



# The Madawaska Club of Go Home Bay 1898

## NOTICE

of

## SPECIAL MEETING

of

### THE MADAWASKA CLUB OF GO HOME BAY

The Special Meeting (the “**Meeting**”) of members of The Madawaska Club of Go Home Bay (the “**Club**”) will be held at 7:00 p.m. (Eastern Daylight Time) on August 24, 2023 for the purposes described below, by virtual only Meeting via live online webcast at:

<b>Link:</b>	<a href="https://us02web.zoom.us/j/84541794002?pwd=ODhjMVdobVR4cHBuRW5CZkp5VTBQdz09">https://us02web.zoom.us/j/84541794002?pwd=ODhjMVdobVR4cHBuRW5CZkp5VTBQdz09</a>
<b>Meeting number (access code):</b>	845 4179 4002
<b>Meeting password:</b>	650713

### **Purpose of the Meeting**

The purpose of this Meeting is for members of the Club to consider and, if deemed advisable, pass a special resolution (the “**Easement Resolution**”) approving the Club entering into a conservation agreement (the “**Conservation Agreement**”) with The Georgian Bay Trust Foundation, Inc. (“**GBLT**” and its applicable successor(s) and permitted assign(s), the “**Conservation Body**”) and registering the conservation easement and access easement created thereunder (together, the “**Easement**”) against a portion of the Club’s property described in Schedule A (the “**Open Lands**”). See section titled “Easement Resolution” below for the text of the Easement Resolution and see section titled “Attending and Voting at the Meeting” below for instructions on how to attend and, in respect of site members in good standing, vote at the Meeting.

A substantially final form of the Conservation Agreement is enclosed as Schedule B. The Conservation Agreement is the product of extensive arm’s length negotiations between representatives of the Club and representatives of the GBLT, including the input from the Club’s independent legal counsel and tax advisor.

The final form of Conservation Agreement does not differ substantively from the previous version that was placed before the community in connection with the Club’s 2022 AGM, where members overwhelmingly approved the Club proceeding with finalizing the terms of the Conservation Agreement and undertaking the necessary steps and incurring the necessary costs (including independent legal and tax advice, an independent appraisal of the Open Lands, and related matters) required to advance the Conservation Agreement proposal to this final stage for the Club to formally consider and vote on the

matter. The substantive developments to the Conservation Agreement proposal since the 2022 AGM have been largely outside of the agreement itself. For instance, two notable developments are that the Club's Board of Directors (the "**Board**") has since procured an independent appraisal of our Open Lands and the GBLT has been successful in securing a Federal grant to provide compensation to the Club for the Easement. Should members approve the Easement Resolution by the requisite 66 2/3% majority at the Meeting, the amount of compensation the Club will receive from GBLT for the Easement is expected to be approximately C\$420,000 (before tax), together with a Charitable Tax Receipt for approximately \$2,933,900.<sup>1</sup> We will also be proceeding with an application for the Easement to be treated under the Canada Ecological Gifts Program for tax purposes, which has the potential to increase the income offset of our donation from 75% to 100% and allow us to carry forward unused amounts for 10, rather than 5, years. An independent tax advisor familiar with the Club's not-for-profit status has considered the proposed Easement transactions and advised the Club that, should the Club be required to pay tax on the compensation received by the Club from the GBLT, the Club can use the Charitable Tax Receipt to offset Federal (but not Provincial) taxes on the Club's taxable income, with the expectation that the net cash amount to be received by the Club will be in excess of C\$360,000. For perspective, we understand that the Tadenac Club's conservation easement with GBLT resulted in Tadenac Club receiving cash proceeds of ~C\$180/acre while the Club expects to realize ~\$300/acre of cash proceeds (both pre-taxes). The remaining portion of the Charitable Tax Receipt can be retained by the Club to offset future taxable income of the Club, if any, over the next 10 years. The independent legal review received has confirmed that, as drafted, the agreement is well-designed and enables strong protection for our Open Lands, while preserving flexibility for the Club's members continued use of the Open Lands.

### **Background**

Over six years ago, the Land Stewardship Committee ("**LSC**") was formed by the Board at the request of certain members of the community to consider and make recommendations to the Board as to the best option for enhancing the protection of our Open Lands. Since then, the LSC has been gathering community input, developing evaluation criteria, considering options, and presented its recommendation: that is, a conservation easement agreement that would allow the Club to enhance the protection of its Open Lands and potentially mitigate the risks of taxation increases while maintaining ownership and control of its Open Lands. At the 2021 summer dock meeting, the Board announced that the LSC had its unanimous support in continuing with the conservation easement initiative. A site member vote was held at the 2022 AGM to determine if a majority of the community was in favour of the Club continuing to advance this process by drafting a Conservation Agreement with the GBLT for members to consider. At that meeting, over 85% of Club members voting at that meeting voted in favour of the Club pursuing the easement initiative, including finalizing the Conservation Agreement with the GBLT to enhance protection of our Open Lands. After consultation and feedback from the community on a previous version of the Conservation Agreement, we now have a final form of Conservation Agreement for the membership to consider and vote on at the upcoming Meeting. If the Easement Resolution is approved at the Meeting, the Club will proceed with finalizing arrangements with the GBLT, entering into the Conservation Agreement and registering the Easement on title to our Open Lands with a view to providing lasting protection from development for the valuable habitat that our Open Lands represent for many

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<sup>1</sup> This is based on a third party appraisal that the Club has received in respect of the diminution of the value of the Open Lands as a result of the imposition of the easement, and removal of the Club's development rights, on our Open Lands. See Schedule C for a copy of this appraisal.

endangered and threatened species while still allowing the Club to use and enjoy these lands, subject to the Restrictions set out in the Conservation Agreement.

### **Board Recommendation**

The Board (with one member abstaining solely in respect of the 999 year term of the Conservation Agreement) is in support of voting “Yes” to the Club entering into the Conservation Agreement and registering the Easement on title to our Open Lands. In making its determination, the Board considered a number of factors, including those summarized below, and determined that the benefits expected to be realized from the Easement outweigh the risks associated with the Easement. Members should consider carefully the factors set out below as well as the other information contained in this Notice of Meeting in evaluating and voting on the Easement Resolution.

The time to place the Easement on our Open Lands is now and has followed an extensive community consultation process demonstrating strong support for this initiative. The process to arrive at our current proposal has been robust, spanning 7-years and involving extensive community consultation and input. The grant awarded to the GBLT to compensate the Club for the Easement expires this fall and there is no guarantee that future grants will be available.<sup>2</sup> The Club puts itself at risk of not receiving any financial benefit (or a significantly reduced benefit) for the Easement should it delay.

### **Benefits**

- The Conservation Agreement provides the most durable and long-lasting protection for our Open Lands from potential development and changes in zoning, the only mechanism available to further reduce our property tax burden, and the best way to conserve these lands for the threatened and endangered plant and animals that inhabit them as well as for future generations of the Club community to use and enjoy.
  - The Club is expecting to have its Open Lands redesignated as Conservation Lands under the Township Zoning By-laws, which would result in a zero rated municipal property tax in respect of the Open Lands.
- The recommendation follows a robust process that considered all alternatives. The LSC’s task was to identify the most effective way to enshrine the Club’s long-term vision of Open Land stewardship and protection for future generations. The review analyzed all available options, including maintaining the status quo, and concluded that a conservation agreement with a not-for-profit conservation organization or land trust is the most effective course of action. Such an agreement would retain our ownership, enshrine the development restrictions we currently have and continue to restrict access to these lands to members of the Club and guests. It would also allow for uses currently permitted on the Open Lands and make provision for future activities that are consistent with the conservation intent of the agreement.
- Conservation easements on private property are a widely used and effective approach for environmental stewardship and protection throughout North America. To date there are over 130,000 conservation easement agreements in the U.S. and more than 2,000 in Canada protecting more than 27 million acres of natural space. There are approximately three dozen

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<sup>2</sup> The GBLT secured these funds through a federal program and it is uncertain whether this program will be renewed once it expires in 2027. Having secured access to these funds, the Club has until November 1, 2023 to sign the Conservation Agreement with GBLT and to effect the registration of the Easement by February 2024, otherwise these funds are no longer available. .

conservation easements in Muskoka and Georgian Bay, none of which have encountered material disputes related to the easement to the Club's knowledge.

- The Conservation Agreement is expected to provide long term protection from increased taxation pressure. A primary risk to the Club with respect to maintaining the protection of the Open Lands is that the Club decides, or is forced by circumstance, to sell all or a portion of the Open Lands. This could be a result of a material change by governments to tax or zoning policies in response to development pressures that are increasing throughout cottage country. Alternatively, this could be the result of an unforeseen event that impacts the financial viability of the Club. A sale, whether voluntary or not, will result in the Club losing a portion of the Open Lands.
- Development pressures exist. On Lake Joseph in Muskoka, for example, average cottage prices have doubled since 2014 with a commensurate increase in taxes. We are already seeing evidence of rising property values in our own community. This pressure might eventually expose the Open Lands to re-evaluation which could, for example, lead to an assessment of the outside of Long Island based on the number of potential cottage sites deemed appropriate by municipal planners. This would force the Club to consider long-term solutions to a very challenging and possibly unaffordable tax burden. The Conservation Agreement, with its development restrictions, is anticipated to shield the Club from rezoning and large, market-based tax assessments.
- Likewise, should the Club decide, or be forced, to sell the Open Lands, or any portion of them, the benefit of a Conservation Agreement is that the development and use restrictions set out in the Agreement will bind any subsequent owner of the lands, thus continuing the protection established by the Club against future development.
- The Conservation Agreement has been designed to be a flexible, evolving document that will allow future members to continue to use and enjoy the Open Lands.
- Given that the Club does not intend to sell or develop the Open Lands, the creation of the Easement at this time provides an opportunity to realize a financial benefit from the Open Lands without compromising the Club's ongoing use and enjoyment of these Open Lands. With GBLT having been awarded funding to purchase the Easement (subject to certain conditions), the Club can realize substantial cash proceeds now while also obtaining a Charitable Tax Receipt to offset future Federal taxes on the Club's taxable income, including potentially in respect of the remaining cottage lot sales.

#### Risks

- The Club will not be practically able to monetize any portion of the Open Lands in the future, including if required for liquidity/solvency purposes. That said, the large majority of the lands are interior properties ill-suited to cottage development at this time. The Club also has two unsold cottage lots available for future use and has been fiscally responsible to date, operating well with revenue largely from membership dues.
- In the event of a breach of our obligations to conserve the land, the Club may be required to complete remediation work under the terms of the Conservation Agreement, or reimburse the Conservation Body for remediation work done by the Conservation Body on behalf of the Club. This amount could be material. However, provisions made in the agreement stipulate GBLT shall work in cooperation with the Club to rectify any problem, to the extent that such rectification or amelioration is reasonably possible. Further the Club has always endeavoured to practise good

environmental stewardship and would likely embark on remediation in the absence of the Conservation Agreement, assuming such remediation was not cost prohibitive.

- The Conservation Agreement permits the GBLT to voluntarily assign its rights and obligations thereunder to another Conservation Body and, in certain circumstances under the applicable legislation, the GBLT's rights and obligations may be assumed by the Ontario Minister of Natural Resources, which would necessitate the Club forming a new relationship with the new Conservation Body; further, GBLT management will change over time which may impact the quality of our relationship. However, under the Conservation Agreement, the Club has ensured that the GBLT can only voluntarily assign to a Conservation Body whose mission, vision, and values are consistent and compatible with the Conservation Intent outlined in the Conservation Agreement.
- Future generations of members will be subject to the Easement restrictions in respect of the Open Lands and will not be permitted to remove or amend the terms of the easement without the consent of the conservation body and the consent of the Ontario Minister of Natural Resources, or his or her successor and the Minister of Environment and Climate Change (Canada) or his or her successor. The expectation therefore is that the Easement is "permanent" and binding on future members in what is effectively perpetuity. As stated above, the Board feels that this is more a benefit than a risk to the community as the purpose of the Easement is to strengthen protection on our Open Lands (including from potential future development).
- The Easement has been intentionally designed to be flexible to allow for the community's use of our Open Lands to evolve over time, except to the extent restricted by the express Restrictions imposed by the Easement and provided such activities are in keeping with the Conservation Intent and do not materially adversely impair or destroy the Natural Values and Features of the Open Lands. There can, however, be no assurance that any specific proposed future usage that is not consistent with the Club's historic usage of the Open Lands will be consented to by the Conservation Body as being consistent with the Conservation Intent.
- The Club may in the future be required to sever the parcel of land that covers Open Land and the Main Dock/Caretakers site in order to develop the Main Dock/Caretakers site. The Club, after discussing with members familiar with the Township's planning by-laws and processes, does not presently expect this to be a meaningful risk of materializing but, if it does, there would be a requirement to seek Ministerial consent and Township approval to remove the Easement registration from the severed Main Dock/Beach site. While the Club expects these consents and approvals to be forthcoming, there can be no guarantee that they will be obtained in a timely manner or at all.
- The Club is expecting to have its Open Lands redesignated as Conservation Lands under the Township Zoning By-laws, which would result in a zero rated municipal property tax in respect of the Open Lands. However, there can be no guarantee that such redesignation will be successful and potentially the appraised value obtained through the Eco-Gifts Program could result in a higher assessed value. The Club views this risk as unlikely to materialize and GBLT has only observed reductions in tax with the placement of easements to date.
- The Easement does not restrict or impede a governmental entity expropriating the Open Lands (or any part thereof) for development purposes and, accordingly, the Easement enhances but does not absolutely guarantee long-term conservation of the Open Lands. However, this is a risk that is presently facing the Club's land and not created as a result of the Easement.

### **Conservation Agreement and Easement Summary**

The following does not purport to be a complete summary of the Conservation Agreement. Please refer to the specific terms of the Conservation Agreement attached as Schedule B.

- The Club retains ownership (in fee simple) of the Open Lands, while ensuring the continued protection and the ability to protect and use the land as we have done for over a century (See Section 5.0). Any unforeseen future uses of the Open Land will be allowed as long as they are not restricted by the terms of the Easement and are in keeping with the Conservation Intent specified in the agreement.

*2.2 Conservation Intent. The Property Owner and GBLT have entered into this Agreement for the purpose of maintaining the Natural Values and Features of the Open Lands as they exist as of the commencement of the Term and as they may naturally evolve over time throughout the Term. In furtherance of that intent, the Property Owner has agreed, subject to the qualifications and exceptions set out in Article 4.0 of Schedule "D" attached hereto, to comply with the Restrictions set out in Article 3.0 of Schedule "D" attached hereto in order to preclude any activities that:*

*(a) would materially interfere with, damage or destroy the Natural Values or Features of the Open Lands; or*

*(b) materially alter the natural processes affecting the Open Lands.*

- The term of the Conservation Agreement is 999 years, effectively "in perpetuity".
- The Easement imposes restrictions (the "**Restrictions**") (see Sections 3.0 and 4.0 of Schedule "D" to the Conservation Agreement) on the use by the Club of the Open Lands and requires the Club to use all reasonable efforts to inform Club personnel, members, relations of members and guests of members (collectively, "**Authorized Persons**"), of the Restrictions.
- The Restrictions are substantially in keeping with how the Club has conserved and used the Open Lands to date. The Restrictions preclude, solely in respect of the Open Lands: all forms of development (with the exception that temporary structures can be erected for short periods of time); any commercial camping, hunting or trapping activities; dumping; alteration of site and topography; interfering with or altering lakes; ponds, wetlands, watercourse or other bodies of waters; planting or introducing non-native species; use of pesticides and herbicides; constructing roads or parking areas; logging or commercial harvesting of trees or other vegetation or any gathering/removal of native or naturally occurring plants or species (other than in accordance with good forestry practice, to remove hazards for human safety, or as needed for paths/trails); any sale of the Open Lands, except where buyer acknowledges that the Easement runs with the land; or creation of any easements, rights of way or similar liens. These Restrictions are subject to limited exceptions, including in respect of temporary structures, paths, trails and boardwalks, floating docks, and utility access.
- The Easement permits the Club and the Authorized Persons to conduct any activity on the Open Lands that is not expressly covered by a Restriction which are not inconsistent or incompatible with the Restrictions or the Conservation Intent, and which do not materially adversely impair or destroy the Natural Values and Features of the Open Lands. Section 5.0 of Schedule "D" to the Easement sets forth an exhaustive list of Permitted Activities.
- The Easement grants the GBLT with rights to access the Open Lands to monitor compliance by the Club with the terms of the Conservation Agreement.

- Any default by the Club of the Conservation Agreement will result in an 120 day period (or such longer period, if 120 days is not reasonable) for the Club to ameliorate or rectify the default. If the Club has not commenced actions to rectify or ameliorate the default within such period, the GBLT may enter the Open Lands and carry out such actions as are reasonably possible to rectify or ameliorate such default, at the Club's expense.
- Any amendment to the Conservation Agreement requires the consent of the Ontario Minister of Natural Resources and Environment Canada, if required by the Ecological Gift Program.
- Assignments of the Conservation Agreement by the GBLT to another Conservation Body is generally restricted, other than assignments to a Conservation Body whose mission, vision, values and activities are consistent and compatible with the Conservation Intent.

### **Overview of Easement Process**

Set out below is a summary of the key steps completed since the 2022 AGM in respect of the Easement process and, if members approve the Easement Resolution at the Meeting, the key steps to be undertaken by the Club in order to finalize the Conservation Agreement and register the Easement.

#### **Completed**

- A certified independent appraisal of the Open Lands for charitable tax receipt purposes. See appraisal attached as Schedule C.
- An independent legal review of the Conservation Agreement commenting on the draft with respect to the Club's conservation goals and the nature of the agreement itself regarding any potential risks to the Club. This review of the Conservation Agreement has commended the Club on the quality and flexibility afforded in the Conservation Agreement and agreed that this type of an arrangement provides for secure and enduring protection for our Open Lands while still retaining ownership.
- Independent tax advice on the tax implications to the Club of accepting compensation for the Easement.
- The GBLT has requested, and been awarded, funding from the federal government.
  - The Conservation Agreement needs to be signed by November 1, 2023 and the Easement needs to be registered by February 2024 in order for the Club to benefit from the Federal grant received by the GBLT in respect of the Easement.
- The GBLT has prepared, and the Board has reviewed, a form of "Baseline Data Report" describing the Open Lands and documenting the Natural Values and Features and current uses of the Open Lands. This report will serve as an objective information base for the current state of the Open Lands and for monitoring compliance with this Agreement. See Schedule "C" to the Conservation Agreement for a copy of this "Baseline Data Report".

#### **Ongoing**

- Members to vote on the Easement Resolution at the Meeting.
- The Club's lawyer will review and verify the legal descriptions of the property to be governed by the Conservation Agreement (all Club lands currently zoned as "Open Space" except a portion of

the property between the main dock and regatta site), and make certain housekeeping updates to the title documents to the Open Lands.

- The Club and the GBLT to finalize the terms of the donation of the Easement to the GBLT.
- The Club and the GBLT to advance the Eco-Gifts qualification process and evaluate whether to make use of the Eco-Gifts program to offset the taxable income, if any, realized from the Easement.
- The Club to establish rules and regulations pertaining to the use of the Open Lands which are consistent with limiting such use to the Permitted Activities.
- The Club to apply to the Township to re-designate the Open Lands as conservation lands with a view to benefiting from the zero-rated property tax.

### **Easement Resolution**

Members are being asked at the Meeting to consider and, if deemed advisable, pass the Easement Resolution approving the Club entering into the Conservation Agreement (attached as Schedule B hereto) and registering the easements to be created thereunder on the Club's Open Lands (see Schedule A hereto). The full text of the Easement Resolution is set out below. In order for the Easement Resolution to be approved at the Meeting, it must receive affirmative votes representing at least 66 2/3% of the votes cast at the Meeting by Site Members in Good Standing present online or voting by proxy.

#### **"EASEMENT RESOLUTION**

1. *The Club is authorized to execute, deliver and perform its obligations under that certain Conservation Agreement (the "**Agreement**"), substantially in the form presented to the Club's members on August 10, 2023, with such housekeeping amendments as any director or officer of the Club may approve.*
2. *Any director or officer of the Corporation is authorized to:*
  - (a) *execute and deliver the Agreement; and*
  - (b) *execute and deliver all other documents, agreements and instruments (collectively, "**Ancillary Documents**"), and do all acts or things as may be necessary or desirable to give effect to these resolutions and the transactions contemplated in the Agreement.*
3. *Execution of the Agreement and any Ancillary Documents by any officer or director of the Club will be conclusive evidence of his or her approval of the Agreement or Ancillary Document, as applicable, and that such Agreement or Ancillary Document, as applicable, is the version approved by this resolution.*
4. *Any and all actions heretofore taken and documentation heretofore delivered by any officer or director of the Club in respect of the Agreement or any documentation related thereto or otherwise in furtherance of the foregoing resolutions, is hereby ratified, adopted, approved."*



## **Attending and Voting at the Meeting**

### ***Attending the Virtual Only Meeting***

We will again be holding the Meeting in a virtual only format, which will be conducted via live webcast. Members will not be able to physically attend the Meeting.

Site Members in Good Standing (as defined in By-Law No. 2 of the Club, as amended) and duly appointed proxyholders will be able to attend, submit questions in writing and vote at the Meeting online at the website noted above. Other community members will be entitled to attend the Meeting as guests, but guests will not be permitted to vote at the Meeting and any votes by persons other than Site Members in Good Standing will not be valid. **We strongly urge Site Members to attend and cast their vote at the Meeting online or to submit proxies appointing the individuals designated by the Club on the proxy form to the Club's Secretary in advance of the meeting to ensure an orderly vote tabulation process at the Meeting.**

If you attend the Meeting online, it is important that you are connected to the internet at all times during the Meeting in order to vote when balloting commences. You should ensure you have a strong, preferably high-speed, internet connection wherever you intend to participate in the Meeting. The Meeting will begin promptly at 7 p.m. (Eastern time) on August 24, 2023, unless adjourned or postponed. The online webcast will be opened 15 minutes prior to the Meeting, at 6:45 p.m. (Eastern time).

### ***Voting at the Virtual Meeting***

As a Site Member in Good Standing, you can vote online at the Meeting or you can appoint someone to attend the Meeting online and vote for you (called voting by proxy). Please read these instructions carefully.

- ***If you want to attend the Meeting and vote online:*** Simply login to the Meeting and complete the ballot online during the Meeting once balloting commences. In order for your vote to be eligible, you will need to specify on your ballot which site you represent. In the event of any conflicts or double voting in respect of a site, the scrutineers of the Meeting will contact the applicable Site Member in Good Standing at his or her email on the Club's records to confirm the vote.
- ***If you do not plan to attend the Meeting online:*** Accompanying this Notice is a proxy form which is a document that authorizes someone else to attend the Meeting online and vote for you. You can either mark your voting instructions on the proxy form and return it to the Club's Secretary in advance of the Meeting at [secretary@gohomebay.com](mailto:secretary@gohomebay.com) or you can appoint another person (called a proxyholder) to attend the Meeting online and vote on your behalf. If you appoint a proxyholder other than the individuals designated by the Club on the proxy form, you must submit a copy of your form of proxy appointing that proxyholder (together with your proxy's name and email address) to the Club's Secretary (Jan Wishart) in advance of the Meeting at [secretary@gohomebay.com](mailto:secretary@gohomebay.com).

**Again, we strongly urge Site Members to attend and cast their vote at the Meeting online or to submit proxies appointing the individuals designated by the Club on the proxy form to the Club's Secretary in advance of the meeting to ensure an orderly vote tabulation process at the Meeting.**

### ***Discussions During the Virtual Meeting***

In advance of the formal business of the Meeting, members will have an opportunity to ask questions regarding the matters to be voted on at the Meeting.

If you have any questions or need assistance to attend and vote at the Meeting, please contact Lewis Reis ([lewis.reis@outlook.com](mailto:lewis.reis@outlook.com)) or Christian Brands ([achristian.brands@gmail.com](mailto:achristian.brands@gmail.com)).

By Order of the Board of Directors

Jan Wishart

August 10, 2023

Secretary

[secretary@gohomebay.com](mailto:secretary@gohomebay.com)