate to the open space conservation easement. Mineral extraction is allowed provided that the open space use of the land is not negatively impacted (e.g. surface mining would not be acceptable).

**Criteria Points System. The following scoring system has different categories, each with its own portion of the total points. The Total Maximum Points = 145**

### ***Natural Resource Characteristics (60 Points)***

#### **1.a. Natural Soil Characteristics- Maximum Points: 20**

The percentage of soils meeting the characteristics below will be calculated by local Conservation District staff utilizing county USDA soil survey maps. [IN BENZIE COUNTY, THE SYSTEM DEVELOPED COULD BE REVISED AS SOON AS THE MODERN SOIL SURVEY IS COMPLETED, WHICH SHOULD BE BY 2003 FOR DIGITAL AND 2005 FOR A PUBLISHED SURVEY.] This percentage will be multiplied by the maximum points allowed for each soil grouping and the total from each grouping will be added for a total score.

Does the land have 100 feet or more on a lake, river or stream? *If yes, assign 20 points and skip the other 4 questions. If no add 5 points for some shoreline less than 100 feet to the score for the other 4 questions in this category.*

- What percent is wetland?
  - > 40% = 10 points
  - $\geq 20\% \leq 40\%$  = 5 points
  - $\geq 10\% < 20\%$  = 2 points
- What percent is prime forestland?
  - > 40% = 4 points
  - $\geq 20\% \leq 40\%$  = 3 points
  - $\geq 10\% < 20\%$  = 2 points
- What percent is prime agricultural land or prime orchard land?
  - > 40% = 10 points
  - $\geq 20\% < 40\%$  = 5 points
  - $\geq 10\% < 20\%$  = 2 points
- What percent is characterized by steep slopes that are prone to erosion?
  - > 40% = 10 points
  - $> 20\% \leq 40\%$  = 5 points
  - $> 10\% < 20\%$  = 2 points

*Example: 100 acre parcel has 90 feet of shoreland, is 40% wetland, has 25% prime forestland and 30% steep slopes. Total points: Its score is 23, but the maximum is 20 so that is all the points it would get.*

**1.b. Ecological value - Maximum Points: 20**

Sites that would rank highest include those that are of statewide or regional, as well as local importance. Other sites of high ecological value would include areas that are known to contain endangered, threatened or rare wildlife and plants that are protected by state or federal law, or those that have significant habitat resources for such species, and species that are of concern locally. Such areas are of critical importance in the protection of viable natural populations and communities. Areas that provide corridors for wildlife movement or for greenways are of lesser importance, but still important.

Contains ecosystems of documented state or regional importance	= 20 pts
Documented threatened or endangered species and/or	
Unusually high diversity of species	
Contains ecosystems of documented local importance	= 15 pts
Documented habitat for protected species	
Helps connect prime greenways and wildlife corridors	= 10 pts
Other ecological values	= 5 points
Site contains known environmental contamination that	
has not been completely cleaned up	= minus 20 points

*Example: parcel has documented habitat for protected species and serves as a wildlife corridor to connect prime greenways. This score is 25 points, but the maximum is 20 points, so Total = 20 points.*

**2. Size of Parcel(s) - Maximum Points: 10**

Emphasis is placed on larger parcels to help create larger linked natural areas with similar or compatible characteristics that will better ensure protection of natural features and functions, even if presently in an early stage of succession.

100 or more acres in size	10 pts
75 to 99 acres in size	8 pts
40 to 74 acres in size	6 pts
20 to 39 acres in size	0 pts
less than 20 acres in size	Subtract 10 points from total score

(Benzie Land Preservation Advisory Committee may decide not to deduct points for parcels less than 20 acres in size if the parcel is adjacent to or within a previously protected property.)

*Example: 110 acre parcel has 10 points  
Total points = 10 pts*

**3. Soil Conservation or Forest Management Plan - Maximum Points: 5**

Points are awarded for property that has an approved and implemented soil conservation plan adopted by the landowner and USDA-NRCS to help reduce erosion of topsoil.

Implemented Soil Conservation or Forest Management Plan	5 pts
No Soil Conservation or Forest Management Plan Adopted	0 pts

*Example: Landowner has adopted and implemented a USDA-NRCS approved conservation plan. Total points = 5 pts*

**4. Enrollment in the Open Space Provisions of the Farmland and Open Space Preservation Act (P.A.116) or the Commercial Forest Reserve Act**  
- Maximum Points: 5

Emphasis is given to landowners who have already taken this step to temporarily protect their land by enrolling in the open space portion of the state Farmland and Open Space Preservation Act OR in the Commercial Forest Reserve Act. If the entire parcel is enrolled, then the maximum score (5 pts) would apply. If only a percentage of the parcel is enrolled, than the percentage is multiplied by the maximum number of points (5) to result in a score.

*Example: Two adjacent 50 acre parcels are submitted as part of the same application by the same land owner. Only one 50 acre parcel is currently enrolled in the Commercial Forest Reserve Act (50%). Total points = 2.5 points*

**Development Pressure (30 points)**

**5. Proximity to Existing Public Sanitary Sewer and/or Water** - Maximum Points: 20

**a. Public Sanitary Sewer and/or Water** - Maximum Points: 10

Additional priority is placed on parcels closer to existing community services with the exception that parcels adjacent to existing sewer and water lines or a new public road should receive the lowest priority for preservation (the public has already made the investment and the land can be used for higher density development). Linear distance to existing, usable public sanitary sewer and/or water service will result in the following scoring options:

Less than 1/2 mile from sewer or water	0 points
1/2 mile or more but less than 2 miles	8 points
2 miles or more but less than 5 miles	10 points
More than 5 miles	6 points (the threat of development is likely lower)

*Example: Parcel is located 3 miles from existing sewer lines. Total points = 10 pts.*

**b. Road Frontage – Maximum Points: 10**

Road frontage is an indicator of development potential. Development potential will depend on both the length of frontage and the quality of the road. Assign the following points based on the length of road frontage.

No road frontage	0 points
Less than one quarter mile	1 point
At least one quarter mile but less than half a mile	2 points
At least one half mile but less than three quarters mile	4 points
Three quarters of a mile or more	6 points

If the farm has road frontage, assign the following additional points based on the quality of best road that fronts the farm.

State highway	4 points
County primary road	2 points
County secondary road	1 points
Private road	0 pts

*Example: Parcel has 3,000 feet of frontage on a state highway = 8 points. Total points from Development Pressure example = 18 points.*

#### **6. Development Activity in Township - Maximum Points: 10**

Emphasis is placed on parcels located within townships that have a greater degree of development activity, placing the land under a greater threat of development. [WHILE SOME COUNTIES USE THE NUMBER OF WELL PERMITS IN A TOWNSHIP FOR THIS MEASURE, IT IS RECOMMENDED THAT BENZIE COUNTY USE BUILDING PERMITS IN THE LAST 5 YEARS AS ACCURATE WELL PERMIT NUMBERS MAY BE DIFFICULT TO OBTAIN.] The townships will be divided into four groups.

Parcel located in a group of townships with the highest number of new building permits in last 5 yrs.	10 pts
Parcel located in a group of townships with the second highest number of new building permits	7 pts
Parcel located in a group of townships with the third highest number of new building permits	5pts
Parcel located in a group of townships with the lowest number of new building permits	3 pts
Parcel located in a city or village	0 pts

*Example: Parcel is located within a township that falls into a group of townships that have the second largest tier of new building permits. Total points = 7 pts*

#### **Additional Protection Efforts (25 points)**

#### **7. Location to other protected property - Maximum Points: 15**

Priority is placed on parcels that are adjacent or near to other previously protected land to help create a block of preserved land, protecting the public's investment by minimizing the potential for the parcel to be surrounded by

development. The potential for future land use conflicts is also minimized when blocks of land can be protected or buffered from future development.

Parcel is near other private land that has already been permanently protected from development through a conservation easement or deed restriction (development rights may have been purchased, transferred or donated) or is state or federal land managed for its natural resource values, or is a land intended for recreation use and is proximate to a public park or recreation facility.

Parcel is adjacent to protected land	15 pts
Parcel is not adjacent but within 1 mile of protected land	10 pts
Parcel is not adjacent but is 1 mile from protected land	5 pts
Parcel is not within 1 mile of protected land	0 pts

*Example: Parcel is adjacent to a previously protected farmland parcel = 15 pts*

#### **8. Natural Resource Protection District Zoning Designation - Maximum Points: 10**

Additional points are given to parcels that are designated as an agricultural district or \_\_\_\_\_. [INSERT NAME OF OTHER LOW DENSITY NATURAL RESOURCE DISTRICTS THAT WOULD QUALIFY (SUCH AS FOREST RECREATION, OR CONSERVATION DISTRICTS). REWORK BELOW ONCE OTHER DISTRICTS ARE IDENTIFIED AND INSERT PROPER NAME OF DISTRICT. WILL NEED TO BE ADDED TO THE ZONING ORDINANCE.]

Exclusive _____ District (Restricts Residential Development)	10 pts
General _____ District	3 pts
Non-_____ District	0 pts

*Example: Parcel has been designated as an exclusive Forest-Recreation district under current zoning (1 house per 40 acres). Total points= 10 pts*

#### **Other Criteria (30 points)**

#### **9. Additional Points Based on Matching Funds - Maximum Points: 15**

Emphasis will be placed on parcels that have additional matching funds other than county or state sources. Matching funds could be money contributed by townships, private or non-profit sources or could be an offer by the landowner to accept an offer less than appraised value (up front commitment to accept a certain percent discount (e.g. 10-20%) of the (development rights) value). A letter of commitment regarding matching funds must accompany application. As a result, priority consideration will be given to parcels that townships have agreed to provide additional funding.

25 percent or more of (PDR) value	15 pts
15 to 24 percent of (PDR) value	12 pts

10 to 14 percent of (PDR) value	8 pts
5 to 9 percent of (PDR) value	4 pts
1 to 4 percent of (PDR) value	0 pts

*Example: Parcel is located within a township that has agreed to provide additional funding which will cover 25% of the development rights value. Total points = 15 pts.*

#### **10. Unique Aesthetic, Historic or Cultural Characteristics - Maximum Points: 15**

Additional points will be given to parcels that have unique aesthetic, historic or cultural characteristics. An example would be a parcel with a particularly good scenic view from a public vista such as a road or park. Another example would be property that was the site of a ghost town or adjacent to a history museum or historic structure.

Parcel has particularly good scenic view from a public viewing location (like a county road). 10 pts

Parcel has unique historic or cultural features 5 pts

Parcel does not have unique features 0 pts

*Example: Parcel is site of still standing 1870 one room schoolhouse along county road with a great scenic view to an inland lake. Total points = 15*

[TIE-BREAKING CRITERIA MAY NEED TO BE DEVELOPED.]

### **PERMITTED AND PROHIBITED USES**

A conservation easement or development rights easement is the principal legal document used to establish a permanent restriction on the land to open space uses. It must specify the development rights being acquired as well as those that remain. It also specifies the permitted and prohibited uses of the land. Listed below are typical permitted and prohibited uses of land in a conservation easement (from a model PDR ordinance prepared by Biko Associates, Inc. for the Minnesota Environmental Quality Board in 2001).

**Permitted Uses.** Lands under a development rights easement may continue to be used for the following purposes, except as regulated by the specific terms of the easement and as restricted by local zoning requirements and other applicable regulations:

1. Customary agricultural or forestry uses, including seasonal and specialty agricultural businesses and customary home occupations as defined by applicable zoning requirements.
2. Land conservation and management activities, as specified in the terms of the easement.
3. The landowner's residence or farmstead.

4. Replacement, expansion or modification of existing buildings within the immediate area of the house site or farmstead, up to a specified percentage of the original building footprint(s), which shall be negotiated as part of the terms of the easement.
5. Customary agricultural buildings shall be permitted as specified in the terms of the easement.
6. Other activities and alterations that may occur on the property shall be defined by the terms of the easement. In general, such activities shall be permitted to the extent that they do not lessen or degrade the resource values the easement is intended to protect.
7. A conservation plan prepared according to the standards of the Natural Resources Conservation Service or similar agency shall be required for all agricultural or forested land under easement.
8. Hunting and fishing where legal and possible.

**Prohibited Uses of Land.** The following land uses shall be prohibited on lands under a conservation easement:

1. Additional residential units (other than the existing residence, if present) are not permitted within the designated easement area. The applicant must designate any areas to be set aside for residential development at the time of application. The area must be subdivided from the eased property prior to closing. Any remaining density left unused on lands under easement shall be extinguished under the terms of the easement.
2. Non-agricultural commercial or industrial development are not permitted within the designated easement area without prior written approval of the easement holder(s).

Permitted and prohibited uses should be refined by the BLPAC for general use as well as carefully considered for each parcel subject to a conservation easement. Appendix J contains a copy of the Peninsula Township, Grand Traverse County Development Rights Easement and a sample Agricultural Conservation Easement developed for use in Clinton County, Michigan. Either sample needs to be modified to fit the particular situation.

## **LAND PRESERVATION ORDINANCE**

In Appendix M is a draft Land Preservation Ordinance for Benzie County. Prior to adoption it needs to be carefully reviewed and refined to ensure it best meets the needs and desires of the Benzie County Open Space and Natural Resources Plan Advisory Committee, the Benzie County Planning Commission, and the Benzie County Board of Commissioners. It also needs to be reviewed by either the County Prosecutor or another attorney hired by the County that is familiar with such ordinances and development rights easements. The legal questions identified earlier in this chapter also need to be examined at that time and some

of the same questions need to be resolved with regard to the sample TDR ordinance in Appendix N.

This draft Land Preservation Ordinance draws from many different sources. The base ordinance is from Washtenaw County, Michigan and was adopted in June 1998. It was heavily modified with provisions from the draft Leelanau County PDR Ordinance (fall of 2001), the Meridian Township Land Preservation Ordinance (adopted in the fall of 2001), the Minnesota Environmental Quality Board Model prepared by Biko Associates in 2001, and the draft model ordinance for the 6 northern townships in Macomb County (prepared by the Michigan Dept. of Agriculture in late 2001). While a strong effort was made to make the draft Land Preservation Ordinance comprehensive, clear and to consistently use terms as defined, it should be reviewed further to ensure this is true and to identify any other terms that need to be defined.

Section 6 of the draft Ordinance defers inclusion of a scoring system directly in the ordinance (as the Washtenaw County ordinance does) and leaves it up to the BLPAC to refine the draft included in this chapter. This task needs to be done very carefully. All of the above referenced ordinances, and several other county agricultural protection plans currently under preparation use significantly different criteria in the scoring systems. An effort should be made to review these other scoring systems to determine if any proposed criteria should be eliminated and either replaced or supplemented with other criteria, before being adopted. Then after being used the first cycle, the criteria should be further refined for improved clarity and utility. Thereafter it should be annually reviewed and refined if necessary. The scoring criteria should be submitted to the County Board of Commissioners for approval prior to its first use, and prior to any later revisions.

Several times the ordinance makes reference to rules of procedure of the BLPAC. These are critical to effective functioning of the BLPAC and should be carefully prepared to address all the issues identified in the Ordinance. No sample rules of procedure for a land preservation advisory committee were identified in the research for this Plan, so this will be a new undertaking.

There are numerous forms and summary materials developed for many of the PDR ordinances identified above, and these should be consulted when developing similar material to implement the Benzie Land Preservation Ordinance. Among the most useful of these are found in Appendices H and I. Appendix H includes material from the state of Michigan Purchase of Development Rights Program and the Michigan Natural Resources Trust Fund Program. Appendix I includes materials on installment purchases gathered and summarized by Dr. David Skjaerlund of the Michigan Council on Rural Development. These are very helpful materials for understanding some of the nuances of PDR.

## **SUMMARY OF KEY POINTS**

This chapter proposes establishing a Land Preservation Program in Benzie County. It should begin with adoption of a Land Preservation Ordinance, creation of a Land Preservation Advisory Committee and initiation of a millage to raise funds for purchase of land and development rights in land that are consistent with this Plan and the Land Preservation Ordinance. Priority lands for preservation include major (and especially scenic) highway corridors, sensitive environment lands, agriculture and forest production lands, public land in-holdings and historic/cultural places as generally depicted on Map 9.

The Benzie County Land Preservation Advisory Committee should also obtain fee interest, development rights and conservation easements to other lands on an opportunistic basis. However, funds should be carefully used and some acquisitions may need to be transferred to other entities or sold to raise acquisition funds for purchases with greater scenic and environmental importance.

The general criteria for land acquisition are:

- The land should be in one of the priority category. The discussion above lists the general priority categories. See Table 5 for a more extensive description and rationale for selection.
- The acquisition should be in as large a block as possible.
- The acquisition should be contiguous with or near other protected lands.
- If the land has productive capacity for agriculture or forestry, only the development rights should be acquired and efforts should be made to continue productive and wise, resource use.
- Land with high scenic value and view exposure should have a high priority for acquisition.

Other land preservation and scenic character enhancement approaches such as design guidelines and conservation subdivisions can be used where the landowner does not want to convey development rights or an easement or where the land is not a high priority for acquisition. The Land Preservation Advisory Committee should be familiar with these other approaches in order to help landowners become effective stewards of their lands while achieving an economic return. Changes to the County Zoning Ordinance and to other local zoning ordinances will also be necessary to implement these techniques.

What is most important however, is to move forward deliberately and fairly quickly on these recommendations, or important momentum will be lost, and along with it, opportunities for land preservation. Too many missed opportunities could dramatically reduce the aesthetic quality of open spaces and viability of long-term use of natural resources in Benzie County.