



**POLICY FOR ACCEPTANCE OF CONSERVATION AND
OTHER LAND AND WATER PROTECTION ARRANGEMENTS**

Approved by the Board of Directors August 15, 2015
Revised, January 6, 2017

The Board of Directors of the Geneva Lake Conservancy (“GLC”) has established this policy, for acceptance of conservation easements and other land protection arrangements (collectively, “Projects”). This policy guides, rather than limits, GLC’s evaluation of any proposed acquisition by it of any proposed new conservation easement or other involvement in a land or a water protection project. The Board retains discretion over Project selection and will evaluate each proposed Project on its own merits, using careful evaluation of the property, with respect to both potential public benefit from the Project and GLC resources.

**I. GLC PROCEDURES FOR EVALUATION OF CONSERVATION EASEMENTS AND
OTHER LAND AND WATER PROTECTION ARRANGEMENTS**

This policy shall be interpreted and applied in a manner consistent with the following procedures:

1. The Board of Directors of GLC will review and act on every proposed Project according to the provisions of this Policy and will cause to be documented its consideration of this policy for each proposed Project.
2. GLC Staff will prepare a written proposal for each Project (“Project Proposal”), outlining the process of its acquisition and containing its estimate of the costs that each counter-party to the Project can expect to incur, in the preparation of the Project documentation. The Project Proposal will include a plan for contribution to both the Stewardship Fund and the Legal Defense Fund of GLC and must be signed by the other

party or parties, prior to the commencement by GLC of its involvement in more than negotiation of the Project.

3. GLC Staff will include, within each Project Proposal, a request and supporting information designed to encourage each counter-party to allow reasonable public access or educational opportunities, or both, within the Project's site, the details of which will be included within the terms of any recorded instrument relating to the Project. In addition, the Project Proposal will inform each counter-party of all aspects of the Project documentation and the requirement that GLC is to defend and uphold at least those of its rights that are provided for in the Project documentation.
4. Prior to acceptance by GLC of a Project, GLC will inform each counter-party, in writing, of the requirement that GLC discourage any amendment to the Project documentation, as is more fully described in GLC's policy for an amendment to Project documentation, hereinafter; that Project documentation may be amended only for an extenuating and compelling reason and, then, only when there will be no net loss of the conservation value that the Project was designed to protect.
5. Prior to acceptance of a Project, GLC will determine and document whether any proposed reserved rights allowed to any counter-party or other person by the Project documentation have a potential of interfering with, or of having an adverse impact on, the conservation value that Project was designed to protect.
6. GLC recognizes that land protection may be achieved in a variety of ways other than its acquisition of a Project, that land protection may be accomplished through cooperation with other organizations and institutions, and GLC will actively pursue such opportunities, both before and after the closing of the Project, to the extent consistent with this policy and the following criteria.

II. GLC REQUIREMENTS FOR ALL SUCH PROJECTS

In order that a Project will qualify for GLC acceptance, the Board of Directors of GLC must find that it meets *all* of the following four requirements:

1. Protect land or water that has significant conservation values that are consistent with the then Mission Statement of GLC.
2. Protect land or water located within GLC's Service Area, which includes the Project Focus Areas approved by the Board of Directors in November, 2016 as part of its 10-Year Comprehensive Plan. Unusual circumstances may warrant acquisition by GLC of a Project outside the Project Focus Areas, so defined.
3. Protect land or water, for which the undertaking by GLC of monitoring, management and enforcement can be met by GLC, logistically, legally and financially, and for which each counter-party has fulfilled all of obligations undertaken.
4. Protect only land or water that is of sufficient magnitude or other significance, that its conservation value is likely to remain intact, even if adjacent land is developed, or sufficient neighboring land or water is either protected or likely to be, protected, so as to have the same result.

III. GLC SELECTION CRITERIA

Before accepting a Project for protection, GLC will determine that it meets at least one of the following criteria, in addition to all of the applicable IRS criteria defined in Sec. 170(h)(4)(A) of the IRS Code:

1. Land or water that offers significant relief from urban and suburban encroachment and which improves the environmental character of the vicinity of the Project.
2. Land or water that provides scenic views from public roads or trail corridors.
3. Land or water that provides public recreational or educational opportunities consistent with the conservation value of the property.

4. Land or water that provides a buffer zone or is adjacent to or in close proximity to an existing protected area.
5. Land or water that is important for the preservation of the quality and quantity of surface or underground waters, or for providing the control of flooding.
6. Land or water that contains habitat for plant or animal species classified by the State or Federal government as rare, endangered or threatened.
7. Land or water that contains exemplary or critical habitat for plant or animal species not classified as rare, endangered or threatened.
8. Land or water that is free from hazardous waste or other contamination that could expose GLC to liability.
9. Land or water that has physical access, for inspection, and will not present difficulty, in monitoring compliance with GLC's undertakings.
10. Land or water that is located within a Natural Area, as then defined by SEWRPC.
11. Land or water that is located within a Primary Environmental Corridor, as defined by the Walworth County Land Use Plan then in effect.
12. Land or water that is located in "Prime Agricultural Land", as defined by the Walworth County Land Use Plan then in effect.
13. Land or water identified for protection in the Walworth County Park and Open Space Plan then in effect.

IV. GLC REJECTION CRITERIA

Even if a proposed Project meets all of GLC's requirements set forth in Section II, and at least one of the Selection Criteria set forth in Section III, the Board of Directors of GLC has the discretion to decide that any or all of the following criteria may be relevant and may constitute grounds sufficient for rejecting a proposed Project:

1. The Project primarily benefits a single landowner or developer and is not part of larger strategy to accumulate a number of like properties whose protection will yield a greater benefit consistent with the Conservancy's mission.

2. The Project undertaking by GLC may be unusually difficult to enforce, because of special circumstances, such as multiple or fractional ownership, irregular configuration or inconvenient location.
3. Is the vicinity of the Project capable of development – i.e., will GLC’s participation “save” anything?
4. Adjacent land is being, or is likely to be, developed in a manner that would significantly diminish the conservation values of the property in question.
5. The counter-party requires a provision in Project documentation that, in the judgment of GLC, seriously diminishes the Project’s conservation value or the ability of GLC to enforce its rights in the Project documentation.
6. The Stewardship obligation to be assumed by GLC for the Project is likely to exceed the capacity of GLC for Stewardship.
7. The capacity of GLC is likely to be used to lessen or absolve a person or entity, other than GLC, from mandated clean-up obligations.
8. An environmental physical hazard associated with the Project is poses a liability risk to GLC.
9. An ethical or public image problem for GLC can be expected from acceptance by GLC of the Project.
10. The Project has a defect in title.
11. An encroachment, an easement or a boundary dispute exists that could adversely affect the ability of GLC to meet its stewardship obligations for the Project.
12. The interests of the general public suggest that the Project should considered by another organization or governmental entity.

V. OBLIGATIONS OF THE COUNTER-PARTY

Absent compelling circumstances warranting an exception, GLC’s acceptance of a Project is contingent upon the following:

1. As some conservation easements qualify as “qualified conservation contributions” under Section 170(h) of the Internal Revenue Code, a federal income tax deduction may be available to the counter-party. Such a deduction is not available if a donor lacks “donative intent” – that is, the counter-party is making the donation because of requirement that it be done (for example, pursuant to a condition in a subdivision approval or other permit), or in cases where the counter-party is receiving some consideration, in return for transferring the easement. Each counter-party shall consult professional advisers of its own selection. No person is authorized to make any representation, on behalf of GLC, regarding the availability or amount of any such deduction. If a counter-party intends to seek a tax deduction, appraisals of the property, pre (within 6 months of signing) and post Project must be obtained and submitted to GLC prior to the signing of the Project documentation.
2. As part of a closing of the acceptance by GLC of any Project, the counter-party is required to sign a written commitment, (a) acknowledging that neither GLC, nor any person acting on its behalf, has made any representation about the tax implications of the proposed donation, (b) representing that the counter-party is not, as of the date of the closing, required to act under any condition to subdivision approval or other permit, and (c) agreeing that the counter-party will not claim a tax deduction or credit in respect of the Project unless, consulted a competent adviser, the counter-party believes in good faith that the counter-party is entitled to the deduction or credit. In any case in which the counter-party will not seek a deduction or credit, in connection to the Project, a written undertaking, only to that effect, may be substituted.
3. Treasury Regulation Section 1.170A-14(g)(2) requires that any lien existing at the time of the closing of an acquisition by the recipient of a conservation easement shall be subordinated to the conservation

easement. GLC will ask for a copy of the owner's current title report and undertake a last owner and lien search by a licensed title examiner. If a lien encumbers the property, the counter-party must obtain from any lien holder a signed subordination agreement subordinating the lien right to the right of GLC to enforce the conservation purposes of the Project.

4. In order to avoid imposing financial obligations upon GLC not contemplated by it, each counter-party must agree that the counter-party retains financial responsibility for:
 - a. Costs incurred by GLC arising from its consideration of and response to any future request the counter-party makes to GLC for the modification of Project documentation, including but not limited to the cost of GLC staff time, use of other GLC resources, and attorneys and/or consultant fees that GLC reasonably incurs, as a result of the request; and
 - b. Costs incurred by GLC arising from a successful enforcement action by GLC against a counter-party, or a counter-party's successor in interest, of agreement terms or conditions, including, but not limited to attorneys' and/or consultant's fees that GLC incurs, as a result of such enforcement against the counter-party.

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**WORK SHEET FOR EVALUATION OF
POTENTIAL LAND PROTECTION PROJECTS**

The Geneva Lakes Conservancy (“GLC”) is considering a potential conservation protection project for property located at _____ (“the Project”). Details of the GLC’s consideration of the Project are set forth below:

PROJECT SUMMARY

Project/Property Name:

Date of Initial Contact with Landowner:

Staff Member Handling Initial Request:

How contact was initiated:	--Landowner contacted GLC
	--GLC contacted landowner
	--Other

Landowner Information

Name:

Address:

City/State/Zip

Phone:

Property Location

Township/Municipality

Tax ID Number

Address:

Plat Map Page No.:

Legal Description

ACRES OF PROPERTY:

Is property located within a GLC Project Focus Area:

Hackmatack

Ivanhoe Lake Area

Lakes Watershed Areas

Kettle Moraine State Forest Area

Sugar Creek Valley Area

Turtle Creek Area

White River Corridor

If not, why should this property be considered by the board of directors:

Likely Land Protection Tool: Conservation Easement donation Land purchase

Conservation easement purchase Land donation Purchase at bargain sale

Other, please explain _____

I. With respect to mandatory criteria set forth in Section II of the GLC's Policy on Acceptance of Conservation and Other Land and Water Protection Arrangements, the GLC has determined that:

A. The Project protects land or water that has significant conservation values that are consistent with the current Mission Statement of GLC.

Yes No

B. The Project will protect land or water located within GLC's Project Focus Areas:

Yes No

C. The Project will protect land or water, for which the undertaking by GLC of monitoring, management and enforcement can be met by GLC, logistically, legally and financially, and for which each counter-party has fulfilled all of objections undertaken.

Yes No

D. The Project will protect only land or water that is of sufficient magnitude or other significance that its conservation value is likely to remain intact, even if adjacent land is developed, or sufficient neighboring land or water is either protected or likely to be, protected, so as to have the same result.

Yes No

II. With respect to optional criteria set forth in Section III of the GLC’s Policy on Acceptance of Conservation and Other Land and Water Protection Arrangements, the GLC has determined that:

A. The Project will protect land or water that offers significant relief from urban and suburban encroachment and which improves the environmental character of the vicinity of the Project.

_____ Yes _____ No _____ TBD

B. The Project will protect land or water that provides scenic views from public roads or trail corridors.

_____ Yes _____ No _____ TBD

C. The Project will protect land or water that provides public recreational or educational opportunities consistent with the conservation value of the property.

_____ Yes _____ No _____ TBD

D. The Project will protect land or water that provides a buffer zone or is adjacent to or in close proximity to an existing protected area.

_____ Yes _____ No _____ TBD

E. The Project will protect the land or water that is important for the preservation of the quality and quantity of surface or underground waters, or for providing the control of flooding.

_____ Yes _____ No _____ TBD

F. The Project will protect the land or water that contains habitat for plant or animal species classified by the State or Federal government as rare, endangered or threatened.

Yes No TBD

G. The Project will protect land or water that contains exemplary or critical habitat for plant or animal species not classified as rare, endangered or threatened.

Yes No TBD

H. The Project will protect land or water that is free from hazardous waste or other contamination that could expose GLC to liability.

Yes No TBD

I. The Project will protect land or water that has physical access, for inspection, and will not present difficulty, in monitoring compliance with GLC's undertakings.

Yes No TBD

J. The Project will protect land or water that is located within a Natural Area, as then defined by SEWRPC.

Yes No TBD

K. The Project will protect land or water that is located within a Primary Environmental Corridor, as defined by the Walworth County Land Use Plan then in effect.

Yes No TBD

L. The Project will protect land or water that is located in “Prime Agricultural Land”, as defined by the Walworth County Land Use Plan then in effect.

_____ Yes _____ No _____ TBD

M. The Project will protect land or water identified for protection in the Walworth County Park and Open Space Plan then in effect.

_____ Yes _____ No _____ TBD

III. With respect to potential grounds for GLC Rejection of the Project set forth in Section IV of the GLC’s Policy on Acceptance of Conservation and Other Land and Water Protection Arrangements, the GLC has determined that:

A. The Project primarily benefits a single landowner or developer and is not part of larger strategy to accumulate a number of like properties whose protection will yield a greater benefit consistent with the Conservancy’s mission.

_____ Yes _____ No _____ TBD

B. The Project is unusually difficult to enforce.

_____ Yes _____ No _____ TBD

If yes, the difficulty arises from the following circumstances:

1. The vicinity of the Project is capable of development – i.e., will GLC’s participation “save” anything?

_____ Yes _____ No _____ TBD

2. Adjacent land is being, or is likely to be, developed in a manner that would significantly diminish the conservation values of the Project.

_____ Yes _____ No _____ TBD

3. The counter-party requires a provision in Project documentation that, in the judgment of GLC, seriously diminishes the Project's conservation value or the ability of GLC to enforce its rights in the Project documentation.

_____ Yes _____ No _____ TBD

4. The Stewardship obligation to be assumed by GLC for the Project is likely to exceed the capacity of GLC for Stewardship.

_____ Yes _____ No _____ TBD

5. The capacity of GLC is likely to be used to lessen or absolve a person or entity, other than GLC, from mandated clean-up obligations.

_____ Yes _____ No _____ TBD

6. An environmental physical hazard associated with the Project poses a liability risk to GLC.

_____ Yes _____ No _____ TBD

7. An ethical or public image problem for GLC can be expected from acceptance by GLC of the Project.

_____ Yes _____ No _____ TBD

8. The Project has a defect in title.

_____ Yes _____ No _____ TBD

9. An encroachment, an easement or a boundary dispute exists that could adversely affect the ability of GLC to meet its stewardship obligations for the Project.

_____ Yes _____ No _____ TBD

10. The interests of the general public suggest that the Project should be considered by another organization or governmental entity.

_____ Yes _____ No _____ TBD

IV. Following are special circumstances to be considered in connection with the potential project:

V. FINANCIAL ASSESSMENT

Does this project involve a donation or partial donation by the landowner?

Does the project involve a GLC purchase?

If yes, what is the estimated purchase price?

What is the funding status for this project?

Other than a possible purchase price, what are the estimated costs to the GLC to complete this project?

Appraisal _____

Survey _____

Legal fees _____

Title Insurance _____

Transfer fee _____

Closing fee _____

Staff time _____

Baseline doc _____

Stewardship _____

Legal defense _____

Has a detailed financial spreadsheet been created for land stewardship for this project?

_____ Yes _____ No

If yes, where is the spreadsheet located? _____

Has the landowner been notified of the potential conservation stewardship, legal defense and other costs associated with this project?

_____ **If yes, please attach notification letter**

Dated: _____, 20__.

By: _____
Authorized GLC Representative

This information was reviewed and the project opportunity was _____ *approved*
_____ *rejected* by the GLC LPC COMMITTEE on _____, 20__.

This information was reviewed and the project was _____ approved
_____ rejected by the GLC Board of Directors on _____, 20__.

Recordkeeping and Due Diligence:

What is the permanent name assigned to this project _____

Where are the hard files for this project stored: _____

Where are the e-files for this project stored _____

Reminder: It is imperative that staff follow the Geneva Lakes Conservancy's Records Retention Policy as it relates to this project.

