

# **Strengthening CEA Practices for Securement**



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**OLTA 2019 S&P Workshop**



# Outline

- CEA intro and examples
- Standard 11 and Practices - CEAs
- Other CEA Standards and Practices
- CEA defence strategies, challenges
- CEA resources, experiences, discussion





# 1. Introduction

## Who are we, what experiences?

- Are you from this region?
- Are you from land trusts? Others?
- Have you dealt with CEAs before – used them, interacted?
- Are there any particular CEA items you are keen to know more about?



# What are CEAs?

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



# CEA Legalities

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

1M—April, 1934.

## THE LAND TITLES ACT

*In the matter of Lot Island G 937 Hay Marsh Bay, Rainy Lake  
being Parcel 3171*

This land is subject to assurance fees of 3/4 per cent on value of land and 1/10 per cent on buildings, (not less than \$1.00) which must be paid before any dealing therewith.



# Conservation Land Act, s.3

3. (2) An **owner** of land may grant an **easement** to or enter into a **covenant** with one or more **conservation bodies**,
- (a) for the **conservation**, maintenance, restoration or enhancement of **all or a portion** of the **land or the wildlife** on the land;
  - (b) for the **protection of water quality and quantity**, including protection of drinking water sources;
  - (c) for **watershed protection** and management;
  - (d) for the conservation, preservation or protection of the land for **agricultural purposes**;
  - (e) for the **purposes prescribed** by the regulations made under this Act; or
  - (f) for **access to the land** for the purposes referred to in clause (a), (b), (c), (d) or (e).

LRO # 48 Transfer

Received as RD29253 on 2015 12 18 at 13:57

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties



# CEA responsibilities

- Owner:
  - Abide by covenants
  - Notifications
  - Maintain property e.g. taxes, insurance
- Holder:
  - Maintain documents, records, resources
  - Consideration of owner, govt. approvals
  - Monitor property (annually), compliance
  - CEA Program development



# CEA Content

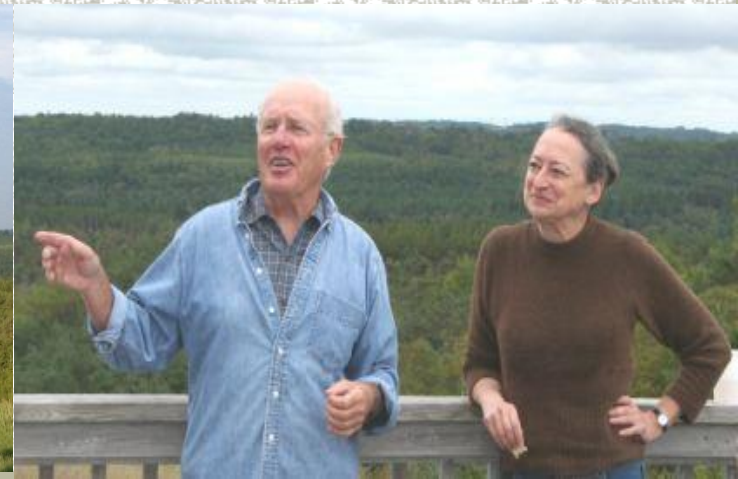
- Body:
  - Land details, parties, responsibilities
  - Notice, dispute resolution, approval, other procedures - “boilerplate” etc.
- Covenants: subdivision, landscape alteration, pollution, forestry, structures, vehicles, roads/trails, land uses, others
- Easement: access for monitoring
- Baseline report and maps (zones)





# Example: McKim-Garsonnin CEA

- 260 acre property that contains headwaters of Fleetwood Creek on the Oak Ridges Moraine, adjacent to OHT/KRCA large property
- Older landowners with stewardship interests
- 2011 CEA allows good stewardship, trails, forest management, prairie restoration and windmill
- CEA reflects existing ORM planning restrictions
- Qualifies for income and property tax incentives
- Demonstrates good stewardship, encouraged others



# Example: Cowan CEA

- Norm Cowan donated CEA on Eastern Syndicate Island (5 acres) in 2005, title 2018
- Largest natural island left on Stoney Lake
- Part of island corridor at Boschink Narrows between granite north shore and limestone south shore
- Conservation agreement allows use for nature conservation, annual monitoring



## 2. S11 – CA Stewardship

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

- 10 practices to implement this standard

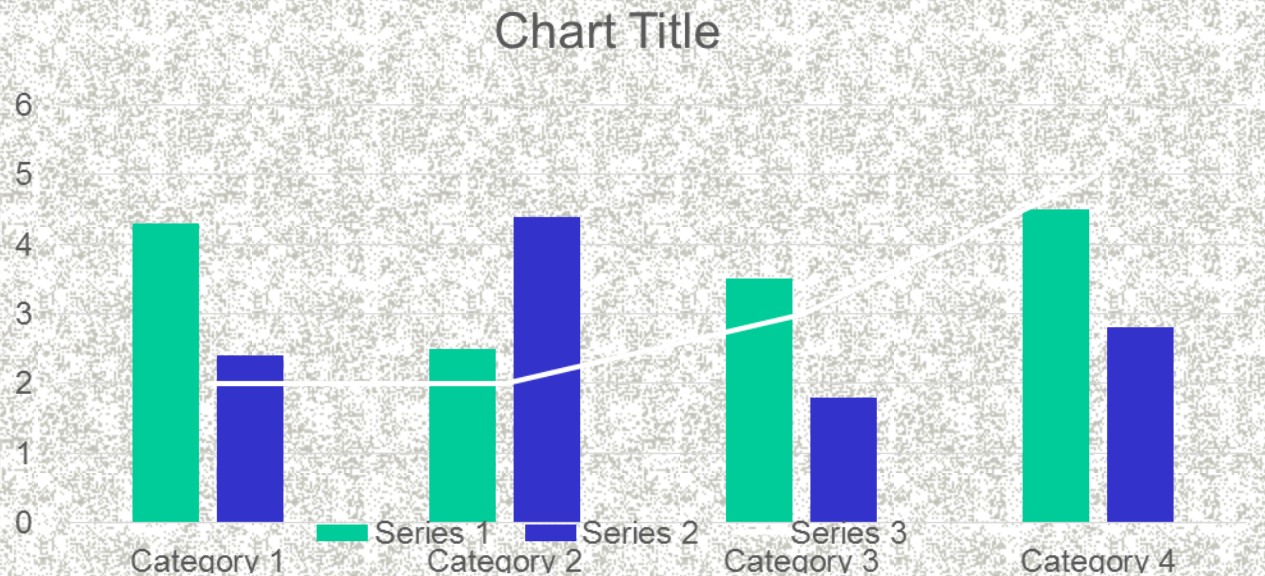
KLT –  
Young




# A: Funding CA Stewardship

1. Estimate stewardship and enforcement costs
2. Track stewardship and enforcement costs

\$





## B. Baseline Documentation Report

1. Have a BDR: descriptions, maps, photos of values, monitoring conditions
2. BDR prior to closing: technical expertise, interim version if needed
3. Document changes to land or CA
4. Owner and LT hold an original copy





# C. CA Compliance Monitoring

1. Adopt policy/procedure: consistent monitoring protocols, recordkeeping
2. Monitor at least once per year: if aerial then on ground every 5 years, promptly document monitoring outcomes, verify any suspected breach

Twp. North Kawartha –  
Mt. Julian Inn



# D. Landowner Relationships

1. Maintain regular contacts
2. Systems to track ownership changes
3. When changes, meet new owners: CA copy, CA info, CA stewardship policies

KLT –  
Dance

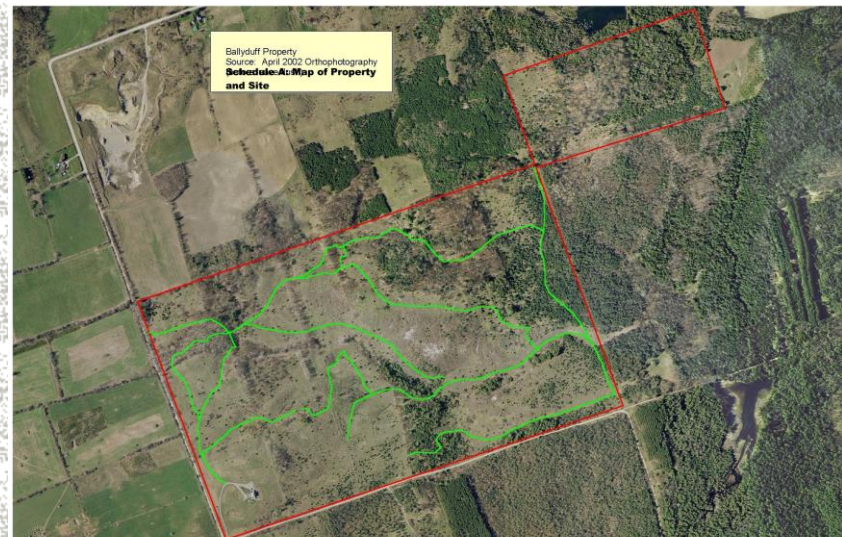


# E. CA Enforcement

1. Policy, procedures to document violations
2. Investigate violations promptly
3. Involve parties, authorities, legal counsel: report

Ecogift feature  
impacts to ECCC

KLT –  
Ballyduff







# F. Approvals, Permitted Rights

1. Respond to landowner requests: timely, consistent, as in CA or procedure
2. Establish procedures for decisions
3. Permanent record: notices, approvals, denials, interpretations, exercise of rights

KLT –  
Glen Burn



# G. Contingency Strategy

1. Establish contingency plan if LT ceases to exist, cannot steward/administer CA
2. Maintain contact with backup holder

KLT –  
Emily Creek





## H. Amendments

1. Adopt, follow policy for amendments: mission, laws, charitable status, no private or undue benefit, CA purposes and donor's intent, have net beneficial or neutral effect
2. Evaluate amdts. with due diligence
3. Document how amdt. meets principles
4. Request ECCC approvals for Ecogifts

# I. Expropriation

1. If threat to CA of expropriation: avoid loss of conservation values, have % value documented, document efforts to get proportionate share of proceeds, notify relevant parties/ECGCC if Ecogift

AFOCLT/RLC –  
Wilderness Islands





# J. Partial/Full Extinguishment

1. If rare extinguishment of CA: follow CA, obtain provincial authorization, no undue benefit, avoid/mitigate harm to Cons. Values, apply proceeds to cons., consider LT reputation, promptly notify relevant parties (incl. donors, funders), request ECCC prior approval if Ecogift



# 3. Other CEA S & Ps

- 2. A – Compliance with Laws
- 3. C – Board Approval of Transactions
- 4. C – Land, CA Transactions with Insiders
- 6. E – Risk Management and Insurance
- 8. - Evaluating, Selecting Projects: B,C,D,E
- 9. - Ensuring Sound Transactions: E,H,I
- 10. - Tax Benefits  
and Appraisals: A,B

HHLT –  
Haliburton property





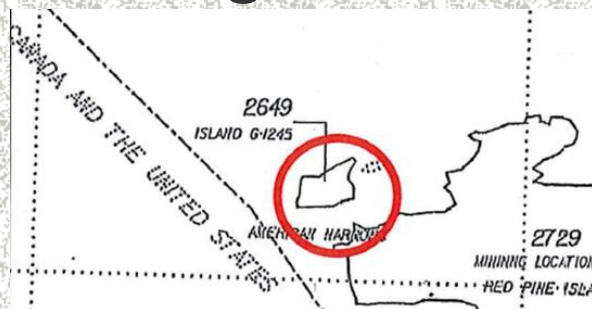
## 4. CEA Defence

### Concerns:

- one CEA challenge could undermine all, set a poor legal precedent
- could be expensive to defend a CEA
- some land trusts may not address breaches, not have funds or be able to fully prosecute or defend a CEA

# CEAs – not always simple!

- Detailed purposes – AFOCLT template
- Provisions for reserved interests
- Mortgage and lease subordination
- Area size for forestry or severance
- Term length: tree cutting by-law, Ecogift
- Alignment with land use planning
- Owners, boundaries
- Registration issues



AFOCLT/RLC –  
American Narrows

## Indian Treaty

### Articles of a Treaty

made and concluded on the fifteenth day of November in the Year of Our Lord One thousand Nine hundred and twenty three. Between His Most Gracious Majesty George the Fifth of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, Emperor of India, by His Commissioners Angus Seymour Williams of the City of Ottawa in the Province of Ontario Esquire Barrister at Law, and Departmental Solicitor of the Department of Indian Affairs; Robert Victor Sinclair of the said City of Ottawa Esquire, one of His Majesty's Counsel learned in the law and Uriah McFadden of the City





# OLTA CEA WG activities

- Background
- CEA Best Practices, defence Report
- CEA cases, risk mgt., other research
- CEA registration bulletin development
- CEA Guide

KLT – Dance Sanctuary





# CEA Guide Outline

Introduction

1. Definitions
2. Representations and Warranties
3. Intention
4. Covenants
5. Easement
6. Owner's Obligations and Indemnity
7. Default
8. Notice
9. General Provisions

SA. Legal Description

SB. Covenants (22)

SC. Easement

SD. Baseline Doc. Report

SE. Management Plan

CLA excerpt

KLT -

Dance

Sanctuary



# Legal Drafting is Critical

- CEA Components:
  - Owner: on title, successors
  - Cons. body: governments, conservation charities, backups
  - Purposes: align with CLA, tax programs, site features
  - Restrictions: instructions, plan, draft, think long-term, anticipate exceptions
  - On-going relationships: changes in owners/land/context over time, dispute resolution, approvals
  - Specific CLA and tax provisions: beyond common law, requirements, alignment
- Templates: OLTA, LTA, AFOCLT – only guides, apply specifics
- Terms need to actually protect features
- Understand context, all transaction pieces
- Professional legal help for strong drafting
- Fresh eyes in final review

KLT –  
Elliott





# Ecogift certificate paragraph

“The **terms** of the conservation easement agreement **must protect the ecologically sensitive features** for which the land is certified. **Strong conservation easement agreement drafting is therefore critical** to ensure that the ecological sensitivity is maintained. This certification of ecological sensitivity does not assess the conservation easement agreement’s rigour or defensibility in a court of law. Please ensure that all parties, and their advisors, **review the final version** of the conservation easement agreement for consistency and coherency throughout the document, including **references, definitions, provisions and schedules.**”

# 5. Challenges and Changes

- CEA registration procedures
- CEA property tax evaluation
- CEA tax valuation for non-Ecogifts
- CEA defence funds
- Conservation severances
- CLTIP criteria, program limits, AF



# Upcoming Developments

- Canadian LT S&Ps interpretation, guidance docs.
- OLTA CEA Guide
- CEA Registration Bulletin
- Securement implementation in land use planning

KLT – Chiminis/  
Big/Boyd Island





## 6. Some CEA Resources

- Ita.org – CE Handbook, many others
- [olta.ca/what-we-do/publications](http://olta.ca/what-we-do/publications)
  - NCC – Best Practices for CE Programs
  - WCELA – Greening Title: Best Practices
  - OHT – BDR Template for Natural Heritage
  - OLTA – Top 10 to Remember for BDR
- OLTA - CEA Best Practices Report
- CEA templates: OLTA, LTA, AFoCLT
- Other land trusts' experiences, docs!

# 7. Questions, Discussion?

- Your experience, issues, lessons
- Questions on CEA S & Ps?
- How can CEA Guide be most useful?

KLT – Emily Creek

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