



**Land and Asset
Dispositions:
Intentional...**

...or not

Overview of session

- Moderator: Daria Koscinski
- Speakers:
 - Paul Peterson, lawyer private practice
 - Stephanie Merrill, Nature Trust of New Brunswick
 - Martin Straathof, Ontario Farmland Trust
 - Will Thomson, lawyer private practice

Supporter: Ecological Gifts Program

Laura Kucey, Regional Program Co-ordinator

What is a disposition?

Voluntary:

- Part release of conservation easement
- Trade Lands or surplus lands
- Transfer to First Nations community
- Financial grants to landowners or other organizations

What is a disposition?

Involuntary:

- Expropriation
- Encroachments
- Contingency Planning (for dissolution of Land Trust)

Bedrock Principles (ITA requirements)

a charitable organization must:

- be constituted and operated exclusively for charitable purposes;
and
- must devote all of its resources to charitable activities carried on by the organization itself or to making qualifying disbursements.

How Can a Charity Operate

Extract from CRA publication CG-032 (DRAFT)

Carrying on its own charitable activities through:

- its staff and volunteers
- an intermediary (with charity exercising direction and control)

Making Qualifying Disbursements through:

- gifts to qualified donees
- grants to non-qualified donees or “grantee organizations”
(subject to charity accountability requirements)

qualifying disbursement means making resources available to:

[simplified summary of new definition in ITA 149.1 (1)]

- to a qualified donee (another charity) or
- to a grantee organization (not a charity) if
 - the disbursement is applied to exclusively to activities in furtherance of a purpose of the charity;
 - the charity documents the purpose and the charitable activities to which the disbursement is applied.

Disposition Considerations

- Need to consider:
 - Legal Compliance, including
 - 1.1 principle, preservation and use of charitable assets
 - 1.2 Corporate law - charitable corporate purposes
 - 1.3 Assets subject to trust or fiduciary obligations
(include funder and donor conditions)
 - 1.4 Ecogifts

Disposition Considerations

- Need to consider:

2. Standards and Practices:

- # 9 Sound Transactions
- # 9 (i) Selling and Transferring
- # 11 CE Stewardship
- # 12 Land Stewardship

Disposition Considerations

POLICY

Land Trust needs a Policy for Land and Asset dispositions

If the Land Trust already has relevant policy - may need review and update to incorporate:

- 2022 Income Tax Act amendment - “grantee organizations”
- CRA Guidance in CG-032

Disposition Considerations

Donor and Funder Conditions and Requirements

- See for example NHCP
- May also arise with private donors of cash and land

Skutik IPCA

Stephanie Merrill, Nature Trust of New Brunswick



Skutik IPCA

Passamaquoddy Recognition Group & Nature Trust of New Brunswick

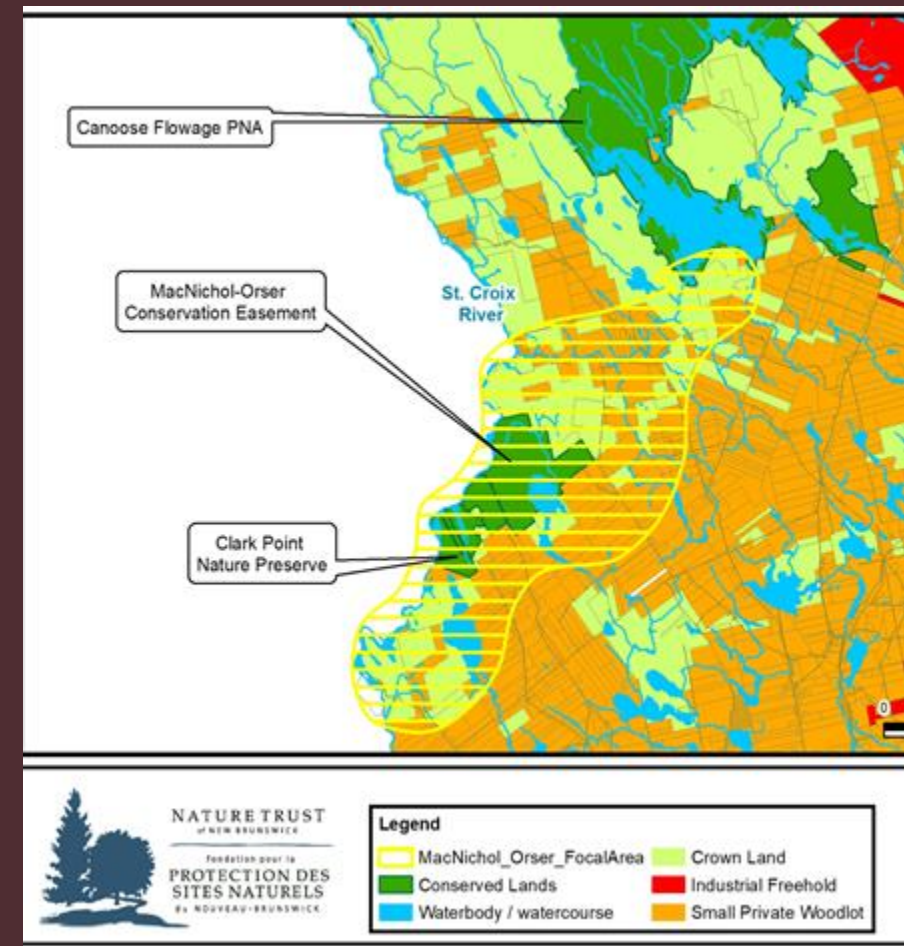
Rebuilding The Peskotomuhkati Nation through Conserved Lands

How it Started 2019:

The Nation purchased a property w/ easement managed by NTN

How it's Going 2023:

7 IPCA properties owned by NTN, in trust for the Nation, to be transferred when they establish land trust entity



Skutik IPCA

Rebuilding The Peskotomuhkati Nation through
Conserved Lands

Our Shared Learning Journey:

Relationship building

Adapting our acquisitions processes

Board buy-in

Stewardship funds

CRA approval

Shared Stewardship

Capacity building

Transfer Plans

Legal agreements

Unknowns to figure out later



Duffins Rouge Agricultural Preserve, Easements, and the Greenbelt

Martin Straathof, Ontario Farmland Trust



Duffins Rouge Agricultural Preserve, Easements, and the Greenbelt: Are you in or are you out?

- History and context of the lands
- Impacts to the Conservation Land Act
- Various levels of protection and Bill 23 & 39
- Lessons for Land Trusts

Expropriation & Encroachments

Will Thomson, lawyer private practice



EXPROPRIATION

What is Expropriation?

- The taking of land (including an easement) without the consent of the owner.

What Can Be Expropriated? And By Whom?

- An expropriation may take all of a property, part of a property, or it may take only a partial interest in a property, for example, an easement or subterranean rights.
- Expropriating Authorities can include municipalities, the provincial government, Provincial ministries, utility companies and universities.

Pre-Expropriation - What to Keep in Mind

- Keep apprised of notices, advertisements, and public planning processes related to the land.
- Before proceeding with the expensive and time-consuming expropriation process, most authorities will try and negotiate to simply buy the land.
- This is a great opportunity for a Land Trust to resist or negotiate the expropriation.
- Be sure to document the efforts made (in all cases but especially if the land is the subject of an EcoGift).

The Expropriation Process In Ontario

1. Notice of Application for Approval to Expropriate
2. Hearing of Necessity
3. Plan of Expropriation
4. Notice of Election and Possession
5. Offer and Compensation

Key Takeaways For Land Trusts

1. Be Proactive – be aware of activity on and near your property, engage actively in the pre-expropriation process – once the formal process starts, it may be too late to stop.
1. Act Fast – As soon as you are faced with an expropriation obtain legal advice, and engage qualified experts in appraisal, science, and others as needed.

Key Takeaways For Land Trusts

- 3. Educate – the expropriating authority may have little knowledge about the ecological value of the land.
- 3. Familiar yourself with the Land Trust Standards and Practice on Expropriation

Special Considerations for Easements/EcoGifts

1. If not the fee-simple title holder, need to be extra engaged in process to be sure interests are protected.
2. Damages/compensation claim may be more complex, need additional appraisal expertise.

Special Considerations for Easements/EcoGifts

3. If the land is an Eco-Gift:

- a. An expropriation could be considered a disposition or a change of use per ECCE guidelines/ Income Tax Act.
- b. Engage ECCE as soon as possible.
- c. Ensure easement/eco-gift appraisal is current, update as necessary.
- d. Document & demonstrate steps taken to avoid, prevent, or mitigate any harm to the conservation values of the land.

ENCROACHMENT - What Is It?

- An intrusion onto the property of another person.
- Could be obvious – the construction of a building or fence on Land Trust property – or subtle – the expansion of agricultural or grazing land onto Land Trust property (trespass).

How Do Encroachments Impact Land Trusts?

- As landowners of largely rural, undeveloped land, Land Trust property is ripe for possible encroachments, and in particular, those that are modest or hard to detect.
- While increasingly rare, in remote parts of Ontario Trust Land may still be held in *Land Registry* system (as opposed to *Land Titles*) which makes it, theoretically, at risk of adverse possession. Trusts should confirm the nature of their land holdings.

Encroachment - How Can a Land Trust Prepare?

- Be Proactive – Land Trusts should be superb ecological stewards of their land and employ regular environmental monitoring programs; should ensure that boundary surveys are periodically included in this work.
- Be Prepared – How many Land Trusts have formal surveys of their land holdings?
 - If not, consider how you will identify and protect your boundaries from encroachment? Surveys, GPS, fencing, signage, etc.

What To Do If Faced With an Encroachment?

Don't Wait!

- While now rare in Ontario, an encroachment that persists for years may be the subject of an adverse possession claim.
- A court will be much more willing to order the removal of an encroachment if the encroaching party did so knowing they were encroaching rather than by honest mistake.

What To Do - Continued

- A Land Trust should, as soon as possible after discovering an encroachment:
 - Document the encroachment with photos, locations, extent of the encroachment.
 - Engage neighbours or other witnesses to the encroachment.
 - If any damages have occurred, evidence of the damages and appraisals for restoration.

What To Do - Continued

- A Land Trust should, as soon as possible after discovering an encroachment:
 - Write to the encroaching landowner (by registered letter, preferably) to advise them of the encroachment, and the steps needed to rectify it/restore and repair the Land Trust property.
 - Advise your insurance company and advise the encroaching landowner to contact theirs.

What If Being a Good Neighbours Fails?

- If the encroachment isn't simply an honest mistake that is easily rectified, engage legal counsel. Early legal review and advice will help set the land trust on the most effective course of action and avoid costly mistakes. In some cases of trespass, including for example the taking of trees or forest products, you may consider reporting the trespass and theft to the police.

Questions?



More questions?

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Land Trust - Disposition Policy

[time permitting]

Elements of Disposition Policy