



**REPORT OF COUNCIL-IN-COMMITTEE**

*For City Council – December 13, 2021*

*Additional Item*

**From:** Office of the City Clerk

**Date:** Monday, December 13, 2021

**Title:** Conservation Easement on Thompson Drive in favour of Nashwaak Watershed Association

**Description:**

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Council-in-Committee, at its session held on December 13, 2021 considered an administrative report from the Manager of Real Estate which sought authorization with respect to the granting of a Conservation Easement over a portion of city-owned property located off Thompson Drive, being PID 75457440 (the “Property”) to the Nashwaak Watershed Association Inc.

The Property is located on the eastern banks of the Nashwaak River, near the former Cotton Mill on McGloin Street and adjacent to the Marysville Heritage Centre. The Property – sometimes referred to as the Marysville Flats – was acquired by the City in 2009 for its environmental and recreational value, as well as its adjacency to the AT trail.

Unsurprisingly given its location, the Property was used as a farm/agricultural property for many years and was cleared for such purposes during that time. As a result of the lack of vegetation and destructive flood waters and ice scouring in 2008, 2017 and 2018, the Property has experienced significant erosion. This has caused the Property to shrink in size and has raised concern that further erosion could potentially impact the nearby trail or municipal infrastructure. At a bare minimum, Staff and the NWAJ believe that inaction would have lead to further loss of land, as the soil would inevitably wash in to the river over time.

To combat the negative impacts of unchecked erosion, the City (largely through Parks and Trees) has worked with the Nashwaak Watershed for the last decade to protect and restore the Property. Since this collaboration started, the NWAJ has taken an active role in the management of the Property, contributing significant amounts of time and resources on the site. In addition to installing rock armouring and bioengineered bank stabilization features to support the most impacted areas of the banks (2017), the NWAJ has invested in the reforestation of the site, planting thousands of silver maple and willow saplings at locations coordinated with City Staff (started in 2011). The goal of these plantings is to introduce vegetation that will stabilize the soil and absorb excess water/moisture. Obviously, the presence of trees also contributes to a broader goal of carbon sequestration and oxygen production.

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To advance their goals, the NWAJ has prepared a site-specific management plan for the Property (previously presented to Council and the Environment Committee). The goal of the plan is to slow the rate of soil loss and restore the site from an old-field to a silver maple floodplain forest that is able to withstand changing environmental conditions and prevent against future loss of property and infrastructure. Clearly this objective is in keeping with the City's best interest.

Given the life cycle of the trees being planted, the site will take many years of care and management to reach its full potential, and ongoing maintenance of young trees is required to maintain the health of the trees. Consistent with the management plan, the NWAJ regularly attends to the Property to tend to saplings, replace trees that have not survived, perform regular maintenance (such as mowing between trees) and ensure that the proper conditions for growth exist.

Notwithstanding the 10+ years of effort and investment by the NWAJ, its use and management of the Property has never been formalized in a written legal agreement with the City. As a result of the success of the work to date done on the Property and the good working relationship that has developed between the organization and the City during the collaboration, Staff have welcomed the opportunity to discuss a longer term arrangement, particularly in recognition of the long term commitment that is required and which NWAJ is prepared to make. Staff believe that the long term objectives of the NWAJ for the Property warrant consideration for a more appropriate long term arrangement between the City and the NWAJ, such that each party may feel confident about the investment and commitment required now and in to the future.

### Conservation Easement

As a result of these discussions regarding a long-term approach, the notion of a "conservation easement" emerged. This is a relatively new concept in New Brunswick, having been created pursuant to provincial legislation in 2011, the Conservation Easements Act, RNSB 2011, c 130.

In short, a conservation easement is a legal agreement that allows landowners to protect and preserve property through an agreement with a third-party agency while also maintaining ownership of the property. Such easements typically outline what activities may and may not occur on site (by the third party or others) and are registered on title so as to create an enforceable legal property interest in favour of such third party agency. These rights run with the land in perpetuity unless certain conditions are not met (e.g. the third-party agency ceases to exist).

While these forms of agreement may not suit every scenario or property holding, Staff believe that such a legal arrangement would be well-suited to address the long term management of the Marysville Flats and represents an opportunity for the City to apply an innovative solution to preserve the beautiful and important Property by working with a well regarded local organization. Further, Staff believe that the creation of such a formal relationship regarding the Property serves to advance the City's Climate Change

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Adaptation Plan and other environmental objectives while also ensuring that the Property itself remains accessible for public use and access; it balances a long term and sustainable approach with the ability for the public to continue enjoying the Property as it continues to regenerate and evolve.

To gauge Council's support for this initiative, the NWAJ and City Staff presented to the City's Environmental Committee earlier in October 2021, during which it was discussed that a conservation easement was being considered between the parties. Members of Council on the Committee were supportive of the efforts, and indicated a desire to bring the matter forward to City Council for further approval.

## Agreement Contents

As a result of further discussion following the presentation to the Environment Committee, Staff have negotiated a conservation easement with representatives from the NWAJ.

A copy of the Conservation Easement is attached; however, the key points of the agreement are summarized as follows:

- Easement Property
  - o the portion of the Property to which the conservation easement would apply is shown in Schedule B of the Conservation Easement. It is the entirety of the parcel, with the exception of 10 m on either side of a municipal service line (running from McGloin Street to Dodona Street) and the island located in the middle of the Nashwaak River, which is not accessible. The easement will be registered on the PID for the Property accordingly.
- Purpose
  - o to protect, enhance and restore the natural ecosystems and wildlife habitat of the Easement and Parent Property(ies);
  - o aims to ensure the conservation, maintenance, restoration and enhancement of the floodplain forest, backwater swales, and riverbank for flood mitigation and to prevent future riverbank erosion on the Parent and Easement Properties, and further downstream along the Nashwaak River
- NWAJ role –
  - o carry out the requirements of the restoration plan and necessary monitoring, stewardship and enforcement on the Easement Property required to uphold the purposes of the Conservation Easement;
  - o communicate restoration plan progress with the City;
  - o permit members of the public to use the Easement Property to access the Nashwaak River and otherwise enjoy the environmental and ecological features of the Easement Property, provided that such access shall be by foot or non-motorized active transportation means (bike, etc.);
  - o be responsible for, at its risk and expense, carrying out the Marysville Flats Forest Restoration Plan;
  - o acquire at its expense any necessary permits or approvals for work or activities;

- o carry and maintain adequate comprehensive general liability coverage; and
- o indemnify and hold harmless the City for any and all loss or damage (whether to property or the person) associated with the NWAI's activities or the Conservation Easement.
- Agreed uses
  - o low-impact, non-motorized recreational activities including nature appreciation, walking/hiking, wildlife viewing, dog-walking, and fishing by the public;
  - o ecological restoration of the floodplain forest and backwater swales as outlined in the Marysville Flats Forest Restoration Plan;
  - o ecological restoration of the eroding riverbank using bioengineering bank stabilization techniques;
  - o maintenance of the existing municipal active transportation trail; and
  - o maintenance and access to municipal infrastructure
- Prohibited uses
  - o construction or placement of permanent structures;
  - o development of additional roads or parking areas other than the existing crushed rock path/former farming road;
  - o intentional introduction of non-native species;
  - o dumping of soil, rubbish, ashes, garbage, waste, etc.;
  - o use or application of pesticides, insecticides, herbicides, chemicals or other toxic materials other than for purposes of ecological restoration;
  - o excavation, extraction, removal or exploration for loam, clay, sand, gravel, marl or other minerals or substances; and
  - o use or operation of motorized vehicles including snowmobiles and all-terrain vehicles, other than for purposes of ecological restoration

As noted above, Staff believe that the adoption of a Conservation Easement will help ensure that the Property has an enthusiastic and knowledgeable steward who will be able to see the long term plan for the Property through, all while retaining ownership in the name of the City and ensuring that it remains available for residents to enjoy for years to come.

The Committee directed that the following resolution be forwarded to City Council for consideration:

BE IT RESOLVED that the Council of the City of Fredericton hereby authorizes and approves the granting of a Conservation Easement over a portion of city-owned property located off Thompson Drive (PID 75457440) to the Nashwaak Watershed Association Inc.; AND THAT the Mayor and City Clerk be authorized to execute the necessary documents to facilitate this direction.

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