

Nova Scotia Community Lands Trust Discussion Paper

Objective

Nova Scotians have expressed a desire to acquire and make use of lands that they value. When large privately held landholdings come on the market, individuals and communities may be interested in purchasing the land but they currently do not have a mechanism to do so. A new model is being considered to incorporate community participation in the land purchase process and give a wider range of individuals and groups an opportunity to contribute to the process. This Discussion Paper proposes a number of mechanisms that would allow the citizens of Nova Scotia to do so.

Introduction

In terms of land base, Nova Scotia is the second smallest province in Canada. Of our 55,284 square kilometers of land base, the vast majority is privately owned, with only about 28% being owned by the province. This leaves limited land available for conservation, natural resource development, and community access and use. One approach to addressing these land constraints and conserving land for future generations is for the province to buy properties of value and significance as they come available. In the past fiscal year (2009-

10) the government spent more than \$75 million for land purchases. This budgetary allocation was an unusual occurrence, and is not expected to be repeated in the near future given government financial constraints.

Direct government funding of land purchases does not provide an opportunity or mechanism for community participation in the land purchase process, whether that participation is to identify the land to be purchased, make decisions regarding the activities and uses that will take place on the land after it has been bought, or to contribute money to pay for the land. When JD Irving Limited decided to sell all of its lands in southwestern Nova Scotia, community groups and individuals got together to form a lobby group to encourage government to buy the land. Buy Back Nova Scotia also proposed a number of funding strategies as an alternative to outright purchase by the province. This included establishing a fund or trust which would allow local residents to contribute money to buy lands of interest in their communities.

The Department of Natural Resources has prepared a Discussion Paper to consider the issue and to consult with the public about the topic of community funding for land purchases. The

Community Lands Trust Discussion Paper discusses funding mechanisms and presents options for the development of a mechanism through which citizens, Mi'kmaq communities, organizations, and businesses can participate in the purchase of land to be used for a range of community and traditional purposes, including:

- Recreation
- Hunting and fishing
- Forestry
- Conservation
- Agriculture
- General access and use.

Background

The conservation and protection of Nova Scotia's land has gained importance over the past two decades, as communities have witnessed the loss of some of their most treasured properties to development or to foreign ownership. The province's relatively limited land base and its attractiveness to both local and offshore developers have created a sense of urgency among citizens to maintain their ability to access and use lands traditionally available for community purposes. At the same time and moving forward, even though land prices are extremely low, the province and municipalities have limited financial capacity to invest more money in land purchases.

Against this backdrop is the tremendous growth in both Canada and the United States in the establishment of land trusts. These trusts have raised a significant amount of money from communities and industry to buy large areas of land to be conserved for forestry and agricultural uses, community enjoyment and access, and ecological protection. This Discussion Paper will consider whether a land trust would be a good tool to help Nova Scotians acquire land for community purposes, and will also consider other mechanisms for achieving that objective.

Currently, a number of land trusts, such as the Nova Scotia Nature Trust, the Nature Conservancy of Canada and the Kingsburg Coastal Conservancy, are working in Nova Scotia to identify and acquire land for ecological protection purposes. These groups have been successful at raising funds for, and attracting attention to, the protection of numerous smaller land holdings throughout the province. The land purchased by these organizations helps the province meet its land protection goal of legally protecting 12% of Nova Scotia's land base by 2015, as set out in the *Environmental Goals and Sustainable Prosperity Act*.

While land can be purchased to address protection goals through these mechanisms, they do not create a way for communities and individuals to contribute funding for land of broader community interest, including traditional activities and uses. The mandates of established Nova Scotia land trusts focus almost exclusively on ecological preservation and do not address the purchase of land for community purposes. Creative strategies are needed to facilitate the purchase of land to support community priorities.

Several other land purchase organizations exist in Nova Scotia, raising funds in the community to further their objectives. These community groups build their funding campaigns around the purchase of specific parcels of land. For example, the Mahone Islands Conservation Association focuses on buying islands in Mahone Bay to ensure that they are available for traditional use by the community. The Friends of Redtail Society is working to buy forestry land in the Pictou area to protect it from being clear-cut and to preserve the upland watershed, deer runs, essential waterways, and remnant stands of old growth forest. While these organizations have been successful at achieving local land purchase goals,

working as independent organizations they currently lack the capacity to acquire larger land holdings as well as the ability to provide a province-wide mechanism to facilitate community land purchases.

The following paper outlines a number of potential approaches to enable community participation in the acquisition of land in Nova Scotia.

Community Lands Funding and Purchase Approaches

APPROACH

Community Lands Trust

Establish a land trust to help local communities and groups contribute to the purchase of, and buy, land of interest to that specific locality or community. The land would be purchased for the benefit and use of the community.

How would a community lands trust be established?

A community lands trust would be established by government under the *Finance Act*, through a trust indenture. The indenture would set out the rules of the trust and would name the trustees who would be responsible for administering the trust and making decisions about trust fund purchases.

An example of a trust set up by government for land purchases is the Crown Share Land Legacy Trust (CSLLT) Fund. It makes money available to Nova Scotia land trusts so they can buy private land for conservation and protection. The land trusts must contribute matching funds from other sources towards the cost of each land purchase. Through a board of trustees, the province provides an incentive for existing land trusts to

acquire land and attract additional fundraising by providing funding at the following levels:

- Up to 50% of the value of a property valued at less than \$250,000.
- Up to 60% of the value of a property valued at between \$250,000 and \$1,000,000.
- Up to 70% of the value of a property valued at \$1,000,000 or more.

In January 2010, the CSLLT invested in the protection of almost 1,485 hectares of some of Nova Scotia's most critical habitat, including large tracts of forests, lakes, wetlands and shoreline along the Tusket and Clyde River systems.

The trustees appointed by government could be a community group incorporated for that purpose under the *Societies Act*. The Community Lands Trust Society could apply to the federal government to become a charitable organization. If the Community Lands Trust Society wanted to own the land, it would need to comply with applicable provincial and federal legislation.

How would the land be purchased?

Under a community lands trust model, money would be raised through the donations and fund raising efforts of community members. All money raised would be held in trust by the Community Lands Trust Society and used to buy lands of interest. Specific campaigns could be organized to raise funds for a specific purchase. The trust could also receive contributions from foundations and government.

Who would own the land?

The community lands trust would own, and be responsible for managing, the lands acquired under this land purchase option.

How would the community lands trust be administered?

A community lands trust would be managed and administered by board of trustees, and could hire paid staff. Any cost of administration would come from a portion of the money donated and raised by the community.

How would the land be managed?

Under a community lands trust model, stewardship of the land would be the responsibility of the community lands trust. The community lands trust would manage the land through paid personnel or community volunteers. It might also be possible to enter into a land management agreement with the appropriate provincial or municipal government department.

What are the limitations of a community lands trust model?

The community lands trust option has certain limitations:

- A land trust set up specifically for community land purchases has not been established in Nova Scotia before.
- Because land is owned by a non-profit organization, stewardship and management would have to be organized by volunteers or paid staff in the community.
- Although the goals of a community lands trust would be unique, some might perceive it to be in competition with established conservation-oriented land trusts in the province.

- Challenges around the governance and administration of the land may arise, including the cost of administration, which would use up a portion of the funds raised by the community.
- Ultimately, the community does not hold title to the land and may not have a say in its use, since title is held by the trust.
- Conflict could arise between and among various community groups regarding campaigns for various parcels of land.

How would a community lands trust address the goal of community participation in land purchase?

A community lands trust would provide a new mechanism through which community members could donate money or land toward the acquisition of specific lands of interest. This option also creates a new entity independent of government with the mandate of identifying lands of interest, promoting and organizing fundraising efforts, and overseeing stewardship and land management. If the fund were successful in generating contributions, this approach might make a large land purchase possible.

APPROACH

Community Interest Groups

When land of interest to a specific community becomes available for purchases or in situations where the local community is interested in ensuring that certain lands in an area are purchased and maintained for public community use, local citizens establish a community group focused on land purchases. In Nova Scotia, the Mahone Islands Conservation Association (MICA) and The Friends of Redtail Society are examples of community interest groups, which work to buy lands of community interest.

MICA Case Example

MICA was established in 2002 to protect and conserve the unique environmental qualities of the shoreline and islands of Mahone Bay, and the traditional, social, and recreational access of community members to the islands. MICA identifies specific islands and lands of interest and negotiates purchases or donations of key properties. In carrying out its mission, MICA develops funding proposals to all levels of government for the acquisition of lands of interest. Each purchase is considered separately, with the province or municipality providing the funding they

are able to contribute for a specific campaign. MICA then initiates a public funding campaign to raise the balance of the funds for a specific purchase. MICA does not hold title to acquired lands, but turns ownership over to the provincial Department of Natural Resources. In taking on ownership of the land, the province enters into a stewardship agreement with MICA, which makes MICA responsible for the management and oversight of the lands. Since 2002, MICA has contributed approximately \$500,000 to the acquisition and conservation of community islands in the Mahone Bay area.

How would community interest groups be established for the purpose of land purchase?

As with any organized community effort, the establishment of a community interest group would begin with the common desire to purchase lands of community significance. Options exist for community groups to form and register as a non-profit society under *Societies Act*.

How would land be purchased?

Under the community interest group option, money would be raised and held by the organization and used in the purchase of land. A wide range of fundraising options exist, including donation drives, auctions, benefit concerts, and ticket raffles. Legal and financial services related to the purchase of land must be sourced and funded by the community interest group. In some cases the province or municipality would contribute to the purchase, but if funding contributions were made by the provincial government, the ownership of the land must be turned over to the province.

Who would own the land?

Under the community interest group option, if all of the funds were raised by the community organization, the community group would own the land and could donate the land to the province, if so desired. If the province contributed funds for the purchase, then the land could be owned by the province or by the community organization, depending on the funding source within government.

How would community land purchase groups be administered?

Community organizations that purchase land are administered by volunteers or paid staff. All costs associated with the administration of the organization and its land purchases would come out of the money donated and raised by the community. The community group could also enter into a long term agreement with the province to work together to purchase lands. In such a case, the province may agree to contribute staff time and in kind resources to help with legal, survey and other land related activities.

How would the land be managed?

Under the community interest group option of land purchase, stewardship is the responsibility of the organization's staff and volunteers. If the land is turned over to the province, the land could be managed by the province or could be managed by the community group under a stewardship agreement.

What are limitations of the community land purchase group option?

The community interest group option has certain limitations:

- Establishment of a community interest group is highly dependent on the motivation and capacity of community volunteers
- Challenges related to the administration and sustainability of all non-profit organizations would come into play.
- Land could only be acquired in small parcels.
- No overarching organization or coordinated effort for province-wide initiative - acquisition could be piecemeal.

How would a community land purchase group approach address the goal of community participation in land purchase?

Community interest groups fully address the goal of community participation in the acquisition of land. At their very nature, community interest groups are grass-roots efforts and activities focused on meeting community needs and addressing community interests and values. This option represents the purest form of community participation in that the

identification, purchase, and management of lands of interest come directly from community members. The only drawback to this approach is the ability of such groups to buy large tracts of land, and to raise money quickly for land purchases.

APPROACH

Community Lands Special Purpose Fund

The provincial government establishes and administers a special purpose fund to allow individual citizens and groups to contribute money for land purchases. Land of interest to local communities or of general value is purchased through the fund. The special purpose fund purposes would need to be clearly defined in order to meet the government accounting rules. Under this option, to the extent a provincial contribution would be used in the first year, the province could contribute seed money to the fund and call upon communities and individuals to contribute money to the fund. The contributions would be used for specific land purchase campaigns or generally to fund the purchase of land that would meet the fund rules. Land purchase objectives, or campaigns would be determined by government and communities working together, and

land purchase decisions would be determined based on the contributions raised by the community.

How would a community lands special purpose fund be established?

A community lands fund would be set up as a special purpose fund under the *Finance Act*. Special purpose funds are monies set aside from normal operations, for a specific designated purpose. The fund would be created by the province with a specific mandate to purchase land for community use.

If the province contributed seed money to the fund, the land purchase would need to be made within the same fiscal year as it is not possible to carry over budget dollars to a future year. External contributions of money to the fund would be considered deferred revenue and could be used in future years for specific land purchases subject to appropriation.

How would land be purchased?

Under the community lands special purpose fund model, lands of interest would be purchased by the province in consultation with community groups. Funds donated by community members would be used for the

purpose contributed – either to purchase specific parcels of land or generally for land purchases to provide for community use and access.

Who would own the land?

Either the Province of Nova Scotia or a community group would own land purchased under this option. The special purpose fund would not own the land.

How would the community lands special purpose fund be administered?

The community lands special purpose fund would be administered by government staff, for example staff at the Department of Natural Resources.

How would the land be managed?

Land acquired under this option would be managed by the province; however a local community group could enter into a stewardship agreement with the Department of Natural Resources and take on responsibility for managing the lands.

What are limitations of the community lands special purpose fund?

The community lands special purpose fund option has certain limitations.

- Any money contributed to the fund by the province could not be carried from one fiscal year to the next.
- The community's ability to acquire large parcels of land would be limited due to the limited nature of such a fund.
- Under this option, the community would have a say in the purchases made with funds raised by the public, but public involvement would be more restricted than under a community land purchase group.
- Without a specific campaign for a specific target, community interest in contributing to the fund might be more limited.

How would a community lands special purpose fund address the goal of community participation in land purchase?

A community lands special purpose fund would offer community members a mechanism for donating money to be used specifically for the purchase of lands of interest. If the fund was

successful in generating contributions, this approach might make a large land purchase possible.

APPROACH

Land Use Easements

Land use easements are legal agreements established between a landowner and a nonprofit organization or governmental entity to permanently limit or conserve the uses of land. A land use easement does this by restricting the amount of development and activities that can take place in the future. Since the development value of the property cannot be realized, the market value of the property may be reduced to that of "open land", i.e. the value of the land for agricultural or forest uses¹. Land use easements can be created to support a number of goals or objectives, including conservation, agriculture, forestry and public access. Easements run with the land, meaning that even when the land changes hands, the restrictions continue.

¹ From *Working Forest Conservation Easements: A Primer for Forest Landowners* (2001).

Conservation Easements

Established under the *Conservation Easement Act*, conservation easements are agreements entered into between a land owner and an eligible body that:

1. Grant rights and privileges to an easement holder over an owner's land that relate to the purposes for which the conservation easement is granted.
2. May impose obligations, either positive or negative, on an owner or an easement holder, or both, respecting an owner's land that relate to the purposes for which the conservation easement is granted.
3. Are made for the purpose of protecting, restoring or enhancing land that:
 - a) Contains natural ecosystems or constitutes the habitat of rare, threatened or endangered plant or animal species,
 - b) Contains outstanding botanical, zoological, geological, morphological or paleontological features,
 - c) Exhibits exceptional and diversified scenery,
 - d) Provides a haven for concentrations of birds and animals,

- e) Provides opportunities for scientific or educational programs in aspects of the natural environment,
- f) Is representative of the ecosystems, landforms or landscapes of the province.

Working Forest Easements

A working forest easement refers to an agreement between a legal body, such as a non-profit organization or government entity, and a landowner that restricts specified development rights on the owner's land and protects the forest's economic value by assuring sustainable forest practices and encouraging long-term land stewardship. A working forest is a forest that is actively managed and accessible for timber harvesting.

Working forest easements are designed to allow forestry to continue, while prohibiting more permanent types of development such as residential or industrial uses that displace forest lands. This differs from conservation easements, which are generally established to keep the land "forever wild", and where forest harvesting is prohibited. Working forest easements under this option can enable communities to continue deriving the benefits of privately-owned forestry lands without worrying that they will be

lost to development, at a much lower cost than purchasing the land. Currently, no legislation exists in Nova Scotia designed for the establishment of working forest easements.

Agricultural Easements

Agricultural easements are used to enable land to remain in agricultural use by preserving and protecting its agricultural soils, viability, and productivity. No activity that would significantly impair the actual or potential agricultural use of the land, such as conversion to subdivisions, would be permitted.

Community Access Easements

Like the easements described above, a community access easement refers to an agreement between a legal entity, such as a non-profit organization or government department, and a landowner which ensures access and use of the owner's land (as specified in the easement) by members of the community.

How would land use easement options be established?

Conservation easements are governed by the *Conservation Easement Act* of Nova Scotia (2001). New legislation

would need to be put in place to establish working forest, agricultural and community access easements.

How are easements used in the purchase of land by communities?

Easements are used to extinguish the development rights on lands of interest. Under this option, easements would be used to engage commercial partners in the purchase of land, thereby reducing the total cost of the land purchase. There are essentially two ways for easements to come into play:

1. A community organization or government agency purchases an easement from a current landowner. Development rights are then forever restricted, and no land changes hands.
2. When land comes on the market, the community group or government agency purchases an easement which drives down the price enough for a prospective new landowner to purchase and continue forestry activity subject to the easement.

Who would own the land?

The easement would be held by the community interest group or a government entity, while the land itself would be owned by the original land owner or a commercial entity, such as a forestry company or agricultural producer.

How would these land use easements be administered?

Land use easements are administered by the legal entity that holds the easement. In the case of a conservation easement in Nova Scotia, an organization deemed eligible under the Act can hold and administer an easement. These eligible bodies include:

- American Friends of Canadian Land Trusts
- Archaeological Land Trust of Nova Scotia Society
- Ecology Action Centre
- Nova Scotia Nature Trust
- Nature Conservancy of Canada
- Bras d'Or Preservation Foundation
- Ducks Unlimited Canada
- Federation of Nova Scotia Naturalists
- Kingsburg Coastal Conservancy Association

- Blomidon Naturalists Society
- Shubenacadie Canal Commission

All costs associated with administering, monitoring, and enforcing the easement are the responsibility of the easement holder.

How would the land be managed?

Under a land use easement approach, land would be managed by the landowner, subject to the terms of the easement. The easement holder would be responsible for monitoring and enforcing the easement.

What are limitations of the land use easement option?

The creation of land use easements has certain limitations:

- Community participation in the purchase of the easement would still require the creation of a fund or trust to raise money for the purpose of acquiring the easement.
- The amount of capacity required to oversee easements (e.g., monitoring, legal work) can be prohibitively high for most community organizations.

- A community land purchase group would need to be formed to identify lands over which easements were desired.
- The market value of the land is decreased and the land owner might not be interested in selling an easement.
- Potential for conflict can arise, as different parties hold different rights to the use of the land.
- Some flexibility in future land use planning is lost.

How do land use easements address the goal of community participation in land purchase?

Land use easements attract partners with both commercial and conservation interest thereby leveraging community funds in the purchase of the land. Land use easements allow communities to limit development and derive economic value from the working part of the land, while ensuring access to the rest. This approach preserves traditional access and uses at the lowest cost to the community.

What Next?

The Province would like to know what Nova Scotians think about contributing money to purchase land for community uses. While a number of options exist to facilitate the process, the direction taken depends upon the will and interest of communities to acquire and own lands that are important to them.

With the above information in mind, please consider the following questions:

- What, if any, public land use issues exist in your community?
- What do you think should be done about it?
- Should your community acquire and own land?
- Would you be willing to contribute? How?
- Do you think it is important that communities in Nova Scotia acquire land for their own access and use?
- What do you see as the best option for purchasing and managing land that is important to your community?

The Department of Natural Resources is interested in hearing what you think about community land purchases. Public meetings will be held in eight locations across Nova Scotia. During these facilitated meetings, community

land purchase options will be presented and your input and opinions will be welcomed.

Follow the [Community Lands Trust](#) link on the Department of Natural Resources website for information on a community meeting in your area.

Comments on the discussion document will be accepted in person at all public meetings, or in writing until October 15, 2010. You are invited to comment via email landweb@gov.ns.ca or in writing at:

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