

THE RELATIONSHIP BETWEEN THE NCBA AND THE NCBA CONSERVATION ORGANIZATION

The NCBA Conservation Organization, a Michigan nonprofit corporation and public charity, was incorporated in 2011 as a “Qualified Conservation Organization” under MCL 211.7o(5) and granted 501(c)(3) status by the IRS. The Conservation Organization was launched by NCBA members in the hope that much of the undeveloped portions of the NCBA could be maintained in their natural state in perpetuity despite development pressures. The Conservation Organization has been substantially successful in this goal since its creation.

Earlier, numerous NCBA members had donated to the NCBA’s “land fund.” By 2011, it was becoming apparent that acquiring and protecting additional land from development in the future would create a property tax burden the NCBA could not shoulder. But if we shared the lands owned by the Conservation Organization with all citizens of Michigan pursuant to Michigan law, we could guarantee our woodlands would remain woodlands forever, and that the Conservation Organization land would remain open to NCBA members for non-destructive use, forever.

The NCBA is different from the Conservation Organization: it is what the IRS calls a “501(c)(4)” organization, and its board of directors is responsible only to its members. In other words, the NCBA has no responsibilities to non-members, and its board may not consider non-members’ interests except in as they may affect members’ interest. However under tax laws its income—primarily dues—is not subject to income tax.

The Conservation Organization, as a “501(c)(3)” organization, has responsibilities to the Michigan public, to the state (pursuant to the law under which it was organized), and to the U.S. government, all of which responsibilities the NCBA does not have. As such, the NCBA and Conservation Organization could never have been part of the same corporation because of the different constituencies, loyalties, and purposes.

Instead, to insure a close working relationship, the NCBA board became the “members” of the Conservation Organization, who then elected the Conservation Organization’s board of directors. And that seemed to work fine for more than a decade as there was wide-spread support by NCBA members for acquisition of land by the Conservation Organization.

Then the 2022 NCBA Annual Meeting happened. It became clear that many members did not want the NCBA to have any control over their individually-owned property, but that NCBA members did want the NCBA to stop the Conservation Organization from having control over its own property. This was commonly articulated as having a “trail.” The Conservation Organization had discussed having a trail in order to comply with its obligations under Michigan law to make its property available for non-

destructive use by residents of Michigan, although the Conservation Organization has not built a trail. Others have identified an old logging road and improved a deer path which might become a part of a future Conservation Organization trail, but so far the Conservation Organization has focused on surveying its land.

At the Annual Meeting, it became obvious that an irreconcilable conflict of interest had developed between many members of the NCBA and the Conservation Organization. If the directors of the NCBA tried to control the CO board to “stop the trail,” they would satisfy at least some NCBA members. But the directors of the Conservation Organization would be put in an impossible position: instructed to violate their fiduciary duties under federal and state law and to serve the private interests of the NCBA. The state’s response might be to dissolve the Conservation Organization for failure to comply with state law and to put all its property up for public auction. Pentwater Township might make all Conservation Organization land subject to property taxes. See the discussion below.

To avoid that outcome, the NCBA board changed the Conservation Organization from a “membership” corporation to a “directorship” corporation. That had the practical effect of preventing NCBA directors from forcing an action on the Conservation Organization board which the Conservation Organization board did not feel legally authorized to take, while allowing the two corporations to continue to work together, as they have for over a decade. As a reminder, the NCBA has never had the authority to tell the Conservation Organization to do anything. And so it remains.

CONSERVATION ORGANIZATION LAND HOLDINGS

Over the past eleven years, the CO board has acquired land to preserve our natural habitat in several ways – donations from individuals and organizations, purchases at tax sales and outright purchases. Over the past eleven years the acquisitions have been:

Donations from individuals	65 Lots
Donations from the NCBA	173 Lots
Purchases at tax sales	64 Lots
Outright purchases	172 Lots

For a total of 474 Lots or roughly 34 Acres.

All purchases have been made with funds donated by more than 50 individuals or families. The lots previously owned by the NCBA were purchased with funds from the Land Fund. To our knowledge, no dues money has ever been spent on the purchase of land.

CONSERVATION ORGANIZATION DUTIES

Under Michigan law, Conservation Organization land is held for conservation purposes and is open to all residents of this state for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing. MCL 211.7o(5).

The law does not mention trails. However we as the Conservation Organization board have interpreted “open” to mean that NCBA members and Michigan residents must have access to the land as a practical matter and not just in theory. The state legislature did not sacrifice valuable tax revenue without a benefit to the electorate as a whole. And their use of the phrase “hiking ... cross-country skiing, or snowshoeing” makes clear that at least one of these activities must be possible. Hence our consideration of a trail.

There may be other options than a trail to provide access to and walking on Conservation Organization land, and we are not wedded to any particular course of action. However building a trail appears at the moment to be the most cost-effective approach. Unless others by the end of this winter come up with alternatives which comply with state law and demonstrate how the alternatives could work, we will likely build a trail on Conservation Organization land next year.

The Conservation Organization wants to be a good neighbor, and therefore solicits your input. But it is useful to remember that if any other private landowner decided to put a trail on his or her land, there wouldn't be an issue. A private landowner can do what he or she wants with their own land. The same principle should apply to the Conservation Organization.

Furthermore, a Conservation Organization trail will be only on Conservation Organization land and the platted streets. The Conservation Organization has no intention of using the private property of others without their permission. Support of Conservation Organization trails is the best way to keep trespassers off private property.

THE BENEFITS OF THE CONSERVATION ORGANIZATION

As previously mentioned, the Conservation Organization has preserved about 34 acres so far. We hope to preserve more, and remember this is from development, forever, and keeps this land available to NCBA members. If the Conservation Organization ceased to exist for any reason, then developers would bid for its land, and their developments would likely change the NCBA drastically.

If the NCBA were to pick up the taxes if Pentwater Township started taxing the Conservation Organization lots for failure to comply with the law, then the economic burden would be large. At an estimated average SEV of \$1,330 and tax-per-lot of \$58.25, the NCBA's budget would have to increase by \$27,000 per year every year. That's about an extra \$600 per cottage each year. Since no one could be forced to contribute under the new NCBA legal structure, we deem it unlikely that there would be enough money to pay the taxes. The Conservation Organization would have to dissolve and its land be sold.

Accordingly, in addition to its being required by law, we think it is in the best interests **of the NCBA** for the Conservation Organization to ensure Conservation Organization property is "open to all residents of this state for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing," and we intend to make it so.

The current board consists of Linda McClelland, President, Chuck Totten, Secretary, David Reynolds, Treasurer, Jeff Hoenle, Director and Steve Pierce, Director. Please feel free to contact any of us.