

**MASSACHUSETTS EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS**  
**DIVISION OF CONSERVATION SERVICES**  
**LAND PROTECTION PROGRAMS**

## **I. Overview**

In Massachusetts, increased development pressures destroy and fragment habitats and threaten biodiversity. Over the last 50 years, the area of developed land in Massachusetts has increased by 200 percent, while the population has increased by 28 percent.<sup>1</sup> Between 1985 and 1999, Massachusetts lost an average of 40 acres of land each day to development.<sup>2</sup> In order to combat these threats, the state's Executive Office of Environmental Affairs (EOEA) - Division of Conservation Services (DCS), is dedicated to, among other tasks, "helping communities, nonprofits and private landowners protect open space and provide quality outdoor recreation experiences across [Massachusetts] by providing access to financial support, planning tools and technical assistance."<sup>3</sup> DCS awards grants to municipalities and non-profit organizations in three categories: conservation land acquisition, parkland acquisition, and park development and/or recreation.<sup>4</sup> As of Fiscal Year 2004, DCS had contributed to the protection of 153,092 acres of open space.<sup>5</sup>

DCS administers three open space programs: the Self-Help Program, the Urban Self-Help Program, and the Conservation Partnership Program. The Self-Help Program assists municipal conservation commissions in acquiring land for natural resource and passive outdoor recreation purposes.<sup>6</sup> The Conservation Partnership Program is a grant program that provides reimbursements to non-profit organizations of up to 50 percent for the cost of acquiring land or interests in land for conservation or outdoor recreation purposes.<sup>7</sup> The Urban Self-Help Program

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<sup>1</sup> Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program, *BioMap: Guiding land conservation for biodiversity in Massachusetts (2001)*, available at: <http://www.mass.gov/dfwele/dfw/nhosp/nhpubs.htm>.

<sup>2</sup> Mass Audubon, *Losing Ground: At What Cost? (2003)* at 1, available at [http://www.massaudubon.org/PDF/advocacy/losingground/LosingGround\\_1.pdf](http://www.massaudubon.org/PDF/advocacy/losingground/LosingGround_1.pdf) (last visited Sept. 28, 2005).

<sup>3</sup> Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, *Division of Conservation Services*, at <http://www.mass.gov/envir/dcs/default.htm> (last visited Sept. 26, 2005).

<sup>4</sup> The Massachusetts Department of Conservation and Recreation, Land Acquisition and Protection Program is responsible for direct state acquisition of land for natural resource protection and recreation. See: Massachusetts Department of Conservation and Recreation, *Land Acquisition and Protection Program*, at <http://www.mass.gov/dcr/stewardship/landacq/index.htm> (last visited Sept. 26, 2005). However, according to program administrators, recent funding cuts have restricted the purchase of conservation easements and the rehabilitation of existing acquired land. Telephone interview with David McGowan, Director, Land Acquisition and Protection Program (2005).

<sup>5</sup> Email from Melissa Cryan, Urban Self-Help Coordinator, Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services to Seema Kakade, Staff Attorney, Environmental Law Institute (Apr. 29, 2005, 09:36:00 EST) (on file with author).

<sup>6</sup> Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, *Massachusetts Self-Help Program*, at <http://www.state.ma.us/envir/dcs/selfhelp/default.htm> (last visited Dec. 8, 2005).

<sup>7</sup> Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, *Conservation Partnership*, at <http://www.mass.gov/envir/dcs/conservation/default.htm> (last visited Sept. 26, 2005).

assist cities and towns in acquiring and developing land for park and outdoor recreation purposes.<sup>8</sup>

DCS' Self-Help and Conservation Partnership Programs both have authority to prioritize land acquisition funding based on biodiversity considerations. Both programs utilize this authority by including biodiversity-related criteria in their project scoring systems. The Conservation Partnership Program emphasizes biodiversity in its grant selections more than the Self-Help Program. As of 2005, DCS staff were unsure as to how the Massachusetts wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) would affect grant selection processes.

## **II. Massachusetts' Self-Help and Conservation Partnership Programs**

The Self-Help Program was established in 1961 to assist municipal conservation commissions in acquiring land for natural resource and passive outdoor recreation purposes. The program funds the acquisition of land, or a partial interest (such as a conservation restriction), and associated acquisition costs, such as appraisal reports and closing costs.<sup>9</sup> The Self-Help Program has protected 50,637 acres of land throughout the state since its inception and approximately 1,175 acres in Fiscal Year 2004 alone.<sup>10</sup>

The Conservation Partnership Program is authorized to provide reimbursements of up to 50 percent to nonprofit organizations for the cost of acquiring land or interests in land for conservation or outdoor recreation purposes.<sup>11</sup> EOEAA has \$150,000 available for grants in Fiscal Year 2005, the first year in which the program has received funding, with a maximum of \$25,000 per grant. Because funding is limited, EOEAA has expressed a preference for project funding that is necessary to close on conservation land that is being acquired as a gift or as part of a bargain sale. Applicants receive reimbursement after the project has: (1) been approved for a grant by EOEAA; (2) acquired the land; and (3) granted and recorded a perpetual conservation restriction.<sup>12</sup>

### ***Program Funding***

DCS' land protection programs are funded by the Massachusetts Open Space Bond of 2002, which authorized \$266.418 million over three years for a variety of land conservation activities. Of the \$266.418 million, \$21.25 million is allocated for the Self-Help Program, \$22.1 million for

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<sup>8</sup> The Urban Self Help Program focuses primarily on recreation, and so will not be discussed in detail here. However, it should be noted that the program does recognize "green infrastructure" and "unique natural areas or wetlands" in the grant selection process. Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, *Massachusetts Urban Self-Help Program*, at <http://www.mass.gov/envir/dcs/urban/default.htm> (last visited Sept. 26 2005).

<sup>9</sup> Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, *Massachusetts Self-Help Program*, at <http://www.mass.gov/envir/dcs/selfhelp/default.htm> (last visited Sept. 28 2005).

<sup>10</sup> Telephone Interview with Jennifer Soper, Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services (Apr. 5, 2005).

<sup>11</sup> 2002 Mass. Acts 236 § 2, available at <http://www.mass.gov/legis/laws/seslaw02/sl020236.htm>.

<sup>12</sup> Soper, *supra* note 10.

the Urban Self-Help Program, and \$3 million for the Conservation Partnership Program.<sup>13</sup> Since its inception, DCS has received \$275,971,024, of which \$105,869,668 has been used for open space grants. In Fiscal Year 2004, DCS received \$4,994,895, of which \$1,531,750 was used for Self Help Program grants and \$3,463,145 was used for Urban Self Help Program.<sup>14</sup> The Conservation Partnership Program received \$150,000 for grants in Fiscal Year 2005, the first year in which the program has received funding.<sup>15</sup>

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

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

DCS funds organizations to protect open space using fee title acquisition and conservation easements.

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

The DCS programs are competitive grant programs with separate scoring systems for conservation and recreation projects. Both programs allocate point values using land selection criteria that include “biodiversity and resource protection” (ten percent of the total point value in the Conservation Partnership Program and 20 percent of the total point value in the Self-Help Program).<sup>16</sup>

*Self-Help Program.* Applicants to the Self-Help Program (municipality, town, or city) must verify that their community has approved an Open Space Plan and that they are eligible to apply before preparing an application to EOEA. Each project proposal is reviewed by the Inter-Agency Lands Committee (ILC), which consists of representatives from the Department of Conservation and Recreation, Department of Fish and Game, and Department of Agricultural Resources, as well as other EOEA staff. The ILC employs a project scoring methodology to evaluate project applications.

Evaluation criteria included in the methodology are organized under the following categories: demographics (15 points), community profile score (35 points), project quality (41 points), and partnerships (4 points). The project quality category includes: water resources (15 points), green infrastructure (10 points), multiple uses (5 points), biodiversity and resource protection (5 points), and consistency with the *Massachusetts Outdoors 2000!* plan (6 points). The biodiversity and resource protection sub-category includes consideration of whether or not the proposed project contains, abuts, or is likely to contain resources identified by the: Statewide Land Conservation Plan, Massachusetts Natural Heritage and Endangered Species Program, Massachusetts Historical Commission, Areas of Critical Environmental Concern Program, or

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<sup>13</sup> 2002 Mass. Acts 236, available at <http://www.mass.gov/legis/laws/seslaw02/sl020236.htm>.

<sup>14</sup> Cryan, *supra* note 5.

<sup>15</sup> Soper, *supra* note 10.

<sup>16</sup> Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, *Conservation Land Acquisition Projects Selection System*, available at [http://www.mass.gov/envir/dcs/pdf/cons\\_proj\\_%20rate\\_sys\\_06.pdf](http://www.mass.gov/envir/dcs/pdf/cons_proj_%20rate_sys_06.pdf); Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, *Grant Announcement: ENV 05 POL 18, Conservation Partnership Grant (Feb. 10, 2005)*, available at <http://www.comm-pass.com> (search “Conservation Partnership RFR”).

Five-Year Watershed Action Plan. Proposed projects are awarded points under the green infrastructure sub-category if they create hubs or corridors of permanently protected land or expand an existing hub or corridor. Points are also awarded for multiple uses for providing wildlife habitat.<sup>17</sup>

*Conservation Partnership Program.* The Conservation Partnership Program makes reimbursement grants to eligible nonprofit organizations.<sup>18</sup> The Conservation Partnership Program uses a separate, but similar, scoring methodology for reviewing and evaluating applications<sup>19</sup> that gives more weight to biodiversity considerations than the Self-Help Program's evaluation methodology.

The Conservation Partnership Program rating system organizes criteria under three categories: project quality (67 points), partnerships (25 points), organizational capacity (8 points). The project quality category includes the following subcategories: water resources (13 points), landscape conservation (10 points), statewide conservation uses (18 points), working farms and forests (10 points), biodiversity and resource protection (10 points), and consistency with the *Massachusetts Outdoors 2000!* plan (6 points). The biodiversity and resource protection subcategory includes consideration of whether or not the proposed project contains, abuts, or is likely to contain resources identified by the: Massachusetts Natural Heritage and Endangered Species Program, Massachusetts Historical Commission, or Areas of Critical Environmental Concern Program. In addition, if the majority of a project is contained in the Statewide Land Conservation Plan, the project receives points under the Statewide Conservation Uses subcategory. Projects can also receive points under the landscape conservation subcategory for creating a hub or corridor of protected land or linking with existing protected land.<sup>20</sup>

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

Lands acquired under both programs must generally be protected in perpetuity. The Conservation Partnership Program awards nonprofit corporations with reimbursements if they have granted and recorded a *perpetual* conservation restriction.<sup>21</sup> The Self-Help Program requires that lands "be retained and used at all times for open space purposes."<sup>22</sup> Furthermore, lands acquired through the Self-Help Program cannot be wholly or partially converted without approval from that Secretary of Environmental Affairs and must be replaced with land of at least equal value and usefulness.<sup>23</sup>

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<sup>17</sup> Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, *Conservation land Acquisition Projects Selection System*, available at [http://www.mass.gov/envir/dcs/pdf/cons\\_proj\\_%20rate\\_sys\\_06.pdf](http://www.mass.gov/envir/dcs/pdf/cons_proj_%20rate_sys_06.pdf) (last visited Sept. 26 2005).

<sup>18</sup> 2002 Mass. Acts 236 § 2, available at <http://www.mass.gov/legis/laws/seslaw02/sl020236.htm>.

<sup>19</sup> Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, *Grant Announcement: ENV 05 POL 18, Conservation Partnership Grant* (Feb. 10, 2005), available at <http://www.comm-pass.com> (search Solicitations for "Conservation Partnership" and choose the RFR document) (last visited Nov. 23, 2005).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> MASS. REGS. CODE tit. 301, § 5.09 (2000), available at [http://www.mass.gov/envir/dcs/pdf/301cmr5\\_00\\_06.pdf](http://www.mass.gov/envir/dcs/pdf/301cmr5_00_06.pdf).

<sup>23</sup> *Id.*

DCS does not authorize separate funding for the long-term management and stewardship of protected lands. However, applicants that demonstrate that long-term monitoring and stewardship will be conducted receive extra points in the selection process.<sup>24</sup>

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

The Massachusetts Division of Fisheries and Wildlife completed Massachusetts' wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) in 2005. The plan uses a habitat-based approach that links species to critical habitats essential for the survival of the species.<sup>25</sup>

While the Massachusetts Division of Fisheries and Wildlife's BioMap<sup>26</sup> and Living Waters<sup>27</sup> projects will continue to guide DCS grant programs, as of January 2006, program officials were unsure as to whether or not the wildlife action plan would be utilized in project evaluation processes.<sup>28</sup>

#### **V. Summary**

Massachusetts' EOE-DCS land protection programs are authorized by Massachusetts statutes to conserve open space for its biodiversity value, among other purposes. The Self-Help and Conservation Partnership Programs include biodiversity-specific criteria in their project selection processes. Lands under both programs are protected in perpetuity. Program officials have not determined how the Massachusetts wildlife action plan will affect their land acquisition selection criteria.

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<sup>24</sup> Soper, *supra* note 10.

<sup>25</sup> Massachusetts Division of Fisheries and Wildlife, *Massachusetts Comprehensive Wildlife Conservation Strategy*, at: [http://www.mass.gov/dfwele/dfw/cwcs/dfw\\_cwcs.htm](http://www.mass.gov/dfwele/dfw/cwcs/dfw_cwcs.htm) (last updated Sept. 30, 2005).

<sup>26</sup> The BioMap Project identifies and maps the areas most in need of protection in order to preserve Massachusetts' native biodiversity. Massachusetts Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program, *BioMap*, at <http://www.mass.gov/dfwele/dfw/nhosp/nhbiomap.htm> (last updated Nov. 15, 2002).

<sup>27</sup> The Living Waters Project promotes the strategic protection of freshwater biodiversity in Massachusetts. Massachusetts Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program, *Living Waters*, at <http://www.mass.gov/dfwele/dfw/nhosp/nhaqua.htm> (last updated June 6, 2005).

<sup>28</sup> Email from Jennifer Soper, Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services to Ben Gerhardstein, Research Associate, Environmental Law Institute (Jan. 12, 2006 14:16:00 EST) (on file with author).