

Report to the Madawaska Club Board from the Land Stewardship Task Force

Objective

To consider whether and how to update or enhance the protected status of the lands held by the Madawaska Club currently zoned as “open space” while retaining ownership and control of such lands.

Background

Since being founded as the Madawaska Club 120 years ago, stewardship of the land has been an important principle that has guided and influenced many of the decisions made by residents of the Go Home Bay Community. As far back as 1904, the Madawaska Club designated the front of Long Island and Pig Island “to be kept as a place of resort freely open to all persons entitled to the privileges of the Club” (Madawaska Club Go Home Bay 1898-1923). This task force believes that we owe it to future generations to do all that we can to preserve the lands currently zoned as “open space” (the “Open Lands”) as such lands have been preserved for us.

At the Annual and General Meeting of the Madawaska Club in 1988, the members approved a Community Plan for all of the property held by the Club. Four new building sites were identified to be made available to members and with the remaining property, being the Open Lands, to remain as undeveloped open space. Since that date, two of the building sites have been sold and two sites remain with the Club available for sale at the appropriate time. Under the Community Plan adopted by the Club, Pig Island was left as a separate property, with the restriction that it could not be developed unless development of Pig Island was approved by a 2/3 majority vote by site holders. The Open Lands (which exclude the main dock and caretaker’s property) were declared to remain undeveloped. Alteration of this plan would require a 2/3 majority vote in favour by site holders.

The Community Plan was enshrined in the Official Plan and Zoning By-law applicable to the Go Home Bay community. Under the Official Plan and Zoning By-law, the Open Lands were designated as “Open Space”, which designation prohibits development on these lands and restricts their use.

Proposal

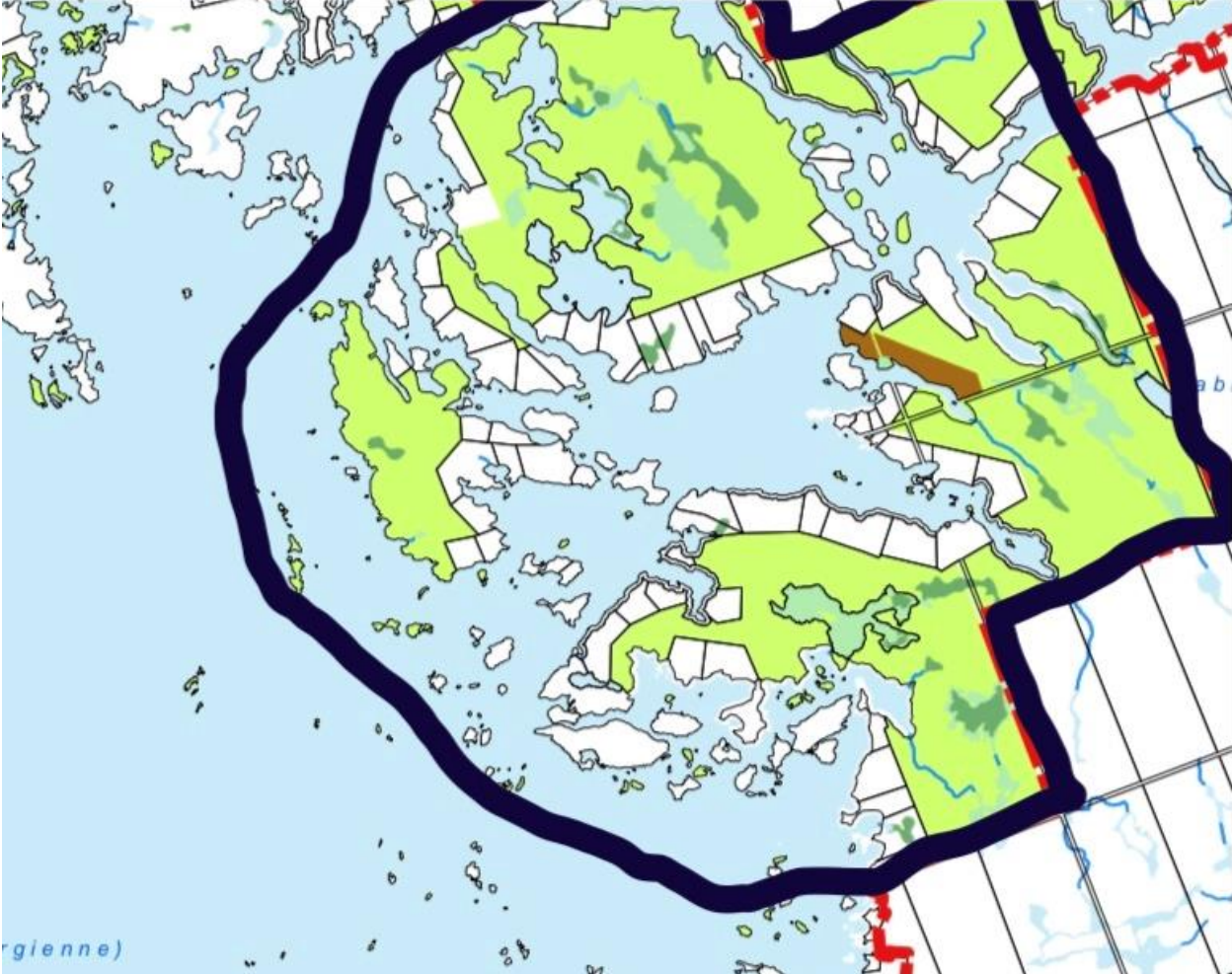
While the Madawaska Club has stewarded their open spaces for over four generations, the protection of these lands is not strong as it could be under only a municipal zoning designation, especially in today’s context of burgeoning development pressure in Southern Ontario. We are recommending that members consider strengthening the protection of the Open Lands by

granting a conservation easement that will restrict development while retaining full ownership and control of both access to and use of the Open Lands (Map 1) with the Madawaska Club.

In addition, as explained below, there is presently an opportunity that the Madawaska Club could benefit financially from - the Canada Nature Fund. This fund has been established by the federal government as a means of promoting its commitment to support the conservation of ecosystems, landscapes and biodiversity, including species at risk.

With this recommendation, our goal is to enshrine the club's extraordinary long-term vision of open land stewardship and protection for future generations.

Map 1. Madawaska Club open space properties (in green). Open space spans 1,589 acres. The caretaker's site and main dock is indicated in brown.



Reasons for Further Protection

Conservation Significance of the Undeveloped Lands

The Open Lands are unique from an environmental and conservation perspective; particularly their role in connecting to other areas of protection and providing undisturbed spaces for threatened and at-risk Canadian species. The Open Lands protect pristine wetland and interior lake and forest ecosystems, which provide habitat for the highest density of rare Canadian Shield animal and plant communities in Ontario, including the richest biodiversity of reptiles and amphibians in all of Canada (Appendix 1 lists endangered, threatened and at-risk species found in the Open Lands). The ecosystems associated with the Open Lands contribute significantly to water purification, nutrient cycling and local climate mitigation in a warming world.

Furthermore, the Open Lands connect to other protected or semi-protected areas to the north and south of Go Home Bay. This linkage creates a corridor of protected lands along the eastern shore of Georgian Bay (Appendix 2). Corridors are critical to environmental conservation because they amplify the impact of a single conservation area, providing a larger area required by animals and plants to live in and move. Such large areas ensure migration corridors for larger animals and interior forest habitat for many bird species that only nest away from human disturbance.

The Open Lands of the Madawaska Club also comprise part of the United Nations Georgian Bay Biosphere Reserve. This biosphere reserve encompasses a rich and unique mosaic of forests, wetlands and rocky habitats that help sustain the water quality of the area. However, the biosphere “reserve” designation does not offer any protections to these lands, but rather promotes solutions reconciling the conservation of biodiversity with its sustainable use and development. In the meantime, development continues to fragment nearshore and inland habitats.

Development pressure

As the population of Ontario continues to grow, so will the demand for vacation properties and pressure to develop the open space owned by the Club, especially shoreline areas such as the front of Long Island. For example, we are seeing development pressure hit our Muskoka neighbours hard where some lakeside cottage communities now are fighting against condo development.

In tandem with development pressure and rising property values, the tendency will be for taxes to increase. Although the provincial “Managed Forest Tax Incentive Program” has been an excellent mechanism for significantly reducing the tax burden on these properties; there is always a risk that a current or future provincial government could cancel the program and our taxes would rise. Adding an additional level of protection, such as with a conservation easement, reduces the market value of the land and therefore, property taxes.

Canada Nature Fund

As part of its international commitment to protect 17% of our land and freshwater ecosystems, the Government of Canada has developed the Canada Nature Fund (CNF). The CNF program is designed to address the global biodiversity and ecosystem conservation crisis by motivating

and supporting the efforts of Canadians whose participation is critical to achieving success in nature conservation. The CNF targets federal investments that enhance collaboration and partnership on protected and conserved areas and species at risk.

The 2018 federal budget established a fund of \$1.35 billion to support work with other governments, indigenous groups, non-profit organizations and others. Subsequently, the federal government launched a Target 1 Challenge to provide \$175 million for projects that help meet Canada's biodiversity target.

Organizations, that include land trusts such as the Georgian Bay Land Trust (GBLT), have submitted applications to the Canada Nature Fund for funding of projects that they wish to undertake under the Target 1 Challenge. One type of project that can be funded under this programme is the acquisition by such organizations of conservation easements which provide for the protection of environmentally sensitive and important lands. GBLT has expressed an interest in acquiring a conservation easement over the Open Lands in order to enshrine the corridor described above. The Club's 1,589 acres of open land would very likely qualify for an easement payment under the CNF program because our lands encompass significant wetland and other habitat for endangered and threatened species, especially reptiles and amphibians. The projected value of the conservation easement is between \$250 and \$600 per acre, potentially resulting in a significant financial award to the Madawaska Club.

Attached is a memorandum (Appendix 3) that addresses the legal aspects of a conservation easement. It is important to understand that the granting of a conservation easement by the Club would not open access to the Open Lands to the general public, would enhance protections against development and would not impair the current uses to which such lands are currently put to use by members of the Club.

Conservation Opportunity

Our committee was asked to research options for strengthening the conservation status of our Open Lands. We investigated several options (see FAQ section). We concluded that a grant of a conservation easement to a land trust is the best way for the Madawaska Club to protect its community plan to preclude development of the Open Lands while maintaining control over this land and continuing existing recreational uses. (Refer to Appendix 3 for details on legal aspects of conservation easements).

A conservation easement is a legal document between the landowner and a conservation body which imposes conservation measures and/or development restrictions on the affected property. If registered on title, the conservation easement binds the existing and subsequent owners of the property. A conservation easement cannot be amended by the landowner without the consent of the conservation body and the provincial Minister of Environment. The role of the conservation body is to ensure that the landowner abides by the terms of the conservation easement.

The terms of a conservation easement are negotiated between the landowner and the conservation body. Easements are tailor-made and can be designed to protect an entire property, or only those features cherished by the landowner. Unless the landowner agrees, a conservation easement does not provide access to the public.

The conservation easement that we have in mind would enshrine the development restrictions currently designated by the Community Plan, would continue to restrict access to these lands to members of the Madawaska Club and would continue to allow for the uses currently permitted under the “Open Space” designation provided under the existing Official Plan and Zoning By-law. Any subsequent changes to the Official Plan or Zoning By-law would not affect these restrictions.

Proposed Next Steps

Legal and Tax issues: The granting of a conservation easement will constitute a disposition of an interest in land by the Madawaska Club. It is important that this disposition not affect the tax status of the Madawaska Club as a non-profit organization. It is also important that the Madawaska Club understand any restrictions that might apply to how the proceeds of disposition received can be used by the Club. While preliminary discussions with a tax specialist have been positive in this regard, it will be necessary for the Club to formalize this advice prior to proceeding.

Member Approval: Pursuant to the by-laws of the Club, the Madawaska Club is not able to grant a conservation easement without the approval of its members by way of a Special Resolution. We are suggesting that this proposal be presented to members at the AGM. The proposal would be fully presented and discussed with members with a view to determining whether or not the proposal is likely to have the necessary support of members. Members would not be asked to provide their final approval but may be asked to indicate whether or not the Board should proceed to seek the necessary tax advice and proceed to negotiate the terms of a conservation easement with GBLT.

Drafting of an Easement Document: Following the AGM, if the board feels there is enough interest in proceeding, we will work with club membership to develop an easement document proposal which would define restrictions and activities allowed on our open lands. The easement likely would reflect our history of usage and restrictions while allowing for some future flexibility in usage that is consistent with conservation goals. Our goal would be to settle the terms of a conservation easement to be recommended to members prior to the summer so that members would have an opportunity to review the detailed proposal ahead of the summer meeting.

Focus Groups: We propose to run a series of focus groups with members of the Club after the AGM and before the summer meeting to discuss the proposal.

Further presentation at the summer meeting: We will make a further presentation of the proposal at the summer AGM that would include a full legal opinion, and a draft easement document for discussion with the membership. If the board feels that there is strong enough support from the membership after the summer meeting, then a vote on the issue could be called in early fall of 2019.

Early Fall 2019: Call a meeting to vote on the proposal. In order to proceed, the vote will require a 2/3 majority of siteholding members in good standing. It should be noted that the reason to proceed to a vote in the fall, would be to allow the Madawaska Club to take advantage of significant funds from the Canada Nature Fund. If the membership does not feel that taking advantage of the fund is a priority, then the Madawaska Club could proceed in a slower fashion in terms of developing a strategy for long term protection of the Open Lands.

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Appendix 1: Go Home Bay Species-at-Risk. Species are listed as Special Concern (SC), Threatened (T), and Endangered (E) by COSSARO (Ont), COSEWIC (Can) or both COSSARO and COSEWIC (Both).

Amphibians

Western Chorus Frog (T-Ont)

Birds

Bald Eagle (SC-Ont)
Bank Swallow (T-Both)
Barn Swallow (T-Both)
Black Tern (SC-Ont)
Bobolink (T-Both)
Canada Warbler (SC-Ont/T-Can)
Cerulean Warbler (T-Ont/E-Can)
Chimney Swift (T-Both)
Common Nighthawk (SC-Both)
Eastern Meadowlark (T-Both)
Eastern Wood-Pewee (SC -Both)
Evening Grosbeak (SC-Both)
Golden-winged Warbler (SC-Ont/T-Can)
Kirtland's Warbler (E-both)
Least Bittern (T-Both)
Olive-Sided Flycatcher (SC-Ont/SC-Can)
Red Headed Woodpecker (SC-Ont/E-Can)
Rusty Blackbird (SC-Ont/SC-Can)
Whip-poor-will (T-Both)

Fish

Lake Sturgeon (T-Both)
Northern Brook Lamprey (SC-Both)
Silver Lamprey (SC-Both)

Insects

Monarch Butterfly (SC-Ont/E-Can)
West Virginia White Butterfly (SC-Ont)
Yellow-banded Bumble Bee (SC-Both)

Mammals

Algonquin Wolf (SC-Ont/T-Can)
Little Brown Myotis (E-both)
Northern Myotis (E-both)
Tri-coloured Bat (E-both)
Eastern Small-footed Bat (E-both)

Plants

Branched Bartonian (T-both)
Broad Beech Fern (SC-both)
Forked Three Awned Grass (E-both)

Reptiles

Blanding's Turtle (T-both)

Common Map Turtle (SC-both)

Common Snapping Turtle (SC-both)

Eastern Foxsnake (T-Ont/E-Can)

Eastern Hog-nosed Snake (T-both)

Eastern Milksnake (SC-both)

Eastern Musk Turtle (SC-both)

Five-lined Skink (SC-both)

Massasauga Rattlesnake (T-both)

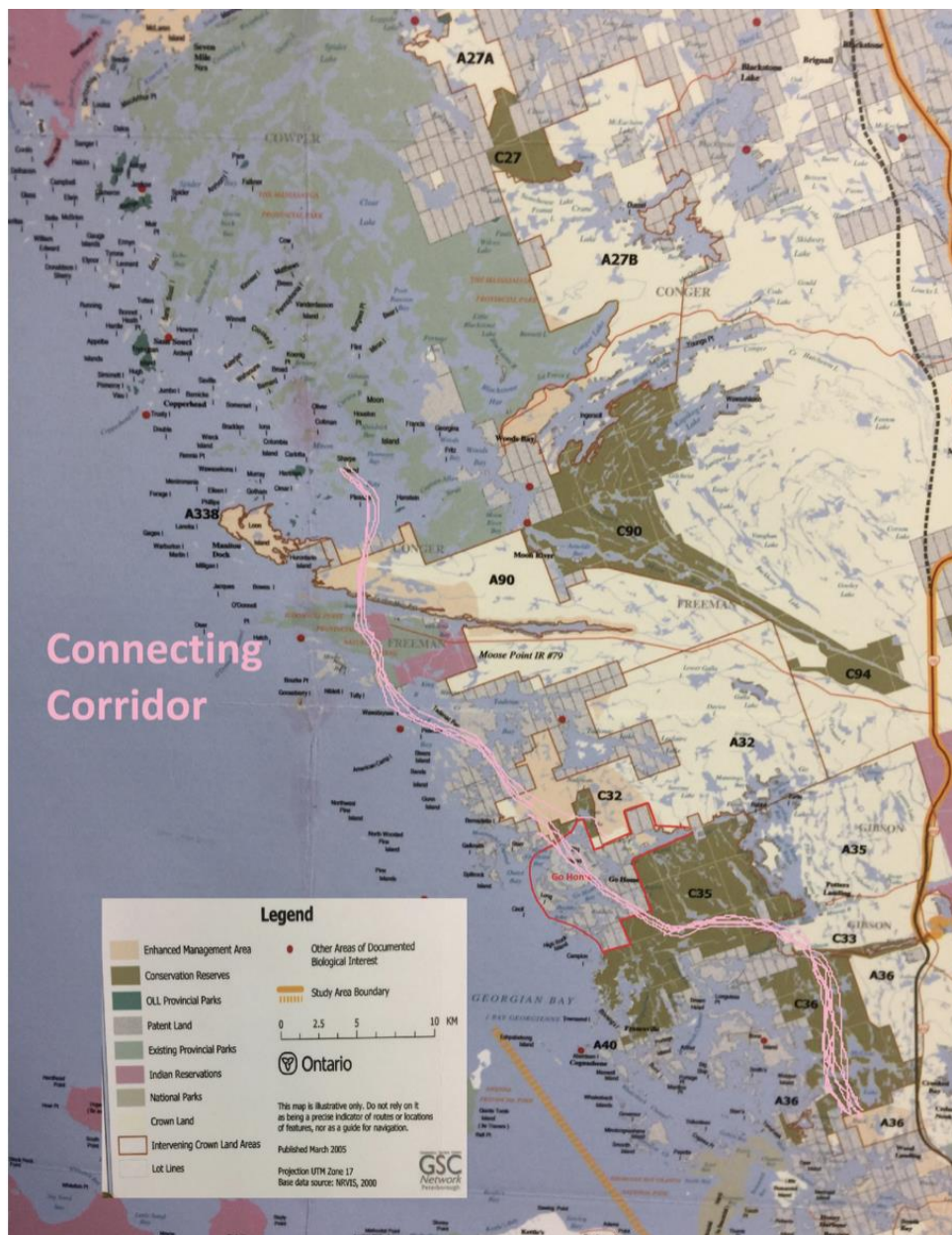
Northern Ribbonsnake (SC-both)

Spotted Turtle (E-both)

Appendix 2: Go Home Interior Lands in a larger context

Map 2 shows how Go Home connects two Ministry of Natural Resources Conservation Reserves (C35, C36) to the south of us with a “Natural Heritage Enhanced Management Area-EMA” to the north of us. The EMA is a crown land designation which is rather loose as far as nature conservation; but it does provide a framework for development of area-specific land use policies by local planners and, therefore, leaves the door open for strengthening conservation objectives. “Patent” land on this map means private land. The conservation corridor through Wah Wah Taysee links through properties protected by the GBLT, such as American camp and others. Note also that the C32 Moreau Bay Conservation Reserve encompassing Tate Lake is contiguous with our open lands and therefore acts to increase their size.

Map 2. Land use along the southeastern shore of Georgian Bay



Appendix 3: Proposal for a Conservation Easement

Background/Current Situation

With the development of the Community Plan, the Go Home Bay Community and the Madawaska Club at Go Home Bay (the “Club”) determined that, with the exception of several specific sites currently utilized by the Club (i.e. Main Dock and Caretaker’s Site) or left available for development (two sites remain unallocated on the Pittsburgh Channel), the unoccupied Club lands (the “Open Lands”) should remain undeveloped. Accordingly, the Club took steps to adopt a Community Plan that was embodied in the Official Plan and Zoning By-law for the Go Home area and that designated the Open Lands as “Open Space”.

Pursuant to the “Open Space” designation, any development on such lands is prohibited. Permitted uses for these lands are limited to: (i) conservation, (ii) passive outdoor recreation, (iii) public parks and accessory structures, (iv) private parks, and (v) conservation education.

Furthermore, the Club’s by-laws include a provision restricting the Club from proceeding to develop the Open Lands without the approval of a special majority of the members of the Club. Neither the Board, nor the Club, may proceed with the development of the Open Lands prior to such development being approved by the members by way of a Special Resolution. A Special Resolution is a resolution passed by site-holding members where such vote succeeds by a majority of not less than 2/3 of the site holders present and voting at such meeting. For any such vote, each site is allocated one vote.

Finally, since the Club is incorporated as a without share capital corporation, any proceeds derived from the development of any of the Club lands cannot be distributed to members. Such proceeds would have to be retained by the Club.

Despite these provisions that restrict the Club from developing the Open Lands, it is possible that the Township and the District could, despite objections from the Club or members of the Go Home Community, re-designate the Open Lands under the zoning by-law and Official Plan so that development would be permissible on such lands. While such a redesignation would not affect the provisions in the Club’s by-laws that restrict the development of the Open Lands, such a change in designation could impose economic pressures on the Club by increasing the assessed value of these lands and the taxation imposed on the Club.

Conservation Easements

Conservation easements, which are created pursuant to the *Conservation Land Act* (Ontario), are a mechanism for land owners to voluntarily impose conservation measures and/or development restrictions on their own property. The statute provided for the establishment of conservation easements in order to overcome the requirements relating to the creation of easements under common law principles.

Under the common law, an owner of a property who wished to enshrine conservation measures or development restrictions on a property could only do so by granting an easement imposing such conservation measures or development restrictions to the owner of an adjacent property. Once granted, the conservation measures or restrictive covenants could only be enforced by the owner of the adjacent property to which the easement had been granted. Furthermore, the easement could easily be subsequently amended or relinquished by subsequent owners of the two properties. Accordingly, this was not an effective tool for an owner who was seeking to enshrine the conservation measures or development restrictions so as to bind subsequent owners of the property.

The *Conservation Land Act* was enacted so as to allow for conservation measures and development restrictions to be enshrined on a more permanent basis. It does this by providing for the granting of a conservation easement to a “Conservation Body”, which includes:

- (i) the Crown in right of Canada or Ontario;
- (ii) an agency, board or commission of the Crown;
- (iii) a band (as defined in the Indian Act);
- (iv) a municipal council;
- (v) a conservation authority; and
- (vi) a corporation that is registered as a charity, a charitable foundation and any other person prescribed by regulation. (Section 3(1)).

A conservation easement may be granted:

- (i) for conservation, maintenance, restoration or enhancement of all or a portion of the land or the wildlife on the land;
- (ii) for the protection of water quality or quantity, including the protection of drinking water sources; or
- (iii) for watershed protection and management.

There are also other purposes that are not relevant to our situation at Go Home Bay.

The statutory provisions creating conservation easements now effectively allow a landowner to impose a development restriction on the landowner’s own property without having to benefit a neighbouring property. To do so, the landowner must enter into an agreement providing for the development restrictions with a Conservation Body. The Conservation Body is then required to monitor the land and ensure that the landowner complies with the requirements of the agreement.

To the extent that the landowner wishes to bind subsequent owners of the property, the agreement describing the easement or development restrictions is registered on title to the property. Once that is done, the conservation easement binds subsequent purchasers of the

property. Thus, the conservation measures or development restrictions imposed by the conservation easement are enshrined on a more permanent basis.

A conservation easement is not absolutely permanent. It is possible, although difficult, to amend a conservation easement. The owner of the land affected by the conservation easement may not amend the terms of the easement without the approval of the Minister of Environment. The Conservation Body may not release the easement without the consent of the Minister. But, a landowner, with political support and the acquiescence of the Conservation Body, can have a conservation easement amended.

Proposal for a Conservation Easement over the Open Lands

The Land Stewardship Committee (LSC) was established in 2017 and charged with examining options for enhancing protections offered to the Open Lands. The LSC has requested that the Board consider granting a conservation easement over the Open Lands in order to more fully enshrine the Club and community's intent that these lands be preserved in their natural estate. If a conservation easement is to be granted by the Club, it would include conservation measures and development restrictions that essentially mirror the requirements of the current "Open Space" zoning while still permitting members of the Club to continue to use the Open Lands for activities currently engaged in by members of the Club (i.e. picnics, walking, camping and frisbee golf on Long Island). By granting a conservation easement, the Club would not be opening the Open Lands to the public. The Open Lands can retain their status as private property. Even though a conservation easement would be granted in favour of a Conservation Body, the grant would not give rights of use or access to anyone other than a member of the Club.

A conservation easement must be carefully drafted. Experience in the US, where conservation easements have existed for much longer than in Canada, has shown that subsequent landowners have, at times, attacked the validity of a conservation easement in order to have the conservation measures or development restrictions removed or amended. Furthermore, to the extent that the Club decides to proceed with the granting of a conservation easement, we should anticipate that Club members would not want the conservation easement to restrict activities on the Open Lands which are considered appropriate at this time.

If the Club proceeds with a conservation easement, the most logical Conservation Body to receive the conservation easement would be the Georgian Bay Land Trust. It obviously has considerable experience in dealing with conservation easements in Georgian Bay and it has the resources in place to monitor activities related to conservation easements in this area. Its role would be to ensure that the terms of the conservation easement were honoured. It would have the ability to enforce the easement if the terms of the easement were breached.

It should be recognized that a Conservation Body can assign the easement to another Conservation Body. So, if the Club grants a conservation easement to GBLT, it is possible for GBLT to assign the easement to another Conservation Body without the consent of the Club. While it is not presently foreseeable that GBLT would make such an assignment there can be no

assurances that GBLT will continue to hold the conservation easement forever. In the event of any such assignment, the replacement Conservation Body would remain bound by the terms of the Conservation Easement granted by the Club and could not amend the easement without the approval of the Club and the Minister. In any event, the LSC believes that the GBLT has achieved sufficient strength and community support to remain as a conservation force for the foreseeable future.

FAQ's

Why the rush? The easement solution we are proposing is consistent with the Club's long history of stewardship of our open lands for the use and enjoyment of all members. Consideration of an easement now will give the club the opportunity to apply for significant funds from the Canada Nature Fund. The CNF is a federal government initiative and therefore, subject to changes in government. Also, the "Challenge 1" component of the CNF program is time limited and this is the subprogram under which the club could take advantage of this unique opportunity to receive payment for an easement. If, however, receiving payment for an easement is not important to the membership, then this consultation process on land protection could proceed at a much slower pace.

What about setting up a trust or foundation to pay the taxes on open space land? Although a community trust fund to pay land stewardship costs including property taxes would help, it does not bestow the additional legal protection that an easement provides. There may be a role for such a vehicle if the club moves forward and obtains a grant from the Canada Nature Fund. That would be a decision the Board could consider if a grant is obtained.

Why not just donate the open space Lands to a land Trust?

Donating the open space lands to a land trust would meet the objective of stronger legal protection; but this option would entail loss of ownership and, therefore, loss of exclusive access and control of these lands by club members.

We have been stewarding the open space lands well for decades. Why do we need to change? A Municipal zoning designation of open land under an official community plan such as ours, can still be changed, particularly in the in the 21st century context of high development pressure. An easement provides stronger legal protection while at the same time the club retains ownership, control and exclusive access. Placing an easement on our open lands simply enshrines what we have been doing all along: maintaining the Clubs long standing philosophy of protecting these lands for the use and enjoyment of all club members.