

## ILLINOIS OPEN SPACE LANDS ACQUISITION AND DEVELOPMENT PROGRAM

### I. Overview

An Illinois General Assembly task force on urban growth has observed that “poorly coordinated growth and development often threaten natural areas and open space.”<sup>1</sup> In an effort to combat the negative effects of growth and development, the Illinois Open Space Lands Acquisition and Development (OSLAD) Program provides funding assistance to local governments for acquisition and development of land for public parks and open space.

The OSLAD Program is the largest local government open space acquisition program in the state, and several project evaluation criteria pertain to natural resource and wildlife habitat benefits. The OSLAD Program will utilize the Illinois wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) as a strategic guide for acquiring land that will yield the greatest wildlife benefit from a statewide perspective.

### II. The Illinois Open Space Lands Acquisition and Development Program

The OSLAD Program is a state-financed program created under Public Act 84-109, the Open Space Lands Acquisition and Development Act.<sup>2</sup> The act directs the Illinois Department of Natural Resources (IDNR) to make grants “for the capital development and improvement of park, recreation or conservation areas, marina and shoreline...and for the acquisition of open space lands.”<sup>3</sup> IDNR administers the program with a staff that includes several biologists. The program provides funding assistance to local government agencies both for acquisition and development of land for public parks and open space. The demand for OSLAD funding varies from year to year, and a project that does not receive funding in one year may receive funding the following year if the project application is modified with guidance from IDNR staff. Overall, IDNR has placed a priority on natural resource and wildlife-oriented projects.<sup>4</sup>

#### ***Program Funding***

The OSLAD program was initially financed with bond money subject to an annual appropriation by the Illinois General Assembly. In 1989, Senate Bill 1463 earmarked a portion of the state’s real estate transfer tax as a dedicated funding source for the OSLAD Program.<sup>5</sup> As of 2005, the OSLAD Program receives 35 percent of the state’s real estate transfer tax.<sup>6</sup> The program

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<sup>1</sup> Illinois Department of Natural Resources, *Public Attitudes Toward Open Space: The Unmet Demand for Open Space in Illinois* (May 2003) at 2, available at [http://dnr.state.il.us/orep/open\\_space\\_final\\_report.pdf](http://dnr.state.il.us/orep/open_space_final_report.pdf) (last visited Sept. 22, 2005).

<sup>2</sup> 525 ILL. COMP. STAT. 35/1.

<sup>3</sup> 525 ILL. COMP. STAT. 35/3.

<sup>4</sup> Telephone Interview with Dick Westfall, Manager, Greenways & Trails Section, Illinois Department of Natural Resources (April 12, 2005).

<sup>5</sup> Illinois Department of Natural Resources, *Outdoor Recreation Grants Programs - OSLAD/LWCF 2005 Local Participant Manual* at 9, available at <http://dnr.state.il.us/ocd/OS-LW2005Man.pdf> (last visited Sept. 22, 2005).

<sup>6</sup> 35 ILL. COMP. STAT. 200/31-35(b).

provides funding assistance of up to 50 percent of approved project costs.<sup>7</sup> Grant awards of up to \$750,000 are available for acquisition projects, while development and renovation projects are limited to a maximum grant of \$400,000.<sup>8</sup> According to IDNR's Division of Grant Administration, the OSLAD Program has spent \$178.3 million since its inception in 1985. In Fiscal Year 2004, the program expended \$16.6 million altogether, with \$1.7 million for acquisition projects (as opposed to development and renovation projects).<sup>9</sup>

### **III. Land Protection Strategies**

#### ***Land Protection Tools***

The primary open space protection tool utilized under the OSLAD Program is fee title acquisition.<sup>10</sup>

#### ***Prioritizing Land Acquisition***

The OSLAD Program's authorizing legislation directs IDNR to prioritize projects in high population density areas, projects that reflect outdoor recreation needs and priorities identified in the Statewide Comprehensive Outdoor Recreation Plan, and projects in flood plain areas.<sup>11</sup> Eligible land acquisition projects include (but are not limited to): "general park purposes such as community and neighborhood parks; frontage on public surface waters for recreation use; open space/conservation purposes to protect floodplains, wetlands, natural areas, wildlife habitat and unique geologic or biologic features; and additions to such areas."<sup>12</sup> All project applications are evaluated and prioritized according to the following categories of criteria: statewide outdoor recreation priorities (35 percent), local project needs assessment (25 percent), local planning (10 percent), site characteristics and development plan (25 percent), and project special considerations (5 percent).<sup>13</sup>

The statewide outdoor recreation priorities category includes several criteria that address the wildlife and habitat benefits of proposed projects. These criteria relate to whether the project promotes "natural resource conservation" and/or protects or enhances the following: "a State or locally significant natural area, or threatened/endangered species habitat, or an area identified in a Conservation 2000 Partnership Plan," "significant wildlife habitat," "natural wetland areas."<sup>14</sup> Additions to existing park lands or natural areas are eligible for OSLAD Program funds,<sup>15</sup> but criteria do not include a specific preference for acquiring lands that enlarge or link existing

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<sup>7</sup> Illinois Department of Natural Resources, Office of Capital Development, *Open Space Lands Acquisition and Development Program (OSLAD) & Land and Water Conservation Fund (LWCF)*, at <http://dnr.state.il.us/ocd/newoslal1.htm> (last visited Sept. 22, 2005).

<sup>8</sup> *Id.*

<sup>9</sup> Email from Dick Westfall, Manager, Greenways & Trails Section, Illinois Department of Natural Resources, to Benjamin Gerhardstein, Research Associate, Environmental Law Institute (January 23, 2006, 9:57 :00 EST) (on file with author).

<sup>10</sup> Westfall, *supra* note 4.

<sup>11</sup> 525 ILL. COMP. STAT. 35/5.

<sup>12</sup> ILL. ADMIN. CODE tit. 17, § 3025.50.

<sup>13</sup> Illinois Department of Natural Resources, *supra* note 5, at 17-19.

<sup>14</sup> *Id.*

<sup>15</sup> ILL. ADMIN. CODE tit. 17, § 3025.50.

protected areas.<sup>16</sup> Additionally, although criteria do not require that project proposals reference an open space plan, those that do make use of a plan receive additional points.<sup>17</sup>

While the OSLAD Program closely follows its evaluation criteria in prioritizing eligible local government applications, in practice, if a project requests funding for land acquisition for wildlife and biodiversity purposes, it will increase the likelihood of receiving funding. Although natural areas and wildlife purposes do not specifically outweigh other criteria, biodiversity factors are considered high priority because they simultaneously meet several of the goals and priorities of the OSLAD Program.<sup>18</sup>

### ***Protection in Perpetuity***

Illinois law does not specifically protect OSLAD-acquired land in perpetuity. However, high quality, sensitive lands that are dedicated as “Illinois Nature Preserves” or registered as “Illinois Land and Water Reserves” are protected in perpetuity by the Illinois Natural Areas Preservation Act.<sup>19</sup> Approximately eight to ten percent of OSLAD-acquired lands are designated as “state nature preserves” or were acquired as a buffer to “state nature preserves.”<sup>20</sup> For land acquisition under the OSLAD Program, a covenant is placed upon the deed that requires the land to be “operated and maintained in perpetuity for public outdoor recreation use.” Projects are bound to this requirement for a period of time that corresponds to the amount of OSLAD funds expended on the project. Projects that receive up to \$50,000 are bound for six years and for every \$25,000 increment above \$50,000, one year is added. Property acquired with OSLAD funds may not be converted to a use other than public outdoor recreation without the approval of the IDNR. Conversions are only approved if the project sponsor provides a comparable substitute property.<sup>21</sup>

All OSLAD-acquired lands are subject to periodic IDNR site inspection. Inspections monitor whether or not the site is being used for its original purpose, appears attractive, is well-maintained and well-managed, is readily accessible, and is appropriately signed.<sup>22</sup> The OSLAD Program does not provide additional funding to local governments for long-term management and stewardship of acquired lands.<sup>23</sup>

## **IV. State Wildlife Action Plan**

The Illinois wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy), was formulated by IDNR with the help of scientists, sportsmen, and conservationists throughout the state. The plan was accepted by the U.S. Fish and Wildlife Service in October

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<sup>16</sup> Illinois Department of Natural Resources, *supra* note 5.

<sup>17</sup> Westfall, *supra* note 4; ILL. ADMIN. CODE tit. 17, § 3025 Appendix A.

<sup>18</sup> *Id.*

<sup>19</sup> 525 ILL. COMP. STAT. 35/3.06.

<sup>20</sup> Westfall, *supra* note 4.

<sup>21</sup> ILL. ADMIN. CODE tit. 17, § 3025.70

<sup>22</sup> Illinois Department of Natural Resources, *supra* note 5, at 37.

<sup>23</sup> Westfall, *supra* note 9.

2005.<sup>24</sup> The plan identifies 32 conservation opportunity areas (areas of special importance in conserving species of greatest conservation need). For nearly all of these areas, the plan calls for permanent land protection, maintaining open space, and/or habitat expansion. Acquisition is one tool that may be used to achieve these goals.<sup>25</sup>

Among the conservation opportunity areas, the level of conservation planning varies widely. Some areas are at a conceptual stage of planning, while others have highly-detailed acreage targets and priority areas.<sup>26</sup>

The wildlife action plan is more “strategic” than “operational,” and does not generally include a level of detail that would prescribe acquisition of a particular parcel. From a statewide perspective, the plan guides the OSLAD Program (and other land acquisition funding sources) to a small number of priority conservation opportunity areas where land acquisition would yield the greatest benefit.<sup>27</sup>

## V. Summary

The OSLAD Program is authorized under Illinois statute to acquire open spaces for natural resource conservation purposes. While the program has no specific mandate to prioritize biodiversity conservation when acquiring lands, project evaluation criteria do reward projects that protect or enhance threatened/endangered species habitat or significant wildlife habitat. The OSLAD Program will utilize the Illinois wildlife action plan as a strategic guide in targeting land that will yield the greatest wildlife benefit from a statewide perspective.

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<sup>24</sup> International Association of Fish and Wildlife Agencies. *Illinois Plan to Conserve Wildlife, Natural Areas Accepted* (Oct. 31, 2005), at <http://www.teaming.com/press/11.1.05.htm> (last visited Nov. 15, 2005).

<sup>25</sup> Westfall, *supra* note 9.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*