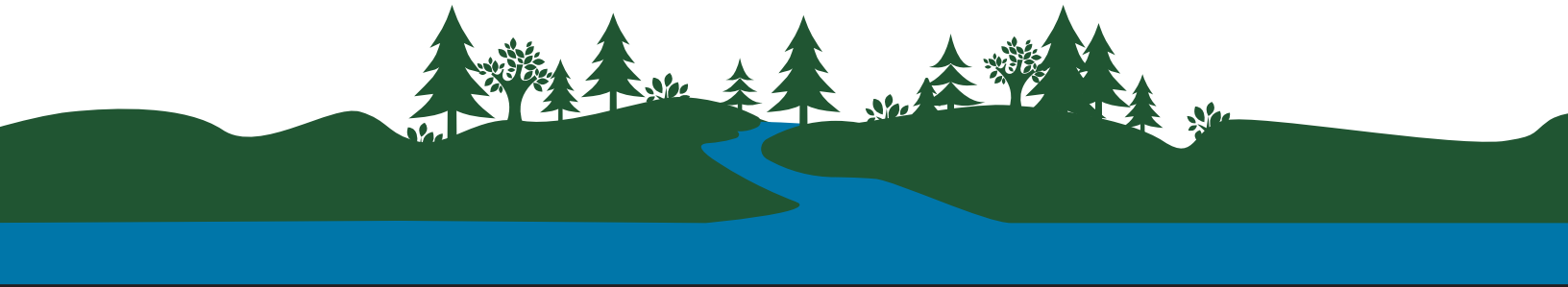


FOREVER PROTECTED?



The Potential for Sector-wide Approaches to
Stewardship and Legal Defence of
Private Conservation Lands



Centre for Land Conservation
Centre pour la conservation des terres

Accelerating Private Land Conservation is a Report Series published by the Centre for Land Conservation. The Series is devoted to the advancement of land conservation policy, science and management issues of national interest in Canada. The objective of the Series is to make Canadians more aware of the value and importance of private land conservation and to promote improved conservation policy and practice to achieve more, better and faster conservation outcomes in Canada to meet the twin challenges of biodiversity loss and a changing climate.

Forever Protected?

The Potential for Sector-wide approaches to Stewardship and Legal Protection of Private Conservation Lands

Prepared by Sarah Winterton and Robert McLean

September 2022

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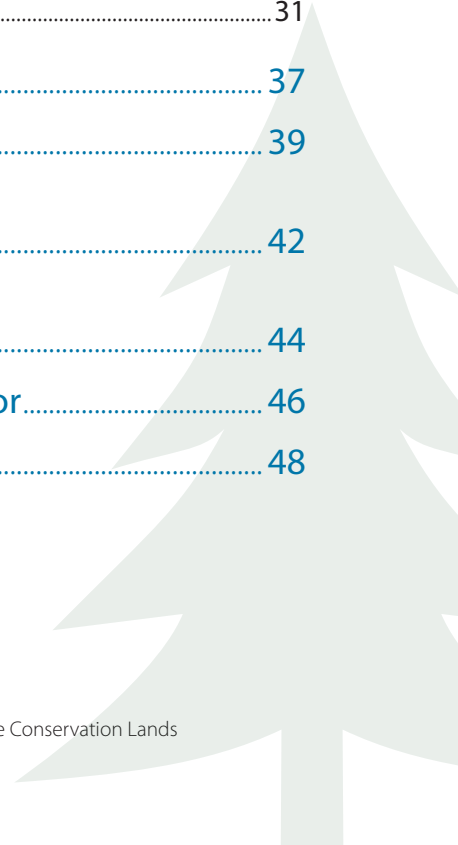
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CLC is particularly grateful to the private land conservation organizations that shared their perspectives on the stewardship and legal protection of their conservation properties and conservation agreements.¹ Their enthusiasm to tackle important issues sets the stage to generate increased support and stability for private land conservation. Without their input, this report would not have been possible.

Conservation funders and government representatives provided invaluable knowledge and ideas for increasing support for stewardship and legal protection of private conservation lands.

About the Centre for Land Conservation (CLC)

The CLC is a not-for-profit, registered charity established in 2019 that seeks to support the conservation of private lands in Canada. Our vision is for conservation lands in Canada to contribute significantly to biodiversity targets through strong and leading-edge practices. Our approach reflects a commitment to reconciliation with Indigenous peoples and collaboration with conservation partners. As custodian of the *Canadian Land Trust Standards and Practices*, the CLC works with the land conservation community as an independent voice to enhance public trust and confidence in private land conservation.

¹ Throughout the report, “conservation agreement” refers to a conservation easement, covenant or servitude.



ABOUT THIS REPORT

Through a contract with Environment and Climate Change Canada, the Centre for Land Conservation (CLC) conducted a situational analysis focused on the stewardship and legal protection of private conservation lands and agreements to ensure that the conservation benefits of these properties are sustained over the long term.

In order to gather information and prepare this report, the following definitions were used:

- *Stewardship* includes activities undertaken to maintain the biological and ecological values of conservation lands held by an organization or under agreement with a landowner (including the monitoring of lands/agreements).
- *Legal protection* includes any legal challenges and issues associated with conservation agreements and fee simple lands and/or legal risks to organizations that hold lands (including any enforcement actions).

The following report comprises information collected through direct consultations and written submissions from a total of 44 individuals from 24 private land conservation organizations and external experts representing organizations from British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Canada-wide organizations and U.S. organizations during February and March 2022. Participating organizations ranged from community based, with few or no staff, to regional and national in scope. The consultations build on previous consultations conducted by CLC as well as outcomes from “A National Conversation on Performance Assurance Approaches for Land Trusts in Canada” forum held in February 2020.

The report results reflect active, ongoing and spirited conversations within the sector. The conversations are summarized with key themes highlighted in Part 2 Stewardship and Part 3 Legal Protection. Unless otherwise credited, quotations throughout the report are from participants in these conversations. The private land conservation community is highly aware of the context in which they are working, along with the emerging trends, opportunities, challenges and threats they are navigating to achieve long-term success. Private land conservation organizations welcome the attention to these issues and have a strong willingness to participate in strategies that will leverage their strengths, diminish vulnerabilities, activate opportunities and ensure they can fulfill their mandate for lasting stewardship of Canada’s conservation lands and agreements.



EXECUTIVE SUMMARY

Stewardship and legal protection of conservation lands in Canada's southern landscapes is critically important to achieving national biodiversity targets and supporting climate change mitigation and adaptation efforts. As most lands within these landscapes are privately owned, non-governmental land conservation organizations have a key role to play if these objectives are to be met. This report focuses on the need for these organizations to have the capacity to operate sustainably to provide long-term, durable stewardship and legal protection of their conservation lands and agreements.

The benefits of ensuring a healthy and thriving private land conservation community extend beyond protected area targets and biodiversity conservation to include maintenance of irreplaceable natural infrastructure and ecosystem services that help to mitigate and adapt to the effects of climate change, regulate water quality and quantity and mitigate the effects of extreme weather events that can lead to flooding and drought. Importantly, these lands also provide recreational opportunities and places for outdoor activities, contributing to human health and well-being, a particularly important benefit in the context of the ongoing global pandemic.

Canada now has more than 150 non-governmental organizations working on the ground from coast to coast to protect ecologically important lands and conserve biological diversity. They manage a significant conservation estate and work hard to sustainably manage and protect their lands and agreements. Nevertheless, these organizations continue to voice concerns related to the long-term stewardship and legal protection of their conservation properties and agreements.

Reconciliation with Indigenous Peoples

Canadians and their governments are working to advance reconciliation and renew the relationship with Indigenous peoples, based on recognition of rights, respect, cooperation and partnership. The conservation and protection of land, water and biodiversity are important for advancing reconciliation in Canada.

The conservation and sustainable use of biodiversity are central to the culture, spiritual well-being and traditional activities and way of life of Indigenous peoples. For millennia, Indigenous peoples have cared for and stewarded lands, water and wildlife. Their histories, experiences and traditional ecological knowledge are helping to shape the way land conservation and protection are understood, valued and approached throughout Canada, including lands of conservation importance in southern Canada.

For their part, private land conservation organizations are already engaging with Indigenous communities to establish long-term relationships. Ensuring capacity for and establishing consistency of practice by private land conservation organizations in engaging with Indigenous peoples on key aspects of protection, access and integration of Indigenous perspectives, knowledge and practices will contribute to 'conservation through reconciliation' objectives. Such engagement, collaboration and partnership are an important aspect of the stewardship of private conserved lands.

Protected Forever?

In light of the importance of private conservation lands to achieving Canada's biodiversity goals—and to accelerate the trajectory towards these goals—governments continue to support the work of the private land conservation community. With the anticipated adoption of a Global Biodiversity Framework under the Convention on Biological Diversity in December 2022 and the likely establishment of even more challenging goals, and ongoing concerns voiced by private land conservation organizations, it is an optimal time to examine in more depth the stewardship and legal protection challenges faced by them and identify opportunities to address these challenges in the best possible way.

Through a contract with Environment and Climate Change Canada, the Centre Land Conservation (CLC) conducted a situational analysis focused on the stewardship and legal protection of private conservation lands and agreements to ensure that the conservation benefits of these properties are sustained over the long term. The analysis comprises information provided by private land conservation organizations and external experts, and builds on previous consultations conducted by the CLC. Participating organizations ranged from community based, with few or no staff, to regional and national in scope.

The report reflects active, ongoing and spirited conversations within the private land conservation sector. More details on the results of the consultations and information gathering are found in the Stewardship and Legal Protection parts of the report. As models to prompt discussion and development of ideas and suggestions, the Stewardship section includes information on the Canada Cultural Investment Fund and the Legal Protection section describes an insurance program developed specifically for U.S. land trusts known as Terrafirma. Key learnings and a summary of the recommendations follows.

Key Learnings

- I. The work of the private land conservation community provides multiple benefits to Canada on matters that are a priority for Canadians and can make a contribution to Reconciliation with Indigenous peoples.
- II. Achieving the objectives of Canada's Nature Legacy and Nature Smart Climate Solutions initiatives in the southern landscapes of Canada will depend on contributions from the private land conservation community.
- III. The private land conservation community is responsible for a significant conservation land estate that is critical to achieving conservation objectives in the southern ecosystems of Canada where additional conservation actions are urgently needed.

- IV. Canada's Nature Legacy call to increase private land acquisition through the Natural Heritage Conservation Program acknowledges the role that the private land conservation community has in contributing to protected areas targets in landscapes where much of the land is privately held.
- V. The people engaged in the private land conservation community are highly knowledgeable and committed to the conservation of nature, healthy ecosystems and species at risk through sound land stewardship and legal protection of their conservation lands and agreements.
- VI. As compared to other Canadian charitable sectors, the private land conservation community faces unique challenges to sustain the benefits and effectively steward their conservation lands over the long term as the effort to respond to biodiversity and climate emergencies intensifies. In addition, the community has few insurance instruments to backstop legal protection of their conservation lands and agreements.
- VII. The majority of private land conservation organizations function with capacity challenges, such as few or no paid staff, not aligned with the importance of the natural assets they protect and steward. Generally, they are managing through a variety of strategies, including support from highly dedicated and motivated staff and volunteers, that enable them to fulfill their core stewardship responsibilities for their conservation lands and agreements, and build effective relationships with landowners to avoid potential legal issues.
- VIII. Federal and provincial grant and contribution programs prioritize the securement of conservation lands and agreements. These programs also play key roles in providing financial support for stewardship activities that would not otherwise be implemented.
- IX. To augment their stewardship activities beyond core responsibilities, private land conservation organizations pursue grants and contributions, an effort that takes staff and volunteer time away from other organizational activities and may not lead to the securement of additional funds resulting in needed stewardship activities going unactioned.
- X. Private land conservation organizations are primed to benefit from increased investment. Most private land conservation organizations are endeavouring to generate revenue streams and/or create restricted or endowment funds to provide greater financial security and predictable cash flow for long-term stewardship of their natural assets and other infrastructure.
- XI. Most private land conservation organizations identify the need to increase their restricted funds or have access to legal defence support as a priority. While many have not faced legal challenges yet, they anticipate dealing with an increase in compliance issues, particularly when the ownership of conservation agreement lands changes hands in the future.
- XII. A legal claim that goes against a private land conservation organization could have negative repercussions for the entire sector. An increase in investment in restricted funds for legal protection would help protect a conservation estate valued at over \$2.3 billion and growing.
- XIII. Similar to securing funds for stewardship, raising funds for legal protection is challenging for the private land conservation community and competes with their efforts to raise funds for core operations and stewardship.

- XIV. Support for establishing and growing restricted or endowment funds for stewardship and legal defence could be provided through various means. For example, grant and contribution programs:
- a. could accept investment in these funds as an eligible expense
 - b. support the development and implementation of a program specifically focused on establishing and growing endowment funds
 - c. support the development and implementation of an insurance program to serve the private land conservation community with legal support and protection

Recommendations

This situational analysis confirms the need for additional investment in the private land conservation community.

Given the multiple benefits of private land conservation and linkages to priorities of Canadians and governments, the potential contribution of private land conservation to reconciliation with Indigenous peoples, and the unique challenges faced by the private land conservation sector with respect to the long-term stewardship and legal defence of conservation lands and agreements, ***the CLC recommends that an in-depth two-part feasibility study be undertaken on:***

- 1. How best to increase financial support for stewardship and the ongoing operations of private land conservation organizations including examination of:**
 - how a program similar to the Canada Cultural Investment Fund could be modeled and adapted to support capacity building for the private land conservation community
 - the utility of a stewardship endowment initiative to other organizations such as Indigenous communities working to establish Indigenous Protected and Conserved Areas
- 2. Assessment of the level of legal risks of private land conservation organizations, and of effective and efficient ways to provide legal protection for the fee simple lands and conservation agreements they hold, including examination of:**
 - what model of an insurance reciprocal program could meet their needs
 - how an initiative similar to the Terrafirma program in the United States could support the private land conservation community in Canada



PART ONE: INTRODUCTION

Context

The loss of biodiversity and ecosystem integrity and the accelerating rate of this loss is now well documented both globally² and in Canada. Internationally, the 2010 Aichi Biodiversity Targets³ were adopted to protect and conserve biodiversity during the United Nations Decade on Biodiversity 2011-2020. Work is ongoing to develop a post-2020 global biodiversity framework as a stepping-stone towards the Convention on Biological Diversity's 2050 Vision of "Living in harmony with nature."⁴ It is anticipated that this framework will be adopted at the next meeting of the Conference of the Parties to the Convention on Biological Diversity to be held in December 2022.

In response to the Aichi Biodiversity Targets, Canada's federal, provincial and territorial governments released the 2020 Biodiversity Goals and Targets for Canada "to be achieved through the collective efforts of a diversity of players both public and private whose actions and decisions have an impact on biodiversity" and noted that "governments need to do their part but cannot act alone."⁵

While private lands make up only 11% of Canada, such lands are disproportionately important to the conservation of Canada's biodiversity and are at higher risk of harm or loss. Although species at risk are now found throughout the country, higher densities of these species are found in the southern landscapes of Canada where most Canadians live and where much of the land is privately held. Success in achieving biodiversity targets, such as for protected and conserved areas, and in protecting, conserving and recovering species at risk in these landscapes, will depend on privately protected and conserved lands. In this regard, non-governmental land conservation organizations have a key role to play.

To support the ongoing contribution that private land conservation organizations can make toward Canada's biodiversity goals—and accelerate the growth of this contribution—these organizations must be able to not only acquire conservation lands or interests in them but also have the wherewithal to ensure they can operate sustainably to provide long-term, durable stewardship and legal protection of their properties and agreements. The benefits of doing so in Canada's southern, most developed and densely populated ecosystems extend beyond protected area targets and biodiversity conservation to include the maintenance of irreplaceable natural infrastructure and ecosystem services that help to mitigate and adapt to the effects of climate change. By conserving wetlands, rivers and riparian areas for example, private conservation lands help regulate water quality and quantity and mitigate the effects of

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- 2 IPBES (2019), Global assessment report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Brondízio, E. S., Settele, J., Díaz, S., Ngo, H. T. (eds). IPBES secretariat, Bonn, Germany. 1148 pages. ISBN: 978-3-947851-20-1
 - 3 Convention on Biological Diversity (2010), [Aichi Biodiversity Targets](#)
 - 4 Conference of the Parties to the Convention on Biological Diversity, [Fourteenth Meeting](#), CBD/COP/DEC/14/34, 2018
 - 5 Environment and Climate Change Canada (2020), [2020 Biodiversity Goals and Targets for Canada](#)

extreme weather events that can lead to flooding and drought. Importantly, these lands provide recreational opportunities and places for outdoor activities, contributing to human health and well-being, a particularly important benefit in the context of the ongoing global pandemic.

The conservation and sustainable use of biodiversity are central to the culture, spiritual well-being and traditional activities and way of life of Indigenous peoples. For millennia, Indigenous peoples have cared for and stewarded lands, water and wildlife. Throughout Canada's history, Indigenous communities have worked to ensure recognition of the importance of biodiversity and healthy ecosystems and today hold direct management responsibility for species and lands under their authority as well as play key roles in efforts to conserve and protect lands, water and species across broader landscapes. Their histories, experiences and traditional ecological knowledge are helping to shape the way land conservation and protection are understood, valued and approached throughout Canada, including lands of conservation importance in southern Canada. This work is reflected in the Indigenous Circle of Experts' 2018 report entitled: *We Rise Together: Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation*.⁶

The last half century, in particular the past 25 years, have witnessed an increasing reliance on the part of governments to have non-governmental organizations lead efforts to conserve and protect private lands through the creation by governments of various land conservation and stewardship programs, and by the establishment of federal and provincial enabling legislation and policies. Canada now has more than 150 land conservation organizations and other non-governmental organizations working on the ground from coast to coast to protect ecologically important lands and conserve biological diversity.

To accelerate Canada's trajectory towards achieving its biodiversity conservation goals, including protected and conserved areas referred to as *Target 1*⁷ and more recent and ambitious *30x30* protection objectives,⁸ the federal government and provincial and territorial governments have and continue to support the work of the private land conservation community. This support is provided through multiple channels, including, but not limited to:

- provincial legislation that enables conservation easements, covenants and servitudes
- policy and incentive tools such as Canada's Ecological Gifts Program
- funding streams both federally and provincially.

Definitions

The International Union for Conservation of Nature (IUCN) defines a **protected area** as "a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values."

The IUCN further recognizes **privately protected areas** as "any land that meets the 'protected area' criteria and is held in private ownership, including individuals, corporations, not-for-profit, religious and research entities."

Source: International Union for the Conservation of Nature (2018), Guidelines for Privately Protected Areas

6 The Indigenous Circle of Experts' Report and Recommendations (2018), [We Rise Together: Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation](#)

7 Canada's Target 1 stems from Aichi Target 11 committing countries to expand and improve their protected area system

8 30x30 references Canada's commitment to protecting 30% of its lands and waters by 2030

While government and other funders continue to support the efforts of organizations to secure and protect private conservation lands, these organizations continue to voice concerns related to the long-term stewardship and legal protection of their conservation properties and agreements. At a national forum held in February 2020, “A National Conversation on Performance Assurance Approaches for Land Trusts in Canada”, organizations identified a number of challenges and opportunities related to the stewardship of their conservation lands and agreements and, among risk management concerns, identified “long-term liabilities (legal defence and stewardship) associated with holding land in perpetuity.”⁹

While the private land conservation community shares many needs and challenges with other charitable sectors, it has characteristics that make it unique. The ownership of land or rights in land creates ongoing obligations for the management or monitoring of conservation lands if the natural capital assets of these lands are to be protected not just for now, but for future generations. Private land conservation organizations are, by definition, long-term enterprises with significant capital assets that require ongoing operations if the benefits of those assets are to be sustained. In addition, they face potential legal issues and challenges unique to these organizations.

Many charities operate their programs on a year-to-year basis focused on the provision of services that enable them to generate revenue to sustain their operations annually. While other charitable sectors have large capital assets that also require long-term stewardship and maintenance, what differentiates the private land conservation organizations is the absence of tools that enable them to more readily generate sufficient revenue, in particular unrestricted revenue, for ongoing stewardship and legal protection of their properties and agreements. Cultural, educational and health not-for-profit charitable organizations all benefit from funding, including government funding, that provides key financial support for the management of capital assets and ongoing operations. In addition, some charitable sectors, such as the arts and culture sector, which is able to charge admission fees, self-generate additional revenue to sustain their operations over the long-term. Conversely, private land conservation organizations are not fully compensated for the many benefits they provide on an ongoing basis. Arguably, private land conservation organizations are not compensated at all for sustaining the benefits provided to society over the long-term.

The need to increase stable funding for private land conservation organizations is real and urgent. More than \$2.3 billion in conservation estate is held by private land conservation organizations either in fee simple ownership (ownership of title to the land) or as conservation agreements.¹⁰ Additionally, annually tens of millions of dollars are raised for conservation and millions more in tax receipts are issued for ecological gifts. It is important to ensure that this conservation estate and the funds contributed to this work, as well as future funding contributions and conservation land donations, are sufficiently supported to sustainably manage and protect all conservation lands and agreements over the long term.

Funders of private land conservation have an increasingly important role to support private land conservation organizations in ensuring a durable standard of care and, thus, protect the contributions of individual Canadians, donors and funders, both private and public, to achieve and sustain the long-term conservation outcomes envisioned by these contributors. It is inevitable that, with the continued

⁹ Centre for Land Conservation (2020), [A National Conversation on Performance Assurance Approaches for Land Trusts in Canada](#)

¹⁰ According to 2018 data available from the Canada Revenue Agency

growth and investment in the private land conservation sector, it will become more difficult to deal with sustainability, legal and compliance issues, and that funders—both private and public—will seek assurances of conservation in perpetuity and organizational long-term viability. For these reasons, it is the optimal time to examine in more depth the stewardship and legal protection challenges faced by private land conservation organizations and identify opportunities to move forward to address these challenges in the best possible way.

Changing Context: Opportunities and Challenges

The private land conservation community is operating within a context in which expectations for the sector are rapidly changing in response to the priorities of Canadians. The mission of private land conservation organizations to safeguard ecologically significant lands in perpetuity has been galvanized by increasing trends of biodiversity loss, the climate emergency and other imperatives. As governments respond to these priorities, opportunities may be created for increased support to the community for stewardship and legal protection of private conservation lands and agreements. These priorities include:

- conservation through reconciliation
- counting toward Target 1
- protection and recovery of species at risk
- climate change mitigation and adaptation
- the health and well-being of Canadians

Reconciliation with Indigenous Peoples

Canadians and their governments are working to advance reconciliation and renew the relationship with Indigenous peoples, based on recognition of rights, respect, cooperation and partnership. The conservation and protection of land, water and biodiversity are important for advancing reconciliation in Canada. An important initiative in this regard is the Conservation Through Reconciliation Partnership which “aims to critically investigate the state of conservation practice in Canada and support efforts to advance Indigenous-led conservation”. Its work “seeks to meet emerging research needs and build capacity to support the establishment of Indigenous Protected and Conserved Areas and the transformation of existing protected areas to better align with Indigenous governance, knowledge and law.”¹¹

The Value of Nature

According to the World Economic Forum, half of the world’s Gross Domestic Product is moderately or highly dependent on nature and the services it provides, and the global food-, land-, and ocean-use system provides up to 40% of the world’s jobs. Habitat loss and degradation and climate change are two of the top five global risks threatening our planet, economy and way of life. The benefits of protecting healthy ecosystems outweigh the costs by a factor of at least 5:1.

Source: Canadian Parks and Wilderness Society (2020), [The Economic Value of Investing in Nature: An Evidence Background](#)

11 Conservation through Reconciliation Partnership

Through substantial investment by the federal government in Indigenous Protected and Conserved Areas (IPCAs), opportunities are created for partnership with private land conservation organizations—particularly in relation to IPCAs in complex landscapes that include private ownership of land. To advance reconciliation and enable the partnerships needed for the establishment of IPCAs, it is important to ensure that Indigenous communities and private land conservation organizations have meaningful engagement and collaboration. Such engagement, collaboration and partnership are important aspects of the stewardship of private conserved lands.

Private land conservation organizations are already engaging with Indigenous communities to develop long-term relationships that include developing and implementing best practices. Ensuring capacity for and establishing consistency of practice by private land conservation organizations in engaging with Indigenous peoples on key aspects of protection, access and integration of Indigenous perspectives, knowledge and practices would contribute to ‘conservation through reconciliation’ objectives.

Counting Towards Target 1

The recognition of the contribution of private land securement and stewardship to the goals of Canada’s Nature Legacy to protect 30% of lands and waters by 2030 positions the activities of private land conservation organizations within an urgent global call to action framed by the Aichi Biodiversity Targets.

A key program to protect private conservation lands was launched well before the adoption of the Aichi Biodiversity Targets. Canada’s Ecological Gifts Program provides a way for Canadians with ecologically sensitive land to protect nature by offering significant tax benefits to landowners who donate land or a partial interest in land to a qualified recipient. Recipients, mainly private land conservation organizations, ensure that the land’s biodiversity and environmental heritage are conserved in perpetuity.¹²

Building on the success of programs like the Ecological Gifts Program and the previous Natural Areas Conservation Program, under the Nature Legacy Initiative, the Government of Canada launched the Natural Heritage Conservation Program (NHCP) in 2019 with an investment of \$100 million over four years in the private land conservation community.¹³ The goal is to increase the area of privately protected land for species at risk by 200,000 hectares (494,210 acres) as a measurable contribution to Target 1 of Canada’s 2020 Biodiversity Goals and Targets.

The Miistakis Institute created the *Assessing Privately Conserved Areas for Alignment with Pathway to Canada Target 1 Alignment Guide*¹⁴ to help private land conservation organizations achieve the ‘protected area’ or ‘other effective area-based conservation measures’ (OECM) status for their privately held lands and be counted under Canada’s Target 1 goal. The Guide reinforces the importance of ensuring that private land conservation organizations have sufficient resources for stewardship of their conservation lands and easements. For example, these properties are more likely to be included in Target 1 reporting if policies and management plans (with clear management goals and relevant baseline data), and robust on-going monitoring are in place.

¹² Environment and Climate Change Canada, [Ecological Gifts Program](#)

¹³ Environment and Climate Change Canada, [Natural Heritage Conservation Program](#)

¹⁴ Miistakis Institute (2017), [Assessing Privately Conserved Areas for Alignment with Pathway to Canada Target 1 Alignment Guide](#)

While private land conservation organizations are well placed to have their conservation properties 'count', it is important to ensure that resources for stewardship and legal protection are in place. Having their properties included in Target 1 has value for private land conservation organizations, confirming that specific conservation outcomes are being met, which may then be leveraged to incent further investment in effective stewardship practices and legal protection. Sufficient investment in the stewardship of these properties in perpetuity would provide a significant contribution to Canada's strategy to protect nature for future generations and help to address biodiversity loss.

Protecting and Recovering Species at Risk

Federal, provincial and territorial governments have agreed to the implementation of the Pan-Canadian Approach to Transforming Species at Risk Conservation in Canada.¹⁵ The approach shifts conservation from single-species to one that focuses on multiple species and ecosystems. It concentrates on priority places, species, sectors and threats across Canada and challenges partners to work together to achieve better outcomes for species at risk. Of the 11 priority places identified by Environment and Climate Change Canada, 10 are in southern, more highly disturbed ecosystems. In addition, one of the priority species (Greater Sage-Grouse), all three sectors (agriculture, forestry and urban development) and the threat of invasive alien species are all relevant to species at risk protection and recovery in these southern ecosystems where key conservation lands are often privately held.

Private conservation lands in southern Canada have been and continue to be those with the highest biodiversity conservation values, including key and critical habitats for species at risk. Ensuring that the private land conservation community is empowered to steward and protect these habitats over the long term—whether this be activities such as conserving and restoring habitats or managing invasive species or ensuring the obligations of a conservation agreement are respected—is critical to protecting and recovering species at risk in these regions. More than 230 of Canada's terrestrial species at risk are found on lands stewarded by private land conservation organizations.¹⁶

Climate Change Mitigation and Adaptation

The contribution of land degradation to climate change is well documented. Avoiding the conversion of natural habitats to other land uses prevents carbon emissions that occur through such disturbance and enables further sequestration of carbon through appropriate land management activities.¹⁷ While the quantum of carbon on private conservation lands may not be large in the context of all lands in Canada, it is clear that all actions, whether large or small, that contribute to achieving global targets related to climate change count given the magnitude of the challenge. Moreover, private conservation lands will play an increasingly important role in mitigating and adapting to the effects of climate change. Ensuring that private land conservation organizations can effectively steward their conservation lands and agreements over the long term will ensure that these lands are continuing to contribute to addressing the global climate crisis.

¹⁵ Environment and Climate Change Canada, *Pan-Canadian Approach to Transforming Species at Risk Conservation in Canada*

¹⁶ Nature Conservancy of Canada, *Our Impact*

¹⁷ Intergovernmental Panel on Climate Change (2020), *Special Report on Climate Change and Land, Chapter 4: Land Degradation*

Human Health and Well-being

In conducting the interviews for the preparation of this report, land conservation organizations frequently noted higher numbers of visitors to properties with public access. This observation reinforces their role in protecting and conserving natural areas for the physical and mental health and well-being of Canadians. These higher visitation rates highlight the need to increase capacity of private land conservation organizations to maintain the ecological integrity of these areas and manage the natural and built assets from a visitor experience perspective, such as providing parking, trail access and as a good neighbour of adjacent landowners. This has emerged as an area of activity needing specialized attention by staff or volunteers with a specific skillset.

Multiple Benefits from Private Land Conservation

In summary, it is clear that the work of the private land conservation community provides multiple benefits to Canada on matters that are a high priority for Canadians. However, the rapidly changing context and increasing demands and expectations on this community create challenges to stewardship, legal protection and services provided by these organizations if the benefits of private land conservation are to be sustained over the long term.



PART TWO: STEWARDSHIP

Status of Stewardship

The private land conservation organizations that offered their perspectives on key questions related to stewardship capacity and funding, including endowment funds, represented a range of organizations from volunteer-run to high-capacity charities with conservation agreements and fee simple lands worth hundreds of millions of dollars. Most private land conservation organizations manage a mix of fee simple and easement, covenant or servitude lands. Some have opted to focus on fee simple lands while others focus only or mainly on conservation agreements. There was a high level of consistency in the feedback received from private land conservation organizations that provided input either in writing or during interviews.

On fee simple lands, as the land manager, private land conservation organizations necessarily take an active and direct role in the stewardship of the lands. Core stewardship activities focus on such activities as:

- protecting, maintaining and restoring existing habitat
- controlling invasive species
- monitoring for trespassing and boundary issues
- conducting community outreach and maintaining friendly relations with neighbouring landowners
- tracking any potential land-use changes on adjacent lands
- dealing with human impact on trails and any built infrastructure on publicly accessible property

For organizations that hold title to private conservation lands, the consultations highlighted that private land conservation organizations of every size go beyond acquisition and stewardship with programs that support a variety of activities such as public education, community and volunteer outreach, scientific research, native plant propagation, trail and facility maintenance and Indigenous engagement. While these broader activities serve a valuable purpose, the private land conservation organization may be

Funding Challenges

“Ongoing stewardship isn’t valued in the same way as acquisition.”

“Funders are inconsistent from year to year or move on to different areas of interest, while private land conservation organizations are committed to their core mission in perpetuity.”

“Keeping up with conservation challenges of stewardship and climate change like pulling invasive species is getting increasingly expensive and doesn’t solve the problem; investing in solutions is needed.”

“An increase in hectares protected means an increase in liability and the property management budget.”

challenged to expand operations to include fundraising for these broader activities while still ensuring sufficient funding to effectively manage its conservation lands. Private land organizations are challenged on an annual basis to acquire and steward conservation lands while supporting these other activities. Many organizations noted that funding for acquisition of conservation lands and agreements is more readily available while exclusive funding for stewardship is difficult to generate.

For conservation agreements, core stewardship activities are conducted to ensure that the terms of the agreement are being met by both parties. These activities focus mainly on:

- managing and deepening the relationship with the landowner through direct contact
- ensuring landowner compliance through regular monitoring and reporting
- conducting checks through site visits, flyovers or other means

To ensure conservation outcomes on lands for which they hold conservation agreements, private land conservation organizations rely primarily on the landowner to uphold and even improve the natural heritage value of the property according to the terms of the conservation agreement. A key challenge cited by organizations relates to when ownership of a property changes. In general, they report higher levels of confidence in the original owner to meet the obligations of the conservation agreement because of trust developed through the agreement development and negotiation process. When land changes ownership, private land conservation organizations anticipate higher than usual landowner

“They don’t have enough time, money, staff and resources to do everything that they need to do to achieve the protection levels and stewardships required.”

contact will be needed to ensure the new owner fully understands the intentions and obligations of the conservation agreement. Such engagement assists the new landowner in developing a management philosophy for the lands that is consistent with the requirements of the conservation agreement.

With 59% of private land conservation organizations operating with no full-time positions and 24% supporting one to six positions, nearly 85% of private land conservation organizations function with limited or no paid human resource capacity.¹⁸ Common capacity challenges shared through the consultation process include:

- monitoring, collecting and tracking details about the properties
- reporting and meeting with landowners regularly (ranges from annual to triannual)
- tracking land sales and changes to land title
- providing best management practice tools or training for landowners
- maintaining contact with landowners is time consuming
- completing long-term management plans for every property
- supporting internal policies and financial management related to stewardship activities and investments
- building connections with Indigenous communities
- maintaining good relations with neighbours of conservation lands

¹⁸ According to 2018 data available from the Canada Revenue Agency

- engaging professional expertise when needed
- fundraising and grant responsibilities require a significant time commitment—multiple funders are usually needed to meet budget needs

In general, private land conservation organizations support their operations through a combination of common revenue generating strategies, such as membership dues, monthly and one-time donations, grant writing, corporate sponsorships, legacy gifts, investment income and merchandise sales, as well as volunteer support. Gaps in staff capacity are handled mainly through externally funded short-term contracts, government funding programs, such as the Canada Summer Jobs initiative, partnerships and volunteers. Members of Boards of Directors may also play key roles in the activities of private land conservation organizations including fundraising, property management, landowner outreach, community engagement, investment oversight and legal defence. This is especially true for organizations with limited or no staff. Without this highly dedicated and motivated group of volunteers playing an active role in the life of the private land conservation organization, the impact and sustainability of the private land conservation community would be significantly diminished.

“Land trusts depend on many sources of funding—the loss of any revenue sources has big implications for budgets and the level of work they can undertake. It can take years to recover from a decrease in funding.”

All organizations reported that stewardship activities are being undertaken for both conservation lands and agreements. However, all reported budgets for stewardship are insufficient and result in lost opportunities for enhancing the benefits of private conservation lands. Available budget is prioritized for essential obligations and ‘core’ stewardship work which one organization defined as activities required to maintain organizational image and reputation. For this organization, maintaining a positive public perception meant keeping ‘the lights on’, the ‘basics’ of property ownership, for example, paying taxes and insurance, inspecting properties, delivering on commitments to the public, donors and supporters, managing assets related to the visitor experience such as access, trails and parking facilities and other basic needs and requirements. Funding for these necessary activities is provided through their revenue streams including annual fundraising efforts and/or through the establishment within budget of reserve or endowment funds. Nevertheless, while core needs appear to be met, other stewardship needs, such as maintaining or restoring habitats or removing invasive species, are met only to varying degrees and, in some years, may not be undertaken at all.

Endowment or Restricted Funds

A few organizations have created sizable endowments over many years; however, this is the exception rather than the norm. Private land conservation organizations, by direction of the Board of Directors, may hold internally restricted, externally restricted and/or endowment funds. The purpose of internally restricted funds is determined by the Board and supported by a Board resolution, while for externally restricted or endowment funds, the purpose is established by an external donor or funder.

Government Funding

The following initiatives were mentioned in annual reports or during consultations as providing funds that assist in the stewardship of private conservation lands

Federal

- 2 Billion Trees Program
- Canada Nature Fund
- Climate Change Challenge Fund
- Habitat Stewardship Program for Species at Risk
- Nature Smart Climate Solutions Fund
- North American Waterfowl Management Plan

Provincial

- Alberta Land Trust Grant Program
- Community Gaming Grants – BC
- Conservation Trust – MB
- Greenlands Conservation Partnership Program – ON
- Habitat Conservation Trust Foundation – Conservation Economic Stimulus Initiative – BC
- Manitoba Fish and Wildlife Enhancement Fund
- Natural Area Protection Tax Exemption Program – BC
- New Brunswick Environmental Trust Fund
- New Brunswick Wildlife Trust Fund
- Nova Scotia Crown Share Land Legacy Trust
- Ontario Conservation Land Tax Incentive Program
- Ontario Managed Forest Tax Incentive Program
- Ontario Species at Risk Stewardship Program
- Ontario Trillium Foundation
- Prince Edward Island Wildlife Conservation Fund
- Project de partenariat pour les milieux naturels – QC
- Saskatchewan Fish and Wildlife Development Fund
- Stewardship Association of Municipalities – Newfoundland and Labrador

These reserve or endowment funds have been set up to generate more stable, predictable ongoing investment returns to the private land conservation organization so that it can meet its obligations to steward its lands and agreements not only through challenging financial times, but in perpetuity. The establishment of such reserve or endowment funds is in line with the Canadian Land Trust Standards and Practices¹⁹ whose practice elements set out that private land conservation organizations should:

- build and maintain sufficient operating reserves to sustain operations
- adopt and implement a plan to build and maintain dedicated or restricted funds sufficient to cover the long-term costs of stewarding and defending the land trust's land and conservation agreements

¹⁹ Centre for Land Conservation, *Canadian Land Trust Standards and Practices*, Standard 6: Financial Oversight, Practice A: Fiscal Health

Some strategies private land conservation organizations are currently using to grow these funds include:

- by policy, establishing a target for investment into a stewardship endowment, often based on a percentage of the value of a conservation property
- negotiating a donation from the landowner that meets a minimum stewardship investment target, such as 15-25% of the land value, when the land is accepted
- raising the percentage goal of the property value through targeted donor outreach and direct funding campaigns
- annually allocating to reserve funds a portion of the amount secured through fundraising efforts
- creating targeted appeals for contributions from key demographics, e.g., legacy donors

Nevertheless, further financial support is needed to enable private land conservation organizations to more predictably provide for enhanced and some core stewardship activities and for society to more fully benefit from these conservation lands and agreements. Currently, going beyond core stewardship activities to deliver 'enhanced' stewardship programming is usually contingent on special fundraising efforts and such programming is the first to be dropped if funding targets are not met. Consequently, activities such as creating property management plans, implementing restoration activities and conducting scientific research may not happen if there is a budget shortfall.

The range of fundraising capacity within the private land conservation sector is broad and further research is needed to focus on the specific issues and needs that smaller volunteer-led organizations have compared to larger well-staffed operations. A selective review of private land conservation organization annual reports reveals an extensive list of donors, partners and volunteers supporting the activities of these organizations. With funds coming from numerous donor categories, such as individuals, corporations, foundations and all levels of government, it is evident that private land conservation organizations dedicate significant amounts of time to annual fundraising to achieve a certain level of financial stability for ongoing operations and activities.

Where private land conservation organizations are able to undertake enhanced stewardship activities, they reported on the critical importance of government funding programs that enable them to increase capacity for such activities. While these government funding programs are demanding with respect to application and reporting requirements, such funding enables organizations to undertake and enhance their stewardship activities. One private land conservation organization mentioned that the Nature Smart Climate Solutions Fund, for example, is contributing to the development of a carbon-focused land management plan.

"For a smaller private land conservation organization, the benefits of a sustainability fund are a long way off. It will take a lot of fundraising to meet that goal, so it is difficult to make that activity a priority."

While private land conservation organizations rely, in particular, on government funding programs to support them to steward their lands effectively, these programs are competitive and success in obtaining funding is unpredictable. These organizations also spend considerable time pursuing funding from a wide variety of other sources. They have little to no certainty that their grant proposals or fundraising efforts will be successful despite stewarding significant natural heritage for the common good. Those few

private land conservation organizations that receive predictable, reliable funds can consistently support higher levels of stewardship, such as organizations that receive funds from municipalities through provincially mandated requirements.

Private land conservation organizations are working in a challenging environment with competing expectations and a growing sense of urgency to protect the best of what is left as quickly as possible. They demonstrate considerable experience and expertise whether operating through a volunteer base or with paid staff. The benefits of healthy reserve or endowment funds are a long way off for the private land conservation organization community generally, no matter their size.

Indigenous Protected and Conserved Areas

While the time frame for the completion of this report did not permit extensive engagement beyond the private land conservation community, officials of one Indigenous government actively developing Indigenous Protected and Conserved Areas (IPCAs) initiatives shared that the concepts around land ownership and associated protection within an IPCA are still evolving. Who owns land within IPCAs, how such land is managed and how it is legally protected were cited as matters of importance and under consideration within the context of an IPCA. In this regard, the Canadian Land Trust Standards and Practices, performance assurance, stewardship and legal defence were all of interest and considered as potentially relevant to Indigenous organizations and communities that are advancing IPCAs within their areas. The officials of the Indigenous government recommended that further consideration and discussion of these matters occur at the national level within the IPCA network.

Establishing Endowment Funds – A Case Study: Canada Cultural Investment Fund

Endowment funds are “often referred to as the future lifeblood of any charity...providing for the long-term financial success of the organization, they are also a buffer in times of financial and/or fundraising reversals.”²⁰

While the value of healthy reserve or endowment funds was acknowledged by private land conservation organizations, the consultations highlighted questions and challenges on the path to achieving long-term financial security, such as:

- donors preferring to give to private land conservation organization activities such as acquisition rather than a restricted fund
- some organizations preferring to manage a general restricted fund for fee simple lands and conservation agreements to maintain slightly greater flexibility in the use of funds

²⁰ Charity Village (2007), *Endowment Funds: An Overview*

- where an endowment fund is specific to one property, if the return on investment generates more funds than needed for stewardship of the property, the use of such funds on higher priority stewardship needs on other properties would be prevented
- stewardship funds may serve a dual role as legal defence funds creating competing priorities—establishing separate funds requires significant effort
- increasing land values increase the challenge of achieving endowment fund goals
- the terms of endowment funds can be too restrictive, extremely difficult to amend and don't account for the changing context that private land conservation organizations are working within
- growing reserve funds to anticipate potential risks could mean locking up too much funding unnecessarily when it is needed for more immediate stewardship or other activities

While financial support from funders, including governments, to assist non-governmental organizations in establishing and growing endowment funds is not common, there are examples of both one-time and ongoing programs that allow such organizations to do so. One example is the Endowment Incentives component of the Canada Cultural Investment Fund that enables arts and heritage organizations to grow their endowment funds. It is the only matching endowment program offered by the federal government.

The private land conservation community proposed a few options that could help strengthen the capacity of their sector to raise stewardship funds. An example at the provincial level is the Alberta Land Trust Grant Program that accepts as an eligible expense investment in a “Stewardship Endowment to ensure the continued protection and maintenance of the property.”²¹ This option should be considered by other provinces and levels of government. Funding programs focused on securing conservation lands to achieve protected and conserved area targets, for example, could permit investment in stewardship endowments as an eligible expense under their granted projects. Even if these funds need to be matched by another source, it provides the private land conservation organization with a mechanism to raise dollars explicitly for stewardship endowments. The creation of municipal/regional tax-based conservation funds could also focus on providing a 1:1 match for the acquisition and stewardship of privately held land with high ecological value. In the southern Canadian landscape, these parcels play an increasingly critical role in habitat protection and climate resilience now and will continue to do so in the future.

“Are our stewardship funds and annual stewardship activities appropriate for the scale and liabilities associated with our work?”

“I feel that the continued use of the Ecological Gifts program is valuable and essential, but that the program has ignored the issue of supporting stewardship funding throughout its history.”

²¹ Government of Alberta, *Alberta Land Trust Grant Program*

As noted in the report introduction, the private land conservation sector is not alone in terms of stewardship of significant capital assets and having the responsibility to steward these assets over the long term. In the time available for the preparation of this report, it was not possible to thoroughly research the nature and extent of support provided to various charitable sectors to enable the establishment of endowment funds sufficient to provide for the long-term stewardship of the capital assets of those sectors. It is clear, though, that support is provided in other sectors such as health care and education for the stewardship of assets, often through direct investment in capital infrastructure. With respect to the establishment of endowment funds as a means to provide for long-term stewardship of capital assets, there was opportunity to examine the Canada Cultural Investment Fund, which was designed to help arts and heritage organizations to establish and grow endowment funds to support core operations, achieve financial stability and sustain the stewardship of assets.

The arts and culture sector represents 9.4%, or 8,084 organizations, of Canada's total number of charities, in comparison to 2% represented by environmental charities. Overall, 7% of charitable giving by Canadians goes to the arts and culture sector and 5% to environment. Based on 2015 data, the average revenue from all levels of government to the arts and culture sector was 51% of its total average revenue, while total average revenue from government to environmental charities was 31% of total average revenue.²²

The arts and culture sector was provided a significant opportunity in 2001 when the Government of Canada launched the Tomorrow Starts Today program that committed \$560 million to arts, cultural and heritage programs over three years²³ through three new programs:

- Canada Arts Presentation Fund
- Canada Cultural Spaces Fund
- Canada Cultural Investment Fund

While the programs delivered through this funding, including the Canada Arts Training Fund that preceded the Tomorrow Starts Today investment, have evolved since then, they continue to provide stability and sustainability as well as bringing a focus on equity, diversity and inclusion to the sector today.

Canada Cultural Investment Fund

The Canada Cultural Investment Fund (CCIF) offers a unique model in terms of incentivizing investments in endowment funds. A review of the program was conducted through internet research and consultation with Canadian Heritage officials responsible for the Endowment Incentives component of CCIF.

Overview

CCIF sits within the federal department of Canadian Heritage, whose mandate focuses on fostering and promoting "Canadian identity and values, cultural development and heritage."²⁴

²² See Appendix III

²³ The Globe and Mail (2004), *Arts funding program renewed for 2005-2006*

²⁴ Government of Canada, *Raison d'être, mandate and role – Canadian Heritage*

Since 2001-02, CCIF has been encouraging “private sector investment, partnership and sound business practices to help arts and heritage organizations be better rooted and recognized in their communities.”²⁵

CCIF includes three components, two of which are relevant to this report:

- i. Endowment Incentives—provides grants to match private sector funds raised on behalf of professional not-for-profit arts organizations to grow endowment funds
- ii. Strategic Initiatives—launched in 2010-11, this component provides financial assistance for collaborative projects involving multiple arts and heritage organizations that improve their business practices and diversify their revenues
- iii. Limited support to Endangered Arts organizations—supports professional arts organizations to avoid potential closure and regain financial health

Endowment Incentives Component

Professional not-for-profit arts organizations can apply for funding from the Endowment Incentives component to match private sector contributions to create or increase endowment funds. The funding match provided by the government is up to one dollar for every dollar contributed from a private donor.

Beginning with an annual budget of \$3.1 million in 2001-02, the Endowment Incentives component grew to \$18.9 million by 2010-11. This ramp up has since stabilized, with figures reported in 2017-18 at the same level. Canadian Heritage officials confirmed that the overall budget for this component remains at approximately this level.

Funding is allocated to all eligible applications based on the annual Endowment Incentives budget to request ratio which is calculated by dividing the annual budget by the total amount requested from all organizations.²⁶ In other words, all eligible and qualifying applications receive funding from the program each year. The amount received by each applicant is proportionate to the applicant’s request within the overall amount requested by all eligible applicants.

Who Can Apply?

The arts organization seeks funding partners with an associated charitable foundation. Both the organization and the foundation must meet eligibility criteria to apply. Larger arts organizations, such as the Stratford Festival or Toronto Symphony Orchestra, have their own dedicated foundations. In other cases, community foundations are relied upon. The foundation receives and invests the funds, the arts organization benefits from the investment income.

²⁵ Government of Canada, [Canada Cultural Incentive Fund](#)

²⁶ Government of Canada (2019), *Grouped Arts Evaluation: Canada Arts Presentation Fund, Canada Cultural Spaces Fund, and Canada Cultural Investment Fund 2013-14 to 2017-18*

To be eligible for funding²⁷:

Arts Organization	Incorporated under relevant federal, provincial or territorial legislation as a not-for-profit arts organization, governed by a board of directors, with appropriate oversight of financial operations and annual financial statements Core mission is to create, produce or present professional works, or train professional artists Within the last five fiscal years has received funds from Canada Council for the Arts, or Department of Canadian Heritage, i.e., the Canada Arts Presentation Fund, the Canada Arts Training Fund or the Fathers of Confederation Buildings Trust If not a grantee of any of these funds within the last five fiscal years, the organization must demonstrate its capacity to operate at a professional level
Associated Foundation	A publicly registered charitable foundation, as described in subsection 149.1(1) of the <i>Income Tax Act</i> , with a mandate to accumulate, administer and invest capital assets for the purpose of providing part or all the annual income to the beneficiary arts organization

Two key additional criteria for the arts organization include:

- a minimum of three years in operation prior to the application with audited financial statements
- a specific level of financial stability, including a commitment to its long-term viability

The financial stability of the organization is determined based on the calculation of its net assets ratio. The total of unrestricted net assets is divided by the total operating revenues, provided by the financial statements for the fiscal year to calculate the net assets ratio.

A negative net assets ratio greater than 15% makes the organization ineligible to apply.

Government Funding Limits

There is no limit to the amount of matching funds an arts organization can receive from the Endowment Incentives component over time. Previously, a lifetime maximum of \$15 million per organization was in place, but this cap was removed in 2018.

The annual funding limit is fixed; therefore, the amount available as matching funds will vary depending on the number of applications and amount of funding requested.

Current maximum limits on funds requested in each fiscal is the lesser of:

- \$2,000,000 or
- 50% of the average total operating revenues of the organization's past three completed fiscal years

²⁷ Canadian Heritage, Government of Canada, *Application Guidelines – Endowment Incentives Component*

As a means to ensure that funding is distributed more equitably among organizations, this formula changes once an organization has received a total of \$10,000,000 in matching funds to the lesser of:

- \$1,000,000 or
- 50% of the average total operating revenues of the organization’s past three completed fiscal years²⁸

Funding Conditions

The arts organization and foundation must agree to specific conditions in accepting matching funds:²⁹

- The funds from the Endowment Incentive component along with the private donor match are capitalized in perpetuity and held as restricted assets by the foundation, as outlined in the funding agreement.
- Arts organizations have access to the investment income only that is generated by the fund, which can be used for operations or special projects.
- If the Endowment Incentive component funding does not fully match the donations from private donors, the funding agreement does not apply to the extra amount raised from them.
- Only standard administrative and investment charges can be applied to the matching grant at no greater than 2% of the total grant amount received from the Endowment Incentives component.
- The arts organization bears the cost of the fundraising activities out of its operations budget.

The funding agreement can also include additional conditions.

Impact

From 2013-14 to 2017-18, CCIF distributed \$110.7 million in funding through its three components. The Endowment Incentives component was by far the most active funding stream, with 85% of the total funds delivered through its matching grants to a total of \$93.7 million. Over this five-year period the arts community therefore locked in \$187.4 million to support its long-term financial health by starting and/or growing endowment funds.

The impact of the Endowment Incentives matching grants were numerous during this five-year period, and include:

- On average, the target of 70% of recipients creating an endowment was met
- The amount of endowment income increased, as did the amount of donations by private donors to the endowment
- Overall, the matching funding enabled as much as 25% growth in arts organizations’ endowment funds

Table 1: Endowment Incentives Applications and Funding Approved, 2013-14 to 2017-18³⁰

Indicator	Endowment Incentives
Total Applications (#)	543
Total Requested (\$)	\$110 million
Total Applications Approved (#)	525
Total Applications Approved (%)	97%

²⁸ Canadian Heritage, Government of Canada, *Application Guidelines – Endowment Incentives Component*

²⁹ Canadian Heritage, Government of Canada, *Application Guidelines – Endowment Incentives Component*

³⁰ PCH’s Grants and Contributions Information Management System (GCIMS). Adapted from *Grouped Arts Evaluation: Canada Arts Presentation Fund, Canada Cultural Spaces Fund, and Canada Cultural Investment Fund 2013-14 to 2017-18*, Canadian Heritage, Government of Canada, August 2019

- The private sector donations represented a diversification of funding to arts organizations, with donations from individuals (49%), non-governmental organizations (25%), other organizations (14%) and corporations (8%)
- The average annual income of \$22.5 million earned on endowments investments and disbursed by foundations to arts organizations was more than double the annual target of \$10 million
- Helping arts organizations to stabilize their financial health with a significant percentage of their income (78%) coming from non-governmental sources

In a joint written submission to the Standing Committee on Finance (2020), a group of arts organizations put forward the recommendation to increase the Endowment Incentives component from \$19 million to \$25.5 million, based on the significant financial security and stability the fund has helped organizations to achieve.³¹

Results shared through the consultation with Canadian Heritage staff highlighted that since 2001, 290 organizations have been funded. Applications for 2022 are the highest ever with 165 requests totalling \$36 million. The increase in new applicants suggests that arts organizations are increasing their capacity to raise matching funds and suggests that the Endowment Incentive does exactly that—incent others to invest in endowment funds. It also is incenting arts organizations themselves to be creative, for example, one added a small endowment surcharge on ticket sales to help raise matching funds.

Strategic Initiatives Component

While less funding is available on an annual basis for the Strategic Initiatives component, this component contributes to organizational health and operations by providing financial assistance for projects involving multiple partners that help arts and heritage organizations improve their business practices and diversify their revenues.

As noted by Canadian Heritage, “by supporting collaborative projects, Strategic Initiatives encourages knowledge and resource sharing and the strategic use of technologies that will strengthen the business operations of arts and heritage organizations, helping them make stronger contributions to Canadian society and the economy.”³²

Canada Cultural Spaces Fund

A complementary program to CCIF is the Canada Cultural Spaces Fund (CCSF). The objective of CCSF is to “contribute to improved physical conditions for arts and heritage related creation, presentation, preservation and exhibition as well as increased and improved access for Canadians to performing arts, visual arts, media arts and to museum collections and heritage displays. This is achieved through the improvement, renovation, and creation of arts and heritage facilities, and through support for the acquisition of specialized equipment and conduct of feasibility studies for cultural projects.”³³

³¹ A Joint Submission by various arts organizations, Parliament of Canada, House of Commons, Standing Committee on Finance, *Enhancing economic growth and donor engagement through Canadian Heritage’s Canada Cultural Investment Fund – Endowment Incentives Component*

³² Canadian Heritage, Government of Canada, *Strategic Initiatives – Canada Cultural Investment Fund*

³³ Canadian Heritage, Government of Canada, *Canada Cultural Spaces Fund*

The program funds three types of activities:

- The construction and/or renovation of arts and/or heritage facilities
- The acquisition of specialized equipment
- The development of feasibility studies for the construction or renovation of arts and/or heritage facilities

Grouped Arts Evaluation

The Grouped Arts Evaluation published in August 2019 by the Evaluation Services Directorate, Canadian Heritage found that CCIF aligns with and supports the mandate of Canadian Heritage and its priorities of supporting cultural industries and infrastructure.³⁴

The Endowment Incentives component enabled arts organizations to raise capital and create endowments through private sector donations. It resulted in income disbursed by foundations to professional arts organizations at twice the program target and helped arts organization recipients achieve financial stability with a high percentage (78%) of funding sources that were non-governmental.

The Strategic Initiatives component contributed to arts and heritage organizations demonstrating sound organizational, administrative and financial health. It helped arts and heritage organizations to improve business practices and built new and strengthened existing partnerships related to best practices, marketing and technology.

CCSF contributed to arts and heritage organizations better creating, presenting, preserving and exhibiting arts and heritage experiences since a high percentage of projects maintained or enhanced infrastructure and spaces. Most users were satisfied with these improvements. It enabled these organizations to have resources to build/improve facilities and infrastructure by funding a high number of construction/renovation projects and specialized equipment purchases, and in helping projects to secure over 70% in external funding primarily from provincial, territorial, municipal and private sources.

Challenges And Needs

The Grouped Arts Evaluation found a continued need for improved access and mitigation of barriers to program funding for small organizations and underserved groups. Indigenous, racialized and other underserved groups had lower access to funds due to a lack of awareness of the opportunity. Some organizations lack the capacity to find matching donations from private donors, while larger organizations need support to achieve the level of endowment required to be self-sustaining. Efforts are being made to improve the support and access to the programs, particularly for small organizations and underserved communities.

The evaluation identified issues regarding processes for performance data collection, monitoring and reporting. The definitions and interpretation of indicators and outcomes, as well as approaches to data collection, were not always clear and could be subject to interpretation. A need was identified to improve performance measurement indicators and data collection tools, including methodologies and systems, to ensure that data collected is meaningful, accurate and useful. Work is underway on tools and practices to ensure integrity of data and consistency of methodologies.

³⁴ Government of Canada (2019), [Grouped Arts Evaluation: Canada Arts Presentation Fund, Canada Cultural Spaces Fund, and Canada Cultural Investment Fund 2013-14 to 2017-18](#)



PART THREE: LEGAL PROTECTION

Status of Legal Protection

The real estate under the protection of the private land conservation community, either as fee simple lands or conservation agreements, is found primarily across Canada's southern landscape, a region that reflects a high degree of fragmentation due to settlement and industrialization patterns over the last few hundred years. These lands play a significant role in helping to protect biodiversity and ecosystem services as they have been secured by the land conservation organization due to their high conservation value. From an ecological perspective, these lands are irreplaceable.

Legal defence was mentioned as a priority by every private land conservation organization consulted, but their capacity to protect their properties effectively reflects a wide range of experiences. The urgency felt to address organizational challenges related to legal defence varied, with some feeling the pressure of specific issues, such as the growth of residential land development, more acutely than others.

Further, advice from the Environmental Law Centre and Miistakis Institute reinforces the unique context for legal protection of a conservation agreement. "Knowing that conservation easements are perpetual and likely to face a challenge at some point, conservation easements should be drafted with the expectation that they will have to be defended at some point in the future."³⁵

The main areas of discussion during the consultations focused on protecting conservation agreements and covered:

- the importance of deterrence—all private land conservation organizations need to be backed by strong legal defence support
- the vulnerability of conservation agreements—the impact of change of ownership and the organizational expertise needed to foster positive landowner relationships
- the key elements of best management practices to ensure prevention of legal issues
- the impact on the organization of the settlement or claims process
- the need for knowledgeable legal professionals and a legal defence fund
- the benefits and challenges of a collective insurance program to support all private land conservation organizations

³⁵ Environmental Law Centre and Miistakis Institute, [Creating Robust Conservation Easements](#)

A number of private land conservation organizations reported that they had yet to deal with any significant legal issues, because their conservation agreements are still with the original grantor of the agreement. Legal costs for their regular operations relate to title transfer and due diligence for fee simple lands, as well as reviews of conservation agreements. They anticipate issues arising in the future when their properties start to change hands, and most have identified the need to increase their legal defence resources. This ranges from increasing their restricted funds to adding staff trained in landowner outreach and compliance monitoring to having access to legal expertise with a solid knowledge of regional issues and how land conservation organizations operate. One organization, for example, described taking a proactive approach when one of their easement properties went on the market. They provided the local realtors with information about the meaning of the conservation agreement, so prospective buyers could be well informed before making an offer.

“There aren’t a lot of underwriters out there who know land conservation.”

“The issue really is deterrence. Some landowners have deep pockets, and they look at the agreement holder and assume there is little ability to defend.”

The private land conservation sector is exposed to unique legal risks that do not lend themselves to coverage in the general insurance sector. The insurance instruments available to them include commercial general liability insurance that protects “against claims for bodily or personal injuries, advertising liability, as well as property damage to third parties arising from your operations or products or occurring on your business premises”³⁶ and title insurance that covers issues that may affect, for example, clear title to the property, existing liens, encroachment on an adjoining property, title fraud and mistakes in the public record or land survey.³⁷

Larger or older private land conservation organizations have dealt with issues with conservation agreements and fee simple lands, such as:

- enforcing agreements
- damage from activities on adjacent lands, such as drainage alteration from residential construction
- dealing with formal challenges, such as expropriation for road or pipeline construction
- trespass
- encroachment activities by neighbouring landowners, such as tree cutting
- general property damage
- property management liabilities that impact neighbours
- assessed value of property with conservation agreement
- enforcement of provincial or federal rules at the municipal level

³⁶ Intact Insurance, [Liability Insurance](#)

³⁷ Financial Services Commission of Ontario (2008), [Understanding Title Insurance](#)

Another area of risk identified related to the misalignment of policies and/or programs between different levels and departments of government. While beyond the scope of this report, additional research is needed, for example, to clarify the significance that mismatches between high-level conservation goals and provincial planning law or municipal plans have at the site level and on private land conservation organizations. These mismatches can have implications for legal defence of conservation lands. Similarly, how does a conservation agreement impact the assessed value of a property and does this hinder or support long term protection?

The capacity of every private land conservation organization to defend its agreements and properties is the litmus test for the entire sector. The goal is to settle issues through mediation and avoid litigation. A poor outcome for an organization in court can set a legal precedent that could impact every private land conservation organization in Canada.

“Our way of doing things is to create a bond of trust with private owners. It can take time, but the important thing is that it is the owner who is the bearer of the project.”

The focus on building a strong relationship with the landowner for a conservation agreement is central to every organization’s legal protection strategy. Nonetheless, challenges in maintaining this practice at the level needed persist and leave the organization feeling vulnerable.

Private land conservation organizations recognize the need to maintain an internally restricted fund for legal defence. Raising funds for this purpose is a challenge as most donors prefer to fund activities rather than give to a restricted fund. As outlined in the Status of Stewardship section of this report, private land conservation organizations spend significant time raising annual funds to cover their core operations, special projects, stewardship activities and their investment targets for long term stewardship. However, these funds are mainly applied to stewardship activities rather than set aside in a restricted fund for a legal defence action that may not occur for many years. Consequently, organizations feel that their legal defence fund is too low. It is common practice to use one restricted fund to cover both stewardship and legal defence, although some organizations keep separate funds.

“We have noticed a real discrepancy between aspirations of the federal government and the capacity to actually protect land parcel by parcel. This goes beyond finances, but rather the goals and approaches of the planning community, including municipalities [...] and their various private consultants. These are the regulators that most closely affect the work of a land trust and impact the environment at the local scale.”

“We do not specifically separate our stewardship and legal defence costs and investments. We manage our stewardship funds for the dual purpose of providing annual income to cover annual stewardship costs as well as a significant principal amount that could be accessed for legal defence or enforcement if needed. This requires proper diversification of stewardship investments to meet multiple needs over the short and long term.”

In the case of a dispute or non-compliance with a conservation agreement, direct costs related to the settlement process include legal as well as other professionals needed to evaluate damages and provide estimates and plans for restitution. Private land conservation organizations reported a range of costs related to settlements between \$3,000-\$90,000. For cases elevated to the courts, the costs were much higher.

“By policy, (we) set aside \$5,000 in a segregated stewardship fund for each conservation agreement held. We recognize that this is a very small sum and would be insufficient for any serious legal challenge.”

A couple of examples that were shared in the consultations with private land conservation organizations highlight the range of issues that organizations can face. In the first example, a landowner with a conservation agreement was impacted by actions of a neighbour that constituted a boundary infraction and resulted in significant damage to the property. The onus was on the landowner to pursue the neighbour for damages, and the private land conservation organization supported the landowner in the settlement process by paying costs for reports and legal fees. Another case involved the drainage of wetlands covered under a conservation agreement that resulted in serious long-term damage to the property. The case was resolved through a ‘judicially assisted dispute resolution’ process and included the removal of the easement from the damaged lands to other healthy wetlands with additional habitat included as part of the settlement.

The impact on an organization goes beyond direct costs, however, as staff time is diverted from their regular role to support the legal process. For organizations with a small staff component, this has the potential to impact other areas of organizational activity significantly over a long period of time. One private land conservation organization reported, for example, that the settlement process related to compliance issues with a conservation agreement had taken over 18 months to resolve, and another has been engaged in court for a few years over boundary issues connected with their fee simple lands. While a successful settlement will cover direct costs incurred by the private land conservation organization, it was pointed out that costs associated with staff time usually are not unless a specific contractor was hired to support the process. The potential for legal issues arising also increases as the organization’s portfolio of properties grows. It is not surprising that an organization with numerous properties could always have a few legal issues in play.

The value of experience in dealing with legal defence issues was summed up well in one discussion during the consultations as “prevention is better than a cure.” Resources that outline best practices for private land conservation organizations to minimize the potential for legal issues are available on-line through the Land Trust Alliance BC³⁸, the Environmental Law Centre and Miistakis Institute³⁹ in Alberta, the Ontario Land Trust Alliance⁴⁰ and les Réseaux de Milieux Naturels Protégés⁴¹ in Quebec, to name a few.

The intent of these best practices is to support the passion that inspires a private land conservation organization with rigorous systems that will safeguard special natural areas in perpetuity. They are designed to anticipate future problems and ensure that a private land conservation organization is challenge ready. Best practices address a suite of needs including:

- due diligence in designing the terms of a conservation agreement and/or land donation as an exercise in risk management and prevention—to clarify the limitations of the landowner’s wishes, achieve maximum conservation value and minimize superfluous restrictions that could become contentious
- professional and accurate recordkeeping to meet standards of evidence
- establishing and maintaining a regular frequency of compliance monitoring
- separating the roles of ecological monitoring from compliance monitoring at the staff level
- engaging in a process of mediation first as a follow-up to compliance issues
- sufficient contact with new landowners assuming title of property with a conservation agreement

“Having a national legal defence fund of significant size would provide a shield to protect land trusts.”

All private land conservation organizations consulted for this report recognized that a collaborative approach is needed and welcomed the idea of a collective fund or shared mechanisms to backstop their potential legal defence needs and create the best possible conditions for private land conservation organizations to fulfil their mandate of protecting their lands in perpetuity.

The potential benefits include:

- giving equitable access to significant levels of legal support that will deter legal action against all organizations
- addressing organizational capacity issues through training in best management and legal defence practices
- building a portfolio of experts at the regional level to support organizational resource needs (e.g., access to lawyers familiar with land conservation)
- backing legal claims with sufficient funds
- coordinating research to better understand the potential liabilities that organizations may face in different situations or regions

38 Land Trust Alliance of BC, [Legal Education](#)

39 Environmental Law Centre and Miistakis Institute, [Conservation Easements in Alberta](#)

40 Ontario Land Trust Alliance, [Resources](#)

41 Réseau de milieu naturels protégés, [Formations](#)

The mindset of legal defence is not, however, the motivating purpose behind a private land conservation organization. Relationship building around a shared set of values related to conserving the natural world is what drives a private land conservation organization forward. Consequently, a collective fund or shared mechanism would take the pressure off private land conservation organizations to grow and manage their own restricted funds for legal defence, thereby keeping their fundraising efforts focused on raising money for operations, special projects, acquisition and implementing best practices associated with prevention and stewardship.

Insurance Reciprocal – A Case Study: Terrafirma

Private land conservation organizations are currently on their own when it comes to protecting their properties in perpetuity. The standard benefits offered through title and general liability insurance don't protect against the variety of legal issues an organization can face. This precarity of protection doesn't measure up to the benefits that these safeguarded lands offer with respect to Indigenous reconciliation, species at risk, climate mitigation and resilience and human well-being.

Given the range of organizational capacity within the private land conservation community, the idea of an insurance reciprocal program, as a national protection fund or mechanism stands out as a viable option. The establishment of Terrafirma, an insurance reciprocal program for private land conservation organizations in the United States, serves as a successful model to consider for the Canadian context. A review was conducted through internet research and a consultation with administrators of the Terrafirma program.

Terrafirma

Created by the U.S. Land Trust Alliance to address the need to ensure conservation permanence, Terrafirma was licensed as a captive insurance risk retention group by the State of Vermont on July 11, 2012. It was designed by and for land trusts, being member-owned and managed, in consultation with insurance specialists and attorneys, and supported by US\$5 million in foundation funding.

The need for this service is in response to the challenges facing land trusts across the United States due to rising population and development pressures that are increasing the value of conservation properties. All land trusts must have the capacity to protect themselves from litigation and safeguard the land, plus the billions of dollars that have been invested in them through taxes, tax incentives and credits as well as public and private donations. The value of the service is in minimizing risk and uncertainty for land trusts and offering expert legal support through a national team of experts when the day comes that they face litigation. As part of a national strategy to ensure that land trusts have the capacity to protect their properties in perpetuity, Terrafirma also provides a suite of training opportunities that focus on risk management, negotiation and conflict resolution, best practices and more. Membership in Terrafirma sends the message that the land trust can defend its conservation lands and easements, but it doesn't replace the need for the land trust to build sufficient financial reserves and develop sound business practices.

“Land trusts could think of Terrafirma as standing behind them to protect their resources from catastrophic legal expenses and to help them avoid unnecessary litigation through solid practices, early dispute resolution and smart risk management.”

Source: [Terrafirma](#)

Group captives insurance programs “insure the risks of a heterogeneous or homogeneous group of unrelated insureds, providing them with benefits such as:

- Combined purchasing power
- Share in underwriting profits and related investment income
- Flexibility with respect to coverage forms and claims handling
- Incentive for risk management and loss control
- Access to reinsurance markets”⁴²

A risk retention group (RRG), or insurance reciprocal, is a subset of a group captives program and is an “entity owned by their insureds and authorized to underwrite the liability insurance risks of their owners. RRG owners must be from a homogenous industry group and based on a single state license are able to operate in all 50 states and the District of Columbia.”⁴³

Terraforma’s 2020 Audited Financial Statements states that “Terraforma has no employees and is managed by Alliance Risk Management Services LLC (ARMS or the Manager), a wholly-owned subsidiary of Land Trust Alliance. ARMS has authority to take all actions on behalf of the Company that the Manager deems necessary or appropriate for the continuation and conduct of Terraforma, and responsibilities include claims handling and policy issuance. Terraforma is solely responsible for meeting its obligations to its members and others. Land Trust Alliance, ARMS, or any member are not liable for the claims, debts or other liabilities of the Company.”⁴⁴

Governance and Membership

Terraforma established a Members Committee to represent member land trusts and oversee management by ARMS. The Members Committee has eight members representing eight regions across the United States plus one member appointed from Vermont. The Committee members are elected for staggered three-year terms and are also responsible for approving policies and strategic direction. The diversity of land trusts is reflected through the members Committee from national, regional (state) and local land trusts, both accredited and non-accredited.⁴⁵

Table 2: Growth in Terraforma over 8 years

	2013	2021
# of land trusts	420	541
# of states	46 + DoC*	48 + DoC*
# of properties	20,568	34,788
# of acres	6,354,434	9,803,397

* District of Columbia

In 2021, conservation easements comprised the most insured rights at 86% of total number of properties. The total market value of all Terraforma assets increased from US\$8,864,692 in 2019 to US\$10,094,158 in December 2020, with its total equity reaching over US\$7.2 million.⁴⁶

42 Risk Services, [Group Captives](#)

43 Risk Services, [Learn About Risk Retention Groups](#)

44 Johnson Lambert LLP (2020), [Terraforma Risk Retention Group LLP Audited Financial Statements Years ended December 31, 2020 and 2019](#)

45 Ibid.

46 Johnson Lambert LLP (2020), [Terraforma Risk Retention Group LLP Audited Financial Statements Years ended December 31, 2020 and 2019](#)

Eligibility Requirements

A land trust must answer yes to the following questions to participate in Terrafirma:⁴⁷

1. Is the land trust legally organized and in good standing in the state in which it is incorporated or organized?
2. Is the land trust tax exempt under IRC §501(c)(3)⁴⁸ or listed on Publication 78 (or a successor listing) with the IRS?
3. Does the land trust have a complete baseline documentation report for every conservation easement or deed restriction?
4. If the land trust is insuring its fee properties, does the land trust have a complete inventory for every parcel of fee-owned land?
5. Does the land trust implement a program of annual monitoring of its conservation easements or deed restrictions?
6. If the land trust is insuring its fee properties, does the land trust regularly monitor its fee-owned land?
7. Is the land trust a member in good standing of the Land Trust Alliance?
8. Is the land trust free of any final judgment against it for fraud, misrepresentation, criminal charges, bad faith, misleading business practices or any other similar charges?
9. Is the land trust free from any ongoing governmental investigation or inquiry, such as an attorney general investigation, legislative hearing and the like, the subject of which is land trust complicity in misleading business practices, fraud, gross negligence or criminal misconduct?
10. Is the land trust operating at breakeven (where income and expenses are equivalent) or does it have a plan to reach breakeven that may, among other actions, include use of reserves?
11. Does the land trust have general liability insurance? (no D&O requirement)
12. Does the land trust have and implement a written records policy and secure recordkeeping system that preserves irreplaceable documents essential to defense and enforcement?
13. Is the land trust actively building its legal defense and general stewardship reserves or other reserves that can be allocated for legal defense and stewardship, unless prohibited by state statute or regulation?

Application Process and Fees

Terrafirma opens an annual enrollment window for new applicants from December 1st to February 1st. Applicants choose the categories that apply to their properties, and all properties within that category must be insured at the same time. This is to ensure that the risk pool is large enough to sustain coverage. The categories include:

- Conservation easements
- Owned land
- Trail easements
- Access easements
- Deed restrictions

⁴⁷ Terrafirma, [Eligibility Requirements](#)

⁴⁸ Organizations described in IRC section 501(c)(3) are commonly referred to as charitable organizations

Applicants do not need to submit copies of baseline documentation reports and organizational documents. Terrafirma evaluates organizations based on the eligibility criteria and other information contained in the application. It doesn't underwrite individual properties or easements.

Registration fees follow a sliding scale according to the number of parcels enrolled.

Annual Premium & Discounts

The annual premium is US\$63 per insured parcel, including conservation easements, fee properties, trail easements and access easements.

Accredited land trusts, through the Land Trust Alliance's accreditation program, receive a higher discount per parcel. Non-accredited land trusts receive a discount for following Best Practices. Both receive an equal discount for risk management training and bulk properties.⁴⁹

Table 3: Registration fee schedule

Parcels	Fee (US\$)
1 to 10	\$375
1 to 24	\$600
25 to 49	\$900
50 to 99	\$1,400
100 to 299	\$1,900
300 to 499	\$2,400
500 to 999	\$2,900
1000 to 1999	\$3,400
2000 and up	\$4,000

Table 4: Discounts for Terrafirma members

Accredited	Discount	Non-Accredited	Discount (US\$)
Accreditation	\$11 per parcel	Best Practices	\$4 per parcel
Risk Management	\$1 per parcel	Risk Management	\$1 per parcel
Bulk Properties (250+)	\$3 per parcel	Bulk Properties (250+)	\$3 per parcel
Total Possible	\$15 per parcel	Total Possible	\$8 per parcel

The Land Trust Alliance offers a suite of free webinars in risk management. Terrafirma also offers a free online course: A Guide to Risk Management for Land Trusts, which will qualify a land trust for the discount.

Accredited land trusts must successfully meet the 12 standards detailed in the Land Trust Standards and Practices, established by the Land Trust Alliance in 1989. Membership in the Land Trust Alliance requires a commitment to the Land Trust Standards and Practices. Accreditation is granted through the Land Trust Accreditation Commission, which is an independent program of the Land Trust Alliance formed in 2006.⁵⁰

⁴⁹ Terrafirma, [Costs and Discounts](#)

⁵⁰ Land Trust Accreditation Commission, [About the Land Trust Accreditation Commission](#)

Land trusts must meet all the following conditions to qualify for Terrafirma's Best Practices discount:

- Every transaction is reviewed and approved by a qualified attorney prior to closing.
- A written policy on violation resolution is in place and followed.
- A written conflict of interest policy is in place and followed.
- Written criteria exist for selecting land and easement projects consistent with the land trust's mission.
- Each project is evaluated for its performance of the land trust's perpetual stewardship responsibilities.

Terrafirma membership benefits include:

- Affiliate Membership in the Non-profit Risk Management Center
- seven issues per year of Terrabytes, a newsletter covering various subjects related to best practice, legal issues, etc.
- use of the Defense Reserves Calculator to assess the level of risk associated with insured parcels

Coverage

Terrafirma covers legal costs for both the enforcement and defence of fee owned land and conservation easements, including costs for lawsuits and mediation. This coverage applies if the land trust launches or is named in a lawsuit.

Terrafirma does not cover property damage, which should be covered by property insurance.

The Terrafirma policy has 37 exclusions. It also has specific conditions related to land trust mergers, the division of fee land or conservation easements and co-holder coverage.⁵¹

Claims

The Claims Committee oversees claims management in collaboration with the insured land trusts. It includes attorneys appointed by the Members Committee with a range of experience in conservation and insurance. Their responsibilities include:

- ensuring that Terrafirma is well managed
- evaluating, monitoring, approving and managing all member claims
- legal strategy for Terrafirma
- assigning outside counsel to represent land trusts (in consultation with the land trust)

Terrafirma encourages land trusts to file a placeholder claim at the first indication of any looming problem and offers 22 general indicators to consider. Early filing is meant to initiate conversations and prevent problems from becoming worse.⁵²

Each submitted claim carries a US\$5,000 deductible.⁵³

⁵¹ Terrafirma, [Coverage](#)

⁵² Terrafirma, [Potential Indicators of When to File a Claim](#)

⁵³ Terrafirma, [Claims](#)

Claims History

Since 2013, Terrafirma has handled 1,156 claims, of which 698 were resolved successfully. This included favourable court decisions in 26 cases and unfavourable in two cases.

Based on feasibility projections from 2010, the frequency of covered claims is slightly higher, but their severity has been less than anticipated, and include:

- preserve and conservation easement trespass
- vegetation removal
- topography changes
- minor unpermitted structures
- unpermitted land divisions
- technical legal challenges such as partition proceedings and bankruptcy⁵⁴

⁵⁴ Terrafirma, [Annual report to Land Trust Members March 1, 2020 to March 1, 2021](#)



KEY LEARNINGS

- I. The work of the private land conservation community provides multiple benefits to Canada on matters that are a priority for Canadians and can make a contribution to Reconciliation with Indigenous peoples.
- II. Achieving the objectives of Canada's Nature Legacy and Nature Smart Climate Solutions initiatives in the southern landscapes of Canada will depend on contributions from the private land conservation community.
- III. The private land conservation community is responsible for a significant land conservation estate that is critical to achieving conservation objectives in the southern ecosystems of Canada where additional conservation actions are urgently needed.
- IV. Canada's Nature Legacy call to increase private land acquisition through the Natural Heritage Conservation Program acknowledges the role that the private land conservation community has in contributing to protected areas targets in landscapes where much of the land is privately held.
- V. The people engaged in the private land conservation community are highly knowledgeable and committed to the conservation of nature, healthy ecosystems and species at risk through sound land stewardship and legal protection of their conservation lands and agreements.
- VI. As compared to other Canadian charitable sectors, the private land conservation community faces unique challenges to sustain the benefits and effectively steward their conservation lands over the long-term as the effort to respond to biodiversity and climate emergencies intensifies. In addition, the community has few insurance instruments to backstop legal protection of their conservation lands and agreements.
- VII. The majority of private land conservation organizations function with capacity challenges, such as few or no paid staff, not aligned with the importance of the natural assets they protect and steward. Generally, they are managing through a variety of strategies, including support from highly dedicated and motivated staff and volunteers, that enable them to fulfill their core stewardship responsibilities for their conservation lands and agreements, and build effective relationships with landowners to avoid potential legal issues.
- VIII. Federal and provincial grant and contribution programs prioritize the securement of conservation lands and agreements. These programs also play key roles in providing financial support for stewardship activities that would not otherwise be implemented.
- IX. To augment their stewardship activities beyond core responsibilities, private land conservation organizations pursue grants and contributions, an effort that takes staff and volunteer time away from other organizational activities and may not lead to the securement of additional funds resulting in needed stewardship activities going unactioned.

- X. Private land conservation organizations are primed to benefit from increased investment. Most private land conservation organizations are endeavouring to generate revenue streams and/or create restricted or endowment funds to provide greater financial security and predictable cash flow for long-term stewardship of their natural assets and other infrastructure.
- XI. Most private land conservation organizations identify the need to increase their restricted funds or have access to legal defence support as a priority. While many have not faced legal challenges yet, they anticipate dealing with an increase in compliance issues, particularly when the ownership of conservation agreement lands changes hands in the future.
- XII. A legal claim that goes against a private land conservation organization could have negative repercussions for the entire sector. An increase in investment in restricted funds for legal protection would help protect a conservation estate valued at over \$2.3 billion, and growing.
- XIII. Similar to securing funds for stewardship, raising funds for legal protection is challenging for the private land conservation community and competes with their efforts to raise funds for core operations and stewardship.
- XIV. Support for establishing and growing restricted or endowment funds for stewardship and legal defence could be provided through various means. For example, grant and contribution programs:
 - a. could accept investment in these funds as an eligible expense
 - b. support the development and implementation of a program specifically focused on establishing and growing endowment funds
 - c. support the development and implementation of an insurance reciprocal to serve the whole private land conservation community with legal support and protection



RECOMMENDATIONS

This situational analysis confirms a high need for additional investment in the private land conservation community to ensure:

- effective management of their conservation agreements and stewardship of their lands so that the conservation benefits of these properties flourish in perpetuity
- access to sufficient and effective legal resources to protect their lands and conservation agreements, emphasizing the imperative of treating the private land conservation sector as a whole with respect to their vulnerability to legal challenge

Given the multiple benefits of private land conservation and linkages to priorities of Canadians and governments, the potential contribution of private land conservation to reconciliation with Indigenous peoples, and the unique challenges faced by the private land conservation sector with respect to the long-term stewardship and legal defence of conservation lands and agreements, ***the CLC recommends that an in-depth two-part feasibility study be undertaken on how best to:***

1 Increase financial support for stewardship and the ongoing operations of private land conservation organizations for durable conservation outcomes, including assessment of such options as:

- Adjusting current funding programs to provide endowment funding match as part of each funded project
 - Enhancing or establishing annual funding programs for “core” stewardship activities for which it is difficult to raise funds, for example, property management plans, conservation agreement monitoring, core stewardship staff
 - Creating a separate program focused on matching endowment contributions to provide stability to the sector as a whole
- 1.1 In relation to the matching endowment option, as the Canada Cultural Investment Fund provides an interesting and proven model for supporting and sustaining the operations of not-for-profit charitable organizations, ***the Centre for Land Conservation recommends that the feasibility study include examination of how a program similar to the Canada Cultural Investment Fund could be modeled and adapted to support capacity building for the private land conservation community.*** Additional considerations in relation to the Canada Cultural Investment Fund are found in Appendix 1.

- 1.2 With respect to the nature and key elements of a feasibility study related to stewardship, **the Centre for Land Conservation recommends:**
- I. Engaging key constituencies and experts including private land conservation organizations and other stakeholders, legal, investment and tax professionals, community foundations, Indigenous leaders, government and donors through surveys, interviews and in-person workshops
 - II. Researching investment of endowment funding, particularly the potential role and involvement of foundations, such as community foundations
 - III. Addressing policy considerations such as match funding requirements/ratios, distribution of contributions from funders, priority areas for investment based on external factors such as urgency for nature protection at the regional level, eligibility of organizations including due diligence and risk management considerations
 - IV. Addressing design and governance considerations related to a stewardship endowment initiative
 - V. Developing the means to measure impact by identifying key metrics to track progress and report on impact over time
- 1.3 The time frame for the completion of this report did not permit extensive consultations with Indigenous organizations and communities. In this regard, **the Centre for Land Conservation recommends that the utility of a stewardship endowment initiative to other organizations be examined including engagement with Indigenous communities working to establish Indigenous Protected and Conserved Areas.**

2 Assess the level of risk now and in the future that private land conservation organizations may face, to scope effective and efficient ways to provide legal protection for the fee simple lands and conservation agreements they hold, and to explore in particular what the model of an insurance reciprocal program offers to meet their needs.

- 2.1 As the Terrafirma program in the United States provides an effective and proven insurance reciprocal model for providing sector-wide legal defence support, **the Centre for Land Conservation recommends that the feasibility study include examination of how a program similar to Terrafirma could be modeled and adapted to support the private land conservation community.** Additional considerations in relation to Terrafirma are found in Appendix II.

- 2.2 With respect to the nature and key elements of a feasibility study related to legal protection, **the Centre for Land Conservation recommends:**
- Conducting a personalized study of the risks the sector could be facing over the next few decades and the potential size of protection fund needed
 - Engaging key constituencies and experts, including private land conservation organizations and government stakeholders, legal, investment and insurance professionals, foundations, Indigenous leaders and donors through surveys, interviews and workshops
 - Comparing the type and scale of program and minimal thresholds needed to deliver value to the whole sector, including start up funding needs and potential funders, plus ongoing costs and how they will be sustained
 - Outlining a process of integrating standards and practices to establish a pathway for continuous improvement within the sector
 - Linking with conservation outcomes and Indigenous reconciliation practices at the regional to national level
- 2.3 Additional research and consultation is needed related to the scope of potential risks of the private land conservation sector such as:
- the potential misalignment of government policies/programs that may create legal issues or obstacles for organizations
 - the impact of planning laws on the assessed value of a conservation agreement
 - how designated land uses undermine the goals of permanent protection



APPENDIX I:

CONSIDERATIONS TO BE ADDRESSED IN A FEASIBILITY STUDY RELATED TO THE CANADA CULTURAL INVESTMENT FUND

The Canada Cultural Investment Fund (CCIF), through its Endowment Incentives program, has enabled arts and heritage organizations to start and grow endowment funds, incentivized private donors to contribute to the endowment funds of these organizations and increased the level of financial stability among recipient organizations by helping to diversify revenue streams. The Strategic Initiatives component of the CCIF built new and strengthened existing partnerships related to best practices, marketing, and technology among arts and heritage organizations, improving business practices, and helped these organizations to achieve and demonstrate sound organizational, administrative, and financial health.

Given the success of CCIF, it is a useful model to be considered in terms of support for endowment funding for the private land conservation community. It would be important to consider similarities and differences between the two sectors in the design of any initiative to grow the endowment funds of private land conservation organizations. Some considerations in this regard are:

- i. The Endowment Incentive component of CCIF has been funding arts organizations for 20 years. Is there an imperative to establish appropriate levels of endowment investment more quickly? What would be required to meet a shorter timeline for private land conservation organizations to establish endowments of sufficient size to generate investment income able to reasonably support stewardship activities annually and over the long-term?
- ii. Private land conservation organizations depend on many sources of funding to meet their budget needs. Diverting too much funding into an endowment fund that may otherwise have gone into annual operations could jeopardize the organization's ability to manage their easements and steward their properties to high standards in the short term. Could the program be structured so that organizations have the option to provide match over a longer time frame?
- iii. The 1:1 match may be too low to be effective for many private land conservation organizations and therefore have low perceived value. Could the eligibility criteria be structured to allow a higher contribution, like 2:1, from funders to private land conservation organizations that have lower fundraising capacity or fewer funds comparatively already in reserve accounts?
 - The success of the Endowment Incentives component of CCIF has shown the government's match has decreased over time. In 2022, for example, it came in at roughly 60% match for every match dollar raised by the arts or heritage organization. Could the federal government and/or other funders make the initial investment to build momentum for a private land conservation program, based on the trajectory of growth of investment from private donors as demonstrated through the CCIF program?

- iv. Information on the nature and extent of the needs of private land conservation organizations with respect to financial stability and their capacity to sustainably steward their conservation lands and agreements is not well known. As the scale and extent of liabilities associated with the work of private land conservation organizations across Canada is unknown, it may be useful to conduct a needs analysis, ensuring consistency and comparability of such information.
- v. Donors prefer to give to activities rather than investment funds. The Endowment Incentives component of CCIF has shown that donors to the arts community responded positively to the potential for doubling their donation impact through the program. In this regard, it may be useful to consider:
 - Market research to determine the response from private land conservation donors to a matching endowment opportunity
 - Research should also determine what features of the program allowed it to attract new, incremental funding rather than re-allocation by donors of their current level of funding
 - The nature of any support useful to private land conservation organizations such as training, and communications and marketing expertise to create an effective endowment campaign
- vi. What would be the eligibility requirements and how would private land organizations best demonstrate due diligence and effective risk management as an incentive to governments and other funders to invest in endowments. The experience of the Terrafirma program in the United States demonstrates that a commitment to accreditation by the land trust translates into increased capacity in all aspects of its operations.⁵⁵

55 Peter Szabo, Bloomingdale Management Advisors (2018), [An Impact Evaluation of the Land Trust Accreditation Program's First Ten Years](#)



APPENDIX II: CONSIDERATIONS TO BE ADDRESSED IN A FEASIBILITY STUDY RELATED TO THE TERRAFIRMA PROGRAM

1. The private land conservation community operates primarily in the southern region of Canada on a landscape fragmented by competing uses, such as industrialization and continued settlement. Within this context, the importance of the land conservation community in the role of protecting species at risk, mitigating climate change, increasing climate resilience and supporting healthy ecosystem services is heightened. It will be important to understand:
 - the risks the sector faces now and over the next few decades
 - the model and scale of fund that will effectively serve the legal needs of the sector—does the community have the capacity to support an insurance reciprocal like Terrafirma?
 - the pros and cons of various models, including the investment needed to implement, and ongoing costs—how does the model become self-sustaining?
 - the level of buy-in needed by the sector to meet an operating threshold for an efficient program

A personalized study would examine key fundamentals within the private land conservation sector to inform the design of the program. Based on the preliminary study conducted by Terrafirma, a study of the Canadian context would cover:

- understanding the risk
 - understanding the numbers
 - refining coverage
 - defining initial capital
 - defining start-up costs
 - defining limits
 - defining coverage
2. Private land conservation organizations depend on many sources of funding to meet their annual budget needs. The lack of an adequate defence fund puts their operations at risk, but it is difficult to address this funding gap without impacting their core operations. What impact would an insurance reciprocal program have on their core budget, and would additional funding sources be needed to help organizations benefit from the program?

3. Terrafirma's program that serves the private land conservation community in the United States has proven to be an effective model in building capacity for the sector and protecting the natural assets that its members steward. The fundamental metrics of the program show significant growth, such as a nearly 30% increase in membership and a 53% increase in protected land from 2013 to 2021.

The private land conservation community in Canada operates with significant gaps in legal protection that an insurance reciprocal could fill. To what degree can the Terrafirma model be adapted for the Canadian context?

- What would be the eligibility requirements and how would private land organizations best demonstrate due diligence and effective risk management as an incentive to governments and other funders to invest in establishing an insurance reciprocal? Does the experience in the United States demonstrate that a commitment to accreditation by land trusts translate into increased capacity and ability to legally defend conservation lands?
- Terrafirma grants membership to organizations that have met accreditation guidelines and those that haven't, but that are meeting best management practices in their operations. Accredited organizations receive higher discounts in the premiums they pay. How could a national insurance program connect with the Canadian Land Trust Standards and Practices and build a framework that supports a pathway of continuous improvement? Can thresholds be integrated into the standards and practices so they aren't overwhelming for small land organizations? Can discounts be given to organizations that meet criteria for improvement and thereby reduce risk factors?
- What is the value for funders in a national insurance program? Conduct additional research regarding their level of recognition of the value of standards and practices.



APPENDIX III: PRIVATE LAND CONSERVATION WITHIN THE CHARITABLE SECTOR

Data compiled by Environment and Climate Change Canada shows the private land conservation sector in Canada includes 147 charitable organizations, based on a review of reports to the Canada Revenue Agency in 2018. In total, the sector holds \$2.3 billion in assets, generates \$396 million in revenue, and issues \$87 million in tax receipts. The sector employs 1,463 full-time and 1,164 part-time or seasonal employees.⁵⁶

The majority of private land conservation organizations operate in Quebec (32%), Ontario (27%) and British Columbia (19%), with the remaining 20% distributed across Alberta (7.5%), Saskatchewan (2%), Manitoba (1.3%), New Brunswick (3.4%), Nova Scotia (3.4%) and Prince Edward Island (2.7%). Two national private land conservation organizations represent roughly 1.3% of the total number of organizations.

A minority of private land conservation organizations employ staff, with 41% of these organizations offering full-time permanent positions and 59% operating without staff. Around 24% support one to six full time jobs, 13% support 7-26 positions and 4% over 50 full time jobs.

With respect to total annual revenue, 37% of private land conservation organizations have less than \$100,000, 32% have \$100,000-\$600,000, 8% have 600,000 to \$1.1 million, 16% have \$1.1-\$5 million and 6% over \$5 million.

Around 7% of private land conservation organizations hold over \$25 million in total assets, while 46% hold less than \$1 million. The remaining 47% hold total assets ranging from \$1 million-\$23 million.

Within the broader charitable sector, there are 86,000 charities operating in Canada, of which environmental charities make up 2%, or roughly 1,720 organizations. The private land conservation organization community represents around 8.5% of environmental charities, and less than one percent of Canadian charities in total.

⁵⁶ According to 2018 data available from the Canada Revenue Agency

Table 5: Private Land Conservation Organizations with the Canadian Charitable Sector⁵⁷

	Canadian charities	Private land conservation orgs	%
# of organizations	86,000	147	.17
Assets	\$519 billion	\$2.3 billion	.44
Revenue	\$169 billion	\$396 million	.23
Jobs	1.5 million	2,627 (full- & part-time)	.18

Table 6: Charitable sectors by percentage of charities⁵⁸

Percentage	Charitable Sector
7.50%	Religious
22.40%	Social Services
9.5%	Public Benefit
9.4%	Arts & Culture
7.6%	Health
7.4%	Education
2.0%	Environment
1.6%	International
0.8%	Animals
0.3%	Indigenous Peoples

Table 7: Percentage of giving by Canadians per charitable sector⁵⁹

Percentage	Charitable Sector
41%	Social Services
31%	Religious
26%	Health
19%	Education
16%	Public Benefit
12%	International
7%	Arts & Culture
6%	Animals
5%	Environment
1%	Indigenous Peoples

Table 8: Percentage of average government funding (all) as part of average revenue by charitable sector⁶⁰

Sector	Av Revenue	Av Rev from Gov't	% Rev
Health	16,352,316	13,357,255	82%
Education	9,175,125	6,077,054	66%
Social Services	1,504,381	931,498	62%
Indigenous Peoples	2,427,199	1,394,112	57%
Arts & Culture	974,026	501,384	51%
Public Benefit	1,929,349	657,313	34%
Animals	1,596,081	510,589	32%
Environment	719,056	223,317	31%
International	2,573,128	522,263	20%
Religious	421,116	49,469	12%

57 Mark Blumberg, Canadian Charity Law (2021), *Which Canadian charities had the largest assets in 2019?*

58 Canada Helps, *The Giving Report, Meet the Sector* (some charities focus on more than one issue area, so are counted more than once)

59 Canada Helps, *The Giving Report, Giving Facts*

60 Canada Helps (2017), *The Giving Report 2017*

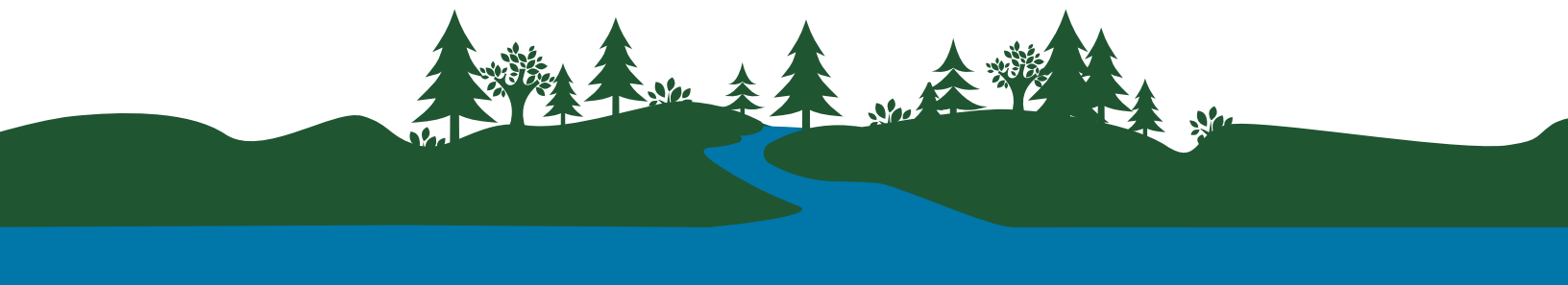


APPENDIX IV: ORGANIZATIONS CONSULTED

The consultation process for the development of this report included a broad-reaching e-mail to the private land conservation community. The request from CLC encouraged interested organizations to provide written responses to supplied questions on stewardship and legal protection or to set up a conference call with CLC to discuss the topics of stewardship and legal protection (using the supplied questions as a guide). CLC connected with 24 organizations, including one Indigenous organization and other relevant stakeholders, i.e., funders and representatives from the case studies.

CLC is grateful to the organizations and individuals who shared their experiences and opinions which helped shaped this report. However, the learnings and recommendations are the opinions and reflections of CLC alone. Any errors or omissions are those of CLC. Please note that in order to assure anonymity, the name of the Indigenous organization does not appear on this list.

Organizations Consulted between February 2022 and March 2022	
Canada Cultural Investment Fund	Manitoba Habitat Heritage Corporation
Canadian Wildlife Service	Meewasin Valley Authority
Central Lake Ontario Conservation Authority	Nanaimo & Area Land Trust
Denman Conservancy Association	Nature Conservancy of Canada
Ducks Unlimited Canada	rare Charitable Research Reserve
Escarpment Biosphere Conservancy	Saskatchewan Stock Growers Association
Fondation SÉTHY	Southern Alberta Land Trust Society
Gabriola Land & Trails Trust	Terrafirma
Islands Trust Conservancy	The Land Conservancy of British Columbia
Kawartha Land Trust	Western Sky Land Trust Society
Legacy Land Trust Society	Weston Family Foundation
Long Point Basin Land Trust	



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