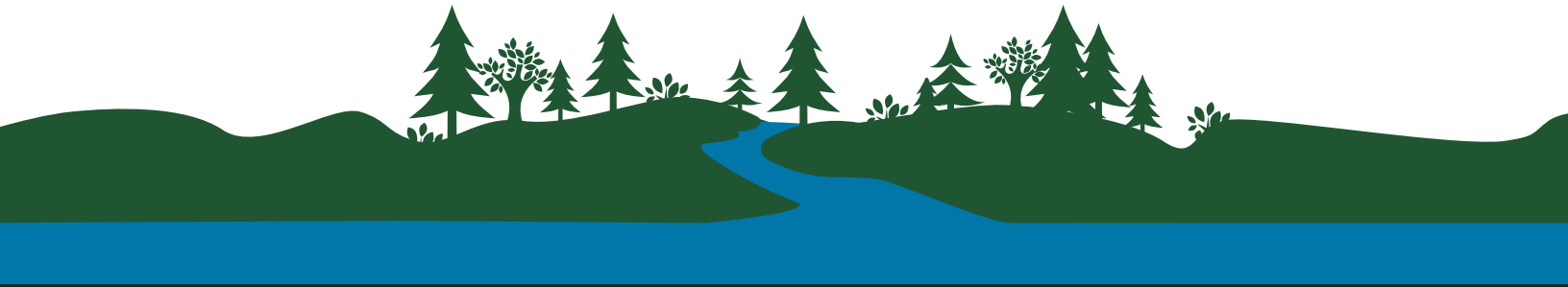


# FOREVER PROTECTED?



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

## EXECUTIVE SUMMARY



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

Également disponible en français

Centre for Land Conservation  
Ottawa, Ontario  
K2K 3E7  
Canada

Homepage: [www.centreforlandconservation.org](http://www.centreforlandconservation.org)



## ACKNOWLEDGEMENTS

The Centre for Land Conservation (CLC) gratefully acknowledges the contributions of all those organizations and individuals that helped to make this report possible.

Environment and Climate Change Canada provided information, advice and financial support.

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.<sup>1</sup> 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.

---

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



## 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.

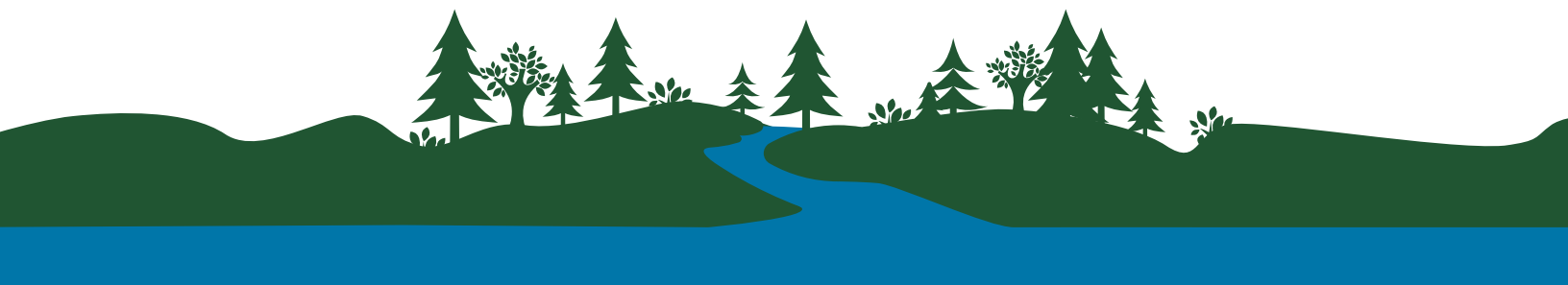
- XIV. Support for establishing and growing restricted or endowment funds for stewardship and legal defence could be provided through various means. For example, grant and contribution programs:
- a. could accept investment in these funds as an eligible expense
  - b. support the development and implementation 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



**Centre for Land Conservation**  
**Centre pour la conservation des terres**