

THE IMPACT OF CONSERVATION EASEMENTS ON PROPERTY TAX BURDENS



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From Wikipedia:

“The landowner who grants a conservation easement continues to privately own and manage the land and may receive significant state and federal tax advantages for having donated and/or sold the conservation easement. Perhaps more importantly, the landowner has contributed to the public good by preserving the conservation values associated with their land for future generations. In accepting the conservation easement, the easement holder has a responsibility to monitor future uses of the land to ensure compliance with the terms of the easement and to enforce the terms if a violation occurs.”

From Zhang (2004), referring to US legislation:

“The incentive for land owners to donate conservation easements includes the fact that a donation may result in reduced federal and state income tax and local real property tax. Under federal income tax law, the donation of a conservation easement is a tax-deductible charitable gift, provided that the easement is qualified and donated in perpetuity. Property tax benefits are determined by state and local governments and may vary.”

- **A BRIEF DIGRESSION RE TERMINOLOGY: IN CONSERVATION AGREEMENTS I'VE READ, AN "EASEMENT" PRESCRIBES A LAND TRUST'S RIGHT OF ACCESS TO A PROPERTY, WHILE A "COVENANT" PRESCRIBES AN OBLIGATION OF THE PROPERTY OWNER.**
- **HOWEVER, THE "EASEMENT" LABEL IS OFTEN APPLIED TO THE ENTIRE AGREEMENT (AS IN THE QUOTES ABOVE) — I'LL USE THAT TERMINOLOGY HERE FOR CONVENIENCE.**

- **THE IMPACT OF CONSERVATION EASEMENTS ON PROPERTY TAX BURDENS IS CURRENTLY NON-EXISTENT IN ONTARIO.**
- **WHILE PROFESSIONAL APPRAISALS OF INDIVIDUAL PROPERTIES SHOW SUBSTANTIAL MARKET-VALUE LOSS DUE TO EASEMENTS, PROPERTY TAX ASSESSMENTS — LIKewise BASED ON MARKET VALUE — ARE VIRTUALLY UNAFFECTED.**

- **FACED WITH A CHOICE BETWEEN APPRAISERS AND ASSESSORS, THE GOVERNMENT OF CANADA HAS TAKEN THE APPRAISERS' SIDE.**

- **WHEN CONSIDERING CHARITABLE DEDUCTIONS FROM INCOME TAX, THE FEDS TREAT EASEMENT-RELATED REDUCTIONS IN VALUE — ESTIMATED BY APPRAISERS — AS ELIGIBLE CONTRIBUTIONS.**

- **WHILE APPRAISERS HAVE FEW SALES OF EASEMENT PROPERTIES TO EXAMINE, SOME SALES HAVE OCCURRED, SO PRICES CAN BE COMPARED WITH PRICES OF SIMILAR PROPERTIES WITHOUT EASEMENTS.**
- **APPRAISERS CAN ALSO INTERVIEW BROKERS WHO HANDLED FAILED LISTINGS — LISTED PROPERTIES TAKEN OFF THE MARKET BECAUSE POTENTIAL BUYERS WERE DETERRED BY A CONSERVATION EASEMENT.**

- **POTENTIAL BUYERS HAVE BEEN SCARED OFF BY RESTRICTIONS THAT PROHIBIT NEW BUILDINGS, SEVERANCES AND LOGGING — NOT TO MENTION OPERATION OF SNOWMOBILES OR ALL-TERRAIN VEHICLES.**

- **SINCE THE RESTRICTIONS RUN WITH THE LAND IN PERPETUITY, POTENTIAL BUYERS' EXPECTATION OF FUTURE APPRECIATION WILL LIKELY BE AFFECTED NEGATIVELY.**

- **SO WHY DON'T ASSESSED VALUES USED FOR PROPERTY TAXATION REFLECT THESE SAME NEGATIVE INFLUENCES?**
- **ASSESSMENT AGENCIES (IN ONTARIO'S CASE, THE MUNICIPAL PROPERTY ASSESSMENT CORPORATION — MPAC) USE MASS APPRAISAL MODELS TO VALUE PROPERTIES.**

- **SALES DATA ARE ANALYZED STATISTICALLY (“MULTIPLE REGRESSION” MODELS) TO ESTIMATE THE IMPACT OF VARIOUS PROPERTY CHARACTERISTICS ON VALUE. IF THERE ARE FEW SALES OF PROPERTIES WITH EASEMENTS, THE IMPACT WON’T SHOW UP.**
- **HOWEVER, EVEN WITH MORE PLENTIFUL SALES DATA, MULTIPLE REGRESSION MODELS MAY NOT DETECT EASEMENT-RELATED IMPACTS ON SALE PRICES.**

- **ZHANG (2004) SURVEYED ACADEMIC STUDIES THAT EXAMINED THE IMPACT OF AMERICAN CONSERVATION EASEMENTS ON SALE PRICES. NEGATIVE IMPACTS DID NOT SHOW UP.**
- **ONE CITED AUTHOR EXPLAINED THESE RESULTS AS FOLLOWS: “.....FAILURE OF MARKET PARTICIPANTS TO PERCEIVE THE PERMANENCY OF THE PRESERVATION, INSUFFICIENT INFORMATION FOR LAND BUYERS TO MAKE RATIONAL DECISIONS, AND POSITIVE CONTRIBUTION OF RURAL AMENITIES TO LAND VALUES.”**

- **THE “POSITIVE CONTRIBUTION OF RURAL AMENITIES” LIKELY MEANS THAT EASEMENT PROPERTIES IN THE DATA SET WERE MORE ATTRACTIVE THAN NON-EASEMENT PROPERTIES, SO THE EASEMENTS’ NEGATIVE IMPACT ON VALUE WAS MASKED BY THE POSITIVE IMPACT OF GREATER AMENITY.**

- **GIVEN THE LIMITATIONS OF MASS APPRAISAL, ONTARIO PROPERTY OWNERS GRANTING EASEMENTS ABSORB A LOSS IN VALUE — WHILE NOT RECEIVING THE PROPERTY TAX REDUCTION THE LOSS SHOULD ENTAIL.**
- **THAT’S A NEGATIVE INCENTIVE, BUT POSITIVE INCENTIVES CAN BE CONSIDERED — WITHIN THE ONTARIO GOVERNMENT’S PUBLIC POLICY FRAMEWORK.**

- **BEFORE CONSIDERING SPECIFIC INCENTIVE MODELS I'LL CONSIDER THE RATIONALE FOR HAVING INCENTIVES IN THE FIRST PLACE.**

- **ECONOMISTS GENERALLY ACCEPT THE PROPOSITION THAT “EXTERNALITIES” PREVENT PRIVATE MARKETS FROM REACHING SOCIALLY OPTIMAL OUTCOMES.**

- THE OWNER OF ENVIRONMENTALLY VALUABLE LAND DERIVES A PRIVATE BENEFIT WHILE SOCIETY AT LARGE DERIVES AN EXTERNAL BENEFIT BEYOND THE PRIVATE BENEFIT— MANY WHO NEVER SET FOOT ON THE LAND STILL BENEFIT ENVIRONMENTALLY.

- LAND OWNERS FACE A TRADE-OFF WHEN CONSIDERING DEVELOPMENT OPTIONS: GIVING UP THEIR PRIVATE AMENITY BENEFIT FROM LAND IN ITS NATURAL STATE VERSUS EXPECTED PROFIT FROM DEVELOPMENT.

- OWNERS ARE GENERALLY NOT MOTIVATED TO TAKE INTO ACCOUNT THE EXTERNAL BENEFIT THAT WILL BE LOST WITH DEVELOPMENT. THUS LAND CAN BE DEVELOPED WHEN THERE IS AN OVERRIDING SOCIAL INTEREST IN IT NOT BEING DEVELOPED.

- **THE SOCIAL BENEFIT DERIVED FROM LAND IN ITS NATURAL STATE IS SUBSTANTIAL: REPORT FOR ONTARIO'S NATURAL RESOURCES MINISTRY (SPATIAL INFORMATICS GROUP 2009) ESTIMATED A RANGE OF \$4000-\$26,000 PER HECTARE FOR SOUTHERN ONTARIO FOREST LAND, \$15,000-\$161,000 PER HECTARE FOR SOUTHERN ONTARIO WETLAND.**

- **THE LAND USE EXTERNALITY CREATES THE POTENTIAL FOR NET LOSS TO SOCIETY WHEN ENVIRONMENTALLY VALUABLE LAND IS DEVELOPED. ONCE DEVELOPED, LAND ALMOST NEVER REVERTS TO ITS NATURAL STATE.**
- **MITIGATING THE LAND-USE EXTERNALITY PROVIDES THE RATIONALE FOR INCENTIVES TO RETAIN ENVIRONMENTALLY VALUABLE LAND IN ITS NATURAL STATE.**

- I'LL LOOK AT TWO EXISTING INCENTIVES IN ONTARIO: (1) FAVOURABLE TAX-RATE AND ASSESSMENT POLICIES FOR “MANAGED FOREST” PROPERTIES (SIMILAR POLICIES APPLY TO FARM LAND); AND (2) THE “CONSERVATION LAND TAX INCENTIVE PROGRAM” (WHICH EXEMPTS ELIGIBLE PROPERTIES ENTIRELY FROM PROPERTY TAX).

- **MANAGED FOREST PROPERTIES HAVE TO SATISFY CRITERIA IN ONTARIO REGULATION 282/98, PRESCRIBED UNDER THE ASSESSMENT ACT.**
- **THEIR PROPERTY TAX RATE IS REDUCED BY THREE FOURTHS, AND THEIR ASSESSMENT IS BASED ON CURRENT-USE VALUE — WHAT WILLING BUYERS WOULD PAY IF THEY INTEND TO HOLD LAND IN ITS CURRENT USE, EVEN IF OTHER WILLING BUYERS (THOSE PLANNING A DIFFERENT USE) WOULD PAY MORE.**

- **THE TAX BREAKS AVAILABLE TO MANAGED FOREST PROPERTIES CAN NEUTRALIZE MODERATE DEVELOPMENT PRESSURE — BUT PROPERTY OWNERS HAVE A FREE HAND TO CHANGE LAND USE ANY TIME DEVELOPMENT OR REMOVING TREES BECOMES PROFITABLE ENOUGH.**
- **IN OTHER WORDS MANAGED FOREST PROPERTIES ARE NOT PROTECTED LAND AS DEFINED IN THE UNITED NATIONS CONVENTION ON BIOLOGICAL DIVERSITY.**

- **AT LEAST IN PRINCIPLE, PROTECTED LAND IS LAND THAT IS PERMANENTLY IMMUNE TO DEVELOPMENT PRESSURE. PROVINCIAL PARKS ARE AN EXAMPLE.**
- **IN LINE WITH THE UN CONVENTION, THE ONTARIO GOVERNMENT HAS COMMITTED TO A PROTECTION TARGET OF 17 PERCENT OF THE PROVINCE'S TOTAL LAND AND FRESHWATER AREA BY 2020.**

- **YET A RECENT REPORT BY THE CANADIAN PARKS AND WILDERNESS SOCIETY SAYS ONTARIO IS CURRENTLY AT ONLY 10.3 PERCENT — A LEVEL THAT HAS INCREASED BY JUST 0.4 PERCENT SINCE 2011. A MUCH FASTER RATE OF INCREASE IS REQUIRED TO REACH THE 17 PERCENT TARGET BY 2020.**
- **AS I'VE NOTED, LAND IN THE MANAGED FOREST CLASS ISN'T PROTECTED BEYOND THE CURRENT YEAR, SO IT WON'T HELP MEET THE TARGET. HOW ABOUT THE OTHER PROGRAM I NOTED — THE CONSERVATION LAND TAX INCENTIVE PROGRAM (CLTIP)?**

- **ACCORDING TO THE MINISTRY OF NATURAL RESOURCES (2010) “THIS VOLUNTARY PROGRAM (CLTIP) PROVIDES AN INCENTIVE FOR LANDOWNERS TO PROTECT CONSERVATION LANDS BY OFFERING 100% PROPERTY TAX EXEMPTION ON ELIGIBLE PORTIONS OF THEIR PROPERTIES FOR THEIR LONG TERM COMMITMENT TO THE STEWARDSHIP OF CONSERVATION LANDS.”**

- **“LONG TERM COMMITMENT” IMPLIES PROTECTION AS IN THE UN CONVENTION. AND SOME PROPERTIES EXEMPTED UNDER CLTIP ARE INDEED PROTECTED AND SHOULD BE COUNTED AS SUCH — THOSE OWNED BY REGISTERED CHARITIES HAVING PROTECTION OF CONSERVATION LAND AS A PRIMARY OBJECTIVE.**

- **HOWEVER THE CLTIP ALSO EXEMPTS PROPERTIES THAT CAN BE OWNED BY ANYONE. WHILE CHARITABLE OWNERSHIP (E.G. OWNERSHIP BY A LAND TRUST OR CONSERVANCY) IMPLIES PROTECTION, OWNERSHIP BY OTHERS DOES NOT. THEY CAN GIVE UP THE TAX EXEMPTION AND END THEIR STEWARDSHIP WHENEVER THEY LIKE.**
- **THAT SAID, THERE IS A STILL A PREFERENCE FOR PROTECTED LAND IN THE CLTIP BECAUSE A LONG LIST OF LAND TYPES IS ELIGIBLE FOR EXEMPTION IF OWNED BY A CHARITY. A SHORTER LIST APPLIES TO OTHER OWNERS.**

- **SINCE A PROPERTY WITH A CONSERVATION EASEMENT IS EFFECTIVELY CONTROLLED BY THE CHARITY HOLDING THE EASEMENT, WHY NOT GIVE THESE PROPERTIES THE SAME ELIGIBILITY FOR TAX EXEMPTION? THAT WOULD PROVIDE THE CURRENTLY MISSING INCENTIVE TO SIGN ONTO EASEMENTS.**

- **APART FROM A ONE-TIME INCOME TAX DEDUCTION — WHICH ONLY PARTIALLY COMPENSATES FOR A CAPITAL LOSS — THERE IS CURRENTLY NO TAX ADVANTAGE CONTINGENT ON SIGNING A CONSERVATION EASEMENT.**
- **THE INCENTIVE PROVIDED BY A PROPERTY TAX EXEMPTION COULD HELP THE PROVINCE MEET ITS 17 PERCENT PROTECTED-LAND OBJECTIVE, SINCE LAND SUBJECT TO A CONSERVATION EASEMENT IS PROTECTED LAND.**

- **WOULD IT BE POSSIBLE TO ADAPT THE TAX EXEMPTION SO THAT IT HELPS ENFORCE EASEMENT OBLIGATIONS OVER THE LONG TERM? CONCEIVABLY, A PROPERTY OWNER WHO DEFAULTS COULD BE MADE LIABLE FOR PREVIOUSLY EXEMPTED TAX — WITH INTEREST — BACK TO THE YEAR THE EXEMPTION COMMENCED.**

- **SECTION 23 OF ONTARIO'S ASSESSMENT ACT PROVIDES FOR A TAX PENALTY ALONG THESE LINES**
 - **A PENALTY INTENDED TO DISCOURAGE DEVELOPMENT OF A PARTICULAR CATEGORY OF UNDEVELOPED LAND, I.E. GOLF COURSES.**
- **ELIGIBLE GOLF COURSES ARE NOT EXEMPT FROM PROPERTY TAX, BUT THEIR ASSESSMENTS ARE "FIXED" TO PREVENT THEIR TAXES INCREASING BY MORE THAN THE AVERAGE INCREASE FOR THE MUNICIPALITY'S RESIDENTIAL CLASS.**

- **THE ASSESSMENT ACT REQUIRES THE MUNICIPAL TREASURER TO RECORD EACH YEAR THE DIFFERENCE BETWEEN TAXES PAID AND TAXES THAT WOULD BE PAID WITHOUT THE FIXED ASSESSMENT. IN TORONTO THAT CUMULATIVE AMOUNT IS NOW IN THE TENS OF MILLIONS — IMMEDIATELY PAYABLE IF A GOLF COURSE IS CONVERTED TO ANOTHER USE.**

- **IF A SIMILAR TAX PENALTY WERE APPLIED TO EXEMPTIONS FOR PROPERTIES WITH CONSERVATION EASEMENTS, THE LOCAL MUNICIPALITY WOULD BE MOTIVATED TO MONITOR COMPLIANCE.**
- **THE RETROACTIVE TAX LIABILITY WOULD ADD TO THE PENALTIES FOR NON-COMPLIANCE SET OUT IN THE EASEMENT AGREEMENT ITSELF, DETERRING A FUTURE OWNER FROM EVEN CONSIDERING DEVELOPMENT. POTENTIAL PROFIT FROM DEVELOPMENT WOULD BE MORE THAN OFFSET BY THE PENALTIES.**

- **CLEARLY A TAX PROGRAM ALONG THESE LINES WOULD REQUIRE EXTENSIVE ANALYSIS BEFORE BEING IMPLEMENTED. IT'S JUST A SUGGESTION AT THIS POINT.**
- **BUT THIS MUCH SEEMS CLEAR: THE LIKELIHOOD OF CONDOMINIUMS SPROUTING ON THE ROSEDALE GOLF CLUB'S ATTRACTIVE ACREAGE IS VIRTUALLY NIL — THANKS TO THE IMPACT OF A TAX PROGRAM (DEVELOPED DECADES AGO) THAT ACTUALLY ACHIEVED ITS INTENDED PURPOSE.**

- **AS FORMER TORONTO COUNCILLOR DOUG HOLIDAY OBSERVED: “THE CITY DID THIS BECAUSE A LOT OF GOLF COURSES WERE SELLING THEIR PROPERTIES. BY SIGNING, (THE OWNERS) KNEW THEY WERE ESSENTIALLY LOCKING THEMSELVES TO THAT LAND FOR ALL TIME. SELLING WOULD BE TOO EXPENSIVE BECAUSE THEY’D HAVE TO PAY BACK TAXES AND INTEREST — AND THAT WAS THE IDEA.” — QUOTED IN TORONTO STAR July 13, 2010.**

REFERENCES:

CANADIAN PARKS AND WILDLIFE SOCIETY (2015). “PROTECTING CANADA: IS IT IN OUR NATURE? — HOW CANADA CAN ACHIEVE ITS INTERNATIONAL COMMITMENT TO PROTECT OUR LAND AND FRESH WATER.”

ONTARIO MINISTRY OF NATURAL RESOURCES (2010). “CONSERVATION LAND TAX INCENTIVE PROGRAM POLICY”. DOCUMENT COMPILED BY BIODIVERSITY BRANCH, JULY 5.

SPATIAL INFORMATICS GROUP (2009). “ESTIMATING ECOSYSTEM SERVICES IN SOUTHERN ONTARIO”. REPORT PREPARED FOR THE ONTARIO MINISTRY OF NATURAL RESOURCES.

ZHANG, XIAOWEI (2004). “THE EFFECTS OF CONSERVATION EASEMENTS ON LAND VALUES”. MSc DISSERTATION, VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, DEPARTMENT OF AGRICULTURAL AND APPLIED ECONOMICS.

4.37 % of Southern Ontario Conserved



11 million people

Ontario's best farmland.

Ontario's industry

Most of Ontario's rare species

68,385 sq km south of the Shield

Conservation (like IUCN):

INCLUDED

C.A. lands

Gov't parks/res.

NGO reserves

Conserv. Agmts

EXCLUDED

County forests

Municipal

Regulated lands

Wilderness Reserves

Caveats



Included, but

- Some CA's log aggressively, disturb habitat
- Conservation agreements may fail
- Nature reserves vs recreational parks

Excluded

- Municipal reserves: No records/not all nature
- County forests are generally logged heavily

Losing 300 acres a day

- 10,000 acres a year
- 40 sq km a year
- About 2/3 of 1% a year
- Same as EBC has conserved over 18 years
- GTA West Highway loses 8 sq km



Land Conservation

Your best investment for:

1. Protecting Species at Risk (set aside habitat)
2. Carbon sequestration (cheaper to buy land than plant trees)
3. Ecosystems services (flood control, water improvement etc)
4. Health services (health promotion, avoid obesity)
5. Education services (learn by seeing it up close)
6. Efficient development (channel it to serviced areas)
7. Tourism & Recreation (trails/ access)
8. Efficient property taxation
(tax personal gain, not public good)



Regulation is not enough

- Wetlands drained
- Quarries approved
- Logging allowed
- Motorized vehicles allowed
- Buildings allowed in ANSIs/Greenbelt
- **All rules subject to change by signature**



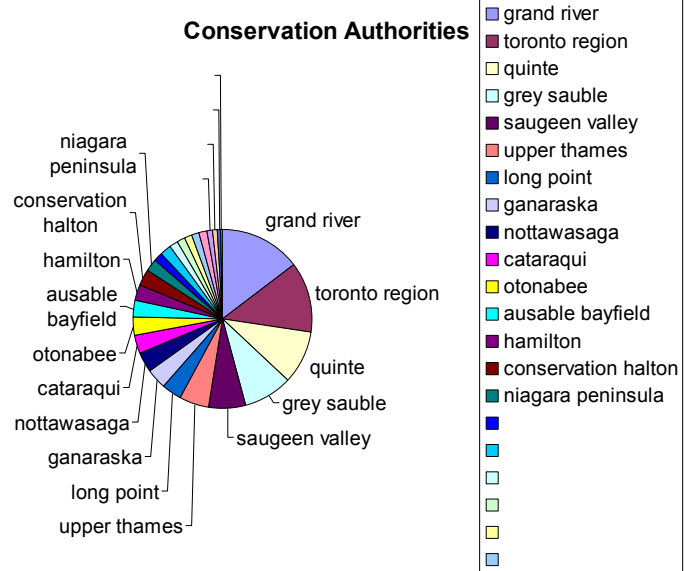
Ecosystem Services (Benefits)

- Suzuki: Greenbelt worth \$2.6 billion/yr
- MNR: Southern Ontario worth \$84 billion/yr

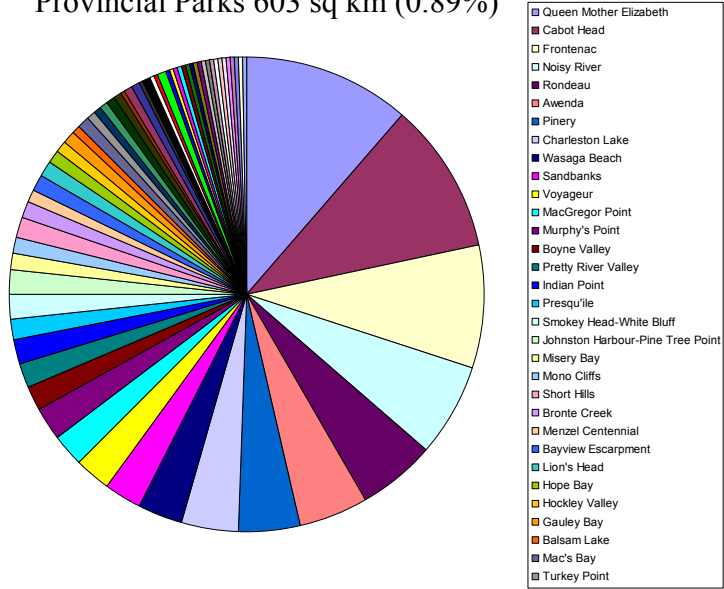
(2/3 of Ontario budget)



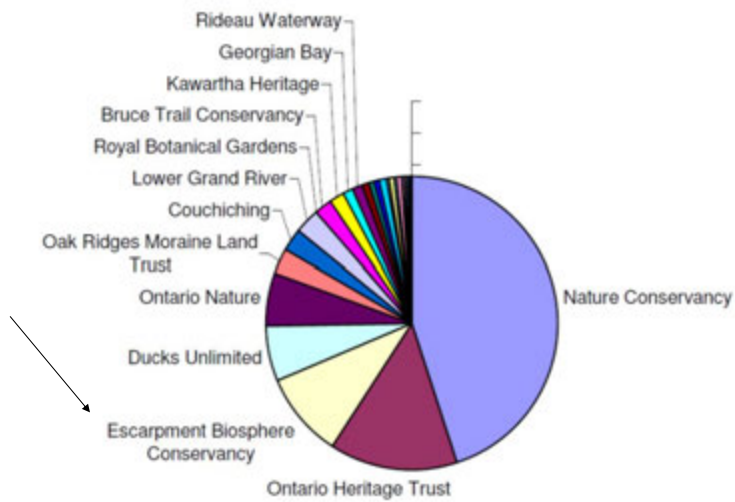
Conservation Authorities 1440 sq km (2.1%)



Provincial Parks 603 sq km (0.89%)



Conservation by Land Trusts 477 sq km (0.70%)

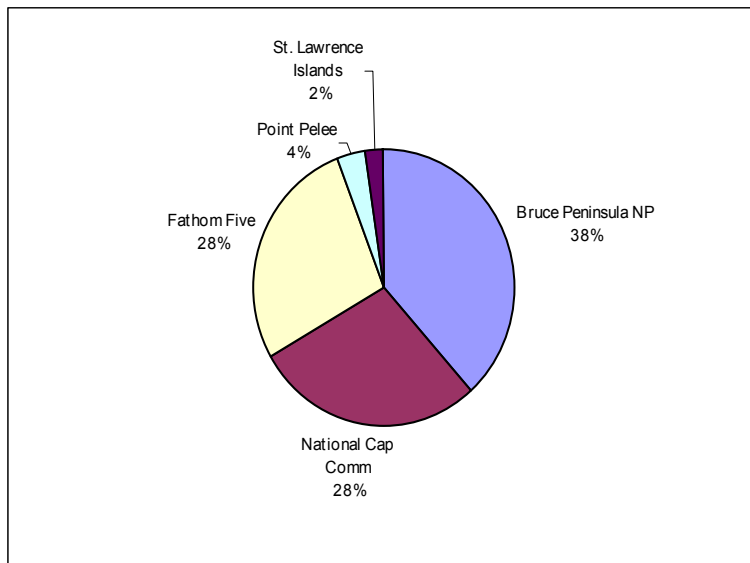


Escarpment Biosphere Conservancy

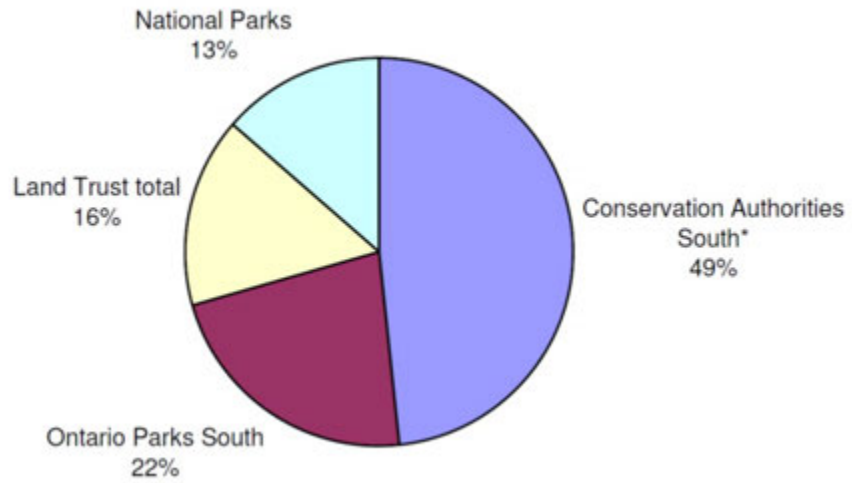
- Ontario's 2nd largest charitable trust (44 sq km)
- 18 km of Huron shore protected
- Habitat of 64 rare and endangered species
- 10 reserves abut provincial or national parks
- 12 Escarpment parks (NEPOSS), plus 3 coming
- Land donations over \$1 million each year
- A new reserve created monthly
- 2 staff and sixteen board members from Toronto to Manitoulin
- 1300 supporters



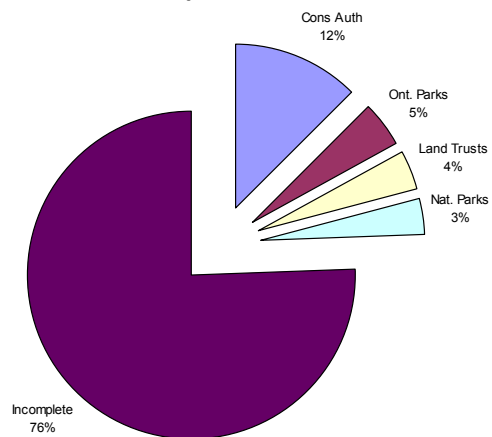
Contribution by National Parks 403 sq km (0.59%)



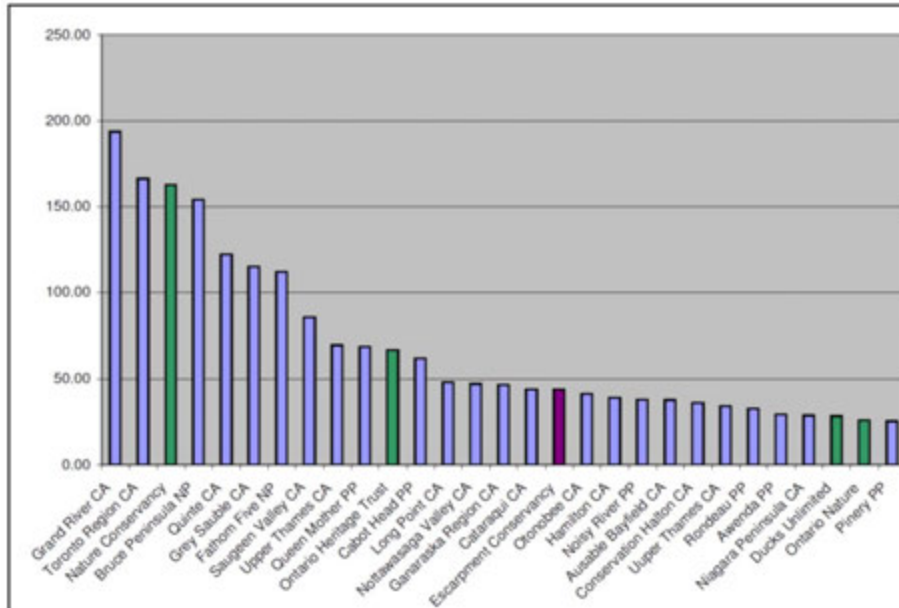
Conservation by Type 2,983 sq km (4.37%)



Biodiversity Status

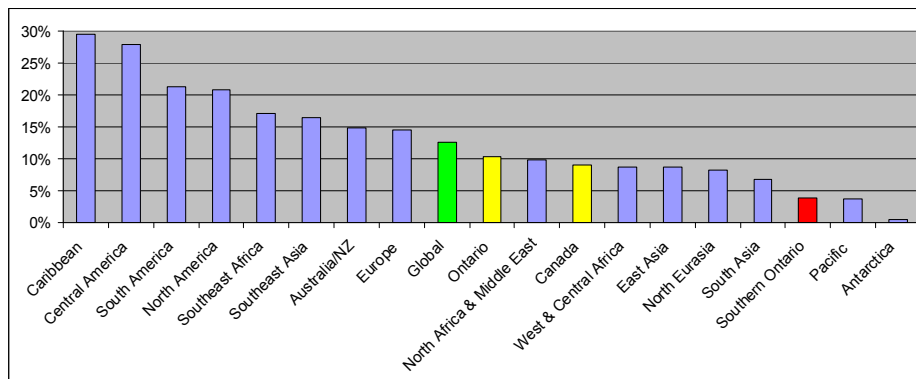


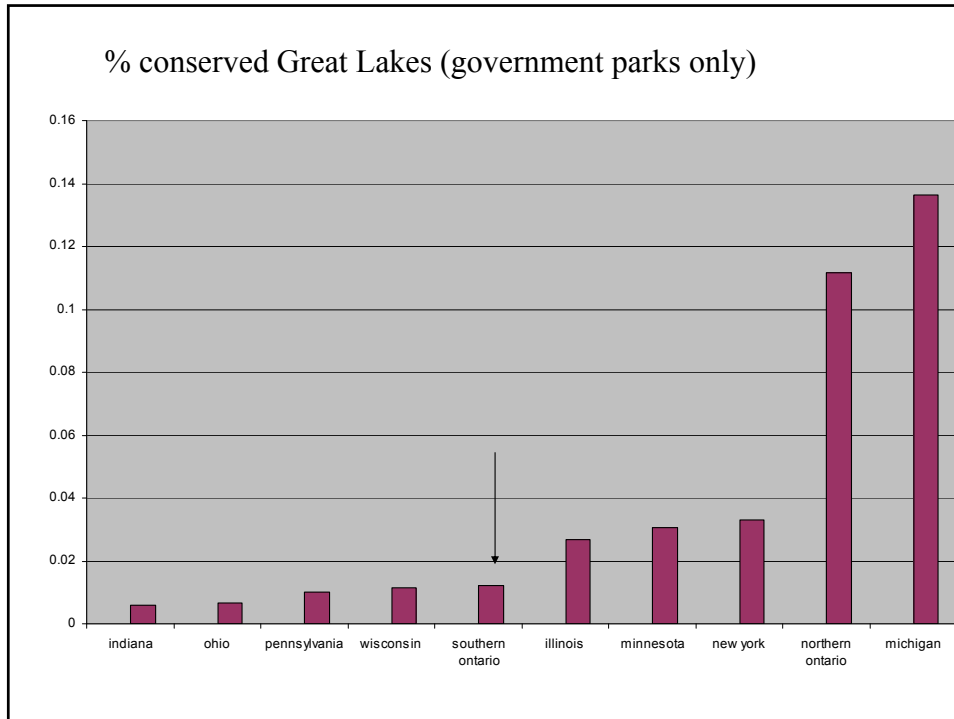
Leading Conservation Groups (29 out of 70)



% land conserved globally

(source: United Nations Environment Program)





Biodiversity Goals

- **1993** Canada signs Convention on Biodiversity to protect 12% of each eco-region
- **1995** Ontario affirmed its commitment to 12%
- **2010** Canada 17% for 2020
- **2012** Ontario Government agrees to 17% by 2020
- **2012** OLTAP program cancelled



Observations

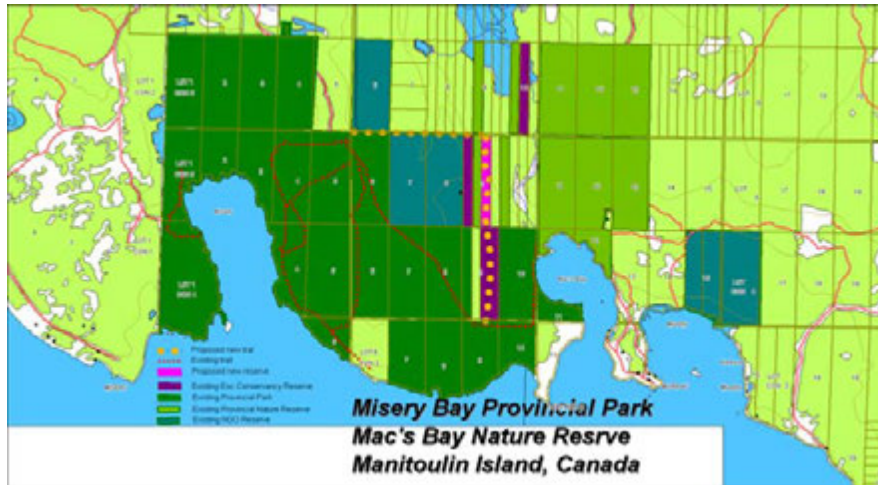
- Land trusts are now securing more land in southern Ontario than all governments combined
- Land trusts are the most efficient (volunteers, donations)
- Southern Ontario is far below other jurisdictions
- 17% goal is far off



Myth: “It’s OK, we have the Greenbelt and PPS”

- **Fact:** Greenbelt at 7,300 sq km (10.6%) is regulated, not protected in title in perpetuity
- **Fact:** Some of Greenbelt and PPS are already protected in title
- **Fact:** Houses, pits, golf courses can be built
- **Fact:** Greenbelt does not meet IUCN reqmts
- **Fact:** Only “public” lands are accessible

EBC_(purple) adds to Misery Bay Park
(green) and NGO lands_(blue)



Cape Hurd: EBC_(purple) partners
with NCC/OHT/ON_(green)



Former funding

- 75% of CA acquisitions
- \$5 million/yr for Niagara Escarpment
- \$5 million for natural areas (to OHT)
- \$15 million to Oak Ridges
- \$250 million through NCC

US Funding

- Some states \$100 million/yr (NJ, Fla, Mich)
- US federal grants (matching)

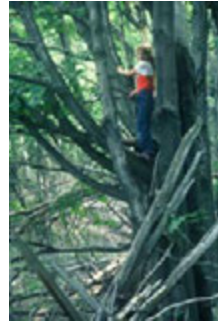
Ontario Land Trust Assistance Program

- MNR supported appraisals, legal, surveys
(often \$5-\$10,000 per property)
- \$950,000 helped secure 13,500 acres worth \$36 mill
- an acre cost only \$70
- each \$1 brought \$37 of land
- adding 1% conserved costs \$12 million not
by buying it outright
- Program cancelled in 2012 (budget constraints)



Tools which could help

- Funding securement costs (appraisals, legal, surveys)
- Allowing conservation severances (like CA and gov't)
- New forms of funding (eg carbon credits, eco services, land transfer fees, severance fees)
- Reduce land taxes for agreement owners



Dirty little FACTS

- Less than 25% of biodiversity goal
- Province has no data base
- Landowners who conserve pay same taxes
- Municipal revenue reduced
- No trail agreement enforcement
- **NO provincial FUNDING**
- **No rule changes, no leadership**

Conclusions

- We **MUST** increase protected land
- Land trusts can carry most of the load
- But **WE NEED HELP**

