

State Lands and Waters

BACKGROUND

Working under a constitutional dictum that “conservation and development of the natural resources of the state are hereby declared to be of paramount public concern,” the Michigan Department of Natural Resources (MDNR) seeks to maintain, use, and develop natural resources defined to be in the public trust (e.g., fish, wildlife, Great Lakes bottomlands, mineral resources, and navigation rights).

Lands

Of Michigan’s 37 million acres of dry land, more than half is still (or, rather, again) covered by forest: 19 million acres. Even though only 20 percent (about 4 million acres) of this vast forest is managed by the Forestry Division of the MDNR, it is the largest state forest system in the United States. The MDNR also manages 300,000 acres in wildlife areas, 260,000 acres in state parks and recreation areas, and 28,000 acres of water-access sites—for a total of 4.5 million acres or 12 percent of the state; Michigan’s state parks system ranks tenth in size nationally. The department is charged to

- provide access to those lands for recreation and economic use;
- protect representative samples of natural systems and unique natural features and maintain natural diversity;
- provide a broad base of land for cultural and natural resource–related education and research;
- exercise long-term management over lands in public ownership and, through Farmland and Open Space agreements, support natural resources on private lands;
- manage lands for timber, wildlife, minerals, and other resources essential to the state’s economic base;
- protect open space amid developed areas as a contribution to attractive urban settings; and
- provide recreation opportunities.

Michigan’s land acquisition began in the last century. Land first was given by the federal government to the states to encourage population growth and development. Then, to raise money, the state sold some land to private individuals, but this land often reverted to the state when the timber or mineral resources were stripped or after homesteaders realized it was marginal for farming. Often, the cycle recurred. Government and the public became concerned over the

depletion of the state's resources and the tax reversion cycle that saw some 116 million acres fall into tax delinquency between 1908 and 1930. Surveys and studies in the 1920s and 1950s resulted in 1.3 million acres of tax-reverted land being sold to private investors and 130,000 acres turned over to local units of government. The remaining land was designated as state forest or forest reserve and now comprises the bulk of Michigan's nearly 4-million-acre state forest system.

Since the 1950s, land under MDNR jurisdiction has increased by about 10,000 acres a year. However, through land exchanges, sale, gifts, and purchase, the MDNR now manages 450,000 fewer acres than it did in 1942 and has set a priority of consolidating remaining lands into managed units.

Natural Resources Trust Fund

Since 1976 the chief means by which the state buys land is the Natural Resources Trust Fund; the fund's revenue is state royalties from oil and gas wells. That is, the proceeds from selling certain nonrenewable resources are used for acquiring another.

First established by law in the mid-1970s and then voted into the Michigan Constitution in 1984 (with amendments in 1994), the fund receives one-sixth of the value of the product removed from under state-owned land and from three-sixths to one-quarter of the minerals extracted from lands directly leased from the state. The fund has received \$35–38 million a year over the past decade and now holds about \$120 million. Up to one-third of the fund's revenue and all of its interest income may be distributed each year—on average, \$18–20 million. State and local units of government may bid for trust fund grants to help purchase or develop recreation lands, and the state and local units of government generally split the pot 50-50 each year.

The trust fund, always a tempting source of financing for a variety of serious public projects, now is protected by the Michigan Constitution, which stipulates that its revenue may be used only for acquiring land or land-use rights “for recreational uses or for

protection of the land because of its environmental importance or its scenic beauty (and) for the development of public recreational facilities . . .” It also specifies that at least 25 percent of the annual expenditures be used for acquisition and no more than 25 percent for developing recreation facilities. The fund has been responsible for the lion's share of the more than 98,000 acres acquired in the past ten years.

Farmland and Open Space Act

Michigan has lost millions of acres of productive farmland and priceless open spaces over the years, as urban areas have sprawled into rural areas. Until the 1970s development had boosted property values—and the property taxes assessed on the land—pricing many landowners out of the market and forcing them to sell to developers or speculators. In the 1970s the Michigan Farmland and Open Space Act was enacted—protecting landholders by preventing their land from rising in value automatically as urban sprawl and development pushed surrounding land prices higher. It allows a farmer or landowner to enter into an agreement with the state—pledging to keep the land as it is and out of developers' hands for 10–90 years (most property owners sign up for ten)—thus maintaining its agriculture or open-space tax assessment and lower rate. By 1996 some 48,000 agreements were in effect, saving 4.3 million acres from bulldozers.

When Proposal A cut property taxes virtually in half in 1996, the tax credit program changed significantly, and some 3,000 landowners sought to terminate their agreement with the state. But 46,000 contracts remain in place, sheltering 4.2 million productive or open acres. About 2,000 agreements expire annually, and roughly 70 percent (about 1,400) are renewed. Approximately 150 new agreements are signed each year.

Interest is growing in establishing a “purchase of development rights” program for agricultural land in the state. Under such a program, the state or a local unit of government would pay a farmer the difference between the parcel's value as farmland and as developed land. Mission Peninsula, near Traverse City, has adopted such a program.

Waters

Forty percent of Michigan is under water—Great Lakes water; some 39,000 square miles (25 million acres) of the lakes are under Michigan jurisdiction. With 3,200 miles of Great Lakes shoreline, 36,000 miles of rivers and streams, and 11,000 inland lakes, Michigan has resources, opportunities, and responsibilities that are virtually unmatched in any other state. The MDNR manages these resources, and the MDEQ guards the quality of their water.

The MDNR is rapidly approaching its goal of dotting Michigan's Great Lakes shoreline with safe harbors for boaters. With 73 harbors—from Copper Harbor to Detroit, from New Buffalo to Sault Ste. Marie—and two more on the way, Great Lakes boaters are never more than 15 miles from a safe harbor. Once built, local units of government are responsible for operating and maintaining the harbors except in cases where local resources are inadequate to do so; the department currently operates 13 harbors. The MDNR also seeks to develop public boating-access sites on every inland lake of more than 100 acres and fishing access sites on streams and small lakes.

The state Natural Resources and Environmental Protection Act (1994) requires that Michigan waters meet certain water quality standards that (1) protect the public health and welfare, (2) enhance and maintain water quality, (3) protect natural resources, and (4) meet the requirements of federal legislation and the U.S.–Canada agreement on water quality. The MDEQ has water-quality watchdog and enforcement authority.

The MDEQ Office of the Great Lakes tackles such problems as harmful aquatic nuisances (foreign species introduced through international ship traffic), mercury pollution, nonpoint (diffuse) pollution, and requests to divert Great Lakes waters to other purposes. It also oversees coastal and shore lands management, sand dune protection and management, and threats to the lakes' water quality.

DISCUSSION

Land Acquisition and Public Access to Waters

A Senate subcommittee on public land ownership, purchase, and management held public hearings in 1995 and arrived at conclusions that seemed to weigh in against the state's continued land acquisition, citing inattention to (1) "the full costs of acquisition and the added burden" of maintaining the land, and (2) "new methods of conserving lands apart from outright . . . ownership." The subcommittee recommended that the state recognize that there are other ways "to help the state meet its mission to conserve the resource base." Without getting specific, it also urged the state to work more closely with the private sector. The MDNR told the subcommittee that "our land acquisition objectives are more precise and more defined than ever before . . . [and we are] looking to consolidate ownership within existing land-management boundaries and to add to those lands to conserve sites of unique natural value."

The MDNR says among its highest priorities is to acquire, "as they become available," the 35,000 acres of private land that are within park boundaries. The 96 state parks and recreation areas cover 260,000 acres, 142 miles of Great Lakes shoreline, and 462 miles of inland lakes, rivers, and streams, and in some there are parcels still under private ownership. Another department priority is to continue to create boating-access sites on inland lakes. Although there are some 1,100 in operation (with 27,000 parking spaces), 536 lakes of 100 acres and larger still do not have public boating access. The MDNR reports that in Michigan, there are 500,000 "trailerable" watercraft, and the need for public boating access continues to be great. There is considerable state-local zoning conflict about this and also riparian-public conflict—especially in regard to personal watercraft (i.e., jet skis), which some say are causing too much lake traffic, noise, pollution from boat fuel, and safety problems.

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The department also seeks to acquire land that improves access to state forests, buy private land within state forest boundaries, reduce user conflicts (e.g., hiking versus hunting; cross-county skiing versus snowmobiling), and provide the public with special-use recreation areas (e.g., trails). Most of the state's 63 wildlife areas are in the more heavily populated southern regions, and their 294,000 acres are surrounded by 78,000 acres of private land. The MDNR seeks to acquire these lands as they become available "for more efficient management and (to) reduce recreation conflicts with . . . landowners."

Mineral Resources

The MDNR has jurisdiction over surface and mineral rights on 3.8 million acres of land, mineral rights only on another 2.1 million acres, and surface rights only on an additional 700,000 acres. Minerals underlying the state's 24 million acres of Great Lakes bottomlands also are state owned, and the MDNR is empowered to lease to private individuals and firms state-owned mineral rights for oil, gas, and other mineral exploration and development. It administers nearly 6,200 oil and gas leases. Since 1927 such leases have produced more than \$954 million for the state; over the past decade, annual income has been \$35–38 million.

Because of danger from oil spills, drilling from the surface of the Great Lakes is prohibited by law, but technology now permits "slant," or "directional," drilling—in which land-based drills reach under the lake bottom and extract oil and gas. One such Michigan well dates back to 1945, but most go back only to 1977. State law requires that the drilling apparatus be set on "uplands" at least 1,320 feet back from the shoreline. The Michigan Environmental Science Board concludes in a 1997 report to the governor that because oil and gas tend to follow the path of least resistance (and therefore would follow the drill back to the wellhead), "there is little to no risk of contamination to the Great Lakes bottom or waters." The report does cite, however, "a small risk of contamination at the wellhead." It recommends that drilling be prohibited in sensitive areas and that there be no development within 1,500 feet of the shoreline.

The state House has passed legislation (HB 4061) that would require the MDNR to sell the mineral rights it

owns under 2.1 million acres to the surface owners, purchase the mineral rights to the 700,000 surface acres it owns, and end the practice of keeping mineral rights when it sells property. Backers, including the Michigan Oil and Gas Association, Michigan Land Use Institute, and Michigan Townships Association, contend that the practice causes confusion and conflict between surface and subterranean owners. Opponents, including the Michigan United Conservation Clubs (MUCC) and Michigan Environmental Council, object to the revenue loss to the Natural Resources Trust Fund and the Michigan State Parks Endowment Fund.

Forestry

Michigan timber products annually generate \$9 billion in economic activity. The figure pertains both to wood from Michigan forests and that brought in from elsewhere for processing in Michigan. Timber standing in state-owned forests is valued at nearly \$2 billion, and the wood taken from state lands alone averages \$21 million a year, supports 30,000 jobs, and generates close to \$2 billion for the Michigan economy. The presence of 6.4 million acres of state- and federal-owned commercial timberland gives the wood-using industry a very good reason to locate or expand in Michigan. Logging is increasing on state and private lands—but not on the federally administered 3.9 million acres. Clear-cutting, a controversial practice, is practiced on some species, but many hardwoods are selectively thinned. The MDNR takes wildlife needs into consideration in logging practices—leaving brush and buffer zones. It also monitors the practices of private timber operators.

Recreation

The MDNR estimates that Michigan woods and other natural attractions account for one-third of the state's \$9-billion travel and tourism industry: The state's natural resources annually attract more than 800,000 licensed hunters (spending 15 million days in the field), nearly 2 million licensed anglers (spending 25 million days fishing) and more than 900,000 registered watercraft (logging more than 13 million boat days), not to mention the 23 million visits to state parks and recreation areas.

Indian Rights and Treaties

The Treaty of Washington in 1836 was a last step toward Michigan's entry into the union as a state. It applied to the northwest one-third of the lower peninsula and the eastern half of the Upper Peninsula and promised Indians the right to continue hunting and fishing and pursuing their "usual occupations" in Michigan's woods and waters until the land was required for settlement. With terms imprecisely defined (e.g., What did "required" really mean? How was "settlement" defined?), several lawsuits have been filed in the latter half of the 20th century. The situation became potentially explosive in 1970, when a suit was filed over Indians' treaty right to fish in Great Lakes waters unfettered by MDNR rules. A federal judge agreed that in this case the "land" was not needed for settlement. In 1985 the state and the four tribes then involved entered into a 15-year settlement that preserves the Indians' Great Lakes sport-fishing rights, drastically limits their commercial fishing, and allows them to fish as they wish (with restrictions in a few particularly sensitive areas). Rumors persist (without confirmation) that some Indian groups plan to press for inland hunting and fishing rights. The 1985 agreement will expire in 2000, and some observers believe renegotiation will involve some old demands being reintroduced and some new demands presented.

Defining Navigability

Navigability is the key to how Michigan waters shall be used and regulated (recreation may occur only on navigable waters). But how to define navigability? The definition on the books says that any river or stream that *ever* floated logs is considered navigable. The records are sketchy, and memories of which rivers once floated logs are fast fading.

Legislation now under consideration (SBs 767–68) would define as navigable any natural river or stream "on which a person can float in a vessel of the lightest nature during any period that ordinarily recurs from year to year." The legislation is opposed by property rights activists and others who believe that the public—which sometimes is noisy, litters, disrupts or harms natural habitat, and trespasses—should not

necessarily have access to all waters, particularly those on private land. The bills are supported by the Michigan United Conservation Clubs, which believes that the public is entitled to use all natural resources.

See also Agriculture; Water Quality; Great Lakes Concerns; Land Use.

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[For report on public land ownership. Note appendix
C of MDNR Briefing Paper]