

Improving Conservation Easement Agreements

OLTA Gathering
October 8, 2019

CEA Standard 11 and Practices

- 11. A - Funding CEA Stewardship
- 11. B - Baseline Documentation Report
- 11. C – CEA Compliance Monitoring
- 11. D - Landowner Relationships
- 11. E – CEA Enforcement
- 11. F - Approvals and Permitted Rights
- 11. G - Contingency Strategy
- 11. H - Amendments
- 11. I - Expropriation
- 11. J - Partial or Full Extinguishment



CEAs: Other standards and practices

- 2. A – Compliance with Laws
- 3. C – Board Approval of Transactions
- 4. C – Land and CEA Transactions with Insiders
- 6. E – Risk Management and Insurance
- 8. - Evaluating and Selecting Projects: B, C, D, E
- 9. - Ensuring Sound Transactions: E, H, I
- 10. - Tax Benefits and Appraisals: A, B

CEA Working Group

- Members
- Activities
- Workplan



OLTA CEA Resources

Conservation Easements

Annotated Conservation Agreement	<p>The Baseline Documentation Report (BDR)</p>	A Model Annotated Sample Conservation Easement Agreement	Best Practices and Performance Measures (BPPM) for Conservation Easement Programs
<p>The Top 10 Things to Remember when Doing your BDR OLTA BDR Case Study</p>	Conservation Easement Brochure	Conservation Easement – Tax Benefits Brochure	<p>GREENING YOUR TITLE A GUIDE TO BEST PRACTICES FOR CONSERVATION COVENANTS</p>
Annotated Baseline Documentation Report (BDR) Template for Natural Heritage Lands subject to a Conservation Easement Agreement held by a Land Trust			

Andrews v. Rago case (2019 ONSC 800)

- 3' strip on house boundary
- LTA ss. 119(9) – if no fixed date, covenant expires after 40 years
- Court: “forever” is not fixed date, thus expires
- BUT: ss. 119(12) - doesn't apply to CEAs in CLA, OHA
- CLA: CEA valid for term in it



CEA Guide and Template

- Built on 2008 template
- Template/sample
- Drafting guidance
- Review process:
 - Drafting, research
 - Review by CEA WG
 - Legal reviews
 - Plain language approach



Template Improvements

- Clarify/align wording
- Legal technicalities, interpretation, consider challenges
- New provisions, examples
- Updates: conservation values, agency titles, enforcement, BDR
- Additional drafting tips
- Excerpts: CLA, S&P, plain language



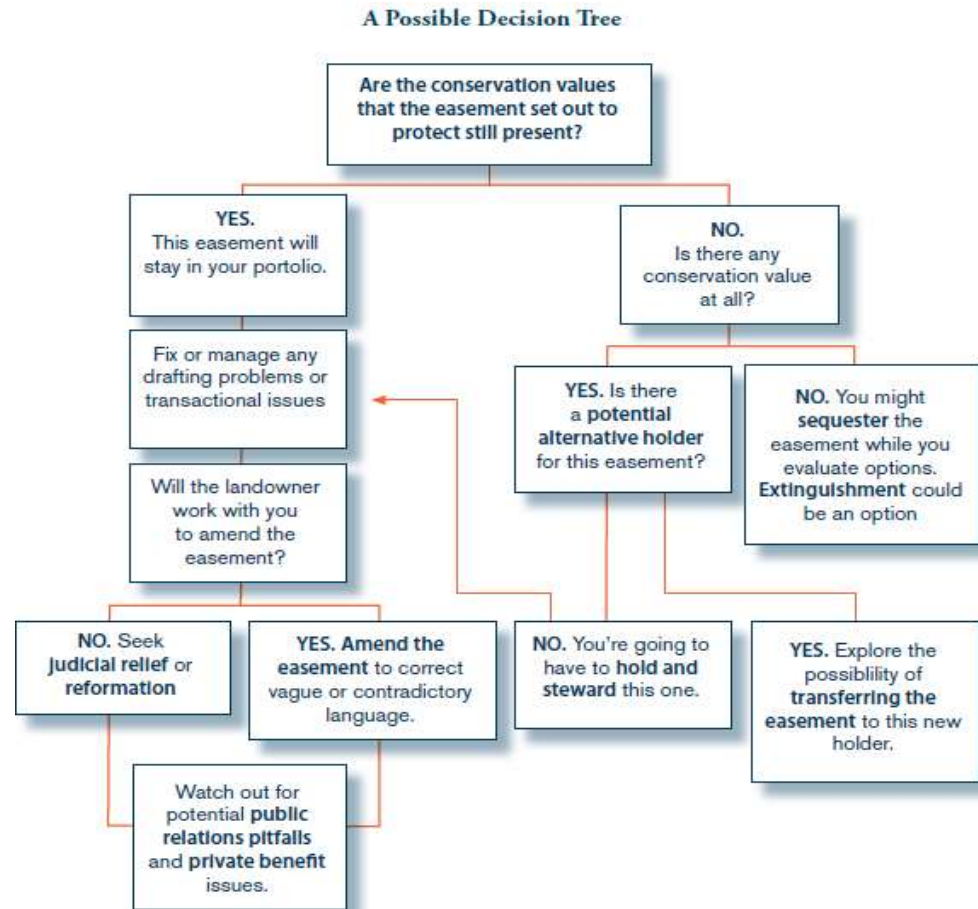
CEA Guide – Main Messages

- Work with professionals; don't just copy template!
- Specify/define “conservation values”
- Restrictions aligned to protect key values
- Enable some future flexibility
- Enhance defence, interpretation provisions



CEA Revitalization Pilot

- How can land trusts review, identify, manage, and resolve issues?
- Selected 4 land trusts that hold CEAs to participate in pilot
- OLTA staff undertook a review of CEA & supporting documentation



Easement Revitalization: Getting Started (Solid Ground Consulting, 2012).

CEA Revitalization Pilot

- Surveyed 4 land trusts to identify current practices
- All participants hold CEAs that do not meet their current standards
- All participants identified wording/language/drafting as primary issue with CEAs
- No participants have an amendment policy
- Land is generally still owned by first owner



CEA Revitalization Pilot

- After initial review...
 - Drafting issues in all CEAs
 - Transactional Issues – BDRs missing important information
 - All properties in the pilot have not lost conservation value
- Develop a guide to help land trusts update CEAs



CEAs in Practice

- Are you finding enough lawyers, appraisers, surveyors etc. to support your CEAs?
- Any CEA enforcement or transition issues?



Questions, discussion, issues?



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