

Conservation Easement Agreements:
A Guide, Sample, and Notes for
Ontario Land Trusts, Landowners, and Advisors

This Guide and the sample are **not** intended to provide legal advice.

Conservation Easement Agreements are significant legal documents which are written to last forever. Amendments are difficult to make or may not be possible at all. This Guide is to give you information about some of the complexities.

Both the landowner and the land trust must get legal advice before finalizing a Conservation Easement Agreement.

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Special thanks to members and volunteers from OLTA for reviewing content and providing feedback.

Cover photo: Morgan Roblin

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This guide was developed thanks to grants from:



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Introduction

The Ontario Land Trust Alliance (OLTA) represents the network of land trusts across Ontario. Land trusts are community-based, non-profit organizations primarily focused on protecting significant natural landscapes for future generations. They also provide protection to important agricultural lands and cultural heritage features.

OLTA promotes excellence in land conservation throughout its land trust member network by sharing knowledge and best practices, reducing financial barriers to land conservation, promoting organizational excellence, providing access to current research and education, and representing the collective voice of the land trusts.

To serve its members, OLTA has established a Conservation Easement Agreement Working Group. One of the tasks of this Working Group is to develop an updated Guide for Conservation Easement Agreements (CEA). This Guide has built on earlier versions and has benefited substantially from the contributions of Jordan Shay, a Student-at-Law at the time, Alec Clute and Christopher Tzekas, lawyers at the firm of WeirFoulds, and the experience and expertise of the members of the Working Group and other reviewers.

The sample CEA in this Guide, which is annotated with notes, is intended as an example only to provide readers with an introduction to the provisions that might typically be included in a CEA. This is not legal advice. Actual CEAs should be individually prepared, paying particular regard to the parties, the property, the purposes, and the circumstances, in consultation with biologists, lawyers, accountants, land surveyors, and others whose professional advice may be relevant to the particular situation.

Planning and preparing a CEA takes considerable thought and needs to consider both the current owner as well as future owners and the changes that may occur in land management or to natural features over an extended time period.

Section 1: Background on Conservation Easement Agreements

The Ontario [Conservation Land Act](#) enables land trusts and other qualified organizations to protect land without owning it through Conservation Easement Agreements (CEA).

The Agreement is negotiated between the current landowner and the land trust when both parties share the goal of preserving the natural features of the property.

Conservation Easement Agreements are enforceable legal contracts and interests in land that are registered on the title to the property at the local Land Registry Office. CEAs limit what the current owner and all future owners may do on the property. Their purpose is to protect wildlife, habitats, shoreline, water quality and quantity, or other natural, agricultural, and other cultural features forever.

To realize these benefits, Conservation Easement Agreements must be clearly written with all the necessary elements to make them strong, enforceable legal documents today, and forever.

Every CEA will be different, with some aspects reflecting the specific elements of a property that are identified for conservation. A CEA states the intent of the landowner and the land trust to agree on the purpose of the CEA. The conservation values need to be directly linked to the property – what is important or special about the features of *this* property that compel their conservation forever.

Some other parts of a CEA may be the same from one agreement to another – such as the sections about enforcement and access to the property.

OLTA hopes that use of this Guide will help you begin to prepare a Conservation Easement Agreement. A lawyer needs to check that the language is consistent and legally binding, and has all the essential components of an enforceable Conservation Easement Agreement that suit the parties, the property, and its special features.

Why are Conservation Easement Agreements worthwhile?

Conservation Easement Agreements can benefit **landowners** by:

- Protecting the natural or cultural features of their land forever
- Keeping the property in the family or being able to sell and still protect it
- Enabling the ongoing enjoyment of the property by its owners, and
- Providing a charitable receipt for the appraised value of the use and ownership rights that are limited once the Conservation Easement Agreement is put in place.

Conservation Easement Agreements benefit the **land trust and the community** by:

- Achieving land conservation without the responsibilities of ownership.
- Preserving important habitats and watersheds over the long term, and
- Connecting and increasing the amount of conserved land in a region.

The following references also relate to Conservation Easement Agreements:

- CEAs that are donated may be eligible for tax incentives under Environment and Climate Change Canada's [Ecological Gifts Program](#).
- United States taxpayers who own land in Canada and wish to place a CEA on it may work with [American Friends of Canadian Conservation](#) to benefit from US tax rules and incentives.
- CEAs are also possible under the [Ontario Heritage Act](#) for natural or cultural heritage conservation purposes.
- The [Canadian Land Trust Standards and Practices \(2019\)](#) provide guidance on best practices for protecting land, including the creation and stewardship of CEAs (see relevant excerpts in the text and Appendix A)



Chris Wooding

Section 2: Conservation Easement Agreement Essential Elements

Conservation Easement Agreements (CEA) must be specific and include these essential elements:

The Conservation Values

State the natural and, if applicable, cultural features of the property that are important to conserve.

For example, the property may have 1000 m of undisturbed shoreline that is used by migrating birds and provides nesting habitat for turtles. The CEA may require the owner to leave the shoreline and the 200 m abutting the shoreline undisturbed. There are sound ecological and biodiversity reasons to do this. Take into account both existing natural features and long-term ecological changes that may occur.

Review how the reasons allowing for a Conservation Easement and Covenants in Section 3(2) of the *Conservation Land Act* apply to this property. In Ontario, the reason a land trust is agreeing to a Conservation Easement must be found in this section of the law.

The Covenants, also referred to as the Restrictions

Set out what the landowner may do on the property and what is prohibited or controlled.

For example, the landowner may be allowed to repair or rebuild the current house on the same building footprint and not be allowed to build any new buildings elsewhere on the property.

The Owner's Rights and Responsibilities

Beyond the Covenants, clarify what the Owner may and may not do once the CEA is in place.

For example, the landowner continues to enjoy all rights of ownership, including the right to sell the property and responsibilities for liability, albeit with the CEA now permanently in place.

The Easement

Permit the land trust to access the property to monitor compliance with the CEA, to enter the property in an emergency, and to be able to remedy any damages that have occurred in violation of the CEA.

For example, the CEA will set out the arrangements for annual monitoring visits and the times when the land trust can enter the property without the permission of the owner.

The Enforcement Provisions

Establish how the land trust will enforce the agreement and specify the remedies if the terms of the CEA are broken.

For example, should a landowner build a new shed that is not permitted by the CEA, the land trust must have a legal power to have it removed at the landowner's expense. The wording in the CEA must also give the land trust the legal right to collect money from the landowner to compensate for any of the landowner's actions or failures to act for which they are legally responsible.

Provisions about Procedures specific to the CEA

Describe how each party will notify the other party about CEA matters, what happens when the Property changes hands, and other standard provisions in a CEA.

For example, all contracts say "time is of the essence", meaning that deadlines matter and should be met.

Schedules or Appendices with additional information

CEAs usually have at least three schedules:

- the Covenants
- the Easement
- the Summary of the Baseline Documentation Report

Sometimes, the legal description of the property is in a Schedule because of its length. This is most likely when there are rights of way, utility easements, and other encumbrances on the property.

Careful. Pay attention to section and schedule references when you work on a CEA as they will need to be changed when you add or drop a section during discussions and drafting.

Final task. Before signing a CEA, remember to double-check that all the section and schedule references and cross-referenced sections are correct.

Section 3: Conservation Easement Agreement Sample with Annotations

OLTA requires all of its Land Trust Members to abide by the 2019 Canadian Land Trust Standards and Practices (CLTS&P) as the technical and ethical guidelines for their organization's operations, and commit to making continual progress toward implementation of these Standards and Practices.

The Standards and Practices are essential for land trusts related to the creation of CEAs. In particular, Practice 9. E provides an important foundation for writing the CEA. Other Standards and Practices are noted in the annotations with their full text provided in Appendix A.

CLTS&P, Practice 9. E: Conservation Agreement Drafting

1. For every conservation agreement,
 - a. Individually tailor it to the specific property
 - b. Identify the conservation values being protected
 - c. Allow only uses and permitted rights that are consistent with the conservation purposes and that will not significantly impair the protected conservation values
 - d. Avoid restrictions and permitted rights that the land trust cannot monitor and/or enforce
 - e. Include all necessary and appropriate provisions to ensure it is legally enforceable
2. Review each conservation agreement for
 - a. Consistency with enabling legislation of conservation agreements and other provincial and federal applicable legislation
 - b. Internal consistency, omissions and absence or errors within the conservation agreement documents



Conservation Easement Agreement

This is an Agreement with Covenants and an Easement in Gross made under section 3, the *Conservation Land Act* (the Act), as amended

between

[name of the landowner(s) on the title to the property] (the Owner)

and

[legal name of the land trust] [land trust]

on

[insert date CEA signed by the parties]

The Purpose of this Conservation Easement Agreement

1. The purpose of this Conservation Easement Agreement (“Agreement”) is to protect, conserve, maintain, restore, and enhance, for all time, the significant natural features of the Property, defined in section 4 as “Conservation Values”. It is the intent of the parties to preserve the Conservation Values (“Conservation Values”) of the Property. The Conservation Values include: [list the important and special features of the Property that the Agreement is designed to protect forever and include the appropriate reason for this Agreement found in section 3(2) *Conservation Land Act*.]

The Purpose of this Conservation Easement Agreement

1. The “purpose” section states, in broad terms, the reasons for the Conservation Easement Agreement. Section 3(2) of the *Conservation Land Act* sets out the purposes for which the parties may sign a conservation easement agreement. Make sure you include at least one of these purposes in this section of the CEA and in the definition of “Conservation Values”.
 - (a) or 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).

Setting out the purpose and intention of the parties in broad terms in this section will be used as a reference in interpreting the detailed covenants and rights under the Agreement. This section provides essential guidance when interpreting clauses in the future. It may also provide guidance for situations that were not foreseeable when the Agreement was signed.

The Purpose of this Conservation Easement Agreement

2. Stating that there is a public interest in the Conservation Easement Agreement establishes that the Property's Conservation Values are important to ecological health and therefore protecting them is of benefit to society generally. The importance to Indigenous, non-Indigenous and nature relations could also be noted.
3. The *Conservation Land Act* gives land trusts, and other conservation bodies such as government agencies, the authority to sign and register CEAs and to enforce them. It is important to tie in your Conservation Easement Agreement to this law which allows and sets the rules for all Conservation Easement Agreements in Ontario.

Definitions

4. These definitions are likely to be the same for all Conservation Easement Agreements.

CLTS&P, Practice 11. A: Funding Conservation Agreement Stewardship

1. Estimate the long-term stewardship and enforcement expenses of each conservation agreement transaction
2. Track stewardship and enforcement costs

2. The registration of this Agreement on the title to this Property and the conservation of its natural features identified as Conservation Values in section 1 are important to ecological health and in the public interest.
3. The Owner and the [land trust] make this Agreement with its Covenants and Easement in gross under section 3 of the *Conservation Land Act*. Once registered on title for the Property, the provisions of the Agreement run with the land. The Agreement may be enforced by the [land trust] or its assignees against the Owner or any subsequent owner of the land.

Definitions

4. In this Agreement, the following words and terms have the following meanings:
 - (a) "Act" means the *Conservation Land Act*, RSO 1990, c. C.28, as amended, and any statute that may be enacted to modify or replace it.
 - (b) "Agreement" means this Agreement and the Schedules attached to and forming part of it.
 - (c) "Baseline Documentation Report", referred to as the "Report" in this Agreement, means the document describing the Property and its Conservation Values and identifying its natural features and boundaries and the structures on the Property. A Summary of the Report is found in Schedule 3, which is attached to and forms part of this Agreement

Each party to this Agreement has an original of the complete Report including descriptive text, photographs, boundaries, and maps.

Definitions

4. Be sure to include at least one of the reasons for a CEA found in section 3(2) of the Conservation Land Act in the definition of the Conservation Values of the property.

Some Conservation Easement Agreements may have different restrictions for different sections of the Property, for example, the residential zone, farmed fields, or a forest. In this case, this section may include a definition of the zone or zones that describes their location. Sometimes the CEA only applies to a portion of the property. Clearly identified boundaries are important for CEA monitoring and enforcement. A reference plan or metes and bounds description prepared by an Ontario land surveyor may provide the necessary clarity and precision around boundaries. A reference plan may also be required by your local Land Registry Office. Future registration bulletins from the government of Ontario may also provide guidance on this. The use of accurate Global Positioning System points is also possible. Aerial imagery and handheld mapping applications can also provide useful references when a registered survey is not possible. In some circumstances, zones could also be described and shown on a map in a Schedule to the Agreement. Check regulations and government policies for registering surveys, plans, and sketches, such as Ontario Regulation 43/96 on Surveys, Plans and Descriptions of Land.

- (d) “Conservation Values” means biodiversity, ecological functions, and other natural features of the Property, described in section 1, which are to be conserved through this Agreement. The Report sets out the features of the Property in greater detail.
- (e) “Covenants” mean the covenants set out in sections 6 and 7 and Schedule 1 attached to and forming part of this Agreement.
- (f) “Easement” means the easement set out in sections 8 and 9 and Schedule 2 attached to and forming part of this Agreement.
- (g) “Owner” means the owner of the Property and any person who, at any time after registration of this Agreement, becomes the registered owner of the Property. The Owner may be an individual, spouse, corporation, partnership, or other person under law, including a trustee.
- (h) “Person” means individuals, corporations, partnerships, or trusts.
- (i) “Property” means the portion of the land that is covered by this Agreement including any buildings, structures, and improvements. It is described as [insert here the legal description from the parcel register with the PIN and the Lot and Concession or cross-reference to the relevant schedule].
- (j) “Register” means to register on title using Ontario’s Land Registration System.
- (k) “Term” means the term of this Agreement, beginning on the date of signing and lasting for a term of 999 years.

The Owner

5. A title search is an essential step in the Conservation Easement Agreement process. It is best to find out as soon as possible in the negotiation process about any rights-of-way, other easements, longer-term leases, or other interests affecting the property. You may need to arrange for another easement or another registered right to the property to be made secondary to the CEA. For instance, when there is a mortgage registered on title, before taking on the conservation easement, you must make sure the mortgage is paid off and the charge against the property ended, or that the mortgage is now made subordinate (postponed or subject to the CEA) and the CEA is effective on title.

Your lawyer should also do an off-title search to find out about any other encumbrances, financial liens, or other payments that are due and linked to the property.

You will need to establish the marital status of the landowner. Even though a spouse may not be a registered owner on title, the spouse will often have to agree to the CEA and sign it.

When the legal description is long and there are many details to list, you may create a Schedule for the Property description. This section could then read – “The Owner states that they have good title to the Property as described in Schedule 1.” Note: when providing the legal description of the Property in a Schedule, make sure the definition of Property in Section 4 refers to that Schedule.

The Owner

5. The Owner represents and warrants that they have good title to the Property [with the following limitations: list any rights of way, utility easements, leases, etc. with dates and registration numbers, when applicable]



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The Covenants – Restrictions on the Use of the Property

6. The details of the restrictions on the Property are in the Schedule. This section clarifies the intent of the Owner and the land trust to put these restrictions in place.

Restrictions are essential to the Agreement. They are negotiated with the Owner. Their purpose is to protect the valued natural features of the Property. Therefore, the restrictions must relate to the natural features.

See Schedule 1, The Covenants, for more information.

7. It is important that the Owner understands the obligations that the Conservation Easement Agreement places on them. The Owner is no longer free to do whatever they wish. Once the Conservation Easement Agreement is registered on title, it restricts the Owner's property uses. The mindset of an Owner of a Conservation Easement Agreement property should be to ask themselves "Is this allowed?" before doing any planting, cutting, extracting, building, road repairs, etc.

The CEA should be written so that future landowners clearly understand what activities are allowed and what is restricted

See CLTS&P, Practices 11. C, 11. D, and 11. F

The Covenants – Restrictions on the Use of the Property

6. The Covenants are set out in Schedule 1 of this Agreement which is part of this Agreement. The parties agree that the Covenants are restrictive covenants for the purposes of the Act. Once registered on title, the Covenants run with the Property and bind the Property and any part of it to the terms of this Agreement for its Term. The Covenants restrict the Owner's uses of the Property and give rights and benefits to the [land trust]. The Owner intends to create and agrees to abide by these Covenants on the property.
7. The Owner must receive the prior written consent of the [land trust] before doing something that may have a negative effect on the Property's Conservation Values.

CLTS&P, Practice 11. C: Conservation Agreement Compliance Monitoring

1. Adopt a written policy and/or procedure for compliance monitoring of conservation agreements that establishes consistent monitoring protocols and recordkeeping procedures.
2. Monitor each conservation agreement property at least once per calendar year
 - a. If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years
 - b. Promptly document the outcomes of annual compliance monitoring activities for each conservation agreement, including communications to and from owners of conservation agreement properties.
 - c. Conduct on-the-ground verification in a timely manner for any suspected violation or breach of conservation agreements.

The Easement – The Right to Access the Property

8. An “easement” is the right to cross over or to access the Owner’s land. Without an easement registered against the Property, the land trust would not have the right to go onto the Owner’s land. Having the legal right to go onto the Property is necessary to monitor compliance with the Agreement and to take remedial action when the Owner has not complied with its terms. This section also includes agreement not to interfere with access, which is a restrictive covenant that complements and parallels the easement’s right of permitted access for the land trust.

See CLTS&P, Practices 11. C and 11. D

9. In most cases, neither the Owner nor the land trust want the public to have access to the Property without the owner’s permission. This section confirms this intent. Should public access be acceptable, think carefully about the impact people might have on the Property and its Conservation Values over time and how the Owner could manage overuse, litter, and other problems that often accompany public use, including liability.

The Easement – The Right to Access the Property

8. The Owner agrees to permit and to not interfere with entry and access to the Property by the [land trust] when it or its representatives seeks to verify compliance with this Agreement or conduct restoration or remediation activities.
9. The Easement in Gross is set out in Schedule 2. This Agreement does not give the public a right to access any part of the Property.

CLTS&P, Practice 11. D: Landowner Relationships

1. Maintain regular contact with owners of conservation agreement properties to maintain relationships and avoid potential agreement conflicts
2. Establish systems to track changes in land ownership
3. When the property changes hands, attempt to meet with the new owner or property manager to ensure the new owner obtains:
 - a. A copy of the conservation agreement documents
 - b. Information in writing about the conservation agreement
 - c. Copies of the land trust’s stewardship policies and procedures

The Property

10. The Baseline Documentation Report, in conjunction with the CEA, is the basis on which the land trust monitors compliance with the CEA and on which enforcement actions may be taken. The Report is a critical document that binds the landowner and the land trust. The details in it matter. The details and accuracy of the Report are therefore essential, including all the restrictions as documented in the signed CEA. Make sure **before signing and registering** the CEA that the Report and the CEA are consistent and the drafting process has not resulted in changes to one document and not the other. In the rare situation where the complete Report is not ready at the time the CEA is registered, the landowner and the land trust must sign a timeline and process for completing the report and an acknowledgement that the registered Report is an interim report. Check a land trust's duty under CLTS&P, Practice 11. B. 2 before registering a CEA without a final Report. In some circumstances, it may be useful to register an updated Report or develop and sign off on a monitoring report or current condition report to reflect key approved or natural changes (e.g. a windstorm or fire).

Ontario Land Title Registry directives may limit the length and contents of the Report that may be registered on title, which is why this section refers to the Summary of the Baseline Documentation Report. It is important to make sure that the Summary Baseline Documentation Report that is registered is accurate and properly references the full Report.

OLTA has resources for completing a BDR on its website. www.olta.ca

The Property

10. Schedule 3 to this Agreement is a Summary of the Report for the Property. It describes the current use of the Property, its natural features, any structures, and other items.
11. The parties agree that the Report accurately describes the Property, its Conservation Values, its uses and natural features at the time of entering this Agreement, the elements of the Property to be conserved by this Agreement, and other related items. The Owner and the [land trust] each have a copy of the full Report.
12. The parties agree that the Report is the basis for monitoring compliance with this Agreement from now on.

11. This section confirms that the Owner and the land trust agree that the Baseline Documentation Report they both signed is accurate.

CLTS&P, Practice 11. B. 4 says that the Owner and the land trust are each to have an original of the complete, signed Baseline Documentation Report.

12. CLTS&P, Practice 11. B. 2 requires that the Baseline Documentation Report is prepared and signed by the Owner and the land trust *before* the Agreement is registered on title. When seasonal conditions make it impossible to complete a full Report, the Owner and the land trust must sign a timeline for completing the Report and acknowledge the accuracy of the data available at the time of signing.

Owner's rights and responsibilities

13. Ownership of the Property does not transfer to the land trust. The Owner continues to own the Property with all the rights of a property owner limited only by the provisions in the Agreement and the restrictions on activities that are set out in it. Some land trusts may include a right of first refusal in the CEA for when the owner puts the property up for sale.
16. The Owner is expected to act as a reasonable owner and not let the Property become derelict or incur debts that can be claimed against the property and could interfere with the CEA.

See *CLTS&P, Practices 2. A & 6. E*

CLTS&P, Practice 2. A: Compliance with Laws

1. Comply with all applicable federal, provincial and municipal laws and regulations

CLTS&P, Practice 6. E: Risk Management and Insurance

1. Routinely assess and manage risks so that they do not jeopardize the land trust's financial health and its ability to carry out its mission and legal responsibilities
2. Carry general liability, directors' and officers' liability, property and other insurance, all as appropriate to the land trust's risk exposure or as required by law

Owner's rights and responsibilities

13. The Owner maintains all rights to the Property that are not expressly restricted by the Agreement and are consistent with the Agreement.
14. The Owner maintains the right to lease, sell, or transfer the Property, or pass it on through a will, according to the provisions in this Agreement. The [land trust] has no possessory rights in the Property.
15. The Owner is solely responsible for the condition of the Property.
16. The Owner must, at the Owner's expense, continue to maintain the Property as a careful and prudent owner, including:
 - (a) keeping the buildings and structures in good repair [if applicable]
 - (b) paying all fees and taxes as they become due
 - (c) keeping the Property free of construction liens and other liens or debts, and
 - (d) complying with municipal by-laws and other legal requirements.

The Owner retains all occupier's liabilities, and other liabilities and responsibilities, related to the ownership, use, and maintenance of the Property.

Owner's rights and responsibilities

17. Insurance protects the land trust and land trust officers in case of third party accidents on the Property and other claims. The land trust and the Owner could agree that the land trust is not named as an additional insured, although it is preferable.

18. The Owner cannot shrug off a violation of the terms of the Conservation Easement Agreement by saying that a contractor or visitor to the Property did it. The Owner must inform people whom they invite to the Property of the obligations under the Agreement and the restrictions in it.

See also section 35 which makes the Owner liable for damages caused by people using the Property with the Owner's permission.

20. This notice period gives the land trust time to take actions to protect its rights under the Conservation Easement Agreement, to connect with the new Owners, and to visit the Property to try to make sure no violations of the Agreement occur during the change of ownership.

See *CLTS&P, Practice 11. D*

17. The Owner must maintain comprehensive general liability insurance to cover per occurrence property damage, bodily injury, and personal injury. The coverage amount must be adequate for the circumstances and reflect industry standards of the day. The [land trust] must be listed as an additional insured on the insurance policy. The Owner must provide proof of insurance when requested by the [land trust].

18. The Owner may invite others to have access and use the Property so long as they respect the terms of the Agreement. The Owner agrees to make anyone using the Property, including licencees, lessees, contractors, neighbours, visitors, and family members, aware of the Agreement including its Covenants and Easement provisions. The Owner is responsible for ensuring that anyone on the Property with the Owner's permission abides by the terms of the Agreement.

19. The Owner has the right to use the Property as collateral to secure a debt, provided that the rights of the [land trust] to enforce the terms, restrictions, Covenants, and the Easement under this Agreement remain, take precedence, and are not limited in any way.

20. The Owner must give the [land trust] at least twenty-one (21) days' notice of any planned change in the ownership or legal interest in the Property. The notice must include the name, address and contacts of the new owner, renter, mortgagor, or other party.

Owner's rights and responsibilities

21. It is essential for a new Owner or someone who is acquiring a right in relation to the Property, such as a lender, to understand the purpose of and obligations under the Conservation Easement Agreement. This section requires the Owner to communicate this information. The failure to do so, however, does not affect the enforceability of the Agreement with respect to the Owner or the third party.

See CLTS&P, Practice 9. I

22. This is a safeguard to make sure that the new Owner is aware of the Conservation Easement Agreement and its requirements. It also identifies responsibilities during the period of transition in ownership. An additional measure could be to prohibit any transfer or mortgage unless the CEA is in good standing, as acknowledged in writing by the land trust

21. Before finalizing an agreement or signing any documents with any mortgagor, buyer, or other person acquiring an interest in the Property, the Owner must inform the party, in writing, of this Agreement, the Owner's responsibilities under it, the [land trust's] interest, and the Property's Conservation Values that the Agreement protects. The Owner must send a copy of this communication to the [land trust]. The Owner must ensure that any agreement or document signed with another party is subject to this Agreement.

22. To avoid liability for a breach of this Agreement after a transfer of ownership, the current Owner must provide the [land trust] with, in addition to the required notice of transfer of the Property in section 21, a written, signed, and witnessed statement, with the content and in a form acceptable to the [land trust], from the future Owner acknowledging this Agreement and assuming its obligations and liabilities as of the date of the transfer of ownership. When the Property changes ownership in any way including a power of sale or gift to a family member, the owner transferring the Property must provide the complete Report to the new Owner.

CLTS&P, Practice 9. I: Selling or Transferring Land or Conservation Agreements

1. When selling land, conservation agreements or other real property interests,
 - a. Establish protections as appropriate to the property
 - b. If the sale is to a party other than another charitable organization or public agency, obtain an independent appraisal by a qualified appraiser or a short narrative, a letter of opinion or other documentation from a qualified real estate professional to determine the value of the asset and to support the selling price
 - c. Select buyers in a manner that avoids any actual or appearance of impropriety

Owner's rights and responsibilities

23. When the Owner agrees, the paying of "transfer fees", sometimes referred to as "stewardship fees", at the time of sale of the Property, can be included in the Agreement. They are further insurance that the land trust can protect the Conservation Values of the Property over the long term. By receiving a small percent of the sale price, the land trust can offset inflation that may have eroded the funds originally set aside to steward the Property. The funds may also pay for an update, if necessary, of the Report for the new Owner's signature. Ensure that such a fee or charge meets Land Titles Act requirements.

See CLTS&P, Practice 11. A

24. Land use changes or resource use approval could have a negative effect on the Conservation Values the Conservation Easement Agreement is protecting. The approval authority needs to be told that there is a Conservation Easement Agreement in place. The land trust needs to know of the application ahead of time so that it can protect its interests.

23. Within three days after closing the sale or disposition of the Property, or under agreed alternative arrangements with the [land trust], the selling Owner must pay the [land trust] two (2) percent of the sale price. This does not apply to the transfer of the Property to the Owner's heirs in the case of the death of the Owner or to a bequest made by the Owner. In the case of a lease, the Owner will pay the [land trust] an amount specified by the [land trust] in its sole discretion up to a maximum of two (2) percent of the lease amount on the day the lease takes effect. The failure to make this payment within three (3) days of closing or the day the lease takes effect results in a debt charged against the whole Property.

The Owner must give the [land trust] twenty-one (21) days' notice with a description of a proposal before the Owner, or anyone acting on behalf of the Owner, files an application seeking a land use planning change or resource use approval. The Owner must inform, in writing, the party to whom the application is submitted of this Agreement, the Owner's responsibilities under it, the [land trust's] interest, and the Property's Conservation Values that the Agreement protects. The [land trust] must be copied on and sent this correspondence.

24. The Owner must inform the [land trust] of any notice about a request to permit activities or changes on a property within 500 m of the Property three (3) days after receiving such notice or seeing it posted on a nearby property.

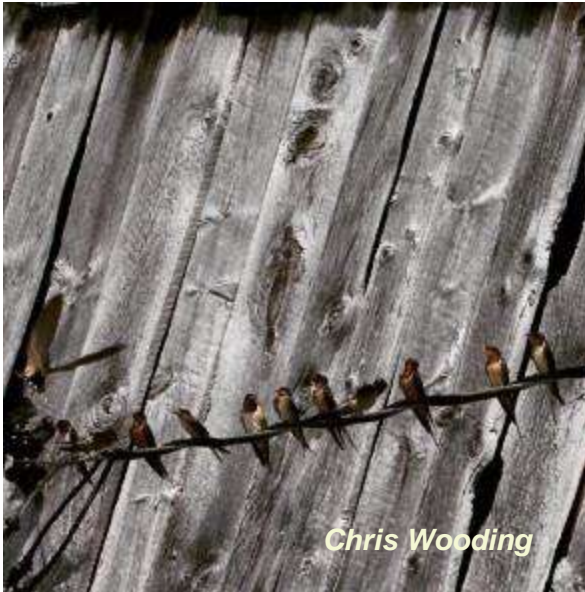
Owner's rights and responsibilities

25. The Owner will be notified about a proposed change of use on a neighbouring property, which requires approval by a governing body. The land trust has an interest in ensuring that the proposed change will not have a negative effect on the easement Property. This links the private Conservation Easement Agreement with the public processes of planning and other resource approvals which could have a negative impact on the Conservation Values of the Property.
27. Section 207.31 of the *Income Tax Act* (Canada) imposes a tax on charities that dispose of or change the use of an Ecological Gift property without the authorization of the Minister of the Environment and Climate Change. The tax is equal to 50% of the value of the property immediately prior to the disposition or change in use. This section protects the land trust from paying this penalty should the Owner violate the terms of the Conservation Easement Agreement and change the use of the Property without the necessary permissions.

25. The Owner must inform the [land trust] of any notice of expropriation or injurious affection within three (3) days of receiving such notice.
26. The failure of the Owner to carry out the obligations in sections 20 to 25 does not invalidate any part of this Agreement or its enforceability.
27. Except as required by law, the Owner will not permit any access to the Property under the *Aggregate Resources Act* or the *Mining Act*, as amended or replaced, or any other legislation with the purpose of extracting aggregates, minerals, water, or any other resources, without obtaining the prior written consent of the [land trust].

CLTS&P, Practice 9. I: Selling or Transferring Land or Conservation Agreements

2. When selling or transferring conservation land or conservation agreements to another charitable organization or public agency, consider whether the new holder can fulfill the long-term stewardship and enforcement responsibilities
3. For the sale or transfer of land or conservation agreements certified as ecological gifts, request authorization from the Minister of Environment and Climate Change Canada, or its replacement.



28. When the Owner, by act or omission, negligent or not, causes any damages, injury, death, or loss to the [land trust], the Owner agrees to cover the costs of the damages, injuries, death, and losses and indemnify and hold harmless the [land trust]. This includes actions or omissions by the Owner or anyone acting on behalf of the Owner or for whom the Owner is responsible in law. The Owner agrees not to claim these damages, injuries, or losses from the [land trust], its directors, employees, volunteers, or agents.

Include for a Property when there is an application for certification or certification has been received under Environment and Climate Change Canada's Ecological Gifts Program only:

Owner's rights and responsibilities

29. The wording of this section will vary depending on the situation, and the Owner's wishes. Generally, a land trust will want the right to provide the location of the Property to other conservation organizations for regional conservation planning work and connectivity mapping. Signage and sharing information may also be a condition of funding the land trust received towards the costs of the acquisition of the conservation easement.

Possible alternative wording might include: "The Owner agrees to have signage posted on the Property to communicate the conservation status of the Property, to provide public information about its protection, and to recognize funders who contributed towards the long-term protection of its Conservation Values".

[separate section] The Owner agrees to hold harmless and cover the costs and indemnify the [land trust] when the federal government imposes a tax or penalty under the *Income Tax Act* (Canada), as amended or replaced, or other law, as a result of any unauthorized change in use or disposition the Owner made to the certified ecologically-sensitive Property.

29. The Owner agrees to allow the [land trust] to report on this Agreement and the location of the Property to government departments and agencies and conservation organizations.

Enforcement – The response to a breach of a term of the Agreement

30. It is preferable for a land trust to work out solutions with the Owner to maintain a positive long-term relationship. Taking disputes to court is expensive and will have a negative impact on the parties. Sometimes, however, going to court may be necessary to defend the Conservation Easement Agreement and the Conservation Values of the Property.

31. The section gives the land trust the authority to decide when there has been a breach of the Conservation Easement Agreement. This avoids arguments about whether or not a situation is a breach. When the land trust says it is a breach, it is, and the land trust can follow up.

The land trust needs to have evidence – photographs, documents, annual monitoring reports, other records, etc. – to support its conclusion that there has been a breach of the Agreement.

Enforcement – The response to a breach of a term of the Agreement

30. When the [land trust] determines that there is an actual or threatened breach of a term in the Agreement, it will notify the Owner of the actual or threatened breach and set out the actions, with estimated costs, the Owner must take to remedy the breach along with a reasonable deadline for completing the required actions. If the Owner fails to remedy the breach by the deadline or fails to arrange for the remedy within a timeline satisfactory to the [land trust], then the [land trust] has the right to enter the Property and do the work necessary to remedy the breach or prevent further damage, all at the expense of the Owner.

31. Despite section 30, the [land trust] has the right to decide that a breach requires immediate action to prevent or mitigate damage or irreparable harm to the Conservation Values of the Property. In this situation, the [land trust] may enter the Property to remedy the breach at the expense of the Owner and without the prior notice required by section 30 or in section 3 of Schedule 2.



Chris Wooding

Enforcement – The response to a breach of a term of the Agreement

32. See *CLTS&P, Practice 11. E*

CLTS&P, Practice 11. 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

32. The [land trust] may take all remedies or actions in law or equity, by statute or under this Agreement, to enforce the Agreement or to protect or preserve the Conservation Values of the Property. These actions include:

- (a) the right to enter the property and take remedial actions to prevent or mitigate damage or irreparable harm to the Conservation Values of the Property
- (b) the right to ask a court for an injunction, *ex parte*, prohibitive, or mandatory, as necessary, to enforce the Agreement or restrain violations
- (c) the right to ask a court for a declaration, including an interpretation, or that there has been a breach of the Agreement
- (d) the right to ask a court to compel restoration as a result of the breach, and
- (e) the right to ask a court for damages including any as described in sections 33 to 36.

All remedies are cumulative and additional to all remedies now or later existing at law or in equity.



Morgan Roblin

The response to a breach of a term of the Agreement – Enforcement

33. Traditionally, a court looks to the market value of a property before and after breach of an agreement to determine the appropriate amount of compensation. This is not always a suitable approach when damage to a natural feature is at issue. This section provides for compensation that would allow restoration or replacement of the damaged natural feature. In addition, since restoration or replacement of a mature natural feature or ecosystem may not be possible, the Agreement specifically provides for injunctive relief, as in section 32 to prevent damage to the natural features in the first place. These enforcement provisions give the land trust a strong hand to help ensure that the original owner's intent can be achieved in the future.

See CLTS&P, Practice 11. E

34. *See CLTS&P, Standard 11*

35. *See CLTS&P, Practices 6. E & 11. E*

CLTS&P Practice 11. 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. Establish written procedures to guide the land trust's 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.

33. The Owner and the [land trust] acknowledge and agree that a breach of this Agreement may cause irreparable harm to the Conservation Values of the Property and that damages may not be a sufficient remedy.

Further, it may not be possible to remedy the breach and fully restore the Conservation Values of the Property as they existed before the breach. The Owner and [land trust] also acknowledge and agree that it is not necessary to prove either actual damages or the inadequacy of otherwise available legal remedies. The Owner waives the defences of laches, estoppel, or prescription. The Owner therefore agrees to compensate the [land trust] for the losses to the Conservation Values of the Property by making, in addition to any other amounts owing to the [land trust] based on the loss of the Agreement's market value or on the long-term restoration costs, whichever, in the opinion of the [land trust], better compensates the [land trust] for the breach.

34. The Owner must pay survey costs and the fees for filing a Reference Plan when the Owner and the [land trust] have a dispute about the location of a boundary relating to the Covenants.

35. The Owner is responsible for damages or unauthorized changes to the Property caused by human actions. The burden of proof is on the Owner to prove on a balance of probabilities that the damage was caused by a trespasser and there was no way that the Owner could prevent or stop it from happening.

The response to a breach of a term of the Agreement – Enforcement

37. Extreme weather events may occur. They are not the Owner's or the land trust's fault. This section clarifies that neither the Owner nor the land trust can be held responsible for breaches of the Agreement caused by natural events.

See CLTS&P, Practices 6. E and 11. E

38. *See CLTS&P, Practices 11. D & 11. E*

39. *See CLTS&P, Practices 6. E & 11. E*

CLTS&P, Practice 11. 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. Maintain contact with the backup holder as appropriate to ensure the ability of the holder to hold conservation agreements is still valid.

36. The Owner must pay all reasonable costs incurred by the [land trust] to enforce the terms of this Agreement or to remedy a breach of this Agreement, unless a court decides that there has been no breach or default by the Owner. This includes, for example, all legal or other dispute resolution costs and expenses, government fees, remediation work, and restoration costs.

37. Neither the Owner nor the [land trust] is liable for damage or changes to the Property caused by a storm, earthquake, naturally caused fire, flood, washout, infestation, or other acts of nature, whether foreseeable or unforeseeable, that prevent either from performing its obligations under this Agreement. Neither the Owner nor the [land trust] are liable for damages or changes to the Property from any prudent action taken in good faith under emergency conditions to prevent or mitigate damage to the Conservation Values of the Property. The burden of proving that a breach of the Agreement was caused by an act of nature or was prudently taken in good faith under emergency conditions falls to the party claiming immunity from liability.

38. The Owner must apply any proceeds of insurance that arise from a breach to a term of this Agreement or damage to the Conservation Values of the Property to the costs of remediation or restoration work. The Owner, in consultation with the [land trust], may pursue a third party for injunctive relief and the recovery of damages. Any award of money will be applied to the outstanding costs of the recovery and remediation work.

39. Any money owed to the [land trust] by the Owner is a lien or a charge upon the Property and enforceable in the same way as any debt or a mortgage. The interest rate is five (5) percentage points above the prime rate of interest charged by the Bank of Canada beginning thirty (30) days after the Owner was served notice that the debt was owing to the [land trust]. The debt can be collected by the [land trust] in a court of law.

Notice

40. Any notice, request, or waiver under this Agreement must be made in writing. The written notice may be hand delivered, or sent by registered pre-paid post, courier, email, or other electronic communication to the appropriate address:

Owner

Address

Email

Telephone

[Land trust]

Address

Email

Telephone

41. A notice sent by email, or other electronic communication, is deemed received on the day it was sent provided it was sent before 5 pm on a business day. When sent after 5 pm or on a Saturday, Sunday, or statutory holiday in Ontario, it is deemed received on the next business day. Pre-paid postage mail is deemed received four (4) business days after it was mailed. A notice sent by courier is deemed received two (2) business days after it was sent, or on the day it was received, whichever is sooner.

42. The Owner or the [land trust] must provide written notice of any change to the contact information in Section 40 within three (3) days of the change. The new information is substituted for the contact information in Section 40.

43. The [land trust] may rely on the address for the Owner in the municipal assessment records when attempts to contact the Owner using the information in Section 40 have been unsuccessful.

Notice

40. See *CLTS&P, Practice 11. D*

Other elements of the Agreement

44. The Conservation Easement Agreement is usually permanent and registered on title to run with the land. Nevertheless, changes in family circumstances, property values in the area, land use classifications, or natural changes may give rise to hopes to capitalize on new opportunities. This provision clarifies that, whatever happens around or on the property, the Agreement remains in force.

The land trust's written agreement is required before the Owner can take certain actions. This requirement is specified in various sections of the Agreement and is firm. A lack of response from the land trust is not permission to proceed.

See CLTS&P, Practice 11. F

46. This section refers back to the purpose of the Conservation Easement Agreement which is stated in Section 1.

47. This protects all provisions in the Agreement from becoming unenforceable should a court decide that one provision is not legal and cannot be enforced.

Other elements of the Agreement

44. The Owner and the [land trust] agree that the Covenants and Easement are enforceable regardless of changes in the Owner's circumstances, general economic conditions, land use planning status of classification, or in the use of nearby properties.

When this Agreement requires the Owner to receive the prior written consent of the [land trust] before doing something, the decision to consent rests solely with the [land trust]. The [land trust] is not obliged to respond. No response from the [land trust] is not consent.

45. The Owner and the [land trust] will try to work together when there is a disagreement about any element of this Agreement. They may agree to use an alternative dispute resolution process.

46. Any ambiguity in a provision of this Agreement must be interpreted in such a way as to maintain the purpose of the Agreement as stated in section 1. Furthermore, in the case of inconsistencies between provisions in the Agreement or related documents, the [land trust] has the right to decide which provision applies to best protect the Purpose of the Agreement and the Property's Conservation Values.

47. The provisions in this Agreement are severable. Should a court decide that a provision is invalid, or unenforceable, or not applicable in a particular situation, the remaining provisions and their application remain in full effect.

Other elements of the Agreement

48. For a variety of reasons, a land trust may decide not to follow up on a breach of the Agreement or may not follow up because the breach was not identified. This failure to act at one time does not stop the land trust from taking action at another time.
49. This is a standard statement in contracts. It means that deadlines must be met. When a land trust decides to extend a deadline in the CEA, it should do so in writing and repeat that time is of the essence.
50. Indigenous Treaties and known protocols could also be noted. See *CLTS&P, Practice 2. A*
51. See *CLTS&P, Practices 11. I & 11. J*

48. The failure of the [land trust] to enforce a provision of this Agreement does not affect the right of the [land trust] to enforce the provision at a later date.
49. Time is of the essence to this Agreement, even though a time limit may have been extended or ignored one or more times.
50. The applicable laws of Ontario and Canada apply to this Agreement.
51. This Agreement cannot prevent the expropriation of all or part of the Property under the laws of Ontario or Canada. The Owner and the [land trust] have no claim against each other in the case of an expropriation or injurious affection.

Each may pursue a claim for compensation with respect to their interests in the Property and may keep the proceeds from their claims.

CLTS&P, Practice 11. H: Amendments

1. Adopt and follow a written policy or procedure addressing conservation agreement amendments so that they are consistent with the following principles:
 - a. Are consistent with the land trust's mission
 - b. Comply with all applicable provincial and federal laws
 - c. Do not jeopardize the land trust's charitable status
 - d. Do not result in a private or undue benefit
 - e. Are consistent with the conservation purpose(s) and intent of the conservation agreement
 - f. Are consistent with the documented intent of the donor, grantor and any funding source
 - g. Have a net beneficial or neutral effect on the relevant conservation values protected by the conservation agreement
2. Evaluate all conservation agreement amendment proposals with diligence sufficient to satisfy the above principles
3. If an amendment is used to adjust conservation agreement boundaries (such as to remedy disputes of encroachment) and results in a *de minimis* extinguishment, document how the land trust's actions address the terms of J. 1 below
4. Request authorization from the Minister of the Environment and Climate Change Canada for amendments to conservation agreements certified as ecological gifts.

CLTS&P, Practice 11. I: Expropriation

1. If a conservation agreement is threatened with expropriation,
 - a. Work diligently to avoid the net loss to conservation values and document the actions taken
 - b. Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation agreement
 - c. In circumstances where a net loss of conservation values cannot be avoided, document the land trust's attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation agreement deed
 - d. Provide prompt notification to relevant parties, including the expropriating authority and Environment and Climate Change Canada, if the conservation agreement is certified as an ecological gift.
52. The [land trust] has the right to assign its rights and obligations in the Agreement to another conservation body qualified to hold and enforce conservation covenants and easements under the Act. The [land trust] will provide the Owner with written notice of such assignment within thirty (30) days of the assignment. Once the Agreement is assigned, the [land trust] cannot be held liable for any breach in the obligations owing to the Owner under the Agreement.
53. Whenever the term "Owner" applies to more than one person, the provisions in the Agreement apply to each person jointly and severally.
54. This Agreement with its schedules is the entire Agreement between the Owner and the [land trust]. The parties agree that there are no other representations or understandings, verbal or written, except as stated here.
55. The headings in this Agreement are for convenience only and do not form part of the Agreement.



Chris Wooding

Other elements of the Agreement

56. A signed CEA is enforceable against the Owner who signed it. Section 3(5), *Conservation Land Act*, requires the registration of a CEA in the local land registry office to make it enforceable against future owners.

Once registered, the property cannot change hands or have a charge, such as a mortgage, registered against it without the lawyer doing the required title search finding that there is a Conservation Easement Agreement in place with restrictions and obligations on the land and its Owner.

Provisions relating to the Signing of this Agreement

58. It is preferable for the Owner to have obtained this advice. When that has not happened, you should put in this section instead:

“The Owner acknowledges that the [land trust] has recommended that the Owner get independent legal, financial, and tax advice before signing this Agreement, and has decided not to do so.”

See *CLTS&P, Practices 10. A & 10. B*

59. When an Owner is making a donation of the Conservation Easement Agreement, get legal advice **before** asking the Owner to contribute financially to the long-term stewardship of the Property. A gift must be made freely, without any conditions. This section confirms that this is the case in this transaction.

56. The [land trust] and the Owner agree to the registration of this Agreement, the related Easement and Covenants provisions and Report, and any required supporting documents in the Land Registry Office so that its terms will run with the title to the Property and bind the current and future Owners for the Term. They also agree to update its registration as may be required by any changes in Ontario’s land registry or land titles system and to include this Agreement in a conservation easement agreement registry, should one be established.

57. Once registered on title, this Agreement runs with the land for the Term and is binding on and will benefit the parties and their respective successors, assigns, heirs, executors, and personal representatives, as the case may be.

Provisions relating to the Signing of this Agreement

58. The Owner understands the Agreement and has obtained independent legal, financial, and tax advice before signing this Agreement.

59. The Owner is signing this Agreement freely and without any pressure from the [land trust].

60. The Owner states that there are no legal or equitable reasons to prevent compliance with this Agreement.

Provisions relating to the Signing of this Agreement

61. A conservation Easement Agreement cannot be changed by the parties alone. The parties must have the written consent of the Minister of Natural Resources and Forestry before making any changes.

For a Property that is an Ecological Gift: The parties must have the written consent of the Minister of Environment and Climate Change as well as the Minister of Natural Resources and Forestry before making any changes to the Agreement.

62. Some land trusts are incorporated under the *Ontario Corporations Act*, some under the *Canada Not-for-profit Corporations Act*, some under another law. Insert the correct reference in this section. This section shows that the land trust is qualified to hold the CEA under the Act.

61. The Owner Understands and agrees that the terms of this Agreement cannot be released, cancelled, or amended without notice to and the prior written consent of the Ontario Minister of Natural Resources and Forestry, as set out in subsection 3(4.2) of the Act.

Include for a Property when there is an application for certification or certification has been received under Environment and Climate Change Canada's Ecological Gifts Program only:

[separate section] The Owner understands and agrees that, under the terms of the Ecological Gifts Program, the uses of the Property and the restrictions on it cannot be changed, or the Agreement released, cancelled, or amended, without the prior written authorization of the Minister of the Environment and Climate Change, as required by section 207.31, *Income Tax Act*, as amended or replaced.

62. The [land trust] is a corporation incorporated or continued under [Part III of the *Ontario Corporations Act* **OR** Part II of the *Canada Not-for-Profit Corporations Act* **OR** other legal reference that establishes that it is qualified under the Act], is a registered charity under the *Income Tax Act*, as amended or replaced, and is a “conservation body” as defined by the Act.

Provisions relating to the Signing of this Agreement

63. Two concepts to keep in mind.

- 1) A contract technically requires an exchange of benefits, referred to as “consideration”. Usually one party pays the other party for something provided. In this case, the payment is small. It is sufficient “consideration” to confirm the contractual relationship and the obligations in the Agreement.
- 2) A gift must be voluntary and not involve a condition such as the requirement to pay money by the donor Owner to the land trust that is receiving the gift of the conservation easement. The nominal \$2 amount allows the transaction to qualify as a gift for income tax purposes. An option, instead of payment of the nominal \$2, is to substitute this section:

“In consideration of all the provisions in this Agreement, and following the *Conservation Land Act*, R.S.O. 1990, c. C.28, as amended, the Owner and the [land trust] agree to the covenants, restrictions, and easement in this Agreement, which will run with the Lands for the Term.”

63. Pursuant to the Act and with the payment of two dollars (\$2.00) by the [land trust] to the Owner, the Owner agrees to and grants the Covenants and Easements in this Agreement to the [land trust] for its benefit, to run with the land for the Term.

CLTS&P, Practice 11. J: Partial or Full Extinguishment

1. In the rare case that it is necessary to extinguish a conservation agreement, in whole or in part,
 - a. Follow the terms of the conservation agreement with respect to taking appropriate action, and obtain provincial authorization when required by law
 - b. Ensure there is no undue benefit
 - c. Take steps to avoid or to mitigate harm to conservation values and /or use any proceeds in a manner consistent with the conservation agreement deed
 - d. Consider the land trust’s actions in the context of its reputation and the impact on the land conservation community at large
 - e. Provide prompt notification relevant parties, including donors and funders involved in the land transaction
 - f. Request prior authorization from Environment and Climate Change Canada if the conservation agreement is certified as an ecological gift

This Agreement and its Schedules are dated, signed, witnessed, and delivered.

Date

Owner – Print name

Witness – Print name

Signature

Signature

[land trust] – Print name

Witness – Print name

I/We have authority to bind the corporation.

Signature

Signature

Provisions relating to the Signing of this Agreement

When the Property is owned by one spouse in a couple, the *Family Law Act* may require the signature of the non-owner spouse on the Agreement. The land trust should ask the non-owner spouse if they have received independent legal advice before signing the Agreement and should document both that they asked the question and the answer given.

The statement “I/We have authority to bind the corporation” means that the people signing on behalf of the land trust have the authority to do so according to the land trust bylaws or a motion of the Board of Directors.

A corporate seal is not required.

When it is not possible for all the parties to be together to sign the original of the Agreement, you can add a section to allow the Agreement to be signed in “counterpart”. For example: “This agreement may be signed in counterparts.” Then, the parties can sign identical copies of the Agreement and each copy is valid. Speak to your lawyer about this type of arrangement. It is not ideal.

Title Insurance

When a property with a CEA changes hands, the lawyer acting for the purchaser may suggest getting title insurance. Title insurance is common practice in real estate transactions in Ontario. The existence of a CEA does not prevent the purchaser from getting title insurance. The title insurance company may have specific requirements for a property with a CEA. This is something for the purchaser's lawyer to check when presenting title insurance options to a client.

Generally, the CEA will not be covered by title insurance and the title insurance company will not pay for any loss relating to the CEA. Restrictions on development potential or market value impacts, for example, are already known as the CEA is registered on title and the title insurance company deems the purchaser to be aware of the limits the CEA places on the Property.

A title insurer may require a compliance statement from the land trust stating that the Property complies with the CEA at the time the Property changes hands. The land trust should visit the property as close to the time of the Property transfer as possible and again immediately after.

Title insurance policies are not usually available to insure the land trust's CEA interest in the property.



Morgan Roblin

Schedule 1

This Schedule is attached to and forms part of the Conservation Easement Agreement between [name of the Owner] and [land trust] signed on [date the CEA is signed].

Note to readers – This section offers a few examples of covenants that may be included in a CEA. The covenants that the land trust and Property Owner negotiate must be linked to the Conservation Values of the Property and be specific and enforceable. They must relate to the Property and align with the purposes permitted in the *Conservation Land Act*.

Since the covenants or restrictions are typically the most variable part of the CEA and the focus of most of the negotiations, some land trusts use a relatively standard agreement and attach the covenants as a Schedule (appendix) to the Agreement. We have used this approach here.

A CEA and its Easement and Covenants may apply to only a portion of the Property or a zone, so long as this does not create a new building lot (see specific exemptions in the *Planning Act*, subsections 50 (3) and (5)). The CEA can also be drafted to apply to the entire property with specific Covenants applying only to certain zones or areas within the property boundaries (i.e. residential zone versus protected zone).

In most cases, only some of the covenant examples below will be relevant, depending on the Property and its Conservation Values. Please use the wording here as an illustration only.

Schedule 1

The restrictions or “Covenants” are the key part of the Conservation Easement Agreement. They are specific to the Property and the Conservation Values that the Agreement is meant to protect. They are negotiated with the current Owner. They will apply to all future owners, too.

Some things to keep in mind:

- Tie the restrictions to the natural features the Agreement is protecting. For example, when the only purpose of the Agreement is to preserve the shoreline without disturbance, restrictions must relate to the shoreline.
- While you might wish to protect natural features and processes, keep in mind that it might be useful to consider and permit specific human activities, such as removing invasive species or hazards and doing restoration work with the permission of the land trust. etc.
- Use specific measurements wherever possible. Better to write that the Owner may maintain a “3 m wide roadway” on the Property than to say the Owner may maintain “a narrow roadway”.
- Consider using zones to reflect the various uses of the Property and to separate what activities and restrictions are acceptable in what zone. For example, for properties with a house, it may make sense to create a human residential zone, where people can make some changes over time, and a conservation zone, where natural processes will continue without human interference. In some cases, a farm or agricultural zone may be useful.

-

- Consider how you will monitor compliance with the Agreement restrictions. You may wish to prohibit the killing of animals on the Property. How will you know if the Owner sets mouse traps in the house every Spring and Fall? What will you be able to verify during a monitoring trip? What is essential to protect the Conservation Values of the Property?
- Think about enforcement. Should you find that the Owner has failed to respect a restriction in the Agreement, what enforcement action could you take to remedy it? When you cannot see a way to enforce a restriction, it is best to rethink what you are trying to achieve and how best to achieve it.
- Be careful when you create an exception to a covenant. Make sure it does not undermine the intent of the covenant.
- Be consistent with the words you use. For example, don't use "forest", "woods", and "grove" interchangeably. You may want to define some words or terms in the Covenants schedule.
- Keep it simple. Although it is tempting to try to foresee every possible use or misuse of a Property, complex agreements are more likely to have language that is vulnerable to different interpretations.
- Aim for simple, clear, and concrete restrictions.

Some "Covenants" are "requirements" to do something or "positive covenants", instead of "restrictions". They are acceptable provisions so long as they relate to the purpose of the Agreement, for example, keeping fencing in good repair to keep cattle out of protected habitat.

The fact that covenants may be restrictions (you must not) or requirements (you must) is specifically addressed in subsection 3(10), *Conservation Land Act*. It says that whether a covenant is "positive or negative in nature", the law considers it a "restrictive covenant".

Reference to the covenants being "in gross" means that they do not relate to a nearby property, unlike some kinds of covenants (and easements). The *Conservation Land Act*, Section 3(4), explicitly does not require covenants and easements to benefit nearby lands.

See CLTS&P, Practice 11. F

The Covenants – Restrictions on the Use of the Property made under Section 3, the *Conservation Land Act*, as amended

1. The parties agree that the Covenants are restrictive covenants in gross under the *Conservation Land Act*, R.S.O. 1990, c. C.28, as amended (the “Act”). Once registered on title, the Covenants run with the Property and bind the Property and any part of it for the Term. The Covenants restrict the Owner’s uses of the Property and give rights and benefits to the [land trust].
2. The Owner will not use the Property nor permit any use of the Property that will damage or destroy the Conservation Values of the Property or prevent their restoration and remediation.
3. The Owner and all successors and assigns reserve the right to use the property in a manner that is consistent with the terms of this Agreement and that is not expressly prohibited in these covenants.

3) A CEA only conveys rights and sets restrictions that are described in it. This provision gives the Owner the reassurance that they are not giving up any rights of ownership that are not part of the CEA.

4. The Owner agrees to abide by the following Covenants.

Subdivision

5. The Owner may not subdivide or create a condominium of the Property.

5) Subdividing a Property could potentially defeat the purpose of the CEA or create more enforcement challenges with multiple owners. As discussed below, this section needs to support the purpose of the CEA.

Severance

6. The Owner may not sever or otherwise separately deal with any portion of the Property.

6) This restriction, as all restrictions, must relate to the Conservation Values that the CEA is protecting. In some cases, the layout of the Property and the CEA terms may not justify this restriction on ownership. For example, when a small portion of the Property is a residential zone with a house and garage that is not covered by the CEA restrictions on use because the residential zone has no Conservation Values, it may be hard to justify preventing the severance of that portion of the Property in the future. The *Planning Act* and local plans and by-laws will also have some regulatory restrictions that apply to severances and subdivision.

Easements and Rights of Way

7. The Owner may not grant an easement or right-of-way on, over or under any part of the Property, unless required by law.

7) The CEA generally prohibits the Owner agreeing to encumbrances on the Property. There are some circumstances in which a landowner may not refuse an easement or right of way. For instance, Ontario Hydro may want to put in a power line and the Owner cannot usually prevent it.

Water

8. No waterbody on the Property may be altered in any way. Damming, draining, diverting, or changing the course of any water flow is prohibited.
9. The use, removal, or sale of water taken from the property is prohibited.

9) This covenant is possible for a natural Property where the goal of the land trust and the Owner is to allow natural processes to occur without human interference. When the Owner is using the Property recreationally or lives there, some or all of the year, the covenant could allow the Owner to take water for personal use. In some cases, agricultural drainage may be required by law and cannot be restricted on the Property.

Changes to the Topography of the Property

10. Grading, removing, or adding materials or altering the surface or topography of the Property is prohibited.

10) When the Property includes road access to a house, for example, this provision can be made less restrictive or include a specific exception for the road or allow excavation around the house. When the Property includes shoreline, specific wording to protect the natural landscape of the shoreline may be necessary.

Roads and Driveways

11. No new driveways, other roadways, or parking areas may be constructed anywhere on the Property.

11) The Baseline Documentation Report should identify the exact location of existing roads and driveways. The CEA needs to allow for their maintenance and repair. Usually, a CEA will not allow for any new roads or driveways and will not allow them to be widened or paved. Consider what is a reasonable restriction in the context of the Property's Conservation Values, the different zones (e.g. agricultural areas needing equipment access) and the long-term (forever) effect of the restriction. Some flexibility can be incorporated in this or the trail restriction by requiring land trust approvals of any changes.

Trails

12. No new trails, paths, or other passageways for any type of vehicle may be constructed anywhere on the Property, except with the prior written approval of the [land trust].

12) The Baseline Documentation Report should identify the exact location of any existing trails. Generally, the CEA should prohibit adding to the trail system and limit how the trails are maintained. For example, clipping branches to keep the trail open or stating a maximum width of an unpaved surface may be acceptable. Widening a trail or adding gravel, wood chips, and other materials to it may be prohibited.

Vehicles

13. No vehicles, including trucks, cars, motorhomes, boats, trailers, snowmobiles, all-terrain vehicles, motorcycles, and bicycles may be used or stored anywhere on the Property. Horses and horseback riding on the Property are prohibited.

13) This covenant is possible for a natural Property where the goal of the land trust and the Owner is to allow natural processes to occur. When there is a driveway or trails on the Property, the covenant could allow vehicle access and specify where they can go and where they can be parked. When there is a house and septic system, the covenant may need to allow truck access for maintenance of or repairs to the septic system. Where there are trails, horseback riding could be permitted.

Camping

14. The placement of a mobile home, trailer, tent, or boat which can be used as a residence or temporary accommodation is prohibited.

14) This covenant is possible for a natural Property where the goal of the land trust and the Owner is to allow natural processes to occur without human interference. When the Owner is using the Property recreationally or lives there, some or all of the year, the covenant could allow some temporary overnight accommodation in the residential zone or a specified area. Prohibiting temporary accommodations might be difficult to monitor and enforce.

Limits on Construction

15. Construction of any building, shed, or other structure anywhere on the Property is prohibited.

15) When a CEA covers a natural Property with no human use this covenant may be appropriate. When there is a residence on the Property, it may be best to create a "Conservation Zone" and a "Residential Zone". The Residential Zone may allow changes to an existing building within the existing building footprint or within some limits – not more than "x" square meters and "y" height, "z" percentage increase, or one new outbuilding. When a CEA has different zones, each zone should be defined in the definitions section of the CEA or in this Schedule. "Zones" or "Areas" could cover the Property shoreline, an agricultural area, a woodlot, a wetland, or any other distinct feature of the Property. Be sure to consider whether solar panels, septic tanks, fences, turbines, benches, signs, or similar small structures will be permitted in a particular zone

Dumping

16. The storage of any waste, hazardous material, soil, sewage, rock, or other similar material anywhere on the Property is prohibited.

16) When there is a driveway, this covenant can be modified to allow for the repair of the driveway and the possible temporary storage of materials for that purpose. You may also need to account for waste and sewage storage when there is a residential use on the Property.

Cutting Trees and Vegetation

17. The removal, cutting, or pruning of any trees, plants, or other vegetation is prohibited.

17) This covenant is possible for a natural Property where the goal of the land trust and the Owner is to allow natural processes to occur without human interference. When the Owner is using the Property recreationally or lives there, some or all of the year, the covenant may allow some cutting of a specified amount of firewood, perhaps, or to keep the hydro line, driveway, and trails free of encroaching or hazardous vegetation. When including this covenant, be sure to consider any restoration or ongoing habitat enhancement, management plans, or related needs. Also consider potential activities such as removal of invasive or noxious plants, habitat restoration, or compliance with a Managed Forest Plan may also be considered.

Pesticides and Herbicides

18. The use of any pesticide, herbicide, or other toxic material is prohibited.

18) The covenant is possible for a natural Property where the goal of the land trust and the Owner is to allow natural processes to occur without human interference. When the Owner is using the Property recreationally or lives there, some or all of the year, the covenant could allow limited use of these products, or in specific zones of the property. This might be acceptable when, for example, it is to control a problem, such as an invasive or noxious species, that is threatening the Conservation Values of the Property or is compromising the Owner's ability to enjoy its use, such as an infestation of ants in the living quarters. The covenant could require the prior written approval of the land trust before the application of any toxic products.

Hunting, Trapping, Fishing

19. Commercial or sport hunting, trapping, and fishing is prohibited.

19) It is difficult to monitor and enforce a prohibition against hunting, trapping, and fishing. It might be useful to include words to protect species at risk and their habitat found on the Property now, and in the future. Species at risk are protected in part by federal and provincial laws. Also consider potential Indigenous use and access.

Movement of Wildlife

20. The construction of fencing or other obstacles that would, in the sole opinion of the [land trust], prevent the free movement of wildlife within or to and from the Property is prohibited.

20) There may be a reason for fencing part of a Property, for example, to prevent cattle from a neighbouring farm to enter. Usually, unfenced areas are desired to allow the freest movement of wildlife.

Livestock and Agriculture

21. Fencing must be maintained to keep livestock from entering the Property [or from leaving the Agricultural Zone].

21) This covenant could be necessary when the Property has an Agricultural Zone with cattle present or when it abuts a farm with cattle. The obligation to maintain fencing to confine cattle is an example of a positive covenant, something that the Owner must do, as opposed to something the Owner must not do.

Indigenous Harvesting

22. The ceremonial use and harvesting of plants and animals by [identify the Indigenous people or clan] in a sustainable and safe manner which maintains the Conservation Values of the Property and the goals of this CEA is permitted. Any such activity must be agreed to, in advance, by the [Indigenous people], the Owner and the [land trust].

22) This covenant makes an exception to the restriction on the removal, cutting, or pruning of vegetation to enable age-old Indigenous traditions to continue. Including this covenant will depend on the interests of the Owner and any local Indigenous peoples. The engagement of Indigenous people in exercising ceremonial and harvesting rights or permissions on private lands is an area of growing interest among conservation organizations and landowners. It can foster reconciliation, the sharing of traditional ecological knowledge, and the development of partnerships. Be sure to discuss access to privately owned land with the landowner.
See CLTS&P, Practice 1. C. 4.

Business

23. Any commercial enterprise on the Property is prohibited.

23) This covenant is more likely to receive the Owner's agreement when the CEA is on a natural Property. An Owner who lives on the Property may wish to maintain the right to work from the Property or to have a small business selling eggs, homemade products, crafts, art, or other items, or offering nature tours. A CEA that allows tree harvesting would need to reflect that business. What range of commercial activities would be viable without compromising the Conservation Values of the Property?

Access to the Property by the [land trust]

24. The Owner grants and agrees to give the [land trust] an irrevocable easement and covenant, to run with the land for the Term, to permit the [land trust] and its Board members, employees, and agents and their materials, equipment, and vehicles to enter the Property to:

- (a) carry out monitoring activities to ensure compliance with this Agreement
- (b) conduct inventory and stewardship activities
- (c) plan for, carry out, or evaluate any required work related to the enforcement or breach of this Agreement, or to remedy the breach.

24) The land trust's right to enter the Property is covered in the CEA Easement provisions. By including it again here in the Covenants schedule there is added protection for the land trust should a court declare all or part of the easement provisions invalid. When access to the Property covered by the CEA is through another of the Owner's properties then specific permission to cross through the non-CEA property is necessary. A lawyer can advise how best to establish this permission.

When the easement is only on a portion of the Property, include wording in this section that allows the land trust to cross the Property to get to the part covered by the CEA.

Schedule 2

This Schedule is attached to and forms part of the Conservation Easement Agreement between [name of the Owner] and [land trust] signed on [date the CEA is signed].

Easement in Gross – The Right to Enter and Access the Property made under Section 3, the *Conservation Land Act*, as amended

1. The parties agree that the Easement in Gross is made under the *Conservation Land Act*, R.S.O. 1990, c. C.28, as amended (the Act). Once registered on title the Easement in Gross runs with the Property and binds the Property for the Term. The Easement is a limit on the Owner's rights and gives rights and benefits to the [land trust].
2. The Owner grants and gives the [land trust] an irrevocable easement, to run with the land for the Term to permit the [land trust] and its Board members, employees, and agents and their materials, equipment, and vehicles to enter the Property to:
 - a) carry out monitoring activities to ensure compliance with this Agreement
 - b) conduct inventory and stewardship activities
 - c) plan for, carry out, or evaluate any required work related to the enforcement or breach of this Agreement, or to remedy the breach
 - d) do anything that is necessary or incidental to the [land trust's] rights and obligations under this Agreement, and
 - e) undertake any purpose contemplated by this Agreement
3. The [land trust] agrees to provide the Owner with 48 hours' notice in writing by regular mail, e-mail, or other electronic communications method that provides a written record, before visiting the Property. The [land trust] will make every effort to provide this notice, although it is not necessary that the Owner actually receive the notice when the [land trust] has provided notice in accordance with the notice provisions of this Agreement [cross-reference to notice section].

4. The [land trust] is not required to give the notice required by section 3 and may exercise its right of access when the access is to:
 - (a) prevent a breach of the Agreement
 - (b) take steps to remedy a breach
 - (c) assess damage from a natural disaster, or
 - (d) evaluate the impact on the Property of an action on a neighbouring property.
5. The [land trust's] right to enter the Property under the terms of this Agreement includes, for example, the right to bring equipment on to the Property to do remediation or restoration work, and extends to anyone acting under the authority of the [land trust] for these purposes.

Schedule 2

See *CLTS&P, Practices 11. C & 11. D*



Morgan Roblin

Schedule 3

This Schedule is attached This Schedule is attached to and forms part of the Conservation Easement Agreement between [name of the Owner] and [land trust] signed on [date the CEA is signed].

Baseline Documentation Report Summary

[insert all the sections of the Report Summary]

Signatures attesting to the Authenticity of the Baseline Documentation Report and its Summary:

Author of Baseline Documentation Report and its Summary:

I certify that I am the principal author of the Baseline Documentation Report and the Baseline Documentation Report Summary. I confirm that the contents are a true description of the Property at this time.

Date:

Report Author's name:

Witness name:

Report Author's signature:

Witness signature:

Property Owner:

I certify that I am the Owner who is donating a Conservation Easement according to the terms of the Conservation Easement Agreement, signed [month, day, year], and that, to the best of my knowledge, this Baseline Documentation Report and its Summary describe the true state of the Property at this time.

Date:

Owner's name:

Owner's signature:

Witness signature:

Schedule 3

The Baseline Documentation Report is specific to the Property and is the basis for monitoring changes and compliance with the Conservation Easement Agreement.

It is detailed and comprehensive, and usually includes information about:

- the property – legal description
- the property – geography
- the property – location of structures
- the natural features
- species found on the property
- the terms of the CEA and how they will be monitored.

The text is supported by maps and photographs with reference points. When the Report is not prepared by the parties, they may consider obtaining a reliance letter from the Report's author in order to confirm its source and allow the parties to rely on its contents.

The Summary BDR is necessary for the registered version of the CEA in order to comply with government-required limits on document registration (such as no photographs).

When there is a significant change to the Property following a natural disaster such as a forest fire or flood, for example, the monitoring report should describe the changes to the Property in detail. The Owner and the land trust may agree to register an addendum to the summary Baseline Documentation Report on the title to the Property of a "current conditions report" to reflect this significant change to the Property.

The Ontario Land Trust Alliance has several valuable reference materials to assist in preparing a Baseline Documentation Report.

See CLTS&P, Practices 8. B, 8. C, 8. D, 8. E, and 11. B

CLTS&P, Practice 11. B: Baseline Documentation Report

1. For each conservation agreement, have a baseline documentation report signed-off by the necessary technical expertise, with written descriptions, maps and photographs, that documents:
 - a. The conservation values protected by the agreement
 - b. The relevant conditions of the property as necessary to monitor and enforce the agreement
2. Prepare the baseline documentation report prior to closing and have it signed by the landowner and land trust at or prior to closing
 - a. Baseline documentation reports that require technical data collection are prepared with the support of professional(s) having appropriate background and expertise
 - b. In the event that seasonal conditions prevent 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 interim data at closing
3. In the limited circumstances when there are significant changes to the land (such as a result of a wildfire or bank erosion) or the conservation agreement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report
4. The landowner and the land trust each hold at least one original copy of the signed baseline documentation report



Appendix A: Canadian Land Trust Standards and Practices Related to Conservation Easement Agreements

The following are Standards and Practices that relate to CEAs and were taken from the Canadian Land Trust Standards and Practices (Canadian Land Trust Alliance, 2019).

STANDARD 11: CONSERVATION AGREEMENT STEWARDSHIP

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

PRACTICES

A. Funding Conservation Agreement Stewardship

1. Estimate the long-term stewardship and enforcement expenses of each conservation agreement transaction
2. Track stewardship and enforcement costs

B. Baseline Documentation Report

1. For each conservation agreement, have a baseline documentation report signed-off by the necessary technical expertise, with written descriptions, maps and photographs, that documents:
 - a) The conservation values protected by the agreement
 - b) The relevant conditions of the property as necessary to monitor and enforce the agreement
2. Prepare the baseline documentation report prior to closing and have it signed by the landowner and land trust at or prior to closing.
 - a) Baseline documentation reports that require technical data collection are prepared with the support of professional(s) having appropriate background and expertise
 - b) In the event that seasonal conditions prevent 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 interim data at closing
3. In the limited circumstances when there are significant changes to the land (such as a result of a wildfire or bank erosion) or the conservation agreement (such as a result of an

amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report

4. The landowner and the land trust each hold at least one original copy of the signed baseline documentation report

C. Conservation Agreement Compliance Monitoring

1. Adopt a written policy and/or procedure for compliance monitoring of conservation agreements that establishes consistent monitoring protocols and recordkeeping procedures
2. Monitor each conservation agreement property at least once per calendar year
 - a) If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years
 - b) Promptly document the outcomes of annual compliance monitoring activities for each conservation agreement, including communications to and from owners of conservation agreement properties
 - c) Conduct on-the-ground verification in a timely manner for any suspected violation or breach of conservation agreements

D. Landowner Relationships

1. Maintain regular contact with owners of conservation agreement properties to maintain relationships and avoid potential agreement conflicts
2. Establish systems to track changes in land ownership
3. When the property changes hands, attempt to meet with the new owner or property manager to ensure the new owner obtains:
 - a) A copy of the conservation agreement documents
 - b) Information in writing about the conservation agreement
 - c) Copies of the land trust's stewardship policies and procedures

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

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. Establish written procedures to guide the land trust's 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

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. Maintain contact with the backup holder as appropriate to ensure the ability of the holder to hold conservation agreements is still valid

H. Amendments

1. Adopt and follow a written policy or procedure addressing conservation agreement amendments so that they are consistent with the following principles:
 - a) Are consistent with the land trust's mission
 - b) Comply with all applicable provincial and federal laws
 - c) Do not jeopardize the land trust's charitable status
 - d) Do not result in a private or undue benefit
 - e) Are consistent with the conservation purpose(s) and intent of the conservation agreement

- f) Are consistent with the documented intent of the donor, grantor and any funding source
 - g) Have a net beneficial or neutral effect on the relevant conservation values protected by the conservation agreement
2. Evaluate all conservation agreement amendment proposals with due diligence sufficient to satisfy the above principles
 3. If an amendment is used to adjust conservation agreement boundaries (such as to remedy disputes or encroachment) and results in a *de minimis* extinguishment, document how the land trust's actions address the terms of J.1. below
 4. Request authorization from the Minister of Environment and Climate Change Canada for amendments to conservation agreements certified as ecological gifts

I. Expropriation

1. If a conservation agreement is threatened with expropriation,
 - a) Work diligently to avoid a net loss to conservation values and document the actions taken
 - b) Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation agreement
 - c) In circumstances where a net loss of conservation values cannot be avoided, document the land trust's attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation agreement deed
 - d) Provide prompt notification to relevant parties, including the expropriating authority and Environment and Climate Change Canada, if the conservation agreement is certified as an ecological gift

J. Partial or Full Extinguishment

1. In the rare case that it is necessary to extinguish a conservation agreement, in whole or in part,
 - a) Follow the terms of the conservation agreement with respect to taking appropriate action, and obtain provincial authorization when required by law
 - b) Ensure there is no undue benefit

- c) Take steps to avoid or to mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation agreement deed
- d) Consider the land trust's actions in the context of its reputation and the impact on the land conservation community at large
- e) Provide prompt notification relevant parties, including donors and funders involved in the land transaction
- f) Request prior authorization from Environment and Climate Change Canada if the conservation agreement is certified as an ecological gift

STANDARD 2: COMPLIANCE WITH LAWS

Land trusts must fulfill their legal requirements as not-for-profit organizations and comply with all laws and regulations.

PRACTICES

A. Compliance with Laws

- a) Comply with all applicable federal, provincial and municipal laws and regulations

STANDARD 3: BOARD ACCOUNTABILITY

Land trust boards act ethically in conducting the affairs of the organization and carry out their legal and financial responsibilities as required by law.

PRACTICES

C. Board Governance

1. Provide board members with written expectations for their services on the board
2. The board meets a minimum of three times per year and maintains adopted minutes of each meeting
3. Provide board members with sufficient and timely informational materials prior to each meeting to make informed decisions
4. Board members evaluate their performance annually as a group and as individuals at least once every three years

5. Adopt procedures for removing board members who are not fulfilling their responsibilities
6. Have governing documents that contain policies and procedures (such as provisions for a quorum and adequate meeting notices) to encourage board participation and to prevent a minority of board members from acting for the land trust without proper delegation of authority.

STANDARD 4: CONFLICTS OF INTEREST

Land trusts have policies and procedures to avoid or manage real or perceived conflicts of interest.

PRACTICES

C. Land and Conservation Agreement Transactions with Insiders

1. When engaging in land and conservation agreement transactions with insiders
 - a) Follow all transaction policies and procedures
 - b) For land and conservation agreement transactions with insiders, obtain an independent appraisal by a qualified appraiser to justify the purchase or sale price

Standard 6: Financial Oversight

Land trusts are responsible and accountable for how they manage their finances and assets.

PRACTICES

E. Risk Management and Insurance

1. Routinely assess and manage risks so that they do not jeopardize the land trust's financial health and its ability to carry out its mission and legal responsibilities
2. Carry general liability, directors' and officers' liability, property and other insurance, all as appropriate to the land trust's risk exposure or as required by law

STANDARD 8: EVALUATING AND SELECTING CONSERVATION PROJECTS

In advance of every land and conservation agreement transaction, land trusts carefully evaluate and select their conservation projects.

PRACTICES

B. Project Selection Criteria

1. Develop and implement a written process to select land and conservation agreement projects
2. Develop and apply written project-selection criteria that are consistent with the land trust's conservation priorities
3. Document the conservation benefit of every land and conservation agreement project

C. Project Evaluation

1. Visually inspect properties before buying or accepting donations of conservation land or conservation agreements to determine and document whether:
 - a) There are important conservation values on the property
 - b) The project meets the land trust's project-selection criteria
2. Evaluate and document potential threats to the conservation values on the property and structure the project to best protect those conservation values
3. Evaluate and document any current or potential risks and liabilities associated with the project, including to the land trust's reputation or to the land trust community, and modify or decline the project if the risks outweigh the benefits

D. Project Planning

1. Individually plan all land and conservation agreement projects so that:
 - a) The land trust identifies the best available conservation strategy for the property
 - b) The property's important conservation values are protected
 - c) The project furthers the land trust's mission and goals

2. Assess the stewardship implications of each project and the land trust's capacity to meet those obligations

E. Partnership Documentation

1. When engaging in a partnership on a joint acquisition or long-term stewardship project or when co-holding conservation agreement, create written agreements to clarify:
 - a) The goals of the project
 - b) The roles and responsibilities of each party
 - c) Legal and financial arrangements
 - d) Communications to the public and between parties

STANDARD 9: ENSURING SOUND TRANSACTIONS

Land trusts work diligently to see that every land and conservation agreement transaction is legally, ethically and technically sound.

PRACTICES

E. Conservation Agreement Drafting

1. For every conservation agreement,
 - a) Individually tailor it to the specific property
 - b) Identify the conservation values being protected
 - c) Allow only uses and permitted rights that are consistent with the conservation purposes and that will not significantly impair the protected conservation values
 - d) Avoid restrictions and permitted rights that the land trust cannot monitor and/or enforce
 - e) Include all necessary and appropriate provisions to ensure it is legally enforceable
2. Review each conservation agreement for
 - a) Consistency with enabling legislation of conservation agreements and other provincial and federal applicable legislation

- b) Internal consistency, omissions and absence of errors within the conservation agreement documents

H. Purchasing Land or Conservation Agreements

1. When buying land, conservation agreements or other real property interests, below, at or, in limited circumstances, above the appraised value, contemporaneously document:
 - a) The justification for the purchase price
 - b) That there is no private or undue benefit
2. Obtain an independent appraisal by a qualified appraiser in advance of closing to support the purchase price based on the fair market value
 - a) However, a short narrative, a letter of opinion or other documentation from a qualified real estate professional may be obtained in the limited circumstances when:
 - i. A property has a very low economic value
 - ii. A full appraisal is not feasible before a public auction
 - iii. Or the amount paid is significantly below the fair market value

I. Selling or Transferring Land or Conservation Agreements

1. When selling land, conservation agreements or other real property interests,
 - a) Establish protections as appropriate to the property
 - b) If the sale is to a party other than another charitable organization or public agency, obtain an independent appraisal by a qualified appraiser or a short narrative, a letter of opinion or other documentation from a qualified real estate professional to determine the value of the asset and to support the selling price
 - c) Select buyers in a manner that avoids any actual or appearance of impropriety
2. When selling or transferring conservation land or conservation agreements to another charitable organization or public agency, consider whether the new holder can fulfill the long-term stewardship and enforcement responsibilities
3. For the sale or transfer of land or conservation agreements certified as ecological gifts, request authorization from the Minister of Environment and Climate Change Canada, or its replacement.

STANDARD 10: TAX BENEFITS AND APPRAISALS

Land trusts work diligently to see that every charitable gift of land or conservation agreement meets provincial and federal tax law requirements, to avoid fraudulent or abusive transactions and to uphold public confidence in land conservation.

PRACTICES

A. Landowner Notification

1. Inform potential land or conservation agreement donors who may claim a provincial or federal income tax deduction or credit, in writing and early in project discussions, of the following:
 - a) Canada Revenue Agency strongly recommends an independent appraisal prepared by a qualified appraiser for gifts of property valued at more than \$1,000, including information on the timing of the appraisal
 - b) As beneficiary of the tax receipt, the donor has the primary responsibility for any determination of the value of the donation (even in the case where the appraisal has been arranged for or commissioned by the land trust)
 - c) An independent appraiser who is certified by the Appraisal Institute of Canada and who follows the Canadian Uniform Standards of Professional Appraisal Practice should perform the appraisal, or, in Québec, Les normes de pratique professionnelle des évaluateurs agréés (Les normes de pratique)
 - d) The land trust requires a copy of the completed appraisal in order to issue a charitable donation receipt
 - e) The land trust will not participate in projects where it has significant concerns about the potential for false receipting, tax avoidance, tax abuse or tax fraud
2. Where appropriate, inform potential donors about the Ecological Gifts Program including
 - a) The increased tax benefits associated with making a gift under the program
 - b) The consequences of unauthorized disposition or change in land use of ecological gifts
 - c) That appraisals of ecological gifts must comply with the Ecological Gifts Program Guidelines for Appraisals and will be reviewed independently by the Appraisal Review Panel

3. Do not make assurances as to:

- a) Individualized legal or tax implications
- b) Whether a particular land or conservation agreement donation will be eligible for a donation tax deduction or credit
- c) What monetary value of the donation the Canada Revenue Agency and/or province will accept
- d) What the resulting tax benefits of the deduction or credit will be, if any

B. Legal Requirements: Land Trust Responsibilities

- 1. If the land trust holds charitable donations of land or conservation agreements, it meets the requirements for a qualified donee under the applicable provisions of the Income Tax Act
- 2. Issue donation tax receipts only in accordance with the provisions of the Income Tax Regulations

Appendix B: Relevant Excerpts from the Ontario *Conservation Land Act*

Conservation Land Act, Revised Statutes of Ontario 1990, chapter C.28 (excerpt: section 3)

Ontario Regulation 293/03 (Conservation Bodies)

<https://www.ontario.ca/laws/statute/90c28>

Definitions

3 (1) In this section,

“conservation body” means,

(a) the Crown in right of Canada or in right of Ontario,

(b) an agency, board or commission of the Crown in right of Canada or in right of Ontario that has the power to hold an interest in land,

(c) a band as defined in the *Indian Act* (Canada),

(d) the council of a municipality,

(e) a conservation authority,

(f) a corporation incorporated under Part III of the *Corporations Act* or Part II of the *Canada Corporations Act* that is a charity registered under the *Income Tax Act* (Canada),

(g) a trustee of a charitable foundation that is a charity registered under the *Income Tax Act* (Canada),
or

(h) any person or body prescribed by the regulations; (“organisme de protection de la nature”)

“owner” means the person registered on title in the proper land registry office as the owner of land.
 (“propriétaire”)

Conservation easements and covenants

(2) 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).

Easement reserved by conservation body

(2.1) When a conservation body conveys land, it may reserve an easement for a purpose referred to in subsection (2).

Same

(2.2) A reference in any Act or regulation to easements granted under this Act also applies to easements reserved in accordance with subsection (2.1).

Assignment

(3) The easement or covenant may be assigned by a conservation body to another conservation body.

Validity

(4) The easement or covenant is valid whether or not the conservation body or assignee owns appurtenant land or land capable of being accommodated or benefited by the easement or covenant and regardless of whether the easement or covenant is positive or negative in nature.

Term

(4.1) The easement or covenant is valid for the term specified in it.

Amendment

(4.2) The owner of the land affected by the easement or covenant shall not amend the easement or covenant without the consent of the Minister.

Release

(4.3) The conservation body or assignee shall not release the easement or covenant without the consent of the Minister.

Notice to Crown

(4.4) No person shall commence a proceeding to amend or release the easement or covenant without giving notice to the Minister.

Registration

(5) The easement or covenant may be registered against the land affected in the proper land registry office and, once registered, it runs with the land against which it is registered.

Enforcement

(6) The conservation body or assignee may enforce the easement or covenant against the owner of the land and, if it is registered, against any subsequent owner of the land against which it is registered.

No merger of registered easement

(6.1) If a conservation body that is a party to an easement that is registered as described in subsection (5) becomes the owner of the affected land,

(a) the easement is suspended but does not merge; and

(b) if the conservation body afterwards conveys the land, the easement becomes effective again.

Mandatory assignment

(7) If a conservation body ceases to be a conservation body, it shall be deemed to have assigned every easement and covenant to which it is a party to the Minister.

Effect of deemed assignment

(8) The Minister may register notice of the deemed assignment against the land affected in the proper land registry office and may assign the easements and covenants, or any of them, or hold them as if he or she were a conservation body.

Rights preserved

(9) Subject to subsections (4.2), (4.3) and (4.4), nothing in this section limits a right or remedy that a person may have under any other Act, at common law or in equity in respect of an easement or covenant, if the right or remedy is not inconsistent with this section.

Deeming provision

(10) A covenant under this section, whether positive or negative in nature, shall be deemed to be a restrictive covenant.

Regulations

(11) The Minister may make regulations,

(a) prescribing persons or bodies for the purpose of clause (h) of the definition of “conservation body” in subsection (1);

(b) respecting those records, information, reports and returns with respect to easements and covenants that a conservation body holds under this section that the conservation body must keep, must open for inspection or must submit to the Minister or other person designated in the regulations;

(c) prescribing purposes for the purpose of clause (2) (e);

(d) providing for and respecting one or more registries of easements and covenants under this Act.

ONTARIO REGULATION 293/03 – CONSERVATION BODIES

Prescribed conservation bodies

1. The following are prescribed as conservation bodies for the purpose of clause (h) of the definition of “conservation body” in subsection 3 (1) of the Act:

1. A prescribed donee under the *Income Tax Act* (Canada).

2. A qualified organization, as defined under section 170 (h) of the *Internal Revenue Code* (United States) and Treasury Reg 1.170A-14 (United States).

3. A corporation created by statute that is a registered charity under the *Income Tax Act* (Canada).