Assessing Your Organization

*A tool for land trusts to conduct a detailed assessment of organizational progress toward implementing the Canadian Land Trust Standards and Practices*

Conservation Agreement Stewardship Workbook

# Acknowledgements

This document was revised and modified based on the U.S. Land Trust Alliance document *Assessing Your Organization* (Revised 2017) and the Canadian Land Trust Alliance document *Assessing Your Organization* (2007) with permission from the Land Trust Alliance. The Ontario Land Trust Alliance would like to thank Environment Climate Change Canada for its financial support toward the development of this document.

Reprinting of copyrighted *Assessing Your Organization* for uses other than distribution to land trust board and staff requires permission from the Land Trust Alliance. Reprinting of the *Ontario Land Trust Alliance Assessing Your Organization* for uses other than the distribution to land trust board and staff requires the permission of the Ontario Land Trust Alliance.

|  |  |
| --- | --- |
|  | Ontario Land Trust Alliance Inc.P.O. Box 54 Acton  Acton, ON L7J 2M2 [www.olta.ca](http://www.olta.ca/) |

Table of Contents

[Checklist of Written Materials, Practices or Procedures 1](#_Toc98851835)

[Standard 11: Conservation Agreement Stewardship 2](#_Toc98851836)

[B. Baseline Documentation Report 2](#_Toc98851837)

[C. Conservation Agreement Compliance Monitoring 3](#_Toc98851838)

[D. Landowner Relationships 5](#_Toc98851839)

[E. Conservation Agreement Enforcement 7](#_Toc98851840)

[F. Approvals and Permitted Rights 9](#_Toc98851841)

[G. Contingency Strategy 11](#_Toc98851842)

[H. Amendments 13](#_Toc98851843)

[I. Expropriation 15](#_Toc98851844)

[J. Partial or Full Extinguishment 17](#_Toc98851845)

[Setting Priorities 19](#_Toc98851846)

# Checklist of Written Materials, Practices or Procedures

Here are some materials that you may find helpful to review and refer to as you work through this workbook. The items in green link to highest priority practices in the AYO workbook.

Conservation agreement monitoring policy and/or procedure (11C1)

Information about the conservation agreement and the land trust’s stewardship policies and procedures for new owners of conservation agreement land (11D3)

Conservation agreement enforcement policy and procedures for responding to violations (11E1)

Procedure for responding to landowner required notices or requests for interpretation or approvals if not specified in the conservation agreement deed (11F1)

Procedure to guide decision-making regarding approvals and permitted rights (11F2)

Conservation agreement amendment policy (11H1)

Land management plan for each conservation property (12B1)

# Standard 11: Conservation Agreement Stewardship

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

*How well is the land trust meeting this practice?*

*1 = not currently meeting*

*4 = meets or exceeds*

|  |  |
| --- | --- |
| How many conservation agreements does the land trust have? | Click here. |
| How many hectares? | Click here. |
| Notes:Click here. |

## Baseline Documentation Report

|  |  |
| --- | --- |
| 1. In the limited circumstances when there are significant changes to the land (such as a result of a wildfire or bank erosion) or the conservation agreement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, baseline supplement or current conditions report
 | Choose an item. |
| Does the land trust document significant changes to the land covered by its conservation agreements and changes to the conservation agreements themselves? | Choose an item. |
| If yes, the documentation includes (check all that apply):[ ]  The date[ ]  Written descriptions[ ]  Photographs and/or maps[ ]  Signatures, as appropriate to the form of documentation |
| Notes:Click here. |

## Conservation Agreement Compliance Monitoring

|  |  |
| --- | --- |
| 1. Adopt a written policy and/or procedure for compliance monitoring of conservation agreements that establishes consistent monitoring protocols and recordkeeping procedures
 | Choose an item. |
| Does the land trust have a written policy or procedure for monitoring its conservation agreements? | Choose an item. |
| Notes: *E.g. What is the policy or procedure? When was it adopted? When was it last reviewed?*Click here. |
| 1. Monitor each conservation agreement property at least once per calendar year
	1. If a land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years
	2. Promptly document the outcomes of annual compliance monitoring activities for each conservation agreement, including communications to and from owners of conservation agreement properties
	3. Conduct on-the-ground verification in a timely manner for any suspected violation or breach of conservation agreements
 | Choose an item. |
| Does the land trust monitor all of its conservation agreements on an annual (or more frequent) basis? | Choose an item. |
| If yes, for how many consecutive years has the land trust monitored all of its conservation agreements on an annual basis? | Click here. |
| Notes:Click here. |
| Does the land trust conduct aerial monitoring? | Choose an item. |
| If yes, does the land trust supplement aerial monitoring with on-the-ground monitoring at least once every five years? | Choose an item. |
| Notes:Click here. |
| Does the land trust promptly document its annual monitoring in writing and with photos as appropriate? | Choose an item. |
| If yes, at a minimum, the land trust’s monitoring reports include (check all that apply):[ ]  Monitoring date[ ]  The specific conservation agreement monitored[ ]  Name of the monitor[ ]  Observations related to the property’s condition and conservation values[ ]  Observations related to any potential violations[ ]  Any changes in land ownership |
| Notes:Click here. |
| Does the land trust use a template conservation agreement monitoring report? | Choose an item. |
| Notes:Click here. |
| Describe how the land trust monitors agreements it holds, including what involvement the landowner has in the monitoring process (if any):Click here. |
| Notes:Click here. |

## Landowner Relationships

|  |  |
| --- | --- |
| 1. Maintain regular contact with owners of conservation agreement properties to maintain relationships and avoid potential agreement conflicts
 | Choose an item. |
| How often each year does the land trust contact conservation agreement landowners? | Click here. |
| Notes:Click here. |
| 1. Establish systems to track changes in land ownership
 | Choose an item. |
| Does the land trust track changes in land ownership for its conservation agreement properties? | Choose an item. |
| Notes:Click here. |
| Does the land trust obtain a copy of the deed for each new owner to verify legal ownership? | Choose an item. |
| Notes:Click here. |
| 1. When the property changes hands, attempt to meet with the new owner or property manager to ensure the new owner obtains:
	1. A copy of the conservation agreement documents
	2. Information in writing about the conservation agreement
	3. Copies of the land trust’s stewardship policies and procedures
 | Choose an item. |
| Does the land trust have an established process in place to explain its conservation agreement and monitoring responsibilities to new owners of land protected by conservation agreement? | Choose an item. |
| Notes: *E.g. Describe the process. Is it a formal, written process?*Click here. |

## Conservation Agreement Enforcement

|  |  |
| --- | --- |
| 1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation agreement violations
 | Choose an item. |
| Does the land trust have a dated, written policy and procedure that state how it will address potential violations? | Choose an item. |
| If yes, the policy and procedures include (check all that apply):[ ]  Details on how the land trust will respond to a violation, including:* How the land trust will identify, review and make decisions to resolve a suspected violation
* Steps the land trust will take to document its enforcement actions
* The timing and nature of communications with the landowner

[ ]  The role of each party (such as board members, volunteers, staff, attorney and co-holders and/or partners) in the enforcement process[ ]  Clear descriptions of the differences in how the land trust responds to minor violations and major violations, if the land trust has different procedures for each |
| Notes: *E.g. What is the policy and procedure? When was it adopted? When was it last reviewed?*Click here. |
| 1. Investigate potential violations in a timely manner and promptly document all actions taken
 | Choose an item. |
| Have any of the land trust’s conservation agreements been violated? | Choose an item. |
| If yes, please describe the most recent conservation agreement violation:Click here. |
| Approximately how many violations have there been of conservation agreements held by the land trust? | Click here. |
| Briefly describe the nature of the violations that have occurred in the last five years:Click here. |
| For all violations, the land trust’s actions (check all that apply):[ ]  Are timely[ ]  Are professional and focused on the facts and appropriate resolution[ ]  Are consistent with the protection of the conservation values and comply with the restrictions on the property[ ]  Do not result in private inurement or impermissible private benefit[ ]  Are appropriately documented |
| Have all violations been resolved? | Choose an item. |
| Notes:Click here. |
| 1. Involve pertinent parties, authorities and legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution
	1. For conservation agreements that have been certified as an ecological gift, report violations that have impacted the natural features of the property to Environment and Climate Change Canada
 | Choose an item. |
| Does the land trust involve pertinent parties, authorities and legal counsel in its enforcement actions, as appropriate? | Choose an item. |
| Notes:Click here. |

## Approvals and Permitted Rights

|  |  |
| --- | --- |
| 1. Respond to landowner required notices or requests for interpretation or approvals in a timely and consistent manner, as specified in the conservation agreement deed or in a written procedure
 | Choose an item. |
| Does the land trust have a written policy or procedure for how and when it responds to landowner requests? | Choose an item. |
| Notes: *E.g. What is the policy or procedure? When was it adopted? When was it last reviewed?*Click here. |
| What is the timeframe for responding to landowner notices or requests? | Click here. |
| Notes:Click here. |
| Does the land trust involve legal counsel for complex requests for interpretation or approvals? | Choose an item. |
| Notes:Click here. |
| 1. Establish written procedures to guide the land trust’s decision-making regarding approvals and permitted rights
 | Choose an item. |
| Does the land trust issue discretionary approvals? | Choose an item. |
| Notes: Click here. |
| Do the land trust’s conservation agreement deeds contain discretionary approval clauses? | Choose an item. |
| If yes to either, does the land trust have written procedures to guide its decision-making with respect to discretionary approvals? | Choose an item. |
| Activities approved by the land trust using approvals (check all that apply):[ ]  Are consistent with the conservation agreement’s purpose and terms[ ]  Do not confer private inurement or impermissible private benefit |
| Notes: *E.g. What is the procedure? When was it established? When was it last reviewed?*Click here. |
| 1. Maintain a permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights
 | Choose an item. |
| Does the land trust retain the originals of stewardship records and keep them generally secure and protected from damage or loss in accordance with its recordkeeping policy? | Choose an item. |
| Notes:Click here. |

## Contingency Strategy

|  |  |
| --- | --- |
| 1. Establish a contingency plan for all conservation agreements in the event the land trust ceases to exist of can no longer steward and administer them
 | Choose an item. |
| Does the land trust have a contingency plan for all of its conservation agreements? | Choose an item. |
| Notes: *E.g. What is the plan? When was it established? When was it last reviewed?*Click here. |
| If a backup holder is named in a conservation agreement (check all that apply):[ ]  The holder has agreed to accept the conservation agreement[ ]  The holder is qualified to accept the conservation agreement under federal and provincial law[ ]  The holder has the capacity to monitor and defend the conservation agreement[ ]  Complete files and adequate stewardship funds are available for transfer to the holder |
| Notes:Click here. |
| 1. Maintain contact with the backup holder as appropriate to ensure the ability of the holder to hold conservation agreements is still valid
 | Choose an item. |
| Does the land trust have regular contact (at least once annually) with the backup holder to ensure they continue to be willing and able to accept the conservation agreement? | Choose an item. |
| Notes:Click here. |

## Amendments

|  |  |
| --- | --- |
| 1. Adopt and follow a written policy or procedure addressing conservation agreement amendments so that they are consistent with the following principles:
	1. Are consistent with the land trust’s mission
	2. Comply with all applicable provincial and federal laws
	3. Do not jeopardize the land trust’s charitable status
	4. Do not result in a private or undue benefit
	5. Are consistent with the conservation purpose(s) and intent of the conservation agreement
	6. Are consistent with the documented intent of the donor, grantor and any funding source
	7. Have a net beneficial or neutral effect on the relevant conservation values protected by the conservation agreement
 | Choose an item. |
| Does the land trust have a dated, written amendment policy or procedure? | Choose an item. |
| If yes, the land trust’s amendment policy or procedure (check all that apply):[ ]  Is consistent with the principles listed in H.1.[ ]  Requires amendments to have a net beneficial or neutral effect on the protected conservation values[ ]  Prohibits private inurement and impermissible private benefit[ ]  Describes the role of the board (and any committee) in addressing amendments[ ]  Describes the circumstances under which the land trust would consider an amendment[ ]  Describes how the land trust’s procedures may vary depending on the type of amendment being considered |
| Notes: *E.g. What is the policy or procedure? When was it adopted? When was it last reviewed?*Click here. |
| 1. Evaluate all conservation agreement amendment proposals with due diligence sufficient to satisfy the above principles
 | Choose an item. |
| Has the land trust amended any of its conservation agreements? | Choose an item. |
| If yes, please describe the most recent conservation agreement amendment:Click here. |
| Approximately how many conservation agreements has your land trust amended? | Click here. |
| Briefly describe the nature of the amendments that your land trust has completed in the last five years:Click here. |
| Did every amendment satisfy the principles listed in H.1.? | Choose an item. |
| Notes:Click here. |
| 1. If an amendment is used to adjust conservation agreement boundaries (such as to remedy disputes or encroachment) and results in a *de minimis* extinguishment, document how the land trust’s actions address the terms of J.1.
 | Choose an item. |
| Has the land trust ever used an amendment for this purpose? | Choose an item. |
| If yes, please describe the circumstances:Click here. |
| If yes, did the land trust follow the steps outlined in Practice J.1.? | Choose an item. |
| Notes:Click here. |
| 1. Request authorization from the Minister of Environment and Climate Change Canada for amendments to conservation agreements certified as ecological gifts
 | Choose an item. |
| Has the land trust amended any of its conservation agreements certified as ecological gifts? | Choose an item. |
| If yes, did the land trust request authorization from the Minister of Environment and Climate Change Canada for amendments to those conservation agreements?  | Choose an item. |
| Notes:Click here. |

## Expropriation

|  |  |
| --- | --- |
| 1. If a conservation agreement is threatened with expropriation
	1. Work diligently to avoid a net loss to conservation values and document the actions taken
	2. Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation agreement
	3. In circumstances where a net loss of conservation values cannot be avoided, document the land trust’s attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation agreement deed
	4. Provide prompt notification to relevant parties, including the expropriating authority and Environment and Climate Change Canada, if the conservation agreement is certified as an ecological gift
 | Choose an item. |
| Has the land trust ever faced an expropriation action affecting one of its conservation agreements? | Choose an item. |
| If yes, the land trust (check all that apply):[ ]  Took steps to avoid or mitigate harm to the conservation values[ ]  Took steps to secure the appropriate compensation for the rights expropriated[ ]  Documented all actions taken in connection with the expropriation action[ ]  Used any proceeds in a manner consistent with the conservation agreement’s purposes |
| Notes:Click here. |
| Does the land trust have, or can it obtain, data on the percent of value of the property represented by the conservation agreement for every tax-deductible conservation agreement it holds? | Choose an item. |
| Notes:Click here. |

## Partial or Full Extinguishment

|  |  |
| --- | --- |
| 1. In the rare case that it is necessary to extinguish a conservation agreement, in whole or in part,
	1. Follow the terms of the conservation agreement with respect to taking appropriate action, and obtain provincial authorization when required by law
	2. Ensure there is no undue benefit
	3. Take steps to avoid or to mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation agreement deed
	4. Consider the land trust’s actions in the context of its reputation and the impact on the land conservation community at large
	5. Provide prompt notification to relevant parties, including donors and funders involved in the land transaction
	6. Request prior authorization from Environment and Climate Change Canada if the conservation agreement is certified as an ecological gift
 | Choose an item. |
| Has the land trust ever extinguished a conservation agreement, in whole or in part (other than through expropriation)? | Choose an item. |
| If yes, please describe the circumstances:Click here. |
| If yes, the land trust (check all that apply):[ ]  Followed the conservation agreement terms with respect to obtaining judicial or regulatory review OR[ ]  Obtained a written legal opinion why the land trust did not need judicial or regulatory review[ ]  Documented that the extinguishment did not result in private inurement or impermissible private benefit[ ]  Took steps to avoid or mitigate harm to the conservation values[ ]  Used any proceeds in a manner consistent with the conservation agreement’s purpose[ ]  Did not put the land trust’s or the land trust community’s reputation in jeopardy[ ]  Informed or involved the land trust’s board, as appropriate to the scale of the extinguishment, according to the terms of the conservation agreement or other agreement |
| Notes:Click here. |

# Setting Priorities

Based on what you have learned about your land trust’s implementation of these conservation agreement stewardship practices, please complete the following list.

Our organization’s conservation agreement stewardship strengths are:

|  |
| --- |
| 1. Click here.
 |
| 1. Click here.
 |
| 1. Click here.
 |

Our greatest conservation agreement stewardship challenges are:

|  |
| --- |
| 1. Click here.
 |
| 1. Click here.
 |
| 1. Click here.
 |

Some specific steps we will take over the next one to three years toward overcoming the challenges are:

|  |
| --- |
| 1. Click here.
 |
| 1. Click here.
 |
| 1. Click here.
 |