

## **Easement and Dedication Programs for Parks and Private Lands**

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### **Abstract**

Many of the challenges for conserving Canada's biodiversity within representative areas occur on private lands. Beyond purchase and agency management, new approaches must be advanced to involve landowners in diverse ways. As wildlife and habitat areas always have, this involves crossing sectoral and jurisdictional lines. Developing familiarity with dedication programs, conservation easements and their associated tax incentives will enhance conservation opportunities for protected area managers, policy makers and partners alike.

Numerous examples and variations of park dedication programs exist in both Canada and the U.S. Landowners make a long-term commitment to protect all or a portion of their property in exchange for a range of benefits, including the following: exemption from expropriation, property tax reductions, recognition, and access to technical and financial support. Such a program could be developed in Ontario, and indeed the Ontario Nature Trust Alliance is investigating its own private system.

Conservation easements are voluntary agreements that become binding on future landowners. They can be useful in ensuring private commitments as in dedication programs and park inholdings. They also can be used for guaranteeing public purposes as private lands are transferred into public hands or vice versa as in *Legacy 2000* or Pickering land dispositions.

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### **The Need for New Tools for Protected Areas and Private Lands**

There is a growing need to examine and apply new tools for protected areas, and especially to conserve private lands. This paper outlines two of these tools – conservation easements and private land dedication programs – and relates their application to protected areas primarily within the context of provincial jurisdiction in Ontario.

This need for expanding the conservation tool kit for protected areas can be identified on at least three levels: landscape, site and institutional. This will not be new information for many practitioners in the field who observe and experience such challenges. Nonetheless, it does deserve noting, for it establishes a context that demands creative approaches and increased effort.

At the landscape level, we have seen substantial losses in natural habitat across Ontario and Canada. Many of southern Ontario's wetlands have been converted or impacted and ecologically viable woodlands are few and far between in most of the province's settled areas. Only a small percentage of Canada's tallgrass

prairie remains and pressures in the Okanagan Valley continue to endanger unique habitats. There are many such examples and growing data on such situations. We must acknowledge that we are losing habitats and associated species, despite long-standing protected area efforts on public lands.

At the site-specific level, protected area managers and planners are concerned with integrating resource management and maintaining ecological integrity. This is made manifest in several ways. Many protected areas have lands – inholdings – or partial interests such as utility corridors within their boundaries that affect the ability of authorities to manage the area as a unit. External lands may remain to be acquired to complete parks, while management agreements with neighbours are of limited term and may be terminated upon a land sale. With respect to ecological integrity, there are conservation biology issues of size, configuration, linkages and the like, as well as detrimental external influences such as pollution, noise, other disturbances and blowdown effects. Unless efforts are taken by protected areas authorities to overcome these management constraints, the site and system goals will not be fully achieved.

Institutionally, Ontario faces several challenges. Whether one adopts the analyses of Ontario Parks or that of the Endangered Spaces Report Cards, this jurisdiction has not achieved its protected area representation and other targets, especially in southern Ontario. Further, current initiatives, while in many cases making important contributions, together are not sufficient to achieve protected area goals identified in a succession of public statements and policies. A more comprehensive and innovative approach is required, yet remains largely indiscernible.

Indicative of current priorities, the *Lands for Life* initiative does not extend beyond Crown lands. Long-term items identified in the *Nature's Best* program that would have advanced protected areas in southern Ontario have largely been sidelined in order to feed the *Lands for Life* process (OMNR 1997). The government has abandoned traditional provincial funding and involvement for conservation authorities, and has thus limited opportunities to foster land acquisition and stewardship in southern watersheds. As a result of diminished resources and responsibilities, it thus appears that the Ontario government is neglecting a full private lands component within its protected areas mandate.

Two programs which stand as exceptions to this general rule are the *Conservation Land Tax Incentive Program* (CLTIP) and *Legacy 2000*. Each program makes a partial contribution to private natural heritage conservation. CLTIP exempts the most important categories of natural lands from property taxes, and thus provides an incentive to keep properties in their natural state. However, CLTIP has taken a back seat to the *Managed Forest Tax Incentive Program*. It lacks detailed criteria and, like planning policies, does not establish a long-term protected area.

*Legacy 2000* is an agreement to support the Nature Conservancy of Canada's acquisition of lands, which are transferred to Ontario Parks as protected areas under a long-term lease. While adding to southern protected areas, this program does not encompass nor sustain good stewardship and planning within the hands of private individuals and organizations, like the nature reserves system carried out by the Federation of Ontario Naturalists. Except for the selling or

giving of land, *Legacy 2000* does not enable ordinary private landowners to contribute to long-term representation efforts.

If we accept the goal of representation of all natural features and functions, as well as the need to protect unique features – such as endangered and vulnerable species – then we must address these landscape, site level and institutional challenges on the southern lands that lie predominantly within private hands.

In Canada, biodiversity, human populations, arable soils, and access to resources are greatest on private lands. So too are consequent conflicts. As a result, the conservation community must devise new approaches and entertain new partnerships in order to reach their goals. Conservation easements and dedication programs provide only two possibilities. While these techniques may be somewhat familiar, their application in Ontario could benefit from a closer examination.

### **Conservation Easements**

A conservation easement is an agreement between a landowner and a qualified organization or agency to place conditions on the use and management of the property. These conditions may involve limits on tree cutting, agriculture, road or structure building, or the means to manage wildlife. The signed agreement is registered in the land registry office, and thereby becomes legally binding on the current and any future landowner. Because easements are negotiated agreements, they can be tailored to the landowner's needs, the organization's objectives, and the features of the land. Easements can be purchased, but are often donated to a conservation charity such as a land trust, a conservation authority or a government agency. The terms of the easement are ensured through regular monitoring of the property by the holding organization, and by mediation or enforcement actions in court, if necessary.

A landowner who enters into a conservation easement may be able to achieve a variety of tax benefits. If an easement is given to a conservation charity or government agency, the organization will issue an income tax receipt which can then be used to claim a credit or a deduction to reduce income tax. The valuation rules proposed in new federal income tax legislation suggest that an easement will only be recognized as having substantial value where it is certified by Environment Canada to be 'ecologically sensitive'. Where lands or easements are certified as 'ecologically sensitive lands', the donor can claim more of a donation in relation to income, compared to other donations such as cash.

Annual property tax reductions may also be possible, since an easement may reduce the property's value and thus the taxes paid on this assessment. In many circumstances, these tax advantages can result in significant benefits for donors. Since easements may reduce low density and inappropriate development, and protect neighbours' amenity values, they may also lower servicing costs and taxes for municipalities.

Conservation easements can be used in a variety of situations to complement protected areas. First, by securing the appropriate use of inholdings or nearby parcels, they can help protect the core of a protected area. The process involves contacting the landowners, explaining and demonstrating the benefits of

easements to them, and then entering a process of negotiation. For example, one of my elderly clients wants to have an easement cover his forest and restoration efforts on tableland. The easement will thus help maintain ecological functions and ensure a buffer for a stream that forms the core of an Environmentally Sensitive Area (ESA). In sensitive situations, a short-term easement could establish trust and build the basis of a longer-term easement on the land, or perhaps its eventual acquisition.

Second, a conservation easement could be used to leverage other partners' involvement in protecting a site as well as in contributing towards a larger protected area assembly. We have seen this approach raised by an American landowner on Georgian Bay. He wishes to place restrictions on his significant island and shoreline properties before transferring it to the land trust, and use this donation to spur other donations and negotiations for an adjacent establishment of a protected area on Crown land. He has been promoting the concept of joint management between the land trust and the provincial government for this larger assembly, and thus contemplates the integrated and ecologically-based management discussed above.

This Georgian Bay example also highlights a third opportunity for using conservation easements: the conditions of any transfers of land to governments to establish a protected area could be guaranteed by using these agreements. As government politics and policies change, landowners are less willing to donate property to public agencies, and increasingly are turning more to non-profit organizations that have a clear conservation mandate. The recent uproar over whether new legislation would cause conservation authorities to sell off lands either donated or purchased with public donations is a classic example. Thus, in order to generally instill confidence in the acquisition of parkland, or to complete arrangements with some landowners, a conservation easement could be granted to a third party conservation organization while the title was transferred to an agency to become a protected area. An interesting twist on this approach occurred along the Grand River, where a donor's estate transferred the historic site and ecologically significant land holdings to the Lower Grand River Land Trust Foundation to become Ruthven Park. However, the estate also granted a conservation easement to the Ontario Heritage Foundation to ensure that this important property would be appropriately managed by the land trust.

Fourth, a variation on the above could also be accomplished. As agencies streamline or privatize their operations, many may sell or otherwise dispose of their surplus land holdings. Important ecological or cultural features could be protected during this process by granting an easement to a third party, before transferring the title into less conservation-oriented hands. This enables the public interest to be secured in a flexible yet permanent fashion, so long as the usual monitoring and enforcement of easements is maintained. A recent example is the Ontario government's proposed sale of over 3,000 hectares of land in the Pickering Agricultural Assembly on Toronto's doorstep. Through a local conservation group, we convinced the municipalities to negotiate with the Ontario Realty Corporation to grant a combination of title and easements over significant streams and valleylands which included ESAs and the Rouge Park as a condition of receiving Official Plan Amendment approvals. The Region of Durham also required agricultural easements on the tableland before the land was sold to

remove speculation and urban development pressures, thus further protecting the valleys and streams that pass through this area.

These are only four of the ways that conservation easements can be creatively applied within the protected areas context; other arrangements may be possible. Park authorities need to be aware of such opportunities and be prepared to explain and explore them with their conservation partners in order to achieve their larger management goals.

### **Private Land Dedication Programs**

A dedication program for private lands enlists landowners of significant properties to make a voluntary but long-term commitment to conservation for all or a part of their land. In this way, private landowners retain ownership and supervisory management, while the public interest in ensuring the conservation of significant sites is secured on private lands at little cost. The use of this voluntary technique also enhances landowners' pride and positive attitudes, and enables them to make a specific contribution towards conservation efforts without requiring disposition of the land or using a regulatory model. Dedication can involve not only individual landowners, but also corporate holdings and those of other institutions such as universities, school boards, cemeteries or agencies without a direct conservation mandate.

The technique is relatively straightforward. Legislation creates the authority to enter into agreements with landowners, likely with certain minimum standards and criteria, and also creates a reciprocal government responsibility back to the landowner. The government can be viewed as the trustee of such areas, assuming responsibility neither to harm their features nor to detract from their intended purpose. More tangibly, there are usually a number of direct benefits for the landowner, often graduated to correspond with the level of commitment made. Landowner benefits through a dedication program can include:

1. qualifying for one-time or annual property tax reductions or cash payments;
2. exemption from expropriation, except in the most extraordinary cases where an assessment demonstrates that a high threshold has been met, and that a high level of approval has been obtained;
3. protection from inappropriate resource development activities and approvals, such as those for mining or hydro-electric development;
4. recognition for land use planning purposes, with resulting procedural privileges;
5. access to government stewardship programs, such as those providing extension services, information, funding and other support; and,
6. public recognition through honour rolls or maps, plaques, gateway signs, annual dinners, newsletters and the like.

The landowner is provided with information on the program and how the site meets set criteria, then signs a standard form agreement and becomes entitled to the program's identified benefits. The agreement is given official status in some form, such as receiving high level government approval and being enrolled onto an official list. In at least one example, enrollment also involves granting a right of first refusal to the government to match any purchase offers. If the standard

agreement is a formal, binding and long-term commitment, it often is registered on the land title to ensure that the agreement binds not only the current but also future owners. This title registration is similar to that for conservation easements.

There are numerous examples of programs across North America that demonstrate the potential of such an approach to private land dedication. At least a dozen states in the U.S., mostly in the Midwest, have established 'natural area' programs that include such dedication or easement procedures, often with property tax and non-expropriation benefits (Endicott 1993). These programs often include many publicly- as well as privately-owned sites of natural heritage significance. Along with other examples in the U.S., Canada has numerous programs to encourage farmers to keep lands in agriculture and provide wildlife habitat benefits over the longer term. These programs include: the *Permanent Cover Program*; certain Prairie Conservation of Agriculture, Resources and Environment (CARE) initiatives; and proposals for an agricultural dedication program in New Brunswick (Greenfield and Richer 1996). The federal government has had its *Landmarks* program for national park dedications that recognizes non-federal interests in land.

From a protected areas perspective, perhaps the clearest example of private land dedication in Canada is Prince Edward Island's (PEI) Natural Areas program. Like Ontario south of the Canadian Shield, PEI has a very high percentage of private land. Under the Natural Areas Protection Act, a PEI landowner may enter into an agreement, lease or conservation easement with the provincial government for significant natural areas. An easement may be registered on the land title, ensuring that it is binding on future landowners. Associated regulations may also be put in place to protect the land by prohibiting certain activities, unless the Minister has approved a management plan that specifies otherwise. Significantly for landowners, such natural areas are exempt from property taxation, and the Minister may erect an identifying plaque on the site. The provincial government also keeps a registry of such properties and may provide other services that assist landowners of these sites. As of 1993, a total of 96 properties had been designated under the Natural Areas Protection Act, including seven owned by the non-profit Island Nature Trust (PEI 1993). As another example, Nova Scotia's Conservation Easements Act similarly provides for entering into conservation easements and designating natural areas by agreement with the landowner, while its Provincial Parks Act also provides for establishing a park by agreement with the landowner.

In Ontario, a number of private land initiatives exist or are unfolding. These include *Legacy 2000*, CLTIP, Areas of Natural and Scientific Interest (ANSI), and a land registry by the Ontario Nature Trust Alliance. Yet none fully accomplish a private land dedication program. Still, there are other Ministry of Natural Resources programs that could provide models and insights. For example, Ontario has had Woodland Improvement Agreements and the Agreement Forest program to secure long-term private and institutional commitment to maintaining productive forests. While these agreements are largely being phased out, this experience with land dedication could be considered in redesigning or expanding the programs discussed below.

As noted earlier, the Legacy 2000 program enables the Nature Conservancy of Canada (NCC), or in some cases a local land trust, to acquire properties and

then lease them to Ontario Parks to be regulated and operated as a provincial park or similar protected area with public access. Except for NCC and a few land trusts, private landowners cannot retain ownership and active management of their properties and still protect them under this program. There is also no direct government responsibility or on-going benefits back to original landowners in the community, and only a responsibility back to NCC through the terms of the lease.

CLTIP may come closer to a dedication program, since landowners of the most significant natural lands in Ontario can apply to be exempt from property taxes. On the application, a landowner must make the following declaration: "I intend to maintain my property as conservation land and not to undertake activities that will degrade or destroy the natural values of the site". Occasional monitoring may occur, and should inappropriate activities be discovered or reported, the property will be removed from the program and back taxes will become payable.

While it encourages conservation and is an important component of a stewardship package, CLTIP nonetheless has limitations. Technically, the declaration only relates to a conservation intention as of the date that it is made; of course, landowners can and do change this intention. There are no means to upgrade or secure a more detailed and long-term agreement that specifies the natural values involved and appropriate management activities – as managed forests require – nor is the agreement capable of binding future landowners. Enforcement is limited to removing the tax exemption and assessing back taxes, but these do not retain or remediate changed conditions at the site. Finally, CLTIP only applies to a few designated categories of land. This means that landowners of other habitats such as those of vulnerable or non-legislated endangered species, as well as non-forested areas, regionally important or restoration areas, or corridors between significant sites cannot make such a contribution to, or receive such benefits by sustaining Ontario's natural heritage.

The province's designation of ANSI or newer natural heritage areas identifies sites on public and private land that have life or earth science significance. Contrary to the perceptions of many, the ANSI designation really only identifies and describes the site, but otherwise does not protect it. Planning and other decisions which correspond to ANSI designations provide protection, but this is done through a regulatory rather than voluntary means. Typically, landowners can react negatively to ANSI identification or related zoning restrictions because of the imposition of regulatory constraints.

A more recent and private identification effort is the registry of the Ontario Nature Trust Alliance (ONTA) for lands, easements and other interests that meet certain management standards. While still under development, this registry may become a means to identify and dedicate private lands towards conservation. However, the program is only available for ONTA's member land trusts, not individuals or other corporations, and does not formalize government recognition and protection, nor direct reciprocal benefits to a diverse array of landowners.

Given the accomplishments of dedication programs elsewhere and limitations in current Ontario programs, a new system to commit private land towards conservation should be advanced. Such a program could be established under the province's Conservation Land Act, which already contains broad authority for conservation programs and easements. As once also existed for CLTIP's

predecessor, conservation programs under this Act are limited to certain types of designated lands. An amendment would be required to broaden them. Alternatively, a new statute could be introduced that more comprehensively and specifically addresses the needs of natural area stewardship and dedication on private lands.

## Conclusions

Increasingly, park managers and conservationists must consider the administrative and ecological management implications of protected areas within a privately-held landscape in order to meet protection objectives. This requires examining new tools for existing, publicly-owned protected areas, but also for lands that will remain in private ownership and will, in specific and long-term ways, be committed towards conservation. Conservation easements and dedication programs are just two of these methods that have demonstrated their usefulness both in Canada and the United States. Both are cost effective, especially in comparison to direct acquisition and management. Also, both appeal to landowners' stewardship ethic and desire to make a contribution towards conservation.

The Ontario Ministry of Natural Resources calls for undertaking by the year 1999 "a review of available tools that encourage and acknowledge the contribution of private land stewardship programs with a view to furthering the contribution of private lands to natural heritage protection" (OMNR 1997, 32). Recognizing and addressing this need is important, particularly in light of the limitations and gaps in the current framework as suggested above. Such a review would do well to examine, and eventually implement, creative use of easements and dedication programs as part of a more comprehensive and innovative package. This would then foster administrative and ecological integrity, cost effectiveness, and wider partnerships. Perhaps most significantly, these techniques would further encourage the voluntary participation of private landowners in conserving the province's diverse – and increasingly stressed – natural heritage.

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