
Memorandum

To: File

From: Julia Nave, Southeast Alaska Program Director

Subject: Planning for the future of Gustavus Forelands Preserve

Date: January 6, 2024

Introduction

This memo summarizes the results of an internal review of the current management of the Gustavus Forelands Preserve and options for the future of the preserve. Although possible disposition of the preserve has been part of the Alaska chapter's thinking since its creation, the chapter should consider the future of the Gustavus Preserve with a holistic perspective and not solely with the goal of disposition. A thorough review of the acquisition history and current circumstances will show TNC's legal and ethical commitments that must be considered. Furthermore, as the Chapter explores its goals and those of our partners, those conversations may lead to different paths for moving forward.

Background

Conservation Goals

TNC's original conservation goals and plan for the acquisition are documented in the Gustavus Real Estate Project Abstract dated July 13, 2005. It states that "The overall plan for management of the Conservancy's holdings at Gustavus will emphasize habitat protection while allowing continued public access and recreational or subsistence use." The goals can be summarized as follows:

- Protection of critical habitat and near-shore areas that are home to key conservation targets including lodgepole pine-forested wetlands, sedge-dominated wetlands, coastal wetlands and tidal flats and coastal-willow thickets;
- Expand local awareness of the area's biodiversity;
- Encourage compatibility of human use with the area's natural systems.

With regards to long-term ownership, the Project Abstract makes it clear that the Chapter wanted to keep the door open to transferring property or entering into a co-management arrangement.

The Chapter has binding commitments from the original acquisition of the Gustavus Preserve based on legal restrictions and funding obligations. TNC Global procedures and policies outline conditions for transfer of TNC-owned lands, which come from our legal requirements under U.S. law as a charitable

organization. These are not necessarily barriers to action or transfer but must be considered and clearly addressed if the Chapter wishes to transfer the property. At Gustavus, the key commitments and requirements for a transfer include:

- A State-held conservation easement that restricts activities and runs with the property;
- Donor and public commitments to keep the land undeveloped and open to the public;
- A requirement to show the transferee's commitment and capacity to steward conservation values;
- An obligation to see the conservation values protected into the future.

The State-held conservation easement and donor commitments will need to be passed on to any future owner, released or addressed in some way if the Preserve is transferred. The State-held conservation easement will run with the land and bind the new landowner. While possible to pursue changes or a release of the conservation easement by working with the State and Federal government, it would take significant time and the outcome is highly uncertain. The donor and public commitments made by TNC Alaska can be passed to the new landowner and documented through a donation agreement, memorandum or resolution.

TNC policies and procedures require TNC Alaska to demonstrate the commitment and capacity of a potential transferee to own and steward the property. Commitment could be shown through the entity's mission, an agreement, resolution, ordinance or law, to name a few examples. Capacity can be shown by financial resources, staffing, knowledge and experience.

The requirement to ensure future protection of conservation values can be met through legal mechanisms, property characteristics or transferee characteristics. It's possible that this requirement could be satisfied if the Chapter finds that maintaining the State-held conservation easement and the donor commitments sufficiently protect the conservation values. However, if the State-held conservation easement or donor commitments are not passed to the future owner or are not considered sufficient then the Chapter would need to consider additional mechanisms to prove that the conservation values would be protected.

At the Gustavus Preserve, the Chapter has the chance to create space for healing sacred, ancestral relationships with the land. Returning the land to the Huna Tlingit people by transferring it to HIA is one option to consider given both the request from HIA in their letter as well as TNC's growing awareness of our obligation to honor Indigenous rights. Creating a shared vision and goals with HIA and the community of Gustavus would be critical. That shared vision can open conversations and begin to build relationships that would allow the Chapter and HIA to navigate the transactional pieces of the path they choose.

Based on consultation with TNC staff experienced with transfers to Tribal Nations, the Chapter could consider the transfer of various forms of legal rights to HIA as either an end goal or a step toward eventual title transfer. This could include a grant of access, a co-management agreement, or a cultural respect and use agreement. For a full transfer of title, it appears that the Chapter's legal and donor commitments as well as TNC internal guidance may require significant conversations with HIA and TNC attorneys about whether these commitments could be passed on and how requirements would be addressed. The transfer of legal rights like a co-management agreement could allow for more conversation and relationship-building while keeping the burden of legal and donor commitments with TNC. Through these steps, the Chapter could create a space for healing and collaboration for TNC, HIA and the community of Gustavus.

Options for Long-term Preserve Management

Below are the three options to consider for the future ownership and stewardship of Gustavus:

- 1. TNC Retain Fee Ownership.** After evaluating the facts, goals and opportunities, the Chapter could decide to maintain ownership of the Gustavus Preserve. This is not necessarily a permanent decision. However, retaining ownership of Gustavus does not mean that no action is needed. The Chapter should take this opportunity to examine current and future costs, obligations and the staff capacity necessary to appropriately steward the property. The Chapter must consider how stewardship will be maintained over the long-term, or how TNC stewardship of this Preserve could change to incorporate new goals or partnerships.
- 2. Transfer of Fee Ownership.** The Chapter may choose to transfer ownership of the property to a more appropriate owner. This option would reflect the Chapter's chosen strategy to not maintain significant land holdings in Alaska. Transferring the property would alleviate the Chapter of its long-term commitment to the Preserve. However, a transfer will require a significant investment of staff capacity in the short to mid-term. Conversations with the potential transferee, community outreach and legal processes on both sides will take multiple years.
- 3. Transfer of Legal Rights.** With this option, the Chapter would maintain ownership of Gustavus but transfer legal rights to another entity. These legal rights could include the right to access the property, an agreement for use of cultural resources, or an agreement to co-manage the conservation and cultural resources. Co-management would have TNC work with a partner entity to jointly steward the property. This can be a way to collaborate, develop trust and build capacity of the partner entity. It can be an interim step if TNC or the partner do not feel prepared to transfer or receive full ownership. Granting right to access or use cultural resources

could be strong first steps to sharing rights and expanding partnerships. These steps could take a modest investment of Chapter and legal staff time. Developing a co-management agreement would require a more significant investment of staff capacity and resources in the short-term to develop the agreements and partnerships. In all cases, the Chapter would be making a more long-term commitment as an active partner in these agreements and in maintaining legal ownership.

Next Steps

The steps below are the result of the in-depth review of our preserve ownership, completed in March of 2023. A few of these steps were taken immediately at the conclusion of the review and are noted with dates below:

- Share the findings of this research with TNC Alaska Chapter staff for consideration (*completed March 2023*)
- Respond to HIA to share information and TNC's considerations and responsibilities surrounding the preserve. Listen to and learn about the tribe's current interest in acquiring and/or stewarding these lands (*initial conversation April 2023*)
- Determine what option for ownership and legal rights to property best fits TNC Alaska goals through conversations with TNC Alaska Leadership and chapter-wide strategic planning efforts

If chapter decides to pursue a transfer of title or legal rights or a change in management regime:

- Develop outreach plan for meaningful engagement with Gustavus community members and donors who funded the land acquisition
- Engage TNC colleagues, attorneys and IPLC (Indigenous Peoples and Local Communities) staff in advisory capacities as needed to address lingering questions and concerns about how to follow our values while satisfying commitments from the original acquisition and TNC transfer requirements
- Dedicate staff capacity to continue this work:
 - Outreach and relationship management with possible partners including HIA, City and community of Gustavus
 - Project management
 - Legal
- Explore options to support any potential transferee with financial and technical resources to build immediate capacity for transfer process and long-term capacity for stewardship of the Preserve:
 - If transferring fee title, transfer TNC's \$70,000 stewardship endowment for Gustavus

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- If transferring legal rights, determine if and how much of endowment should be given to transferee
 - Regardless of the type of transfer to take place, TNC should offer financial and technical resources to support transferee such as coordinating pro bono legal services