



## **S&P Standard 11 & 12A**

## **Conservation Easement Stewardship**

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## **Funding Stewardship**

Susan Walmer , CPA, CMA

Executive Director, Oak Ridges  
Moraine Land Trust

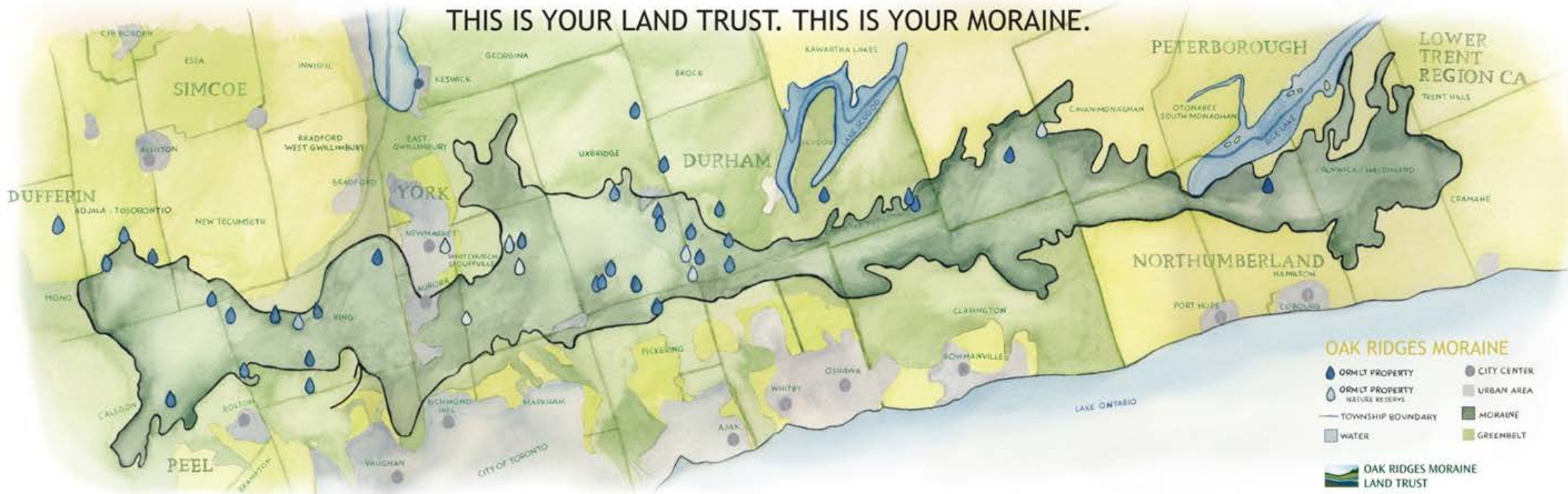
# Introduction

- My background
- Your experiences- land trusts?  
Other organizations?
- CEA experience ?
- CEA or Stewardship questions  
that you would like me to cover  
during this presentation?



Wisdom begins in wonder. *Socrates*

THIS IS YOUR LAND TRUST. THIS IS YOUR MORAINE.



<p>2019 ORMLT Protected Lands                  4300 acres Value \$37,126,000                  EGS value &gt; \$6,000,000 annually</p>	<p>CEA- 42 properties; 3925 acres                  FS- 13 properties; 370 acres                  RC – 3 properties; 6 acres</p>
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# PRACTICES

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



*Jackman CEA- Humber River and Development lands protected forever*

# What are CEAs?

- Terms: “C&E, CE, CA, CEA” ...
- SP Glossary –“CA”: A legally binding agreement voluntarily entered into between a landowner and a land trust to restrict the use of subject real property to protect the conservation values of the property, and may include a servitude for the use and benefit of dominant land, a covenant or an easement.
- Registered on title, binding future owners
- May be donated, sold, or split receipt (combo)
- May cover all, part or zones of a property
- *Wording borrowed from previous presentation*



CEA York Region Headwaters on ORM

# CEA Legalities

- CLA s.3; OHA ss. 22 and 37; or other statutes
- Parties: “Owner” and “Conservation Body”
- Covenants: negative and positive, in gross
- Amendment and release: MNRF approval, and possibly ECCC for Ecogifts
- Registration on title: unclear procedures; entire, covenants, easement
- Other provisions: assignment, term, no merger, enforcement, records and registry
- Baseline reports: property’s current description, maps, zones

• Slide borrowed from previous presentation

Ontario ServiceOntario LAND REGISTRY OFFICE #45

PARCEL REGISTERED (AMENDED) FOR PROPERTY IDENTIFIED

LAND REGISTRY OFFICE #45

REGISTRATION DATE: 2010-06-17

REGISTRATION FOR: 03/08/11

ON: 03/08/11 AT 12:43:52

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT - SUBJECT TO RESERVATIONS IN CHAIN GRANT \*

PROPERTY DESCRIPTION: PC W/10 01 01 CON 7 REG AS IN 2119417 ; KING

PROPERTY REFERENCE: **to Ontario under B64583B with Municipal Boundaries**

REGISTERED/QUALIFIED: **Some error w/ description**

REG. DATE: 1990-11-01

REG. DATE FROM: 01/01/1990

REG. DATE TO: 1990/11/01

REGISTERED/QUALIFIED: **As noted in main search - missing mentions of B64583B**

REGISTERED/QUALIFIED: **R219417 AS H B64583B**

REGISTERED/QUALIFIED: **MISSING MENTIONS OF B64583B**

REG. NUM.	DATE	INSTRUMENT TYPE	ACTION	PARTIES FROM	PARTIES TO	CEST/ CHG
**EFFECTIVE 2000/07/29 THE INTENTION OF THE "SUCCESSION DATE" OF 1990/08/18 ON THIS PLAN**						
**NOT REPEATED AFTER THE "NEW CREATION DATE" OF 1990/11/01**						
** PREVIOUS INCLUDES ALL DOCUMENT TYPES AND RELATED INSTRUMENTS SINCE 1990/11/01 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, IS:						
** SUBSECTION 4(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION NOTES *						
** AND EXCEPT OR SUBSTITUTION TO THE CROWN.						
** THE RIGHT OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESUMPTION, NON-DESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVEYANCE.						
** ANY LEASE TO WHICH THE SUBSECTION 7(1) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 1990/11/01**						
AD04024	1990/11/01	BY-LAW				
ADDRESS: 22- 80-LAW 1044, AMENDING 80-LAW 809. (AFFECTS ALL PARCEL/REGD LANDS 0008/02/19 D. WILSON, 2000)						
68113	1990/11/01	PLAN REFERENCE				
8219417	1978/02/17	TRANSFER	01			
TR011118	2009/11/20	CHARGE	545,000	CONVEYER, BANC	CONVEYEE, BANC	

Notes on table: **W/10 01 01 CON 7 REG AS IN 2119417** (handwritten in blue)

Notes on table: **12/28/19** (handwritten in blue)

Notes on table: **29 Dec 19** (handwritten in blue)

Notes on table: **10/1/76** (handwritten in blue)

Notes on table: **Henke, Helmut** (handwritten in blue)

Notes on table: **R219417** (handwritten in blue)

Notes on table: **ASSESSMENT PLAN SHEETS** (handwritten in red)

Notes on table: **Taken during P.I.W - 0094/18** (handwritten in red)

Notes on table: **Sec 150 Annual** (handwritten in blue)

Notes on table: **Stos Annual Bd.** (handwritten in blue)

NOTES: CHANGING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH REGISTRATION REFERENCED FOR THIS PROPERTY.  
NOTES: ENSURE THAT YOUR REGISTRY NUMBER THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE CHECKED THEM ALL UP.

# Conservation Land Act, s.3

## INTENTION

3. An owner of land may grant an easement to or enter into a covenant with one or more conservation bodies,

(a) for the **conservation, maintenance, restoration or enhancement** of all or a portion of the land or the wildlife on the land;

(b) for the **protection of water quality and quantity**, including protection of drinking water sources;

(c) for **watershed protection and management**;

(d) for the **conservation, preservation or protection of the land for agricultural purposes**;

(e) for the purposes prescribed by the regulations made under this Act; or

(f) for access to the land for the purposes referred to in clause (a), (b), (c), (d) or (e).



*CEA 2018:Heindenreich:100 acres: Farm, Environmental and Cultural Heritage Landscape protected (PPS section 2.6 & 6.0)*

# STANDARD 11

## Conservation Agreement Stewardship

Land trusts have a program of responsible stewardship for their conservation agreements.

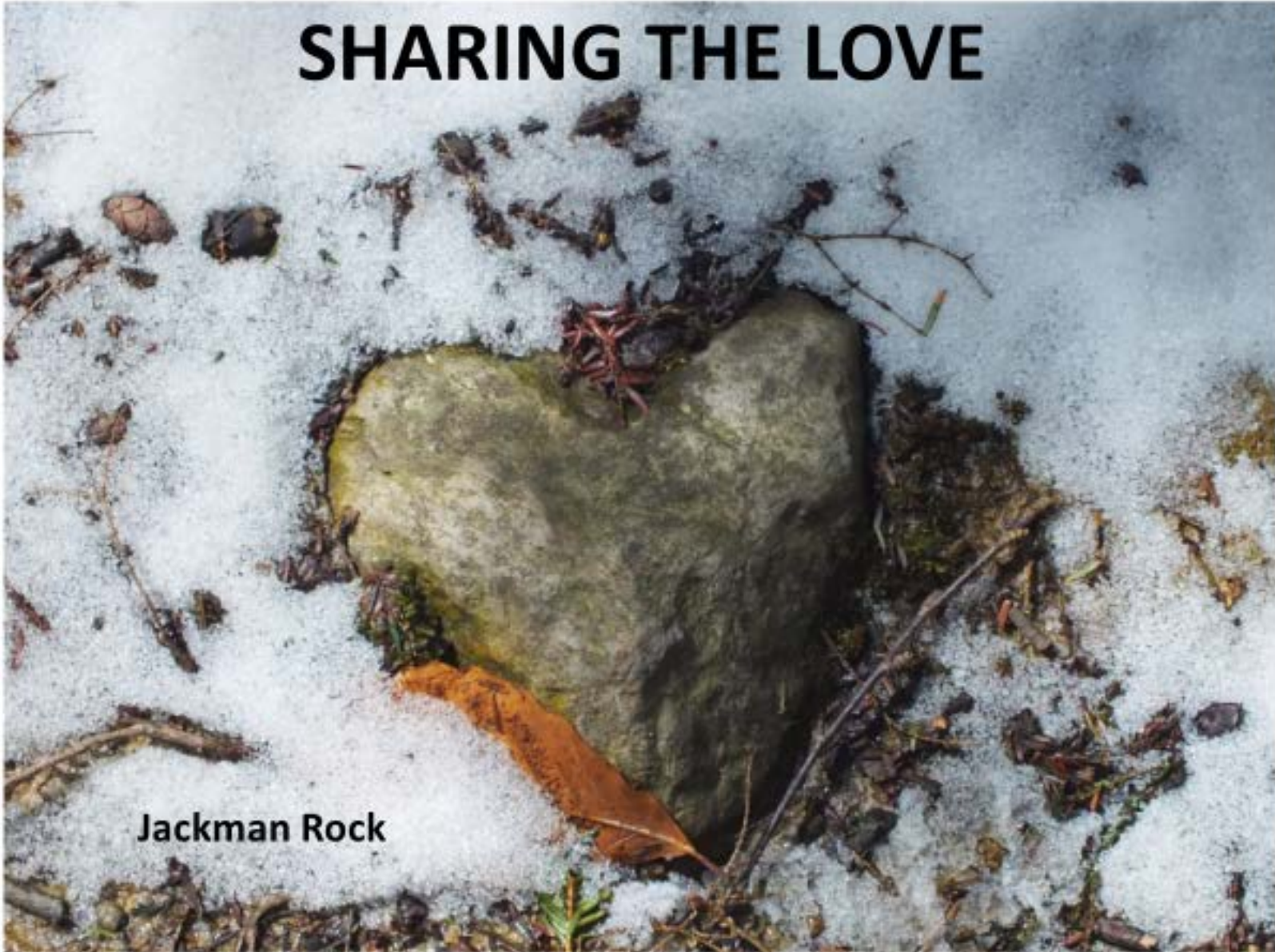
- Land securement and land stewardship policies approved by Board.
- Procedures to reduce risk throughout the process.
- Ongoing discussions with land owners, their families and lawyers to ensure understanding of the covenant restrictions on title in perpetuity.



*Glassco CEA: 4 parcels: 300 acres: multi generational council including Land Trust representative*



# SHARING THE LOVE



Jackman Rock

# CEA Outline and Content

Consideration between parties;  
date

1. Definitions- Land Information

2. Representations and Warranties

3. Intention

4. Covenants-subdivision, landscape alteration, pollution, forestry, structures, vehicles, roads/trails, land uses, others

5. Easement - access for monitoring

6. Owner's Obligations and Indemnity

7. Default

8. Notice

9. General Provisions

SA. Legal Description

SB. Baseline Doc. Report

SC. Acknowledgement and Assumption Agreement

SD. Covenants and Restrictions

# CEA responsibilities

## Owner:

- Follow the covenants
- Notifications
- Maintain property e.g. taxes, insurance

## Holder:

- Maintain documents, records, resources
- Consideration of owner, govt. approvals
- Monitor property (annually), compliance
- CEA Program development



*CEA- Eco Gift- 100 acres- Trees and Farm*



2001 First CEA Farm: 600acres:EcoGift:  
Agricultural and Environmental Features

# 11 A - Funding Stewardship



Estimate the long-term stewardship and enforcement expenses of each conservation agreement transaction

Track stewardship and enforcement costs

## B- Baseline Documentation Report

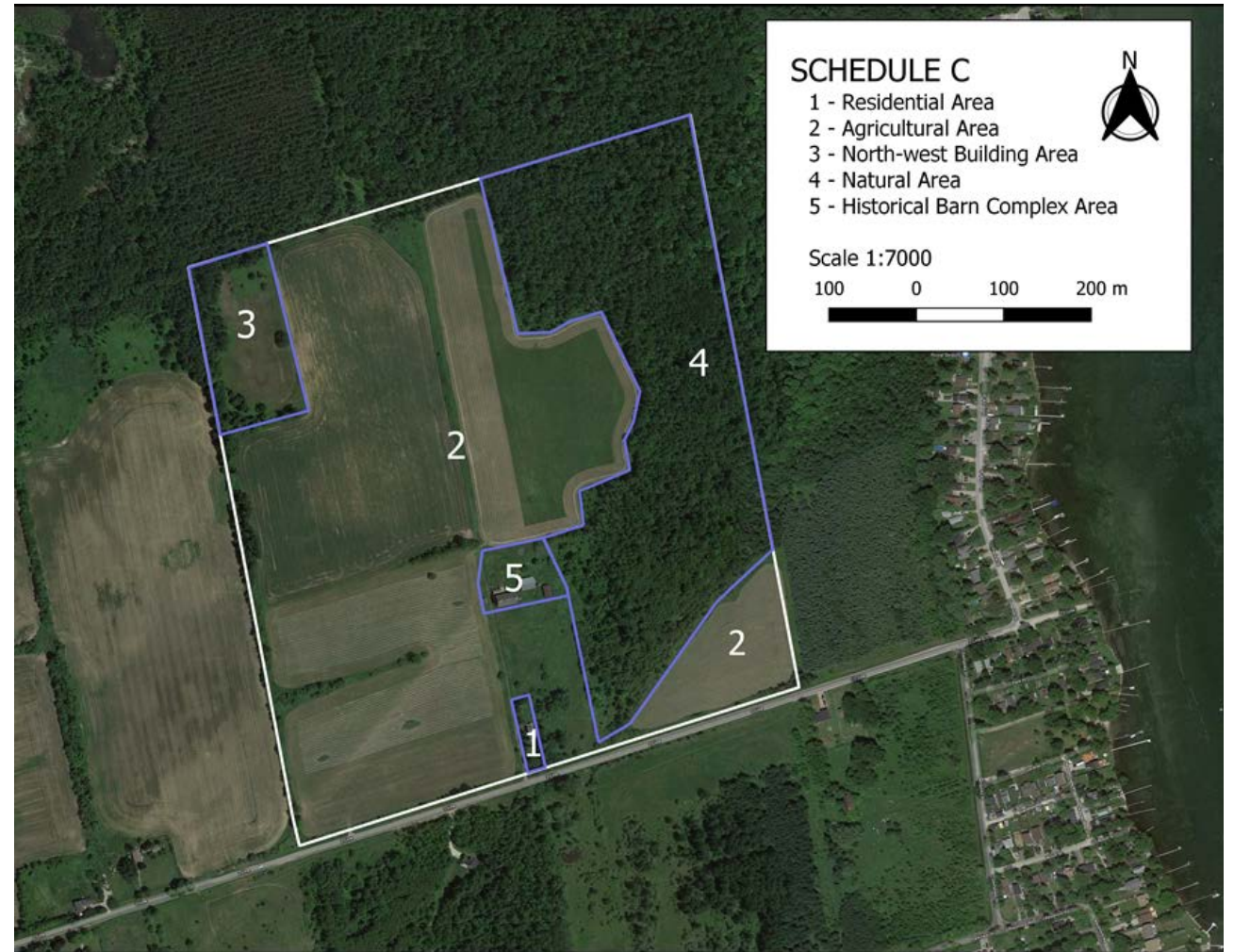
- Prepared by professional(s) with appropriate background and expertise, the BDR documents with maps, photos and descriptions the conservation values and the relevant conditions needed to monitor and enforce the agreement
- Both the landowner and the land trust each have one original copy of the signed BDR
- If the weather prevents the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of data at closing

# SCHEDULE "C" - BASELINE DOCUMENTATION REPORT SUMMARY

Attached to and forming part of the Conservation Easement Agreement between XXX and the Oak Ridges Moraine Land Trust, dated as of the \_\_\_ day of \_\_\_\_\_ 20XX

**Site Plan or Map:** See the attached map below.

**Schedule "C" Map 1:** Map of Conservation Zones defined in the Conservation Easement Agreement



*\*\*\*Signed and Filed with ECCC within 6 months of closing \*\*\**

# B3 - CURRENT CONDITIONS REPORT

- Document changes through monitoring reports, a baseline supplement or current conditions report

## **Example: Joint CEA with OFT**

- Driveway location altered for safety purposes approved by local authorities and ECCC
- Note GSP location of new driveway and additional restoration measures for the property and have owners sign the current conditions report.
- Outcome – better relationship with owner who advised us in advance of future property plans



*ORMLT/OFT CEA Little Rock II with the rerouted driveway; restoration plan with additional vegetation planned for spring 2019*



# Current Conditions Report

## Contents

<u>Preface</u>	
<u>1.0</u>	<u>Summary</u>
<u>1.1</u>	<u>Property Name</u>
<u>1.2</u>	<u>Information Used for This Management Plan</u>
<u>1.3</u>	<u>Date of Site Visits</u>
<u>2.0</u>	<u>Property Information</u>
<u>2.1</u>	<u>Landowner Name (s):</u>
<u>2.2</u>	<u>Landowner Contact</u>
<u>2.3</u>	<u>Details of Conservation Easement Agreement</u>
<u>2.4</u>	<u>Property Address</u>
<u>2.5</u>	<u>Legal Description</u>
<u>2.6</u>	<u>Surface Area</u>
<u>2.6.1</u>	<u>Significance of the Property</u>
<u>2.7</u>	<u>Access Details for the Property</u>
<u>2.8</u>	<u>Ministry of Natural Resources and Forest</u>
<u>2.9</u>	<u>Official Plan (OP) Land Use Designation(s)</u>
<u>2.10</u>	<u>Property Zoning</u>
<u>2.11</u>	<u>Adjacent Land Use</u>
<u>Program</u>	
<u>3.0</u>	<u>Conservation Values of the Property</u>
<u>3.1</u>	<u>Site Description</u>
<u>3.2</u>	<u>Ecological Sensitive Criteria under the Eco-Gift</u>
<u>3.3</u>	<u>Terrestrial Features</u>
<u>3.4</u>	<u>Aquatic/Wetland/Groundwater Features</u>
<u>3.5</u>	<u>Soils</u>
<u>3.6</u>	<u>Wildlife Habitat</u>
<u>4.0</u>	<u>Inventories</u>
<u>4.1</u>	<u>Description of Conservation Easement Agreement</u>
<u>Zones</u>	
<u>4.2</u>	<u>Improvements and Structures</u>
<u>4.3</u>	<u>Trails</u>
<u>4.4</u>	<u>Public Use and Recreational Activities</u>
<u>4.5</u>	<u>Species of Interest</u>
<u>4.6</u>	<u>Forest, Plant and Wildlife Inventory</u>
<u>4.6.1</u>	<u>Plantations</u>
<u>4.7</u>	<u>Invasive Species</u>
<u>Appendix A:</u>	<u>Ground Photos of the Property</u>
<u>Appendix B:</u>	<u>Flora List</u>
<u>Appendix C:</u>	<u>Anthropogenic Features and Threats Map</u>
<u>Appendix D:</u>	<u>Summary Life Science Checklist &amp; Description</u>

# C. Conservation Agreement Monitoring

- Adopt a written policy and/or procedure with consistent monitoring protocols and recordkeeping
- Monitoring at least once per calendar year ; if aerial is appropriate; on-the-ground monitoring at least once every five years; document and deal promptly with a violation or breach of CEA



*2003 CEA Powell Sword:198.50 acres: Kawartha Lakes*

# Monitoring Report Template

- Property Owner, Property Address, Phone Number
- Property Size, Ecogift Number
- Monitoring Date: Weather: Sign Condition
- Covenants and Restrictions: Y or N , Action
- Monitor's Recommendations : Recommended Follow up Season; Next Year
- Monitor's Notes: Follow-up Actions Required: Monitoring Route:
- Monitoring Sign Off : ED, Monitor, Volunteer etc
- Natural Heritage Features: Invasive Species, Species at Risk: New Species (Plants) ( Wildlife)
- Waypoints and Photos



CEA Wells; 11.15 Hectares ; tree planting

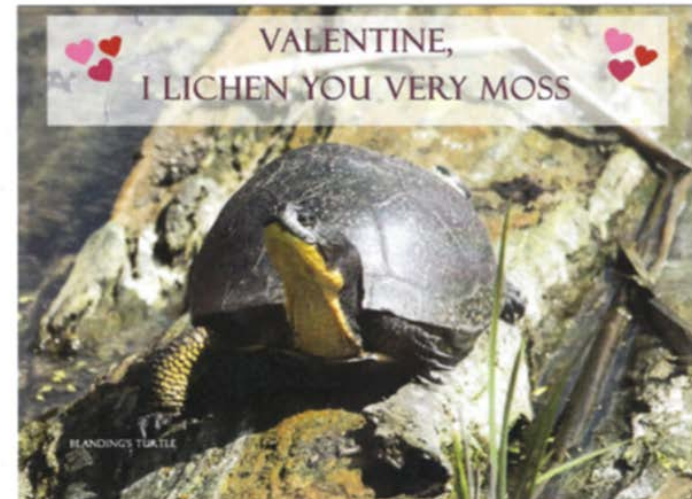
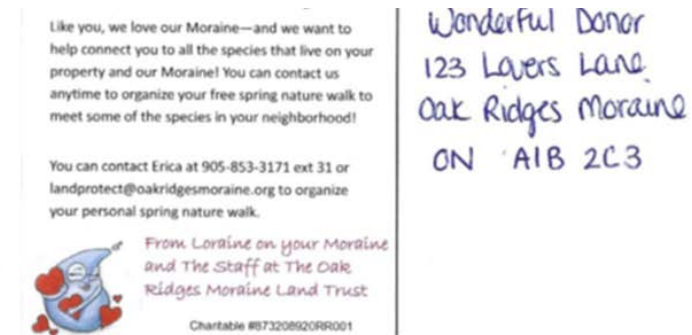
## D. Landowner Relationships

Maintain regular contact with owners of conservation agreement properties to maintain relationships and avoid potential agreement conflicts



# Keep In Touch with your Donors but not too much!

- Contact your land donors and CEA holders with personalized letters and information on their property and special events just for them
- Send the annual monitoring report to land owners with information to assist them with Best Management Practices and restoration options
- Annual Gratitude Report
- Online or hard copy seasonal newsletters



# CLIMATE CHANGE

## WHAT CAN LAND TRUSTS DO?

- "Land trusts like the Oak Ridges Moraine Land Trust are a creative approach to conserving Ontario's biodiversity, especially as our natural areas and species are further pressured by climate change.
- Land trusts can be local solutions to the global problems of biodiversity loss and climate change."

*Dianne Saxe – Environmental Commissioner of the Environment*

**We are a local solution to the global problems  
of biodiversity loss and climate change**





# EDUCATE AND INFORM YOUR LAND OWNERS AND SUPPORTERS



# Change in Property Ownership



*New Owners involved in drafting CEA prior to purchase – they had input and changed location of agricultural & barn area*

- Establish a Change in Property policy/ procedure including wording within the CEA about how to notify the Land Trust when the title is changing.
- Meet with the new owner or property manager asap to review the CEA covenants and the land trust's stewardship role and follow up in writing.

# Establish systems to track changes in land ownership

Sample CEA wording :

- **Change in Ownership** - The Owner shall give notice to the Trust of any change in the ownership of or any interest in the Lands and the Trust shall give notice to the Owner of any assignment of the interest of the Trust under article 9.5 of this Agreement. Any such notice shall include the name and address of the new party and shall be given at least ten (10) days prior to the change of interest.
- **Transfer Fee** - No less than ten (10) days in advance of a transfer of the fee simple title to or a possessory interest in the whole or any part of the Lands, the Owner shall pay to the Trust one (1) percent of the sale price or make alternative arrangements for such payment to the satisfaction of the Trust.
- **Title Search – asap**

## SCHEDULE “D”

### ACKNOWLEDGEMENT AND ASSUMPTION AGREEMENT

- The New Owner is now the registered owner of the Lands.
- The Agreement stipulates that, on the sale or transfer of the Lands, an acknowledgement and assumption agreement executed by the new registered owner of the Lands acknowledging the priority of the Agreement and the interest of the Trust and assuming the obligations of the owner under the Agreement shall be delivered to the Trust.
- The New Owner acknowledges and agrees that:
  - the Agreement shall rank first in priority to all other agreements, easements, encumbrances and liens affecting the Lands except those that have priority under any statute;
  - the Trust continues to have and enjoy all the rights, easements and remedies granted to it in the Agreement; and
  - the New Owner will, at all times observe and perform the terms, covenants and conditions contained in the Agreement respectively reserved and contained on the part of the Owner therein to be observed and performed.

# E. Conservation Agreement Enforcement

1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation agreement violations
2. Investigate potential violations in a timely manner and promptly document all actions taken
3. Involve pertinent parties, authorities and legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution
  - a) For conservation agreements that have been certified as an ecological gift, report violations that have impacted the natural features of the property to Environment and Climate Change Canada



# Change in Use Report



## Land Securement Contact Form

Date:

Time:

Staff Present:

Type of Contact:

Meeting  Phone Call  Other:

Contact Name:

Contact Details:

Meeting Details:

- Keep a record of all conversations and meetings
- Field staff advise management asap
- Management to contact the land owner about a potential Change in use.
- Contact ECCC for an Eco Gift property
- Deal with Land owner to resolve issue and keep the environment aspects of the property protected.

# F. Approvals and Permitted Rights

1. Respond to landowner required notices or requests for interpretation or approvals in a timely and consistent manner, as specified in the conservation agreement deed or in a written procedure
2. Written procedures to guide decision-making regarding approvals and permitted rights
3. Maintain a permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights



*500th Ecological Gift property in Ontario –  
CEA comprising of 54 acres of agricultural land and 45  
acres of environmental lands*

# CEA wording examples

- Wherever the written consent of the Trust is required to comply with the Covenants and Restrictions, the Owner shall **cover the Trust's costs associated with consent requests** and the **Trust's approval process including any costs reasonably incurred by the Trust** in retaining outside professional assistance to review and implement the request.
- In the **event of a dispute between the Trust and the Owner** as to the boundary of the Protected Area, **the Owner shall pay the costs of a survey** of the boundary and the filing of a Reference Plan detailing the location of the boundary.



# Non Compliance CEA Wording

- **All reasonable costs to enforce** the terms of this Agreement, including without limitation legal costs and expenses, and any costs of restoration required to remedy any violation of the terms of this Agreement by **the Owner shall be paid by the Owner to the Trust**
- Until paid by the Owner to the Trust , such costs of remedy incurred by the Trust shall be a **debt owed by the Owner to the Trust and shall be a charge upon the Lands enforceable in the same manner as a mortgage and recoverable by the Trust in a court of law.**





# Non Compliance CEA Wording

- Non compliance within the sixty-day period, the Trust shall be **entitled to enter onto the Lands and to complete those works and measures** necessary to provide compliance and to remedy the default at the expense of the Owner.
- **Require immediate action to prevent or mitigate damage** to the Natural Features of the Lands or for the purpose of public safety, the Trust may **pursue its remedies** under this Article 7 without prior notice to the Owner and without waiting for the expiry of the sixty (60) day notice period as otherwise required under Section 7.1.

# G. Contingency Strategy

1. Establish a contingency plan for all conservation agreements in the event the land trust ceases to exist or can no longer steward and administer them
2. The land trust maintains a relationship with the backup holder as appropriate to ensure the ability of the holder to hold conservation agreements is still valid

## CEA Sample Wording

- *The Trust may assign all of its interest in this Agreement, the Covenants and Restrictions and the Easement to any qualified Conservation Body as defined by the Act.*

# I. Expropriation

If threatened with expropriation,

- a) Avoid a net loss to conservation values, document the actions taken and attempts to receive proportional share of the proceeds and use any proceeds in a manner consistent with the conservation agreement deed
- d) Prompt notification to relevant parties, including the expropriating authority with an Ecological Gift notify Environment and Climate Change Canada



*Example: GTA WEST*

# STANDARD 12 :

## Funding Land Stewardship

- Determine the immediate financial and management implications of each conservation property acquisition or contractual stewardship commitment and estimate the long-term implications
- Anticipate and track costs associated with long-term land management, stewardship and enforcement of conservation properties



# Stewardship Funding Models

**Percentage of Fair Market Value Model**

OR

**Stewardship Input Model** includes

- staff time for reporting, field work , travel time and management review
- Financial inputs with cost of inflation, investment rate, net present value of a dollar
- Stewardship funding needed for protection in perpetuity

# STEWARDSHIP FUNDING INPUT MODEL

Monitoring Inputs	Planning (Report prep and writing, Follow-up)							Travel							Field Work/Monitoring Visit									
	Exec. Dir.		Program Manager		Stwrdshp Intern		Reporting Total	Exec. Dir.		Stwrdshp Intern			Stwrdshp Summer Staff			Travel Total	Exec. Dir.		Stwrdshp Intern		Stwrdshp Summer Staff		Field Work	Total
	Time	Total	Time (hrs/yr)	Total	Time (hrs/yr)	Total		Distance	Total	Distance	Time (hrs/y)	Total	Distance	Time (hrs/yr)	Total		Time (hrs/yr)	Total	Time (hrs/yr)	Total	Time (hrs/y)	Total		
<b>Property</b>																								
<b>Nature Reserves - ORMLT Ownership</b>																								
Sample	2.00	150	0.50	25	4.00	100	275		-	48	1.00	51	-	1.00	20	71	6.00	450	2.00	50	2.00	40.00	540.00	886
Sample	0.50	38	0.50	25	4.00	200	263		-	32	0.50	27		0.50	-	27		-	2.00	50	2.00	40.00	90.00	380
<b>Conservation Easements</b>																								
Sample	0.50	38	0.50	25	4.00	100	163		-	140	2.00	126		2.00	40	166		-	2.00	50	2.00	40.00	90.00	418
<b>Restrictive Covenants</b>																								
Sample	0.25	19	0.50	25	1.00	25	44		-	80	1.25	44		1.25	63	106		-	0.50	13	0.50	10.00	22.50	173
			2.00		13.00														6.50		7			1,856.43

## Financial Inputs

Cost Inflation	2.0%
Investment Return	4.0%
Net Return	2.0%
Salaries (per hour rate)	
Executive Director	75*
Stewardship Intern	25*
Program Manager	50*
Claim Charge (km)	0.54
Summer Staff	20
Annual Property Insurance for all properties	\$4,000
*increased to include 2019 budget (salary, MERCs and Benefits)	

Stewardship Cost and Funding Estimates		As at: Dec 31, 2018				
Property	Total Est. Annual Exp.	Total Est. Disc. Cost	Est. Funding Requirement	Secured Funding	Net Funding Requirement	
<b>Nature Reserves - ORMLT Ownership</b>	886		45,182		45,182	
<b>Conservation Easements</b>	418		21,323		21,323	
<b>Restrictive Covenants</b>	173		8,631		8,631	
<b>Total Cost Estimate</b>	<b>1,477</b>		<b>75,136</b>	-	<b>75,136</b>	
<b>Core Annual Income (enter as negative)</b>	-		-		-	
<b>Net Estimate</b>	<b>1,477</b>	-	<b>75,136</b>	-	<b>75,136</b>	
<b>General Administrative Exp ( Insurance)</b>					<b>4,000</b>	
<b>Total Net Estimate</b>					<b>79,136</b>	
<b>Federal Forever Fund Balance</b>					<b>303,750</b>	
<b>Total Surplus / (Deficit)</b>						

# Challenges

- Complicated legal process – detailed purposes, title issues, multiple owners, future generations and intent, mortgage and leases,
- Must have qualified legal guidance for both Land Trust and the owners
- Registration process , CLTIP, property tax values
- Enforcement, Boundary issues with neighbours
- CEA Defense

# Questions?

Contact:  
Susan Walmer, CPA, CMA  
Executive Director,  
Oak Ridges Moraine Land Trust

[swalmer@oakridgesmoraine.org](mailto:swalmer@oakridgesmoraine.org)

905-853-3171 x32

