

CLEAN OHIO FUND: CLEAN OHIO CONSERVATION PROGRAM

I. Overview

A history of habitat loss, fragmentation, and degradation, as well as the proliferation of exotic species, has contributed to a significant loss of biodiversity in the State of Ohio.¹ Today, the state's rapidly expanding urban environments and high population density (more than three times the national average) continue to affect habitat loss and fragmentation.² Recognizing the need to protect Ohio's open space, farmland, and outdoor recreation opportunities and to revitalize blighted neighborhoods, Governor Bob Taft proposed the Clean Ohio Fund in 2000.³ The Ohio legislature endorsed the \$400 million initiative and Ohio voters approved the program in November 2000. Four programs administer the Clean Ohio Fund: the Clean Ohio Conservation Program, the Clean Ohio Agricultural Easement Purchase Program, the Clean Ohio Trails Fund, and the Clean Ohio Revitalization Fund. This summary focuses on the Clean Ohio Conservation Program (COCP), the major conservation-focused open space funding program in the state.⁴ According to program officials, as of 2005, the COCP has helped protect roughly 24,000 acres since its inception in 2000.⁵

The Ohio Public Works Commission (OPWC) oversees the program at the state level, while 19 Natural Resource Assistance Councils (NRACs) implement the program at a regional level throughout the state. While the COCP has a broad goal of preserving open space, sensitive ecological areas, and stream corridors, individual NRACs have specific authority to prioritize land acquisition based on biodiversity-related considerations, particularly high quality or sensitive species habitat.⁶ The 19 NRACs utilize this authority to varying degrees through their individual project selection methodologies. As of 2005, OPWC does not anticipate requiring NRACs to integrate the Ohio wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) into their selection methodologies; however, state officials do expect that some NRACs will use the plan in evaluating and prioritizing land acquisition projects.

II. The Clean Ohio Conservation Program

The statutory purpose of the COCP is to “provide for open space acquisition and related development of those open spaces, including acquisition of easements” and to “protect and enhance riparian corridors or watersheds, including the protection and enhancement of streams, rivers, lakes, and other waters of the state.”⁷ Open space projects should provide for “the

¹ Environmental Law Institute, *Ohio's Biological Diversity: Strategies and Tools for Conservation* (1998) at 7.

² *Id.*; The Trust for Public Land, *Funding Profile: Ohio*, at:

http://www.tpl.org/tier3_cdl.cfm?content_item_id=880&folder_id=706 (© 2005).

³ Clean Ohio Fund, *Welcome to the Clean Ohio Fund*, at <http://clean.ohio.gov/> (last updated March 11, 2002).

⁴ The Clean Ohio Agricultural Easement Purchase Program, Trails Fund, and Revitalization Fund focus on, respectively, farmland preservation, outdoor recreation, and brownfields remediation.

⁵ Telephone Interview with Laurence Bicking, Chief, Ohio Public Works Commission, (March 31, 2005).

⁶ OHIO REV. CODE § 164.27.

⁷ *Id.*

protection of habitat for rare, threatened, and endangered species or the preservation of high quality, viable habitat for plant and animal species” and “the reduction or elimination of nonnative, invasive species.”⁸ With respect to watershed conservation, the statute directs projects to emphasize habitat protection, in addition to other factors.⁹

NRACs, which implement the COCP at a regional level, are each composed of eleven members chosen by individual districts’ Public Works Integrating Committees. NRAC members are volunteers who have expertise in conservation, natural resource protection, parks and recreation, and environmental protection. NRACs receive COCP grant applications, make funding decisions, and then forward their decisions to the OPWC for authorization.¹⁰

Program Funding

The Clean Ohio Program, a \$400 million initiative, is funded through the sale of general obligation bonds.¹¹ COCP receives \$37.5 million annually (\$150 million total over four years, beginning April 2002 and scheduled to expire in 2006).¹² As of 2005, 257 COCP projects protecting roughly 24,000 acres had been funded. Funding allocations to the NRACs are based on a formula that accounts for the number of counties and the district population covered by the NRAC.¹³

Organizations eligible to receive COCP grants include local governments, park and joint recreation districts, conservancy districts, soil and water conservation districts, and non-profit organizations.¹⁴ All applicants must provide a minimum 25 percent local match; however, projects with more matching funds are likely to receive higher priority.¹⁵

III. Land Protection Strategy

Land Protection Tools

COCP-funded participants protect land through fee simple acquisition, as well as the purchase of conservation easements and development rights.¹⁶

⁸ *Id.*

⁹ *Id.*

¹⁰ Ohio Department of Natural Resources, *Clean Ohio Fund Overview*, at <http://www.dnr.state.oh.us/cleanohiofund/default.htm> (last visited June 14, 2005).

¹¹ *Id.*

¹² Ohio Public Works Commission, Advisory, House Bill No. 3 – Clean Ohio Program (June 29, 2001), *available at* <http://www.pwc.state.oh.us/H.B.%203%20-%20CLEAN%20OHIO%20PROGRAM.629.htm>; The Nature Conservancy, *Clean Ohio Fund*, at <http://www.nature.org/wherewework/northamerica/states/ohio/preserves/art12993.html> (©2005).

¹³ Each NRAC district receives 0.25 percent of the total allocation for each county it covers, and the remaining funds are distributed to the NRACs on a per capita basis. This formula weighs the population factor more heavily so that urban areas receive greater funding than rural areas. Bicking, *supra* note 5.

¹⁴ Ohio Department of Natural Resources, *supra* note 10.

¹⁵ Andrew Welsh-Huggins, *Projects with matching funds have better shot at Clean Ohio grants*, CINCINNATI ENQUIRER (July 27, 2001), *available at* http://www.enquirer.com/editions/2001/07/27/loc_projects_with.html (last visited June 17, 2005).

¹⁶ Bicking, *supra* note 5.

Prioritizing Land Acquisition

The Clean Ohio Program is unique among state open space programs in that it allows regional units (NRACs in this case) to develop their own project prioritization and selection methodologies.¹⁷ However, OPWC has provided a model scoring methodology. The methodology was developed by a focus group that included representatives of the parks, conservation, scientific, and environmental communities and was reviewed by over 100 Clean Ohio Fund supporters.¹⁸ NRACs were given the option to adopt the model methodology, modify it, or develop their own individual scoring methodology (individual methodologies had to reflect the criteria outlined in the authorizing legislation and required OPWC approval).^{19,20}

OPWC's model methodology is divided into four parts: (1) a preliminary screening to ensure that the proposed project is eligible to receive COCP funds; (2) twenty-five project scoring criteria based directly or indirectly on habitat and biodiversity protection²¹ (each area of emphasis receives two points for a 50-point maximum); (3) project scoring based on project funding, coordination, and viability (40 points); and (4) project scoring based on local priorities (10 points), which may include "natural resource viability."^{22,23}

Many NRACs collaborated with key environmental professionals and leaders in their district to formalize individual project selection methodologies.²⁴ While some methodologies are nearly identical to the model methodology (e.g. District 2, which serves the Cincinnati area),²⁵ others appear quite different (e.g. District 1, which serves the Cleveland area).²⁶ All are based, to some degree, on the model methodology outlined above. Thus, each NRAC includes biodiversity protection as a consideration in project prioritization, but the emphasis on biodiversity varies from region to region.²⁷ Many NRACs also give preference to projects that are identified in or

¹⁷ Ohio Public Works Commission, *Advisory - NRAC Model Scoring Methodology*, at <http://www.pwc.state.oh.us/NRAC%20SAMPLE%20SCORING%20METHODOLOGY.htm> (last visited June 17, 2005).

¹⁸ Bicking, *supra* note 5.

¹⁹ Ohio Public Works Commission, *supra* note 17.

²⁰ All 19 NRAC scoring methodologies can be viewed online. See Ohio Public Works Commission, *District Methodologies Currently on File*, at <http://www.pwc.state.oh.us/NRAC.METHODOLOGYS.2.htm> (last visited July 12, 2005).

²¹ The first five areas of emphasis deal directly with habitat and biodiversity protection (e.g. "protects habitat for rare, threatened and endangered species," and "increases habitat protection for a variety of native species"). In addition, though not directed at habitat protection, some of the other areas of emphasis also benefit biodiversity (e.g. "preserves or restores streamside forests").

²² This criterion prioritizes projects that are important to the viability of the resource affected by the project, especially endangered species or biological communities.

²³ Ohio Public Works Commission, *supra* note 17.

²⁴ Bicking, *supra* note 5.

²⁵ Hamilton County Natural Resources Assistance Council - District 2, Ohio Public Works Commission, Clean Ohio Conservation Program, Scoring Methodology for Grant Applications (Final Revision October 5, 2004), *available at* <http://www.pwc.state.oh.us/Meth.Dist2.Green.pdf>.

²⁶ District 1 analyzes projects with a more flexible approach than the OPWC model criteria. Each project's economic, social and environmental benefits are rated, with environmental benefits receiving the highest weight. The methodology lists biodiversity improvements as environmental benefit that project applicants should address. Cuyahoga County Natural Resources Assistance Council - District 1, Ohio Public Works Commission, Clean Ohio Conservation Program, Round Two Project Selection and Evaluation Methodology (November 8, 2002), *available at* <http://www.pwc.state.oh.us/Meth.Dist1.Green.pdf>.

²⁷ Bicking, *supra* note 5.

consistent with regional or community open space plans. Finally, methodologies typically give preference to projects that would link existing open space areas.²⁸

NRACs rely on COCP applicants to provide the biological information that supports their proposed projects. The degree to which this information is utilized during the decision-making process varies depending on the NRAC. NRACs are composed of volunteers who may or may not have the time, resources, or expertise to comprehensively assess biological information.²⁹ The most common source of biological information is the Ohio Department of Natural Resources (ODNR) Heritage Database. This database contains over 13,000 records for known locations of Ohio's rare plants and animals, high quality plant communities, and other natural features.³⁰

Protection in Perpetuity

Lands acquired with COCP funds must remain in the ownership and control of the grant recipient permanently. Grant recipients are required to record OPWC-approved deed restrictions or conservation easements at the time of transfer of land or rights to land. OPWC enforces deed restrictions and conservation easements, which can only be modified or extinguished with approval from the OPWC Director. A breach of the terms of a deed restriction or conservation easement may result in a major financial penalty.³¹ Lands can be sold if the buying party will provide the same stewardship and converted if other properties that are similar in value, size, and quality are protected. However, lands are rarely sold or converted.³²

The COCP does not provide funding for long-term stewardship or monitoring of properties.³³ Furthermore, the future costs of monitoring easements and deed restrictions and maintaining the property cannot be counted toward the required 25 percent local match.³⁴

IV. State Wildlife Action Plan

ODNR's Division of Wildlife led the development of the Ohio wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy).³⁵ As of November 2005, OPWC staff were not familiar with the plan and had no plans to integrate it into the Clean Ohio Conservation Program. However, OPWC officials expect that some NRACs will use the plan to review and prioritize land acquisition projects.³⁶

²⁸ Ohio Public Works Commission, *supra* note 20.

²⁹ Bicking, *supra* note 5.

³⁰ Ohio Department of Natural Resources, *Division of Natural Areas and Preserves, Heritage Database*, at <http://www.dnr.state.oh.us/dnap/heritage/default.htm> (last updated March 3, 2005).

³¹ Ohio Public Works Commission, Advisory, Clean Ohio Program, Long Term Ownership & Control Requirements (March 19, 2002), *available at* <http://www.pwc.state.oh.us/Long.Term.Requirements.pdf>.

³² Bicking, *supra* note 5.

³³ *Id.*

³⁴ Ohio Public Works Commission, Advisory, Clean Ohio Conservation Program – Policy Clarifications (April 8, 2002), *available at* <http://www.pwc.state.oh.us/Policy.Clarifications.pdf>.

³⁵ Teaming With Wildlife, *Ohio Comprehensive Wildlife Conservation Strategy*, at http://www.teaming.com/state_cwcs/ohio_cwcs.htm (last updated May 9, 2005).

³⁶ Bicking, *supra* note 5.

V. Summary

Ohio's Clean Ohio Conservation Program, a part of the Clean Ohio Program, has provided significant funds for preserving open space between 2002 and 2006. The program is unique in that land acquisition decisions are made at a regional level. Regional NRACs are specifically authorized by Ohio law to prioritize land acquisition based on conservation- and biodiversity-related considerations and do so to varying degrees. While it is unlikely that Ohio's wildlife action plan will be formally integrated into the COCP, some NRACs may use it to help determine land acquisition priorities.